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

Professor Christine Desan
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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


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


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


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)


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


*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


____________. *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


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


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


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


Class 9: The Development of Commercial Banking


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


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


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


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

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


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


Panel memos for Ottoman Class Exercise

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


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


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


Ottoman Citizen’s Memo (assigned in class 12)

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


The U.S. Gold Clause Cases:


Class 16: The Bretton Woods Balance


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](http://avalon.law.yale.edu/20th_century/decad047.asp#b3)

IV. The “Second Globalization”: The Promise and Dangers of Capital

Class 17: Debating Development and the IMF


Class 18: Monetary Adjustment, the IMF, and Austerity Resurgent: The Challenges of Economic Development
[Guest Speaker: Pascal McDougall, Harvard Law School]


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


**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


Malaysia: Twenty Years after the Asian Financial Crisis

Reference:

Optional:

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


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


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


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

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


**Class 24:** Globalization as a Challenge of Governance