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Introduction: Law and Political Economy in a Time of Accelerating Crises

Abstract: In this time of accelerating crises nationally and worldwide, conventional understandings of the relationships among state, market, and society and their regulation through law are inadequate. In this Editors' Introduction to Volume 1, Issue 1 of the Journal of Law and Political Economy*, we reflect on our current historical moment, identify genealogies of the Law and Political Economy (LPE) project, articulate some of the intellectual foundations of the work, and finally discuss the journal's institutional history and context.*

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Ernest Hemingway's 1926 novel *The Sun Also Rises* contains this famous exchange:

> "How did you go bankrupt?" Bill asked.
> "Two ways," Mike said. "Gradually and then suddenly."

In the United States and around the world, we are facing intertwined crises: skyrocketing economic inequality, an increasingly destabilizing and extractive system of global finance, dramatic shifts in the character of economic production, a crisis of social reproduction, the ongoing disregard of Black and brown lives, the rise of new authoritarianisms, a global pandemic, and, of course, looming above all, the existential threat of global climate change. From the vantage point of mid-2020, it is impossible to avoid the sense that these crises, like Mike's bankruptcy, have emerged both suddenly and as the result of problems long in the making. It's also clear that these interlocking crises are accelerating as they collide with societies whose capacities to respond have been hollowed out by decades of neoliberalism.

With the launch of the *Journal of Law and Political Economy* (*JLPE*), we—mostly legal scholars, but joined by economists, sociologists, political scientists, geographers, historians, and Indigenous and ethnic studies scholars—leap into the interdisciplinary fray, as so many others have done before us. *JLPE* is motivated by the belief that any attempts to understand the roots of the numerous crises facing us, much less assemble collective projects to address them, must contend with issues of law and political economy. In this Editors' Introduction to Volume 1 of *JLPE*, we explain our own sense of what "Law and Political Economy" is, both as an intellectual enterprise and as a network of scholars, policymakers, students, and advocates. We reflect on our current historical moment, identify genealogies of the Law and Political Economy (LPE) project, articulate some of the intellectual foundations of the work, and finally discuss the journal's institutional history and context. The accelerating crises that pose a challenge to our systems of governance are also a reason why we write,

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and why we believe our enterprise to be a timely one.

I. The Challenges of the Current Moment

The COVID-19 pandemic has brought into public consciousness a series of issues that we consider central to the Law and Political Economy mission.

Financialization. Among the most striking developments in recent decades is the increasing dominance of finance and financial logics over human needs, and even production, and the pandemic has thrown this problem into sharp relief. As one economist put it in March, while economic time stopped across many domains as the result of the pandemic and the efforts to mitigate it, financial time largely did not (Coy 2020). More than two decades of work across the social sciences has identified and criticized "financialization" as a driver of economic inequality and instability (Krippner 2011; Lazonick 2013; Nesvetailova and Palan 2020; Epstein 2005; Arrighi 1994), and policy responses to the pandemic have supercharged these dynamics. Consider, for instance, that after an initial drop, major American stock indices have recovered to set new highs as the pandemic rages. As of this writing, although the US is facing record drops in employment and gross domestic product, as well as a looming eviction crisis, the aggregate wealth of American billionaires has increased by over $750 billion (Americans for Tax Fairness and Institute for Policy Studies 2020). From our vantage point, a key element of the more than $10 trillion in bailouts and extraordinary central bank actions in the United States in the first half of 2020 (Brenner 2020) has been to extend the logic of shareholder primacy in corporate governance---to the point that instead of taking losses first, shareholders are now among the most insulated from losses of any group in society.

New Geographies of Production. While the pandemic has caused immediate problems in domestic manufacturing, including plant closures and outbreaks within cramped factories in industries such as meatpacking, among its more lasting effects may be on the international organization of production. The just-in-time approach to logistics and the global supply chains created during the neoliberal era of so-called "free trade"—and the "race to the bottom" in labor standards and regulation it has facilitated (Varellas 2009; Adkins & Grewal 2016; Thomas 2000)—have buckled and broken, raising questions about whether production will ever return to pre-pandemic levels of globalization. The uncertainty extends to the delivery of services essential for human flourishing: for example, as predicted by Law and Political Economy scholars (Pasquale 2014), under neoliberalism the organization and delivery of health care, both in the US and globally, has proven dangerously fragile (Moudud 2020).

Worker Precarity. While financial time races on and profits to the owners of capital increase, workers and their families are caught in economic predicaments ranging from difficult to dire. The pandemic exposed the precarity of "essential workers": not only hospital employees (janitors as well as doctors and nurses), but also nursing home aides, truck drivers and gig drivers, convenience store clerks, and workers throughout the food system, from those in the fields to those in meat-processing facilities to those delivering for restaurants and grocery stores. Though hailed as heroes, many of these workers, especially those with the lowest pay and benefits, continue to face a grim choice between going to work and risking illness and death, or staying home with mounting bills and the threat of hunger and homelessness. Many of these workers are immigrants, some undocumented, meaning that they both lack access to government support and that they are frequently responsible for supporting families outside the US through remittances. These workers are also disproportionately non-white, and their economic precarity is contributing to their disproportionate representation among those dying of COVID-19.

