

## Law and Political Economy, Spring 2022

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### Syllabus

#### Week 1: Introduction to law and political economy

##### Class 1: Introduction and overview: productivity, power, and inequality

Our World in Data *Life Expectancy of World Population 1800, 1950, 2012*. (session 1 supp 1-2).

CDC, *Life expectancy at birth, age 65, and age 75, by sex, race, and Hispanic origin, US, selected years, 1900-2018*. (session 1 supp. 3-5).

Thomas Piketty, *Capital in the 21<sup>st</sup> Century*, Figures 1.1, 8.6, 9.2, 9.3, 9.4. (session 1 supp. 6-10).

World Bank, *Taking on Inequality* (2016), Figure 0.13. (session 1 supp. 11).

World Bank, *Fair Progress* (2018), Figure 0.11. (session 1 supp. 12).

Bivens and Mishel, *Raising America's Pay*, Introduction, key findings, and figures A, B, and D. (session 1 supp. 13-18).

Lakner and Milanovic, *Global Income Distribution: From the Fall of the Berlin Wall to the Great Recession*. World Bank Econ. Rev. 2015 1-30, 12-15, 18-19, 21-23. (session 1 supp. 19-28).

Smith, *The Wealth of Nations, Book I Chapter II: Of the Principle that Gives Occasion to the Division of Labor* (session 1 supp. 29-31).

Marx, *Capital I*, Chapter 31, 33, selections. (session 1 supp. 32-36).

Wood, *The Origin of Capitalism: The Long View*, 11-12, 25-26, 52-53, (session 1 supp. 38-47)

Letter from Emanuel Downing to John Winthrop, 1645. (session 1 supp. 48).

Fields, *Slavery, Race, and Ideology* New Left Rev. 101-108, 109-110, 114. (session 1 supp. 49-59).

##### Class 2: What's law got to do with it?

Acemoglu and Robinson, *Why Nations Fail*, 73-83, 198-199. (session 2 supp pages 1-14)

Grewal, *The Legal Constitution of Capitalism*, in *Boushey et al, After Piketty*. Pages 471-486 (ignore struck paragraphs); optional after 486. (session 2 supp pages 15-34 (30-34 optional)

Pistor, *Code of Capital* introduction. Pages 1-20, 29-32. Page 2, starting midway with "Thirty years later..." (session 2 supp 36-54)

Benkler, *Structure and Legitimation in Capitalism I*, (session 2 supp pp 66-95)

**Week 2: Agrarian anti-capitalism, racialized class structure, and paths not taken in the 19th century**

**Class 3. De-commodifying land, labor, and money: Homesteading, Cooperativism, and Populism**

Disposition of the Public Domain, (session 3 supp 1.)

Note: Distributive Liberty 107 Harv. L. Rev. 859, 868-875 (session 3 supp 2-9)

The Homestead Act (session 3 supp 10-11)

H.R. 141 Moore's Bill, 1850 (session 3 supp 12-17)

Speech of Galusha Grow, Cong. Globe 1852 427-428 (session 3 supp 18-19)

Lawrence Goodwyn, The Populist Moment, 55-62, 116-112 (session 3 supp 20-30)

Bensel, Yankee Leviathan, 265-271, 285-288 (session 3 supp 31-39).

The Ocala Platform, December 1890 (session 3 supp. 40)

Tracy, Appendix on the Sub-Treasury Plan, in Davis, A Political Revelation, 298-302 (session 3 supp 42-44)

Thelen, Attention Shoppers: excerpt on Cooperatives in the US (session 3 supp 45-52).

**Class 4: Legal Foundations of racialized class structure in the post-Reconstruction South**

Du Bois, Black Reconstruction, p. 196-197, 220-221, 338, 571-576, 620-621 (session 4 supp 1-6).

Bensel, Yankee Leviathan, 348-350 (session 4 supp 7-9)

Woodman, Post Civil War Southern agriculture and the law 321-337 (session 4 supp. 10-26).

