



academy for
new european political economics

Monetary Sovereignty, Government Debt and Taxation

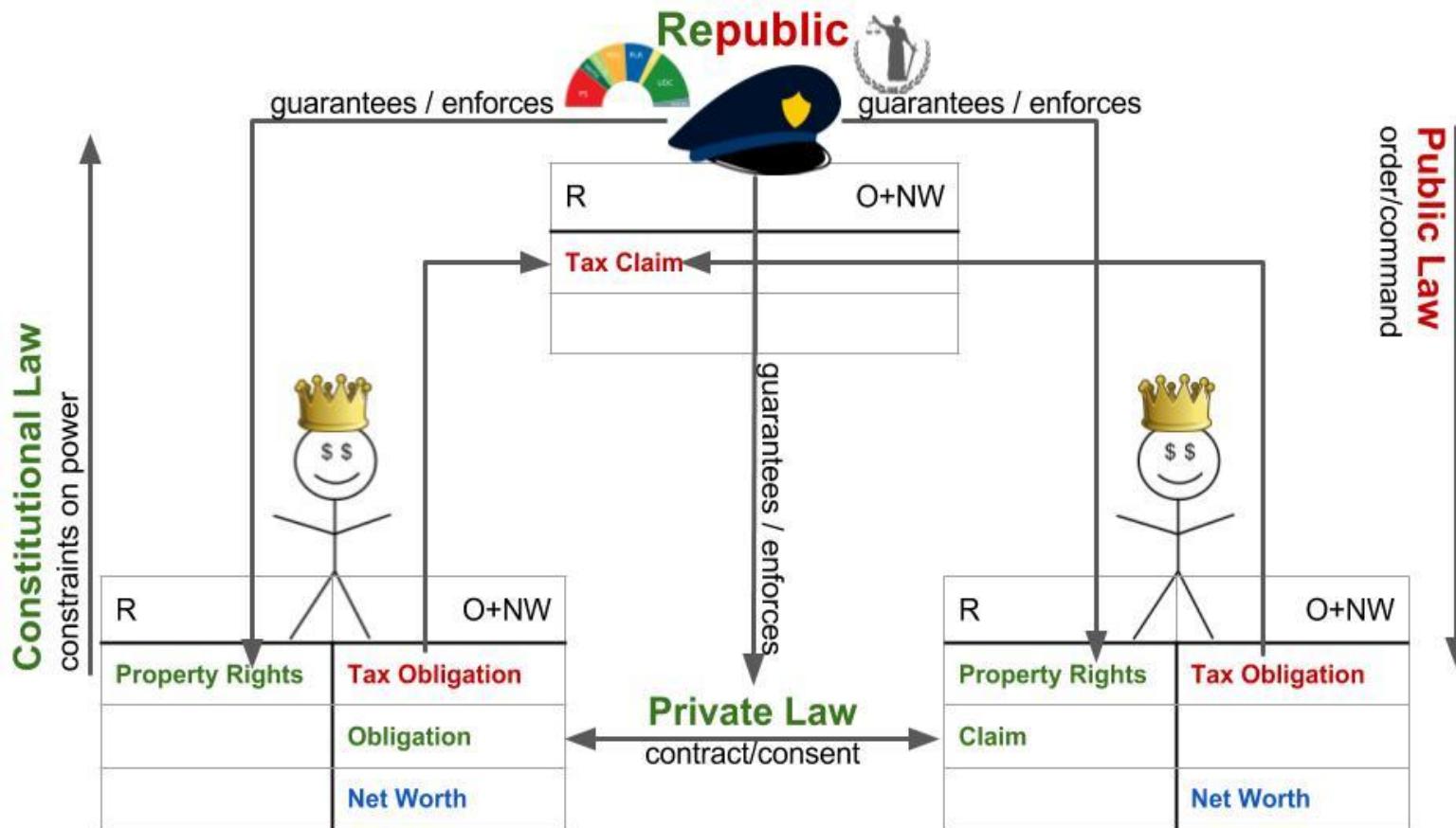
Some Clarifications from a Legal Institutional Point of View

WINIR Conference “Institutions and Open Societies”

Utrecht University
September 14-17, 2017

Wolfgang Theil (Germany) - Wolfgang.Theil@anep-economics.org - Phone +49 1577 321 3500

“Open Society”: Roman Law & Finance



Sovereign State ... Law ... Money

Red:
Legal Terms

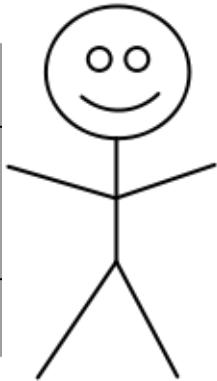
Blue:
Balances,
genuine
Accounting
Terms



“Money of **account** ... is the primary concept of a theory of money.”
Keynes 1930

“Real” assets? Property vs. Possession

A	L+NW
<u>Property:</u> House 100 000\$	
	NW 100 000\$



rental contract:
absentee ownership



Owner

Legally owns house
property right
= asset

immaterial/abstract money-denominated
exchange value
metaphysical

Tenant

Possesses house
thing
= no asset

material, concrete
use value
physical

1st vs. 2nd Order Objects of Law

*“From the perspective of law, we must clearly and precisely distinguish things as **1st order objects of law** from **rights** as **2nd order objects of law.***

*The objects of the property rights belonging to someone’s assets do not represent the assets. The **assets** consist of the property rights in the things/objects, not in the things themselves; and in the creditor’s claims, not in the objects which can eventually be legally claimed on their basis.”*

*Karl Larenz. 1967. Allgemeiner Teil des Bürgerlichen Gesetzbuchs. München: C.H. Beck, p. 306
(Standard Textbook on German Private Law)*

What are Rights? Social *Relations*

WESLEY NEWCOMB HOHFELD (1879-1918) <i>Fundamental Legal Conceptions as Applied in Judicial Reasoning</i>		
Jural Correlatives		
Right	Duty	Type of Relation
Creditor holds Claim	Debtor must serve Obligation	<i>unital</i> (right vis a vis <u>one</u> others' duty)
Owner holds Property (exclusion)	ALL others must respect exclusion	<i>multital</i> (right vis a vis <u>all</u> others' duty)



WESLEY NEWCOMB HOHFELD

Enforcement

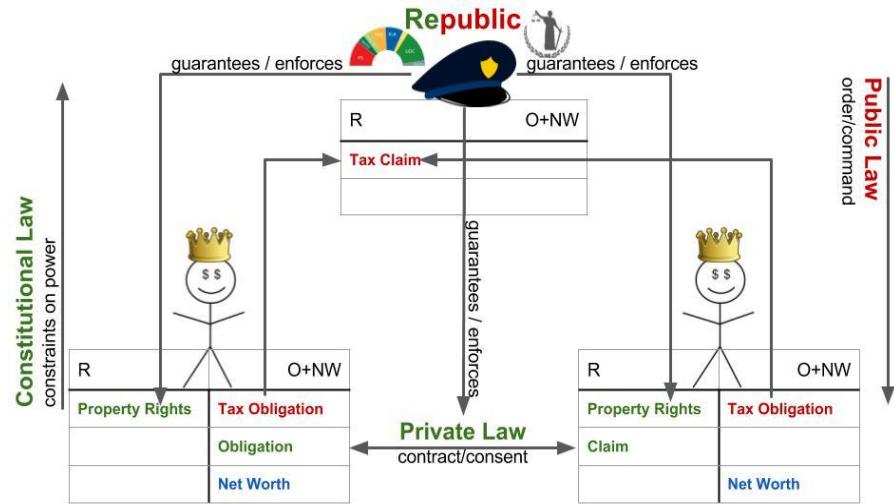
"The correlation of rights and duties is not a conclusion of logic, as is often inferred, but is a command of government."

*(John R. Commons. 1924. Legal Foundations of Capitalism.
New York: Macmillan, p. 86-87)*



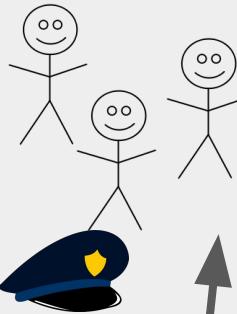
Financial Accounting therefore deals with ...

... keeping track of
immaterial, money-denominated
triangular legal relations
between
free & equal legal persons
and an enforcing state ...



... AS IF they were things ("assets" & "liabilities").

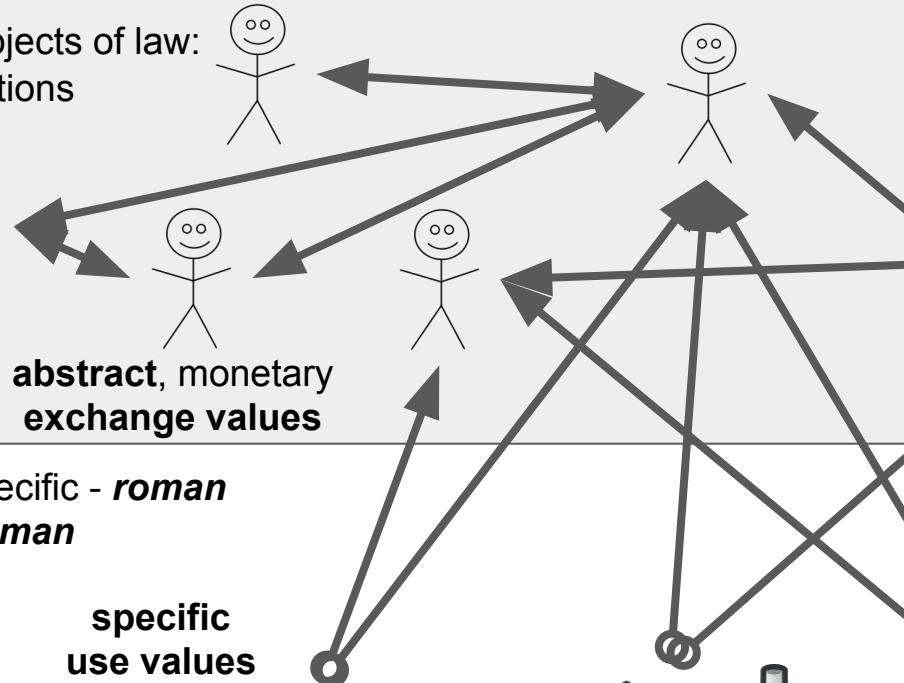
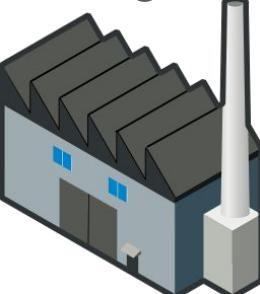
2nd order objects of law: Rights&Obligations



↑ historically specific - *roman*
↓ universal - *human*



1st order objects of law: things, ideas, services



World of **Law/Economics**
transferable rights
corporeal + incorporeal
property
claims + obligations
Assets/Liabilities

BUSINESS/FINANCE
Chrematistike
Law/Accounting



World of possessing and
using tangible and
intangible **things/ideas**
PRODUCTION/
INDUSTRY
Oikonomia
Engineering/Technology

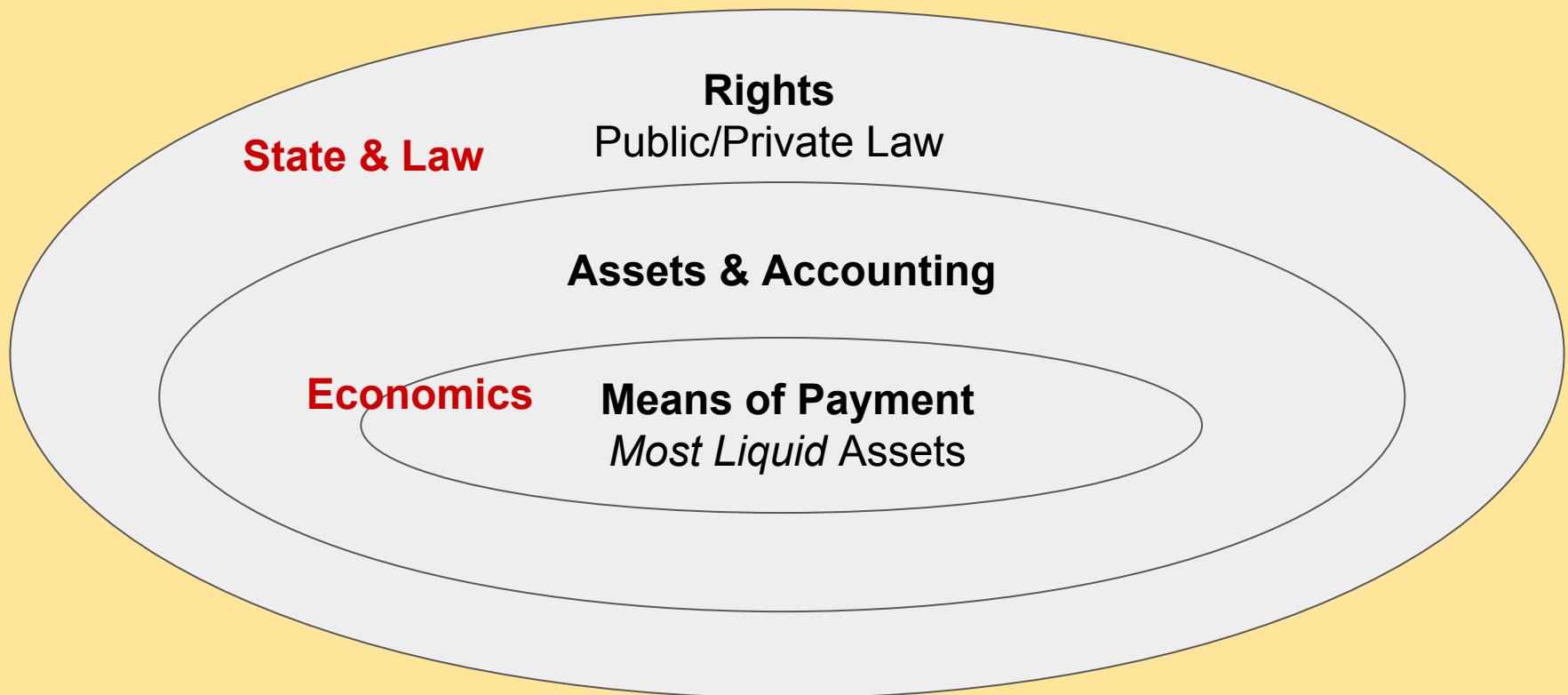
Summary

Historically Specific **Core Distinctions** in Roman Law

- **Private** vs. **Public** Law (Conflict)
 - → Free Marketeer vs. Statist
- **Things** (1st) vs. **Rights** (2nd ord. obj. of law)
 - → Nominalist vs. Chartalist