Even workers not faced with a choice between the risk of illness and the risk of economic ruin are dealing with unprecedented threats. Like Mike's bankruptcy, this sudden labor crisis is also a manifestation of a much slower one. Beginning in the 1970s, large corporations faced increasing pressure from the financial sector to divest themselves of labor expenses. One response was the offshoring of production facilitated by the neoliberalization of international trade, discussed above. Another was the shedding of full-time employees, resulting in a "fissured workplace" (Weil 2017) heavily reliant on part-time workers, independent contractors, franchisees, and gig workers (Dubal 2017). Once the pandemic began, many of these workers relied on federal paycheck support to avoid bankruptcy and eviction, and even to put food on the table, while policymakers fretted about the "moral hazard" of bailing them out.

Monopolization. The pandemic has made even clearer the importance of the resurgent interest in the anti-monopoly tradition in academia and beyond (Khan 2017; Paul 2020; Wu 2018; Vaheesan 2019; Teachout 2020). The timeliness of this revival is underscored by rising super-profits for technology monopolists, such as the so-called "FAANG" companies (Facebook, Apple, Amazon, Netflix, and Google, as well as similarly situated firms such as Microsoft). Companies in other highly concentrated industries—including, since the start of the pandemic, retail giants such as Walmart, Kroger, and Target—are also experiencing burgeoning profits the rest of the economy sinks into depression.

Digital Surveillance and the Algorithmic Intermediation of Life. In addition to their economic dominance, companies such as the FAANGs are also key drivers of unprecedented and intensifying shifts in the nature of governance. These and other powerful companies located at the nexus of cutting-edge government-funded research, billionaire financiers, and the military and security state (Mazzucato 2015; Weiss 2014; Block 2008) are constantly pushing their data harvesting operations and algorithms into additional areas of life (Zuboff 2018; Pasquale 2015; O'Neill 2016; Cohen 2019; Kapczynski 2020). As a result, nearly every aspect of human experience, whether economic, political, social, cultural, psychological, or even spiritual, is now increasingly under pervasive surveillance, intermediated and steered into often dangerous directions by unaccountable algorithms and artificial intelligence networks so complex their architects often cannot even understand them (Rahimi and Recht 2017). The full extent of the social, political, and governance effects of this surveillance are yet unknown, but what we have become aware of is troubling.

Neoliberal Family Policy. The pandemic has exposed the fact that wage labor, and "the economy" as a whole, depend on processes of social reproduction that are deeply gendered, and defined as

peripheral to or outside the sphere of the market (Folbre 2001; Fraser 2017). It has largely fallen on mothers to take on the burdens of home-schooling and the supervision of children and teenagers subject to remote instruction. The under-compensation of nursing home aides (driven not only by a gendered under-valuation of care work, but also the economics of health care) can be directly tied to needless deaths in rehabilitation facilities (Gonsalves and Kapcyznski 2020). The pressure to "open the economy" places special stress on K-12 teachers, as well as threatening to deepen the fissure between wealthy families able to hire private tutors for "pods" of children, and poor and middle-class families forced to rely on under-resourced public schools.

Meanwhile, as Melinda Cooper (2017) has pointed out, neoliberal economic governance also leans hard on the family as a mechanism for facilitating and legitimating upward distribution. Using the moralized discourse of personal and family responsibility, family policy in recent decades has sought to shift economic and social risk onto individual households (Hacker 2019), slashing the social safety net and expanding private credit. The language of "family values" legitimates household accumulation of wealth and privilege at the top (Markovits 2019), and—intertwined with the carceral state—legitimates state surveillance and discipline at the bottom (Gustafson 2011).

Racialized State Power. The pandemic has seen the maturation of the largest racial justice movement since the 1960s, as issues of police violence touch off massive and sustained protests across the United States and around the world. Notably, this movement has targeted the political-economic, organizational, and legal bases of unaccountable law enforcement power. Acutely aware of the role of the criminal legal system in suppressing Black, brown, Indigenous, and immigrant communities, many racial justice advocates have adopted policy stances ranging from outright abolition of the police to redirecting resources away from "violence workers" and toward helping professions and community organizations (Davis 2003; Vitale 2017). Movement organizers have taken aim at the legal and policy pillars of the criminal legal system, including the political power of police unions, statutes and judicial decisions that create impunity for police violence (including the legal doctrine of qualified immunity), and the harassment and punishment apparatus that makes people in poor Black and brown communities into second-class citizens, including stop and frisk policies, money bail, and mandatory minimum sentences (Roberts 2020). The movement for Black lives is also calling attention to the deep connections between the criminal justice system and our financial system under contemporary capitalism. A particularly salient example is the civil lawsuit recently filed in Louisville, Kentucky in the wake of the police killing of Breonna Taylor as she slept in her bed. Attorneys for Taylor's estate seek to connect the dots between state violence and policies promoting gentrification in her community (Bailey and Duvall 2020). Meanwhile, the president has turned from "dog whistles" (Haney López 2013) to bullhorns in attempting to incite white fear and hostility against nonwhites, including immigrants as well as Black people.

