



OÑATI INTERNATIONAL INSTITUTE  
FOR THE SOCIOLOGY OF LAW

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OÑATIKO LEGE-SOZIOLOGIAKO  
NAZIOARTEKO ERAKUNDEA

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INSTITUTO INTERNACIONAL  
DE SOCIOLOGÍA JURÍDICA DE OÑATI

WORKSHOP ON

# Realism, Institutionalism and Experimentalism: Ontological foundations for legal thinking concerning socioeconomic processes

7-8 May 2026

**COORDINATORS** **Diogo Coutinho** - University of Sao Paulo Law School  
**Matias Guiloff** - Diego Portales University Law School

**MEETING ROOM** Provincial Archives of Gipuzkoa – ground floor  
[Geolocation of the Historical Archives from the Antia Residence and passing through the Old University building](#)

## List of participants

**Aliya Moudud**

Mercy Center Inc.

**Brigitte Leal**

Universidad Adolfo Ibáñez (Chile)

**Title:** "The Limits of Adjudication: Four Challenges of Liability for Environmental Damage in Chile."

**Abstract:** "Since the 2012 establishment of Environmental Courts, environmental damage litigation in Chile has increased remarkably. However, the current institutional framework faces significant dilemmas that challenge the adequate exercise of liability actions. This article identifies four primary challenges associated to the adversarial model, standing limitations, causation complexities, and remedial uncertainty. The study argues that Chilean environmental proceedings remain rooted in civil litigation paradigms, which often clash with the polycentric nature of environmental harms. Furthermore, statutory constraints on standing and evidentiary hurdles in proving causal links complicate the pursuit of substantive justice. By analysing the lack of monitoring and the vagueness of restoration measures, the paper identifies focal points for legal reform. Ultimately, it suggests that institutional changes are necessary to support a more effective and collaborative regime for environmental remediation in Chile."

**Keywords:** Environmental damage liability; environmental courts; remediation; Chilean environmental law

**Caetano Patta Barros**

The Brazilian Centre for Analysis and Planning (CEBRAP)

**Title:** "Law and Institutions in the Business Strategies of Digital Platforms in Brazil."

**Abstract:** "Challenging orthodox economic and legal theories that conceive institutions as neutral frameworks, this paper examines how business strategies reshape power relations within broader social, political, and legal contexts. Drawing on case studies of the development of digital platforms in Brazil, the paper analyses how platform firms strategically mobilise legal and institutional arrangements in their operational, expansion, and consolidation strategies. Rather than treating law as an external regulatory constraint, the paper shows how legal frameworks and institutional processes function as key resources through which platforms structure markets and secure competitive advantages. Building on insights from critical legal scholarship and political economy, the paper argues for an approach that recognises the

co-constitution of markets and governance, whose particular forms are shaped by historically specific social, legal, and institutional configurations. Through an analysis of legal disputes, regulatory engagement, and institutional strategies in Brazil, the paper shows how private firms and public actors mobilise law and institutions to advance particular business models and shape market structures. It thereby contributes to debates on the legal foundations of platform capitalism in the Global South."

**Keywords:** Business strategies; digital platforms; law and political economy; sociology of law

### **Daniel Rodrigo Zubillaga Puchot**

Universidad de la República

### **Diogo Rosenthal Coutinho**

University of Sao Paulo (USP)

**Title: "Karl Polanyi and the Law."**

**Abstract:** "This paper is part of an on-going research project (the PoLAWnyi project) on the "hidden law" in the work of Karl Polanyi, especially in "The Great Transformation" (1944). Polanyi, who had a legal background, refers very little – and always incidentally – to law. However, in The Great Transformation, law is present (and ikey) when the author mentions concrete norms (the Speenhamland and many others) and in concepts such as institutions, embeddedness, self-regulating market, fictitious commodities, double movement, democratic planning, etc. The fact is that Polanyi thoroughly talks about the roles of law in his theory, without, however, doing so explicitly. Law in the double movement, law in the regulation and institutional organization of the market, law in embedding and desembedding processes, law in democratic planning, law in institutional change, law in laissez-faire are examples. The article unveils, maps, organizes, and discusses the legal facet of Karl Polanyi, specially his rich – historicized, politicized and institutionalized – narrative on the roles played by the legal apparatus in democratic and autocratic cycles, and in the process of de-regulation and re-regulation of markets. In doing so, underscores the underestimated "relevance of the legal" in the polanyian though."

