**LS 190.5 The Law and the History of Economic Institutions of Capitalism**

**Fall 2023**

**Professor Veronica Aoki Santarosa**

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Course meeting: Mondays and Wednesdays, 5:00 - 6:30 P.M., Wheeler 24

Assistant: Lisa Bazan, lbazan@law.berkeley.edu

Office hours: Tentatively, Thursdays, 1 - 2:30pm (in-person or via Zoom at berkeley.zoom.us/my/aokisan) and by appointment

**Course Description**

This seminar will focus on the formation and evolution of economic and legal institutions from the height of the medieval Commercial Revolution to the present day. In the absence of strong states, how could the law support the rise of anonymous long-distance trade, early entrepreneurial activity, and the ascent of financial capitalism? Major topics will include the institutions that governed the organization and finance of early trade, the legal history of commercial law, the organization of enterprises, the venues for contract enforcement, the regulation of financial intermediaries, sovereign debt, and the evolution of the global financial governance architecture. The course readings will explore a wide range of recent scholarship on economic history and legal history, with emphasis on social science approaches.

**Course Objectives**

This course is intended to help students become better consumers, judges, and communicators of seminal works in the economic history and legal history literatures. At the completion of this course, students should have gained the following knowledge and set of skills: (1) have an understanding of the history and legal underpinnings of major economic institutions in capitalist economies; (2) be able to critically engage with empirical work and have a better sense of its inherent limits and problems; (3) write focused reaction papers analyzing and responding to assigned readings, and employ those reaction papers as the preparation and basis for vigorous in-class discourse; (4) gain an acquaintance with working with primary sources.

**Readings**

The weekly readings, assignments, announcements, etc., will be posted on the course website. And, if it is helpful, please print out the readings and bring them to class; **no laptops (or other electronic devices) permitted unless you have an accommodation or it is necessary to access the readings.**

**Class Attendance**

You are required to attend every class. Only students with valid reasons will be excused from the seminar. You must notify me by email of such absence prior to the missed class; I will give you a compulsory make-up assignment for completion in the week following your absence.

Students who miss the first meeting will be dropped.

**Course Requirements**

The following factors will determine your course grade:

Class participation (20%): The instructor will assess participation based on attendance and thoughtful contributions to class discussions. I expect you to be active, engaged, enthusiastic discussants. Quality is more important than quantity. But quantity *is* important. If you do not participate in every class, expect to be called on. Participation will be graded each class meeting, and the grades aggregated to produce a final participation score. I will grade with the intent to encourage participation, not stifle it. It should be noted that brave attempts, even if the answer proves to be incorrect, receive positive credit. If you find a particular case or topic too painful or uncomfortable to discuss, or if challenging life circumstances make class participation overly burdensome, you may decide to opt out of a particular discussion. If such circumstances arise, you should inform me of your need to opt out of the day’s discussion, preferably before class.

Discussion Leader (20%): At the beginning of the term, students should sign up to lead off class discussion of a few sessions (TBD). Leading the discussion involves preparing and posing questions to the class, gently prodding and inviting classmates to speak on specific points mentioned in their reaction memos, and comment on the readings. I will provide further guidance about how to prepare in the first class.

In-class brief presentation of one supplementary paper (20%): A student assigned to cover a supplementary reading should provide a brief summary of the argument or key points of the paper and offer a critical appraisal of the material.

Reaction Memoranda (40%): Before 05:00 PM of the Sunday evening prior to each Monday seminar meeting, students are required to post at the course website a ~ 400-600 words long “Reaction Memorandum” that should engage critically and substantively with the readings assigned for that week’s meeting. Effective memos critically assess the author’s argument; defend the author against objections; develop intriguing implications of the text(s); identify additional related legal, economic, or policy questions; critique methodology; or provide directions for further analysis. Please single-space the memo, using 12-point, Times New Roman font. Late submissions will not be accepted. **No reaction memorandum is due for the first week of class.**

**You may not use Large Language Models or similar tools to complete your assignments.**

**Equal Opportunity**

All reasonable efforts will be made to accommodate students with disabilities in accordance with university policy. Information about specific resources provided by the UC Berkeley Disabled Students’ Program may be found online at http://dsp.berkeley.edu/dspServices.html. Please notify me as soon as possible if you require accommodations of any kind.

**Academic Integrity**

Please review Berkeley’s Academic Integrity Policy at sa.berkeley.edu/conduct/integrity

University rules require that you comply with this policy. If you have questions as to what it entails, please contact me.

