The Legal Structure of Accelerated Inequality

Since the publication of Thomas Piketty's *Capital in the Twenty-First Century*, academic and popular discussion of inequality has flourished. Piketty documented the historical trend of capital concentration which he framed as a piece of inherent economic logic, $r > g$, meaning that the returns to capital outpace growth. When that economic logic applies over time, it guarantees that holders of capital will amass wealth faster than the rest of the population, eventually undermining social stability based on the promise of a society of relative equals. But Piketty left the mechanisms by which capital accumulates faster than growth largely devoid of analysis. Law and political economy scholars have stepped into the breach by emphasizing the centrality of law in generating the conditions of economic activity, including but certainly not limited to distribution. They have begun to delineate the legal underpinnings of globalization that subjects states to economic competition. In addition, they have highlighted the role of particular actors, the lawyers who serve asset holders – be they financial firms, tech giants who thrive on data-mining, or those staking out property rights in human genetic material – in changing the shape of legal entitlements to favor their clients. These are crucial contributions, and one of their defining features is their wide scope of applicability: the analyses deal with topics ranging from contract, property, and bankruptcy through intellectual property, trade law, and immigration, covering the gamut of legal arrangements underpinning modern capitalism.

This article utilizes the analytical toolkit that law and political economy has begun to exploit in explaining the rise of inequality and its degradation of politics, but it advances in a different mode of analysis. Where they gather evidence of the role of law in deepening inequality across an expansive and expandable range of topics, this article begins from one key issue – the law of money – and follows the chain of its impact throughout the system. The law of money is the core of valuation in market societies, and thus, it is not simply one example among many. Instead, it is the place where design decisions tend to have the largest ripple effects on economic activity writ large, from production all the way through distribution. These design decisions are political to the core, but have been increasingly handled in low-visibility politics addressing seemingly arcane legal rules. The law of money is the beginning of a long set of chain reactions: ostensibly mundane rules on who can create money-denominated claims and on what terms create a particular type of financial industry, with a deep reliance on the support of central banks; the valuation of money claims generates a special set of incentives for money managers, most importantly those who manage large institutional investors; institutional investors, in turn, increasingly determine the incentive structure for corporate management beyond the financial industry – bypassing completely the possible desires of their ultimate beneficiaries. In essence, the law of money functions as industrial policy, pushing societal efforts in some directions and neglecting others. The effect has been heightened and accelerating inequality.

The ambition of this article is to explain the way money functions as the core of valuation, and the way that the design of the money system has pointed, for the last four decades, towards concentration of wealth. Finally, it suggests that the law of money may be the most productive place to direct reformist energies for those interested in battling inequality and revitalizing democracy.

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