

Law and Political Economy

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Yale Law School
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FINAL VERSION
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Much of legal scholarship and practice in recent decades has held politics and economics apart, abstracting away from, or actively denying, their interdependence. Law schools and legal scholarship are organized along an implicit divide between “public” and “private” fields of law which is defined in significant part by the role that economics is thought to play in these respective fields. Many fields are thought of as being “about the economy” – contracts, torts, anti-trust, intellectual property, trade, consumer protection are examples. For the past several decades, scholarship in these fields has been dominated by law and economics approaches that have downplayed considerations of distribution and elevated questions of efficiency. This approach treats efficiency as a “neutral” value, yet construes the term in a manner that reproduces a constitutive priority for the privileged. Public-law scholarship, in turn, has tended to make questions of economy foreign. To learn and practice constitutional law today, for example, is often to assert that constitutional values have no purchase on questions of economy or class: these, after all, are the received lessons of *Lochner* and *Carolene Products*, of *San Antonio* and *McRae*. These areas of law have become dominated by a particular version of formal equality, bounded for example by a specific rendering of the state-action doctrine, and by investigations of power and coercion that tended to stop wherever the market is seen to begin.

A new body of “law and political economy” scholarship is emerging to challenge this artificial division between the economy and politics across a wide variety of legal fields. This course will explore the predicates and possibilities of this new approach, discussing also what it can draw from and contribute to social mobilization against intensifying inequality, precarity, racialized and gendered injustice, and ecological destruction.

Part I of the course begins with key theoretical readings that articulate the embeddedness of the economy in politics (e.g., Polanyi, Wood, Robinson), and that describe the role of law in the constitution of markets. We will review the key conceptual moves within law and economics and neoliberal thought and consider how they have worked their way into legal thought and helped to naturalize market-mediated and intersectional inequalities. We will also review key critiques of neoliberalism and law and economics.

Part II of the course asks: what might a mode of legal analysis look like that took the political nature of the economy seriously? What questions would it center? We will begin by exploring what it might mean to democratize the economy, and discuss recent work on how we might identify “non-reformist reforms” that build incrementally toward more a radical

democracy. We will then explore a range of legal topics that are central to the effort to construct a more democratic and egalitarian society, and ask what a political economy approach might help us understand or achieve in each realm. We will focus on five topics that are central to intellectual, political, and movement-based efforts to make our legal and social order more just, equal, democratic, and sustainable: healthcare; basic income / work guarantees; reparations; the carceral state and abolition; a renewed constitutional political economy; and trade and global capitalism. The topic of the final class will be determined by seminar participants.

Dates and Logistics

We will meet in Baker Hall, Room 116.

Please read the syllabus carefully, and be on the lookout for new iterations. Readings may change and classes may be rescheduled, but I'll always give you as much advance notice as I can.

Readings are either linked on the syllabus below, or available on Canvas. There is one book that you should purchase: Karl Polanyi, *The Great Transformation*, Beacon Press 2001 edition. I did not order them at the bookstore, but copies should be available at good bookstores (how many are there left?), and used copies are available online for \$8 as of this writing. I have also put a few copies on reserve in the library, and it is available as an ebook via the Yale Library.

Requirements

The main course expectations are close reading and generous and collaborative class participation. Class time will be a mixture of didactic presentation, group discussion, and small-group breakout sessions. Reading can be heavy in certain weeks, and you'll need time to reflect upon it to bring your own insights to our conversation. I suggest leaving ample time – more than the night before – for course reading.

This is the most important thing about our class sessions – seriously, read this several times: You are joining one another as colleagues in a joint learning community, and you are expected to support one another in that endeavor. We will aim for a conversation in which everyone is engaged and able to contribute, so that we are able to benefit from the insights, experiences, and voices of everyone in the class. It is not easy to make space for disagreement and uncertainty. It is important both that you have the courage to take risks in conversation, and that you strive to be a generous interlocutor. Presume that others' views are being offered in good faith even if they are views with which you disagree.

