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LJST 54: The Crisis of Neoliberal Legal Theory

The theory of governance known today as "neoliberalism" is most often understood as a mainly economic policy. Both its opponents and its proponents seem to agree that neoliberalism is best debated as an ensemble of practices (such as free trade, privatization, deregulation, competitiveness, social-spending cutbacks and deficit reduction) that emphasize the primacy of the free market in and for the arrangement of social and political orders. But, particularly in its initial theorizations, neoliberalism was also, perhaps even mainly, a philosophic doctrine that emphasized the centrality of a certain concept of law in and for human civilization as such. At the 1938 *Colloque Walter Lippmann* in Paris and then again at the inaugural 1947 meeting of the Mont Pèlerin Society in Switzerland, the leading figures of what would only later become known as "neoliberalism" criticized existing economic theories for neglecting basic questions of legal theory, and argued that capitalism could not be saved from the perils of socialism and communism without a renewed understanding of, and insistence on, the rule of law. In this course, we shall take this, the "legal theoretical" origin of neoliberalism, as a point of departure for understanding neoliberalism as a whole. We'll begin by seeking to understand neoliberalism on the basis of the way it posed law and economics as problems for thought. In relation to what alternate theories of law and economics did neoliberalism emerge? How did neoliberals try to revive the "classical" liberalism of John Locke, Thomas Macaulay, William Gladstone, J.S. Mill, John Morley, and Alfred Venn Dicey? How did certain concepts of law and economics frame the way that neoliberal thinkers arrived at their basic understandings of life and labor? We'll then explore the ways in which various critics of neoliberalism have sought to expose and to question the legal theories at its origin. How might renewed attention to neoliberalism's jurisprudential presuppositions help us today in our attempt to think and act beyond neoliberalism's constitutive limits? Our goal in all phases of the course will be to reconstruct neoliberal thought on its own terms, in order to grasp better its contemporary incoherence, crisis, and dissolution. Readings will include Wendell Berry, David Bollier, Melinda Cooper, Rosemary Coombe, Michel Foucault, Nancy Fraser, Milton Friedman, Michael Hardt and Antonio Negri, David Harvey, Friedrich Hayek, John Maynard Keynes, Naomi Klein, Paul Krugman, Warren Montag, Karl Polanyi, Richard Posner, Ludwig von Mises, and Slavoj Žižek.

Required Texts (available at Amherst Books)

David Bollier, *Viral Spiral*
Melinda Cooper, *Life as Surplus*
Michel Foucault, *The Birth of Biopolitics*
Milton Friedman, *Capitalism and Freedom*
David Harvey, *A Brief History of Neoliberalism*
F. A. Hayek, *The Road to Serfdom*
Naomi Klein, *The Shock Doctrine*
Antonio Negri and Michael Hardt, *Commonwealth*
Karl Polanyi, *The Great Transformation*
Richard Posner, *The Crisis of Capitalist Democracy*
Ludwig von Mises, *Liberalism: The Classical Tradition*
Slavoj Žižek, *First as Tragedy, Then as Farce*
The Road from Mont Pèlerin, Ed. Mirowski and Plehwe

Course Requirements

- (a) 1 Final Essay (no page limit) (40% of grade)
- (b) 1 Analytic Essay (maximum 10 pages, excluding footnotes) (30% of grade)
- (c) 10 Critiques (maximum 1,000 words each, no footnotes) (20% of grade)
- (d) Close Reading and Active Participation in Class (10% of grade)
- (e) Compliance with Amherst College Honor Code

Note: There will be a minimal copyright charge for some of the items on the e-reserves.

