

Legal Foundations of Capitalism
Spring 2020
Proposed Syllabus

Student Convener: Luke Herrine
Faculty Advisor: Amy Kapczynski

Description: In the legal academy and elsewhere, the dominant way of thinking about the process of production, commerce, finance, and social provision more generally is the framework of neoclassical economics. So hegemonic is the orthodoxy that its models are commonly treated as the only way to think clearly about how these phenomena work. The notion that there is a model intervening between thinker and reality is hardly even considered. This course explores current non-neoclassical—that is, heterodox—approaches to studying the core phenomena with which neoclassical economics has been concerned. The focus is on heterodox frameworks that center the role of law in structuring the social provisioning process. After a general introduction to basic concepts and conceptual frames, the course homes in on theories of money, credit, and finance. Money and finance, though central to contemporary capitalism, are particularly underdeveloped areas of neoclassical theory and particularly well developed areas of recent heterodox theory.

Each class session will be 90 minutes. Students must attend at least 750 hours to receive credit.

Week 1: Introduction: Economy as Instituted Process

J.W. Mason, *It's Bargaining Power All the Way Down*, *Crooked Timber* (Dec. 15, 2015)
FREDERIC LEE, *MICROECONOMICS: A HETERODOX APPROACH* (2017), pp. 37-40, 60-68
Hannah Appel, *Race Makes Markets: Subcontracting in the Transnational Oil Industry*, *Items: Insight from the Social Sciences* (Dec. 18, 2018).

Week 2: Law as Microfoundation

David Singh Grewal, *The Laws of Capitalism*, 128 *Harv. L. Rev.* 626 (2014), pp. 652-661
JOHN COMMONS, *THE LEGAL FOUNDATIONS OF CAPITALISM* (1924), pp. 143-171
KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW LAW CREATES WEALTH AND INEQUALITY* (2019), pp. 9-21

Week 3: The Corporation

David Ciepley, *Beyond Public and Private: Toward a Political Theory of the Corporation*, 107 *Am. Pol. Sci. Rev.* 139 (2013).
PISTOR, *CODE OF CAPITAL*, pp. 52-71
Robert Hockett, *Accounting for Incorporation: Part I*, *Law and Political Economy Blog* (Sep. 24, 2018)

Week 4: Coordination and Competition on the Market

ANWAR SHAIKH, *CAPITALISM: CONFLICT, COMPETITION, CRISIS* (2016), pp. 261-72

FREDERIC LEE, MICROECONOMICS: A HETERODOX APPROACH, pp. 154-64
Sanjukta Paul, *The Constitutional Role of Economic Coordination Rights*, Law and Political Economy Blog (Oct 25, 2019)

Week 5: Race and Class in Political Economy

Angela Harris, *The App and the Operating System: Neoliberalism and "Social Reproduction"*, Law and Political Economy Blog (Feb 18, 2019).

Noah Zatz, *Is "The Market" The Enemy?: Racial Exploitation in Bailey v. Alabama*, Law and Political Economy Blog (Jan. 17, 2018).

Daniel Hirschman & Laura Garbes, *Toward an Economic Sociology of Race*, Socio-Econ. Rev. (2019)

Erik Olin Wright, *Understanding Class: Toward an Integrated Analytical Approach*, 60 New Left Rev. 101 (2009).

Week 6: Historicizing American Capitalism

ALFRED CHANDLER, THE VISIBLE HAND (1977), pp. 17-36 (commerce in the 18th century), 62-72 (production in the 18th century), 86-94 (the railroads' innovations), 235-39 (emergence of mass distribution), 240-44 (emergence of mass production)

WILLIAM ROY, SOCIALIZING CAPITAL (1999), pp. 176-183

Week 7: Money as Social Technology

DAVID GRAEBER, DEBT: THE FIRST 5,000 YEARS (2012), pp. 21-43 (The Myth of Barter), 120-24 (defining "debt") 127-36 (on the--litigious--origins of money) 211-21 (Credit versus Bullion), 223-28 (Introduction to The Axial Age), 296-305 (What, Then, Were the Middle Ages?), 326-36 (The World of Credit and the World of Interest), 345-60 (So What is Capitalism, Anyway?)

Week 8: Money as Legal Institution

Christine Desan, *Money as a Legal Institution in MONEY IN THE WESTERN LEGAL TRADITION: MIDDLE AGES TO BRETTON WOODS* (2016), pp. 22-35

Katharina Pistor, *A Legal Theory of Finance*, 41 J. Comparative Econ. 315 (2013)

Week 9: Modern Money as Franchise

Robert Hockett & Saule Omarova, *The Finance Franchise*, 102 Cornell L. Rev. 1143 (2017)

Week 10: Money and Business Cycles

PERRY MEHRLING, THE NEW LOMBARD STREET (2011), pp. 11-29

Week 11: The Social Meaning of Money

BRUCE CARRUTHERS & LAURA ARIOVICH, MONEY AND CREDIT: A SOCIOLOGICAL APPROACH (2010), pp. 51-79

Week 13: Conclusion

[group will discuss readings]