Paper Option

The course offers two ungraded credits. Students seeking graded credits may add a third credit, and complete a seminar paper by the end of exam period. The paper option must be elected

by Sept. 11 and you must file the appropriate form with the Registrar. Papers should be between 25 and 40 pages, double spaced. They are due on the last day of exam period.

You may propose your own paper topic, or write a paper that offers a “law and political economy” take on a particular market/industry/institution, or a particular legal case. (I can describe more about what this might mean in office hours.) If you’re interested in writing a paper, come talk to me in the early weeks in office hours about the potential topic.

Laptop Policy

Some students need laptops in the classroom, and others find them an impediment to their learning. If you are in one of these categories, please send me an email by Sept. 3 describing your needs. (I will keep them confidential, and please be frank – I will of course not hold any of this against you.) Since we are a small class, I will establish a laptop policy after I know a little more about everyone’s needs.

Accessibility and Accommodations

If I can help in any way make this course more productive or accessible for you, please do not hesitate to reach out, via email or by coming to office hours.

Students with documented disabilities should contact the Yale University Resource Office on Disabilities by email to rod@yale.edu, or by telephone at 203.432.2324, to request accommodation for examinations or other course-related needs. The Resource Office on Disabilities will work directly with the Registrar’s Office on accommodations.

Office Hours and Contact

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Office hours: 3pm – 5pm on Tuesdays (please sign up in advance online)

Readings

1. Theoretical Foundations: Market Society and the Embedded Economy (Aug. 28)

This week’s readings introduce us to some foundational accounts of how the market relates to society, and to the problems that follow from theories that too rigidly separate the “economy” from the realm of politics. Polanyi’s work is experiencing a revival in many places, primarily because of theorization of the distinctive nature of what he calls “market

society” and what Wood would call “capitalism.” As you read, consider: what does Polanyi mean by the “embedding” of the market in society? What is fictitious about his “fictitious commodities”? What is the “double movement,” in his account, and can it be surpassed? What is Wood’s critique of conventional economic history, and of Polanyi’s account? How does she define “capitalism”? What role does law play in her account? Is law an epiphenomenon for these thinkers? What does Robinson mean by “Western Civilization” and how does it affect capitalism, in his view? How does Robinson’s view of the society in which capitalism is embedded compare with Polanyi’s? Why, in his analysis, is racism central to capitalism?

Karl Polanyi, *The Great Transformation*, Beacon Press 2001 edition, read pp. 3-5, 35-58, 71-80, 116-35, 141-57, 171-74, 257-68 (please purchase this book)

Ellen Wood, *The Origins of Capitalism- A Longer View* (1999) pp. 11-33, 166-81 (“The Commercialization Model and Its Legacies” and “Capitalism and the Nation State”)

Cedric Robinson, *Black Marxism* (1983), Introduction and pp. 13-28

Recommended:

Fred Block, [Polanyi’s Double Movement and the Reconstruction of Critical Theory](#), Rev. IEPE, 2008

Wolfgang Streeck, [The Crises of Democratic Capitalism](#), *New Left Review*, Sept-Oct 2011 (esp. pp. 10-29).

2. Law, Markets and Power: The Realist Revolution (Sept. 4)

*This week, we will use the work of legal realists to map the role of law in constituting markets. Legal realism was a powerful intellectual movement that developed to contest the tenets of “laissez faire” in law and intellectual life. Singer describes this backdrop well, as well as the two critical moves that realists made. What are these moves? Are you persuaded by the realist critique of the public/private divide, and of formalism? It is common to hear that “we are all legal realists now.” Singer both affirms and contests that – how? Finally, the realists did not much discuss questions of race (and far less, questions of gender.) But their ideas arguably had significant implications for the legal doctrines that helped construct and maintain white supremacy. Hale (who did write some about race) also contributed to a brief in *Shelley v. Kraemer*. How does (or doesn’t) the *Shelley* opinion embody Hale’s ideas? What can it tell us about the implications of the realist attack on the public/private distinction for matters of equality, and for matters of democracy? *Shelley* is a kind of phantom limb in constitutional law – its radical implications were quickly cut off by*

the Court. What were the alternatives, and what can they teach us about what a law and political economy approach of the constitution might require or enable?