Key: (B) = book; (E) = e-reserve; and (F) = film streamed on the e-reserve section

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1. September 15
Introduction: What is a Crisis?
Reinhart Koselleck, "Crisis" (E)

2. September 22
 - a. David Harvey, *A Brief History of Neoliberalism* (B)
 - b. Dieter Plehwe, "Introduction," in *The Road from Mont Pèlerin* (B)
 - c. Philip Mirowski, "Postface: Defining Neoliberalism," in *The Road from Mont Pèlerin* (B)

3. September 29
 - a. Richard Posner, *The Crisis of Capitalist Democracy* (B)
 - b. Richard Posner, "The Law and Economics Movement" (E)
 - c. Paul Krugman, "How Did Economists Get it So Wrong?" (E)
 - d. John Maynard Keynes, "The End of *Laissez-Faire*" (E)
 - e. John Maynard Keynes, "Poverty in Plenty" (E)

4. October 6
 - a. Slavoj Žižek, *First as Tragedy, Then as Farce* (B)
 - b. Karl Marx, Section I of *The Communist Manifesto* (E)
 - c. John Maynard Keynes, "A Short View of Russia" (E)
 - d. Antonio Negri, "Keynes and the Capitalist Theory of the State" (E)
 - e. Giorgio Agamben, "The Power and the Glory: Giorgio Agamben on Economic Theology" (E)

5. October 13
 - a. Ludwig von Mises, *Liberalism: The Classical Tradition* (B)
 - b. Ludwig von Mises, "The Limitation of Offspring" (E)
 - c. Warren Montag, "War and the Market" (E)
 - d. John Maynard Keynes, "Am I a Liberal?" (E)

6. October 20
 - a. Karl Polanyi, *The Great Transformation* (B)
 - b. Wendell Berry, "Two Economies" (E)
 - c. Wendell Berry, "The Idea of a Local Economy" (E)

7. October 27
 - a. Friedrich Hayek, *The Road to Serfdom* (B)
 - b. Friedrich Hayek, "The Use of Knowledge in Society" (E)
 - c. Rob Van Horn and Philip Mirowski, "The Rise of the Chicago School of Economics and the Birth of Neoliberalism," in *The Road from Mont Pèlerin* (B)
 - d. Keith Tribe, "Liberalism and Neoliberalism in Britain, 1930-1980," in *The Road from Mont Pèlerin* (B)
 - e. Yves Steiner, "The Neoliberals Confront the Trade Unions," in *The Road from Mont Pèlerin* (B)

8. November 3
 - a. Milton Friedman, *Capitalism and Freedom* (B)
 - b. Alfred Venn Dicey, "Lectures VII and VIII" from *Lectures on the Relation between Law and Public Opinion* (E)
 - c. C. B. MacPherson, "Elegant Tombstones: A Note on Friedman's Freedom" (E)
 - d. Ronald W. Crowley, "A Comment on Professor Macpherson's Interpretation of Friedman's 'Capitalism and Freedom'" (E)
 - e. C. B. MacPherson, "Interpretation vs. Criticism: A Rejoinder to Professor Crowley" (E)

9. November 10
 - a. Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (B)
 - b. Karin Fischer, "The Influence of Neoliberals in Chile before, during, and after Pinochet," in *The Road from Mont Pèlerin* (B)
 - c. *The Corporation* (F)
 - d. **Analytic Essay Due**

10. November 17
 - a. Michel Foucault, *The Birth of Biopolitics* (B)
 - b. Martin Heidegger, "The Question Concerning Technology" (E)
 - c. Michel Foucault, "The Subject and Power" (E)
 - d. Stuart Elden, "Governmentality, Calculation, Territory" (E)

11. December 1
 - a. Melinda Cooper, *Life as Surplus: Biotechnology and Capitalism in the Neoliberal Era* (B)
 - b. Nancy Fraser, "Feminism, Capitalism, and the Cunning of History" (E)

12. December 8
 - a. David Bollier, *Viral Spiral: How the Commoners Built a Digital Republic of Their Own* (B)
 - b. Rosemary Coombe and Andrew Herman, "Rhetorical Virtues: Property, Speech, and the Commons on the World-Wide Web" (E)
 - c. James McCarthy, "Commons as Counterhegemonic Projects" (E)

13. December 15
 - a. Antonio Negri and Michael Hardt, *Commonwealth* (B)
 - b. Warren Montag, "Imitating the Affects of Beasts" (E)
 - c. Antonio Negri, "Postmodern Global Governance and the Critical Legal Project" (E)
 - d. Antonio Negri, "Philosophy of Law Against Sovereignty" (E)
 - e. Andrea Fumagalli *et al.*, "Nothing Will Ever Be the Same: Ten Theses on The Financial Crisis" (E)

December 22: **Final Essay Due**