INSTITUTIONAL *WORK* TAKEN LITERALLY: HOW INSTITUTIONAL LOGICS SHIFT AS BANKING LAWYERS 'GET THE DEAL DONE'

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ABSTRACT

The role of interest and agency in the creation and transformation of institutions, in particular the "paradox of embedded agency" (Seo & Creed, 2002) have long puzzled institutional scholars. Most recently, Lawrence and Suddaby (2006) coined the term "institutional work" to describe various strategies for creating, maintaining and disrupting institutions. This label, while useful to integrate existing research, highlights institutionalists' lack of attention to work as actors' everyday occupational tasks and activities. Thus, the objective of this study is to take institutional *work* literally and ask: How does practical work come to constitute institutional work?

Drawing on concepts of "situated change" (Orlikowski, 1996) I supplement existing macro-level perspectives of change with a microscopic, practice-based alternative. I examine the everyday work of English and German banking lawyers in a global law firm. Located at the intersection of local laws, international financial markets, commercial logics and professional norms, banking lawyers' work regularly bridges different normative settings. Hence, they must constructively negotiate contradictory meanings, practices and logics to develop shared routines that resonate with different normative frameworks and facilitate task accomplishment.

Based on observation and interview data, the paper distils a process model of banking transactions that highlights the critical interfaces forcing English and German banking lawyers into cross-border sensemaking. It distinguishes two accounts of cross-border sensemaking: the "old story" in which contradictory practices and norms collide and the "new story" of a synthetic set of practices for collaboratively "editing" (Sahlin-Andersson, 1996) legal documentation. Data shows how new practices gain shape and legitimacy over a series of dialectic contests unfolding at work and how, in turn, these contests shift institutional logics as lawyers 'get the deal done'. These micro-mechanisms suggest that as practical and institutional work blend, everyday working practices come to constitute a form of institutional agency that is situated, emergent, dialectic and, therefore, embedded.

Keywords: institutional work, embedded agency, situated change, dialectics, professional firms

INTRODUCTION

Since DiMaggio's (1988) foundational work, discussions of interest and agency in institutional processes have come to dominate institutionalist scholarship (e.g. Greenwood & Hinings, 1996; Hirsch & Lounsbury, 1997; Oliver, 1991). Especially the "paradox of embedded agency" (Seo & Creed, 2002:226), how actors become motivated and enabled to transform the taken-for-granted practices and norms that define them, has captured attention. Seo and Creed (2002) suggest that institutional "contradictions" enable embedded agency, as they undermine the perceived inevitability of institutions and enable self-interested actors to conceive of preferred alternatives. Various strategies through which self-interested actors shape these alternatives have been documented in the institutionalist literature and Lawrence and Suddaby (2006) recently systematize them under the label of "institutional work".

Ironically, in describing change agents' work as aimed at creating, maintaining and disrupting institutions, the label highlights institutionalists' lack of attention to work in its literal meaning as actors' everyday occupational tasks and activities. Focusing on field-level purposive action, the idea of *institutional* work remains detached from *practical* work and thereby points out a significant gap in institutionalists' understanding of embedded agency. Therefore, the objective of this study is to take institutional *work* literally and ask: How does practical work can come to constitute institutional work?

I draw on ideas of "situated change" (Orlikowski, 1996) to understand the role of individuals and their everyday work in creating and transforming institutional arrangements. In contrast to existing notions of purposive, field-level change this perspective focuses on the micro-sources and micro-mechanisms of institutional work; how individuals at work encounter contradictory practices, negotiate adaptations that facilitate task accomplishment, and thereby contest underlying institutional logics. This perspective is highly relevant as individuals increasingly work across national or occupational borders and must regularly negotiate institutional contradictions to accomplish their work.

The case study discusses the work of English and German banking lawyers - embedded in their contradictory common law and civil law frameworks - in a global law firm. Working at the

intersection of local laws, international financial markets, commercial and professional logics they regularly become aware of contradictory institutional arrangements. They review legal documentation from both jurisdictions to ensure its cross-border validity and enforceability. Where they encounter problematic clauses, they must negotiate a wording that achieves the intended commercial result, but is valid in both jurisdictions. In these negotiations, lawyers try to assert authority over the meaning of their problems and over legitimate practices to address them. As certain practices grow more dominant, so do the logics that are invoked to legitimize them. Institutional logics shift as banking lawyers 'get the deal done'.

These processes suggest that practical work can shape institutional logics 'from below' and thereby come to constitute institutional work. It represents a form of institutional agency that is situated, emergent, dialectic and, therefore, embedded. Thus, this paper contributes ongoing institutional debates about the role of interests and agency in institutional processes and proposes a new lens for examining the paradox of embedded agency.

THEORETICAL POSITIONING

The 1990s saw a distinct change in the research interests of institutional scholars. Despite its structurationist foundations (Berger & Luckmann, 1967; DiMaggio & Powell, 1983; Giddens, 1984), the new institutionalism in organization theory had been captured by notions of institutions as reified constraints that condition organizational structures and are themselves impervious to change. Institutional arrangements became associated with "demands of centralized authorities or regulatory agencies and only secondarily with widespread beliefs, practices, and norms" (Barley & Tolbert, 1997:95). In the 1990s a growing number of critics opposed this strong emphasis on institutional persistence over change and directed their attention to the role of agency and interests in shaping institutional arrangements (e.g. Clemens & Cook, 1999; DiMaggio, 1988; Greenwood & Hinings, 1996; Hirsch & Lounsbury, 1997; Lawrence, 1999; Oliver, 1991). Especially, institutionalists wonder how actors come to challenge the very norms that they take for granted and supposedly consider beyond their influence. This "paradox of embedded agency" (Seo & Creed, 2002:225) has since become a fundamental puzzle for institutional theorists.

Lawrence and Suddaby (2006) have recently systematized various types of "purposive action" in institutional processes under one overarching label of "institutional work". Their review integrates different strands of research, but thereby also highlights disconnects and different approaches to interests, agency, and embeddedness.

Research into the creation of institutional arrangements, often under the label of "institutional entrepreneurship" (DiMaggio, 1988) has contributed greatly to reintegrating agency into institutional theory, but by and large, bypassed the paradox of embedded agency. Authors sidestep the issue of embeddedness by blending "old" and "new" institutionalisms (e.g. Greenwood & Hinings, 1996; Hirsch & Lounsbury, 1997; Rao, 1998) and attending to disadvantaged actors whose marginal social position isolates them from the field's isomorphic pressures. Or, more recently, they explore emerging fields (e.g. Garud et al., 2002; Lawrence et al., 2002; Lounsbury, 1997; Lounsbury et al., 2003; Maguire et al., 2004) that are by definition characterized by low institutionalization and, thus, weak isomorphic constraints on human agency. In both variants concepts of change have been developed from cases of strong agency, but weak embeddedness.

In contrast, research into the disruption or "deinstitutionalization" (Oliver, 1992) of existing institutional arrangements has recently developed approaches with considerably more leverage to address notions of embeddedness when conceptualizing agency and interest in institutional transformation. With the help of Seo and Creed's (2002) concept of institutional "contradictions", Greenwood and colleagues (Greenwood et al., 2002; Greenwood & Suddaby, 2006) identify conditions that motivate and enable even central actors in mature fields to take purposive action and challenge established institutions. Purposive action by elite actors in mature fields as strongest case of embedded agency: Mature fields exert forceful isomorphic pressures and elite actors are least likely to act entrepreneurially, as they are conjectured to benefit most from protecting existing norms and lose most from violating them.

According to Seo and Creed (2002) contradictions between "nested" institutional levels or domains (Holm, 1995) are an inevitable by-product of structuration and hence characteristic of mature institutional fields (also Clemens & Cook, 1999; Friedland & Alford, 1991). Contradictions undermine the perceived inevitability of institutional arrangements, create space for reflection and institutional work and thus enable embedded agency. Greenwood and Suddaby

(2006) find that contradictions are particularly salient where actors occupy "boundary-bridging" positions which make them aware of alternative institutional arrangements. Where these alternatives promise a relative improvement in actors' social or economic position, they prompt institutional change. Hence, in this view, opportunities for purposive action regularly exist for actors embedded in one institutional setting, but aware of an alternative.

Simultaneously, although it has yet found less explicit empirical application, Seo and Creed's (2002) dialectic model of institutional change outlines the socio-political struggles through which change agents overcome institutional inertia. Proponents of dialectic perspectives critique entrepreneurial models of institutional change as "analytically removed from the more active struggles over meaning" (Lounsbury et al., 2003:72) and underscore the relevance of institutional "maintenance" as a category of institutional agency in Lawrence and Suddaby's (2006) typology.

In dialectic perspectives, struggles over meaning form the heart of institutional change. Actors whose "inherited" practices and logics collide as thesis and antithesis of a dialectic struggle, engage in "framing contests" (Ryan, 1991). They define issues in ways that position their preferred practices and logics as an appropriate solution and mobilize a resourceful coalition of like-minded actors to make their preferred alternatives dominate the synthetic arrangements that emerge from their struggles (Bate et al., 2004; Benford & Snow, 2000; McAdam et al., 1996). Thus, "framing" ascribes meanings which, in turn, mobilize support for purposive action. From a dialectic perspective, struggles over institutional arrangements are ultimately fought as "battles of meaning" (Hargrave & Van De Ven, 2006:870).

