

Money, Sovereignty & the Shape of Law

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Abstract

This paper develops legal and geopolitical ramifications of *Declarations of Dependence: Money, Aesthetics, and the Politics of Care*, my forthcoming book on neochartalist political economy and critical theory. In the paper's first section, I rehearse the book's critique of critical theory's tacit Liberal treatment of modern money and aesthetics. Here, I attune aesthetic theory to the neochartalist understanding of money as a boundless public utility, while uncovering the impoverished social topology upon which critical theory and Liberal modernity writ large have implicitly relied. In the second section, I extend this topological turn to questions of jurisprudence and geopolitics. There, I argue that money *is* law and that, *as* law, money traces a necessary shape. At the same time, I problematize the modern language of sovereignty upon which neochartalists typically rely. My contention is not that the modern-nation state is somehow dead or passé but, rather, that the modern metaphysics of sovereignty obscures money's underlying legal architecture and capacities and, ultimately, naturalizes a politics of irresponsibility that neochartalism otherwise repudiates.

Keywords: money, neochartalism, Modern Monetary Theory, law, sovereignty, geopolitics, Thomas Aquinas, Middle Ages, early modern Europe, critical theory, aesthetic theory.

JEL Codes: A1, B0, B1, B2, B3, B4, B5, E0, F0, F3, F6, K0, H0

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In this paper, I take a preliminary step toward developing the undertheorized legal ramifications of my recent book on neochartalist political economy and critical theory (Ferguson, 2018). I have composed the paper in two parts. The first section revisits my book's critique of critical theory's tacit Liberal treatment of modern money and aesthetics. Here, I uncover the impoverished social topology upon which critical theory and Liberal modernity writ large have implicitly relied. Conversely, I recover a more capacious social topology in the medieval Thomist theology that modern Western philosophy supplanted. My thesis is that reviving such a topology today is necessary for redeeming critical theory and aesthetics in the wake of the neochartalist intervention.

In the second section of the paper, I extend this topological turn to questions of jurisprudence and geopolitics. There, I claim not only that money is a "creature of law," as chartalists regularly assert, but also propose that money *is* law and that, *as* law, money traces a necessary shape. Specifically, I contend that money constitutes a centralizing, overlapping, and emphatically inalienable world *topos*, rather than expressing a bounded territorial sovereignty or decentralized exchange instruments that are by turns lost and gained. In doing so, I affirm law's heterogenous unity as well as its ineluctable worldly responsibilities, I put pressure on neochartalism's uncritical reliance on Westphalian models of sovereignty, and I ultimately jettison the modern language of sovereignty. My contention is not that the modern-nation state is somehow powerless or passé, rather, that the modern metaphysics of sovereignty obscures money's underlying legal architecture and naturalizes irresponsible politics.

Part I: Money & Aesthetics

Titled *Declarations of Dependence: Money, Aesthetics, and the Politics of Care*, my book expands both the scope and efficacy of critical theory by drawing upon the neochartalist understanding of money as boundless public utility (Tcherneva 2007). Emerging from the Western Marxist or Frankfurt School tradition, critical theory has customarily read cultural and aesthetic artifacts as fraught expressions of the unjust and crisis-ridden monetary instrument that dominates Liberal modernity (Jay 1986). In *Declarations of Dependence*, I critique Marxism's dark inversion of the Liberal imaginary. I claim that this inversion reifies monetary mediation as an essentially decentralized and privational relationship that justice demands overcoming. In contrast, I attune critical theory's encounters with cultural and aesthetic forms to neochartalism's historically repressed conception of money as an inalienable public infrastructure. With this, my book exposes

critical theory to a vast and wholly uncharted domain of sociohistorical causality, it dramatically broadens the field of what is imaginable and actionable, and it brings fresh urgency to critical theory's primary undertaking: to illuminate unheeded contradictions and potentials within cultural and aesthetic artifacts with an eye toward a more just tomorrow.

