Martha T. McCluskey, University at Buffalo School of Law*

Association for the Promotion of Political Economy and the Law (APPEAL): Transforming Law and Economic Power

Abstract: This article reflects on the Association for the Promotion of Political Economy and Law (APPEAL), formed in 2012 as the first contemporary scholarly group named for the emerging field of Law and Political Economy (LPE). APPEAL organizes academics and allies to address urgent social problems by exploring possibilities for reorienting the economy toward justice, equality, and democracy. To mobilize ideas for change, APPEAL emphasizes collaborative intellectual communities. I situate APPEAL in the context of a neoliberal political movement to capture law's power by investing in the Law and Economics message that economic power inevitably limits democracy and social justice. Though vastly outmatched in funding, APPEAL brings together experts in economics, law, and other disciplines to clarify and change influential neoliberal ideas about both law and economics. I highlight APPEAL participants' scholarship showing the interconnected social, political, and legal nature of economic power as the basis for transforming economic politics and policy.

Keywords: political economy and law, law and economics, legal theory, legal education, institutions, neoliberalism

I. Introduction

In 2012, spurred by inadequate responses to the 2008 financial crisis, several law professors and economists met to organize academics to confront the underlying political-economic problems. Our discussion launched the Association for the Promotion of Political Economy and Law (APPEAL) as the first contemporary US scholarly group named for the approach now known as Law and Political Economy (LPE).

This article reflects on APPEAL's institutional and intellectual contributions to the rapidly expanding LPE movement, situating our work in the context of neoliberal capture of legal thought. APPEAL was founded to confront decades of politically motivated investments in ideas about law, government,

* Professor Emerita. Please direct correspondence to mcclusk@buffalo.edu. I thank the editors of the *Journal of Law and Political Economy* for valuable comments, Eleanor Morgan for excellent research and editing assistance, and Angela Harris, Eric George, and Carl Nightingale for feedback on drafts. In addition, the author thanks Eric George and Nikos Efstratudakis for their organization-building work and Denise Herkey-Jarosch of the Rowboat Family Foundation for administrative expertise. Finally, thanks to APPEAL Board members and participants for creating an inspiring and warm community. This article represents solely my own views, without authorization by APPEAL as an organization.

and economy. Our activities especially respond to the influential Law and Economics approach, which draws on a neoclassical economic model to endow markets with seemingly separable and superior powers for governing society. APPEAL instead emphasizes that power is constituted by fundamentally interdependent social, economic, and legal systems open to political change.

First, APPEAL grounds political economy in social institutions, rather than individualized behavior. From this perspective, APPEAL programs bring a range of social science and humanities perspectives to economic analysis. Following the LPE approach launched by ClassCrits and further developed by the *Journal of Law and Political Economy* (Harris and Varellas 2020), APPEAL affirms that contested ideas about identity, culture, subjectivity, and epistemology inevitably shape economic analysis and action.

In turn, social practices and meanings are shaped by economic thought and institutions. Accordingly, APPEAL analyzes economic policy and theory as sites for advancing social justice. A policy approach that separates social qualities (and inequalities) from economic ends is itself an ideological choice that cuts against democratic values. Rather than balancing economic goals with moral values, APPEAL encourages an economics that measures value as the shared well-being of people and the environment. This means not only that economics should inform discussions of social justice, but that social justice should inform—and transform—economics.

Second, APPEAL activities examine economic forces as inextricably rooted in questions of politics and power. APPEAL's name builds on the tradition of political economy, which foregrounds questions of conflict and power in economic activity—asking who wins, who loses, and who decides (Boyce 2021). Further, APPEAL reclaims the term "political economy" from its narrow use within the discourse of Law and Economics and neoliberalism to portray government as a distortion of free markets.

As a distinct contribution to LPE, APPEAL connects sociolegal scholars and lawyers with political economists. APPEAL highlights the pervasive power of imperial conquest, financial hierarchy, and systemic subordination in structuring markets, and supports economic analysis of alternatives that advance prosperity through democracy and equality.

Third, APPEAL affirms law's power for political-economic change, with critical attention to the limits and dangers of that power. Law actively constitutes the basic terms and institutions of economic activity, so it cannot be adequately analyzed as an epiphenomenon of underlying political-economic powers (Deakin et al. 2015, 191–92). APPEAL activities explore the value-laden legal rules that inevitably shape political-economic interests as well as the costs and benefits that emerge from purportedly impartial market processes.

At the same time, APPEAL programs emphasize that law is never outside the economic transactions it governs. Economic conditions and interests influence the form and substance of legal institutions, including courts, legislatures, government agencies, international bodies, the legal profession, and legal education, all of which depend on ongoing material support. Contrary to the Law and Economics premise of firm and fixed legal rules guiding market exchange, private economic actors regularly use their leverage in the market, state, civil society, and courts to unevenly modify and evade legal constraints and to increase constraints on others. Any understanding of our present order must consider the ways that law remakes economic power as part of a dynamic process in which law is also being remade through unequal economic power.

Therefore, APPEAL engages law and policy as vital sites of ideological struggle over political-economic values and identities. The neoliberal movement's focus on transforming law (discussed in Part III) underscores the centrality of the law's power to institutionalize political-economic hierarchies, even (or especially) for those who regularly exploit law's weaknesses.

Applying these three themes, the first part of this article will focus on APPEAL's institutional approach. It begins with an overview of the history of APPEAL's formation and development, and then reflects on APPEAL's institutional strategies. APPEAL's praxis grows out of a political-economic analysis of the success of Law and Economics in building institutions. The second part of this article examines the theoretical and institutional challenges that Law and Economics presents for the emerging Law and Political Economy movement. It begins by situating Law and Economics ideas in a broader neoliberal effort to construct a legal regime that entrenches a right-wing social and economic order. Next, the article links Law and Economics' influence to a well-funded institution-building campaign that sought to delegitimize democratic alternatives to neoliberalism. Finally, this section analyzes the influential Law and Economics message that law should often defer to unequal, unaccountable economic power.

The final part of this article discusses APPEAL's intellectual approach to challenging that logic. By connecting the politics of economics with analysis of social and legal power, APPEAL illuminates the ideas and structures that stack the economy against the well-being of most people and the planet. The article gives examples of scholarship highlighting, first, the social nature of economic power; second, the political nature of economic power; and third, the legal nature of economic power. With this integrated vision, APPEAL aims to build a network of scholars and changemakers committed to expanding the horizons of imagination and action.

II. APPEAL's Institutional Praxis

APPEAL formed with the conviction that changing ideas requires intellectual community, collaboration, and institutional resources. APPEAL affirms and learns from the organizations that have shaped our participants' scholarship and strategies over many decades. Those include the Law and Society Association, LatCrit, the Institute for Global Law and Policy, the Feminism and Legal Theory Project, and the Vulnerability and the Human Condition Initiative; along with academic associations focused on socioeconomics, labor law, feminist economics, and institutional economics.

A. Formation and Growth

APPEAL emerged directly from connections made through ClassCrits, an early organizational leader of LPE emphasizing critical analysis of the interrelationships between economic power, class, race, gender, and other forms of systemic inequality (Mutua 2021). In 2010, ClassCrits cosponsored an interdisciplinary workshop on the financial crisis, supported by the University at Buffalo Baldy Center for Law and Social Policy and organized by Angela Harris, Athena Mutua, and me, Martha McCluskey.

This event led to a 2012 inaugural meeting of law scholars and economists, hosted by the University of Massachusetts Amherst's Political Economy Research Institute (PERI), a major institutional base for the study of heterodox economics. The law professors attending, Frank Pasquale, Jennifer Taub, Zephyr Teachout, and I, had engaged with economic thought in our work on topics including health law, antitrust, corporate governance, financial regulation, corruption, and social welfare policy. They

were joined by University of Massachusetts economists James Boyce, Michael Ash, Gerald Epstein, and Gerald Friedman, scholars whose research has addressed issues of labor, poverty, economic development, environment, health, and finance, among other topics.

With growing numbers of individual scholars interested in reframing economic policy, we wanted more opportunities to enhance the impact of their work through interdisciplinary collaboration and exchange. We aimed to push the boundaries of existing legal and economic analysis. We chose the name APPEAL to advance "political economy and law" as a challenge to Law and Economics' claim to define the economy and its relationship to law.

Taking this discussion forward, three of the law scholars (Jennifer Taub, Frank Pasquale, and I) organized a panel presentation on Law and Political Economy for the 2013 Law and Society Association annual meeting. That session confirmed our sense of growing interdisciplinary interest in connecting economic and social analysis of law.

In 2014, with a grant from the University at Buffalo, State University of New York, we held APPEAL's first workshop, "Critiquing Cost-Benefit Analysis in Financial Regulation," hosted by George Washington University's Center for Law, Economics, and Finance and cosponsored by several policy groups: Americans for Financial Reform, Better Markets, and the Center for Progressive Reform. The same grant supported two APPEAL workshops in 2015 at the University at Buffalo's Baldy Center for Law and Social Policy, one on teaching new thinking in law and economics and the other on higher education finance.

In 2017, APPEAL incorporated as a tax-exempt nonprofit, expanding our events to build a broader multidisciplinary community of LPE scholars and policy professionals. In 2017, we held a workshop on engaged scholarship at the University of Maryland, Francis King Carey School of Law with presentations from over forty scholars and policy experts. In 2018, APPEAL again partnered with PERI at the University of Massachusetts Amherst to host a conference connecting law and heterodox economics, featuring seven panels formed from a call for papers as well as topical breakout sessions fostering discussion between students and scholars. To supplement our events, APPEAL cofounders published a blueprint for reframing law school teaching about law and economy and a collaborative article countering conventional legal-economic ideas (McCluskey, Pasquale, and Taub 2016; Pasquale et al. 2019).

APPEAL's 2019 conference expanded our international and interdisciplinary reach with over seventy speakers, a number of whom participated in the newly formed Law and Political Economy Collaborative Research Network (CRN) of the Law and Society Association. In contrast to our sole panel at the Law and Society Association's annual meeting six years before, this new CRN produced fourteen Law and Political Economy panels for the 2019 Law and Society Association meeting and over two dozen LPE panels in both 2022 and 2023.

To further expand interdisciplinary and international exchange, in 2019 APPEAL launched our Summer Academy in Law and Money, hosted by the University of Manchester Law School in the UK and cosponsored by the Young Scholars Initiative of the Institute for New Economic Thinking (INET) and its Finance, Law, and Economics Working Group, along with the Law and Money Initiative. Led by APPEAL Board member John Haskell, the Summer Academy encourages innovative and inclusive discussions among graduate students and senior scholars focused on the democratic possibilities of law, money, and society. After taking place online in 2020 and 2021, in 2022 APPEAL's

collaborative Summer Academy was hosted by the University of Rome and included emerging scholars from Africa, the UK, and Europe in conjunction with the annual conference of the European Association of Evolutionary Political Economy (EAEPE). In 2023, APPEAL worked with both EAEPE and INET collaborators to develop a Law and Political Economy stream for the EAEPE annual conference, featuring an intensive writing workshop for a group of emerging scholars.

During the pandemic break in large events, APPEAL developed several online discussion groups. Beginning in 2020 and continuing through the present, the "What Is Capitalism?" group explores the legal underpinnings and changing forms of capitalism. In 2021–2022, the Corporate Governance, Law and Power group, led by Faith Stevelman and Sarah Haan, produced a series on corporate law and climate change. Two working groups, Measuring and Managing Inflation, and LPE Perspectives on Cost-Benefit Analysis, opened seemingly technical economic topics to deeper critical analysis. The Constituting and Constitutionalizing Political Economy group explored the structural barriers to democracy and justice that underlie divisions such as public/private, economic/social, and politics/law. APPEAL also collaborated with the LPE Project, under the leadership of former LPE Project Deputy Director Raúl Carrillo, to produce an online mentoring series for emerging scholars and professionals.

More recently, in 2022, APPEAL organized "The Law and Political Economy Difference" workshop, which brought together a group of law scholars and economists to discuss the distinct contributions of an LPE approach and was cosponsored by the Baldy Center for Law and Social Policy at the University at Buffalo. In 2023, APPEAL joined with economics student groups and allied faculty at John Jay College of the City University of New York and the New School for Social Research to launch a series of New York City workshops promoting connections between heterodox economics and LPE.

Adding to our own events, APPEAL has organized panels for conferences held by other groups, including Just Money, the LPE Project, and the Union of Radical Political Economists (URPE). Since its founding, APPEAL has been an incubator for the broader LPE institutional ecosystem, providing opportunities for connections and conversations that have helped spur other initiatives. Part IV of this article will elaborate on scholarship featured in APPEAL's activities.

B. *APPEAL's Strategies for Change*

APPEAL's intellectual and organizational focus reflects our political-economic view of the landscape we seek to change. Within academia, the LPE movement cannot expect to match Law and Economics' record of extraordinary external funding, described in Part III-A below. Intellectual work contesting the power of supersized private wealth is unlikely to attract as much private funding as work that rationalizes or accommodates that power.

The success of Law and Economics shows that intellectual movements gain power through material resources, but also that intellectual resources can enhance the political-economic power of wealth. By lavishly funding the academic field of Law and Economics from its early stages to the present, activists on the right have made a particularly productive investment that continues to produce antidemocratic changes. The right's success in fueling Law and Economics challenges the LPE movement to consider the specific ways in which intellectual work can (and cannot) contribute to new political-economic power. Addressing this challenge, APPEAL's institutional practices are informed by three strategies

that enabled investments in Law and Economics to leverage broad acceptance of neoliberal ideas: building institutions, reframing the intellectual opposition, and connecting theory with professional policy expertise.