**Course Content**

\*\*\*\* This syllabus is a guide for the course and is subject to change. I will periodically post the specific weekly reading assignments in the course website \*\*\*\*

**Week 1: The Encounters of Law, History, and Economics**

Schuessler, Jennifer, “In History Departments, It’s Up With Capitalism,” *New York Times* (6 April 2013), <https://www.nytimes.com/2013/04/07/education/in-history-departments-its-up-with-capitalism.html>

Documentary (trailer) “Capital in the Twenty-First Century,” <https://www.youtube.com/watch?v=TqkjyI1QD2A>

North, Douglass, “Nobel Prize Lecture: Economic Performance through Time” (9 December 1993), <https://www.nobelprize.org/prizes/economic-sciences/1993/north/lecture/>

Nisbett, Richard, “Op-Ed: Do you think like an economist?,” Los Angeles Times (3 September 2015), <https://www.latimes.com/opinion/op-ed/la-oe-0903-nisbett-sunk-cost-20150903-story.html>

Klerman, Daniel. "Quantitative legal history," The Oxford Handbook of Legal History (2018): 343.

Harris, Ron, “The Uses of History in Law and Economics,” *Theoretical Inquiries in Law*, Vol. 4, No. 2 (2003). pp. 660-61, 677-96 (excerpt).

Goldin, Claudia, “Cliometrics and the Nobel,” *Journal of Economic Perspectives*, Vol. 9, No. 2 (1995): 191–208 (excerpt).

**Week 2: Early Trade-Supporting Institutions**

Greif, A., “Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders’ Coalition,” *American Economic Review*, Vol. 83, No. 3 (June 1993). (skim formal derivation)

Hausmann, Ricardo, “The Diaspora Goldmine,” *Project Syndicate* (25 June 2015), <https://www.project-syndicate.org/commentary/remittances-not-only-benefit-to-homeland-economies-by-ricardo-hausmann-2015-06>

Postrel, Virginia, “Even without law, contracts have a way of being enforced,” *New York Times* (10 October 2002), <https://www.nytimes.com/2002/10/10/business/economic-scene-even-without-law-contracts-have-a-way-of-being-enforced.html>

Bernstein, Lisa, “Contract Governance in Small-World Networks: The Case of the Maghribi Traders,” *Northwestern Law Review* (2019) (excerpt).

Supplemental readings: Lemercier, Claire, “Formal Network Methods in History: Why and How?,” *Social Networks, Political Institutions, and Rural Societies* (2015): 281–310 (excerpt).

**Week 3: From Intra- to Inter-Network Sources of Cooperation: Trust, Culture, and Institutions as a Microfoundation**

Trivellato, Francesca, “Merchants on Trial: Legal and Extra-Legal Sources of Cooperation within the Jewish Trading Diaspora in the Eighteenth Century,” *IEHC Helsinki Session* 35 (2006).

Guinnane, Timothy W. "Trust: a concept too many." Jahrbuch für Wirtschaftsgeschichte/Economic History Yearbook 46.1 (2005): 77-92 (excerpt)

Fehr, Ernst and Simon Gachter, “Altruistic Punishment in Humans,” Nature 415:137-140 (2002), http://www.nature.com/nature/journal/v415/n6868/pdf/415137a.pdf

Supplemental readings: Ostrom, Elinor, “Collective Action and the Evolution of Social Norms.” Journal of Economic Perspectives 14(3): 137-158 (2000).

Hadfield, Gilian and Barry Weingast, “What Is Law? A Coordination Model of the Characteristics of Legal Order,” Harvard Journal of Legal Analysis.

**Week 4: In Search of a *Lex Mercatoria*; Private versus Public Ordering**

Milgrom, Paul, Douglass North, and Barry Weingast, “The Role of Institutions and the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs,” *Economics and Politics,* Vol. 2 (1990): 1–23. (excerpt; skip model)

Milgrom, Paul, Interview, <https://www.blog.kleros.io/kleros-interviews-a-conversation-with-professor-barry/>

Fisman, Ray and Tim Sullivan, "Everything We Know About Platforms We Learned from Medieval France", Harvard Business Review (24 March 2016), <https://hbr.org/2016/03/everything-we-know-about-platforms-we-learned-from-medieval-france>

Kadens, Emily, “Myth of the Customary Law Merchant,” *Tex. L. Rev.* 90 (2011): 1153 (excerpt).

Supplemental reading: Bernstein, L., “Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry,” *Journal of Legal Studies*, Vol. 11, No. 1 (January 1992), (115–135, skim rest).

