

Kolloquium “Law and Finance”

Schwerpunktbereiche 1, 2 und 3
LL.M. in Legal Theory, Module E5

SS 2018

Juniorprofessor Dr. Matthias Goldmann, LL.M. (NYU)

Course time: Wednesdays from 15h c.t. -18h on the following dates:

11 April, 18 April, 25 April (exceptionally from 9h c.t. to 12h in room SH 1.106), 2 May, 23 May, 30 May, 6 June, 13 June, 20 June

Room: HoF 3.45 (Sydney)

Enrolment: No prior enrolment necessary. Just come to the first class or write me an e-mail.

Learning goals and competencies:

- Develop a profound understanding of the role of law in finance and economics, as well as the role of economic knowledge in the law. Hence, a truly interdisciplinary experience.
- Familiarize students with the main strands of research relevant for the interaction between law and finance.
- Learn to develop own research questions.

Module description: This Kolloquium focuses on the relationship between law and the financial sector in a profound sense. Its goal is to investigate, both in practice and in theory, the multiple, intricate relationships between the law and the financial sector and how they mutually shape each other. Each session usually requires the preparation of two texts, one of them being of a more theoretical nature, the other one being more practical with a focus on concrete cases. The theoretical texts will introduce participants to important strands of past and contemporary research that have a bearing on the relationship between law and finance. Authors include Weber, Hayek, Polanyi, the law & economics literature, Foucault, and recent scholarship related to the financial crisis. Practical texts and cases will include sovereign debt litigation, investment law, as well as monetary and regulatory issues from Europe and beyond. The introductory session on 11 April 2018 will provide an overview of the subjects to be covered and requires no prior readings.

Course requirements: Basic knowledge of European and/or International law; interest in and/or knowledge of questions of finance and democracy.

Grade requirements: To get a grade for the Kolloquium, students need to write two reaction papers which engage critically with one of the readings, theoretical or practical, which are discussed during class. Each reaction paper may comprise between 1,500 and 2,000 words and may be written in English, German, French, Italian, or Spanish. Reaction papers are to be sent to goldmann@jur.uni-frankfurt.de on the day before the course. The reaction papers will be assigned to students based on their preferences as indicated after the first class. In addition, active class participation is required. This includes doing the readings on a regular basis. The readings have been selected with a view to keeping the amount of time necessary for their preparation within reasonable limits.

Course Program (as of 7 March 2018)

Session No.	Course date	Readings	Reaction paper due date
1	11 April	<p>For Immediate Release: Law in a Capitalist Economy</p> <ul style="list-style-type: none"> - Purpose and overview of the Kolloquium. - How to write a reaction paper? - Presentation: Money, Capitalism, Regulation, and the Role of Law. <p><i>Background reading:</i> Desan, Christine, "Money as a Legal Institution", in D. Fox and W. Ernst, <i>Money in the Western Legal Tradition</i> (2014) 18.</p>	n/a
2	18 April	<p>Public Relations: Capitalism and Legal Rationality</p> <p><i>Theory:</i> Max Weber, <i>Economy and Society</i> (1922): vol. 1, pp. 212-223, 311-315; vol. 2, 654-658, 775-776, 784-788, 880-892.</p> <p><i>Practice:</i> RGZ 103, 328 (German), English translation: https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=954.</p> <p><i>Background readings:</i> Max Weber, <i>Economy and Society</i> (1922): vol. 2, 729-731, 789-791, 892-895. Max Weber, <i>The Protestant Ethic and the Spirit of Capitalism</i> (1904-1905), ch. 5. Emile Durkheim, <i>The Division of Labour in Society</i> (1893), extracts.</p>	18 April 9:00h
3	25 April 9am-12pm SH 1.106	<p>Dark Shadows: Law and the Disembedded Economy</p> <p><i>Theory:</i> Karl Polanyi, <i>The Great Transformation</i> (1944): Ch. 1 and 2 (pp. 3-32), Ch. 11 (136-140).</p> <p><i>Practice:</i> Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, available at https://www.italaw.com/sites/default/files/case-documents/ita0095.pdf, only the following sections (pages): Sec. I (pp. 1-6), ch. V.1 (p. 99), Sec. V.3.C (pp. 132-154), Sec. V.4.C.(1) (only para. 586 on p. 174 and para. 602 on p. 178), Sec. V.4.C.(2)(a)-(c) (p. 180-186).</p> <p><i>Background readings:</i> Karl Polanyi, <i>The Great Transformation</i> (1944): Ch. 5 (59-70), Ch. 10 (116-135). Robert Hale, "Coercion and Distribution in a Supposedly Non-Coercive State", 38 <i>Political Science Quarterly</i> (1923) 470-494. John Maynard Keynes, <i>The end of laissez-faire</i> (1926) https://www.panarchy.org/keynes/laissezfaire.1926.html.</p>	24 April 12:00h

