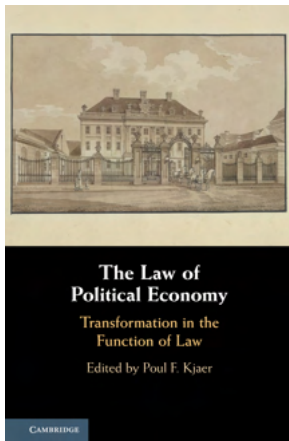

Book Reviews

Poul F. Kjaer (ed.) 2020: *The Law of Political Economy: Transformation in the Function of Law*. Cambridge: Cambridge University Press



Debates about the role of law in globalized neoliberal capitalism have proliferated in recent years, but few discussions grapple with such insight and depth with the contradiction that exists between the role of law in the emergence and structuring of power relations and its role in regulating or shaping their socio-economic effects as those collected within *The Law of Political Economy*, edited by Poul Kjaer. By embracing an historical perspective that engages with the role of law at both a structural and an historical level, the contributions to this volume significantly advance our understanding of the law's relationship with globalized capitalism—as well as the problems (such as rising inequality, climate change, environmental degradation and the depletion of natural

resources) with which this relationship is associated.

Divided into four parts (a theoretical and conceptual section to begin, one empirical section focusing on global issues and a second focusing on European issues, and a normative section to finish) the volume demonstrates brilliantly the value of a constitutive understanding of law that engages with both the structural logics that condition legal and social development and the contingent actions and decisions which mediate how that logic plays out in practice. In so doing, it goes some way towards empowering us when it comes to understanding whether, and if so how, we might bring about change.

Despite writing from within very different theoretical traditions, the contributors all articulate an image of law as something that constructs (and structures) relations of power while simultaneously shaping them in ways that operate to subordinate them (and the practices they enable) to wider societal interests. Part of the reason law is able to do this, moreover, relates to its relative autonomy from social relations—or, in systems-theoretical terms, its operational closure. And yet it is exactly this autonomy (or operational closure) which, the contributions suggest, has been eroded or undermined in recent years, as law has been harnessed to support rather than qualify market-based objectives and consequently has become a weapon to be wielded by the powerful. Exploring this premise from a range of perspectives through the lens of various legal frameworks—

from labour law to international law to EU competition law and consumer protection law—and from the perspective of a variety of societal issues, the contributors deftly illustrate both the distinctiveness of our current law-politics-economy configuration and its potentially significant ramifications.

Perhaps the most interesting contribution in the collection is that of Isabel Feichtner, who, in her discussion of the political economy of natural resource extraction, clearly demonstrates the importance of paying attention both to the contingent decisions shaping socio-economic development *and* to the structural logics which condition them. Equally insightful is David Kennedy's study of the struggles shaping the evolution of international law in which he encourages us to see the law not as a rational response to observed problems, but as a crystallization of past conflicts which are always already shaped by legally structured and underpinned power relations; power relations that then animate the subsequent struggles and conflicts to which law and legal developments 'respond'. Taken together, Feichtner and Kennedy thus remind us of the 'real alternatives lying all around us' (p. 157), exposing the contingent legal rules and institutional arrangements that underpin every apparent 'fact' about our contemporary reality.

A slightly different but complementary perspective on the law's role in structuring power relations is provided by Marija Bartl, who explores how ideas about the economy and the market shape the way we think about law, how ideas about the law condition our understanding of what the market is and what it needs, and how different configurations of such ideas operate to support particular forms of social organization while making it more difficult to challenge or disrupt it. This contribution highlights how the law influences the dynamics of power relations not only through its impact on the distribution of rights and resources, but also as a result of the way it shapes perceptions as well as beliefs. At the same time, Bartl emphasizes how the role that the law plays in this respect is itself profoundly shaped by its own self-understanding and the way it represents (in legal discourse) its own relationship with economic and political processes. The chapter thus expertly demonstrates the importance of deconstructing and exposing the assumptions about politics and the economy that are embedded in different aspects of legal discourse, and how these assumptions change over time.

In making these observations, Bartl reminds us of the significance of the assumptions embedded in the 'bourgeois' *form* of law: the way in which the law necessarily represents itself (and the legal subject) within the framework of capitalist societies—an observation that is taken up by Gunther Teubner in the book's ambitious concluding chapter. Here, Teubner outlines his vision for a new form and approach to rights, one which he hopes might transcend some of the limitations of the subjective rights at the heart of bourgeois legality. While the reader is left wondering how, exactly, such a model of rights might come into being, the author should still be applauded for encouraging us to think creatively about what an alternative form of law might look like—and even about the possibilities that might exist *within the framework* of that form as well.

Despite the considerable strengths of the volume, readers may feel disappointed by its lack of ambition. In particular, the editor and contributors refuse to take a stance on a number of key theoretical debates, including the question of whether the insights provided about the law's relationship with political economy should be seen as insights into the law's relationship with the political economy of

capitalism, or in more generalized universal terms as relevant to the political economy of a more nebulous notion of ‘modernity’. This means that none of the contributions really grapple with the question as to whether the observations made about the novelty of and problems associated with our current law-politics-economy configuration should be seen as part of an ongoing process (whereby particular configurations are broken down and reconfigured within the framework of the capitalist *form* of that relationship), or whether this breaking down should be seen as indicative of a breakdown *of* that form, and thus of capitalism itself.

The book therefore leaves certain core questions unanswered: does the harnessing of law to support (rather than qualify) market-based objectives that we see today reflect a fundamental breakdown in the separation of the economic and the political which is essential and distinctive to capitalism—or is it merely one more example of a law-politics-economy configuration that is consistent with that separation, albeit one that is significantly altering the balance of power in favour of capital? Moreover, what are the practical and strategic implications of this analysis for social actors seeking to bring about political economic changes, especially those seeking to move beyond capitalism? While many contributors demonstrate the value of problematizing our current arrangements and exposing possible alternatives, they fail to provide any guidance as to the limits of the changes that might be possible—or which of these, if any, might be realizable *through* law. Thus, while methodologically rich and theoretically insightful, the volume reveals that there is still work to be done when it comes to exploring *The Law of Political Economy* today.

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