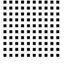

# Introduction

The main concern of this book is to investigate a particular feature of many contemporary societies that is clearly visible, yet rarely explained, and to analyse and illustrate it through a study of the unlikely case of South Africa. The feature under investigation is essentially this: whenever a borrower is unable to serve his debts, the issue is turned from being an economic matter into a legal one. At that point we no longer talk about the satisfaction of wants or exchanges, but about the enforcement of contracts and offences. Delinquent borrowers are deprived of their legal capacity, a special kind of autonomy that many authoritarian regimes actually grant their citizens, and which usually marks the threshold between infancy and adulthood.

Over-indebtedness is of salient public topicality since the expansion of finance has increased the easy access to consumer loans in many countries and growing amounts of consumption have become debt-financed (Bauman 2007). Consumer credit markets have become an important part of contemporary capitalism because they augment the options for involving otherwise illiquid citizens in the market economy (Hart, Laville and Cattani 2011: 3; Langley 2010). Consumer loans changed from being an emergency tool into a common component of commodity supply and, finally, into a commodity themselves (Langley 2014). For citizens living in financialized economies, it has become the norm to tap into their future income. At the same time, consumer credit markets increase the number of over-indebted citizens and prevent them from improving their standard of living, or they exclude them from social life altogether.

In this regard, South Africa is indeed an unlikely case due to its social structure. Sampie Terreblanche (2002) has explained why the country possesses one of the highest levels of social inequality, a fact that has been confirmed repeatedly by data from the World Bank (2019). Hein Marais (2011) provided a detailed analysis of the many restrictions and hardships a broad majority of the South African population is exposed to in their daily lives, among them unemployment, underemployment and poverty. Under these circumstances, the development of a consumer

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credit market, whose rationale one should expect to lie in the probability of loan repayments based on reliable income streams, is a surprising fact in the first place.

Indeed, South Africa is one of the first of the 'poorer nations' (Prashad 2014) to have an institutionalized and financialized consumer credit market. The combination of these three terms – marketization, institutionalization and financialization – constitutes the principal feature of this study and justifies its unconventional approach.

The first keyword is marketization. Since its foundation in 1993, the South African consumer credit business has been deliberately turned into a market, i.e. it was intended to be accessible for everyone, transparent, competitive and supposedly self-regulated. As will be evident in the following chapters, this was not a natural development, but a politically governed one (Callon 1998a; Polanyi 2001). A market represents a sphere in which participants are expected to interact autonomously in instrumentally and strategically oriented ways in pursuit of their individual benefits (Callon 2007: 142–43; Hirschman 2013). Therefore, this study will differ significantly from scholarly works on mixed or non-market forms of monetary exchanges and indebtedness as well as from legal studies on the topic.

Important research on the role of credit in the daily lives of South Africans has been published before, in particular by Deborah James (2012, 2013, 2015) and Detlev Krige (2011, 2014). Both scholars focussed on the connection between local communities and the ways in which money and debts were handled. Further important studies relating to the National Credit Act have been undertaken by legal scholars, and in this regard work carried out by Jannie Otto (2010) and Michelle Kelly-Louw (2007, 2008, 2009) must be mentioned. The analysis of marketization in this study, on the other hand, differs from these works because it concentrates on the economic effects a legal framework has on the equality of market participants.

The second focus is on institutionalization. Beginning with reforms in 1999, and finalized with the enactment of the NCA (National Credit Act 34 of 2005), the South African government took its consumer credit market to a different level of stabilized organization, especially in comparison to traditional forms of money lending. The legal framework introduced rules and procedures, and it established additional governmental and privately acting bodies. A growing number of market actors like credit bureau clerks, debt counsellors and payment distribution agents were assigned defined tasks and had to meet specific quality criteria. The process of credit granting was furnished with benchmark data,

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formulas and forms. The market as such was placed under permanent observation and literally made public. Money lending could no longer be reduced to a private exchange between two parties. To sum up, the business was turned from a space of private social interaction into being a permanently available infrastructure, i.e. a stabilized environment of social interaction (Luhmann 1989: 51–62).

