

## Monetary Law and Regulation

Legal Studies Program at UC Berkeley

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Bruno Meyerhof Salama

**Instructor.** Bruno Meyerhof Salama, salama@berkeley.edu. **Lectures.** TU, TH, from 12h30-2pm at Anthro/Art Practice Bldg. 155. **Office Hours.** Mondays 9h00-10h00 am via Skype. To schedule a meeting, just add brunosalama18 over [Skype](#) and send a message.

**GSI.** Will Darwall, wdarwall@berkeley.edu

**Description.** The world is experiencing renewed interest in the law and regulation of money. The drivers include technological developments that led to innovations such as fintechs and cryptocurrencies alongside fears of excessive debt levels and inflation, concerns over the loss of the US dollar hegemony, and, more recently, unconventional monetary policies enacted in response to the Great Recession of 2008 and the COVID-19 crisis. Despite the appearance of originality, most of the ensuing questions have already been addressed, in one way or another, during the process of consolidation of modern-day finances. This course surveys the history of US monetary law from its inception to the coming about of cryptocurrencies. It starts with a discussion of monetary affairs in colonial times and during the American Revolutionary War, and then moves to examine the framework established at the Constitutional Convention. Next, it covers the 19<sup>th</sup> century and New Deal Supreme Court cases that have shaped US monetary law as we know it today. The last part discusses contemporary legal dilemmas such as the regulation of bitcoin and stablecoins, the creation of central bank digital currencies, the workarounds the US debt ceiling and the debate over the spectrum of the Fed's legal authority. The course concludes by revisiting some classic questions concerning the nature and functions of money.

**Learning objectives.** This course has three goals. The first is to enable students to critically understand the law and regulation of money, including the policy choices that underlie court interpretations. The second is to conceptualize monetary law as an instrument of power as well as a technique for promoting efficient social exchanges. The third is to equip students with a general understanding of current monetary affairs.

**Grading breakdown.**

Two written memos: 50% (25% each)

One term paper: 50%

**Written memos.** This syllabus mentions several court cases which we plan to discuss during the semester. You must choose two cases and then write one memo about each

one of them. The memo should **(i)** summarize the case, **(ii)** explain the legal issue at hand, **(iii)** explain the court decision, and **(iv)** provide a comment. It is advisable to make use of the bibliography listed in this syllabus to help you with the comment. Use 12-point Times New Roman, 1.5 spaced with 1- inch margins. The memo should be limited to **5 pages** and submitted through bcourses. Don't forget to write your name at the top of the page.

**Term paper.** Write a paper that explores an idea discussed in the course. The precise content of the paper is for you to choose. Desirable approaches include (but are not limited to): **(i)** discussing different viewpoints concerning a certain case covered in class; **(ii)** exploring the historical context in which a court decision was taken (example: slavery and post-slavery transition and impacts, international context, domestic politics, ideological changes or tensions reflected in the law, economic changes that explain legal evolution, etc.); **(iii)** comparing different cases or drawing lesson from the evolution of case law; **(iv)** contemporary legal challenges posed by changes in the business model of banking, the coming about of new technologies applied to money, or the politics of central banking. These topics are addressed in the course and are covered in the bibliography outlined herein. You should explore this bibliography, but you do not need to limit yourself to it. The term paper can (but needs not) develop ideas presented in the two memos. The paper is expected to be **5-10 pages** not including: front page, an optional appendix for graphs or other notes, and a required bibliography for source material. Use 12-point Times New Roman, 1.5 spaced with 1- inch margins. Don't forget to include a title for your paper and to write your name at the top of the page. **Structure:** a good paper will clearly state an argument and then provide reasons. You might be tempted to describe various themes or events related to monetary law and regulation without really presenting an argument; you should avoid doing that. Clear theses that are supported with evidence and reasons and are well organized will typically be awarded higher grades. The **grading rubric** for the term paper will be made available at bcourses.

#### **Important deadlines.**

- The first memo is due 7 days after the lecture when we finish syllabus item 6.
- The second memo is due 7 days after the lecture when we finish syllabus item 10.
- The term paper is due on May 9.