Joseph Singer, Legal Realism Now, 76 Cal. L. Rev. 465 (1988), pp. 475-503, 516-17, 528-32

Robert Hale, Coercion and Distribution in a Supposedly Non-Coercive State, 38 Pol. Sci. Q. 470 (1923).

Felix Cohen, Transcendental Nonsense and the Functional Approach, 35 Colum. L. Rev. 809 (1935)

Shelley v. Kraemer, 334 U.S. 1 (1948)

3. Neoliberalism and the Twentieth Century Synthesis (Sept. 11)

Legal realist insights have become both intrinsic to mainstream thinking about law in the US, and in certain aspects have been rejected. In this week's readings, we will consider what remains of legal realism, and why. We will trace the rise of neoliberalism in law (in part, but not only, exemplified by the rise of law and economics), generating what co-authors and I have called a new "Twentieth Century Synthesis." How well does our account describe the conventional wisdom that has structured what you have been taught in law school? What seems reasonable in policy debates, and what happens in courts, agencies, and government more broadly? What can we learn from the history of neoliberalism for thinking about how certain questions become out of bounds/in bounds ("on the wall"/"off the wall" in Jack Balkin's terminology)? What is "neoliberalism" and how has it worked its way into legal discourse? What would it mean to challenge it today in law? How far can we go by simply resurrecting the insights of the legal realists, and how much more than that is needed?

Steven Teles, Rise of the Conservative Legal Movement, pp. 90-118

Powell Memo, "Attack on the American Free Enterprise System" (Canvas)

David Grewal, Jed Purdy, Amy Kapczynski and Sabeel Rahman, Against the Twentieth Century Synthesis: Theorizing Law and Political Economy in the Era of Neoliberalism (forthcoming Yale Law Journal, 2020) (draft – not for circulation)

David Singh Grewal and Jedediah Purdy, [Law and Neoliberalism](#), in Law and Contemporary Problems, 2014

Recommended:

If the concept of neoliberalism is unfamiliar, you may want to read Wendy Brown, "[Neoliberalism and the End of Liberal Democracy](#)," in *Edgework: Critical Essays on Knowledge and Politics* (2005)

You might also find others of the pieces in the Law and Contemporary Problems volume on Law and Neoliberalism useful: <http://scholarship.law.duke.edu/lcp/vol77/iss4/>

Simon Deakin, David Gindis, Geoffrey M. Hodgson, Kainan Huang and Katharina Pistor, *Legal institutionalism: Capitalism and the constitutive role of law*, J. Comparative Economics, 2017

4. **The Politics of Market Supremacy I: Wealth Maximization and Theories of Value (Sept. 18)**

You will all have encountered the concept of "efficiency" in law school before. But you may not have had the chance to investigate deeply what is meant by the term. What is an "efficient" state of affairs in law and economics? How is "wealth maximization" defined? Posner's early work deeply shaped the field, and we will use his account to understand why many felt that law and economics could not only help rationalize legal decisionmaking, but was normatively desirable as well. Posner and other L&E practitioners identify strongly with the realists (though they think they've moved beyond them). How does economic analysis relate to realism? In what ways does it rely on the realist moves? Singer proposes that L&E is a new version of formalism: how could this be so? Posner's arguments for wealth maximization as a moral proposition were, it is fair to say, decimated by the kinds of critiques offered in Dworkin, and Hausman and McPherson. Liscow's work is a formalization and extension of the insight that others have had before, that the definition of efficiency is inherently biased. How is efficiency biased toward those with more purchasing power? What are the other normative problems with efficiency elucidated by the readings? If efficiency is biased, does it at least get us "closer" to a more objective or neutral science of law?

