CONSTANT AND CHANGING ELEMENTS IN THE REGULATION OF MONEY

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Money may have a history of four thousand years but "a public money system is comparatively late in origin while the device of legal tender is a still more recent invention".[1] Throughout history people have proved to be highly creative with money – just as in other fields. First, money was invented and then it went through a series of innovations as a means of payment, ranging from tangible money to electronic money. In this paper I am going to outline characteristics of money and opportunities and limitations in its regulation. My working hypothesis is that money is a public good, which has substantial consequences for those intending to regulate it.

I. Money

1. Money is a social product; it has evolved in human communities. As explained by textbooks of economics and finance, the use of money makes it possible to dispense with the barter of commodities and it facilitates specialization. Employing a term of Talcott Parsons, money can be called a mediating medium of the economy (or of the economic sub-system). Systems coordinated by, among other things, money are imperfect. To illustrate that point, suffice it to refer to crises of overproduction or to economic bubbles (trade in high volumes at prices that are considerably at variance with intrinsic values), which at times also cause crises (cf. the present financial crisis triggered by the US subprime mortgage bubble).

2. The use of money is not necessarily related to a state or to power in general; anything accepted as money by the community concerned can function as such.[2] As Tibor Nagy puts it: [money] "is not created by state regulations because it is a product of spontaneous evolution".[3] In this context Samuelson and Nordhaus formulate the money paradox

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1 KHAN, A: "The Evolution of Money: A Story of ConstitutionalNullfiction", *University of Cincinatti Law Review*, Winter 1999, 395–396; OLIPHANT, H.: "The Theory of Money in the Law of Commercial Instruments," 29 *YALE L. J.* 1920, 606, 616.

2 But those in power – whether a state or some other entity – tend to bring the issue of money under their control because that pays economically and politically.

3 NAGY, Tibor: "A pénzrendszer joga" (The Law of the Currency System) in: Simon, I. (ed.): *Pénzügyi jog* (Financial Law), I, Budapest, Osiris, 2007, p. 275.

sagaciously: "Money is accepted, because it is accepted."[4] Money can be considered a social convention; in that sense the use of money is a cultural product that is maintained by routine; and confidence is its foundation. Said thesis is the basis for the societary theory of money, which can confirmed by numerous illustrations.[5] Take the example of closed institutions where consumer goods, typically cigarettes function as money. In the United States during the first half of the 19th century mostly notes issued by banks under the law of the member states functioned as the medium of exchange[6] even though the country had official money coined by the federal government. Or take the example when market players partly use the money of another country. During the Yugoslav Wars in nascent successor states some people used the German marks and US dollars as their money. Western currencies were occasionally used as money also in former socialist countries despite a strict ban.

3. There is consensus on the functions of money albeit not on its definition. Simply put, any object qualifies as money provided it can fulfil its functions.[7] Samuelson and Nordhaus state that money is useful as it facilitates simple and fast transactions (medium of exchange), easy pricing (unit of account) and preservation of value over time (storage of value).[8] It is a very succinct yet comprehensive definition. Note that the number of functions experts attribute to money depends also on their working philosophies and the purpose of the study concerned. Glyn Davies, for instance, lists as many as ten functions of money.[9]

Throughout history money has taken various tangible forms, including salt and peculiar shells.[10] Precious metals functioned as money as early as the Antiquity though at that time coins were weighed and not counted.[11] In their textbook on finance Bánfi and Sulyok-Pap write that "As for the material of money, the time between the appearance of money and the advent of the modern money system falls into three periods. Commodity money (typically metal coins) dominated in the first, commodity money and money substitutes together in the second and fiat money in the third."[12]

4. Economists agree that it is almost impossible to define money in terms of its physical appearance (salt, shell, etc.) and features (durability, divisibility or intrinsic value) be-

4 SAMUELSON, P. A. – Nordhaus, W.: *Economics* (13th edn.), McGraw–Hill, 1989, p. 227.

5 PROCTOR, C.: *Mann on the Legal Aspect of Money*, (6th edn.), Oxford, OUP, 2005, p. 23. (Hereinafter reference to it will be like this: Proctor (Mann).)

6 See for instance: POLLARD, A. M. – PASSIC JR., J. G. – ELLIS, K. H. – DALY, J. P.: *Banking Law in the United States*, Butterworth Legal Publishers, pp. 16-17.

7 We have to add that nowadays money does not necessary assume an objectified form. Indeed, it typically exists in the form of electronic signs stored in computers.

8 SAMUELSON, P. A. –Nordhaus, W.: op. cit. (footnote 4), p. 230.

9 DAVIES, Glyn: *A History of Money: From Ancient Times to Present Day*, Cardiff, University of Wales Press, 2002, (3rd edn.), pp. 28–29.

10 BRAUDEL, F.: *Civilization and Capitalism, 15th–18th Century*, Vol. I. *The Structure of Everyday Life – The Limits of the Possible*; London, Fontana Press, 1981, pp. 442–443.

11 See for instance Hóman, Bálint: *Magyar pénztörténet: 1000–1325* (A History of Money in Hungary: 1000–1325), Budapest, MTA, 1916, p. 130; P. Leroy-Beaulieu: *Traité de la Science des Finances* III, Paris, Guillaumin, 1877, pp. 613-617.

