

The Legal Architecture of Globalization: Money, Debt, and Development

Professor Christine Desan
Spring 2019

An integrated political economy now covers much of the globe. This course focuses on the monetary structure of that phenomenon as a matter created and contested in law. Trade, extraction, exchange, debt, and economic development – for centuries, all have depended on money as their medium. By examining the changing legal design of money, we will study globalization as a material, ideological, and distributive event of enormous significance.

Early sovereigns prioritized domestic law, both public and private, in developing the rules that provide the basic matrix for exchange. Those rules created the mediums that carry value – including money, credit, and circulating capital. Nation-states today still claim sovereignty over those decisions; they are basic to self-determination and economic development. But the latitude for those decisions had changed. New monetary and financial relations now bind states, individuals, and other entities together and reconfigure the possibilities for their interaction. Tracking money takes us, in other words, from law at the local level to the law and legal regimes that determine how money flows at the international level.

Starting from the local level, we consider why and how political communities create money and financial institutions both for public ends (like defense and social welfare) and for the decentralized exchange of their members. That focus exposes how central money's design is to governance; we consider the design of money and the institutions around it as decisions that penetrate the character of modern political societies. In turn, we attend to the challenges that occur as different sovereign projects collide, interact, or compete with one another, and the character of the international orders that have resulted, including those of early Europe, the era of the Gold Standard, the Bretton Woods period, and the contemporary system.

We will focus, in particular, on the advent and development of modern money, a form of liquidity created by central banks, based on sovereign debt, and expanded by commercial banks and capital markets. We discuss how that bank-based money defines value, authority, and markets in the modern world, with attention to the way it has shaped and is shaped by international law and international financial institutions, its role as the medium for much of modern globalization, its implications for economic development, and its impact on global and domestic inequality.

Please note: As presently constructed, the course is Euro-centric. On the one hand, that emphasis acknowledges and conveys the dominance of western monetary forms and international law in the contemporary world. The spread of those forms and law becomes one of the issues we must track and debate. On the other hand, the emphasis means that we neglect non-European monetary designs and debates. In response, I am working to expand our

frame to recognize non-European alternatives and to develop comparative resources, for this and other classes. If you are interested in working on that project, now or in the future, please meet with me to talk.

A second challenge haunts those mapping the legal design of money and monetary globalization: given money's elemental importance to economics, that discipline dominates much of the writing about money, importing terms and assumptions that are unfamiliar to lawyers and law students. We will decode those terms and assumptions as we go – the course does not presume or require background knowledge in economics. Our focus, by contrast, is on the legal structures, conceptions, and practices that animate money, as well as debates about those phenomena. Having said that, the disciplinary differences are real and create difficulty for many of us. You are invited to flag terms or models that are confusing, in class and/or in office hours and we'll work to decipher what we need to do our own work.

Logistics: All readings will be available at the Copy Center and on Canvas. Class attendance, reading, and participation are required. We will use a panel system to organize class discussion, but your voluntary participation is always welcome and encouraged. The class will be screen-free: the use of laptops, cellphones, and tablets is prohibited, save by permission. Course evaluation depends on a final written exam.

We are fortunate to have the participation of a teaching fellow, Pascal McDougall. He will join in teaching class materials and leading exercises. He is also available each week for student meetings; his office hours are below.

For continued discussion, please come to meet with me in office hours or by appointment. Susan Smith can help you with questions about scheduling and course materials. Our office information is below.

Class Instructor:
Professor Christine Desan
Griswold 410
Office hours:
Monday, 2:00-4:00 and by appointment

Faculty Assistant:
Susan Smith (ssmith@law.harvard.edu)
Griswold 4 South

Teaching fellow:
Pascal McDougall
pmcdougall@sjd.law.harvard.edu
Lewis 123
Office hours:
Thursday, 12:00-2:00 and
Friday, 12:00-1:00
NOTE: Pascal's office hours are canceled on
Feb. 14-15, Feb. 28, and April 4-5.

Syllabus

Introduction and Overview

Class 1: Money, Debt, and Development: Challenges and Change in a Globalizing World

Opening Exercise (reading to be done before Class 1):

“When America Was a Developing Country: A Case Study on Money, Sovereignty, Development, and the International Order” – Handout

Thayer, Theodore. "The Land-Bank System in the American Colonies." *The Journal of Economic History* 13, no. 2 (1953): 145-159

Post-class Assignment (reading to be done after Class 1):

Cypher, James M. *The Process of Economic Development*. 4 ed. New York: Routledge, 2014, 3-34.