Richard Posner, *The Economics of Justice* 60-73, 87-96 (1983)

Daniel M. Hausman & Michael S. McPherson, *Economic Analysis, Moral Philosophy, and Public Policy* 12-23, 64-67, 135-140, 145-47, 55 (2d ed. 2006)

Ronald Dworkin, *Is Wealth a Value? Change in the Common Law: Legal and Economic Perspectives*, 9 J. Legal Stud. 191, 194-209 (1980)

Zachary Liscow, [Is Efficiency Biased?](#), U. Chi. L. Rev., read 1649-58 (introduction)

Recommended

Elizabeth Anderson, *Value in Ethics and Economics* (1995)

5. The Politics of Market Supremacy II: The Separation of Efficiency and Distribution, and Cost-Benefit Analysis (Sept. 25)

Law and economics insists that efficiency should be maximized and questions of distribution deferred to elsewhere in the political process (typically, to legislative decisions about taxation). This week, we will read the most influential exposition of this view, from Shavell and Kaplow. Why do they argue efficiency should be maximized first, and are you persuaded? Their view has been widely criticized, and we will read one recent critique. What is Liscow doing with the concepts of “distribution” and “redistribution,” and does his way of arguing for the efficiency of redistribution convince you? Cost-benefit analysis is a means of deploying Kaldor-Hicks wealth maximization techniques to justify or undermine the case for legal rules and regulations. Since the Reagan Administration, federal agencies have been required to adopt regulations only after determining that their benefits justify their costs. What is the appeal of cost-benefit analysis? After reading the Kysar chapters and the Stop-Prison Rape Act “Regulatory Impact Assessment,” do you think it achieves those ideals? If it is instead a way of conducting a conversation (rather than a precise calculation), what issues does it frame and highlight, and which does it deemphasize or neglect? Is it a useful framing device for policymakers, and why? Does an economic perspective on the law represent a rejection of law's intrinsic or constitutive norms, or of the practice or values of democratic politics? What role does the concept of “neutrality” play in economic analysis and cost/benefit in particular? Notice that this neutrality is not that of a judge, but any decisionmaker: how does this relate to the value of democracy? How does it relate to legal ideology?

Louis Shavell and Steven Kaplow, Why the Legal System is Less Efficient Than the Income Tax in Redistributing Income, *J. Legal Studies* (1994), read pp. 667-69, 674-77

Zachary Liscow, [Reducing Inequality on the Cheap: When Legal Rules Design Should Incorporate Equity as Well as Efficiency](#), 123 *Yale L. J.* 2479 (2014), read pp. 2480-2490

Doug Kysar, *Regulating From Nowhere: Environmental Law and the Search for Objectivity* (2010), read Introduction and Chapter 3

Department of Justice, [Prison Rape Elimination Act: Regulatory Impact Assessment](#) (May 17, 2012), read pp. 1-8, 39-42

6. Beyond The Twentieth Century Synthesis: New Left Imaginaries and Non-Reformist Reforms (Oct. 2)

This week, we will move from critique to reconstruction. Many of the political economy critiques we have been reading draw on the work of Karl Marx. But political developments did not follow the trajectory that Marx suggested. We will read two important post-Marxists, who each offer accounts of how to think about the limits of the Marxian account, and about transitions to more post-neoliberal or post-capitalist (or democratic) governance of economic relations. Gorz is best-known for his account of “non-reformist reforms.” What is a non-reformist reform, and how does expanding our conception of class or the privileged political agent of change challenge or complicate his account? Wright offers both an account of “socialism” as a modality of economic governance, and a theory of political transitions. How does he define “socialism” and why does he think it is desirable? How – short of revolution, which Wright considers unlikely (and/or unlikely to end well), might we progress toward a more egalitarian democracy, including a democracy of the economy? Do Gorz/Wright provide a helpful framework? How do they differ? Gorz is more focused on coming up with a coherent strategy and Wright with experimentation. What are the advantages of each approach? Are they incompatible? What institutional structures does Gorz assume that make envisioning a unified strategy more plausible? How can we draw from each of them in our present institutional formation? What does Akbar’s account add to those of Gorz and Wright? Is she right that work with movements is essential to the development of a consequential new left imaginary? What can we learn about that imaginary from her work, and the Black Lives Matter platform? Are there aspects of the BLM platform that you think are / are not “non-reformist reforms”? How should lawyers think about their role, in Akbar’s account? Does this map onto Gorz/Wright? How do you think about your role as a lawyer?