Steltzner, Labor injunction and debt peonage, 42 J. of Post-Keynesian Econ. 126-132 (session 4 supp 27-33)

Sawers, Race and Property After the Civil War: Creating the Right to Exclude, 87 Miss. L. J. 703, **Required:** 741-744, 751-756; **Optional:** 744-751 (the details), 756-763. (session 4 supp 34-56).

Mitchener and McLean, US Regional Growth 1880-1980, Table 1. (session 4 supp. 57)

**Optional:** Selections from Ransom and Sutch, Debt Peonage in the Cotton South 32 J. Econ. Hist., Sep., 649-652 (session 4 supp. 58-82)

**Week 3: Law and Power in the Second Industrial Divide**

**Class 5: Law and the emergence of Big Business**

Horwitz, Transformation of American Law 1870-1960, 56-60,70-106 (session 5 supp 1-24)

Friedman, A History of American Law, 422-429 (session 5 supp 25-29)

Boyd, *Just Price, Public Utility, and the Long History of Economic Regulation in the United States* 35 Yale J. Reg. 721, 750-768 (2018). (session 5 supp 30-51)

*Munn v. Illinois*, 94 U.S. 113 (1876). (session 5 supp 52-61)

*Wabash, St. Louis and Pacific Railway Company v. Illinois*, 118 US 557 (1886) (session 5 supp 62-71)

### **Class 6: Judges against workers**

Witt, The Accidental Republic, 25-33 (session 6 supp 1-9)

Forbath, Law and the Shaping of the American Labor Movement, 102 Harv. L. Rev. 1109, 1132-1178. (session 6 supp 10-57)

Wertheimer, We Were There: The story of working women in America, 200-204, 206-207, 209-217, 227-231, 267-274, 281-287 (session 6 supp 58-93)

Optional: [The Brandeis Brief in \*Muller v. Oregon\*](#)

Optional: Klarman, The Judges vs. the Unions: The Development of British Labor Law, 1867-1913, 75 Va L. Rev. 1487, 1487-1488, 1498-1509, 1512-1528, 1533-1535. (session 6 supp 94-127).

### **Week 4: The first decades of the Twentieth Century**

#### **Class 7: Legal Theory in Practice: Progressive assaults on judicially-imposed laissez faire**

Holmes, The Path of the Law, (session 7 supp, 1-9)

*Lochner v. New York* (session 7 supp. 10-12)

Hohfeld, *Some Fundamental Legal Conceptions as applied to judicial reasoning* (session 7 supp 7-20)

Morris Cohen, *Property and Sovereignty* (session 7 supp 21-24)

Hale, *Coercion and Distribution in a supposedly non-coercive state* (session 7 supp 25-30)

Felix Cohen, Transcendental Nonsense and the functional approach (session 7 supp 31-49).

#### **Class 8: The Great Migration and the legal structuring of racialized class in the industrial Northeast and Midwest**

Dawson, Blacks In and Out of the Left, 12-28 (session 8 supp 1-17)

Du Bois, The Migration of Negroes, *The Crisis* June 1917 (session 8 supp 18-21)

Fligstein, The Transformation of Southern Agriculture and the Migration of Blacks and Whites, 1930-1940, 17 International Migration Rev. 268, 269-270, 272-280 (session 8 supp 22-33)

Hirt, Zoned in the USA 116-121, 121-127 opt., 127-132 req. (session 8 supp 34-39 required; 39-44 optional; 44-49 required)

Brooks and Rose, Saving the Neighborhood. (session 8 supp 50-61)

Rothstein, Color of Law, 64-67, 83-91 (session 8 supp 62-70)

Note on racial disparities in wealth and homeownership (session 8 supp 71-74)

Katznelson New Deal, Raw Deal (session 8 supp 75)

**Class 9:** Approaches to thinking about race and capitalism

Hall, *Race, articulation, and societies structured in dominance*, Stuart Hall Reader ch. 12, 305-308, 322-323 (session 9 supp. 1-6)