**Memos and term paper submission at bcourses.** It is your responsibility to ensure that the correct file is accessible to your GSI at the time of submission/in advance of the deadline. Absent an error on the part of the bCourses platform, submissions not accessible to the GSI at the deadline will be marked late. **Late submissions** will be accepted with a 0.5 point per hour (on the hour) penalty (e.g., memo submitted Monday 12:30am will receive a 0.5-point penalty; Monday at 1:30 am will receive a 1-point penalty, etc.), up to 20 hours after the regular deadline.

**Students with DSP accommodations granting occasional extensions on take-home assignments for disability-related circumstances may be granted a 48-hour extension.** To receive an extension on a given submission, upload your work-in-progress to bCourses and add a comment: "I have a DSP extension accommodation and am using

my extension on this submission.” This work in progress will not be graded. Remember to upload your final submission to the same submission link before the extension deadline. bCourses will mark the file “late,” however assume that your extension will be granted.

**Course format (remote/recording/asynchronous participation).** This course does not accommodate asynchronous participation. Recording of lectures without a verified DSP accommodation or express permission from instructor is prohibited.

**Disability-related accommodations.** If you need disability-related accommodations in this class, you must arrange to meet with your GSI during the first week of class to discuss your requirements. Please remember that accommodations and extensions are meant to specifically address the impact of a student's disability on their ability to fully participate or to complete an assignment by the deadline provided to the other students.

**Statement on copyright and recording.** Materials in this course are protected by copyright law. Materials are presented in an educational context for personal use and study and should not be shared, distributed, or sold in print or digitally outside the course without permission. Video and audio recording of lectures and sections without instructor and fellow classmates' consent is prohibited. You may not reuse or circulate or post to websites (e.g., Course Hero, Quizlet, etc.) any recorded lectures, slides, exams, or other course resources authored by the teaching team without permission. This includes screenshots of course materials and/or participants, unauthorized recording of lectures, presentations, and discussions.

**Discussion sections** are designed to help students especially with their memos and term papers.

**Course materials.** There is no official textbook. The course webpage contains the syllabus, announcements, PDFs of court cases, readings, lecture slides, web links, and instructions for memos, and term paper.

**Preparation for class.** You are required to read the assigned readings before each class. You are encouraged read the additional bibliography and to participate actively in class discussions.

**Course outline.**

**1. Monetary law allocates power to create and regulate money. Legal tender is at the heart of sovereign authority over money.** The centrality of legal tender can be illustrated by classic cases in English Common Law (e.g. the Case of the Mixt Monies of 1604). Legal tender of the US Dollar is currently established by the Coinage Act of 1965. In the US, there is no federal requirement that bills and coins be accepted in payment for goods or services. Case law considers electronic payments as a substitute for legal tender (as for example in *Berry v. Hannigan*, 7 Cal. App. 4th 587, 1992 and in *Genesee Scrap & Tin Baling Co. v. City of Rochester*, 558 F. Supp. 2d 432, 436, W.D. N.Y.2008).

**Assigned readings:** Gerald T. Dunne, *Monetary Decisions of the Supreme Court*, Rutgers Univ. Press, 1960 (hereinafter, “Dunne”), p. 3-6.

Additional bibliography:

David Fox, *The Case of Mixt Monies: Confirming Nominalism in the Common Law of Monetary Obligations*, 70 *The Cambridge Law Journal* 144 (2011)

David Fox, *Money, Law, and Institutions*, in *Handbook of the history of money and currency* (Battilossi, Cassis, and Yago, eds.), Springer, 2020 (hereinafter, the “Handbook of the History of Money”)

Keith Rosenn, *Law and Inflation*, University of Pennsylvania Press, 1982, p. 90-94

**2. Early US monetary law was an instrument for institutional innovation but is sometimes invoked to illustrate the problem of monetary mischief.** Massachusetts issued indented bills in 1690, arguably the first governmental paper currency without metallic backing since medieval China. Excessive issuance led to high inflation. Government moved to outlaw note discounts, with limited success. To finance the American War of Independence, the Continental Congress issued a paper money known as the Continental currency. This currency depreciated badly during the war. The monetary prerogative set out under the Articles of Confederation would not be repeated in the US Constitution.

