

Neoliberalism: An LPE Reading List and Introduction

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What is “neoliberalism”? What sorts of institutions and ways of thinking characterize the “neoliberal era”? How might law reflect commitments of neoliberalism in different domains—in, for example, employment discrimination, criminal law, international trade, or welfare reform? This introduction offers a broad overview of the concept and the scholarly approaches to studying and theorizing it. It is followed by a bibliography, which provides resources to help answer some of these questions.

I. Fundamentals: Neoliberalism as “Deregulation” and “Reregulation”

“Neoliberalism” is frequently criticized for being difficult to define, but it is a crucial concept for understanding fundamental changes in political economy and in law that began in the 1970s. As several scholars have pointed out, many of our most important concepts, like capitalism, democracy, efficiency, conservatism, liberty, and socialism, remain in wide use despite perpetual debates about their definitions. Clearly this does not mean that the words are analytically useless, and even less that they are empty signifiers. It only means that challenging and developing previous interpretations of these concepts is a necessary part of understanding them.

In order to make sense of the vast literature on neoliberalism, which covers complex phenomena across wide swaths of history and geography, we’ll begin with three points of orientation: First, we should distinguish between earlier studies of neoliberalism and more recent literature because of a shift in how scholars characterize the basic character of neoliberal policy. As will be discussed in greater detail in this section, earlier literature tended to define neoliberalism as a project of deregulation, or to use Jamie Peck’s formulation, of “roll-back.” More recent scholarship, by contrast, emphasizes the central role of the state in neoliberal governance, which can be thought of as “reregulation” or “roll-out.”

Second, despite the diversity in its theorizations, there is consensus that neoliberalism refers to a form of governance that was born in the 1970s, and which then came to dominate many domestic economies, as well as global economic institutions, over the course of the 1980s. The term can become confusing in part because writers use it to refer both to a form of governance and to its underlying ideological commitments. (Thus, there are often gaps between neoliberal thought and actually existing neoliberalism, as with any theory in action.)

Third, as an ideology, neoliberalism reconceives the appropriate relation between the market economy and forms of collective, public authority. It tends to take the former as a realm of individualistic, self-interested, rational calculation, while it casts the latter as prone to mismanagement, distortion, tyranny, and ignorance. This point is worth underscoring because it

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marks perhaps *the* central opposition at the core of neoliberalism. There are various ways to express it. One is to say with David Grewal and Jedediah Britton-Purdy that neoliberalism opposes “market imperatives” and “democratic demands.” Another is to say, in Andrew Lang’s formulation, that it opposes “collective purposes” to “individual economic freedom.” Each of these formulations has slightly different implications; talking about individualism and collective purpose is different than talking about the market and democracy, even though there is an obvious connection between the two dichotomies. The fact that neoliberal ideas originated amid anxieties about the rise of “collectivism”—socialism, communism, social democracy—after the Great Depression and the Second World War can help to clarify these oppositions further. What is at stake for neoliberals is the protection of market ideals like individualism and economic freedom from interference by “collective” efforts.

What, then, does this opposition entail? One result might be a neoliberal commitment to privatization, deregulation, and cutting social protections—something like the “roll-back” alluded to earlier. In the public imagination, this is often what “neoliberalism” has been taken to mean. Neoliberals, on this view, want “small government” and as little public interference in markets as possible. They want *laissez-faire*. Certainly, intellectuals have advocated for, and politicians have implemented, neoliberal policies aimed at making the free market “freer” in this deregulatory sense, whether by repealing domestic financial and environmental regulations, imposing austerity policies on debtor nations, vigorously opposing minimum wage laws or the expansion of social insurance programs, and so on.

In fact, however, perhaps the key point of consensus in the more recent scholarship is that neoliberalism is much more than just a negative program. In practice and in theory, it also entails a “roll-out,” a positive vision for the active role of the state. This aspect of neoliberal governance involves “encasing” economic activity in legal protections and technocratic institutions that subordinate the state to market functions and foreclose public claims on economic decision-making. In other words, the conflict between market imperatives and democratic demands requires more than simply dismantling and weakening the institutions that channel and implement the collective will. It requires putting institutions (including public institutions) to work on behalf of the market. On at least some interpretations of neoliberalism—including those of Milton Friedman and Friedrich Hayek, deans of the neoliberal “thought collective”—it is this acknowledgment of the need for state power that differentiates neoliberalism from the old *laissez faire* of classical liberalism and its emphasis on pure freedom of exchange.

Some ways in which neoliberals understand the need for state power are basic. Markets require reliable enforcement of the “ground rules” on which they operate: contract, property, and tort law, among other rules regimes. (One key legal insight, which dates back to the realists, is that the way these rules are set up is never natural or self-evident, and often has profound distributive consequences.)² Markets may also need governments to perform the (at least apparently) paradoxical function of *protecting* them from collective interference. This explains, in part, why neoliberal regimes are amenable to, and often favor, militarized and carceral approaches to social control and the maintenance of borders. Another entailment of the roll-out is the deep interpenetration of market

² See *Legal Realism: An LPE Primer and Introduction* for a deeper discussion of this and related points.

logic into the state in such a way that the state serves the needs of the market, not the other way around. The deep point is that, in Jamie Peck's words, neoliberalism "has always been about *the capture and reuse of the state*, in the interests of shaping a pro-corporate, freer-trading 'market order'" (emphasis mine).

II. Neoliberalism and the Law

Capturing the state involves capturing the law. It might therefore be surprising that, although critiques of neoliberalism have been prominent in various branches of social theory for some time, their uptake into legal scholarship has been partial at best. Beginning to change this is one key aspect of Law and Political Economy's project. This means, in part, building on the work of scholars—some of them cited below—who in recent years have begun to excavate the ways in which neoliberalism has transformed the legal discourse over the past half century.

The depth of this transformation is one of the most compelling reasons why the concept of neoliberalism is necessary to lawyers and students of LPE today. Legal scholarship, legal argument, and legal education have changed not just here or there, in certain domains of the law, but at the very roots of legal common sense. Corinne Blalock and Christopher Tomlins have both argued that the limits of legal argumentation, modes of reasoning, and judicial decisions are no longer determined by a specifically legal logic, but rather by a logic largely taken up from neoclassical economic thought. This means that neoliberalism is not merely one ideology that one can choose from the menu of scholarly and lawyerly approaches to law, but that certain of its assumptions are present more or less everywhere. They have become atmospheric, the air lawyers breathe. In this way neoliberalism is, as Blalock argues, hegemonic: its premises tend not to appear available for critique, even in self-consciously critical or reform-oriented scholarship.

