

Theme Issue: Legal Geographies of Finance

Editors' Introduction
Environment and Planning A

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If the global financial industry has escaped unchastened from the 2008 collapse and its aftermath, its deep entanglement with the neoliberal state is clearly part of the explanation. Crisis-era scholarship has tackled the state-finance nexus with renewed vigor and creativity (e.g., Krippner, 2011), building on previous demonstrations that states have driven and been enlisted in financialization for decades (e.g., Arrighi, 2010[1994]; Gowan, 1999; Helleiner, 1994). However, scholars have only begun to take on the full institutional complexity of governance today, and how it is being reshaped around finance in many distinctive ways. This theme issue argues that more thoroughly engaging law and the legal is particularly crucial to developing a precise, politically powerful understanding of the state and its role in producing financial geographies.

One of this collection's contributions is empirical: the papers' shared focus on the US legal system provides an unusually fine-grained lens into a set of domestic

institutions and practices that wield global influence (Maurer, 1995; Riles, 2011).

Another contribution is theoretical: the papers combat narrowly mechanistic understandings of government regulation and other legal practices as merely "restricting" or "unleashing" financial accumulation. As has been shown perhaps most dramatically in relation to so-called "offshore" jurisdictions (Maurer, 1997; Palan et al., 2010), there is no "outside" the legal in contemporary capitalism. All financial processes are constituted in and through differentiated, overlapping, often competing and frequently contradictory geographies of legal space. Finally, the collection's contribution is, inevitably, political. Praxis-oriented understandings of relationships among law, states, space and finance require both situating the legal in relation to larger theories of capitalist development and excavating the role of law in particular financial practices. Notably, the precision of the papers in this issue illuminates how highly technical and place-specific legal practices have engendered financial structures that can "travel" and transform financial systems elsewhere. In doing so, they also suggest nodes and methods for resisting the growing power of finance.

The current collection engages a still-emerging but vital body of work on law and finance in critical geography. For example, Christophers (2014) has shown in the context of US anti-trust law how the law both defines and enacts the borders of particular markets. Barkan (2013) has examined the law's role in "territorializing space" in the context of multinational corporations and economic globalization. Pollard and Samers (2007) have considered how *Shari'a* law has influenced

expanding geographies of Islamic finance. Blomley's (e.g., 1994) work on law and property, while not explicitly situated in *financial* geography, has been foundational as the authors examine financial institutions' attempts to define and exploit new forms of property. More broadly, this issue speaks to generative convergences among financial geography (e.g. Christopherson et al., 2013; French et al., 2009; Lee et al., 2009), critical legal studies (Blandy and Sibley, 2010; Valverde, 2009), and the social studies of finance (e.g. Callon et al., 2007; MacKenzie, 2006). Like much of this literature, the papers here focus on processes and strategies of financial market (re)production – with, however, a more pronounced emphasis on concrete configurations of finance, space, power and law. In doing so, we aim to respond to calls for greater attention to the technicalities of law from critical geography (Barkan, 2011) and from critical legal studies (Riles, 2005).

Common Context: Financializing a Common Law System

Articulating a program of research that can bring together critical scholars working on law in different geographical contexts is an ongoing challenge. Beyond the general difficulties of uniting scholars working in the Global North and Global South, turning to law means confronting multiple legal "zones." Common law, civil law,¹ and religious law systems operate according to different rules and produce distinct

¹ Based on set legal codes and distinct from "civil law" used elsewhere in this collection, which refers to common law systems' division of law into civil and criminal spheres. In practice, many countries have hybrid legal systems draw on multiple "types" at once.

geographies. While, therefore, necessarily partial, this collection's focus on the United States has two key benefits. First, it allows the papers to collectively contribute to a concrete understanding of legal processes in one national context. Second, just as the United States has pushed neoliberal policies and financialization worldwide, US law has increasingly shaped the laws of other states around the globe (Dezalay and Garth, 1995), and is thus particularly important for understanding global capitalism.

The US's highly complex structure of law and government also demonstrates forcefully the interpretive advantage of a precise, processual approach that attends to the dialectical relationships between structures and their transformation. Like (and with) neoliberalization (Peck and Tickell, 2002) financialization has not destroyed, but rather reworked state-finance relationships, in ways that have increased the latter's size, power, reach and status as a governmental object. Understanding *how* these relationships have changed requires embedded, contextual investigation. As a common law system with a federal political structure, US governance requires an often-uneasy interplay between an accretionary, self-referencing and backward-looking body of case law and precedent, and a political structure that distributes legislative power among federal, state and local bodies.

