John D. Haskell, University of Manchester Law School*

Modern Money Theory and International Law

Abstract: This essay examines an emerging epistemological conjuncture between what might loosely be identified as two (primarily) academic camps: economists subscribing to "modern money theory" (MMT) and international lawyers associated with "critical" traditions within the discipline. For many legal scholars, my sense is that their current experience with MMT varies from "I think I have heard of that before" to "that state theory to money that pushes for a universal job guarantee." And many progressive economists familiar with MMT have not spent a significant time with the insights and sensibility of critical international law scholarship. My aim here is to explore where there might be fruitful collaboration between these communities.

Keywords: capitalism, colonialism, critical legal studies, international law, modern money theory, neo-chartalism, political economy

I. Introduction

This essay examines an emerging epistemological conjuncture between what might loosely be identified as two (primarily) academic camps: economists subscribing to "modern money theory" (MMT) and international lawyers associated with "critical" traditions within the discipline. Among the latter, my sense is that their current experience with MMT varies from "I think I have heard of that before" to "that state theory of money that pushes for a universal job guarantee," and that the legal academics most familiar with MMT usually run in Anglo-American "Law and Political Economy" circles at more or less elite law schools. To this law-oriented community, my aim is to indicate certain cultural and theoretical orientations with MMT that suggest fruitful collaboration for international lawyers; I imagine for those interested, the next step would be to dive into the existing literature and social media to better understand MMT's diagnoses and proposals.

To the economists, my assumption is that most readers will have exposure to certain strands of legal theory, though probably not in a programmatic way and more linked to relatable themes (such as antitrust, banking, human rights, or labor law) and specific authors (see, for example, Desan 2014; Grey 2020; Hale 1923; Kennedy 2006; Kennedy 1985; Pistor 2013). For such economics-oriented academics, as well as many, at least US, law-oriented academics, there is usually a less clear understanding of what international law brings to our diagnosis. Conversely, international lawyers tend to have significant room for further exploring what their economic and

* Senior Lecturer, University of Manchester Law School. Please direct correspondence to john.haskell@manchester.ac.uk. I am grateful to the intellectual comradery within the communities at the Association for the Promotion of Political Economy and the Law, the Institute for Global Law and Policy, and the Law and Political Economy project. A special thanks to Rohan Grey and Akbar Rasulov, and more generally, a number of colleagues who have helped me rethink money and law, including Raúl Carrillo, Jay Cullen, Scott Ferguson, Eric George, Andrea Leiter, and Nathan Cedric Tankus. The text also directly benefited from reading and listening to reflections by Christine Desan, Angela Harris, David Kennedy, Oliver Kessler, Roy Kreitner, and Martha McCluskey. I very much appreciate the generosity of the reviewers and editors at the *Journal of Law and Political Economy*, not least Jay Varellas.

legal peers are working on at the domestic level. If my hunch is correct, one useful outcome of scholarly interchange would be a legal canon that situates our professional jurisdictions within broader conceptual and institutional contexts (as did American Legal Realism; see Kennedy and Fisher 2006).

My aim here is to take up a small part of this bigger picture. On the one hand, the article aims to flesh out the disciplinary sensibility within the contemporary academic circles of more critical international law, which I hope might reveal some potential blind spots within law and economic approaches to governance and identify sites of collaborative possibility and shared vision with MMT—in other words, what might we learn from international law. On the other hand, the article attempts to draw insights from MMT and legal theorists within the emerging canon of Law and Political Economy to speak to the current limits within international law scholarship. In short, how might we recalibrate our respective interests by listening to each other? So, this is less a manifesto and more an interested third-party introduction.

II. How We Met (An International Law Perspective)

MMT economists and critical international lawyers share a sequence of overlapping professional affinities, though often expressed through distinct rhetorical economies, tacit knowledge, and institutional mechanics. One open question is the extent to which these professional backgrounds create cultural obstacles to productive collaboration. We might begin by paying attention to these triggers for discomfort and miscommunication alongside agreement.

Perhaps the most immediate question is, Why is the encounter occurring only now? It cannot be simply that international lawyers are uncomfortable with anything that reminds them of mathematics or numbers. After all, economic and legal experts with an international perspective, both in and out of the academy, have experimented with cooperation throughout the twentieth century. The thing is, the majority of such projects and people subscribed to "conservative" agendas: Cold War Austrian and ordoliberal economists writing reflections on the nature of law within and between nations (Slobodian 2018); interwar international lawyers committed to the doctrinal defense of private property in wartime and (at least by the 1950s) the development of various soft law mechanisms through international organizations to preserve the sanctity of foreign investment (Shalakany 2000, 419); the rise to prominence of Law and Economics and neo-institutionalism in universities and foreign affairs departments by the late 1970s (Dezalay and Garth 1996); and, in the aftermath of the Berlin Wall and the Soviet Union, the emphasis on "rule of law" metrics and programs by Bretton Woods institutions and other international financial and trade monitoring bodies in the name of good governance (Lang 2011).

Left-of-liberal economists and international lawyers simply have not traditionally exercised significant direct influence on each other. Aside from the first generation of institutional economics in the American interwar years, more progressive economists have tended to treat law primarily as a means to formalize policy choices about the allocation of claims and distribution of resources (such as the legal right for collective union action).[1] On the international law front, as far as I can tell, it is only within the last two decades or so that more critically oriented international legal academics began to focus explicitly on questions of capitalism and political economy. And even so, this shift in the literature is highly stylized (Haskell and Rasulov 2018, 243). Authors overwhelmingly favor issues of property, labor, and trade, and prefer filtering these regimes in relation to the political legacies of colonialism and neoliberalism rather than embarking on any real engagement with the institution of money and the operations of international financial systems.

[1] For an early twentieth century example of meaningful engagement by economists with law, see Commons (1924).

References tend to remain limited to sources within the classical political economy canon (Marx, Polanyi, Smith, Weber), authors with broad cross-disciplinary appeal writing about capitalism at large (Harvey, Stiglitz, Wood), or field studies with only one foot in economics (American Legal Realism, dependency theory, development studies, Marxism/neo-Marxism, world systems theory). One might occasionally see a mention of Keynes, but not in terms of specific theoretical claims or references to any specific work (and never a reference to scholars such as Innes, Lerner, or Minsky). Right-wing economists are increasingly discussed—most commonly Hayek and von Mises—but again, only to stand in for the turn into the neoliberal era.[2] While development experts or economic historians are occasionally invited into projects, the critical project within international law seems to prefer to speak primarily to other legal academics, or occasionally colleagues in anthropology, development studies, history, and international relations. So, economics shows up, but rarely in any comprehensive or programmatic style that would entail working with economists or demonstrating literacy outside some central tenets from the "classics" of political economy. Progressive economists and their ideas have yet to crack the market with more than an occasional footnote and a half-sentence parenthetical.

On its face, this (largely unacknowledged) reluctance to take progressive economists seriously is difficult to explain, especially when the histories and futures of capitalism are trending within the field and critical international lawyers are no strangers to disciplinary infidelity. It also might suggest that there is no point in going further; when we are all feeling ourselves living on narrow bandwidths of time and energy, it may be a sunk cost to venture outside. Perhaps academics within the critical traditions of international law just don't feel comfortable with ordering economics straight without some interdisciplinary chaser. But then why this essay in this journal? Why the presence of MMT scholars Randall Wray and Fadhel Kaboub at annual gatherings put on by the Institute for Global Law and Policy (IGLP) at Harvard Law School? How do we account for Stephanie Kelton's writing showing up in international law discussion groups and MMT literature discussed in flagship publications like the *Leiden Journal of International Law*? The international law scene just feels different from even five years ago. And so, we are back to our original question: why now? The explanation requires that we briefly take a closer look at the contemporary sociology of the international law field (Rasulov 2012, 151).

The current field of critical international law academics displays a relatively narrow set of institutional, intellectual, and intergenerational characteristics. Depending on one's vantage point, the field either represents a relatively homologous theoretical edifice, or exhibits a distinctly WASP-y inclination toward sublimated, but regular, splintering into new enclaves.

