Decivilisation and Shifting Regimes of Labour Relations

The Cases of Postrevolutionary France and of the Verlag-System in Early-Modern Germany

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1 Introduction

In his work on civilisation processes sociologist Norbert Elias seldomly discusses theoretical conceptions of other social theorists. To some extent, however, we may infer his ideas from his reticence about phenomena that others considered to be particularly important in societal development. One of these phenomena is 'law'. 'Law' did figure prominently in social theories of the early 20th century, also with authors who were a source of inspiration to Elias like Max Weber. But it is conspicuous by its absence from Elias' writings, with only a few exceptions. How should we understand this, and can his position in this regard be sustained? Can law really be relegated to a mere reflection of power balances, as Elias suggests? Or should we rather recognize the role it may play in figurations and in (de)civilizing processes?

1.1 Outline of this paper

After a short introduction to the concept of (de)civilization (in 1.2), I start by commenting upon Elias' conceptualization of normativity, arguing that it correctly restores normativity to a central place in sociological theory but may have to be revised in light of more recent literature. His (almost lacking) remarks on 'law' do not adequately account for its impact on the constitution of social groups (section 2). In the third and fourth sections I use two historical cases of changing figurations of labour relations to substantiate my argument.

The first of these cases is based on historical accounts of the prolonged struggle (16th - 19th c.) in the textile industry between workers, organized in craft guilds in German cities, and merchants trying to take control of complete production chains. Its outcome, the contested *Verlag*-(putting out-)system, can be conceptualised as a provisional compromise between different, and partly conflicting regimes of labour relations. Each of these regimes is based on coherent normative, including legal, models, though built up from different social imagery. In the end the commercial regime has won a victory over that of the guilds, gradually destroying civilised life in the guilds.

The second case, in section 4, concerns developments in the relations between 'employers' and workers in de first decades after the French Revolution. The French national legislator, implementing legal principles of the Revolution, initially deprived employers of their customary legal means to control workers. It created an almost completely revised playing field, committing employers and workers to new mutual understandings and negotiations on working conditions. I argue that in this case law, imposed from the 'outside', has had, at least for decades, an autonomous contribution to civilising labour relations.

In the final section, I use the results of my analysis of these two cases to criticize Elias' statement of the 'all-time correspondence' between legal forms and the structure of society, which tends to

reduce the former to an epiphenomenon of the latter. Rather, human interdependency and its processes generate 'cultural' elements that do not fade away in the next turn of processes, but gain a certain permanence, even if this may be only in a sleeping state of 'potentiality' (Bucholc 2015) or 'capability' (Sassen 2006). In their formation figurations are partly dependent on the available cultural elements and on the way these can successfully be recombined or transformed. I argue that normativity is an integral part of these processes and that law can have a relatively autonomous part to play in processes of (de)civilization.

1.2 (De)civilization

To Elias the 'civilizing process' is a technical term that tries to avoid connotations of 'progress' but does imply a kind of sequential order (Loyal & Quilley 2004: 10-11). It can be viewed as composed of four elements:

(a) a shift in the balance from external to internal constraints on impulses;
(b) a tendency towards a more stable and differentiated pattern of self-restraint; and
(c) increasing mutual identification across group boundaries (Van Krieken 2011: 42);
(d) an increasing urge of foresight, the need to take a long-term view on relations to others (Wouters 1995: 32).

All of these elements concern processes that have no intrinsic localisation. But its elements ('more', 'increasing') imply shifts in levels of civilisation, and if we are qualifying groups or figurations in terms of these shifts, we need to locate groups and define figurations. Although they usually can be considered to make part of even wider figurations, the criteria of the 'civilizing process' can be applied at group level. In case of conflicts between groups, in particular, their application can bring out a diversity of simultaneous civilization and 'decivilisation' processes. Van Krieken (2011) has shown how the process of civilisation within the figuration of the English lords and the Crown has been closely connected to the exceptionally violent way in which England has suppressed and colonized Ireland since the 12th century. In these terms, the necessary conclusion must be that in such confrontations civilisation and decivilisation can be part of the same process. Nevertheless, the Eliasian instigation to look at overarching figurations tends to regard the latter as steps backward on a road to a civilized *telos*, as Goudsblom (2003: 35) concludes: "human groups stand a better chance of survival in the long run with an advance in the civilising process than do groups that lag behind in this sense. (…) It is an empirical generalisation, and not just a theoretical assumption, that in the very long run, the entire web of human relations has changed, and is continuing to change, in the direction of more far-reaching social interdependence and greater complexity."
In my analysis of the two cases, in sections 4 and 5, I come back to the question of analysing the processes involved in terms of (de)civilisation.

2 Elias' approach to normativity

2.1 *Rules and normativity 'beyond' expectations*

Martha Bucholc (2015: 12) contrasts Elias' obvious neglect of law with her observation that his main work '*On the Process of Civilisation'* shows "the overwhelming impact of rules of every kind on our lives." This is an important observation, but some critical notes have to be added.

First, to a certain extent the overwhelming attention paid to rules and standards could be seen as an artifact of his methodology: to Elias discourses on 'rules' figured primarily as research materials, in an unavoidable detour to acquire knowledge of changes in figurations of interdependent behaviour.

One might argue that developments in actual interdependencies are the real subject of his sociology, and that the only way to study them is, unfortunately, by way of access to accounts of *standards*, to what people have recorded about their expectations of each other's behaviour (books of manners; other discourse on normative issues, f.i. in letters).