Simultaneously, dialectic perspectives highlight how seemingly stable institutional arrangements are a constant accomplishment that needs to be more or less actively maintained. They constitute a temporary truce rather than persistent stability (Morrill et al., 2003), because the synthesis that opposing coalitions of actors agree constitutes the thesis for another change cycle. In contrast to the predicted outcome of planned innovation, a synthesis is "neither the antithesis espoused by the agent, nor the thesis defended by incumbents" (Hargrave & Van De Ven, 2006:882) nor the end of the change process. As neither side finds its interests fully accommodated in the new arrangement, the synthesis remains a contested terrain between advocates of dominant and suppressed practices and logics. These dynamics of contestation and mobilization indicate the potential of dialectic

models to conceptualize institutional agency not as entrepreneurial, but collective; not linear, but contested (Hargrave & Van De Ven, 2006; Hensmans, 2003; Lounsbury, 1998). Simultaneously they also indicate potential for making the concept of institutional work more relevant for addressing the paradox of embedded agency. Given its focus on systematizing types of agency and its strong reference to institutional entrepreneurship literature, the concept of institutional work has substantial, yet unrealized, potential for addressing embedded agency.

First, numerous cases of institutional entrepreneurship that Lawrence and Suddaby (2006) discuss to develop their concept of institutional work rely on the mobilization of field-level entities with coercive authority to legitimate change projects 'from above'. In contrast, dialectic change models developed in the context of social movements suggest that change agents mobilize coalitions of "a million change agents" (Bate et al., 2004) around a shared project to endow it with resources and legitimacy 'from below' (Morrill et al., 2003). So far, there is only limited understanding of the dialectic dynamics of dominance and resistance that play out below the surface of apparently linear trajectories of institutional processes. This calls for closer attention to actors' dialectic struggles over meaning in this "grassroots" form of mobilization (Hargrave & Van De Ven, 2006:865) to explain institutional change not as an entrepreneurial, but a collective and therefore more embedded accomplishment.

Second, defining institutional work as purposive and directed implies the existence of a preconceived institutional project that pursues a clear vision and unfolds as planned change. Based on a rhetoric of entrepreneurship, institutional work focuses on the activities of change agents aimed at realizing discrete projects. It, thus, discounts the moment of conception, the experimentation with alternative practices that helps actors envision a desirable institutional arrangement. However, as conditions and processes of institutional creation and transformation are increasingly well understood, the lack of explicit attention to the gap in between is exposed. Collective models of change have explored how change projects emerge from processes of "discovery through investigation and negotiation" (Commons, 1950:25). Institutionalists in organization theory, however, have left underexplored the localized and ambiguous interactions that transform awareness into action. Appreciating institutional work as emergent instead of planned, may afford institutional theorists better grip on the paradox of embedded agency.

Finally, Lawrence and Suddaby locate their work in the tradition of a practice turn in new institutional theory. Given its grounding in past empirical research, however, the resulting practice-view of institutional work retains a macro-level lens that focuses on rule-based and normative work involving macro-level actors and coercive authorities. These practices of institutional work are far removed from actors' everyday practices, especially from "work" in its literal meaning as actors' everyday occupational tasks and activities. Focusing on field-level purposive action, the idea of *institutional* work remains detached from *practical* work and thereby highlights the current disconnect between nested levels and stages of institutional processes; between practices aimed at negotiating institutions and practices aimed at negotiating ambiguous social interactions in everyday life.

Therefore, this paper suggests taking institutional *work* literally and shifting attention from practices of institutional work to practical work that assumes institutional relevance as it encounters institutional barriers to task accomplishment. Contradictory working practices may cause actors to challenge institutional arrangements that hinder task accomplishment, and thereby function as "micro-level sources of macro-level changes" that are yet little understood (Lawrence et al., 2002:881).

The objective of this paper is to address these current shortcomings by taking institutional *work* literally and explore how practical work can come to constitute institutional work. This question focuses conceptual and empirical attention on the everyday activities of individuals at work and how these form the micro-sources of macro-processes of institutional work. Examining the origins of institutional work and embedded agency through a microscopic lens magnifies qualities and mechanisms of institutional work that have previously remained obscure. The shift of attention from macro to micro-level practices connects broader institutional arrangements to localized, individual behaviours by which knowledgeable actors encounter institutional contradictions in practice, translate their awareness into action and engage in incipient institutional work that is situated in their working practices, emergent, dialectic and therefore embedded.

To this end, the paper draws on situated perspectives on change (Orlikowski, 1996). Proponents of this view share institutionalism's structurationist roots, but assume primacy of action over stability. Therefore, situated change and institutionalist perspectives complement each other by

looking at opposite sides of the same coin: the constitution of structure through ongoing agency. Although Orlikowski and her colleagues (Orlikowski, 1996, 2000; Orlikowski & Barley, 2001; Schultze & Orlikowski, 2004) develop their notion of situated change from observations of organizational change in response to technological innovations, its application to institutional processes is warranted insofar as technological structures resemble institutions in their constraints on human action and radical organizational change has proven potential to illuminate institutional phenomena (e.g. Greenwood & Hinings, 1996). Therefore, the situated change perspective supplies the microscopic lens for exploring the relationship of practical and institutional work.

Orlikowski explicitly positions her concept of *situated* change as direct response to *planned* change models that were identified above as limiting the current understanding of institutional work. In her view, change is "grounded in the ongoing practices of organizational actors and emerges out of their (tacit and not so tacit) accommodations to and experiments with the everyday contingencies, breakdowns, exceptions, opportunities and unintended consequences that they encounter" (1996:226). Invoking notion of organizing as continuous improvisation (Weick, 1993), change is portrayed as inherent in and inseparable from the everyday practice of actors "trying to make sense of and act coherently in the world" (Orlikowski, 1996:227-228). Absent shared standards against which to evaluate the coherence and meaning of these acts, however, "battles of meaning" (Hargrave & Van De Ven, 2006:880) start within organizations, not organizational fields.

These battles produce "slippage between institutional templates and the actualities of daily life" (March, 1981:564) that, like contradictions (Seo & Creed, 2002), enables actors to challenge previously taken-for-granted templates. While individual adaptations may appear inconsequential, dialectic syntheses eventually become theses and each adaptation may precipitate further breakdowns that accumulate over multiple cycles of change (Barley & Tolbert, 1997; Koene, 2006). In this sense, March's suggestion that organization scholars too often search for "comparably dramatic explanations" (1981:564) of organizational change rings equally true for institutional change. In his view, change may spring from innocuous sources, because "most of the time most people in an organization do what they are supposed to do; that is, they are intelligently attentive to their environment and their jobs". Therefore, this paper takes institutional *work* literally to understand how practical work may come to constitute institutional work.

RESEARCH METHODS

The inductive logic and theory-building objective of this study dictate a qualitative methodology (Eisenhardt, 1989; Eisenhardt & Graebner, 2007). Observation and interview data from an embedded single-case study (Yin, 1994) was collected to address the research question. This multi-method approach produces rich data on the interplay of situated micro-level work practices and broader meaning systems that characterizes work across normative settings. These data form the basis for grounded theory-building. This approach focuses on understanding the ongoing construction of meaning by social actors in natural settings (Glaser & Strauss, 1967; Suddaby, 2006), which is also central to the objective of this paper. Following principles of grounded theory produced a highly non-linear research process that was characterized by the sequential sampling of embedded cases and individual informants, re-reading of existing literature in the light of emergent concepts, and experimenting with different theoretical lenses to distil the most plausible account of actors' working practices and their relevance for negotiating meanings, practices, and logics.

The banking group of a global law firm was purposively chosen as an extreme case (Starbuck, 1993). On the one hand, the case represents an elite member of an ideal-typical profession (e.g. Abbott, 1988; Freidson, 2001). It participates in a mature institutional field with dense sets of norms that govern professional practice (DiMaggio & Powell, 1983; Scott, 1987). Thus, change in this setting would, like Greenwood and Suddaby's (2006) big five accounting firms, constitute a rare, but particularly strong case of embedded agency by elite actors in a mature field. On the other hand, operating globally, the case firm occupies the intersection of local institutions and international markets, commercial and professional logics. Especially in banking groups, "boundary-bridging" (Greenwood & Suddaby, 2006) work is the rule, rather than exception. The large majority of transactions include international elements and regularly require banking lawyers to collaborate closely between offices in different jurisdictions to integrate legal documentation. In this sense, practical work in the banking group constitutes a nexus of contradictory practices and norms, bringing together commercial and professional logics as they present themselves in local law concepts and routines to make sense of them.

INSERT TABLE 1 ABOUT HERE

To maximize the likelihood of observing the collision and alignment of contradictory practices, the banking groups in the firm‘s English and German offices were sampled as embedded sub-cases of maximum difference (Maxwell, 1996). As representatives of common law and civil law regimes, English and German lawyers represent “opposite ends of the spectrum of competences, scope of activity, and professional values” (Morgan & Quack, 2004:14). Table 1 summarizes these ideal-typical differences between the two legal regimes and points out specific areas of friction that may cause conflict between lawyers from both jurisdictions.

The paper relies on observational and interview data to understand the everyday practices of banking lawyers as well as their relevance for broader meaning systems. For within-case triangulation, data was collected from three distinct yet supplementary contexts: Observation of legal work, participation in a workshop on cross-border collaboration, and follow-up interviews with both, workshop and observation participants. The sampling of individual informants co-evolved alongside preliminary analyses and different data collection methods throughout different stages of data collection and analysis.

Observations of lawyers at work captured in rich detail the working practices, actions and interactions in which lawyers make sense of foreign legal documentation to ensure its cross-border validity. Data was gathered over two weeks, job shadowing lawyers in the German and English banking groups throughout their working day. Observations of lawyers’ practical work covered 13 German and 29 English participants at all levels of seniority, as well as a wide variety of activities and different stages of transactions. The sample emerged in response to participants’ availability and gaps in previously collected data, aiming to match participant numbers across different contexts (see Barley, 1990). This approach proved essential insofar as English-qualified lawyers were found practicing in both, the firm’s English as well as German office and their special situation had to be accounted for in the data.

