CRN 55

Law & Political Economy

Annual Meeting of the
Law & Society Association

June 1–4, 2023
San Juan, Puerto Rico

Caribe Hilton
1 C. San Gerónimo
San Juan, 00901, Puerto Rico

ABOUT CRN 55

The Law and Political Economy CRN provides a forum for conversations between legal scholars, social scientists and others at the intersection of law and a variety of contemporary approaches to political economy from across the social sciences and humanities.

The CRN focuses on encouraging the incorporation of a broader range of approaches to political economy into legal and sociolegal scholarship, while also facilitating a deeper engagement with legal rules, institutions and processes by scholars from other disciplines.

@LPE_network

CRN 55 EVENTS

Happy Hour

Friday, June 2: 5:00 PM - 7:00 PM
Scryer Rum and Barrelhouse, 259 Calle Tetuan, San Juan

First drink complimentary for the first 100 attendees.
Co-sponsored by the LPE Project and the LSA LPE CRN.

Business Meeting

Saturday, June 3: 12:00 PM - 12:30 PM
Room: Beach Wing – Conference Center 4

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Schedule

THURSDAY, JUNE 1

8:00 AM - 9:45 AM

Panel: Exploring the Intersections of Law, Religion, and Socio-economic Rights

Beach Wing – San Gerónimo A

Samantha Godwin, Yale Law School
Alaa Hajyahia, Yale University Law School
Chair: Francis Cao, Frankfurt Goethe University
Discussant: Mark Gould, Haverford College

10:00 AM - 11:45 AM

Panel: The Political Economy of Constitutional Rights

Beach Wing – San Gerónimo A

Matias Guiloff, Universidad Diego Portales
Ciara Torres-Spelliscy, Stetson University
Anna Palau Roque, University of Barcelona
Anne-Sophie Bouvy, UCLouvain
Valeria Ruiz Perez, Law Department, London School of Economics
Chair: Ximena Benavides-Reverditto, Yale University
Discussant: Sam Erman, USC Gould School of Law

2:45 PM - 4:30 PM

Panel: LPE and Economic Constitutionalism

Garden Wing – San Cristóbal A

Francis Cao, Frankfurt Goethe University
James Varellas, University of California, Berkeley
Edward Bechard-Torres, Lincoln Alexander School of Law
Ricardo Valenzuela, Universidad Diego Portales, Chile & Non-Presenting Co-Author Rodrigo Cordero, Universidad Diego Portales, Chile
Chair: Mario Schapiro, DIREITO FGV Sao Paulo
Discussant: Poul Kjaer, Copenhagen Business School

Panel: The Political Economy of Adjudication and Dispute Resolution

Wave Wing – 2nd Floor: Ceiba

Can Eken, Durham University
Yulia Khalikova, University of Hamburg
Walker Kahn, University of Wisconsin-Madison
Logan Strother, Purdue University
Jeffrey Stempel, Boyd School of Law, University of Nevada, Las Vegas
Chair & Discussant: Danya Reda, University of Massachusetts, Dartmouth

FRIDAY, JUNE 2

8:00 AM - 9:45 AM

Panel: Empire and American Institutions: How the Outward Projection of US Imperial Power Shaped Domestic American Law and Legal Thought

Beach Wing – Conference Room 5

Sam Erman, USC Gould School of Law
Andrea Katz, Washington University School of Law
Edgar Melgar, Princeton University
Noah Rosenblum, NYU School of Law
Chair: Sam Erman, USC Gould School of Law

10:00 AM - 11:45 AM

Roundtable: Law and Political Economy 101

Beach Wing – San Gerónimo A

Corinne Blalock, Law and Political Economy Project
Raul Carrillo, Law and Political Economy Project
Amy Kapczynski, Yale Law School
Diana Reddy, UC Berkeley
Chair: James Varellas, University of California, Berkeley

Panel: Profiting from Ecocide in the Caribbean

Beach Wing – San Gerónimo B

Tameka Samuels-Jones, York University
Angela Sherwood, Queen Mary University School of Law
Fernando Tormos-Aponte, University of Pittsburgh
David Whyte, University of Liverpool, School of Law & Social Justice
Chair: Jose Atiles, University of Illinois Urbana Champaign

Panel: Race, Class and Gender in Labor and Employment

Beach Wing – San Gerónimo C

Maria Ximena Davila Contreras, University of Texas
Shikha Silliman Bhattacharjee, UC Berkeley
Mason Barnard, Princeton University
Erin E Hatton Hatton, SUNY Buffalo
Chair: John Whitlow, CUNY School of Law
Discussant: Leanna Katz, Faculty of Law, McGill University

12:45 PM - 2:30 PM

Panel: Reimagining Care, Agency, and Rights: Addressing Inequality and Empowerment in Labor and Employment

Beach Wing – San Gerónimo B

Edward van Daalen, McGill University
Leanna Katz, Faculty of Law, McGill University & Non-Presenting Co-Author Rebecca Horwitz-Willis, Harvard University
Andjela Kaur, Penn State University
Chair: Erin E Hatton Hatton, SUNY Buffalo
Discussant: Ying Wu, Shanghai Jiao Tong University KoGuan Law School

2:45 PM - 4:45 PM

Panel: Rethinking Care and Social Reproduction: Perspectives from the Global South

Beach Wing – Conference Center 4

Dipika Jain, Jindal Global Law School
Isabel Jaramillo, Facultad de Derecho, Universidad de los Andes
Saptarshi Mandal, Kent Law School - University of Kent
Prabha Kotiswaran, King's College London
Felipe Aguila, Universidad Diego Portales, Chile & Non-Presenting Co-Authors Mayra Feddersen, Universidad Adolfo Ibanez, Santiago, Chile; Javier Wilenmann, Universidad Adolfo Ibanez
Chair: Prabha Kotiswaran, King's College London
Discussant: Adelle Blackett, McGill University

Panel: The Law and Political Economy of Intellectual Property Rights

Beach Wing – San Gerónimo A

Shubha Ghosh, Syracuse University

Caoimhe Ring, University of Oxford
Hannibal Travis, Florida International University College of Law
Ulia Gosart, San José State University School of Information
Chair: Klaas Eller, University of Amsterdam
Discussant: Amy Kapczynski, Yale Law School

4:45 PM - 6:30 PM

Panel: The Law and Political Economy of Digital Platforms and Technological Change

Beach Wing – San Gerónimo A

Isabella Mariani, University of California, Berkeley, School of Law
Maroussia Lévesque, Harvard Law School
Kai-Fang Lin, Stanford Law School
Joanne Cheung, Stanford University, School of Engineering
Beatriz Kira, University College London, School of Public Policy
Chair: Dimitri Van Den Meerssche, Department of Law, Queen Mary University of London
Discussant: Veena Dubal, University of California, Hastings

Panel: The Political Economy of Health Policy and Law

Beach Wing – San Gerónimo B

Ximena Benavides-Reverditto, Yale University
Mariana Fontes, University of São Paulo
Jason Jackson, MIT & Non-Presenting Co-Author Aziza Ahmed, BU School of Law
Marc Rodwin, Suffolk University Law School
Shruti Iyer, Centre for Socio-Legal Studies, University of Oxford
Chair & Discussant: Natalia Pires de Vasconcelos, University of Georgia

5:00 PM - 7:00 PM

Happy Hour (Co-Sponsored with LPE Project)

Scryer Rum and Barrelhouse
259 Calle Tetuan, San Juan, PR 00901

SATURDAY, JUNE 3

8:00 AM - 9:45 AM

Panel: Capitalism Without Borders: International Trade, Global Value Chains and Economic Development

Beach Wing – Conference Center 5

Klaas Eller, University of Amsterdam
Kim Vu-Dinh, Mitchell Hamline School of Law
Jaakko Salminen, Lund University
Poul Kjaer, Copenhagen Business School
Mario Schapiro, DIREITO FGV Sao Paulo
Chair: Ana Carolina Dall'Agnol, University of Oxford
Discussant: Brian Broughman, Vanderbilt University Law School

Roundtable: Conceptualizing Law and Legal Institutions within Terrains of Struggle

Beach Wing – San Gerónimo B

Amna Akbar, The Ohio State University, Moritz College of Law
Angela Harris, University of California, Davis
K-Sue Park, Georgetown University Law
John Whitlow, CUNY School of Law
Angelica Chazaro, University of Washington School of Law
Chair: Veena Dubal, University of California, Hastings

Panel: Corporations and their Shareholders (Co-sponsored with CRN 46)

Gran Salón Los Rosales (parking garage): E

Kevin Douglas, Michigan State University College of Law
Urska Velikonja, Georgetown University Law Center
Lenore Palladino, University of Massachusetts Amherst
Eric Chaffee, The University of Toledo College of Law
Chair & Discussant: Josephine (J.S.) Nelson, Harvard Law School

Panel: The Political Economy of Tax Law

(Co-Sponsored with CRN 31)

Beach Wing – San Gerónimo A

Andrew Granato, Yale University
Ajay Mehrotra, Northwestern University & American Bar Foundation
Ian Murray, European University Institute
Chair: Ajay Mehrotra, Northwestern University & American Bar Foundation
Discussant: Omri Marian, University of California, Irvine School of Law

10:00 AM - 11:45 AM

Panel: The Law and Political Economy of Environmental and Natural Resources Regulation and Litigation (Co-Sponsored with CRN 36)

Beach Wing – San Gerónimo A

Ana Carolina Dall'Agnol, University of Oxford
Ying Xia, University of Hong Kong & Yueduan Wang, Harvard Law School
Madison Condon, Boston University School of Law
Ana Braconnier De León, Center for Advanced Studies and Research in Social Anthropology (CIESAS)
Christine Schwobel-Patel, University of Warwick
Chair & Discussant: Matias Guiloff, Universidad Diego Portales

12:00 PM - 12:30 PM

CRN55 Law and Political Economy Business Meeting

Beach Wing – Conference Center 4

12:45 PM - 2:30 PM

Roundtable: Global Data Law & Justice

Beach Wing – Conference Center 4

Angelina Fisher, New York University
Benedict Kingsbury, New York University
Thomas Streinz, NYU Law - Guarini Global Law & Tech
Dimitri Van Den Meerssche, Dept. of Law, Queen Mary University of London
Jennifer Raso, McGill University Faculty of Law
Chair: Fleur Johns, UNSW Sydney

Panel: The Domestic Work of International Criminal Justice

Gran Salón Los Rosales (parking garage): Garita

Mattia Pinto, University of York
Leila Ullrich, University of Oxford
Franka Pues, King's College London
Aaron Fichtelberg, University of Delaware
Nicola Palmer, King's College London
Jessica Stanton, Temple University
Chair: Randle DeFalco, University of Hawai'i at Mānoa William S. Richardson School of Law
Discussant: Sara Kendall, University of Kent

Panel: The Law and Political Economy of Colonialism, Racism and Nationalism

Room: Beach Wing – San Gerónimo A

Ying Wu, Shanghai Jiao Tong University KoGuan Law School
Martha Mahoney, University of Miami School of Law
Leo Yu, Southern Methodist University
Dania Thomas, University of Glasgow
Arwa Awan, University of Chicago
Chair: Joanne Cheung, Stanford University, School of Engineering
Discussant: Angela Harris, University of California, Davis

Author Meets Reader (AMR) Session : Translating Food Sovereignty: Cultivating Justice in an Age of Transnational Governance

Beach Wing – Conference Center 5

Author: Matthew Canfield, Law Faculty, Leiden University
Chair: Amy Cohen, UNSW
Readers: Rosemary Coombe, York University
Nadia Lambek, Faculty of Law. Western University

Luis Eslava, University of Kent

2:45 PM - 4:30 PM

Panel: How Economic Power Shapes Legal Structures, and Vice Versa

Garden Wing – San Cristóbal F

Kathryn Sabbeth, UNC School of Law
Brian Highsmith, Princeton University
Anna Reosti, American Bar Foundation
Sandeep Dhaliwal, NYU School of Law
Shai Karp, Northwestern University
Chair & Discussant: Shai Karp, Northwestern University

Panel: LPE Approaches to Economy, Society, and Trade (Co-Sponsored with CRN 28)

Beach Wing – San Gerónimo A

Nketiah Berko, Yale Law School
Janka Deli, Stanford Law School
Faisal Chaudhry, University of Dayton
Chair: Caoimhe Ring, University of Oxford
Discussant: Kim Vu-Dinh, Mitchell Hamline School of Law

4:45 PM - 6:30 PM

Panel: Entrepreneurship and New Firm Governance

Beach Wing – Conference Center 7

Anat Beck, CWRU Law
Mark Suchman, Brown University
Brian Broughman, Vanderbilt University Law School
Chair: Mark Suchman, Brown University
Discussant: Gordon Smith, Brigham Young University

SUNDAY, JUNE 4

8:00 AM - 9:45 AM

Panel: LPE and State Capacity

Beach Wing – San Gerónimo A

Mark Gould, Haverford College
Fernando Loayza, Yale Law School & Non-Presenting Co-Author Samira Mathias, Jindal Global Law School
Raquel Pimenta, FGV - Getulio Vargas Foundation Law School Sao Paulo & Non-Presenting Co-Author David Trubek, University of Wisconsin
Jonathan Klaaren, University of the Witwatersrand, Johannesburg
Haozhou Lin, Shanghai Jiao Tong University KoGuan Law School
Chair: Mariana Fontes, University of São Paulo
Discussant: James Varellas, University of California, Berkeley

Panel: Race, Empire, Capitalism and the Constitution (Co-Sponsored with CRN 23)

Gran Salón Los Rosales (parking garage): Garita

Tom Frost, Leicester Law School, University of Leicester, UK
Farnush Ghadery, London South Bank University
Mazen Masri, City University London
Tanzil Chowdhury, Department of Law, Queen Mary University of London
Chair: Tshepo Madlingozi, Centre for Applied Studies, University of Witwatersrand
Discussant: Vidya Kumar, SOAS Law School

10:00 AM - 11:45 AM

Panel: Elite Networks in Law and Political Economy

Beach Wing – San Gerónimo A

Zachary Krislov, Yale Law School
Kate Conlow, University of Iowa College of Law
Patrick Long, Temple University Law and Public Policy Scholar
Ayelet Carmeli, Massachusetts Institute of Technology
Umberto Nizza, University of Verona

Chair: James Varellas, University of California, Berkeley
Discussant: Fabio de Sa e Silva, University of Oklahoma

Roundtable: Legal Production of Racial Capitalism

Gran Salón Los Rosales (parking garage): Garita

Karen Engle, University of Texas School of Law
Jennifer Gordon, Fordham University School of Law
Vanja Hamzic, SOAS University of London
Athena Mutua, SUNY, Buffalo
Chair: Vasuki Nesiah, The Gallatin School, NYU

LAW & POLITICAL ECONOMY INITIATIVES

Association for Promotion of Political Economy & Law (APPEAL)

Since 2013, the Association for Promotion of Political Economy & Law (APPEAL) has organized workshops and other activities exploring the ideology and structure of law, economy, money, and power at the local, national, and international levels. Our events especially build LPE connections with heterodox economists and organizations as well as with policy experts. Our wide-ranging online discussion group, What is Capitalism? is open to all. We organize a collaborative interdisciplinary summer academy for graduate students, recently in Rome and the UK, as well as an LPE stream of the EAEPE (European Association for Evolutionary Political Economy). For more information visit www.politicaleconomylaw.org or contact appeal@politicaleconomylaw.org

ClassCrits

Founded in 2007, ClassCrits is a community of left legal scholars interested in markets, economic justice, and class in a broad sense (including Weberian and Marxian meanings of the word), whose work is friendly to and/or builds on critical legal studies, critical race theory, and feminist legal theory traditions. ClassCrits produces the *Journal of Law and Political Economy (JLPE)*, organizes a major annual conference featuring activists, scholarly presentations, and works in progress sessions for emerging scholars. Please go to www.classcrits.org for more information or contact classcrits@classcrits.org

The Law and Political Economy Project (LPE Project)

The Law and Political Economy Project brings together scholars, practitioners, and students working to develop innovative intellectual, pedagogical, and political interventions to advance the study of political economy and law. Visit lpeproject.org to access a variety of materials, including video recordings of the panels and presentations, the new online Anti-Monopoly and Regulated Industries Academy, and the LPE Blog at www.lpeproject.org/blog.

The Journal of Law and Political Economy (JLPE)

The *Journal of Law and Political Economy* is a peer-reviewed journal that seeks to promote multi- and interdisciplinary analyses of the mutually constitutive interactions among law, society, institutions, and politics. Visit www.escholarship.org/uc/lawandpoliticaleconomy to learn more about *JLPE*, including how to submit your work, and to access all of its contents free of charge.

The Program on Law and Political Economy at Harvard Law School

The Program on Law and Political Economy at Harvard Law School is designed to foster a vibrant intellectual community of students and faculty, and to train students and entry-level academics to think about political economy as an integral part of law. Visit www.lpe.law.harvard.edu to learn more about the project.

Law & Political Economy in Europe

LPE in Europe is a movement of legal scholarship and praxis that seeks to show how law contributes to the social, economic, and ecological crises that we face, and how it could become a tool in addressing them. It will host its first Summer Academy in June 2023 where participants will join an international faculty of leading LPE researchers for a series of writing workshops and roundtable discussions. LPE in Europe is on Twitter @LPE_Europe and includes also a mailing list for events: lpeineurope@gmail.com.

Law & Political Economy in Latin America

The Law & Political Economy Cluster (NUDEP) at Fundacao Getulio Vargas (FGV), and the Law & Public Policy Group (GDPP) at University of Sao Paulo (USP), together with the Collaborative Research Network (CRN 55) on Law and Political Economy (LPE), will host the workshop Law & Political Economy in Latin America in Sao Paulo, 24-25 July 2023. The workshop seeks to support the development of LPE scholarship and practice in Latin America and create connections for further regional activities and collaboration opportunities. Applications to the workshop are now closed. To learn more about other LPE events in opportunities in Latin America contact lpelatam@gmail.com.

ORGANIZERS

Amy Cohen
Temple University
School of Law
ajcohen@temple.edu

Beatriz Kira
University College London
Department of Political Science, School of Public Policy
b.kira@ucl.ac.uk

Francis Cao
Frankfurt Goethe University &
Shanghai Jiao Tong University
francismcao@gmail.com

James Varellas
University of California, Berkeley
Department of Political Science
jvarellas@berkeley.edu

Joanne Cheung
Stanford University
School of Engineering
jkcheung@stanford.edu

Jose Atiles
University of Illinois at Urbana-Champaign
Department of Sociology
jatiles@illinois.edu

Kim Vu-Dinh
Mitchell Hamline School of Law
kim.vudinh@mitchellhamline.edu

Maj Grasten
Copenhagen Business School
Department of Business Humanities and Law
mg.bhl@cbs.dk

Matias Guiloff
Universidad Diego Portales
matias.guiloff@mail.udp.cl

SUPPORTERS

The work of CRN 55 is possible thanks to the generous support of the following organizations:

Association for Promotion of Political Economy & Law (APPEAL)
www.politicaleconomylaw.org

ClassCrits
www.classcrits.org

The Law and Political Economy Project (LPE Project)
www.lpeproject.org

Journal of Law and Political Economy
www.escholarship.org/uc/lawandpoliticaleconomy

Abstracts

THURSDAY, JUNE 1

Panel: Exploring the Intersections of Law, Religion, and Socio-economic Rights

Chair: Francis Cao, Frankfurt Goethe University
Discussant: Mark Gould, Haverford College

This panel brings together four diverse papers that delve into the complex relationships between law, religion, and socio-economic rights in the 21st century. The topics range from the European Court of Human Rights' approach to Islamic veil bans, to the conceptualization of consent as a normative power, the role of law in supporting systemic social movements, and the potential for a grassroots-inspired transnational social security framework. Through critical analysis and interdisciplinary perspectives, the panel seeks to address pressing legal and societal issues while fostering dialogue and reflection on the role of law and legal institutions in promoting social and economic justice. This panel promises thought-provoking and engaging discussions on the future of socio-economic rights and legal reform.