**Review your notes** Fields, *Slavery, Race, and Ideology* **Session 1** supp. 49-59;

**Review your notes** Du Bois, excerpts from *Black Reconstruction*, **Session 4** supp 1-6;

Cedric Robinson, *Black Marxism* 1-5, 21-28, 39-41, 71-99, 101-120 (session 9 supp., 7-72, please note the long segments I mark as "skim" and what to skim for)

West, *The Cornell West Reader* 259-264 (session 9 supp 73-78) (optional, because "superseded" by)

West, *Toward a Socialist Theory of Race* (session 9 supp 79-84)

Harris, *Whiteness as Property* 106 Harv. L. Rev. 1707 1715-1725, 1737-1745 (session 9 supp 85-104).

**Weeks 5-9. Law and Political Economy from the Great Inflation to the Great Recession.**

**Class 10: The Great Compression: 1940~1973**

**Lecture:** Federal law and the building blocks of a new middle class, mangled by Jim Crow

**Week 6:**

**Class 11: Introduction and overview of neoliberal capitalism**

Sugrue, *The Origins of Urban Crisis*, 127-134, 143-150 (session 11 supp 1-16)

Vogel, *Regulatory Roots of Inequality in America*, 1 J. L&Pol.Ec (2021) (session 11 supp 17-30)

Rahman and Thelen, *The Role of Law in American Political Economy* 78-102 (session 11 supp 31-55)

Britton-Purdy, Grewal, Kapczynski, and Rahman, *Building a Law-and-Political-Economy Framework*, 129 Y.L.J. 1784, 1794-1806 (session 11 supp 56-68)

**Class 12: From the War on Poverty to the War on Crime**

Roberts, *Abolition Constitutionalism* 133 Harv. L. Rev 1, 12-35, (2019) (session 12 supp 1-24)

Hinton, *From the War on Poverty to the War on Crime* 1-26, 49-79, 87-95 (session 12 supp 25-50 required, 51-90 optional)

Usmani and Clegg, *The Economic Origins of Mass Incarceration* Catalyst 2019 (session 12 supp 91-121)

Waquant, *Punishing the Poor* 1-17 (2009) (session 12 supp 122-136)

Week 7

**Class 13: The care economy in the transition to post-industrial society.**

Fraser, *Behind Marx's Hidden Abode*, *New Left Rev.* 86 (2014) ( "Background Conditions") (session 13 supp 1-4)

Baker and Cooke, *The Bronx Slave Market*, *The Crisis*, 1935, p. 330. (session 13 supp 5)

Jones, *An end to the neglect of the problems of the Negro woman!* *Pol. Aff.* 1949, 10-12 (session 13 supp 6-7)

Wacquant, *Punishing the Poor*, 48-58. (Rolling back the charitable state). (session 13 supp 10-20)

Weill, *Enforcing Labor Practices in Fissured Workplaces*, *The Econ. & Labor Relations Rev.* 2011, 34-37 (session 13 supp 21-24)

Folbre, *Valuing Children*, chapter 10, *who should pay for the kids?* pp 178-191. (session 13 supp 25-38)

Fraser, *Fortunes of Feminism*, Chapter 9, *Feminism, Capitalism, and the Cunning of History* 214-221 (session 13 supp 39-46)

Hatton, *The Temp Economy: From Kelly Girls to Permatemps in Postwar America*  
Required: 5-9; 30-51. (session 13 supp 47-51; 59-80); (Remainder, optional)

Benkler *Structure and Legitimation Part II*, pp. 34-37 (session 13 supp 93-96)

**Class 14: Organized Business and the Assault on Labor.**

Powell, *Attack on American Free Enterprise System* (1971) (session 14 supp. 1-35) (skim or read to get a closer sense of the breadth and ambition of the plan).

Hacker & Pierson, *Winner Take All Politics*, *Politics & Society* 38(2) 169-197 (2010) (session 14 supp. 36-64) (this is the primary reading we will spend time on in class).