INSERT TABLE 2 ABOUT HERE

While aiming to absorb a maximum of ethnographic background detail on legal practice, observations focused on discriminating different categories of activities and practices in lawyers’ work. Guided by Barley’s (1990) illustration of his approach to unstructured ethnographic data,

particular attention was given to distinguishing the time lawyers spend in interaction rather than working individually and the types of interaction they engage in. Observable behaviours and situated comments provided "low inference descriptors" (Silverman, 2001) to code different activities and interactions through which lawyers jointly interpret legal concepts, negotiate their meanings and, in the process, challenge the normative basis of their local sensemaking routines. Observing different stages of numerous transactions produced a mosaic of working practices that provided the basis for a process model of banking transactions. Simultaneously, it uncovered how disparate sets of institutional norms bear on the everyday production of cross-border legal services and drew attention to the ongoing production of meaning in lawyers' practical work.

A more serendipitous opportunity for additional observation arose as the researcher was invited to participate in an internal workshop on facilitating cross-border collaboration among the firm's European banking specialists. 22 delegates from each major European jurisdiction shared anecdotes of cross-border collaboration, identified sources of inefficiency and attrition, and drafted a set of 'best-practice' guidelines to address their issues and facilitate future cross-border collaboration. Their debates reassured that earlier observations of meaning production at work had not been idiosyncratic, but representative of broader issues of boundary-bridging work across common and civil law settings. More importantly, however, it was this more openly political arena that highlighted how the contradictions that lawyers encountered in their practical work prompted them to formalize rules for boundary-bridging work, define different actors' roles, identities and norms to suit their interests, and thereby engage in micro-level forms of institutional work. Lawyers' attempts to mobilize different actors and invoke local norms in support of their preferred identity, role or working practice prompted a review of more explicitly political literatures on dialectic change, social movements and collective action. Additionally, the emergent focus on lawyers' situated political behaviour also shaped sampling decisions for the subsequent interview phase of the research.

To explore the political dimension of lawyers' work in more detail, an initial set of six follow-up interviews was conducted with continental European workshop participants. Their preliminary analyses suggested new themes for subsequent interviews with observation participants. Semi-structured interviews with 37 of the 64 observation refined the categories that emerged from the observation phase. To harness synergies between observations and interviews, questions were

individualized, referencing observations or workshop statements to ensure that responses reflect personal experience rather than esoteric speculation. In this sense, interview questions were predominantly topical (Rubin & Rubin, 1995). However, respondents were encouraged to elaborate and thereby provided glimpse of their underlying worldviews of appropriate practice.

Respondents were asked to describe their role in the current transaction, the skills and activities it involves, and how inter-office collaboration unfolds over the course of cross-border transactions. Then, the main body of conversation revolved around first-hand accounts of respondents discovering problematic legal wording and negotiating adequate alternatives among lawyers from different jurisdictions. As junior respondents in particular reported difficulties in making foreign colleagues understand why certain interpretations were more or less appropriate than others, they began to reveal how problem framing and sensemaking practices are conditioned by norms from their local jurisdiction. It emerged that not only were local interpretations contested, but also the practices that produced them and the local logics that supported their appropriateness. Still, respondents unanimously emphasized the pressure to deal with such contradictions pragmatically and constructively. They described their current sensemaking routines in ways that closely resembled Sahlin-Andersson's (1996) editing rules. Although legal documentation was invariably in the English language, respondents introduced translation as an indigenous metaphor for their cross-border work. Overall, however, observations and discussions initially produced inconsistent accounts of cross-border collaboration; episodes of antagonistic and dogmatic debates mixed with constructive collaboration between English and German lawyers. Conversations with more senior observation participants corroborated the emergent idea of a shift in cross-border and prompted a third interviewing phase. 17 senior lawyers and partners with a long history in the firm were snowball sampled to supplement a retrospective account on the development of boundary-bridging work between English and German lawyers. From the comparison of current and retrospective accounts two contrasting models of cross-border collaboration crystallized which are used to illustrate the ongoing negotiation of meanings, practices and norms in banking lawyers' work.

INSERT TABLE 3 ABOUT HERE

Overall, 54 respondents were interviewed (see table 3), producing a total of 55 hours of recordings and individual interviews lasting between 30 and 140 minutes. Interviews were conducted in the respondents' native language, tape recorded, fully transcribed and translated as necessary for publication. In order to make statements attributable while maintaining respondents' anonymity, they were coded by respondents' position, jurisdiction and a consecutive numbering.

CASE STUDY: LEGAL WORK AS BOUNDARY-BRIDGING SENSEMAKING

Specific practices must be evaluated in the context of work that they serve. For banking lawyers, the type of transactions they facilitate, and the contributions that clients expect co-determine the extent of boundary-bridging practices and their significance for broader populations of organizations. Figure 1 illustrates a process model of banking transactions that outlines why banking transactions are generally cross-border, which interfaces force lawyers into boundary-bridging sensemaking, and how its outcomes diffuse beyond the organization.

INSERT FIGURE 1 ABOUT HERE

Banking transactions typically arise from a specific, non-contentious commercial context: An investor wants to secure high-volume debt financing to fund or re-finance a commercial project. Lawyers draft requisite legal documentation, manage the timely satisfaction of all conditions for the disbursement of funds and advise their client in negotiations over the terms of lending. These negotiations are non-contentious insofar as the bank's lawyers face their client's customer as their counter-party. Both parties stand to benefit from a successful transaction as banks earn interest and the investor receives funds to realize the commercial project.

Borrower and bank, together with their financial advisers and lawyers, formulate their commercial intention to borrow/lend a specified amount under certain terms and conditions. This broad understanding is documented in the "termsheet", the commercial basis on which lawyers devise financing structures and begin drafting legal documentation. The "facilities agreement" as the principal document lays out the terms on which different financial facilities are made available and specifies the "security principles" that outline which categories of assets are accepted as collateral for secured facilities.

These financial agreements provide considerable scope for institutional arbitrage. Exercising their freedom of contract, parties agree a transaction-specific system of rights, obligations and remedies and choose the national law most favourable to their interests to govern the transaction. Irrespective of where transaction parties are located, English is typically the law of choice as it facilitates the syndication of loans in international financial markets. Consequently, the facilities agreement is typically the domain of English lawyers as lead counsel on banking transactions.

In contrast to these financial agreements, the transfer of securities is invariably governed by the domestic law of their original location. Therefore, for any English-law financing secured on German assets, banking lawyers must guarantee that a German securities package can effectively secure the English-law financing. This means, first checking that the type of security outlined in the security principles can be taken under German civil law, secondly ensuring that those contract clauses defining events of default are valid, legal, binding and enforceable in both jurisdictions. These interfaces make the integration of legal documentation a pervasive problem and their alignment an integral part of banking lawyers' work. Given the local specificity of security law, this act of conversion - "Germanising" in local vernacular - is the domain of German lawyers acting as local counsel. It requires close interaction between English and German colleagues working on finance and security agreements respectively. Where legal documentation does not interlock as intended, both sides must constructively deal with any inconsistencies to 'get the deal done'. Lawyers must negotiate local meanings of legal concepts and agree wordings that resonate with both, the normative categories in their local jurisdiction and the desired commercial outcomes in international markets.

On the basis of the agreed wording German lawyers issue a "legal opinion" which certifies that – with specified qualifications – English-law agreements are valid, legal, binding and enforceable in Germany. As this opinion makes local counsel liable for any errors, it assures both English lead counsel and their client that local law issues have been adequately addressed. In this sense, the legal opinion carries local law across jurisdictional boundaries and gives clients the confidence to sign multi-jurisdictional agreements. It is the legal keystone that attains the desired commercial outcome, funds are released and the transaction is closed.

After closure, the lending bank may try to sell smaller units of its loan to a syndicate of banks and thereby instantly trigger a series of follow-up transactions. As potential buyers review the terms of the original lending, these diffuse into a tightly coupled field of elite law firms, banks, and rating agencies that syndicate each others' loans and review each others' legal documentation. Hence, these collaborations may diffuse the meanings, practices and logics that lawyers negotiate in their daily work beyond their original context and may set de facto standards for a wider field.

The old story: "Sometimes it's just 'no'!"

The "germanising" of English-law facility agreements may discover disconnects where German civil codes disable specific legal concepts that English legal practice allows. Thus, if left unaddressed the inconsistency prevents cross-border enforcement and may thereby undermine the bank's security. Given that local laws cannot be changed to resolve these issues, banking lawyers must find a pragmatic way around them that respects local laws and commercial interests.

However, in contrast to the initial drafting of financial agreements where freedom of contract grants lawyers ample space to manoeuvre, the cross-border alignment of legal documentation is more constrained by the specificity of local laws and a way around these issues may be hard to find. Therefore, when German lawyers criticize English-law wording as disregarding German legislation, English and German lawyers use different approaches to drafting an amended document that may be labelled as enterprising or administering.

English lawyers, take the commercial interest articulated in legal language, not legal language itself as their primary attention focus. Given their typical role as lead counsel, they emphasize their strong client focus and the dominance of English law in finance markets to assert authority over the definition of cross-border issues and their appropriate solution. They subscribe to an enterprising approach to legal drafting, trying to wordsmith legal agreements around their clients' commercial interests. German lawyers identify this approach as a major source of attrition in cross-border collaboration. They find English lawyers' approach fails to accept the comparable rigidity of legal categories in civil law jurisdictions and maintain that sometimes it is impossible to adapt local legal concepts to meet English lawyers' expectations. Conversely, this persistence is read taken by English lawyers as evidence of a German administering approach to drafting characterized by a lack of client-focus and unwillingness to think outside the cognitive boxes of their codified laws.

These views highlight the contradictory problem-solving approaches that collide in cross-border work. In contrast to English lawyers' enterprising approach; articulating commercial interests in legal language, German lawyers' administering practices focus on preserving blackletter law. While this may be a practical consequence of their transaction role; reviewing the enforceability of legal clauses, institutional factors may shape the way German lawyers approach legal problems. Given their extensive academic training, German lawyers see their legal expertise as a key competence and strong resource for legitimizing their practices.