12 BÁNFI, Tamás – Sulyok-Pap, Márta: *Pénzügytan* I (Finance I), Budapest, Tanszék Kft., 2002, p. 15.

cause it comes in so many forms and several factors influence their form and acceptance. The ways economists define money largely depends on their theoretical approach and the era when that issue is addressed. Glyn Davies writes: "Money is anything that is widely used for making payments and accounting for debts and credits."[13] Money is credit, says Innes, putting forward the shortest and broadest definition. Bell, a contemporary theorist, shares that view.[14]

5. If our purpose is to examine the role and scope of law in regulating money, it is justified to put the question Lorenz von Stein raised in the 19th century: "Is it possible to regulate the economic nature of money by legislative and administrative means and if so, to what extent?"[15] It is the very object of this paper to find out whether money can be regulated by legal means and if so, to what extent.

II. Money in the law

1. Lorenz Stein is of the view that a business transaction is the affair of the parties to it and of no one else. There is however an external condition of business transactions that market players are unable to ensure. "That condition is the certainty of the appropriate volume and value of available goods. To ensure certainty, the value of goods must be objectively defined [*objektiv feststeht*] and guarded from arbitrary intervention. Neither the local government, nor civil society can ensure such certainty because it needs to be enforced in the entire economy. Only the state is capable of that by issuing relevant laws. [...] Certainty has dual meaning. It refers to *goods* themselves, and it is manifest in the system of weights and measures; and it refers to the *value* of goods, in the system of coins and banknotes. The latter leads us to credit transactions and the related securities."[16] The

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13 DAVIES, G.: op. cit. (footnote 9), p. 29.

14 INNES, M: "What is Money," *Banking Law Journal*, May 1913 ("Money, then, is credit and nothing but credit. A's money is B's debt to him, and when B pays his debt, A's money disappears. This is the whole theory of money."); Bell, S.: "The role of the State and the Hierarchy of Money," *Cambridge Journal of Economics*, No 2, 2001, p. 150 (Reviewing all the various theories of money would be beyond the scope of this paper.)

15 "*Jetzt erscheint das Geldleben als ein vom Güterleben vollständig geschiedenes und selbständiges, und jetzt beginnt daher auch die Frage, ob und wie weit dasselbe seine wirthschaftliche Natur dem Willen der Gesetzgebung und Verwaltung unterwerfen kann.*" Dr. Lorenz Stein: *Handbuch der Verwaltungslehre und des Verwaltungsrechts mit Bergleichung der Literatur und Gesetzgebung von Frankreich, England und Deutschland.* Stuttgart, Verlag der J. G. Cotta'schen Buchhandlung, 1870, p. 230.

16 "*Das ist die Sicherheit für das richtige Maß in Gut und Werth bei den Leistungen. Diese Sicherheit kann nur gegeben werden, indem das Maß objektiv feststeht und der subjektiven Willkür entgegen ist. Diese zur objektiven Geltung gelangende Bestimmung des festen Maßes kann nun weder die Selbstverwaltung noch der Verein geben, weil sie für alle Umlaufsverhältnisse in gleicher Weise gelten soll. Sie muß durch das Gesetz des Staats aufgestellt und durch die Verwaltung desselben durchgeführt werden. ... Dieses Umlaufswesen hat nun, nach dem Wesen des Gutes, einen doppelten Inhalt. Es bezieht sich zuerst auf das Gut für sich und erscheint hier als Gütermaß im Maß- und Gewichtssystem; dann bezieht es sich auf den Werth im System der Münze und des Papiergeldes. Mit dem letzteren geht es in das Creditwesen über, dem auch die Frage nach den Werthpapieren angehört.*" Stein, L.: op. cit. (footnote 15), p. 224; NAGY, Tibor: Nemzeti pénzrendszerünk alkotmányos alapjai (The Constitutional Foundations of Our National Currency System), Budapest, MTA ÁJI (Institute of Law and Political Sciences of the Hungarian Academy of Sciences), manuscript, 1995.

objectively defined volume and value that feature in that quote can be considered as an ideal type the way Max Weber used this term. Stein wrote these seminal thoughts in the 19th century, when public administration was organized with expertise in several areas of social life and business.

The states have been striving to define value objectively for long – as has been repeatedly pointed out by Bálint Hóman. As he puts it: "the origin of the right to mint coins is related to the state's power of control. In ancient times the right of states to mint coins developed from the state control of the means of payment used in commerce. The state intended to prevent abuse."[17] We can agree with the view that coins that were issued by a monarch and were therefore authentic made exchange easy; (in principle) they facilitated payment without the need to measure their weight. In sum, they rendered trade-related payment transactions simpler, faster and more convenient.[18] It is however also known that sovereigns were at times at odds with official money: time and again states impaired the value of money,[19] and there were decisions whose motivations are still a mystery.[20]

2. A Juris Doctor by profession, Proctor (Mann) writes that when the legal characteristics of money are defined, attention has to be paid to the functions of money and the legal framework in which it has to be created.[21] He offers the following definition of the legal characteristics of money: "Looking at the state theory of money in the round, it seems that the essential legal characteristics of 'money' are as follows: (a) it must be expressed by reference to a name and denominated by reference to a unit of account which, in each case, is prescribed by the law of the state concerned; and (b) the currency and unit so prescribed must be intended to serve as the generally accepted measure of value and medium of exchange within the state concerned."[22]

3. When we examine the legal characteristics of money, we have to differentiate between notions, such as money, currency or official money and legal tender. Anything can be thought of as money that fulfils the functions of money. Nowadays economists give a fairly wide interpretation to money; they consider numerous financial instruments as money. Such instruments include, alongside banknotes and coins, bank accounts, fixed deposits and credit securities. As for the latter ones, they are mainly differentiated by

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17 HÓMAN, Bálint: op. cit. (footnote 11) p. 410; cf. NUSSBAUM, A.: "Basic Monetary Conceptions in Law"; *Michigan Law Review*, Vol. 35, No. 6 (Apr., 1937), pp. 865-907; p. 883 ff.