Second, the term 'rules' may be used for very different kinds of behavioural standards, indeed, but may, as a general term which connotes 'application', lead us astray. It may be significant that, presumably to prevent confusion with legal types of rules, authors building upon Elias' works usually prefer the term '(cultural) code' to 'rule'. Rather than having some fixity of themselves, these *codes* are discursive snapshots which express behavioural standards, taken by those who comment upon developments of social relations, whether they are writers of books on manners, letter-writers, or sociologists. It is possible to represent these codes in rule-like form, and it is not unusual that they are being made explicit in this form during some stage of their development , though it is definitely not their greatest moment - their ultimate victory is when they have become part of the habitus to such an extent that it has become shameful to make them explicit. They become part of an economy of affects that Elias largely conceives of in Freudian terms. To Elias the explicit discussion of codes, for instance in books of manners, primarily provides an entry to gaining knowledge of changing figurations. The same can be argued as to formalisations of normativity in general: no substantive role in the development of social figurations is being granted to them, they merely *reflect* moments in the development of figurations, otherwise determined (Wouters 2008: 30).

Bucholc rightly points to the central place in Elias' work of normativity. Not only have rules and standards been the basic material for his investigation of interdependencies, I would add that *these interdependencies themselves are normatively constituted.* In Elias' terms they are constituted by mutual 'expectations' or anticipations of behaviours of those taking part in a configuration. However, dealing with normativity in these terms is like reducing space to a two-dimensional representation. An empirical approach appears to urge researchers to try to catch normative phenomena in terms of 'expectations'. However, the disciplinary need to distinguish between factual and normative declarations ought not to mislead us into assigning facts and values, as aspects of human existence, to quite separate domains of it (Krygier 2012: 114). These 'two-dimensional' researchers often do acknowledge human beings' capacity to imagine a spatiotemporal reality different from the actual one, as well as their practice of judging the actual by reference to the imagined one. On the other hand, they feel obliged to stick to what they consider to be observable. Their 'solution' is to restrict research to the more easily recordable, and therefore methodologically accountable, perceived misfits between them, which they describe in terms of 'expectations not come true'. Some of these 'expectations', however, are structuring elements of figurations, they are constantly performed in practices in such a way that not living up to them has (actual or virtual) negative consequences for participants. Loss of repute in the court society studied by Elias is an instance of these consequences.

I would argue that reducing normativity to the cognitive matter of 'what you imagine others will do' is an impoverishing representation of the normative dimension of human behaviour. For one thing, as I already noted, there is obviously more to it than mere expectations: if they are refuted by actual behaviour of others, this often significantly changes the context of mutual behaviour. If it concerns 'the rules of the game', it may result in anger, loss of repute, or the imposition of what is more generally called 'sanctions'. Nevertheless it is these 'expectations-with-consequences' that are often treated by researchers as an adequate 'detached' account of normativity.

Another aspect of normativity that is in this way neglected, may be illustrated by again using the analogy of the game. Elias brings in a thought experiment: in watching a soccer game, think away the other players except one – and you will not be able to make any sense of his movements in the field.

This illuminates the fact that they respond continuously to what the others - now made invisible – do; one might say that the person observed is by this manipulation divested of his quality as a player. Now, even if we do *not* think away the other players, the only way to make sense of the movements, for players as well as observers, is as part of a relatively stable, institutionalized game. Actions of players are not merely being attuned to the rules of the game or to what they expect others will do – this attuning of actions is continuously oriented by 'what is at issue and at stake in the play'. In such a way a specific normativity is conferred on the figuration that cannot be reduced to 'expectations', not even to 'expectations-with-consequences'. Beyond that, processes are characterized by their orientation to what is *at issue* and what is *at stake* in how they are being continued (Rouse 2015: 164-173). To be sure, recognizing the importance of this normativity does *neither* mean that its standards would be fixed, *nor* that its outcome would be 'rational' in the sense of a product of consciousness (to anticipate objections that we could imagine Elias might have raised).

The practical and discursive capacities of human beings allow them to go *beyond* the restricted sense of normativity as that of attuning to the actions of others. Joseph Rouse (2015, 2016) has argued that the perceptual and practical capacities of human beings are transformed by the fact that they are picked up within discursive practices. Conceptual understanding (allowing for a differentiation of 'how things are taken up' from 'how things are') is a naturally developed human capacity that allows for a new way, beyond that of 'alignment', of orienting on what is 'at stake', what we 'are up to'. (Rouse 2016: 38-9). This conception extends the view on normativity in figurations as it has been implied in Elias' game metaphor. It is time now to end these general remarks on the concept of normativity and to focus on the more restricted phenomenon of 'law'.

2.2 Figurations and 'law'

As noted above, 'law' is conspicuous by its almost complete absence from Elias' writings. How should we understand this absence, and can it be considered adequate in light of his theory? It contrasts with the attention the founding fathers of sociology paid to the role of law in society. Now, taking a sociology of science perspective, *some* reservations as to the way they have treated law might be warranted: these early sociologists had usually been trained as lawyers, and ideational and representational explanatory conceptions tended to be dominant in their approach. However, since the 1930's sociological theory has, presumably in parricidal reaction to this earlier stage, to a large extent repressed the part that 'law' may play as a constitutive factor in social relations. The disciplinary boundaries of what 'sociology' should be, have been drawn in such a way that the 'ought' of normativity could not be allowed inside.

An explanation of its absence might be that to Elias talking about law is, sociologically speaking, an instance of 'process-reduction', of treating relations and processes as if they would have a static substance of their own. What counts is the way that figurations are changing. It may be that in the struggles that are part of this change some groups of people appeal to legal rules, but the fact that these rules have been formalized would only count as a less significant epiphenomenon. One of the few of Elias' statements on the matter clearly concerns a stage of well developed *state* law :

> "Legal forms correspond at all times to the structure of society. The crystallization of general legal norms set down in writing, an integral part of property relations in industrial societies, presupposes a very high degree of social integration and the formation of central institutions able to give one and the same law universal validity throughout the area they control and strong enough to enforce respect for written agreements. The power that backs up legal titles and property claims in modern times is no longer directly visible. (…) The chains mediating between the legal system and the power structure have today grown longer, in keeping

> with the greater complexity of society. And as the legal system often operates independently of the power structure, though never completely so, it is easy to overlook the fact that the law here, as in any society, was a function and a symbol of the social structure or – what comes to the same thing – the balance of social power." (Elias 2000: 233)

The focus is here on law as a 'function and symbol' of power balances and on what figurational preconditions its 'crystallization' presupposes; law is rather derived from figurations than considered to be an organizing element. The existence of legal titles seems not to matter in itself; it is the power that backs them up that counts. Whether the appeal to formalized rules 'makes a difference' is considered to depend entirely upon power balances.