A New Theory of Consent as a Normative Power
Samantha Godwin, Yale Law School

Consent is understood to transform the moral and legal landscape – but how this transformation works is debated. Some theorists maintain that the normative transformation takes place via the right mental state – others, the right performance or speech act. Mental state accounts address the presence or absence of the harms which the respect for consent guards against, but given that only manifestations of mental states are epistemically accessible to others, leave unclear how they can transform the deontic status of others' acts from impermissible to permissible. Performative accounts explain how people learn that their duties towards others have changed, but in cases of miscommunication, imply that people can lose rights even when they had no intention of waiving them. Hybrid models requiring both sets of conditions to be met have both sets of problems. I propose a four-step account of consent: 1. intent to waive a claim-right becomes effective once the consenter 2. performs a willing act that tokens that waiver, but the consentee's correlating duty only becomes a permission when they 3. can witness the act and 4. correctly interpret it. This model of asynchronous transformation from claim-right/duty to waived-right/permission explains long-standing theoretical and practical questions in consent theory.

Contemporary Forms of Separate and unequal? A Theoretical and Legal Inquiry into Islamic Veil Bans in the European Court of Human Rights

Alaa Hajyahia, Yale University Law School

Several European countries have enacted national laws prohibiting the wearing of religious symbols in public spaces. In the wake of these controversial laws, many cases involving Islamic veils have reached the European Court of Human Rights (ECtHR).

Examination of the ECtHR cases reveals an intriguing incongruity between the principles underlying the women's petitions and the reasoning behind the Court's decisions: The women argue that these bans violate multiple rights, such as rights to religion, education, work, and equality. The Court, however, has chosen to focus primarily on whether these laws violate the 'freedom of religion'. It has given virtually no attention to the Muslim women's advocacy for their rights to equality, work, and education; it has been indifferent to the women's opportunity to flourish professionally and personally on their own terms.

The Court's approach rests on two alarming assumptions: first, veils are a sign of religious oppression; and second, when Muslim women insist that they wear the veil of their own free will, they are not being truthful. Such assumptions lead the Court to conclude that, by upholding veil-bans, it is 'liberating' these women from the oppression of their religion and Muslim patriarchy, promoting the principle of gender equality.

When the ECtHR failed to register claims brought by petitioners that spoke to matters of equality, work, and education, it failed to listen. Instead of creating a common space, it excluded. Calling it gender equality, it separated the Muslim woman from public spaces, pushing her back home. Is this a new form of separate and unequal? This paper aims to discuss this question. Further, it aims to isolate the underlying assumptions that shape the Court's decisions, and to offer an alternative. Arguing that Muslim women are morally evaluative humans, deeply informed by their unique cultural experiences, I propose three fundamental shifts-ontological, hermeneutical, and normative.

Panel: The Political Economy of Constitutional Rights

Chair: Ximena Benavides-Reverditto, Yale University
Discussant: Sam Erman, USC Gould School of Law

This panel addresses the political economy of constitutional rights. It concerns how the distribution and enactment of rights are shaped by - and constitutive of - ways in which politics and economics relate and interact in society. The papers discuss the imposition of punishment in prisons by public authorities under unconstitutional conditions; the US 14th Amendment's disqualification clause which bars individuals from office for fomenting an insurrection; the role of trust and legitimacy in debates on core constitutional rights, such as the right to private property; the (biased?) role of legislatures in processes of budget law-making; and how law and public policy construct systemic forms of inequality and exclusion in cities through the provision of essential public goods and services.

A question of trust: The political economy of constitutional drafting in Chile
Matias Guiloff, Universidad Diego Portales

On September 4, 2022, the Chilean people rejected the new Constitution draft elaborated by the Constituent Convention. During the drafting process many debates arose concerning the adequate level of generality of the rules to be included in the Constitution (for instance, whether the right to private property should be established on general terms or listing specific objects that should be therefore regarded as private property, as is the case of pension funds). Similar debates also emerged as to the scope and pace of those changes that these new constitutional rules were intended to bring by, as for instance whether those existing private property rights over water resources should cease to exist immediately or after a transition period had gone by.

Within this context, this paper will argue that at the core of these debates were questions of legitimacy of those processes that would have been entrusted to implement the Constitution, in case that it would have been approved. Indeed, due to this distrust on constitutional implementation processes, such as legislation, administrative rulemaking and even judicial adjudication, a huge pressure was placed on the drafting of the constitutional provisions, which were alternatively charged of being either too broad or too detailed. This critique was rapidly presented as one on the technical quality of these rules, leading to claims that they were deficient. Obviously and ironically, this ultimately undermined the legitimacy of those rules and of the very constitutional draft proposal.

This suggests that democratic constituent processes are bounded by the legitimacy of those institutions that exist at the moment that it takes place. Therefore, constitutional drafters in Chile and elsewhere would do well in considering these legitimacy issues of implementing institutions.

Constitutional Accountability After January 6th: Applying the Disqualification Clause
Ciara Torres-Spelliscy, Stetson University

The U.S. Constitution's 14th Amendment is famous for its equal protection clause, due process clause and birth citizenship clause. Much less well known is the 14th Amendment's disqualification clause which bars individuals from office for fomenting an insurrection. This part of the Constitution has been little used in over 100 years. After January 6th, an open question was whether courts would block participants in the January 6th 2021 insurrection at the U.S. Capitol from holding office. Thus far, the courts have allowed Members of Congress to remain in office. But a court in New Mexico removed Couy Griffin from state office for his participation in January 6th. This paper will explore both lines of cases.

Exploring the influence of the Spanish parliament on the budget law: a territorial perspective
Anna Palau Roque, University of Barcelona

The capacity of legislatures to influence budget laws is an essential part of democracy, and their final approval essential for the correct functioning of the State, the political and economic life (Melado 2007). If the legislature is bypassed in budget decision-making, then fiscal policies are decided by the government on the advice of unelected officials (Lienert 2013). However, the literature has emphasized that the involvement of legislatures in budget issues might be controversial because it can promote increasing deficit and public debt (Jörgen von Hagen 1992). This criticism has also been grounded on the argument that legislators work on the basis of short-term horizons or might try to maximize budget spending for specific electorates (Lienert 2013). In this line, the literature has reported "pork barrel" politics, namely, politicians tendency to favor voters in localities that have supported them in previous elections at the expense of all taxpayers (e.g. Firpo et al, 2015, Fiva and Halse, 2016). Recent published research (Mattos et al. 2021) demonstrates that federal deputies display birthplace favoritism in allocating discretionary resources to municipalities via budgetary amendments (see also Fiva and Halse 2016). On these grounds, this paper explores to what extent statewide and regionalist parties in Spain introduce amendments to the budget bill. We expect that regionalist parties introduce amendments to influence budget sections related to the interests of their regions to maximize what their territories get from the state-budget. However, according to the exposed above, statewide parties might also have interests for maximizing budget allocations to specific constituencies because parties' electorate geographical distribution is not uniform across the territory. The analysis relies on a new and comprehensive database including all the amendments introduced by all the parliamentary groups to the budget law in two different legislatures.

Regulation of infrastructural public goods and services from a LPE perspective

Anne-Sophie Bouvy, UCLouvain

The suggested paper aims to propose a new legal framework for the provision of Belgian local public services from a LPE perspective. Today's legal framework is poor or non-existent, deeply shaped by the neoliberal governance and neoclassical economy of our times (entailing the submission of public services to standards such as efficiency, wealth-maximization, expertise, competition and leading to privatization).

This paper argues that the provision of essential public goods and services represents one of the major ways in which law and public policy construct systemic forms of inequality and exclusion. This paper also draws on the assumption that there are some goods and services defined by conditions of scale, necessity, vulnerability (i.e., that are "infrastructural") and which have to be governed by another approach, based on solidarity, inclusion and democracy.

The LPE analytical framework is used for it is both necessary and relevant, first, to understand the current legal framework of the provision of local publics services (how did we get there?) and, second, to think and build a new legal and institutional framework (where do we go from there?).

This paper will provide an analyse of the provision of local public services (in the energy sector) through a LPE lens, that is the political and socio-economic conditions, facts, circumstances that have shaped it. The paper will then develop reform proposals built around three elements: (i) a structuralist perspective: addressing the underlying economic and political arrangement of the local public services rather than focusing of efficiency, competition and growth. (ii) An institutional perspective: recognizing the constitutive role of law and the centrality of power to provide a new institutional vision, while being realistic about law's limits. (iii) Finally, a democratic and power-building perspective which requires to give (real) power to every stakeholder on an equal basis in the decision-making process.

Unconstitutional Punishment and Political Authority: The Colombian Case

Valeria Ruiz Perez, Law Department, London School of Economics

In 1998, at the peak of the war on drugs and after years of armed conflict, Colombian prisons faced unprecedented rates of population growth, overcrowding, and violence. To overcome these conditions, the Constitutional Court created a strategy of structural intervention: the declaration of an unconstitutional state of affairs ("USA"), that is, the existence of massive, generalized, and systematic violations of fundamental rights in the penal system, which justified wide-ranging judicial intervention in criminal justice policy and prison administration. 25 years later, the situation remains almost unchanged.

This paper presents an alternative reading of the crisis in Colombian prisons, asking what the imposition of punishment under unconstitutional conditions implies in terms of the State's claims to political authority. Rather than framing the issue as a matter of fundamental rights, I link it to broader discussions on the relationship between democracy and the tendency towards mass incarceration, focusing on the core concepts of sovereignty and legitimacy.

First, I analyze the relationship between the USA and challenges to the State's monopoly of the use of force, both inside and outside prisons. I argue that, although prisons are meant to realize and embody the State's claims of sovereign authority, the USA implies an official recognition of the porousness of the walled spaces of legality, reflecting the frailty of the state's authority.

Second, I explore the Court's attempts to bring punishment into the sphere of legitimacy. I analyze the limitations of the Court's strategy and argue that, beyond their questionable practical effects, declarations of USA's in prisons constitute a simultaneous denunciation of the moral illegitimacy of punishment and, paradoxically, a justification of its imposition under unconstitutional conditions, creating an appearance of political inclusion and recognition while preserving the authoritarian exercise of coercion.

Panel: LPE and Economic Constitutionalism

This panel explores the role of economics in constructing the legal ordering

of market societies, both domestically and transnationally. It addresses in particular the co-constitutive relationship between legal rules and the socioeconomic order of a state. Papers discuss how economic constitutions have spurred reforms for corporate law in the Global South; the relationship between concentration of market power and democracy; the role of business associations in the rise of neoliberal legality in Latin America; the constitutional political economy of finance, and how China's economic governance shape transnational legal ordering.

Chair: Mario Schapiro, DIREITO FGV Sao Paulo
Discussant: Poul Kjaer, Copenhagen Business School

Analyzing China's Economic Order: Values, Dialectics, Conflicts
Francis Cao, Frankfurt Goethe University

China is making an alternative economic order, creating a new, pragmatic, decentralized form of economic governance and incorporating private and public international law into the global framework through a network of trade, investment, and governance efforts that encompass agreements, contracts, and trade and investment treaties. At the heart of China's economic order lies an idiosyncratic production regime that mobilizes various constitutional forms in the transnational legal orders. This article explores how the constitutional forms stemming from transnational legal orders, involving the transformation of the global society and the self-subversion of state constitutions, are rendered at face value and instigated the pushback from the emerging market countries, in particular, China. The dynamic of dialectic and conflict is intrinsic to an analysis of China's economic order considering its eventual temporality. It is argued that since the socio-legal approach deals with ordering and dialectics in separate ways, the basis is created for potential future constitutional change from the status quo, engendering conflicts. Further, the article emphasizes the centrality of the constitutive function, the core of the sociology of constitutions framework, and its intimate connection to the Chicago sociology school's notion of ecology. The constitutive/ecological nexus explores how conflicts are generated or degenerated by integrative and symbolic values, the formalization of communication media, the struggle between the establishment and the spontaneous, and the formulation of the international legal complex. Finally, this article relates this sociological theory to the critique on liberalism's public/private distinction and shows how much an ecology theory of international political economy offers an alternative to the perspective of neoliberal global institutions, which emphasizes the centrality of constitutions and courts to create a well-ordered global society.

Developmentalism, Anti-Developmentalism, and the Constitutional Political Economy of Finance
James Varellas, University of California, Berkeley

If Franklin Roosevelt gave an updated version of his Second Bill of Rights speech today, what would he have to say about the regulation of finance? This paper argues that FDR would have a lot to say about our contemporary regime of financial (as opposed to fiscal) dominance of the political economy

and its implications for the economic and social rights that were the focus of his classic 1944 speech. Further, this paper argues that FDR would have had much to contribute to contemporary discussions about the role of finance in channeling the resources of society in the direction of industrial policy and essential infrastructures, from high technology to care and social reproduction. Meredith Woo-Cummings has argued that finance is the "nervous system of the developmental state," but Peter Evans and others have also pointed out that states exist on a continuum between facilitating developmentalism and predation, or what this paper calls "anti-developmentalism." The wager here is that FDR would have called for a financial system that focuses on promoting national development, social resilience, and human flourishing and sharply criticized the current regime that enables widespread extraction and predation by financial elites.

LPE and Economic Constitutionalism: A View from Company Law
Edward Bechard-Torres, Lincoln Alexander School of Law

Much of the "LPE" movement has centered around a renewed challenge to the public/private divide. This project hopes to contribute perspectives from comparative constitutional and company law in the Global South. Countries including South Africa and Colombia exhibit what might be called "economic constitutionalism". This project views a country's economic life as a matter of constitutional concern. Crucially, for constitution drafters, this has meant that areas of "private" and corporate law must be rethought to promote the community's economic aspirations – including substantive equality, the realization of basic needs, curbing private power, and confronting historic injustice.

Scholars have considered the relationship between these ambitious "transformative" constitutions and developments in contract and property law (Klare and Davis, 2010). This paper extends that field of inquiry to corporate law. The presentation develops both empirical and normative claims.

Empirically, I consider how these economic constitutions have spurred reforms for corporate law. I attend to changes in legal doctrine and shifts in legal thought more broadly. I argue that in spite of constitution drafters' aspirations, a promised "transformation" has been stunted by lawyers' commitment to the public/private divide. Normatively, I chart how corporate law might be reshaped by constitutional economic aspirations. I begin from the position that the rules of corporate law have important distributive consequences, and that these dimensions cannot be properly scrutinized if the public/private divide continues to structure lawyers' imagination. Next, I surface the "publicness" of the firm in discussions around corporate purpose and shareholders' interests. Finally, I gesture towards changes that might be made to the internal structure of the corporation – including directors' duties – and contrast these changes to proposals to create new "positive" duties for businesses.

The making of neoliberal legality: The legal imagination of business elites and the social constitutionalization of "free enterprise" in Latin America
Ricardo Valenzuela, Universidad Diego Portales (Chile)

Non-Presenting Co-Author
Rodrigo Cordero, Universidad Diego Portales (Chile)

The free enterprise system is a normative cornerstone of many Latin American political constitutions and a formative principle of neoliberal legality. Despite this, the penetration of this economic category into the shaping of the legal field and conceptions of the rule of law has been scarcely examined. To be sure, lawyers, judges, and legal experts have played an important part in the legal buttressing of the free enterprise model. In this paper, however, we propose to explore the making of neoliberal legality from the periphery of the juridical system. We argue that the rise of neoliberal legality in Latin America owes a great deal to the legal imagination crafted by business associations. In line with this, we turn our attention to the work of “norm entrepreneurship” developed, at least since the 1940s, by an organization barely noted in mainstream histories of neoliberalism: the Inter-American Council for Commerce and Production (IACCP). We investigate the positioning of the IACCP in the struggle to create social legitimacy for business activities and entrepreneurial culture, as much as in fostering free enterprise as a foundation of public law and a model for the constitutional state. Drawing on contributions from sociological constitutionalism, we analyze the IACCP’s work of social constitutionalization as a result of a twofold dynamic: the construction of a transnational “social space” of relations between actors through which the business community gathered political force to impulse a transformation of the legal field; and the deployment of “moral narratives” of justification to situate private property and free enterprise at the epicenter of democratic institutions and social life.

Panel: The Political Economy of Adjudication and Dispute Resolution

Chair & Discussant: Danya Reda, University of Massachusetts, Dartmouth

This panel analyzes the political economy of adjudication and dispute resolution, particularly attentive to how a range of different procedural rules and mechanisms achieve substantive ends. Papers consider questions across domestic and transnational jurisdictions, such as how the US Supreme Court uses emergency relief orders to influence merit determinations; how the Russian Constitutional Court adjudicates electoral disputes; how major arbitration institutions design rules on confidentiality and whose interests these rules serve; how lower US courts’ dependency on civil fees shapes their operations; and how the process of judicial appointments in the US has helped facilitate a form of contractual interpretation that favors insurers over policyholders in the wake of COVID-19 disputes.

Confidentiality and Legitimacy of International Arbitration: Are They Mutually Exclusive?

Can Eken, Durham University

Confidentiality has always been considered one of the main features of inter-

national arbitration. Surprisingly, there is no rule in the UNCITRAL model law on confidentiality. As a result, many jurisdictions that adopted the model law do not have any provision for confidentiality. Jurisdictions that did not adopt the UNCITRAL model law, such as England and Wales, also do not provide a specific rule on confidentiality in their legislation. Therefore, confidentiality is left to the parties to determine. As a result, each jurisdiction and arbitration institution regulated confidentiality in "separate and unequal" ways.

The article brings together the case law from various jurisdictions regarding confidentiality. In most of these decisions, the law does not provide confidentiality as a default rule. After analyzing how confidential arbitration is, who has the duty to keep this process confidential is elaborated. To this end, the status quo of the arbitration rules of major arbitration institutions and UNCITRAL rules are discussed. Furthermore, this article analyzes whether the confidentiality of international arbitration undermines the legitimacy of the process thoroughly.

Overall, the article provides significant contributions to the literature regarding confidentiality in international arbitration and its relationship with legitimacy. The article provides parties with important suggestions on how parties in arbitration can secure themselves against potential breaches of confidentiality.

Electoral Disputes in Authoritarian Constitutional Courts: Evidence from Russia
Yulia Khalikova, University of Hamburg

Authoritarian leaders worry about elections and can use constitutional courts to side-line the opposition, legitimize unfair electoral rules, or limit freedoms of political expression. At the same time, autocrats are also concerned with the legitimacy of the electoral process: elections that are not considered legitimate by the public could cause mass protests. What is the role of constitutional courts in these processes? I argue that timing is vital. Electoral disputes require timely adjudication, often within weeks, if not days, of the submission. However, the nature of constitutional proceedings does not allow for such speed. Consequentially, rulings in favour of a petitioner do not impinge upon the distribution of power: the elections have already passed and, even if a specific requirement is found unconstitutional, the regime has time to control the electoral field before the next electoral round. I focus on Russia, an authoritarian regime with constantly changing electoral legislation, and the role of the Russian Constitutional Court in upholding or nullifying these changes. Using an original dataset on the court's judgments between 1992 and 2021 (N = 734), I find that the RCC is, in fact, more likely to nullify electoral laws. I complement these findings with in-depth study of all electoral disputes decided by the RCC in connection to the changes in electoral laws.

Fines and Fees in the Civil Court Context: Impacts and Consequences of Court Dependence on Mortgage Foreclosure Fee Income
Walker Kahn, University of Wisconsin-Madison

A growing body of research explores the court systems' increased utilization

of Legal Financial Obligations (LFOs)-the fines and fees courts use both discipline criminal defendants and generate much-needed revenue-but little is known about impact of court fees in civil. This study examines the social and legal consequences of court dependence on fee revenue generated by civil mortgage foreclosure litigation in Cook County, Illinois from 1992 to 2006. Theorizing the court's growing reliance on fees for funding operations within the macro-level financialization mortgage markets, this research examines how the court's efforts to manage tensions in foreclosure litigation between markets, formal rights, and informal protections enabled mass foreclosure, and increased housing precarity and social inequality. Findings indicate that the court's dependence on filing fees generated by mortgage foreclosure cases transformed the structure and function of the court, legally disempowered debtors, empowered repeat-player plaintiffs, and enabled practices that would lead to the 2007 foreclosure crisis.

Shedding Light on the Shadow Docket
Logan Strother, Purdue University

Despite its recent fame the Supreme Court's "shadow docket" is poorly understood. We describe the range of activities that fall under that moniker and present novel data to enable study of this overlooked part of the Court's work. We show that the Roberts Court is granting more emergency relief orders while simultaneously generating more public dissent from justices. We also provide evidence of ideological decision-making on the shadow docket. Additionally, we draw attention to a previously ignored component of the shadow docket: the Court's use of orders to shape the contours of cases on the merits docket. We show that the Roberts Court regularly changes the questions to be answered in merits cases in ways that have major implications for both real-world policy and theories of judicial behavior. We conclude by showing how these data can inform broader studies of the Supreme Court involving ideology, amici, opinion bargaining, and more.