There are, to be sure, domains of legal scholarship that are more or less neoliberal than others. The rapid and wildly successful rise of law and economics as a mode of legal analysis owes much to the theories of neoliberal intellectuals of the Chicago School, like Milton Friedman and Gary Becker. The distinctly neoliberal conception of the individual as primarily a rational, egoistic actor gets its fullest expression in legal scholarship of this ilk, which, in its quest for "efficiency" as wealth-maximization, seeks to use the law to create the proper incentives, minimize transaction costs, and avoid government "distortion" of competitive equilibria and the efficient allocation of resources and entitlements.

It is also true that critical scholars drawing on Critical Legal Studies, critical race theory, and feminist legal theory have done essential work in examining the way law is profoundly constitutive of the economy and the larger distribution of wealth and power in society. Market-making legal regimes have exploited and entrenched America's racial hierarchy, as, for example, Keeanga-Yamahtta Taylor shows in her work on the Federal Housing Administration's experiments with "public-private partnerships" and the predatory inclusion of "subprime" Black homebuyers in the real estate market. Further, LPE-oriented scholars like David Grewal have pointed out that what in other disciplines are described as the "laws" of capitalism—this is to say the descriptive regularities of the capitalist economy, such as Thomas Piketty's $r > g$ —are often grounded in the capital-L law

of cases and statutes. Katharina Pistor similarly describes law as “the code of capital.” The implication to be drawn is that the descriptive “laws” of the economy are not natural kinds, but the product of certain changeable legal and institutional arrangements.

There are likely many reasons for neoliberalism’s deep interrelationship with the law, but one is that law as an institution, congenial as it is to the pretense of apolitical, technical fairness, may be uniquely suited to neoliberal governance. Blalock puts it this way: “Neoliberalism is law’s problem because the law (and the legal academy, by extension) is complicit in its legitimation. . . . [T]he law serves a legitimating function insofar as it hides the politics of the market’s logic as merely background rules.” Where neoliberal policy tends to transfer power away from democratic control, it finds a worthy partner in legal institutions, which, particularly in post-New Deal America, have come to conceive of themselves as righteously anti-democratic or “counter-majoritarian.” We might add that American law has a history of formalism in which the neoclassical economic principles of modern law-and-economics fit comfortably. In this regard, Blalock can be heard to echo critics of other such regimes, such as Morton Horwitz in his book on the rise of 19th century legal formalism: “[T]he paramount social condition that is necessary for legal formalism to flourish in a society is for the powerful groups in that society to have a great interest in disguising the inevitably political and redistributive functions of law.”

Politics and redistribution are not limited to any particular area of the law. The insight that neoliberalism is hegemonic, in Blalock and Tomlins’ meanings, suggests that a true grasp of the relationship between neoliberalism and the law requires us to see not just the ways in which neoclassical economics has permeated the “economic” domains of law, including the private law “ground rules” and public law arenas like antitrust or tax law. It also requires us to see how neoliberalism has shaped the very ways in which the law is divided up—into “economic” and “noneconomic” areas, for example—and the ways in which certain basic legal concepts are generally defined and deployed. This is what Amy Kapczynski, David Singh Grewal, Jedediah Britton-Purdy, and Sabeel Rahman name the “twentieth-century synthesis” in their recent statement of the core aims and tenets of LPE.

This synthesis includes the basic lines in the sand of constitutional argument: our fundamental rights regime does not protect economic wellbeing, but, as Britton-Purdy shows elsewhere, it does protect free participation in the market, and in so doing it entrenches an image of a legal subject who is primarily an interested consumer rather than a principled citizen. Another example—this one from Kapczynski’s piece below—might be the way in which mainstream intellectual property jurisprudence tends to depict the state as prone to capture, abuse, and market mismanagement, even as it demands increasingly complex state-enforced rules regimes to structure the market for ideas.

It is therefore important to keep in mind that the study of neoliberalism, for a lawyer or a student of LPE, is much more than an exercise in social-theoretic abstraction. It is crucial to understanding why the discipline of American law today is shaped the way it is shaped, why its conceptual dramatis personae are who they are, and why the basic “moves” of LPE are essential for passing beyond the neoliberal era in the law. One should not lose sight, in other words, of the fact that the law is and has been a key site of the neoliberal roll-out.

III. Ways of Talking About Neoliberalism

Understanding the forms this roll-out takes is therefore essential to understanding neoliberalism and its relationship with the law. But unfortunately (or excitingly, depending on your temperament), it is in talking about the positive policies, goals, and effects of neoliberalism that scholars tend to go off in different—sometimes complementary, sometimes contradictory—directions. Here, we'll sketch a few of the dominant scholarly approaches to the topic to name and describe some different ways of thinking about “neoliberalism” that are important to LPE. These will necessarily be generalizations and even exaggerations; most writers mix multiple modes of analysis to some degree. But the hope is that this information will make digging into the sources, and understanding how they relate to one another, a little bit easier.

There are two strands of the neoliberalism literature of primary import to LPE. The first, usually shorthanded as the Marxist approach, focuses on neoliberalism as a historical development in political economy. The second, usually traced to Michel Foucault, understands neoliberalism as a political rationality (or a form of “governmentality”) which calls into being new kinds of subjects who see themselves as entrepreneurs with human capital to develop and personal brands to build.

The Marxist approach to neoliberalism, exemplified by David Harvey's groundbreaking *A Brief History of Neoliberalism*, understands neoliberalism as a phase in the historical development of capitalism and emphasizes the economic and political structures through which it is made manifest. Harvey, accordingly, describes neoliberalism as primarily a project of the ruling class, one that arose in response to the inflationary crisis of the 1970s, which tended to erode the financial wealth of creditors. He defines it in the first instance as a political theory that aimed to promote “individual entrepreneurial freedom within an institutional framework characterized by strong property rights, free markets, and free trade.” But, on his and similar accounts, ideological coherence is less important than the ways economic elites entrenched their own power, the structural and economic developments that attended their doing so, and the international circuits their ideas and practices travelled in the process.

The second major theoretical approach is usually traced to Michel Foucault, whose lectures on *The Birth of Biopolitics* in 1978-79 offered a foundational genealogy of neoliberalism. He defined neoliberalism as a form of political or “governmental rationality,” a concept glossed by Colin Gordon as “a way or system of thinking about the nature of the practice of government (who can govern; what governing is; what or who is governed), capable of making some form of that activity thinkable and practicable both to its practitioners and to those upon whom it was practiced.” Following Foucault, scholars in this vein emphasize power as it is exercised not just by the state, but as it is diffused throughout society in a “capillary” fashion. Foucault's famous description of the figure of *homo oeconomicus*, which he takes to be the subject called into being by neoliberal practice, is an early and clear example of one tenet of neoliberal rationality: it takes—and also aims to remake—the subjects of its power as rational, predictable, egoistic, and calculating. As William Callison and Zachary Manfredi write, this literature has “illuminated a range of processes from the discursive

reconfiguration of *homo oeconomicus* as ‘human capital’ to the financialization of institutional governance and of subjectivity itself.”