Legal Institutionalist Theory of Money

Money in Law vs. Non Law



Stateless: Tribal, Failed & Weak States

Means of Barter Exchange

Means of Payment

Any legal person	
Rights	Obligations + Net Worth
Claims <ul style="list-style-type: none">- <u>Credit</u> Means of Payment- Other (less liquid) claims	
Property Rights <ul style="list-style-type: none">- <u>Commodity</u> Means of Payment- other (less liquid) PR	

Liquidity & Accountability

Any legal person	
Rights <i>by liquidity</i>	Obligations + Net Worth <i>by maturity</i>
<p>Hierarchy of Rights (Mehrling 2012 in terms of law)</p> <p>Current</p> <p>Means of Payment</p> <p>Property (Commodity) MoP Claims (Credit) MoP</p> <p>Other Claims (accounts receivable...)</p> <p>Other Property (inventory, raw mat.)</p> <p>Non-Current</p> <p>Claims (long term) Property (land, real est., machin.)</p>	<p>Current</p> <p>Obligation t_1 t_2 $t_3 \dots$</p> <p>Non-Current</p> <p>Obligation t_x t_y</p> <p>Net Worth (Balance)</p>
	<p>Enforceable when Due</p>

5 Subtypes of “Money”

Means
of
Payment

Law	Private	Public
Property (Commodity MoP)	1. Barley, Tobacco, Silver ... Privately Minted Coins	2. Gov't Minted Coins (Coinage Prerogative)
Claims (Credit MoP) <ul style="list-style-type: none">- direct- via intermediary (banking system)	3. Bill of Exchange Private Bank Notes	4. U.S. Demand Notes 1861 (direct) Federal Reserve Notes (via banking system)

Means
of
Exchange

Non Law	5. Generalized Means of <u>Barter</u> <ul style="list-style-type: none">- seashells, cattle, agricult. products- cigarette “currency” (Germany 1946)- dollar in “dollarized” weak & failed states
----------------	---

Metallism

vs.

Nominalism?

Intrinsic Value of Commodity Money (Metallism)?

A	L+NW
<u>Property</u> Coins 100 000\$	
 NW 100 000\$	



You

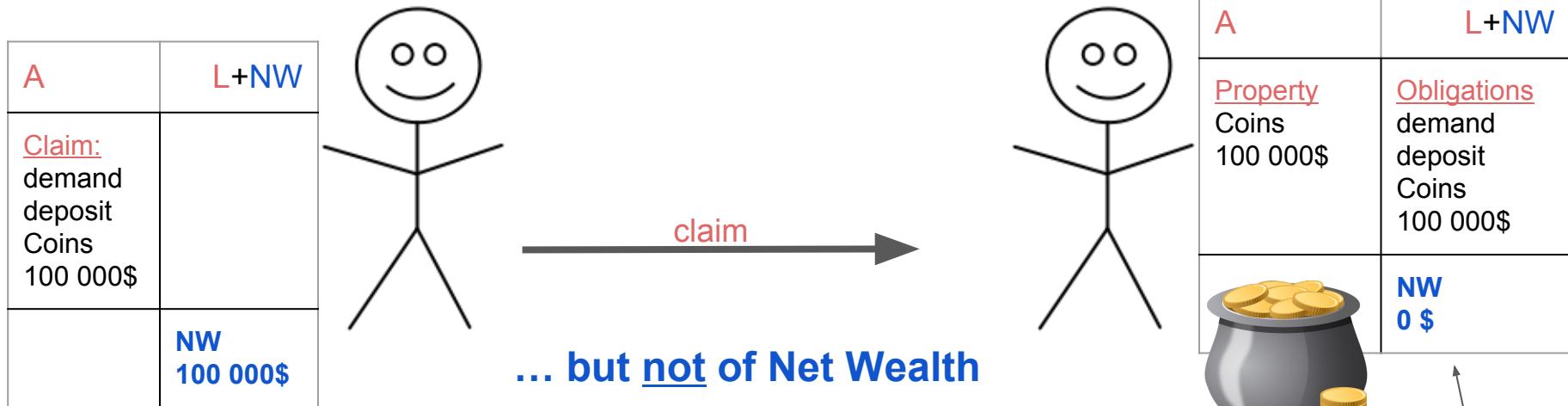
Property = 2nd order object of law

- + Coins = 1st order o.o.l.
- = net worth f. you

A	L+NW
	NW 0 \$

Bank

Transfer of Coins ...



Depositor

Claim = 2nd order object of law
= net wealth f. depositor

Bank

Coins = 1st order object of law
= no net wealth f. Bank

Monetary Sovereignty: Public vs. Private?

Why is State Money often the “Best Money”?

Modern Monetary Theory (Randall Wray 2012)

State

- declares legal tender
- issues legal tender liabilities by buying from priv. sector on credit (**private** law!)
- taxes **all** citizens by command (**public** law!)
 - accepts tax payments in its own **liabilities** (offsetting against **tax claims**)
 - universal domestic demand for state **liabilities**: **highly liquid**

Therefore

- no liquidity/insolvency constraint as long as gov’t debt is denominated in **domestic** currency - but risk of inflation
- constraint: net debt denominated in **foreign** currency - exorbitant U.S. privilege

Objection

Money View (Perry Mehrling)

“For monetary theory, so it seems to me, the significant point about the modern state is NOT its coercive power, BUT the fact that it is the one entity with which every one of us does ongoing business. We all buy from it a variety of services, and the price we pay for those services is our taxes.”

*Perry Mehrling
Modern Money: Fiat or Credit?
Journal of Post Keynesian Economics Vol. 22, 2000, No. 3, p. 402*

Hybridity of Republican States

Republican Government (Legal Person in Public Law)	
Claims	Obligations
<u>Public Law</u> Tax Claims ag. ALL Citizens Administrative Fines [...] <u>Private Law</u> Accounts receivable (Gov't Services) [...]	<u>Public Law</u> Social Security Subsidies <u>Private Law</u> Bonds (Treasury Bills) Accounts payable fr. gov't purchases [...]
Property Rights	Net Worth

Republican Governments (public authorities)

- are legal persons in *public* law (command, subordination)
- can choose to partially act in *private* law (consent, equality)
- can emit bonds as MoP or refinance them through banks
- are constrained by constitutional law: republican principles

Government bonds

- are obligations in *private* law
- are claims on the gov't's assets, including **tax claims**
- can be secure, low-yield assets *if the state has reliable legal institutions* ²²

What “Backs” Sovereign Money?

State enforces at maturity

1. **Public** law: *tax claims - sovereign state*
2. **Private** law: *contracts (on demand: civil court) - sovereign citizens*

Sovereign Money therefore “backed” by

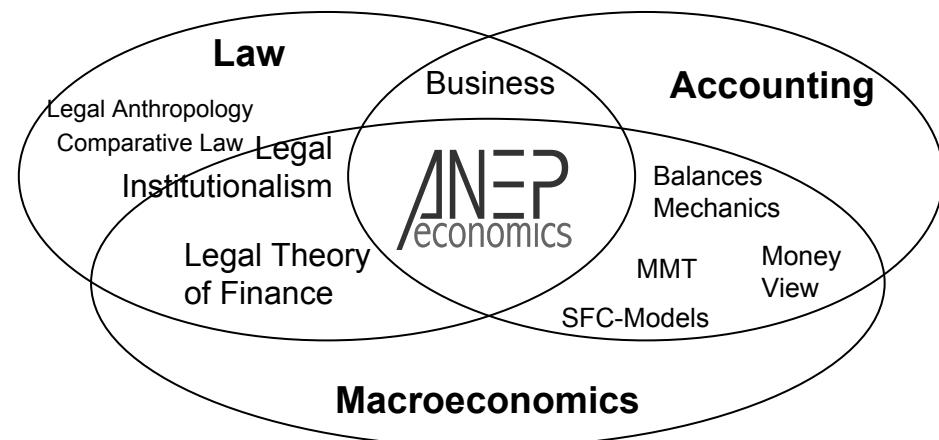
1. **Sovereign State Law Enforcement (legitimate monopoly of force)**
 - Internal: Police & Bailiffs
 - External: Military (U.S. mil. bases “back” internat. trust in dollar)
2. **Subjective Expectations** (valueing & pricing assets: inflationary booms, deflationary busts)

Need - and potential! - for anti-cyclical state action (Roosevelt 1933, Volcker 1979, Bernanke 2008 ...)!



academy for
new european political economics

wolfgang.theil@anep-economics.org
www.anep-economics.org
youtube: ANEP economics



<http://independent.academia.edu/WolfgangTheil>



academy for
new european political economics

Monetary Sovereignty, Government Debt and Taxation

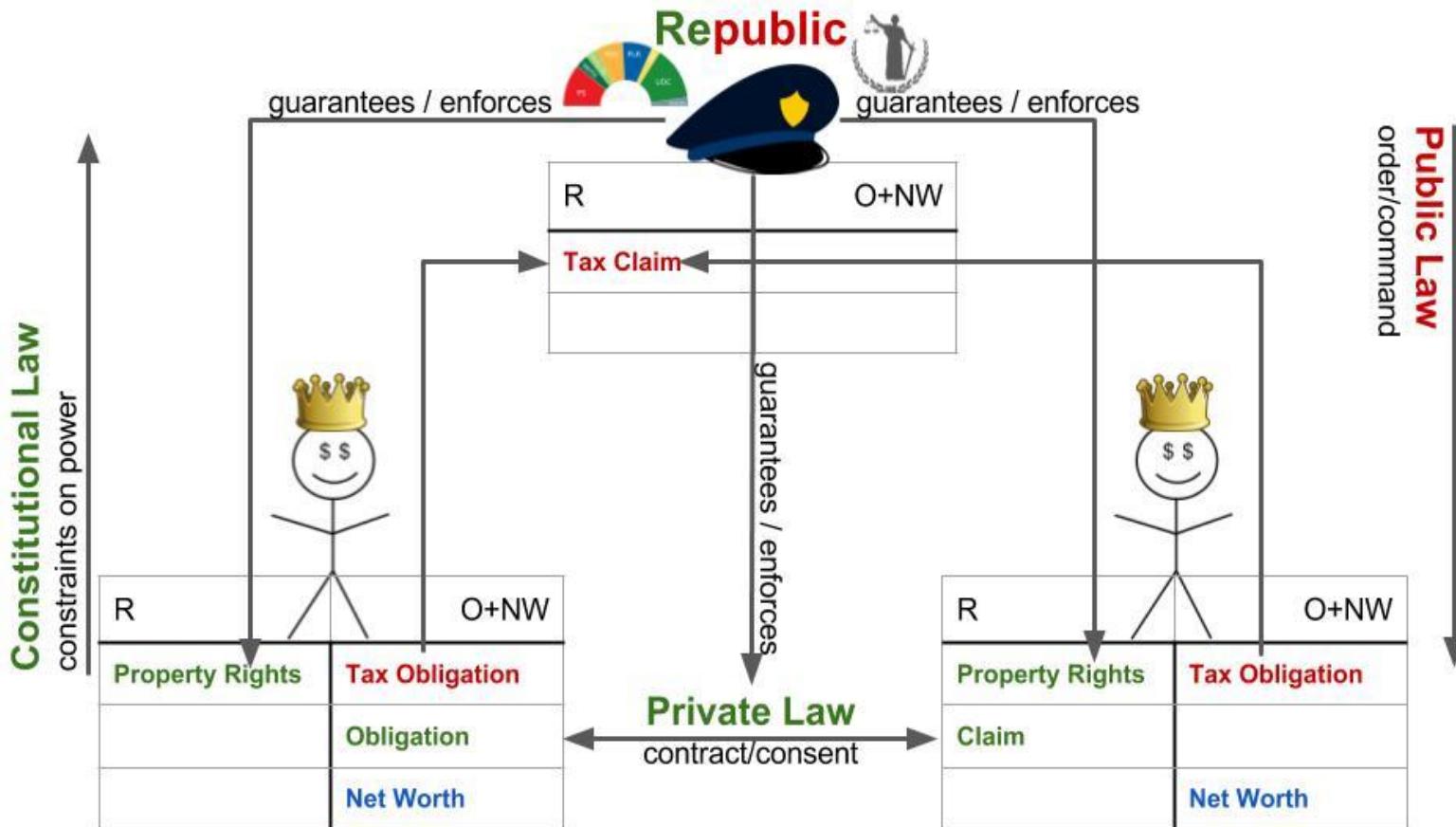
Some Clarifications from a Legal Institutional Point of View
(extended version)

WINIR Conference “Institutions and Open Societies”
Utrecht University

September 14-17, 2017

Wolfgang Theil (Germany) - Wolfgang.Theil@anep-economics.org - Phone +49 1577 321 3500

“Open Society”: Legal Institutions



Sovereign States

Legitimate Monopoly of Force

over a defined territory and its people.

- Internal: Law
 - pacify territory
 - guarantee & enforce laws
- External: Westphalian Order
 - defend borders
 - relate to other states by treaties in public international “law”:
 - “Primitive Law on the Global Level” (E.A. Hoebel)

← Dialectic Conflict →

Public Law (<i>ius publicum</i>) Centralization	Private Law (<i>ius privatum</i>) Decentralization
State	Civil Society, Market
Monopoly of Force	Plurality of Forces
Centralization of Sovereignty/Decisionmaking	Decentralization of Sovereignty/Decisionmaking
Inequality & Subordination Taxation by Command	Equality & Freedom Property & Contract by Consent
Whole / Totality	Individual Parts / Plurality

Constitutional Law: Republican Principles*

(~~Absolutist Monarchy 1789, Colonial Ruler 1776~~)

Citizens Retain **Public** Law, but Subordinate it to **Private** Law Principles
(Monopolism/Pluralism Dialectic):

1. Division of **Power**: Free Citizens apply “divide et **impera**” to State
 - a. **Public** / Private Law Division (Civil Liberties: Freedom *from* the state *within* the state, guaranteed by the state)
 - b. Horizontal: Legislative, Judicial & Executive Branches of Gov’t
 - c. Vertical: Federalism (Federal, State and Community Gov’ts)
2. Popular **Sovereignty** & **Democracy** (Free Citizens = Partial Sovereigns)
3. **Rule** of Law (not people) over **Citizens** AND the **State** (**Rechtsstaat**)

* free citizens restrain but retain centralized monopoly of force

Private/Public Law Dialectic

[“Market/State”] - inescapable Conflict in Open Societies

Private Law (Freedom) impossible without Public Law (Command):

“All private law is connected to a right of acknowledgement and protection by public law.