18 STEIN, L.: op. cit. (footnote 15).

19 An example is the medieval renewal of money, which is also called forcible money exchange. When carefully examined, that was burdensome for all parties involved, irrespective of social standing. Such renewal of money occurred in Hungary several times a year until the Golden Bull (1222) – which in effect was the Hungarian version of the Magna Charta – provided that money could only be exchanged once a year. Act XXIII of 1222 provides that "money shall last for a year; from Easter to Easter". For a detailed discussion of this issue, see Hóman, Bálint: *Magyar pénztörténet: 1000–1325* (A History of Money in Hungary: 1000–1325) and Takács, Gy: *Rendszeres magyar pénzügyi jog* (Systematic Hungarian Financial Law), Pécs, Dunántúl Pécsi Egyetemi Kiadó és Nyomda Rt., 1936.

20 FRIEDMAN, M.: *The Crime of 1873*, WPE E-89-12, The Hoover Institution, Stanford University, March 1989.

21 PROCTOR (Mann): op. cit. p. 14.

22 PROCTOR (Mann), op. cit. pp. 35–36.; see also KNAPP, G. F.: *The State Theory of Money*, London, Macmillan, 1924, pp. 1, 38.

maturity and liquidity.[23] From a legal point of view however, we do not consider each of them money.[24] F. A. Mann writes: "debts are contracted in terms of money, not in terms of bank accounts".[25] In a legal sense therefore it is necessary to differentiate between money and debt, which is money owed. Demand deposit is a debt, that is, a claim for money but not money itself. In the positive law of the different states, regulated money (official money, currency) is not named in a uniform manner even in cases when the same language is used. In European Union law the term "currency"[26] is used, while in the law of the United States, it is called "United States money".[27] Below I will use the term "currency", unless the context requires otherwise. "Currency" is an abstract notion; it means money regulated by the state. In each case there is a legal definition for the currency unit – or monetary unit or ideal unit, as it is called by Nussbaum.[28] The definition of the currency unit is important to ensure its unit of account (and measure of value) function. The currency unit (unit of account) so defined is the basis of the whole currency system. This unit of account may and indeed has to be regulated by law. The legal tender is legally defined on that basis.

The legal tender is tangible; and the concrete objects (banknotes and coins) that have to be accepted at payment are defined by law. "Legal tender," as Nussbaum defines its meaning, "is money which, if tendered by a debtor in payment of his debt, must not be refused by the creditor. Legal tender is a relatively new invention in the history of money. It dates back only to the eighteenth century, however, in the American colonies the legal tender concept arose as early as the first half of the seventeenth century."[29] The official money (i.e. currency) has been traditionally identified with the objects that represent it: cash, that is, banknotes/paper money and coins – which in effect are the legal tender. The above-mentioned Council regulation on the euro, for instance, considers the euro banknotes and coins as the legal tender – apart from a transitional period.[30] Proctor (Mann) puts it this way: "One of the functions of the monetary system is to define those chattels or other assets which are to constitute legal tender within the state concerned. ...Legal tender is such money in the legal sense as the legislator has so defined in the statutes which organise the monetary system. Chattels which are legal tender therefore necessarily have the quality of money but the converse is not true – not all money is necessarily

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23 See for instance SAMUELSON, P. A. – Nordhaus, W.: *Economics* (13th edn.), McGraw–Hill, 1989, pp. 227–230.

24 See LASTRA, R. M.: *Legal Foundations of International Monetary Stability*, Oxford University Press, Oxford, 2006, pp. 14–15.

25 MANN, F. A.: *The Legal Aspects of Money*, (3rd edn.), Clarendon Press, Oxford, 1971, p. 6.

26 Council Regulation 974/998 of May 1998 on the introduction of the euro, Art. 2.

27 United States Code Title 31, section 5101.

28 NUSSBAUM, A.: "Basic Monetary Conceptions in Law," *Michigan Law Review*, Vol. 35, No. 6 (Apr., 1937), pp. 865-907, 870 ff.

29 NUSSBAUM, A.: op. cit. pp. 865–907 and 898–899.

30 Council Regulation 974/998 of May 1998 on the introduction of the euro, Articles 10, 11 and 15.

legal tender."[31] Public receivability means a "special legal tender" in which payments must not be refused by the state if it is tendered for a public obligation, e.g. taxes.[32]

Let us note that in the law of the United States the notion of legal tender includes coins and currency alike. Under United States law the latter means various forms of paper money (notes).[33] In European Union law currency means the official money but in the US law currency means paper money, which is a form of legal tender.

4. Nowadays currency[34] is fiat money: it lacks intrinsic value and cannot be converted to precious metals. It fulfils the functions of money after all: it acts as unit of account, measure of value and medium of exchange. At least two conditions need to be satisfied for money to fulfil those functions. First, the state has to adopt clear-cut rules to create the law of money. Second, in view of economic realities, the target community should accept money. Both law and a firm value are prerequisites. The two factors are closely interrelated. It is not always possible to attain both aims: the requisite legal system and the firm values. The states cannot always ensure the requisite legislation. The purchasing value of money cannot be directly regulated. However, the function of the unit of account (the "ideal unit" as Nussbaum calls it) is available for regulation. Nowadays an essay that discusses the law of money must by all means shed light on the main features of the regulation of institutions that generate money – first of all, the central bank and the banking system – because those institutions have a strong influence on the value of money.