Hacker & Pierson *Winner Take All Politics* Ch. 5 (book chapter, until "Top of the World") (session 14 supp. 65-79).

Week 8:

**Class 15: Banking deregulation and access to credit**

Krippner, *Capitalizing on Crisis*, Session 58-85 (session 15 supp 1-14 (double pages)).

Mehrsa Baradaran, How the Other Half Banks, 73-77, 90-94, 109-137, 210-219 (session 15 supp 15-63 (skim 54-63 to get a feel for the postal banking proposal, rather than details).

Executive Summary of Pay-Day & similar high interest short term loans, CFPB rules (skim pp. 64-70, look more closely at section on ability-to-repay and principal step-down).

**Class 16: Banking policy and the racial wealth gap.**

Mehrsa Baradaran, The Color of Money: Black Banks and the racial wealth gap 196-205, 222-246, 249-277 (session 16 supp. 1-64).

Collins, Hamilton, Asante-Muhammad, & Hoxie, Ten solutions to bridge the racial wealth gap: excerpts on Baby Bonds and Postal banking (session 16 supp 65-68).

Week 9:

**Class 17: Financialization.**

Krippner, Capitalizing on Crisis, 50-57, 86-105. 140-145. (session 17 supp. 1-17 (double pages))

Foroohar; Makers and Takers: How Wall Street destroyed Main Street 121-143 (session 17 supp. 18-29 (double pages))

Philippon, The Great Reversal, 207-222 (session 17 supp. 30-45 (note brief optional/skim section))

Liu & Sinha, SPIVA U.S. Scorecard, Year-end 2020 (session 17 supp. 46-48).

**Class 18: Executive compensation and the rise of superstar salaries.**

Bebchuk and Fried, Executive Pay as an Agency Problem, J. Econ. Persp. 17:71-92, 71-83 required, 83-89 opt. (session 18 supp. 1-13 required, 13-19 optional)

Frydman and Saks, Executive Compensation, A New View, 23 Rev. of Fin. Stud. 2107-2111, 2115, 2128-2132 (session 18 supp. 20-27)

Benkler, A Political Economy of Oligarchy, (Session 18 supp. 28-58.)

**Week 10:**

**Class 19: Monetary policy, full employment, and inflation.**

Forstater, From Civil Rights to Economic Security: Bayard Rustin and the Africa-American Struggle for Full Employment 1945-1978, 36 Int'l J. Pol. Econ 63, 63-72 (session 19 supp 1-10)

Baker, Rawlins, and Stein, The Full Employment Mandate of the Federal Reserve (CEPR, Fed Up, CPD) 5-23 (session 19 supp. pp. 11-25 optional; pp. 26-31 required, (read to understand the stakes of Fed appointments and legislative proposals during the Trump presidency)

Furman and Summers, Who's Afraid of Budget Deficits? Foreign Affairs March/April 2019, 82-88, 90-94 (session 19 supp 32-42)

Stephanie Kelton, The Deficit Myth, chapter 2 (session 19 supp. 63-87) (Optional: Chapter 1 supp. pages 43-62).

Kelton, [How do you solve a problem like inflation?](#)

Watch first 45 minutes of: [CEPR Webinar: Inflation Today, with Dean Baker, Jason Furman, and Joseph Stiglitz](#)

Optional: Watch: [The MMT Debate with Dean Baker and Randall Wray](#), Real News May 13 2019 (15 minutes)

### **Class 20**: Antitrust

Khan and Vaheesan, Market Power and Inequality, 11 Harv. L. & Policy Rev. 238-250, 254-256, 265-294 (session 20 supp pp. 1-46)

Khan, The New Brandeis Movement 9 J. European Competition L. and Prac. 131-132 (session 20 supp 47-48)

Henwood, [Why Socialists should distrust antitrust](#) (Jacobin, July 2021)

Read ONE of the pieces by Melamed and and Petit

Melamed and Petit, Before "After Consumer Welfare", (session 20 supp. 50-57) (short, aimed at Wu, not Khan, but outlines the main counterarguments) OR If you really are focused on antitrust, you should read the longer, more detailed argument in:

Melamed and Petit, The Misguided Assault on the Consumer Welfare Standard Rev. of Indust. Org. 54:741-774, 741-770 (much more detailed, including a good outline of the range of New Brandesian and other progressive claims, but longer and harder) (session 20 supp 58-87).