Andre Gorz, *Strategy for Labor* (Martin A Nicolaus & Victoria Ortiz, trans. 1967), read pp. 3-12.

Erik Olin Wright, *Envisioning Real Utopias* (2010), read pp. 10-29; 89-107; 110-49; 366-73

Amna Akbar, *Toward a Radical Imagination of Law*, *NYU Law Review* (2018), read pp. 406-415, 464-79

[Platform](#), *The Movement for Black Lives*

[The Tensions in Democracy: Interview with Astra Taylor](#), *LPEBlog*, July 9, 2019

7. The Political Economy of the Welfare State I: Social Reproduction and Healthcare (Oct. 9)

In this section of the course, we will consider the implications of a law and political economy approach for distinct issues of law and policy. We will focus our attention on five that are central to the effort to construct a more democratic and egalitarian society, and ask what a political economy approach might help us understand or achieve in each realm.

We first consider the topic of long-term care and healthcare more broadly. First, we will read some important work that makes the (feminist) point that “social reproduction” is neither accounted for, nor adequately supported, in market society. What does Federici have to teach us about the exclusions of conventional accounts (including those in Marx) about where the market is, what work is, and the divide between production and reproduction? Does Fraser’s work capture something that you have seen in your own life or the work/family divides in your social or family circles? Finally, read the Hoffman and Pasquale and consider: are these examples of LPE approaches? (Why / why not?) What can we learn from Hoffman’s work about political economy of long-term care? What might we learn from Hoffman and Pasquale about the political economy of healthcare reform? Can we go beyond their accounts to envision how care could be at the center rather than the margin of society? What sort of reforms would be required to make it easier to care for ourselves and each other in everyday life? How might Federici’s global vision of the role of women in reproduction be incorporated into a vision of social reform focused on care?

Sylvia Federici, *The Reproduction Of Labor Power In The Global Economy and The Unfinished Feminist Revolution* (excerpts, Canvas)

Nancy Fraser, [Contradictions of Capital and Care](#) New Left Review (Dec. 2016)

Allison Hoffman, [Reimagining the Risk of Long-Term Care](#), Yale Journal of Health Law, Policy, and Ethics (2016), read pp. 239-47, 303-09

Frank Pasquale, [Rebuilding Health Care Policy from the Ground Up](#), Balkinization, Nov. 12, 2016

Allison Hoffman, [Medicare for All as a Democratic Movement](#), LPEBLog, July 22, 2019

8. The Political Economy of Work (Oct. 16)

Last week we talked about which sort of labor is valued and how to structure society to make caring labor more sustainable/valued, which has benefits both for those tasked with caring and for those who need care. This week we focus less on how law structures care per se and more on how it structures work, caring or otherwise. As the Gorz reading nicely summarizes, the notion that workers should control the conditions of work and of society more generally has long been at the core of leftist projects. As Andrias discusses, a big reason for the decline of leftist politics in the US has been the evisceration of the labor movement. What role did law play in this project, according to Andrias? How does she envision law contributing to a reinvigorated labor movement? How might the sectorial/social bargaining approach of Andrias be understood as a non-reformist reform? How might it be understood as merely a reform? How does it fit with the politics of care we discussed in the last class? The remainder of the readings deal with the question of how the federal government might set a floor on labor conditions. Frase and Ackerman outline the

basic leftist cases for a universal basic income (UBI) versus a job guarantee (JG). How does each think about how their preferred policy would affect labor power? The control over one's time? The ability to care for each other? Aja and coauthors come to this discussion with a racial lens: what do they say in favor of a job guarantee? What might be said in favor of a UBI? Are these policies inconsistent with each other? In answering that question consider Tcherneva's intervention: does a UBI actually undermine collective control over the conditions of work and the purpose of work?

Kate Andrias, *The New Labor Law*, 126 *Yale L.J.* 2 (2016), read pp. 13-36, 70-81.

Peter Frase, *The Politics of Getting a Life*, *Jacobin* (2011).