New Authoritarianisms. State responses to these crises have been alarming. The US notoriously has a president willing to encourage right-wing conspiracy theories, ignore science, and stoke white nationalism, and whose hold on power is supported by party leaders and a base that seems gleefully willing to abandon democratic norms and institutions (Kuhner 2017). But the turn to authoritarianism is not limited to the US. Leaders in nominally democratic countries around the world are taking up similar projects to crush dissent and encourage division. Anti-immigrant and anti-Muslim sentiments, couched in old languages of civilization, caste, and racial and religious identity, flourish even while the call that "Black lives matter" echoes around the globe. Meanwhile, China and Russia are embracing technology-enhanced efforts both to control their own citizens and to influence foreign events. One cannot help but see parallels to the present situation in Karl Polanyi's account of the collapse of

classical liberalism and the rise of fascism, the American New Deal, and European socialism as contending frameworks promising to protect society from the ravages of the market during the first half of the twentieth century (Polanyi 2001 [1944]).

Ecological and Climate Crises. Finally, the pandemic has provided an illustration of the relevance of political ecology to political economy. In 1976, the ecologist Barry Commoner argued that three apparently separate crises then besetting the United States—a crisis of environmental pollution, the "energy crisis," and an economic crisis of simultaneous recession and inflation ("stagflation")—could be traced to a single basic defect: a social design under which financial relations determined economic relations and economic relations determined ecological relations, even though the precarity of life on Earth demanded the reverse (Commoner 1976). Today, as climate change produces another set of cascading crises that are both gradual and sudden, political ecologists are drawing connections between "natural disasters" and the political economies of agribusiness, international development, and urbanization under neoliberal governance. This work illuminates the role of law in facilitating patterns of economic extraction and human settlement that disturb critical ecosystems, making far more likely the emergence of new pathogens such as the novel coronavirus (Davis 2020; Wallace et al 2020; Foster and Suwandi 2020).

Of course, these paragraphs barely scratch the surface of the myriad crises facing us. Our account, however, indicates the scope of the Law and Political Economy framework. By founding *JLPE*, we hope to deepen a range of connections.

First and foremost, we wish to broaden discussions of the legal regulation of economic matters beyond the narrow bounds of "Law and Economics." As others have argued (Polinsky 1974; Harris 2003; Britton-Purdy 2020), Law and Economics–still the regnant discourse on economic issues in law schools—resists history, sociology, and the humanities, and reduces law to a tool with which to maximize wealth, typically for the few (in practice if not in theory). Our view is nearly the opposite. Markets and their constituents, including corporations, trade relations, contracts, property, and money itself are creatures of law and politics, crafted by the state. Markets are also social institutions embedded in histories of colonialism, slavery, and exploitation. Their ultimate purpose is to promote human flourishing, not only to allocate scarce resources in a way that purportedly maximizes a particular conception of efficiency. Accordingly, we invite sociologists, political scientists and theorists, geographers, economists, anthropologists, literary scholars, historians, scholars in cultural and ethnic studies, Indigenous scholars, and others into the conversation as we rethink state and market governance in the ashes of neoliberal ideology.

Second, and relatedly, we aim to reconnect legal scholarship with the longstanding, broad, and deep literatures of political economy. As we note in the section that follows, while legal scholars have been entranced with Law and Economics, scholars in other fields have continued to analyze markets within their social and political contexts. Too often, however, these scholars have ignored or misunderstood the role of legal institutions and doctrines. Just as legal scholars must engage with political economy, political economists must engage with the law. We hope to establish *JLPE* as a site for these richer conversations.

Third, we hope to trouble the conventional boundaries of "the economic" itself. As we elaborate below, neoliberalism's separation of the state from the market was preceded by domesticity's evacuation of social production from the sphere of economic relations. Similarly, the conventional history of capitalism frames land dispossession and the forcible incorporation of subsistence

economies into wage-based economies as "primitive accumulation," something that happened in the past, before capitalism proper (Ince 2014; Harvey 2004). And, as the new literature on racial capitalism has begun to explore, the carceral state is connected in intricate ways to economic production, distribution, and extraction, as well as to the moral ideologies of discipline and punishment that underpin discourses of work, public assistance, and crime (Wacquant 2009; Soss et al 2011; Gustafson 2011).

