

RESEARCH HANDBOOK ON **Political Economy and Law**

Edited by
Ugo Mattei • John D. Haskell



Research Handbook on Political Economy and Law

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RESEARCH HANDBOOKS ON GLOBALISATION AND THE LAW

 **Edward Elgar**
PUBLISHING

Cheltenham, UK • Northampton, MA, USA

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Front cover illustration by © James W. Earl

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Published by
Edward Elgar Publishing Limited
The Lypiatts
15 Lansdown Road
Cheltenham
Glos GL50 2JA
UK

Edward Elgar Publishing, Inc.
William Pratt House
9 Dewey Court
Northampton
Massachusetts 01060
USA

A catalogue record for this book
is available from the British Library

Library of Congress Control Number: 2015943014

This book is available electronically in the [Elgaronline](#)
Law subject collection
DOI 10.4337/9781781005354



ISBN 978 1 78100 534 7 (cased)
ISBN 978 1 78100 535 4 (eBook)

Typeset by Columns Design XML Ltd, Reading
Printed and bound in Great Britain by TJ International Ltd, Padstow

RESEARCH HANDBOOK ON POLITICAL ECONOMY AND LAW

RESEARCH HANDBOOKS ON GLOBALISATION AND THE LAW

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Acknowledgements

This volume originated from a series of moments. In particular, the Institute for Global Law and Policy under the vision of David Kennedy, and the International University College of Turin spearheaded by Ugo Mattei, were instrumental in generating a critical mass of scholars experiencing similar anxieties and hopes – and I am deeply grateful to have had the opportunity to be part of these communities. Many of the authors in this volume participated in events and projects related to these institutions. The amount of sheer energy and time the authors dedicated to this collection is humbling, and it has been such an intellectually stimulating and personally gratifying experience to work together. My family, as always, was also very supportive. B.S. Chimni raised the original idea for this collection, and the continued encouragement and intellectual insights from Dan Danielsen, Jessica Fish, Richard Haskell, David Kennedy, Boris Mamlyuk, Ugo Mattei, Umut Özsü, Nikolas Rajkovic, and Akbar Rasulov made this collection actually come to life. Perhaps more than anyone else, the copy editors spent countless hours ensuring the materials were ready for publication, and I cannot sufficiently express my gratitude to the lead copy editor Jessica Fish, and assistant copy editors Shauncey Hunter, Jessica Setzer, and Justin Woolsey. The publishers at Edward Elgar, especially Ben Booth, Laura Mann, and Elizabeth Clack, were infinitely encouraging and patient throughout this process. Books often have dedications, and to the extent that such a thing matters, this collection to me would be a testament to the collective energy of the community that brought the collection together and the colleagues and students that keep making it all matter.

John D. Haskell

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1. Introduction

John D. Haskell and Ugo Mattei

The crisis that began with the ‘housing bubble’ in 2007 continues to haunt global governance. Taxpayer bailouts of large banks and austerity measures have not ameliorated the dire economic situation for populations around the world, and often heightened and spread dangers previously associated with decolonized and non-industrialized regimes. The rate of profit and growth continues to lag, the once so popular mantras of ‘free markets’, ‘individual entrepreneurship’, and ‘privatization’ are increasingly treated with suspicion, and distrust of the private and public sector seems at an all-time high in contemporary memory. Rather than address these growing challenges, the majority of official responses remain embedded within the very same mainstream conceptual logic that led to the current situation; the underlying dynamics and goals that shape the organization of production unscathed. The imaginative and institutionalized resistance to alternative ideological experimentation in turn tends to not only stifle creativity and naturalize entrenched socio-economic agendas (eg, the co-option of movements concerning anti-capitalist democracy, the commons, deep ecology), but pushes critics into ever more desperate measures (eg, reactionary European and US populist movements, militant Islamic cadres) or cynical apathy and quiet despair.

Even more troubling, while widespread reforms have been enacted with the purpose to mitigate the crisis, there is no consensus about what caused the conditions that allowed for the crisis in the first place, nor what policy directions would be best for the future. Consider the initial stages of the crisis itself. Was it due to the moral failure of consumers that spent lavishly on lifestyles they couldn’t afford? Or perhaps it was the fault of financial institutions willing to take on excessive risk to maximize short-term profits? Or possibly it was the government officials that succumbed to the overspending of populations and over-lending of banks in the hopes of placating their constituencies and ensuring reelection? Or was it a combination of these factors, the crisis at once a story of financial miscalculation, moral failure, and political ineptitude? And was it due to intentional or unintentional actions? To what extent was the crisis the result of neoliberal policies (eg, trade liberalization, privatization), and to the extent it might be, is this merely a situation requiring that excesses are tamed or does it point to intrinsic instabilities within the global infrastructure? Even if it was any number of these dynamics, a more fundamental question emerges: namely, why did these factors and conditions arise in the first place, and how might we simultaneously treat them in their individualized/contingent and structured/systemic specificity?

