



## Law and Political Economy

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**Abstract:** ‘Law and Political Economy’ surveys recent approaches to the study of phenomena at the intersection of law, politics and the economy. These take an interdisciplinary perspective, viewing markets as fields of social power that are not spontaneous but created and reproduced in the meeting of legal norms, political action and economic activity. Through regulating economic relationships, the politico-legal order constitutes and reconstitutes the power relations that make up society. This, in turn, is driven by the formation of class, sectoral and geopolitical interests, as well as ideological convictions, which harness political and legal authority. We present these inter-related processes through exploring contemporary debates on inequality, inter-personal market relations, the relation between the state and market, and the effects of economic integration and globalisation on democracy and political self-determination.

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## I. INTRODUCTION

'Law and political economy' surveys approaches to the study of phenomena at the intersection of law, politics and the economy. It presents real-world events and developments in law and political economy through a historical, conceptual and interdisciplinary lens, rather than taking law, politics or economics as autonomous disciplines, to be studied through pure methods.

Law and political economy can be distinguished from classical (or neo-classical) law and economics because of a focus on issues of power and inequality, between persons, groups, states and regions. More specifically, it focuses on how relations of power are legally and politically configured and reconfigured over time and in distinct periods, and how in turn this conditions the development of the economy. While 'law and political economy' does not therefore refer to one discrete body or system of thought, its treatment here shares an affinity with (and owes a debt to) various and related critical traditions.<sup>1</sup>

The aim here will be to sketch in broad outline the themes that have recently come to prominence through renewed interest in the political economy and politico-legal institutions of capitalist society and its development. This coincides with the return in the academy – as well as the public sphere – of a discourse of crisis, and specifically structural crises of capitalism, which now demands theoretical attention across various disciplines and within mainstream scholarship itself (particularly since the global financial crisis and the Euro-crisis beginning in 2007 - 2008).<sup>2</sup> This renewal is thanks, in large part, to the influence of French economist Thomas Piketty and German sociologist Wolfgang Streeck. As a preliminary step, we first consider the logic of capitalism in terms of a dynamic of socio-economic inequality, conditioned by politically and legally constituted relations of power, rather than an 'iron law' of the capitalist economic system. To explore this further, we survey three levels of analysis: law and political economy of the market (the micro-level), law and political economy of the state (the meso-level) and international and global law and political economy (the macro-level). This separation, however, is merely heuristic; micro-, meso- and macro-levels are of course intertwined and interdependent, not least increasingly mixed through forms of transnational integration.<sup>3</sup>

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<sup>1</sup> Including Marxism, Keynesianism, the German Historical School of Economics, the Frankfurt School, (historical) institutionalism, legal realism, critical legal studies, law and development, and critical political economy.

<sup>2</sup> This kind of approach has long been prominent in work on the state in the Marxist tradition, as developed, for example, by Bob Jessop (e.g. Jessop, 2017).

<sup>3</sup> This is most evidently in the case of the European Union, which is at the same time an internal market, a proto-state (with a central bank and single currency within the Eurozone), and an inter-state trade regime. It will not be dealt with separately here but integrated into the entry at various points.

## II. CAPITALISM AND INEQUALITY

Piketty's *Capital in the Twenty-First Century* (2014), a historical approach to institutional change and the dynamics of inequality from a *longue durée* perspective, has begun to shape inquiries into the relationship between law and political economy and will likely do so for the foreseeable future. According to Piketty and associates, the rate of return on capital has consistently outpaced the average growth of the economy as a whole and "an apparently small gap between the return on capital [ $r$ ] and the rate of growth [ $g$ ] can in the long run have powerful and destabilizing effects on the structure and dynamics of social inequality" (2014: 77). This 'law of capitalism' is expressed in the inequality:  $r > g$  (ibid: 353), which means that "capital reproduces itself faster than output increases" (ibid: 571). All else being equal, this means that unless the process is actively reversed, the rich get richer faster than anyone else in society.