Finally, while *JLPE* is a US-based journal, we think international, comparative, and global South perspectives are an essential part of developing a full picture and analysis of contemporary Law and Political Economy. Indeed, despite the myth of American exceptionalism, the US is rooted in a transnational history of empire that has shaped its foreign policy, its constitutional and immigration law, and international law itself (Anghie 2007; Rana 2010). Accordingly, at *JLPE* we welcome transnational and comparative analyses at all levels of scale, from the micropolitics of a single community to the entire capitalist world system.

We recognize that these attempts to topple conventional intellectual silos comes with a set of risks. An insight may be novel in one intellectual tradition and considered banal in another. Scholars trained in one discipline may disdain the methods of another. And even seemingly basic terms like "capitalism" or "law" may be used in very different ways in different fields, leading to misunderstanding or conflict. Nevertheless, we believe that in this time of multiple and interlocking crises, such boundary-pushing endeavors are necessary if we are to meet our historic moment.

II. Genealogies of Law and Political Economy

As four of our LPE colleagues note in a recent article (Britton-Purdy et al. 2020), the legal scholarship of the last half-century has withdrawn from "questions of economic distribution and structural coercion" (ibid, 1806). In legal fields designated as politics-regarding (such as constitutional or administrative law), great deference is paid to existing economic and political distributions, which are treated as neutral baselines from which courts should not stray without a compelling rationale (Sunstein 1987). In fields designated as market-regarding (such as corporate or property law), "[w]ealth maximization, transaction costs, and externalities have served as 'linking theories' that connect analysis of legal rules and institutions with the general equilibrium model of neoclassical economics" (Britton-Purdy et al 2020, 1800). Thus, in keeping with what Wendy Brown describes as neoliberalism as a form of "rationality" (Brown 2015; see also Blalock 2014), both "public" and "private" law have come to depend on the idealization of efficient and free markets that respond nimbly to rational preferences and maximize social wealth for all.

In embracing the term "political economy" rather than "economics," we signal our rejection of this approach to markets, politics, and law. In this section, we briefly take note of the intellectual resources on which the movement, and this journal, draws—literatures that constitute our "invisible college" (Varellas 2018).

A. Political Economy Traditions Outside Law

One deep and rich resource for Law and Political Economy, of course, is scholarship on political economy outside law. In political science, for example, unlike law, comparative and international approaches to political economy have always been at least as prominent as narrowly economistic

approaches (Cohen 2008; Vogel & Barma forthcoming), and a new subfield of American political economy is emerging (Hacker et al. forthcoming). In sociology, anthropology, and geography, scholars have maintained an arguably even more robust and sustained engagement with political economy. As with some of the best political economy work in political science, this work is also often rooted in the foundational social theories of Weber, Marx, and Durkheim (Harvey 2005; Macneil 1980; Fourcade & Healy 2007; Fligstein & Dauter 2007; Wilk & Cliggett 2007; Peck 2010). Meanwhile, work in the tradition of classical social theory has inspired scholars writing in political ecology and related fields to close yet another intellectual divide – that between political economy and the nonhuman world (Paulson et al 2003; Latour 2018; O'Connor 1998; Smith 2006). Even the discipline of economics has maintained a series of "heterodox" approaches traceable to a variety of figures, including Marx (1867), Keynes (1936), and Minsky (1986), as well as institutional economists such as John Commons (1924) and Thorsten Veblen (1904).

In the humanities, scholars trained in philosophy, ethnic and cultural studies, environmental humanities, history, political theory, and literature similarly never rejected political economy. Their interest in understanding economic institutions and activities in the context of politics, history, and culture has produced, for example, exciting new histories of capitalism (Baptist 2014; Beckert 2014; Johnson 2013; Karuka 2019; Lowe 2015), a new interest in racial capitalism (Davis 1981; Marable 1983; Robinson 1983; Rodney 2018; Taylor 2019; Williams 1944), and critical accounts of international development and the political economies of the postcolonial global South (Escobar 1995; Galeano 1973; Mbembe 2001; Prashad 2007). Humanities scholars have led the way in investigating the multiple dimensions of neoliberalism, from its history (Burgin 2012; MacLean 2017; Slobodian 2018) to its styles of governance (Brown 2015), to the affects and "structures of feeling" that haunt neoliberal life (Anderson 2016; Berlant 2011; Butler 2018; Clough 2008). Scholars of settler colonialism (Bhandar 2018; Byrd 2011; Moreton-Robinson 2015; Wolfe 2006; Wolfe 2016; Whyte and Meissner 2018) and of postcolonial and decolonial theory (Quijano 2000; Mendoza 2016; Mohanty 2003; Mignolo 2011), meanwhile, have traced the colonial-imperial and racist roots of the nation-state, the owner of property, the citizen, and the human.

Although these fields and scholars never abandoned political economy, they do not consistently engage with legal scholarship or understand the "insider" view of legal professionals. No doubt this is in part the result of legal academia's distinctive attachment to an imagined audience of judges, legislators, and administrators in need of guidance (Rubin 1988). In any case, journals devoted to political economy seldom publish legal scholars, and legal scholars tend to ransack the social sciences and the humanities for ideas to bring into law more often than they engage on equal terms with the work of other disciplines.

