

SUMMARY

Money and Law

Jean Carbonnier, <i>General approaches</i>	7
A few words about three ghosts that remained on the threshold : gold, the Mammon and the lack of money.	
Marianne Paillard de Chenay, <i>A Systemic Approach</i>	11
Today, money represents a global phenomenon implying interrelations between its various elements. To understand it, an analytical method is not sufficient ; one has to turn to a systemic approach consisting in treating money as a global system, through its emerging qualities and in a teleological viewpoint.	
Bruno Oppetit, <i>The Ambivalence of Money</i>	19
Money gives rise to a double questioning :	
- What does it stand for ? What is its meaning ? Is it the translation of a reality or a pure creation of the human mind ?	
- How does it appear in the various streams of thinking ? Does one grant it a certain legitimacy ?	
Ivar Ekeland, <i>The Value of Money</i>	25
We analyse the role of money in modern economic theories.	
Gérard Lyon-Caen, <i>Money and Work</i>	31
Money does have a smell: its legal status depends on where it comes from: capital or work, wages or free-lance. And salary itself shows a different aspect according to whom it concerns: the debtor or the creditor.	
Thierry Revet, <i>Money and the Individual</i>	43
Money and the individual although different if not opposite have always have an intimate relationship. And this relationship is even getting stronger. Money helps to liberate the individual, it can also help to maintain its dignity. But on the other hand, money is impinging on an ever growing number of elements and aspects related to the individual: its work (from the beginning), its private life (since this notion has been invented), up to its name, its hair and other marketable products. This intimacy is thus a threat to the individual. it is infringing on the essence of the « extra-patrimonial » in the right of individual identity, while the « extra-patrimoniality » is consubstantial to the individual conceived as the antithesis of material objects. Therefore, the threat could aim at the very unity of the person. Under the objectification undertaken by money, there is a risk for the individual to	

be split into two entities: an abstract and disembodied volition and an aggregate of things, more or less legally negotiable.

- Didier Truchet, *Money and Freedom* 55
 From a legal point of view, money and freedom do not form a system. However they maintain links, varying in time and space : no money and no freedom ; money without freedom ; freedom without money ; money as well as freedom.
- Etienne Perrot, *Money under Religious Criticism*..... 61
 The opposition between religion and money has shown itself in various ways : by condemning the loan with interest, by distrusting the grabbers, by fearing the individualism linked with money. Vector of urban values, money opposes itself to religious values. The opposition is so strong that it suggest a common anthropological ground, here in the way of an hypothesis designated as the debt. The credit from which money springs, and the credo which gathers the community, stem from the same source. Hence the ambivalence of the displayed hostility.
- Dominique Terré, *The Virtues of Money or the Quest for the Spiritual* 71
 In this paper, the author, with the support of the book *Philosophy of Money*, shows that the Spiritual also builds a representation of Absolute, in so far as Money is held as a universal mean.
- Léon Nadio, *The Question of Money in Roman Comedy*. 85
 The main aim of this paper is to show that the question of money, so important in the Roman comedy, not only has a literary scope, but also reflects some economic tendencies of the epoch when Plautus and Terence wrote their plays. This time is characterised by the decline of the ancient agricultural society and the rising, because of trade and business, of the class of knights. Such a mutation is similar to that which happened in Athens, as it appears in the plays of the poets of the New Comedy, especially in Menander's ones.
- Michel Germain, *Sociology of Dematerialisation* 105
 Dematerialisation allows financial circulation and exchanges. This reality is obvious when securities are concerned. It can also be seen for fiduciary then scriptural money. Controls must prevent any malfunction. The use of computers doesn't change the deep nature of dematerialisation. It brings this movement to its peak.
- Rémy Libchaber, *Money, between Matter and Memory* 115
 At the age of scriptural money and of euro, is it necessary to go on asking questions about the relationship between money and precious metals ? More than a quick denial, one can see that the exercise is helpful, for it unveils the whole continuity in the legal conception of currency. Our money is not only directly linked to the forms that blossomed yesterday, it also replenishes its constraints. Thinking about material money timely reminds us that incorporeal moneys are not as bad as one sometimes says, et that abstraction and realism get finally pretty well on in that matter.
- Bernard Fraigneau, *Money and the Management of Uncertainties*..... 127
 Money has always been measuring itself to time. With the expansion of the settlement markets, the time in the future is becoming convertible into cash. – The end of certainties. References to quantic relativity. An environment of entropy and irreversibility. For a control on the likely and a management of the unforeseeable. – The global casino of time markets.

The technical support of public debts. Short description of financial innovation (futures). – Neither angelism, nor systematic denigration. A new added value in the direction of human progress.

Pierre Demeulenaere, *Legitimizing and Denunciating the Search for Money in Modernity* 137

The search for money creates old issues of legitimacy which are renewed in modernity by the modification of the economical behaviour and the development of human sciences about them. Therefore arises the problem of their possible normativity when they analyse these behaviours and their changes. This paper suggests the necessity to introduce, when describing behaviours linked to an economical rationality, the theme of the perception, by the actors, of a legitimacy of their action. Which would then come under a more embracing principle of axiological rationality.