5. Ever since the rise of capitalist states, the regulation of the financial system in national law can be examined at two levels: at the level of the constitution and at the level of the other laws. Relevant rules can also be found in international law and the law of integration. Below I will discuss certain relevant issues of international law, constitutional law and the domestic currency Act.

III. *Lex monetae*: money (currency) in international law

1. The traditional thesis that the right to issue money is a part of the financial prerogative and that the regulation of a currency system is based on state sovereignty[35] is – albeit with reservations – still tenable. Wielding its financial prerogative the state establishes

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31 PROCTOR (Mann): op. cit. p. 66

32 NUSSBAUM, A.: "Basic Monetary Conceptions in Law," *Michigan Law Review*, Vol. 35, No. 6 (Apr., 1937), pp. 865-907 and 898–899.

33 United States Code Title 31, Article 5103

34 If I were entirely precise and fully consistent with the above train of thought, I should use the term "legal tender" here. However in this context such adherence to detail would hamper clarity.

35 See NAGY. T.: A nemzetközi pénzügyi jog problémája (Problems of International Financial Law), Budapest, MTA (Hungarian Academy of Siences), (Kandidátusi értekezés, kézirat) (Candidate of Science thesis, manuscript, 1961, pp. 115–179; Lippert, G.: *Rechtsbuch des Internationalen Finanzrechts*, Graz, Lenkam Verlag, 1935, pp. 126–146; For a more recent summary of the history of souvereignity and explanation of its contemporary meaning in the field of monetary affairs, see Lastra, Rosa Maria: *Legal Foundations of International Monetary Stability,* Oxford University Press, Oxford, 2006, Ch. I.; Proctor, C. (Mann): op. cit. pp. 499–527.

and regulates the currency system, shapes monetary policy; wielding sovereignty under international law it formulates exchange regulation. We also have to refer to the euro zone and other integration systems and international currency system, in which the participating states restrict their financial sovereignty.[36] The states mutually recognize and respect one another's financial prerogative, including the right to issue money, and they protect one another's currency.[37]

As for the latter statement, it can be illustrated by the so-called Kossuth lawsuit that has taken place in England.[38] Commenting on that case in the footnote of one of his works, Proctor (Mann) writes that "From a strictly legal point of view, the Emperor's case was by no means free from doubt."[39] During his stay in England after the fall of Hungary's War of Independence in 1849, Lajos Kossuth – "the famous Hungarian patriot," as Nussbaum[40] referred to him – commissioned a private company to print paper money. He and his supporters planned to use it in Hungary as legal tender during a future war of independence. Francis Joseph I of Habsburg sued Kossuth and the printing company in England for violating his financial prerogative. The monarch requested that the court forbid Kossuth and the printer to print money. The court ruled that the right to issue money is part of what is called financial sovereignty, which the states mutually recognize. The *de facto* exercise of power may also be the basis of financial sovereignty. If said court in England failed to prohibit such activity, it could provoke a justified diplomatic protest. That argument was meant to dismiss Kossuth's claim that Habsburg rule in Hungary was not legitimate. The court had a political rather than a legal consideration in mind, as can be seen from the explanation to its judgment.

2. The principle of *lex monetae* is applied in international relations, in both international private law and international public law. Pursuant to that principle, the law of the issuing state applies both to the currency and the legal tender.[41]

3. Using an example supplied by Proctor (Mann), let us suppose that a court in England has to decide a legal dispute over a contract. The parties to the contract accept the law of England as governing law and payment is supposed to take place in dollars. It has yet to be decided whether the payment to be made is defined in Australian, Canadian or USA dollars. "But if it is found that the parties intended to refer to US dollars, how can the court proceed from there? English Law does not itself define the US dollar or any other foreign currency. Instead, the reference must be made to the federal law of the United

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36 NAGY, T: "Nemzetközi pénzügyi jog" (International Financial Law) (in: Simon, I. (ed.): *Pénzügyi jog II* (Financial Law II), Budapest, Osiris, 2007, pp. 381–384.

37 PROCTOR (Mann): op. cit. pp. 529–530.

38 I am grateful to Ms Margaret Watson, a librarian at Bodleian Law Library in Oxford for her cordial assistance. She has sent me the relevant court judgment. The name of the case is: *Emperor of Austria* v. *Day and Kossuth* (1861) 3 DeG F & J 217.

39 PROCTOR (Mann): op. cit. pp. 530–531.

40 NUSSBAUM, A.: "Basic Monetary Conceptions in Law," *Michigan Law Review*, Vol. 35, No. 6 (Apr., 1937), pp. 865-907 and pp. 884-885.

41 PROCTOR (Mann): op. cit. p. 332 and pp. 331–353; Wahlig, B.: "European Monetary Law: the Transition to the Euro and the Scope of Lex Monetae", in: *International Monetary Law* (ed. M. Giovanoli), Oxford, Oxford University Press, 2000, pp. 122–124.