The third focus is on financialization, viewed as the practice of calculating future risks in order to solve present tasks (Martin 2002; Schraten 2015). The politically shaped market became dominated by commercial banks, because they could fulfil the new conditions most easily. From 1990 onwards, South African banks re-entered the global markets after years of apartheid-related boycotts and legal restrictions (The Banks Act 94 of 1990). Grietje Verhoef (2009) has analysed the remarkable dominance of the very few key players in the South African economy. They brought financialization into the everyday lives of the people. National and international commercial banks were able to share their risks on the financial markets, or even to get rid of them by way of securitization. As will be seen in this study, this has shaped the form of the loans they offered to the South African customers. By issuing the NCA, the government intended to involve its citizens in these procedures of financialization because it granted the political right to apply for a loan to every citizen (s 60 NCA). Hence, it encouraged them to take the risks involved in financialized loans instead of demanding thriftiness and encouraging saving in order to satisfy wants.

This did not happen by accident, as Dale McKinley (2017: 7) revealed in his study on the 'corporatisation of liberation', as it was performed by the governing political parties. With this term he is referring to the political strategy of the ANC of promoting the emancipation and social uplifting of the hitherto discriminated and impoverished parts of the population by means of including them in the capitalist economy. Instead of redistributing resources or building a social welfare state that would protect the population from the devastating effects of market competition, citizens were called on to enter the economic struggles as entrepreneurs themselves. Free business was meant to generate economic growth, which was supposed to enable the government to distribute wealth without interfering in the existing social structure. The establishment of a financialized consumer credit market was deliberately intended to be a part of this strategy, as this study will show.

However, the financialization of everyday life is not limited to the economic expansion into world markets, a process Gillian Hart (2014: 121–42) aptly characterizes as 'de-nationalization', because it also entails

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the local regulations – including the legal framework – that represent a 're-nationalization'. This twofold tendency is not a contradiction of the findings of McKinley, who emphasizes the importance of the ideology of a National Democratic Revolution in the strategy of the ANC. From the beginning, the political and economic transformation of South Africa had a nationalistic character, seen most evidently in the expulsion of foreigners and in xenophobic riots (Crush 1999; Manzo 1996). The following chapters confirm that the legal regulation of the globalized economy was locally embedded, limited in its effects to the citizens and permanent residents of the nation state, and heavily dependent on a functioning state apparatus.

Summarizing this approach in methodological terms, the aim of this study is to explain the empirical character of the 'extra-locality' (D. Smith 2001: 159) of the institutions, rules and norms of the South African consumer credit market that cannot be grasped by participant observation, traditional ethnography or sociological interviews. Instead, it distils the 'ruling relations' (D. Smith 1999: 73–95) from the social setting created by laws, institutions, procedures, calculations and forms. The infrastructural relations between the laws and legal regulations, institutions, actors and processes are of the utmost importance. The empirical resources of this study are legal texts, policy documents, aggregated data and statistics, formulas and forms (Cooren 2004; Latour 2010; MacKenzie 2006; Riles 2011; D. Smith 2001). Of special importance are economic textbook principles that have been implemented into the infrastructure of the South African consumer credit market, as well as loan offers and contracts and their regulations which build the database for an analysis of this market (Callon 1998b; Muniesa, Millo and Callon 2007). The main argument of the study in methodological regard is the following: the purpose of this complex arrangement was the reconciliation of a backward-looking colonial property right with the requirements of a future-oriented financialized economy. The result was an intensification and consolidation of the social inequality that the consumer credit market was allegedly supposed to have mitigated.

## The Conflict of Interests

A lot has changed in the treatment of debtors over the last centuries (Schraten 2016). In pre-modern societies, debtors were culprits that could be imprisoned, enslaved, tortured or executed. However, capitalism turned them into an economically valuable resource. For creditors,

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it became literally counterproductive to insist on the imprisonment of debtors because this immobilized the debtors' labour power. Instead, indebtedness presents an irresistible justification for demanding unselfish drudgery from the so-called plebs.

In addition to economic reasoning, the Enlightenment endowed human beings with the arguments necessary to claim acknowledgement of their dignity, something they had fought for since the revolutions in the United States (1776), France (1789) and Haiti (1791).