At one end of the spectrum are international law academics over 65 years old: Philip Allott (retired from the University of Cambridge), Antony Carty (teaching in Hong Kong, James Crawford (recently passed away, but previously retired from the University of Cambridge and serving as an ICJ judge), David Kennedy (teaching at Harvard Law School), and Martti Koskenniemi (semi-retired from the University of Helsinki). Crawford and Koskenniemi previously ran prestigious international law centers in the UK and Europe; Kennedy is currently the director of the Institute for Global Law and Policy. All three men, in various ways, have created hubs for hundreds if not thousands of emerging and established scholars to spend time together and train in carefully curated interpretative perspectives and codes of professional good behavior. While academics, all of these men have also practiced law, primarily in various diplomatic roles, and have varying degrees of (usually quite strong) ties to European culture and non-legal intellectual traditions. In the middle generation are academic scholars in their late forties to early sixties, most with a strong connection with Harvard Law School, either having studied there in the 1980s and 1990s or having

[2] Economic historians like Philip Mirowski have extensively unpacked these institutions and ideas, but even here, rarely find their way into international law scholarship (see Mirowski 2008).

affiliated with its research activities from abroad in the early twenty-first century. A few in this cohort have been successful in founding new theoretical enclaves (for example, Antony Anghie and Third World Approaches to International Law, or TWAIL) or (at least for a period of time) creating departments friendly to critical traditions and producing new generations of scholars (for example, American University of Cairo, Northeastern University, Sciences Po, University of London, University of Melbourne, University of Toronto); others have made successful careers as academics within mid-to-top-tier law schools within (primarily the Eastern seaboard of) the United States.

At the other end of the spectrum are scholars in their 30s to mid-40s, usually with direct links to the IGLP but less frequently with Harvard degrees, who now work primarily in Australia, Canada, Europe, and the UK. This cohort is significantly more likely to have spent the majority of their career solely in academia, without government or private sector experience.

The more senior generation of scholars came of professional age in the 1970s and early 1980s. This was an era marked by the collapse of left-wing movements at home and abroad and a subsequent retreat from collective political action into cultural representation and identity rights (such as the cultural New Left); a disenchantment with political metanarratives or strong ideological commitments (such as Marxism); a wariness toward establishment authority (generated by, for instance, Nixon and the war in Vietnam); and an interest in European linguistics-oriented theories (such as the Frankfurt School, structuralism, and post-structuralism). Within law schools, this cohort exhibited a general dislike for the neo-formalism of an older generation of teachers, whose ideas of law seemed intellectually unsophisticated (for example, overly deductive) and all too often involved a "morally delicate refusal to respond to the call for justice" and a tendency to "depoliticize the drama" of the era (Kennedy 2001, 8634).

Probably the most visible expression of this new sensibility was what became known as the Critical Legal Studies movement, primarily based at Harvard Law School, which rose to national attention in the late 1970s and early 1980s, fueled by a crew of young (primarily white and male) scholars with prestigious pedigrees willing to disrupt the internal operations of the established curriculum, hiring processes, and industry get-togethers, and seeming to delight in casting aspersions on the intellectual merit and political commitments of their peers (Clark 1994, 461). By the mid-1980s the movement was on the wane due to a combination of internal and external pressures: internally, its inability to mesh with critical race studies and feminist legal theory; externally, a concerted effort by US law schools to stigmatize its scholars as nihilistic and to deny tenure or entry-level positions to anyone closely associated with it. To survive these conditions, a scholar might well shift gaze from the politics of the academy to safer topics—courts, legislatures, and, of course, international law.

It was exactly in this moment and its aftermath that the international law cohort from the middle generation entered adulthood and came to Harvard. If a law graduate was not caught up in the East Coast death march of the Reagan era (graduate from Harvard, make partner at a Manhattan firm, retire in the Hamptons) and instead felt the heady excitement of world affairs with the collapse of the Cold War and the rise of human rights, or if one wanted to attend university in the US and found the newly inaugurated postgraduate degree programs within the US law schools open to foreign candidates, studying at Harvard toward a career in international law could be a very attractive option (Kennedy 2000, 335). This generation thought of public international law in relation to inequality, but primarily through the lens of culture and identity. And this generation carried the professional ambition to avoid employment in government bureaucracies (Wasn't that exactly what was wrong with the Soviet experience?) and private law firms (Wasn't "going corporate" avoiding the responsibilities of privilege?), instead aspiring to join NGOs, advise

governments, and travel the world as an intellectual—in short, to be part of the new management class assessing political risks through the prism of law with a cosmopolitan (interdisciplinary) sensibility (Haskell 2016). In this world view, economists were the enemy: either the handmaidens of Reagan/Thatcher, or the accountants in Human Resources pushing paper.[3]

By the 2000s, however, the younger generation of public international law scholars in the critical tradition was responding to a very different set of anxieties and influences, even while steeped in the existing literature and often expressing an aesthetic more akin to that of a graduate student than a Big Law attorney or State Department official. This was a generation attracted to international law in response to the War on Terror, entering academic adulthood (often with less personal financial entitlement) in the midst of the Seattle protests against globalization and the financial crisis that began in 2007. If the international law academy was slow on the uptake, other law and non-law academic cohorts were now fast retraining their gaze to questions of "capitalism." As the older generations of international lawyers began to return to classical political economy texts in the left-of-liberal tradition (Polanyi, Weber) and American Legal Realism (Hale, Hohfeld), an eclectic dispersion of emotional, methodological, and theoretical affinities emerged within the younger generations of international law academics and more broadly across generations within the legal academy, now keen to understand how the financial system could be simultaneously so unequal, fragile, and entrenched (for an example of the growing diversity in scholarly orientation, see Mattei and Haskell 2015). For some, especially those trained in Australia, Canada and the UK, Marxist literature was a source of inspiration.[4] For a larger cohort, the action was in understanding international trade law and, in more recent years, international investment regimes (see, for example, Haskell and Rasulov 2020). Many colleagues began to follow economic histories of thought to try to understand how the welfare state, labor gains, and the decolonization movement all seemed so distant. Law was part of the story, but the action seemed to be with the right-wing economists who had seized power. At an intellectual and organizational level, how had they been so successful? And while critique was important, the stakes seemed too high for some aesthetic resistance or permanent heterodoxy. The chaos of the world—the risk of losing one's mortgage, one's job, one's health care, watching one's society disintegrate—all felt on our doorsteps. The tragedy of international law abroad was now an immanent domestic reality.

And so, international law academics began returning to economic theories that might offer answers, and found that their fellow legal academics outside international law were doing something similar. Over the last five years, loose networks of legal scholars keen to understand the nuts and bolts of capitalism began to emerge.[5] And at the center of this inquiry was the question of how to understand the heart of capitalism, the logic of its markets—in short, the world of accounting and finance, the people who designed and dealt in money.

[3] A separate strand of international legal theorists in the UK, also branded as "Critical Legal Studies," developed in the 1990s, featuring a much more postmodern streak (for example, Derrida) and a non-legal, graduate school orientation that did not engage economic aspects of governance (see Douzinas 2014).

[4] For a snapshot of contemporary scholarly Marxist perspectives, see the blog *Legal Form: A Forum for Marxist Analysis of Law*, https://legalform.blog.

[5] Some of the more exciting forums of recent years include the Association for the Promotion of Political Economy and the Law (APPEAL), the JustMoney project, and the Law and Political Economy Project (LPE), as well as slightly older efforts such as the Institute for Global Law and Policy (IGLP) and the Institute for New Economic Thinking's Young Scholars Initiative (INET YSI). These are heavily dominated by Anglo-American perspectives and often lose sight of alternative scholarly encampments, such as the European Association of Evolutionary Political Economists (EAEPE).

III. A Common Problem

Despite the fact that progressive economic and international law families do not have a long history together, at the most general level they share some important predispositions: they are engaged in myth-busting supposedly "natural," private-oriented barriers in order to advocate collective political decision-making; they are inclined toward an anti-formalist and qualified functionalism; and they find inspiration in "forgotten" intellectual traditions (Wray 2014).[6] At the heart of their comraderie is a common stance against the reigning orthodoxy, to which we now turn.