**Assigned readings:** Dunne p. 6-10; Arthur Nussbaum, *A History of the Dollar*, Columbia University Press, New York, 1957 (hereinafter, “Nussbaum”), p. 7-24.

Additional bibliography:

Nussbaum p. 35-39

Bray Hammond, *Banks and Politics in America*, Princeton University Press, 1957 (hereinafter, “Hammond”), p. 3-39

Farley Grubb, *Money and Prices in Colonial America*, in *Handbook of the History of Money*

James Willard Hurst, *A Legal History of Money in the United States: 1774-1970*, University of Nebraska Press, 1973 (hereinafter, “Hurst”), p. 3-7

Jack Weatherford, *The History of Money*, Crown Publishers, Inc., 1997 (hereinafter, “Weatherford”), p. 125-137

**3. The US Constitution says little about money, with the result that the Supreme Court would later have to say a lot.** Under the Constitution, Congress is granted powers

to mint coin and establish value. States are granted legal tender powers, but only over forms of money they cannot issue. The extent of the federal government's powers over money is the object of a legendary debate between Hamilton and Jefferson. The creation of the First Bank of the United States in 1791 and the establishment of a bimetallic monetary system in 1792 vindicated Hamilton's position. But that same debate would be revisited time and again throughout the US monetary history.

**Assigned readings:** Dunne p. 10-16; Hammond p. 89-95; David Cowen and Richard Sylla, *Alexander Hamilton on Finance, Credit, and Debt*, Columbia University Press, 2018, chapter 12.

Additional bibliography:

Dunne p. 16-22

Hurst p. 8-18

Hammond p. 95-113

Nussbaum p. 51-60

Christopher P. Guzelian, *A Constitutional Dollar Does Not Devalue*, *St. Mary's Law Journal*, vol. 54 (2022)

Weatherford, 111-122

**4. Monetary law becomes a locus of political struggle between the federal government and states. Several events reveal the ascent of federal power over money.** They are: the creation of the First Bank of the United States in 1791, the use of a monetary prerogative to finance the War of 1812, and the creation of the Second Bank of the United States in 1816. In *McCulloch v. Maryland* (1819), the Supreme Court finds that the Necessary and Proper Clause of the Constitution gives the US federal government implied powers, including the power to create a bank. This doctrine is reinforced in *Osborn et al. v. The Bank of the United States* (1824) and *Craig v. Missouri* (1830).

**Assigned readings:** Dunne p. 23-36. **Assigned case:** *McCulloch*.

Additional bibliography:

Richard Timberlake, *Constitutional Money: A Review of the Supreme Court's Monetary Decisions*, Cambridge University Press, 2013 (hereinafter "Timberlake"), p. 21-34

Robert G. Natelson, *Paper Money and the Original Understanding of the Coinage Clause*, 31 *Harv. J.L. & Pub. Pol'y* 1017 (2008)

A.P.C.U.S.G.P. (2018). *McCulloch v. Maryland (1819)*. Khan Academy.  
<https://www.khanacademy.org/humanities/ap-us-government-and-politics/foundations-of-american-democracy/constitutional-interpretations-of-federalism/a/mcculloch-v-maryland-1819>

Lev Menand, *The FED Unbound: central banking in a time of crisis*, Columbia Global Reports (2022) (hereinafter “Menand”), p. 68-85

**5. After the death of Chief Justice Marshall, a Supreme Court whose majority was appointed by President Andrew Jackson moves to reinstate state monetary powers.** In *Briscoe v. The Bank of the Commonwealth of Kentucky* (1837), the Supreme Court decides that a state can charter a note-issuing bank and control it through stock ownership. With the expiration of the charter of the Second Bank of the United States in 1836, federal monetary authority is undone, and the country moves into the free banking era that would last until the Civil War. The enthusiastic chaos of the antebellum money supply has been associated with the persistence of slavery.