1. Building Institutions

Learning from the organizational success of Law and Economics, APPEAL is guided first by an understanding that the power of ideas depends on institutions. Right-wing funders and entrepreneurs did not rely on a decentralized marketplace of individual scholarly exchange and competition. Instead, as this article discusses in Part III, they deliberately restructured the intellectual marketplace by designing an extensive network of institutions to promote neoliberal ideas. With a similar understanding that economic power involves collective organization, APPEAL activities aim to build networks working toward shared ideals for justice and prosperity.

As part of our attention to institutions, APPEAL is structured to offer a degree of critical distance from the practices and pressures of academic institutions where ties to political-economic power inevitably influence the production of knowledge. Now that LPE has a growing institutional presence within universities and law schools, APPEAL holds a distinct niche (along with ClassCrits) as an independent membership-based nonprofit governed by an elected board. In that form, we hope to reduce the risks that established academic hierarchies or university administrative demands will limit the range and nature of our intellectual work. Moreover, this participant-focused governance structure reinforces our goal of an intellectual approach that develops over time, beyond its initial leaders' vision, to respond to new issues and to air diverging views.

Consistent with this organizational form, APPEAL's activities emphasize collaboration and mutual learning as crucial components of intellectual excellence as well as effective collective action. APPEAL seeks to align its praxis with our substantive goals for democratic social change, in keeping with one tenet of a "non-reformist reform" approach (Akbar 2020, 102; Gorz 1967). Within academia, as in other sectors, neoliberal management strategies emphasizing individualized competition for scarce and unequal funding or status tend to erode the qualities conducive to collective action for long-term institutional change. Institutional spaces that foster a countervailing culture among intellectuals and professionals can contribute to broader efforts to resist erosion of academic integrity and independence from political pressures to limit critical scholarship.

Throughout all our programs, APPEAL strives to be a home for LPE ideas, energies, and voices at risk of being sidelined or toned down in larger academic institutions where demands of reputations, rankings, and revenue can limit intellectual risk-taking and truth telling. Standard measures of academic productivity can pressure untenured scholars to tailor their work to existing frameworks, subject matter, and scholarly hierarchies instead of pursuing their intellectual passions or breaking new intellectual ground (Maynard 2022, 281–84). By designing APPEAL's programs to encourage connections across boundaries of subject area, academic status, geography, and discipline, we hope to build a network that challenges existing scholarly conversations and conventions.

In general, our activities especially focus on collectively lifting many intellectual boats rather than selecting LPE stars. APPEAL programs regularly give equal billing to scholars in differing career stages and institutional positions. Our workshops often integrate presentations by graduate or undergraduate students on panels with senior scholars. Our typical format emphasizes group conversations about

short presentations, rather than "talking heads" followed by a handful of comments or questions. APPEAL events also provide ample opportunities for students and early-career academics to talk with established scholars in small groups. For APPEAL's 2021 international Summer Academy, for instance, graduate students gave plenary presentations on the event's core themes, which were followed by breakout group discussions with leading scholars.

APPEAL activities seek out non-US perspectives as well as those of academics and students working outside of elite universities. Our 2019 Summer Academy for emerging scholars included a plenary discussion of the politics of academic citation, noting the importance of crediting work by scholars of color. In addition, our programs have highlighted women with expertise in subject areas that have tended to be dominated by men, such as corporate law, microeconomics, and finance.

Further, APPEAL's institutional strategy focuses on building a larger, multifaceted Law and Political Economy community. To build relationships with other organizations, APPEAL features many co-organized events and seeks participants who are committed to developing institutions as well as ideas. APPEAL events have also encouraged productive debate about differences in theory and strategy within LPE and its allies. For example, APPEAL events have included discussions between proponents and critics of modern monetary theory.

Finally, a political economy lens should go further to value and develop internal administrative expertise as an important part of building institutions for intellectual change. APPEAL aspires to resist the gendered, raced, and classed practices that devalue administrative work as routine "housekeeping" or that relegate it to temporary positions for students on top of their work toward a scholarly career. The work of advancing alternatives to neoliberal ideology and policy will require long-term investments to develop capacity for administration, coordination, and leadership as well as scholarship, teaching, and grassroots activism. Facing neoliberal intellectual networks managed by highly paid professional administrators and executives, APPEAL, like the larger LPE ecosystem, would benefit from funding structured to support sustainable professional careers in LPE institution building.

2. Resisting and Reframing Law and Economics

As a second strategy, APPEAL responds directly to neoliberalism's power to undermine liberal and left ideals in the guise of economic neutrality. Over several decades after World War II, many US policy experts, economists, and government authorities with centrist or liberal political leanings adopted a general economic "style" that tended to steer public policy toward right-wing ends, as Elizabeth Popp Berman analyzes (2022, 19–20, 37–38). Although widely presented as an apolitical tool, this economic style took root in a context where right-wing political pressures purged economists supporting left-of-center policies from universities (Carter 2020, 370–86) and from the federal government (Storrs 2013, 205–07; Steinbaum 2022). Building on this uneven ground, neoliberal funders and intellectual leaders further promoted the Law and Economics brand of analysis as a seemingly neutral tool for right-wing political change within legal academia and the legal profession, as Part III discusses.

In this context, an LPE approach that affirms democracy, equality, and attention to power (Britton-Purdy et al. 2020, 1829, 1835) will be necessary but not sufficient to counter neoliberal ideas and policies. These goals will be widely perceived as unachievable, even if desirable, without unraveling the neoliberal conceptual fabric that mystifies law's relationship to economics.

In response, APPEAL draws on heterodox economics to revise economic thinking. Our programs include a variety of economic approaches challenging the premises of neoclassical market models. Heterodox economists have contributed to planning and leading our programs, such as our 2018 workshop hosted and co-organized by UMass economics scholars at PERI and our 2023 workshops co-organized by the economic departments and student groups of CUNY John Jay College and the New School for Social Research. APPEAL also explores diverse perspectives on economics through our Summer Academies, organized collaboratively with EAEPE and the Finance, Law, and Economics group of the Institute for New Economic Thinking, Young Scholars Initiative (INET YSI).

In addition to recentering heterodox economics in law and policy, APPEAL activities aim to change prevailing understandings of law within economics. In reading groups and workshops, for example, APPEAL explores the implications of Legal Realism and critical legal theories for economic theory and policy. With close attention to the contested ideas and institutions of economics, and the impact of these on legal theory and institutions, APPEAL programs shed light on possibilities for changing the politics of law.

3. Connecting Scholarship with Practical Expertise

Third, APPEAL's activities respond to a context where well-funded neoliberal institutions give right-wing ideas power through outreach to policy officials, legal practitioners, media experts, and political operatives. Even though political-economic power pervasively influences law, that power does not flow smoothly down from state or market rulers—nor up from mass protest movements. Effective collective action joins contestation and critique with building institutional capacity (Barnett-Loro and Zhou 2018; Doussard and Lesniewski 2017). The goal of democratizing economic power requires creating institutions with the practical legal and administrative expertise and public accountability needed to deliver expansive substantive improvements in everyday social and economic life (Novak 2022, 220).

Law structures and legitimates the institutions (like property, corporations, states, or money) that enable contested interests and ideas to have large-scale impact over time. These institutions require specialized knowledge from intermediaries who can interpret and administer (or resist) institutional goals. These intermediaries are subject to ideological and social influences beyond personal material interests, as neoliberal activists recognize in their strategy, if not in their theory. The Federalist Society is an example of the right's success in normalizing radical legal change through "political epistemic networks" bringing together lawyers and legal authorities with iconoclastic scholars (Hollis-Brusky 2015, 10–16). In addition, as discussed in Part III, the Federalist Society shows the power of pipelines that channel academics and law school graduates into positions of institutional power.

Reorienting legal expertise will be important for similarly institutionalizing ambitious academic and social movement alternatives to right-wing goals. Academics who train future generations of experts have a particular responsibility to engage with law or policy practitioners in evaluating institutional opportunities for supporting social democracy and justice.

As the right's strategic institution building shows, transformative academic prescriptions need not sit on a shelf awaiting change in political winds. Neoliberal ideas gained power through institutions

connecting Law and Economics scholars with experts in media, think tanks, and consulting firms who were paid or cultivated to actively circulate and apply neoliberal academic work. Without comparable extensive institutional resources for packaging and delivering ideas and for tailoring ideas to ground-level policy opportunities, LPE's potential for policy change will be shortchanged regardless of its intellectual merits.

As a step toward addressing this challenge, APPEAL workshops have included panels or presentations by lawyers, economists, and other professionals in nonacademic roles. In addition, APPEAL events often involve students and scholars who integrate activism and policymaking with theory and research. For example, an APPEAL workshop with the theme of engaged scholarship featured a keynote address by Lee Badgett on her book *The Public Professor* (2016), which guides faculty in applying their research beyond the academy. The goal of these connections is not only to turn scholarly research and analysis into policy proposals or legal doctrine, but also to increase knowledge of ground-level institutional practices and problems among scholars and students.

For example, APPEAL's 2014 workshop on cost-benefit analysis brought scholars together with staff of government agencies and advocacy groups to discuss evidence of the method's failures and its misleading precision and to compare alternative methods for evaluating policy. Practitioners presented detailed examples of harmful applications of the method as well as the strategic possibilities for modifications that would correct the antiregulation biases of current cost-benefit practices.

A political economy lens also reminds us that, without mass political mobilization, neither policy expertise nor groundbreaking scholarship will be sufficient for democratizing power. APPEAL programs have discussed how academics and other experts can work together to support the power and voices of movement activists. These discussions also considered how these efforts to democratize expertise can resist an illiberal politics that fosters contempt for reason, education, and evidence.

In addition, APPEAL affirms that relatively small steps can sometimes create power to attain larger goals. Decades of piecemeal neoliberal law changes have accumulated to form major institutional barriers to democracy and equality, for example, in constitutional law (Johnson 2007, 257–58; Cohen 2020, 309–15) and private law (Pistor 2019, 209–13). These structural barriers then substantiate right-wing warnings that resistance to neoliberal policies will be costly and ineffective.

Given this context, APPEAL seeks to direct scholarly attention to strategies that can weaken or bypass these structural barriers. In a recent collaborative Summer Academy, for example, APPEAL developed a case study format where an international group of graduate students, senior scholars, and policy leaders analyzed local strategies for navigating global political-economic barriers to economic development and democratic governance. In addition, APPEAL encourages attention to seemingly minor technical policy changes likely to further lock in inequality and austerity.

APPEAL has given particular attention to political-economic contests for control of professional and graduate education as an institution central to democracy. A 2015 APPEAL workshop on higher education finance examined policy possibilities for lifting the material constraints that limit professionals' and scholars' capacities for critical scholarship and creative public interest work. Frank Pasquale analyzed proposed rule changes in the federal student loan repayment program, arguing for more expansive support based on a macroeconomic view of the value of higher education along with a more complete analysis of the program's fiscal benefits (Pasquale 2015). He also flagged the flawed assumptions and draconian antidemocratic impact of accounting rule changes presented in response

to concerns about program costs (ibid. at 18). Also highlighting the political economy of higher education, APPEAL's 2019 workshop included a presentation examining recent right-wing practices using public university donations to exert ideological control over teaching and faculty hiring (Pienta 2018).

Taken together, APPEAL's institutional strategies mesh with its substantive scholarly activities exploring the deeply interconnected politics of law, society, and economy, discussed in Part IV. The next section, Part III, sets the stage for that intellectual work by illuminating the neoliberal strategy and substance embedded in Law and Economics. At the same time, Part III underscores the formidable challenges facing APPEAL and other LPE organizations, given the neoliberal structural changes in major legal and economic institutions and the resources devoted to further discrediting and impeding robust democratic alternatives.

III. The Neoliberal Campaign for Law's Power

APPEAL organized to respond to problems of prevailing policy and theory as part of a larger neoliberal ideology that grew in power over the second half of the twentieth century. Although the early-twentieth-century Legal Realism movement challenged legal assumptions of market freedom and neutrality, and Critical Legal Studies scholars further developed these challenges in the 1970s, those approaches responded primarily to a liberal legal and political landscape that was not yet dominated by the distinct arguments and policies of neoliberalism. To set the stage for APPEAL's particular goal of countering neoliberalism and its connections to illiberalism, the following section turns in some detail to neoliberal ideas and institutions.

The term "neoliberalism," now used primarily by its critics, identifies "a suite of arguments, dispositions, presuppositions, ways of framing questions, and even visions of social order that get called on to press against democratic claims in the service of market imperatives" (Grewal and Purdy 2014, 4). The paradigm's fluid, sometimes contradictory messaging, deployed without label, is part of its power to deflect opposition while challenging established liberal precepts (Mirowski 2018). A "signature move" of neoliberalism is its claim to a depoliticized market economy (Grewal and Purdy 2014, 5). In the emblematic neoliberal comment famously identified with Margaret Thatcher, "there is no alternative" to that market's rule, whatever its failures or unfairness (ibid. at 6n17).

This ideological framework emerged from a network of intellectuals and business leaders who organized to push back against mid-twentieth-century political pressures to expand social welfare programs and business regulations (Jones 2012, 17–18). Launched in 1947 by Friedrich Hayek, the Mont Pelerin Society became an important transatlantic hub for organizing this opposition. For a short time, prominent participants identified themselves as "neoliberals" to denounce the "liberal" economic policies of the New Deal (Glickman 2016). They also sought to replace earlier "laissez-faire" ideas of self-correcting markets with an emphasis on active government *support* for free markets (Mirowski 2018). In addition, influential Mont Pelerin members sought to revise the liberal paradigm to counter growing postwar movements for global democracy, racial equity, and human rights (Slobodian 2018). As older, overt theories of social hierarchy lost credibility, neoliberal leaders understood that economics was a key ideological battleground. Externally, however, they waged this battle by promoting an ideal of economics as an impartial guide for ordering society (Mirowski 2014, 84–86).

