

**SARAH LAWRENCE COLLEGE
DEPARTMENT OF ECONOMICS**

**Legal Foundations to Business History:
Corporate Governance, Democracy, and Economic Transformation**

Spring 2020

Class Time: M and W 9 am - 1030

Class: Science 101

Professor: Jamee K. Moudud (jmoudud@sarahlawrence.edu)

Course Description

Rival ideas about property rights and liberty are at the heart of the ways in which market economies are legally structured. However as Abraham Lincoln said: “We all declare for liberty; but in using the same word we do not all mean the same thing . . . The shepherd drives the wolf from the sheep’s throat, for which the sheep thanks the shepherd as a liberator, while the wolf denounces him for the same act as the destroyer of liberty . . . Plainly the sheep and the wolf are not agreed upon a definition of the word liberty” (Address at the Sanitary Fair, Baltimore, Maryland, April 18, 1864). This ambiguity, which speaks to a central controversy in capitalism in regards the nature and distribution of property relations, is illustrated in this course via the study of the legal foundations of corporations. From the scandal regarding Cambridge Analytica and Facebook regarding the harvesting of private information for commercial and political purposes to the controversies about gun control, the political activism of the National Rifle Association, and the significance of *Citizens United* we are continuously confronted by the centrality of corporate governance in the society. And of course broader questions regarding the economic regulation of corporations (e.g. with respect to environmental, taxation, or labor laws) have been central to political debates since colonial times.

This course on Law and Political Economy will explore corporate governance through the lens of legal and business history. A central theoretical argument of the course is that politics and the economy are deeply interwoven and law is the mediating institution that structures the economy. Conflict and power struggles mold, alter, and occasionally disrupt the law/economy/politics nexus. This theoretical insight will be used to analyze the dynamics of corporate governance and economic regulation in both the US and other contexts. One of the central questions that we will discuss is the “regulation” versus “deregulation” dichotomy which is so central to popular discourse and economic debates. Quite simply: can we really conceptualize corporations (and the economy) outside their legal and political context? We will explore certain core ideas in neoclassical economics through the insights of Law and Political Economy so as to engage the conventional Law and Economics tradition. We will at every step compare theoretical arguments from different theoretical schools in economics and weave into the analysis insights from constitutional law and corporate law.

This is an intermediate level course designed for students with an interest in a historically-informed analysis of political economy and the law. Some background in economics and/or a relevant social science discipline is recommended although the instructor is willing to be flexible.

Books

Here are the books that need to be bought:

- 1) Horwitz, Morton J. 1977. *The Transformation of American Law 1780-1860*. Cambridge MA and London, England: Harvard University Press.
- 2) Winkler, Adam. 2018. *We the Corporations: How American Businesses Won Their Civil Rights*.

- New York & London: Liverwright Publishing Corporation.
- 3) Lamoreaux, Naomi R., and William J. Novak, eds. 2017. *Corporations and American Democracy*. Cambridge MA and London, England: Harvard University Press.
 - 4) Witt, John Fabian. 2006. *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*. Cambridge MA: Harvard University Press.
 - 5) Berle, Adolph A., and Gardiner C. Means. 1991. *The Modern Corporation and Private Property*. New Brunswick (USA) and London (UK): Transaction Publishers. Pp. ix - liv, Book I (Chapters III, V, VI), Book II (Chapters V, VI), and Book IV.
 - 6) Rahman, K. Sabeel. 2017. *Democracy Against Domination*. New York, NY.: Oxford University Press.

All the other books listed below are available on course reserves, including as e-books.

Conference Paper Details and Workload

Conference papers will need to focus on the core theme of this course, which revolves around the intersection of governance and the business enterprise, seen in a historical context.

Please be prepared to have the first drafts of your conference papers ready to be discussed in conference during the week of April 20 (B week) and that of April 27 (A week), i.e. in your 6th conference meeting of the semester.

The final paper is due Sunday May 3rd by midnight.

There will be 5 papers, 1 in-class presentation of a chapter from the Lamoreaux and Novak (2017) book, and 1 mini-essay on Rahman (2017).

All papers should follow the bibliographic reference style of *Business History Review*. In terms of your conference paper *The Business History Conference* (<https://thebhc.org/mission-history>), *Business History Review* and Harvard Business School's Business History program (<https://www.hbs.edu/businesshistory/Pages/default.aspx>) are great resources for research topics.

Students with Special Needs

If you have special needs that require extra time on exams you should contact Polly Waldman at Disability Services by email (pwaldman@sarahlawrence.edu) or alternatively you can call this office at (914) 395-2235. The website of this office is: <http://www.slc.edu/offices-services/disability-services/index.html>.

If you need accommodation you need to contact Disability Services first, register with them, and provide me with a formal letter from this office.

Syllabus

1. Business and Legal History (3 classes)

Theory and Method

Editors. 2017. "Debating Methodology in Business History." *Business History Review* 91(3): 443-55.

Levy, Jonathan. 2017. "Capital as Process and the History of Capitalism." *Business History Review* 91(3): 483-510.

Dahlén, Marianne, and Mats Larsson. 2014. "Business History and Legal History." *Business History* 56(1): 54-70.