## Week 5: Methods and Frameworks: a brief Introduction to Econometrics and Archival Research

### Lawless, Robert M., Jennifer K. Robbennolt, and Thomas Ulen, *Empirical Methods in Law* (New York: Aspen Publishers, 2010) (excerpt).

### Farge, Arlette, *The Allure of the Archives* (New Haven, CT: Yale University Press, 2013) (excerpt).

### Supplemental reading: Bates, R., and A. Greif, *Analytical Narratives* (Princeton, NJ: Princeton University Press, 1998) (excerpt).

## Week 6: The Bill of Exchange and the Development of Commercial Law

Rogers, James Steven, “The Myth of Negotiability,” *B.C. Law Rev.*, Vol. 31 (1990) (excerpt)

Santarosa, Veronica Aoki, “Financing Long-Distance Trade: The Joint Liability Rule and Bills of Exchange in Eighteenth-Century France,” *Journal of Economic History*, Vol. 75, No. 3 (2015): 690–719.

Horwitz, Morton J., *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1977), Chapter 7.

Trivellato, Francesca, *The Promise and Peril of Credit: What a Forgotten Legend about Jews and Finance Tells Us about the Making of European Commercial Society,* <https://www.ias.edu/ideas/book-promise-and-peril>

Supplemental reading: Pistor, Katharina, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton, NJ: Princeton University Press, 2019), chapter 4.

**Week 7: Debt in Courts**

### Muldrew, Craig, “Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community,” *Economic History Review,* Vol. 46, No. 1 (1993): 23–38.

Mann, Bruce H., *Neighbors and Strangers: Law and Community in Early Connecticut*, UNC Press Books, 2001 (only appendix).

Priest, Claire, “The Nature of Litigation in Early New England,” *Yale Law Journal*, Vol. 111 (2002): 1881.

Mann, Bruce H., “Law, Economy, and Society in Early New England,” *Yale Law Journal*, Vol. 111, No. 7 (May, 2002), pp. 1869-1880

Dayton, Cornelia. "Law and Disputing in Commercializing Early America," *Michigan Law Review*, 87.6 (1989).

Hull, N. E. H. "The Perils of Empirical Legal Research," *Law & Society Review* 23 (1989)

**Week 8: Early Private Debt and Equity Markets**

Hoffman, Philip T., Gilles Postel-Vinay, and Jean-Laurent Rosenthal, “Information and Economic History: How the Credit Market in Old Regime Paris Forces Us to Rethink the Transition to Capitalism,” *American Historical Review,* Vol. 104, No. 1 (February 1999): 69–94.

Neal, Larry, and Lance Davis, “The Evolution of the Rules and Regulations of the First Emerging Markets: The London, New York and Paris Stock Exchanges, 1792–1914,” *Quarterly Review of Economics and Finance,* Vol. 45, Nos. 2–3, (2005): 296–311.

Supplemental reading: Weidemaier, W. Mark C., “Law, Lawyers, and Self-Governance During the Heyday of the London Stock Exchange,” *Law & Contemporary. Problems,* Vol.82 (2019): 195.

**Week 9: The Legal Construction of Public Debt Markets**

Gulati, Mitu, and W. Mark C. Weidemaier, “The Relevance of Law to Sovereign Debt,” *Annual Review of Law and Social Science,* Vol. 11 (2015): 395-408.

Chabot, Benjamin, and Veronica Santarosa, “Don’t Cry for Argentina (or Other Sovereign Borrowers): Lessons from a Previous Era of Sovereign Debt Contract Enforcement,” *Capital Markets Law Journal*, Vol. 12, No. 1 (January 2017): 9–37.

Lienau, Odette, “Sovereign Debt, Private Wealth, and Market Failure,” *Virginia Journal of International Law,* Vol. 60 (2019): 299 (sections I and III).

Taplin, Nathaniel, “One belt, one road and a lot of debt,” The Wall Street Journal (2 May 2019), <https://www.wsj.com/articles/one-belt-one-road-and-a-lot-of-debt-11556789446>

Brautigam, Deborah and Meg Rithmire, “The Chinese ‘Debt Trap’ Is a Myth,” The Atlantic (6 February 2021), <https://www.theatlantic.com/international/archive/2021/02/china-debt-trap-diplomacy/617953/>

Supplemental readings: Mihalyi, David, et al., “Resource-Backed Loans in Sub-Saharan Africa,” (2022).

Gelpern, Anna, et al., “How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments,” (2021).