While it is common, at least within the Western experience, to view international law as a relatively progressive set of social and political agendas, its historical and mainstream presence seeks to cement a world order deeply hostile to democratic control (Anghie 2005; Haskell 2021, 21). Conventional accounts in economics and international law subscribe to naturalist accounts of human behavior and organization, designating actors, fields, and objects to either the realm of deliberate political governance or that of decentralized private coordination. In the literature, this is often framed as a discussion over the proper allocation of decision making between top-down, control-command planning (state; political) and more spontaneous, bottom-up ordering (individual; market). Here, for example, is how a leading scholar writing on global law and economic governance describes the field of choices for countries:

> Central Planning is a way of making law, as well as commodities. … [T]o possess this power [to allocate resources], the orders issued by planning officials at the top must trump the rights of property and contract enjoyed by people and enterprises at the bottom. Thus, public law crowds out private law… An advanced economy involves the production of too many commodities for anyone to manage or regulate . . . . [E]fficiency demands more decentralized lawmaking, not less. (Cooter 1994, 215-216)

At least two interrelated claims are visible here: a quasi-normative statement about how life should be organized, and a slightly more descriptive statement about how the world actually works. To this first claim, the implicit progress narrative is often drawn out in stark terms, invoking the possibility that nothing less than democracy, human rights, and peaceful relations between nations hang in the balance. "Questions of legitimacy loom large; today there is often a focus on 'democratic legitimization'," explains the late John Jackson (a household name in international economic law circles). "[S]overeignty is gravitating away from ideas of 'sovereignty for the benefit of the nation-state' and toward ideas of 'sovereignty' of the people" (Jackson 2008, 12). Such a commitment requires, in the eyes of the international economic law regimes, an "ever-thickening network of commercial treaties" (Neff 1990, 45), and constitutional protections that allow for a "liberal trading system" that "reallocate[es] . . . government powers to democratic people, indigenous people, international organizations and individual human beings as legal subjects of inalienable human rights"—a "normative individualism" that stretches "across frontiers in a globally integrated world" (Petersmann 2008, 35). In keeping with the 1980's human resources mantra that there is no difference between the interests of the capitalists and their labor force, all non-state actors (whether day laborer or multinational corporation) are included under this imagined individual persona, called to what the former president of the World Bank would declare

[6] Within MMT, scholars are primarily resuscitating a mix of forgotten economic traditions—Lerner's Functional Finance, Innes' Credit Theory, Knapp's State Theory of Money, Ingham's sociology, Godley's Sectoral Balance analysis, and a mix of Keynes and other post-Keynesian economic thought (for example, Hyman Minsky)—targeted to replace supply-side, naturalist theories of money and markets, and the belief that there is an inherent tension between full employment and price stability (as in Milton Friedman's non-accelerating inflation rate of unemployment, or NAIRU).

as "perhaps the last real chance to build a world order that is less coercive than what is offered by the nation-state" (Neff 1990, 201).

The second, related claim is that this descaling of state sovereignty in the interests of a decentralized international marketplace is not only closer to the arc of freedom and justice, but also that it conforms to the actual practices and rules of human and social life. In this line of argument, the development of state practice and international law is regularly depicted as originating in interpersonal commercial relationships that slowly standardized into merchant customs, to culminate in formalized legal rules and treaties of both private law and public statecraft. "The law of nations is but private law writ large," writes one of the founders of modern international law, Sir Thomas Holland, the sum of "legal ideas which were originally applied to the relations of individuals" (Holland 1898, 152). "In public as in private law a contract is the law as between the parties to it," explains Georges Scelle (a leading French international jurist of the time who would later sit on the UN International Law Commission), and this law of contract is not only "the foundation of all rules of formal compacts, but the primordial law of all social organization" (Scelle 1911, 174). Freedom here is depoliticized, flattened, individualized, moralized, and made transactional.[7] International law collapses into commercial practice, which is verified through the historical record to take on a transcendental quality of universal common sense that erases the distinctions between states and individuals and subjects them to common restraints:

> [T]o put different standards of morality for individuals . . . of a corporation or of a state, is destructive both of those moral standards and of the legal values of principles which are derived from them. The moral responsibility of states is co-extensive with the moral responsibility of their citizens. . . . It is a moral responsibility of men. . . . [I]t takes sometimes years, or centuries, of wars and waste to give to an obvious principle of common sense the authority of a rule of law. . . . Private law supplies its formulation, its definite shape, its justification in the world of experience . . . as a source of legal reason. . . . Those general principles [of international law] . . . [are] built upon experience and upon infinite intellectual labour. (Lauterpacht 1926, 61-65)

These claims have specific and far-reaching consequences for how orthodox legal thought and institutions anticipate interstate affairs. Since states are just another market actor in a decentralized world of competing interests over limited resources, international legal arrangements are simply a veil over self-interest-maximizing economic activity. "[S]imple game theoretical concepts . . . [demonstrate that states] do not comply with [customary international law] because of a sense of moral or legal obligation; rather, CIL emerges from the states' pursuit of . . . (usually short-term) . . . self-interested policies on the international stage" (Posner and Goldsmith 1999, 1114-1115, 1148). Of course, it may be that in particular instances a state may lean altruistic, but because the entire international legal order is exogenous to private market dynamics, the efforts of populations to exercise sovereignty over market functions are doomed to fail—especially in relation to how the government chooses to generate and spend money. "When analysing the proper role of law . . . it is easy to fall into a moral trap and to justify any of the arguments based on abstract social values. [We] must avoid this trap, and rather choose . . . the pure logic of efficiency and stability" (Lupo-Pasini 2017, 66).

[7] "The people of today cannot dwell in isolation linked as life is to the common cause of human progress. . . . [E]arthly civilization becomes universal, demanding that each and every people in the world share in its benefits . . . [and] a higher estimate is put upon the life of man . . . [so] that tranquillity becomes more valuable in the world, its rule controls as a supreme necessity, as the greatest of all blessings . . . the immovable basis of national autonomy" (Scott 1908, 130-131).

What this means in practice is that government must relinquish its control over market functions and aspirations for its populations in order to service the business world. "[I]n market economies no government has the power actually to guarantee everyone a job," writes LSE professor of commercial law Hugh Collins. "Governments lack the levers to manage the economy. . . . The system also discourage[s] capital investment since there [would be] a surplus of cheap labour . . . retained even if it could be replaced efficiently by mechanisation and computerisation" (Collins 2015, 25).[8] To the extent that government retains a purpose, its competency will now be judged solely on its success protecting the ecosystem for investment (more on this in a minute).

But this claim belies a more fundamental position that hinges on our understanding of the nature and function of money itself, to which investment is so fundamentally tied. After all, the Permanent Court of International Justice declared as far back as 1929 that "it is indeed a generally accepted principle that a state is entitled to regulate its own currency." *Case Concerning the Payment of Various Serbian Loans Issued in France*, Permanent Court of International Justice (PCIJ), Judgement No.14, 1929.[9] Why does a state need to encourage capital investment if it ultimately controls the purse? What stops the government from driving money towards "social values" (full employment, health care, housing) for its populations, regardless of foreign investment's priorities?

The reservation to state control over its printing press goes back to the depiction of states (and law) as exogenous to market interaction. Just like the laws of contract and "private law writ large," the advent of money among international law scholars is situated within a "primordial" organization of barter and exchange. "Money has become the main instrumentality of legal transactions since man has advanced beyond the barter economy," explains the prominent twentieth century international law jurist Arthur Nussbaum; as such, it is grounded in the "attitude of society, as distinguished from [the] state" and "subject to the economic law of supply and demand . . . the fiat of the lawgiver is not the essence of money and cannot ultimately determine its value" (Nussbaum 1939, 4, 10, 22). This valuation is manifest not in law, but monetary prices, which are both input and output of the global marketplace, which itself acts as a sort of computer processor or clearinghouse of all human interaction over scarce resources.[10] "A far-reaching international division of labour among billions of people is possible only by relying, to a large extent, on the information conveyed by spontaneous market prices (as a cybernetic feedback mechanism) and on the free efforts of millions of people guided by general framework rules of private and public national and international law" (Petersmann 1991, 16).[11] The "temptation to print money to finance government expenses" would distort these information signals and lead to economic, and by extension, social disruption (Lastra 2015, 32). To avoid this "abuse of sovereignty," therefore, the ruling orthodoxy within global governance holds that states and international institutions must "depoliticise the management of money" (Lastra 2015, 32). In this world view, the state's options are constrained to raising taxes, borrowing from creditors, or attracting investors (the latter methods mitigating against tax hikes)—in short, to facilitate long-term institutionalized programs that attract private finance while preventing what might be perceived as risky or unsustainable private sector liabilities (Blackenburg and Kozul-Wright 2016, 2). This holds true even in the face of "financial meltdown" and "circumstances of public emergency"; the state's primarily responsibility, we are repeatedly told, is to "ensure a stable and

[8] For an overview of existing international legislation and legal interpretation around the right to work, concluding that the field is plagued by orthodox economic thought, see Carrillo (2021). Employment/labor legislation tends to be interpreted to only provide negative rights, and full employment language is depicted as aspirational (see, for example, Mundlak 2008).