Moreover, as is the case throughout academia, method and language often divide parallel or overlapping conversations along disciplinary lines. As a result, there are many areas of opportunity for developing Law and Political Economy into a truly interdisciplinary conversation with relevance for many other disciplines in addition to law. One of the aims of the *Journal of Law and Political Economy* is to create the intellectual space for scholars from heterogenous, sometimes conflicting approaches to political economy to simultaneously engage with one another and take law seriously on its own terms. Conversely, we also intend *JLPE* to be a space where legal scholars--who as denizens of a professional school often find themselves isolated from intellectual developments in the rest of the university--can find, and create, cutting-edge trans-disciplinary scholarship relevant to law.

B. Political Economy Traditions Within Legal Scholarship

It is also, we think, important to acknowledge LPE's multiple genealogies within legal scholarship. LPE scholars often begin their lineage with the American Legal Realists, especially Robert Hale, whose essay "Coercion and Distribution in a Supposedly Non-Coercive State" is as fresh and pertinent today as it was when originally published in 1923. The Realists' iconoclastic assault on the ideology of legal scholarship included an attack on a classic liberal idea: the idea of a fundamental separation between, on the one hand, an economic sphere characterized by freedom, and on the other, a political sphere characterized by coercion (Desautels-Stein 2012, 399). For Hale and other Realists like Morris Cohen, it was politics, not to say coercion, all the way down. This critique, sidelined by World War II, the New Deal, and the emergence of legal process theory (Purcell 1973) was taken up again in the 1980s by scholars in the Critical Legal Studies (CLS) movement. Duncan Kennedy (1985), for instance, argued that a form of legal consciousness he called "classical legal thought" sustained the imaginary dichotomy between free markets and government coercion (see also Klare 1978). Moreover, Kennedy argued, neoclassical economics scholars had absorbed this dichotomy and re-presented it in their conceptions of perfect competition and the perfect rationality of economic actors. The result was Law and Economics: a set of just-so stories about the alignment of common law property and contract rules with allocative efficiency (McCluskey 2003).

Like American Legal Realism before it, CLS was sidelined (Blalock 2014), and one account of Law and Political Economy begins here, with a reinvention of its insights. Within this narrative, LPE might be deemed critical legal studies for the age of neoliberalism (Blalock 2014). We might also, however, conjure a different legal genealogy for Law and Political Economy—one that looks more closely at the role of law in the constitution of the *demos*. For example, in the later decades of the twentieth century, feminist legal scholars began to investigate the ways in which law not only helps create and maintain ostensibly separate spheres of market and state regulation, but also helps create and maintain extractive and hierarchical processes within each sphere. The conventional split between state and market obscures a third sphere, which we might call the social or civil society. Feminist legal theory has demonstrated how Anglo-American jurisprudence, in marking out "the family" and its associated activities (sexuality, care, reproduction) as a private space outside the market (characterized by love rather than commerce or justice), perpetuates male domination in both state and market relations, and genders all three spheres (MacKinnon 1989, Olsen 1983, West 1997, Silbaugh 1996, 1997, Fineman and Thomadson 1991). At the same time, as socialist feminists had long pointed out, capitalist wage labor depends on unwaged or under-compensated labor: the work of "social reproduction" (Bhattacharya 2017). This trans-disciplinary work, of course, drew on the vast resources of feminist scholarship outside the legal academy (Cooper 2017, Folbre 2001, Okin 1989, Pateman 1988).

The powerful role of gender in naturalizing economic exploitation and exclusion extends to the political economy of legal academia itself. For instance, the split that Britton-Purdy and his colleagues (2020) identify between those who teach and write in "economic" fields and "political" fields is mirrored in a split between both types of scholars and those who teach and write in family law—a field dominated by women, as opposed to the far more prestigious fields of economic regulation and constitutional law.[1] Law and Political Economy begins to step from under the shadows of Legal

[1] Nancy Levit observes:

> Segregation by sex persists in substantive course teaching assignments. Female law professors are

Realism and CLS to the extent that it acknowledges the ideological function of separating both "the political" and "the economic" from the social and the family in legal analysis.

Critical Race Theory (CRT) and its ally, LatCrit theory (Valdes and Bender forthcoming), are central to this alternative genealogy of Law and Political Economy. Emerging in the early 1990s, CRT upended previous generations of civil rights scholarship in law, suggesting that American democracy was founded on, and continues to be predicated on, white supremacy—indeed, that anti-discrimination law actually facilitates instead of challenging this fundamental commitment (Bell 1987; Bell 1992; Crenshaw et al. 1995; Delgado 2017; Valdes et al. 2002; Williams 1991).[2] Like feminist legal theory, CRT emerged on the contested frontier between academia and social movements; it drew on the theoretical traditions of Black studies and ethnic studies, especially the transdisciplinary work of radical women scholars of color (Anzaldua 1987; Hartman 1997; Collins 1990; Hull et al. 1982; Lorde 1984; Mills 1997; Moraga and Anzaldua 1981; Spillers 1987; Spivak 1995; Weheliye 2014).

