

## Goethe University Frankfurt

### Kolloquium/Module “Law and Finance” 2021 Syllabus

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The objective of the Kolloquium/Module is for students to acquire a profound understanding of the multiple, intricate relationships between the law and the financial sector, how they mutually shape each other, and how our understanding of them has changed over time. Each class is divided into three parts and requires the preparation of two texts, a theoretical one and a case.

The first part of each class consists in an introduction into a certain period or major event in the evolution of the world economy, starting in the early 20th century. This part serves to familiarize students with key economic concepts. Due to the Covid-19 pandemic, this part will consist in a short, recorded video.

The subsequent parts of each class will take place via Zoom. Each Zoom session will start with a short Q&A session about the video. In the second part, students will discuss a theoretical text that reflects the role of law during the period explained in the first part. The texts will introduce the students to important strands of past and contemporary research on the law and the economy. Authors include Max Weber, Karl Polanyi, Friedrich Hayek, the law & economics literature, Katharina Pistor, and others. In the third part, students discuss a case which reflects, or contrasts with, the concept of law discussed in the second part. These cases address various aspects of the financial sector, including sovereign debt litigation, investment law, monetary law and bank regulation. Where the reading list proposes more than one case, students can choose which one they would like to read.

The introductory session on 21 April 2020 will provide an overview of the subjects to be covered and train students in writing a reaction paper. There will be a video for this class, too. The zoom meeting starts at 4pm on 21 April 2021. The introductory reading by Britton-Purdy et al. is recommended as a preparatory reading for this class. The text can be downloaded via OLAT and will be circulated to those enrolled in the class.

Videos can be watched via Youtube. The in-person classes will be conducted via Zoom, beginning at 4pm on each scheduled day.

#### **21 April 2021 - Class No. 1 - The Role of Law in Financial Capitalism**

##### *Part 1: Course Introduction (Video)*

- Purpose and overview of the Kolloquium/Module

*Part 2: Finance and Economics (Video)*

- Key concepts: Money

*Part 3: Legal Theory (Video)*

- Key questions: State vs Market, self-interest vs. solidarity

*Part 4: Practice (in class, beginning at 4pm CET)*

- Q & A on videos
- How to write a reaction paper

*Background reading (not compulsory):*

- Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski und K Sabeel Rahman, „Building a law-and-political-economy framework: Beyond the twentieth-century synthesis“, 129 Yale LJ (2019) S. 1784.
- Justin Desautels-Stein, “The market as a legal concept: classical liberalism, modern liberalism, pragmatic liberalism”, in U. Mattei and J. D. Haskell (eds.), *Research Handbook on Political Economy and Law* (Elgar 2015) 29-43.
- Granovetter, Mark. “Economic Action and Social Structure: The Problem of Embeddedness.” *American Journal of Sociology*, vol. 91, no. 3, 1985, pp. 481–510.

**5 May 2021 - Class No. 2 - Industrialization and Legal Rationality**

Reaction paper deadline: 4 May 2021, 3pm

*Part 1: Finance and Economics (Video)*

- History: Origin of capitalism, industrialization. Theory: inflation crises.

*Part 2: Legal Theory (in class, beginning at 4 pm)*

- Max Weber, *Economy and Society* (1922): vol. 1, pp. 212-223, 311-315; vol. 2, 654-658, 775-776, 784-788, 880-892.

*Part 3: Case (in class)*

- RGZ 103, 328 (German), English translation:  
<https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=954>.

*Background readings:*

- Max Weber, *Economy and Society* (1922): vol. 2, 729-731, 789-791, 892-895.

- Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (1904-1905), ch. 5, (notes available here).
- Emile Durkheim, *The Division of Labour in Society* (1893), extracts.

## **12 May 2021 - Class No. 3 – The Great Depression and Disembedded Law**

Reaction paper deadline : 11 May 2021, 3pm

### *Part 1: Finance and Economics (video)*

- History: The Great Depression. Theory: Asset crises.

### *Part 2: Legal Theory (in class)*

- Karl Polanyi, *The Great Transformation* (1944): Ch. 1 and 2 (pp. 3-32), Ch. 11 (136-140), (damaged pages available here).

### *Part 3: Case (in class)*

- Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania, ICSID Case No. ARB/05/22, 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).