[9] For an example of how this sovereign prerogative is qualified, see Lastra (2015, 17-18).

[10] "We recall that the term 'prevailing market conditions' . . . describes the generally accepted characteristics of an area of economic activity in which the forces of supply and demand interact to determine market practice." Appellate Body Report, *US-Carbon Steel (India) Case*, quoted and discussed in Lang (2019, 714).

[11] For an intellectual history contextualizing this position, see Slobodian (2018, 218-62).

predictable business environment for foreign investors" (Van Harten 2008, 93-94). These normative prescriptions often slip from a quasi-pragmatic tone to either analogising the rights of capital mobility to refugee rights[12] or relying on downright racialized rhetoric reminiscent of formal colonialism.[13] As merely one of many institutional players in a global marketplace that transcends political space and time, the core constituency of the state, in other words, is not its population per se but future returns on capital, and by extension those captains of industry and finance that represent its flows (see Miles 2013). The goal for international law and politics is ultimately to minimize risk posed by domestic societies to investor ambition.

IV. A Happy Union?

Most of the challenges to the orthodoxies of global governance leveled by critical traditions in international law begin with a claim shared by Modern Money Theory: "[T]he economy is always embedded in the social organization as a whole, affecting and affected by culture, politics and social institutions" (Wray 2012, 197). To put this in legal jargon: Any supposedly individual, private economic phenomenon (such as contracts or prices) always takes place against institutionalized background rules that arrange the distribution of entitlements, assign value, and influence behavior in society.[14] "All prices are bargained in the shadow of the law and reflect the respective legal ability of different parties to mobilize the state for or against their economic interests" (Kennedy 2011, 21). [15]

These background rules are the result of struggle between different interests, but it is exactly these political dynamics that are engineered out of sight through economic and legal fictions such as the principle of formally equal at-will bargaining.[16] The scandal is not that coercion exists (politics, like

[12] In the post-World War II era, international economic law protection of capital would be depicted as protecting refugees, the idea being that money should be safe and free to travel, just like people. For a discussion of "refugee money," see Slobodian (2018, 140-161).

[13] "The state that refuses to contract" out its services today in this manner is, within the standing regime, "regarded as the equivalent of the light-headed juvenile who needs protection from its own foolhardy actions" and instruction in order to assume that "degree of maturity, self- and externally anchored discipline" required of the "21st century version of the 19th century club of 'civilised nations'" (Weiler and Walde 2004, 4).

[14] Much of the critical legal literature of the last few decades, I think, analytically echoes (implicitly or directly) arguments raised by American Legal Realist scholars in the 1920s and 30s—in particular, Robert Hale. For a discussion of the American Legal Realist tradition, see Fisher III, Horwitz, and Reed (1995).

[15] In the words of Hockett and Kreitner:

> [C]ollective, organizational decisions play a central role in manufacturing and moving prices. Examples of the impact of public decisions on the price system range from the obvious to the more subtle, but most are straightforward enough to mention here without detailed elaboration. On the obvious side, public employment and procurement effectively benchmark prices for some of the most important goods and services in the putatively privately ordered economy. Similarly, changing background rules make all the difference in pricing many of the most important market interactions. It is hard to imagine pricing pharmaceuticals without patent law; impossible to make sense of real estate prices without local zoning ordinances; incoherent to consider the price of medical care without insurance law. (Hockett and Kreitner 2018, 783)

The difference between a regular or a distorted market activity comes down to the assumption of what counts as normal market operations and the legitimate institutional competency of the state—and when this is turned over to investors, the scope of public sovereignty shrinks (Lang 2011, 689-697).

[16] The straightforward critique here is that the parties do not actually occupy equal bargaining positions due to other implicated rights allocations (such as labor or property). But the rhetoric of the profession is clever and offers multiple solutions to mute this critique. For instance, procedural formalism sets out general criteria that help verify the aims of the parties, and which should be interpreted in light of equity, good faith, reasonableness, and so forth. The role of the judge in this instance is to exercise discretion, interpreted as the (ever-evolving) enlightened "common sense" of the profession. To challenge the capacity of the law to exercise this discretion as politically biased, however, merely

ideology, is inescapable), but that the existing regime and its canonical lexicon are deeply undemocratic and result in gross inequalities—and that it could be otherwise (Unger 2004). The disagreement between more orthodox stances and these more critical voices in international law (and MMT) is not only about the dynamics of organizational change and design, but a deeply philosophical question about the capacity of collective human nature in relation to its environment: the former subscribing to a latent transcendentalism that hopes to read the tea leaves of the market and ride the wave of infinite complexity; the latter embodying a modernist refusal to accept a politics of deferral and holding to a belief that technical skill and collective political will can move most mountains[17]—at least within the ecological constraints of the planet (Castoriadis 2003).

There are also distinct blind spots and insights to each of these critical economic and law traditions that suggest productive collaboration. Perhaps the most pronounced omission within international law is that—for all its analytical zeal to displace the neo-formalist market fundamentalism in international legal regimes and instil a nuanced sensibility to the indeterminacy of legal reasoning, and for all its commitment to a more democratic global political economy through a more activist development state—authors rarely challenge the orthodox characterization of money itself as a creature of the economy (Feinig 2018).[18] This might simply be a reflection that the disciplinary sensibility within international law is firmly oriented around viewing money explicitly as a medium of non-state, decentralized individual interaction, and that the profession tends to tell stories about itself that are deeply oriented around relational exchange.[19] At the same time, this still seems a curious omission because other legal institutions—contract, property, human rights—are often common targets for demonstrating underlying distributive policy designs. Beyond criticizing Bretton Woods institutions and foreign investors for harsh contractual clauses, international law scholars, more often than not, simply keep the world of accounting and finance outside the text. Most of the time, reading the literature, it feels as if money is an afterthought to resource allocation of existing capital, with capital contemplated in terms of natural resources (land, labor), fixed productive assets (factories), or possibly pre-accumulated wealth (which might be subject to redistribution or taxes).

The closest readers get to a direct attempt to analyze money as an institution is from a relatively small but vocal cohort of (usually public) international law academics who identify with some

reinstates the initial problem. If the critique is that this bias is not endemic, then one is sent back to reform the very same formal procedural standards and interpretive protocols with the aim to again "read out politics." Or, if the critique is that there is no unbiased interpretive standpoint, then one is left either justifying the function of law, or falling back on claims that in the event of strong disagreement there are some overarching deductive principles or processes that allow for the right commitments to be determinative. Once we enter the game of domestic or international contract law, it is difficult to stop playing versions of privity. For a general discussion in this direction, see Rasulov (2014).

[17] For a meditation on the politics of deferral versus the politics of the present, see Noble (2005) and Haskell (2018, 76-81).

[18] As intimated earlier in the text, the neglect of theorizing money is possibly part of a broader discomfort about speaking to any systematic fiscal politics. Committed to demystification and wary of any totalizing claims, many (especially post-liberal) legal academics simply bracket questions of how to speak about the system at large (at best, a hodgepodge of "people with projects" that might be loosely identified as the "status quo") and focus instead on mapping the conceptual legal vocabularies within conservative circles of academia and the judiciary to demonstrate that deductive reasoning from guiding principles (or any other form of applied legal rationality) is incapable of providing certainty or consensus or internal coherence on its own terms. Speaking of "capitalism" or getting too normative is just bad intellectual/professional form (Kennedy 1985, 995-1001).