This neoliberal vision overlapped with a politically influenced shift in mainstream economics toward formal microeconomic analysis divorced from empirical and theoretical questions of social and political context. This shift also narrowed macroeconomics to emphasize technical management of depoliticized market cycles, draining Keynesianism of its earlier prodemocracy emphasis (Carter 2020, 256–67, 251–52). During the 1960s, as US politics was inflamed by the Cold War and civil rights struggles, prominent Mont Pelerin economist Milton Friedman popularized the microeconomic ideal of individualized mutual exchange by reframing the unfettered capitalist market as the supreme source of freedom and social justice (Carter 2020, 460–64).

By the late twentieth century, this neoliberal paradigm had mobilized a new mainstream US political consensus favoring market-centered policies such as privatization, central bank restraints on public social spending, deregulation of private business power, and expanded protection for global capital mobility (Callison and Manfredi 2020, 5), along with weakened worker protections promoting business "flexibility," as Jedediah Kronke analyzes (Pasquale et al. 2019, 115–21). The 2008 global financial crisis spurred new academic efforts to challenge these economic policies (Kwak 2017; Earle, Moran, and Ward-Perkins 2017) along with new organizations reorienting economic expertise, such as the INET, the Washington Center for Equitable Growth, and Economists for Inclusive Prosperity.

Less critical attention has been paid to how neoliberalism connects economics to the goal of transforming law. Hayek developed neoliberalism as a theory aimed at limiting legal support for social justice and democracy (Hayek [1973] 1982, vols. 1 and 2). Hayek discredited law's power to deliberately solve socioeconomic problems. Instead, he advocated formal, generalized legal rules as the basis for spontaneous private ordering—exemplified by property and contract rights in the free-market ideal.

In his intellectual history, Quinn Slobodian explains that "neoliberalism has been less a discipline of economics than a discipline of statecraft and law," concentrated on "making market enforcers" more than on making markets (Slobodian 2018, 11). Through the twentieth century, assorted factions of the political right worked with neoliberal intellectuals to encase new democracies in global markets structured to maintain and expand unequal and extractive colonial gains (ibid.). In 2023, the Mont Pelerin Society website's statement of aims affirmed its 1947 goal of establishing a rule of law based on private rights and freedoms.

In the 1990s, several strands of critical legal theory turned scholarly attention to neoliberal ideas about law, connecting these to earlier ideologies of inequality and oppression. LatCrit and ClassCrits scholars were early US leaders questioning the neoliberal policies driving inequality globally and domestically (Mutua 2021, 343–44; Carrasco 1997). Beginning in 1995, the Feminism and Legal Theory Project held numerous workshops exploring neoliberal economic ideology's influence on legal concepts and institutions. These generated a wide range of critical scholarship, including a series on corporate law (Sarra 2003) and an edited volume of workshop papers (Fineman and Dougherty 2005).

Until recently, however, much of US legal theory and analysis has overlooked the hegemonic power and covert politics of the neoliberal paradigm (Blalock 2014, 88–90). To a large degree, the dramatic rise of Law and Economics helped to ingrain Hayek's idea of law-as-market-servant as background "common sense" within mainstream US legal academia and policy analysis (ibid. at 83–89).

A. Law and Economics as a Strategy to Capture Law

Intellectual historian Neil Duxbury describes Law and Economics as nothing short of a "revolution" in legal thought (1995, 380–81). Law and Economics reshaped legal theory by reordering law's relationship to the political economy, positioning the market as the ultimate standard of impartial and rational governance that law and politics should generally support but not supplant. Reflecting on its influence, Harvard Law student Ted Hamilton observed that the "most repeated word in my first year curriculum was not justice, or liberty, or order. It was *efficiency*" (Hamilton 2014).

With that term, and related concepts like "economic welfare," Law and Economics purports to establish criteria for evaluating law's impact freed from subjective judgments about social context and value (Cooter and Ulen 2012, 3). This economic framework appears to separate law from the more contentious and complex questions of morality, epistemology, and method embedded in legal theory and practice and amplified by Legal Realism (Leff 1974, 455–59). Although Law and Economics includes highly technical scholarship, it has been popularized as a set of broadly accessible general precepts for analyzing virtually any legal issue in any subject area.

With this intellectual stance, Law and Economics helped upend liberal ideals of justice and democracy as the ground of legitimate authority. It also displaced an earlier twentieth-century law and economics method that analyzed private law rules as systems of hierarchy and coercion (for example, Hale 1952; Samuels 1989a). Although Law and Economics similarly emphasizes that legal rules are affected by political-economic power, it generally reifies a sphere of economic behavior more fundamental and determinative than law.

Law and Economics also revolutionized law with its ties to nonacademic private funders. Leading this funding stream, the Olin Foundation invested over $68 million in Law and Economics as its primary project from the 1970s through its closing in 2005 (Miller 2006, 62, 66). The Olin Foundation's longtime executive director, James Piereson, viewed its Law and Economics funding as part of organizing a larger right-wing philanthropic campaign. Consistent with his Mont Pelerin affiliation (Mont Pelerin Society Directory 2013), Piereson encouraged other funders to follow Hayek's call to support a "war of ideas" that would push conservative thinking beyond the confines of current political possibilities (Piereson 2005).

The Olin Foundation chose Law and Economics as a means to reshape law by undermining left-wing and liberal influence on legal academia (Miller 2006, 71–81; Teles 2008, 192–98). For example, Law and Economics gave right-wing funders a way around law faculty and administrators' resistance to funding for overtly conservative constitutional law (Teles 2008, 188–89; Miller 2006, 81). Piereson explained that Law and Economics "has a philosophical thrust in the direction of free markets and limited government . . . [t]hat is, like many disciplines, it seems neutral, but is not" (Teles 2008, 189).

The success of these Law and Economics investments did not depend on persuading law faculty or legal professionals to directly change their political leanings or moral ideals. Instead, the Olin Foundation's Board of Directors strategically planned its academic funding to wield political power by giving their ideological opponents obstacles to overcome (Miller 2006, 58). Over the decades, Law and Economics has influenced law and policy especially by changing the terms of the discussion. Presented as a rigorous and nonideological analytical approach, Law and Economics obscures the normative and political stakes of neoliberal policy and casts doubt on the credibility of other approaches to evaluating law and policy.

To achieve this goal, the Olin Foundation worked closely with politically aligned funders, including the brothers Charles and David Koch, the Lynde and Harry Bradley Foundation, and the Sarah Scaife Foundation (Miller 2006, 7, 34–36, 131–34; Teles 2008, 218). These allies invested in a network of institutions strategically linking Law and Economics market ideas to legal support for an exclusionary antidemocratic cultural politics. The Olin Foundation, for example, was an early leader in developing the Manhattan Institute to promote free-market ideas in tandem with right-wing messaging about "urban issues" like welfare and crime (Miller 2006, 124–25, 201). In the 1990s, the Manhattan Institute singled out Critical Race Theory and Feminist Legal Theory as major assaults on law, reason, and the family (MacDonald 1995). Reinvigorating this campaign, the Manhattan Institute has recently become a leader in stoking fears that Critical Race Theory threatens US schoolchildren, as part of its goal of privatizing public education (Reddy 2021).

Similarly, and with more direct impact on law, the Olin Foundation joined with right-wing funders to develop the Federalist Society (Miller 2006, 93–95; Mayer 2016, 110; Mandery 2019). Executive Director Piereson explained that the Olin Foundation funded the growth of Law and Economics and the Federalist Society as complementary initiatives (Teles 188–89), influencing legal academia by combining the apolitical scholarly appeal of Law and Economics with the Federalist Society's overt embrace of constitutional politics.

Reaching into almost every US law school and legal practice area, the Federalist Society offers students and lawyers extensive networking and professional development opportunities with an ideological bent. It funds law school debates featuring right-wing perspectives on "culture wars" topics like campus freedom of speech and affirmative action along with more technical topics like antitrust and cryptocurrency. Its website's reading list introduces US law to students by explaining that the basic premises of America's legal system are "private property ownership, freedom of contract, and limited government." It cultivates a community of students, legal professionals, and scholars that bridges libertarian and moral conservative ideologies, reflecting the society's ties to funders whose interests in antidemocratic economic policies align with hierarchical religious and moral traditions (Nelson 2019, 102–06, 141–43; Schwartz 2021).

In his early assessment of the durability of the late-twentieth-century conservative legal movement, Teles (2008, 218–19) underestimated the cumulative intellectual and political impact of Law and Economics' position within a large and dense grid of neoliberal institutions sustained by copious funding (Rahman and Thelen 2021, 84–86). Two decades into the twenty-first century, this institutional grid fuels a larger shift in the personnel, practices, and norms of courts, legislators, regulatory agencies, media, and academia, enhancing the ideological power of Law and Economics by shifting career opportunities and prestige toward the right.

1. Building Law and Economics' Neoliberal Brand

Drawing on crucial "financial and moral support" from the Olin Foundation (Miller 2006, 66), corporate law scholar and Mont Pelerin member Henry Manne played a major role in orchestrating Law and Economics' dramatic rise (Mirowski 2018, 31, 33; Priest 1999, 327, 329–30). Manne's institutional success began in the early 1970s with a series of Law and Economics summer seminars for law professors, with funding from the Koch Foundation, General Motors, and other funders interested in resisting democratic regulation of business (Gindis 2020, 15). With additional Olin Foundation support, Manne expanded that programming into a full-time Law and Economics Center

in 1974, which landed a permanent base at George Mason University (GMU) in 1986 (Miller 2006, 66, 69). Manne's programs gave Law and Economics its identity as a distinct academic field (Manne 2005, 316) and became the "very engine" of its dramatic growth (Gindis 2020, 10).

Manne claimed he designed the Law and Economics brand to reverse Legal Realism and the growth of the regulatory state (Manne 1997, 31–33). Although Manne depicted a world hostile to market ideals, by the second half of the twentieth century legal process theory had substantially eclipsed Legal Realism, and organized business power had limited the reach of federal regulations of market power. Drawing on Hayek, Manne asserted that these early-twentieth-century developments had caused the "breakdown" of the rule of law by replacing formal legal principles with substantive social or political judgments (Manne 1997, 21–26).

In Manne's view, law's proper role is to uphold "free market goals established exogenously" through economic forces without considering social ideals or "pseudo-social science" (Manne 1997, 12, 26). Manne further explained that this rule of market forces is best achieved by a hierarchical federal judiciary focused on principles of "small government, private property, and freedom of contract," insulated from federal legislators or administrators (Manne 1997, 12–16, 20–25).

Manne emphasized that both the judiciary and legal academics must be coached to realize this market-centered law (ibid., 32–33). He explained that judges schooled in "neo-classical microeconomic theory" would learn to remove considerations of social context and fairness from their decisions, enforcing "only those rules consistent with the philosophy of a free-market economy" (31, 37). As key producers and influencers of legal authorities, law professors were also central to Manne's neoliberal mission. By training law professors in this microeconomic theory, Manne aimed to weaken the "leftward ideological leanings" of legal academia (28–29, 36–37). Although Manne's vision countered the social justice ideals exemplified by the Warren Court's civil rights decisions, it also built on a liberal culture that emphasized judges and lawyers as the agents of political change.

Manne marketed the Law and Economics brand as a set of analytic tools for making law more effective for any social or political purpose. Nonetheless, the brand's economics is especially useful for "proving" Hayek's message that, even if desirable, social and economic justice goals are largely unachievable through deliberate substantive law or policy (Blalock 2014, 86).

The Law and Economics brand attracts broad intellectual interest by raising important questions about the limits of liberal law reforms in the face of economic pressures. But Law and Economics generally skews the answers to those questions by dampening deeper inquiry into the social, political, and legal nature of that pressure. Manne's vision elided the earlier twentieth-century law and economics analysis of the contingent institutions driving market forces (Gindis 2020, 13n23). Indeed, Manne deliberately structured Law and Economics Center programs to avoid serious debate about "ideology or first causes" (Manne 2005, 313).

To build Law and Economics' credibility as a nonideological approach, Manne's programs included a few economists (like Paul Samuelson) identified with centrist liberal politics while limiting their presentations to formal neoclassical principles (Butler 1999, 359–60). Describing Manne's firm control over the Law and Economics Center's political tilt, Yale Law scholar George Priest (also a Mont Pelerin member) noted: "A liberal economist teaching supply and demand is hardly dangerous. A liberal economist becomes dangerous when addressing how to improve the world with unlimited spending of other citizens' tax monies. That, Henry Manne would never allow" (Priest 1999, 330).

Similarly, Manne constructed the Law and Economics brand to remain open to variations of its general market-centered theme. Analysis of market failures and bounded rationality, for example, could justify limited reforms while reinforcing the idea that a value-neutral and formally equal market should be the measure of legal rationality. For another example, the expansive criterion of "economic welfare" (rather than wealth maximization) helped Law and Economics answer concerns about fairness by claiming that the market optimizes individual choices about social and moral value.

Developing Manne's vision over half a century, the GMU Law and Economics Center's proliferating programs target legal academia, the legal profession, and government authority, especially capitalizing on judges' demand for further training and intellectual community in a changing, complex legal environment. In 2023, the Law and Economics Center website reports that its programs have been attended by over five thousand federal and state judges in the United States, including four Supreme Court justices, along with nearly one thousand state attorneys general and their senior staff. The center's 2023 website also reports that its division for scholars, now called the Henry G. Manne Program in Law and Economic Studies, has served over two thousand participants from 429 academic institutions since its founding. In addition to general training in Law and Economics, the center provides numerous specialized programs for legal authorities and academics (Butler 1999, 367–69), listing past events on its website covering virtually every area of law and policy, including civil and criminal justice, privacy, evidentiary rules, environmental law, health law, higher education, labor and employment, and "public law" as a whole. In 2021 alone, according to the center's website, its six divisions provided sixty-five programs with 3,250 participants from fifty-two US states and territories, generating forty-six "commissioned papers" and over $13 million in donations.