The more specific aim of my book is to rethink the ill-fated and distinctly modern category of the aesthetic (Eagleton 1991). Irreducible to the study or practice of art as a transhistorical phenomenon, the aesthetic carves out a particular and separate domain of collective experience during Western modernity, lending meaning to a host of sensuous practices which include the arts. According to the dominant narrative, the modern aesthetic project arises as a bourgeois antidote and then revolutionary alternative to an increasingly ruinous monetary economy. Next, in the standard account, the historical promise of this project is thwarted. Sensuous production comes under the sway of ever-more voracious markets and a sensationalized logic of commercial capital that French Marxist Guy Debord christened the "society of the spectacle." As a result, most contemporary critical theorists conceive the aesthetic project as a tragic fall story, even as many declare the dialectical premises of that story to have been falsely construed. Knowing no alternatives to this dialectical fable, however, present critical theorists continue to position aesthetic inquiry against the money relation, striving to redeem aesthetic modernity's dashed hopes in the face of the neoliberal onslaught (Fontaine 2016).

This dismal narrative, I submit, reifies the Liberal money form and divorces aesthetic life from the financial supports it requires to flourish. With this in mind, my message to present critical theorists is the following: let us finally embrace money's commodious fiscal bases and let go of modernity's tired dialectical opposition between money and aesthetics. Let us unapologetically affirm the fact that money is the primary medium upon which aesthetic thought and practice depend. Going further, we might learn to appreciate that money itself acts as a kind of aesthetic medium—not a plastic art on the model of painting or sculpture but, instead, what I call a "proto-aesthetic instrument," which plays an essential role in cultivating the shared sensuous life in which specific artistic forms take shape.

In *Declarations of Dependence*, my theses regarding the historical fate of the aesthetic hinges on a deeper genealogical critique of the modern metaphysics that have lent both Liberal money and the aesthetic project their characteristic shape. In fleshing out this critique, moreover, I show how neochartalism unwittingly revives an alternative and far more capacious social topology that Western modernity has foreclosed.

Recall that, for neochartalism, a fully-fledged monetary system comprises broad-scale infrastructures that are stretched across what legal scholar Christine Desan has aptly described as money's central "fiscal backbone" (Desan 2014, 64). This centralizing topology hangs on myriad interdependent, overlapping, and ongoing obligations at a distance. Such obligations can never be properly disaggregated, according to neochartalism, because a necessary set of public obligations—fees, fines, and taxes—anchor money's wide interlocking architecture across nested scales. Furthermore, since this nested series rests in the first and last instance upon a broad political community and production system, rather than on fleeting local exchanges, the foundations of any money economy are not only inalienable so long as the embodied political community exists, but they also appear to be strangely omnipresent in a very real, though quite unmodern sense.

That neochartalism sounds foreign and sometimes even nonsensical to contemporary ears, I suggest, is due to the fact that it conjures a whole topological and causal background—a total shape and worldly movement—that modern Western metaphysics long ago rejected and that everyday experience now frankly does not admit. During Europe’s High Middle Ages, however, a rather similar social topology became visible in the scholastic theology centered around the Dominican friar Thomas Aquinas.

Writing during the great political and economic expansion of the High Middle Ages, Thomas argued that Being takes the shape of a centralizing, inalienable, and inescapably interdependent cascade (Ozment 1981). While no doubt reliant upon the contiguous comings and goings of individual creatures and things, this cascade realizes the broad labor of Creation all at once via its entire mediating infrastructure. Emblematized by the miraculously inexhaustible transubstantiation of the Eucharist on disparate altars, Thomas’s metaphysics sought to make sense of the mystery of the late medieval period’s ballooning political economy and converging heterogenous cultures. Furthermore, his topology served as the basis for legal conceptions of the fiscal apparatus or treasury, what jurists from Bracton to Accursius referred to as the “*fiscus sanctissimuss*,” or “most holy fisc” (Kantorowicz 1997, 184).

During the fourteenth and fifteenth centuries, however, late medieval Europe entered a long and painful twilight beset by countless political, economic and environmental crises. Responding to these crises, Franciscan theologians such as Duns Scotus, William of Ockham, and humanists from Petrarch to Erasmus challenged the Thomistic synthesis with a new metaphysics and a recognizably modern social topology. This metaphysical *topos* decentered Thomism’s boundless cascade, reconstituting the Christian God as an absolute and immediate willing power in the world. In so doing, the Franciscans and humanists variously contracted Creation’s wide causal breadth into a contiguous and alienable “thisness,” or what Scotus famously dubbed “haecceity” (Spade 1994, 57–113). As a consequence, this new topology tended to reduce causality to proximate relations and deemed anything like concurrent mediation at a distance either unnecessary, artificial, or impossible.