Rules do play a significant role, but primarily in the way they 'go into' social practices. The ontological status of the rules that direct behaviour may be deduced from Elias' use of the game as a model of social life; it is, as Bucholc notes, comparable to the status they have within Wittgenstein's theory. This implies that rules are not only followed but also ceaselessly *made*: "Rule making, just as much as rule following, is the core of the human condition." (Bucholc 2015: 15). Bucholc argues that to Elias

> "the only dimension of normativity about which a sociologist may conceive an informed opinion … [is] how these orders operate in social life … In Elias's writing, there is no chasm between legal norms and any other norms if we examine their genesis and the way they work. Their only particularity is in their social perception or in the meaning attached to them. It is an obligation of social science to render that meaning understandable as a part of social practices, but it is nonetheless its main goal to describe and explain the relationships in the figuration as they are." (Bucholc 2015: 13-14].

If Bucholc's interpretation of Elias is correct, 'the way rules work' would to a sociologist be the only relevant issue about rules and, more importantly, it would *in no significant way be influenced by different statuses of rules*. The latter appears to me, at first sight, a contra-intuitive statement. It is, at least, an implicit denial of the importance that other sociologists (like Weber) have accorded to law. If there were to be different ways in which 'rules work', would a 'status' of rules not be a way of describing, and accounting for these differences?

2.3 *Three flaws in Elias' conception of law*

Elias' rejection of any particularity of legal rules is related to the way he conceives of 'law'. I consider his conception to be too restrictive in three respects. First, although his processual analysis generally pays few attention to this 'static' category, its focus on state formation and the monopoly of violence involves a tendency to equate 'law', formally with '*state* law', and substantially with 'restriction of violence'.[1] Second, restricting the impact of law to 'how it works' implies a focus on its rules as 'applied' in actual behaviour; Elias regards this as 'knowledge' that we have largely forgotten about but disregards the *normative* (including 'legal') elements. Third, he regards rules that have been somehow fixed as just *snapshots* that merely to some extent visualize changing relations in figurations. Even if legal rules can be regarded as being used as instruments of defining relations between categories of humans within figurations, they seem to be accorded no life of their own: neither to have a technicality nor an internal coherence that would influence the development of figurations.

[1] In `The Germans' Elias (1996: 158-60) allows for the existence of contradictory `codes of norms', but these are immediately relegated to the 'private' vs. the 'public' sphere (state-level and up); no specific attention is paid to intermediate levels of normative organisation (nor to the consequences of using such a bipolar distinction).

As to the first flaw, his focus on 'state law', I would argue that there is no good reason to restrict the concept of 'law' to the contingent 19th-century version of it, as it has developed in the context of the formation of nation states. A 'state law' view is a kind of 'Whig history' in that it, at least implicitly, identifies 'law' with its current, top-down, largely written, uniformized manifestation. Elias' recurrent identification of law with 'state law' is hard to reconcile with his type of processual analysis which seems anyhow incompatible with whatever kind of fixed definition. Law is not just a theoretical concept, it has in different places and times been appealed to in a conscious effort to assign a relative stability to somehow principled, and to a certain extent generalized, ways of living together.[2] If we shake off the modern blinkers, what is rather to be observed is that "law spreads upwards from the bottom" (Berman 1983: 556). Social practices have "a natural potential for 'envaluation', (…) an empirical likelihood founded in conditions that are routinely generated by the experience of relationship" (Selznick 1969: 10). Emerging patterns of interaction tend to get valued in themselves, not as an instrument but as constituting part of a group's identity and common aspirations (Krygier 2012: 77-8). As soon as they are accompanied by procedures somehow specifically directed at enforcement, they are to be qualified as 'law'. Not as something 'imposed' upon social relations, but as an integral part of the enterprise involved in the formation of societies.

I regard as a second flaw that Elias, in so far as he analyses our behaviour as based on rules that we largely have forgotten about, treats them as a *cognitive* phenomenon - one might refer to it as an 'epistemological path-dependency'. He has once used the metaphor of a group of people climbing the stairs of an unknown tower and reaching ever higher storeys, after which the stairs broke down and people at the hundredth storey forgot about how their vision of the world had been built up during the climbing of the stairs (Elias 1988: 115-6). It would be inadequate to use this metaphor only in a cognitive sense and forget about the normative elements implicated in the perspective of this 100th-storey people. Normative techniques that we have developed, climbing the stairs, become co-constitutive of the figurations we are forming. As Gordon (1984: 112) noted: "the legal forms we use set limits on what we can imagine as practical options: Our desires and plans tend to be shaped out of the limited stock of forms available to us: The forms thus condition not just our power to get what we want but what we want (or think we can get) itself."

Elias makes a rather sharp distinction between 'phantasy' and 'reality-congruent knowledge' and couples this with 'involvement' and 'detachment'. From his perspective a conceptualisation of what is 'at issue' and 'at stake' in a practice tends to be banned to the category of 'phantasy'. Bucholc regards these issues as part of a Wittgensteinian 'form of life', which is based on involved phantasies, the importance of which Elias has neglected. She interprets it in terms of the 'communicational functions' of knowledge and memory, 'players' are involved 'in the symbols with which games are played' (Bucholc 2014: 135-7). I would argue that her account stresses the cognitive at the expense of the normative elements of such a form of life, and that these normative elements are more adequately captured by Rouse's (2015) notions of what is 'at issue' and 'at stake' in a social practice.