A central question emerging from Piketty's work is whether the inequality stemming from  $r > g$  is to be understood as resembling a 'natural law' or as the contingent result of political and legal choices. Piketty is ambiguous about this, treating inequality as "a historical fact, not a logical necessity" (ibid: 353) but also suggesting "that a market economy based on private property, if left to itself... contains powerful forces of divergence" (ibid: 571). This divergence (i.e. increasing levels of inequality) is clearly observable in the period leading up to World War I and again in the last few decades of the 20<sup>th</sup> century. In attempting to explain the anomaly in between (World War I to the 1970's), analyses of economic trends and politico-legal dynamics join forces. There is, however, disagreement on what this reveals. In line with the general literature, Piketty describes the period between the end of World War II and the beginning of the first oil crisis in 1973 – variously called *les trente glorieuses*, *Wirtschaftswunder* or the Golden Age of Capitalism – as an exceptional one where inequality was contained. But he suggests that the 'fundamental structural contradiction of capitalism' was ameliorated rather than overcome. Capitalism, in other words, continued to adhere to its immanent logic, independent of the politico-legal framework of society. Its effects were mediated by the countervailing forces of redistributive policies and reconstruction in the aftermath of the levelling destruction caused by two world wars. This, however, only enabled "the *illusion* that the fundamental structural contradiction of capitalism ( $r > g$ ) had been overcome" (ibid: 572 (*italics added*)).

Scholars of a more institutionalist bent take a different approach. Critical legal scholars, for instance, have claimed that capitalism should be understood fundamentally as a legal rather than a material ordering (Grewal, 2014: 652). Samuel Moyn argues that in order to understand economic inequality, one must abandon the idea of a 'capitalist system' with certain identifiable general laws and tendencies; there are "only legal and more broadly political arrangements in which inequality improves or ... worsens" (ibid: 54). He concludes that "there is no such thing as capitalism" (ibid: 55). The economists Daron Acemoglu and James A. Robinson also criticise Piketty's "quest for general laws of capitalism" (2015: 3) for

failing to allow for “a systematic role of institutions and political factors in the formation of inequality” (ibid: 4). This failure “implies that [Piketty’s] general laws have little explanatory power” (ibid).

Wolfgang Streeck offers the kind of perspective that is suggested by an institutionalist line of critique. For Streeck, the ‘fundamental insight of political economy’ is that “the natural laws of the economy, which appear to exist by virtue of their own efficiency, are in reality nothing but projections of social-power relations which present themselves ideologically as technical necessities” (Streeck, 2015a: 10). Streeck takes a broad view, presenting a material dynamic of the whole social order that is both capitalist and democratic in form, based on distinct but inter-related logics of competition and accumulation on the one hand, and solidarity and redistribution on the other. These two logics, which transcend the varieties of capitalism (Hall and Soskice, 2002), operate in a dynamic disequilibrium (Streeck, 2011). Nancy Fraser pushes this even further. Capitalism, in accordance with its own logic, is parasitical on those very social, political and ecological foundations that it tends to erode; but as an institutional, historical and moral form of economy it cannot be understood in abstraction from democratic forces and the pressures they exert on the governance of the state and the state system (Fraser, 2014).

Like Piketty and associates, Streeck argues that *les trentes glorieuses* is part of an exceptional period due to the high growth rates achieved in the context of post-war reconstruction. This growth allowed for the emergence of a compromise between capital and labour that facilitated high levels of pre-distribution (increasing labour’s share of national income) and redistribution (social transfers). But this comes to an end in the revolt of capital that begins the period of neo-liberalism in the 1970’s, which sees a return to the ‘normal’ dynamic over the subsequent decades, “a condition ruled by an endemic conflict between capitalist markets and democratic politics” (Streeck, 2011: 6). This in turn entails recurrent crises and further economic instability, Streeck presenting the state as moving through various developmental stages, as the tension between the democratic and capitalist logic is softened or deferred by political and legal means (Streeck, 2014).