States for that purpose. This is the foundation of the *lex monetae* principle ...".[42] Proctor (Mann) discusses the principle of *lex monetae* as a universal legal principle, and he cites judgments passed by courts of the United States. In this respect his opinion is corrected by Gruson. He states that in cases cited by Mann the American courts did not apply *lex monetae*, instead, they applied foreign law. The law applied in concrete cases was that of the state which issued the money concerned. (For example, the contract's governing law was English law and contractual payment had to be made in pound sterling.) This having said, Gruson draws the following conclusion: "There can be no doubt that ...a US court would in a proper case apply the *lex monetae* doctrine to a contract in which the law of the contract differs from the law of the currency."[43]

4. The law of a currency system attracts attention when it is changed as, for instance, when a new currency is introduced. In the period before the introduction of the euro it was always of importance how the courts ruled in legal disputes concerning contracts that were governed by the law of an EU country or that of some third country and denominated in currencies of countries that are today members of the euro zone of the European Union countries. Questions like these arose: is it possible to invoke *force majeure* before a court of the United States if the contract was denominated by German marks and the euro is introduced prior to the expiry of the contract? In what currency must payment be made? If payment must be made in euros, what should be the rate of exchange? *Lex monetae* – which was considered a safe haven – received the spotlight in view of the disputes anticipated. Recital 8 of the Preamble of Council Regulation 1103/97/EC that is meant to regulate certain issues in connection with the introduction of the euro provides: "Whereas the introduction of the euro constitutes a change in the monetary law of each participating Member State; whereas the *recognition of the monetary law of a State is a universally accepted principle*; whereas the explicit confirmation of the principle of continuity should lead to the recognition of continuity of contracts and other legal instruments in the jurisdictions of third countries". In the Preamble, which can be considered also as a reasoning of the regulation, the continuity of contracts is explained in part by invoking the principle of *lex monetae*.

IV. Currency in the Constitution

1. A question of competence is in the centre of the constitutional law regulation of currency: who has the powers to decide the most fundamental decisions in any state about currency? The royal prerogative to mint coins has traditionally belonged to sovereign powers of states. When establishing the separation of powers, modern constitutions separated legislative and executive power and assigned disposition over such monopolies to the legislature. Tibor Nagy has pointed out that in politics and jurisprudence the constitutional foundations of financial law have been known since the French Revolution. Con-

[42] PROCTOR, C. (Mann): op. cit. p. 98 and pp. 331–353.

[43] GRUSON, M.: "The Scope of *Lex Monetae* in International Transactions: A United States Perspective", in: *International Monetary Law* (ed.: Giovanoli, M.), Oxford, Oxford University Press, 2000, p. 456.

stitutions define which financial relationships have to be regulated by Acts of Parliament. Those norms belong to the circle that obliges parliaments to adopt financial laws.[44]

In what form currency appears (and is kept) mainly determines its constitutional regulation. Say, currency takes the form of precious metal coins; the categories of its regulation differ from those applied to notes, which have no intrinsic value, not to mention e-money. If the categories of regulation differ, so do conceptional approach and regulation – depending on the priorities of the regulation of the currency system and the monetary system in general at the time framing the Constitution.

2. In the era of specie standard it had to be made clear that coinage was a monopoly of the state and it is the legislature's right to pass relevant key decisions. It is forbidden for private ventures to mint coins or to create alternative currency systems. The executive (the monarch or the central bank) may make decisions on currency by way of legislation. In such an era the Constitution defines the right of coinage as a prerogative of the state. For instance, the Constitution of the Hellenic Republic of 1911 provides that the right of coinage belongs to the king in accordance with the relevant law.[45]

It is still laid down in the Constitution of the United States of America that Congress "shall have Power" [...] "to coin Money". It is worth taking a moment to examine how that provision was formulated. Several documents show what efforts were taken in the United States to solve currency-related problems before the Constitution was framed.[46] The competence for deciding who had the right to regulate and issue money was an issue to be defined at the level of the federal Constitution. Another question to be decided was what exactly it meant to create money. Did it involve the right of coinage as well as that of the issue of paper money? The Constitution empowered the United States to coin money and regulate the value of money.[47] By contrast it prohibited coinage and the issue of paper money by the member states.[48] The Constitution remained silent on the central Government's right to issue (paper) money.[49] The Constitution provides that the United States, that is the Federation, may coin money and raise government debt. The Constitution puts it this way: "To borrow Money on the credit of the United States."[50] The original draft of the Constitution had the following wording: "To borrow Money *and*

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[44] NAGY, Tibor: "A pénzügyi jog alkotmányos alapjai" (Constitutional Foundations of Financial Law), *ELTE Jogi Kari Acta* (Acta Juridica Hungarica), 1963, Vol. V/I; Nagy, Tibor: "A pénzügyi jog és a pénzügyi jogtudomány" (Financial Law and Financial Jurisprudence), in: SIMON, I. (ed.): *Pénzügyi jog I* (Financial Law I), Budapest, Osiris, 2007, p. 58.

[45] Greek Constitution (1911) Art. 41.

[46] For references: NUSSBAUM, A.: "The Law of the Dollar," *Columbia Law Review*, Vol. 37, No. 7 (Nov., 1937), pp. 1057–1091, e.g. p. 1057 ff.

[47] Art I. Sec. 8: "(The Congress shall have the power) To borrow Money on the credit of the United states; To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures".

[48] Art. I, Section 10. The Constitution forbade the member states to issue banknotes. What is more, it prohibited them from considering in their own legislation and legal matters any payment obligations as settled unless that happened in money issued by the federal authorities.

[49] POLLARD, A. M. – PASSIC, J. G., JR. – ELLIS, K. H. – DALY, J. P.: op. cit. (footnote 6), p. 9.