A third flaw in Elias' conception would be that legal rules seem neither to have a technicality nor an internal coherence that would influence the development of figurations. The relative fixities that a

[2] Lon Fuller (1964: 106): "the enterprise of subjecting human conduct to the governance of rules". Clifford Geertz (1982: final sentence): "The primary question, for any cultural institution anywhere, (..) is whether human beings are going to continue to be able (..) to imagine principled lives they can practically lead." Bucholc (2015: 78) suggests a broad definition : "Law is just an umbrella term for the ways of exercising power in a figuration of such complexity as to have developed special institutions whose task it is to set forth rules in a specified (in particular, written) form and ensure that these rules are obeyed, including by punishing disobedience."

community creates or adopts itself, however, can have a relatively autonomous importance in how the figuration develops. Reverting to Elias' metaphor, with a twist, one might say: the stairs back down are practically not available, the tools that have been developed to become part of the tool kit facilitate practices, and may be adapted, or even be applied in unforeseen ways, but their construction and form also limit options of what can be done.
Late-medieval guilds, for instance, used a legal model and legal tools as a normative constitution of their communities. The legal model has been continuously copied from other groups and was in so far treated as a incorporeal tool, a kind of organizational 'operating system'. In a span of two centuries this 'operating system' spread its normativity all over Europe, keeping its constitutional kernel while being 'updated' and adapted to local circumstances. In this way the availability - also in the sense of: the *scarcity* - of usable legal models has been a dynamic factor in the development of figurations in late-medieval cities. Examples of the same mechanism are that journeymen in Germany, feeling the urge to organize themselves, elected a 'king' (Schulz 1985: 72, 75, 175), and that youth groups in the French countryside adapted the model of the monastery and chose an 'abbot' (Muchembled 1988: ch. V). So, while the development of a normativity that constitutes a group can best be regarded as a movement 'bottom up', it may well be that it is adopted from an 'external' source and in a next step, if necessary, adapted to the specific circumstances of the social practice on which it is being imposed.

The legal aspects of this process of the formation of social entities can be analysed in terms of a differential attribution of capacities and responsibilities to functionaries and categories of human beings (f.i. 'citizens'), backed up by institutionalized forms of power, that constituted their possibilities of acting within configurations that were, in this way, formed. The creation of conditions of citizenship is just the normative side of the development of figurations of living together in pacified social unities. With the passage of time an important part of the developing normativity tends to lose its capacity of being perceived as essentially of such nature, and gets a 'taken-for-granted' character. However, does this necessarily mean that its rules "have little to do with law", as Van Krieken (2019) argues? If we take seriously Elias' assertion that 'legal forms correspond at all times to the structure of society', why would the legal character of norms be lost to the extent that they become integrated into people's habitus? Their 'working' may not be described in the usual *legal* terms of a perceptible 'application' of rules; in case of someone transgressing them, however, we may *socially* see their normativity 'revived' and count on the application of sanctions. It would be more adequate to treat these rules as 'sunken' law, as a normativity "that is almost imperceptibly infused into the material and social organization of ordinary life" (Silbey 2005: 331).[3]

From Elias' perspective such a revival of 'sunken law', or an appeal to law generally, is merely an opportunity that is being seized. Van Krieken (1991: 49) points out that, if we can speak of 'agency' in Elias' approach, it consists of the strategic *seizure* of opportunities which arise for individuals and

[3] It is significant that Elias, in what one might call a `Freudian' mode of analysis, views habitus rather as a result of suppressed violence than of accepted and 'internalised' norms and standards. He treats monopolised violence as 'barracked' (*kaserniert*), as if it were a mass exerting a hardly noticed kind of gravitational pressure on individuals: "von dieser gespeicherten Gewalt in der Kulisse des Alltags geht ein beständiger, gleichmäßiger Druck auf das Leben des Einzelnen aus, den er oft kaum noch spürt, weil er sich völlig an ihn gewohnt hat" (Elias, *Prozess* II: 325-6). While Elias builds upon an anthropology of a human passion to attack (`Angriffslust') and a Hobbesian state theory regarding the fear to be aroused in order to control the passions of the subjects (Wickham & Evers 2012), more recent biological and anthropological literature (see f.i. the summary of Fukuyama 2012: 7) highlights the human species' genetically programmed skills to cooperate. Dunning & Hughes (2013: ch. 6) have imagined a theoretical discussion in which Foucault would have challenged Elias to undertake a sociogenetic examination of his own Freudian 'repressive hypothesis'.

groups, *not* in the actual *creation* of those opportunities. Elias prefers to regard these opportunities as the outcome of *unplanned* processes. His approach thus disregards organizing interventions of powerful groups within figurations that give form and direction to the development of social relations. The use of the guild model to organize groups of citizens within cities is an instance of such an intervention. Likewise the introduction of taxes has done more than merely reflect power relations between rulers and dependent groups – its consequence has been the ready availability of institutionalized forms of extraction. New opportunities (f.i. tax farming) have been created for actors, figurations have changed as a consequence of the availability of social techniques, partly of a legal character. In Elias' perspective *material* aspects of power relations are relegated to a secondary level. Incorrectly, I would argue, in view of the instances of substantial impact of techniques on power relations. For instance, the significance of privileges, granted by a ruler to dependent groups, has changed at the moment that handwriting techniques made the lasting validity of the act of granting less dependent upon the contingent memory of witnesses (and created new practices of forging documents as well).