Streeck’s analysis has rejuvenated enquiry not only into the relation between democracy and capitalism but also into the political-legal transformation of the state, in particular through the project of European integration, and most recently the single currency, the euro. In these conditions, as the dominant means for the state to raise resources has shifted from reliance on its citizens through direct taxation (the ‘tax state’) to reliance on financial investors in the global marketplace (the ‘debt state’), a new type of ‘consolidation state’ is constituted, based on perpetual austerity and internal devaluation (Streeck, 2014; see also Scharpf, 2016).

Streeck’s work draws on and updates earlier insights of Karl Polanyi (2001). In Polanyi’s account the modern nation-state exists and evolves in a dynamic relation with the modern market economy. Polanyi traces a ‘double movement’ of liberal marketisation followed by social reaction to the disembedding of social

relations as it evolved in the 19<sup>th</sup> and early 20<sup>th</sup> century. The ‘double movement’ represents a dynamic of legally induced and enforced commodification of the ‘fictitious commodities’ of land, money and labour (disembedding that which must remain embedded in ‘thick’ social structures), which produces a reaction, as society tries to protect itself. Reversing the classical liberal idea, this leads Polanyi (2001: 147) to the conclusion that “laissez-faire was planned; planning was not.” Social re-embedding, in other words, is more likely to be spontaneous than the carefully planned and state-executed processes of commodification that preceded it. The existence of two distinct logics in perpetual tension, one operating according to notions of equality and solidarity, the other on the basis of inequality and competition, is captured by the figure of the ‘market society’.

### III. LAW, POLITICAL ECONOMY AND THE MARKET

One of the major limitations of the neo-classical approach to law and economics is captured in the notion of ‘markets left to themselves’. This reflects the common but misleading perception that markets function according to natural forces or natural laws that public power can choose to act upon or withdraw from. But markets do not perform a structuring function in society without a legal and political ordering already in place. At a minimum, public powers provide the legal and material framework conditions within which the economy operates. And this minimal-state perspective needs to be complemented to take into account the detailed ways in which law and political authority condition and affect market relations, transactions and outcomes in practice and in distinct periods (Desautels-Stein, 2015).

The free market paradigm is difficult to align with the legal nature of even textbook examples of ‘perfectly competitive’ markets. As Bernard Harcourt (2011: 15) has demonstrated with reference to the wheat market in Chicago, the supposedly most perfectly competitive ‘free markets’ are shot through with disciplinary rules and regulations. There is, one might conclude, no such thing as a ‘self-regulating market’ in which resources are allocated to their most efficient use through the free workings of the price mechanism. ‘De-regulation’ and ‘self-regulation’ are simply names for particular kinds of regulatory and disciplinary regimes (see also Vogel, 2018). As Polanyi (2001: 71) put it, “regulation and markets, in effect, grew up together.” In other words, the analyst should recognise that law and politics structure economic activity both in their absence and in their presence. The most salient question is therefore not whether but *how* law and politics shape market activities.

The link between the governing apparatus of the state and supposedly ‘free’ private economic interactions has long been a central concern for critical legal scholars. In order to highlight the constitutive dimension of law for economic life, Duncan Kennedy (1991), for example, analysed the way in which society’s background rules affect and condition bargaining over supposedly free contracts.

When there is a conflict between labour and capital, for instance, distributive bargaining does not take place in a legal vacuum, even though the resulting contract is presented as the product of voluntary exchanges. As Kennedy puts it, “legislators and judges are responsible for the framework of ground rules within which labor conflict is conducted, including such basic rules as that corporations can “own” factories” (1991: 329). Echoing this, the *régulation* theorist Robert Boyer (2001: 57) has argued that “[t]here is no invisible hand in the implementation and selection of basic capitalist institutions” such as property rights. A market economy “requires strong and coherent intervention from political authorities, as well as a stable legal system” (ibid.).