Adding to this academic impact, the GMU center continues to update and strengthen the Law and Economics brand's right-wing ideological focus, contrary to Steven Teles's earlier hypothesis that the brand's academic ambitions might dilute its funders' political goals (Teles 2008, 218-19). In 2021 and 2022, the center produced a series on the virtues of capitalism, featuring prominent Law and Economics scholars discussing economic and social "wokeness" as a threat to the rule of law. In 2019 the center claimed that over thirty law schools had accepted GMU's complimentary offer of a credit-bearing, revenue-producing Law and Economics course taught by center-affiliated faculty (Butler 2019).

Even if one assumes that most participants come away from Law and Economics Center programs without a major change in their politics or values, its message is likely to increase doubts about deliberate legal efforts to remedy the existing market's inequalities and injuries, effectively tilting the field toward the right. After participating in several Law and Economics Center programs, federal District Court Judge Robert Carter noted that "the economists in attendance, from my perspective, had Neanderthal views on race and social policy," but that he nonetheless took to heart its core message that "social good comes at a price, a social and economic cost" (Butler 1999, 357n16). A study of the impact of Law and Economics Center programs on federal judicial decisions between 1976 and 1999 found that judges who attended "use more economics language in their opinions, issue more conservative decisions in economics-related cases, rule against regulatory agencies more often, favor more lax enforcement in antitrust cases, and impose more/longer criminal sentences" (Ash, Chen, and Naidu 2022).

2. Expanding Law and Economics' Institutional and Political Power

Supplementing the Law and Economics Center programs from the 1980s into the twenty-first century, the Olin Foundation and allied funders developed a network of new Law and Economics institutes within most US elite law schools (Miller 2006, 74–82). From the start, these investments were designed to secure the brand's prestige and politics, while also remaining acceptable within academic institutions requiring at least some degree of academic openness (Teles 2008, 190, 202–03). Olin leaders positioned Olin's dispersed Law and Economics programs as depoliticized alternatives to Critical Legal Studies (ibid. at 192–96) and to academia's "racial politics" (Miller 2006, 80).

Over the decades, the dispersed law school Law and Economics institutes have been led by faculty with varying theoretical and political views. Nonetheless, this diversity remains generally compatible with the foundational premises and consequences of Law and Economics ideas and methods. Variations such as behavioral economics, game theory, new institutionalism, and rational choice largely tweak rather than challenge Law and Economics' formal, individualistic, and market-centered economics and its thin account of law.

Even when qualifying free-market ideals or neoliberal policies, these Law and Economics programs can reinforce rather than dilute the broader right-wing political power of the brand. As a centralized base, with greater funding and reach than other institutes, GMU's center continues to define and promote the general substance and method of Law and Economics, in part by offering ongoing career-enhancing opportunities for faculty from other Law and Economics institutes to participate in programs consistent with the center's ideological mission.

Along with support for other universities' Law and Economics programs, over the decades activist funders have supported major expansions of GMU's institutional capacity to serve as a hub for amplifying the brand's rightward bent. As GMU's law school dean from 1986 to 1997, Manne redesigned the school to make Law and Economics its "exclusive" intellectual focus (Manne 2005, 326). Manne's protégé and longtime center director Henry N. Butler further strengthened the school's Law and Economics focus while serving as law school dean from 2015 to 2020.

Sharpening the school's ideological identity, in 2016 Dean Butler leveraged a $30 million five-year funding stream from the Charles M. Koch Foundation and an anonymous donor to rename GMU's law school for conservative Supreme Court Justice Antonin Scalia (Fandos 2016). This naming deal required the law school to expand its existing Law and Economics mission and to add a new center on the administrative state (GMU Foundation, GMU, and Charles Koch Foundation 2016). The agreement gives "sole and absolute discretion" to annually review and enforce the deal to the BH Fund (GMU FOIA Charles Koch Foundation Full 2018, 150–53), a nonprofit entity headed by longtime Federalist Society leader Leonard Leo and used to receive the anonymous donation (Pienta 2018). During the same period, Leo used the BH Fund to organize millions of dollars in donations for a right-wing campaign to remake the federal judiciary (O'Harrow and Boburg 2019).

Taken in this larger context, the Scalia Law naming deal highlights GMU's institutional leadership in connecting Law and Economics to overtly illiberal and antidemocratic ambitions. Leo's role as Scalia Law's naming fund overseer overlapped with his role serving as an informal advisor to President Donald Trump on judicial appointments geared toward restricting abortion, voting rights, and LGBTQ rights (for example) (O'Harrow and Boburg 2019). During this time, the GMU Law and Economics Center also launched a new campaign to provide Law and Economics training for Trump's newly appointed federal judges, with a special focus on reducing federal regulatory power (Pienta

2018). In addition, capitalizing on a Global Antitrust Institute funded by tens of millions in technology industry donations, GMU's Scalia Law School became a major pipeline of legal experts serving in the Trump administration's Federal Trade Commission (Tech Transparency Project 2021).

Even if this institutional politics remains below the surface of much of GMU's substantive Law and Economics programming, it continues a longstanding conservative practice of fusing market fundamentalism with traditional moral ideologies (Block and Somers 2014, 200). Indeed, recent right-wing cultural and racial politics has roots in various neoliberal logics (Slobodian 2019). GMU's Mercatus Center, an internal think tank aligned with GMU's Law and Economics programs, was developed in the 1980s with Koch Foundation funding as a base for grounding market ideology in culture, rather than in the narrowly economistic, quantified style of neoclassical economics (ibid. at 377).

Following Hayek, this cultural approach constructs markets, ideally governed by judge-made common law, as systems that perfect culture and morals through an evolutionary and disciplinary process that overcomes the imperfections of deliberate social justice projects (Slobodian 2019, 378). Hayek's cultural theory rejects the explicit racial essentialism of some neoliberal thought leaders, but it nonetheless shares a commitment to "the basic inequality of human capacity" with strong enforcement of private property (rather than democracy) as the foundation of legitimate order (ibid. at 374, 382). In the twenty-first century, the Koch Foundation and allied leading neoliberal funders have continued to invest heavily in moral authoritarian as well as economic libertarian ideas. As neoliberal policies have increased economic insecurity for many in the middle class, economic elites plausibly weaken political resistance by inflaming populist cultural and racial divides. Further, as neoliberalism narrows mainstream views of reasonable policy responses to economic inequality and instability, it sets the stage for an illiberal politics of reactionary despair and distrust (Haskell and Mattei 2015, 1).

At GMU and beyond, most participants in Law and Economics programs are probably somewhat aware of its politicized uses and right-wing funding. That awareness, however, can coincide comfortably with the view that Law and Economics has practical and intellectual merit separable from its politics, at least with some qualifications. This depoliticized position then reinforces right-wing politics by casting the overt moral commitments of opposing legal approaches (such as Critical Race Theory or LPE) as primarily driven by politics and opinion, rather than by principled analysis and evidence. In addition, without comparable institutional networks that can comprehensively reframe the intellectual field, individual scholarly critiques of Law and Economics, no matter how brilliant, are unlikely to weaken its power and prestige.

At another level, Law and Economics' thinly depoliticized stance also helps normalize a professional culture of moral detachment that Lisa Duggan describes as a neoliberal affect of "optimistic cruelty" in response to human suffering (Duggan 2019, 5, 84). That attitude thrives on an implicit narrative thread within much of Law and Economics contrasting high-minded market logic (whatever its many variations) with suspect sentimentality for particularized human and environmental harm.

In an early critique of Law and Economics, Robin West argued that its distinguishing feature is the covert normative claim that "might is innocent" (West 1986, 852, 846–47). Similarly, reflecting on the growth of Law and Economics in the US over several decades, Anita Bernstein concluded that its various strands cohere mainly through "an undertheorized, or less than conscious, affinity and affection for persons who hold power," which tends to produce outcomes consistent with support for the "freedom to indulge prejudice," including the subordination of women (Bernstein 2005, 332–

34). The following section of this article examines in more detail the normative narrative about power that emerges from Law and Economics text frequently used in GMU Center programming and associated with the Law and Economics brand.

B. *Law and Economics as Neoliberal Legal Theory*

Three widely accepted Law and Economics precepts promote a master narrative of law as market patron, charged with expanding the rule of social and economic power unhinged from democratic norms and processes. First, economic forces can be understood as depoliticized responses to natural scarcity. Second, law can harness these forces by using formally neutral private law rights such as property and contract to create markets where voluntary individual choices drive overall gain from scarcity. Third, to some extent, these economic forces limit law's power to deliberately reorder the economy for goals other than perfecting this naturalized market ideal. By engaging legal academics and authorities in working through various applications of these general precepts, Law and Economics has established its logic as the foundation of rational analysis of law and policy.

This master narrative builds on teachings of Armen Alchian, a Mont Pelerin member (Plehwe 2009, 8, 33), who heavily influenced Manne's vision (Gindis 2020, 13–16) and who became the "mainstay" of Manne's judicial training programs (Butler 1999, 359). Alchian's textbooks, used in Law and Economics Center programs from their early years through the late 1990s (Ash, Chen, and Naidu 2022, 10, 62; Butler 1999, 419), asserted the primacy of a nonmathematical microeconomics centered on private property rights (Boetke 2020). Setting up the first Law and Economics premise, Alchian introduced economics by attributing human suffering not to unjust distribution or flawed institutions, but rather to "universal scarcity," based on an essentialized antagonism between nature and insatiable human wants. "Since the fiasco in the Garden of Eden, what we get is by sweat, strain, and anxiety" (Alchian and Allen [1964] 1983, 2).

Similarly, a Law and Economics textbook coauthored by former Scalia Law Dean Butler and frequently assigned in recent GMU judicial programs grounds economic power in a timeless, presocial and prepolitical conflict between unlimited human desires and a world of limited resources (Butler, Drahozal, and Shepherd 2014, 5). "Just as a physicist must take into account the effects of gravity, so too must a lawyer understand the effects of economic forces. In a very real sense, economic forces are the gravity of the social world—often invisible, but omnipresent" (ibid. at 3). Another Law and Economics textbook used in Law and Economics Center programs as well as law schools, by Robert Cooter and Thomas Ulen, introduces economics as an objective science of behavioral forces forming the "mortar" that undergirds law (Cooter and Ulen 2012, 3).

This initial Law and Economics premise sets up the message that "the crucial point of economics is simply that **incentives matter**" (Butler, Drahozal, and Shepherd 2014, 3 (bold emphasis in original)). This seemingly innocuous point makes a stealth move that is key to neoliberalism: it divorces economic incentives from sociolegal, political, and environmental context.

The Butler textbook explains that its economics takes "individual decision-makers and individual markets as the basic units of analysis" (Butler, Drahozal, and Shepherd 2014, 3). Legal institutions (like private property or employment) matter primarily as devices for facilitating or impeding the individualized, depoliticized behavior deemed to constitute the market's economic and moral force. Even in its edition revised after the 2008 financial crisis, the Cooter and Ulen textbook fails to consider

how institutions like financial or monetary systems inextricably shape individual incentives or societal welfare (Cooter and Ulen 2012, x–xi; McCluskey 2018, 78). In this view, corporations appear mainly as abstract individuals or as aggregations of individualized contracts (Butler 1989).

This idea of incentives reinforces the decontextualized, depoliticized view of scarcity. The Butler textbook summarizes the fundamental economic principle as TANSTAAFL: "There ain't no such thing as a free lunch" (Butler, Drahozal, and Shepherd 2014, 5). Everything has a cost, including lost opportunities, which drives economic actors to "make choices or trade-offs about competing uses of limited resources" (ibid. at 5). These trade-offs follow predictable general patterns formed by interchangeable decontextualized economic actors who mutually adjust their behavior to maximize their marginal benefit over cost (6).

The Law and Economics master narrative's second precept posits that law can manage these "'natural' forces that constrain economic behavior" to promote an efficient (or welfare-maximizing) societal equilibrium that also advances individual freedom. By protecting formal private rights to freely gain from owning, using, and exchanging property, in this logic, law can neutrally gear microeconomic market processes to internalize the costs of individual gain seeking, so that individuals voluntarily make choices that benefit society as well as themselves (Butler, Drahozal, and Shepherd 2014, 17–19; Cooter and Ulen 2012, 105–08). Although real markets fall short of that ideal, economics can guide law to strengthen property rights and reduce transaction costs to unleash the market's optimizing power (Butler, Drahozal, and Shepherd 2014, 32–33; Cooter and Ulen 2012, 102–08).

A third precept follows from this idea of market forces driving individual self-interest toward societal equilibrium. Like gravity, the intractable force of economic incentives bears down on legal aspirations for social justice and democracy. If any specific legal change goes beyond harnessing or nudging these underlying market incentives to redirect market behavior for political or moral goals (like racial or gender equality), that change will impose a cost (recalling that no lunch is free). Those burdened by legal mandates or penalties will generally react by offloading their losses on others, generating further costs from this "friction." Moreover, the costs of any market disruption will generally fall most heavily on those with the least social, political, and economic power to resist or shift these presumptive nonmarket costs.