Over time, the *topos* of haecceity became the unquestioned metaphysical backdrop for an ascendant modernity, giving direction and significance to everything from political economy to aesthetics. It enabled influential Franciscans and humanists to reject Thomist visions of an incorruptible holy fisc and to re-envision money as an alienable medium of exchange, well before the likes of John Locke. From here, it gave rise to Reformation conceptions of the Almighty as an immediately willing God which, in turn, perpetuated destructive wars of religion and the rise of a Westphalian system of fiscally-strapped sovereign states. Finally, the new topology cast the mold for an emergent philosophy of the aesthetic. Set against monetary exchange while mirroring its dreams of redemptive proximity, the aesthetic promised to cure the inadequacies of political and economic existence by means of the same poisonous metaphysics that condition such deficiencies. Turning to the next and final section of this paper, I now wish to elaborate upon the consequences of my book’s critical genealogy of modern metaphysics for modern jurisprudence and political philosophy.

Part II: *Ex Uno Plura*

The problem with modernity's contracted haecceity metaphysics is that it grounds human relationality upon a primary unboundedness or non-relationality, which externalizes the question of relationality from the start. Beginning from this lethal premise, modern metaphysics thereby envisions the central challenge of collective belonging not as governing an always-already interdependent and bounded reality, but as finding means to unify ontologically disaggregated beings into some kind of coherent and legitimate whole. Far from natural, this seemingly primordial difficulty is metaphysically spurious, thoroughly modern, and exceedingly political.

Liberal money form is the most salient expression of this phantasmatic non-relationality, and it appears to be non-relational because the modern metaphysics of haecceity has inscribed estrangement into the heart of law and politics. To put a finer point on it, this originary alienation weaves itself into how Western modernity figures the topological relation between law and politics. In the eyes of Westphalian modernity, or if one prefers, Jean Bodin or Thomas Hobbes, sovereignty is exclusive and primary, and law is an extension of sovereign power. Should law spill beyond sovereignty's jurisdiction, it is usually characterized either as geopolitical domination, a compact between sovereign wills, or weak and wishful thinking.

On my reading, such a topology turns the relationship between law and politics disastrously inside-out and the modern Liberal money form is the result. This modern view of law and politics casts money as a decentered global exchange relation for which no governing body is ultimately responsible. It exculpates modern governance from perpetual legal entanglements in what are characterized as external social and ecological problems.

I would like to recast this inside-out relation between law and politics from the vantage of the Thomist metaphysics that modern thought has rejected. In so doing, I contend that the genuinely global promise of neochartalism requires that money be understood as law instead of as an extension of sovereignty. Above all, I argue against modern jurisprudence that law is neither fundamentally a neutral rationality nor a coercive means for arbitrating opposing wills. Law, as Thomas argues, is a broad, boundless, and abiding center of interdependence which, while heterogeneous, multi-scalar, and overlapping, takes a necessary and not merely contingent shape. When joined with neochartalism, I propose, the Thomist topology of law and politics stands to render global governance visceral, indelible, and actionable.

Thomas's understanding of law and politics is most discernable in his philosophy of "natural law" (Aquinas I-II q. 94). In Thomism, natural law is mostly empty of positive precepts and commandments. Instead, natural law marks the ineludible riddle of social and material interdependence from the widest to the smallest scales. This riddle knows no outside. It assumes a tiered, heterogenous, and overlapping structure. But it traces no external bounds. Natural law, according to Thomas, is the basis for the various positive laws that organize a given social order. Yet, for Thomas, just like the natural law it realizes, positive law forever mediates the many from one, *ex uno plura*, rather than tenuously forging one from many, *e pluribus unum*.

Having predicated law in an ineluctable dependence, Thomas then characterizes the rapport between human governance and law via the scholastic method of analogy. He begins with the

broader relation between God and what he calls “eternal law,” a kind of cosmic or supernatural interdependence that forms the mysterious basis of all order in the universe (Aquinas I-II q. 93). Articulating this relationship, Thomas once again proves perplexing since, for him, God is both an infinite font of Creation and a legally bounded subject of His own created order. On Thomas’s reasoning, that is, God is the boundless and omnipresent center of Being’s continual Creation, not the absolute power or unbounded will characteristic of post-Reformation divinity. Yet at the same time, God’s infinitude is ineluctably restricted by eternal law’s own sublime interdependence. As a result, law appears simultaneously to proceed from God’s boundless creativity *and* to hold sway over Creation in ways that no divine agent can instantly dismantle. Therefore, God is nothing like an absolute will or power, Thomas concludes, precisely because the Divine remains forever indebted to the order to which divinity gives rise.

