



JUDICIAL EDUCATION PROGRAM &
HENRY G. MANNE PROGRAM IN LAW & ECONOMICS STUDIES

Forum on Capitalism and the Rule of Law in the Woke Era

Wednesday, November 17 - Sunday, November 21, 2021
Charleston, SC



AGENDA

WEDNESDAY, NOVEMBER 17

- 4:00 – 6:00 pm Registration, *Second Floor West*
- 6:00 - 8:00 pm Welcome Reception & Dinner, *Market Street Circle*
(*Guests welcome*)

THURSDAY, NOVEMBER 18

All classes will be held in Ballroom: Live Oak

- 7:00 – 7:50 am Breakfast, *Magnolia*
(*Guests welcome*)
- 8:00 – 8:40 am Keynote Address / Lecture 1:
The Importance of the Rule of Law to Capitalism and the American Legal System

Edith Jones, Circuit Judge, US Court of Appeals for the Fifth Circuit

Reading Assignment:
Scalia, Antonin, "The Rule of Law as a Law of Rules." *The University of Chicago Law Review* 56, 4 (Fall 1989)
- 8:45 - 9:20 am Lecture 2: Wokeism: The Threat to Capitalism and the Rule of Law

Todd J. Zywicki, George Mason University Foundation Professor of Law, George Mason University Antonin Scalia Law School; and Senior Fellow, Center for Monetary and Financial Alternatives, Cato Institute

Reading assignment:
Zywicki, Todd, "Extending the Culture Wars," Cato Institute (Fall 2021)

Bhagat, Sanjai and Todd Zywicki. "Does the market care about ethical investment? It depends," *The Hill* (September 2021).
- 9:30 – 10:40 am Breakout Session 1:
Group A, *Cypress*
Julie A. Hill, Alton C. and Cecile Cunningham Craig Professor of Law, University of Alabama School of Law

Michael Munger, Professor of Political Science, Director of Undergraduate Studies of the Department of Political Science, Professor in the Sanford School of Public Policy, Professor of Economics, and Brass Fellow, Duke University

Group B, *Dogwood*

Susan E. Dudley, Director, Regulatory Studies Center, Distinguished Professor of Practice, Trachtenberg School of Public Policy & Public Administration, George Washington University

Vanessa Casada Pérez, Associate Professor of Law, Texas A&M University School of Law; Research Associate Professor of Agricultural Economics, Texas A&M University

Group C, *Jenkins-King Charles*

John Baker, Professor Emeritus, Louisiana State University Paul M. Hebert Law Center

Saura Masconale, Assistant Professor and Director of Outreach, University of Arizona Center for the Philosophy of Freedom

10:55 am – 12:10 pm

Lecture 3: Corporate Law: Environment, Social, and Governance (ESG)

Jonathan R. Macey, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law, Yale Law School

Commentary: Henry N. Butler, Henry G. Manne Professor of Law and Economics and Executive Director, Law & Economics Center, George Mason University Antonin Scalia Law School

Reading Assignment:

Macey, Jonathan R., "ESG Investing: Why Here? Why Now?," George Mason Law & Economics Research Paper No. 21-22 (October 14, 2021).

Bhagat, Sanjai and R. Glenn Hubbard, "Should the Modern Corporation Maximize Shareholder Value?," AEI Economic Perspectives (September 2020).

12:10 pm

Adjourn for the day

FRIDAY, NOVEMBER 19

All classes will be held in Ballroom: Live Oak

7:00 – 7:50 am

Breakfast, *Magnolia*
(Guests Welcome)

8:00 – 9:15 am

Lecture 4: The Essential Meaning of the Rule of Law

Thomas W. Merrill, Charles Evans Hughes Professor of Law, Columbia Law School

Reading Assignment:

Macey, Jonathan R. "ESG Investing: Why Here? Why Now?" George Mason Law & Economics Research Paper No. 21-22 (October 14, 2021).

Bhagat, Sanjai and R. Glenn Hubbard. "Should the Modern Corporation Maximize Shareholder Value?" AEI Economic Perspectives (September 2020).

AGENDA

9:30 - 10:40 am

Breakout Session 2:
Group A, *Cypress*
Group B, *Dogwood*
Group C, *Jenkins-King Charles*

10:55 am – 12:10 pm

Lecture 5: Crony Capitalism | Munger

Reading Assignments:

Munger, Michael C. and Mario Villarrel-Diaz, "The Road to Crony Capitalism," *The Independent Review* 23, 3 (Winter 2019).