For example, the Butler textbook suggests that consumer protection laws capping interest rates on consumer credit will induce retailers to substitute costly and confusing new fees, price increases, or installment sales arrangements (Butler, Drahozal, and Shepherd 2014, 106). If courts void those changes as unconscionable contracts, low-income consumers may be further harmed by losing access to consumer goods like household furniture and appliances (ibid. at 84). Similarly, the Cooter and Ulen text explains that rent control ordinances will hurt rather than help households with modest incomes, because the market "laws" of supply and demand will induce landlords to reduce the quantity or the quality of low-cost rentals (Cooter and Ulen 2012, 32–33). To illustrate the alleged harms of environmental regulation, Alchian taught Law and Economics Center judicial classes that African American communities are better off with high levels of air pollution because living in a health-damaging environment reduces their housing costs (Ash, Chen, and Naidu 2022, 63).

Although this three-part logic of law's incapacity for socioeconomic good leaves some room for law to correct and compensate for market failures (Cooter and Ulen 2012, 38–42), Law and Economics cautions against the risks of government failure (Butler, Drahozal, and Shepherd 2014, 126, 136–37, 222). Quoting a passage from Hayek, the Butler textbook asserts that private market decisions can

produce and manage information more accurately and comprehensively than lawmakers or administrators can (Butler, Drahozal, and Shepherd 2014, 120–22). Similarly, the Cooter and Ulen textbook declares that private law enforcement by decentralized courts law will better fine-tune a complex modern economy than regulations imposed by "bureaucrats and politicians" (Cooter and Ulen 2012, 227).

Accordingly, Law and Economics teaches that taxing and spending is a more rational solution to market inequity or injury than regulation, human rights, or other substantive law reforms. However, this depoliticized market logic also reminds us that, as part of the political process, fiscal policy operates through hierarchical power fraught with flawed information, subjective morality, and private rent seeking (Butler, Drahozal, and Shepherd 2014, 130–31). As a result, this logic further warns that "redistributive" taxation and spending also will risk government failures that increase waste, inequality, and injury (ibid. at 129–30, 218).

This three-part Law and Economics narrative captures ground set by other legal approaches that recognize that law is subject to political, social, and economic power. Like the Law and Society movement, Law and Economics assesses how "law in action" produces consequences that tend to diverge from purposes and principles of law "on the books." Similarly, like critical legal theories, Law and Economics emphasizes that law pervasively operates through power that is contested and manipulated for harmful private purposes.

Unlike those approaches, however, Law and Economics' distinctly neoliberal feature is its assertion of a method that can rationally order these forces affecting law by modeling generalized "laws" of human behavior. By legitimating barriers and backlash to effective justice as unintended consequences induced by essential market forces (McCluskey 2012), Law and Economics obscures responsibility for law's failures while offering new ideological tools for resisting repairs.

The resulting message is that, even in the face of multiple catastrophic crises, law should largely seek to follow rather than to govern economic power. Identified with a market of individualized nonhierarchical free choice, unequal private control of resources becomes the foundation of liberty and rational ordering (Cooter and Ulen 2012, 111–12; Butler, Drahozal, and Shepherd 2014, 125). This narrative frame inverts the emancipatory possibilities of legal protections for equality, democracy, health, environment, labor, consumers, basic human needs, or honesty, turning these into authoritarian, arbitrary interference with personal freedom and overall well-being (McCluskey 2018, 96–97).

IV. APPEAL's Intellectual Approach

How can LPE rewrite the story that market might is largely intractable and innocent? APPEAL's intellectual work reframes the core Law and Economics premise that incentives matter—and that incentives matter especially as a brake on democracy, social justice, and care for people and environment. The economic pressures that Law and Economics depoliticizes as market incentives indeed constitute conditions to be reckoned with. But these incentives operate through contingent institutional power that is not clearly rational or conducive to either individual freedom or societal well-being.

APPEAL reckons with economic incentives by foregrounding the interrelated social, political, and legal institutions that make those incentives matter, and for whom. This conceptual reframing illuminates possibilities for restructuring economic power through institutional changes in law, politics, and culture.

For this intellectual reckoning to matter, however, LPE will require more than better logic and evidence. In the current political economy, where large-scale organizations mobilize private wealth and professional expertise to gain self-serving power over economy, culture, knowledge, and government, the value of intellectual expertise will depend on organized support and struggle.

Without the vast resources behind Law and Economics, APPEAL hopes to inspire more funders as well as scholars to join in the work of institutionalizing Law and Political Economy as an approach that antidemocratic theories must reckon with. To make LPE scholarship matter more, we need institutions that systematically connect more LPE intellectual work with policy and media leaders as well as social movements and advocacy organizations. Similarly, to counter the influence of Law and Economics, the LPE approach will need material resources for outreach to judges and other legal authorities. Further, LPE will need more material support for expanding career opportunities for lawyers, economists, and others who can work within and against institutions that have been wedded to neoliberal and other anti-egalitarian ideas and policies.

Yet APPEAL's political economy lens affirms that power depends on ideology as well as funding. Law and Economics added value to its funders' wealth by providing a narrative that gave legitimacy to neoliberal governance. Rather than emphasizing an affirmative programmatic vision, neoliberal funders deployed the ideological power of Law and Economics to generate intellectual roadblocks that would make robust democratic alternatives appear largely infeasible, as discussed below in Parts III-A and III-B. Widely adopted by politically liberal and centrist authorities in government and academia, its depoliticized story of law's limited power helped advance systematic change across issue areas by narrowing the bounds of seemingly reasonable political and legal debate (Berman 2022, 217).

In response, APPEAL scholarship focuses on dismantling these conceptual roadblocks. In addition to contributing to detailed policy proposals, academics can advance transformative action by illuminating the flawed assumptions and interconnected structural roots of socioeconomic problems. With critical attention to neoliberal logic and its consequences, APPEAL scholars can help build new political space for the many ambitious policy alternatives developed in other historical eras and political contexts along with the policy demands of contemporary social movements.

In APPEAL's 2017 workshop on publicly engaged scholarship, activist academics and experts in media underscored the constructive value of scholarship redefining political-economic problems. For example, Martha Mahoney reflected on the legal and political impact of her law review article that replaced the question "why didn't she leave" with attention to separation violence as a central problem in abusive intimate relationships (Mahoney 1991, 5). This reframing directed attention away from individual behavior to structural solutions addressing underlying inequalities (Mahoney 1992, 1315–19).

The examples of both critical and constructive scholarship that follow unravel the depoliticized idea of economic incentives by exploring the interrelated social, political, and legal institutions that govern economic power. Any one reform strategy must contend with resistance operating through other institutionalized forms of power—and no one institution can be fully insulated from pressures for

political, legal, and social change. By bringing individual insights together in workshops and other exchanges, APPEAL aims to connect the dots of current problems to illuminate structural solutions obscured by neoliberal logics.

A. Economic Forces Are Social

APPEAL analyzes economic incentives as collective, value-laden, and intertwined with culture, affect, identity, and philosophical ideas. Is the economic "gravity" that weighs against social goals feedback from a legitimate order or evidence of damaging disorder? The answers turn on implicit judgments about whose private gain seeking, through what processes, should count for or against the common good—judgments shaped by ideologies of race, gender, class, and sexuality (McCluskey 2003, 815–22). To advance meaningful equality, advocates for social justice must contend with the narratives that recast structural subordination as legitimate market incentives.

In an APPEAL session on constitutional political economy, Julie Nice noted the neoliberal logic underlying a 1970 US Supreme Court decision that upheld a state policy capping welfare benefits per family, thereby disadvantaging recipients in larger families. The state's lawyer defended the policy as a reasonable form of "very harsh market" discipline, providing an "incentive to work" with an "economic whip" that would deter "certain groups" from choosing welfare over wages (Nice 2016, 141–43). Nice explains that the Court's ruling establishes both a constitutional doctrine and a political norm that legitimatizes and normalizes exceptionally harmful state treatment of people in poverty regardless of the state's purpose, effect, or viable alternatives (Nice 2008, 638, 656–57). In response, Nice advocates the mutually reinforcing power of combining political organizing with constitutional rights claims to affirm the legitimacy of poor people's demands for equal protection (ibid. at 670–71).

APPEAL encourages analysis that examines the "first causes" obscured by the Law and Economics story that human suffering naturally results from individualized competition for scarce resources. APPEAL workshops have featured Nicole Dewandre's philosophical work arguing that power for change comes not only from physical and financial force but also from the conceptual frameworks that direct thought and action. The ideal of the omniscient and omnipotent rational actor seeking ever-increasing gain provides a misleading guide for human beings, who are inherently relational, unique, and vulnerable (Dewandre 2019; Fineman 2019, 357–60). Contrary to Law and Economics' first premise, in this view, humans are neither naturally insatiable nor necessarily locked in a contest for control over nature or others (Dewandre 2015, 198–01). In the face of systemic problems like climate change, human well-being requires shifting policy analysis away from dubious efforts to predict the precise effects of specific solutions to instead focus on building capacity for collective trust and action in the face of unexpected change and risk (ibid. at 200–02).

Further explaining the power of ideas, Dewandre explained that rationality operates through social qualities of language, using metaphors to construct a shared conception of reality. In a coauthored empirical study, Dewandre found that European Union policy documents described human beings as impersonal instruments of economic functioning: as "human resources," the "workforce," "entrepreneurs," or "consumers," for example (Dewandre and Gulyas 2018, 16–17). In contrast, the documents more frequently presented inhuman economic agents as sensitive personified beings, potentially healthy and dynamic yet in need of public support, encouragement, stimulation, and opportunity. By inverting human and inanimate qualities, the policy rhetoric prompts readers to favor the interests of business firms. With this attention to the power of language to limit thought, we can

better recenter policy analysis on the well-being of distinctly human subjects in the present (ibid. at 20–21).

Similarly engaging the power of narratives, Frank Pasquale (2020, 222–25) proposes "new laws of robotics" to affirm a vision of human value against the conventional wisdom that artificial intelligence must inevitably replace human work and reasoning. Images of omniscient markets that mechanistically maximize well-being, measured as a formal quantity, impede collective imagination and action toward a more democratic and egalitarian human future. For example, the idea that rational self-interest involves seeking competitive advantage over others can induce an economy that uses technology for wasteful arms races (ibid. at 143–44, 166–67). Instead, Pasquale presents principles for affirming humanistic power over technology to enhance meaningful human work and care for others (26, 45–59).

Also emphasizing the policy power of narratives, another APPEAL discussion highlighted Daniel Greenwood's work on corporate law metaphors. The conventional depiction of corporations as private individual "property," rather than specially protected human associations, helps rationalize corporate resistance to laws enforcing public responsibilities (Greenwood 2005, 278–84). Instead, by reframing corporations as governance institutions given autocratic powers, Greenwood advocates promoting policies that go beyond external regulation to change basic internal corporate rights and governance structures (ibid. at 293–95). Similarly, the image of shareholders as "investors" rationalizes neoliberal policies of shareholder primacy, even though shareholders are not the primary source of financing for contemporary corporate production (Palladino 2022; Lazonick 2017). Recognizing the social nature of corporate productivity, Lenore Palladino advocates replacing shareholder primacy with broader stakeholder governance and rights to share in corporate profits (Palladino 2019).

In an APPEAL session on cost-benefit analysis, Mark Silverman examined the method's underlying model of human subjects as market consumers. He explains that individual market behavior cannot reveal prepolitical values deserving deference in regulatory policymaking because individual preferences are necessarily constituted by social institutions (like markets) (Silverman forthcoming, sec. 3.1). For example, workers may choose jobs that risk shortening their lives because of contingent conditions such as racial discrimination, restrictions on organized labor, or limited educational opportunities. Instead of measuring preferences that reflect market constraints, we can ask which institutional structures, whether existing or imaginable, will best encourage individuals to advance others' well-being along with their own. Silverman argues that decisions about public health and risks to human life are fundamentally about social qualities and values that should be decided through social institutions that facilitate ideals of democracy and fraternity (ibid., sec. 3.4).

At APPEAL's 2019 workshop, June Carbone further illuminated the socioeconomic costs of designing institutions based on an ideal of individualized competition for scarce resources. To increase market discipline on corporate managers, beginning in the 1980s many corporations adopted pay-for-performance schemes tied to measurable short-term results (Stout 2014). Following prominent economic theories, these schemes aimed to "whip" executives' work ethic into better shape with high-stakes competitions for superior individual rankings (Carbone, Cahn, and Levit 2019, 1114–17). Carbone analyzed evidence showing that these incentive schemes generate "masculinity contest" cultures that select for managerial traits like narcissism, ruthlessness, and self-serving rule breaking (ibid. at 1124–27). This "market discipline" induces discrimination against workers deemed less suitably masculine and undermines incentives for long-term corporate productivity, innovation, and compliance with law. Carbone and coauthors propose holistic solutions that combine restructuring

managerial compensation with more fundamental institutional and ideological changes to orient business success toward social responsibility, cooperative relationships, public accountability, and long-term productivity (1160–62).

Also examining the limits of centering economic policy on atomized individual gain, a 2017 APPEAL workshop panel questioned the idea that targeted social support, rather than universal benefits, best promotes individual choice and economic welfare. Allison Hoffman analyzed market-based health insurance incentives designed to encourage people to weigh the costs of competing health-care options, showing that these instead force patients and families to make risky and time-consuming "choices" based on inherently inadequate information (Hoffman 2019). In practice, such "consumer-driven" health policies neither capture what individual patients or families want nor induce collective cost savings or quality improvements (ibid. at 2001–07). APPEAL panelist Katherine Moos explained that nonuniversal, cost-sharing approaches to US social programs mask the problem that, over the last several decades, employers have increasingly shifted the costs of social reproduction to households, depending on unpaid and low-wage labor especially by women and workers of color (Moos 2020, 20–22).