3 Guilds' normative orders and the German 'Verlag'-system

In order to argue for the significance of law in changing figurations of labour relations, I selected two 'cases' that are discussed in sections 3 and 4, respectively. The intention of the first case is to make clear to what extent law is integral to 'ways of life' that are cherished by groups of workers, and are thus defended by them with vigor against any threat from the 'outside'. The case concerns a struggle in a figuration in which the main participants have been individual craftsmen involved in the production of textiles, capitalist merchants and local and state authorities. It was a struggle over control of the production, but also between 'ways of life' and between legal models that structure labour relations. This case should make clear how the 'guild' and the 'commercial' ways of life presuppose, and build upon models of mutual rights and responsibilities. These models are *legal* models in so far as their normativity is a *reflective* one backed up by the power represented by specific enforcing agencies. My focus here is on German cities where the production had been organized in guilds, but let it be noted that merchants had also been 'putting' out parts of actual production to farming families at the countryside, to some extent a 'free zone' for their operations.

3.1 *Normative orders of guilds*

The constitutional significance of law, as a 'bottom-up' kind of normativity, is more widely to be seen in the development of European societies in the second millennium A.D.. Europe has, since the 11th century, seen an abundance of cities arising with a specific type of legal constitution. Berman (1983) compares their development with that of cities in the Islamic part of the Mediterranean and notes that the social and economic circumstances were not very different between them but western cities had the disposal of religious and legal models that could be mobilized to compose the city as a "community of communities", with a belief in its own dynamics and a consciousness of its own history (Berman 1983: 362-3). In that way religion and law had an *indirect* impact on the figurations that developed within the city, by way of the availability of concepts and models on the basis of which internal relations of the city could be organized.

The urge to organize communally implies, within the expanding space of late-medieval cities, the need to distinguish the organized group from others – by its own jurisdiction, symbols, rituals and by the choice of the patron saint to whom an altar in a church is to be dedicated. For the constitution of

their relations, citizens and craftsmen borrowed a 'brotherhood' model of religious origin. Its legal model has been continuously copied from other groups, and adapted to local situations. The associational models, on which the organization of the city and of craftsmen guilds have been based, implied the fixing of legal rules. Citizens and members of crafts were required to explicitly commit themselves to these rules.
On being admitted to a guild, an aspirant had to pay an entrance fee and to take an oath that he would live up to the ethos and rules of the community of the guild. The 'ethos' might comprise conceptions of the specific, and partly secret technical knowledge and capacities (the 'mystery') of the craft, of its importance to the well-being of the city, and of the religious protection that the craft would receive, in particular from a specific saint. By this oath a new member 'voluntarily' subjected himself to the present rules *as well as* to the rules that the community would make in the *future* - this marks their *constitutional* significance. The oath was also the ritual entrance into the guild's own *jurisdiction*. The enforcement of the rules within the guild was guaranteed by a particularity of the legal *construction* of the rules: the new member submitted himself on beforehand to well defined penances in case he would not comply with rules. No specific procedure was provided for establishing an infringement, principally it was a matter to be brought up by the guild officer, or, in case of disagreement, in a regular meeting of all masters of the craft. The order of these meetings was strictly regulated – it was one of the social institutions of the premodern city in which citizens learned to 'behave', to restrict their impulses of anger and power in order to a have a 'civilized' discussion on common issues (Van Vree 1999). *Restoring order* and 'unity' among the brothers of the guild was the dominant conception of justice to be done. An infringer was therefore expected to compose, for instance by renewing 'in public' his commitment to the rules and, as for the 'unity', by the ritually significant act of offering a collective drink. Only a refusal to do so, which was perceived by the other members as an act of desertion, could result in the imposition of tough sanctions and even in a definitive break – which to a stubborn infringer could mean the loss of his capacity of practising his craft in the town.

In the 'way of life' of the guild ideals of public duty, religious piety, 'brotherhood' and mutual care figured prominently. Members regularly met, collectively decided on issues concerning the order of the guild, had meals together, participated in processions (by which they claimed their prestige in the civic order) and in funerals of members, and took care of sick or old members, widows and also contributed to the city's poor relief. They had a relatively autonomous jurisdiction over their members; their self-declared rules were confirmed by the city and promulgated as charters, mainly in order to be effective also towards non-members (f.i. bunglers).

Of course, the rules of these normative models are not to be misunderstood as a description of 'how things were actually operating'. The 'brotherhood' model, that the guilds and journeymen's associations applied, puts constraints upon participants but there is no way of definitively fixing these constraints – their impact is indeed, as Elias would stress, always dependent upon changes in figurations.[4] But it is important to note that they were not 'external' rules in the 'modern' sense and yet there were fixed as rules of a special status. To guild members they were their *own* rules: the 'ethos' and rules were part of the identity of craftsmen, connected to the 'honour' of the trade and to the (semi-)religious conceptions that were mobilized to create and articulate its particularity.

[4] Cf. Bucholc (2015: 93) on Wittgenstein: "the very way in which rules operate makes it impossible to clearly say what is and what is not a part of the game. (..) any game (..) is a sphere of indeterminacy, which only becomes determined when a mistake is made."

Together they formed a type of 'involved phantasy' (Bucholc 2014: 137), the rules were defended as 'our law' against intrusions on their jurisdiction from the outside. It was not impossible - but you had to be strong as a member to go against the grain. And even if you did, the validity of the model still restricted the practical options - remember Max Weber, famously pointing out that even the thief recognized the legal order: by hiding his act. It is important to recognize that in social practices such constitutional models can have a substantial impact on mutual actions, *even when*, to an outside observer, the actual conformity of actions to the rules of the model is slight.[5]

What, then, does make the community of the guilds different from others? Not the fact that entering a community implies the commitment to an 'ethos' of that community and to the compliance with behavioural standards. But some characteristics of guild rules do give them a specific status:

(a) its order is principally based on the *formal equality* of members (as 'brothers')
(b) of the guild as a numerically *closed* association of licensed craftsmen within a town;
(c) with a recognized own *jurisdiction* (and internal institutionalized enforcers);
(d) its standards of behaviour are explicated in a legal form that includes *wilful submission* by oath *to enforcement* in the future in case the member would not comply.