Scholars in this vein tend to emphasize the processes by which neoliberal policies shape subjects in the mold of *homo oeconomicus* and the political consequences that follow from them. Wendy Brown, for example, argues that neoliberalism works to translate nearly all aspects of life into economic terms. Far from the engaged citizen of democratic liberal theory, the neoliberal subject is a rational, calculating, and independent entity “whose moral autonomy is measured by their capacity for ‘self-care’—the ability to provide for their own needs and service their own ambitions.” Brown ties this shift directly to the dissolution of the body politic. Under neoliberalism, the state’s existence is no longer contingent on the citizens’ communal actions, but on their *individual* actions, leading to an anti-collectivity—as well as anti-democratic—bias under neoliberalism.

Outside of critical theory, historians have traced the emergence of neoliberalism as an ideology and a practice of governance. Intellectual histories like those by Angus Burgin and Quinn Slobodian identify particular thinkers, bureaucrats, and politicians as progenitors and evangelists of neoliberal ideas. This body of work emphasizes the contingency of historical development, with a focus on the concrete individuals and institutions and the relationship of their ideas with the historical context in which they were forged. These intellectual histories (Burgin’s is a good example) have often focused on the Mont Pèlerin society, a founding group of neoliberal intellectuals organized by Hayek in 1947, and the lineage connecting their thought with the “Chicago School” of economics often identified with Milton Friedman. In the United States, these histories have often ended with Reagan’s election in 1980, which marks the moment these ideas came to power nationally.

Increasingly, however, historians have turned their focus to other centers of neoliberal thinking. Quinn Slobodian’s *Globalists* highlights the “Geneva School” and shows how its vision of neoliberalism centered not on the global market economy per se, but rather on what sorts of institutions were most necessary to protect it from interference by nation-states and democratic pressure. He connects their ideas with the contemporary historical challenges to which this particularly “global” school of neoliberal thinkers responded, like the Great Depression and, later, decolonization and demands from developing countries for a New International Economic Order. Nancy MacLean offers an account of the “Virginia School” of Public Choice economics associated with James Buchanan. She shows how Public Choice economists’ application of neoclassical economic theories to political decision-making arose as part of a backlash against the New Deal and the Civil Rights Movement, both of which were cast as improper “collectivist” interventions in the political order. Her historical work also effectively draws out the historical linkage between white supremacy and neoliberalism.

As mentioned above, neither the theoretical nor the historical approaches to neoliberalism have been fully incorporated into legal scholarship, though LPE is trying to change that. In addition to some of the foundational LPE work, including the articles by Blalock, Kapczynski, Grewal and Purdy, and others, a growing body of legal scholarship is beginning to grapple with the ways in which the law has developed in particularly neoliberal ways over the past half-century. Deborah Dinner, for example, traces what she sees as a neoliberal strain in Title VII anti-workplace-

discrimination law, where judicial ideals of efficiency and market supremacy have led judges to block certain types of protective regulation that could benefit working-class women. Andrew Lang discusses the neoliberal turn in international trade law, identifying neoliberal ideas as the core of a deeply legalized, technical trade regime that is insulated from collective political purposes more thoroughly than ever before. Anne Alstott discusses family law under neoliberalism, reckoning with a regime based primarily on the protection of negative liberty and an image of the state as an inevitably stumbling interloper. Others below discuss election law, intellectual property, human rights law, and healthcare reform.

IV. Actually Existing Neoliberalism

We might sum up the above by noting that, despite their differences, each of these analytic modes tends to confirm a couple of basic points about neoliberal law and policy. First, it tends to use and even expand governance institutions, and legal institutions in particular, but primarily in ways that insulate market domains from assertions of democratic political control. Second, it tends to expand the market, and market rationality, ever more deeply into human life and politics. In other words, the insistence on protecting markets from democracy is complemented by the tendency to marketize politics and the *demos* itself.

A final and deeply important point must be made about the real-world implementation of neoliberal theory. In practice, neoliberal policy will be and always has been put into practice against background systems of social and global hierarchy. The sort of market exchange that neoliberalism portrays as free, fair, and efficient will, therefore, always tend to generate wealth through extraction from Black and brown labor in particular, and to exploit a gendered and racialized division of un- or under-compensated care work and other reproductive labor. Actually existing neoliberalism is therefore perfectly compatible with, and in fact often committed to, racial exploitation, discrimination, and “traditional” conservative views about gender, social reproduction, and family structure. What presents itself as a set of neutral “ground rules” will therefore tend to exploit and to deepen such “irrational” forms of social hierarchy.

This point is worth elaborating with some examples. As Melinda Cooper has shown, the preservation of traditional family structures through neoliberal policies—such as welfare policies that incentivize marriage—is a rational counterpart to the neoliberal roll-back of traditional social insurance policies and public services. The private, nuclear family must provide the care work and economic security that the state will no longer guarantee. Wendy Brown’s more recent work, which draws on Cooper’s, even argues that Hayek’s original conception of a neoliberal society in fact *required* the preservation of the “personal, protected sphere” of the traditional, patriarchal family. In another vein, Joe Soss et al. show that welfare reform in the neoliberal era means the “marketization” of poverty governance. On their account, this involves the devolution of disciplinary authority to local and private-sector authorities (Lockheed Martin, for example, takes large and lucrative welfare-administration contracts) that seek to remake the poor into responsible neoliberal subjects, largely through work requirements and mandatory training programs in which

social assistance is conditioned. The poorly overseen implementation of these policies tends, in turn, to replicate and deepen racial inequalities and works to supply cheap labor to employers.

Bernard Harcourt helps to explain how ideas about the need for governments to keep their hands off the “natural order” of the market also legitimate modern mass incarceration. Governments are cast as qualified to interfere only with those who are seen as deviating from this “natural order”—criminals—and hence the massive expansion of America’s prisons has not generally been seen as contradicting rhetoric about the need for a small state. Indeed, Elizabeth Hinton’s work on the rise of mass incarceration makes this insight vivid. On her account, the retrenchment of the Great Society welfare state in the 1970s was complemented by the continued expansion of the carceral state, with police in many cases actually moving into offices previously occupied by social services. Ruth Wilson Gilmore’s political-economic account of California’s massive prison-building project in the 1980s and 1990s also brings the point to life. She describes how, in the aftermath of the post-war *trente glorieuses* and the 1970s roll-back of the welfare state, surpluses of finance capital, land, labor, and state capacity gave rise to prison construction and mass incarceration in a time when crime was on the decline. Racial capitalism, mass incarceration, the social control of the poor, and the exploitation of Black and brown people are, of course, phenomena that predate the neoliberal era. But today they have taken on forms that are in many cases distinctively neoliberal. Certainly the promise of equality in the market has, as in the past, [done nothing](#) to ameliorate racial inequality.