The shared US context also raises more general theoretical arguments about, for example, what exactly constitutes "the legal." The authors take seriously the relative autonomy of legal, political and economic processes – in common law

systems and beyond – and the idea that law cannot simply be reduced to the means by which states justify and bolster contemporary capitalism and the status quo.

Rather, legal processes have their own distinctive temporalities, discursive formations, cultural practices and internal struggles. At the same time, legal and economic processes undoubtedly inflect one another. A history of economic upheaval and change has rendered US governance even more complex than when it started, including through transformations in civil law realms of particular importance for finance such as contract and property law. Finally, relationships among legal practices of various kinds are far from simple. The papers in this collection address a range of types, from legislation and policy to contracts, case law, property rights and litigation.

Within the issue, Teresa explores both sides of a conflict now raging in New York City housing: private equity firms' speculative manipulation of rent regulation, and community organizations' creative deployment of legal tools in response. Christophers and Niedt investigate why a Bay Area municipal government proposal to use eminent domain to rescue mortgages left "underwater" after 2008 provoked a major legal challenge from powerful financiers, and explore its broader significance as a struggle for jurisdictional control over financial value and risk. Kay documents how the US tax code, federal and state legislation, and traditional interpretations of property law have been altered to allow conservation easements: a privatized mechanism for protecting peri-urban land from development and, increasingly, for speculating on new kinds of "green" value. And Potts shows how US

conflicts and contracts law has come to enable economic elites to select the legal spaces that will govern their own transactions, bolstering financial power and the status of jurisdictions like New York. Despite the variation in topics, the papers develop several common themes: neoliberalism's discursive construction of contracts and civil law as a "private," deceptively non-redistributive form of governance; legal infrastructure as a necessary support for new kinds of "intangible property" and financial accumulation strategies; and jurisdictional competition as a major strategy for expanding financial and financial centers' power – and for producing highly uneven geographies of capital and risk.

"Private" Governance: Rule of Contracts

Despite its actual, and in many ways expanding, reliance on state interventions, neoliberalism's discursive valorization of unfettered individual economic action, self-regulating markets and the withering away of the bureaucratic welfare state has meant that many actors have pushed to expand the realm of "private" commercial over "public" law, even as (as Potts and Kay discuss in depth) legal actors themselves constitute the boundary between private and public, and law and "politics" (see also Blomley and Bakan, 1992). As several papers in this collection show, the boundary-creating functions of law have worked not only to categorize

but to *determine* the relationship between financial activity and state oversight. The papers particularly emphasize how neoliberal structures valorize the role of "private" contract (Foucault, 2008; Harvey, 2007). While happy to take advantage of "big state" structures, finance has strategically invoked the freedom of contract to defend itself against political challenge and to organize its (and our) world, sometimes even gaining the right for "sophisticated" players to write their own rules (as, for example, Potts demonstrates with choice of law clauses). Yet even when successful, such financiers should not be seen as having escaped the law, but rather as having reconfigured it to their own benefit.

Finance also invokes the "sanctity" of contract to order and protect its projections for the future. Because its stock in trade is fictitious capital, financial accumulation depends on betting on future conditions (Teresa). Financial actors argue that changing existing contracts imposes an unfair "political" burden on them (Christophers and Niedt). Such arguments have long been used to justify making predatory loans in boom times, and holding debtors to their commitments even after crashes render them absurd. Ashton (2014) argues that recent legal changes have further restricted debtors' ability to pursue legal remedies. Other covert forms of upwards wealth redistribution that neoliberal finance has effected while railing against the "political" redistributions of the US welfare state include, for example, tax write-downs for conservation easements – breaks that only pay off for the rich (Kay). Still, as Christophers and Niedt show in relation to the housing crisis, the

power of contract is neither absolute nor unshakeable, and law can at times function as a tool of resistance against financial power. Finance, not surprisingly, is particularly worried about the potential for crises to make politicians decide, as they did after the Great Depression, that public pain overwhelms certain contract rights and to reverse the direction of the redistributions that these legal-financial practices have effected.