The importance of such fundamental background rules as those which constitute property rights is not only that they configure the basic conditions in which the parties engage with each other, but that they affect their relative bargaining strength, making certain ‘free’ outcomes more or less likely. In this respect, Kennedy (1991: 330) outlines two general categories: “the rules governing the conduct of parties during bargaining” and “the set of rules that structure the alternatives to remaining in the bargaining situation.” The legal framework that the state guarantees, in other words, not only acts directly on the particular bargaining situation by making it feasible and, subject to certain requirements, binding, but it also configures the range of possible alternatives and the likelihood of their materialisation in practice.

In addition to the positive law and framework of rules on property and contract, the background political and legal culture also shapes economic interactions. This can affect concrete inter-personal relations in fundamental but complex, and often hidden, ways, conditioning relations of social reproduction, including workplace and household relations, gender and race relations, inter-generational relations, etc. The politico-legal ‘background rules’ of a regime structure the way people lead their lives and the relations they enjoy with one another in the public sphere, the ‘in between’ sphere of civil society and the private sphere of the home. Rules regarding parental leave, for instance, influence the pay gap between men and women, which in turn leads to a given distribution of bargaining power within the family (also a legal category with economic consequences), concerning issues ranging from household duties to career opportunities. As feminist theory and activism has been propelled into public consciousness, the line between the personal and the political in increasingly contested. This is no less true of the personal and the economic. In order to understand how a formally free and equal market economy (re-)produces inequalities, one must thus recognise that “the mundane matters” (Enloe 2011).

The relation between the politico-legal order that produces a certain kind of market economy and the social power relations in the household or firm is central to the law and political economy perspective on what we have called here the ‘micro-level’. It requires the analyst to adopt a relational perspective on power that sees it not merely as possession but something that is “exercised from

innumerable points, in the interplay of non-egalitarian and mobile forces” (Foucault, 1990: 94). From this vantage point the analyst must not only take into consideration that the legal and political structure of the capitalist economy produces inequalities but also consider what different forms these inequalities take and how they change over time. Struggles against dominant interests and ideas in turn take their point of departure from everyday experiences of distributive injustice, misrecognition and the absence of political representation, and can translate into calls for reform of the politico-legal structuring of the economy (e.g. Fraser, 2013; Brown, 2015).

#### **IV. LAW, POLITICAL ECONOMY AND THE STATE**

The state and the state-system continue to be key focal points for law and political economy. The state remains a primary locus of political allegiance and continues to provide the main stage for ideological, distributive, and identity conflicts and struggles. As such, it is central to understanding the relations between law, politics and the economy as they evolve in the context of a specific and dominant form of actually existing political community.

Under the Bretton Woods system, individual states took on an active role in the economy, conditioning the ‘free labour market’ through political and legal means. Whether through nationalisation of key industries, Keynesian demand management, or the introduction and extension of social rights based on citizenship (Marshall, 1950), politico-legal institutions of the state directly shaped economic outcomes, transforming the ‘background’ conditions by affecting the relative bargaining strength of employers and employees. The development of the welfare state is crucial in this respect, offering a means of subsistence irrespective of employment status. Gøsta Esping-Andersen (1990) shows that the relative bargaining position is fundamentally altered if workers have a meaningful, non-stigmatising, opportunity of opting out of the labour market for an extended period of time. For Esping-Andersen the welfare state is a recognition of the fact that there is no free and equal bargaining position between labour and capital. The worker cannot meaningfully withdraw her labour power for any length of time without this resulting in significant material deprivation. In addition to its general macroeconomic effects on post-redistributive income equality, the welfare state thereby fundamentally alters the pre-redistributive income distribution through providing the worker with an alternative to accepting the wage offered by employers.