V. Futures

What the future holds for neoliberalism is, like much else about it, a contested subject. Its death has been pronounced before—say in the aftermath of the 2008 financial crisis—only for the neoliberal order to persist, if not unaltered. Some writers, like Wendy Brown, believe that the global turn toward right-wing nationalism means the neoliberal snake may finally be eating its own tail, having created the conditions for its own nihilistic unraveling. Others, like Callison and Manfredi, suggest that neoliberalism has only “mutated,” and that neoliberals are in many instances willing and able to collaborate with the forces of ethno-nationalism in order to achieve their goals. Neoliberal ideologues and politicians have shown themselves willing to do so, despite the fact that some at least ostensibly anti-neoliberal policies have arisen under some of these regimes—as with anti-austerity measures taken, often at the cost of the exclusion of ethnic minorities and refugees, in Eastern Europe. The COVID-19 crisis brings yet more challenges in the form of the collapse in global economic demand, stress on supply chains, and the exposure of the fragilities of our deeply interdependent global economy. These may be the most profound challenge the neoliberal order has faced yet. It seems safe to say, in any event, that we have entered a new phase of neoliberal policy, and that the new conditions that neoliberals and neoliberal institutions must adapt to will call for new solutions on their part, and new and creative forms of analysis and action on the part of their critics.

Bibliography

Sources are categorized as follows: “Foundations,” “Law and Neoliberalism,” “History,” “Theory,” and “Neoliberalism and Social Hierarchy.” Within each category, the sources are organized chronologically.

Foundations

MICHEL FOUCAULT, THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE, 1978–79, at 267–90 (Michael Senellart ed., Graham Burchell trans. 2008) (1988).

- In Lecture 11, Foucault draws out the problematic of *homo oeconomicus*, the theoretical subject of liberal and neoliberal economic thought and the schema it attempts to apply to every domain of human behavior. *Homo oeconomicus* is shown to be a kind of paradox when we take him as a political subject: on the one hand, he is “eminently governable,” because he responds rationally and predictably (because egoistically) to reality. But, on the other hand, his interests spontaneously converge with those of others and he must only attempt to pursue them on his own. *Homo oeconomicus* has, indeed, also been conceptualized to make him appear *ungovernable*, for the economic sphere, in its unknowably complexity, stands against the totalizing power of the liberal political sovereign as completely insoluble to it. It is not hard to see how, ideologically speaking, these precepts make it difficult to argue against the neoliberal vision of “undistorted” free markets.

DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2007)

- Harvey argues that neoliberalism has served primarily as a class-based political project to restore the power of economic elites by re-concentrating wealth in their hands. In the stagflation years of the 1970s, elites saw their relative wealth fall precipitously and felt their power threatened. Thus the utopian neoliberal ideals including deregulation, free trade, and global economic institutional oversight, and so forth, though ostensibly designed to create the conditions for increased *global* growth, have in fact been justifications for elite wealth accumulation and the reconsolidation of power in the hands of the national and global ruling classes.

WENDY BROWN, UNDOING THE DEMOS (2015)

- Here Brown elaborates the Foucauldian concept of *homo oeconomicus* in the context of twenty-first century neoliberalism. Her contention is that neoliberalism, taken here as a particular form of political rationality, “disseminates the model of the market to all domains and activities—even where money is not at issue.” The individual becomes not merely an economically rational actor—a trucker and a barterer—but “human capital,” herself the site of constant “investment” and competition with others. This has particularly pernicious effects on political culture, for a society of individuals seen this way cannot be fundamentally a society of equals, engaging on equal footing in collective deliberation, etc. Competition implies precisely the opposite—a society of unequals, even in the political sphere.

David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1 (2015), <https://scholarship.law.duke.edu/lcp/vol77/iss4/1/>.

- Grewal and Purdy argue that the conflict between “market imperatives” and “democratic demands” is at the core of neoliberalism. The reemergence of free-market ideology must be understood as a result of the reemergence of this conflict, which had been submerged during

the post-war decades by high rates of growth and (relatively) egalitarian social democratic policies. Understanding neoliberalism in this context, Purdy and Grewal argue, can help us to understand the different forms its arguments take in different contexts: neoliberalism is identifiable as the claims made on behalf of those market imperatives.

MUTANT NEOLIBERALISM: MARKET RULE AND POLITICAL RUPTURE (William Callison & Zachary Manfredi eds., 2019)

- In the introduction to this edited volume of essays, Callison and Manfredi offer a synthetic perspective on neoliberalism in light of the global political scene at the close of the 2010s. They argue that neoliberalism in the wake of the 2008 global financial crisis and the right-wing populist political transformations of recent years is anything but dead, or even a “zombie.” It is, rather, best understood as “mutated.” This is to say that it has been transformed by the accidents of history, the consequences of its own policies—including and especially the advent of financial capitalism—popular reactions to its values and politics, and so on. The authors’ point is not only that neoliberalism lives, but also that its new forms may require new analyses. (In some ways, they follow Peck in appreciating neoliberalism in its “impure” forms.) Thus they consider, for example, the way “traditional left-right ideological boundaries” are being blurred in the era of mutant neoliberalism, suggesting that neoliberals have in many places joined with the nationalist right in order to better achieve some of their aims.

Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law and Political Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020), https://www.yalelawjournal.org/pdf/Britton-Purdyetal.Feature_iwo42jj4.pdf.

- This article draws out the foundational relationship between neoliberalism and what the authors call law’s “Twentieth-Century Synthesis”: “a pervasive view of law that encases ‘the market’ from claims of justice and conceals it from analyses of power.” It describes the way neoliberal premises have found their way into nearly all areas of law. And, crucially, it suggests what kinds of conceptual reorientations are necessary to move beyond the Synthesis: the shift from talking about efficiency to talking about power, from neutrality to equality, and “from the antipolitics of the Twentieth-Century Synthesis to a candid and risky embrace of democracy.”

Law and Neoliberalism

Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539 (2006), <https://scholarship.law.wm.edu/wmborj/vol14/iss4/9>.