U.S. Insurance Law and Politics: The Influence of Structural Factors on COVID-19 Coverage Claims
Jeffrey Stempel, Boyd School of Law, University of Nevada, Las Vegas

This paper examines the mass of litigation in which insurance policyholders sought business interruption coverage for closures, restrictions, and lost revenue. The looming issue in these cases was whether government closure orders alone or the presence of COVID-19 on premises constitutes "physical loss or damage" and whether policies contain an applicable virus exclusion precluding coverage.

Thousands of cases have been brought. To the surprise of many, insurers have prevailed in nearly all cases in U.S. federal courts, the location of most claims. Prior to this amazing run of victory for insurers, observers thought coverage would hinge on the presence or absence in the policy of a specifically applicable virus exclusion. Instead, insurers have (erroneously) convinced most federal judges that insured property is not lost or damaged unless there has been permanent structural change to the property.

Policyholders have fared significantly better in state court actions but nonetheless lost most cases, an arguable result of path dependency and a "bandwagon" effect as federal court decisions occupied the field and set the tone even though insurance law in the U.S. is (supposedly) determined by the states.

This run of insurer success is no accident. It stems to a large degree from the structural organization and jurisdiction of U.S. Courts and the politics of federal judicial appointments. In addition, it reflects the success of an insurance industry public relations campaign that arguably mischaracterized the legal issues and exaggerated the dangers of insurer insolvency should claims be covered.

The unfortunate result is a body of insurance precedent in which insurers without virus exclusions have the same litigation track record as insurers with virus exclusions. Another unfortunate byproduct is departure from the normal protocols of civil procedure and contract law that typically support policyholders.

FRIDAY, JUNE 2

Panel: Empire and American Institutions: How the Outward Projection of US Imperial Power Shaped Domestic American Law and Legal Thought

Chair: Sam Erman, USC Gould School of Law

Between the mid-nineteenth and early-twentieth centuries, the United States transformed from an introverted cluster of states into a far-flung global empire. What effect did this outward-facing transformation have on the internal development of American political and legal institutions? Although the architects of American empire endeavored to erect bulkheads between the spheres of the international and the domestic, our roundtable contends that these lines dissolved in unpredictable ways, triggering an unwitting recursive process of institutional importation. This session gathers scholars of law, history, and legal history to explore empire's effect on domestic models of presidential governance, the rights of citizens, the justice system, federalism, international law, and other areas.

Roundtable: Law and Political Economy 101

Chair: James Varellas, University of California, Berkeley
Participants:
Corinne Blalock, Law and Political Economy Project
Raul Carrillo, Law and Political Economy Project
Amy Kapczynski, Yale Law School
Diana Reddy, UC Berkeley

This roundtable will introduce scholars to the LPE movement, which explicitly aims to analyze the role of law in shaping hierarchies of race and gender, market supremacy, technological development, climate crisis, and other central forces that define political economy and our world. Participants will discuss their respective entry points into the LPE movement, as well as key analytical "moves" within LPE scholarship, and what it means to think, research, write, and teach within an LPE framework more broadly. Finally, the roundtable will engage with audience questions about the movement, the LPE Project, and JLPE.

Panel: Profiting from Ecocide in the Caribbean

Chair: Jose Atiles, University of Illinois Urbana Champaign

The Caribbean is at the center of the climate crisis and experiencing the dire consequences of a long history of colonial exploitation that is now being ma-

terialized in the form of ecological crises and multiple climate change related disasters. Nevertheless, scholarly debates on the role of law, colonialism, and on the political economy of the climate crisis in the Caribbean remain somewhat elusive and disconnected. This roundtable aims to bring together scholars working on the ecocidal consequences of different forms of predatory investment and capital flows in the region. This roundtable aims to promote a serious discussion about the immediate and dire environmental consequences of colonial and corporate profiteering in the Caribbean, and the social, political, and economic transformation is necessary to protect the region.

Race, Class and Gender in Labor and Employment

Chair: John Whitlow, CUNY School of Law
Discussant: Leanna Katz, Faculty of Law, McGill University

This panel offers insights into labor rights and employment law through a law and political economy perspective, emphasizing the ways in which race, class and gender have shaped the landscape of labor and employment. Papers in this panel cover the current and historical status of the corporations that profited from peonage and convict leasing of African Americans after the Civil War, the current situation of White-Collar Labor Activism and the challenges it brings about on self-regulation theories and praxis, and the experience of rehab workers at Salvation Army's Rehabilitation Centers and the way in which American racial capitalism is justified and sustained. A feminist reading of Universal Basic Income is provided, discussing how it can improve the lives of vulnerable women and other subordinated groups.

Bitter Harvest: Supply Chain Oppression and the Legal Exclusion of Agricultural Workers
Shikha Silliman Bhattacharjee, UC Berkeley

Persistent exploitation of farmworkers is a defining problem of our time. An estimated 32 percent of the global population is employed in agriculture. At the base of global food systems, agricultural workers sustain the world's population while systematically excluded from labor rights protections. Through an analysis of restrictions on labor rights for agricultural workers in the laws of 110 countries, this article distills a typology of legal exclusion that persists to date across the globe. These exclusions articulate with labor exploitation at the base of agri-food supply chains, and economic and social hierarchies constructed by race, caste, indigeneity, gender, and migration status.

How can we upend this legal architecture of oppression, rooted in racialized and gendered capitalism? The global understanding advanced in this article is critical to dismantling legal architectures of oppression. At the national level, it provides legislators, judges, lawyers, and advocates with a framework for identifying and addressing layered mechanisms of legal exclusion in their own jurisdictions. Moreover, since agricultural supply chains operate globally, it provides importance guidance for protecting workers rights on agri-food supply chains, including through binding due diligence legislation in headquarter

economies of lead firms, enforceable brand agreements, and inclusion of labor rights in food safety and environmental standards. Finally, due to the structure of monopsony capitalism, in order to raise the floor for agricultural workers worldwide, legal exclusions must be ratcheted up across jurisdictions. Global analysis, then, provides a roadmap for strengthening international standards and global campaigns-including campaigns led by local trade unions and global union federations, human and labor rights organizations, and consumers in headquarter economies of lead firms.

A Feminist Reading of Universal Basic Income

Maria Ximena Davila Contreras, University of Texas

What does a feminist universal basic income (UBI) look like? Is UBI inherently feminist? How can UBI improve the lives of vulnerable women and other subordinated groups? How can feminist political economy inform UBI experiments across the Global South? This paper seeks to answer these questions by zooming in on the case of Colombia, the second most unequal country in Latin America. Informed by the analytic possibilities of feminist political economy, this paper offers a theoretical framework to imagine a social policy schema that follows the imperatives of care, the recognition of reproductive labor, and the dignification of material life. In particular, I propose four tenets that are essential to envision a feminist UBI. First, a feminist UBI must be a sufficient and decent income, far from a meager amount below the poverty line. Second, it must be accompanied by other welfare and social protection policies, such as the implementation of a robust national social security system. Third, it must be a long-term and permanent income not limited to a crisis-based temporality. And fourth, it must not follow a familist perspective of social welfare. This means that it does not reproduce models in which women are considered citizens (and, therefore, beneficiaries of social policies) only when they are mothers or caretakers. This paper thus reflects on the feminization of crises in the Global South and contemplates feasible yet radical policies to improve the livelihoods of the 99%.

From Contract to Constitution: White Collar Labor Activism and The Challenges of Regulating from Within

Mason Barnard, Princeton University

Unionization efforts and worker activism have recently surged across the United States. Amazon warehouse workers and Starbucks baristas won NLRB elections; Google workers staged walkouts in response to company policies; graduate students and post-docs sought to rebalance their relationships with university administrators. Although many of these efforts arose in response to typical workplace concerns – layoffs and firings, dangerous workplace environments, and insufficient salaries and benefits – others, particularly those initiated by well-paid and well-educated professionals, sought to shape organizations' policies and broader corporate governance. Twitter employees, for example, advocated and won the removal of President Donald Trump from the platform following the January 6th Insurrection, and Disney workers pushed back against the company's acquiescence to anti-LGBTQ legislation in Florida. Many American workers desire not just better working conditions, but a greater

voice in how their firm operates.

Drawing on NLRB data and interviews with employees, worker activists, and other professionals across the media, technology, university, and nonprofit sectors, this paper describes employee efforts to regulate their firms from within. It aims to expand and to integrate existing sociolegal work on self-regulation (Gunningham and Rees 1997; Aoki 2001), labor law (Casper 2001; Jackson 2005), and democratic governance (Jasanoff 2011; Kennedy 2005), arguing that while worker-led regulatory efforts offer a useful tool to restrain firms, these efforts also struggle with challenges of democratic representation and legal efficacy. Without effective structures and processes to identify and govern corporate polities, worker regulatory efforts often represent the views of an opinionated few and lack broader legitimacy. Ensuring worker regulatory campaigns are democratic in practice and not just in principle is crucial to their future success.

Working for Rehab: Labor, Addiction, and Salvation in American Racial Capitalism

Erin E Hatton Hatton, SUNY Buffalo

In this project I examine the experiences of people who attended Salvation Army Addiction Rehabilitation Centers, a disciplinary no-cost six-month drug rehab that requires residents to work 40 hours a week without pay. This labor supports the Salvation Army's thrift store enterprise, yet the Salvation Army calls it " therapy," though such work does not fit easily into medical definitions of treatment. Yet, drawing on in-depth interviews with 40 rehab workers, I find that many of them come to understand such labor as therapeutic.

To understand why, I situate their experiences and the Salvation Army rehab centers in the context of racial capitalism, an analytical framework that highlights the racialization and racism implicated in the structure of capitalism. Though the Salvation Army's addiction programs are rooted in racial capitalism, conceptually they are located at its margins or what Bhattacharyya (2018) calls the "edge spaces" of racial capitalism: "spaces of non-capitalism or almost-capitalism" that represent this system's need "to designate some spaces and populations as non-productive." Likewise, the rehab workers I interviewed are racial capitalism's "edge subjects": the excluded, marginalized, and/or exploited populations who are marked as non-productive and therefore viewed as "parasites, dependents and objects of charity" (Bhattacharyya 2018: 65). Of such subjects, Bhattacharyya asks, "How do people continue to participate in systems that offer so little reward?" Answering this question is necessary to understand not "how capitalism is formed," Bhattacharyya explains, but how "it continue[s]" and does so "in a manner that infects our consciousness and become[s] part of our own sense of self" (p. 4). In this project I take on this task. Drawing on interviews with rehabbers who lived and worked at the Salvation Army's addiction programs, I analyze how racial capitalism is justified and sustained by some of the most marginalized people within it.

Reimagining Care, Agency, and Rights: Addressing Inequality and Empowerment in Labor and Employment

Chair: Erin E Hatton Hatton, SUNY Buffalo
Discussant: Ying Wu, Shanghai Jiao Tong University KoGuan Law School

This panel brings together five papers that address the intersections of care, agency, and rights in relation to inequality and empowerment. The panel explores the shifting childcare landscape during COVID-19, highlighting the role of race, class, and citizenship status in welfare state policies. It commemorates the 50th anniversary of the Rehabilitation Act of 1973, assessing its impact on the vocational rehabilitation system and persons with disabilities. The "care crisis" in the U.S. is examined, critiquing the dominant work-care framing and advocating for a broader conversation around care and inequality. Lastly, the panel delves into recognizing children's "we-agency" in social movement activism, challenging the notion of agency as autonomous authorship and highlighting the importance of collective narratives.

Lessons from the Shifting Childcare Landscape: Interdependence of Family, State, and Market

Leanna Katz, Faculty of Law, McGill University
Rebecca Horwitz-Willis, Harvard University

This article analyzes how state support during COVID-19 shaped the provision of and access to childcare in Chelsea, MA. Chelsea is a low-income immigrant city that experienced the highest COVID-19 infection rates in the state. Using distributional analysis and community interviews, we surface new insights about how race, class, and citizenship status shape childcare policies.

This paper makes empirical and theoretical contributions to welfare state scholarship. First, we analyze how historical and contemporary welfare policies are shaped by race, class, and citizenship status. Many COVID-19 childcare policies increased funding and flexibility for daycare centers or provided market-dependent support. We find these policies did not align with Chelsea's care needs. Chelsea is a childcare "desert," and did not benefit from policies meant to keep daycare centers afloat. Moreover, market-dependent policies such as paid leave were untenable for low-income parents who could not afford a pay cut, or inaccessible due to citizenship status. In the face of limited state and market support, Chelsea residents fortified networks of family, friends, and neighbors to provide childcare. Second, we build on Esping-Anderson's welfare capitalism theory to reflect experiences of low-income immigrant mothers. Our study highlights how welfare capitalism's categories of market, state, and family do not reflect how care is embedded in community. We thicken the notion of family to account for relationships beyond the family unit, especially vital when state and market support is unavailable. We further show how "defamilialization," or the degree to which welfare policies relax family responsibilities, reflects experiences of higher-income families who can purchase care in the market.

We conclude with new welfare concepts to reflect experiences in low-income communities where extended family plays a greater role than the state and where informal economic activity is widespread.

Recognizing Children's 'We-Agency' in Social Movement Activism

Edward van Daalen, McGill University

A growing body of critical scholarship shows that children have been, and will continue to be, key actors in political activism. Take, for example, the school strikes which have become an important feature of the global climate movement (Holmberg & Alvinius 2020). However, recognizing children's political agency in social movements remains a normatively thorny question, due to children's perceived vulnerability and malleability, and our perceived duty to protect them from the 'corrupting' world of (adult) politics (Hanson 2016; Rodgers 2020). When children strive for ideals or goals that defy established morals in movements, they are deemed to be unduly influenced, or even manipulated (Taft 2015; van Daalen & Mabillard 2019).

In this paper, we contest this cursory way of dismissing children's political voices and actions by challenging the underlying notion of agency as "autonomous authorship" (Korsgaard 2009), one that is informed by the UN Convention on the Rights of the Child (UNCRC) (Tisdall 2015). According to the autonomous authorship notion of agency, a person is an agent if and only if they can independently and rationally form, revise, and pursue their own goal. As such, children who rely on others in forming goals and are passionate in their action are not exercising agency but merely manipulated. Drawing on the philosophy of shared agency (Gilbert 2013; Tam 2020; Tollefsen & Gallagher 2017) and empirical insights from working children's movements in the global South, we instead propose the notion of "narrative we-agency" to recognize children's political agency. On this new notion, the essence of agency is not to author self-governing laws but to collectively narrate stories of who we are, revising our roles, and enacting our new script. Far from being manipulated by adults with a particular (human rights) agenda, children are in fact collective we-agents who advance their own human rights.

Rehabilitation Act of 1973 and the Vocational Rehabilitation System in the United States

Andjela Kaur, Penn State University

Next year, 2023, marks the 50th anniversary of the Rehabilitation Act of 1973. This piece of legislation extended civil rights to persons with disabilities in the United States and has served as the basis for further legislation that prohibits discrimination of persons with disabilities in the labor market. The 1973 Act also brought significant changes to the vocational rehabilitation system and professional practices that assist job seekers with disabilities in obtaining jobs. This paper will examine how this law has been implemented through the Rehabilitation Services Administration (RSA), a part of the Office of Special Education and Rehabilitative Services (OSERS) whose current vision is "that all Americans with disabilities will live and thrive with their disabilities in their own communities." To assess the impact of this legislation more broadly, the paper will address the interpretation of this legislation by the public vocational rehabilitation system that the RSA supports.

Rethinking Care and Social Reproduction: Perspectives from the Global South

Chair: Prabha Kotiswaran, King's College London
Discussant: Adelle Blackett, McGill University

Gender, Political Economy and Neoliberalism in Indian Healthcare: A Case Study of the Frontline Healthcare workers in India

Dipika Jain, Jindal Global Law School

In this paper, I use the political economy theoretical frameworks to analyze research findings of an empirical study undertaken in three districts of Haryana, India to comprehend the challenges faced by the frontline community healthcare workers called the Accredited Social Health Activist (ASHA) workers. Liberalization policies in the 1990s resulted in a marked decline in health expenditure and the privatization of the health sector, along with encouragement of private sector service delivery, autonomy and revenue building. Such liberalization combined with healthcare sector developments by international agencies played a role in limiting the budget towards public health services. In 2005, the National Rural Health Mission (NRHM) was introduced to address the primary healthcare needs of the rural population and improving "access to rural people, especially poor women and children to equitable, affordable, accountable and effective primary healthcare". ASHA workers were hailed as the "fountainhead of community participation in public health programs" and expected to familiarize themselves with the health status of all residents, by surveying each household and maintaining a village health register. The state, therefore, relies on gendered patterns of discrimination in labour to sustain the efforts of ASHA workers under precarious and unfair working conditions. This study employs a political economy approach to evaluate the care work performed by ASHA workers. Further, I argue that neoliberalism contributes towards the creation and sustenance of a highly gendered and casteist political economy in the healthcare sector.

The Care Turn in Latin America

Isabel Jaramillo, Facultad de Derecho, Universidad de los Andes

This paper addresses the field of care in Latin America: it identifies its main authors, topics and policy proposals. It argues that the field was constituted as early as the 1990s under pressure from the ELAC, and has operated as a semi-autonomous field for the last thirty years, with few academic influences and little impact in the curricula. Most participants in the field are independent consultants that work under contract with ELAC. The authors most cited, although not considered an indispensable part of reporting, are Joan Tronto and Pascale Molinier.

The paper also argues that notwithstanding the little impact it has had in academic circles, it has had enormous policy impact. As it has been true in other cases, however, policies show more of a cooptation of the political energy of the term than real commitment to the agenda. Participants in the field have

produced a significant amount of reports showing exactly the little impact that reforms have had on the distribution of power along gender lines.

The Home and the World: Social Reproduction and Gendered Constitutionalism in India

Saptarshi Mandal, Kent Law School - University of Kent

Over the last decade, feminist legal scholars in the Global North have increasingly posed motherhood and caregiving as questions of constitutional law and shown how these questions are central to the goal of gender equality (Suk 2018; Rubio-Marín 2016; Nedelsky 2012). These scholars have helpfully theorised social reproduction as the proper subject of constitutionalism whereby the polity assumes responsibility for raising the next generation of citizens. In concrete terms, this has boiled down to arguments in favour of constitutional protection of pregnancy and caregiving responsibilities of parents. This paper argues that this body of scholarship misidentifies the private family as the sole site of social reproduction and risks entrenching gender-stereotypes in envisioning constitutional protections. Using three case studies from India that involved constitutional arguments – one where a mother won workplace accommodation of her caregiving responsibilities; one where female staff of a government-run child development program failed to get recognition as government employees; and one where a group of Muslim women organised a public sit-in to protect against an anti-Muslim and unconstitutional citizenship law – the paper examines the working of constitutional arguments at multiple locations of social reproduction both within and outside the home.

Theorising the Postcolonial Welfare State from a Feminist Lens

Prabha Kotiswaran, King’s College London

Theorising the state has long been a key endeavour for feminists, including for feminist lawyers. Catharine MacKinnon in the late 1970s challenged the state to recognise gendered harms thus inaugurating decades of feminist engagement domestically and internationally with the state on violence against women. Socialist feminists have similarly theorised the welfare state and its ever-receding contours and the increasing privatisation of the states’ responsibilities transposed to the site of the family through welfare reform. In several postcolonial states like India, however, the welfare state is all but a residual mechanism where investments in even basic public goods like education and health are weak and faltering despite decades of independence from colonial rule. Nonetheless, women nationalist leaders secured robust traditions of state feminism for the post-independence state. Against the backdrop of state feminism, my paper seeks to trace the role of the Indian welfare state in enabling the social reproduction of its citizens. From path-breaking recommendations to recognise women’s unpaid work as far back as the 1970s to the universal system of early years childcare and the more recent thrust to build houses and toilets and ensure delivery of cooking gas, piped water and direct cash transfers, the paper interrogates the terms on which welfare is delivered to citizens, particularly women given their increasingly salient role in ensuring electoral gains.