Jean Clam, *Money and Circulation. A contribution to a structural analysis of the monetary medium* 153

The article shows the necessity of analytical descriptions of money as an object of an implicate structure. It contends the legitimacy of globalizing approaches practised by critical theories of money which lack of this analytical scope. The analysis of the medium-structure allows for an understanding of the fact that the operational complexity of the medium always outreaches the capacity of complexity control of the agent who brought the medium into being. Opposing an ontology of the medium (as *inter-esse*) to the ontology of the thing (as *esse*), it sheds light on monetary circulation and its structural moments. The article sketches, at last, the limits set to the circulatory dynamic of money through a "symbiotic time" that cannot be eluded by any social process.

Pierre Caye, *Power and Money. From market to sovereignty* 175

For the founding of the Federal German Republic, for reuniting the two Germanys, for the European community, money is always at the core of the new foundations of politics. However, it is a strange symbol for politics, abstract, mute, without project or meaning which, for this reason, seems to cause not only a real democratic dearth, but even more of a radical crisis of the great European historical sovereignties. It is just that the question of power does not seem to be present in the new political entities federated around money. However, the catalactic logic of the monetary instrument implies a truly metaphysical conception of man's action, grounded on the estimation of his own forces when tried by his generic powerlessness. This profound intuition on man's acting, the liberal ideologies, which postulate the self-organisation of the market without really succeeding in justifying it, are unable to support it till the end. In fact, the experience of freedom and of the force specific to man through exchange demands constituting not a minimal power, but on the contrary a highly sophisticated one : a power in a position to create duration and discipline.

P. Bauchet, *On the Consequences of the Deregulation of Financial Flows on the Situation of the Persons* 191

The deregulation of financial flows around the world entails important consequences. Of course, it plays in favour of the economical development. But it creates instabilities, uncertainties, exclusions and inequalities of income. The national laws cannot remain in a neutral position in front of these consequences.

- Marie-Anne Frison-Roche, *Private Money, Public Money* 197
 Money does not seem to be of the same nature, depending of its "private" or it "public" character. In the first instance, born out of work, it can accumulate itself or invested for a profit ; in the second instance, it is affected to an abstract functionality to serve the nation. But today, confusion arises between the two notions, on the occasion of the transfers from one to the other. Moreover, the financial globalisation has instituted money as a pure object – and not anymore as a pure instrument – ; as a reflection, a law of money is creating itself, a financial law that does not care whether the concerned person is private or public.

Miscellaneous Studies

- Valérie Lasserre-Kiesow, *Legislation in 18th century Germany. Thoughts about legislation today and yesterday* 215
 The classical idea of legislation is based upon certain paradigms after which the German legislation of the 18th century and the great codes of the 19th century were created. At the end of the 20th century, these paradigms seem to dissolve or to change. Today's legislation depends on this evolution.
- André Damien, *Judicial Power and Virtue. The 3 temptations of the magistrate* 235
 The citizens of a free and democratic State can only stand the powers conferred to the judge if they are Virtuous, otherwise the powers entrusted upon them would be but a tyranny. This virtue, which essentially shows itself through the independence of the judge may be challenged in three ways. – The judge may be corrupted by money but if examples may be given it is in fact only a school case. – The judge may be servile towards the Power, and to facilitate his promotion do a favour to powerful persons to which Politics has given power. Since the reformation of the career and the promotion of magistrates, this suspicion is disappearing. – The judge may be imbued with fashionable ideas to the point of losing his virtue of independence. This, d'Aguesseau called the slavery of Prevention. The judge, to be fully virtuous, must be independent from preconceived ideas, traditional or revolutionary ones and be independent of the judicial routine.
- Enrique Haba, *About the Lack of Realism in today's Theory of Law* 241
- Laure Bazzoli & Thierry Kirat, *Two non-Hayekian Views on Efficiency and Selection of Legal Rules : Institutional Economics and the Economic Approach to Law* 257
 Alternative views to those provided by F. Hayek on the selection of legal rules can be investigated. This article is devoted to a rough examination and comparison of two academic streams in Economics : the Old Institutionalism advocated by John R. Commons and the post-Coasian Law and Economics. These streams are compared on the main focuses they both stress : the relationships between Law and Economics, the sources, nature and significance of legal rules, the logic underlying the process of institutional evolution.

Nikolaos Intzessiloglou, <i>The Time-Space of the Legal System: from systemic spatio-temporality to legal spatio-temporality</i>	285
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The spatio-temporality of the legal system is here studied in its greatest complexity, in the heart of a field of relativity constituted by a pattern of relations between norms and isomorphic behaviours on the one hand and by the chance that a judgement loaded with authority will occur on the other. The adopted systemic process also includes the structural, functional, dialectic, organisational, semiotic and cybernetic approaches. Among the phenomenon and concepts correlatively studied in the heart of the time-space, we indicate: rise and duration, durability and modernity, the arrow of time and its direction, linearity and circularity of time as indicating it is open or closed, totality and creativity, finality and projectivity, relativity and uncertainty, order and disorder, variety and control, the dialectic of convergence and divergence, interpretation as harmonising act, change inside continuity, continuity inside change, morphostatic evolution and morphogenetic evolution, the forces serving preservation and those serving change, synchronisation of systems, etc. The synthetic, pattern-creating, descriptive and comprehensive virtue of this approach is proven through examples referring to the most various branches of legal activity, while its explanatory strength may expand itself in any particular case also by using empirical researches.

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