

Georgetown University Law Center

Seminar: Law and Political Economy

Spring, 2022

Syllabus of March 3, 2022, (updates schedule, finalizes readings)

Professor Brishen Rogers

Key Logistics:

Professor's contact info: br553@georgetown.edu

Overview: This seminar introduces students to the field of “Law and Political Economy” (LPE) and explores current topics in LPE scholarship. LPE scholars are a diverse group whose work cuts across subject areas and methodologies. Nevertheless, LPE scholars tend to hold that “the economy” and “politics” are deeply interdependent—and yet that much legal doctrine, legal scholarship, and legal discourse denies that interdependence. Many LPE scholars also seek to understanding the relationship among axes of social inequality including race, class, gender, and nationality, and to envision more democratic and inclusive legal and political-economic orders.

The first part of the course will provide general introduction to LPE. We will begin by reading several law review articles articulating what LPE is and that lay out major themes within LPE research. We will then situate LPE within past bodies of legal theory including legal realism, critical legal studies, and critical race theory. In Spring 2022, the second part of the course will address at least two current topics in LPE research. First, we will study classical and contemporary theories of the relationship between law and capitalism as a social and economic order. Our goal there will be to shed additional light on how law constitutes the political-economy, and how political-economic forces in turn shape law. Second, we will explore the law and political economy of *labor*, broadly defined to include forms of work that are free and unfree, paid and unpaid, and national and global.

Assigned readings

Note, Jan. 10: Links to the assigned readings for each week, and some notes from me, can be found on the course site under “assignments.”

Unit 1: Foundations

Class 1, January 18: Introduction—What is LPE?

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), entire article

Angela Harris & James J. Varellas, *Law and Political Economy in a Time of Accelerating Crises*, 1 J.L. & POL. ECON. 1 (2020), pp. 1-2, 6-12.

Class 2, January 25: Critical Legal Studies as a Precursor to LPE

Karl E. Klare, *Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law*, 4 INDUSTRIAL RELATIONS LAW JOURNAL 450 (1981), read pp. 450-475 and 480-82.

Nate Holdren and Eric Tucker, *Marxist Theories of Law Past and Present*, 45 LAW & SOCIAL INQUIRY 1142 (2020) — read pp. 1142-1152

Emporium Capwell v. Western Addition Community Organization, 420 U.S. 50 (1975).
See the course website for additional details on how to prepare this case.

Class 3, February 1: Critical Race Theory as a Precursor to LPE

Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988)

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Unit 2: Capitalism and the Law

Class 4, February 8: Defining “Capitalism”

Destin Jenkins and Justin Leroy, *Introduction: The Old History of Capitalism*, in Jenkins and Leroy, eds., HISTORIES OF RACIAL CAPITALISM, pp. 1-15 (2021)

Nancy Fraser, *Beyond Marx’s Hidden Abode: For An Expanded Conception of Capitalism*, *New Left Review*, (March-April 2014)

Creative Destruction, Wikipedia (Jan. 10, 2021), PDF, pp 1 (intro), 4-5 (Schumpeter)

Wolfgang Streeck, *Taking Capitalism Seriously: Towards an Institutionalist Approach to Contemporary Political Economy*, 9 SOCIO-ECON. REV. 137 (2011) — pp. 148-156 only

Class 5, Feb. 15: Weber and Polanyi on Law and Capitalist Development

David Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972 WISC. L. REV. 720 (1972)

Fred Block, *Polanyi's Double Movement and the Reconstruction of Critical Theory*, 38 PAPERS IN POLITICAL ECONOMY 1 (2008)

[GULC has no classes on Feb. 22]

Class 6, March 1: “Informational” Capitalism

Amy Kapczynski, *The Law of Informational Capitalism*, 129 YALE L. J. 1471 (2020)

Herman Mark Schwartz, *Mo' Patents, Mo' Problems: Corporate Strategy, Structure, and Profitability in America's Political Economy* in Hacker et al, eds., *THE AMERICAN POLITICAL ECONOMY: POLITICS, MARKETS AND POWER* (2021)

Class 7, March 8: Global Capitalism and Law

NTINA TZOUVALA, *CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW* (2020) (selections) (Chapter 1: The Standard of Civilisation in International Law)

QUINN SLOBODIAN, *GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM* (2018) (Introduction: Thinking in World Orders)

Carlos Vela-Martinez: *World Systems Theory* (available online)

[GULC Spring break, week of March 14]

Unit 3: LPE and Work

Class 8, March 22: Antimonopoly and Work

K. Sabeel Rahman, *Curbing the New Corporate Power*, BOSTON REVIEW, May 4, 2015

Hiba Hafiz, *Labor Antitrust's Paradox*, 86 U. CHI. L. REV. 381 (2020)

Sanjukta Paul, *Fissuring and the Firm Exception*, 82 LAW & CONTEMP. PROBS. 65 (2019)

Class 9, March 29: Data, Technology, and Work

BRISHEN ROGERS, *DATA AND DEMOCRACY AT WORK: ADVANCED INFORMATION TECHNOLOGIES, LABOR LAW, AND THE NEW WORKING CLASS*, (forthcoming, The MIT Press, 2022)

I've uploaded the full manuscript. Please read the intro, Chapter 1, and Chapter 2. Then read either Chapter 3, Chapter 4, or Chapter 5. Focus on the intro and first two chapters, and read the additional chapter carefully enough that you can grasp its main argument.

I'd also like to run class a little differently this time. Let's treat it like an academic talk: I'll outline the book's argument for about 30 minutes, likely with a PowerPoint, and then open it up for questions. So please come prepared with a few questions about my overall argument, how it fits into the other materials we've read this semester, etc. And in preparing those questions or comments, please feel free to push back on my arguments!

Class 10, April 5: The Law and Political Economy of Care

Dorothy E. Roberts, *Welfare Reform and Economic Freedom: Low-Income Mothers' Decisions about Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029 (2004)

Gabriel Winant, *A Place to Die: Nursing Home Abuse and the Political Economy of the 1970s*, 105 JOURNAL OF AMERICAN HISTORY 96, (2018)

Nah Zatz, *Care Work In & Beyond the Labor Market*, LPE BLOG, December 6, 2019,

Class 11, April 12: Ecology, Political Economy, and Law

Nancy Fraser, *Climates of Capital*, NEW LEFT REVIEW, (Jan-Feb 2021)

Kate Aronoff, Alyssa Battistoni, Daniel Aldana Cohen, and Thea Riofrancos, *Strike for Sunshine*, THE NATION, November 20, 2019, at <https://www.thenation.com/article/archive/green-newdeal-labor-movement/>

Angela Harris, *Tracking Extraction*, LPE BLOG, February 24, 2020, at <https://lpeproject.org/blog/tracking-extraction/>

Unit 4: Conclusion

Class 12, April 19 – Paper Presentations

Class 13, April 26 – Finance and political economy.

KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW LAW CREATES WEALTH AND INEQUALITY* (2019) (selections)

GRETA KRIPPENER, *CAPITALIZING ON CRISIS: THE POLITICAL ORIGINS OF THE RISE OF FINANCE* (2011) (selections)