Introduction

What is money? How did it emerge and evolve through history? What are the politics of money? What role does it play in our lives? What does law have to do with money?

The current financial crisis has brought with it renewed appreciation of the political and social contentiousness of money. Against this unfortunately timely background, this issue of *Theoretical Inquiries in Law* revisits and addresses these and other questions from a host of theoretical, methodological and disciplinary perspectives. The issue opens with accounts mapping key positions in current theories and histories of money. The contributions which follow consider contemporary as well as historical institutional and conceptual structures related to money, from central banking, finance, and the meanings of liquidity, through legal regimes underlying monetary arrangements, to the role of politics in all of these. These contributions examine, challenge, and enrich existing accounts of money in society.

Money, argues Richard Sylla in this issue's opening article, serves as a medium of exchange, a unit of account, and a form for storing wealth. It can perform these economic functions best, grease the wheels of commerce and thus support economic growth, when its value remains stable over time. Sylla explains how the desideratum of a stable value of money has been met, with greater or less success, throughout history, and argues that short-term political economy considerations have been the main obstacle to this end. Sylla examines five identifiable monetary regimes in economic history, offering an historical and critical review of money's development from a pure commodity regime to modern fiat money with central banking, and speculates on the route to success of our modern regime.

Randall Wray offers an alternative, "heterodox" approach to money, challenging both the historical account associated with the "orthodox" approach and its theoretical premises. Wray rejects the account of evolution from commodity money to fiat money, instead locating money's origins in credit and debt relations. He emphasizes the non-neutral social nature of money and the role of the authority. It is the sovereign's ability to impose a liability in a unit of account and payable in the sovereign's IOUs that creates money ("taxes drive money"). While the unit of account and store of value functions of money are emphasized, its work as a medium of exchange is de-emphasized. Rejecting the relation posed by the "orthodox" approach between money stock and inflation, as well as policies intended to preserve

a stable value of money, Wray argues that the state can mobilize resources in the public interest, without worrying about budget deficits.

The third contribution to this issue, by Bruce Carruthers, offers a sociological outlook which complicates textbook definitions as well as historical accounts of the impact of money. Money is not only a means of exchange, a unit of account, or a store of value, argues Carruthers. Money has social meanings which differ from money in theory. Contra accounts of modern money's imposition of a unidimensional valuation on social products, processes and relations, Carruthers considers the ways in which individual, institutional and organizational practices of differentiation constrain the commensurability ostensibly imposed by money. On Carruthers' account, the social reception of money is active, not passive.

The next three articles consider aspects of global finance. Nergiz Dincer and Barry Eichengreen begin with the premise that central banks, nowadays, are supposed to be transparent: open about their objectives, outlooks, policy strategies, and even their mistakes. They then document changes in the prevalence of central bank transparency, examining the move toward greater transparency in 100 countries through 2006. Dincer and Eichengreen analyze the determinants of the degree of transparency, focusing on the role of political variables, and finally examine the consequences of transparency for monetary-policy outcomes: inflation variability and inflation persistence. If financial globalization and political democratization are here to stay, the authors suggest, then so too is greater monetary policy transparency.

Anastasia Nesvetailova takes another perspective on current conditions, by examining the 2007–2009 global credit crunch. Contra prominent explanations of the crisis which focus on macroeconomic and human factors, Nesvetailova offers an alternative reading built upon Hyman Minsky's vision of financial innovation and crisis. She argues that the meltdown is the result of a multifaceted phenomenon of liquidity illusion, deriving from the mainstream conceptualization which treats liquidity as a function of the market and dissociates it from its relation to state money. After identifying and examining the three pillars of liquidity illusion in the context of the 2002–2007 credit boom, Nesvetailova argues that the mode of mainstream theorizations had ultimately institutionalized the illusion of liquidity by treating financial innovation as liquidity enhancing when it in fact undermined it.

Ronen Palan sheds light on the centrality of British Empire city-state jurisdictions to current global finance, contra theories linking financial centers to large cities and to U.S. hegemony. He tracks the British financial predominance of the last half-century to the emergence in 1957 of the London offshore financial market (the Euromarket) and its subsequent expansion

to British linked city-states around the world. To explain this British-centered development of the international financial market, Palan draws on three theoretical frameworks. First, the hinterland theory identifying city-state jurisdictions' competitive advantage in accommodating global finance; second, the dependent jurisdictions theory pointing to dependencies' relative attractiveness for financial actors; and finally, the hegemonic cycles theory, which relies on the British Empire's declining hegemonic position to explain its predisposition to favor the interests of the financial sector.

Roy Kreitner juxtaposes present and past global monetary regimes, examining the legal infrastructure associated with two eras of globalization: the gold standard at the turn of the twentieth century; managed flexibility at the turn of the twenty-first. Both regimes, argues Kreitner, aim to shield money from political intervention, but they do so in different ways; attention to the legal framework — the form of rule making and legal players in each regime — sheds light on how these differing regimes pursue the goal of insulating money from politics. In shielding money from politics in different ways, money also functions differently as a means of valuation of human significance under each regime. Fleshing out these differences, Kreitner's historical comparison offers lessons about the changing political economy of money.