Seth Ackerman, *The Work of Anti-Work: A Response to Peter Frase*, *Jacobin* (2011).

Alan Aja, Daniel Bustillo, William Darity, Jr., & Darrick Hamilton, *From a Tangle of Pathology to a Race-Fair America*, *Dissent* (2014)

Pavlina Tcherneva, *The Job Guarantee: Delivering on the Benefit that Basic Income only Promises—A Reply to Guy Standing*, 7 *Basic Income Stud.* 66 (2013), read pp. 69-74

9. The Political Economy of Property: Race, Nation, and Reparations (Oct. 23)

In week one, we read an introduction to the idea of racial capitalism. In this class we will ask: can race itself be thought of as a species of property, and is property as we know it racialized? If so, how should that matter for law, as well as for scholarship on law and political economy? Start by reviewing the Cedric Robinson to bring back to mind our earlier discussion of the relationship between race and capitalism. Then read the Harris, a classic of critical race scholarship. Next, read the two newer attempts to rethink property law as a project of racial capitalism. What do these accounts teach us about the relationship between property and race in U.S. history? How do conventional ways of thinking about property obscure the relationship between property and race? How do Harris and Franke imagine that we might redeem a more egalitarian political economy (and how might Park's account suggest that we do the same)? Are their visions compelling? Are they an example of "non-reformist reforms" and why? Do they invite "inefficiency" and if so, is this a problem or a virtue? Could reparations be sufficient to undermine the legacy of slavery and racism, or do they risk creating a false sense that we have "wiped our hands" of racism without actually undermining the mechanisms that reproduce it? If so, what else would be required to undermine those mechanisms?

Review Cedric Robinson, *Black Marxism – Introduction* and pp. 13-28

Cheryl Harris, *Whiteness as Property*, 106 *Harvard Law Review* 1707 (1993) – read pp. 1707 – 1745, 1757-61, 1766-81

K-Sue Park, [Money, Mortgages, and the Conquest of America](#), Law and Social Inquiry (2016), read pp. 1007-1014

Katherine Franke, Making Good on the Broken Promise of Reparations, New York Review of Books, Mar. 18, 2019.

[IMPORTANT NOTE: class will be 12:10 – 2pm on Tues., Oct. 29 – no class on Weds. Oct 30]

10. The Carceral State and Abolition Democracy (Tues. Oct. 29)

In this class, we will explore the political economy of the carceral state. The “economy” is normally cordoned off from the criminal law and the carceral state. Today’s readings allow us to ask: do prisons have a political economy? Is the carceral state important to the construction of contemporary capitalism? Gilmore’s work has been influential both for her account of the drivers of California’s high levels of incarceration, for her definition of “racism”. We’ll talk about both, so consider their implications and whether you are persuaded by her analysis. Next, we will explore what present-day prison abolitionism might have to say to – and learn from – scholarship on law and political economy. What is “abolition democracy”? Does abolition democracy address the political economy of racism? How does abolition democracy fit in with the projects of structural reform of “the economy” (as traditionally understood) we have been discussing?

Ruth Wilson Gilmore, Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California, 2007. If you have a hard copy, the reading is pp. 5-29, 52-127 (SKIM this section, there’s a lot here – just try to understand what she means by the surpluses of land, labor, money, and state capacity), 241-48. If you access via proxy server (at <http://site.ebrary.com/lib/yale/detail.action?docID=10779285>) the pages are different for some inexplicable reason. The assigned pages correspond to:

Introduction

Subchapter “Transition” (within chapter two — “The California Political Economy”) to the entirety of chapter 3 (“The Prison Fix”). [this is the section to skim, as above]

Chapter 6 (“What Is to Be Done?”)