Optional: Philippon, The Great Reversal 20-22, 25-96 (session 20 supp 92-165). If you want to read the whole, it is a very clear explanations of the state of the art on the data and debates, written for a general highly educated and committed but not economics-trained audience. If you do not, **I suggest you read 101-105 (Walmart), 109-114 (Walmart v. Amazon)**, which raises the questions of the potential benefits to poor people associated with what he calls "good concentration," and 75-85, and **look at all the graphs throughout**. I will offer a brief lecture highlighting major insights.

You may instead want to watch [Philippon's 50 minute lecture on the book](#) (minute 2:30-52): it adds elements not in the materials, particularly the comparison with EU, and may be a bit harder to follow than the book, but will take less time.

### **Week 11**:

#### **Class 21**: The Role of Technology in Political Economy

Benkler, Power and Productivity, Allen et Al, The Political Economy of Justice, 35-51 (session 21 supp 1-17)

Cohen, Between Truth and Power, 16-24, 27-28, 62-63, 71-73 (session 21 supp 18-33)

Kapczynski, The Law of Informational Capitalism, 129 YLJ 1460, 1508-1515 (session 21 supp. 44-51)

Rogers, Data and Democracy at Work (excerpts from ch. 3 and 4) (session 21 supp. pp. 52-68)

Rahman and Thelen, Rise of the Platform Business Model forthcoming in *Politics & Society* (session 21 supp. pp 69-84 (skim pp. 78-82))

### **Class 22: Green Growth vs. De-growth: The Case of the Green New Deal**

These readings do not exhaust the range of views about how to respond to the climate challenge; they do not even exhaust the positions within the center-left and left. If you to read these materials over the weekend before class and have materials you would like to share with the other participants, please post these to Canvas no later than Tuesday; and please be kind to each other, don't overload, and offer a paragraph summary of what you posted to guide people's choices about what to read of each other's posts.

House Res. 109: Recognizing the duty of the Federal Government to create a Green New Deal (session 22 supp. pp. 1-6)

Data for Progress, A Green New Deal: A Progressive Vision for Environmental Sustainability and Economic Stability, (session 22 supp. pp. 7-33)

Stephen Graham, revolutionary reflections: "Green Capitalism": A critical review of the literature (session 22 supp. 34-61)

### **Week 12:**

### **Class 23: Restructuring labor power**

Block and Sachs, Clean Slate for Worker Power 1-8, 22-54 (session 23 supp. 1-42)

Sanders, Corporate Accountability and Democracy (session 23 supp. 43-46)

S. 1082, 115th Cong. 1st Sess. A Bill to provide for the establishment of the United States Employee Ownership Bank, (session 23 supp. 47-55)

Thelen, Varieties of Liberalization, 194-203 (session 23 supp. 56-60)

Optional: Thelen, Varieties of Liberalization: 141-151 (Labor Market Policies in Denmark); 154-175 (the Dutch case and the rise of part time work) (session 23 supp. 61-77).

### **Class 24: Partial decommodification and addressing racialized class structure**

Asante-Muhammad, Collins, Hamilton, and Hoxie: Ten Solutions to Bridge the Racial Wealth Divide 1-5, 9-25 (session 24 supp. 1-29)

powell, Menendian, and Ake, Targeted Universalism, pp 1-37, 42-43 (session 24 supp. 30-69)

Optional: Sitaraman and Alstott, The Public Option, chapters 2, 10. (session 24 supp 65-85).