**Keywords:** Polanyi; law; institutions; regulation; political economy

### **Eric George**

Law and Political Economy Collective

**Title: "Legal Realism, Charismatic Authority, and the Assertion of Private Power."**

**Abstract:** "For students of law and political economy, the legacy of legal realism is typically analyzed and retrieved through the identification of a critical fissure. In the 1970s, the law and economics movement salvaged the legacy of the legal realists, appropriating its anti-transcendental, empirical approach, re-deploying it to be compatible with behavioral economics. In so doing, they jettisoned virtually all of the norms that had classically motivated the realists analyses; the critique of concentrated economic power, the forfeiture of individual freedoms to large-scale enterprise and tyrannical government, and at least in the case of Veblen, a anarchistic suspicion of "predatory" individuals and institutions. Somewhat unsurprisingly, this makes Robert Lee Hale, of all the realists of the 1920s, to be the natural heir of the "leftist" critique of private power. This paper argues that the leftist retrieval of Hale is useful, but it tends to conceive of the "private power" as something wielded by firms. I argue that Hale's framework can be modified to theorize a wider range of private forms of power, including charismatic authority, thereby making legal realism an interesting framework for interrogating authoritarianism and fascism."

### **Jamee Moudud**

Sarah Lawrence College

**Title: "Distributional Struggles, History, and Method: Law and Political Economy versus Neoclassical Economics."**

**Abstract:** "In neoclassical economics wages are determined at the full employment level via the marginal productivity of labor which is derived from the production function. John Maynard Keynes,

however, showed that unemployment is the norm in capitalism. Following this view Joan Robinson (1937) argued that the norm in capitalism is the existence of disguised unemployment. Further, as a major contributor to the Cambridge Capital Critique, Robinson revealed the circular reasoning at the core of marginal productivity theory. So the question is, what determines the primary distribution of income between labor and capital? This paper seeks to explore how a historically-informed analysis offers a vital methodological approach to study what one might call a social conflict theory of distribution. It seeks to address this issue from the Law and Political Economy (LPE) framework by drawing on insights from the public sociology approach pioneered by Michael Burawoy and the economic sociology of law tradition. It will be argued that treating society as a political community, whose formal and informal (i.e. cultural) institutional structure distributes relations of power within it as the Original Institutional Economists and American Legal Realists discussed, invariably involves historically based contextual analyses."

**Keywords:** Law and Political Economy; primary distribution of income

### **Jean Paul Cabral Veiga da Rocha**

University of São Paulo (USP), Brazil, Law School

**Title: "Beyond Bitcoin and the crypto experiment: law and the money of the future."**

**Abstract:** "Technological innovation, rising inequality, and international financial crises in recent decades have called into question the current institutional monetary framework: Fiat money, or credit-money. One of the most important challenges was embodied by the creation and exponential growth of private cryptocurrencies, especially Bitcoin. The crypto proposal is not just a versatile and free payment option, nor is it just another form of speculation. Bitcoin is a political project: it promises a new monetary order without intermediaries and without the state. The advancement of cryptography, combined with a decentralized scheme of collaboration and incentives, has enabled the emergence of private global cryptocurrencies that aim to shield individuals from the ills of state currency: inflationary and distributive manipulations, recurring systemic crises, invasive technocratic regulations, and political persecution. But for now, Bitcoin's results do not bring it any closer to being a true money: extremely volatile, it is not suitable as a unit of account, proving more useful as a risky financial asset that has increased sixfold in value in the last three years alone.

Dissatisfaction with the current monetary order and with the libertarian crypto proposal raises the theoretical and practical challenge of imagining the money and credit of the future. Not just interesting but isolated experiments, such as social currencies and community banks, but a whole new institutional arrangement that reestablishes the links between finance and production, democratizing money."