These elements resulted in a continual conflict between political efforts to defend exploitative rights and the intention to deter payment default on the one hand, and the struggles for debtors' alleviation together with humane and solidary conflict resolutions on the other hand. Expressed in the terms of Polanyi (2001: 136–40), we observe in these conflicts the expansion of free markets and its 'countermovement'. With the emergence of a financialized economy, the political conflicts between creditors' and debtors' interests intensified, and as a result most legislations are being constantly reformed (Kilborn 2007; Niemi, Ramsay and Whitford 2009; Niemi-Kiesiläinen, Ramsay and Whitford 2003).

The establishment of a consumer credit market in South Africa is an extraordinary example of this phenomenon, not only due to the social division of the population caused by slavery, colonialism and apartheid in the past, but as a consequence of the detailed and sophisticated market framework that was implemented in 2006. By focussing on its conflicting dynamics, this study aims to complement the study by David Graeber (2011), which dealt with the stable features of debt in the first place.

A political debt relief solution is urgently needed in South Africa. However, this book will argue that debt relief only represents the treatment of superficial symptoms. In the stage of over-indebtedness, the mechanism of consumer credit has already failed. The utilization of the emancipatory potential of consumer credit would require a fundamentally different understanding of the options this economic tool offers. Where consumer credit is concerned, we are confronted with a closely woven interdependence of the economy and law, which means that the realization of future opportunities is dependent on and shaped by a legitimacy that derives from the past. In the case of the South African consumer credit market, the new opportunities of credit customers are embedded in a ruthless property law from colonial times – with harmful consequences for consumers. The democratic constitution of South Africa from 1996 confronts this legacy with a Bill of Rights, which demands 'that state and society are working towards the effective realisation of these rights', as Heinz Klug (2010: 4) argued. This study will

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disentangle the interwoven threads of the economy and law in order to make alternative policies of such an emancipatory kind visible.

## The Scope and the Effects of the Market

The Republic of South Africa has developed a thriving consumer credit market. The quarterly report of the supervisory governmental body, the National Credit Regulator, confirmed a year-on-year growth of 6.6 per cent of the value of credit granted in December 2018. The average year-on-year growth rate during the previous twelve months had been 7.2 per cent (my own calculations from NCR 2018a: 3; NCR 2018b: 3; NCR 2018c: 3; NCR 2018d: 3).[1]

The latest reports from 2018 contained figures indicating economic progress year-on-year in nearly all sections of the business. Banks and retailers had posted increased amounts of sold loans. The number of loan applications had grown, and the total amount of most of the different credit types like mortgages, secured credit, credit facilities, unsecured loans and short-term credit had also risen. The total amount of outstanding consumer credit had risen by 5.6 per cent, and the number of credit-active persons had gone up by nearly 800,000 within a year. The rejection rate of loan applications had increased slightly to 56 per cent. Only a few statistics indicated a decline, such as that of the fairly insignificant area of developmental credit (NCR 2018b: 1–7; NCR 2018e: 2).

This was a remarkable achievement for an African country with high rates of poverty and unemployment, indicating that many citizens were able to bridge their gaps in liquidity by applying to regulated and supervised credit suppliers. It was even more exceptional when one remembers that a banking collapse had taken place in 2002, which had been caused by bad debts resulting from irresponsible lending and borrowing practices and which had seriously damaged financial business (Porteous 2004: 82–85).

However, one fact undermines the impression of success and progress: the number of credit customers with 'impaired records', i.e. those in arrears for more than three months, blacklisted or with judgements and administration orders against them, remained at the level of nearly 10 million individuals. This number had crossed the threshold of 9 million persons in March 2012 for the first time, reaching its peak of more than 10.5 million in June 2015, but never dropping below 9 million subsequently. There has been no permanent decline in the numbers since

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the peak was reached. In December 2018 the figure of 10.16 million was 460,000 higher than in December 2017 (NCR 2018e: 2).

The total number of credit customers in 'good standing' had also gone up, a fact that coincided with high levels of over-indebted customers due to the growth of the market. Its share had declined by 1 per cent within a year, though. It meant that one in six South Africans – including children and pensioners – was in serious financial trouble because they had not been able to make a loan repayment for more than a quarter of a year, or had already been excluded from the market by creditors, courts or administrative bodies. This is an alarming finding for a country with one of the highest poverty rates in the world, and one that is a young political democracy constantly living with the pressure of social unrest (Alexander 2010; Makgetla 2018).

It meant that a sizeable part of the South African population was held in a liberal form of debt bondage in so far as their citizens' rights were not infringed but all efforts to improve their economic position were in vain because their earnings would ultimately belong to their creditors.