Munger, Michael C., "A 'Good' Industrial Policy is Impossible: With an Application to AB5 and Contractors," George Mason Law & Economics Research Paper no. 21-30 (October 26, 2021).

Holcombe, Randall, "Creative Destruction: How Capitalism Undermines Rule of Law," George Mason Law & Economics Research Paper no. 21-23 (October 14, 2021).

Lecture 6: Where Have All the Capitalists Gone?

Richard Salsman, Assistant Research Professor of Political Science, Political Science Department, Trinity College of Arts & Sciences, Duke University

Reading Assignment:

Salsman, Richard M., "Anti-Socialism Isn't (Necessarily) Pro-Capitalism," American Institute of Economic Research (February 2019)

12:10 pm

Adjourn for the Day: Afternoon Study Session

SATURDAY, NOVEMBER 20

All classes will be held in Ballroom: Cypress/Dogwood

7:00 – 7:50 am

Breakfast, *Charleston Grill*
(Guests welcome)

8:00 – 9:10 am

Lecture 7: Education, Academia, and Free Speech

Gail Heiot, Professor of Law, University of San Diego School of Law

Lecture 8: The American Bar Association, the Lawyers Cartel, and Woke Law Schools

John O. McGinnis, George C. Dix Professor in Constitutional Law,
Northwestern University Pritzker School of Law

Reading Assignment:

Shepherd, George B. and William G. Shepherd, "Scholarly Restraints - ABA Accreditation and Legal Education," 19 *Cardozo Law Review* 6 (July 1998), 2091-2109, 2249-2257.

- 9:25 – 10:40 am Breakout Session 3:
Group A, *Cypress*
Group B, *Dogwood*
Group C, *Jenkins -King Charles*
- 10:55 am - 12:10 pm Lecture 9: Public Health, Pandemics, and the Rule of Law

Josh Blackman, Professor of Law, South Texas College of Law

Reading Assignment:
Blackman, Josh. "The Irrepressible Myth of *Jacobson v. Massachusetts*" *Buffalo Law Review* Vol. 70.

Salsman, Richard M. "Yes, Follow the Science - in Every Field" *American Enterprise Institute* (December 2020)

Lecture 10: Emerging Woke Issues in Employment Law
and Enduring Woke Issues in Occupational Licensing| Zywicki
- 12:10- 5:45 pm Afternoon Study Break
- 5:45 pm Refreshments
- 6:00 pm Keynote Address / Lecture 11: Should We Be Awakened from Capitalism?

George Priest, Edward J. Phelps Professor of Law and Economics, Yale Law School
- 7:00 pm Reception & Dinner, *Main Street Circle / Riviera Ballroom*
(Guests Welcome)

SUNDAY, NOVEMBER 21

All classes will be held in Ballroom: Live Oak

- 7:00 – 7:50 am Breakfast, *Magnolia*
(Guests Welcome)
- 8:00 – 9:10 am Lecture 12: Environmental and Energy Issues in ESG

Richard Morrison, Research Fellow, Competitive Enterprise Institute

Reading Assignment:
Morrison, Richard. "Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights." *Competitive Enterprise Institute: Profiles in Capitalism* (May 2021): 42-66.

AGENDA

Lecture 13: Woke-Style Activism in the Courts

Donald J. Kochan, Professor of Law and Deputy Executive Director, Law & Economics Center, George Mason University Antonin Scalia Law School

Reading Assignment:

Sharfman, Bernard S., "The Illusion of Success: A Critique of Engine No. 1's Proxy Fight at ExxonMobil," George Mason Law & Economics Research Paper no. 21-20 (August 9, 2021).

Hamilton, Alexander "The Federalist Papers : No. 78" *The Avalon Project* (2008)

9:25 - 10:40 am

Breakout Session 3:

Group A, *Cypress*

Group B, *Dogwood*

Group C, *Jenkins-King Charles*

10:55 - 11:25 am

Lecture 14: The Role of the Judicial Branch in Protecting Capitalism & the Rule of Law

John Baker, Professor Emeritus, Louisiana State University Paul M. Hebert Law Center

Reading Assignment:

Fuller, John L. and Wiston, Kenneth I. "The Forms and Limits of Adjudication." *Harvard Law Review*, 92, 2 (Dec. 1978).

11:25 am

Closing Remarks

11:30 am

Program Adjourns for Judges

11:45 am to 1:00 pm

Professors Roundtable: Brainstorming Session on Directions for Future Research and Opportunities to Engage with the LEC's CapLaw Project

1:00 pm

Program Adjourns for All