Frieden, Jeffrey A. *Currency Politics: The Political Economy of Exchange Rate Policy*. Princeton: Princeton University Press, 2015, 1-5, 220-228.

Harmes, Adam. “Institutional Investors and Polanyi’s Double Movement: A Model of Contemporary Currency Crises.” *Review of Int’l Political Economy* 8, no. 3 Autumn (2001): 389-391.

Class 2: Course Overview and Introduction to Money as a Legal Institution

Tobin, James. "Money." In *The New Palgrave Dictionary of Economics*, edited by Steven N. Durlauf and Lawrence E. Blume, 2008, 1-10.

Desan, Christine. "Money as a Legal Institution." In *Money in the Western Legal Tradition*, edited by Wolfgang Ernst and David Fox. Oxford: Oxford University Press, 2016, 18-26, 28-31.

I. A Baseline: Money and its Design in the Early Western World

Class 3: Commodity Money and Medieval Constitutionalism (the Law on Money Creation and Debasement)

Desan, Christine. *Making Money: Coin, Currency, and the Coming of Capitalism*. Oxford: Oxford University Press, 2014, 29-31, 58-65.

Ullman, Walter. *Principles of Government and Politics in the Middle Ages*. London: Methuen & Co, Ltd., 1966. Routledge 2010, pp.150-153, 154-155, 160,164-166, 167,170, 172-173, 183-186.

Oresme, Nicolas. *The De Moneta*, in *The De Moneta of Nicholas Oresme and English Mint Documents* (about 1355-1360). Translated by Charles Johnson. Medieval Texts. London: Thomas Nelson and Sons, 1956, chapters 1-6, 8, 12-13, 15, 20-24.

Class 4: Medieval Money, Development, and the Law on Exchange (Usury and Nominalism)

"The Song of the King's Taxes," in Coss, Peter, ed. *Thomas Wright's Political Songs of England: From the Reign of John to That of Edward II*. Cambridge: Cambridge University Press, 1996.

Provisions on Usury – Gratian's *Decretum* II 14. c. 1-4; Pope Alexander III, *Third Lateran Council*, Canon 25; Pope Urban III, *Decretal* X 5. 19. 10

Kaye, Joel. *A History of Balance, 1250-1375: The Emergence of a New Model of Equilibrium and Its Impact on Thought*. Cambridge: Cambridge University Press, 2014, 20-74 (excerpts).

Clarke, Peter D. "Western Canon Law in the Central and Later Middle Ages." In *The Oxford Handbook of European Legal History*, edited by Heikki Pihlajamäki, Markus D. Dubber and Mark Godfrey. Oxford: Oxford University Press, 2018, 265-284 (excerpts).

Murphy, Sean. *Principles of International Law*. 2 ed. St. Paul, MN: West, 2012, 3-10, 77-112 (excerpts).

The Case of Mixed Money, 2 James 1, 2 Cobbett's Complete Collection of State Trials 114 (Privy Council 1605).

Class 5: Sovereignty and International Law in an Age of Bullion: the Early Modern Settlement

Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University Press, 2004, 13-31.

Janis, Mark W. "Sovereignty and International Law: Hobbes and Grotius," in *Essays in Honor of Wang Tieya* (1993).

Grotius, Hugo. "Prolegomena." In *The Rights of War and Peace (De Jure Belli Ac Pacis)*, edited by Jean Barbeyrac and Richard Tuck. Indianapolis: Liberty Fund, 2005 [1625].

_____. *The Freedom of the Seas, or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade* Translated by Ralph Van Deman Magoffin. Edited by

James Brown Scott. Liberty Fund Online ed. New York: Oxford University Press, 1916 [1608], selections from chapters 1, 5, 8, 13.

Hobbes, Thomas. "Leviathan, or the Matter, Forme, and Power of a Common-Wealth, Ecclesiasticall and Civill." [London]: Andrew Crooke, 1651, selections from chapters 11, 13, 14, 17, 18, 24.

II. The Early Modern Quartet: Modern Money, Public Debt, Securities Markets, and Commercial Banking in the Era of European Expansion

Class 6: The Invention of Modern (Bank-based) Money

Christine Desan, "Reinventing Money: The Beginning of Bank Currency," in *Making Money: Coin, Currency, and the Coming of Capitalism*. Oxford: Oxford University Press, 2014, 296-298, 304-322.

Paterson, William *A Brief Account of the Intended Bank of England*. London: Randal Taylor, 1694.

