Description:
Every political community faces an elemental challenge: how will it mobilize resources for its own use? Just as importantly, how will it enable individuals to measure and move value between themselves? Modern societies have responded by making and managing money. Debates over money's creation are therefore foundational to governance and they explode in formative decades. In the United States, determinations about money during the Critical Period and early Republic (1780s and 90s), the 1860s, and the 1930s defined federal and state authority, set the terms for economic development, and drew the line between public and private activities.

The constitutional work continued beyond those periods, as Americans contested decisions about money's design and distribution. Their efforts shaped and reshaped the state and federal roles (federalism), configured the character of public obligation (sovereign immunity & the Contracts Clause), and defined the reach of congressional authority (Article I and enumerated powers). The design of money also became a terrain on which the federal government and private actors fueled the rise of certain industries including banking, experimented with the corporate form, and improvised a powerful administrative state. We take the constitutional drama forward to the last decade, reaching the financial crisis and the profound public policy challenges we face, including such issues as the relationship between finance and inequality, credit allocation and the unbanked, and the independence and accountability of the Federal Reserve.

Course requirements:
Insofar as money creates particular ways to move material resources, it is an institution of governance used by both public and private actors. Our knowledge about money as an institution of governance is, however, comparatively small. The course maps that territory with a focus on U.S. development and dynamics. The course also enlists student participation in illuminating the existing territory.

(1) Course reading and class discussion are integral to that goal. Participation is therefore an essential requirement, and comprises 25% of the course grade. We will generally reach the readings for each class after an introductory lecture on background, and will discuss them the following day. Note that, while the readings below include links to online copies of readings, the class materials, available on Canvas and at the Copy
Center, include edited versions of the readings. You are only responsible for the reading the edited versions.

(2) The last four classes have been set aside to discuss current policy issues. For optional course credit (25%), students are invited to work in groups (1-4 students) to design and teach those classes. The listed readings provide background, and students will meet with Professor Desan to plan the class they teach. The preparation will include the drafting of some material by students individually.

The public policy topics identified on the syllabus in classes 20-23 (and associated readings) are provisional. Student groups may suggest a different topic and, with approval, the class will concern that subject instead of one listed below.

Students should inform the instructor by Friday, Sept. 29, if they would like participate in the public policy classes.

(3) The balance of the evaluation is by exam. By default, the exam result counts for 75% of course grade. For students who choose to work on a class, the exam grade counts for 50% of the final grade.

Course information:
Professor Christine Desan, G410
Office Hours: Tuesdays, 2 – 4 p.m.

For appointments, contact:
Susan Smith, Griswold 4S
ssmith@law.harvard.edu
Syllabus:

I. Governing at the Material Level

Class 1: The Dollar as a Democratic Medium
Opening Exercise: The Civil War as a Monetary Challenge

Post-Discussion Reading:
The Legal Tender Cases
Knox v. Lee, 79 U.S. 457 (1871)
Parker v. Davis, __________

Class 2: Money: the Basic Design

Cotton Mather, "Some Considerations on the Bills of Credit Now Passing in New-England" (1691) in Colonial Currency Reprints 189-196, edited by Andrew McFarland Davis (Boston: John Wilson & Son, 1910), at URL


Class 3: Money: the Modern Design (a very brief introduction)


Optional: C. Desan, A Note on the Federal Reserve’s Power to Power Money, 12-16

II. Experiments with Money: Economic Development, Sovereignty, and the Contest over Federalism (1690-1865)

Class 4: Money and Self-Determination -- The Colonial Experience


William Douglass. "A Discourse Concerning the Currencies of the British Plantations in America" (1740) In *Colonial Currency Reprints*, edited by Andrew MacFarlane Davis (Boston: John Wilson & Son, 1910) at URL.


**Class 5: Money and Nation-building – the Revolution and the Constitution**


Benjamin Franklin, "Of the Paper Money of America” (1780?), in *The Papers of Benjamin Franklin*, Digital edition, URL.


U.S. Constitution, Art. I, Secs. 8 & 10

**Class 6: The New Federalist Approach to Money: Public Debt and National Banking**


Alexander Hamilton to Edward Carrington, May 16, 1792, at Founders Online, National Archives, at [URL](#).

**Class 7: Revising Public Obligation: The Contracts Clause and Article I, Sec. 10 Fellow Travelers**

*Chisholm v. Georgia*, 2 U.S. 419 (1793)

*Fletcher v. Peck*, 10 U.S. 87 (1810)

*Craig v. Missouri*, 29 U.S. 257 (1837)

**Class 8: State Development Strategies in an Illiquid World: Banks and Corporations**


*Dartmouth College v. Woodward*, 17 U.S. 518 (1819)

*People v. Manhattan Company*, 9 Wend. 351 (Sup. Ct., NY, 1832)


**Class 9: Federalism Contested: Jackson and the Battle over the Bank(s)**

Review: U.S. Constitution, Art. I, Sec. 10


*McCulloch v. Maryland*, 17 U.S. 316 (1819)
President Andrew Jackson’s Veto Message Regarding the Bank of the United States, July 10, 1832.

*Briscoe v. Bank of Kentucky*, 36 U.S. 257 (1837)

**Class 10:** Free Banking: The High Tide of State Power


**III. Configuring Federal Monetary Power (1865-Present)**

**Class 11: National Banking I: Federal Entry into Retail Banking**  
*Veazie v. Fenno*, 75 U.S. 533 (1869)

*Julliard v. Greenman*, 110 U.S. 421 (1884)


**Class 12: National Banking II: Constitutional Claims to Credit Outside the Commercial System**  
Southern Alliance, St. Louis Convention, Report of the Committee on the Monetary System on the Sub-Treasury Plan, Dec. 1889, as


The Ocala Platform, Report of the Committee on Demands, Dec. 1890, as reprinted in Tindall, ed., *supra*.


**Class 13: Conceptualizing the Modern Market: Gold, Futures, and Economic Expertise**


*Embrey v. Jemison*, 131 U.S. 336 (1889)

*Chicago Board of Trade v. Christie Grain & Stock Co.*, 198 U.S. 236 (1905)

**Class 14: “Fed-eralizing” the Monetary System**

Guest lecturer: Prof. Nadav Orian Peer, Tulane Law School

[Materials to be announced]

**Class 15: Liberating the Fed: the Movement towards Discretionary Monetary Policy**


**Class 16: Credit Allocation as a Political Project**


Address of Marriner S. Eccles, Chairman of the Board of Governors of the Federal Reserve System, to the National Tax Association (Oct. 14, 1941).

**Class 17: Market Funding and Financialization**

Perry Mehrling, “Re-theorizing Liquidity” (draft, June 2016).

John D. Martin, “A Primer on the Role of Securitization in the Credit Market Crisis of 2007” (Feb. 17, 2009) at [URL](#).


**Class 18: The Financial Crisis**


**Class 19: The Constitutional Charge of Administrative Accountability and Independence**

*Raichle v. Federal Reserve Bank of N.Y.*, 84 F.2d 910 (2d Cir., 1929)


IV: Money in Constitutional Dimension: Contemporary Issues
Provisional Reading:

**Class 20: The Constitutional Right to Credit? Banking and the Unbanked**


**Class 21: Finance and Inequality**


**Class 22: Monetary Reform: Proposals to Restructure Money Creation**


Class 23: The Debate over Fiscal Policy: From Austerity to Full Employment Proposals


Class 24: Dreams about Money