[50] Art I. Sec. 8.

emit bills on the credit of the United States".[51] The question was formulated as follows: how can the Federation become indebted? Does it also have the right to issue securities that can be used as money or it may only raise a debt in such a way that it cannot convert the debt into (paper) money, not at least directly. The question why the text concerned – "and emit bills" – was deleted from the final version is answered by the minutes of the constitutional convention.[52] The various oral contributions boil down to two opinions. According to the first camp, unforeseeable future events may necessitate to convert debt into money. Consequently, it would be unwise to narrow Congress's room of manoeuvre. The other camp stated that there had been abuses with paper money during the American Revolution. Hence it follows that Congress should not get a competence – which in effect means the right to emit money – with which it could cause considerable damage to the citizenry. The majority of the Founding Fathers were convinced that it would endanger the freedom and property of citizens if the state had the right to issue credit securities. In sum, they intended to prevent that the state could issue credit securities, which could then function as paper money easily exposed to inflation.

3. In the era when banknotes were issued on the basis of the monopoly of money issue, the constitutions included provisions about the right to issue money. Actually those constitutions reflected on a change in the character of money. For instance, Article 34 of the French Constitution of 1958 stipulates that the regulation of the issuing of currency was an object of legislative action.

4. More recent European constitutions carry provisions about the institutional conditions for currency creation. They define as objects of legislation the rules that refer to the central bank. Take for instance Article 32/D (1) of the Hungarian Constitution in effect: "The National Bank of Hungary is the central bank of the Republic of Hungary. The National Bank of Hungary shall define the country's monetary policy in accordance with the provisions of specific other legislation." We could also refer to the Dutch Constitution in effect. It stipulates that Parliament regulates the monetary system with laws.[53] In the Constitution of Finland of 1999, the chapter on finances only covers the central bank. Defining its constitutional status it states that the central bank operates with the guarantee and under the supervision of the legislature and that its governor is elected by Parliament.[54] Let us add that the majority of the member states of the European Union – including The Netherlands and Finland – are in the euro zone. Note that the Treaty of Maastricht has laid the foundations for the creation of the euro when it framed the legal

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51 Records of the Federal Convention: Thursday, August 16, 1787, pp. 308–311. (http://lcweb2.loc.gov/cgi-bin/ampage?collId=llfr&fileName=002/llfr002.db&recNum=308&itemLink=r?ammem/hlaw:@field(DOCID+@lit(fr00282))%230020316&linkText=1)
About the interpretation of the monetary conditions of the time, see a highly critical essay by E. C. Holloway: "Gold, money and the U.S. Constitution", 2003 (http://www.gold-eagle.com/editorials_03/holloway011303.html); for an analysis of this problem, see A. Khan: op. cit. (footone 1), pp. 398–410.

52 Records of the Federal Convention: Thursday, August 16, 1787, pp. 308–311.

53 Dutch Constitution, Art. 106.

54 Finnish Constitution, Section 91, Chapter 7.

provisions for the establishment of the European Central Bank and the European System of Central Banks (ESCB).[55]

V. The currency Act and the practical functions of the official money

1. In each country the currency is introduced by an Act of Parliament.[56] That is because constitutions define the regulation of currency as a duty of legislatures. In the Hungarian literature the main components of content of the currency Acts have been collected by Tibor Nagy. The currency Acts in his opinion "enumerate the authorities that have the powers to issue and emit currency ('issue' is a legal term and 'emission' is a technical category), the units of value (forint and *fillér*[57]), the relation between the current and older currency (recurrent connection), (the rate of exchange; the old currency is accepted for a definite period of time), the monetary standard (*Münzfuß*), reference (where it applies) to reserves support the currency system, limits to the number of coins that have to be accepted (where that applies), provisions about counterfeit banknotes and coins and those with missing part(s), provisions about the materials used in the manufacture of coins and the number of special (memorial) coins that may be issued".[58]

2. It is unusual, Tibor Nagy writes, that Hungary's currency, the forint, was introduced in 1946 by a decree of the Prime Minister.[59] The decree, which is still in force, includes all the provisions that a statute regulating a currency system should include, as expounded above. It includes provisions on the duty to keep records of public finances (Article 8), accounting records (Article 9) in forints, and also the duty to keep track of and define liabilities defined by statutes and administrative decisions (Articles 10–12) in forints. The decree also provides that, as from 1 August 1946, if in a contract no currency is named, it has to be deemed as defined in forint value. The exception to that rule is a case when it is proven that the parties to a deal intended to define some other currency (Article 13).

Since 1991 the Hungarian Constitution has carried the provision that the National Bank of Hungary (NBH) has the right to issue the legal tender in accordance with the provisions of a separate Act of Parliament. The Act on the National Bank of Hungary, which was also adopted in 1991, stipulated that only the NBH had the right to issue banknotes and coins and the banknotes and coins issued by the NBH qualify as legal tender. Hence

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55 A discussion of this topic would be beyond the scope of this paper. Numerous monographs offer comprehensive analyses. The first systematic one is written by René Smits. See: SMITS, R.: *The European Central Bank*, Kluwer, The Hague, 2000 (reprinted with corrections); Smits, R.: The Position of the European Central Bank in the European Constitutional Order – inaugural address. Amsterdam, 2003, Universiteit van Amsterdam, pp. 1–57.