Allegra McLeod, [Envisioning Abolition Democracy](#), Harv. L. Rev. (2018)

Recommended

Juno Mac & Molly Smith, [Sex is Not the Problem With Sex Work](#), Boston Review, Oct. 2018

Walter Johnson, [Ferguson's Fortune 500 Company](#), The Atlantic, Apr. 26, 2015

Loïc Wacquant, "Class, Race & Hyperincarceration in Revanchist America," Daedalus Summer 2010 (Canvas)

Loïc Wacquant, "Crafting the Neoliberal State- Workfare, Prisonfare, and Social Insecurity," Sociological Forum, June 2010 (excerpts, Canvas)

For a good summary of Wacquant's thought, see Loïc Wacquant, [The Punitive Regulation of Poverty in the Neoliberal Age](#), Criminal Justice Matters, Sept. 2012

11. Constitutional Political Economy (Nov. 6)

Constitutional law is implicated in all of the legal questions we have discussed so far. This week we focus more directly on what political economy analysis might demand of a democratized constitutional law. The "Twentieth Century Synthesis" was defined by an embrace of neoliberal ideas about markets, states, and subjects in many domains of constitutional doctrine. What form of constitutionalism would correspond to the emerging political economy critique? What do Rahman and Purdy see as the benefits of a reshaped left constitutionalism, and what do they see as its key aspects? Rana suggests that we reject the constitutional "veneration" that emerged in the post-WWI era. What does his historical account of that veneration, and leftist struggles in earlier eras have to teach us about the nature of a constitutionalism to which we aspire?

K. Sabeel Rahman, [Domination, Democracy, and Constitutional Political Economy in the New Gilded Age](#), 94 TEX. L. REV. 1329 (2016).

Jedediah Purdy, [The Left's Guide to Reclaiming the Constitution](#), NY Times, Sept. 10, 2018

Aziz Rana, *The Creedal Constitution* (forthcoming 2020) read Introduction

Aziz Rana, Comment for LPE Conference, Jan. 2019

Recommended:

Jedediah Purdy, [Beyond the Bosses' Constitution](#): The First Amendment and Class Entrenchment, Columbia Law Review (2018)

Amy Kapczynski, [The Lochnerized First Amendment and the FDA: Toward a More Democratic Political Economy](#), Columbia Law Review Forum (2018)

12. The Legal Foundations of Global Capitalism (Nov. 13)

Capitalism is fundamentally globalized today. This week we will consider how law structures this global order. International law is fragmented, with regimes of humanitarian law, human rights law, and trade law all governed in different ways. Our focus will be on the construction of trade and investment law, with a view to its position in international law generally. Trade law enjoys more robust enforcement mechanisms, and far more consequential rights than other regimes. How does this fact – and the particular features of what is regulated through the trade regime – reflect the “encasement” of democracy, in Slobodian’s terms? International law has often been criticized by nationalist conservatives, and defended by liberal cosmopolitans. What position should law and political economy scholars take in this debate? Does LPE analysis suggest that we need a different form of international law, and if so, what kind?

David Singh Grewal, “Three Theses on the Current Crisis of International Law” (draft, forthcoming, *Indiana Journal of Global Legal Studies*), https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=6295&context=fss_papers

Greg Shaffer, [Retooling Trade Agreements for Social Inclusion](#), 2019 Ill. L. Rev. 1

Recommended:

J.W. Mason, [The Market Police](#), Boston Review, June 1, 2018

John Ruggie, “International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order,” *International Organization*, pp. 379-415 (1982) [read pp. 385-404] at <http://www.jstor.org/pss/2706527>

Andrew Lang, “Reconstructing Embedded Liberalism,” *Journal of International Economic Law*, 9(1): pp. 81-116 [read pp. 85-101] at <http://jiel.oxfordjournals.org/content/9/1/81.full.pdf+html>

13. Concluding Class: The Green New Deal (Nov. 20)

Kate Aronoff, Alyssa Battistoni, Daniel Aldana Cohen & Thea Riofrancos, *A Planet to Win: Why We Need a Green New Deal*, Chapter 2

2019 Proposed [House Resolution](#) “Recognizing the duty of the Federal Government to create a Green New Deal.”

Rhiana Gunn-Wright & Robert Hockett, [The Green New Deal](#), New Consensus Paper, Jan 2019

David Roberts, [The Green New Deal, Explained](#), VOX, Mar. 30, 2019

Michael Grunwald, [The Trouble With the Green New Deal](#), Politico, Jan. 15, 2019