

The LPE Critique of Law and Economics

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There is no such thing as a neutral methodology. Every tool we wield—whether an economic model, a legal doctrine, or a framework of critique—shapes the world at the same time as it tries to explain it. Law and economics claims scientific detachment in its pursuit of “efficiency” and pretends to float above politics. But it does neither. Beneath that technocratic façade, it smuggles in a vision of social life shaped by market hegemony and an erasure of the powerless. It does not simply describe society; it remakes society in the image of those who benefit most from the status quo.

So declares the law and political economy (LPE) critique of law and economics—a clarion call reminding us that methods are never just methods. They are vantage points on power that affect what we see and what we overlook. The LPE critique insists that economics is not a neutral science and that the law and economics approach to understanding society is neither apolitical nor inevitable.¹

It is a compelling critique because, at root, it is correct.

And therein lies the tragedy. For in stumbling upon this truth, the LPE movement has managed the remarkable feat of being simultaneously right and curiously unlettered. It has constructed an elaborate structure for critique without engaging with the discipline it claims to dismantle. Not because it cannot, but because it will not.² Seriously engaging with its object of criticism might force LPE to confront the messiness of actual

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¹ See, e.g., Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 *YALE L.J.* 1784, 1827–28 (2020); Angela Harris & James J. Varellas, *Law and Political Economy in a Time of Accelerating Crises*, 1 *J.L. & POL. ECON.* 1, 5–6 (2020); David Singh Grewal, Amy Kapczynski & Jedediah Britton-Purdy, *Toward a Manifesto*, *LPE BLOG* (Nov. 6, 2017), <https://perma.cc/6TFU-LH7H>.

² There is at least one exception. See generally David Singh Grewal, *The Epicycles of General Equilibrium Theory*, 86 *LAW & CONTEMP. PROBS.* 25 (2024). It is hard to find others.

scholarship rather than the convenient caricatures it traces across the literature.

This intellectual abdication would be merely amusing if it were not so corrosive for a new generation of law students.³ Here is a movement that claims to unmask power structures but remains willfully blind to its own exercises of academic powers—the power to dismiss without understanding, to critique without engaging, to remain proudly ignorant while claiming profound insight. It has, in effect, weaponized its own refusal to learn.

This is not a takedown. LPE's underlying critique about methodology and power remains valid. Rather, this is a challenge. For those among the LPE faithful willing to risk their certainty, willing to approach with genuine curiosity rather than predetermined conclusions, what follows is an invitation to understand the LPE critique with the rigor it deserves.

Now to the LPE critique itself.

It begins with a move as old as politics itself. Start with catastrophe. “We live in a time of rolling political, economic, social, and ecological crises.” So begins the opening salvo of one of the more successful presentations of the LPE cause.⁴ But from the first declaration, it tips its hand. This is not a call to sober inquiry. This is an incantation of urgency that primes the reader to seek not analysis but a savior. Fear creates an intellectual vacuum into which the critique steps in as the only possible response.⁵

The result is to preemptively disqualify alternative frameworks by making them appear complicit in the crisis itself. The rhetorical sequence is as old as Cicero:

- (1) Establish that everything is collapsing,
- (2) suggest that conventional tools are powerless to explain this, and
- (3) position yourself as the only possible solution.⁶

³ To whom I dedicate this Essay and advise not to be fooled by slogans or labels.

⁴ Britton-Purdy et al., *supra* note 1, at 1786.

⁵ See, e.g., *id.* at 1784 (“We live in a time of interrelated crises . . . ‘Neoliberal’ premises undergird many fields of law and have helped authorize policies and practices that reaffirm the inequities of the current era . . . This Feature offers a framework for . . . a new ‘law-and-political economy approach.’”). See generally Grewal et al., *supra* note 1 (similar).

⁶ In his *First Catilinarian Oration*, Cicero began by lamenting the collapse of public life (“O tempora, o mores!”), cast the Senate and other institutions as powerless to act, and then presented himself as the Republic’s indispensable savior. The move bears a striking resemblance to the same sequence on display here: catastrophe, impotence, and the sole new solution. See M. Tulli Ciceronis, *Oratio Prima*, in CICERO: IN CATILINAM I & II, at 1, 1.1–2.6 (H.E. Gould & J.L. Whiteley eds., 1943).

