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)  

Week 2: Law as Microfoundation  
JOHN COMMONS, THE LEGAL FOUNDATIONS OF CAPITALISM (1924), pp. 143-171  

Week 3: The Corporation  
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

**Week 5: Race and Class in Political Economy**
Daniel Hirschman & Laura Garbes, Toward an Economic Sociology of Race, Socio-Econ. Rev. (2019)

**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**

**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]