The tradition of German ordoliberalism offers a very different complexion on the relationship between the state and the market. Ordoliberalism rejects both the notion of *laissez-faire* of 19<sup>th</sup> century classical liberalism and the central planning



associated with socialism and the welfare state.<sup>4</sup> The ordoliberalists thus sought a ‘third way’, which privileged the role of the state and the constitution in the ordering of the economy (for a collection of key ordoliberal texts, see Peacock and Willgerodt, 1989). But rather than necessarily distorting the functioning of the market economy, as classical liberalism complained, or tempering capitalist inequality, as welfarism demanded, the ordoliberalists considered state intervention in the economy to be necessary in order to preserve the free market itself. The state, as it were, needed to remain in a position akin to a neutral but proactive umpire: free of the influence of interest groups, parties and mass democracy (Manow, 2001), but strong enough to be able to prevent any socio-economic group from becoming dominant and distorting the political-economic structure. The state’s role, in other words, was to ensure that there remained indeed something resembling the theoretical ‘free market position.’

The ordoliberal rejection of a self-regulating market is encapsulated in the doctrine of the ‘strong state in a free economy’ (Bonefeld, 2017). The state provides the basic ‘order’ of the economy and remains an active force, but only in accordance with the principles of the market, functioning as ‘guardian of the competitive order’ (Eucken, 2004). This also requires the market economy to be protected from electoral take-over, shielding the apparatus of economic governance from political forces hostile to it. Political and economic power should, thus, be strictly circumscribed through an ‘economic constitution’ policed by strong independent institutions, such as a constitutional court, an anti-trust commission and a legally independent central bank, which developed in the post-war period as a model for removing the government of money from democratic influence. In this sense, ordoliberal ideas provided the economic dimension of what Jan-Werner Müller (2011) has called ‘constrained democracy.’ In tandem with the protection of certain basic elements of the ‘political’ constitutional order against potentially non-liberal democratic majorities, West Germany developed an apparatus of economic government that isolated aspects of economic policy from electoral politics – and long before *neoliberalism* emerged in the form we know it today.

While ordoliberalism shares a number of convictions with the American neoliberalism associated with ‘the Chicago School’ – particularly a conception of freedom that privileges the market, the *homo economicus*, as well as a dedication to the stability of money – they also differ on crucial issues. One such issue is the question of monopoly power. Ordoliberalism sees private monopolies as an evil justifying state intervention. To neoliberals such as Milton Friedman (1962: 28), however, “if tolerable, private monopoly may be the least of the evils,” compared with the other ‘evils’ of public monopoly and public regulation. What makes private monopolies “tolerable” is the belief, following Schumpeter’s famous

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<sup>4</sup> To the ordoliberalists, Keynesianism was essentially a variant of socialism. In this they shared Hayek’s conception that the ‘road to serfdom’ was paved by economic planning.

notion of ‘creative destruction,’ that, absent government interventions, the market will, in the long run, erode monopoly power. In a free market economy, monopoly is therefore perceived only as a temporary competitive advantage bound to be eroded over time by new entrants and technologies, or kept in check by the threat of such.

A neoliberal faith in the market mechanism has, since the late 1970s, largely eclipsed earlier welfarist and also, to an extent, ordoliberal ideas. This development is reflected in a commitment to the well-known policy mix of privatisation, deregulation and liberalisation. The neoliberal state might, for instance, promote distribution through prices rather than through hierarchies, political objectives or social needs, or it might encourage various forms of ‘self-regulation,’ leaving, within new institutional settings, non-public actors to innovate and devise guidelines for economic activity. It does not, however, mean that the neoliberal state withdraws from the market or that it is a small state. On the contrary, the neoliberal state actively restructures and reregulates the functioning of the economy along ideological lines and in favour of the interests of capital (Harvey, 2007).

The legal-political institutions of the state thus play a crucial role in neoliberalism. Their function and form, however, change. Rather than ordering and correcting economic relations through maintaining competitive markets or protecting labour unions and welfare policies, the state emerges as a key actor in pursuing market liberal economics, weakening the position of labour relative to capital, and, in particular, directing the turn to financialisation of the economy (Mahmud, 2015). This takes place through domestic reforms as well as imperialist strategies and international integration (Fine and Saad-Filho, 2017).