“I do it for love”: Legal consciousness and right mobilization among caretakers in Peñalolen, Santiago de Chile

Felipe Aguila, Universidad Diego Portales, Chile
Mayra Feddersen, Universidad Adolfo Ibanez, Santiago, Chile
Javier Wilenmann, Universidad Adolfo Ibanez, Santiago, Chile

In the last decades, legal consciousness and legal mobilization of impaired individuals and their caretakers have been a focus of sociolegal work. Most work has analyzed the frames championed by activists combatting the unfair distribution of work along gender lines and discrimination, and the views of ordinary caretakers and caregivers (e.g., Garland-Thomson, 2005; Levitsky, 2008, 2014; Fleisher & Zames, 2011). Other researchers have studied changes in the activation patterns and (market-driven or bureaucratic) realization of these rights (Heyer, 2002, 2015; Vanhala, 2011; Revillard, 2019). Yet most of this work has been conducted in Global North countries, with little attention to diverging dynamics in Global South contexts. What entitlements and senses of duty do caregivers exhibit in these countries? How do these intertwine with the daily experience of these caregivers?

In this paper, we expose the findings of a research project carried out in Chile, a country that has seen rising feminist mobilization for the acknowledgment of care work and the activation of welfare provision of care, but in which there has been little qualitative work on the experiences and views of ordinary individuals on these issues. We studied a centrally funded but county-administered program named Chile Cuida, which aims at providing help to caretakers, in the county of Peñalolén. We carried 34 in-depth, in-home interviews of caretakers receiving support from this program, as well as all assistants working for the program and the official charged with administering it. By encouraging our interviewees to narrate their daily lives, we sought to disentangle their views about the impact of care work in their life, the sense of entitlement associated with them, and the resources used by them to get help. We found a dominating familialism ideology (Berret and McIntosh, 1982; Dalley, 1988; Livetsky, 2014), with little framing of their experiences and needs in terms of rights.

The Law and Political Economy of Intellectual Property Rights

Chair: Klaas Eller, University of Amsterdam
Discussant: Amy Kapczynski, Yale Law School

This panel will address the distributive implications of current debates concerning intellectual property rights. Specifically, how conceiving software as an experiment has implications for policy towards artificial intelligence within and beyond intellectual property? How should a Political economy framing for Intellectual Property rights look like? Can freedom of expression and public rights be used to defend the circular economy and remix culture? How can the rights of indigenous people granted by international law be reconciled with states regulations that may violate their intellectual property rights?

AI as Software: From Cybernetics to Computer Science

Shubha Ghosh, Syracuse University College of Law

The United States Supreme Court decision in Google v Oracle brought the practices of computer software to the forefront of copyright fair use analysis. Justice Breyer's opinion emphasized the needs of computer programmers (broadly defined) in assessing whether the literal copying of a program can be fair use. Concurrently, debates over artificial intelligence continue, expanding beyond the narrow questions of authorship and inventorship to situating AI within the scheme of intellectual property rights. This presentation, draws on two published articles, to make the case that debates over AI are just ongoing and longstanding debates over the treatment of software under copyright and patent laws. Drawing on my typology of software derived from the computer science literature, I identify conflicts in the conceptualization of software (and AI) as a mathematical object, an engineering tool, and an experiment. The Google opinion illustrates how a practice oriented approach to programming overlaps with the view of software as experiment. The presentation will develop how this experimental view of software has implications for policy towards artificial intelligence within and beyond intellectual property.

Managing Indigenous Content Materials Responsibly: the Problem of Public Domain

Dr. Ulia Gosart, SJSU iSchool

Norms on protecting Indigenous knowledge co-exist in separate legal planes. On the one hand, communities falling under the international legal category "indigenous peoples," possess inherent rights to govern their intellectual resources. On the other hand, as members of their respective states, they submit to legal regulations that may violate their intellectual property rights.

Functioning of libraries illustrates the problem well. As state entities, libraries manage Indigenous materials using copyright law and regulations supporting rights of citizens to access information. Compliance with these norms may violate Indigenous customary laws and protocols on knowledge handling, and in some cases lead to misappropriation of Indigenous knowledge, especially if these materials are in public domain. The functioning of large digital libraries with millions of items in public domain (HathiTrust, BHL) provide good examples.

Indigenous communities in the U.S. have limited instruments to realize their intellectual property rights. In cases of print materials, communities can repatriate – if the materials fall under the NAGPRA category, or work through the transfer of ownership if an institution is willing to collaborate. In case of digital copies, co-management approach offers some solutions to the problem. Co-management solutions that support Indigenous source communities rights can start with collaborative governance approach, as demonstrated on the example of the American Philosophical Society (APS). Since 2014 the APS collaborated with over 80 Indigenous communities balancing rights of source communities with mission of the APS. Libraries may also implement reparative descriptions, or install content management systems, such as Mukurtu, to allow source communities control access to the sensitive or confidential information, or data that others may potentially exploit.

The Political Economy of Intellectual Property Rights in Crises

Caoimhe Ring, University of Oxford

The liberalist legal form rests on the public-private distinction; the separate realms of property and sovereignty. This logic remains pervasive despite critiques from Legal Realism to the present day. Tactically, the Law Political Economy movement confronts this dichotomy as a source of disparate crises, from rising inequality to climate collapse: 'to think about law (through critique) with law (through the development of constructive projects), but also beyond law' (Blalock 2022). This paper considers historical state incursions on intellectual property rights (IPRs) during crises, contending that these encounters expose the falsity of the public-private division. From WWI to the Apollo Missions, the state took on expanded roles, with 'mission-oriented' innovation prizes and funds, seizing or weakening any IPRs which posed a barrier to achieving these goals. Such incursions are a recursive logic in times of emergency which depend on and simultaneously legitimate state sovereignty; to resolve a crisis, the state needs to seize those rights. The difference between these historical incidents and now, however, is the presence of a harmonised international IPR regime which precludes the incursions on IPRs which were so central to innovation missions of the past. In an age of crises-notably the climate catastrophe-we see the rhetoric to suspend IPRs arise with the infelicitous terminology of a 'Manhattan Project' for climate change. Thinking with crisis, this paper highlights the mechanics of the public-private distinction instead of using crisis as an exceptional event that occludes the structural features that produce it (Berlant 2011). Tracing shifts in the parasitic relationship between public authority and private power during crisis demonstrates how IPRs, like any private right, are a form of public regulation (Kennedy 1991). Thinking with these shifts in IPRs, I ultimately seek to displace a neoliberal framing for a political economy conception of IPRs.

The Trans-Atlantic Political Economy of User Rights: To Repair, Upgrade, and Reuse

Hannibal Travis, FIU College of Law

The political economy of copyright and especially digital copyright is relatively well-understood. Complexities, however, exist relating to the application of copyright and trademark law to the repair, improvement, and "appropriation" of existing cultural expressions and advertised goods. Fan art, postmodern contemporary art, video game modifications, video tutorials, repackaged fashion and creative commodities, and upgraded smart devices can be lucrative. They are legally precarious, however, because book and digital publication owners, music labels and publishers, movie studios, streaming services, video game publishers, and other associations of authors and proprietors insist that value must not be derived from copyrighted or trademarked work absent a signed license agreement. Deriving some or all of their value from existing copyrighted and trademarked bits of global cultures, repaired devices, upgraded software or imagery, and appropriated slogans and themes are vulnerable to intellectual property claims. Manifesting judgment and even genius, however, their creators may enjoy defenses and limitations Drawing on the principles articulated during the trans-Atlantic emergence of "right to repair" legislation (e.g. for iPhones), this presentation explores the "right to upgrade" a device or an

expression (a character, image, design, sound, or clip). Digital platforms allow copyright and trademark owners to delete, mute, demonetize, or remonetize the proceeds of speech that affects their rights. The law governing multimedia creativity, while equivocal on some points, could come to the rescue of some fan creators, postmodernists, and game "modders." Through proper attribution, disclaimers of sponsorship, and proliferation of new meanings and messages, multimedia works enjoy paths to legality that may suit purveyors of other "upgrades. The freedom of expression and public rights may defend the circular economy and remix culture.

The Law and Political Economy of Digital Platforms and Technological Change

Chair: Dimitri Van Den Meerssche, Queen Mary University of London
Discussant: Veena Dubal, University of California, Hastings

This panel offers insights into digital platforms and technological change through a law and political economy lens, highlighting the impact of social and legal contexts on technology development and adoption. The papers in this panel examine the challenges posed by digital technologies to democratic societies, including the need for greater transparency and accountability for social media platforms, the alienation resulting from the commodification of consumer attention, and the socialization of police investigators by internet technology companies. The panel also explores the definition of technology in the public interest, discusses the automation divide, and suggests alternative approaches to governance to address the inequalities arising from data-driven technologies.

Alienation and the Commodification of Consumer Attention
Isabella Mariani, Jurisprudence & Social Policy Program, UC Berkeley

The effects of the commodification of consumer attention, also referred to as the "attention economy," have attracted the interest of economists, psychologists, and empirical sociologists in recent years with the boom of social media and the rapidly expanding technology sector. The subject, however, is relatively unexplored through the lens of classical social theory. This paper sets out to explain the commodification of consumer attention as a form of alienation. I argue that the practices of technology companies of data collection and manipulation of consumer attention results in their alienation by separating them from their species-being through the externalization of their conscious life activity and the rationalization of their interpersonal relationships. Part 1 examines Marx's theory of alienation, the concept of species-being, the individual's conscious life activity, and the role of mutual recognition in our interpersonal relationships. Part 2 looks at what it means to be a commodity, and the role of time in the theory of value. Part 3 examines the specific strategies and workings of modern for-profit technology companies, their surveillance strategies and manipulation of our habits in the commodification of consumer attention, measured in the unit of time engaged on a digital platform. Part 4 argues that such commodification and manipulation of consumer attention leads to the alienation of the consumer from her species-being, her conscious life activity, and from one other.

Analog Privilege: unpacking the automation divide

Maroussia Lévesque, Harvard Law School

In theory, some imperatives like death and taxes apply to everyone. But in practice, the privileged shirk, avoid, or delay the seemingly inevitable. From cryogenic body preservation to offshore tax havens, exceptionalism has eroded the egalitarian ideal captured in Franklin's message. Nowadays, the powerful also have cheat codes to avoid the reductive, deterministic and invasive machine learning systems that power data-driven decision-making in an ever-expanding range of activities. While shallow guestimates drive decisions for and about the masses, the select few get to engage with automation on their own terms, modulating how much (or little) they submit to predictive analytics. In many cases they bypass automation altogether, using a parallel analog track allowing them to be seen at their discretion and in all their complexity, contradictions, and, ultimately, humanity. They enjoy the luxury of analog treatment.

Automation generates three key harms: reductivism, determinism and monitoring. Reductivism refers to predictive analytics' oversimplified guestimates, in contrast to analog decisions that foster multidimensional assessments. Determinism consists in backward-looking predictions caging people into algorithmic prisons, in contrast to open-ended analog decisions that recognize, and indeed celebrate, the possibility of change. AI systems also facilitate pervasive monitoring, whereas analog privilege confers a cloak of invisibility from punitive systems.

Once the automation divide comes into focus, the question becomes what to do about it. We can improve mass automation to reduce the relative advantage of analog privilege, guarantee an analog option to level the playing field or even draw red lines against predictive analytics in certain high-stake contexts. All these solutions will require a more decentralized approach to governance that combines industry expertise with government oversight and civil society input.

Assessing transparency and disclosure obligations in the regulation of social media platforms

Beatriz Kira, University College London

Social media companies have moral duties not to contribute nor amplify harmful and dangerous online speech (Howard, 2019). It follows that in order to comply with these moral duties, social media companies should bear the costs of moderating dangerous and harmful content with sufficient vigour. Whether and how to translate these moral duties into legal obligations, however, remains contentious. Lawmakers and policymakers in many jurisdictions largely agree that social media platforms should be subject to some form state regulation, but the appropriate level and manner of regulation on this matter has been the subject of intense debate.

While considerable attention has been paid to rules requiring social media companies to monitor, remove, or demote content on their platforms, less attention has been paid to the – arguably less controversial – rules that require companies to provide information to users and the authorities. While this latter type of obligation avoids more thorny legal questions that emerge when the

state seeks to regulate content, they are not without contention. For example, in May 2022, the US Eleventh Circuit struck down a provision in Florida's social media bill (Senate Bill 7072) that required information about each content moderation decision, considering it to be unduly burdensome. Beyond this specific US constitutional debate, there is a wider and more general question around regulatory burden and the amount of regulatory costs social media companies should be required to bear.

The paper addresses the following questions: how can we distinguish between the transparency and disclosure requirements that are so burdensome that under no circumstance they could be upheld, from those that in some cases might be justified, and in fact morally required? How can parameters be established to conceptualise and appraise transparency and disclosure obligations existing and proposed legislation to regulate social media?

Public Interest in the Datafied State

Joanne Cheung, Stanford University
Anne Washington, New York University

Public interest implies, evokes, defines, includes, and excludes. As technologists and scholars of technology, we approach public interest as both theory and practice. We apply three lenses to uncover assumptions embedded in "public interest": 1 Who is the public? We challenge the notion that the public constitutes a coherent group of people who hold shared concerns. Eminent domain, which seizes property for the common good, exemplifies the entanglement of majority interests and minority rights. 2 What is the public interest? Defined through opposition, public interest assumes an implicit divide between public and private, open and closed, accountable and unaccountable. This divide obscures the economic and political power that shapes the development and distribution of technology and data-centric assets. 3 How is the public interest served? We examine the assumptions of a codified standard of practice that defines work in the public interest. We consider whether it is possible to build systems that serve the majority and the margins simultaneously. Public interest, emerging from "public interest law", is defined by the client represented by the lawyer. If the public is whoever the practitioner has a fiduciary duty towards, then public interest is beholden to the moral choice of the practitioner rather than the purpose of any institution. Looking into the future, we describe two public interest models that center the marginal to improve shared social good.

The Role of Consumer Trust in Algorithmic Competition

Kai-Fang Lin, Stanford Law School

In the digital era, search engines act as the gatekeeper for online information connecting the virtual world with physical world, and influencing consumer decisions. How Google allocates online resources concerns the competitive landscape. Since search algorithms hold not only power over the marketplace of ideas but also power over the marketplace of commodities, analyzing the role of algorithms in digital competition offers a perspective on social impact in an algorithmic society.

Centering around antitrust concerns in algorithmic society, this research maps the conflict between consumer trust, provides guidance on the relationship between various forms of trust and market power,and theorizes the future role of algorithms and antitrust agencies. Methodologically, through an online survey experiment of Taiwanese consumer health decisions, this research delineates the causal relationship between institutional trust (expectation of algorithms) and individual trust (consumer inertia) under different health decisions and sheds light on the following questions. How do algorithms shape or reflect consumption norms? Where does consumer trust come from, and how does trust contribute to various power structures? What are the roles of algorithms, online platforms, consumers, and antitrust agencies in digital competition?

In light of the special characteristics of digital ecosystem, this research concludes with recommendations for formal and informal regulations in future antitrust reform. This research also provides a possible review process for antitrust agencies' consideration. Online information search behaviors predict macroeconomic activities, provide insight into shared beliefs and expectations, and reflect the consumption culture of a given society. Through the analysis of information consumer decision making, this research contributes to uncovering the relationship between trust and power and theorizing the potential role of online institutions in social engineering.

The Political Economy of Health Policy and Law

Chair & Discussant: Natalia Pires de Vasconcelos, University of Georgia

This panel adopts a law and political economy perspective to examine the provision of healthcare services, how states address injuries, and the relationship between food systems and current public health crises. Papers include comparative analysis of health outcomes in the Global North and South under the guise of improving health outcomes through markets; legislation in the US to mitigate the excesses of private insurance schemes; analysis of how market concentration in biopharmaceutical manufacturing limits the development of (and equitable access to) novel antimicrobials; how the Indian state provisions cash to victims of COVID-19 in ways that simultaneously address and deflect questions of public and private responsibility; and how state purchasing power shapes food markets in Brazil.

AMR Entrepreneurship: Integrating Equity into "New" Acess-to-Medicines Business Models
Ximena Benavides-Reverditto, Yale University

The R&D pipeline for new antibiotics falters in the face of salient global public health needs. Governments usually do not engage in biopharmaceutical manufacturing for financial reasons and potential regulatory conflicting interests, while the lack of 'commercial sustainability' of antimicrobial treatments has driven large pharmaceutical companies to turn toward more lucrative drugs. As a result, we face a 'valley of death' between invention and timely access to lifesaving medicines.

In recent years, 'new' U.S. and international business models have emerged with the promise to develop new antibiotics. Nonetheless, reliance on traditional business and funding models raises concerns about their potential to enhance equitable patient access. The inequitable distribution of scarce and timely accessible, safe, and effective COVID-19 vaccines has showed the handful powerful actors controlling production and allocation of medicines. I claim in this essay that challenges to speed up novel antibiotics' R&D and production do not trace to science, regulation, or economic challenges exclusively, but, fundamentally, to market and political power concentrations.

The AMR public health state of affairs and entrepreneurship initiatives offer an opportunity to re-examine concerns about sustainable biopharmaceutical innovation. How can medical interventions innovation excel without sacrificing-moreover, improving-equitable access to lifesaving products? I advocate for recognizing the existence of market and political power silos and the urgency of integrating equity into the anatomy, funding, and governance of firms when designing antimicrobial innovation business models. By focusing on the AMR Action Fund in particular, I encourage a critical examination of the power dynamics of biopharmaceutical innovation ecosystems embedded in 'new' business models and suggest equity-based governance strategies to mediate the tension between production and accessibility of novel antimicrobials.

Law, public policies and authoritarianism: the case of the National School Feeding Program
Mariana Fontes, University of São Paulo

The paper analyzes the use of state purchasing power to acquire school feeding based on the case of the National School Feeding Program (Pnae). The main argument developed is that the legal and institutional arrangements by which public procurement is operationalized, depending on how they are mobilized, can contribute to the achievement of public policy objectives and government programs and, thus, can also delimit the contours of existing markets, or encourage the emergence of new markets. The case of Pnae shows that certain rules of the process of hiring suppliers – in particular a rule that provides for the simplification of the hiring process and the obligation to purchase 30% of the food for school meals of products produced by family agriculture, indigenous peoples and quilombolas – can increase the effectiveness of the realization of the right to adequate food and nutrition of students from public schools, as well as can catalyze the expansion of the food market, in particular by expanding sources of fresh, healthier food from a nutritional point of view.

From 2016 onwards, after becoming one of the largest public procurement programs in the world – data shows that PNAE acquired 3 million tons of food from more than 200.000 small farmers (2003-2013) – with the expansion of authoritarianism in Brazil, the program has been the target of attacks by the Executive and Legislative Powers. The objective is to systematize and analyze the initiatives in the legal field aimed at weakening this important government program. The research considers secondary sources, in particular documentary and bibliographic sources.

LPE & Global Health
Jason Jackson, MIT
Aziza Ahmed, Boston University School of Law

Market-based approaches have become central in the field of global (public) health, and market-supporting legal institutions are now seen as an essential component of this market revolution. These developments have created an opportunity – indeed a demand - for legal ideas in the governance of global health, much of which has been provided by the field of law and economics largely in its role as companion to mainstream economics. Yet despite this growing ubiquity of law and economics in the field, until recently, scholars had not examined the dynamics around global health issues – including deep inequalities in health outcomes within and across the Global North and South – through the lens of Law and Political Economy (LPE). This has begun to change. A nascent but growing literature demonstrates that an LPE approach can be instructive for understanding how law structures the global political and economic order to produce health inequalities both within and across countries through maintaining power imbalances, despite claims of equalizing relationships between countries through international law, and improving health outcomes through markets.

The No Surprises Act—Health Insurance Reform that Reinforces the Status Quo.
Marc Rodwin, Suffolk University Law School

Hailed as a major reform, the No Surprises Act (NSA) is a profoundly conservative law that aims neither to reform design of insurance, to regulate fees, nor to limit health care spending. The NSA mitigates a perverse but narrow problem: unpredictable and uncontrollable high out-of-pocket bills for individuals who are unable to receive care within their insurance network. However, the NSA neglects to address the broader high medical costs, limited choice of caregivers, and the resulting insecurity and unfairness that characterize American health care. It allows caregivers to extract high payments and insurers to restrict choice of caregivers. Insurers can continue to employ ineffective cost controls that generate unpredictable high out-of-pocket costs for patients-and high levels of denial of payments to doctors and hospitals. The law amputated the most politically and visibly consequences of unregulated private insurance in the United States in ways that enable business as usual in private health insurance to persist, subject to unnecessarily complex arbitration rules that magnify administrative waste. This paper examines the competing interests of organized medicine, hospital associations and insurers that led to the NSA. It also explores the implementation of the NSA focusing on the system of alternative dispute resolution used to determine fees for caregivers that provide services to patients outside of insurance caregiver networks.