3.2 The legal order of guilds vs. the commercial order of traders

The production of textiles, for centuries the largest sector of manufacture, has been organized as a *serial* processing of textile materials, in which each part of the concatenation of processes is taken care of by a separate trade in the city, each of them separately organized as a guild. Since the French Revolution guilds have been ostracized for a supposed selfish promotion of economic interests, and this one-sided view continues in much of recent economic and historical literature.[6] While guilds may be viewed by a current economic orthodoxy as monopolisers, their social fields comprised much more: they were the organizational structure of a 'way of life'.

The serial processing in textiles made these guilds interdependent and opened a certain need, and space for coordination, but the mutual competition for their place within the city normally prevented one of them from becoming dominant in these relations of textiles production. The traders, however, to which they increasingly deliver their textiles as export products, are keen to attune the production to increasingly rapid changes in consumers' preferences for kinds of textiles and shifts in fashion. Their lifeworld is a commercial one, their logic that of private law contracts, in which one 'party' is made accountable for delivery of products defined by their conditions. It is diametrically opposed to the communal lifeworld of craftsmen, primarily traditional producers, keen on their autonomy . Traders are commercially interested in increasing both the efficiency of processes and their control of the whole of the production. The logic of their commercial initiatives tends to undermine the organized basis of the independence of producing masters and to increase the distance between the model and practice of artisanal production. As long as city authorities are backing up the model (as they did, in some cases till mid-19th century), the power balance implies that merchants have no choice but to formally respect this claim to independence of the craftsmen.

A compromise has been found in the *Verlag*- or 'putting out'-system. More and more the merchants were providing craftsmen with looms and raw materials, specifying what well-defined products were

[5] Cf. Bucholc (2015: 37): "socially imposed limitations (..) are a part of what we are – our refusal to obey them proves it no less than our compliance."
[6] Though economic historians have started to recognize guilds' contribution to economic welfare. e.g Lucassen 1995.

to be delivered - often: exclusively - to these merchants. They ran up against the boundaries of craftsmen's autonomy and thus had to restrict themselves to defining the required qualities of the product to be delivered; they missed opportunities to effectively monitor and control the process itself. Problems: how to ensure that the hired craftsman will not be using the loom to produce his own marketable products, will not embezzle materials, will not be poached by another merchant or will just disappear before delivery? The moment of delivery became a crucial one in their relations and typically generated a large number of conflicts (is the deficiency of a product due to the low quality of the materials provided or to the craftman's work?). They tended to be dealt with in informal ways rather than by the ordinary, formal justice (Brand 1990: 399-400). Jürgen Brand notices the massive embezzlement of raw materials - in spite of penal sanctions, a whole black market could flourish on it – and interprets it as acts of protest against the constrictions to which the system subjected the craftsmen. These actions would not be motivated by personal gain, but be intended to damage the *Verleger* who, from the perspective of guilds' normative model, appears to them as an 'uncompaniable alien' ('*ein ungeselliger Mensch',* Brand 1990: 199-208).

These ever changing practices of making and living labour relations can be conceived as a struggle between groups of people living from different legal orders. Law is part of these practices and consistent concepts of rights and duties are being mobilised as weapons in the struggle. Figurations are changing, in response to the dynamics of technological and market changes, of institutional developments towards regulation at state level, of social differentiation that increases distances between workers and principals (master – *Verleger* – factory owner), and of social *identities* (the (partly legal) self-definitions of participants (member of guild – contractor - wage worker).

3.3 *Civilising and decivilising consequences*

In terms of civilization, these changes can be argued to have had both *civilising* and *decivilizing* effects. On the one hand civilising effect: the problems mentioned above have urged merchants to not just try to rule out the guild regime, but rather to look for smooth *combinations* with it. Both merchants and craftsmen and their workers have thus been subjected to new behavioural restrictions (Schermer & Willoweit 1982). Both sides have resisted accepting one another's view, so it has been an armistice rather than a concord: merchants by way of contracting got more grip on the production chain as a whole, though only indirectly on the actual production; guild masters lost part of their control but were allowed to formally retain their independency, so strongly connected to their perceptions of 'honour' and of their rightful place in city communities.

In the course of the 19th century the power balance has shifted in favour of the merchants, who have been supported by the forces of nation states increasing their control over cities. The resulting abolition and decay of guilds is in several respects to be qualified as *decivilisation*. The communal structure of common decision-making, of self-regulation and relative autonomous jurisdiction was destroyed; the mutual control of the quality of products, of working conditions and working times, the training system (apprentice- to masterhood), communal meals, the mutual support at funerals of members, the care of the sick and old gradually disappeared from city life. The internal constraints of the 'public' order of the guilds were forcefully replaced by the external restraints of the 'privatized' order of the market. While the cities had been able to counterbalance the increasing power of merchants, and by support of the legal order of the guilds to force merchants and craftsmen to take mutual account of each other, in the course of the 19th century central governments broke down this institutional framework and thereby gave an impetus to these decivilising effects. An institutional void was left that has only gradually, as from the end of the 19th century, been refilled by arrangements at nation state level.

4 Labour relations and the French Revolution

In this section, the second case regards the consequences of the French Revolution for the relations between 'masters' and workers, at the end of the 18th, and during the first decades of the 19th century in France.[7] Inevitably, developments cannot be represented here but in short. My point in this case is that, if Elias' treatment of law as a mere reflection of power relations were correct, one would expect labour relations in French cities both to continue their 18th-century 'bonded' character, characterized by strong (including criminal law) limits on their mobility (Cottereau 2006), and to be in tune with 19th-century developments elsewhere in Europe, characterized by an intensification of control of workers which Stanziani (2014) relates to the prominence of labour-intensive growth up to the 1890's. This expectation is shown to be refuted by actual developments In France that were partly a consequence of a legal change that was relatively autonomous from, and in its effects changed power balances.