Thus, all private law rests on the foundation of public law.

(Georg Jellinek 1905: General Theory of the State, 372-373, my translation)

Hybrid system, historical cycles of centralizing and decentralizing sovereignty:

Anacyclosis

(Aristoteles, Polybios, Cicero, Machiavelli, Vico, Kant ...)

Modern European Cycles

- 17th/18th cent. Absolutism. Sovereign State Formation
- 18th/19th cent.: 1st Wave of Democratization. Decl. of Independence, French Revolution “Liberal Century”
- 1914 /1917/1933: New Deal, Fascism. State Dominance
- 1945-1962 2nd Wave of Democratization
- 1962-1971/1973: Keynesian Era - End of Bretton Woods S. State Dominance
- 1975-1989-2008: 3rd Wave of Democratization. Neoliberal Revolution, Collapse of Socialism
- 2005-? Democratic Recession: Financial Crisis ... Trump, Orban & Co. ... ?

→ **Cycles of Private vs. Public Money (debt) Creation**

<u>Stateless</u>			State Centralized Authority				<u>Interstate</u>							
Reciprocity Tribal Communities Failed States			Religion Theocracy	Rule of Law Republic			Reciprocity International Public “Law” <u>EU-“Law”</u>							
Generalized	Balanced	Negative	Heavenly Order on earth Salvation	Private Law Decentral [Freedom]	Dialectic	Constitution. [Constraints on Power]	Public Law Central [Order]	Diplomacy War						
Close Kinship	Kinship Friend- ship	Strangers	Dues for <u>holy</u> order and Salvation	Property Rights Contract Business	Democracy Federalism Politics	Dues for <u>legal</u> order by Taxation	Hegemony Power							
Non-Law Custom Closed Society			Neopatrimonialism “Corruption”				Law Europ. Civilization “Open Society”							

Assets & Liabilities

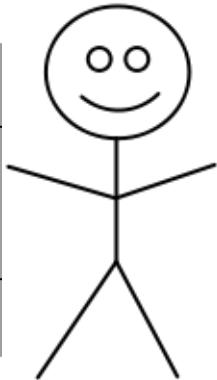
Standard Accounting Categories

Any Economic Subject	
Assets	Liabilities + Net Worth
Financial Assets	Loans
Real Assets	Net Worth

Modern Monetary Theory (Wray 2012, 24)

“Real” assets? Property vs. Possession

A	L+NW
<u>Property:</u> House 100 000\$	
	NW 100 000\$



rental contract:
absentee ownership



Owner

Legally owns house

property right = 2nd order object of law
= asset

immaterial/abstract money-denominated
exchange value
metaphysical

Tenant

Possesses house

thing = 1st order object of law
= no asset

material, concrete
use value
physical

The owner can sell the property right to a third person independently of the tenant, even though the tenant may have a right to stay there and his rental contract cannot be terminated by the new owner. The new owner then buys the home not to use / possess it, but as a “capital asset” which yields “interest” (monthly rent payments). The person actually possessing the home did not change. The person legally owning the home changed.

The rental contract is tied not to a specific owner, but to the property right itself, which the owner can sell WITH the duties coming with the rental contract.

This type of impersonal transfer of abstract rights, independent of actual and de iure possession, and this view of things as “assets” that yield monetary returns to the owner even if he does not possess the physical object, is completely absent in stateless communities (which of course lack private law as well).

It is the hallmark of financial markets and of western civilization.

Property vs. Possession - SO WHAT?

- fundamental distinction of Roman (private) Law (basis of modern civil codes)
- got blurred during “vulgar law” end phase of roman empire
- disappeared during middle ages
- absent in stateless communities (“possession is the whole law”, W. Seagle)
- re-appeared in 12th century with reception of roman law (University of Bologna, italian renaissance)
- prompted merchants to develop double-entry bookkeeping

1st vs. 2nd Order Objects of Law

*“From the perspective of law, we must clearly and precisely distinguish things as **1st order objects of law** from **rights** as **2nd order objects of law.***

*The objects of the property rights belonging to someone’s assets do not represent the assets. The **assets** consist of the property rights in the things/objects, not in the things themselves; and in the creditor’s claims, not in the objects which can eventually be legally claimed on their basis.”*

*Karl Larenz. 1967. Allgemeiner Teil des Bürgerlichen Gesetzbuchs. München: C.H. Beck, p. 306
(Standard Textbook on German Private Law)*

Assets are not “Things”



“The material things have no value for economics except as they can lawfully be owned and their ownership lawfully transferred.

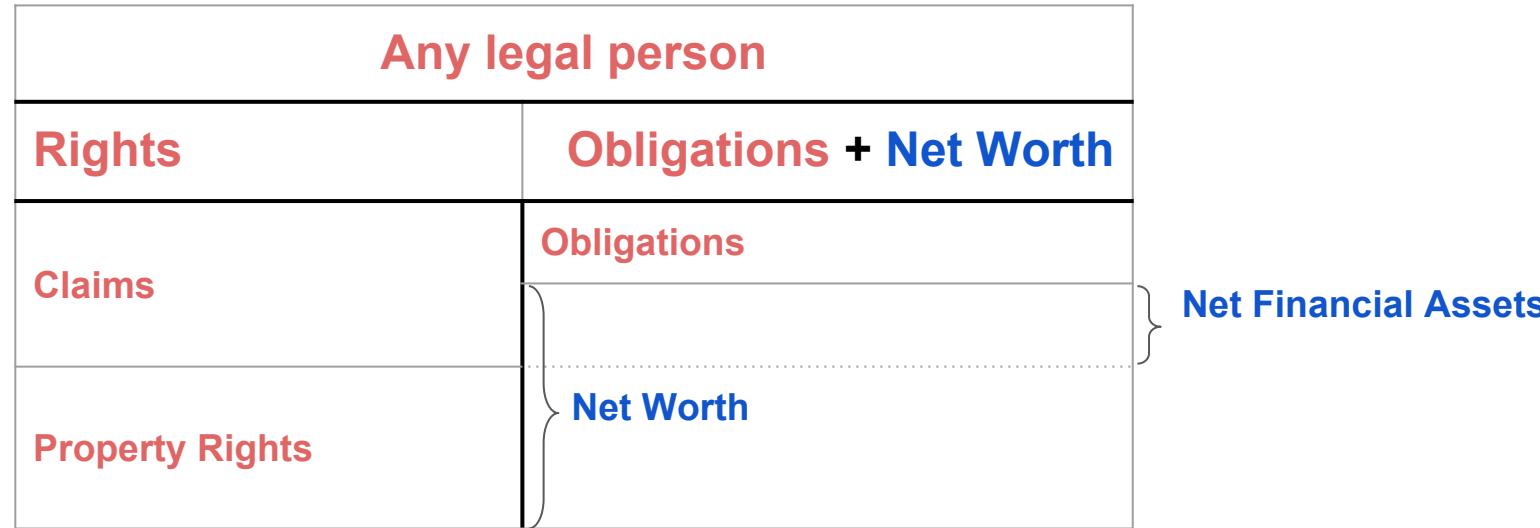
*Other sciences deal with things (1st order objects of law, WT) – **economics deal with legal rights over things (2nd order objects of law, WT).***

John R. Commons 1934, “Institutional Economics”, 400

... in Double Entry Accounting:

Red:
Legal Terms

Blue:
Balances,
genuine
Accounting
Terms



Italian Renaissance, 12th Century ff.

- renewed reception of Roman Law (*codex iustinianus*) - first Universities (Bologna)
- Double Entry Bookkeeping:
 - *Summa de arithmeticā, geometriā, proportioni et proportionalitā* 1494



Luca Pacioli (1445-1517)
Collaborator of
Leonardo da Vinci

What are Rights? legally enforceable social *relations*

WESLEY NEWCOMB HOHFELD (1879-1918) <i>Fundamental Legal Conceptions as Applied in Judicial Reasoning</i>		
Jural Correlatives		
Right	Duty	Type of Relation
Owner holds Property (exclusion)	ALL others must respect exclusion	<i>multital</i> (right vis a vis <u>all</u> others' duty)
Creditor holds Claim	Debtor must serve Obligation	<i>unital</i> (right vis a vis <u>one</u> others' duty)



WESLEY NEWCOMB HOHFELD

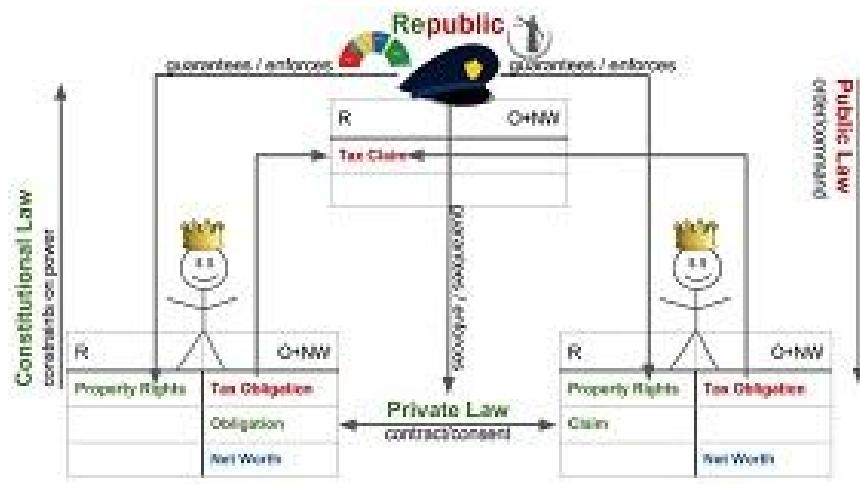
"The correlation of rights and duties is not a conclusion of logic, as is often inferred, but is a command of government."

*(John R. Commons. 1924. Legal Foundations of Capitalism.
New York: Macmillan, p. 86-87)*



Economics therefore deals with ...

*... buying and selling invisible
triangular legal (paucital or
multital) relationships between
fictitious people (legal persons)
and a state ...*



... AS IF they were things ("assets" & "liabilities").

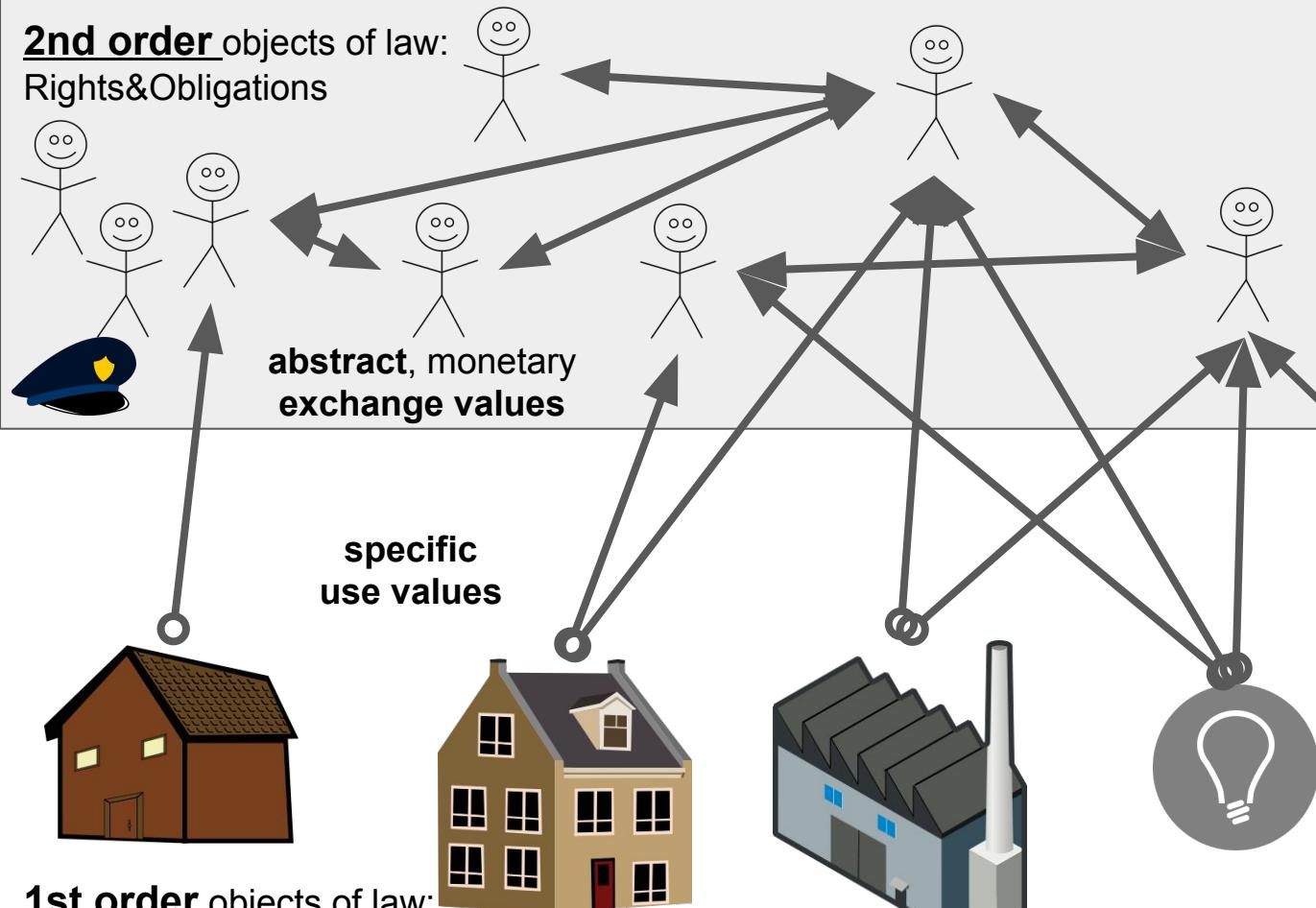
Wolfgang Stützel, building on J.R. Commons:

„Whatever people exchange, they are never concerned with just the object itself, but always with the rights and duties that are connected to the object, which are transferred from one partner to the other by exchange. Which set of legal rights and duties is transferred, is determined by the legal order.”