- Harris uses a political economy lens to examine two landmark pre-*Obergefell* supreme court cases that dealt with the rights of sexual minorities: *Goodridge v. Department of Public Health* and *Lawrence v. Texas*. She argues that, “from a political economy perspective, *Goodridge* . . . can be seen as a victory against bigotry that simultaneously threatens to absorb the gay and lesbian movement into neoliberal politics. The slow-motion breakdown of marriage over the last few decades is an event that has epic economic, political, and cultural implications. If . . . ‘homosexuality’s horizon’ is limited to achieving same-sex marriage, the possibilities of economic, political, and social revolution suggested by ‘queering the family’ may be lost.”

Martha T. McCluskey, *Thinking with the Wolves: Left Legal Theory After the Right's Rise*, 54 BUFFALO L. REV. 1191 (2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=892565.

- McCluskey's review of an anthology of essays entitled *Left Legalism/Left Critique* takes up some of the core questions about the proper role of left legal scholarship and left political theory: How do we think about the relationship between law and politics, identity and class, theory and practice, without either reducing one to the other or naively treating them as distinct? She cautions against arguments that deepen rather than deconstruct these distinctions, in part because they are distinctions that have been partially set up—or at least successfully exploited—by the right. She also points to the successes of right-wing investments in legal theory as possibly instructive to the left, and calls (in part) for a political economic analysis of left legal theory itself as a possible antidote to some of the book's pitfalls. (The article is from nearly 15 years ago, but an optimistic observer will see the Law and Political Economy movement as answering to many of the desiderata for left legal theory that McCluskey sets out here.)

Jay Varellas, *The Constitutional Political Economy of Free Trade: Reexamining NAFTA-Style Congressional-Executive Agreements*, 49 SANTA CLARA L. REV. 717 (2009),

<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1080&context=lawreview>.

- Part II of this article traces the post-World War II history of the international political economy and U.S. trade agreements from the initial postwar decades, when a more socially protective “embedded liberalism” was dominant, to the more neoliberal orientation of recent decades, when international trade law has been used to undermine domestic social protections. It then uses this insight to address an important debate in constitutional law: whether the postwar practice of Congress approving trade agreements with bare majorities in both houses violates the Treaty Clause's requirement that treaties be approved by “two thirds of the senators present.”

ANDREW LANG, *WORLD TRADE LAW AFTER NEOLIBERALISM: REIMAGINING THE GLOBAL ECONOMIC ORDER* (2011)

- Lang offers a complex account of the global trade system, international law, and their relationship with neoliberalism. His arguments unsettle the common sense about the trade regime, challenging the notion that international trade has always been indebted to classical economic ideas about the benefits of free trade, and that in the neoliberal era this commitment has merely intensified and led to WTO-imposed deregulation as needed to remove domestic policy barriers to trade. On his view, this story underestimates the degree to which neoliberal ideas have actually *transformed* the international trade system, which is and has been a site of competing ideological conceptions. Further, they naturalize the very concept of a “barrier to trade,” taking the neoliberal/free-trade version of such barriers as self-evident—when in fact past trade regimes had very different conceptions of these. At the core of the neoliberal transformation of trade law, according to Lang, is the loss of a sense of trade policy (and domestic policy to boot) as legitimately serving collective purposes: rather they are seen as creating the conditions for individual economic freedom. This has led to a particular identification with trade law in the neoliberal era with “rule of law” values—neutrality, predictability, generality—and its transformation into something less diplomatic and political than technical and legalistic.

Peer Zumbansen, *Lochner Disembedded: The Anxieties of Law in a Global Context*, 20 INDIANA J. GLOBAL LEGAL STUD. 29 (2013), <https://www.repository.law.indiana.edu/ijgls/vol20/iss1/3/>.

- Zumbansen surveys some of the challenges facing scholarly and legal analysis of legal and quasi-legal institutions in the age of transnational capitalism and neoliberalism. He calls for an interdisciplinary analysis, pointing to the various complementary contributions that have been made by different types of scholarship. Finally, he offers a reconsideration of *Lochner v. New York* in light of these global legal challenges, but with an unorthodox emphasis on Justice Harlan's dissent rather than the traditional opposition between the opinions of Justice Peckham and Justice Holmes. His point is that the traditional legal categories invoked by the case—above all the opposition between the private economic sphere and government regulation—are bound in important ways to the social and factual contexts in which they are embedded. *Disembedding* these concepts, Zumbansen says, and applying them to disputes in a transnational context has proved inadequate. Thus Justice Harlan's highly fact-sensitive analysis provides a better model for transnational jurisprudence.

David Singh Grewal, *The Laws of Capitalism*, 128 HARV. L. REV. 626 (2014), https://harvardlawreview.org/wp-content/uploads/2014/12/Vol128_Grewal.pdf.

- This review of Thomas Piketty's *Capital in the Twenty-First Century* assesses the book's arguments and takes them up as "a prompt to examine the underlying legal and institutional foundations of capitalist economic relations." As such, Grewal goes on to assess the particularly *legal* underpinnings of the growth of inequality under modern capitalism. In other words, he develop[s] an account of the "laws" of capitalism, understood not as statistical regularities obtaining in a given socioeconomic regime, but as the legal structuring that undergirds it."

Anne L. Alstott, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 LAW & CONTEMP. PROBS. 25 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4706&context=lcp>.

- Alstott argues that American family law is permeated with neoliberal ideas so thoroughly that it can be difficult to imagine alternatives. In three arenas—constitutional family law, state family law, and welfare law—family law is organized around the protection of negative liberty, the sanctity of laissez-faire market distributions, and suspicion of the state and state action. The first step toward reimagining a family law beyond neoliberalism, the article argues, may be working to draw these different arenas of legal thinking together; then we might be able to imagine a more just family law, one committed to positive rights and the fostering of positive family life.

Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 77 LAW & CONTEMP. PROBS. 71 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4708&context=lcp>.

- Blalock offers a powerful diagnosis of the apparent decline in the importance of critical legal theory: it has largely failed to grapple with the hegemony of neoliberalism. Critical scholarship, she argues, has remained committed to critiques of the post-New Deal liberal consensus, and so it has seen neither the distinctiveness of neoliberal rationality nor the "depth of its entrenchment" in the political and legal order. Blalock shows that the most common narratives about the decline of legal theory can be reconciled with one another when neoliberalism is grasped as the underlying cause of legal theory's "crisis," and that various proposals for reforming theory are revealed as inadequate in this light. For students

of LPE, the piece provides a crucial narrative bridge from the ostensible decline of older forms of critical legal scholarship to the revitalization of critique in our current moment. It also underscores why legal scholarship in particular must take up this task.

Robert Hockett, *Preliberal Autonomy and Postliberal Finance*, 77 LAW & CONTEMP. PROBS. 105 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4709&context=lcp>.