Having primed the reader with catastrophe, the LPE critique follows up with another hallmark of dogmatic critique: reducing a complex intellectual tradition to a single, rigid doctrine so that it may be more easily dismissed. Enter the so-called “Twentieth-Century Synthesis,”⁷ a vague, all-encompassing phrase that flattens decades of legal and economic scholarship into a single, convenient opponent. This is the straw man perfected: By collapsing vastly different traditions—from formalist efficiency theories to empirical institutional analysis—into one monolithic “Synthesis,” the critique ensures that it never has to engage with the strongest elements of its target, or indeed with any target at all.

For law and economics is not a single doctrine but a sprawling, contradictory, and often self-conflicted field. It is a mix of theoretical modeling, behavioral insights, empirical analyses, and normative debates about human well-being.⁸ Often, its policy conclusions are ambiguous, contingent, and deeply contested. It’s no grand neoliberal blueprint; it’s an ongoing, fractious reckoning of incentives, trade-offs, and the messy realities of institutional design.

And if you dive into the literature, you will find a field deeply engaged in the analysis of power and inequality at a level of sophistication beyond the LPE critique’s wildest comprehension, from exposing how financial markets routinely fail,⁹ to how giant asset managers distort competition,¹⁰ to how state-sponsored racial exclusion inflicted generational losses in wealth and education.¹¹ This is mainstream law and economics. Mistaking it for neoliberal sorcery is not just an error, it is an evasion. It’s a way to sidestep the hard work of engagement by pretending the entire field is nothing more than an ideological trick. This is what makes the LPE critique so frustrating. It demands to be taken seriously while refusing to do the same in return.

⁷ See Britton-Purdy et al., *supra* note 1, at 1784.

⁸ Compare R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 15–19 (1960), with GUIDO CALABRESI, *THE COSTS OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS* 24–129 (1970); compare ROBERT H. BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 50–115 (1978), and Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 U. PA. L. REV. 925, 933–44 (1979), with Jonathan B. Baker, *Recent Developments in Economics that Challenge Chicago School Views*, 58 ANTITRUST L.J. 645, 647–55 (1989).

⁹ See generally Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 AM. ECON. REV. 393 (1981).

¹⁰ See generally José Azar, Martin C. Schmalz & Isabel Tecu, *Anticompetitive Effects of Common Ownership*, 73 J. FIN. 1513 (2018).

¹¹ See Abhay Aneja & Guo Xu, *The Costs of Employment Segregation: Evidence from the Federal Government Under Woodrow Wilson*, 137 Q.J. ECON. 911, 947–51 (2022).

But perhaps I am being unfair. Perhaps, somewhere beneath the theatrical invocations of market worship and hidden power, the LPE critique offers something more than just a refusal to do the reading. Perhaps it offers a plan, a roadmap, a tangible alternative. Let's see how it fares in the trenches of actual policy.

Take the criminal justice system. Abolitionism in criminal law is a cause that rightly demands serious attention. The enduring pain inflicted by mass incarceration and racial disparities in policing cannot be dismissed with facile appeals to “deterrence” or “efficiency.” Yet in the hands of a critique that privileges sweeping proclamations over rigorous inquiry, even abolitionism becomes another rhetorical instrument—and a powerless one at that. For the abolitionist, it is not enough to highlight the brutality of prisons or the failures of policing; one must frame all existing approaches as irredeemably tainted.¹² Law and economics, in this caricature, is portrayed as a handmaiden of punitive excess, as though the entire discipline were a codification of oppression. Gone is any recognition that serious economic analysis grapples with the complexities of resource allocation, incentives, and human behaviors that shape real outcomes on the ground.