Consequently, it comes as no surprise that South African politicians started to discuss a debt relief bill, which was based on a draft Amendment to the NCA (Government Gazette No. 41274) and suggested extinguishing debts as a measure of last resort. Quite predictably, this suggestion was immediately opposed by the credit industry, which warned against the moral hazard of credit customers who would start to borrow carelessly as soon as a debt relief was expected (Tshwane 2018).

## On the Political Formation of Markets

However, it requires a more complex debate to make the positive potential of consumer credit work, and to prevent exploitation, poverty and extreme social inequality at the same time. Debtors and creditors are not only divided by a conflict over the repayment of debts, but they actually share certain mutual interests, often without being aware of it. For instance, an increase in the borrower's income is in the interest of both – it would improve the living conditions of debtors, secure the repayment of loans and raise the demand for further credit. On the other hand, debtors should not be indifferent towards the creditors' intention to avoid repayment default because this affects the price of loans, and their general availability.

Yet the most important aspect of this discussion cannot be grasped from the individual perspectives of debtors or creditors. One needs to

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view it from a third perspective, i.e. that of society as a whole. Only this perspective allows one to take the mutual dependency of a multitude of creditors and debtors into account, and to give due consideration to a long-term time frame of socio-economic change and to the tensions between the economic, legal and political fields of society. This viewpoint is a purely reflexive one, though. Society does not exist as 'a single thing' (Rosanvallon 2006: 190), and adopting this viewpoint is an imaginary process that requires normative decisions (Castoriadis 1997).

Consumer credit can only result in beneficial improvements for the whole of society if it is organized in liberal markets, which means that every citizen is able to access credit under the same conditions, and actors are able to observe and calculate the practice of their behaviour. However, markets can be organized in different forms. Only some promote equal exchange, whereas others facilitate competition, and still others benefit oligopolistic actors. The establishment of a liberal market beneficial to a democracy requires political intervention in order to guarantee transparency and to prevent the abuse of power by the successful actors at the expense of weaker competitors, newcomers, customers and society as a whole. Karl Polanyi (2001) explained the necessity for managing markets by state intervention, and Mark Granovetter (1973, 1985) showed how the densely woven fabric of economic rationalities, legal regulations, political interests and social norms influences the decisions of actors. Both used the term 'embeddedness' to describe this multiplicity of societal interdependencies. The democratic government of the Republic of South Africa seemed to have been basically aware of these intricacies because it 'embedded' its consumer credit market in a complex legal and institutional framework.

The economic mechanism behind the opposition of market growth and high levels of over-indebtedness is easy to understand: loans are taken out due to a lack of liquidity, and insufficient income often constitutes the reason for a debt career of this kind beginning (Ritchie 2018). If earnings are not increased quickly to cover the expense of debt repayments, the economic situation will deteriorate further because of constantly increasing financial obligations. In other words, taking out an unsecured loan is beneficial only if the lack of liquidity is temporary or the loan is used to generate additional income. At the same time, repayment defaults lead to penalty fees, the compounding of interest and prolonged debt services, hence to higher profits on the part of creditors. This means that consumer credit will increase the social inequality in society if most loans are used for consumption.

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Less easy to understand is the political mechanism. Why does a political democracy construct a market framework that perpetuates the imbalance between a small number of beneficiaries and such a huge number of permanently hard-pressed debtors? Even more astonishingly, why is a government claiming it is advancing 'the social and economic welfare of South Africans', as it says in section 3 of the NCA, by implementing this kind of consumer credit market? These two questions, in particular, represent the main concern of this book, and thus the debate about possible debt relief mechanisms is framed by this socio-economic analysis.

The core of the analysis is formed by the crisis of the consumer credit market between 2012 and 2014, which ended with the collapse of the African Bank Investment Ltd and then by the continuation of a financialized consumer credit market in South Africa afterwards. A reconstruction of the history of South African money and credit supply following the foundation of the National Central Bank explains the long-term effect of policies and the structural starting point of a freely accessible consumer credit market in 1993. Consequently, a discussion of the failure of the free market experiment between 1993 and 2002 will illustrate the reasons and the conditions for the construction of the NCA.

