



THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH & INEQUALITY

Professor Katharina Pistor, Edwin B. Parker Professor of Comparative Law, Columbia Law School

Webinar

Wednesday, 08 September 2021

A Word From Today's Chairman



Mike Wardle

Director & Head of Indices

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Today's Agenda



- 15:00 – 15:05 Chairman's Introduction
- 15:05 – 15:25 Keynote Presentation – Professor Katharina Pistor
- 15:25 – 15:45 Question & Answer

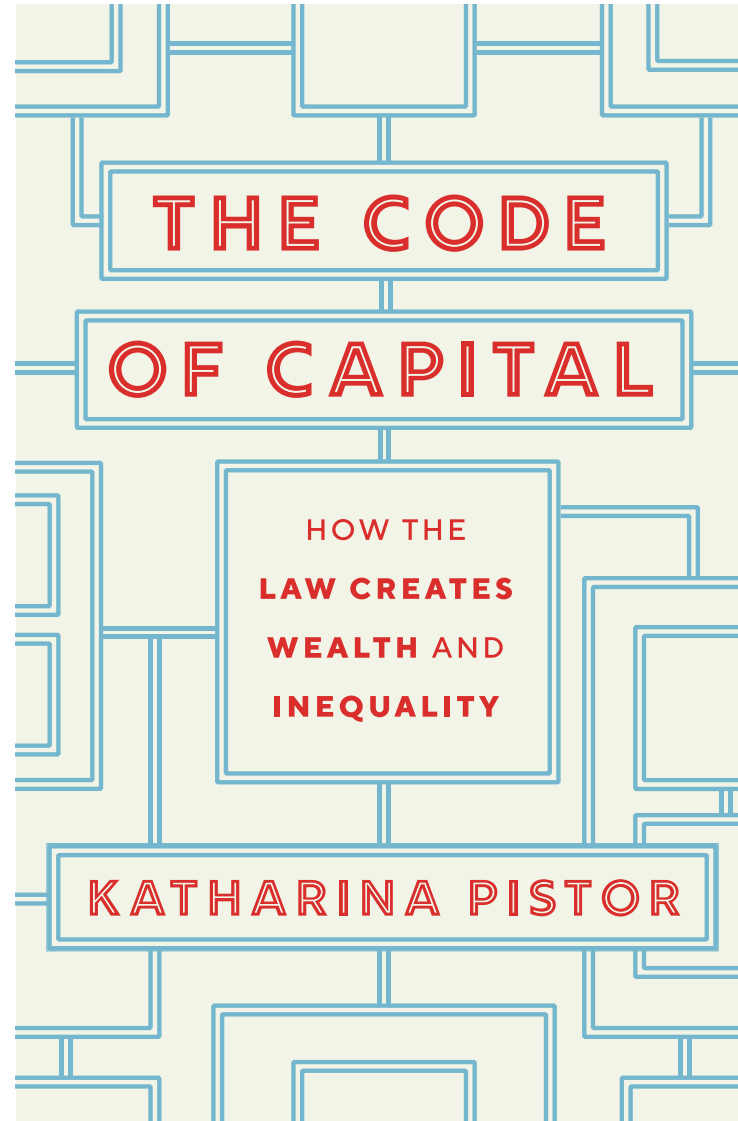
Today's Speaker



Professor Katharina Pistor

Edwin B Parker Professor Of Comparative Law

Columbia Law School



Core Thesis

Capital is coded in law

- Capital = wealth generating asset
- Law = Institutionalized means of coercion

Capital's Attributes

(3/4)