*R.D. Grass/Wolfgang Stützel. 1987. Volkswirtschaftslehre.
München: Vahlen, p. 49*

2nd order objects of law:
Rights&Obligations



World of **Law/Economics**
transferable rights
corporeal + incorporeal
property
claims + obligations
Assets/Liabilities

BUSINESS/FINANCE
Chrematistike
Law/Accounting



World of possessing and
using tangible and
intangible **things/ideas**
PRODUCTION/
INDUSTRY
Oikonomia
Engineering/Technology

3 Examples

- **Intertribal Barter, Oriental Bazaar, Russia 1990, Failed States**
 - 2nd order nonexistent - barter
- **Western Supermarket: Commodities for Cash**
 - 2nd order exists, remains invisible
- **Financial Markets (stock exchange)**
 - 2nd order & 1st order *spatially separated*

What are Financial Markets?

- **trade 2nd order objects of law**
 - commodity futures trader do not need to touch or even see the “stuff” the *rights* to which they buy&sell
- presuppose strong, reliable impersonal state & legal institutions (registries, enforcement)
- do not exist in stateless communities (barter!)
- are compromised in weak, neopatrimonial states (soft currencies)

Marx' “Secret” of “Commodity Fetishism”

“The value relation between ... commodities, has absolutely no connection with their physical properties and with the material relations arising therefrom. [...]”

“So far no chemist has ever discovered exchange value either in a pearl or a diamond.”

Articles of utility become commodities, only because they are products of the labour of private individuals or groups of individuals who carry on their work independently of each other.

The whole mystery of commodities ... vanishes ... as we come to other forms of production.”

Karl Marx. 1867. Capital, Vol. 1, Chapter 1: Commodity and Money:
“The Fetishism of Commodities and the Secret Thereof”

Legal Institutional Theory of Money

Money in Law I: Accounting Unit for transferable legal rights/obligations

*"Money of **account**, namely that in which **debts** and prices and general purchasing power are expressed, is the primary concept of a theory of money.*

*A money of **account** comes into existence along with **debts**, which are **contracts** for deferred payment, and price lists, which are offers of **contracts** for **sale** or **purchase**."*

*John Maynard Keynes. 1930.
A Treatise on Money, p. 3ff*

What is Monetary Value?

- Past stored labour (Classical) +
- Present utility (Neoclassical) +
- **Future expected opportunities of exchanging a transferable 2nd order object of law for other 2nd order objects of law**
 - J.R. Commons 1924
 - J.M. Keynes 1936
 - W. Stützel 1952
 - **Business practice**
 - ***Depends on trust in reliability of network of legal relations involved (Rudolf Kauila 1949)***

“Money” in Law II: Means of Payment

Any legal person	
Rights	Obligations + Net Worth
<p>Claims (<i>unital</i>)</p> <ul style="list-style-type: none">- Credit Means of Payment (net zero for aggregate closed economy)- Other (less shiftable) claims	Obligations
<p>Property Rights (<i>multital</i>)</p> <ul style="list-style-type: none">- Commodity Means of Payment (net asset for aggregate closed economy)- other (less shiftable) PR	Net Worth

What are Means of Payment?

- subset of rights (2nd order objects of law):
 - **assets**
- *most shiftable* subset of assets (market+state demand):
 - **means of payment**
- specific forms variable:
 - historically (barley to bills of exchange to FED liabilities)
 - within boom/bust cycles (Mehrling 2012)

Money in Law III: Liquidity

Any legal person	
Rights <i>by liquidity</i>	Obligations + Net Worth <i>by maturity</i>
<p>Hierarchy of Rights (Mehrling 2012 in terms of law)</p> <p>Current</p> <p>Means of Payment</p> <p>Property (Commodity) MoP Claims (Credit) MoP</p> <p>Other Claims (accounts receivable...)</p> <p>Other Property (inventory, raw mat.)</p> <p>Non-Current</p> <p>Claims (long term) Property (land, real est., machin.)</p>	<p>Current</p> <p>Obligation t_1 t_2 $t_3 \dots$</p> <p>Non-Current</p> <p>Obligation t_x t_y</p> <p>Net Worth (Balance)</p>
	<p>Enforceable when Due Accountability</p>

What is Liquidity?

Quality of Rights:

- time frame within which a legal person expects to be able to exchange (“shift”) a particular right for *other* rights
- depends on market & state demand
 - most “in demand” asset = most liquid
 - liquidity hierarchy of rights
 - changes during boom/bust (Mehrling 2012)

Commodity MoP: Property Rights in what?

Historically variable (market & state demand)

- barley (Mesopotamia)
- tobacco (colonial Virginia)
- silver, gold coins
 - *privately* owned mints
 - *state* owned mints
- gold (up to gold standard 1870-1973)

Commodity MoP: Produced by Whom?

Historically variable

- private mints
- legal tender, but freedom of coinage+private mints (i.e. german reich, 19th century)
- public mints, coinage prerogative (regalia) of sovereign

Debasement possible for privates and states, but easier for states to get debased coins accepted: legal tender, accepted for tax payments at nominal value: demand creates liquidity

Credit MoP: Claims against Whom?

Historically variable:

- private legal subjects
 - bill of exchange
 - private bank notes
- public legal subjects
 - United States Demand Notes (1861-62, direct)
 - Federal Reserve Notes (bef. 2008, via Bank: FED)

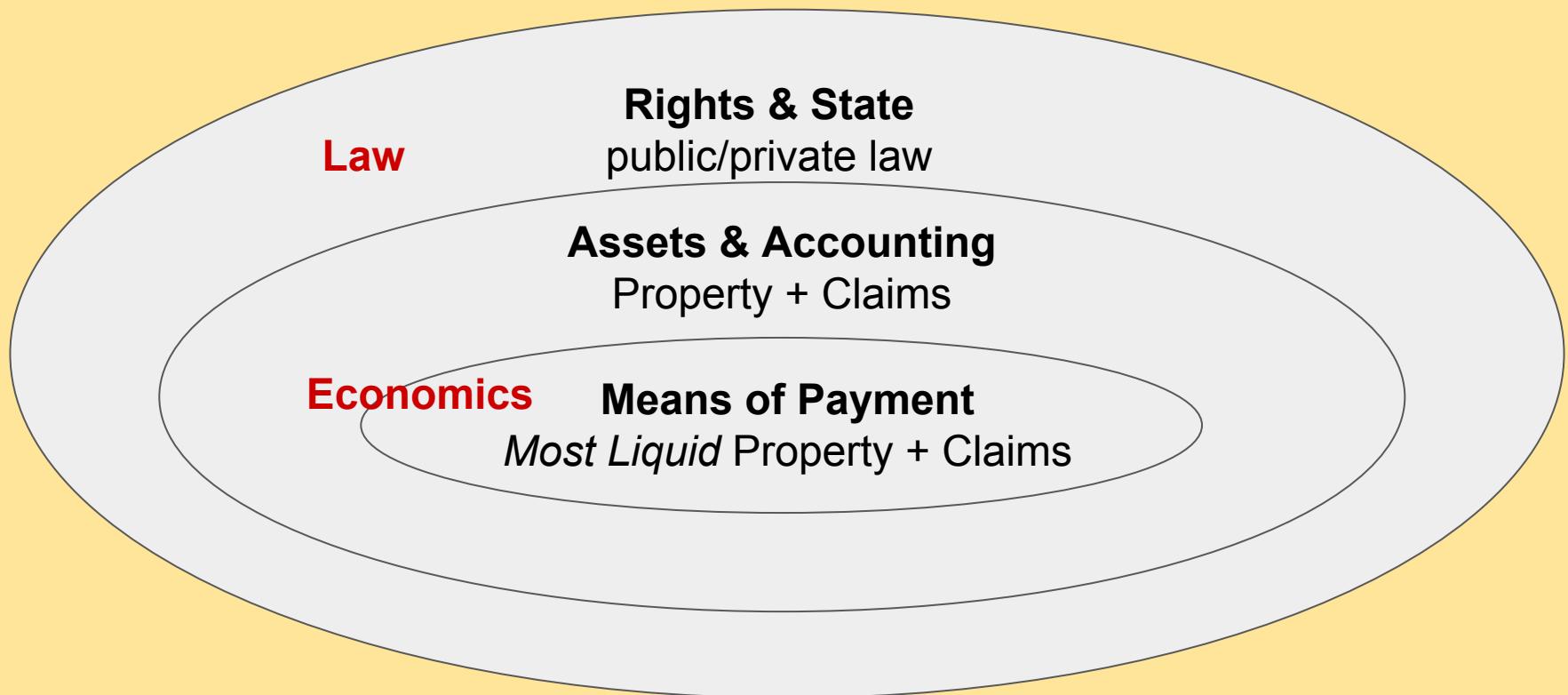
May or may not be mediated by a financial intermediary (private or public bank); today's central banks monetize claims against private **and** public legal subjects (hybrid system)

5 Subtypes of “Money”

	Law	Private	Public
<u>Means of Payment</u>	Property (Commodity MoP)	1. Barley, Tobacco, Silver ... Privately Minted Coins	2. Gov't minted coins (coinage prerogative)
	Claims (Credit MoP) <ul style="list-style-type: none">- direct- via intermediary (banking system)	3. Bill of Exchange Private Bank Notes	4. U.S. Demand Notes 1861 (direct) Federal Reserve Notes (via banking system)

<u>Means of Exchange</u>	Non Law	5. Generalized Means of <u>Barter</u> <ul style="list-style-type: none">- seashells, cattle, agricult. products- cigarette “currency” (germany 1946)- dollar in “dollarized” weak & failed states
----------------------------------	----------------	--

Money: Law vs. Non Law



Stateless: Cultural Anthropology

Means of Barter Exchange

MMT's denial of commodity money

“Even coins made of gold or silver are really IOUs stamped on metal. They are not examples of commodity money.”

Wray 2012, 152

similar:

Heinsohn&Steiger 1996, 244ff

Balance sheet of the Deutsche Bundesbank as at 31 December 2016

Assets

		31.12.2015	
		€ million	€ million
1	Gold and gold receivables <i>of which: gold receivables €307,546.21</i>	119,253	105,792
		(0)
11	Other assets		
11.1	Coins	1,003	(963)

Liabilities

		31.12.2015	
		€ million	€ million
1	Banknotes in circulation	264,907	254,844

Controversy: Commodity vs. Credit Money

- Metallism (Right & Austrians)
 - only gold has intrinsic value
 - goal: back to gold standard (ended in 1971)
- Nominalism (Left & MMT)
 - commodity money never existed
 - was always just government liability stamped on metal
(Wray 2012, 153)

Intrinsic Value of Commodity Money (Metallism)?

A	L+NW
<u>Property</u> Coins 100 000\$	
 NW 100 000\$	



You

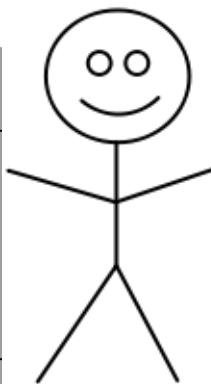
- Property = 2nd order object of law
- + Coins = 1st order o.o.l.
 - = net worth f. you

A	L+NW
	NW 0 \$

Bank

Transfer of Coins ...

A	L+NW
<u>Claim:</u> demand deposit Coins 100 000\$	
	NW 100 000\$



claim →

... but not of Net Wealth

Depositor
Claim = 2nd order object of law
= net wealth f. depositor

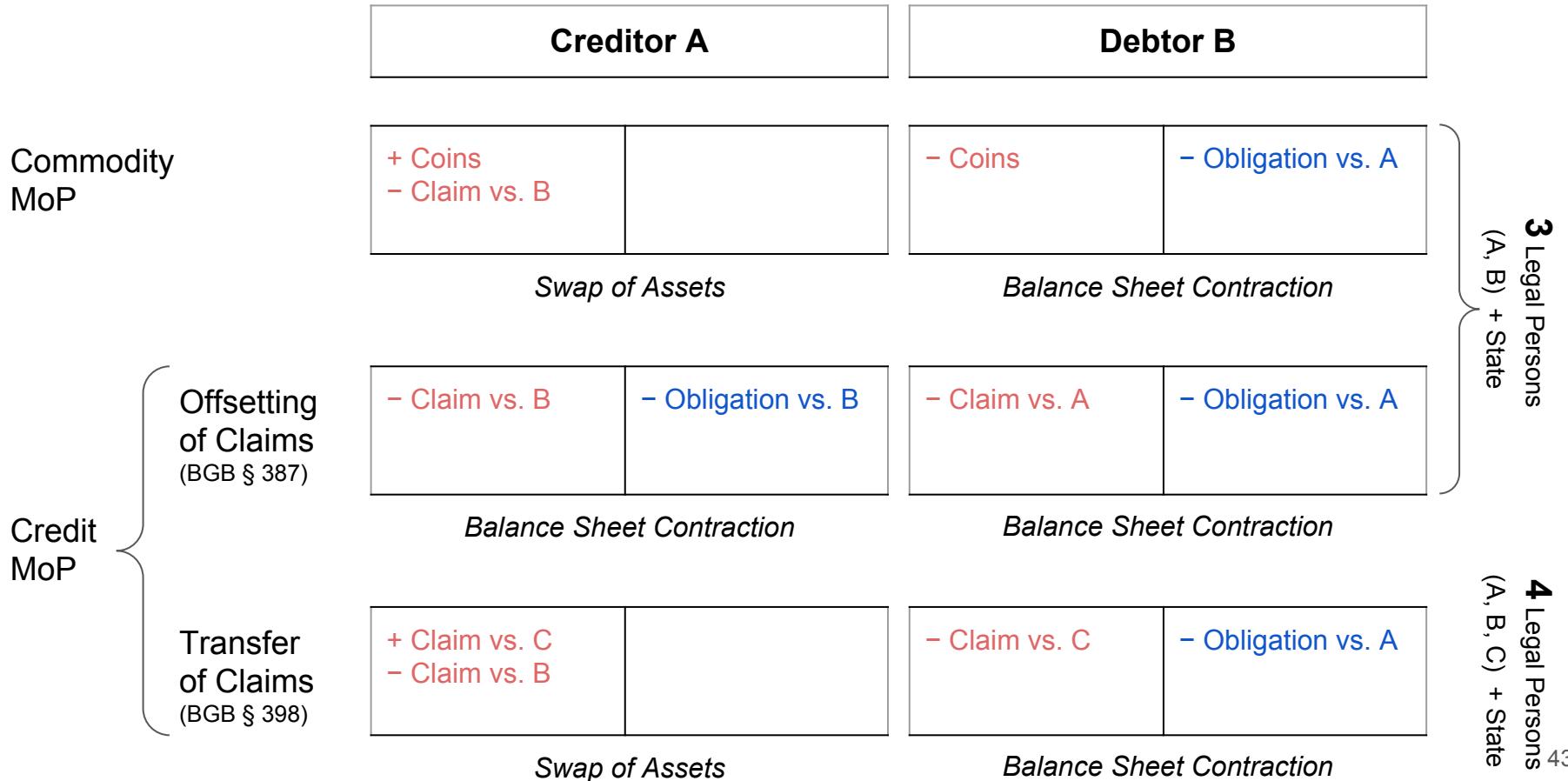
These are
my coins.