56 NAGY, Tibor: op. cit. (footnote 3), p. 276.

57 The Hungarian currency unit is forint and one forint is divided into one hundred fillérs.

58 NAGY, Tibor: op. cit., p. 276; As mentioned by Proctor (Mann) above, the currency Act has to define the name and unit of currency.; See also Knapp, G. F.: *The State Theory of Money*, London, Macmillan, 1924.

59 NAGY, Tibor: op. cit., p. 277; See Decree 9000/1946 (VII. 28.) of the Prime Minister on determining the value of the forint and related provisions.

it follows that payments made in that legal tender have to be accepted at face value. That law includes some further provisions that are typical of currency Acts in general.[60] The Act currently in force about the Hungarian central bank also includes provisions about the NBH's monopoly in issuing money, about the legal tender, the obligation to accept forints as the legal tender, and about the counterfeit and damaged banknotes and coins.[61] As from 2001 an Act stipulates that Hungary's currency is the forint.[62]

3. The practical functions of currency can be identified in three main areas in our days. As has been expounded above, the currency of the state concerned has to be universally accepted for settling debts, that is to say, as the legal tender.[63] Another, related, function of currency is that taxes and charges have to be paid in that currency.[64] Thirdly, as a rule, the accounting and reporting obligations have to be discharged in that currency.[65]

VI. Currency and the forms of legal tender

1. Nowadays currency typically takes the form of cash: banknotes and coins. They lack intrinsic value; they qualify as legal tender. As in the past, there still are limitations to the regulation of money. Its relation to tangible goods and intangibles is beyond direct control. As nowadays banknotes and coins cannot be converted to gold, there is no sense in determining their gold equivalent (monetary standard) in a currency Act.[66] While considering the question to what extent currency may be regulated, it is worth asking another question: should bank money also be treated as legal tender? At a conceptual level and starting out from commodity money, the regulation of legal tender is based on the notion of the *chattel*. In past centuries this concept of the chattel was extended to paper money, which in turn is a converted form of credit securities. Proctor writes that today only a minority of payments are transacted in cash while the majority are transacted through banks. Hence his conclusion: "in a world in which the use of cash as a means of payment is steadily decreasing, the importance of the formal concept of legal tender necessarily diminishes at the same time."[67] It is an acceptable conclusion, but in the same way it is possible to propose extending the notion of legal tender to new, electronic forms of

60 Article 4 (2) of the Act LX of 1991 on the National Bank of Hungary.

61 Article 4 (2) and Articles 31–34 of the Act LVIII of 2001 on the National Bank of Hungary.

62 Article 1 of Act XCIII of 2001 on the Abolition of Foreign Exchange Restrictions.

63 If in a state no foreign exchange restrictions are in force concerning payments, contracting parties may in its jurisdiction agree about payments in any currencies. Under Hungarian law, the Hungarian currency being convertible, contracting parties may agree about payments in other currencies as well. (Article 1 of Act XCIII of 2001)

64 In the Hungarian legal system Article 1 of the above-mentioned Act XCIII of 2001, several tax laws and legislation on the public finances include provisions about that.

65 Now that a considerable part of the business activities are international, there are various exceptions to the main rule.

66 The relationship between banknotes and gold was ultimately severed by a speech by the president of the United States on 15 August 1971. Richard Nixon analysed the relation between the state and the market. See his speech at http://www.youtube.com/watch?v=iRzr1QU6K1o

67 PROCTOR (Mann): op. cit. (footnote 5), p. 68.

money: bank money (deposit) and e-money. Economically speaking the bank deposit is considered as money but the status of e-money needs clarification on several fronts. E-money has earned recognition in law but its practical use is limited.[68] The extension of the concept of legal tender needs to be considered because electronic technology can offer several solutions for fulfilling the functions of payment instruments. If the concept of legal tender is extended to bank money, that requires the clarification of further questions as related to the banking system and in fact the financial market and its institutions in general. That is because in that case the concept of legal tender would be transformed also in a legal sense: in addition to chattel, that would include contractual relationships. Money equals credit – as has been pointed out above.

2. F. A. Mann – and Tibor Nagy – is of the view that bank deposit is a claim for money, not money. C. Proctor however argues against defining money as *chattel*.[69] If the question is put this way: can a debt be deemed as settled if it is credited in the creditor's bank account[70], then, under Hungarian law the answer is clearly affirmative. The modes of payment that enterprises may apply are restricted by law. The main rule is that enterprises have to keep their uninvested funds in a (compulsory) current account and have to transact all their payment transactions by relying on that account.[71] Positive law itself excludes the question whether or not business players accept as debt settlement the crediting of debts in their bank accounts or else they insist on the physical handover of banknotes (and coins).[72] There is another rule that specifies the payment of taxes. If a taxpayer pays his taxes by transfer from his inland current account, then the tax is deemed to have been settled already when his account is debited.[73]

3. As could be seen from our short description of the rules of tax payment and the compulsory (current) account, in Hungary the obligation of payment can be considered as settled when that is fulfilled by bank transfer. There are not any functions of money that bank money could not fulfil in the same way as paper money or coins. Therefore, it would be justified to consider classifying bank money (bank transfers) as legal tender also in a legal sense. Currency is an abstract idea while legal tender is concrete. Consequently, the question is whether or not legislators are prepared to extend the concept of legal tender to a dematerialized form of money. At a time when dematerialized securities have become common such a solution could seem to be evident. Actually, such a move

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68 In the European Union these issues are regulated by Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions. E-money is also mentioned in the Hungarian law: in Article 218 of Act XXXV of 2004 on Credit Institutions and in Government Decree 227/2006 (XI. 20.) on Payment Services and Electronic Payment Instruments.