[19] An orthodox version frames the history and ongoing tensions of international legal affairs as a problem of anarchy (due to formally equal nation-states lacking any overarching authority to mediate conflict) and falls back on the sanctity of consent and customary international norms. More critical traditions (such as TWAIL) highlight the cultural hegemony baked into the conceptual and institutional architecture of international law, but, rather than move away from an exchange-theory of social order, they tend to reinstate its protocols, albeit on more egalitarian, reflective terms.

variety of Marxism. To recall, Marx speaks to the origins of money, that it "necessarily crystallizes out of the process of exchange, in which different products of labour are in fact equated with each other, and thus converted into commodities . . . [and in the] historical broadening and deepening of [this] phenomena . . . one particular commodity is transformed into money" (Marx [1865] 1973, 181-187). The process of commodification, of creating products to exchange for profit, is at odds with the promise of market society to maximize human desire and liberty. The purpose of labor is no longer based on the use of what is created, but rather its pecuniary value on the market, so that the commodity is internalized as if it had its own intrinsic value (a price) detached from the laborer, their time, and their "links to family, land and community" (Tzouvala 2020, 22-26). Society becomes increasingly alienated, the "sacred unity between man and nature" severed (Chimni 2012, 22). And in contrast to its promise of liberating humans, capital takes on a rapacious "vampiric quality" by being "dead labour (i.e. accumulated surplus-value) . . . [that] lives only by sucking living labour, and lives the more, the more labour it sucks" (Marks 2008, 285).

The law is essential in these operations because the commodity mode of production presupposes the juridical concepts of private property and contract, and a relational context where subjects understand each other as "owners" (of labor or goods)[20] capable of entering into non-coercively negotiated reciprocal obligations (at-will contract).[21] International law plays an important historical and contemporary role in this story. The exchange of commodities, for Marx, only begins with external relations between bounded communities, which through sustained customs of exchange become internalized as a social, individuated process (Kennedy 1985, 978); it is international legal institutions and rules that are said to carry this market logic across the far reaches of the globe, "flattening out differences and reformulating state-society relations in a uniform way" (Cutler 2014, 46). So, like their conservative peers, Marxist international law scholars see the commodity form (especially the money commodity) as a legal institution rising out of primordial exchange. And, like their critical post-liberal counterparts, they attempt to demystify the claimed neutrality of market institutions with the twist that money is not ancillary, but a legal mechanism central to how exploitation operates in the political economy of contemporary global governance. In this story, finance capital represents the apex of capitalist development, possessing a "magic quality" that "sells what are pieces of paper to make money generating bubbles of growth 'out of nothing'"—to the detriment of "spaces for politics" that are "collective, but not state-centered, private but not profit-oriented . . . solidarity-oriented" (Chimni 2012, 40). Money both enables and masks capitalist exploitation . . . mother of, and handmaiden to, the transnational capitalist class.

MMT flips this account to position money as a core legal institution for democratic planning and an essential analytical window into understanding the nature of global capitalism.[22] First, MMT emphasizes that money did not grow out of private exchange or commodity relations, but rather

[20] "The guardians must therefore recognize each other as owners of private property. This juridical relation, whose form is the contract, whether as part of a developed legal system or not, is a relation between two wills which mirrors the economic relation" (Marx [1865] 1973, 178). For an elaboration of this theme, see Miéville (2004, 87).

[21] The law, in short, is part of the "base," part of the fundamental DNA to power constellations in capitalist development, and not an appendage performing an ideological obfuscation (see Althusser 2005, 49-128). This insight is not specific to the Marxist tradition:

> Every expansion of power, whether economic or not, produces a certain justification. It requires a certain principle of legitimation, a whole inventory of legal concepts and formulas, of stock phrases and slogans that are not only "ideological" simulations, and serve not only the purposes of propaganda, but are an indication of a simple truth: all human activity in some sense has an intellectual character, and politics, imperialistic as well as any other historically meaningful kind, is not essentially non-intellectual . . . there has never been an international law without such justifications. (Schmitt [1950] 2003, 163)

[22] For a general discussion of the Marxist limitations to thinking about money, see Ferguson (2018, 1-66). A number of progressive legal scholars, not necessarily associated directly with MMT, share this insight into the constitutive role of money in society and its possible importance in future democratic planning (for example, Kreitner 2015).

the reverse trajectory: first there was credit, then money tokens, and finally barter (Pilkington 2011). And implicit to systems of credit and monies of account, centralized deliberate authority and enforcement are required for effective mass coordination (Innes 1913). The history (and actual architecture) of money, in other words, is ultimately collective rather than individual, public not private, and deeply political in the structuring and assignment of social organization and value (Grey 2020; Tankus 2020).

All of this should be familiar territory for critical international law scholars, and might provide a new inroad to debates over international economic law and the global architecture of development and trade. Suddenly, capital and money markets are not simply reservoirs of investment grounded in accumulated private savings sui generis, with the role of international organizations and governance regimes to facilitate the efficient and safe mediation of private creditors and public debtors. Instead, "[l]arge sovereign debt markets are effectively prerequisites to the emergence and sustenance of large private debt and equity markets"—not only because they create the demand, but because the private markets are themselves underwritten by the sovereign public's monetized full faith and credit (Hockett and Omarova 2017, 1163).[23]

Second, to speak of public credit intimates a revised definition of money, one that takes up a rather functionalist perspective (in the American Legal Realist tradition, we might think of this as "a thing is what it does," Cohen 1935, 826). While money is a bundle of functions, at its core it expresses a balance sheet operation representing a social credit/asset–debt/liability relation—or, as MMT scholars sometimes describe it, money is an IOU that the state compels its constituencies to accept for settling obligations through its power to tax (Wray 2010). Unlike a household that maintains its budget as a currency user, the state can exercise authority as a fiat currency issuer to run its economies with far greater policy space (holding as a principle that spending, not savings, drives economic growth), since its spending power is not reliant on pre-accumulated investment capital, but only its real resource constraints (agriculture, energy, labor; see Kelton 2020, 15-40).

For international lawyers, this is important because it reverses the claim that international law is hopelessly fragmented by private interests (since those private interests are reliant on the public purse), and opens the door for thinking concretely about new programmatic alternatives of international social reform that might counter today's orthodoxies.[24] In particular, MMT economists suggest a state-funded but administratively decentralized, universal, bottom-up job guarantee that would act as an automatic fiscal stabilizer to allow for full employment and guard against inflation. When times are good, the private sector would scoop up labor; when times are hard, the guarantee would act as a safety net and ensure spending on necessities in the economy (Tcherneva 2020). With spending overtly rooted in the public sovereign authority, the aims of finance are significantly more open to many of those progressive objectives that so often seem all

[23] This also intimates the specter of how we account for risk. When financial markets disburse funds, they commonly seek a range of assurances, often in the form of approved collateral, to satisfy creditor "exposure" concerns. At the international level, the collateral often takes the form of the government contracting away the public constituency's right to design regulation over all sorts of productive social activities. But as with any collateral or initial investment decision, the valuation of future potential earnings is always subject to unknowable contingency, and simply stacking additional possible collateral does less to guard against insolvency than to create the very conditions for instability to domino out of control (see Riles 2010).

[24] For typical depictions of international law as a quasi-anarchistic terrain of interests, see Koskenniemi (2006), Ruggie (2014), and Zumbansen (2010). While often perceived as progressive intellectual efforts, most of the transnational literature relies on a deeply conservative set of tropes that discount political hierarchy and curtail democratic sovereignty through the state model. This should be troubling to international lawyers, whose bread and butter is tied not to the market but the state, the latter which acts as the fiat enforcer and legislator of last resort. To reassert the public over the decentralized, privatized conceptions of expert rule is to augment legal cachet in governance writ large. (And to be clear, "centralization/decentralization" are ultimately rhetorical devices used interchangeably to characterize the same phenomena with different effects, rather than allowing any new insight.)

too distant: addressing racial disparities and gender imbalances, institutionalizing a care economy for the disabled and elderly, acclimating markets to climate constraints, and so forth.

Thinking of money in terms of financial accounting, as a balance sheet operation, also helps us rethink what we mean when we speak about capitalism. Rather than think of a real (production) versus fictional (speculative finance) economy, we might recast these dynamics as mutually reinforcing operations, with the creation of value involving not only pre-accumulated wealth, labor, information, and technology, but also the process of capitalization: the assignment of pecuniary value to a legal asset in the present based on its expected future predicted earnings (discounted for replacement costs and other risks above the going interest rate: see Levy 2014; Nitzan and Bichler 2009). The expansion of this process over all aspects of social life is the story of capital, and for too long progressives have allowed the constellation of power in business and finance to exercise this sovereignty over (literally) our future.