Especially junior German lawyers feel more comfortable within the confines of their expert knowledge and, when asked to assess the enforceability of English-law contracts, focus on the literal terms of legal wording. Given the idiomatic nature of legal language, however, this literal approach is problematic in cross-border contexts where lawyers do not share meaning systems. Thus, German lawyers approaching foreign legal documentation in an overly literal manner often exaggerate disconnects and declare English-law concepts as well as their corresponding commercial outcomes unenforceable. Thus, English and German colleagues argue over the appropriate interpretation of the concept and whose interpretation takes precedence.

The esoteric nature of local expertise is used not only to impose local interpretations in negotiations over contested contract clauses, but also in negotiations over who presents local law concerns to the client. First, German lawyers are sceptical of English lead counsel correctly relaying comments and questions to and from the client. For them, "Chinese whisper" is a main source of misunderstanding and delay on cross-border transactions. Second, discussing local law concerns directly with the client raises awareness of local securities documents and, more importantly, local lawyers. These discussions allow local counsel to challenge the support role that lead counsel ascribed to them.

In response, to avoid these negotiations English lawyers try to reduce local law reviews to a pro-forma ritual. Under great time and cost pressures they draft securities documents based on material from earlier transactions and present local lawyers with a finished document to be rubber-stamped with a legal opinion. While local lawyers accept that this practice can accelerate transactions, they see the risk that heavily negotiated clauses may unwittingly be re-used as initial basis for negotiation, undermining the firm's credibility in the marketplace.

Altogether, the clash of contradictory problem-solving approaches (table 4) and the corresponding set of negotiations have been identified as a problem that impinges on the cost and timeliness of client service as well as lawyers' working hours. The ongoing collisions of legal interpretations and disputes over appropriate drafting approaches created an acute awareness of contradictions between English and German legal practice. Motivated by the pragmatic need to 'get the deal done', they produced local adaptations to legal interpretations and practices that accrued to a new approach to integrating legal documentation across jurisdictions.

The new story: "Say what you think it means"

In their ongoing negotiations of contract clauses, lawyers find that a way *around* legal obstacles is hard to find as long as they remain firmly embedded *within* their idioms of legal language. Hence, they develop a new set of collaborative sensemaking practices that relax cognitive constraints. They dis-embed legal concepts from their local context, distil their underlying meanings, and re-constitute those in wording that conforms to the normative categories of both jurisdictions. In this sense, although all contracts are invariably written in English, German and English lawyers develop a process that resembles processes of translation or "editing" (Czarniawska & Sevon, 1996; Sahlin-Andersson, 1996).

INSERT FIGURE 3 ABOUT HERE

As a first step towards aligning contradictory problem-solving practices, English lawyers adopt more collaborative practices for integrating legal documentation. Ongoing confrontations made English lawyers aware that their legal concepts are not universal and that foreign colleagues need assistance and instruction in making sense of them. Hence, they change from a sequential approach to English-law drafting and German-law reviewing to more collaborative sensemaking.

Also, English lawyers redirect their German colleagues' attention from legal review to joint sensemaking. German lawyers respond by requesting more, especially commercial, background information on the transaction. They are no longer content with receiving the legal agreements to be reviewed, but instead, insist on additionally seeing the original "termsheet" and resulting "[finance] structure memorandum", because they communicate the commercial essence of the

transaction. Access to these commercial documents enables lawyers from both jurisdictions to de-contextualize their debates from the cognitive constraints of local legal idioms and distil the commercial intention behind problematic clauses.

Based on the rationalistic problem-solving logic of the financial products outlined in the structure memorandum, lawyers from both jurisdictions develop a common language in which they co-construct a *commercial* plot that can be *legally* reconstituted in both jurisdictions to produce comparable commercial outcomes. In the process, German lawyers adopt more commercial approaches to legal interpretation and English lawyers relax their assumption of legal universalism. Both sides adapt their working practices to focus on joint sensemaking. Lawyers present the desired commercial outcome and ask their foreign counterparts to replicate it by means of local law constructs.

In order to develop a cross-border understanding of this shared goal and explore different routes to attain it, lawyers rely on visualizations. Organization charts or diagrams of funds flows were almost omnipresent in German lawyers' offices, as they try to discover local law equivalents that emulate an English-law financing structure. As German lawyers realize that they can replicate unenforceable English-law concepts by combining familiar German-law concepts, their drafting approach becomes less dogmatic and focused on preserving legal wording. Thus, over the course of their ongoing negotiations, German lawyers have adapted their working practices from an administering to an editing approach to reduce friction in cross-border collaboration.

However, the success of this new orientation depends on German lawyers' ability to discover alternative routes to reach the agreed commercial outcome, despite civil law obstacles. They must emulate within the formal categories of their codified laws a commercial outcome and legal construct originally devised in a freedom-of-contract logic. In practice, German lawyers carefully select, arrange and combine familiar civil law building-blocks that *individually* resonate with local normative categories and *collectively* realize the intended commercial outcome that had previously been unattainable. Thereby, lawyers actively manage the legitimacy of novel financial products. They "blend novelty and familiarity" (Morris & Lancaster, 2006:224) by presenting novel financial products under the familiar labels of local law.

The familiar labelling of local law building blocks signals the context-specific legitimacy of these individual concepts – and by extension of the commercial plot realized by their combination. The use of local labels embeds the de-contextualised commercial plot in local normative categories and makes locally embedded actors less likely to question its legitimacy. Hence, this re-contextualization is the keystone of successful editing. It requires a great sense of responsibility and sure instinct on the part of lawyers, as they must anticipate how local judges would interpret their label. Judges could find lawyers over-stretching a label to legitimize a commercial plot that circumvents local norms, "re-qualify" the plot according to their own reading of the specific label, and thereby deny its intended effects. Only when re-qualification can be excluded with sufficient certainty can lawyers be confident that the chosen label successfully ascribes familiar, context-specific meaning to the commercial plot they co-constructed with their foreign colleagues. This confidence in the local legitimacy of the commercial plot and its legal documentation is the basis on which German lawyers issue their legal opinion that all reviewed agreements are valid, legal, binding and enforceable under German law.

The requirement to review agreements from other jurisdictions has not only changed lawyers' drafting approaches, but also the contract template for the agreements they produce. Under pressure from English lawyers and global financial markets, German lawyers have adopted international standard formats. Traditionally, German-law credit agreements were drafted with strong reference to the civil code whose definitions and specifications would regulate any non-contracted items. Accordingly, they rarely exceeded several pages. Recently, however, they have grown to several hundred pages and meanwhile match their English-law equivalents in volume. While English lawyers see a value-added in explicitly specifying every clause, and making German-law agreements understandable as a stand-alone document, there is no technical justification for this adaptation in German law. Nonetheless, because non-compliance with English-law expectations causes avoidable delays, technically redundant common-law definitions have become an accepted feature of German banking agreements. A similar mechanism prompted the acceptance of standard contract formats. In order to promote transparency and facilitate the review of bulky finance agreements the loan market association (LMA), encompassing large banks, leading corporate law firms and other financial institutions, issued a standard contract template. To streamline the cross-border review and international syndication of their local loan agreements, German lawyers adopted the Anglo-American document style:

As table 4 summarizes, cross-border work has produced profound changes in the working practices that German and English banking lawyers employ to review legal documents and ensure their enforceability across jurisdictional borders. While the convergence on typically Anglo-American contract formats suggests that German lawyers are unilaterally adopting their English colleagues' working practices, they are settling on more middle-ground practices in terms of their drafting approaches, attention foci and sources of legitimacy.

INSERT TABLE 4 ABOUT HERE

DISCUSSION

Observing the ongoing tugs-of-war that produce these middle-ground practices can provide institutionalists with rare insights into the micro-mechanisms through which institutional practices and norms are disrupted or maintained. They illustrate how reviews of foreign legal documentation and the pragmatic pressures of getting the deal done prompt lawyers to negotiate meaning, synthesize working practices and thereby shift underpinning logics.

Negotiating Meaning

In cross-border banking transactions contradictory legal concepts from different jurisdictions collide and lawyers negotiate whose wording takes precedence. They try to assert authority over the legitimate interpretation of the underlying issue, and thereby impose their original local-law wording. In these negotiations lawyers actively manage meaning. Their contradictory interpretations of legal concepts reflect the different meanings they ascribe to legal and commercial issues, as suggested by the normative categories of their home jurisdiction. Hence, in their everyday cross-border work, banking lawyers engage in "battles over meaning" (Hargrave & Van De Ven, 2006:880) that typically characterize institutional work at the field level. Lawyers' editing approach to drafting is a means to de-contextualize debates from specific local-law contexts and transport meaning across normative contexts. Like institutional entrepreneurs working to diffuse their innovations in a field, banking lawyers employ practices of "theorization" in their everyday work to present their local wording as "compelling and legitimate for adoption" (Greenwood et al., 2002:75; Rao et al., 2003; Strang & Meyer, 1993).

The subconscious management of meaning breeds more explicit negotiations of legitimacy when lawyers formulate their commercial plot in a way that aids its re-contextualization within the cognitive categories of previously disparate jurisdictions (Aldrich & Fiol, 1994; Oakes et al., 1998). While these negotiations of meaning superficially aim at 'getting the deal done', they have an underlying political dimension that governs their dynamics and amplifies their significance for creating, maintaining and disrupting institutional practices and norms.

In the reviews that trigger the negotiations described above, lawyers examine foreign legal documentation through their local law lens. Hence, the meanings that they ascribe to contested legal concepts are a product of the local routines by which they discover and categorize problems in legal documentation. As these practices are in turn embedded in the jurisdiction's broader normative framework, negotiations of meaning not only juxtapose different ascribed meanings, but also confront the contradictory practices from which they originate. Thus, as lawyers try to impose their local meaning of legal concepts in another jurisdiction, they simultaneously assert authority over legitimate problem-solving practices to produce them. As these practices constitute large part of lawyers' identity and professional status, they define cross-border issues to give precedence to their ascribed meaning and get their established practices accepted as legitimate.