- Hockett highlights the way the contemporary financial system has drifted away from the founding American vision of “productive republicanism”—that is, a vision wherein the financial system and the economy more broadly serve “sustainable collective republic-making” rather than being seen as intrinsically good.

Amy Kapczynski, *Intellectual Property’s Leviathan*, 77 LAW & CONTEMP. PROBS. 131 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4710&context=lcp>.

- The article describes the neoliberal vision of the state that predominates in IP scholarship, including that of the left-leaning “information commons” tendency. It shows how the state is imagined as prone to capture and incompetent to make substantive choices about information production aside from those required to set the market ground rules of patent, copyright, and trademark law. But this vision of the state is in some ways descriptively inaccurate, given the complexity of IP lawmaking and law enforcement and the large amount of resources the state devotes to certain kinds of information production. And in the ways in which it is partially accurate—industry capture of IP lawmaking is a real phenomenon—it can also be a self-fulfilling prophecy. Kapczynski therefore calls for a “postneoliberal conception of the state” that is “capable of constraining the proliferation of exclusion rights in information and that can support social ordering beyond markets.”

Samuel Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*, 77 LAW & CONTEMP. PROBS. 147 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4711&context=lcp>.

- Moyn refutes the contention that human rights ideals and the human rights movement have been “complicit” in—in the sense of causally contributing to—the rise of global neoliberalism. Both human rights and neoliberalism have arisen in the last half-century and have roots in the end of the Cold War. But, says Moyn, concurrence is not complicity. The Marxist critique of rights, which some critics of human rights draw on, is in fact underdeveloped when it comes to *international* rights regimes—the existing theory depends too much on the role of rights in internally abetting the growth of modern states. A more plausible account of the relationship of human rights to neoliberalism is that the former are simply ill-equipped to do anything to ameliorate the harms of the latter. At best, human rights strive to set floors for socioeconomic conditions. But this can do nothing to address the massive inequality generated by neoliberalism; in fact inequality can barely be reckoned as a harm in the language of human rights.

Frank Pasquale, *The Hidden Costs of Healthcare Cost-Cutting: Towards a Post-Neoliberal Health Reform Agenda*, 77 LAW & CONTEMP. PROBS. 171 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4712&context=lcp>.

- Pasquale’s powerful article exposes the common charge that the U.S. healthcare system needs to “cut costs” as misdiagnosing the problem. Worse, he shows, existing cost-cutting proposals tend actually to redistribute savings not to patients but to financiers, employers,

and insurers, and they move us closer to a highly stratified healthcare system that attends primarily to the care needs of the wealthy. Pasquale argues that we ought to be more focused on the internal cost structure of the healthcare system—where does the money go?—and less focused on aggregated costs whose cutting will tend to shift money into the hands of residual claimants or middle men. Otherwise, calls for cost-cutting are merely calls for austerity in the guise of reform. And they are no substitute whatsoever for truly patient-centered policies like a single-payer system.

Jedediah Purdy, *Neoliberal Constitutionalism: Lochnerism for a New Economy*, 77 LAW & CONTEMP. PROBS. 195 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4713&context=lcp>.

- Purdy’s article examines the constitutionalization of neoliberal rationality, in large part through the First Amendment. He draws parallels with the *Lochner* Era of pre-New Deal laissez faire: “As the rise of industrial capitalism and a vast population of wage laborers made freedom of contract pervasively relevant at the turn of the last century, today an economy built on consumption and information makes the First Amendment a natural vehicle to constitutionalize transactions at the core of the market.” He argues that certain new antiregulatory arguments—such as those found in First Amendment cases like *Sorrel Health* and *Citizens United*, but also those deployed in *Sebelius* against the Affordable Care Act—essentially characterize citizenship as consumption. The paradigmatic citizen is one who expresses not *principles* through civic participation, but *interests* through the free choice of expenditure in the marketplace.

Zephyr Teachout, *Neoliberal Political Law*, 77 LAW & CONTEMP. PROBS. 215 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4714&context=lcp>.

- Teachout examines the ideological basis of the Supreme Court’s recent decisions on election law and other aspects of political participation. Her conclusion is that these decisions evince a “‘postpolitical’ democratic theory—a vision of democracy without a major political role for the citizens within it.” As enacted, this theory tends to “shift[] the role of the person from the active decider to the consumer of others’ decisions.”

Christopher Tomlins, *The Presence and Absence of Legal Mind: A Comment on Duncan Kennedy’s ‘Three Globalizations’*, 78 LAW & CONTEMP. PROBS. 1 (2014), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4717&context=lcp>.

- Tomlins’ article is a comment on Duncan Kennedy’s famous *Three Globalizations of Law and Legal Thought* that brings neoliberalism into the Critical Legal Studies picture of legal development. In essence, it argues that part of the reason Kennedy was unable to give a satisfactory account of the “third globalization”—the modern era of legal thought, following formalist Classical Legal Thought and the legislatively-oriented legalism of “the social”—is that it failed to grasp the nature of neoliberalism’s relationship to law. Neoliberalism has flipped what Kennedy previously took to be law’s basic role in structuring economic and social life. It is now, says Tomlins, the theoretical apparatus of neoclassical economics that is constitutive of the range of possible arguments, decisions, and policies in law. The piece is most useful if you’ve read [Kennedy’s original](#)—which is worth doing—but even if you haven’t, it gives a sense of how thoroughly neoliberalism has penetrated not just into particular laws, but even into law itself—perhaps so deeply as to constitute the very limits of its critical imagination. See also Corinne Blalock’s piece above, which touches on a similar point.

Deborah Dinner, *Beyond Best Practices: Employment Discrimination Law in the Neoliberal Era*, 92 INDIANA L.J. 1059 (2017), <https://www.repository.law.indiana.edu/ilj/vol92/iss3/5/>.

- Dinner argues that Title VII's employment discrimination provisions have been deeply intertwined with neoliberal ideas about efficiency, market supremacy, and the deregulation of the employment relationship. She shows how early efforts to extend protective regulation—which had previously been offered only to women workers on sexist, gender-essentialist assumptions—eventually gave way to a deregulatory interpretation of anti-discrimination law. In the name of combatting stereotyping and individualized gender-based discrimination, Title VII helped advance efforts to dismantle protective, “maternalist” labor legislation. This deregulatory function—sometimes serving the interests of employers, sometimes those of white-collar women workers—undermined the initial promise of the law as a possible tool of gender equity attentive to the aims of working-class as well as professional women.

History

YVES DEZALAY & BRYANT GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS, AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002).