Priority

- Ranking

Durability

- Extension in time

Universality

- Extension in space

Convertibility

- Lock-in past gains

Legal Modules



Property Law



Collateral Law



Trust Law



Corporate Law



Bankruptcy Law



Contract Law

Examples of Capital Assets

Land

Firms

Debt

Know-how

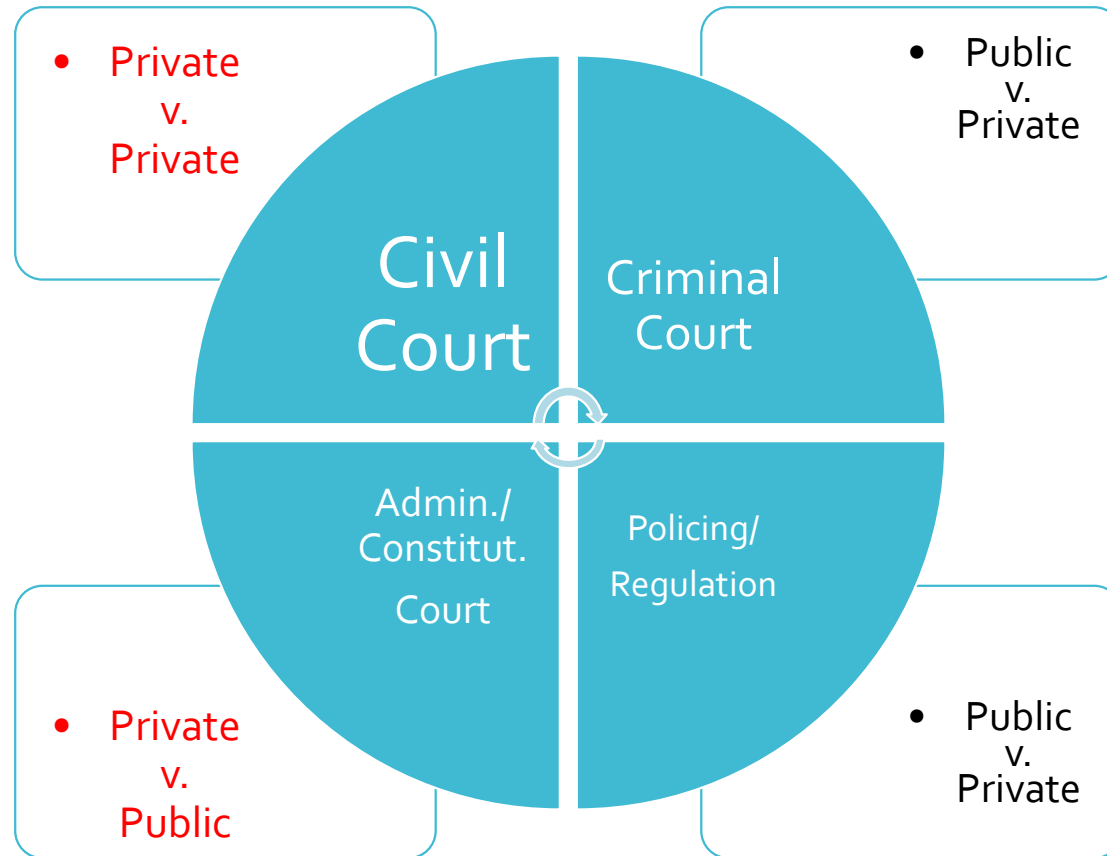
Conception of Law

The modern nation state has centralized the means of coercion (Max Weber)

It does not follow that access to the means of coercion is also centralized

The legal system institutionalizes access to the means of coercion: Who, how, for what purpose