To identify the factors that gave rise to the conditions that facilitated the crisis leads to another level of problems about what should be done. It is one thing to identify parties and policies that might be at fault, but it is quite different from developing appropriate policy responses. On the one hand, even among constituencies which may agree on the causes of the crisis, there is no necessary agreement on the exact

parameters of reform or where to begin. Is it a matter of election reform, of strengthening labor unions, of reining in privatization of utilities, of changing leverage capacities of banks, of allowing state import substitution schemes? Or does it call for more drastic measures: to restructure the very incentivization structure of production, to limit capital accumulation, to scale back heavy industrialization, to build new institutional entities that engage in global redistribution efforts? And if we settle on a policy package, what are the unintended consequences of any reform? There is, for instance, no guarantee that a stronger state will necessarily mitigate inequality or promote more widespread prosperity or not be susceptible to siphoning the accumulation of social power. And perhaps there really are not the resources to sustain cosmopolitan lifestyles for an exponentially growing world population, whereby any attempt at redistribution underestimates its own unsustainability, which will only lead to future systematic crises. We are back to the conundrum of modernist ideology: the idea that unlimited growth is possible in a limited planet and that there is something innate to humanity which allows us to overcome any constraint, whether an individual overcoming unequal social opportunity through hard work or global popular consumption transcending shortages through technological innovations.

On the other hand, it is not simply a matter of getting the substance of reform right. Regardless of our ability to identify the most ideal courses of action, there is the problem of tactics – in other words, how to actually implement a given strategy. Consider the following scenario: a Nobel Prize-winning economist develops an analysis of how the crisis occurred and what to do about it. She writes her analysis in a paper, which is erudite, witty, and absolutely convincing, and she publishes it in a leading journal within her field. We might even say that her ideological commitments would be seen as ‘radical’ by any conventional source. In support of her publication, she travels around countries giving talks at universities and in the media pushing her positions. From even this privileged situation, how does that set of ideas actually get transformed into systematic action? How do we go from a position we hold to actually seeing that position implemented? Nor does it have to be a respected professor. The same is true for a social movement or even a political leader. It is very difficult to get things done, and the problem is well beyond any simple appeal to enlightened self-interest of the population or political will. In short, the tactics of reform are as important as the substance of the prescriptions themselves for understanding the nature of the crisis and what might be done about it.

The questions left in the wake of the crisis do not afford any simple answers, but there seem to be at least three shared agreements that are emerging to provide clues to future analysis. First, there is a growing consensus that the economic ideas of the last 40 or so years are no longer valid: trickle-down economics is a fantasy, there is no such thing as a free market, prices are not an adequate measuring unit, privatization is not a panacea for freedom, production cannot ignore environmental realities, and so forth. In other words, the neoliberal era, in either its German or American guises, may still hold sway in policy, but its track record has proven its fundamental logic to be by and large intellectually bankrupt. Second, any future analysis needs to move away from reified notions of the subjects of history (eg, individuals, states) and think through the conditions (eg, organizational configurations, ideational frameworks of interpretation) that allow these various actors and set the possibilities of their interests. And third, a

central problem to the future of global governance revolves around the twin concerns of 'inequality' and 'production'. In terms of inequality, this is not to indicate that scholars aspire to a world of homogenized interests and experiences. Quite the opposite: the problem with the current valorization of privatized consumption to direct governance is that it has actually led to fewer and fewer meaningful options for the majority of people, within and outside the more prosperous countries. Similarly, in relation to production, what marks the current moment from the Keynesianism of the 20th century is that scholars no longer feel that production is endless. The increasing interconnect-edness of the world has not only led to a pervasive rise in the cost of production, which has simultaneously resulted in lower rates of profit, but is beginning to come up against the limits of a social model of perpetual growth that ignores environmental (and political-economic) realities. The enormity of the problem and the demand for profound and systematic innovation marks our moment. If the invention and innovations of capital accumulation once fueled unparalleled advances for large segments of global populations (and especially, Western industrial regimes), its costs seem increasingly unmanageable for future governance.

This collection is an effort to begin thinking through these challenges in this spirit of excitement about the significance of what is at stake and the openness that the crisis has provided for rethinking what the conditions are and should be for the future of global governance. As noted in the title, *Political Economy and Law*, the materials in this collection offer you the opportunity to think about the crisis from 360 degrees. To speak of economic things, like private property, is to also speak about a type of legal institution that formalizes certain political values and social interests. We need to understand how these various conceptual and institutional fields work internally and in relation to each other, if we are to understand the increasingly complex world we live and work within. To help facilitate this analysis, the chapters are organized into the fundamental pillars of capitalism – finance/markets, labor/interests, and property/commodities. In addition, the authors have come together from economic, legal, and political economy departments to address the diverse aspects of the world we live in today. There is no political agenda or school of thought presented here. Rather, the aspiration is to provide you with a broad overview of the new thinking that is emerging out of the aftermath of the crisis across countries, disciplines, and policy fields.