Finally, in the keynote address for the 2019 APPEAL workshop, Angela Harris linked population-based health disparities to structural socioeconomic subordination (Harris and Pamukcu 2020, 772–73), including racial segregation and related place-based disparities in capital investment and environmental hazards (ibid. at 774–76). These root causes are not adequately addressed by policies incentivizing individual behavior change, by universalist health-care reforms, or by targeting subsidies to at-risk populations (793–95). Cross-racial solidarity for redressing health inequalities is hindered by a zero-sum white identity politics that constructs damaged health and shortened life for white communities as the necessary price of resisting gains for racialized others (Case and Deaton 2020). Harris proposes a "health justice" frame focused on building people power for frontline communities to address multiple intersecting health inequalities (Harris 2020, 807–29).

B. *Economic Forces Are Political*

By giving close attention to changing institutional structures, APPEAL illuminates the political struggles underlying market incentives. If there is no free lunch (as the Law and Economics narrative teaches), there is also no optimal price of lunch free from collective, value-laden contests for government control over the costs of producing and consuming that lunch. For example, several APPEAL events critiqued a 2021 Supreme Court ruling expanding agricultural corporations' property rights to deny workplace access to union organizers, thereby constraining farmworkers' power to bargain for higher wages. *Cedar Point Nursery v. Hassid*, 594 U.S. ___ (2021). That ruling was itself produced through irregular legal procedures strategically spearheaded by a network of well-funded neoliberal advocacy groups.[1]

To explore the "first causes" of market power, APPEAL's "What Is Capitalism?" series included readings from the earlier twentieth-century law and economics movement. We discussed Warren Samuels's analysis of state and market as a thoroughly integrated nexus of jointly produced power, not distinct spheres that act on each other (Samuels 1989a, 1558; Samuels 1989b, 427–28). Similarly, Legal

[1] Brief of Senator Sheldon Whitehouse et al. in support of Respondents, Cedar Point Nursery v. Hassid, 594 U.S. ___ (2021) (No. 20-107), 2021 WL 598516.

Realist Robert Hale grounds market incentives in the relative power to coerce others by withholding resources—a power that depends on institutional arrangements that government can alter in favor of different interests (Hale 1923, 493). APPEAL's focus on this earlier movement included W. E. B. Dubois's empirical analysis challenging the common theory that economic development must precede political power, instead tracing poverty to the lack of effective state and market rights (Prasch 2008, 319).

Building on this earlier scholarship, in a collaborative APPEAL article Jamee Moudud explains that property rights necessarily distribute the coercive power to injure (Pasquale et al. 2019, 123–24). That means "externalities" are a pervasive value-laden problem of market functioning, not a market failure that can be corrected to achieve an apolitical idea of market optimality. Also undermining a central premise of Law and Economics' microeconomic analysis, Reza Dibadj argues that transaction costs permeate real-world market bargaining, so that private bargaining is not generally superior to public regulation as a means for steering resources to their most valued uses (ibid. at 141–43).

Deeper understandings of the political nature of institutions shaping microeconomic activity can illuminate new strategies for structural reforms. In APPEAL's "What Is Capitalism? series," Carol Heim led a discussion of economic history that reframed capitalist profits not as an objective quantity but as the product of accounting conventions and interpretations reflecting a particular politics of value, power, and distribution (Levy 2014, 172). Developing this theme, another session proposed changing state-sanctioned accounting standards to count human and environmental costs as losses of valuable assets rather than as "externalities" of production (Berger and Richard 2021).

As another potential opportunity for politicizing market structures, APPEAL activities have focused on the ways markets constitute institutional power for collective action. For example, panelists in a 2019 workshop explored the ways in which unequal coordination rights pervasively govern market pricing and bargaining power. Sanjukta Paul argued that nineteenth-century US antitrust lawmakers aimed not to advance competition per se, but rather to protect coordination rights of labor and small business against large corporations, recognizing that markets necessarily involve coordinated activity (Paul 2021). Sandeep Vaheesan advocated support for cooperative firm ownership as an antimonopoly but procoordination strategy benefiting consumers, workers, and small businesses (Vaheesan and Schneider 2019). Brian Callaci analyzed the development of the franchise as a system for expanding firms' power to concentrate control while offloading risks to workers and others (Callaci 2021). Another 2019 workshop panel explained that the US Supreme Court's First Amendment rulings have enforced workers' market subordination by restricting workers' power to associate (Casebeer 2017; Garden 2020).

Countering the "new institutionalist" ideas that market forces produce apolitical coordination for mutual gain, APPEAL's "What Is Capitalism?" series featured Judy Fudge's analysis of the employment relationship. Fudge traced the history of the formal legal employment relationship as a contingent political compromise brokered by democratic welfare states to distribute power between labor and capital—now threatened in a global economic context of heightened power for financial capital (Fudge 2017). Further countering the neoclassical idea that competition among firms generates an efficient market equilibrium, economic historian Margaret Levenstein discussed her research finding that the "almost universal" business response to competition is to seek market power through a wide variety of formal and informal methods of collusion, many of which are not reached by antitrust laws (Levenstein 2012, 716).

APPEAL activities draw attention to technical changes in consumer finance that create structural inequalities in microeconomic transactions. Kristin Johnson and Frank Pasquale warned that, without further regulatory oversight and transparency, algorithms used by fintech firms to assess creditworthiness are likely to incentivize discrimination, predation, and deception in consumer transactions (Johnson, Pasquale, and Chapman 2019). Pamela Foohey presented her coauthored empirical research on the effects of law reforms making bankruptcy more burdensome for nonwealthy households, a change rationalized by unsupported credit industry claims of rising costs from profligate debtors (Foohey et al. 2018). Those reforms induced a longer "sweatbox" period prior to bankruptcy, with the result that financially distressed households further drained their economic and personal resources, impeding their ability to rebound, while also incentivizing credit industry profiteering from fees on high-cost loans targeted to debtors on the brink of bankruptcy (ibid. at 230–31). With this empirical research, Foohey and coauthors provide support for lawyers, lawmakers, and judges to counter narratives of opportunistic debtors and to advance changes in bankruptcy rules and consumer credit protections (260–61).

APPEAL's political economy lens also challenges depoliticized narratives about macroeconomic power. In our 2018 workshop, Christine Desan explained that money is a political institution governing economic value and distribution, not a neutral instrument of exchange driven by decentralized choices (Desan 2020, 8–9, 16–17). Presenting historical research on Black banking in the US, Mehrsa Baradaran traced the unequal racial design of US financial institutions and the resulting barriers to Black communities' economic development (Baradaran 2019). Also situating finance in historical context, Jamee Moudud showed that central banking and taxation in the British Empire were designed to hardwire a racial hierarchy supporting British industrialization while preventing successful socioeconomic development in colonies of color (Moudud 2020). Gerald Epstein argued that the idea of central bank independence masks the reality of financial industry influence and leads to policies fostering inequality and instability (Epstein 2021).

In addition, APPEAL scholarship on the politics of finance illuminates macroeconomic approaches that address root causes of the scarcity behind economic insecurity. Responding to evidence that about one-quarter of Americans are not adequately served by private banks, economists Mark Paul and Thomas Herndon propose a public banking option that would improve access while providing competitive pressure against subprime and high-cost lending practices that amplify recessions (Herndon and Paul 2020). Rohan Grey explains that the Law and Economics narrative of "no free lunch" confuses the inherent scarcity of physical resources with the potentially abundant legal and political capacity to govern money and financial capital so that it expands real purchasing power (Pasquale et al. 2019, 132–36). Raúl Carrillo emphasizes that the state constitutes and administers the labor system, so that the extent of unemployment is determined by monetary, fiscal, and legal policy rather than by fixed economic trade-offs (ibid. at 128–32). Also developing an institutional understanding of labor economics, Charles Whalen details the macroeconomic and political benefits of designing a federal jobs guarantee to address poverty and the climate crisis through full employment (Whalen 2019).

C. *Economic Forces Are Legal*

To resist the neoliberal and illiberal capture of law, APPEAL challenges the watered-down idea of law as a force essential to the market, but essentially incapable of deliberately transforming market power.

Neoliberal funders of Law and Economics recognized that economic and political power depend on controlling law's capacity to institutionalize incentives that lock in advantages over others. The major legal changes of the last four decades reflect not only the political right's superior funding, but also its success in organizing legal authorities and legal thinking (Rahman and Thelen 2021, 99–100).

Providing an affirmative method for evaluating policy, APPEAL activities have featured the heterodox law and economics textbook by Sarah Klammer and Eric Scorsone that grounds microeconomics in institutional-normative decisions governing human interdependence. Incentive effects always depend on a particular legal-economic arrangement constraining some opportunities in favor of others, contrary to the idea that policy can impartially manage incentives to maximize economic efficiency or other formal criteria of overall welfare (Klammer and Scorsone 2022, 17). Instead, their institutional analysis directs normative attention to whose interests and actions are the focus of analysis, as well as the ways in which downstream incentive effects of rule changes will depend on a larger institutional context and how that context changes over time and in reaction to new opportunity sets and social meanings (ibid. at 16–21).

Illuminating some of the institutional conditions that shape market interests, a 2018 APPEAL workshop explored substantive legal reforms that could change the incentive effects of new technologies on workers' economic power. Brishen Rogers explained that changes in background legal rules could shift employers' incentives to make digital technologies enhance both productivity and gains for workers; for example, lawmakers could expand the duties and definition of employment and give regulators and union organizers access to employers' data (Rogers 2020). Mark Paul showed that intellectual property law reforms and full employment policies could induce automation that creates more and better high-productivity jobs, rather than more worker insecurity and job loss (Paul 2018).

In APPEAL's series on climate and corporate law, Katharina Pistor argued that market-friendly climate solutions like disclosure rules or green asset subsidies ignore that capitalist markets systematically externalize the cost of destroying the planet's capacity for human life (Pistor 2021). Corporations, trusts, bankruptcy, and investor-centered international trade rules use formal legal rights to confer unequal substantive privileges that can be combined to resist public and private accountability for harm, incentivizing investments in private legal expertise in further "code" law to privatize gains and socialize losses (Pistor 2019, 159–67, 230–34). Law reforms that alter these market licenses to increase liability for environmental damages could begin to constitute a political economy that instead incentivizes societal survival and well-being.

Law continually reshapes substantive economic power by redefining property rights, contrary to the conventional Law and Economics presumption that firmly settled, value-neutral, and formal principles of private law constitute markets driven by decentralized mutual choice. Highlighting law's ongoing role in creating property, an APPEAL presentation by Meredith Hall analyzed two value-laden judgments exemplified in *Qualitex Co. v. Jacobsen Product Co. Inc.*, 514 U.S. 159 (1995), a landmark Supreme Court case granting the right to trademark a particular shade of green (Hall 2021, 10, 239–49). First, object categories can be freely claimed for private property protection when deemed worthless premarket, and second, legal subjects gain that protection when deemed worthy value creators rather than value takers (Hall 2021, 22–23, 219–28, 229–37). Hall argues that seemingly technocratic Law and Economics logic has persuaded judges to adopt a moral frame identifying corporations, rather than consumers or the public, as the most worthy producers and recipients of economic value (Hall 2021, 219–28, 232–38).

As that example shows, law leverages power by institutionalizing ideological change as well as economic gains. In another example, a 2022 APPEAL session featured Diana Reddy's analysis linking the decline in labor unions to a depoliticized approach to workers' rights within American law that defends unions as a means to advance workers' private transaction interests. As an important step toward increasing political support for stronger labor laws, Reddy argues that legal arguments instead can promote a clearer normative vision affirming that workers' collective power is fundamental to the public good (Reddy 2023, 1455–56).

Reviewing the history of international trade agreements in a collaborative article of APPEAL scholarship, James Varellas also shows that law reforms can generate new ideological power for broader political change. Following World War II, a new international legal architecture governing trade and monetary systems provided an important bulwark against the nationalist right and fascism by orienting markets toward human needs (Pasquale et al. 2019, 136–41). Subsequently, the turn toward neoliberal "free trade" policies prioritizing the interests of multinational corporations and investors has fueled new right-wing politics that should be countered with a new affirmative vision of international trade designed to enhance global social protections (ibid. at 140–41).

Political goals of democracy will also depend on engaging a key ideological struggle over law's capacity to induce commitments to public processes and principles for restraining violence and deception. Although this liberal legal commitment falls far short of its promises, it has also helped generate political pressure for steps toward an equal and democratic rule of law. Neoliberal narratives that ground law in a model of aggregate self-interest maximizing that is divorced from moral concerns help press law further toward the rule of authoritarian force and disinformation.

Scholars can defend law's potential for public accountability and equal justice by countering neoliberal logics subjecting law to privatized market forces. An APPEAL "What Is Capitalism?" discussion session led by Maha Rafi Atal questioned the theory that global investors seek sound, stable legal and political institutions. To the contrary, evidence from Africa in the 1990s suggests that foreign investors favor nations and regimes (such as Angola) deemed especially corrupt, violent, and volatile if they can use flexible, targeted nonstate institutions (such as privatized security) to extract gains (Ferguson 2006, 195–01). Another APPEAL session featured Eric George's analysis of corporate arbitration as a privatized legal system that enlists public courts in enforcing corporate power to evade public oversight and accountability (George 2018).