At the same time, real limits are set on what may be explained through this perspective on its own terms. What is counted as a legal asset and who gets access to markets on what terms is not determined by capitalization. In other words, capitalism is a necessary but not sufficient explanation of our suffering. As international lawyers continue to turn toward "political economy," these lines of thought offer new analytical sources for understanding what we talk about when we talk about capitalism and our worlds of struggle.[25]

Collaboration on these lines of inquiry might allow new opportunities for critical legal scholars to inform MMT economists, especially when it comes to international law. First, much of the economic literature focuses on domestic financial architectures of former colonial/imperial states to develop policy analysis. When transporting their insights to former colonial states with weaker international bargaining power, scholars often claim that the basic assumptions for great power countries hold true abroad so long as those weaker states are mindful of implementation challenges (for example, small formal sectors may create difficulties collecting taxes) and preserve the policy space to implement various protectionist measures (such as tariffs, imports, capital and exchange controls) (see Kaboub 2008, 2020-2027; Kelton 2019, 142-155; Wray 2010, 229-232).[26] A challenge with these prescriptions is that unless there is significant buy-in from the ruling countries, current international investment and trade law is stacked against any systematic program in this direction[27]

[25] In the progressive scholarly attention to capitalism and political economy, the intellectual villains are usually identified as cohorts of twentieth century Anglo-American and European economists thought to have ushered in "neoliberalism" (for example, see Brabazon 2016; Mirowski and Plehwe 2009). Thinking of money as a balance sheet operation, however, expands our gaze in important methodological, theoretical, and tactical respects. While economists are important to the story of conservative twentieth century governance, the balance sheet is a tool of corporate accounting and financial technique: in short, the stuff of accountants, trained in business schools, and carried out through professional cadres trained in managerial studies. The histories and theories of capitalism, especially in law, have almost completely avoided these fields of organization and thought, usually disparaging "bureaucracy" in the process. But bureaucracy in itself is not good or bad, just the stylized description of any routinized mechanisms in an organization—and, more often than not, a term of art to constrain the legitimacy of public governance. The point is not to expand the critique of bureaucracy to the private sector, but to stop operating within this mode of criticism. Instead, we might ask, What would it look like to develop alternative accounting practices and new ways of reading value and time into our financial instruments? It is somehow ironic that Foucault, who probably more than anyone highlighted the "neoliberal" break from neoclassicism in economics, did not include those managerial cadres responsible for implementing the daily accounting and reporting (confessional) routines that would build the twenty-first century data panopticon.

[26] Sufficient skill capacities, necessary capital imports, and careful reform sequencing and mediation of informal/formal social domains all raise the possibility of reliance on external global North expert regimes, which raises a host of problems originating in wealthy countries and which would potentially have significant sway over reform efforts in formerly colonized countries.

[27] The disciplinary sensibility and institutional regime, as echoed directly in the language of bilateral investment treaties, are meant to provide a "stable framework for [foreign] investment and maximum effective utilization of economic

and will likely result in costly and resource/time-intensive adjudication,[28] state-imposed countermeasures, and "soft" diplomatic pressure (for example, embargos on necessary capital goods),[29] or even military intervention (Gathii 2009). While various blocs might be established among former colonial states, the historical record indicates that these coordination efforts are usually unsustainable, whether due to external lobbying or different internal pressure points.[30] International law scholars working in development, investment, and trade (and international politics) would be essential for beginning to think through the phasing and risk portfolios of different economic programs to anticipate standing opportunities and downsides.

At the end of the day, the pragmatic constraints on these development plans speak less to the desirability of their substantive itinerary, and more to the hierarchies of political struggle in the world today. Even if correct as a matter of first principles, these anti-democratic legacies remembered by international legal scholars might suggest room for further reflection about where to direct change and how it looks. Pushing policies that we anticipate will fail (due to external pressure) with the consequences of failure only felt by foreign populations suggests revamped imperialist arrogance—even if in the name of anti-imperialism.

Second, critical traditions in international law have developed a rich historical record of the various methods Anglo-American and European cultures have used to exercise control over countries abroad. Though this control was often wrapped in racist prejudices, its visionaries and builders usually saw themselves as humanitarian reformers, seeking to better the moral and material well-being of disadvantaged people and bring them into regimes of abundance and affluence (Berman

---

resources" in the home country (Perrone 2017, 681). To secure these "legitimate expectations" of the international business community, market distortions and barriers to trade have been significantly expanded to include a growing range of formerly basic government regulatory competencies (Lang 2019). In practice, this means almost any regulation will be subject to compensation (Miles 2013, 75-77, 156-174).

[28] For example, one trade dispute between Canada and the United States over lumber imports resulted in six different venues, which themselves lack hierarchy:

> [These] international tribunals can present overlapping jurisdictional opportunities to aggressive disputants. . . . [In this case, the claims] played out in the U.S. Court of International Trade, the Claims Court, the D.C. Circuit, special binational panels set up under Chapter 19 of the North American Free Trade Agreement (NAFTA), an arbitrational tribunal set up under chapter 11 of that Agreement, and the Dispute Settlement Body of the World Trade Organization. After a new agreement between the two countries purported to settle all outstanding claims, later disputes went to the London Court of International Arbitration, a body that normally handles private commercial disputes. (Stephan 2011, 1590-1593)

This forum shopping is particularly challenging in terms of time and resources for less wealthy countries (Simmons and Breidenbach 2011, 216). Investors are often resistant to restructuring debt and willing to pursue claims unlikely to be successful. For instance, a dispute between Egypt and a French company, Veolia, focused in part on the country's decision to raise wage standards (claimed to violate a stabilization clause obligation), resulted in the claimant losing, but only after more than six years of litigation and somewhere between $8-30 million USD in costs (Yong 2018).

[29] Wealthy countries, such as the United States, regularly open international organizations to private lobbying interests that influence private investment disputes. In a dispute between Exxon Mobile and Indonesia, for instance, the company successfully lobbied for the US State Department to halt the lawsuit (Miles 2013, 137-143). The substantive parameters in international contracts and the constitutional provisions in international investment law are also regularly crafted in private law firms at the behest of capital interests (Pistor 2019, 132-145). A range of legal doctrines have also become entrenched in this field to provide significant leverage for wealthy investors and companies over former colonial countries: limited liability, separate legal personality, forum non conveniens (where a party only has to show a potential alternative forum), comity, and so forth (Miles 2013, 128-150).

[30] For studies of the efforts (and failures) of African, Central Asian, and Latin American states to collectively organize in the wake of decolonization, see chapters by Cyra Akila Choudhury, Julio Faundez, Priya Gupta, Liliana Obregon, Umut Ozsu, and Akbar Rasulov in Eslava, Fakhri, and Nesiah (2017). In these studies, the vagueness of the solidarity between countries was often its strength in uniting polities with very different economic and social vulnerabilities, but it also proved fragile to internal conflicts between elites, private foreign investment coordination, and diplomatic and military pressure from powerful northern states.

1999; Koskenniemi 2002). Only in hindsight, judged by subsequent generations, do their projects appear biased and clumsy, if not anxiety-ridden fever dreams that hid the dark sides to their virtue. Even more troubling, in relation to proposals centered on universal job guarantees from a sovereign driving its fiat currency through tax obligations, is that nineteenth century colonial powers in Africa often sought to transform local cultural attitudes toward consumption, production, and wealth through coercively imposed wage-labor and taxation schemes (Anghie 2005, 115-195). Their motivations were often well-meaning, but they were also driven (implicitly and explicitly) by the concern that without the markets and resources of the colonized populations, living standards and economic projects in the colonial powers' home countries would be substantially diminished (Anghie 2005; Forstater 2005).[31] To help bring countries out of poverty required bureaucracies to extract and process data, to steer reform through alliances with local stakeholders, to enforce coordination efforts with arms and diplomatic persuasion—in short, a subtle but real surveillance and disciplining apparatus that reshaped the life experiences of colonized subjects (Anghie 2005).[32] These histories cast shadows that have not yet been sufficiently internalized within MMT scholarship. Are we participating in an ongoing colonial legacy of whiteness as power?