Broughton, John. "A Letter to a Member of the Present Honourable House of Commons, Relating to the Credit of Our Government, and of the Nation in General." London: printed by A.R. and sold by J. Nutt, 1705.

Class 7: The New Public Law of Money: Public Debt and the Ascendance of Creditors' Rights

"Payment in Course" Notices, *the London Gazette*, Nos. 135, 245, 411 (1667, 1668, 1669), as reprinted in H. Roseveare, *The Treasury, 1660-1870: The Foundations of Control*. New York: Barnes and Noble Books, 1973.

Case of the Bankers (1700), in *A Complete Collection of State Trials*. Howell, T.B., ed. Vol. 14:64. London, 1812.

North, Douglass C., and Barry R. Weingast. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *The Journal of Economic History* XLIX, no. 4 (1989): 803-824.

David Kennedy, "Some Caution about Property Rights as a Recipe for Economic Development," *Accounting, Economics, and Law* 1, no. 1, Art. 3 (2011): 2-4, 7-9, 24-27, 32, 34-35, 38, 55.

Class 8: Securities Markets and the Accommodation of International Law: the Rise of Capital Out of the South Sea Debacle

North, Douglass C., and Barry R. Weingast. "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England." *The Journal of Economic History* XLIX, no. 4 (Dec. 1989 1989): 824-828.

Carlos, Ann M., Erin K. Fletcher, Larry Neal, and Kirsten Wandshneider. "Financing and Refinancing the War of the Spanish Succession, and Then Refinancing the South Sea Company." In *Questioning Credible Commitment*, edited by D'Maris Coffman, Adrian Leonard and Larry Neal. 147-168. Cambridge: Cambridge University Press, 2013.

Wennerlind, Carl. *Casualties of Credit: The English Financial Revolution, 1620-1720*. Cambridge, MA: Harvard University Press, 2011, 197-230.

Allain, Jean. *Slavery in International Law: Of Human Exploitation and Trafficking*. Leiden: Martinus Nijhoff, 2013, 10-13, 24-27, 35-36, 42-44, 48-51.

Vattel, Emer de. *The Law of Nations*. Translated by Joseph Chitty. Philadelphia: T. & J. W. Johnson, 1879, sec. 152
http://www.loc.gov/rr/frd/Military_Law/Lieber_Collection/pdf/DeVattel_LawOfNations.pdf

Class 9: The Development of Commercial Banking

Smith, Adam. "On Money" (banking excerpt) in *An Inquiry into the Nature and Causes of the Wealth of Nations*. Online Project Gutenberg, 1776.
<http://www.gutenberg.org/files/3300/3300-h/3300-h.htm>.

Bagehot, Walter. *Lombard Street: A Description of the Money Market*. New York: John Wiley and Sons, Inc., 1873, 1999.

Jones, Norman. "Usury". EH.Net Encyclopedia, edited by Robert Whaples. February 10, 2008. URL <http://eh.net/encyclopedia/usury/>

Foley v. Hill, 2 HLC 28 (1848).

Goodhart, Charles. *The Evolution of Central Banks*. Cambridge, MA: MIT Press, 1988, 29-46.

Class 10: Time-out – Contemporary Money-Making (a short introduction to the modern Fed, commercial banks, and the way they Interact)

Jackson, Andrew, and Benjamin Dyson. *Modernising Money*. London: Positive Money, 2013, 47-80.

Ricks, Morgan. "Money as Infrastructure." *Columbia Business Law Review* 3 (2018): 757, 772-787.

Desan, Christine. "Money Creation by the Federal Reserve: A Note on the Basics of Legal Authority" (January, 2019).

Mehrling, Perry. *The New Lombard Street: How the Fed Became the Dealer of Last Resort*. Princeton, N.J.: Princeton University Press, 2011, 11-17.

III. The "First Globalization": the International Gold Standard and its Legacies

Class 11: Modern Markets as a Radical Innovation: Power, Problems, and Commentary

Hirschman, Albert O. *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*. Twentieth anniversary ed. Princeton, NJ: Princeton University Press, 1997, selections.

Smith, Adam. "On Money" (paper money excerpt) in *An Inquiry into the Nature and Causes of the Wealth of Nations*. Online Project Gutenberg, 1776.
<http://www.gutenberg.org/files/3300/3300-h/3300-h.htm>

Marx, Karl. *Capital: A Critique of Political Economy*. Translated by Ben Fowkes. Pelican Marx Library. Harmondsworth, UK: Penguin Books, 1976, 919-922.

