

1 The Code of Capital: How the Law Creates Wealth and Inequality

2 Katharina Pistor

3 A compelling explanation of how the law shapes the distribution of
wealth

4 Capital is the defining feature of modern economies, yet most people
have no idea where it actually comes from.

5 What is it, exactly, that transforms mere wealth into an asset that
automatically creates more wealth?

6 The Code of Capital explains how capital is created behind closed doors
in the offices of private attorneys, and why this little-known fact is one of
the biggest reasons for the widening wealth gap between the holders of
capital and everybody else.

7 In this revealing book, Katharina Pistor argues that the law selectively
"codes" certain assets, endowing them with the capacity to protect and
produce private wealth.

8 With the right legal coding, any object, claim, or idea can be turned into
capital – and lawyers are the keepers of the code.

9 Pistor describes how they pick and choose among different legal systems
and legal devices for the ones that best serve their clients' needs, and
how techniques that were first perfected centuries ago to code
landholdings as capital are being used today to code stocks, bonds,
ideas, and even expectations – assets that exist only in law.

10 A powerful new way of thinking about one of the most pernicious
problems of our time, The Code of Capital explores the different ways
that debt, complex financial products, and other assets are coded to give
financial advantage to their holders.

11 This provocative book paints a troubling portrait of the pervasive global
nature of the code, the people who shape it, and the governments that
enforce it.

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13 This well-written and deeply researched book should be essential reading
for anyone with a serious interest in the intersection of law and economics
and in understanding, in the words of the subtitle, how the law creates
wealth and inequality.

- 14 The term "law and economics" has come to mean to economists and conservative-leaning jurists the subordination of law to economics and its "natural" laws of supply and demand.
- 15 Providing a robust antidote to this type of economics-centric thinking, this book by a legal academic makes clear that the "code of capital" owes its power to law that is backed and enforced by the state.
- 16 The ability to create, preserve and pass on wealth is dependent on how the law governs contracts, property, trusts and corporations, and how it treats debtors and creditors (including in bankruptcy).
- 17 Not surprisingly, even in democratic societies, these laws systematically privilege capital over labor, shareholders over other stakeholders, and creditors over debtors.
- 18 While the focus is on the current globalized world of securitized debt, transnational investments, intellectual property, and even cryptocurrency, much of the analysis usefully entails looking back at how these areas of law evolved from feudal times through the Industrial Revolution and to the present, in which legal norms continue to privilege the rich and powerful.
- 19 Moreover, while the role of legislators and courts is not neglected, the analysis emphasizes how for the most part the applicable law developed at the hands of skilled private lawyers serving their merchant/corporate clients one transaction or investment at a time, and how increasingly disputes are increasingly resolved through private settlements and arbitration walled off from public scrutiny.
- 20 Thus, a key take-away is: "Law that is backed by the threat of coercive enforcement increases the likelihood that the commitments that private parties made to one another and the privileges they obtained will be recognized and enforced without regard to pre-existing social ties or competing norms and that these legal claims will even be respected by strangers.
- 21 As long as the threat of coercive law enforcement is sufficiently credible, voluntary compliance can be achieved without mobilizing it in every case."
- 22 The threat of coercive law enforcement and incentives to obey the rules diminish, however, in a globalized commercial world: "The legal protections capital enjoys are arguably the mother of all subsidies.
- 23 Rising inequality is the logical conclusion of a legal order that systematically privileges some holders' assets, but not others.
- 24 This is the case especially in a globalized world, in which intervention on the side of the less advantaged can be so easily punished by capital taking to the exit."

- 25 Last year's *We the Corporations* by Adam Winkler provided a masterful legal history on how corporations won important constitutional battles for their own "civil rights" in the Supreme Court over the past 200 years.
- 26 This book is equally ambitious in addressing how the rest of our common law regime has been shaped by corporate lawyers to advance the interests of corporations and their owners.
- 27 Together, they go a long way in explaining their dominance in law, society and, inevitably, politics.