Neta Ziv considers financial institutions by tracing the historical decline of credit cooperatives in early Israeli statehood in a rapid process of centralization of Israel's capital market and financial institutions. Ziv recounts the ideological and political makeup of the early Israeli credit cooperatives, their unique financial and social function, and the causes that led to their demise, underlining the central role of law in this process. Ziv encourages us to view financial institutions not as neutral intermediates but as internal elements within the social and economic fabric. In an era of renewed interest in "social businesses" she recalls the values the credit cooperatives had promoted — mutuality, partnership and solidarity.

In a third article emphasizing legal aspects of financial arrangements, Sarah Ludington, Mitu Gulati, and Alfred Brophy address the subject of a broad international debate: "odious debts," and specifically the question of whether the sovereign debts of despotic regimes, could, or should, be repudiated by a successor government. The authors consider whether customary international law supports the "doctrine" of odious debts identified with Alexander Sack, which justifies non-payment of debts on certain conditions. The authors challenge Sack's doctrine, particularly its first condition of despotism, by revisiting historical precedents that have been cited, not cited, or incorrectly cited. History, they argue, reveals a doctrine,

or perhaps doctrines, of odious debts which are broader and more flexible than Sack's formulation.

Michael Zakim examines the constitutive role of the introduction of money into the nineteenth century American census. Zakim reviews the prolonged historical debate over the formation of a census capable of depicting the complexity and constant variation of modern society. The census of 1850 was able to achieve the ambitious objective by introducing money as a key statistical measurement standard. Money's relativity, its rejection of all absolutes, recommended it to the task. The transformation of the census, argues Zakim, turned it into a form of knowledge for measuring and naturalizing an industrial reality. While revealing a new statistically-based industrial reality, the new census also redefined the essence of industry to be financial rather than material.

Jeffrey Sklansky too examines nineteenth century America, retuning to the question of central banking and its relation to politics. Sklansky traces the story of Nicholas Biddle, the president of the Second Bank of the United States from 1823 to 1835, and America's "first true central banker." Relating Biddle's little-studied legal, legislative, and literary experience to his better-known banking career, Sklansky considers two fundamental problems of early American finance. The first was a problem of regulation of the money supply. The second was a problem of representation: the fact that control over the supply of cash and credit was ceded to unelected bankers and faceless corporations. Biddle, argues Skalnsky, had strengthened the status of central banking by conceiving central banking as an answer to the problem of regulation, while dealing with the ideological challenge of justifying the growing authority of moneyed men in Jacksonian America.

Christine Desan explores the political innovations that produced coin and the arrangements that allowed it to operate as money endowed with liquidity, in the middle of the first millennium in England. Desan departs from the model of ideal commodity money, in which money was the result of a metal commodity that emerged as the dominant marker of value in ancient barter economies. Money is a political invention, she argues. When authorities paid people and imposed obligations in certain units of account, they configured the way people related to the political community and others within it. The process relied on the value placed on the liquidity money offered, in contrast to the value of the metal in it, making clear that liquidity is a collective arrangement which comes at common cost.

Elimelech Westreich turns to the thirteenth and fourteenth centuries, to the Jewish communities in the Iberian Peninsula, to explore the development of legal negotiability. Inspired by the interpretation of the most important legal Jewish sources, the Mishna and the Talmud, Jewish sages were inclined

to recognize the assignment of debts even earlier than English law did. However, at that early stage, the Jewish law for assigning debts still lacked basic characteristics necessary to make it secure and easy to use among the local communities. Westreich sweeps through almost three hundred years of legal changes and debates, showing us how and where, through a purportedly textual debate, Jewish thinkers responded to economic pressure and forged new legal standards to serve their respective communities.

Also included in this issue is the 2009 Annual Cegla Lecture on Legal Theory, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, by Robert Gordon. The Cegla Lectures on Legal Theory feature prominent legal scholars who are asked to address fundamental questions about law and legal institutions. In his lecture, delivered at Tel Aviv University in April 2009, Gordon questions institutional projects to promote the "Rule of Law" in developing countries by probing into the conceptual apparatus informing those projects, particularly the role of legal actors as essential promoters of the Rule of Law. Gordon's historical inquiry into lawyers' role in legal, political and economic liberalization casts doubt on their idealized image as builders of the legal framework of liberal societies. Gordon's inquiry aptly concludes this issue by offering another angle to the examination of the intricate relations between law, politics and economics.

At the risk of overstating one out of the many questions treated in this issue, we end this short Introduction with the following suggestion. The social and political character of money and related (legal, economic) institutions is highlighted in all of the articles collected here. The depth and breadth of the contributions in this issue is manifest in their double movement: on the one hand, affirming money's social and political character from multiple directions; on the other hand, complicating the import of this insight by taking a variety of positions on the relation between the social and the political, and by offering diverse and occasionally conflicting ways in which money's social and political character informs, and might inform, theory, inquiry, and policy.

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The Associate and Assistant Editors