Finally, critical scholarship on international law and development provides yet another genealogy for LPE. Pursuing critiques earlier articulated within Critical Legal Studies (Trubek 1972), formations such as Third World Alternatives to International Law (TWAIL), the Institute for Global Law and Policy at Harvard Law School, and the Transnational Law Institute at King's College London have provided havens for work that critically examines the law of globalization and neoliberalism (Zumbansen 2012), including work that focuses on the global South (Anghie 2007; Chimni 1993; Falk, Rajagopal and Stevens 2008; Kennedy 2013; Gordon and Sylvester 2004; de Sousa Santos 2002). Like the work of critical race and feminist scholars with which these perspectives are intertwined, this work takes a critical stance not only toward global economic institutions and ideologies, but also toward the very assumptions on which contemporary "public" international law is based, including national sovereignty and the universal nature of human rights (Mutua 2001). Cognizant as this work is of the worldwide legacy of colonialism and imperialism, it reaches toward a genuinely international perspective on Law and Political Economy.

The desire to bring together the legacy of American Legal Realism (and its critique of the dichotomy between market freedom and state coercion) with the legacy of critical race feminism and its allies (and its critique of the evacuation of systemic subordination from mainstream legal analysis) led Emma Coleman Jordan and Angela Harris (2005b) to compile writings from Law and Economics, heterodox economics, CRT, and feminist legal theory into the first edition of a casebook on "economic justice" (see also Jordan and Harris 2005a, 2005c, 2005d). As their introduction to that edition observed:

> Neither traditional legal analysis nor economic analysis has paid much attention to the question of who constitutes America, what full citizenship means to those who were originally not

much more likely than male law professors to teach substantive courses addressing familial issues, as well as skills courses that demand intensive labor and student nurturing. During the 1999-2000 school year, 58% of the professors who taught family law were female. Conversely, in 1999-2000, 76% of the law professors teaching corporate law, 78% of the law professors teaching commercial law, and 87% of law professors teaching corporate finance were male. One study showed that even after controlling for credentials and expertise, women are not hired to teach prestige courses, such as constitutional law (Levit 2001, 782-83).

[2] For accounts of the history of critical race theory, see Crenshaw (2011) and Cho and Westley (2000). For accounts of the history of LatCrit, see Valdes (1999) and Hernandez-Truyol et al. 2006.

> included in the American vision, and how a multicultural, multinational society can function within a single economic and political system. Neither traditional legal analysis nor economic analysis had adequately addressed issues like the market value of racialized culture and sexual difference, the borders of national and cultural community, and the problem of remediating long-standing inequalities in both economic and social spheres (vi).

A few years later, this lack became glaring. The subprime crisis of 2008 linked the history of state-sponsored racial segregation and disinvestment with the story of securitization and bank deregulation, making the disconnect between "private" fields of economic regulation and "public" fields of anti-discrimination impossible to ignore (Jordan and Harris 2011).

These disconnections in mainstream legal scholarship also catalyzed the emergence of ClassCrits. A gathering of legal scholars that began in 2007 with a series of small invitation-only workshops (Mutua 2008) evolved into an annual national conference and an organization that has seeded an entire "ecosystem" of institutions—including this journal. As its name suggests, ClassCrits deliberately embraced and built on the critical edifices of American Legal Realism, Critical Legal Studies, Critical Race Theory, LatCrit, and feminist critical theory, but set out to center the question of class. As these scholars began to engage with work outside law, "class" became "political economy," and the Law and Political Economy movement was born (or, as we have suggested, perhaps reborn). In the section that follows, we identify what we think to be the central themes of the LPE approach.

III. Intellectual Foundations of Law and Political Economy

In our view, two central claims lie at the heart of Law and Political Economy. Both follow from the genealogies noted in the previous section, and were articulated in a 2014 mission statement published by ClassCrits (Desautels-Stein et al 2014). The first claim is that *law is central to the creation and maintenance of structural inequalities in the state and the market.* The second is that *"class" power is inextricably connected to the development of racial and gender hierarchies, as well as to other systems of unequal power and privilege* (ibid).

The first claim, the centrality of law to structural inequalities in the state and the market, entails in turn at least two scholarly commitments. First is the refusal of the idea that markets, or any other form of economic activity, is somehow prior to or outside of state power. Recognition of law's centrality in creating and regulating economic domain has inspired LPE scholars, for example, to explore the legal structure of market regulation---what Steven Vogel calls "marketcraft" (Vogel 2018); to show how money is a legal concept (Desan 2014); to investigate the legal underpinnings of international economic global governance (Haskell and Mattei 2015); and to develop taxonomies for the law of informational capitalism (Cohen 2019; Pasquale 2015; see also Kapczynski 2020).