**Assigned reading:** Dunne p. 37-44. **Assigned case:** *Briscoe*

Additional bibliography:

Timberlake p. 39-55

Hammond p. 572-604

Hurst p. 134-150

Charles Calomiris and Stephen Haber, *Fragile by Design: The Political Origins of Banking Crises and Scarce Credit*, Princeton University Press, 2014, p. 153-203

Michael O’Malley, *Face Value: The Entwined Histories of Money & Race in America*, University of Chicago Press, 2012 (hereinafter, “O’Malley”), chapter 2

**6. The Civil War marks the end of free banking and the revival of federal power over money.** Demand notes and greenbacks with legal tender are used to finance the Union army. The National Bank Acts of 1863 and 1864 allow the incorporation of federally chartered banks. They also determine the creation of the Office of Comptroller of the Currency (OCC) and establish the dual banking system that is in place until today. In *Veazie Bank v. Fenno* (1869), the Supreme Court further articulates on federal government powers to provide a currency for the whole country.

**Assigned reading:** Dunne p. 45-52. **Assigned case:** *Veazie*

Additional bibliography:

Matthew Jaremski, Privately Issued Money in the US, in Handbook of the History of Money, especially p. 5-6

Hammond p. 718-739

Nussbaum p. 100-118

Timberlake p. 56-71 and 79-85

Ajit V. Pai, Congress and the Constitution: The Legal Tender Act of 1862, 77 OR. L. REV. 535 (1998)

**7. The Legal Tender Cases revolve around the constitutionality of the Legal Tender Act of 1862. The power of government to interfere with private contracts through monetary manipulation is in question.** The Legal Tender Act had authorized fiat paper money for all debts, but it did not explicitly address the “gold clauses”. In *Bronson v. Rodes* (1868), the Supreme Court manifested a concern with the Legal Tender Act harming the sanctity of contracts. Legal tender and the monetary status of the greenbacks was further whittled down in *Bank of New York v. Board of Supervisors* (1869) and *Lane County v. Oregon* (1869). In *Hepburn v. Griswold* (1870), the Supreme Court held that the Legal Tender Act was an unconstitutional violation of the due process clause.

**Assigned reading:** Dunne p. 65-76. **Assigned case:** *Bronson*

Additional bibliography:

Timberlake p. 72-78

**8. A change in the composition of the Supreme Court led to a reversal of fortunes and the triumph of federal power over money.** In *Knox v. Lee* (1871), the Supreme Court reversed *Hepburn* and upheld the constitutionality of the Legal Tender Act, portraying it as an aspect of national sovereignty that is untouched by concerns with due process and property protection. In the dissenting opinions, critics of greenbacks hint at a connection between the support of greenbacks and the defense of abolition. Later, the constitutionality of the Legal Tender Act was more broadly upheld by the Supreme Court in *Juilliard v. Greenman* (1884). *Ling Su Fan v. United States*, 218 U.S. 302 (1910) demonstrated how monetary law was a noticeable exception to the Supreme Court’s adherence to *laissez faire* during the *Lochner Era*.

**Assigned reading:** Dunne p. 76-87. **Assigned case:** *Knox v. Lee* (excerpts)

Additional bibliography:

Nussbaum p. 118-123

Timberlake p. 97-113

Weatherford, p. 168-177

O'Malley, chapter 3

**9. In 1913, the Federal Reserve Act determined the creation of the Federal Reserve Bank, better known as the Fed.** The Great Deflation of 1870-1890 created the conditions for the country to return to specie parity. The Specie Payment Resumption Act of 1875 and the Gold Standard Act of 1900 sealed the reinstatement of a gold standard. The Fed was created to mitigate the risk of bank panics and to administer the gold standard, whose rigidity was pointed out as the cause of the 1907 Panic. The Fed was also given authority to purchase government bonds in the open market.

**Assigned reading:** David Wessel, *In Fed We Trust*, Three Rivers Press, 2009, p. 27-49; and Craig K. Elwell, Cong. Research Serv., 7-5700, *Brief History of the Gold Standard in the United States* (2011), p. 1-9.