Angell, Norman. *The Great Illusion*. 1909. Reprint 2015, 3, 6, 11-14.

Roepke, W. "Economic Order and International Law." In *Recueil De Cours* 1954, 209-250 (excerpts).

Class 12: The Quartet on the Stage of Empire: Finance in the Ottoman World (i.e., imperialism as a monetary matter)

Eldem, Edhem "Ottoman Financial Integration with Europe: Foreign Loans, the Ottoman Bank and the Ottoman Public Debt," 13 *European Review* 431-440 (Part 1).

J. Bradley, Concurrence on Monetary Sovereignty, *Knox v. Lee*, 79 U.S. 457 (1870).

Koskenniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*. Cambridge: Cambridge University Press, 2004, 127-135.

Fidler, David P. "The Return of the Standard of Civilization." *Chicago Journal of International Law* 2, no. 1 (2001): 137-144.

Panel memos for Ottoman Class Exercise

Class 13: The International Gold Standard & the Geography of Development

Eichengreen, Barry. *Globalizing Capital: A History of the International Monetary System*. 2d ed. ed. Princeton, N.J.: Princeton University Press, 2008, 24-42.

Knafo, Samuel. *The Making of Modern Finance: Liberal Governance and the Gold Standard*. London: Routledge, 2013, 150-175 (excerpts).

Class 14: Sovereign Debt Under the Gold Standard: Practice and Law

The Palmerston Circular (1848), in DCM Platt, *Finance, Trade, and Politics in British Foreign Policy, 1815-1914*. Oxford: Oxford University Press, 1968.

Lienau, Odette. *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*. Cambridge, MA: Harvard University Press, 2014. *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, 1-10, 15-19.

Eldem, Edhem "Ottoman Financial Integration with Europe: Foreign Loans, the Ottoman Bank and the Ottoman Public Debt," 13 *European Review* 440-445 (Part 2)

Material on Class Exercise: Ottoman Debt Repayment

V. Necla Geyikdagi, *Foreign Investment in the Ottoman Empire: International Trade and Relations 1854-1914*. New York: I.B. Tauris Publishers, 2011, 44-45, 50-52.

D.K. Fieldhouse, *Western Imperialism in the Middle East 1914-1958*. New York: Oxford University Press, 2006, 4, 7-11.

Ottoman Citizen's Memo (assigned in class 12)

Class 15: Austerity under Pressure: the Classic Conflict between Discipline and Domestic Need

Kroszner, Randall S. "Is It Better to Forgive than to Receive? Repudiation of the Gold Indexation Clause in Long-Term Debt During the Great Depression" (draft, 1999).

The U.S. Gold Clause Cases:

Norman v. Baltimore & Ohio RR Co., 294 U.S. 240 (1935)

U.S. v. Perry, 294 U.S. 330 (1935)

Nortz v. U.S., 294 U.S. 317 (1935)

Class 16: The Bretton Woods Balance

Gold, Joseph. "Law and Reform of the International Monetary System." *Journal of International Law and Economics* 10, no. 2-3 (1975): 371-421.

Peet, Richard. *Unholy Trinity: The IMF, World Bank and their Borrowers*. 2nd ed. London: Zed Books, 2009, 74-78.

Keynes, John Maynard. "National Self-Sufficiency." *Yale Review* 21, no. 4 (1933); also published in *An Irish Quarterly Review*, vol. 22, no. 86 (1933), pp. 177-188.

Helleiner, Eric. "The Southern Side of Embedded Liberalism: The Politics of Postwar Monetary Policy in the Third World." In *Monetary Orders: Ambiguous Economics, Ubiquitous Politics*, edited by Jonathan Kirshner. Ithaca, NY: Cornell University Press, 2003, 55-65.

IMF Original Articles – I, IV, VIII, XV. For the complete Original IMF Articles of Agreement, see the Avalon Project, Yale Law School:
http://avalon.law.yale.edu/20th_century/decad047.asp#b3

IV. The “Second Globalization”: The Promise and Dangers of CapitalClass 17: Debating Development and the IMF

Oatley, Thomas. *International Political Economy*. 5th ed. Boston: Longman, 2012, 118-125, 128-129.

U.N. General Assembly, Declaration on the Establishment of a New International Economic Order, adopted 1 May 1974.

Bedjaoui, Mohammed. *Towards a New International Economic Order*. New York and UNESCO, 1979, 97-115.