4.1 *Guilds and traders in French cities, ca. 1770-1850*

Since the 17th century, the organisation of the trades in guilds (*corps des métiers*) had been facing significant changes. Journeymen, initially less-qualified members of the guild, increasingly opposed masters, fell out of the guilds and started to organise themselves in journeymen's associations (mostly married, and settled journeymen) and *compagnonnages* (mostly journeymen on their *tour de France*) (Truant 1994). As regards labour relations, guilds thus turned into masters' organisations. In the 18th century economic changes (growing international markets, increasing power of merchants) induced a reorganisation of production that increased the tension between the legal-organisational model of guild relations and new forms of organisation based on private-law contracting in less institutionalized (so called 'free') market conditions. In spite of the guild's normative notion of 'brotherhood', the differentiation between masters had increased, small masters had actually lost their much appreciated independency and had become dependent on more powerful masters. The ever present, and practically (!) important tension between normative model and actual power relations was getting more tight. Relations between masters and journeymen were patriarchal, including a master's right to enforce the return of a deserted worker. Elaborate local conventions, enforced by the administration of justice, provided masters with an extensive command over workers.

Sonencher (1989) has shown to what extent, in the second half of the 18th century, the actual trans-actions between economic actors, even members of guilds, increasingly diverged from what was allowed by the guild normative order. The actual divergence was attended by a political-economic discourse on the irksome restrictiveness of guild rules and on the supposed advantages of centralized instead of local (city) control of economic life, and by a shop-flour discourse in natural law terms criticising the arbitrary powers of masters and the subordination of workers ('we are no slaves'). February 1776 experienced a short-lived abolition of the guilds, instigated by Physiocrat minister Turgot, but opposition resulted in a re-establishment of the guilds in August of the same year (Sonencher 1989: 283). In a first phase of the French Revolution, 1789-1791, workers gradually refused to be subjected to the old conventions, appealing to the Revolution's principles of equality and freedom. The political attitudes were at first ambivalent: on the one hand, these principles seemed compelling reasons for abolition of the guild regulations; on the other hand, abolition could

[7] These changes have been analysed, from diverging perspectives, by several authors; I use the work of Cottereau (1987, 2002, 2006), Sonencher (1989) and Truant (1994) as a basis for my account.

have disruptive consequences for labour relations. After nearly two years of deliberations, the *Loi d'Allarde* of 17 March 1791 put a formal end to all corporative organisations. From a legal perspective, labour relations would in the future be a matter of civil law; they were concisely regulated in the *Code Civil*, and were planned to be further regulated in a *Code Industriel* – on which, turned out later, no political agreement could be realised. Legally a form of hire (*louage d'ouvrage*) was applied to all labour relations (excluding domestic relations), based on a bilateral agreement of formally equal parties, concerning the *product* of labour – and no relation of command between the parties (Cottereau 2002: 1540-44). As of 1791 the *justices de paix* consequently rejected claims of masters and other ancient authorities, based on the old regulations. In case a protesting worker left the shop floor, for instance, judges only allowed his master a civil-law claim to damages on account of breaking the contract.

4.2 *Labour relations after the French Revolution*

This was, indeed, a legal revolution brought upon a system of production in which control of workers was felt to be as necessary as before. Legislation embodied the revolutionary principles and the judicature conscientiously applied them. And it actually resulted in a disruption of labour relations. Masters now had lost the powers of control that the prerevolutionary order had provided them. Workers quickly discovered the new powers they had by legitimate claims to 'equality' and 'freedom', deserting their masters if they could not agree with working conditions, knowing that masters could no longer avail of legal measures to force them to return (Cottereau 2002: 1537). Masters complained that the abolition had resulted in a 'disorder' in their relations with workers that undermined their business and thereby the '*bonne foi*'-relation with merchants (Cottereau 1987: 33-4). Local authorities were facing 'abuses' of counterfeit, now that control and sanctions under guild rules had been abolished. Initiatives to restore prerevolutionary regulations, though, were mostly unsuccessful.

Relieve has been sought in a procedural innovation: the *Conseils de prud'hommes,* first introduced in 1806 in Lyon, were appointed to handle labour conflicts, initially restricted to the textiles sector, but soon extended to cover a broad field. In Cottereau's view they have provided for both a practice of large-scale reconciliation and a 'common law'-way of regulation. Reconciliation was effected in more than 90 percent of the numerous cases. It created a certain scope for local arrangements, in spite of the formal ban on local organisations. It generated an extended, semi-institutionalised practice of negotiations between masters and workers, in a level-playing field actually created by the legal conditions of the Revolution. In the (small percentage of) cases in which a formal decision had to be taken, the new constitution left no way open to refer to (local) regulations, but the *prud'hommes* nevertheless succeeded in realising a certain level of consistency in judgments. They did so by way of non-public deliberations between judges, and in a later phase by publicising judgments, until the *Cour de cassation* put an end to this judicial practice in 1851. Formal recognition of the possibility of negotiations between masters' and workers' organisations was lacking till 1866.

Between 1791 and 1866 there has thus been a radical refiguration of the relations between masters and workers as a result of a legal change, by way of which revolutionary principles were made applicable to a figuration of relations that thereby changed significantly as regards the distribution of powers. The abolition of the old normative order, the constitutional guarantees of freedom and equality, and of binding the judiciary to the 'application' of law effected a change of power positions of masters and workers that, during 60 years (1791-1851), enhanced workers' capacities to act upon their working conditions.