Synthesizing Practices

Disputes over legal concepts and the collision of their ascribed meanings are tied to individual transactions. While they make lawyers aware of contradictory frames of reference, they primarily prompt technical discussions of how to pragmatically resolve these contradictions to get the deal done. Only as these disputes question the legitimacy of underlying practices do they assume broader significance beyond the context of a single transaction. Thus, contesting the legitimacy of their taken-for-granted practices impacts more profoundly on lawyers' belief systems and motivates them to engage in political behaviours to shape and legitimate practices that suit their interests. German and English lawyers start "framing contests" (Ryan, 1991) in which they propose contradictory problem-definitions and contrast their inherited problem-solving practices. Both sides mobilize allies in support of their framing and buttress their authority to sanction selected practices while rejecting others. Depending on the strength of their different allies, the synthetic practice that emerges is dominated by German or English elements.

In this sense, the dialectic framing contests in which German and English sensemaking practices collide constitute the actual generative mechanism that transforms the awareness of contradictions into motivated action. Hence, the transition from negotiating meaning to negotiating sensemaking practices constitutes the node where practical work blends into institutional work. Lawyers negotiate a synthetic set of working practices that aims at resolving their practical issues of aligning legal documentation, but simultaneously transforms their roles and rules of the game for cross-border collaboration. In order to legitimate their local practices, secure their preferred role and set corresponding rules, German and English lawyers frame cross-border issues in ways that mobilize competing networks of field constituents and expectations.

English lawyers frame cross-border issues as commercial. They focus on protecting their client's commercial interest and consider any solution, legal or commercial, that pragmatically navigates around this issue. By framing issues in this way, they position themselves as representing the business needs of their clients as well as the expectations of international finance markets, syndicate banks and rating agencies. They position London as a central hub in financial and legal Europe and enrol these constituents and expectations as allies in their negotiations.

While the coercive pressures that powerful clients can exert on dependent organizations and their practices have been extensively discussed (e.g. DiMaggio & Powell, 1983; Pfeffer & Salancik, 1978), this case adds a new dimension to this dynamic. English lawyers exploit their close ties with clients to turn these isomorphic constraints into a resource for bolstering the legitimacy of their inherited problem-solving practices in negotiations with German colleagues. They use their privileged position of lead counsel to define the transaction. They articulate the commercial outcome to realise, frame the issues local counsel needs to address, and specify the scale and scope of advice that local counsel contributes. Thereby English lawyers outline a network of roles and activities, in which their inherited practices take precedence, because they are supported by framing cross-border issues as commercial rather than legal.

These political dynamics explain German lawyers' observation that historically their English counterparts attempted to impose solutions and relegate German-lawyers' concerns to second-order problems below clients' attention threshold. They also illustrate why English lawyers dismiss administering approaches to legal problem-solving and are able to challenge German

lawyers' established contract format. They channel demands from international clients and other global market participants towards local counsel. Thereby, in contrast to accounts of institutional creation and disruption, lawyers mobilize support by representing the interests of powerful actors, not by enlisting powerful actors like state administrations or professional bodies to represent theirs. English lawyers resort to arguments of market logic and rhetoric of "force majeure" to endow their practices with pragmatic legitimacy (Suchman, 1995:571) and get them accepted in other normative settings. Thus, as they frame issues as commercial rather than legal English lawyers mobilize a powerful coalition in support of their working practices and the legal interpretations they produce. Thus, German lawyers who contest their legitimacy not only challenge their immediate English counterpart, but implicitly the entire banking market whose norms and standards lead counsel represents.

Nonetheless, historically, German lawyers have advanced an antithesis to their English colleagues' practices based on a contradictory framing of issues and backed by a different set of allies. Based on their extensive academic rather than practical training, German lawyers gravitate towards the civil code as their attention focus. Consequently, in contrast to their English counterparts, they frame issues of misaligned legal documentation as legal instead of commercial. This specific framing indicates German lawyers' reliance on their local laws as source of legitimacy. They invoke the normative structures and legal concepts of their home jurisdiction as allies in their dialectic struggle over legitimate legal interpretation or problem-solving practices. Just as English lawyers mobilize market logics and position themselves as stalwarts of client preferences, German lawyers position themselves as local law specialists who claim exclusive authority over the contents of local-law agreements.

German lawyers invoke local laws and notions of appropriateness to oppose English lawyers' demands for adopting their legal wording or contract formats. In contrast to English lawyers invoking market logics, they thus tap moral rather than pragmatic sources of legitimacy (Suchman, 1995:580). Thus, caught in the dilemma of responding to global market pressures and conforming to local normative frameworks, both sides establish intra-organizational patterns of coalition and domination to maintain essential components of their inherited practices, while adopting others that serve their interests better.

Paradoxically, the same normative structures that constrain German lawyers in realizing client's commercial goals empower them to sustain their local practices and meanings in the face of contestation. German lawyers' embeddedness in their local law frameworks hampers the cross-border alignment of legal documentation, but also constitutes their reason-for-being in a specific transactional context. Thus, to some extent, German lawyers appropriate the normative constraints they are embedded in and use them as bargaining chips in ongoing framing contests with English colleagues. In these framing contests, contradictory inherited practices collide as thesis and antithesis and form the starting-point for local adaptations. As constant battles over meaning complicate task accomplishment, actors are motivated to adapt their inherited practices and develop more synthetic alternatives; but only to the extent that they serve their individual interests.

German lawyers articulate a sense of dissatisfaction with their assigned support role in cross-border transactions. The unidimensional "subcontractor" role assigned by English lead counsel and the lack of client contact are perceived to limit local lawyers' professional autonomy and individual career prospects. As long as local lawyers' reviews are seen to address second-order problems, they lack opportunities for raising their profile, developing a client portfolio and bolster their chances for promotion to partnership. Accordingly, German lawyers are interested in re-positioning themselves vis-à-vis their English colleagues, doing more relevant work, and distinguishing themselves in the eyes of the client.

Accordingly, local counsel challenge English lawyers' monopoly over client contact. In terms of their practical work this reduces the "Chinese whisper" between clients, English and German lawyers. Simultaneously, in terms of their institutional work, it weakens English lawyers' exclusive relationship with clients. German lawyers gain experience and visibility with international clients and gradually enrol them in their power-base. Clients are swayed by German lawyers' increasing appreciation of market expectations and the adoption of LMA contract templates. This change of mind illustrates German lawyers' strategic trade-off: They discontinue their inherited practice of drafting agreements with recourse to the civil code and accept the inclusion of formally redundant definitions to 'buy' client access. Importantly, German lawyers concede authority over the format, not the substance of the contracts they draft. They learn to articulate German-law concepts in ways that are transparent, understood without knowledge of the German civil code and, hence, more relevant in global finance markets.

As a consequence, German lawyers increasingly get involved in more visible work on transaction structuring and facilities agreements, redefine their role in cross-border banking transactions, and gain access to clients. These changes demonstrate how a synthetic set of practices begins to emerge over the course of everyday transactional work. German lawyers maintain exclusive authority over their local law concerns, but adapt their inherited drafting practice to accommodate international clients' preferences. They appropriate this new drafting practice, originally imposed by isomorphic pressures and the need to streamline cross-border review processes, and mobilize it as a resource for their self-interested pursuits of work satisfaction, professional status and client access. Prompted by pragmatic pressures of facilitating cross-border work and guided by their individual interests German lawyers selectively maintain practices that underpin their professional identity, while they disrupt less institutionalized others.

Simultaneously, English lawyers adapt their practices to address what they see as obstructing cross-border work. Based on their contradictory framing of issues and the support they successfully mobilized for their inherited practices, their motivations and adaptations differ from those of their German colleagues. English lawyers are interested in maintaining rather than developing their position and want to ensure that client demands are met as closely and timely in cross-border as in local transactions. In this process, German lawyers' local law concerns are identified as a critical bottleneck.

English lawyers experimented with re-using legal language from old transactions. Thereby, they tried to reduce formal reviews by local counsel to a more ritualistic aspect of cross-border transactions, in which German lawyers should rubber-stamp documents their English colleagues prepared on the basis of documents from previous transactions. While English lawyers highlight how the cost and time advantages are in the client's interest, German lawyers emphasize the risk of using legal language out of context. Here, their contradictory interests collide most obviously: time and cost-effective legal advice against exclusive authority over a field of professional expertise. Both sides mobilize their respective sources of support to legitimize their practices. In this contest German lawyers prevail, as they do not accept these client pressures as sufficient reason for compromising their professional duty of care. They dismiss this practice as illegitimate and pressure English lawyers to acknowledge their concerns more constructively.

The "new model" of cross-border sensemaking, by which lawyers edit legal documentation, emerges as the synthesis of the ongoing framing contests between English and German lawyers. Thus, unlike the outcome of planned change, this synthesis has emerged over the course of numerous cross-border transactions, in which thesis and antithesis collide. As lawyers do their everyday work; negotiating the cross-border enforceability of legal concepts, battling over the meaning they encapsulate, and questioning the local practices that generate them, they shape a synthetic set of practices and working rules that facilitate task accomplishment and serve lawyers' individual self-interest. As lawyers assimilate elements from both previously disparate normative settings, the final shape of the new practice set is conditioned by the sources of legitimacy that English and German lawyers can mobilize or appropriate.