Rist, Gilbert. "The Triumph of Third-Worldism." Chap. 9 In *The History of Development: From Western Origins to Global Faith*. 140-170. London & New York: Zed Books, 1997

Peet, Richard. *Unholy Trinity: The IMF, World Bank and WTO*. 2nd ed. London: Zed Books, 2009, 68-74.

Woods, Ngaire. *The Globalizers : The IMF, the World Bank, and Their Borrowers*. Cornell Studies in Money. Ithaca, N.Y.: Cornell University Press, 2006, 53-56.

Class 18: Monetary Adjustment, the IMF, and Austerity Resurgent: The Challenges of Economic Development

[Guest Speaker: Pascal McDougall, Harvard Law School]

McDougall, Pascal. Handout on Exchange Rates, the Money Supply and Austerity (2018).

Peet, Richard. *Unholy Trinity: The IMF, World Bank and WTO*. 2nd ed. London: Zed Books, 2009, 78-85.

Woods, Ngaire. *The Globalizers : The IMF, the World Bank, and Their Borrowers*. Cornell Studies in Money. Ithaca, N.Y.: Cornell University Press, 2006, 40-43.

Class 19: The Two Faces of Debt: Financialization and Conditionality

Cypher, James M. *The Process of Economic Development*. 4 ed. New York: Routledge, 2014, 647-663.

Kennedy, Duncan. "African Poverty." *Washington Law Review* 87 (2012): 205-216.

Krippner, Greta. *Capitalizing on Crisis: The Political Origins of the Rise of Finance*. Cambridge, MA: Harvard University Press, 2011, 86-105.

Class 20: Capital Rules: Capital Mobility as a Governance Issue

[Guest speaker: Professor Rawi Abdelal, Harvard Business School]

PLEASE NOTE: This class will be held on Thursday, April 4

Abdelal, Rawi and Laura Alfaro. 2003. "Malaysia: Capital and Control" HBS Case No. 702-040. Boston: Harvard Business School Publishing.

Abdelal, Rawi. 2007. *Capital Rules: The Construction of Global Finance*. Cambridge: Harvard University Press. chapters 1, 8, and 9.

Malaysia: Twenty Years after the Asian Financial Crisis

Reference:

Abdelal, Rawi and Laura Alfaro. 2002. "Capital Controls" HBS Case No. 702-082. Boston: Harvard Business School Publishing.

Optional:

Abdelal, Rawi. 2007. *Capital Rules: The Construction of Global Finance*. Cambridge: Harvard University Press. chapters 2 and 3.

Class 21: Instability at the Core: The Financial Crisis of 2008

Ricks, Morgan. "Regulating Money Creation after the Crisis." *Harvard Business Law Review* 1 (2011): 76-109 (excerpts).

Ricks, Morgan. *The Money Problem: Rethinking Financial Regulation* 93-101 Chicago: University of Chicago Press, 2016, 93-101.

Blyth, Mark. *Austerity: The History of a Dangerous Idea*. New York: Oxford, 2013, 21-45.

Class 22: The "Judicialization" of Sovereign Debt: Bonds, Courts, and Financial Centers as Authors of Law

Argentina's Collapse: A Decline without Parallel, *The Economist* (Feb. 28, 2002), <http://www.economist.com/node/1010911>.

Buchheit, Lee. "The Role of the Official Sector in Sovereign Debt Workouts." *Chicago Journal of International Law* 6, no. 1 (2005): 333-341.

NML Capital, Ltd. v. Republic of Argentina, 699 F.3d 246 (2d Cir. 2012).

Ukraine v. Law Debenture Trust Corporation P.L.C. [2018] EWCA Civ 2026.

Class 23: Wealth and Inequality: Debating Distribution in a Financialized World

Piketty, Thomas. *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge: Harvard University Press, 2014:

Reading 1 (on inequality) pp. 20-27.

Reading 2 (on public debt and central banking) pp. 540-553, 569-570.

Krippner, Greta. *Capitalizing on Crisis: The Political Origins of the Rise of Finance*. Cambridge, MA: Harvard University Press, 2011, 27-34, 39-41, 50-52.

Blyth, Mark. *Austerity: The History of a Dangerous Idea*. New York: Oxford University Press, 2013, 45-50.

Scheve, Kenneth, and David Stasavage. *Taxing the Rich: A History of Fiscal Fairness in the United States and Europe*. Princeton: Princeton University Press, 2017, 1-23. (Graphics available at [URL](http://www.princeton.edu/~krscheve/) .)

Class 24: Globalization as a Challenge of Governance