V. Conclusion: Where Do We Go from Here?

To date, progressive economists and international lawyers have only begun to engage in conversation. The last time they really came together in domestic affairs, it produced the most progressive governance for working families in modern history. But it also left out major sectors of the population (nonwhite people at home and in the peripheries) (Orford 2006; Pahuja 2011; Rajagopal 2003) and never realized any profound advances to workers' control over the work process or the social distribution of power (Klare 1978, 295-303). While progressive intellectual alliances helped to squeeze out productivity gains through a Fordist model for white men in wealthy countries, these efforts never really managed to make those designs sustainable or universal (Harris 2017; Levy 2019). In hindsight, it offered a social compact that relied too heavily on economic growth at the cost of steep environmental degradation (Galanis 2019). In the name of sensible reform and (justifiable) concern of authoritarian excess, it often compromised too much with power. Maybe that is always the limit of expert rule: Power never concedes anything without struggle, and experts usually have too much to lose.[33] But then again, experts ultimately drive populist rule as well, and there are no alternatives to making political choices. Looking to

[31] "[While the] conditions of paid labor are . . . not unattractive—good and prompt payment . . . the absence of any need for taking thought; and freedom from anxiety as to rainfall, locusts, and the other cares which beset the small farmer," writes the British colonial administrator, Sir Frederick Lugard, "Our rule is not popular. . . . They care less for our impartial justice than we like to think they do. It is at least arguable that they are not yet fitted for the full measure of individual liberty which has taken us centuries to evolve." And yet this century-old rule was itself dependent on the productivity of the colonies.

> It is no doubt that the control of the tropics, so far from being a charge on the British taxpayer, is to him a source of very great gain. . . . [The] products of the tropics have raised the standard of comfort of the working man, added to the amenities of his life, and provided alike the raw materials on which industry and wealth of the community depends, and the market for manufactures which ensure employment. . . . [T]he Empire . . . is the greatest engine of democracy the world has ever known. . . . It has infected the whole world with liberty and democracy. (Lugard 1922, 417-418, 608)

While the foreign political rule of empire is not legitimate today, its logic remains at a functional level largely intact; remove the word "empire" from the colonial language and the text mirrors the contemporary orthodoxy.

[32] This is the current state of affairs, with international bodies such as the IMF exerting increasingly "transparent" oversight over domestic borrower accounts, and scholars continuing to develop new means to shift scrutiny over state budgets to "soft law" arbitral forums (for example, see Waibel 2007). This is increasingly an explicit mandate for international financial and trade institutions.

[33] This seems to me the implicit message in much of David Kennedy's work (for example, see Kennedy 2004).

our current situation, working together, scholars in modern money theory and critical traditions of international law seem to promise whole new vistas of progressive futures to our present.

REFERENCES

Althusser, Louis. 2005. *For Marx*. Verso Books.

Anghie, Antony. 2005. *Colonialism, Imperialism and the Making of International Law*. Cambridge University Press.

Berman, Nathaniel. 1999. "In the Wake of Empire." 14 *American University International Law Review* 1515.

Blackenburg, Stephanie, and Richard Kozul-Wright. 2016. "Sovereign Debt Restructurings in the Contemporary Global Economy: The UNCTAD Approach." 41 *Yale Journal of International Law* 1.

Brabazon, Honor, ed. 2016. *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project*. Routledge.

Carrillo, Raúl. 2021. "Labor." In *Tipping Points in International Law: Commitment and Critique*, edited by John D. Haskell and Jean d'Aspremont, 199. Cambridge University Press.

Castoriadis, Cornelius. 2003. *The Rising Tide of Insignificancy: The Big Sleep*. Liberty Press.

Chimni, B.S. 2012. "Capitalism, Imperialism, and International Law in the Twenty-First Century." 14 *Oregon Review of International Law* 17.

Clark, Gerald. 1994. "A Conversation with Duncan Kennedy." 24 *The Advocate: The Suffolk University Law School Journal* 55.

Cohen, Felix. 1935. "Transcendental Nonsense and the Functionalist Approach." 35 *Columbia Law Review* 809.

Collins, Hugh. 2015. "Is There a Human Right to Work?" In *The Right to Work: Legal and Philosophical Perspectives*, edited by Virginia Mantouvalou, 17. Hart Publishing.

Commons, John. 1924. *Legal Foundations of Capitalism*. MacMillan.

Cutler, A. Claire. 2014. "New Constitutionalism and the Commodity Form of Global Capitalism." In *New Constitutionalism and World Order*, edited by Stephen Gill and A. Claire Cutler, 45. Cambridge University Press.

Cooter, Robert. 1994. "Structural Adjudication in the New Law Merchant: A Model of Decentralized Law." 14 *International Review of Law and Economics* 215.

Desan, Christine. 2014. *Making Money: Coin, Currency, and the Coming of Capitalism*. Harvard University Press.

Dezalay, Yves, and Bryant Garth. 1996. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. University of Chicago Press.

Douzinas, Costas. 2014. "A Short History of the British Critical Legal Conference or, The Responsibility of the Critic." 25 *Law and Critique* 187.

Eslava, Luis, Michael Fakhri, and Vasuki Nesiah, eds. 2017. *Bandung, Global History and International Law: Critical Pasts and Pending Futures*. Cambridge University Press.

Feinig, Jakob. 2018. "Beyond Double Movement and Re-regulation: Polanyi, the Organized Denial of Money Politics, and the Promise of Democratization." 36 *Sociological Theory* 67.

Ferguson, Scott. 2018. *Declarations of Dependence: Money, Aesthetics, and the Politics of Care*. University of Nebraska Press.

Fisher III, William, Morton Horwitz, and Thomas Reed, eds. 1995. *American Legal Realism*. Oxford University Press.

Forstater, Mathew. 2005. "Taxation and Primitive Accumulation: The Case of Colonial Africa." In *The Capitalist State and Its Economy: Democracy in Socialism,* edited by Paul Zarembka, 51. Emerald Group Publishing.

Galanis, Michael. 2019. "Growth and the Lost Legitimacy of Business Organisation: Time to Abandon Corporate Law Reform." 20 *Journal of Corporate Law Studies* 291.

Gathii, James Thuo. 2009. "War's Legacy in International Investment Law." 11 *International Community Law Review* 353.

Grey, Rohan. 2020. "Administering Money: Coinage, Debt Crises, and the Future of Fiscal Policy." 109 *Kentucky Law Review* 239.

Hale, Robert. 1923. "Coercion and Distribution in a Supposedly Non-Coercive State.*"* 38 *Political Science Quarterly* 470.

Harris, Angela. 2017. "Where is Race in Law and Political Economy?" *Law and Political Economy* (blog), November 30, 2017. https://lpeproject.org/blog/where-is-race-in-law-and-political-economy.

Haskell, John. 2016. "From Apology to Utopia's Conditions of Possibility." 29 *Leiden Journal of International Law* 667.

Haskell, John. 2018. *Political Theology and International Law*. Brill.

Haskell, John, and Akbar Rasulov. 2018. "International Law and the Turn to Political Economy." 31 *Leiden Journal of International Law* 243.

Haskell, John, and Akbar Rasulov, eds. 2020. *New Voices and New Perspectives in International Economy Law*. Springer.

Haskell, John. 2021. "A Case in the Politics of Form: Yearbooks of International Law." 50 *Netherlands Yearbook of International Law* 21.

Hockett, Robert, and Roy Kreitner. 2018. "Just Prices." 27 *Cornell Journal of Law and Public Policy* 771.

Hockett, Robert, and Saule Omarova. 2017. "The Finance Franchise." 102 *Cornell Law Review* 1143.

Holland, Thomas. 1898. *Studies in International Law*. Clarendon Press.

Innes, A. Mitchell. 1913. "What is Money?" *Banking Law Journal.*

Jackson, John. 2008. "Sovereignty: Outdated Concept or New Approaches." In *Redefining Sovereignty in International Economic Law*, edited by Wenhua Shah, Penelope Simons and Dalvinder Singh, 12. Hart Publishing.

Kaboub, Fadhel. 2008. "Elements of a Radical Counter-Movement to Neoliberalism: Employment-Led Development." 40 *Review of Radical Political Philosophy* 220.

Kelton, Stephanie. 2020. *The Deficit Myth: Modern Monetary Theory and the Birth of the People's Economy*. Public Affairs.

Kennedy, David. 2000. "When Renewal Repeats: Thinking Against the Box." 32 *New York University Journal of International Law and Politics* 335.

Kennedy, David. 2004. *The Dark Sides of Virtue: Reassessing International Humanitarianism*. Princeton University Press.

Kennedy, David. 2006. "The 'Rule of Law,' Political Choices, and Development Common Sense." In *The New Law and Economic Development: A Critical Appraisal*, edited by David Trubek and Alvaro Santos, 95. Cambridge University Press.

Kennedy, David. 2011. "Some Caution about Property Rights as a Recipe for Economic Development." 1 *Accounting, Economics, and Law* 1.

Kennedy, David, and William Fisher III, eds. 2006. *The Canon of American Legal Thought*. Princeton University Press.