**Keywords:** Money reform; Money experiment; Bitcoin; Financial Experiment; Money and Democracy; Money and Social Inclusion

### **John Charney**

Pontificia Universidad Católica de Valparaíso

**Title: "When Platforms Rule: The Privatization of Rights in the Digital Public Sphere."**

**Abstract:** "The digital transformation of the public sphere has rendered obsolete the legal frameworks conceived to regulate the publication of illegal content in the analogue era. The growing power of digital platforms has undermined the effectiveness of traditional intermediary-liability rules. In their place, two distinct legal models have emerged: an immunity regime established by the U.S. Communications Decency Act of 1996 (CDA) and a safe-harbor system consolidated in the European Digital Services Act of 2022 (DSA). This paper argues that, in addition to consolidating the dominance of large digital platforms, both models—despite their notable differences—have produced a global communications system in which private companies determine the conditions under which free expression and other fundamental rights are exercised and restricted in the digital environment, challenging long-standing principles of the international human rights framework."

**Keywords:** Digital Platforms; governance; freedom of expression; public sphere; intermediary liability

**John Haskell**  
University of Manchester

**Title: "A Balance Sheet Approach to GeoPolitical Forecasting."**

**Abstract:** "Digital technology and financialisation are increasingly identified in scholarship to drive and reflect global governance, and critical scholarship regularly highlights the political choices, entrenched (colonial) legacies, and (unequal) distributive choices embedded in these trends. The scholarship, however, often does not offer an in-depth analysis into the actual operational logic of these technologies nor how they might be specifically reappropriated toward more progressive ends. This paper adopts a balance sheet approach, that demonstrates that prediction is not only a governance gtechnique, but a fundamental infrastructure at the centre of global conflict, and unpacks some imoportant methodological and theoretical insights, and offers some directions toward verificatiabile forecasting. Like legal realists, the aim here is to take 'economic' method serious, from institutionalists, the aim is to take application seriously, and from the last decade, to take seriously the idea of 'financial techniques' and how they can be useful for counter-disciplinary engagement with law academics."

**Keywords:** Law and political economy; legal theory; balance sheetgs; financial forecasting

**Maj Grasten**  
Copenhagen Business School

**Title: "The Political Economy of Misframing: The Case of Gender-Related Violence in International Law."**

**Abstract:** "Gender related violence (GRV) continues to rise at epidemic proportions, despite decades of law and policy interventions. From the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979) to the European Union Directive on combating violence against women (2024) and the African Union Convention on Ending Violence Against Women and Girls (2025), international legal frameworks have proliferated, strengthened, and diversified. Yet this expanding body of law coexists with persistent - and in some contexts worsening - patterns of violence against women and feminized subjects. This paradox signals fundamental limitations in how international law approaches gender violence. This article proposes a Gender in Law and Political Economy (GLPE) approach as a tool for unpacking this paradox by showing how legal frameworks not only respond to GRV but also constitute the economic and social conditions that make violence possible, profitable, and often invisible. Current frameworks - from CEDAW's formal equality model to the Istanbul Convention's criminalization approach - appear comprehensive yet systematically obscure the economic dimensions of violence. Recognising GRV as both a product and a mechanism of structuring economic and political power is crucial, we argue, in any future policy or regulatory measures."

**Keywords:** Gender; Law; Political Economy

**Mario Schapiro**  
FGV Law School, Sao Paulo, Brazil

**Title: "Bleded Governance? Regulatory politics and the limits of green developmentalism in Brazil from a comparative perspective."**

**Abstract:** "The climate crisis directly impacts financial systems, as the transition to a low-carbon economy requires substantial investments that depend on financing from capital markets and banks. Additionally, extreme weather events and the devaluation of carbon-linked assets can result in significant losses for banks and insurers, potentially triggering a sector-wide crisis. Despite the magnitude of these challenges, regulators have primarily focused on shielding financial systems from such losses. At the same time, initiatives aimed at promoting credit for the green transition have received less attention. Following the lead of other jurisdictions, Brazilian financial governance has shifted towards a prudential regulatory framework, emphasizing defensive measures to protect the banking system. This study aims to explore the reasons behind this convergence, especially considering Brazil's history of state interventions in the financial sector, which would suggest a more proactive role in promotional measures, such as financing the green transition. Using qualitative research and process-tracing methodology, the study posits that regulatory politics account for these outcomes, namely, bureaucratic actions leveraging their power resources to achieve institutional goals. From this perspective, current institutional incentives cause regulators to prioritize prudential over promotional

policies, both in standard matters and climate-related issues; furthermore, this bias in favor of prudential policies is dynamically reinforced over time. This study contributes to a deeper understanding of green financial regulation in emerging economies and the influence of the climate crisis on the banking sector."