Or take labor law debates, in which the critique transforms every union-busting corporate strategy into proof that markets invariably crush workers,¹³ when in reality those markets have also been harnessed to secure living wages and meaningful labor protections. Rather than engaging the full scope of a literature that examines which legal interventions empower labor and which stifle opportunity, the critique reduces all mainstream approaches to soulless bean counting.

Or take environmental regulation, an area in which the critique conjures images of a planet on fire while dismissing the nuanced work that grapples with externalities, trade-offs, and long-term planning.¹⁴ It is so much easier to pretend that any careful cost-benefit analysis is a moral surrender than to explore how data and incentives might be harnessed to protect fragile ecosystems.

¹² See, e.g., Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 *YALE L.J.* 2497, 2534–36 (2023).

¹³ See, e.g., Kate Andrias, *Constitutional Clash: Labor, Capital, and Democracy*, 118 *NW. U. L. REV.* 985, 1007–12, 1042–64 (2024) (arguing that business interests have resisted labor's attempts to extend democratic values and freedom of labor).

¹⁴ See, e.g., Angela P. Harris, *Toward a Law and Political Economy Approach to Environmental Justice*, in *THE CAMBRIDGE HANDBOOK OF ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT* 453, 454–67 (Sumudu A. Atapattu et al. eds., 2021).

When confronted with this litany of issues—criminal justice, labor exploitation, environmental degradation—one might hope the critique would embrace the layered realities of policymaking, with some acknowledgment that the same “traditional” tools it disdains could be recalibrated for liberatory ends. Otherwise, what is it all for? Sooner or later, something needs be done. Critique must eventually give way to action.

And when it does, the existential question for the LPE critique will be this: Now that you’ve acted, how will you measure your own success? How will you know if your abolitionist framework reduces harm or deepens insecurity? If your labor protections empower workers or merely shift precarity elsewhere? If your environmental mandates drive technological adaptation—or, by dismantling existing infrastructure too hastily, inadvertently accelerate emissions and ecological collapse? How will you know whether anything you said was right or wrong?

These questions are so unfamiliar to the LPE critique because they belong to the domain of law and economics, the fundamental premise of which is that *action must be accountable to its consequences*, not just its intentions. A theory that cannot tell whether it has succeeded is not a theory at all. It is dogma. And if dogma is the goal, so be it. There is room enough in the world for that, too. But let’s not pretend that it belongs to the same intellectual tradition as serious inquiry, or that it seeks to alleviate suffering rather than simply fortifying its own moral architecture.

When every economic model is reduced to neoliberal dogma, when every efficiency analysis is rebranded as oppression, when the skeptical act of empiricism itself becomes suspect—what remains but to chant totalizing slogans and call it insight? LPE teaches us that “neoliberalism encases markets.” “Legal thought naturalizes inequality.” “Law structures power.”¹⁵ But the real work of reform lies not in crafty taglines but in the slow, unglamorous, and painfully inconclusive process of measurement and hard analysis. Reform does not end with naming a crisis. It does

¹⁵ See, e.g., Britton-Purdy et al., *supra* note 1, at 1807 (arguing that the law and economics movement and the focus on efficiency promoted inequality and encased the market system from democratic reform); QUINN SLOBODIAN, GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM 13–20 (2018) (arguing that “encasement” best describes neoliberalism’s attempt to encase capitalist markets against democratic movements); Jedediah Britton-Purdy, Amy Kapczynski & David Singh Grewal, *How Law Made Neoliberalism*, BOS. REV. (Feb. 22, 2021), <https://www.bostonreview.net/articles/jedediah-purdy-david-g-victor-amy-kapczynski-lpe/> (arguing that law plays a key role in shaping an imbalanced economic order).

not fear hard trade-offs. And it certainly does not confuse the imagined moral clarity of a proclamation with the far harder work of proving it true.

The LPE critique gets one thing right: Neoliberalism's greatest triumph has been to co-opt the language of economics and turn it into a rhetorical tool to entrench elites. But in refusing to take seriously the very methods it criticizes, LPE ensures only that when the time comes to *govern*—when trade-offs must be made, when consequences must be measured, when power must be held to account—it will have nothing to offer.