In this sense, dialectic struggles unfold as a framing contest. English and German lawyers frame the problems they encounter in their cross-border work as commercial or legal and mobilize client preferences or civil law concepts "in an attempt to outcompete alternative framings" (Hargrave & Van De Ven, 2006:882) and associated problem-solving practices. They maintain their inherited working rules and only accept those foreign practices that advance their interests, and can be connected to their problem framing. Thus, neither German thesis, nor English antithesis prevail or perish. They are incorporated into a synthesis that connects to their local normative frameworks, but extends their repertoires of legitimate practices (cf. Friedland & Alford, 1991; Hargadon & Douglas, 2001). Even though lawyers connect their extended repertoires to local normative frameworks, the practices and associated frames they transplant across normative settings are still bound to challenge local values and norms. Thus, lawyers not only edit legal concepts and practices, but also broader logics that underpin them.

Shifting Institutional Logics

In their framing contests, lawyers categorize cross-border issues as legal or commercial in nature. This categorization conditions the appropriate problem-solving approach, but also reflects the basis of legitimation that lawyers invoke for their working practices. Thus, different frames connect variations in organizational practices to contradictory "institutional logics" as frameworks for identifying, classifying, and addressing problems (e.g. Lounsbury, 2007; Thornton, 2001, 2002). As Hargrave and Van de Ven (2006:870) suggest, the maintenance of

institutional logics depends on actors' ability "to frame issues in ways that support their frames and eliminate the possibility of creating or reproducing alternative frames". Given that English and German lawyers frame their issues differently, this maintenance fails. Simultaneously, as lawyers mobilize support for their frames and local interpretations grow more authoritative, their sense-making routines become more accepted, and the invoked logics more dominant.

German lawyers have traditionally been socialized into a professional logic that emphasizes their duty to court. According to the Federal Lawyers' Act, their professional status rests on their role as an "independent agent in the administration of justice" (BRAO, §1), and their formal academic qualification "to sit as a judge under the German Judge Act" (BRAO, §4). Educated and socialized into the classic professional logic of assisting the State in fulfilling its duties, German lawyers have traditionally been concerned with the application of blackletter law rather than the pursuit of client interests. Thus, as early institutionalists would suggest, German lawyers' inherited practices, their way of framing cross-border issues as legal rather than commercial and their literal approach to legal concepts have been conditioned and legitimized by the dominant logic in their normative setting.

Under the pressure of negotiating cross-border transactions more efficiently, English lawyers dismiss this academic approach as outdated and unfit for meeting client demands and implicitly challenge its underpinning logic. This criticism reflects English lawyers' more commercial logic. In the absence of legal codes that could govern any non-contracted items, English lawyers' main focus has traditionally been to draft a comprehensive system of definitions, clauses and remedies that ideally resolve any conflict in their client's interest. This duty to client favours practices that exploit actors' freedom of contract to protect the interests of clients.

As German lawyers review common-law financial agreements and draft their local law agreements as stand-alone documents without recourse to civil codes, client interests begin to more explicitly govern their work. Simultaneously, financial agreements rarely go to court, but instead are primarily evaluated against global financial market standards. German lawyers' duty to court is weakened. While German lawyers maintain a strong focus on their legal expertise as a mobilizing resource, the self-conception of their work changes and the balance of underpinning logics shifts towards a synthesis with a stronger commercial logic.

These insights demonstrate how practical work can shift institutional logics and come to constitute institutional work. Lawyers fail to maintain inherited institutional logics, as ongoing framing contests highlight inconsistencies and contradictions. As pragmatic pressures of cross-border transactions shape a new, synthetic set of working practices, lawyers advance alternative problem frames and invoke different institutional logics as sources of legitimacy. As new practices become dominant, so do the logics invoked in their support and institutional logics shift as banking lawyers get the deal done.

FINDINGS AND FUTURE RESEARCH

Using observational and interview data on English and German banking lawyers' changing work practices, this paper addresses one of the fundamental puzzles of contemporary institutional theory: the "paradox of embedded agency" (Seo & Creed, 2002). Drawing on notions of situated change (Orlikowski, 1996) it uncovers how practical work in boundary-bridging contexts engages individual actors in "battles over meaning" (Hargrave & Van De Ven, 2006:870) and corresponding "framing contests" (Ryan, 1991). Pragmatic pressures of task accomplishment force actors to constructively deal with their contradictory normative frameworks. Their ongoing contests over a) the ascribed meanings of cross-border problems, b) the legitimacy of practices to resolve them and c) the institutional logics that govern these practices both motivate and enable actors to change institutional practices and logics. Thus, meanings, practices, and logics form the conduit through which actors convert awareness into action and practical work comes to constitute institutional work (Lawrence & Suddaby, 2006).

Therefore, based on its micro-level perspective on institutional processes, this paper suggests supplementing the current understanding of institutional work as "purposive action aimed at creating, maintaining and disrupting institutions" (Lawrence & Suddaby, 2006:216) with a more literal alternative. It advances a practice-based perspective that takes institutional work literally and focuses on work that gains broader institutional significance. In contrast to existing research on institutional entrepreneurship it does not subscribe to assumptions of change as planned and isolated from everyday activity, but demonstrates how the micro-mechanisms of institutional change are situated, emergent, dialectic and, therefore, embedded.

The micro-level institutional work is situated in ongoing, everyday work insofar as "most of the time most people in an organization do what they are supposed to do" (March, 1981:564). Their work is aimed at accomplishing a set task and institutional practices and norms are contested as and when they interfere with this aim. Consequently, there is no defined starting point for an institutional change project, but a period of gestation in which actors grow aware of conflicting practices and norms, experiment with alternatives, and mobilize different sources of legitimacy to promote their preferred outcome. It is in this period of experimentation and conflict that everyday work blends into institutional work. In the face of contradictory practices and logics, both practical and institutional work require action that is "knowledgeable, creative and practical" (Lawrence & Suddaby, 2006:219). Accordingly, actors' negotiations over meanings, practices and logics as they unfold in the context of everyday work constitute a situated antecedent of the purposive action that characterizes institutional work at the macro-level.

Microscopic perspectives not only zoom in on the origins, but also on the unfolding of the earliest stages of institutional processes. As the micro-sources of institutional maintenance and change are situated in everyday work, assumptions of a pre-conceived institutional project are difficult to uphold. Notions of emergent rather than planned change seem to describe incipient institutional work more truthfully. As context-specific disputes over contradictory practices and logics function as the generative mechanism of institutional work, its outcome is uncertain and subject to negotiation. Institutional innovations take shape over the course of numerous interactions, each of which constitutes a delimited trial. Actors experiment with new practices, evaluate their pragmatic functionality, and build confidence in their ability to connect them to existing normative frameworks. Conceptualizing institutional work as emergent rather than planned also suggests that it unfolds through more collective and distributed efforts than seems commonly acknowledged. Thus, what may look like unintended consequences from a macro-level perspective may be more accurately described as the emerging outcome of distributed processes of legitimation, in which localized actors try to assert authority over which practices and logics to selectively maintain, disrupt or adapt.

The emergent unfolding of institutional work is closely related to the dialectic nature of the contests between contradictory arrangements that characterize boundary-bridging contexts. The dialectic dimension of institutional work is thrown into relief particularly clearly in boundary-

bridging contexts, as institutional thesis and antithesis exist synchronously in separate normative settings. In contrast to field-level studies examining trajectories of institutional change within a single normative setting, they uncover the political struggles at the boundary of normative settings and build a more realistic understanding of the dialectic non-linearity of institutional change. As institutional theses and antitheses collide, actors on both sides initially work to maintain their institutional framework and thereby inevitably disrupt the previously taken-for-granted arrangements of the other. Institutional maintenance breeds disruption which, in turn, prompts the creation of synthetic normative frameworks that incorporate elements of the original thesis and antithesis. Which elements dominate the new framework depends on actors' ability to mobilize different sources of legitimacy in support of their preferred practices and norms.

Macroscopic perspectives on institutional processes observed the mobilization of coercive authorities like governments, industry regulators or professional associations to represent the interests and legitimate the institutional innovations of peripheral institutional entrepreneurs or social movement activists (e.g. Elsbach & Sutton, 1992; Holm, 1995; Leblebici et al., 1991). The microscopic view proposed here, reveals a contrary dynamic insofar as individual actors were found positioning themselves to represent larger entities so that their own meanings, practices and logics grew more authoritative. Their ability to shape institutional arrangements did not rely on the mobilization of powerful actors, but of widely held expectations. Thus, embeddedness empowers as well as constrains action, as it underpins actors' cultural competence to appropriate institutional structures to their advantage. This paper, conceptualizing institutional creation, maintenance and disruption as a series of dialectic struggles in which actors appropriate contradictory institutions has begun to disentangle these cognitive and resource dimensions of embeddedness. This two-dimensional view demonstrates empirically how embeddedness can constrain or empower action. Depending on the relative dominance of cognitive effects limiting the range of acceptable behaviours or resource effects facilitating the mobilization of support in dialectic struggles, both institutional reproduction and individual action can be conceptualized as embedded, as long as different dimensions of embeddedness are differentiated.

Therefore, as this microscopic lens reveals the situated, emergent, and dialectic characteristics of the micro-mechanisms underpinning institutional work, it also demonstrates its embedded nature. Situated in actors' everyday practical work, emergent from their ongoing negotiations, and

predicated on the dialectic tugs-of-war between alternative practices and norms, institutional work at the micro-level constitutes an example of embedded agency. It conceptualizes situated, micro-level antecedents to the purposive action that institutional entrepreneurs take to create, maintain or disrupt institutions. Thus, taking institutional work literally contributes to unpacking the paradox of embedded agency as the fundamental puzzle of contemporary institutional theory.

While this paper made a first step towards exploring the micro-sources and mechanisms of institutional work, many more are needed. Two of them suggest themselves in the limitations of this paper. First, every lens focuses on specific aspects of a phenomenon to the exclusion of others, so that its strength is simultaneously its limitation. This paper focused on the micro-mechanisms of institutional work in actors' intra-organizational collaboration and excluded macro-mechanisms of field-level diffusion that have been covered in the institutionalist literature. Accordingly, future research should aim to integrate micro- and macro-level research and produce a coherent multi-level understanding of the relationship between individual actors' work and the creation, maintenance and disruption of broader societal structures.