### *Background readings:*

- Karl Polanyi, *The Great Transformation* (1944): Ch. 5 (59-70), Ch. 10 (116-135).
- John Maynard Keynes, *The end of laissez-faire* (1926).
- Robert Hale, "Coercion and Distribution in a Supposedly Non-Coercive State", 38 *Political Science Quarterly* (1923) 470-494.
- Poul F. Kjær, "From the Crisis of Corporatism to the Crisis of Governance", in Poul F. Kjær and Niklas Olsen (ed.), *Critical Theories of Crisis in Europe: From Weimar to the Euro* (Rowman & Littlefield International, 2016) 125-139.

## **19 May 2021 - Class No. 4 - The Welfare State and Social Justice**

Reaction paper deadline : 18 May 2021, 3pm

### *Part 1: Finance and Economics (video)*

- History: Postwar order, Bretton Woods, "trente glorieuse". Theory: The Welfare State.

*Part 2: Legal Theory (in class)*

- Samuel Moyn, *Not Enough. Human Rights in an Unequal World* (2018): Introduction (pp. 11-11) and Ch. 2 (pp. 41-67).

*Part 3: Cases (in class)*

- European Court of Human Rights, *Koufaki and Adedy v. Greece*, App. Nos. 57665/12 and 57657/12, Decision of 7 May 2013.
- ECJ, Case C-8/15 P et al., *Ledra*, ECLI:EU:C:2016:701, judgment of 20 September 2016.
- ICSID, *Urbaser S.A. et al. v. Argentina*, Case No. ARB/07/26, Award of 8 December 2016.

*Background readings:*

- Samuel Moyn, *Not Enough. Human Rights in an Unequal World* (2018): Chapters 1 and 3.
- Juan Pablo Bohoslavsky, “Economic Inequality, Debt Crises and Human Rights”, 41 *Yale J. of International Law Online* (2016).
- Daniel Brinks, Julia Dehm and Karen Engle, “Introduction: Human Rights and Economic Inequality”, 10 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* (2019) 363-375.
- Joseph Slaughter, “Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World” 40 *Human Rights Quarterly* 735.
- Matthias Goldmann, “Contesting Austerity: Genealogies of Human Rights Discourse” (March 26, 2020), Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2020- 09, <http://dx.doi.org/10.2139/ssrn.3561660> .

**26 May 2021 - Class No. 5 – The 1970s and Neoliberalism**

Reaction paper deadline : 25 May 2021, 3pm

*Part 1: Finance and Economics (video)*

- History: The crisis of the 1970s. Theory: sovereign debt crises, deflation.

*Part 2: Legal Theory (in class)*

- F.A. von Hayek, *Law, Legislation and Liberty* (1973), vol. 1, ch. 1 (“Reason and Evolution”).

*Part 3: Cases (in class)*

- 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) (also available in German).

*Background readings:*

- Friedrich A. von Hayek, *The road to serfdom* (1944).
- Thomas Biebricher, “Neoliberalism and Law: The Case of the Balanced Budget Amendment” 17 *German Law Journal* (2016) 835.
- Quinn Slobodian, *Globalists: The end of empire and the birth of neoliberalism* (Harvard University Press, 2018).
- B.S. Chimni, “International Institutions Today: An Imperial Global State in the Making”, 15 *European Journal of International Law* (2004) 1-37.
- Anna Gelpern, “Sovereign Debt: Now What?” 41 *Yale Journal of International Law Online* (2016) 45.

**2 June 2021 - Class No. 6 - Globalization and Law&Economics**

Reaction paper deadline : 1 June 2021, 3pm

*Part 1: Finance and Economics (video)*

- History: Globalization, the “Great Moderation”. Theory: Deregulation

*Part 2: Legal Theory (in class)*

- Gary Becker, *The Economic Way of Looking at Life*, Nobel Lecture (1992).

*Part 3: Cases (in class)*

- 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, parts I. (p. 5), III. (pp. 13-25), and V.1.b (only pp. 85-106).

*Background readings:*

- Richard A. Posner, “Utilitarianism, Economics, and Legal Theory”, 8 *The Journal of Legal Studies* (1979) 103-140.
- Chris Brummer, "Why soft law dominates international finance – and not trade", 13 *J Int'l Econ L* (2010) 623-43.
- La Porta, Rafael, Florencio Lopez de Silanes, Andrei Shleifer and Robert W. Vishny, “Law and Finance”, 106 *Journal of Political Economy* (1998) 1113-1155.
- Michael J. Sandel, “What Money Can’t Buy: The Moral Limits of Markets”, Tanner Lectures on Human Values, 1998.