The debate on credit relief measures in South Africa only gained momentum after considerable delay, and the Amendment of the NCA was still under consideration at the time of writing. Nevertheless, irrespective of the final outcome of this, the fourth chapter will set out the suggested 'debt intervention' in the context of an international comparison of consumer bankruptcy laws, especially those which informed the South African legislators. The chapter will show that the debt relief bill does not affect the fundamental mechanisms of the South African consumer credit market.

The core idea behind this study has three main sources of inspiration, two classical and one contemporary. The classical inspirations are Georg Simmel and Max Weber, because both developed social theories which allow us to analyse the opposed dynamics of economic progress and normative inertia. The purpose of the reference to Simmel and Weber is not to start another discussion on social theory, but to demonstrate the establishment of shared economic textbook principles in the period of the implementation of a capitalist society. The contemporary inspiration is the human economy approach of Keith Hart (2000, 2015; Hart, Laville and Cattani 2011; Hart and Sharp 2014). This approach claims to bring the everyday economy of citizens back into focus, which is far too often

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sidelined in debates about economics, as these mainly deal with profit and growth rates of companies and nation states. The scientific analysis of the people's economy cannot be limited to mathematical models of a predefined number of variables. It has to research the full range of social practices which human beings perform in order to take care of their economic needs and wants. These practices, which partly deviate from the economists' models, contain the resources for political alternatives.

## The Role of the Consumer Credit Market in South African Democracy

A lack of liquidity was and still is an everyday source of distress for millions of South Africans. Therefore, the consumer credit market has been an important concomitant of the political transformation from apartheid to political democracy, and huge efforts have been made to utilize the progressive options of consumer credit in the 'corporatised liberation' (McKinley 2017).

The basic mechanism of consumer credit can help to build a tool for overcoming poverty and for levelling inherited social inequalities, because it allows access to resources without having to own the equivalent amount of money. Stretching the payment of durables over time can be economically advantageous. There is a beneficial effect from the perspective of society, too. In consumer credit markets, unused savings are mobilized to serve as loans to benefit those lacking liquidity and to achieve a better allocation of capital.[2]

The opportunities included in financialized consumer credit even exceed these lauded effects of consumer credit markets. As will be argued by interpreting *The Philosophy of Money* by Georg Simmel (1990) in this study, the deliberate extension of the money supply by the usage of loans basically allows the inclusion of additional participants in the economy without endangering the soundness of money. This option was of crucial importance to the leadership of South Africa after the overthrow of apartheid, in order to be able to extend economic inclusion to the majority of their country's population, which had been disregarded, humiliated and impoverished on political grounds.

However, the apartheid regime had not only constantly tried to discriminate against and externalize non-white South Africans, it had also demonized credit money on religious grounds. Tellingly, regulations concerning the lending business had been fixed in a law called the Usury Act. As a consequence, the post-apartheid governments had to establish a

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consumer credit market almost from scratch. Although this gold exporting country was equipped with sound and mighty banks, and the close ties to the centres of the world economy could be quickly re-established after 1990, it lacked the infrastructure which allowed a lending business to operate. Bank branches and ATMs in the living areas of the non-white population were scarce, and many citizens did not have bank accounts, let alone prepaid or credit cards.

Under these conditions, it was compelling for legislators to follow the instructions of neoclassical economics, and to believe in the possibility of a self-regulating market that would be established automatically by privately interacting individuals. Following this ideology would save political leaders from interventions in the economy and from the resistance that usually accompanies political advances in the property sphere. The initiation of a lending business in South Africa was accompanied by hopes for new investment opportunities, and for the smooth inclusion of formerly disadvantaged citizens as an effect of private economic activities. However, the first attempt to create a literally free consumer credit market resulted in over-indebtedness, economic hardships and violence, and had to be reframed due to its obvious malfunctioning after 1999. Despite this failed attempt, the ideological idea of the possibility of a self-regulating market has haunted the development of the consumer credit market through to the present day, as this study will show. The ongoing debate about debt relief measures is no exception to this.

## The Misconception of the South African Consumer Credit Market

The high level of long-term indebted customers, as revealed by the National Credit Regulator since March 2012, fundamentally calls into question the rationality of a consumer credit market that aims at advancing the 'social and economic welfare of South Africans' according to section 3 of the NCA. Obviously, a considerable part of the population is doomed to constant debt servicing.