APPEAL workshop panels have also explored root causes and potential solutions for white-collar crime. William Black and June Carbone traced an epidemic of corporate control fraud over recent decades to economic ideologies of shareholder primacy and individualized financial gain that rationalized lax regulatory oversight (Black and Carbone 2016, 375–77, 389–99). They advocate mobilizing interdisciplinary expertise to guide regulatory strategies for reversing the resulting criminogenic incentives as well as the accompanying ideologies of self-regulating markets (ibid. at 406–07). Jennifer Taub explains that outsized wealth itself skews the legal system by immunizing elite criminality and normalizing the resulting private gains, with far greater costs to the economy and society than harshly policed and punished street crimes (Taub 2021, xxxii–vi, 218). Taub outlines a range of legal reforms that would help reign in this economic power to evade law, including increased taxes and tax enforcement on the wealthy (ibid. at 222).

V. Conclusion

A decade after APPEAL began, new academic initiatives in the US and many other regions have embraced the Law and Political Economy framework to encourage new thinking about law and economy. This article highlights the challenges and opportunities facing LPE, given the expansive, ongoing political-economic power of the neoliberal ideas promoted through the contrasting Law and Economics framework. This context reminds us that despite generating new support, LPE's resources are no match for the material wealth invested in limiting law's potential for redirecting the economy toward democracy and social justice.

Adding to the challenges of countering the influence of a wide-ranging web of neoliberal institutions, LPE confronts new authoritarian ideologies and political movements promising to respond to the problems of economic power by further replacing democratic institutions with policies of force, exclusion, and suppression of dissent and diversity.

In the face of social, economic, and political crises, the LPE framework offers a path toward understanding and addressing these problems systemically rather than as piecemeal failures. As this article highlights, APPEAL provides a collaborative intellectual community as a vital step toward explaining and dislodging the ideological and structural barriers to change. This article's analysis of the influence of Law and Economics shows the power of organizing ideas and institutional expertise to legitimate radical change and to make alternatives appear unreasonable.

Although better understandings of problems and solutions will not necessarily lead to policy change, effective institutional change requires narratives that translate personal experiences of suffering into possibilities for collective action toward something better (Gordon 1998, 648, 657). The demands by mass protests and social movements are unlikely to be realized without coordinated efforts to institutionalize these ideas and to respond to well-funded counter narratives favoring neoliberal or authoritarian policies (Bevins 2023, 303–29). APPEAL aims to organize academics and professionals to resist the teams of legal and economic experts who will be paid to undermine and co-opt reforms of entrenched political-economic power.

As I finish this article in the fall of 2023, APPEAL has co-organized a workshop with economics student groups at two different New York universities, bringing together about ninety participants to share research and ideas through an interdisciplinary law and political economy lens. Among those attending were many students, ranging from undergraduates to doctoral candidates, offering energy and ideas for changing political-economic power, including a number of students connected to emerging LPE networks in Europe and South America. The workshop offers hope that, in another ten years, today's participating students will have used the intellectual and professional connections fostered by APPEAL and other LPE institutions to develop new possibilities for overcoming ideologies and institutions that impede human flourishing.

REFERENCES

Akbar, Amna A. 2020. "Demands for a Democratic Political Economy." 134 *Harvard Law Review Forum* 90.

Alchian, Armen, and William R. Allen. (1964) 1983. *Exchange & Production: Competition, Coordination, & Control*. 3rd ed. Wadsworth Publishing Company.

Ash, Elliott, Daniel L. Chen, and Suresh Naidu. 2022. "Ideas Have Consequences: The Impact of Law and Economics on American Justice." National Bureau of Economic Research Working Paper No. 29788, February 2022. https://doi.org/10.3386/w29788.

Badgett, M. V. Lee. 2016. *The Public Professor: How to Use Your Research to Change the World*. New York University Press.

Baradaran, Mehrsa. 2019. *The Color of Money: Black Banks and the Racial Wealth Gap*. Harvard University Press.

Barnett-Loro, Carina, and Jack Zhou. 2018. "Turning Grassroots Activism into Durable Political Power." Webinar presentation, Climate Advocacy Lab, December 6, 2018. https://docs.google.com/presentation/d/1uBGFdoAkkjDMMtT2yzSgPeg5JSO6xxNbIlKLDHK4mrQ/edit#slide=id.g4a549e9062_0_6.

Berger, Sebastian, and Jacques Richard. 2021. "Alternative National Accounting: From Monetary to Social Cost Accounting." UWE Bristol Research Repository, March 1, 2021. https://uwe-repository.worktribe.com/output/7338217.

Berman, Elizabeth Popp. 2022. *Thinking Like an Economist: How Efficiency Replaced Equality in U.S. Public Policy*. Princeton University Press.

Bernstein, Anita. 2005. "Whatever Happened to Law and Economics?" 63 *Maryland Law Review* 303.

Bevins, Vincent. 2023. *If We Burn: The Mass Protest Decade and the Missing Revolution*. Hachette Book Group.

Black, William, and June Carbone. 2016. "Economic Ideology and the Rise of the Firm as a Criminal Enterprise." 49 *Akron Law Review* 371. https://ideaexchange.uakron.edu/akronlawreview/vol49/iss2/6.

Blalock, Corinne. 2014. "Neoliberalism and the Crisis of Legal Theory." 77 *Law and Contemporary Problems* 71. https://scholarship.law.duke.edu/lcp/vol77/iss4/4.

Block, Fred, and Margaret R. Somers. 2014. *The Power of Market Fundamentalism: Karl Polyani's Critique*. Harvard University Press.

Boetke, Peter J. 2020. "Why Did Armen Alchian Have to Teach Economists About Property Rights?" *EconLib*, February 3, 2020. https://www.econlib.org/library/Columns/y2020/BoettkeAlchian.html.

Boyce, James K. 2021. "Political Economy of the Environment." In *The Routledge Handbook of the Political Economy of the Environment*, edited by Éloi Laurent and Klara Zwickl, 13. Routledge.

Britton-Purdy, Jedediah, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman. 2020. "Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis." 129 *Yale Law Journal* 1784.

Butler, Henry N. 1989. "The Contractual Theory of the Corporation." 11 *George Mason University Law Review* 99.

Butler, Henry N. 1999. "The Manne Programs in Economics for Federal Judges." 50 *Case Western Reserve Law Review* 351.

Butler, Henry N. 2019. "Complementary Online Course for Your JD Students." Electronic message to Professor McCluskey, March 26, 2019. On file with author.

Butler, Henry N., Christopher R. Drahozol, and Joanna Shepherd. 2014. *Economic Analysis for Lawyers*. 3rd ed. Carolina Academic Press.

Callaci, Brian. 2021. "What Do Franchisees Do? Vertical Restraints as Workplace Fissuring and Labor Discipline Devices." 1 *Journal of Law and Political Economy* 397.

Callison, William, and Zachary Manfredi. 2020. "Introduction: Theorizing Mutant Neoliberalism." In *Mutant Neoliberalism: Market Rule and Political Rupture*, edited by William Callison and Zachary Manfredi, 1. Fordham University Press.

Carbone, June, Naomi Cahn, and Nancy Levit. 2019. "Women, Rule-Breaking, and the Triple Bind." 87 *George Washington Law Review* 1105.

Carrasco, Enrique R. 1997. "Intersections Between LatCrit Theory and Law and Development Studies." 28 *University of Miami Inter-American Law Review* 313. http://repository.law.miami.edu/umialr/vol28/iss2/9/.

Carter, Zachary D. 2020. *The Price of Peace: Money, Democracy, and the Life of John Maynard Keynes*. Random House.

Case, Anne, and Angus Deaton. 2020. *Deaths of Despair and the Future of Capitalism.* Princeton University Press.

Casebeer, Kenneth M. 2017. "'Public . . . Since Time Immemorial': The Labor History of *Hague v. CIO*." In *American Labor Struggles and Law Histories*, 2nd ed., edited by Kenneth M. Casebeer, 381. Carolina Academic Press.

Cohen, Adam. 2020. *Supreme Inequality: The Supreme Court's Fifty-Year Battle for a More Unjust America*. Penguin Random House.

Cooter, Robert D., and Thomas S. Ulen. 2012. *Law & Economics*. 6th ed. Addison-Wesley.

Deakin, Simon, and David Gindis, Geoffrey M. Hodgson, Kainan Huang, and Katharina Pistor. 2017. "Legal Institutionalism: Capitalism and the Constitutive Role of Law." 45 *Journal of Comparative Economics* 188. https://doi.org/10.1016/j.jce.2016.04.005.

Desan, Christine. 2022. "The Key to Value: The Debate over Commensurability in Neoclassical and Credit Approaches to Money." 83 *Law and Contemporary Problems* 1.

Dewandre, Nicole. 2015. "Rethinking the Human Condition in a Hyperconnected Era: Why Freedom Is Not About Sovereignty but About Beginnings." In *The Onlife Manifesto: Being Human in a Hyperconnected Era*, edited by Luciano Floridi, 195. Springer. https://doi.org/10.1007/978-3-319-04093-6_20.

Dewandre, Nicole. 2019. "Humans as Relational Selves." 35 *AI & Society* 95. https://doi.org/10.1007/s00146-017-0700-0.

Dewandre, Nicole, and Orsolya Gulyás. 2018 "Sensitive Economic Personae and Functional Human Beings." 17 *Journal of Language and Politics* 831. https://doi.org/10.1075/jlp.17068.dew.

Doussard, Mark, and Jacob Lesniewski. 2017. "Fortune Favors the Organized: How Chicago Activists Won Equity Goals Under Austerity." 39 *Journal of Urban Affairs* 618. http://dx.doi.org/10.1080/07352166.2016.1262684.

Duggan, Lisa. 2019. *Mean Girl: Ayn Rand and the Culture of Greed*. University of California Press.

Duxbury, Neil. 1995. *Patterns of American Jurisprudence.* Oxford University Press.

Earle, Joe, Cahal Moran, and Zach Ward-Perkins. 2017. *The Econocracy: The Perils of Leaving Economics to the Experts*. University of Manchester Press.

Epstein, Gerald. 2021. "Democratic Money: Central Bank Independence vs. Contested Control (Part 2)." *Just Money* (blog). August 17, 2021. https://justmoney.org/g-epstein-democratic-money-central-bank-independence-vs-contested-control-part-2.

Fandos, Nicholas. 2016. "University in Turmoil over Scalia Tribute and Koch Role." *New York Times*, April 28, 2016. https://www.nytimes.com/2016/04/29/us/koch-brothers-antonin-scalia-george-mason-law-school.html.

Ferguson, James. 2006. *Global Shadows: Africa in the Neoliberal World Order*. Duke University Press. https://doi.org/10.2307/j.ctv11g97mg.

Fineman, Martha Albertson. 2019. "Vulnerability and Social Justice." 53 *Valparaiso University Law Review* 341. https://scholar.valpo.edu/vulr/vol53/iss2/2/.

Fineman, Martha Albertson, and Terence Dougherty, eds. 2005. *Feminism Confronts Homo Economicus: Gender, Law, and Society*. Cornell University Press.

Foohey, Pamela, Robert M. Lawless, Katherine Porter, and Deborah Thorne. 2018. "Life in the Sweatbox." 94 N*otre Dame Law Review* 219. https://scholarship.law.nd.edu/ndlr/vol94/iss1/4.

Fudge, Judy. 2017. "The Future of the Standard Employment Relationship: Labour Law, New Institutional Economics and Old Power Resource Theory." 59 *Journal of Industrial Relations* 374. https://doi.org/10.1177/0022185617693877.

Garden, Charlotte. 2020. "Is There an Anti-Democracy Principle in the Post *Janus v. AFSCME* First Amendment?" 2020 *University of Chicago Legal Forum* 77. https://chicagounbound.uchicago.edu/uclf/vol2020/iss1/4.

George, Eric. 2018. "The Political Economy of Commercial Arbitration: The Corporatization of US Arbitration Law." PhD diss., York University, 2018.

Gindis, David. 2020. "Law and Economics Under the Palms: Henry Manne at the University of Miami, 1974–1980." Unpublished paper, March 13, 2020. dx.doi.org/10.2139/ssrn.3567105.

Glickman, Lawrence. 2016. "Everyone Was a Liberal." *Aeon*, July 5, 2016. https://aeon.co/essays/everyone-was-a-liberal-now-no-one-wants-to-be.

GMU FOIA Charles Koch Foundation Full. 2018. Archived by *Unkoch My Campus*, May 4, 2018 (pdf of documents compiled from a public records request). https://archive.org/details/GMUFOIACharlesKochFoundationFull.

GMU Foundation, GMU, and Charles Koch Foundation. 2016. "Grant Agreement." March 31, 2016. Archived by *Unkoch My Campus*. https://archive.org/details/GMUASSLawMOU2016.

Gordon, Robert W. 1998. "Some Critical Theories of Law and Their Critics." In *The Politics of Law: A Progressive Critique*, 3rd ed., edited by David Kairys, 641. Basic Books.

Gorz, André. 1967. *Strategy for Labor: A Radical Proposal.* Translated by Martin A. Nicolaus and Victoria Ortiz. Beacon Press.

Greenwood, Daniel J. H. 2005. "Introduction to the Metaphors of Corporate Law." 4 *Seattle Journal for Social Justice* 273. https://digitalcommons.law.seattleu.edu/sjsj/vol4/iss1/40.

Grewal, David Singh, and Jedediah Purdy. 2014. "Introduction: Law and Neoliberalism." 77 *Law and Contemporary Problems* 1.

Hale, Robert L. 1923. "Coercion and Distribution in a Supposedly Non-Coercive State." 38 *Political Science Quarterly* 470. https://doi.org/10.2307/2142367.

Hale, Robert L. 1952. *Freedom Through Law: Public Control of Private Governing Power.* Columbia University Press.

Hall, Meredith. 2021. "Properties of Color: How Corporations Came to Own the Visible Spectrum." PhD diss., The New School, 2021. Proquest Dissertations and Theses Global (28418587).