We discover a similarly paradoxical topology in Thomas’s theorization of the rapport between human governance and law. A governing institution is a site and source of social provisioning which, as every neochartalst knows, must remain indebted to a particular society in the long run if that society is to continue to reproduce itself (Wray 1999). To do so, a governing institution wields law’s infinite capacities to organize a certain scale of social and material creation. Yet Thomas argues that law *as such* always traces wider, narrower, and overlapping scales of interdependence than any particular governing institution can possibly look after. Demarcated by neither territory nor sovereign will, these many scales of interdependence meet at Creation’s widest circumference and encircle each particular governing institution on all sides. It is therefore impossible for any governing institution to operate either before or outside law. Governing institutions can contest, suspend, or overturn specific instances of positive law. They may collapse in revolution or war. But, for Thomas, even states of exception and political chaos never circumvent the abiding quandary of social and material interdependence.

Returning to the neoliberal disaster, I think we can equally say that nothing escapes law’s interdependent causal horizon and charge. Law’s purview weds the present nation-state to cities, unemployed persons, and territorial resources as well as to other polities, stateless peoples, and the challenges of global climate change. Thomistic philosophy makes these elementary connections freshly perceptible by folding the relationship between governance and law radically outside-in. At the same time, Thomas’s insistence that legality inextricably leans on a boundless and omnipresent center lifts the metaphysical ceiling that presently constrains modernity’s governing institutions to meet social and ecological needs across interwoven scales.

In this way, Thomism appears to both buttress the neochartalst political economy and problematize its still-unreflected attachments to the language of modern sovereignty. The resulting neochartalst approach to law and politics would neither subordinate jurisprudence to the problem of sovereignty nor pit universal beneficence against the evils of political and economic power. Instead, a Thomist neochartalstism would re-imagine the original shape of law and turn the terms of political contestation irreversibly outside-in.

* This paper is based on an oral presentation delivered at *Law in Global Political Economy: Heterodoxy Now*, a conference organized by the Institute for Global Law and Policy at Harvard University, June 2–3, 2018.

References

- Aquinas, Thomas. *Summa Theologica*. Allen, Texas: Thomas More Publishing, 1981.
- Debord, Guy. *Society of the Spectacle*. Kalamazoo, Michigan: Black and Red, 1967 / 2000.
- Desan, Christine. *Making Money: Coin, Currency, and the Coming of Capitalism*. Oxford: Oxford University Press, 2014.
- Eagleton, Terry. *The Ideology of the Aesthetic*. Hoboken, New Jersey: Blackwell Publishers: 1991.
- Fontaine, Claire. “Our Common Critical Condition,” trans. Kit Schluter, *e-flux Journal* 73 (May 2016). <http://www.e-flux.com/journal/our-common-critical-condition/>.
- Jay, Martin. *Marxism and Totality: The Adventures of a Concept from Lukács to Habermas*. Berkeley: University of California, Press, 1986.
- Ferguson, Scott. *Declarations of Dependence: Money, Aesthetics, and the Politics of Care*. Omaha: University of Nebraska Press, 2018.
- Kantorowicz, Ernst. *The King’s Two Bodies: A Study in Medieval Political Theology*. Princeton University Press, 1957 / 1997.
- Ozment, Steven. *The Age of Reform, 1250 – 1550: An Intellectual and Religious History of late Medieval and Reformation Europe*. New Haven: Yale University Press, 1981.
- Spade, Paul Vincent. *Five Texts on the Mediaeval Problem of Universals*. Indianapolis: Hackett Publishing Company, 1994.
- Tcherneva, Pavlina. “Chartalism and the Tax-Driven Approach to Money.” *A Handbook of Alternative Monetary Economics*. Northampton, Massachusetts: Edward Elgar Publishing, 2007.
- Wray, Randall L. “Surplus Mania: A Reality Check,” Policy Note, *The Levy Institute of Bard College* (1999) No. 3. http://www.levyinstitute.org/pubs/pn99_3.pdf.