This problem has not gone unnoticed. The National Credit Regulator has warned the public against the consequences of constantly growing numbers of seriously indebted citizens since March 2012. The justification for this alarm was confirmed by the collapse of the sixth biggest lender of the country, African Bank Investments Ltd, in August 2014. As a consequence, the bank was quickly split into a decontaminated good bank, with the aim of enabling the business to continue, and a bad bank,

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thus isolating the bad debts that had caused the collapse – a political move that has become very familiar to the global public since the financial crisis in 2007. In a concerted action, the government and banking business representatives tightened the affordability criteria for loans. From the governmental perspective, these operations were successful because any potential contagious effects of the African Bank collapse on the other banks could be contained, and the good bank indeed seemed to recover. Even more importantly, the review of the National Credit Act, which had been initiated after the first warnings of the National Credit Regulator, could be completed without changing the basic architecture of the market.

The effects of these careful and reluctant market interventions were reviewed in the Consumer Credit Market Report of December 2018. It indicated a reduction in the share of unsecured loans of the total amount of credit to a level of 21.5 per cent (NCR 2018b: 4). At the height of the crisis in 2012 and 2013, this proportion had constantly risen until it had reached values above 24 per cent, signalling the preference of credit providers to maximize the sale of this most expensive and most risky type of consumer loan (NCR 2012b: 4). From a short-term business point of view, the preference for selling unsecured loans was a rational move, but in the long run it endangered the resilience not only of the single credit supplier but of the business as such, as the collapse of African Bank confirmed.

This simple fact – a contradiction between the short-term and the long-term rationality of economic action – revealed a crucial mistake in the idea of a self-regulating consumer credit market which forms the core of the National Credit Act 34 of 2005 (Langenohl 2008). The legislators and business representatives had continued to conceptualize the market as an institution that represented a self-evident and infallible guiding principle, albeit with a more complex framework than before 2002. According to its creators, the South African consumer credit market would benefit all participants as long as they followed this principle. It was based on the conviction that undisturbed price negotiations by private actors, supported and monitored by governmental bodies that guaranteed the transparency of information, would result in an economic equilibrium to the benefit of all. The main purpose was the fulfilment of contracts under all circumstances.

The review of the market undertaken in this study will reveal, in at least three respects, misunderstandings of the economics of a financialized consumer credit market. To begin with, there was no single

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rationality of market actors even under the conditions of transparent information, because the outcome of economic interaction is uncertain by definition. Without adopting a deliberate position with regard to the unforeseeable future, economic actors would not be able to realize economic advantages (Appadurai 2012). The uncertainty of economic action runs counter to the conceptualization of a single guiding principle of markets because free actors cannot be determined by a uniform interpretation of their individual futures. On the contrary, economic success depends on the ability to utilize an opportunity that has been rejected by others (Knight 1921).

Secondly, as already mentioned, a financialized consumer credit market is not constituted by two private parties negotiating a price. Instead, it consists of a complex arrangement of institutions, which assemble legal rulings, a variety of social norms and monetary mechanisms into a single 'market device'. This term will therefore be used in this study to describe the unified environment that actors in a consumer credit market are predisposed to accept (Muniesa, Millo and Callon 2007). The market device appears as a uniform setting, which, however, may be handled by the actors very differently. In fact, the purpose of the market device in the South African consumer credit market was, as far as possible, to generate *homines oeconomici*. Human beings are not limited by nature to pursuing their individual economic interest, but they can be conditioned to do so under very specific circumstances (Callon 2007: 142–43).

The third misunderstanding of the economics of a financialized consumer credit market emanates from the debate about debt relief as a last resort of over-indebted citizens. The study shows that this policy only deals with the problem after the economic and social position of debtors has already deteriorated. The basic uncertainty of a loan means that information about the success or failure of the risk-taking action will only become evident subsequent to the conclusion of the contract (Esposito 2011: 18–36). This means that a responsible consumer credit market would require some kind of credit counselling to be instigated before the contract is made, and during its term. As soon as prospects of success vanish, an intervention in the contract commitment is necessary in order to prevent over-indebtedness. This would limit the earnings of creditors, of course. The protection of the profit interest of creditors caused the core problem of the South African NCA, namely, that existing over-indebtedness was conceptualized as a precondition of political intervention.