Additional bibliography:

Timberlake p. 114-118 and 162-169

Nussbaum p. 154-174

Menand, p. 85-104

Sarah A. Binder and Mark Spindel, *The Myth of Independence: how Congress governs the Federal Reserve*, Princeton University Press, 2017 (hereinafter, "Binder and Spindel"), p. 52-81

Charles Goodhart, *The evolution of central banks*, The MIT Press, 1988, especially p. 85-102

Lawrence H. Officer, *International Monetary Regimes: The Gold Standard*, in *Handbook of the History of Money*

Matthew Jaremski, *Privately Issued Money in the US*, in *Handbook of the History of Money*, especially p. 8-9

**10. The end of the gold standard.** In 1933, a recall enacted by President Roosevelt criminalized the possession of monetary gold. Congress then passed a Joint Resolution nullifying public and private contract gold clauses, which were prevalent. After the passage of the Gold Reserve Act of 1934, gold was devalued. Successive legislation increased the powers of the Fed and sought to restrict competition between banks. In 1935, the Supreme Court upheld the nullification of gold clauses in *Perry v. United States* (gold clauses in federal bonds), in *Norman v. Baltimore and Ohio Railroad Company* 47



(gold clauses in private contracts) and in *Nortz v. United States* (redemption of gold certificates).

**Assigned reading:** Dunne p. 87-98. **Assigned case:** *Norman v. Baltimore* (excerpts).

Additional bibliography:

Sebastian Edwards, *American Default: The Untold Story of FDR, the Supreme Court, and the Battle over Gold*, Princeton University Press, 2018

Nussbaum p. 174-208

Weatherford, p. 178-184

Parinitha Sastry, *The Political Origins of Section 13(3) of the Federal Reserve Act*, *Economic Policy Review*, Vol. 24, Number 1 (2018)

Gary Richardson, Alejandro Komai & Michael Gou, *Banking Act of 1935*, FED. RESERVE HISTORY, FED. RESERVE BANK ST. LOUIS (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/banking-act-of-1935>.

Kenneth W. Dam, "From the Gold Clause Cases to the Gold Commission: A Half Century of American Monetary Law," 50 *University of Chicago Law Review* 504 (1983)

Binder and Spindel, p. 16-18

**11. The closure of the gold window and its aftermath.** The Bretton Woods system inaugurated after World War II established an international gold standard. National currencies were fixed to the US Dollar, and the Dollar was fixed to gold. That marked the birth of International Monetary Law. In 1971, the President Nixon terminated convertibility of the US dollar to gold, bringing the Bretton Woods system to an end and rendering the US dollar a fiat currency, unbacked by any commodity. The US experienced high inflation during the 1970s. Inflation poses difficult questions to economists and politicians. For lawyers, the most noticeable problem was the destabilization of contractual obligations. Inflation also disorganized other aspects of financial and monetary regulation, such as the legislated caps on interests set out under state usury laws. The Supreme Court addressed the problem in *Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.* (1978).

**Assigned reading:** Nixon Ends Convertibility of U.S. Dollars to Gold and Announces Wage/Price Controls, *Federal Reserve History*, November 22, 2013. **Assigned case:** *Marquette* (excerpts).

Additional bibliography:

Keith Rosenn, *Protecting Contracts from Inflation*, 33 *Bus. LAW.* 729 (1978)

Barry Eichengreen, International Currencies in the Lens of History, in Handbook of the History of Money, especially p. 18-23

Michael McLeay, Amar Radia and Ryland Thomas, Money creation in the modern economy, Bank of England Quarterly Bulletin, 54(1) (2014) p. 14-27

Todd J. Zywicki, The Economics of Credit Cards, 3 Chap. L. Rev. 79 (2000), especially section V (“Usury Regulations and the Misunderstood Role of Marquette”)

Robert Hockett & Saule Omarova, The Finance Franchise, 102 Cornell L. Rev. 1143 (2017)

David Lazarus, California’s Usury Law Caps Loan Rates. Bizarrely, Most Lenders are Exempt, Los Angeles Times (July 31, 2021)

Angela Redish, Anchors Aweigh: The Transition from Commodity Money to Fiat Money in Western Economies, 26 CAN. J. ECON. 777, 781-85 (1993)

Weatherford, p. 184-189

The New York Times, Gold Certificates Made Legal Again (April 25, 1964)

The New York Times, Bill Signed to Allow Owning Gold in U.S. (August 15, 1974)

**12. The panic of 2008 marks the end of the “great moderation” and reveals the importance of the shadow banking system, which produces money-like claims alongside traditional banks.** The 2008 crisis also marks a turning point in the Fed’s image with the public and its relationship with Congress, in no small part due to the Fed’s emergency lending programs under Section 13(3). The Dodd-Frank Act aimed but in practice failed to restrict such emergency actions, as demonstrated by the response to the 2021 Covid financial panic of 2020.