Translating the Moral to the Material: 'Ex Gratia Compensation' and the Indian State
Shruti Iyer, Centre for Socio-Legal Studies, University of Oxford

After the deadly second wave of COVID-19 in India, the Supreme Court ordered the state to provide 'ex gratia' monetary relief to families who had lost members to the disease. However, despite directing the state to pay compensation, it was unable to determine how much the economic value of a life should be-'the[se] priorities', it said, 'are to be fixed by the government.' 'Ex gratia' refers to a payment made out of a moral obligation and not a legal one. In this paper, I draw on the scholarship of Marc Galanter and Veena Das on the Bhopal Gas Tragedy to describe the remarkable place 'ex gratia' payments occupy in the toolkit of the Indian welfare state. 'Ex gratia' payments are now regularly used to respond to a range of political and economic crises, with cash relief provisioned to those impacted by explosions, farmer suicides, religious violence, caste riots, floods, police firings, and even occupational injuries.

This paper is based on my ethnographic research in the State of Rajasthan in India, where I closely observed how 'ex gratia' payments to those suffering from the occupational illness of silicosis were negotiated in practice by a trade union, and how this compared to those claiming under labour law. I show that 'ex gratia' does not merely fill in a lacuna left by the lack of tort law and insurance-based redress in India. Rather, it fulfils the important political function of translating a moral claim into a material one, and its calculative logics lie outside legal and actuarial reasoning. I argue that 'ex gratia' payments set up a 'separate but unequal' constituency of claimants in India: those who are victims of misfortune, but cannot be plaintiffs seeking legal remedy. I close by considering what the contradictory nature of 'ex gratia' tells us about contemporary welfarism in India, in deflecting legal responsibility away from capital and the state, but in also reckoning with the moral nature of injury and state obligation.

SATURDAY, JUNE 3

Capitalism Without Borders: International Trade, Global Value Chains and Economic Development

Chair: Ana Carolina Dall'Agnol, University of Oxford
Discussant: Brian Broughman, Vanderbilt University Law School

The panel provides insights into the need for rethinking the traditional approaches to economic development and trade, and the role of law in shaping and regulating these processes. The papers discuss the paradox of global economic production and its impact on local communities, and the need for new approaches that prioritize sustainability, resilience, and collective entities governed through contract. The panel also delves into the political economy of global value chains, examining the pricing techniques used in these chains and their impact on human rights. It also discusses the effects of transnational institutions in domestic policymaking and regulation, based on a case study of the Chilean banking system. Finally, the panel also explores the concept of transformative law, emphasizing the strategic position of law in shaping institutions such as competition, contract, corporation, and property.

Confronting price and sourcing squeeze in the political economy of global value chains
Klaas Eller, University of Amsterdam

While regulators and NGOs celebrate the latest wave of regulations along global value chains, indications multiply that these regulations are being circumvented, watered down or remain detached from actual corporate practice. The paper argues that one core stems from sidelining price squeeze and distributive effects in the dominant human rights framing of value chain due diligence. In a global economy facing inflation and staggering production, prices can no longer be bracketed - as manifested by the renewed political and scholarly interest in price levels and profiteering in the field of basic goods in the Global North, ranging from rental prices to fuel and gas. Methodologically, the paper formulates a 'law & political economy' critique of some of the assumptions in 'business and human rights' scholarship and does so based on ethnographic and STS-inspired analysis of pricing techniques in value chains.

Good for the Money: Remittance Economies, Social Enterprises, and Re-thinking Privatized Approaches to International Economic Development
Kim Vu-Dinh, Mitchell Hamline School of Law

For the past few decades, microfinance has served one of the primary building blocks of economic development in developing nations. For individuals living in impoverished nations with no wealthy relatives overseas sending back remit-

tance money, microfinance has been perceived as offering economic opportunity where little to none exist. A growing body of research reveals, however, that at best microfinance might increase economic independence for women and increase a sense of autonomy and choice in under-developed economies, but that mostly it has done little to relieve poverty alleviation in emerging nations and instead has burdened poor people with high interest rate debt. On a parallel track has been the emergence of the social enterprise movement, or the concept that businesses-whether for-profit or nonprofit-can achieve a greater good by focusing on a double bottom line that values both financial sustainability and a community-oriented objective; or in some cases, a triple bottom line with a third objective of environmental sustainability. At the same time, separate and apart from these forms of formalized finance, remittance economies around the world continue to grow as immigration becomes more attainable. It is estimated that approximately $20 billion is sent from overseas relatives to family members in developing nations. This begs the question of whether the tools and practices of social enterprises can be combined with remittance economies in order to increase financially sustainable, community-based economic growth of small to medium-sized businesses-ones that are often unserved or underserved by microfinance, nonprofit and government-based international aid programs, and large-scale private sector foreign investments. This article analyzes the history of economic development and primary financial tools developed by Western nations, the successes and failures of each, and the potential for new approaches.

The Future of Freedom of Contract: Economic Efficiency, Security of Supply, Planetary Boundaries and Human Existentialism in a Circular Economy

Jaakko Salminen, Lund University

When we buy a warm drink at a coffee shop, we do not have to think about child labor, unpaid taxes, political strife or greenhouse gas emissions implicated in the production of our drink at the other end of the planet. Contract gives us the privilege of not having to care about the global structures of production hidden behind our immediate counterpart. Paradoxically, at the same time we have better visibility into the global effects of our daily transactions than ever before. Advanced governance technologies are used to micromanage global value chains; transactions between countless intersecting value chains are automatically analyzed on ubiquitous digital platforms; and lifecycle governance, minutely tracking not only production but how we use and dispose of products, increasingly pervades our daily lives under circular economies.

In this paper I examine the paradox that contract simultaneously connects and separates production from its global effects. I ask what role and scope will remain for freedom of contract when interests of efficiency, resilience and sustainability drive a focus on collective entities governed through contract and their global systemic effects. To balance such technocratic planning, I integrate utilitarian interests with existential questions on the role of private autonomy and freedom in human development in an interconnected and pluralistic world-system. I bridge gaps in current narratives of freedom of contract, focused on industrial production, by extending these to post-industrial modes of production such as the value chain, platform and circular economies. Building on

multidisciplinary sources, I propose a new, more fluid understanding of freedom of contract. Based on this understanding and by combining utilitarian objectives with existential sustainability, my ultimate aim is to build a legally-structured vision of the future trajectories and parameters of the freedom of contract.

What is Transformative Law?

Poul Kjaer, Copenhagen Business School

Upholding normative expectations is a key function of law. This insight indicates that law have a conservative dna to the extent that it is oriented towards the use of present reconstructions of the past to reaffirm existing norms with the purpose of transposing them into the future. However, law transforms too. A key characteristic of world society in its manifold local, national and transnational contexts is the sustained demand for legal norms in the attempt to stabilize but also expand and transform all sorts of social processes. The legal institutions of competition, contract, corporation and property are - among many others - key examples of this. On this backdrop, elements of a concept of transformative law is outlined relying on an epistemological understanding of law as form-giving. It is through form-giving that law constitutes a social phenomenon as a legal institution and it is form-giving which gives law a strategically central position in society. How law and legal scholarship has dealt with the form-giving function over time is briefly illustrated through a genealogy of imaginaries of law distinguishing between four, in the western context, historically dominant types of law: ‘Law as purpose’; ‘law as a tool’; ‘law as an obstacle’; and ‘law as reflexivity-initiation’. On this background, the core dimensions of transformative law are fleshed out with the aim of answering the question to what extent it can act as an alternative to the previous four types of law. It is emphasised that the potentiality of transformative law can be boiled down to a question of time as it is in the tension between ex ante and ex post law the crux of transformative law lies. Hence, a two-fold strategy is unfolded. On the one hand, the paper provides a conceptual framework. On the other hand, it also goes further by engaging in a dual (de-)constructing exercise of transformative law, including of its origin, novelty, possible effects and potentialities.

When Transnational Feedback Demobilizes Domestic Reform: Explaining the Chilean selective convergence to Basel rules

Mario Schapiro, DIREITO FGV Sao Paulo

Influential literature on international political economy has demonstrated that international institutions structure domestic politics as much as local institutions do it. Summarizing this view, Newman & Posner (2018) stress that international regulatory regimes, like Basel rules, have a second-order effect, which is related to their capacity to provide local players with a legitimacy claim to advance market-based reforms. This article speaks to this literature on the transnational feedback effects on domestic politics, but it takes this debate the other way around. Instead of shedding light on the international institutions’ positive feedback, this paper analyzes their negative feedback, i.e., it investigates when these institutions demobilize local interests in pursuing domestic reforms. The negative transnational feedback result firstly from the comparative impact. By comparing the functionalities of the domestic regime with those of

global standards, the governing coalition opts for not reforming the homegrown regulatory framework. Such an option rests on the acquiescence of the international community, mostly rating agencies, that consent to such homegrown choices, not encouraging local players to change the domestic arrangement. To test this theoretical proposition, this article conducts a within-case study on the Chilean banking system, employing the process-tracing method, with fieldwork based on interviews with regulators, financial players, experts, and document analysis. Chile is a puzzle, as it is a market-based economy but has yet to converge to Basel regulatory regime on the same footing as other Latin Americans. This article explains these policy outcomes suggesting that Chilean rulers prefer the homegrown prudential regime built in the early 1980s and permanently utilize the Basel agenda as a counter-mobilization device. Policymakers and financiers resort to global rules to, comparatively, reinforce the virtues of the local arrangement.

Conceptualizing Law and Legal Institutions within Terrains of Struggle

Chair: Veena Dubal, University of California, Hastings
Participants:
Amna Akbar, The Ohio State University, Moritz College of Law
Angela Harris, University of California, Davis
K-Sue Park, Georgetown University Law C
John Whitlow, CUNY School of Law
Angelica Chazaro, University of Washington School of Law

What do we learn from LPE scholarship about the question of "what law is," how legal change happens, and to think about the possibilities of transformative institutional change? This roundtable is premised on the idea that we must shift away from traditional top-down, court-centered, models for understanding law and legal institutions, as well as the marginalization of questions of social and economic hierarchy and distribution. It gathers together scholars who study social movements; changing technological legal infrastructures of property, currency, and labor management as key to developing practices of wealth accumulation in a capitalist system; and who recognize race as a longstanding and persistent blindspot in the study of law and reframe histories and contemporary accounts of legal institutional development accordingly.

Corporations and their Shareholders

Chair & Discussant: Josephine (J.S.) Nelson, Harvard Law School

Corporations can have an uneasy relationship with their shareholders, and the interests of shareholders can be in active tension with other stakeholders. Scholars in this panel explore a wide variety of issues affecting corporate shareholders and stakeholders—how the SEC's investor compensation program has strengthened its enforcement actions, the merits of a proposal for the SEC to engage in supplemental market surveys, what property rights should be in insider trading, how stakeholders of all types influence corporations, and how the U.S. should

use industrial policy to push its businesses away from shareholder primacy.

Getting Property Right in U.S. Securities Regulation
Kevin Douglas, Michigan State University College of Law

Disagreements about regulating insider trading frequently morph into disagreements and confusion about the function and purpose of "property rights." Using insider trading as a case study, this article concludes that a sensible and integrated approach is required to correctly apply the concept of property rights to any area of securities regulation. This article identifies three related commitments as required to get property right in insider trading law. First, officials should only pursue measurable goals and only use methods demonstrated to achieve those goals. Second, officials should only rely on conceptions of property rights that are normatively and descriptively integrated. Third, officials should only rely on policy objectives and moral principles that simultaneously foster individual welfare and social welfare. These three theoretical commitments suggest several practical requirements for correctly protecting property rights through insider trading regulation. At a minimum, the law must protect the exclusive-use rights of information owners, not simply exclude non-owners from using the information. Therefore, the law should protect each information owner's freedom to trade on inside information and protect each owner's freedom to license third-party trading on their information. For the limits to permissible insider trading, this article identifies analogous cases in the laws regulating journalism, private investigations, and trade secrets. The article concludes by addressing several concerns about the practical implications of this approach. For example, what are some viable alternatives for pursuing the distributional goals that undermine the protection of property rights in our current insider trading law?

How the SEC Become the Investor Advocate
Urska Velikonja, Georgetown University Law Center

Twenty years ago, the SEC acquired the right to create compensation funds and distribute to harmed investors any monetary penalties that it collects from violators. At the time, the newly acquired authority under section 308(a) of the Sarbanes-Oxley Act was derided as duplicative, inefficient and potentially undermining the SEC's mission to protect investors by converting the agency into a mere collection agency.

Twenty years later, the SEC's compensation program is centralized, well-managed and distributes about $1 billion per year to investors. The SEC has used the fact that it doesn't just enforce the law but also compensates investors to strengthen its enforcement program and to obtain statutory amendments that make it easier to both, prosecute violations and compensate investors. The compensation program thus strengthened the enforcement program as well.

Industrial Policy for Innovation: Governmental Carrots and Sticks in Reforming Corporate Governance
Lenore Palladino, University of Massachusetts Amherst

U.S. politicians are actively market-crafting: the passage of Infrastructure and Investment Jobs Act (IIJA), the CHIPS and Science Act, and the Inflation Reduction Act (IRA) all in the last year mark a new moment in industrial policymaking. Yet these policies are necessarily layered on top of decades of shareholder primacy, in which corporate and financial leaders have prioritized using corporate profits to increase the wealth of shareholders at the expense of other goals. The Administration and Congress has an opportunity to use industrial policy funding to encourage a broader reorientation of U.S. businesses away from extractive shareholder primacy and innovation and productivity. Public market-crafting contained in discrete industrial policy programs can be the impetus for a broader reorientation of corporate decision-making towards productive innovation that will outlast particular infusions of public money. This article will examine different approaches that the U.S. economic policymaking apparatus has taken and could take, attempting to discern whether public moves can truly shift private corporations away from shareholder primacy.

Securities Regulation by Survey
Eric Chaffee, The University of Toledo College of Law

The United States has a high-quality system of securities regulation. However, it is not a perfect system. The world has changed dramatically since Congress promulgated the Securities Act of 1933 and the Securities Exchange Act of 1934. Especially in the realm of FinTech, regulators have struggled to address and close the RegLag that exists between financial innovation and regulation. Detecting wrongdoing, understanding market behavior, and learning investor preferences has always been and continues to be a challenge.

This presentation recommends supplementing existing federal securities law with a form of market surveillance that I have termed "regulation by survey," which involves the surveying by regulators of investors for purposes of gaining a deeper understanding of what is occurring within securities markets. The benefits of regulation by survey are plentiful because it improves regulator surveillance and understanding, promotes market confidence, and allows investors to engage in improved decision making. These benefits outweigh concerns about regulation by survey, including that it detects injuries after they have occurred, depends on investors to provide meaningful information, permits trolling and manipulation, and creates added administrative costs.

The Political Economy of Tax Law

Chair: Ajay Mehrotra, Northwestern University & American Bar Foundation
Discussant: Omri Marian, University of California, Irvine School of Law

This panel brings together scholars researching the role of law and tax policies in defining global capitalism. The papers in this panel explore the legal process that led to the transformation of USVI into tax-havens, the role of legal expertise in enabling tax-avoidance, the ways in which the life insurance tax industry and actuarial assumptions facilitated tax avoidance, and the legal history of how the Nixon administration proposed to implement a VAT in the US. Altogether the

papers in this panel tell the story of how fiscal policies, taxation, legal actors, and expert knowledge have facilitated tax avoidance and wealth extraction.

A Matter of High Interest: How a Quiet Change to an Actuarial Assumption Turbocharges the Life Insurance Tax Shelter
Andrew Granato, Yale University

This Article will showcase the limits of a highly technical approach to tax policy with the first analysis of an almost completely unnoticed sea change in life insurance tax law, one that engorges a tax shelter at a moment of great attention to laws that enable the wealthiest members of society to face lower effective tax rates than their secretaries.

Life insurance has received extremely favorable federal tax treatment since the inception of the federal income tax. In the 1980s, in response to an increasing wave of policies smuggling traditional investment products into products calling themselves life insurance, Congress formalized a mathematical definition of life insurance policies directly into the Internal Revenue Code (§ 7702). § 7702, a fully realized actuarial simulation, placed quantifiable limits on the degree to which policyholders could treat a life insurance policy like an investment (such as a mutual fund) rather than as insurance protection.

For decades, the provision was left alone; however, buried in the 2020 COVID-19 omnibus relief bill, Congress included – with essentially no public debate– a change to a key actuarial assumption of the § 7702 test. The result, though heavily obscured by layers of mathematics, was that § 7702 was made substantially more permissive, giving policyholders much greater leeway to use life insurance policies as conduits for tax-exempt wealth accumulation. After over thirty years of near-total absence of analysis of Congress' life insurance definition in the legal literature, this paper resurrects the history, purpose, and structural limitations of § 7702 and the hyper-technical approach to tax policy it embodies. It further provides the first analysis of the new world of life insurance after the stealth § 7702 amendment, one in which swathes of the industry are preparing to leverage their extraordinary tax advantage into a new role at the center of high-end tax avoidance.

Nixon's VAT: The Rise and Fall of the 1970s National Value-added Tax to Fund Education
Ajay Mehrotra, Northwestern University & American Bar Foundation

Nearly all developed countries, and many in the developing world, have some type of a broad-based, national consumption tax, frequently in the form of a value-added tax (VAT). In many of these countries, the VAT funds a robust social-welfare state, with national spending on healthcare, education, and the like. The United States is a glaring exception. This paper – which is part of a larger project exploring "why no VAT in the U.S.?" – examines the rise and fall of a 1970s national VAT proposal aimed at funding education proposed by the Nixon Administration.

This paper seeks to identify and analyze the general economic, social, political,

and legal conditions that gave rise to several VAT proposals in the late 1960s and early 1970s. This paper also seeks to explore the broader forces, seminal events, and pivotal historical figures that resisted the VAT during this period and why they were successful in rejecting this new national revenue source. Among these forces was the racial tensions related to busing and school integration. Some opponents of the federal education VAT feared that the growing powers of the federal government would intrude on social and race relations. The ultimate goal of this paper, and the lager project of which it is a part, is to understand better the twentieth-century American resistance to a comprehensive national consumption tax, and why the United States remains the only advanced, industrialized democracy without such a levy.

Terrestrial Paradise: Dodging to Develop in the US Virgin Islands
Ian Murray, European University Institute

Since 2018, the European Union has included the United States Virgin Islands (USVI) on its list of non-cooperative jurisdictions for tax purposes, citing, among other things, preferential tax regimes available to firms under its U.S.-government sanctioned "Economic Development Programme." This paper examines the origins and impact of these tax breaks, in particular those available to "international financial services entities," who in some respects face lower requirements to qualify than other types of businesses. It observes the context of economic competition with Puerto Rico as a window on the landscape of economic growth narratives in the U.S.-controlled Caribbean. It then evaluates claims that the programme has failed to produce observable economic progress in the USVI, raising questions about who truly benefits from policies that use fiscal evasion to promote economic development.

In so doing, this paper builds upon the rich literature criticizing development economics for privileging aggregate capital accumulation over accompanying distributional concerns. Chiefly, it revisits Deidre McCloskey's portrayal of the discipline as a pseudo-scientific exercise in social engineering, merging her postmodernist appraisal with subsequent strands of academic disillusion with the capitalist growth imperative. It further probes the spatiotemporal boundaries of what Vanessa Ogle has called archipelago capitalism, questioning the need to perpetuate colonial constructs as pretexts for modern financial maneuvers in a digital age, when most so-called "offshore transactions" bear only a fleeting and legally fictitious connection to any terrestrial "offshore jurisdiction." In the spirit of the law and society tradition, it exposes the "Economic Development Programme" and similar growth-oriented legal initiatives as products of the very historically contingent geographies of domination they perpetuate.

The Law and Political Economy of Environmental and Natural Resources Regulation and Litigation

Chair & Discussant: Matias Guiloff, Universidad Diego Portales

This panel will tackle with different distributive questions that are currently arising within the realm of environmental and naturales resources regulation.