Legal Access Channels



Private v. Private

Standing rules

- Individual or collectives
- Natural or legal persons

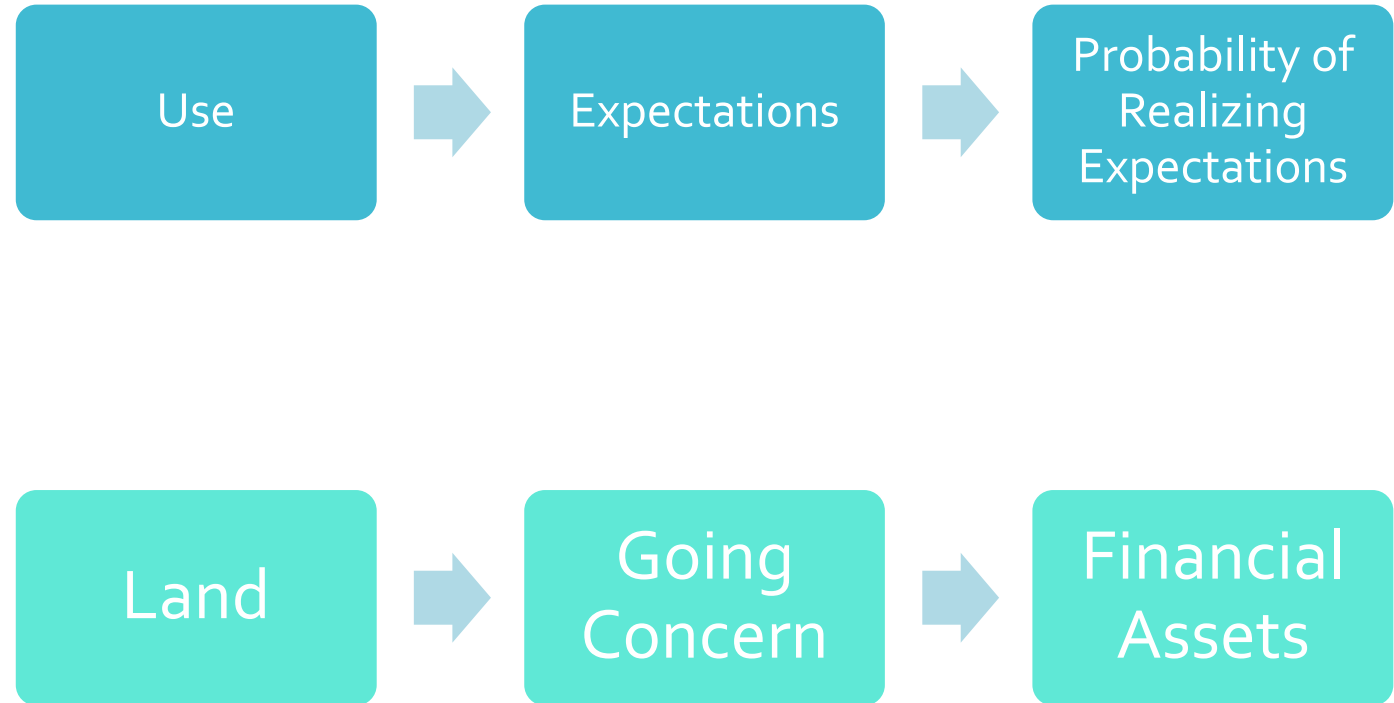
Permissible claims

- Property Rights
- Contracts
- Injury to person, assets,...

Available Remedies

- Property rules
- Liability rules

What is Property?



Bernard Rudden (1994)

The traditional concepts of the common law of property were created for and by the ruling classes at a time when the bulk of their capital was land. Nowadays the great wealth lies in stocks, shares, bonds and the like, and is not just movable but mobile, crossing oceans at the touch of a key-pad in the search for a fiscal utopia. (...)

In terms of legal theory and technique, however, there has been a profound if little discussed evolution by which **the concepts originally devised for real property have been detached** from their original object, only to survive and **flourish as a means of handling abstract value**. The feudal calculus lives and breeds, but its habitat is wealth not land."

Law is malleable

“The working rules of society” (Veblen)

Major/formal change

- Legislation
- New Precedent

Incremental change (formal or informal)

- Interpretation, Analogy, Gap-filling
- Drift, conversion, etc. (Thelen et al.)

Expanding **Private** Access to Coercion

Private v. Private

Choice of Law

- Choose from among different legal orders

Choice of Forum

- Choose among courts located in different jurisdictions

Private dispute resolution

- Option to use private arbitration

Universal Execution

- Assurance of coercive law enforcement even when these options exercised

The Masters of the Code

Knowledge of the law

Mastery of the law's (relative) malleability

Ability to translate economic interests into legal categories

Ability to repurpose legal categories for economic interests

Creativity

Persuasiveness

Elastic ethics



KATHARINA PISTOR

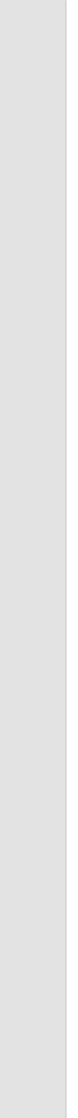
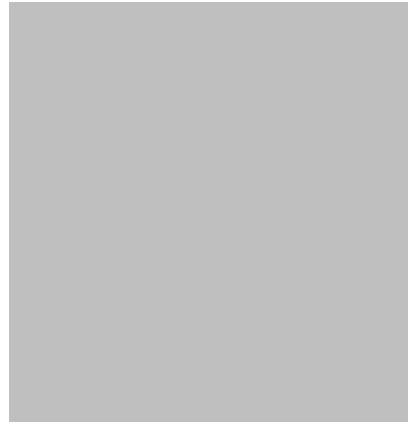
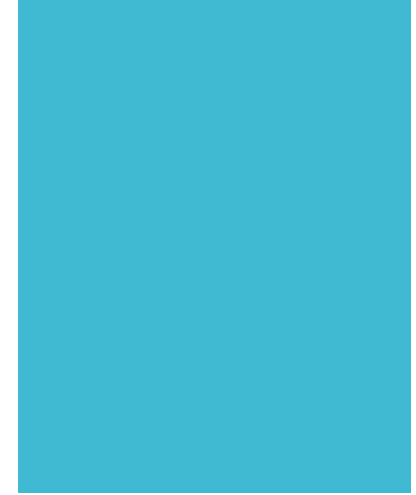
IL CODICE DEL CAPITALE

COME IL DIRITTO
CREA RICCHEZZA
E DISUGUAGLIANZA

POSTFAZIONE DI FRANCESCO DI CIOMMO,
SERGIO DI NOLA E MASSIMILIANO VATIERO

LUISS 

Global
Financial
Centers =
Global **Coding**
Centers



Global Law Firms (2020)