**Assigned reading:** Lev Menand, p. 30-67

Congressional Research Service, Federal Reserve: Emergency Lending, Updated March 27, 2020

Michael S. Barr, Howell E. Jackson and Margaret E. Tahyar, Financial Regulation: Law and Policy, 2<sup>nd</sup> ed., Foundation Press, p. 59-73

Kathryn Judge, Information Gaps and Shadow Banking, 103 Virginia Law Review 411 (2017)

Lev Menand, p. 105-122

Steven M. Davidoff & David Zaring, Regulation by Deal: The Government's Response to the Financial Crisis, 61 ADMIN. L. REV. 463 (2009)

Arthur E. Wilmarth Jr, Taming the Megabanks: Why We Need a New Glass-Steagall Act (Oxford University Press, 2020), p 265-298

**13. Blockchain poses a new challenge to monetary law and regulation. Noticeably, Bitcoin reflects the ambition to create a government-independent money.** Previous attempts to create government-independent money in the US have failed (e.g. the Liberty Dollar Case, *United States v. von NotHaus*, W.D.N.C. Nov. 10, 2014). But the decentralized nature of blockchain makes Bitcoin harder to regulate. Under *CFTC v. McDonnell*, (332 F. Supp. 3d 641, 2018 U.S. Dist. August 28, 2018), Bitcoin is qualified as a commodity. Under *United States v. Faiella*, (39 F. Supp. 3d 544, 545, S.D.N.Y. 2014), it is qualified as money.

**Assigned readings:** Eswar S. Prasad, *The Future of Money*, Harvard University Press, 2021 (hereinafter, "Prasad"), chapter 4. **Assigned cases:** *CFTC v. McDonnell* (excerpts); and *United States v. Faiella* (excerpts).

Additional bibliography:

George Selgin, Synthetic Commodity Money, *J. of Fin. Stability* 92 (2015)

Antony Lewis, *The Basics of Bitcoins and Blockchains: An Introduction to Cryptocurrencies and the Technology that Powers Them*, Mango Media, 2018

Neel Mehta, Aditya Agashe and Parth Detroja, *Blockchain Bubble or Revolution: The Future of Bitcoin, Blockchains, and Cryptocurrencies*, Paravane Ventures, 2021

The New York Times, Prison May Be the Next Stop on a Gold Currency Journey (Oct. 24, 2012)

Bruno Meyerhof Salama and Leonidas Zelmanovitz, What Can Go Wrong with Bitcoin, Libra and other Cryptocurrencies? *Econlib* (August 30, 2019)

**14. Stablecoins may pose competition or instead complement the US Dollar.** How should US law and policy react? Should we increase the role of sovereign money by adopting a Central Bank Digital Currency (CBDC), as in China and (possibly) in Europe? Should we create FedAccounts for everyone? How should large stablecoins such as Tether and USDC be regulated? Do they harm or enhance the US Dollar's role as a global reserve currency?

**Assigned readings:** Prasad, chapter 5.

Additional bibliography:

Eswar Prasad, Money is about to enter a new era of competition, MIT Technology Review, April 12, 2022

Bruno Meyerhof Salama and Leonidas Zelmanovitz, Central Bank Digital Currency and the Agenda of Monetary Devolution, forthcoming in Commercial Banking in Transition (Marco Bodellini, Gabriella Gimigliano and Dalvinder Singh, eds.), American Publisher Palgrave Springer, 2022

International Monetary Fund Policy Paper No. 2021/055, The Rise of Public and Private Digital Money (July 29, 2021)

International Monetary Fund Working Paper WP/20/254, Legal Aspects of Central Bank Digital Currency: Central Bank and Monetary Law Considerations

Marcelo Prates, Money in the Twenty-First Century: From Rusty Coins to Digital Currencies, 15 Ohio State Business Law Journal 164 (2021)