- In Chapter 5, “The Chicago Boys as Outsiders: Constructing and Exporting Counterrevolution,” two leading Law and Society scholars tell the story of the development of the University of Chicago as the center for neoliberal ideology, the spectacular success of intellectual entrepreneurs like Milton Friedman in promoting neoliberal economics, and how Chile became a testing ground for neoliberal economic reforms after Pinochet's coup in 1973.

Philip Mirowski, *Defining Neoliberalism*, in *THE ROAD FROM MONT PELERIN: THE MAKING OF THE NEOLIBERAL THOUGHT COLLECTIVE* 417 (Philip Mirowski & Dieter Plehwe eds., 2009)

- Mirowski here discusses the challenges involved in producing a settled definition of neoliberalism, arguing that neoliberalism must “be understood as a pluralist organism striving to distinguish itself from its three primary foes: laissez-faire classical liberalism, social welfare liberalism, and socialism. He goes on to offer a helpful list of eleven key “doctrines” representing the basic consensus of the Mont Pèlerin Society in the 1980s. The chapter also touches on neoliberalism's authoritarian streak, noting that its doctrines tend toward a “double truth,” which is to say a certain rhetoric deployed at the commanding heights and a very different one used to sell the neoliberal program to the denizens down below.

Rob Van Horn, *Reinventing Monopoly and the Role of Corporations: The Roots of Chicago Law and Economics*, in *THE ROAD FROM MONT PELERIN: THE MAKING OF THE NEOLIBERAL THOUGHT COLLECTIVE* 204 (Philip Mirowski & Dieter Plehwe eds., 2009)

- Van Horn charts the Chicago School's “quest to redefine monopoly in the immediate postwar period.” His interest is in individuals like Aaron Director, Milton Friedman, and Edward Levi who helped to turn the classical liberal attitude toward monopolies more or less on its head, and who cultivated a view of antitrust policy that was based on a skepticism of most legislative and legal intervention against exclusionary market practices.

KIM PHILLIPS-FEIN, *INVISIBLE HANDS: THE BUSINESSMEN'S CRUSADE AGAINST THE NEW DEAL* (2010)

- *Invisible Hands* locates the rise of the New Right in a backlash by corporate America against the rise of the welfare and regulatory state. Phillips-Fein focuses on the ways in which businessmen formed institutions—like the American Enterprise Institute and the Heritage Foundation—that promoted the economic ideology of neoclassical economists like Alfred Marshall and Austrian economists like Friedrich Hayek. The book is above all an account of the ways in which economic elites built some of the core neoliberal institutions that were and are essential to the conservative movement today.

ANGUS BURGIN, *THE GREAT PERSUASION: REINVENTING FREE MARKETS SINCE THE DEPRESSION* (2014)

- Burgin offers a close historical examination of the Mont Pèlerin Society, a group of free-market economists formed at the height of skepticism about the market in the aftermath of the Great Depression. The most important figures are Friedrich Hayek and Milton Friedman. Through Burgin, we observe the contingent, contested, and far from ideologically “pure” origins of neoliberal thinking in Hayek and his generation, who opposed collectivism but still saw a significant role for the state. Then, in the last few decades of the twentieth century, we observe the profound transition of neoliberal doctrine in the hands of Friedman, who was a superior popularizer but also significantly more puritanical than his ideological forebear.

NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT’S STEALTH PLAN FOR AMERICA* (2017)

- MacLean’s book offers an account of the “Virginia School” of Public Choice Economics associated primarily with James Buchanan. She shows how Public Choice theorists’ application of neoclassical economic ideas to political decision-making arose as part of a backlash against the New Deal and the Civil Rights Movement, both of which were cast as improper “collectivist” interventions in the political order. Her historical work also effectively draws out the historical linkage between white supremacy and neoliberalism.

QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* (2018)

- Slobodian’s book offers a slightly divergent perspective on neoliberalism informed by its relationship to global economic integration and decolonization. Slobodian underscores that the neoliberalism of the “Geneva School” was not merely or even primarily about “deregulation,” “market fundamentalism,” “weak states,” or even the Polanyian concept of “disembedding” the market. In other words, the point was not the primacy of the market over whatever was outside of it. Rather, the core of neoliberalism—and especially the neoliberal globalism that emerged out of Geneva—is precisely a vision about *what kinds* of institutions should be outside of the market, the institutions that should “encase” it, in Slobodian’s term. Seen in this way, neoliberal globalism emerges as a project intended to protect an interdependent global economy from interference by nation-states and the pressures of democracy. The book takes a biographical approach; it describes lesser known neoliberal thinkers of the Geneva School (Hayek included) whose thinking and writing dealt primarily with the roll-out of neoliberalism at this global scale (unlike the decidedly Anglo-American-centric London and Chicago schools) and in the face of global challenges like the Great Depression and especially decolonization.

Theory

Stephen Gill, *Globalisation, Market Civilisation, and Disciplinary Neoliberalism*, 24 MILLENNIUM 399 (1995), <https://doi.org/10.1177/03058298950240030801>.

- Gill offers a good example of some of the earlier scholarship on neoliberalism. He presents an account of neoliberalism, globalization, and commodification that seeks to synthesize the best aspects of Foucauldian and Marxian/structuralist analyses. On the one hand, this involves an account of how globalization has involved the imposition of austerity and commodification on sovereign states by transnational institutions like the IMF, as well as through multilateral and bilateral trade agreements like the WTO or the US-Canada Trade Agreement. On the other hand, this entails the micro-level commodification and marketization of ever more aspects of human life. Both of these types of neoliberal governance are abetted by surveillance and data collection that expose the individual person and the sovereign state to the discipline of neoliberal institutions. And both, says Gill, are threatened by the ecological and social limits to growth that neoliberalism is intent on denying.

JAMIE PECK, CONSTRUCTIONS OF NEOLIBERAL REASON (2010)

- Peck's account of neoliberalism emphasizes its contingency and heterogeneity. He shows how the pursuit of an unattainable/utopian essential goal—that of a perfectly free market—drives neoliberalism ever forward, but only because it leaves it always imperfect. Peck provides an account of neoliberalism's *failures* and its reactions to these failures from Hayek and the Mont Pèlerin society to the Obama Administration. One key insight that arises from appreciating neoliberalism in its many and variegated “impure” forms is the idea that neoliberal policy tends to have two phases: a “roll-back” and “roll-out.” The roll-back involves deregulation, assaults on Keynesian fiscal policy and the welfare state, and so on. The roll-out, in turn, must respond to the social and economic failures precipitated by unmitigated roll-back policies. It tends to involve regulation and state-building in the service of neoliberal goals; some examples include work requirements for welfare benefits, expansion of the carceral state, and public-private partnerships in the provision of basic social services.