**Keywords:** Climate change; green developmentalism; banking regulation; climate finance; regulatory politics

### **Matías Guilloff**

Associate Professor, Diego Portales University Law School

**Title: "Background rules and institutions."**

**Abstract:** "In this paper, I will analyze the contemporary significance of background rules. These rules were first unveiled and developed by Robert Lee Hale, during the first years of the 20th century. Though they determine legal and economic outcomes, they are not the rules that first come to mind when thinking about the rules that structure a determined legal institution, and therefore they are termed background rules. For the case of employment and production, one such rule is, for instance, the prohibition of vagrancy. This rule has the effect of forcing people to work in order to gain the resources necessary to have a place in which to live. Currently, there are myriad of these rules that help to structure institutions as complex and crucial for the work of the economy as for instance financial markets. This paper aims at explaining these rules and identifying them and the effects of their operation within modern legal systems."

**Keywords:** Background rules; distribution; legal outcomes

### **Michael Wilkinson**

London School of Economics

**Title: "Authoritarian Liberalism and Modern Constitutionalism."**

**Abstract:** "This paper examines the relationship between liberal constitutionalism and authoritarianism, where authoritarianism is taken as a form of governing that operates in opposition to democracy. Approached historically, modern liberal constitutionalism emerges to constrain the democratic impulse by differentiating between an economic and a political realm and protecting the capitalist economy from interference through various counter-majoritarian devices. Although this imbalance can be partially remedied by turning to a republican tradition which values political equality, republicanism often proceeds by way of normative abstraction. If instead we turn to the idea of the constituent power and the material constitution of the modern state, we can reconstruct how liberal constitutionalism configures (and reconfigures) the dynamic between democracy and capitalism in an authoritarian manner."

**Keywords:** Constitutionalism; democracy; capitalism; law and political economy; republicanism; constituent power; authoritarianism

### **Paula Ahumada**

Universidad de Chile School of Law

**Title: "Governing through boundaries: Law and central banking in Brazil and Chile."**

**Abstract:** "Over the past decades, scholars across disciplines have sought to understand how the boundaries between the public and private spheres have shifted under financialisation. As finance has come to dominate capitalist economies, central banks have expanded their powers in unprecedented ways, revealing deep interdependencies between states and markets. While critical political economy has examined these transformations, it has tended to focus on macroeconomic governance, often underplaying its legal-institutional foundations. Conversely, legal scholarship has primarily focused on central bank independence and accountability, paying less attention to how law itself shapes public-private boundaries and their distributive and political consequences. This article addresses this gap by comparing Brazil (1988-2024) and Chile (1989-2020), analysing how their central banks have drawn and redrawn public-private boundaries in financial governance. Drawing on qualitative content analysis of public documents, the study explores how legal and institutional configurations shape distinct forms of state-market interdependence. Using institutional foundations as heuristic categories for understanding legal processes of boundary-making, this article compares how Brazil and Chile, despite adopting similar

policy paradigms, have drawn public-private frontiers in distinct ways, with significant political and economic consequences."

**Keywords:** Central banks; state and markets; institutions

### **Pedro Mouallem**

FGV Law School

**Title: "Legal Foundations of Power-Building: Brazil's financial governance across three crises."**

**Abstract:** "Crises are often moments of intense institutional change but also involve reconfiguring power relations. Urgency and high stakes create opportunities for implementing new ideas and the emergence of new actors. Over the last decades, crises in the financial sector have reshaped policy orthodoxy and expanded central banks' power worldwide. Yet the relationship between institutional change, power building, and its concrete consequences is not straightforward. The expansion of central bank power does not necessarily diminish the power of finance. It all depends on the complex interplay between institutional alternatives and how actors mobilise them. Drawing on socio-legal studies, this paper examines how the construction of power by central banks and financial actors is neither linear nor unlimited. The study focuses on the Brazilian case, analysing three critical junctures: the banking crisis of the 1990s (1994–2002), the impact of the 2008 global crisis (2008–2012), and the COVID-19 pandemic (2020–2021). The three periods reflect distinct institutional solutions with different political-economic outcomes, but all share a common feature: the persistent weakness of the central bank's lender-of-last-resort function. What explains these patterns of legal change? More importantly, what do they reveal about the power dynamics among public and private actors? This longitudinal case study reconstructs institutional changes across the periods through document analysis and previous interviews."