4	2 May	<p>The Mountain King: Neoliberalism and the Law</p> <p><i>Theory:</i> F.A. von Hayek, <i>Law, Legislation and Liberty</i> (1973), vol. 1, ch. 1 (“Reason and Evolution”).</p> <p><i>Practice:</i> NML Capital, Ltd. v. Republic of Argentina, United States Court of Appeals, 2d Circuit, October 26, 2012 (699 F.3d 246). Bundesverfassungsgericht, Order of 8 May 2007 - 2 BvM 1/03, BVerfGE 118, 124 (134-146) (available in D and E).</p> <p><i>Background reading:</i> F.A. von Hayek, <i>The road to serfdom</i> (1944). Thomas Biebricher, “Neoliberalism and Law: The Case of the Balanced Budget Amendment” 17 <i>German Law Journal</i> (2016) 835. White, Jonathan, “Between Rules and Discretion: Thoughts on Ordo-Liberalism” LSE ‘Europe in Question’ Discussion Paper Series No 126 (2017). Anna Gelpern, “Sovereign Debt: Now What?” 41 <i>Yale Journal of International Law Online</i> (2016) 45.</p>	1 May 12:00h
5	23 May	<p>Shut the Door. Have a Seat: The Economic Way of Looking at Law</p> <p><i>Theory:</i> Gary Becker, <i>The Economic Way of Looking at Life</i>, Nobel Lecture (1992).</p> <p><i>Practice:</i> SEC v. Life Partners, Inc., 87 F.3d 536 (D.C. Cir. 1996); Poštová banka, a.s. and ISTROKAPITAL SE v. Hellenic Republic, ICSID Case No. ARB/13/8, available at https://www.italaw.com/sites/default/files/case-documents/italaw4238.pdf, parts I. (p. 5), III. (pp. 13-25), and V.1.b (only pp. 85-106).</p> <p><i>Background reading:</i> Richard A. Posner, “Utilitarianism, Economics, and Legal Theory”, 8 <i>The Journal of Legal Studies</i> (979) 103-140. Buchanan, James M., "The domain of constitutional economics", 1 <i>Constitutional Political Economy</i> (1990) 1-18. Chris Brummer, "Why soft law dominates international finance – and not trade", 13 <i>J Int'l Econ L</i> (2010) 623-43. Michael J. Sandel, “What Money Can’t Buy: The Moral Limits of Markets”, Tanner Lectures on Human Values, 1998.</p>	22 May 12:00h
6	30 May	<p>The Chrysanthemum and the Sword: Poststructuralism and the Law</p> <p><i>Theory:</i> Foucault, Michel, "Governmentality", in <i>The Foucault Effect</i> (Graham Burchell et al. eds.), 87-104 (1991)</p> <p><i>Practice:</i> Gauweiler et al., European Court of Justice, Case C-62/14, Judgment of June 2015.</p>	29 May 12:00h