Benjamin Geva, Cryptocurrencies and the Evolution of Banking, Money, and Payments. In Cryptoassets: Legal, Regulatory, and Monetary Perspectives (Chris Brummer, ed., Oxford University Press, 2019)

Prasad, chapter 6

Morgan Ricks, John Crawford and Lev Menand, FedAccounts: Digital Dollars, 89 George Washington Law Review 113 (2021)

Dante Alighieri Disparte, Is America Losing the Digital-Currency Race? Project Syndicate (Jul 2, 2021)

Chen Xu and Amy Aixi Zhang, Debevoise & Plimpton Discusses the Policy Debate over Developing a U.S. Central Bank Digital Currency. The CLS Blue Sky Blog, available at [https://clsbluesky.law.columbia.edu/2022/02/21/debevoise-plimpton-discusses-the-policy-debate-over-developing-a-u-s-central-bank-digital-currency/#\\_ftnref1](https://clsbluesky.law.columbia.edu/2022/02/21/debevoise-plimpton-discusses-the-policy-debate-over-developing-a-u-s-central-bank-digital-currency/#_ftnref1)

**15. Two contemporary controversies in monetary law.** First: should the Treasury issue a one-trillion-dollar coin to circumvent the debt ceiling? Would that be legal? Second: should the FED expand its policy objectives? Should monetary tools be used to put in place a green quantitative easing? Should monetary policy be used to mitigate income and racial inequality? Should it be used to aid small businesses? Would any of that be legal?

<p><b>Assigned readings:</b> Jack M. Balkin, 3 Ways Obama Could Bypass Congress, CNN (July 28, 2011); and Christina Parajon Skinner, Central Banks and Climate Change, 75 Vanderbilt Law Review (2021).</p>
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Additional bibliography:

Rohan Grey, Administering Money: Coinage, Debt Crises, and The Future of Fiscal Policy, 109 KY. L.J. (2020)

Marcelo Prates, You Can't Use a Trillion-Dollar Coin, CoinDesk Insights (Oct 4, 2021)

Neil H. Buchanan, Big Coins, Political Credibility, and Hatred of Lawyers (January 10, 2013)

Edward Kleinbard, The Debt Ceiling's Escape Hatch, New York Times (January 9, 2013)

Peter Conti-Brown, David A. Wishnick and David A. Wishnick, Technocratic Pragmatism, Bureaucratic Expertise, and the Federal Reserve, 130 Yale L.J. 636 (2021)

Graham S. Steele, Confronting the 'Climate Lehman Moment': The Case for Macro-prudential Climate Regulation, 30 Cornell J. L. & Pub. Pol'y 109 (2020)

CNBC, What Happens If The U.S. Can't Pay Its Debt?,  
<https://www.youtube.com/watch?app=desktop&v=nRoRbGxxBiY>

Juliana B. Bolzani, Independent Central Banks and Independent Agencies: is the Fed super independent? 22 Bus. L. Journal 195 (2022)

**16. To conclude the course, we revisit the toughest question in monetary law: what is money?** What are the core functions of money and how are they represented throughout the US monetary history? What is the essence of money? Who is right: chartalists espousing the state theory of money or conventionalists defending the commodity theory of money? Is money a type of credit? Moving forward, will innovation unbundle banking, money, and payments? Would that be desirable?

<p><b>Assigned reading:</b> Felix Martin, Money: The Unauthorized Biography, Knopf, Random House, 2013, chapter 1.</p>
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Additional bibliography:

Charles Proctor, Mann on the Legal Aspect of Money, Oxford University Press, 2012, (7th Edition), p. 5-60

Charles Goodhart, The two concepts of money: implications for the study of optimal currency areas, 14 European Journal of Political Economy 14, 407 (1998), section 2 (On the nature and origins of money), p. 410-419

Christine Desan, Making Money: Coin, Currency, and the Coming of Capitalism, Oxford University Press, 2014, p. 330-360

Dan Awrey, *Unbundling Banking, Money, and Payments*, *Georgetown Law Journal* 110 (forthcoming 2022)

George Selgin, *A Three-Pronged Blunder, or, what Money is, and what it isn't*, *ALT-M* (October 27, 2021)

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