**Week 10: Sovereign Debt as a Mode of Governance**

Oosterlinck, Kim, et al. "The odious Haitian independence debt." Journal of Globalization and Development 13.2 (2022): 339-378.

“How a French Bank Captured Haiti,” *The New York Times* (May 2022).

<https://www.nytimes.com/2022/05/20/world/french-banks-haiti-cic.html?smtyp=cur&smid=fb-nytimes&fbclid=IwAR0m49ImSu4W1dqO_RbK2tDk4TZaWddAYwiKisccUVYRb6UMVFnNAeUD0XY>

<https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html>

Lienau, Odette, *Rethinking sovereign debt: politics, reputation, and legitimacy in modern finance*, Harvard University Press, 2014 (chapter 2).

Graeber, David, *Debt: The first 5000 years*, Penguin UK, 2012 (chapters 1 and 3)

**Week 11: Protecting Property Rights**

Demsetz, Harold, “Toward a Theory of Property Rights,” *American Economic Review,* Vol. 57 (May 1967): 347–359.

North, Douglass C., and Barry R. Weingast. “Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England,” *Journal of Economic History,* Vol. 49 (December 1989): 803–832.

C.R., “Glorious revolutions and their discontents,” The Economist (4 December 2013), <https://www.economist.com/free-exchange/2013/12/04/glorious-revolutions-and-their-discontents>

Lamoreaux, Naomi R., “The Mystery of Property Rights: A U.S. Perspective,” *Journal of Economic History*, Vol. 71 (June 2011): 275–306.

Supplemental reading: Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000), (chapter 5).

Ostrom, Elinor, “Collective Action and the Evolution of Social Norms.” Journal of Economic Perspectives 14(3): 137-158 (2000).

**Week 12: Economic History of the Enterprise**

Hansmann, Henry, Reinier Kraakman, and Richard Squire, “Law and the Rise of the Firm,” *Harvard Law Review,* Vol. 119 (2005): 1335 (excerpt).

Harris, Ron, Timothy Guinnane, Naomi R. Lamoreaux, and Jean-Laurent Rosenthal, [“Putting the Corporation in Its Place](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=986959),” *Enterprise and Society*, Vol. 8, No. 3 (September 2007): 687–729.

Supplemental reading: Weinstein, Mark I., “Share Price Changes and the Arrival of Limited Liability in California,” *Journal of Legal Studies,* Vol. 32, No. 1 (January 2003): 1–25.

**Week 13: Does History Matter?The Legal and Colonial Origins Debate**

Acemoglu, Daron, and Robinson, James, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty,* reprint ed. (Currency, 2013), 1–14, 73–83, 198–199.

Gates, Bill, “Good ideas, but missing analysis,” *GatesNotes – The Blog of Bill Gates*, (26 February 2013), <https://www.gatesnotes.com/Why-Nations-Fail>

Book Review, “The big why,” The Economist, (10 March 2012), <https://www.gatesnotes.com/Books/Why-Nations-Fail>

La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Schleifer, “The Economic Consequences of Legal Origin,” *Journal of Economic Literature*, Vol. 46, No. 2 (2008): 285–332.

Supplemental readings: Acemoglu, Daron, Simon Johnson, and James A. Robinson, “The Colonial Origins of Comparative Development: An Empirical Investigation,” *American Economic Review*, Vol. 91, No. 5 (2001): 1369–1401.

Berkowitz, Daniel, Katharina Pistor, and Jean-Francois Richard, “The Transplant Effect,” *American. Journal of Comparative Law,* Vol. 51 (2003): 163.

**Week 14: Global Economic Governance and Development**

Sen, Amartya, Development as Freedom (New York: Knopf, 1999), pp. 3–41.

Davis, Kevin E., “Legal Indicators: The Power of Quantitative Measures of Law,” *10th Annual Review of Law and Social Science* (2014): 37–52.

Coyle, Diane, “When capitalisms collide,” *Nature*, 574 (2019): 322-324, <https://www.nature.com/articles/d41586-019-03047-9>

Stiglitz, Joseph E. "Ethics, economic advice, and economic policy." Development Ethics (2017): 481-502.

Britton-Purdy, Jedediah, David Singh Grewal, and Amy Kapczynski, *Law and Political Economy: Toward a Manifesto,* LPE Project (11 June 2017). <https://lpeproject.org/blog/law-and-political-economy-toward-a-manifesto/>

Supplemental reading: Britton-Purdy, Jedediah, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman, “Building a Law and Political Economy Framework,” *Yale Law Journal* 129 (2020).