

Healing Big Fractures

Structural Changes for Equitable Growth (19 Feb 2021)

Katharina Pistor, Columbia Law School

Institutional Autopsy

- How (seemingly neutral) institutions contribute to inequality
 - **Pre-distribution**
 - Failure to re-distribute
- Political economy of **private** law
- Path forward
 - **Rolling back** legal privileges
 - Legal **empowerment**
 - **Eliminate state-discrimination**

Capital?

- Wealth generating asset

- **Priority**

- Ranking



- **Durability**

- Extension in time



- **Universality**

- Extension in space



- **Convertibility**

- Protecting past gains



Modern State & Law

- ***Enforceability***
 - Legal coding
 - Validation and enforcement
- Multiple dimensions of law
 - State – Citizens
 - Discrimination
 - Citizens – State
 - Rights, standing, resources
 - **Citizens – Citizens***
 - Bargaining power; transactional lawyers, coding skills

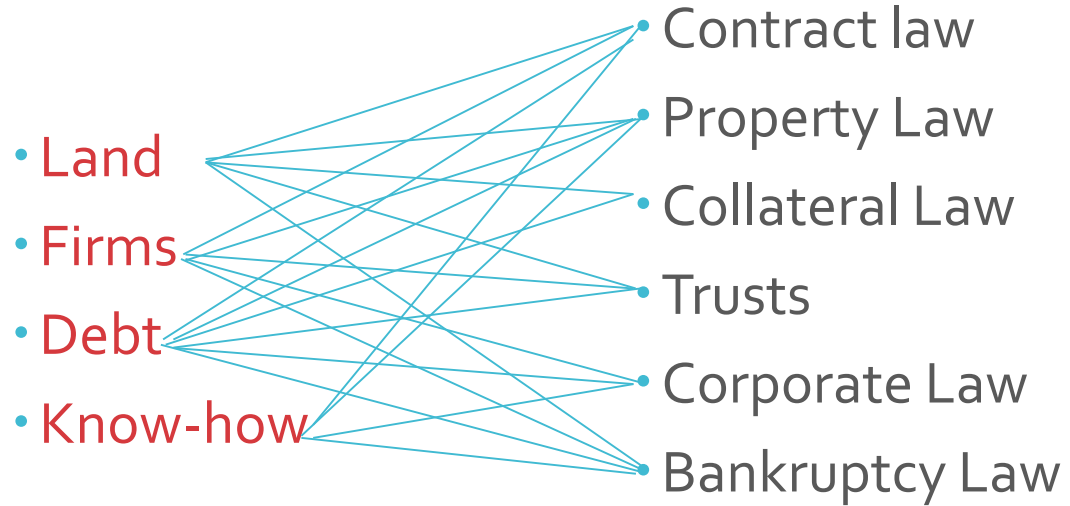
Legal Coding of resources as Capital

Resources

- Land
- Firms
- Debt
- Know-how

Legal Modules

- Contract law
- Property Law
- Collateral Law
- Trusts
- Corporate Law
- Bankruptcy Law



Access to Legal Code

- **Non-random**
 - Literacy
 - “Standing”
 - Resources
- **Expansion of “choice of law”**
 - Regulatory competition
 - Knowledge
 - Bargaining power

Counter Measures

- **Rolling back private law “steroids”**
 - Owner & asset shielding devices
 - “safe harbors”
 - Choice of law/regulatory competition
 - Private arbitration
- **Recoding project (legal empowerment)**
 - Eliminating state discrimination
 - Overt (abolition debate)
 - indirect (Cash fines, bail)
 - Strengthening *durability*
 - Legal Insurance against down-side risk
 - Property⁺
 - Liquidity
 - Strengthening “new” property (Reich)
 - **Durability** of state support

THE CODE

OF CAPITAL

HOW THE
**LAW CREATES
WEALTH AND
INEQUALITY**

KATHARINA PISTOR