Specifically, who is winning and losing with energy transition programs? How does those backlashes against judicial rulings in extractive contexts look like and which actors are generating them? What role is the law playing in the implementation of major foreign direct investment projects? How does the collaboration between private and public actors looks like in environmental public interest litigation within authoritarian contexts? What courses of action are institutional investors taking towards their climate related portfolio risk?

'Extracting Natural Gas in the Rovuma Basin in Mozambique: The Role and the Place of the Law'
Ana Carolina Dall'Agnol, University of Oxford

This study is a chapter of my doctoral thesis, which will be shaped into an article in the near future. It answers the following questions: 'How does the implementation of major foreign direct investment projects in the oil&gas sector take place in resource-rich African Sub-Saharan countries? How is law used to advance or resist the process of accommodating these projects?' I rely on literature on law and globalisation (Sassen; Dezalay/Garth; Shaffer/Halliday; Engle Merry; Lander) to make two inter-locking arguments in this study. My first argument is that major investment projects in the oil & gas sector mobilise legal assemblages that operate beyond traditional borders, both territorial and social. These legal assemblages blur the distinction between the public and the private, as well as the global and the national, and even contribute to redefining these categories. My second argument is that the formation and operation of legal assemblages call for a tapestry of efforts requiring multiple arrangements, in which various processes are involved (Shaffer and Halliday 2015). There are two main processes taking place – which are advanced through law – and which happen simultaneously: a delocalisation process and, paradoxically, a process of embedding the global within the national.

The Area 1 and Area 4 natural gas extraction projects in the Rovuma Basin in Mozambique – the largest foreign direct investment projects in Sub-Saharan Africa on record – were chosen as units of analysis for this study.

I rely on eighty-six qualitative interviews conducted remotely and mainly in person in Maputo, Mozambique, where I am currently based and writing up. I have applied a rigorous grounded theory approach to data collection and analysis.

An Unlikely Duet: Public-Private Interface in China's Environmental Public Interest Litigation
Ying Xia, University of Hong Kong

Research has been increasingly devoted to examining the collaboration between public and private actors in environmental regulation under neoliberal democracies. However, this public-private interface under authoritarian regimes remains understudied. This paper seeks to fill the literature gap by empirically examining the interaction of environmental NGOs and procuratorates in China's environmental public interest litigation. We find emerging complementarity: NGOs focus on new issues and target high-profile defendants to increase the socio-legal impact of their civil litigation, whereas procuratorates have in-

creasingly emphasized administrative litigation against government agencies. This complementarity is shaped by the divergent legal opportunity structures facing Chinese NGOs and procuratorates as well as their varying institutional objectives and capacities. Their divergent regulatory preferences have also fostered synergy between these two actors, allowing them to collaborate on legal experimentation and innovation. This paper sheds light on the opportunities and challenges of public-private collaboration in environmental enforcement in non-democracies such as China.

Institutional Investor Industrial Policy
Madison Condon, BU Law

Several critiques of my 2020 “universal owner” argument fall into two categories. The first is that emissions reductions achieved by public companies “leak” to non-public companies outside the range of institutional investors, like state-owned enterprises. A second category of critique is that acting to reduce portfolio emissions externalities runs afoul of the law in several ways, including potential fiduciary duty violations by executives and fund managers, as well as antitrust law. Here, I argue that the “single firm tradeoffs” (SFT) framing-a cost benefit analysis of one intervention on one industry-in fact poorly captures investor incentives in the climate engagement space. These critiques analyze whether an investor is motivated by portfolio primacy or firm-specific profit seeking when deciding to vote for a resolution with emissions implications. But SFT fails to capture the real-world economic calculus, including but not limited to ignoring competitive effects. And a sudden and immediate slashing of supply may generate unwanted shocks throughout the economy unprepared for price spikes-i.e., a “disorderly transition.” Further, the calculus ignores the investor concern of stranded assets entirely, assuming that the decision to “keep it in the ground” results in a pure sacrifice of future profit. We can observe competing narratives suggesting that the cost of capital for fossils has risen as a result of ROI-guided decisions reflecting emissions regulation and energy trends. Finally, the SFT is poorly suited to the complexities and uncertainties of climate change. Rather than approaching climate related portfolio risk through supply-side shocks, institutional investors are engaging in complex cross-sectoral engagement, both up and down supply chains, with a focus on the hardest to abate industries.

Judicial Backlash in Extractive Contexts Struggles Against Corruption and Megaprojects in Guatemala
Ana Braconnier De León, Center for Advanced Studies and Research in Social Anthropology (CIESAS)

What does a backlash against judicial rulings look like in extractive contexts? This article analyzes a different process of judicial backlash in contexts where the high courts challenge politically and economically the elites’ entrenched interests. In contrast to the judicial backlash in liberal democracies where the conservative reactions can unleash social violence and backslides in the legislative and electoral fields, I argue that in extractive contexts where small elites concentrate power and wealth, a judicial backlash implies political repression, enhancement of impunity, and the strengthening of the elites’ power. Draw-

ing from the case of Guatemala during a critical juncture from 2017 to 2019, I unpack the process of backlash against the Constitutional Court and its support structures by analytically identifying: (1) the trigger, (2) the elite coalition building, (3) the escalating reactions, (4) the political capture of the judiciary-in the Guatemalan case. When the Court decided in cases against corruption and natural resources extractive megaprojects-what I call “anti-extractive rulings”-the economic elites and their political and military allies coalesced to develop strategies to suppress dissent. These strategies included legal actions (impeachments), political noncompliance, intimidation and shaming, and diplomatic leverage. This paper aims to contribute to the growing literature on the backlash and democratic backsliding by highlighting the specific features of contexts marked by a high elite concentration of power, a sufficient degree of judicial activism, and where courts discuss politics.

New Frontiers of Imperial Rentier Capitalism: The Legal Regimes of Extraction for a Green Transition
Christine Schwobel-Patel, University of Warwick

This paper will set out how green energy transition programmes are shaping new frontiers of extraction and concentration of wealth. I will outline the legal regimes that regulate access to scarce resources. These legal channels that allow for the regulated flow of capital from the capitalist periphery to its core are the structures of what I call imperial rentier capitalism. The ‘old’ frontiers will be exemplified through extractivism in the DRC, specifically cobalt; the ‘new’ frontiers will be illustrated by the growing interest in new extractive possibilities in Greenland, where the melting ice sheets are hoped to reveal minerals to power the green energy transition. The object of the study is to make visible how law creates and supports structures of extractivism whilst also playing a role in the greenwashing of its consequences.

Global Data Law & Justice

Chair: Fleur Johns, UNSW Sydney
Participants:
Angelina Fisher, New York University
Benedict Kingsbury, New York University
Thomas Streinz, NYU Law - Guarini Global Law & Tech
Dimitri Van Den Meerssche, Queen Mary University of London
Jennifer Raso, McGill University Faculty of Law

Data is not just a commodity but a medium of power and ordering. Whether data is seen as an economic commodity, a strategic or proprietary asset, a collective good, or a social practice determines the regime through which data is governed, who is governing it, and for whose benefit. Different qualities with which data is imagined thus also determine the nature of the institutions that are being proposed to regulate data. “Thinking infrastructurally” enables us to explore the co-constitutive interaction of legal, social, organizational, and technical practices that enable different data infrastructures and their relationship for power.

This roundtable will explore these conjectures in depth. We will ask: How should data be conceptualized for purposes of regulation? How can global data governance be (re-)oriented towards justice?

The Domestic Work of International Criminal Justice

Chair: Randle DeFalco, University of Hawai'i at Mānoa William S. Richardson School of Law
Discussant: Sara Kendall, University of Kent

This panel explores how international criminal justice is renationalised into domestic setting. Drawing on feminist and sociological theory coupled with original empirical research, it offers a close reading of what is at stake when penal authority developed at the international level is then enacted in specific local settings. Drawing on insights from victim participation meetings in northern Uganda, discourses on human trafficking in Italy to extradition cases in the UK and investigations in Ukraine, the panel explores the labour relations, social solidarities, penal practices and points of resistance that international and transnational criminal law brings into being.

Bordered Penality as Antagonistic Politics
Mattia Pinto, University of York

While an unprecedented number of people are on the move globally, competing discourses are articulated around the phenomenon and shape how migration is governed by domestic and international law. All discourses engage with penality, albeit in very different ways. Governments, state officials and organisations interested in national and global security resort to the language and tools of criminalisation as a way of disciplining, excluding and expelling migrants. While denouncing this 'crimmigration' approach, human rights advocates have started employing the language of anti-impunity to frame border violence (by state and non-state actors) as an international crime. Grassroots migrant movements reject the appropriateness of penal intervention by highlighting the prejudice and violence that penality inevitably produces on people on the move. This article analyses and critically assesses these discourses in the context of migration debates in Italy. It shows how penality becomes a catalyst of antagonistic politics. Domestic penality is mobilised as an instrument of social exclusion and political disfranchisement. International penality is used to evoke moral outrage and delegitimise anti-immigration policies. Even resistance to penality tends to be developed as part of an antagonistic stance towards mainstream discourses. Building upon the work of Chantal Mouffe, the article presents the case for 'agonistic' (as opposed to 'antagonistic') politics in dealing with migration: a valorisation of the political struggle between adversaries over opposing ways of dealing with complex issues of values and power. I argue that moving from antagonism to agonism, far from reinforcing anti-immigration sentiments, is the first, required step towards an abolitionist horizon. Though not resolutive in itself, agonistic politics would in fact help decouple migration from penality and, thus, remove a central source of violence and harm for migrants.

From 'Innocent Victims' to 'Indebted Subjects': Deepening Ideology Critique in International Criminal Justice

Leila Ullrich, University of Oxford

International criminal trials, critical scholars argue, largely function as spectacles for audiences in the Global North. They portray victims as abstract figures of suffering to legitimate legal, military and economic interventions in the Global South while casting black perpetrators as containers for all evil, conveniently distracting from the structural causes of atrocity violence and the wars unleashed, funded or condoned by the Global North. This account is very persuasive, but it perhaps takes too seriously the idea that the International Criminal Court (ICC), above all, tries and punishes individual perpetrators. This paper – based on a forthcoming book – explores what the ICC does beyond the courtroom, 'in the field', especially with regard to victims: community outreach, victim participation, victim assistance and reparations. Drawing on 134 interviews and extensive field research in The Hague and in Uganda, the paper argues that the ICC's main ideological project is not to save 'innocent victims' from 'evil perpetrators' but to create 'blameworthy victims' in Africa and put them to work. What is missing from the ideology critique of International Criminal Law (ICL) is a grounded study of how the Court produces victims in the Global South, not as idealized figures, but as racialized and feminized working subjects for global capitalism.
Drawing on feminist political economy and critical ideology theories, the paper zooms in on how victims in Northern Uganda are integrated into global labour and debt relationships, through the ICC's assistance and reparation programmes, which (re)construct them as 'lazy', 'unproductive' and 'unreliable' workers, debtors and micro-entrepreneurs. The paper thus sheds light on how capitalism works through the quotidian relationships and practices of international criminal justice, especially in domestic and localized settings.

Janus-faced evidence gathering at the ICC: social media open-source evidence and the (dis)empowerment of local actors

Franka Pues, King's College London

Investigations at the International Criminal Court, with a focus on gathering predominantly traditional forms of evidence, often struggle to produce sufficiently relevant evidence in a timely manner. Current developments in the digital realm and changes in communication over the last years has seen the emergence of social media open-source evidence. Recently, with the invasion of the Ukraine, its potential to overcome many of the normally experienced challenges during the collection stage of investigations, such as temporal delays, geopolitical access, and issues of location, has been highlighted.

It is within the nature of user-generated content that it is directly produced by participants, onlookers, and victims at the location of the crime. With their ability to write, film, photograph, and record their actions, crimes, and events witnessed, the notion of actors playing a part in providing evidence at the Court significantly increases and changes, and so does the quantity of available evidence.
However, this new form of evidence and associated evidence gathering is Janus-faced: on the one hand, it allows anyone with internet access to express

their opinions, lowers the bar for active participation of many diverse local actors, and communities can rally together to provide context and information. It is a direct empowerment of domestic actors. On the other hand, as evidence is being collected digitally, not only does it remove an individual's agency and their choice of participation, it is also that with it being part of the digital realm, evidence can be collected and narrated from anywhere in the world. It challenges the necessary domestic components of investigations and raises questions about the role of these newly won local actors and their ability in shaping their stories.

Thus, this paper will examine who, and at which point in time, holds the power over the stories evidence tells, and its new relationship with the Court and domestic communities.

Performing International Legitimacy in Irregular Criminal Justice
Aaron Fichtelberg, University of Delaware

In this paper I analyze the performance of legitimacy in irregular criminal tribunals that apply international criminal laws (such as ad hoc tribunals, revolutionary courts, and "people's courts"). Because these tribunals operate outside of the traditional nation-state system or on its margins, and because they are tasked with adjudicating particularly complicated and fraught conflicts, it is necessary that they perform their legitimacy in a particular way. I will argue that these approaches take three different methods depending on their political position: the radical approach (personified by "people's tribunals" in revolutionary governments), the moderate approach (found in institutions like the "Russell Tribunal" that investigated war crimes in Vietnam), and the conventional approach (found in tribunals such as the Iraqi Special Tribunal and similar ad hoc courts). While none of these tribunals can claim that they were constituted by conventional legal authorities and have questionable jurisdictional claims, they each respond to these perceived weaknesses in different ways based on their relation to conventional international actors. Building on the work of Pease and Archibugi (2018), I point to some ways that irregular tribunals can strive towards more international legitimacy and thereby more effectiveness.

Race, Refugees and International Crimes: Rwanda's Role in the Transnational Legal Ordering of Criminal Justice
Nicola Palmer, King's College London

In April 2022 the British Government entered into an agreement to send people seeking asylum in the UK to Rwanda. An examination of Rwanda's role in reaching this agreement illuminates how wider transnational legal orders of criminal justice are drawn on to reinforce racialised borders and are underpinned by entrenched economic inequalities.

This paper examines Rwanda's role in the development of these transnational legal orders of criminal justice and their intersection with border control. Part I goes inside two English courtrooms - one focusing on extradition, the other on judicial review. It shows the different legal issues at stake and describes the people involved. In doing so, it highlights the different orientation in the discussions of judicial independence in Rwanda when the concern relates to extradi-

tion and when it relates to the externalisation of the UK's obligations to process asylum applications. While the discussion notes the different legal arguments, attention is drawn to the plural social solidarities at play.

Part II places these cases within a wider dataset focused on cases brought against Rwandan nationals. Since 2014, in 20 countries around the world, 102 individuals have been deported, extradited, or domestically prosecuted for their alleged participation in the 1994 Rwandan genocide. Examining how the pursuit of these genocide suspects has intersected with border control helps to explain why the UK's first refugee externalisation agreement has been reached with Rwanda.

Finally, Part III argues that these cases communicate not only an ongoing commitment to recognizing the wrong of genocide but also more ambiguous messaging about fair trial in Rwanda, a racialised notion of the 'criminal migrant' and, to a Rwandan audience, the transnational reach of the Rwandan state. Read together, these cases make visible the plural communities that transnational legal orders of criminal justice constitute and are being constituted by.

The Global Anti-Terrorism Legal Regime: The Spread of Domestic Laws Criminalizing Support for and Incitement of Terrorism
Jessica Stanton, Temple University

In the years following the September 11th attacks, the UN Security Council urged countries to enact domestic laws criminalizing support for and incitement of terrorism, as a means of strengthening the international legal regime for countering terrorism. Why did some countries alter their domestic anti-terrorism laws to align with international standards, while other countries resisted international pressure to do so? Although international anti-terrorism efforts were intended to address threats from transnational terrorist groups like al-Qaeda, this paper argues that concern regarding internal (domestic) threats drove government decision making regarding the adoption of new laws criminalizing support for and incitement of terrorism. Domestic institutions, too, shaped government decision making. Partially democratic governments that perceived significant internal threats to their domestic political power adopted expansive laws that defined support for and incitement of terrorism broadly; such laws provided governments with enhanced tools for political repression, facilitating the detention and prosecution of members of the domestic political opposition. Thus, international efforts to strengthen the global anti-terrorism legal regime had serious repercussions for human rights. To analyze these arguments, this paper draws on an original data set cataloging domestic laws criminalizing support for and incitement of terrorism in 193 countries from 1945 to 2021.

The Law and Political Economy of Colonialism, Racism and Nationalism

Chair: Joanne Cheung, Stanford University
Discussant: Angela Harris, University of California, Davis

This panel examines how the law shapes patterns of colonialism, racism and

nationalism. Specifically, are decolonized countries independent given the existence of entrenched global economic hierarchies? What are the legacies of peasant insurgencies against debt bondage on the origins of financial markets? How does geopolitical tensions impact the racial understanding of immigrants? What lessons can be drawn from past experiences concerning antiracial organization? What is driving the passing of technology statutes that are protective of national companies and which will be their likely effects? How does political independence manifest in the context of entrenched global economic hierarchies?

A New Techno-Nationalism? Or Just New Wine in Old Bottles?
Ying Wu, Shanghai Jiao Tong University KoGuan Law School

Technology has become the battleground for great power competition. US. passed the Innovation and Competition Act, and CHIPS and Science Act. The legislation, as an industry policy, in essence represents a liberal hegemonic order. Simultaneously, the 20th National Congress of the Chinese Communist Party which just closed proposed the “Chinese Modernization” as a new choice for development as an alternative to Western democracies.

Against this background, the paper argues that the techno-nationalism has reappeared which sees technological innovation and capabilities directly linked to a country’s national security, economic prosperity, and social stability. Exploring the origin of techno-nationalism, the paper finds that behind the techno-nationalism hides the racial capitalism. By the methodology of tracing the “history of the present”, the paper goes beyond the identity politics, to trace the assembly of the racism, the imperialism and the capitalism, and thus situates the racism across the boundary from a geo-political and geo-economic perspective.

The historical development of world capitalism was deeply influenced in a most fundamental way by the particularistic forces of racism and nationalism. The origins of racism and nationalism both anticipated capitalism in time and formed a piece with those events that contributed directly to its organization of production and exchange. On this score, through the informal imperialism and the imperialism of free trade, the hegemony constructed and thus coming with the distributional power. By case studies, the paper further argues that, under the techno-nationalism, technology companies will face the “Deep versus Broad Dilemma”; when going overseas, which will fundamentally affect the development of technology and change the GVCs landscape. Technological nationalism will greatly weaken the effectiveness of international governance, lead to unfair distribution.

Antiracist Organizing and Class: Where Does Change Come From, Where Are We Now, and What Should We Be Doing?
Martha Mahoney, University of Miami School of Law

Following previous work on Youngstown steelworkers and waterfront workers in Los Angeles, this paper seeks lessons from a less-studied aspect of the civil rights movement: antiracist, class -conscious organizing with working-class whites in the late 1960s and 1970s in several areas of the country What was achieved, what factors affected durability of those achievements, and how

what lessons should inform activism today? Building on the extraordinary achievements of the Black freedom movement, Bob Zellner and other former SNCC members organized factory workers and woodcutters in Mississippi and Alabama, insisting that whites work on terms of equality and respect with Black workers-leading to changed beliefs about race. Other antiracist class-conscious organizing took place in Kentucky, Chicago, Philadelphia, and North Carolina, winning some victories but with varied results. Successes in structuring interracial leadership of unions were blocked by judicial interventions. It is vital to confront and demand change to racist language and microaggressions. But what changes people's understandings of their lived experience at work and in communities? Zellner found that racist rhetoric was often the last thing to change, after people worked together and ideas had changed. This paper asks how lessons from past organizing may inform work for change today.

From Criminalizing China to Criminalizing the Chinese
Leo Yu, Southern Methodist University

In November 2018, the former Attorney General Jeff Sessions established the China Initiative, the Justice Department's first country-specific initiative that aimed to combat espionage. China, the country itself, seems to have become a criminal suspect for the first time in U.S. history.

This article uses the China Initiative as a vehicle to investigate the dynamic between geopolitical tensions and racial understandings of immigrants in America, and conclude that geopolitical tensions deeply impact the racial understandings of immigrants. In addition, this paper argues that geopolitical tensions project a much stronger impact to nonwhite immigrants than white immigrants. For the Chinese, China, American's most significant challenger in geopolitics, has taken the center role in the racial understanding of them. To many Americans, Chinese are more than just perpetual foreign as they were perceived in the 19th and 20th century; today, they are foreign perpetuators. The China Initiative is a natural response to this new racial understanding of the Chinese.