2020 Rank	Firm
1	Wachtell, Lipton, Rosen & ..
2	Kirkland & Ellis
3	Paul, Weiss, Rifkind, Wha..
4	Sullivan & Cromwell
5	Quinn Emanuel Urquhart ..
6	Davis Polk & Wardwell
7	Simpson Thacher & Bartle..
8	Cravath, Swaine & Moore
9	Weil, Gotshal & Manges
10	Skadden, Arps, Slate, Mea..
11	Milbank
12	Fried, Frank, Harris, Shriv..
13	Latham & Watkins
14	Gibson, Dunn & Crutcher
15	Debevoise & Plimpton
16	Paul Hastings
17	Willkie Farr & Gallagher
18	Cleary Gottlieb Steen & H..
19	Dechert
20	King & Spalding
21	Sidley Austin
22	Ropes & Gray
23	Vinson & Elkins

Legal Foundations

Rules governing the legal profession

- Independence
- Attorney-client privileges

Legal Organization

- Partnerships, Limited liability Partnerships, Professional Corporations, Limited Liability Companies

Scope of legal practice

- Local, national, global
- Mobility of legal services

Self-governance of legal profession

- Ethical standards; enforcement

Internal governance of law firms

- Pay, promotion tournament

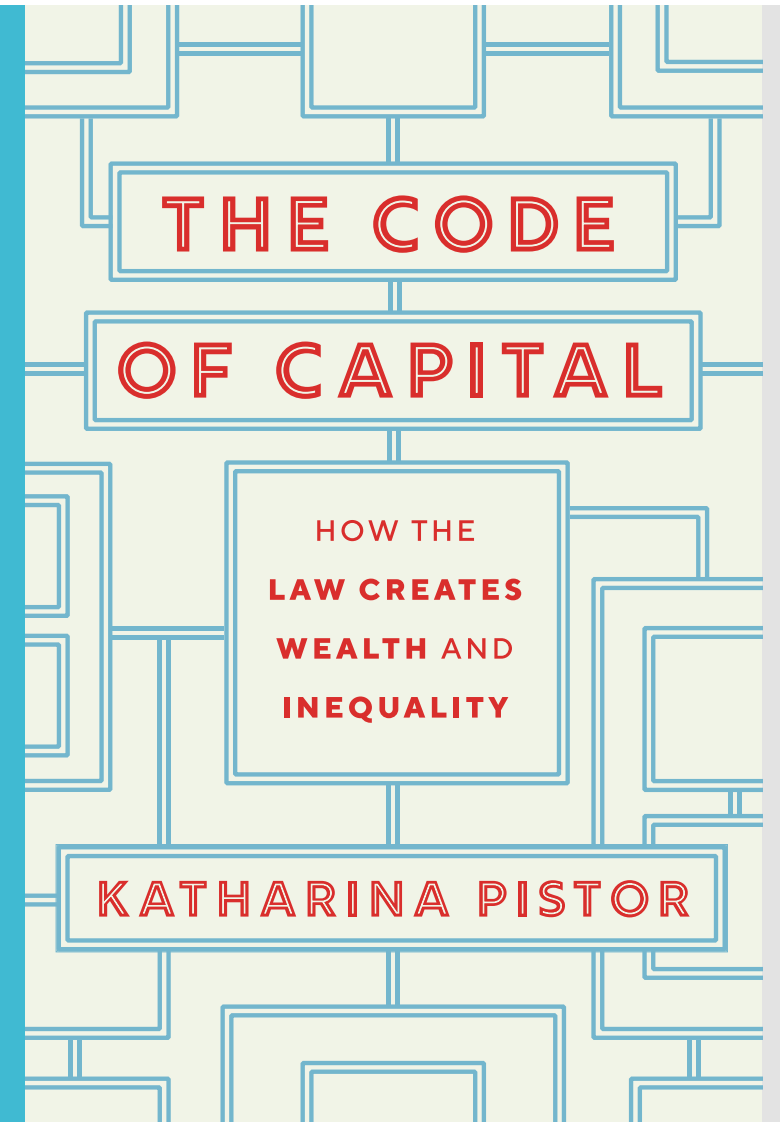
Concluding Thoughts

It takes a legal system
(or two) to code capital

Legal adaptation and
change is a prerequisite
for a dynamic economy
based on private
initiative

Giving capital primacy
risks eroding
democratic self-
governance through
law

Thank you







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Thank You For Listening



Forthcoming Events

- Tue, 14 Sep (15:00-15:45) Share Schemes For Non-Employees & The Gig Economy
- Wed, 15 Sep (15:00-15:45) Deforestation-Linked Sovereign Bonds – A Nature-Based Solution?
- Thu, 16 Sep (09:00-09:45) All Party Parliamentary Groups: What Purpose Do They Serve?
- Mon, 20 Sep (15:30-16:15) Deception & Truth Analysis For Investors

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