The focus on inequalities in the first claim reflects a second commitment: LPE's fidelity to the project once known as "emancipatory critique." In Max Horkheimer's famous formulation, the goal of emancipatory critique is to help "create a world which satisfies the needs and powers" of human beings by developing theories that "explain what is wrong with current social reality, identify the actors to change it, and provide both clear norms for criticism and achievable practical goals for social transformation" (Stanford n.d.). A strong normative commitment, of course, is also central to legal scholarship (though not always salutary; see Schlag 1990). For public law scholars, critical or not, advocating for greater equality and liberty in the service of human flourishing is nothing new. The LPE project, however, encourages scholars to treat anti-subordination as embedded in economic institutions as well. Along these lines, LPE scholars have sought to reorient fields dominated by

"efficiency" language, such as antitrust (Paul 2020; Kahn 2017), administrative regulation (Rahman 2018a, 2018b), election law (Kuhner 2014), and tax (Infanti 2018) around ideals of fairness and flourishing. They also put issues of economic distribution—not only redistribution, but "predistribution" (Hacker 2011)—at the center of public life. And, as in the scholarship critical of neoliberalism, LPE scholars tease out the deleterious political and cultural effects of treating economic efficiency as prior to, or otherwise sealed off from, politics (Britton-Purdy 2020; McCluskey 2016). Refusing this separation permits fresh attention to the ways that political and economic elites can reinforce one another to the detriment of state governance (Kuhner 2014; Teachout and Khan 2014) and economic governance (Black and Carbone 2015).

The second claim that we think central to the LPE initiative--the interrelation of "recognition" and "redistribution" injustices (Fraser and Honneth 2003)–deepens the first, and distinguishes LPE from its forebears in American Legal Realism and Critical Legal Studies. Activism, scholarship, and advocacy associated with the first and second American Reconstructions always resisted the legal processes through which Black Americans are explicitly relegated to second-class citizenship (Foner 1988; Hall 2005; Sugrue 2008). The connections that social theorists had long made between civil and political subjugation and economic dispossession and extraction (Du Bois 1992; Robinson 1983; Rodney 1972), however, were lost to legal scholarship, obscured by a narrow focus on social identity, until feminist and critical race scholarship emerged toward the end of the twentieth century. Since that time, legal scholars have explored, for example, the role of family policy, biotechnology, and mass incarceration in reproducing African Americans as ostensibly deficient political and social subjects (Roberts 1997; Roberts 2001; Roberts 2011); the American political and legal tradition as a project of empire (Rana 2010); the creation and perpetuation of white supremacy through market mechanisms (Roithmayr 2014); and the role of equality jurisprudence in creating and protecting citadels of white economic and social privilege (Mahoney 2003). Critical scholarship on sexual and gender minorities, similarly, has examined the role of legal doctrine in lowering the horizons of queer freedom (Spindelman 2005)—for example, the project of aligning gay and lesbian citizenship with wealth accumulation through marriage (Harris 2006). Indigenous scholarship and advocacy exposes the historic injustices through which the fundamental subject of international law, the nation-state, emerged (Miller et al. 2010), calls for new legal subjects that disrupt conventional relations of ecological-economic extraction (Morris and Ruru 2010), and develops new forms of social-ecological-legal governance (Norton-Smith et al 2016). Meanwhile, a sophisticated tradition of critical scholarship has examined the subordinating effects of conventional lawyering itself (White 1988; López 1992), and helped develop alternative visions that center empowerment and autonomy for dispossessed communities, rather than lawyer-driven "reforms" (Spade 2013; see also Akbar, Ashar, and Simonson forthcoming).

As these identity-focused fields more forthrightly seek to illuminate the connective tissue between capitalism and subjectivation (Simons and Masschelein 2010), this scholarship is pushing into new areas. LPE scholars have recently, for example, illuminated the role of the Federal Reserve and private banking in racialized wealth inequality (Jordan 2017; Baradaran 2017); connected spatialized inequality with white supremacy and the distribution of political power (Anderson 2008; McFarlane 2006; Troutt 2007); chronicled the intersections of neoliberal ideology, criminal law, and racial discrimination in public benefits law and policy (Gustafson 2011); identified racialized processes of economic extraction in consumer credit markets (Freeman 2017), tax policy (Walsh 2018) and municipal budgeting (Atahuene 2020); and demonstrated how racialized processes of land dispossession and labor hyper-exploitation historically helped construct modern financial instruments and practices (Park 2016; Rosenthal 2018). The law of private property and of contract have similarly begun to attract new

attention from scholars willing to track the interrelation of social oppression, economic activity, and political citizenship (Harris 1993; Houh 2015; Singer 2011). This work defies the archaic, unproductive debate over whether "race" or "class" is more fundamental to social inequality, or whether one can be reduced to the other.