This article also analyzes this new racial understanding of the Chinese through the lens of critical race theory. In the early 21st century, the Chinese have been considered functionally white, for the purpose of anti-affirmative action movements. With China's uprising, and the anticipated ending of affirmative actions, Chinese will find that they are motiving towards functionally black in the third decade of the 21st century: to be subject to criminal justice discriminations due to a negative racial understanding.

Unless there is a fundamental change in the cultural understanding of China, there will be little progress in attacking racial profiling against the Chinese. This article urges that Chinese Americans should take the initiative, and help Americans form an accurate, nonbiased understanding of China.

Generative Temporality in a Colonial Debt Economy (1830-1898): Indigo 'Blues' Time and the Origins of Modern Finance
Dania Thomas, University of Glasgow

What are the legacies of peasant insurgencies against debt bondage on the origins of contemporary financial markets? The finance scholarship on temporality is dominated by conceptual Eurocentric and Anglo-American origin stories, abstracted from centuries of sustained peasant confrontations with the contingent violence of debt enforcement. Insights from Subaltern Studies, the Black Radical Tradition, and Abolitionist literature motivate this reassessment of these origin myths.

19th century Bengal, the case study here, was a forced, extractive, plantation-debt economy dominated by English planters and zamindari landlords. The period 1830 -1860 was bookended by laws that incarcerated indigo peasant cultivators for civil wrongs, mainly debt defaults. These were 'slave laws' that kept bodies attached to the soil sometimes across generations and subject to the linear prefigured futures of debt time when debts were paid. In the short term, violent enforcement guaranteed significant returns to capital by erasing the precarity between liabilities and assets, between obligations incurred in the past, and returns to investment in the future. However, this was short-lived, across India. peasant insurgencies pushed back, in Bengal culminating in the Indigo (Blue) Mutiny of 1859. This evanescent collective subjectivity transgressed debt time and simultaneously negotiated contingency (avoidance of violence and often death) in indigo blues time. Incarceration failed and the 'malleability' in the valuation of commitments and obligations that followed, forced losses on investors. The Union Bank that held indigo debt claims went bankrupt in 1848. To restore investor confidence, the sovereign had to step in and back debt claims. India was formally colonized in 1858. The carceral law was replaced by the Indian Contract Act of1872. This paper concludes by revealing that indigo blues time continues to reverberate as the uncertainty that defines modern finance.

The Problem of Economic Imperialism and Political Independence in Postwar Anticolonial Thought

Arwa Awan, University of Chicago

My paper revisits the problem of neo-colonial domination which was confronted by Third World states as formal decolonization appeared on the horizon during the post-war period. While formally independent, these states found themselves trapped in old colonial patterns of economic exploitation, unable, for instance, to sell their primary goods at higher prices, or foster economic development domestically which would undercut the manufacturing advantage enjoyed by richer countries. This paradox of legal independence and economic dependence illuminates the limits of the legalistic paradigm but also opens up productive questions about the relationship between law, state and political economy. In my paper, I reconstruct how two major anti-colonial thinkers – Aimé Césaire and Frantz Fanon – grappled with this paradox from two different contexts from within the global peripheries (Martinique and Algeria). As a representative of Martinique in the French National Assembly, Césaire helped pass the departmentalization law, which, however, failed to deliver economic prosperity for Martinique despite its equal legal incorporation into the metropole. In contrast with Césaire's opposition to political independence due to his fears over the fate of small island economies if completely abandoned by colonial

powers, Fanon finds in political independence and total separation from the colonial power the remedy to neo-colonialism. I examine his vision of “collective autarchy” where Third World countries band together to pressurize the colonial countries into providing capital for development and better terms of exchange. By putting these two radically different routes to achieving economic self-sufficiency into conversation with each other, I bring to light the problem of political independence vis-à-vis entrenched global economic hierarchies, and offer some ways in which contemporary political and legal theory might be enriched from this discussion.

Translating Food Sovereignty: Cultivating Justice in an Age of Transnational Governance

Author: Matthew Canfield, Law Faculty, Leiden University

In its current state, the global food system is socially and ecologically unsustainable. While agro-industrial production is promoted as the solution to these problems, growing global “food sovereignty” movements instead demand local and democratic control over food systems. Translating Food Sovereignty accompanies activists based in the Pacific Northwest of the United States as they mobilize the claim of food sovereignty across local, regional, and global arenas of governance. It reveals how activists leverage the neoliberal transnational order of networked governance to make more expansive social justice claims. This nuanced, deeply engaged ethnography illustrates how food sovereignty activists are cultivating new forms of transnational governance from the ground up.

How Economic Power Shapes Legal Structures, and Vice Versa

Chair & Discussant: Shai Karp, Northwestern University

Decades of compounding economic inequalities and crises have brought new scholarly attention to structures of economic power. This panel asks questions about how legal environments confer economic power and, conversely, how economic power can secure legal power. The presentations will examine structures of economic and legal power in three contexts: landlord-tenant relationships; state-organized debt collection; and the regulations that structure civil courts. Together, the papers in this panel seek to bring forward new insights about the institutional and systemic durability of inequality and-through empirical and theoretical inquiry- to offer new avenues for understanding the mutual construction of legal and economic power.

Courts Segregated by Market Power
Kathryn Sabbeth, UNC School of Law

Even before the most recent crisis of faith in the U.S. Supreme Court, scholars questioned courts’ potential to promote justice. Yet one of the most basic problems has received little attention: the U.S. civil justice system supports and

depends on market power. This can be seen in the wide divergence between investments in the fora that adjudicate the problems of the poor and those reserved for the courts that entertain the concerns of the rich. In a common law, adversary system that relies on parties and judicial officers for the development of law, our investment in courts and lawyers according to parties' economic power results in the distorted development of law that increasingly serves the interests of the powerful. Not by coincidence, this system shortchanges the interests of people of color.

This panel presentation is part of a book project, Courts & Capital. The book has three core themes. First, although court access is a public good, it is not distributed equally, for reasons even more basic than readers might expect. Second, key issues governing people's lives-security in one's home, family relationships, and personal finances-receive the least respect from the civil legal system (measuring respect by expenditures of time and money). Finally, the current structure is an intentional choice of institutional design.

My presentation will focus on one aspect of this design: price-segregated courts. Attendees are likely familiar with hierarchies between trial courts and appeals courts, but I will describe legal hierarchies among U.S. trial courts. These hierarchies determine the resources available for each case, and, as I will explain, regulations assign cases to fora based on the economic value of the plaintiffs' claims. Moreover, the economic value of their claims is directly correlated with the plaintiffs' capital. This is just one illustration of how the civil court system invests in justice in proportion to parties' market power.

Fiscal Cost-Shifting and the Commercialization of Local Public Goods

Brian Highsmith, Princeton University

Increasingly, local governments are adopting regressive user-fee financing models that effectively convert low-income residents into consumers in predatory market transactions. While the dramatic rise of court debt is the best-studied example, this shift extends well beyond punishment systems: local governments are turning to such regressive funding streams to offset the budget costs of seemingly everything that they aim to do today. The commercialization of local public services helps explain a wide range of policy problems that may not initially appear to be connected-including the soaring cost of city ambulance services, exorbitant charges for prison phone calls, school lunch debt, and revenue-driven overpolicing.

Unlike progressive taxes, those revenue streams are imposed through flat-rate fee structures that are not varied by ability to pay, assessed from communities in proportion to their use of public infrastructure. Such service charges are extracted from vulnerable communities that have few resources from which to pay. But the systems are pernicious for reasons extending beyond the economic burdens that results from "successful" payment, and lack of services for those who are unable to afford them. When poor families are charged for their consumption of public goods, the state-in its capacity as the state-has a unique ability to make residents' lives miserable until payment is made. Governments

attempting to coerce payment on these debts suspend residents' driver's licenses, shut off their water access, evict them from their homes, deny their right to vote, and send them to jail.

This project conceptualizes these practices as aggressive forms of state-organized "debt collection"-coercing payment from vulnerable families' limited incomes and depleted assets-and asks how consumer law protections might be applied where the relationship between citizen and state is transformed into something more akin to a predatory creditor-debtor dynamic.

How Landlords Influence Housing Policy in an Era of Resurgent Tenant Power
Anna Reosti, American Bar Foundation

The acute rental unaffordability and insecurity crises playing out across U.S. cities have precipitated the reemergence of the tenants' rights movement and a shift toward a more protective regulatory environment for tenants over the last decade despite considerable political resistance from landlord and real estate interest groups. Though tenants' recent legislative victories in many jurisdictions may signal cracks in the ability of the rental housing industry to influence housing policy, the proliferation of new tenant protection laws at the state and local levels has yet to meaningfully diminish either the economic power of landlords or the political power of the "real estate state" (Stein 2019).
This paper draws on case studies of landlord backlash to tenant protection law in Chicago and Seattle to explore how unsuccessful campaigns to block and/or overturn new regulations can nonetheless advance the long-term interests of regulated industries by delegitimizing activists' calls for greater regulation and chilling lawmakers' legislative aspirations. A central narrative of recent antiregulatory campaigns asserts that tenant protection laws have uniquely pernicious effects on small-scale, non-professional or "mom and pop" landlords, and by extension, the low-income and vulnerable tenants housed within that sector. The focus on "mom and pop" landlords is particularly salient at a time when ownership of rental properties is increasingly concentrated in the hands of large-scale, institutional investors. Our case studies bring empirical scrutiny to such claims and complicate longstanding assumptions about the landlord ownership characteristics that are associated with the provision of relatively affordable and accessible housing in the private rental market.

Investing in Abolition
Sandeep Dhaliwal, NYU School of Law

Private equity firms now control much of the carceral services industry--the private companies that provide for many prisoner needs, selling food and hygiene products, facilitating communication and payments, assisting in medical treatment, all while surveilling their "customers," collecting troves of data from them and their communities. This article explores this process of value capture by private equity firms through an abolitionist lens, which involves attending to two related questions: If one's goal is to end the economic exploitation of those held in jails and prisons, how does this process fit in? What sort of reform strategy adequately undermines such a process to make room for new, constructive

possibilities? This is both a descriptive project and one of social criticism.

The article proceeds in four parts. Part I offers a brief history of private equity. This necessarily abridged account helps us get a sense of the strategies, scale, and increasing presence and political power of the industry. Private equity's incursion into carceral services is part of a broader macro-financial phenomenon. Part II turns to the carceral services space, focusing on Securus, the predominant prison telecom provider, following its explosive growth shepherded by a network of private equity firms. This story also involves shifts in practices as attention and pressure on the company have mounted, shifts calculated to undermine the image of exploitation. Part III develops the legal and political foundations of the carceral services market. These foundations suggest that narrowly targeted reforms to make carceral services provision more fair are unlikely to achieve their aims. Part IV provides support for the abolitionist orientation to this problem, which rejects features of our political economy as fixed. Both national economic policy and the financial system are sites of abolitionist struggle, where new institutional settlements are possible.

Private Government at Home: Landlord Power and Arbitrary Domination

Shai Karp, Northwestern University

The concept of private government has recently offered new theoretical avenues into the critique of economic power. In her trailblazing development of the concept, Elizabeth Anderson draws on republican theories of freedom to argue that workplaces are private spheres-structured by laws of property and contract-where people are subject to substantial unaccountable power in ways that drastically limit their autonomy. In this paper, I translate the private government concept from the workplace to the home in order to consider landlords alongside employers as private governments. Drawing on a rich empirical socio-legal literature on rental housing, I construct a theoretical framework for considering the landlord-tenant relationship as an environment of legally structured private control. I consider the productive parallels and possible pitfalls in the comparison between employment and rental housing. Using recent debates on the political theory of republicanism and political economy, I argue for a materialist republican analytic of power in rental housing. I conclude by considering the implications of this theoretical development for debates in housing policy, and for the politics of social problems more broadly.

LPE Approaches to Economy, Society, and Trade

Chair: Caoimhe Ring, University of Oxford
Discussant: Kim Vu-Dinh, Mitchell Hamline School of Law

This panel includes papers that take a law and political economy approach to traditional economic concepts such as price discrimination, debt instruments, and small- and medium-enterprises, and legal institutions such as property rights, administrative law, and investor-state arbitration. The papers on this panel highlight the need to confront existing inequalities and power imbalanc-

es in economic systems. The panel explores the impact of personalized credit pricing on marginalized populations and proposes a framework to address distributional impacts directly. It also examines the institutional frameworks and narratives that perpetuate credit access problems for women-led small and medium enterprises. Additionally, the panel examines the relationship between reliance of local governments on extractive debt instruments, state fiscal policy, and civil rights. Finally, the panel investigates the impact of investor-state arbitration cases on sectoral bilateral trade and raises questions about the role of the rule of law in international trade.

Credit Where Credit Is Due: Contesting the Debtor Status of Cities
Nketiah Berko, Yale Law School

Over the past decades, the public consciousness has been saturated with images of disinvested cities struggling to provide the barest necessities to their citizens. Cities such as Flint, Michigan, and Jackson, Mississippi, find themselves unable to provide clean drinking water. Territories like Puerto Rico are constrained by the bonds of austerity from robust public goods provision. In general, sub-national governments grapple with declining fiscal revenues and increased demand on social services. In the absence of significant fiscal support from either states or the federal government, local governments – particularly those representing communities of color – are left to contend with a costly private credit market alone.

This paper first explores how the reliance of local governments on extractive debt instruments is in part a function of public policy. Rather than simply the workings of an admittedly racist private market, the structural dependency of municipal governments is also a function of laws governing local government creation and state fiscal policy, as well as the narrow scope of the various civil rights statutes. Characterizing this arrangement as a double franchising regime, wherein upstream policy decisions delegate public services provision to local governments, and their operations to private financiers, the paper emphasizes the political choices and power dynamics inherent throughout.

This paper then advances community-based citizen debt audits as a means of contesting the burdensome debts local governments are forced to accumulate. Utilizing the Community Reinvestment Act as a starting point, the paper proposes that financiers be evaluated – and penalized – on account of the debt they hoist upon local governments. More importantly, the paper argues that such a participatory administrative process can, as it has in Ecuador and, more recently, in Puerto Rico, aid social movements in putting forth a democratic economic agenda.

How Much Does the Rule of Law Matter for International Trade? The Impact of Rule of Law-Related Investor-State Arbitration Cases on Bilateral Sectoral Trade in the European Union Between 2004 and 2019
Janka Deli, Stanford Law School

Over the past decade, several European Union (EU) member states have expe-

rienced a significant rule-of-law decline. Did EU member states backsliding on the rule of law manage to avoid the negative economic implications that theory and the existing body of empirical research on the rule of law and economic growth predict? If so, political regimes responsible for the erosion of the rule of law in the respective countries can be economically sustainable and, thus, more likely to politically sustain themselves as well. Since trade is an important factor for economic growth over the long run, this study addresses this question by investigating the impact of investor-state arbitration cases, prompted by rule of law-related breaches of international investment agreements, on sectoral bilateral trade. The estimates presented in this paper come from a structural gravity estimation on annual panel data on twenty-two EU member states spanning from 2004 to 2019.

Revisiting Rent Theory: Taxing Imputed Returns to Land as an Affordable Housing Policy
Faisal Chaudhry, University of Dayton

In this paper I offer a historical perspective on rent theory and the transition it underwent in the aftermath of the neoclassical revolution in economics, including through marginalism's heterodox extension as part of what Barbara Fried calls the "rent theory Lockean" core of the first law and economics movement. In part, I do so with a specific interest in questioning the dominant narrative that envisions post-marginal revolution rent theory as overcoming the supposed logical limitations of classical political economy, with its fixation on land rent alone. At the same time, I also use this historical perspective to buttress the paper's proposal of taxing the imputed income to the land site component of owner-occupied residential real estate as a contemporary affordable housing policy. The paper is a sequel to my recent piece Property as Rent (94 ST. JOHNS LAW REV. 364 (2021)) and part of my larger research interests in heterodox approaches to law and economics.

Entrepreneurship and New Firm Governance

Chair: Mark Suchman, Brown University
Discussant: Gordon Smith, Brigham Young University

This session brings together a set of papers exploring the role of law in the creation of new business ventures. The papers highlight the diversity of entrepreneurial ventures and the multiplexity of those ventures' relationships to law. These studies offer a valuable complement to other work on the role of law in the economy, much of which focuses on the regulation of large, mature firms. Entrepreneurial start-ups often lack the coordinated lobbying presence of more established businesses; however, they hold greater potential both for economic disruption and for individual agency. Thus, the capacity of law to facilitate or foreclose new firm formation – like the capacity of law to facilitate or foreclose other forms of creativity and deviance – is an essential component of the relationship between law and social change.

Blood Listings
Anat Beck, CWRU Law

The competition among states in selling corporate laws to firms has long been the subject of extensive legal scholarship. States compete with each other over the business of incorporation, seeking to lure businesses to incorporate with them. There are several theories purporting to explain why and how Delaware managed to dominate the market for incorporation for publicly traded firms for so many years.

The scale and magnitude of Silicon Valley's economic power is unprecedented in the history of global technology and industrial development. But Silicon Valley is not alone in the war for talent and technological innovation anymore. There are new tech hubs around the world that have been growing in power and prominence due to multiple factors.

The other large regional tech hub is based in China and Hong Kong. There are alarming reports, however, on a growing number of Chinese tech start-ups that are now willing to list their shares publicly on Chinese exchanges at low valuations in so-called "blood listings". Their slashed valuations are lower than during previous private funding rounds. These "blood listings" public offerings with slashed valuations could possibly translate into significant losses for venture capitalists and alternative venture investors that invested in late funding rounds. In addition to the economic factors mentioned above, the despair of tech companies in China are attributed to new geo-political realities between China and the USA and disruptions from the Chinese government's harsh COVID-19 restrictions.

China's institutions and legal system are different than those found in the West, both are equally capable of designing incentives to foster a well-developed market economy and an advanced financial system. This paper will discuss these differences.

Law and Entrepreneurship: Sheaves and Gleanings in a Field of Dreams
Mark Suchman, Brown University

This paper offers a social-scientific framework for understanding the relationship between law and entrepreneurship. I begin by exploring important ambiguities in both the domain of "entrepreneurship" and the domain of "law." New organizations vary widely in their novelty, their growth orientation, and their complexity – and in many organizational fields, the iconic high-growth, technology-based, "disruptor" is an infinitesimally rare outlier. At the same time, law varies widely in its sources, its determinacy, its primary carriers/enforcers, and its impact – and in many organizational fields, the iconic explicit, authoritative, and coercive government "mandate" is an infinitesimally small and remote tributary. Thus, I argue for modulating the traditional focus of law-and-entrepreneurship studies (which could be characterized as "law-on-the-books for growth-oriented technology-driven disruptor organizations") by attending, as well, (a) to law-in-action and legal consciousness, and (b) to small-scale, low-technology

"reproducer" organizations. To illustrate the divergent roles of formal and informal law in these "high-church" and "low-church" hemispheres of entrepreneurship, I apply Edelman & Suchman's (1997) typology of legal environments and Edelman's (2016) model of legal endogeneity, to examine the entrepreneurial challenges of opportunity seeking, market positioning, legitimation, networking, team building, and technology adoption – as well as the oft-ignored challenges of enterprise termination and recycling. Across these various activity domains, high-church entrepreneurs enjoy a greater ability to be law-makers rather than law-takers; and their enhanced agency, in turn, allows them better to align their formal and informal normative environments. This pattern has substantial implications for policy debates about regulation, about economic informality, and about unequal access to (business-oriented) legal services.

Risk-Seeking Governance

Brian Broughman, Vanderbilt University Law School

In recent years, venture capitalists (VCs) have retreated from active governance and monitoring of their portfolio companies. This trend raises doubts about the conventional model of VC behavior, which explains VCs' active governance as a solution to moral hazard and adverse selection. We propose an alternative model in which VCs use their role in corporate governance to persuade risk-averse founders to pursue high-risk strategies. VCs are motivated to encourage each of their portfolio companies to take risks because most of the gains in successful VC funds come from one or two outlier companies that grow exponentially. By contrast, founders are reluctant to gamble because their equity stakes come with firm-specific risk that cannot be diversified away. To compensate founders for their risk exposure, VCs offer an implicit bargain in which the founders agree to pursue high-risk strategies and in exchange the VCs promise them private benefits. VCs can promise to let founders cash out their shares early in secondary sales, to not replace them when the startup struggles, and to soften the landing if the startup fails. In our model, VCs who develop a founder-friendly reputation have a competitive advantage in ex ante pricing when contracting with a risk-averse founder, but at the same time are more exposed to poor performance ex post due to suboptimal monitoring. Our risk-seeking model can explain recent developments in VC markets and has implications for doctrinal debates in corporate law.