A	L+NW
<u>Property</u> Coins 100 000\$	<u>Obligations</u> demand deposit Coins 100 000\$
	NW 0 \$



Bank
Coins = 1st order object of law
= no net wealth f. Bank

Paying: Substituting Commodity by Credit Money



Government Debt & Taxation

Why are state's liabilities often the “best money”?

Modern Monetary Theory (Randall Wray 2012)

State

- declares legal tender
- taxes **all** citizens by command
- issues liabilities
 - accepts tax payments in its own liabilities (offsetting against tax claims)
 - creating ***universal demand*** for its liabilities,, are therefore highly liquid

Therefore

- no liquidity/insolvency constraint as long as gov't debt is denominated in *domestic* currency - but risk of inflation
- constraint: net debt denominated in ***foreign*** currency (cannot be produced domestically) - exorbitant U.S. privilege (dollar global currency)

Objection

Money View (Perry Mehrling)

“For monetary theory, so it seems to me, the significant point about the modern state is not its coercive power but the fact that it is the one entity with which every one of us does ongoing business. We all buy from it a variety of services, and the price we pay for those services is our taxes.”

*Perry Mehrling
Modern Money: Fiat or Credit?
Journal of Post Keynesian Economics Vol. 22, 2000, No. 3, p. 402*

Law, empirical: Hybridity of Republican States

"The state and the government administration are not only only public authorities, but also non-authoritative economic subjects that operate as legal persons according to private law. It depends on the specifics of a given legal order to draw the line between the action of a public authority in its role of a public authority and its role as a private economic subject.

The state can avoid acting as a private legal subject completely, or subordinate itself to private law in a more extensive way than the nature of the legal relationships he enters would actually allow."

Georg Jellinek 1905: *Allgemeine Staatslehre*, 373

Gov't Balance Sheet in Terms of Law

Republican Government (Legal Person in Public Law)	
Claims	Obligations
<u>Public Law</u> Tax Claims ag. ALL Citizens Administrative Fines [...] <u>Private Law</u> Accounts receivable (Gov't Services) [...]	<u>Public Law</u> Social Security Subsidies <u>Private Law</u> Bonds (Treasury Bills) Accounts payable fr. gov't purchases [...]
Property Rights	Net Worth

Republican Governments (public authorities)

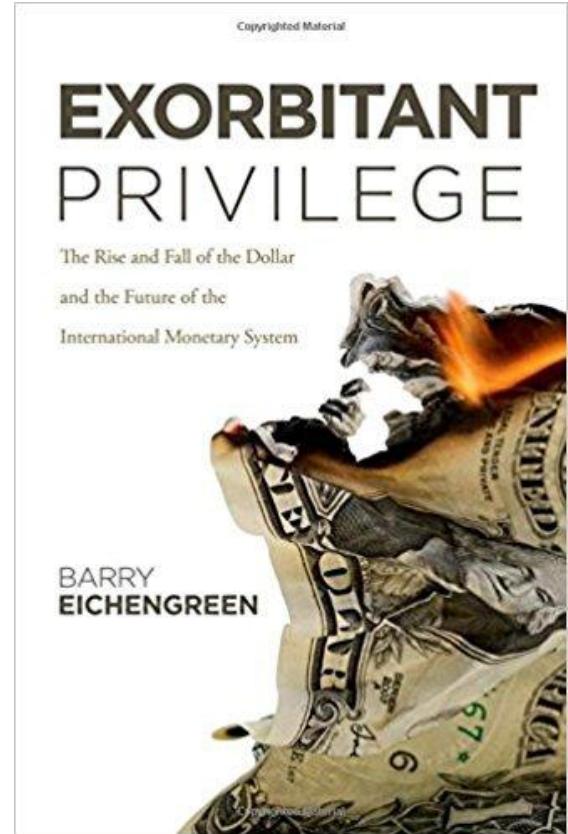
- are legal persons in *public* law (command, subordination)
- can choose to partially act in *private* law (consent, equality)
- can emit bonds as MoP or refinance them through banks
- are constrained by constitutional law: republican principles

Government bonds

- are obligations in private law
- are claims on the gov't's assets, including **tax claims**
- are secure, low-yield assets *if the state has reliable legal institutions*⁴⁸

U.S.A.'s Exorbitant Privilege

- U.S. economy largest net debtor world wide
- but: dollar global currency - since 1944 (Bretton Woods)!
- U.S. only nation that can finance its external deficit by printing own currency
- all other nations need *foreign* currency to pay for trade deficits
- IMF appears in Athens - but *not* in Washington



International Hierarchy of Rights

Mehrling 2015: Claims only!

**Property Rights
must be included!
(Pistor 2016)**



What “Backs” Money?

State enforces at maturity

- public law: *tax claims* (always)
- private law: *contracts* (state service on demand, via civil court)

Sovereign Money therefore “backed” by

1. **Monopolized Force: Sovereign State Coercion**
 - Internal: Police & Bailiffs
 - External: Military (U.S. mil. bases “back” internat. trust in dollar)
2. **Expectations** (subjectively valued Assets: inflationary booms, deflationary busts)

Need for anti-cyclical state action (FED 2008)!

What *should* states do?

“The important thing for Government is not to do things which individuals are doing already, and to do them a little better or a little worse; but to do those things which at present are not done at all.”

J.M. Keynes. 1926. *The End of Laissez-Faire.*
In: Keynes, J.M. 1931. *Essays in Persuasion.* London: Macmillan 1931

Restrictions: Republican Principles*

(~~Absolutist Monarchy 1789, Colonial Ruler 1776~~)

Citizens Retain **Public** Law, but Subordinate it to **Private** Law Principles
(Monopolism/Pluralism Dialectic):

1. Division of **Power**: Free Citizens apply “divide et impera” to State
 - a. Public / Private Law Division (Civil Liberties: Freedom *from* the state *within* the state, guaranteed by the state)
 - b. Horizontal: Legislative, Judicial & Executive Branches of Gov’t
 - c. Vertical: Federalism (Federal, State and Community Gov’ts)
2. Popular Sovereignty & Democracy (Free Citizens = Partial Sovereigns)
3. Rule of Law (not people) over Citizens AND the State (**Rechtsstaat**)

* people restrain but retain a centralized monopoly of force

Long Boom/Bust Cycles Produce Anacylosis

1931-1933

1971-1982ff

2008-2017

Monetary Sovereignty: Stateless Theory vs. Stateless Reality

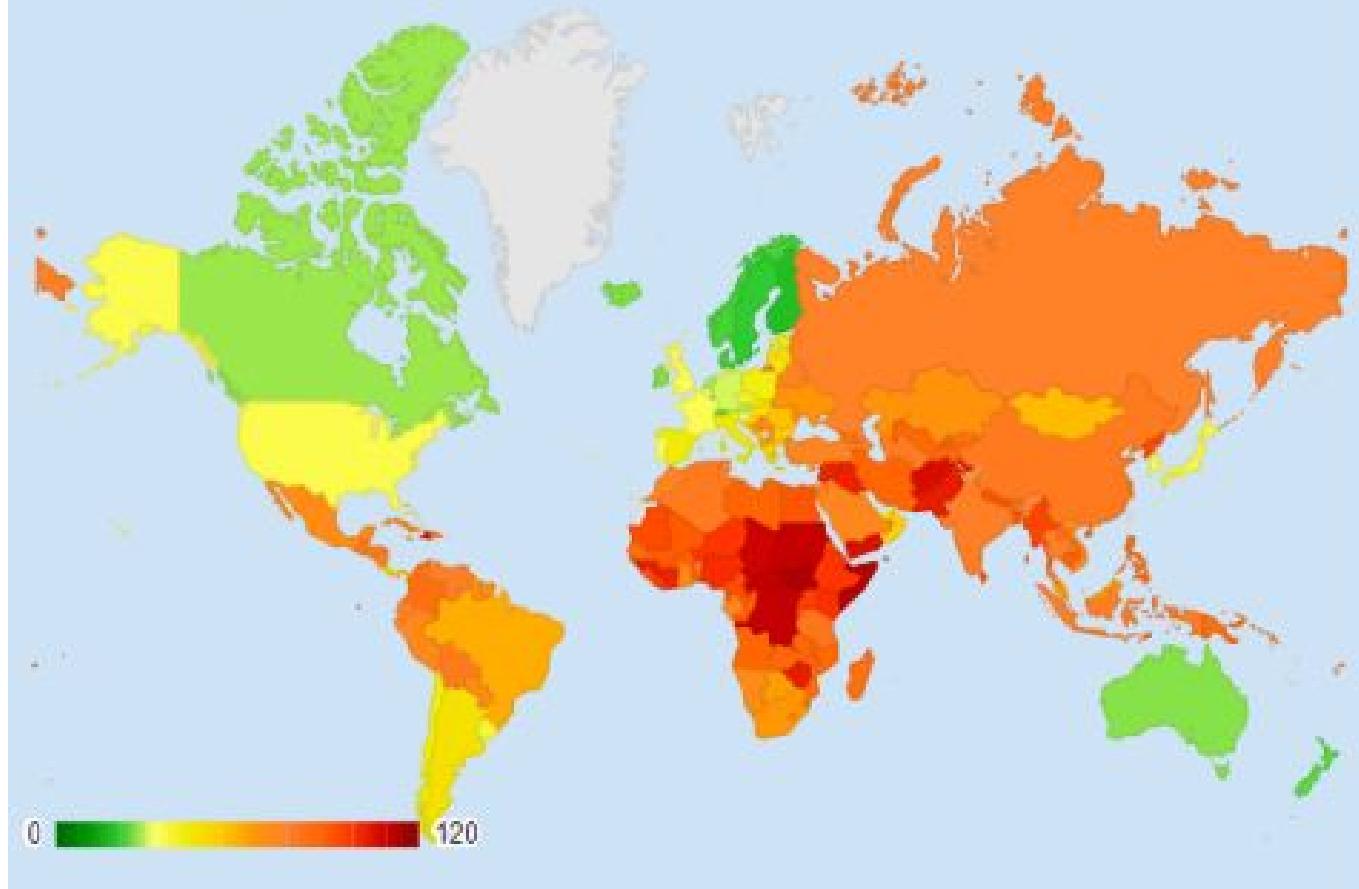
Stateless Theory

"The abstraction from the state in reality does not describe a stateless, anarchic condition. It presupposes a state of ideal stability in all its institutions and functions, so its influence on economic actors can be presupposed as constant and therefore abstracted from."

*Rudolf Kaulla. 1916. Das Objekt des Tauschwerts.
In: Festschrift für Lujo Brentano zum 70. Geburtstag,
München und Leipzig: Duncker & Humblot*

Where does that abstraction work, where does it fail?

FFP Fragile States Index 2014



Failed States

- lost monopoly of force and legitimacy (Lake 2016)
 - internal (includ. legal/monetary) &
 - external sovereignty
- disintegrate into ungoverned, anarchic territory
 - around Europe: clustered east and south of Mediterranean
 - Iraq, Syria, Afghanistan, Somalia, Rwanda, Kongo
- **Weak neopatrimonial States**
 - within europe (weak states): balkans, greece, cyprus, mezzogiorno ...

Credit Money in Weak & Failed States

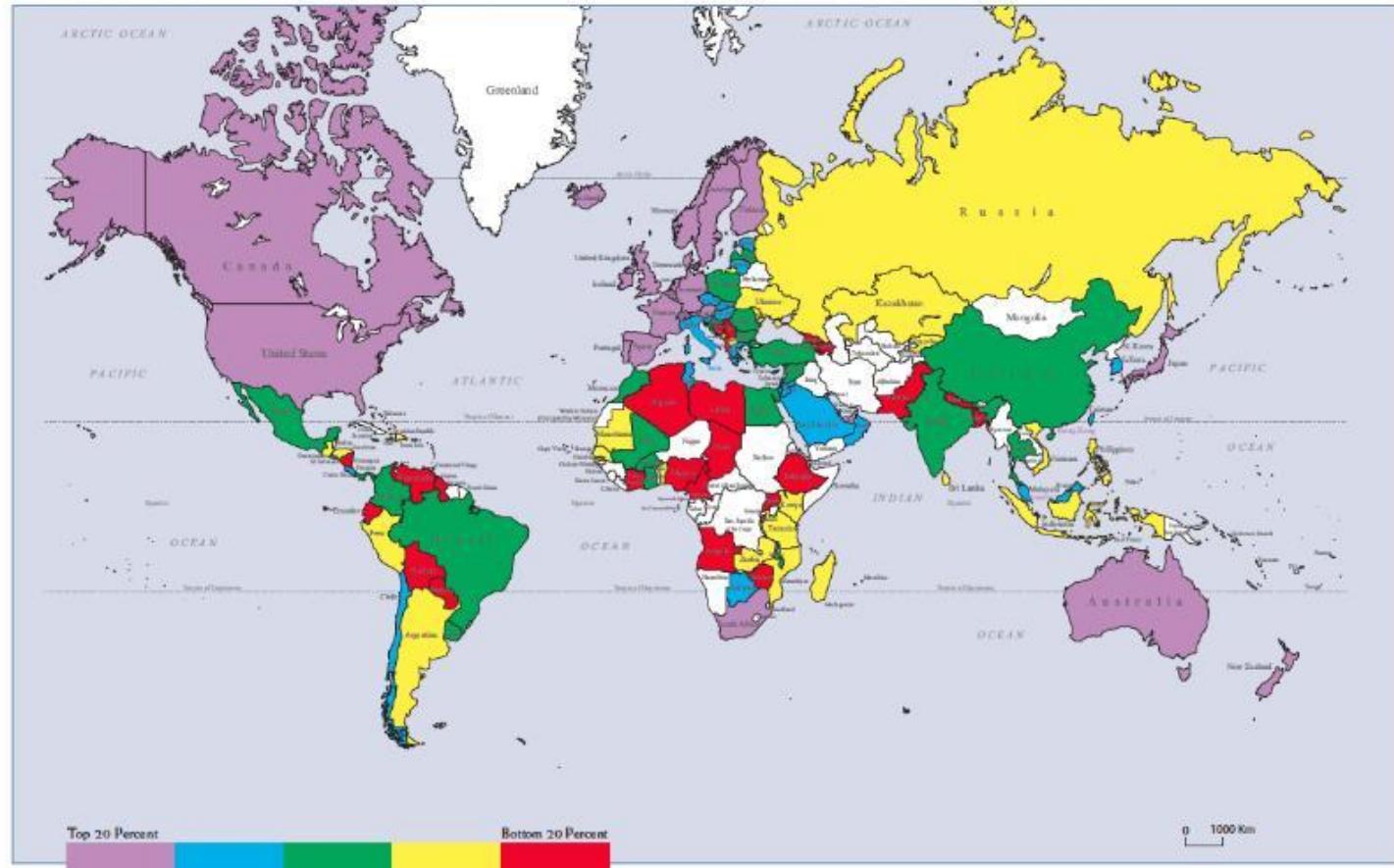
“The value of a claim depends on the reliability of the institutions the creditor must use and rely on to enforce the claim if the debtor does not perform accurately at the promised date. Therefore, the exchange rate of a country’s currency will be lower or higher depending on the reliability and efficiency of its state’s legal institutions, independently of the debtor’s personal reliability.”