Second, as Greenwood and Suddaby (2006) argue, the institutional change by elite firms in mature institutional setting studied in this paper provides a particularly strong case of embedded agency. On the one hand, this means that cross-case comparison is called for to ascertain the generalizability of results. While banking lawyers indicate that the nature of work other legal specialists, such as tax lawyers or litigators do may shelter them from inter-institutional contradictions, the majority of professional work seems to be boundary-bridging in some sense. The increasing internationalization of services makes cross-border work increasingly common and their multidisciplinarity requires collaboration across professional and non-professional occupations. The intersection of local laws, international markets, commercial logics and professional norms is populated by a multitude of actors other than global law firms, for whom the insights of this paper should be relevant. However, future research should establish the exact scope of generalizability across a larger sample of individual and organizational actors.

On the other hand, this means that future research should re-discover the professions as a rich and relevant research setting. Emerging fields in which processes and practices of institutional entrepreneurship have primarily been explored are by definition weakly structurated and, thus,

less effective for research into the paradox of embedded agency. A research agenda that looks at professional practices and norms through a combination of lenses which collectively create a coherent picture of everyday practice and institutional work holds great promise for establishing the role of agency and interest in institutional theory.

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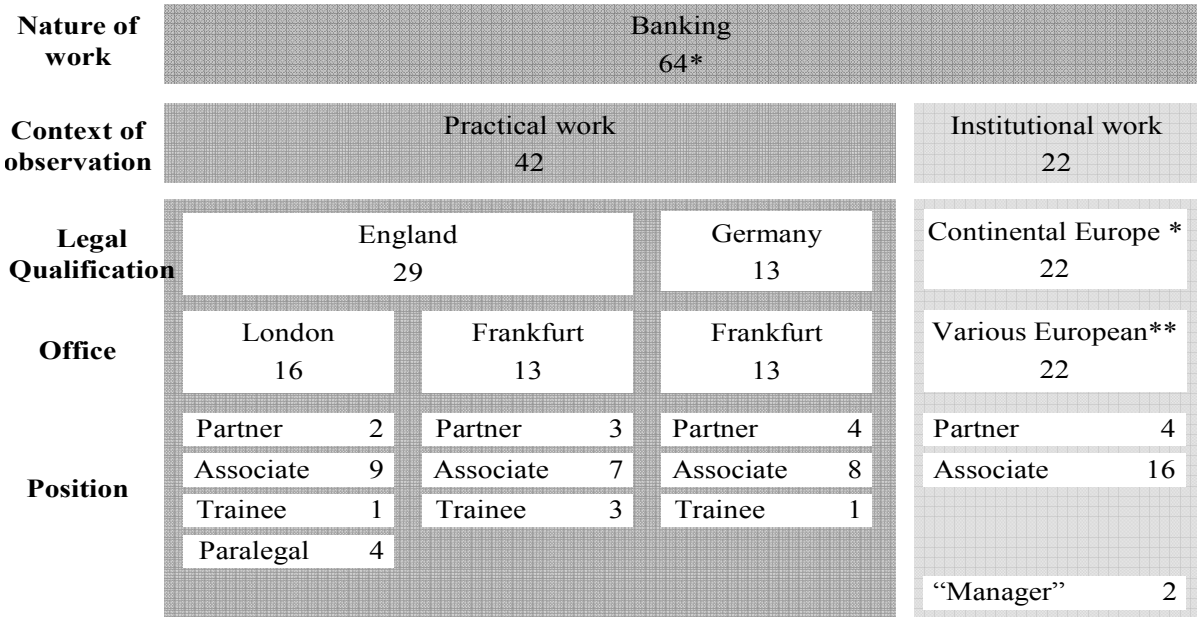
TABLES AND FIGURES

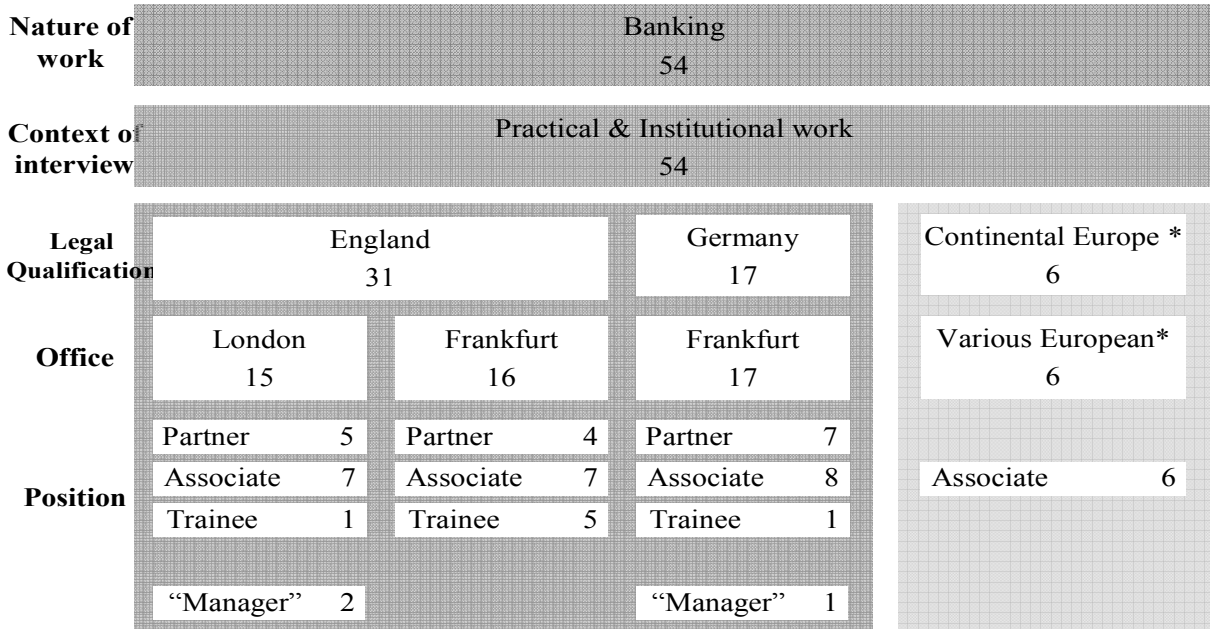
	Civil Law (GER)	**Common Law (ENG)**
Nature of Law	Codified	Case-based
Evolution	Punctuated evolution through formal legislation and academic comment	Continuous evolution through lawyers' daily practice and judges' decisions
Theory & Application	Logically separate	Logically inseparable
Scope of Activity	Administration of law within scope of written legal codes	Shaping of law to make the commercially possible legally allowable
Professional Values	"Duty to Court"	"Duty to Client"
Training & Competences		
Examination	Court (state examination)	Law Society (professional examination)
Approach	Academic approach to legal codes	Vocational approach to legal practice
General Knowledge	Minimum: 4.5 years university	Maximum: 4 years university + 1 year professional course
Firm-specific Experiencce	6 months pre-qualification	24 months pre-qualification
Graduation Age	≈ 30	≈ 25

Table 1: Civil Law and Common Law Regimes (after Morgan & Quack, 2004:14-15)



* To avoid double counting, five participants (1 partner, 4 associates) that have been observed at both practical and institutional work, have only been included in the "practical work" context; the focus of observation.

Table 2: Breakdown of observation participant numbers



* Participants in this category were qualified in continental European civil law jurisdictions and represented their local offices in an internal workshop.

Table 3: Breakdown of interview respondent numbers

Table 4: Contradictory and synthetic practices among German and English banking lawyers

	The old story - "Sometimes it's just 'no'!"		The new model - "Say what you think it means."
Apparently linear change	"If you took an American lawyer, an English lawyer and a German lawyer each with their client into the jungle, the American lawyer would be up the front with the flame-thrower and a machete clearing the path. The English lawyer would be walking hand-in-hand with his client, clearing the path. And the German lawyer would be following his client telling him where he went wrong. That was kind of the old story." (ENG-Partner-44)		"I think it's fair to say that English lawyers have changed the way German lawyers do their work." (ENG-Associate-17)
Elements of dialectic change	**German 'Thesis'**	**English 'Antithesis'**	**Boundary-bridging 'Synthesis'**
Drafting approach	**Administering**	**Enterprising**	**Editing**
	"[German lawyers] are not prepared to think beyond what they have seen in the books." (ENG-Partner-2) "[English colleagues show] a tendency to impose legal solutions that are not always possible. But sometimes it's just 'no'!" (EU-Associate-16).	"A British lawyer has been educated to try and think beyond just the law […] rather than just saying: 'Can't be done'." (ENG-Partner-2) "Whatever [clients] say they want to do goes down on paper as close to what they want as possible - without breaking the law." (ENG-Associate-6)	What they call a pledge does not have the same legal consequences a pledge has in Germany. And this is what you have to be aware of, even if the term may be the same. It is important that you don't just throw around a term." (GER-Associate-31) "We both want to get to the same point, but we might get there by very different routes" (GER-Associate-22).
Attention focus	**Legal wording**	**Commercial interest**	**Joint sensemaking**
	"When [German lawyers] start to work on a deal, they start from the basis of the law […] and then [they] fashion the commercial arrangement so it follows the law." (ENG-Trainee-11) "That is where you get much more friction in finance, when you're talking about - as I say - pure legal things." (ENG-Partner-2)	"Clients don't particularly care about the actual strict rules. They want to know what can be done about them. So, you have to not look at the law books, but see how you can fit the law into the business." (ENG-Trainee-9)	"[You have] to explain to German lawyers what the issues are and then work with the German lawyers with a view to establishing what can and can't be done in relation to the German jurisdiction." (ENG-Partner-2) "Talk about the concept and what you think it means." (ENG-Partner-23) "We always try to find an equivalent [for the proposed financing structure] Therefore, we also always draw diagrams. we always try a lot to visualize." (GER-Associate-35)
Source of legitimacy	**Moral: Local legal expertise**	**Pragmatic: International finance markets**	**Synthetic: Local law in international format**
	"German lawyers are very arrogant about their knowledge […]. They frown a little on the English lawyers, because the English training is shorter and less in-depth." (ENG-Partner-2) "Foreign lawyers are often not taken seriously in Germany due to their lack of academic knowledge" (GER-Partner-3)	"In the banking area, London is simply the financial centre in Europe. […] Being the financial centre in Europe, London is also its legal centre." (ENG-Associate-18) English is the law of choice for finance deals" (ENG-Associate-6),	"A German loan agreement doesn't look different from an English loan agreement. It doesn't look different for the reason that in Germany we had to do it like the English to please English banks in case they want to re-sell these contracts." (GER-Associate-12) "[Explicit definitions] are actually superfluous from a German perspective, because they are a bit stating the obvious. [But] I say: 'Okay, it does not do us any harm. Well, let's include it then'" (GER-Associate-22) "For local law aspects we are the experts. Please don't decide aspects that we have to cover" (EU-Associate-27)
Perceived transaction role	**Local support**	**Lead counsel**	**Emancipated partners**
	"[We feel] not treated as lawyers, but as subcontractors" (EU-Associate-27)	"[The firm] said we needed lawyers on location, but mainly as support to be able to do the deals in London." (GER-Associate-22)	"Deals always came through London. And then [clients] got to know [local partner] on a couple of deals and were absolutely enthusiastic. And now she is hired directly. That's how it works." (GER-Associate-22)
Contract template	**Agreement integrated with civil code**	**Stand-alone agreement in LMA format**	**Stand-alone agreement in LMA format**
	"Ten years ago, a German contract was three pages long. Everything else was in the BGB [civil code]; whereas English contracts were about 100 to 150. Now they are about the same. […] And now every clause is specified in the contract." (ENG-Associate-17)		