## **V. LAW AND POLITICAL ECONOMY: INTERNATIONAL AND GLOBAL DIMENSIONS**

Perhaps the most significant development in law and political economy over the last few decades has been the internationalisation of trade and production and the liberalisation of financial markets. This may be defended from an economically liberal perspective as facilitating consumer choice and exposing previously monopolistic firms in the domestic economy to competition. Economic globalisation, however, also has the effect of curbing the power of organised labour. When the political and legal structure allows production to be offshored or outsourced more easily, the ability of workers to demand a higher share of profits declines. Even without taking policies directly targeting the power of trade unions into account, globalisation thereby has the effect of strengthening the alternatives for capital. In that sense, the neoliberal revolution of Thatcher, Reagan and others started in the late 1970s can be interpreted as a restoration of the class power of capital, which had been gradually curbed during the post-war period of Keynesian demand management and full employment policies (Duménil and Lévy, 2004,

Harvey, 2007, Streeck, 2014).<sup>5</sup> The pattern of rising inequality that Piketty describes appears to have started in tandem with the adoption of neoliberal policies on a grand scale, ushering in a political-economic paradigm that remained virtually unchallenged until the financial crisis of the late 2000s. While some scholars have made compelling arguments about the need to disaggregate the macro figures of inequality and look at differing national level explanations for economic developments (see Acemoglu and Jameson, 2015), it remains notable that inequality has increased across all but a few OECD countries (OECD, 2015) and there are indications that inequality is increasing even in developing economies such as China (Cevik and Correa-Caro, 2015) and India (Chauhan et al, 2016).

Discourses of internationalisation and globalisation also reflect the fact that economic activity and its externalities increasingly cross borders. Climate change is perhaps the most obvious example, but the effects of finance, trade, production, and the movement of labour and capital have led to the realisation that “in an ever more integrated world economy ... national capacities to provide such collective goods as market regulation or crisis management have been dramatically weakened” (Underhill and Zhang, 2008: 536). A complex matrix of legal and political institutions beyond the state has also emerged. International and regional organisations such as the IMF, the World Bank, WTO, EU, Mercosur and NAFTA structure trade and economic integration and address the problems that flow from it. Such organisations have fundamentally altered global political-economic relations between and within certain states by facilitating and routinising cooperation and relatively peaceful dispute resolution. But more than simply being agents for states to overcome collective action problems, international organisations have become actors in their own right. Whether as participants in the construction and perpetuation of policy regimes “around which actor expectations converge in a given area of international relations” (Ruggie, 1982: 380), through exercising bureaucratic expert authority (Barnett and Finnemore 2004), or through legal regimes and regulation (Shapiro and Stone Sweet, 2002), international organisations serve to disseminate ideas for institutional reform in the national context. Domestic politics and law-making are often conditioned by international rules and norms that are outside the individual state’s capacity to alter unilaterally. As has been shown in the context of regional integration in the European Union, constitutional structures of supranational authority and integration through law may have a profound effect on political economy through their deregulatory bias (Scharpf, 2010).

Processes of international and global integration, even if infrequently contested under normal political circumstances, can spring into full view at certain critical moments, as in the case of the recent financial crisis. With international

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<sup>5</sup> Whether this would have been successful without the entry of China into the world economy, with its vast ‘reserve army’ of labour, is another matter (Harvey 2007).

financial markets as well as states and supranational institutions committed to preserving market integration and the economic status quo, the fundamental politico-legal sovereignty of an individual state may be increasingly eroded (Loughlin, 2016). Democracy and even legality may appear to be sacrificed on the altar of market imperatives by an authoritarian liberalism entrenched in a governmental apparatus and backed by the interests of capital, personified in the Euro-crisis by the so-called 'Troika' (ECB, European Commission and IMF) (see Streeck, 2014, 2015b; Wilkinson, 2015).