SUNDAY, JUNE 4

LPE and State Capacity

Chair: Mariana Fontes, University of São Paulo
Discussant: James Varellas, University of California, Berkeley

This panel addresses the sources and varieties of state capacity, understood as the state's ability to accomplish intended policy goals. It focuses in particular on how law and legal actors frame and enable state capacity in different political settings. The papers discuss the role of economic policy changes in the rise of authoritarianism in Brazil; the rational-legal justifications of fascists states; the law and political economy of crises in India; the prefigurative politics of public procurement law in South Africa; and the difference between a Bourdieusian and a Foucauldian perspective on state capacity, including the relationship between the managerial and adjudicative functions of the state.

Fascism: Legal Validity in Patrimonial States
Mark Gould, Haverford College

I conceptualize fascist states as forms of patrimonialism (particularistic, personalistic political processes, even if bureaucratically grounded, where law stems from the prerogative powers of the charismatic leader), as fundamentalisms (charismatic re-evocations of traditional, subterranean values, within the context of (incipient) modernity), and by characterizing them as forms of internal disorder that proceed from within the state (where state actors violate institutionalized norms of authority) and are supported within the societal community/civil society (by significant portions of the political nation). I formulate a theory of validity, grounded in an analysis of legitimation through social values, justification through procedures, and intelligibility/implication through cultural norms, that enables us to characterize the capacity of a rational-legal order to justify arbitrary actions grounded in prerogative powers and the reciprocal capacity of a charismatic authority that rules using prerogative powers to enable its own rational-legal justification.

Law and Political Economy in India: A Framework Adaptation
Fernando Loayza, Yale Law School
Samira Mathias, Jindal Global Law School

Over the last few years, the Law and Political Economy (LPE) field has attempted to develop a general framework to critically analyze the American legal status quo. Although 'LPE' functions as an umbrella for scholarship inspired by different legal traditions, this scholarship does share certain intellectual moves and moral commitments - the deconstruction of power in legal analysis and a shared commitment to substantive equality and democracy.

Despite the United States (US) origins of the field, these shared moves and commitments trigger the impression that the resulting framework can be adequately applied anywhere. This paper attempts to interrogate that intuition, and determine how this framework may be extrapolated to the particularities of other systems, such as in India. In contrast to the US, India presents a set of distinctive features in its legal traditions and socio-economic circumstances which contribute to the creation and perpetuation of political and economic crises.

Drawing on these distinctions, we test the LPE framework in the Indian context, ascertaining the extent to which it is applicable to India. We then demonstrate how it can be modified, or punctuated by additional considerations in order to become useful.
We aim to provide a preliminary translation of the US-centered LPE framework for India and in the process identify relevant variables that significantly impact LPE analyses in India. We also hope that this article will serve as a useful starting point for scholars attempting to carry out translations in other non-US contexts.

Political Economy and Authoritarianism: The Brazilian Case
Raquel Pimenta, FGV - Getulio Vargas Foundation Law School Sao Paulo
David Trubek, University of Wisconsin

This paper explores the relationship between changes in economic policy and the rise of authoritarianism. We outline the theory of authoritarian neo-liberalism and apply it to the Brazilian case. The theory posits that the adoption of neoliberal policies can be a driver of political authoritarianism. Is this model, the economic policies create harms to various groups which protest against them. Seeking to maintain policies which benefit certain groups, those in power may resort to authoritarian means to repress protests. The Bolsonaro government (2019-2022) in Brazil seems to challenge the authoritarian neo-liberalism theory at least in two accounts. First, while the government has adopted neoliberal policies to cater some of the interests in his power bloc, and repressed those who opposed it, these have coexisted with statist/interventionist tools. Second, as in our case study on agrobusiness and environmental policies shows, business interests responded both to government benefits and to the pressures from international markets, which condemned Bolsonaro anti-environmental agenda. These tensions has lead to fractures between agrobusiness associations. These initial findings call for refinement of the Authoritarian Neoliberalism model, specially exploring the conditions that lead business groups to defect from authoritarian governments and align themselves with pro-democratic movements.

Public Procurement and LPE (South African Style)
Jonathan Klaaren, University of the Witwatersrand, Johannesburg

This paper describes a recent exercise of legal drafting in South Africa and then reflects upon that episode from two points of view. The first viewpoint relates to a paper given in the Lisbon LPE stream of CRN-55 by Joel Michaels. The second viewpoint relates to an article (in the form of a book review) forthcoming in Law & Social Inquiry by Amy Cohen and Bronwen Morgan entitled 'Prefigurative Legality'. That paper roughly distinguishes among critical, socio-legal and prefigurative schools in assessing the directedness of legality in social action.

This paper suggests that in at least some contexts of the Global South, with at least partial eschewing of legal reform and/or hope for social reception, some forms of institutional legal work in the Global South may fruitfully be examined using the elements of prefigurative legality. In this way, anti-globalization rights movements of the Global North may be connected with anti-harmonization regulatory initiatives in the Global South.

The episode of law-making to be focused upon occurred over the period from April to October 2022. It occurred within NEDLAC, an institution bringing together labour, business, government, and community and based upon an empowering statute, the National Economic Development and Labour Council Act 35 of 1994. A former trade unionist who later served as the chief of the adjudicative tribunal of South Africa's competition authorities (only in South Africa ...), Dave Lewis has made this case strongly and persuasively in 2020, writing about the positive role of civil society and community organisations and calling for "rethinking Nedlac."

The Affinities and Tensions Between the Managerial and Adjudicative Functions of Modern State--a Critical Comparison of Pierre Bourdieu and Michel Foucault

Haozhou Lin, Shanghai Jiao Tong University KoGuan Law School

The relationship between the managerial and adjudicative functions of the state, or between governance and law, though often unexamined, is in fact complicated and fraught with contradictions. Interestingly, Pierre Bourdieu and Michel Foucault provide two starkly contradictory accounts on this topic. For Bourdieu, the relationship between governance and law--or between the bureaucratic field and the juridical field, in Bourdieusian terms--is an amicable and reciprocally beneficial one, one in which the juridical field offers the state the instrument par excellence to exercise symbolic violence, and the state in turn exalts the jurists. For Foucault, on the other hand, the relationship between governance and law is strained and lopsided. Foucault famously ostracizes law from modern society, or at the least, thinks law is subsumed under the paramountly important discipline and governmentality. Why do the two contemporaries reach vastly different conclusions? How do these different assessments fit in with their overall theoretical thinking, and more importantly, can we extrapolate from this disagreement between Bourdieu and Foucault a coherent theory about the managerial and adjudicative functions of modern state? This paper endeavors to explicate the positions of the two great French intellectuals, contrast them, explain their different genesis, and to the extent possible, reconcile them. This paper ends with a brief discussion of the theoretical import of this debate on the literature of authoritarian judicial politics, taking environmental justice in China as an illustration.

Race, Empire, Capitalism and the Constitution

Chair: Tshepo Madlingozi, Centre for Applied Studies, University of Witwatersrand
Discussant: Vidya Kumar, SOAS Law School

Constitutional law is a product of colonial legacies, a global racial order and the generalisation of capitalism. There are discernible Eurocentric vernaculars within the discipline, made possible by settlement and conquest. Eurocentric and imperial constititional law thus operates through various techniques of governance vested in “status quo constitutionalism”: including colonial ontologies and epistemologies, white supremacy, racial capitalism, and Indigenous genocide and dispossession. These techniques are made visible domestically through liberal conceptions of rule of law, constituent power, sovereignty, rights and constitutionalism. These techniques are further configured by global and international institutions. We explore why and how to engage in anti-colonial praxis in the context of constitutional law.

‘When Does an Omission Become a Lie?’

Tom Frost, Leicester Law School, University of Leicester, UK

This paper focuses on how it is possible to start providing a decolonial approach to teaching Public Law in an English law school. Introducing the UK constitution to law students follows a specific pattern. The UK’s continuing decision for centuries not to codify its constitution is justified through a National Myth that is rarely questioned – there has not been a need to codify the constitution as the UK has never been invaded, never lost a war and has never undergone a revolution. Following this logic, the UK’s current constitution is broadly the same as the constitution that existed in the 17th, 18th and 19th centuries. However, despite law students being introduced to Magna Carta, the Habeas Corpus Act 1679 and the Act of Settlement 1714, they are not taught the importance of British colonial history and white supremacy. It is not possible to understand the modern UK constitution without understanding and teaching as central to that constitution the British role in the slave trade, British colonial dispossession and genocides, and the logic of racial capitalism that underpinned the British Empire and that continues to underpin what remains of that Empire. This history has been excised from constitutional teaching and knowledge in a form of collective national amnesia that is evidenced in political debate and judicial decision-making. That amnesia is deliberate, and not accidental. I use examples of historical justice litigation from Kenya and the Chagos Islands to support my argument.

A Transnational Legal Feminist Analysis of the European Court of Human Rights’ Veil Ban Cases

Farnush Ghadery, London South Bank University

The paper examines the decisions of the ECtHR in the veil ban cases from a transnational legal feminist perspective. Transnational legal feminism argues for the contextualisation of transnational legal practice by way of surpassing the hegemony of Western liberal thought, as found within International/European Human Rights Law. Regarding the ECtHR veil ban cases, the paper criticises the Court’s heavy reliance on Western liberalism and its failure to take into account alternative epistemologies that could have enabled a more contextualised understanding of Muslim women’s veiling practices. The paper begins by illustrating how the Court’s portrayal of veiling as an oppressive religious

practice within Islam serves to entrench the juxtaposition of an essentialised notion of Islam as traditionally backward and rigid with a secular, open, and democratic Europe. It sets out how the Court has historically adopted problematic and incomplete interpretations of Islam, which are also reflected by the veil ban cases. In Part II, the paper discusses how the Court's limited conceptualisation of gender equality and women's rights within the liberal paradigm has foreclosed the possibility of any engagement with alternative feminist epistemologies. Finally, in Part III, the paper makes reference to Islamic feminism, as such a non-hegemonic, non-liberal epistemology, which can facilitate a more context-specific and appropriate understanding of the complex issues that underpin the veil ban cases. The reasoning of the ECtHR, through its Othering of Islam as a monolithic and essentialised religion, displays a lack of awareness of Islam's pluralistic nature as reflected in Islamic feminist thought and practice. I conclude that an understanding of non-Western, non-liberal epistemologies, discourses, and practices, such as Islamic feminism, is necessary for transnational legal practice on questions of gender equality to be truly intersectional as well as decolonial.

Citizenship and Membership in Settler Colonial Constitutionalism
Mazen Masri, City University London

Settler colonialism shapes and animates law in settler-colonial states. It is present in many areas of law: constitutional law, administrative law, immigration law, property law and more. Settler colonialism is very much intertwined with settler statehood that it provides a lens to examine and analyse the constitutional order. Settler colonialism is not just a matter of the past, but it is a foundational aspect in the settler state.

As part of a larger research project on settler-colonialism and constitutional law, this paper will focus on how settler-colonialism shapes immigration and citizenship laws and policies and their role in shaping the political community, its composition, image, identity, and to a large extent, constitutional membership.

The paper examines some aspects of citizenship and immigration in settler states (which include Australia, Canada, and Israel), and explores how settler colonialism finds expression in these laws and policies and how this contributes to shaping the constitutional order. It explores how certain dynamics that are associated with the 'civilising mission' and Patrick Wolfe's 'logic of elimination' are facilitated by constitutional and administrative law in settler states. The paper aims to highlight some common themes about how settler colonialism shapes the development of citizen regimes, and how law, in turn, operates to give effect to the logic of settler colonialism in the form of establishing and reinforcing the settler nation and dissolving the native population. It will also highlight how the exclusionary nature of citizenship in settler colonial states has changed throughout the years to serve the interests of the dominant settler group.

Constitutional Robbery: UK Public Law's Regimes of Dispossession and Racialisation in the Chagos Archipelago
Tanzil Chowdhury, Department of Law, Queen Mary University of London

This paper explores the relationship between UK public law and regimes of dispossession, taking the case of the Chagos Archipelago between 1968 and 1973 as its point of departure. It argues that this period is better understood not just as fortifying US military power in the Indian Ocean littoral region, but as part of a wider geography of primitive accumulation in which UK public law has been central- a process it describes as constitutional robbery. To preface these claims, this paper opts for a relational geography of a materialist public law. This re-conceptualises the geographies- or scales- of UK public law, extending an examination of its effects, impact and material relations beyond the territory of the UK. Further, it locates and analyses the ways in which the technologies of UK public law (re)produces primitive accumulation. Drawing these threads together, the paper offers a reconsideration of UK public law's role in the Chagos Archipelago as a regime of dispossession that was used to facilitate 'systematic colonization' in Iraq through the construction of military bases. Finally, it explores the racializing effects of this legally-enacted primitive accumulation by considering how 'race' is produced and participates both in conferring the 'displaceability' of the Chagossians and how it constitutes their class positionality in Mauritius.

Elite Networks in Law and Political Economy

Chair: James Varellas, University of California, Berkeley
Discussant: Fabio de Sa e Silva, University of Oklahoma

This panel addresses the role of professional and elite networks in law and political economy. It focuses in particular on how social networks, law, and public policy intersect and with what effects on democratic governance. It features papers engaging with conflicts of interest laws in the federal government and the financial ties of academic economists; the political power of business interest groups; campaign financing and public disclosure requirements; regulatory compromises across political fractions; and the implications of professional and political expertise on absenteeism and policy-making productivity.

Building Countervailing Power through the Administrative State

Zachary Krislov, Yale Law School

A rising chorus of scholars has weighed different approaches to "democratizing the administrative state," whether to legitimate its decisions or change their substance. However, much of this work-and indeed, much work on administrative reform-views administrative influence in isolation from its broader political context. Administrative procedures like notice and comment, advisory panels, and judicial review are viewed as failures if they don't result in interest groups getting substantive policy changes.

I offer a different perspective. Building on recent scholarship on agonistic democracy and the administrative state, I suggest that full evaluations of regulatory procedure reform must account for how different procedures facilitate political power-building-even if that power is located and exercised

outside of the administrative state. Giving voice to regulated groups need not mean giving them their way with the administrative state. Rather, administrative procedure should be viewed as a forum for broader political contestation, and different procedures should be judged by whether they naturally lead to the formation of nonstate institutions and advocacy groups that exert influence in legislative and other fora. I survey the historical fortunes of small business in the administrative state to show how failures to impact regulation directly need not be seen as a failure for efforts to empower small business generally. I conclude by suggesting principles and concrete proposals for those who seek to democratize the administrative state.

Financial Conflicts of Interest, Disclosure Issues, and the Impact of Academic Economists on Federal Policy
Kate Conlow, University of Iowa College of Law

Federal regulators, judges, and elected officials often rely on economic scholarship to guide legal and policy decisions that impact the greater public. Academic economists, who provide much of this scholarship, often serve the dual role of influencing policy while also serving as highly paid consultants for large private firms, relying on these firms for funding, and/or maintaining relationships with firms to gain access to important datasets that fuel their research. These financial ties can undermine the integrity of the scholarship when conflicts of interest are not disclosed. My paper first explores why professions and the government have created ethical standards, rules, and laws around conflicts of interest and their disclosure. I trace the history of conflicts of interest laws in the federal government, and especially in the executive branch and agencies, as well as the emergence of professional ethical standards across many fields in the early 1900s. I then discuss the increasing impact and role of economists in government beginning after World War II and how the field of economics was and continues to be at odds with other professions in not having ethical standards. After this foundational background, my paper explores the issues created when academic economists fail to disclose conflicts of interests in their scholarly publishing, government-funded or contracted research, or when advising on policy. For example, financial academic economists received public scrutiny after the 2008 financial crisis was shown to be linked to their policy guidance and failures to disclose conflicts of interest. With this Article, I look into private funding of scholarship and existing disclosure policies for academic economists, and I put forth a solution to foster transparency and ethics among academic economists providing policy guidance to the federal government.

Privacy, Politics, and Money: A Case for Increased Campaign Finance Reporting Thresholds
Patrick Long, Temple University Law and Public Policy Scholar

Campaign finance disclosure requirements provide voters with critical information on the source of political contributions, prevent the appearance of corruption, and enable enforcement of campaign finance laws. Under the Federal Election Campaign Act (FECA), individual contributions to a political committee in excess of $200 per calendar year (or per election cycle) must be publicly disclosed on periodic reports filed with the Federal Election

Commission. The information disclosed includes the contributor's name, contribution amount, address, occupation, and employer. Unlike federal individual contribution limits, which adjust based on the Consumer Price Index each election cycle, the $200 disclosure threshold remains fixed by law. This paper argues that the individual federal contribution disclosure limit should be automatically increased each election cycle consistent with increases to the federal individual contribution limit to protect the free speech rights of political contributors

The first section of the paper outlines the public disclosure requirements under FECA and the Court's jurisprudence, which focuses heavily on government interests without considering the disclosure burdens on individuals. The second section explains how the failure to increase the disclosure thresholds infringes upon the First Amendment rights of political contributors by exposing donors making nominal financial contributions to potential harassment and reprisal from neighbors, political opponents, and employers. The publication of small donor lists does not serve election integrity when cost-of-living increases make individual low-dollar contributions effectively de minimis. Although the increased access to online campaign finance data has strengthened election integrity, it increasingly burdens constitutional rights. The final section sets forth a legislative proposal to apply a cost-of-living escalator to the individual disclosure limit.

Regulatory compromise: the convergence around pension regulation in UK parliamentary debates, 1942-2021
Ayelet Carmeli, Massachusetts Institute of Technology

What happens to traditional partisan divides after the privatization of a major welfare service? I theorize that under privatization and its lock-in policy feedbacks it produces, previously-opposing parties will adapt their policy positions and reach a regulatory compromise about the need to regulate a privatized service. Taking pension reforms in the UK as a case, I examine how MPs' frame the "necessity and appropriateness" of policy choices, tracing the prominence of several themes over time (Schmidt 2008, Hall 1993): market; poverty; affordability; and reform. A quantitative text analysis shows convergence in the prominence of market- and poverty-related rhetoric in both Labour and Conservative MPs' speeches beginning in the 1990s. I conduct a close reading of the debates around the beginning of convergence, uncovering it stems from debates around the 1991 scandal of Maxwell's pension funds embezzlement. Despite initial disagreements on the culprit and appropriate response, both parties quickly converged, with Labour accepting privatization as fait accompli and Conservatives abandoning their previous preference of "light touch regulation." This new shared recognition of the need to regulate the private pension market underlay the enactment of the 1995 Pension Act. This paper contributes to the theory on privatization policy feedback from the perspective of a state as opposed to business, and highlights the benefits of a mixed-method text-based research design.

Should I Stay or Should I Go? Senatorial Absenteeism and the Determinants of Law-making Productivity

Umberto Nizza, University of Verona

Lawmaking is the principal activity of the members of the parliament. This activity stands in stark contrast to scoring political points to be reelected. This paper investigates if senatorial absenteeism affects lawmaking production, with the help of an innovative dataset consisting of 314 Italian Senator (2008-2013). Using a 2SLS approach and data from the open-data OpenPolis Foundation, this manuscript tests whether an increase in the share of non-voting constituents increases the incentives for Senators to sway undecided and operate outside the parliamentary chamber. Eventually, the empirical evidence confirms this speculation, suggesting that professional and political expertise have implication on absenteeism and policy-making productivity.

Legal Production of Racial Capitalism

Chair: Vasuki Nesiah, The Gallatin School, NYU
Participants:
Karen Engle, University of Texas School of Law
Jennifer Gordon, Fordham University School of Law
Vanja Hamzic, SOAS University of London
Athena Mutua, SUNY, Buffalo

This roundtable brings together scholars who are working on a variety of projects that deploy racial capitalism as an analytic to confront law's role in the racialized expropriation of labor, land, nature, personhood, and time. Studies include the history of racial segregation in the United States, contemporary quilombola land struggles in Brazil, eighteenth-century gender-nonconformity of enslaved West Africans, international development assistance aimed at incorporating Syrian refugees into the Jordanian garment industry, and sovereign indebtedness as a modality of racialized extraction.