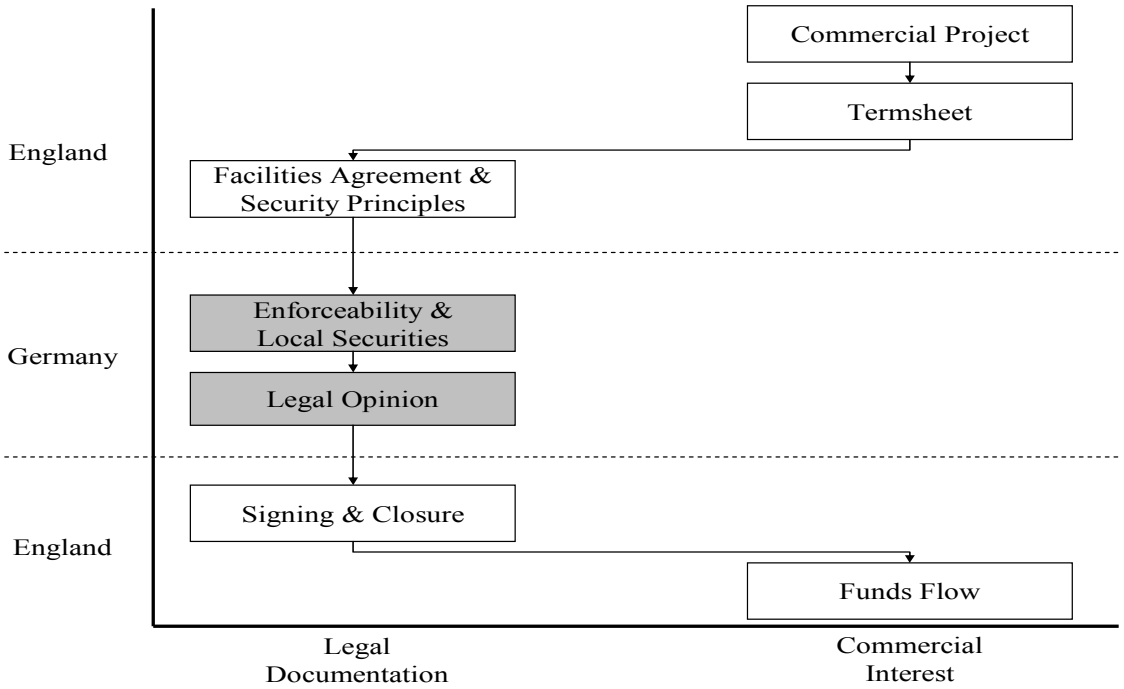


Figure 1: Process model of a banking transaction

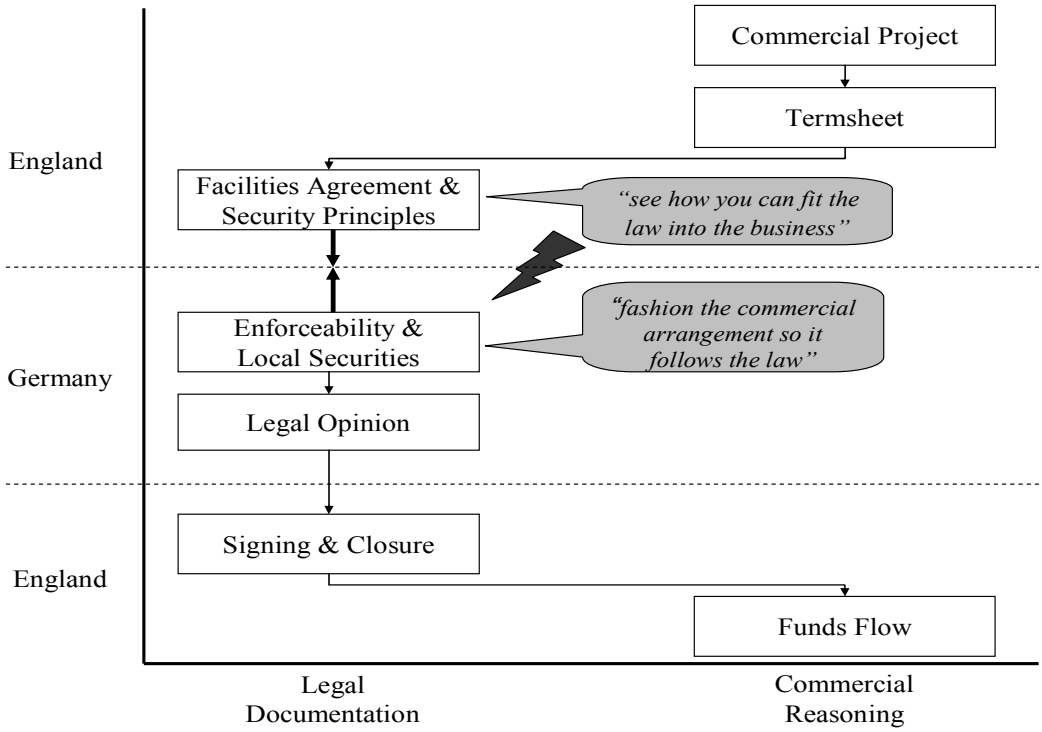


Figure 2: "The old story": contradictory practices colliding in cross-border work

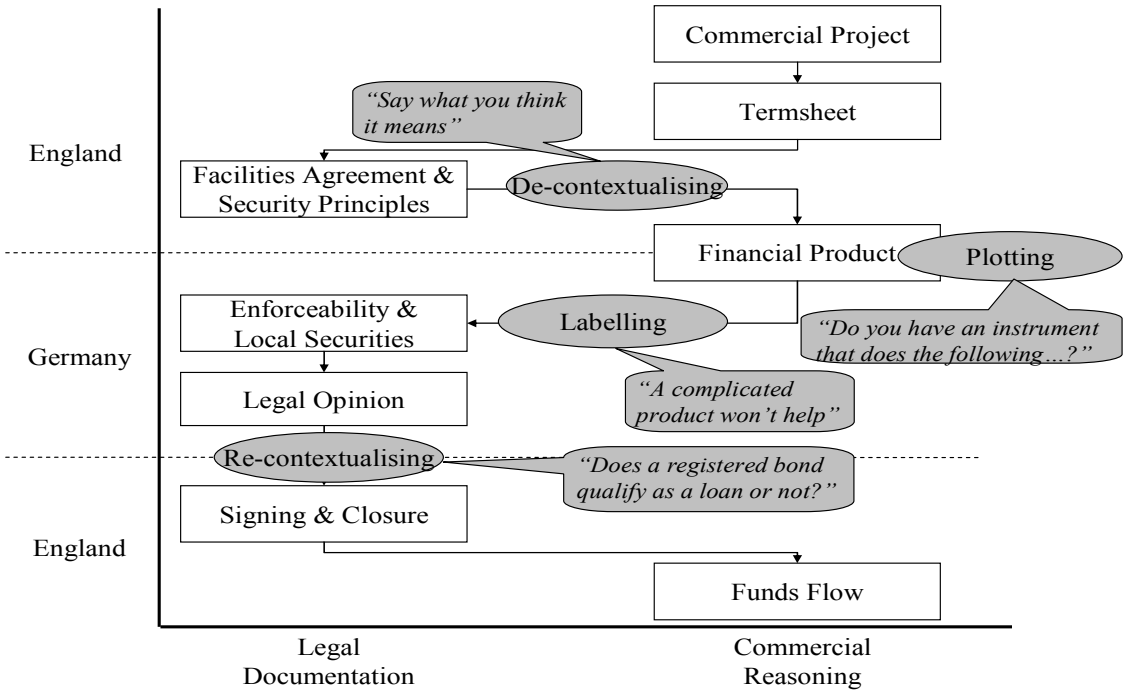


Figure 3: "The new model": cross-border legal work as editing