Business History of Varieties of Capitalism (VoC)

Monbiot, George "Neoliberalism - the Ideology at the Root of all our Problems"

(<https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>).

Thelen, Kathleen. 2010. "Varieties of Capitalism and Business History." *Business History Review* 84(4): 646-48.

Herrigel, Gary, and Jonathan Zeitlin. 2010. "Alternatives to Varieties of Capitalism." *Business History Review* 84(4): 667-74.

Martin, Cathie Jo. 2010. "Business History and the Varieties of Coordination." *Business History Review* 84(4): 657-61.

Whitley, Richard. 2010. "Business History and the Comparative Analysis of Capitalisms." *Business History Review* 84(4): 648-52.

ASSIGNMENT 1

2. Theoretical Issues in Law and Political Economy: the "Public/Private" Distinction and the Business Enterprise (3 classes)

From the Yale Law School blog read both "About" (<https://lpeblog.org/about/>) and "Law and Political Economy: Toward a Manifesto" by David Singh Grewal, Amy Kapczynski and Jedediah Purdy: (<https://lpeblog.org/2017/11/06/law-and-political-economy-toward-a-manifesto/>).

Horwitz, Morton J. 1982. "The History of the Public/Private Distinction." *University of Pennsylvania Law Review* 130: 1423-28.

Singer, Joseph William. 1998. "Property." In *The Politics of Law: A Progressive Critique*, ed. David Kairys. New York, NY: Basic Books, 240-58.

Moudud, Jamee K. 2019. "Distributional Struggles Always Operate Under the Background Laws That Determine Property, Contracts, and Torts." *Law and Inequality: A Journal of Theory and Practice* XXXVII. (Special Issue on "Eleven Things They Don't Tell You About Law & Economics: An Informal Introduction to Political Economy and Law". Guest Editor: Frank Pasquale).

ASSIGNMENT 2

3. Business, Labor, and the State: Political and Legal-Institutional Foundations in Historical Context (5 classes)

Dean, Erik et al. 2016. *Principles of Microeconomics: Scarcity and Social Provisioning*. OpenStax Economics, Principles of Economics. OpenStax CNX. May 18, 2016. Chapter 14 ("The Rise of Big Business"). (1 class)

Moudud, Jamee K. 2019. "A Critical Legal History of French Banking and Industrialisation: An Alternative to the Law and Development Framework." *London Review of International Law* 7(2): 215-251.(1 class)

Witt, John Fabian. 2006. *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law*. Cambridge MA: Harvard University Press. (3 classes)

ASSIGNMENT 3

4. Legal Changes in American Business History and Economic Development (3 classes)

Horwitz, Morton J. 1977. *The Transformation of American Law 1780-1860*. Cambridge MA and London, England: Harvard University Press. "Introduction" and chapters II ("The Transformation in the Conception of Property"), III ("Subsidization of Economic Growth Through the Legal System": skip pp. 89-94), IV ("Competition and Economic Development"), and VIII ("The Rise of Legal Formalism"). (3 classes)

ASSIGNMENT 4

5. Introduction to Corporate Governance (1 class)

Monks, Robert A.G., and Nell Minow. 2011. *Corporate Governance*. 5th ed. Chichester, UK: John Wiley & Sons, Ltd. "Introduction", chapters 1 ("What is a Corporation?").

6. Property Rights and the Modern Corporation (3 classes)

Berle, Adolph A., and Gardiner C. Means. 1991. *The Modern Corporation and Private Property*. New Brunswick (USA) and London (UK): Transaction Publishers. Pp. ix - liv, Book I (Chapters III, V, VI), Book II (Chapters V, VI), and Book IV.

7. What do "Corporate Civil Rights" Mean? The Interlocking of the Constitution and the Economy (4 classes)

Winkler, Adam. 2018. *We the Corporations: How American Businesses Won Their Civil Rights*. New York & London: Liverwright Publishing Corporation. Introduction, Chapters 1, 2, 3, 4, 5, 6, 8, 9, 10

ASSIGNMENT 5

8. Political Governance and Corporations: Democracy and Capital Accumulation (3 classes)

Lamoreaux, Naomi R., and William J. Novak, eds. 2017. *Corporations and American Democracy*. Cambridge MA and London, England: Harvard University Press. "Preface", "Corporations and American Democracy: an Introduction", chapters 1 ("Early American Corporations and the State"), 2 ("Corporations and Organizations in the United States after 1840"), 4 ("The Public Utility Idea and the Origins of Modern Business Regulation"), 8 ("Corporations and the Fourteenth Amendment"), and 5 ("Corporate Taxation and the Regulation of Early Twentieth-Century Business").

SHORT INCLASS PRESENTATIONS BY STUDENTS OF LAMOREAUX AND NOVAK (2017) CHAPTERS

9. Business Power, Inequality, and Democracy: Lessons from Judge Louis Brandeis, John Dewey, and the Legal Realists (2 classes)

Rahman, K. Sabeel. 2017. *Democracy Against Domination*. New York, NY.: Oxford University Press.

Mini-essay on Rahman

Student Presentation of Conference Work (1 class)