Hamilton, Ted. 2014. "Why Law School's Love Affair with Economics Is Terrible for the American Legal System." *Salon*, July 26, 2014. http://perma.cc/U5EU-HSBL.

Harris, Angela P., and Aysha Pamukcu. 2020. "The Civil Rights of Health: A New Approach to Challenging Structural Inequality." 67 *UCLA Law Review* 758.

Harris, Angela, and James J. Varellas III. 2020. "Law and Political Economy in a Time of Accelerating Crises." 1 *Journal of Law and Political Economy* 1. https://doi.org/10.5070/LP61150254.

Haskell, John D., and Ugo Mattei. 2015. "Introduction." In *Research Handbook on Political Economy and Law*, edited by Ugo Mattei and John D. Haskell, 1. Edward Elgar Publishing.

Hayek, F. A. (1973) 1982. *Law, Legislation and Liberty*. Vol. 1, *Rules & Order*. Routledge & Kegan Paul Ltd.

Hayek, F. A. (1976) 1982. *Law, Legislation and Liberty*. Vol. 2, *The Mirage of Social Justice*. Routledge & Kegan Paul Ltd.

Herndon, Thomas, and Mark Paul. 2020. "A Public Banking Option as a Mode of Regulation for Household Financial Services in the US." 43 *Journal of Post Keynesian Economics* 576. https://doi.org/10.1080/01603477.2020.1734462.

Hoffman, Allison K. 2019. "Health Care's Market Bureaucracy." 66 *UCLA Law Review* 1926.

Hollis-Brusky, Amanda. 2015. *Ideas with Consequences: The Federalist Society and the Conservative Counterrevolution*. Oxford University Press.

Johnson, Dawn. 2007. "Lessons from the Right: Progressive Constitutionalism for the Twenty-First Century." 1 *Harvard Law & Policy Review* 239.

Johnson, Kristin, Frank Pasquale, and Jennifer Elisa Chapman. 2019. "Artificial Intelligence, Machine Learning, and Bias in Finance: Toward Responsible Innovation." 88 *Fordham Law Review* 499. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5629&context=flr.

Jones, Daniel Stedman. 2012. *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics*. Princeton University Press.

Klammer, Sarah S., and Eric A. Scorsone. 2022. *The Legal Foundations of Micro-institutional Performance: A Heterodox Law & Economics Approach*. Edward Elgar Publishing.

Kwak, James. 2017. *Economism: Bad Economics and the Rise of Inequality*. Pantheon Books.

Lazonick, William. 2017. "The Functions of the Stock Market and the Fallacies of Shareholder Value." INET Working Paper Series No. 58. http://dx.doi.org/10.2139/ssrn.2993978.

Leff, Arthur Allen. 1974. "Economic Analysis of Law: Some Realism About Nominalism." 60 *Virginia Law Review* 451.

Levenstein, Margaret C. 2012. "Escape from Equilibrium: Thinking Historically About Firm Responses to Competition." 13 *Enterprise and Society* 710. https://doi.org/10.1093/es/khs025.

Levy, Jonathan. 2014. "Accounting for Profit and the History of Capital." 1 *Critical Historical Studies* 171.

MacDonald, Heather. 1995. "Law School Humbug." *City Journal*, Autumn 1995. https://www.city-journal.org/article/law-school-humbug.

Mahoney, Martha R. 1991. "Legal Images of Battered Women: Redefining the Issue of Separation." 90 *Michigan Law Review* 1.

Mahoney, Martha R. 1992. "Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings." 65 *Southern California Law Review* 1283.

Mandery, Evan. 2019. "Why There Is No Liberal Federalist Society." *Politico Magazine*, January 23, 2019. https://www.politico.com/magazine/story/2019/01/23/why-theres-no-liberal-federalist-society-224033.

Manne, Henry G. 1997. "The Judiciary and Free Markets." 21 *Harvard Journal of Law & Public Policy* 11.

Manne, Henry G. 2005. "How Law and Economics Was Marketed in a Hostile World: A Very Personal History." In *The Origins of Law and Economics: Essays by the Founding Fathers*, edited by Francesco Parisi and Charles K. Rowley, 309.

Mayer, Jane. 2016. *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*. Doubleday.

Maynard, Goldburn P., Jr. 2022. "Killing the Motivation of the Minority Law Professor." 107 *Minnesota Law Review* 245.

McCluskey, Martha T. 2003. "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State." 78 *Indiana Law Journal* 783.

McCluskey, Martha T. 2012. "How the 'Unintended Consequences' Story Promotes Unjust Intent and Impact." 22 *Berkeley La Raza Law Journal* 21.

McCluskey, Martha T. 2018. "Defining the Economic Pie, Not Dividing or Maximizing It." 5 *Critical Analysis of Law* 77.

McCluskey, Martha T., Frank Pasquale, and Jennifer Taub. 2016. "Law and Economics: Contemporary Approaches." 35 *Yale Law & Policy Review* 297.

Miller, John J. 2006. *A Gift of Freedom: How the John M. Olin Foundation Changed America*. Encounter Books.

Mirowski, Philip. 2014. *Never Let a Serious Crisis Go to Waste: How Neoliberalism Survived the Financial Meltdown.* Paperback edition. Verso.

Mirowski, Philip. 2018. "Neoliberalism: The Movement that Dare Not Speak Its Name." 2 *American Affairs* 118.

Mont Pelerin Society Directory. 2013. PDF created November 13, 2013, archived on The Mont Pelerin Society (MPS), Desmog. https://www.desmog.com/wp-content/uploads/files/MPS-2013-membership-listing_Redacted.pdf.

Moos, Katherine A. 2020. "Coronavirus Fiscal Policy in the United States: Lessons from Feminist Political Economy." PERI Working Paper No. 510, October 2020. https://doi.org/10.7275/27137910.

Moudud, Jamee K. 2020. "The Janus Faces of Money, Property, and Governance: Fiscal Finance, Empire and Race." PERI Working Paper No. 524, September 2, 2020. https://peri.umass.edu/publication/item/1346-the-janus-faces-of-money-property-and-governance-fiscal-finance-empire-and-race.

Mutua, Athena D. 2021. "ClassCrits Time? Building Frameworks, Building Institutions." 1 *Journal of Law and Political Economy* 333. http://dx.doi.org/10.5070/LP61251595.

Nelson, Anne. 2019. *Shadow Network: Media, Money and the Secret Hub of the Radical Right*. Bloomsbury Publishing.

Nice, Julie A. 2008. "No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default." 35 *Fordham Urban Law Journal* 629. https://ir.lawnet.fordham.edu/ulj/vol35/iss3/4.

Nice, Julie A. 2016. "A Sweeping Refusal of Equal Protection: *Dandridge v. Williams* (1970)." In *The Poverty Law Canon*, edited by Marie A. Failinger and Ezra Rosser, 129. University of Michigan Press.

Novak, William J. 2022. *New Democracy: The Creation of the Modern American State*. Harvard University Press.

O'Harrow, Robert, and Shawn Boburg. 2019. "A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts." *Washington Post*, May 21, 2019. https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts.

Palladino, Lenore. 2019. "The Economic Argument for Stakeholder Corporations." Roosevelt Institute Working Paper, June 2019. https://rooseveltinstitute.org/publications/economic-argument-for-stakeholder-corporations.

Palladino, Lenore. 2022. "The Myth that Shareholders Are 'Investors.'" *LPE Blog*. April 14, 2022. https://lpeproject.org/blog/the-myth-that-shareholders-are-investors.

Pasquale, Frank. 2015. "Democratizing Higher Education: Defending and Extending Income-Based Repayment Programs." 28 *Loyola Consumer Law Review* 1.

Pasquale, Frank. 2020. *New Laws of Robotics*: *Defending Human Expertise in the Age of AI*. Belknap Press of Harvard University Press.

Pasquale, Frank, Lenore Palladino, Martha T. McCluskey, John D. Haskell, Jedidiah Kroncke, Jamee K. Moudud, Raúl Carillo, Rohan Grey, James J. Varellas III, Reza Dibadj, and Sandeep Vaheesan. 2019. "Eleven Things They Don't Tell You About Law & Economics: An Informal Introduction to Political Economy and Law." 37 *Law and Inequality: A Journal of Theory and Practice* 97. https://scholarship.law.umn.edu/lawineq/vol37/iss1/8.

Paul, Mark. 2018. *Don't Fear the Robots: Why Automation Is Not the End of Work*. Roosevelt Institute & Samuel Dubois Cook Center on Social Equity. June 12, 2018. https://rooseveltinstitute.org/publications/dont-fear-the-robots-automation-doesnt-mean-the-end-of-work.

Paul, Sanjukta. 2021 "Recovering the Moral Economy Foundations of the Sherman Act." 131 *Yale Law Journal* 175.

Pienta, Allison. 2018. "The Federalist Society's Takeover of George Mason University's Public Law School." Posted on *UnKoch My Campus* under "Donor Influence at George Mason Finally Exposed." http://www.unkochmycampus.org/charles-koch-foundation-george-mason-mercatus-donor-influence-exposed#finding1.

Piereson, James. 2005. "Investing in Conservative Ideas." *Commentary*, May 2005. https://www.commentary.org/articles/james-piereson/investing-in-conservative-ideas.

Pistor, Katharina. 2019. *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton University Press.

Pistor, Katharina. 2021. "The Myth of Green Capitalism." *Project Syndicate*, September 21, 2021. https://www.project-syndicate.org/commentary/green-capitalism-myth-no-market-solution-to-climate-change-by-katharina-pistor-2021-09.

Plehwe, Dietre. 2009. "Introduction." In *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective*, edited by Philip Mirowski and Dietre Plehwe, 1. Harvard University Press.

Prasch, Robert E. 2008. *How Markets Work*. Edward Elgar Publishing.

Priest, George L. 1999. "Henry Manne and the Market Measure of Intellectual Influence." 50 *Case Western Reserve Law Review* 325.

Rahman, K. Sabeel, and Kathleen Thelen. 2021. "The Role of the Law in the American Political Economy." In *The American Political Economy: Politics, Markets, and Power*, edited by Jacob S. Hacker, Alexander Hertel-Fernandez, Paul Pierson, and Kathleen Thelen, 76. Cambridge University Press. https://doi.org/10.1017/9781009029841.003.

Reddy, Diana. 2021. "Anti-CRT and a 'Free Market' in Racial Education." *LPE Blog*. December 8, 2021. https://lpeproject.org/blog/anti-crt-and-a-free-market-in-racial-education.

Reddy, Diana S. 2023. "After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions." 132 *Yale Law Journal* 1391. https://www.yalelawjournal.org/feature/after-the-law-of-apolitical-economy.

Rogers, Brishen. 2020. "The Law and Political Economy of Workplace Technological Change." 55 *Harvard Civil Rights-Civil Liberties Law Review* 531.

Samuels, Warren J. 1989a. "The Legal-Economic Nexus." 57 *George Washington Law Review* 1556.

Samuels, Warren J. 1989b. "Some Fundamentals of the Economic Role of Government." 23 *Journal of Economic Issues* 427. https://doi.org/10.1080/00213624.1989.11504908.

Sarra, Janis. 2003. "Martha's Garden: Cultivating and Nurturing Alternative Visions of Corporate Law Through the Feminism and Legal Theory Workshop." *Feminism and Legal Theory Project—The Twentieth Summer Workshop*, June 2003 draft, working paper, archived on HeinOnline.

Schwartz, Peter Hammond. 2021. "Originalism Is Dead: Long Live Catholic Natural Law; On the Post-Liberal Future of the Federal Courts." *New Republic*, February 3, 2021.

Silverman, Mark. Forthcoming. "The 'Value of a Statistical Life' in Economics, Law, and Policy: Reflections from the Pandemic." 36 *Rethinking Marxism*.

Slobodian, Quinn. 2018. *Globalists: The End of Empire and the Birth of Neoliberalism*. Harvard University Press.

Slobodian, Quinn. 2019. "Anti-'68ers and the Racist-Libertarian Alliance." 15 *Cultural Politics* 372. doi.org/10.1215/17432197-7725521.

Steinbaum, Marshall. 2022. "When It Comes to the History of Economics, Don't Think Like an Economist." *LPE Blog*. September 26, 2022. https://lpeproject.org/blog/when-it-comes-to-the-history-of-economics-dont-think-like-an-economist.

Storrs, Landon R. Y. 2013. *The Second Red Scare and the Unmaking of the New Deal Left*. Princeton University Press.

Stout, Lynn A. 2014. "Killing Conscience: The Unintended Behavioral Consequences of 'Pay For Performance.'" 39 *Journal of Corporation Law* 529.

Taub, Jennifer. 2021. *Big Dirty Money: Making White Collar Criminals Pay*. Penguin Books.

Tech Transparency Project. 2021. *Big Tech's Back Door to the FTC*. March 2021. https://www.techtransparencyproject.org/sites/default/files/Big-Techs-Backdoor-to-the-FTC_031221.pdf.

Teles, Steven M. 2008. *The Rise of the Conservative Legal Movement*. Princeton University Press.

Vaheesan, Sandeep, and Nathan Schneider. 2019. "Cooperative Enterprise as an Anti-Monopoly Strategy." 124 *Penn State Law Review* 1.

West, Robin. 1986. "Law, Rights, and Other Totemic Illusions: Legal Liberalism and Freud's Theory of the Rule of Law." 134 *University of Pennsylvania Law Review* 817.

Whalen, Charles J. 2019. "Institutional Economics and Chock-Full Employment: Reclaiming the 'Right to Work' as a Cornerstone of Progressive Capitalism." 53 *Journal of Economic Issues* 321. https://doi.org/10.1080/00213624.2019.1594498.