Rudolf Kaulla. 1949. Rechtsstaat und Währung, p. 44

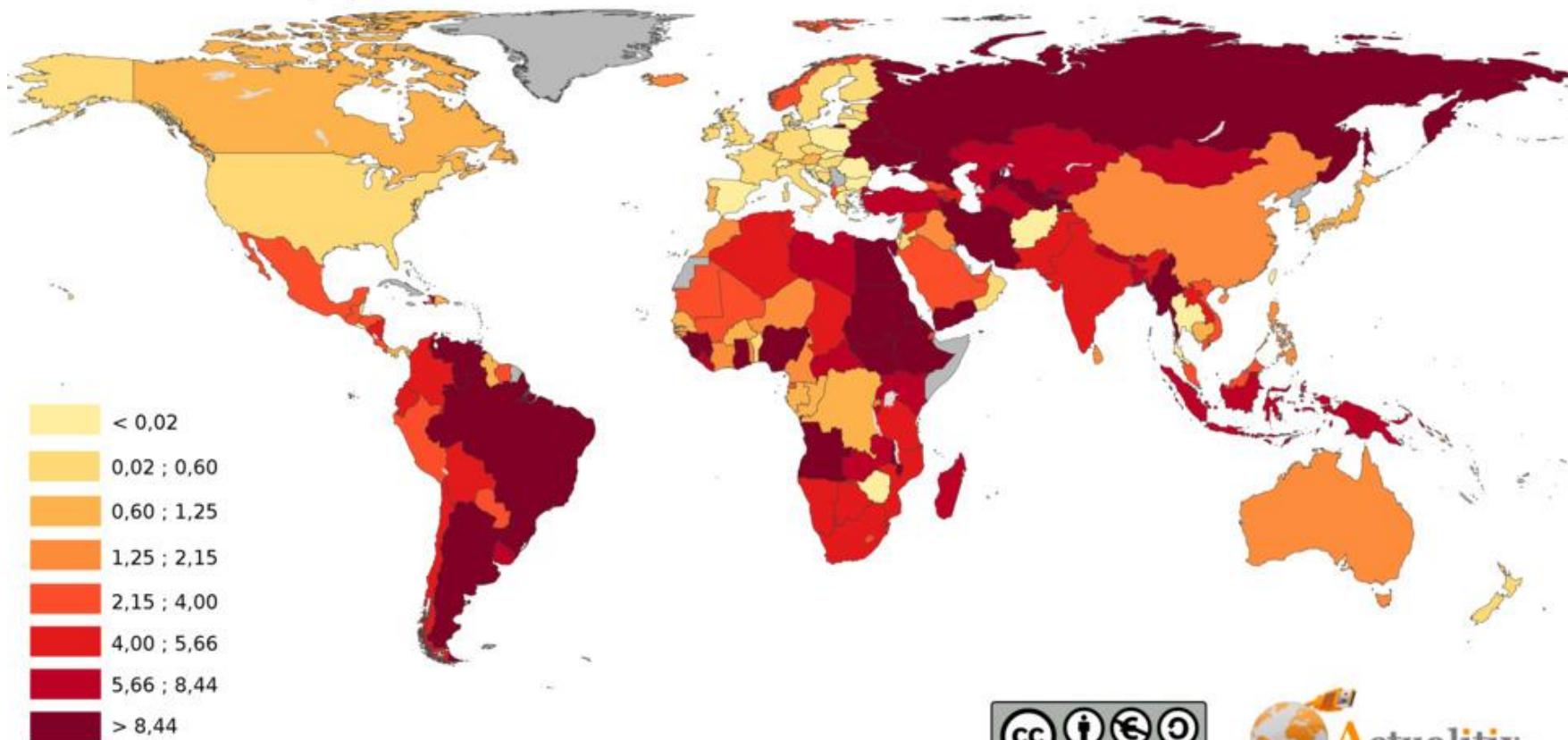
Currency Stability

- much more than with government debt / GdP ratio, currency stability correlates with
 - secure property rights
 - state strength
 - low corruption
- in fact, negative correlation: strong currency states (USA, CAN, JAP) have largest gov't debt/GdP ratios

2010 INTERNATIONAL PROPERTY RIGHTS INDEX RANKING BY QUINTILE



Inflationsrate (%)

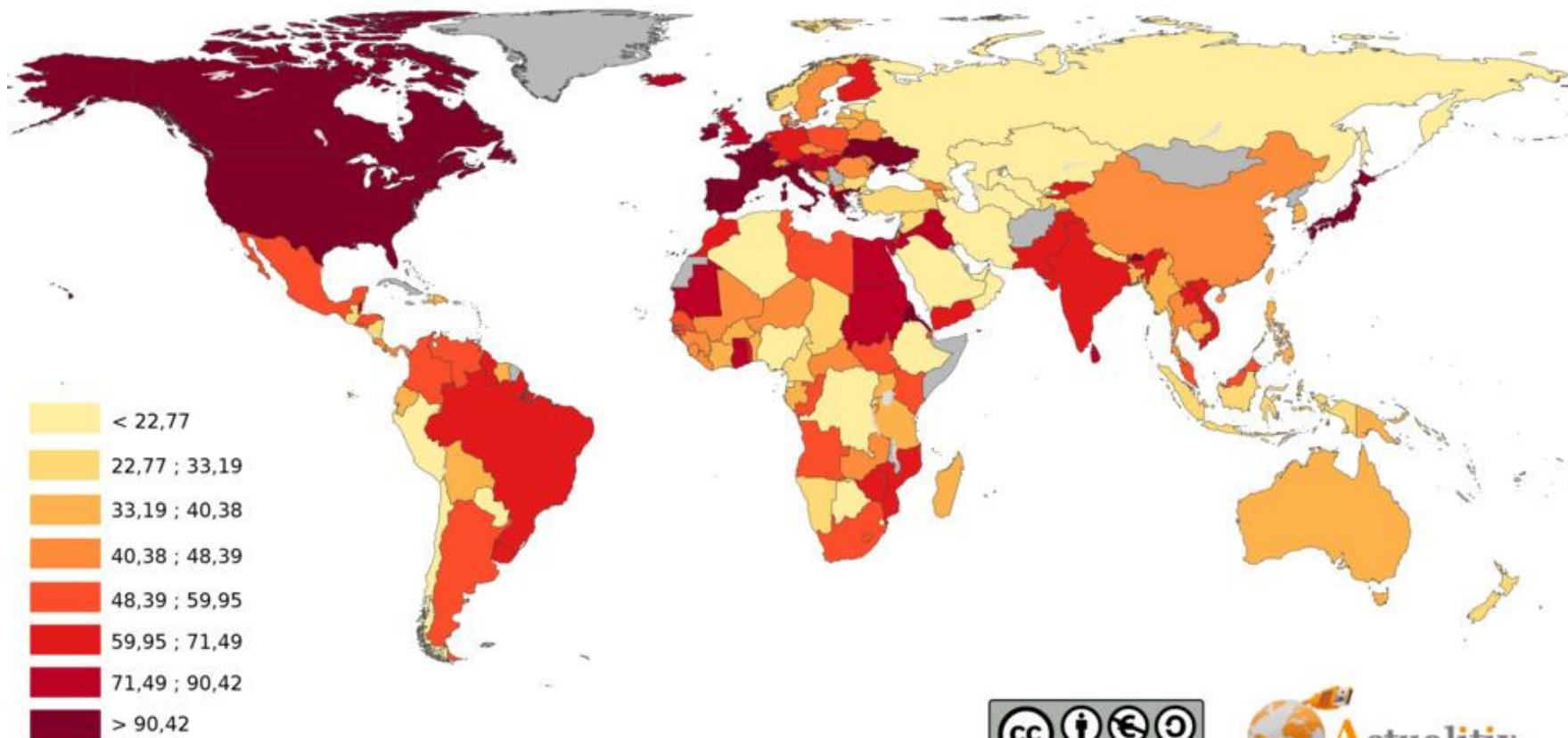


Quelle : IWF - 2015

Copyright © Actualitix.com All rights reserved



Staatsverschuldung (% des BIP)



Quelle : IWF - 2015

Copyright © Actualitix.com All rights reserved



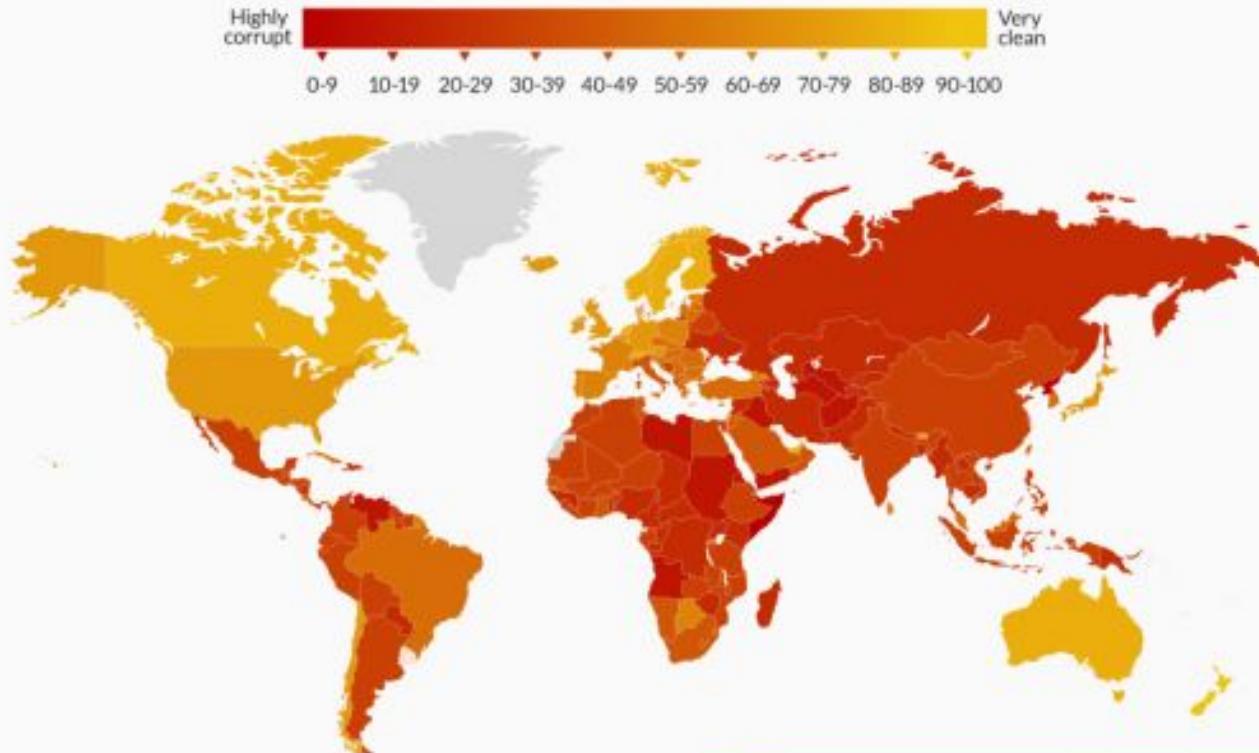
Zimbabwe

- independent “sovereign” state since 1980
 - ranks 13th worst of 177 countries in 2017 FFP fragile states index
 - 4 attempts to set up sovereign currency ending in hyperinflation
 - U.S. Dollar legal tender since 2014



Corruption across the world visualised

Countries and territories ranked on perceived public sector corruption in 2014



@StatistaCharts

Source: Transparency International



INDEPENDENT

statista

Paradox Challenge in Building Open Societies

*"To make a **government** requires no great prudence. Settle the seat of **power**, teach **obedience**, and the work is done. To give **freedom** is still more easy. It is not necessary to guide; it only requires to **let go the rein**.*

*But to form a free **government**, that is, to **temper together these opposite elements of liberty and restraint** in **one** consistent work, requires much thought, deep reflection, a sagacious, powerful, and combining mind."*