"Intangible" Property Law and Financial Accumulation

Financial accumulation, in established and emerging forms, also depends critically on the legal protection of intangible, difficult property. The "commodification" of finance catalyzed by the rise of the stock market revolutionized US governmental treatment of property – notably in tax law – as it made intangible forms of "personal property" more significant for the rich than "real property" in land and buildings. Comparatively removed from physical constraints, financial property is close to a purely socio-legal construct. The proliferation of securitized debt vehicles and other intangible financial instruments in past decades has occurred primarily in the realm of law and contracts. Producing these new forms of property has required changes to existing property law, geared towards protecting financial value-in-motion. Most of the papers in this issue refer to opaque conventions of value appraisal upon which the ordering of financial property consequentially now depends (also see MacKenzie, 2006); all take up the risks and opportunities its intangibility presents.

For example, Potts, and in different ways Christophers and Niedt, consider how intangibility can make the "location" of financial activity ambiguous, permitting various forms of strategic jurisdictional experimentation.

The papers also consider how the temporality of financial accumulation, intangible property, and law intersect. Capitalist value-in-motion is always exposed to the threat of devaluation before it is realized, but finance can sometimes turn that threat into an advantage by determining exactly *when* fluctuations in value are officially recorded and "crystallized." Some of the legal battles discussed here hinge on financial players' dependence on state structures for letting value "float" through a crisis: forestalling official fixation/devaluation until the worst threat has passed (Christophers and Niedt, Teresa). Kay and Teresa both also discuss changing legal debates over the basic "nature" of property and property law's elaboration in response to economic change. The predominant US legal position that property is never just a "thing" but rather a "bundle" of legally-protected rights held against others (e.g. Macpherson, 1978), and established permissions for selling off particular rights within that bundle, have helped justify new forms of intangible property.

At the same time, law, property and temporality are now being combined in new ways. Horwitz (1979) argues that in early US legal battles, the proponents of a nascent industrial capitalism fought to overturn the common law protections of a stable agrarian economy and land order and replaced them with tools like eminent

domain that kept property relations legally open for reordering according to future economic needs. Kay's case of conservation easements is revolutionary in this sense because its proponents won a (highly remunerative) right to legally *extinguish* property parcels' openness to future change. One reason that this particular overturning of capital's accustomed temporal freedom has been so successful is that it is helping unlock another major accumulation frontier in intangible property: the legal transmutation of conserved (temporally fixed) real property parcels into engines for generating unconventional forms of value. Justified through new, legally supported environmental valuation techniques, intangible assets like offset carbon add new "green" speculation possibilities to the ongoing financialization of land and real estate.

From Intangible Property to Uneven Development: Jurisdictional Competition

Finally, no matter how central the role of law in constituting intangible financial property, the papers in this issue show that these processes always also produce eminently material – and differentiated – economic geographies, whether through shaping urban patterns of housing degradation and gentrification (Teresa, Christophers and Niedt) or in determining which peri-urban land is developed and which "preserved" (Kay). At the same time, these specific patterns of uneven development, and the legal-financial techniques that foster them, must all be understood in the context of jurisdictions' competition for investment and control of

economic activity. This struggle takes place at and across different scales. Financial strategies (e.g. offshoring) have long depended on exploiting regulatory and other legal differences across jurisdictions. Clark and Monk (2012), for instance, explore how contractual choice-of-law clauses order economic governance, and Potts pushes this analysis further to show that these clauses actually produce differentiated economico-legal territories. Christophers and Niedt show in the context of defining the "location" of debt that financiers also join powerful states like New York in fighting for the right to define jurisdiction itself. In the context of heightened austerity and competition for investment, neoliberal states have increasingly designed legal spaces to attract financial business. Differentiated jurisdictions, in turn, structure the uneven distribution of capital and power in the global financial system by bolstering the influence of some territorial configurations over others.

Conclusion

The papers collected here share an interest in elements of financialization's enabling conditions, strategies and struggles that are as vital as they are under-researched. All communicate a sense of urgency about the need to understand the links between

law, space and finance at a moment of increasing financial turbulence; epochal political, economic and environmental transformation; and mounting inequality.

This relationship could be unpacked in different ways than we do here – for example, through the topic of *illegality* – and across diverse geographies; we hope that this issue will provoke ongoing engagements and critiques. Ultimately, however, if the dynamics of financial power are to be altered in any way short of the complete overthrow of existing state structures, both the economic and the legal practices that sustain that power must be critiqued and contested.

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