		<p><i>Background reading:</i> Kennedy, David, "Law and the Political Economy of the World", 26 <i>Leiden Journal of International Law</i> (2013) 7-48. Bourdieu, Pierre, "Force of Law", 38 <i>Hastings Law Journal</i> (1987) 805-853. Žižek, Slavoj, "Shoplifters of the world unite" – Libcom, 11 August 2011, https://libcom.org/library/shoplifters-world-unite</p>	
7	6 June	<p>Smoke Gets in Your Eyes: Constructivism and Bounded Rationality</p> <p><i>Theory:</i> Pistor, Katharina, "Towards a Legal Theory of Finance", <i>Columbia Public Law Research Paper</i> (2012), No. 12-323.</p> <p><i>Practice:</i> ECJ, Case C-370/12 <i>Pringle</i>, ECLI:EU:C:2012:756, judgment of 27 November 2012.</p> <p><i>Background reading:</i> Lang, Andrew T. F., "The Legal Construction of Economic Rationalities?", 40 <i>Journal of Law and Society</i> (2013) 155-171. La Porta, Rafael, Florencio Lopez de Silanes, Andrei Shleifer and Robert W. Vishny, "Law and Finance", 106 <i>Journal of Political Economy</i> (1998) 1113-1155. Tversky, Amos and Daniel Kahneman, "Judgment under Uncertainty: Heuristics and Biases", 185 <i>Science</i> (1974) 1124-1131. Miller, Geoffrey P. and Gerald Rosenfeld, "Intellectual Hazard: How Conceptual Biases in Complex Organizations Contributed to the Crisis of 2008", 33 <i>Harvard J. of Law and Policy</i> (2008) 807-840. Minsky, Hyman P., "The Financial Instability Hypothesis", <i>Levy Economics Institute Working Paper No 74</i> (1992). Goldmann, Matthias, "Public Law and Finance: A History of Misunderstandings and a Discourse Theoretical Proposal" (April 11, 2016). Available at SSRN: https://ssrn.com/abstract=2865964</p>	5 June 12:00h
8	13 June	<p>Meditations in an Emergency: Law in Democratic Capitalism after the Crisis</p> <p><i>Theory:</i> Jürgen Habermas, "The Lure of Technocracy: A Plea for European Solidarity", in id., <i>The Lure of Technocracy</i> (2015) 3-28.</p> <p><i>Practice:</i> European Court of Human Rights, <i>Koufaki and Adedy v. Greece</i>, App. Nos. 57665/12 and 57657/12, Decision of 7 May 2013. ECJ, Case C-8/15 P et al., <i>Ledra</i>, ECLI:EU:C:2016:701, judgment of 20 September 2016.</p> <p><i>Background reading:</i> Piketty, <i>Capital in the 21st Century</i> (2014), Introduction, pp. 1-35, Ch. 5 (The Capital/Income Ratio over the Long Run (inc. the Second Law of Capitalism)) Streeck, Wolfgang, "The Rise of the European Consolidation State", <i>MPIfG Discussion Paper 15/1</i> (2015), Cologne. Juan Pablo Bohoslavsky, "Economic Inequality, Debt Crises and Human Rights", 41 <i>Yale J. of International Law Online</i> (2016).</p>	12 June 12:00h

		<p>ICSID, <i>Urbaser S.A. et al. v. Argentina</i>, Case No. ARB/07/26, Award of 8 December 2016, https://www.italaw.com/sites/default/files/case-documents/italaw8136_1.pdf.</p> <p>Sen, Amartya K., <i>The Idea of Justice</i> (Harvard University Press, Cambridge, MA 2009), 355 et seq.</p> <p>Goldmann, Matthias and Silvia Steininger, "A Discourse Theoretical Approach to Sovereign Debt Restructuring: Towards a Democratic Financial Order", 17 <i>German Law Journal</i> (2016) 709-746.</p>	
9	20 June	<p>Tomorrowland: Blockchain and the Law</p> <p><i>Theory:</i> Bjerg, Ole, "How is Bitcoin Money?", 33 <i>Theory, Culture & Society</i> (2016) 53-72.</p> <p><i>Practice:</i> ECJ, Case C-264/14, <i>Skatteverket</i>, ECLI:EU:C:2015:718, judgment of 22 October 2015.</p> <p><i>Background reading:</i> Wright, Aaron and De Filippi, Primavera, "Decentralized Blockchain Technology and the Rise of Lex Cryptographia" (March 10, 2015). Available at SSRN: https://ssrn.com/abstract=2580664 Finck, Michèle, Blockchain Regulation (August 7, 2017). <i>German Law Journal</i>, 2018, Forthcoming; Max Planck Institute for Innovation & Competition Research Paper No. 17-13 . Available at SSRN: https://ssrn.com/abstract=3014641 Varoufakis, Yanis, "Bitcoin and the dangerous fantasy of 'apolitical' money", 22 April 2013, https://www.yanisvaroufakis.eu/2013/04/22/bitcoin-and-the-dangerous-fantasy-of-apolitical-money/.</p>	19 June 12:00h