

Neo-liberalism, Multinational Enterprises, extraterritoriality, International Financial Institutions, Tax, Climate Change Human Rights and Democracy. Solutions: Gaia and rights for nature.

Introduction of the course

We will consider a number of issues which are linked by law and economics. We will see that the Western Anglo-American economic model is predicated on unlimited growth, but this means that the planet will become inhabitable for humans. The neo-liberal paradigm is based on strong property rights allowing the rich become powerful allowing inequality to thrive. The first part of the course will explain that much of the growth is organised by companies and specifically by Multinational Enterprises which have become rich and powerful so that they can avoid regulations and laws using extraterritoriality devices including tax avoidance, Human Rights violations and employment and environmental regulations. The second part of the course considers whether participation for ordinary people is important and explains what the consequences for the environmental emergency for humans. The third section of the course suggests reversing the neo-liberal economic model to ameliorate climate change so that humans should live in harmony with nature.

Lecture 1

This lecture considered the basis on the Anglo-American/EU basis of economic thought and different economic models. We will also consider whether ethical principles should be important in commercial law.

Lecture 2

This session will focus on the predominant model of companies which, in the West uses an economic system known as neo-liberalism. The success of companies is valued by the growth of profits leading to profit maximisation. There are other models. These will be explained. The tenets of the neo-liberal paradigm will be explained. Then the legal mechanisms will be explored. This includes contract, the lack of stakeholders other than shareholders leading to the belief that shareholders 'own' the company. The power of shareholders is boosted by the economic discourse that property rights are crucial in any economy.

Lecture 3

Will consider the structure of companies. The legal structures were deliberately designed to shift risk to creditors from investors/shareholders to increase GDP. In the 1880s companies were allowed to link companies together. However, MNEs are not a legal entity,

you cannot sue an MNE. A group of companies are linked by various mechanisms but each company in the group is legally separate. MNEs have different structures; vertical; horizontal; flat; franchises; contractual arrangements including supply chains. The law protects MNEs by allowing shifting assets between companies (subsidiaries). Creditors and crucially involuntary creditors are disadvantaged.

Lecture 4

MNEs have subsidiaries in different countries but each jurisdiction has different laws. Each company is incorporated in a jurisdiction. This allows MNEs to play 'jurisdictional arbitrage' which is when the MNE chooses the most advantaged national law to boost its profits or avoid regulations including tax, environmental, human rights or labour rights. There are many cases involving MNEs avoiding regulations and activists trying to sue for creditors. The Alien Tort Claims Act, UK and Dutch cases will be examined.

Lecture 5

MNEs and Tax; This session will consider the purpose of tax; is it an interference of liberty or is it a necessary shared levy for a civilized society? Many MNEs avoid taxes because they are focused on profit maximisation. We will consider some legal mechanisms used by MNEs including tax havens and EU law.

Lecture 6

The relationship between MNEs and human rights is problematic because human rights was originally conceived as helping individuals against the state or government. MNEs were not part of the framework. Now the UN Guiding Principles for businesses is part of the HR structure so we will examine it and consider whether this initiative should be expanded.

Lecture 7

The thesis of this session is that the neo-liberal paradigm, MNEs and the global institutions are weakening democracy or participation for people. The MNEs want a trading system which is culturally bland, so all markets are seamless. The Institutions are pushing Codes and protocols which suppress cultural differences. Simultaneously, some dispute resolutions systems (including ICSID) prioritise MNEs against States so that governments cannot set their priorities without incurring compensation for the MNEs. Governments have less policy space and the people cannot participate with policy.

Lecture 8

Many MNEs wish to use the neo-liberal economic paradigm which includes profit maximisation and unlimited growth. MNEs also use neo-liberal tenets to promote strong property rights and concepts like 'ownership'. These discourses and legal mechanisms are problematic in an environmental emergency. We will consider other solutions including Doughnut economics, the Gaia theory and legal personality for all animals, rivers and whether humans have a duty to the planet.

Lecture 9 and Lecture 10

Rather than strong property rights these lecture will consider whether the new jurisprudence on Rights for Nature will be a useful legal tool to reset our economic model by realising that humans are not in charge, rather humans should serve the Earth.