"CREDIT AND DEBT IN AN UNEQUAL SOCIETY: Establishing a Consumer Credit Market in South Africa" by Jürgen Schraten. https://berghahnbooks.com/title/SchratenCredit

## The Procedure of the Argumentation in this Book

The main argument put forward in this study is that the specific understanding of market economies as a realm of freely interacting individuals (and companies, which are also constructed as individuals in the fiction of a legal person under private law) suffers from a repression of its core foundation by an understanding of private property as the exclusive right of an individual to refuse every competing access to a resource. In other words, market economies are embedded in a property right that predestines instrumental rationality over solidarity, emotions and communal traditions.

Consumer credit would basically allow this principle to be surmounted by treating the loan as a common resource that could be utilized to the benefit of creditor and debtor and of society too.

An important conclusion of this argument is that the compartmentalization of our market societies into different realms, called 'the economy' and 'the law', is a precondition for being able to hide the basic reason for an allegedly instrumental economic rationality that seems to be without alternative – and the alternatives that would become obvious once a consciousness of this connection between the legal epistemology of economic interaction had been developed.

These arguments are developed by first describing the South African consumer credit market. The first chapter begins by illustrating the meaning of financialization through an analysis of a typical, ostensibly very simple, very cheap and very unproblematic loan offer, which nevertheless turns out to be expensive and dangerous. The most serious repercussions though could only be extracted from the small print of the contract, which revealed the consequences of a temporary repayment default. The second section of the first chapter then presents a market overview, demonstrating that the single loan offer was actually quite typical. The third section turns our attention to the – now unsurprising – warnings of the National Credit Regulator against the growth of over-indebtedness, and to the consumer credit market crisis, which developed subsequently. After an outline of governmental reactions, the culmination of the crisis with the collapse of African Bank is reconstructed. The chapter ends with a summarizing market overview at the end of the crisis.

The second chapter is devoted to the historical development of money and credit in South Africa from the foundation of the central bank in 1921 to the collapse of the first attempts of establishing a consumer

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credit market in 2002. It shows a clear hostility towards private lending and a generous money supply. Traces of the twentieth-century history of South Africa are still present in the geographic and social structures of the country today. This reconstructed development was responsible for the specific normative order, in which the later forms of the consumer credit market was implemented. The path dependency was based on certain long-term convictions about right and wrong economic decisions. Their condensed forms reappeared in the legal framework of the NCA, as the subsequent chapter will show.

The third chapter analyses the legal framework of the National Credit Act. The first sections deal with the different institutional actors, which were implemented to achieve an economic rationality for all economic participants. It reveals an almost complete protection of private property as an incentive to comply with the rulings. Even more importantly, the details of the analysis show why these hopes were inevitably doomed to failure. The following sections of the chapter reconstruct the governmental reforms in reaction to the crisis from 2012 to 2014, showing a shift in concern from over-indebted citizens towards the preservation of the market principles. The chapter concludes by turning its attention to the international consumer credit market frameworks that informed South African legislators, and the unique characteristics of the National Credit Act. Basically, these other legislations show alternatives in the construction of property rights in consumer credit markets. In this context, the still unrealized South African debt relief solution is discussed, revealing how it would represent a political programme for impoverishment.

This governmental obstinacy with regard to obviously failing market principles demands an intensive analysis of the origins, the social foundation and ideological construction of the idea of a self-regulating market. The fourth chapter begins by explaining the argumentative trick of Adam Smith's famous 'invisible hand'. It then focuses on the possible social implementation of a market equilibrium with reference to the work of Georg Simmel. The rationality of markets, its hidden core and the limits of this rationality are reviewed with reference to Max Weber.

The conclusions to be drawn from this complex analysis are summarized in the final chapter. It explains what the South African consumer credit market devices ultimately consist of, how they work, and why they fail. It ends by highlighting some fundamentally different alternatives in the construction of a credit market.

"CREDIT AND DEBT IN AN UNEQUAL SOCIETY: Establishing a Consumer Credit Market in South Africa" by Jürgen Schraten. https://berghahnbooks.com/title/SchratenCredit

## NOTES

1. The year-on-year figure compensates for seasonal fluctuations, especially during the festive season, which usually results in a short-term peak of consumer credit demand.
2. Of course, bank money builds the core of capital that is utilized in loans nowadays, but this does not deny the truth of this argument.

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