4.3 *A relatively independent, civilising impact of law*

What does this mean, in light of Elias' position that 'legal forms correspond at all times to the structure of society'? Elias remarked on the French Revolution that the actual distribution of power chances had changed in such a way that the manifest distribution of power no longer corresponded to it. This may be a way to analyse the growing tension between actual economic practices and the guild order, but gives no clue to understand the radical changes in actual relations in French cities that were produced by the revolutionary legislation and its implementation by the judiciary. These changes deviated significantly from what generally happened elsewhere (Cottereau 2006; Stanzani 2014: ch. 6). During the 19th century English workers, for instance, have been subjected to an increasing level of subordination, realised by application of the legal 'master and servant'-rules to a majority of workers. English workers could be imprisoned for walking away from their jobs – French employers would have welcomed such a power, but it had become unthinkable after the revolutionary change in legislation.

My conclusion is that in this case the revolutionary legislation, by significantly changing the power positions of those who make up figurations of production in the cities, had a relatively autonomous impact on the development of figurations, an impact that cannot be grasped in terms of 'law merely reflecting figurational developments'. Its impact, presumably unintentionally, has significantly contributed to the level of civilisation in labour relations, by urging masters and workers to mutual consideration and local agreements on labour conditions. It has furthered patterns of self-restraint, mutual recognition and an urge of foresight. Only in the last third of the 19th century the power balance shifted in favour of merchants and factory owners, which resulted in the legal introduction of a 'labour contract' of which 'subordination' to the employer was an important element.

5 Conclusions

In his work on civilisation processes Norbert Elias has treated 'law' mainly as an epiphenomenon of figurational developments, arguing that 'legal forms correspond at all times to the structure of society'. His neglect of law may be interpreted as in line with his epistemological paradigma of the dynamics of figurations: he tends to be more interested in the dynamics of 'the play' than in the putative rigidity of rules that constitute 'the game'. In Elias' analysis normativity is a crucial aspect of figurations, but substantially it is not only contingent, but also 'empty' in that its substance seems hardly relevant to what happens in figurations.[8] I argue that the cognitively oriented reduction of normativity to a 'two-dimensional' notion of 'expectations' is inadequate. Also 'alignment to the rules of the game' is a too restricted notion of the significance of normativity for interactions. Discursive practices allow human beings a normativity that goes beyond that.

Elias' focus on the dynamics of figurations and on power leads him to disregard the relatively substantial contribution of law to the development of figurations and to 'civilisation'. Where he mentions it, Elias treats 'law' as if it were identical to nation state law. This is a serious curtailment of a concept that has been a significant part of reflexive practices in quite different societal configurations, for several millenniums. There is no good reason not to respect it in its different manifestations. We need to use a broader concept of 'law' and to recognize its substantial characteristics, as an immaterial 'tool' that is mobilised to organize social relations. Human

[8] This is why 'playing a game' is such a convenient, but in some respects defective metaphor for social life. What is at issue in a play, is relatively formal (getting the highest score, checkmate, etc.) compared to what is at issue in usual social practices.

interdependency generates 'cultural' elements that do not fade away in the next turn of processes, but gain a certain permanence, even if this may be only in a sleeping state of 'potentiality' (Bucholc 2015) or 'capability' (Sassen 2006). In their formation social groups and societies are partly dependent on these available cultural elements and on the way these can be successfully recombined or transformed.

In order to substantiate my claim to the significance of law, I introduce two cases. The first of these, introduced in section 3, highlights the importance of legal orders in a, to some extent 'constitutional', struggle over rights and duties in working relations, and, indirectly, over what is at issue in a 'way of life'. The second case, introduced in section 4 of the paper, shows that this theoretical abstinence of 'law' does not contribute to our understanding of figurational developments in labour relations. Interdependencies in figurations are themselves normatively constituted, and may be significantly altered by ('external') changes in law.

The first case (section 3) highlights the legal order of the craftsmen in German cities and its gradual suppression by textile merchants who, supported by forces of state formation, tried to get control of the production chain of textiles and finally succeeded, in the 19th century, to impose their private law order on working relations. Craftsmen, faced with what merchants from a commercial logic conceive as their 'natural' rights, perceived merchants' actions as an attack on their legal order and 'way of life' in the city, which did comprise a complex whole of institutional arrangements regarding product quality, working times, training, distributive fairness and common social activities under the sign of 'brotherhood', such as common care of the sick and the old. Legally, they had been allowed their own regulation and jurisdiction in matters of the craft guild. The merchants' and nation states' victory over them, in the course of the 19th century, wiped away most of these arrangements and gradually created an institutional void that may be qualified as an instance of decivilisation.

The second case (section 4) concerns state law and its impact on relations between masters and workers in the decades (1806-1851) after the French Revolution. The legislator consistently and systematically formalized revolutionary principles in law in such a way that it effectively deprived employers of the customary legal means they used to have to control workers. In its effects this new 'regime' (Knegt 2019) deviated substantially from how relations between employers and workers elsewhere in Europe developed, that is: predominantly to a stronger control of employers over workers. French law of 1791 thus significantly changed figurational positions, in a way *not* consistent with previous power relations. The existence of these legal rules cannot be reduced to a reflection of power balances; the legal status of these rules made a real difference. The law levelled the playing field, and had the effect of committing employers and workers to mutual understandings and negotiations on working conditions. Law imposed itself upon the relations of interdependency, and in that way transformed power balances and unintentionally generated a 'civilising' effect.

Elias' position that law is generally to be regarded as 'a function and symbol of the balance of social power' may be consistent with his methodological insistence on power balances in figurations, but does not adequately account for the relatively independent role that law actually can play both in the constitution of positions in figurations (as in cases 1 & 2) and in the modification of power balances (as in case 2).

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