Kennedy, Duncan. 1985. "The Role of Law in Economic Thought: Essays on the Fetishism of Commodities." 34 *American University Law Review* 939.

Kennedy, Duncan. 2001. "Legal Formalism." In *Encyclopedia of the Social and Behavioral Sciences*, edited by Neil Smelser and Paul Baltes, 8634. Elsevier.

Klare, Karl. 1978. "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness: 1937-1941." 65 *Minnesota Law Review* 265.

Koskenniemi, Martti. 2006. *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*. Report of the Study Group of the International Law Commission, A/CN.4/L.682.

Koskenniemi, Martti. 2002. *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1872-1960*. Cambridge University Press.

Kreitner, Roy. 2015. "Toward a Political Economy of Money." In *Research Handbook on Political Economy and Law*, edited by Ugo Mattei and John D. Haskell, 7. Edward Elgar.

Lang, Andrew. 2011. *World Trade Law after Neoliberalism: Reimagining the Global Economic Order*. Oxford University Press.

Lang, Andrew. 2019. "Heterodox Markets and 'Market Distortions' in the Global Trading System." 22 *Journal of International Economic Law* 677.

Lastra, Rosa. 2015. *International Financial and Monetary Law*. Oxford University Press.

Lauterpacht, Hersh. 1926. "Private Law Analogies in International Law" (PhD thesis, London School of Economics).

Levy, Jonathan. 2014. "Accounting for Profit and the History of Capital." 1 *Critical Historical Studies* 171.

Levy, Jonathan. 2019. "Instability and Inequality: American Capitalism after the Volcker Shock of 1980." https://www.youtube.com/watch?v=h022h4dhXzc&t=1s.

Lugard, Sir Frederick. 1922. *The Dual Mandate in British Tropical Africa*. William Blackwood and Sons.

Lupo-Pasini, Federico. 2017. "Financial Stability in International Law." 18 *Melbourne Journal of International Law* 45.

Marks, Susan. 2008. "Exploitation as an International Legal Concept." In *International Law on the Left: Re-examining Marxist Legacies*, edited by Susan Marks, 281. Cambridge University Press.

Marx, Karl. (1867) 1973. *Capital, Vol. 1*. Penguin.

Mattei, Ugo, and John Haskell, eds. 2015. *Research Handbook on Political Economy and Law*. Edward Elgar.

Miéville, China. 2004. *Between Equal Rights: A Marxist Theory of International Law*. Haymarket Books.

Miles, Kate. 2013. *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital*. Cambridge University Press.

Mirowski, Philip. 2008. *Machine Dreams: Economics Becomes a Cyborg Science*. Cambridge University Press.

Mirowski, Philip, and Dieter Plehwe, eds. 2009. *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective*. Harvard University Press.

Mundlak, Gary. 2008. "The Right to Work: Linking Human Rights and Employment Policy." 146 *International Labour Review* 189.

Neff, Stephen. 1990. *Friends but No Allies: Economic Liberalism and the Law of Nations*. Columbia University Press.

Nitzan, Jonathan, and Shimshon Bichler. 2009. *Capital as Power: A Study of Order and Creorder*. Routledge.

Noble, David F. 2005. *Beyond the Promised Land: The Movement and the Myth*. Between the Lines Press.

Nussbaum, Arthur. 1939. *Money in the Law*. Foundation Press.

Orford, Anne, ed. 2006. *International Law and Its Others*. Cambridge University Press.

Pahuja, Sundhya. 2011. *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. Cambridge University Press.

Perrone, Nicolas. 2017. "The Emerging Global Right to Investment: Understanding the Reasoning Behind Foreign Investor Rights." 8 *Journal of International Dispute Settlement* 673.

Petersmann, Ernst-Ulrich. 1991. *Constitutional Functions and Constitutional Problems*. Routledge.

Petersmann, Ernst-Ulrich. 2008. "State Sovereignty, Popular Sovereignty and Individual Sovereignty: From Constitutional Nationalism to Multilevel Constitutionalism in International Economic Law?" In *Redefining Sovereignty in International Economic Law*, edited by Wenhua Shah, Penelope Simons, and Dalvinder Singh, 28. Hart Publishing.

Pilkington, Philip. 2011. "What is Debt? An Interview with Economic Anthropologist David Graeber." *Naked Capitalism* (blog), August 26, 2011. https://www.nakedcapitalism.com/2011/08/what-is-debt-%e2%80%93-an-interview-with-economic-anthropologist-david-graeber.html.

Pistor, Katharina. 2013. "A Legal Theory of Finance." 41 *Journal of Comparative Economics* 315.

Pistor, Katharina. 2019. *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton University Press.

Posner, Eric, and Jack Goldsmith. 1999. "A Theory of Customary International Law." 66 *University of Chicago Law Review* 1113.

Rajagopal, Balakrishnan. 2003. *International Law from Below: Development, Social Movements and Third World Resistance*. Cambridge University Press.

Rasulov, Akbar. 2012. "New Approaches to International Law: Images of a Genealogy." In *New Approaches to International Law: The European and the American Experiences*, edited by Jose Maria Beneyto and David Kennedy, 151. TMC Asser-Springer.

Rasulov, Akbar. 2014. "Theorizing Treaties: The Consequences of the Contractual Analogy." In *Research Handbook on the Law of Treaties*, edited by Christian Tams, Antonios Tzanakopoulos, and Andreas Zimmerman, 74. Edward Elgar.

Riles, Annalise. 2010. "Collateral Expertise: Legal Knowledge in the Global Financial Markets." 51 *Current Anthropology* 795.

Ruggie, John. 2014. "Global Governance and 'New Governance Theory': Lessons from Business and Human Rights." 20 *Global Governance* 5.

Scelle, Georges. 1911. "Studies on the Eastern Question." 5 *American Journal of International Law* 144.

Schmitt, Carl. (1950) 2003. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. Telos Press.

Scott, James Brown. 1908. "The Central American Peace Conference of 1907." 2 *American Journal of International Law* 121.

Shalakany, Amr. 2000. "Arbitration and the Third World: Bias under the Specter of Neo-Liberalism." 41 *Harvard International Law Journal* 419.

Simmons, Beth, and Andrew Breidenbach. 2011. "The Empirical Turn in International Economic Law." 20 *Minnesota Journal of International Law* 198.

Slobodian, Quinn. 2018. *Globalists: The End of Empire and the Birth of Neoliberalism*. Harvard University Press.

Stephan, Paul. 2011. "Privatizing International Law." 97 *Virginia Law Review* 1573.

Tankus, Nathan Cedric. 2020. "The Pandemic-Induced Depression from a Monetary Political Economy Perspective." *Notes on the Crises* (newsletter). https://nathantankus.substack.com.

Tcherneva, Pavlina. 2020. *The Case for a Job Guarantee*. Polity Press.

Tzouvala, Ntina. 2020. *Capitalism as Civilization: A History of International Law*. Cambridge University Press.

Unger, Roberto Mangabeira. 2004. *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*. Verso Books.

Van Harten, Gus. 2008. *Investment Treaty Arbitration and Public Law*. Oxford University Press.

Waibel, Michael. 2007. "Two Worlds of Necessity in ICSID Arbitration: CMS and LG&E." 20 *Leiden Journal of International Law* 637.

Weiler, Todd, and Thomas Walde. 2004. "Investment Arbitration under the Energy Charter Treaty in the Light of New NAFTA Precedents: Towards a Global Code of Conduct for Economic Regulation." 1 *Transnational Dispute Management* 1.

Wray, L. Randall. 2010. "Money." Levy Economics Institute Working Paper No. 647.

Wray, L. Randall. 2012. *Modern Money Theory: A Primer on Macroeconomics for Sovereign Monetary Systems*. Palgrave Macmillan.

Wray, L. Randall. 2014. "From the State Theory of Money to Modern Money Theory: An Alternative to Economic Orthodoxy." Levy Economics Institute Working Paper No. 792.

Yong, Lacey. 2018. "Veolia's Claim Against Egypt Rubbished, as It Turns Focus to Italy." *Global Arbitration Review*, June 22, 2018. https://globalarbitrationreview.com/veolias-claim-against-egypt-rubbished-it-turns-focus-italy.

Zumbansen, Peer. 2010. "Transnational Legal Pluralism." 10 *Transnational Legal Pluralism* 141.