**Keywords:** Financial governance; power-building; legal change

### **Rodrigo Vallejo**

Associate Professor, Tilburg Law School

**Title: "An Experimentalist Law for the European Twin (Green and Digital) Transition."**

**Abstract:** "Fostering the green and digital transitions have become existential policy challenges. But the interdependencies of these challenges urgently requires their 'twinning' to succeed. Twin-Law elaborates an experimentalist, synthetic study that fills this gap, by interconnecting the EU 'Green Deal' and 'Digital Age' legal-regulatory models that are guiding the European twin transition. This will enable judges, policymakers, and researchers to dynamically appraise the powers and responsibilities of key co-regulatory authorities across the green/digital divide and further develop an integral European policy model that can inspire this 'twin transition' elsewhere in the world."

**Keywords:** EU Law; Experimentalist Governance; Green Transition; Digital Transition; Twin Transition

### **Sabine Frerichs**

WU Vienna University of Economics and Business

### **Samuel Tschorne**

Universidad Adolfo Ibáñez

**Title: "Social mobilization, democratic constitution-making and democratic decline in Latin America: key lessons from the failed Chilean experiments in Constitution-making."**

**Abstract:** "After years of democratic decline, Chile has tried to remake its constitutional framework in response to large social mobilizations. Just like many other Latin American countries, Chile has tried to replace its constitution because the political system has been persistently unable to address the many grievances that plague a highly unequal society. In contrast to neighbouring countries, however, mass mobilization against the Chilean political system was not led by organized social movements and, crucially, nor were the subsequent constitution-making processes led by a populist President interested in both overtuning neoliberal policies and strengthening the executive at the cost of Parliament and the

rule of law. However, given the marginal role of organized social movements and the deterioration of the party system (which made it utterly unable to gain any traction to conduct effectively the subsequent constitution-making processes), it is perhaps not surprising that Chilean constitution-making bodies were incapable to elaborate a sufficiently inclusive new constitutional settlement that could obtain enough support in a ratification referendum (put differently, in this conditions it is extremely difficult for any such body to be "representative"). This suggests that, in our present context, constitution-making is not a promising remedy to the crisis of Latin American democracies, because they either lead to the highly risky of strategy of empowering populist executives (deteriorating, thereby, the rule of law and representative institutions) or just fail to arrive to any workable new constitutional compromise able to gain sufficient political support to be ratified and implemented."

**Keywords:** Democratic decline; social movements; constitution-making; Inclusive turn

## **Sebastián Salazar Pizarro**

Universidad Alberto Hurtado

**Title:** "Current trends in Political Economy of Chilean post-constitutionalism: between constitutional change and conservative restauration."

**Abstract:** "The purpose of this article is to identify and critically explain the various components of political economy that shape the current state of constitutionalism in Chile. This analysis is substantiated by recent events in Chile, including a decade of constitutional trials that encompassed three constitution-making initiatives, the ramifications of public policy decisions implemented during the SARS-CoV-2 pandemic, and the process of conservative political restoration witnessed in the country, with a focus on issues pertaining to public security, immigration, and economic growth. To illustrate this point, the text goes on to discuss a number of issues, including the normalisation of constitutional states of emergency and militaristic responses to public problems, cultural disputes over the collective and the individual, the climate and environmental crisis, the institutional erosion of the public sphere and mistrust of private actors in the markets, as well as geopolitical and international economic challenges, among others. The proposal under discussion organises the elements identified according to their grouping into phenomena with local, regional and global implications that impact the deconstitutionalisation of the institutional system and Chilean civil society. Drawing upon a comprehensive review of the Chilean context, this study puts forward a series of reflections on the repercussions of these elements on neoliberal constitutionalism and liberal democracy. In addition, it delves into the evolution of authoritarian mechanisms, shedding light on their ramifications for contemporary political, economic, and social processes."

**Keywords:** Chilean post-constitutionalism; law and political economy, militarism, regulation, state of exception, liberal democracy