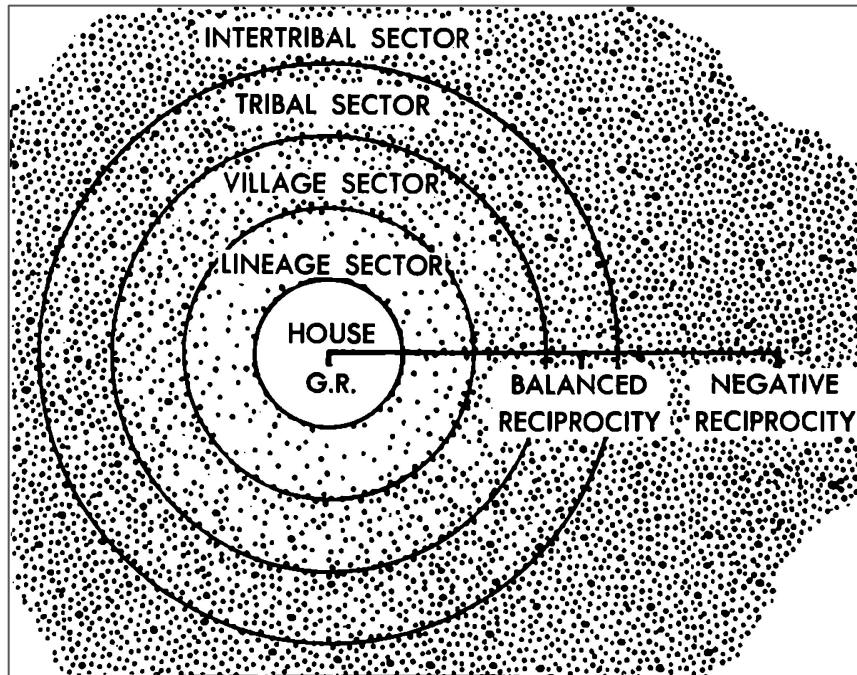
Edmund Burke: Reflections on the Revolution in France

Stateless Gemeinschaft (Custom): Closed Society

- kinship&personal acquaintance
- **non-universalistic**: rules differ according to social distance and situation
- strong distinction between **kin** and **strangers/foreigners** ("us" and "them")

*„One of the outstanding characteristics of traditional societies is the opposition that they assume between their inhabited territory and the unknown and indeterminate space that surrounds it. The former is **the world** ... , **the cosmos**; everything outside it is ... a sort of **“other world,”** a **foreign chaotic** space, peopled by ghosts, demons, **“foreigners”**... “*

*(Mircea Eliade. *The Sacred and the Profane. The Nature of Religion.* New York: Harvest Harcourt, p. 29)*



*“Unto a stranger though mayest lend upon usury; but unto thy brother thou shalt not lend upon usury.” (Deuteronomy xxiii, 20)
“Bist a Tiroler, bist a Mensch. Bist ka Tiroler, bis a Oarschlöch.”
“It’s a long way from a suckling child to a Plains Indians’ horse raid.”*

From Status to Contract: Law vs. Kinship Conflict

*“Custom and Law are not, as Henry Maine believed, continual forms of basically the same kind of rules that could be seen as developing in an evolutionary sequence from custom via customary law to Law. They are contradicting opposites. Law does not evolve the customs of the old order, it destroys them and creates a new order. Law ... emerges, subordinates, absorbs and finally **destroys the old order of custom**, expands to dominate more and more realms of social order **and can determine the entire lives of people, like in capitalism, which is totally dominated by law.**”*

*Lawyer, Legal Historian, Legal Anthropologist
Uwe Wesel 1979.*

*Zur Entstehung von Recht in frühen Gesellschaften.
Kritische Justiz 1979, 233-252,
my translation*

Excluding vs. Sharing

“Many of the moral rules in this type of society are not directed against individuals who steal other people’s property but rather against those who refuse to share food and other necessities.”

Francis Fukuyama 2011: “Origins of Political Order”, 54

Property (absolute right of exclusion) is legal, the foundation of private law and guarantees personal freedom and political rights. But in terms of traditional kinship based reciprocity, it’s immoral.

Conflict of Values - constant topic in european history of ideas, from Plato over Jesus to Rousseau, Proudhon, Owen, Marx;
Attempts to retain freedom but abolish property: “Real Socialism” 1917-1989, Kibbutz 1909-today

“Corruption” is Created by Law

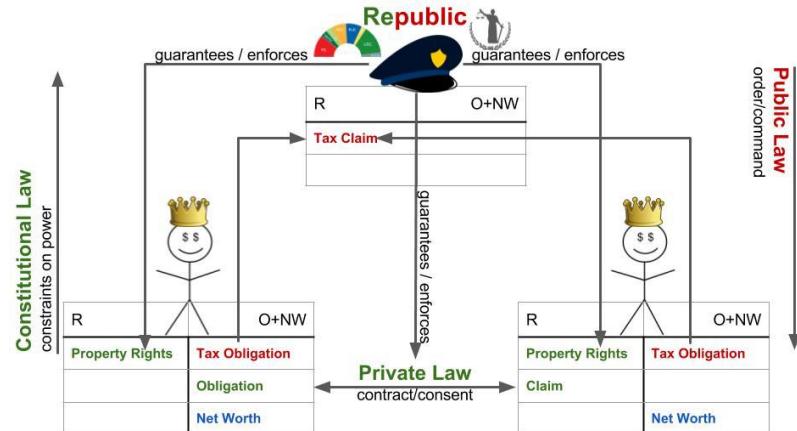
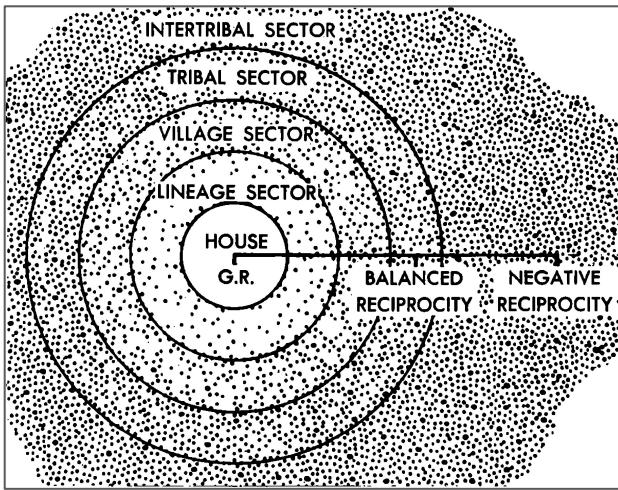
"Patronage and clientelism are sometimes treated as if they were highly deviant forms of political behavior that exist only in developing countries due to peculiarities of those societies.

In fact, the political patronage relationship, whether involving family or friends, is one of the most basic forms of human social organization in existence. It is universal because it is natural to human beings. The big historical mystery that has to be solved is thus not why patronage exists (this question is suggested from the standpoint of the "hobbesian fallacy", WT) but rather why in modern political systems it came to be outlawed and replaced by impersonal organization."

*Francis Fukuyama 2014.
Political Order & Political Decay, 88*

Gemeinschaft → State → *Individualization/Modernization* → “Gesellschaft”

→ patronage/“corruption” →



Private/Public Law Dialectic: Anacyclosis

← patronage/“corruption” ←

Gemeinschaft ← Repatrimonialization ← State ← “Gesellschaft”

Repatrimonialization comes by Nature

“Once states come into being, kinship becomes an obstacle to political development, since it threatens to return political relationships to the small-scale, personal ties of tribal societies. It is therefore not enough merely to develop a state; the state must avoid retribalization or what I label repatrimonialization.”

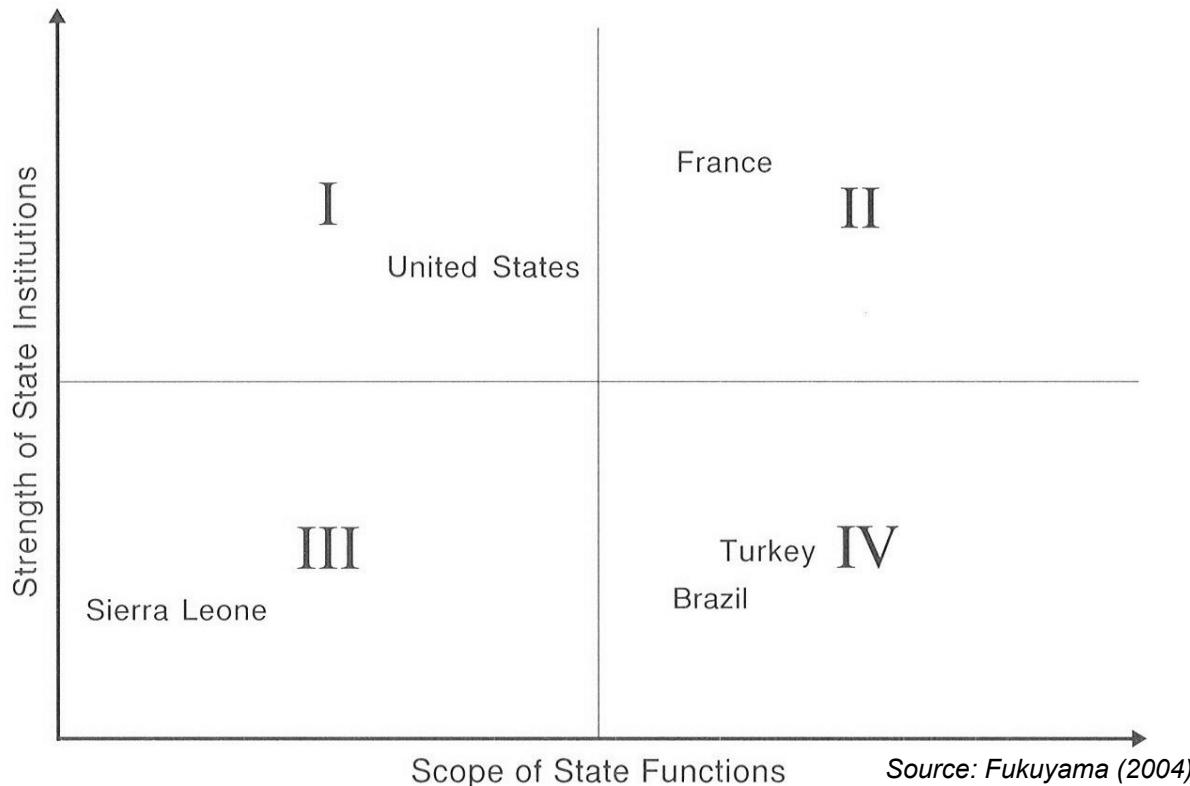
Fukuyama 2011, 81

Kinship/State Dialectic: Institutional Quality

	Modern (impersonal) bureaucratic	Neopatrimonial
Gap Written / Lived Law	<i>small</i>	<i>big</i>
Private/Public Distinction	<i>clear</i>	<i>blurred</i>
Recruitment	<i>by merit (civil service examinations)</i>	<i>by kinship / friendship (nepotism, clientelism)</i>
Employment of public servants	<i>full time, by contract</i>	<i>often part time extra job&income needed</i>
Salary	<i>Good to ensure loyalty</i>	<i>Bad need for bribes & rent-seeking</i>
Corruption level	<i>low</i>	<i>high</i>

Erdmann/Engel 2006, Fukuyama 2011, 2014; based on Weber 1922

State Strength vs. State Scope



So What?

Dilemmas of “Development” & Transition

- state building = creative destruction of extremely stable traditional stateless communities
- mostly under war conditions: war makes the state, but not *necessarily* (Congo 2000s: 1st african world war but no statebuilding)
- state builder's dilemma (Lake 2016): statebuilding efforts from outside inevitably failed (U.S. experience 1950s-today) - unless strong *indigenous* state tradition existed (Germany/Japan 1945)
- market fundamentalist state *dismantlement* (“shock therapy”) catastrophic - Russia 1990s: average life expectancy drops by 10y within 5y: previously unheard of in peacetime (Eberstadt 2005)

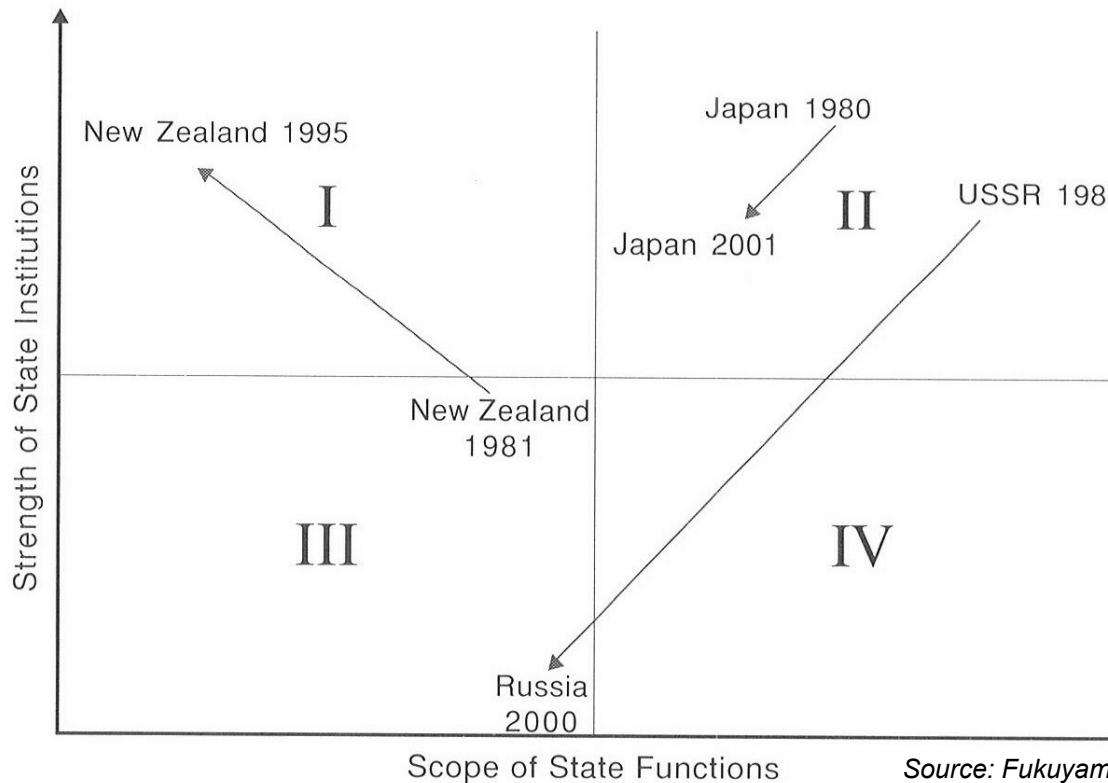
Post 1989 Russia (Jelzin Era) I: Law

After “Perestroika” / “Glasnost” (M. Gorbachev) and “Shock Therapy” (J. Sachs), Russia finds itself in an libertarian anarcho-capitalist “Utopia” that cost many russians decades of their lives:

*“ ... there is widespread uncertainty about government and law at “higher” levels of the body politic; (...) it is **not possible to rely on the law, or even know what it is** ... and at the same time **government**, which used to regulate flows of goods and allocation of labour – including decrees by Soviets and plan-orders by Ministries – **has ceased to be universally or even generally obeyed**. The social structures which are ... toughening themselves are **in contradiction with the goal of a free market**, even with that of a regulated but all-USSR market.”*

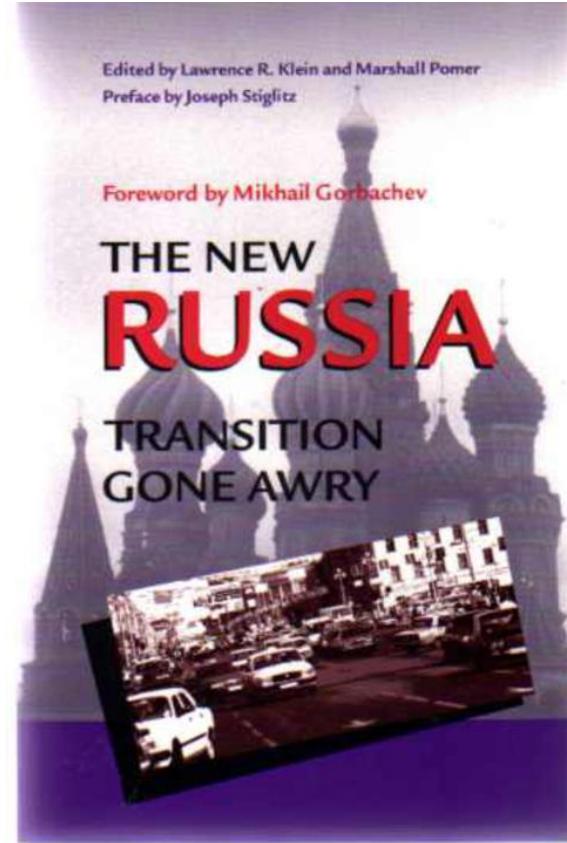
*Caroline Humphrey. 1991. Icebergs, Barter and the Mafia in Provincial Russia.
Anthropology Today, Vol. 7, No. 2 (Apr. 1991), 8-13, p.8*

State Strength vs. State Scope: Changes



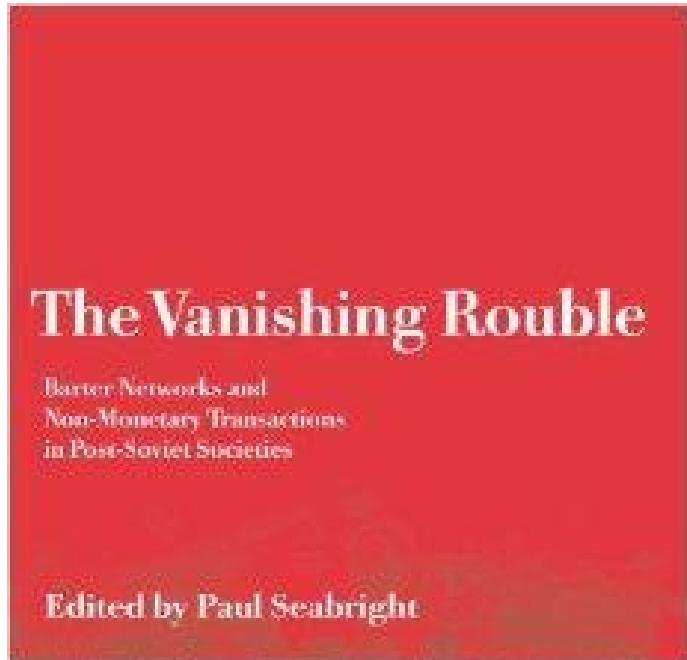
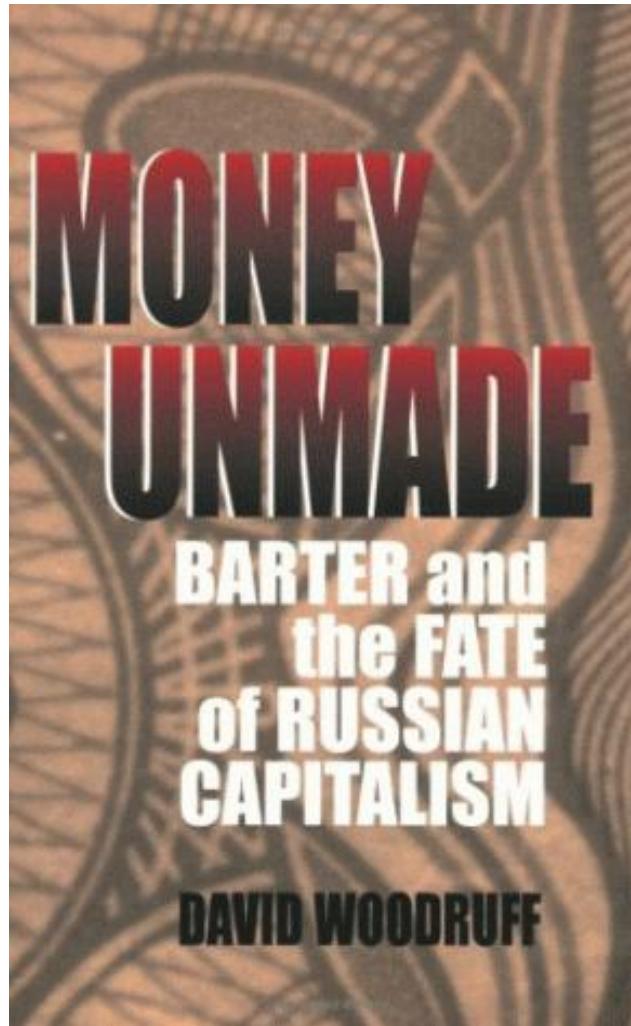
An overlooked reason for deteriorating US-Russia-Relations

1. *The West has completely failed in “helping” or even “advising” Russia in how to build capitalism and liberal democracy, but rather caused immeasurable harm.*
2. *There may be some intentions involved, but it is mainly the result of failed social science that ignores the constitutive legal institutions of capitalism, takes them for granted, or underconceptualizes them.*
3. *Russia already endured 2 failed experiments of western social science (1917ff: socialist/state fundamentalist; 1989ff: libertarian/market fundamentalist) and has lost all trust now.*
4. *Reminder: Theory influences history by guiding or misguiding human action. False theory produces false expectations and failed action. But other than businesspeople, academics can not be held accountable by those who suffer the consequences.*

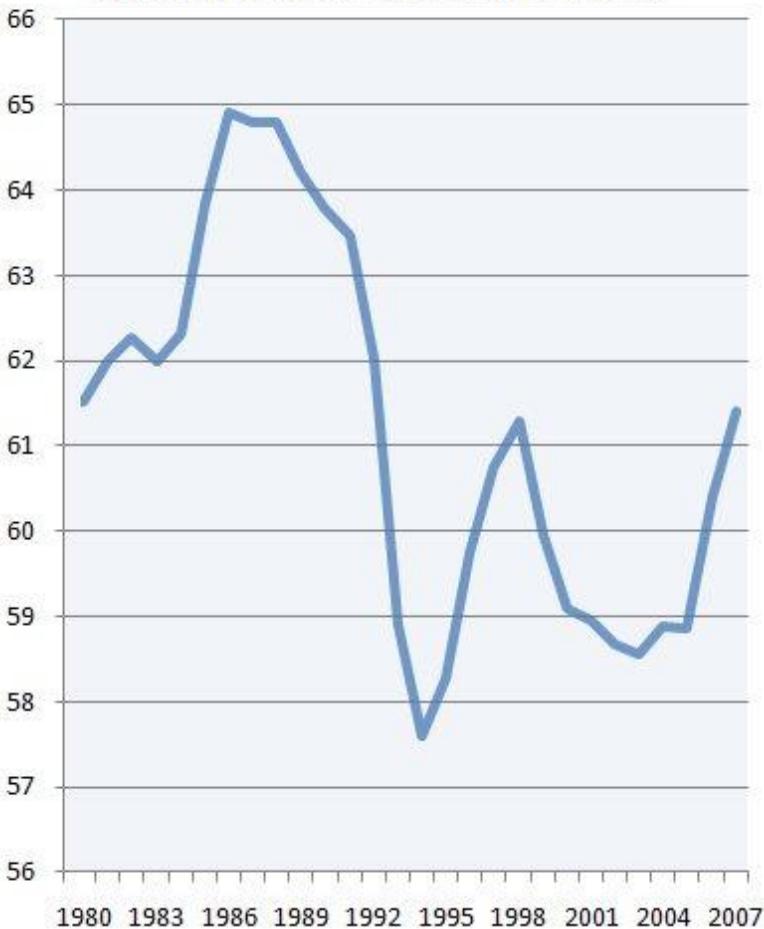


False Economic Theory is a Killer:

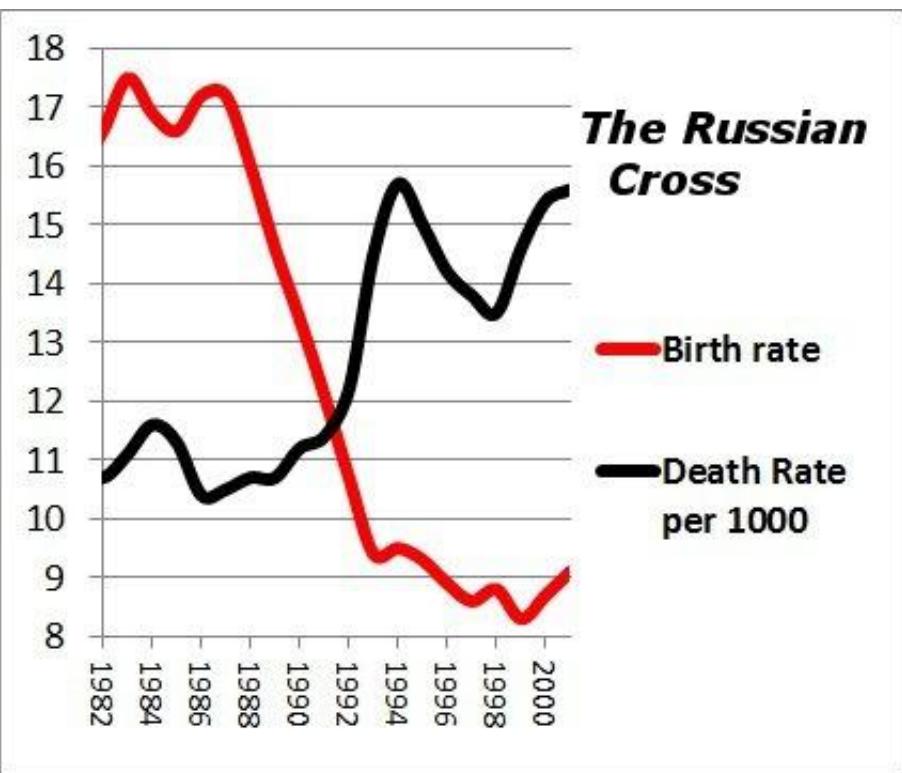
When in 1989, the biggest social experiment of modernity - **state fundamentalism** based upon a faulty theory of technical progress - finally failed after 72 years of trying to “catch up and bypass” capitalism, “shock therapy” dismantling the state without setting up private law cast Russia into an abysmal world of **market fundamentalist** anarcho-capitalism that cost many russians decades of their lives and their health.



Russian Male Life Expectancy



The Russian Cross



Jurisprudence and Economics must fuse!

*The prevailing theoretical and institutional separation of economics and the jurisprudence of private law and public law into specialized disciplines working in relative isolation from one another is **very dangerous**. Working out the fundamental concepts of both disciplines in relative isolation might lead to differences in foundational concepts. Although this may seem relatively unproblematic, it implies crucial consequences: subsequently integrating these fields becomes so difficult that it is often not even attempted at all, or is reduced to superficial, imprecise references to some concepts from the other discipline, [as when economists borrow the term “property” from jurisprudence and using it synonymously with the term “possession”, failing to accurately distinguish between the two; this distinction is one of the core distinctions of roman law and right at the heart of the western (continental) legal system, WT]. Politicians, who must depend on results of all three disciplines, at best have no choice but to eclectically lumping together some concepts they need ad hoc, at worst to rely on syntheses that were produced outside of these disciplines by historians or even journalists as general orientations about social orders.*

This way, the inner relations between the three disciplines remain underconceptualized and unsystematic. A number of very similar problems of all three disciplines remain undiscovered for lack of a precise shared terminology. Even worse, often one discipline adopts concepts from one of the other disciplines in a crudely simplifying and unnecessarily misleading manner.”

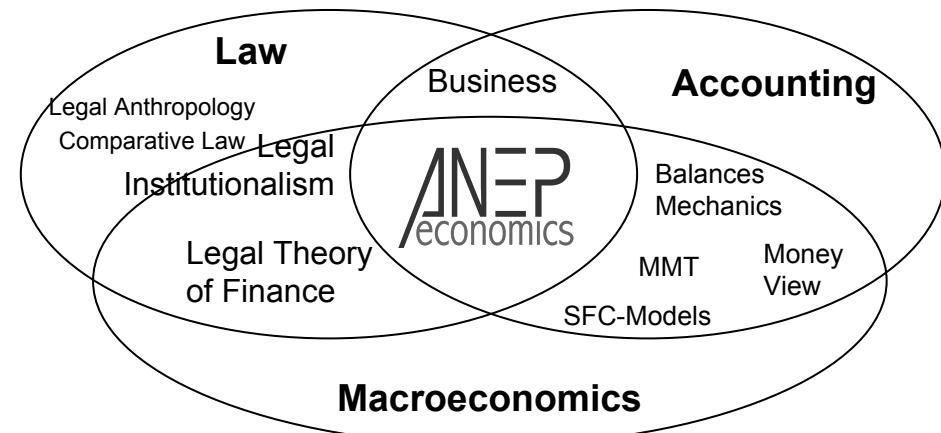
Wolfgang Stützel. 1952.

Preis, Wert und Macht. Analytische Theorie des Verhältnisses der Wirtschaft zum Staat. Aalen: Scientia Verlag 1972, S. 65f., my translation)





academy for
new european political economics



wolfgang.theil@anep-economics.org

www.anep-economics.org

youtube: ANEP economics

<http://independent.academia.edu/WolfgangTheil>