The value in providing a space in which these varied threads of scholarship can meet, intermingle, and grow is not only the potential for new insights about political economy, capitalism, democracy, subordination, and their relationships with law, and new avenues for reconstructing collective governance in a time of multiple, world-threatening crises. The LPE project also fosters a new opportunity for rethinking what legal education and lawyering itself are all about. Law schools, as critical scholars have pointed out, offer an informal but potent curriculum on what is and is not deemed important, and on what is and is not "law" (Kennedy 2004; Guinier, Fine, and Balin 1997). LPE, like Legal Realism, Law and Society, critical legal studies, and feminist legal theory before it, provides a lens for critical reflection on the teaching and practice of law. We explicate these missions more fully in the next section.

IV. The *Journal of Law and Political Economy* as an Institutional Project

As we observed in Section II, the launch of *JLPE* represents the maturation of an entire "ecosystem" of LPE organizations. Founded in 2007 and incorporated in 2017 (Mutua 2008), ClassCrits began by bringing together legal scholars with heterodox economists in an invited-workshop format, before expanding into a series of annual conferences. In 2013, Martha McCluskey, one of the founders of ClassCrits, joined Frank Pasquale and Jennifer Taub to form the Association for the Promotion of Political Economy and Law (APPEAL), which began to organize its own conferences, panels, and workshops. Finally, a group of Yale law students enrolled in a seminar taught by Professor Amy Kapczynski organized a blog on Law and Political Economy. The LPE blog began to publish in 2017 with the support of Kapczynski, David Grewal, and Jed Britton-Purdy, who in 2018 were joined by Sabeel Rahman to launch the Law and Political Economy Project to house the blog and other projects. These four organizations–ClassCrits, APPEAL, *JLPE*, and the LPE Project–constitute the foundation of the institutional LPE ecosystem, and foster the Law and Political Economy mission in complementary ways, helping construct both an emerging method for the study and analysis of issues at the intersection of Law and Political Economy (Britton-Purdy et al. 2020; McCluskey, Pasquale and Taub 2016), and a series of sites for collaboration among scholars of law, social science, and the humanities (Varellas 2018).[3]

As part of the larger LPE ecosystem, *JLPE* intends to pursue at least three goals.

First, *JLPE* welcomes submissions that seek to critique and supplant analytical "moves" that preserve the illusion of antipolitical markets, such as the singular focus on price mechanisms and impoverished conceptions of "efficiency," the purported neutrality of market ordering, and the displacement of democracy by the technocratic governance of economy and society (Britton-Purdy et al. 2020).

[3] Another space for collaboration and outreach is the collaborative research network on Law and Political Economy within the Law and Society Association (LSA). Founded by LPE scholars in 2018, this network is a response both to the burgeoning interest among scholars in Law and Political Economy, and to Lauren Edelman's 2004 presidential address to the LSA, in which she exhorted law and society scholars to challenge Law and Economics more directly (Edelman 2004).

Conversely, the journal welcomes scholarly work intended to reinvigorate the analysis of topics such as power, democracy, and inequality in relationship to market institutions, actors, and systems.

Second, *JLPE* welcomes submissions that seek to bridge disciplinary divides and promote cross-disciplinary collaboration learning between scholars in law and other disciplines. As we suggested in section II, social science and humanities scholars have much to offer legal scholars in terms of theories, concepts, and methods relevant to political economy. At the same time, legal scholars have much to offer scholars in other disciplines whose work implicates legal institutions and practices.

We recognize that neither of these projects—disrupting the hegemony of liberal and neoliberal legalism, and fostering truly interdisciplinary, even transdisciplinary scholarship—is easy. Each requires a commitment by LPE scholars to turn their critical gaze not only on the external world, but also on the taken-for-granted concepts and ideals that constitute "common sense:" from our subject positions, from within our disciplines, and from the scholarly stance itself. The disciplinary aspect of this self-critique may be especially hard for legal scholars, who carry a professional as well as an academic responsibility. It is telling, for instance, that despite sustained critique for over a century from the bench, the bar, and academia itself, American legal education in the twenty-first century is not substantially different from legal education at the end of the nineteenth (Stevens 1987).

Yet, the centrality of law to contemporary economic, social, and political governance—the reason, perhaps, for the extreme conservatism in legal education—is also the reason why law is an indispensable site for work in political economy. Accordingly, our third goal in founding *JLPE* is to influence legal education, policy, and governance at a precarious moment in world history. Work along LPE lines in law is necessary, both for innovation in the profession (Akbar, Asher, and Simonson, forthcoming) and because academic and critical scholarship are strengthened by engagement with policy- and public-oriented research, and vice versa (Burawoy 2004; Suchman and Mertz 2010, 574-77). As we observed at the beginning of this essay, humans around the world today face intertwined crises in finance, in the "real economy," in the environment, in society, and in the institutions and practices of governance. Because of law's centrality to all of these arenas, and our commitment to tearing down the silos among them, Law and Political Economy is well suited to this precarious historical moment.

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