

LAW AND POLITICAL ECONOMY: TOWARD A MANIFESTO

JEDEDIAH BRITTON-PURDY,
AMY KAPCZYNSKI, DAVID
SINGH GREWAL

Jedediah Purdy
([@JedediahSPurdy](#)) is
the Robinson O.
Everett Professor of
Law at Duke Law
School.

Amy Kapczynski
([@akapczynski](#)) is a
Professor of Law at
Yale Law School.

*David Singh Grewal is
Professor of Law at UC
Berkeley School of Law
and co-founder of LPE
Blog.*

PUBLISHED 11.06.17

This is a time of crises. Inequality is accelerating, with gains concentrated at the top of the income and wealth distributions. This trend – interacting with deep racialized and gendered injustice – has had profound implications for our politics, and for the sense of agency, opportunity, and security of all but the narrowest sliver of the global elite. Technology has intensified the sense that we are both interconnected and divided, controlled and out of control. New ecological disasters unfold each day. The future of our planet is at stake: we are all at risk, yet unequally so. The rise of right-wing movements and autocrats around the world is threatening democratic institutions and political commitments to equality and openness. But new movements on the left are also emerging. They are challenging economic inequality, eroded democracy, the carceral state, and racism, sexism, and other forms of discrimination with a force that was unthinkable just a few years ago.

Law is central to how these crises were created, and will be central to any reckoning with them. Law conditions race and wealth, social reproduction and environmental destruction. Law also conditions the political order through which we must respond.

How should legal scholars and lawyers respond to this moment? We propose a new departure – a new orientation to legal scholarship that helps illuminate how law and legal scholarship facilitated these shifts, and formulates insights and proposals to help combat them. A new approach of this sort is, we believe, in fact emerging: a coalescing movement of “law and political economy.”

The approach we call law and political economy is rooted in a commitment to a more egalitarian and democratic society. Scholars working in this vein are seeking to reconnect political conversations about the economic order with questions of dignity, belonging, or “recognition” and to challenge versions of “freedom” or “rights” that ignore or downplay social and economic power.

We pursue these egalitarian and democratic commitments through a set of theoretical premises. Politics and the economy cannot be separated. Politics both creates and shapes the economy. In turn, politics is profoundly shaped by economic relations and economic power. Attempts to separate the economy from politics make justice harder to pursue in both domains. As recent events illustrate, market society generates political conflict – conflict that is profoundly racialized and gendered. A politics that can engage this conflict must be attentive to the interplay between the ways the state creates “the market” and the ways market power feeds back into the politics, and between the hierarchies and humiliations of “private” life and the appeal of reactionary political visions.

Law gives shape to the relations between politics and the economy at every point. It is the mediating institution that ties together politics and economics. Though [legal realists](#) and more recent [critical scholars](#) of law recognized this long ago, their insights must be revived, and given new meaning in the face of the recent history of legal scholarship.

Much of legal scholarship and practice in recent decades has held politics and economics apart, abstracting away from, or actively denying, their interdependence.

Law schools and legal scholarship are divided along an implicit divide between “public” and “private” fields of law, which is constructed in significant part by the role that economics is thought to play in these respective fields. Many fields are thought of as being “about the economy” – contracts, torts, anti-trust, intellectual property, trade, consumer protection are examples. For the past several decades, scholarship in these fields has been dominated by law and economics approaches that have downplayed considerations of distribution and elevated questions of efficiency. This approach treats efficiency as a “neutral” value, yet construes the term in a manner that reproduces a constitutive priority for the privileged.

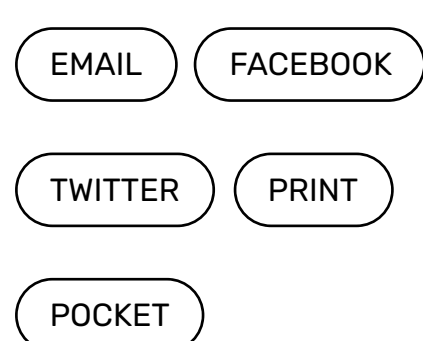
Public-law scholarship, in turn, has tended to make questions of economy foreign. To learn and practice constitutional law today, for example, is often to assert that constitutional values have no purchase on questions of economy or class: these, after all, are the received lessons of [Lochner](#) and [Carolene Products](#), of [San Antonio](#) and [McRae](#). More generally, scholars in these public-law fields rarely devote themselves to the normative question of what kind of economic order might be necessary to make democracy real and vindicate constitutional principles such as equality.

This artificial division between the economy and politics has worked its way into law, in part through legal scholarship and law school pedagogy. But a new body of scholarship is emerging to challenge these divisions and their conceptual foundations across a wide variety of legal fields. In fields such as constitutional law that have made questions of economy foreign, [political economy work](#) characteristically seeks to excavate the [implications of inequality](#) for the political order. In fields thought of as responding to efficiency, political economy characteristically seeks to articulate the [political foundations and implications](#) of existing rules, and of the [efficiency approach itself](#).

Law and political economy scholars are joined, too, by a shared set of questions. How does law create [and reproduce global capitalism](#)? How does law make for specific patterns of capital mobility, labor “flexibility” within countries and regions but immobility across borders, and distributions of wealth and income within and across countries? How do global markets and national states interact with [gender roles and hierarchies](#) and with [racialized division and subordination](#) – producing them, relying on them, complicating or reshaping them? What capacity do social movements and national, local, and transnational institutions have to make these arrangements democratically answerable, to turn the shape of common life into something collectively intended rather than an unequal and unaccountable form of fate? To give life to principles such as equality, democracy, and liberty – principles that are indispensable but often both underdetermined and betrayed in practice – what do we have to demand of economic as well as political life, social as well as economic existence? How does law work to give these liberating demands power, or to disable them? How do the political and constitutional forms of “public law” make, or baffle, a “we” that can pursue equality and democracy at all?

We hope to contribute to this reorientation, and help to consolidate it, through this blog. Our project is hopeful in spirit. Rigorous criticism is the precondition of viable hope. To think realistically about the ways that another world is possible, we have to understand the ways that our own has been made, with all of its hierarchies and harms, and to see how the same tools that made it might remake it differently. The point is to understand the world in order to change it, which begins by making it less resistant to both change and understanding.

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([@JedediahSPurdy](#)) is
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