Stuart Hall, *The Neo-Liberal Revolution*, 25 CULTURAL STUDIES 705 (2011), <https://www.tandfonline.com/doi/full/10.1080/09502386.2011.619886>.

- Hall gives a telescoping history of neoliberal policy and its effects in the British context. He emphasizes, as so many authors do, the heterogeneity of the concept and the different forms it takes; but usefully his writing (lively, if not quite breezy) remains grounded in the different particulars of the British experience of Thatcherism and later the Blairite “third-way.” As in the United States, this has meant extensive privatization, including the destruction of a robust post-war welfare state, followed by the tendency to use the negative consequences of privatization as a way to deepen social control over poor people and minorities, blame them for their own social ills, and to further discredit the state itself.

WENDY BROWN, IN THE RUINS OF NEOLIBERALISM (2019)

- Brown links neoliberalism with the rise of antidemocratic politics across the world. In doing so, she identifies both negative and positive aspects of neoliberalism. On the one hand, neoliberalism is committed to the dismantling of “the social” and “the political.” This is to say, in part, that it privileges liberty claims over equality claims, opposes popular sovereignty,

and argues for closely proscribed limits on state action, as well as the sanctity of property rights and other economic freedoms. On the other hand, however, it advocates an expansion of the “personal, private sphere” of “traditional” (Western, Christian) morality. F.A. Hayek, for example, viewed this sphere as a bulwark of stability that would be required to compensate for the neoliberal roll-back of the welfare state. Brown describes the modern right-wing turn toward explicit racism, reaction, and even nihilism as an unintended byproduct of the tension between the world of religious values and their use as instruments of state power and political argument.

Neoliberalism and Social Hierarchy

RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007)

- Gilmore’s book uses a Marxist lens to explain the political economy of mass incarceration in twentieth century California. Challenging both the mainstream narrative (“crime went up; crime cracked down; crime came down”) and some of the prominent counter-narratives, Gilmore shows how, as the post-war boom receded, the capital accumulation that it had enabled did not. This left a crisis of surplus finance capital, land, labor, and state capacity in California. *Golden Gulag* shows how these surpluses, along with racial inequality, underlying social problems caused by the roll-back of the welfare state, and a deepening urban-rural divide, together combined to produce the largest-ever prison-building project in human history—one that was passed off as small-state conservatism by the politicians who championed it.

LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009)

- Wacquant shows how the “penal categories, practices, and policies of the United States find their root and reason in the neoliberal revolution of which this country is the historical crucible and the planetary spearhead. . . . [T]he irresistible ascent of the penal state in the United States over the past three decades responds not to the rise in crime—which remained roughly constant overall before sagging at the end of the period—but to the dislocations provoked by the social and urban retrenchment of the state and by the imposition of precarious wage labor as a new norm of citizenship for those trapped at the bottom of the polarizing class structure.”

JOE SOSS, RICHARD C. FORDING, & SANFORD SCHARM, *DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE* (2011)

- Soss et al. focus on the relationship between neoliberalism and poverty governance in the United States. They characterize modern welfare programs as primarily a way of regulating the poor; in this they are continuous with the long history of poverty governance in the Anglo-American world. What is novel, however, are the means and ends of this regulation. As for the former, the “marketization” of poverty governance has led to a bonanza for private, for-profit government service providers; a devolution of control to state, local, and private authorities over welfare services in the name of efficiency; and an emphasis on contracts, personal responsibility, work conditions, and harsh penalties for non-compliance as means for managing recipients. All of these methods, the authors show, tend to enable and to deepen the racial inequalities in welfare service provision and in the composition of America’s poor population. As for the ends of the welfare system, the goal is primarily to

cultivate a certain model of market rationality in the poor, and (relatedly) to provide a source of cheap labor for employers.

BERNARD HARCOURT, *THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER* (2012)

- Harcourt’s book connects certain neoliberal ideas about markets with modern mass incarceration. His core concept is that of “neoliberal penalty,” which is a particular way of thinking about the proper place of government activity. It dictates that the government’s role is to uphold, and never to interfere with, a “natural order.” This entails keeping government out of markets—which are naturalized as self-regulating and efficient—while it legitimates expansive state power in the penal sphere, where the government is seen as punishing deviance from the natural order. Harcourt traces this way of thinking back to the eighteenth-century physiocrats and follows its evolution up to the present day. He argues that our concepts of “natural order” and “free markets” conceal more than they reveal about the actual stakes and state of government activity in both the economic and penal spheres.

ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* (2016)

- Hinton shows how the retrenchment of the social welfare state and the rise of mass incarceration are intimately connected. Beginning in the 1960s, the Johnson Administration expanded the federal footprint in local criminal justice administration in response to the intense urban unrest of the 1960s. This laid the foundation for a continuation and expansion of these punitive law-and-order measures, as later the Nixon, Ford, Carter, and Reagan administrations undertook to dismantle the social welfare aspects of the Great Society. In many cases, police literally moved into buildings that had been vacated by social programs. In part, Hinton seeks to push back on the narrative that casts modern mass incarceration as a return to Jim Crow policies; she seeks rather to show that it resulted from a historically specific phenomenon: “the criminalization of urban social programs.”

MELINDA COOPER, *FAMILY VALUES: BETWEEN NEOLIBERALISM AND THE NEW SOCIAL CONSERVATISM* (2017)

- Cooper argues that an alliance between neoliberalism and “the new social conservatism” (neoconservatives, the Christian Right, communitarian leftists, and others) has taken the family as the primary locus of the major economic issues of our time. In reacting to different aspects of 1960s radicalism, these movements found common ground in the conviction that the disintegration of the social arrangements undergirding the Fordist family wage—which pegged the standard of living and access to social insurance schemes to a traditional heteronormative family structure centered on a male breadwinner—were leading to wider social and economic ills. She pushes back against the tendency on the left to regard family issues as mere side-effects of economic arrangements. Instead, she argues, the cultural and social battles over the “crisis of the family” are integral to understanding the neoliberal era in American economic and social policy. The book expertly elaborates this insight.

KEEANGAH-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019)

- Taylor’s book shows how the “public-private partnerships” at the core of the Fair Housing Administration’s policy shift away from redlining amounted to a practice of “predatory

inclusion,” whereby low-income Black citizens were admitted to housing markets on terms that ultimately exploited their desperation in order to profit the real estate industry, mortgage brokers, and banks. The book is a powerful refutation of the neoliberal notion that markets, as sites of neutral economic reason, are capable of cleansing the body politic of the legacies of racial inequality. In fact the FHA’s market-driven policies did just the opposite. They laundered the real estate industry’s racism, entrenched racist notions about black cultural pathology, and reified racist beliefs into material inequality in property values.