The study of law and political economy must therefore consider the politico-legal implications of democratic states being deprived of policy autonomy through their involvement in projects of economic integration. With the introduction of the euro, for example, national institutions that developed historically through conflicts and compromises between different societal actors are subsumed under a legal-technical monetary regime associated with a particular form of capital accumulation. The monetary order, in other words, is far from politically neutral; it is linked to a more comprehensive institutional ordering of the economy (Matthijs and Blyth, 2015). On this question, recent work on the Eurozone suggests that in order to compete with capital, democracy may require a reclaiming of political sovereignty over monetary powers (Streeck, 2015a: 13). This approach emphasises the potential and actual conflicts between a supranational legal order and the existing institutionalised mediations of the relations between society and the capitalist economy. It illustrates what the economist Dani Rodrik (2011: xviii) has called the "fundamental political trilemma of the world economy: we cannot simultaneously pursue democracy, national determination, and economic globalization." Against the reassertion of national popular sovereignty, some, most notably in Europe (Hennette et al, 2017), seek an up-scaling of democracy, proposing to reunite democracy and economic integration at the supra-national level. So far, however, it would appear that the stubbornness of the state-system acts as a strong, perhaps insurmountable, obstacle to this vision of democratic self-government beyond the state. National democratic retrenchment may appear as the more feasible alternative, reclaiming state sovereignty advocated as a project of progressive social and economic change for a post-neoliberal era (Mitchell and Fazi, 2017).

Even if the state were formally to regain sovereignty, however, the ability to exercise it effectively would be constrained by its need to retain and attract investments and finance. There is a parallel between the situation of the individual person and the individual state: both 'enter' (or re-enter) a space of action where political-economic agency is conditioned by existing ground rules and concrete power relations. As Charles Lindblom (1982) put it, in a capitalist world economy, markets come with automatic punishment mechanisms. Given the capacity of capital to halt production and investment or move it elsewhere, the consequences of a significant political or economic reform may be prohibitive in terms of economic stagnation and unemployment. As such, governments may be reluctant to even consider certain political and economic reforms. The erosion of state

authority is thus also linked to the increasing power of capital in the form of transnational corporations (TNCs). More than simply being rule-takers, TNCs increasingly structure and constrain legal-political action within state jurisdictions. Whether on trade standards, value chains, the regulation of externalities, control of information and production, or the formulation of international regulatory regimes, states lose control over economic processes, even if – unilaterally or collectively – they set this dynamic in motion in the first place (Helleiner, 1994). Law and political economy thus calls attention to the need to critically examine the dynamic between legal provisions that alter existing power relations and how such power relations already condition the scope of feasible political and legal change.

## VI. CONCLUSION

The recent surge in interest in critical approaches to the study of law, politics, and the economy finds expression in the rejection of economistic explanations of everything from climate change to family structures, and to expressions of democratic sovereignty. While ‘political economy’ as a discipline and way of thinking has a long history associated with some of the great Western thinkers of the 18<sup>th</sup> and 19<sup>th</sup> centuries (e.g. the Physiocrats, Adam Smith, David Ricardo, Thomas Malthus, John Stuart Mill, Karl Marx), the recent interest stems from a renewed conviction that political, juridical and economic processes cannot be understood in any meaningful way as autonomous.

Political decision-making and law-making doesn’t take place in a social or economic vacuum, even though the material conditions of the day are to many policy makers often considered a given. The question of whether to maintain or abandon a capitalist market economy, for instance, is only rarely a salient political question. More commonly the question would take the form: what kind of capitalist market economy do we want to have? Most of the time it is thus forgotten that the economy *is* a capitalist economy, which can be presumed neither neutral nor natural. In interstitial periods, when it is again remembered that the economy is a juridico-political construction, as well as a product of the power relations of social classes, genders, races, national interests, and other social struggles (core - periphery, creditor - debtor, land owners - city dwellers, capital - labour, workers - non-workers), the deeper question of the material role of structure and agency returns. Through analyses that capture the nature and dynamics of these relations, it may be possible to attain a fuller self-understanding of law and political economy in modern society.

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