- Michel Foucault, “Governmentality”, in *The Foucault Effect* (Graham Burchell et al. eds.), 87-104 (1991).

## **9 June 2021 - Class No. 7 - The Global Financial Crisis and the Code of Capital**

Reaction paper deadline : 8 June 2021, 3pm

### *Part 1: Finance and Economics (video)*

- History: The Global Financial Crisis. Theory: Banking crises.

### *Part 2: Legal Theory (in class)*

- Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press, 2019), pp. 1-22 (ch. 1), 158-182 (ch. 2).

### *Part 3: Case (in class)*

- ECJ, Case C-370/12 *Pringle*, ECLI:EU:C:2012:756, judgment of 27 November 2012.

### *Background reading:*

- Thomas Piketty, *Capital in the 21st Century* (2014), Introduction, pp. 1-35, Ch. 5 (The Capital/Income Ratio over the Long Run, incl. the Second Law of Capitalism)
- Pistor, Katharina, "Towards a Legal Theory of Finance", *Columbia Public Law Research Paper* (2012), No. 12-323.
- Lang, Andrew T. F., "The Legal Construction of Economic Rationalities?", 40 *Journal of Law and Society* (2013) 155-171.
- Minsky, Hyman P., “The Financial Instability Hypothesis”, *Levy Economics Institute Working Paper* No 74 (1992).
- Miller, Geoffrey P. and Gerald Rosenfeld, "Intellectual Hazard: How Conceptual Biases in Complex Organizations Contributed to the Crisis of 2008", 33 *Harvard J. of Law and Policy* (2008) 807-840.

## **16 June 2021 - Class No. 8 - Sovereign Debt Crisis and Liberal Democracy**

Reaction paper deadline : 15 June 2021, 3pm

### *Part 1: Finance and Economics (video)*

- History: The Tragedy of the Eurozone. From banking crisis to sovereign debt crisis to the Banking Union

### *Part 2: Legal Theory (in class)*

- Jürgen Habermas, “The Lure of Technocracy: A Plea for European Solidarity”, in id., *The Lure of Technocracy* (2015) 3-28.

*Part 3: Case (in class)*

- BVerfG, Judgment of the Second Senate of 5 May 2020 - 2 BvR 859/15 -, paras. 1-237 (PSPP).

*Background reading:*

- Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Repr. edn., Polity Press, Cambridge 2008), chapter 1.
- Amartya K. Sen, *The Idea of Justice* (Harvard University Press, Cambridge, MA 2009), 355 et seq.
- Wolfgang Streeck, "The Rise of the European Consolidation State", *MPIfG Discussion Paper 15/1* (2015), Cologne.
- Goldmann, M. (2020). The European Economic Constitution after the PSPP Judgment: Towards Integrative Liberalism? *German Law Journal*, 21(5), 1058-1077. doi:10.1017/glj.2020.64.
- Matthias Goldmann and Silvia Steininger, "A Discourse Theoretical Approach to Sovereign Debt Restructuring: Towards a Democratic Financial Order", 17 *German Law Journal* (2016) 709-746.
- ECJ, Case C-62/14, *Gauweiler et al.*, Judgment of 16 June 2015.

**30 June 2021 - Class No. 9 - Digitalization, Finance, and Law**

Reaction paper deadline : 29 June 2021, 3pm

*Part 1: Finance and Economics*

- Digitalization in the Financial Sector, Blockchain applications

*Part 2: Legal Theory*

- Vlad Zamfir, *Against Szabo's Law, For A New Crypto Legal System*, 26 January 2019.

*Part 3: Case*

- ECJ, Case C-264/14, *Skatteverket*, ECLI:EU:C:2015:718, judgment of 22 October 2015.
- Libra Association, *An Introduction to Libra* (2019).

*Background reading:*

- Nick Szabo, *Money, Blockchains, and Social Scalability*, 9 February 2017.

- Aaron Wright and Primavera De Filippi, “Decentralized Blockchain Technology and the Rise of Lex Cryptographia” (March 10, 2015).
- Yanis Varoufakis, “Bitcoin and the dangerous fantasy of ‘apolitical’ money”, 22 April 2013.
- Bjerg, Ole, “How is Bitcoin Money?”, 33 *Theory, Culture & Society* (2016) 53-72.
- Finck, Michèle, Blockchain Regulation (August 7, 2017). *German Law Journal*, 2018, Forthcoming; Max Planck Institute for Innovation & Competition Research Paper No. 17-13.