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The Code of Capital. How the Law Creates Wealth and Inequality.

Pistor, Katharina. Princeton: Princeton University Press, 2019

[book review]

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I welcome it open heartedly: its cultural and academic innovation is yet another example of teaching law while touching hearts.

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The Code of Capital. How the Law Creates Wealth and Inequality. Pistor, Katharina. Princeton: Princeton University Press, 2019. ISBN: 978-0-69118-943-7 UK£29.95.

In “The Little King,” Salman Rushdie’s prize-winning take on corruption and the opioid crisis, as published in *The New Yorker* (July 29, 2019), the law is described as “an ass,” but a useful one:

The law is useful, in fact. It tells you who is the correct person you need to convince. Otherwise, you can waste money convincing people who don’t have the stamp. Waste not, want not. We are like this only. We know what is the oil that greases the wheels (Rushdie, 59, 2019).

The Code of Capital. How the Law Creates Wealth and Inequality is a prize-winning take on the usefulness of law confined to the international financial market. Katharina Pistor elucidates how the core institutions of private law – contract, property, collateral, trust, corporate, and bankruptcy law – are the building blocks of the financial system, including its newer financial instruments.

Pistor achieves the impossible. She dispenses with legalese and focuses on the substance, which she then explains in a language that is both informative and unthreatening to the financial novice (a category in which I include myself). Pistor brings together legal analysis that is interdisciplinary, historical, and comparative. She is compelling and never pedantic nor boring.

Like someone who once noted they could not be a Marxian because their Conscience determined their Being and not vice versa, Pistor makes a similar argument. You do not have to be a revolutionary to want to stop the capitalist march toward imminent collapse. Arrestingly, Pistor assumes the task of writing the preamble of a guide to leaders, including the unsophisticated financial and legal analysts, on how to assist them decyphering our current circumstances and devising a plan to avoid disaster. Financial crises are periodical but their impact, Pistor disputes, need not be feudal stratification. Capital improves everyone’s life in a multitude of ways. Assets such as land, gold, songs, are nothing without law. For instance, anything found can be used, but the ability to exchange the asset in any other way requires society’s acceptance. Acceptance is achieved through well-established rules, generally referred to as *private law*, which when broken, is enforced through litigation in the courts, for instance, through *public law*. The central issue raised by Pistor is that *private law* is partial to *capital*, not people, and disregards all societal consequences.

The Edwin B. Parker Professor of Comparative Law and director of Columbia Law School’s Center of Global Legal Transformation, Katharina Pistor, magisterially explains how *law* codes *capital* and thus, the existential ground with revolutionary potential. In other words, the coded capital pre-determines what Marxists would call the material conditions for social revolutions. *The Code of Capital* is an Amazon bestseller, thus potentially educating both masses and leaders. Not only does Pistor’s book enable the reader to gather depth of knowledge, until now limited to few experts, but it challenges the reader to embrace innovation. For my part, the challenge became to teach legal research imbedded in financial regulations, because that is the intellectual locus where the battle for the soul of our law students takes place.

Not since the advent of the Critical Legal Studies movement has the American legal academy seen something so brilliantly coherent challenge the status quo. In a highly readable manner, Pistor explains the current fountain of wealth – *capital* – and its accumulation in ever smaller numbers of corporate entities. We learn how derivatives work, what repos, swaps, and close-out netting are. We also acquire, if we do not already possess, a conscious. This seminal book raises deep concerns about the ability of capitalism to continue in a democratic society.

As long as *law* continues its private adventure in the form of contracts, trusts, or property, capital will embody new assets ensuring that capitalism as a basis of our socio-economic structure will continue to exist. But, would *public law* do its job and watch over both capital accumulation and distribution? Pistor contends that unchecked capitalist greed comes at a steep price for all. It feeds off democratic conscience. A German reviewer said that Pistor's book had no punchline. I beg to differ and invite you all to agree with me. The entire book is a punchline for our legal education – we all need to know how law works to make it work for us, as Rushdie would say. Globally, having ended up in prerevolutionary France three centuries later, for all in favor of liberal democracy, Pistor's book is a must read.

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