69 PROCTOR (Mann): op. cit. (footnote 5), p. 26. He writes elsewhere: "... a bank deposit could be regarded as 'money' in the legal sense because payment by means of a bank transfer is now widely accepted medium of payment". *Ibid.* p. 37.

70 *Ibid.*

71 See Article 3 (1) of Government Decree 227/2006. (XI. 20.) on Payment Services and Electronic Payment Instruments. (It would be beyond the scope of this paper to examine the various aspects of the implementation of those rules.)

72 Other rules apply to natural persons who do not pursue entrepreneurial activities but it would be outside the scope of this paper to discuss them.

73 See Article 37 (1) and Article 38 (1) of Act XCII of 2003 on the Rules of Taxation.

would be a breakthrough in the same way as when in Roman law it was recognized that a property cannot be simply delivered (*brevi manu traditio*) upon sale. The delivery of a bank transfer is not that simple either.

It would be beyond the scope of this paper to analyse this question any further but some further points need to be raised. As has been mentioned, electronic money – a new generation of money – has appeared in law, and its creation in both European and Hungarian law is based on bank deposit. The question is how to categorize this recent new form of money, whether or not it qualifies as a legal tender?[74] In my opinion, provided the conditions for payment and acceptance are in place, the answer is clearly affirmative. When the technical conditions are put in place and the relevant rules will do more than attempting to keep that new form of money within the system of credit institutions, the competent and specialized credit institution will generate electronic money by debiting bank accounts. The rules that cover electronic money have two main components. By definition, electronic money is money value stored on some electronic instrument and which is accepted both by its issuer and other entities. In other words, it can fulfil the function of legal tender. Furthermore, in the course of its validity – which is minimum five years – electronic money may be reconverted into cash or bank deposit at the institution where it was issued.[75] In other words, its "gold equivalent" is another electronic code, which is merely a claim.

4. As was mentioned in the beginning of this paper, sociologically speaking, money is a social convention while, economically speaking, it is credit. If we are to be consistent in examining the regulation of bank money (sight deposit), we have to clarify what happens if a bank goes bankrupt. In Hungary all enterprises have to keep their uninvested (free) money in bank accounts.[76] That is why the question – which at first sight seems to be absurd – can also be raised whether enterprises are entitled to full compensation when banks go bankrupt and all deposits are frozen? On reflection that question does not seem to be absurd at all because the operation of banks is regulated and supervised by the state and the central bank also acts as a regulator and as an entity that influences the money markets, and the compulsory bank money is generated by market players. The current financial crisis, more than anything else, has highlighted the fact that the state takes extra efforts to protect deposits; in numerous countries the state supports the activities of deposit insurance entities, which in effect means the promise of the full compensation of depositors. The other option is that the savings lost through the bankruptcy of a bank is considered as acceptable losses, as for instance, (hyper)inflation.

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74 See recent Hungarian legislation: Article 218 of Act CXII of 1996 on Credit Institutions and Financial Enterprises; Act XXXV of 2004 on Electronic Credit Institutions; Government Decree 227/2006 (XI. 20.) on Payment Services and Electronic Payment Instruments. European Union Directive 2000/46/EC is the basis of those Hungarian statutes.

75 Article 218 (6) and (7) of Act CXII of 1996 on Credit Institutions and Financial Enterprises and item I/5/2 of its Supplement. (The length of validity in this context means that the issuer guarantees repayment liability for electronic money for that period.)

76 As this paper focuses on positive law, we cannot discuss sociological questions like the ratio of petty cash kept especially by small enterprises and the cash payments made from it.

VII. The system of monetary institutions is a pivotal issue of our era: the three-tier banking system

1. The answer to the question whether a legislature can directly regulate the economic nature of money depends on how that question is interpreted. In today's economic system it is impossible to directly regulate money's true "economic nature". (Besides, the true economic nature of money is expressed by its value, which in turn is expressed by its relation to real and financial (!) commodities, services and other currencies.) Among other things, the central bank's monetary policy, the quality of the banking system's money generating capabilities and the state's fiscal operation can exert an influence on the value of money – that is, price stability and exchange rate.

2. In the international arena countries may apply legal means to assert their sovereign power over their currency. That question has already been mentioned when we discussed *lex monetae*. In internal law there are several matters that can and should be regulated at the level of the Constitution and Acts of Parliament. At the level of the Constitution mainly questions of competence need to be resolved. Those matters arise in connection with the structure of the state, the form of the state and government and the form of currency used at the time. Nowadays especially the constitutions of European countries include provisions about the central bank, which are relevant to the countries' monetary systems.

At the level of Acts of Parliament we have to mention, in the first place, the currency Act, which is supposed to regulate numerous questions. Such issues include the definition and name of the currency and the currency unit, division of the currency unit and the coppers, the definition of the legal tender (banknote, coins, electronic money and in some cases bank sight deposit) and the definition of the recurrent connection. Nowadays important related questions are the appropriate regulation and, let us add, supervision of the system that generates money: the banking system (the central bank and credit institutions) and the sector adjacent to it: the financial markets.

3. Galbraith is of the view that the establishment of the Bank of Amsterdam (1609) connected the history of money with that of the history of banking.[77] That bank was the first to create bank money, which was not directly connected to intrinsic value and which derived its value from the fact that it could be used to fulfil payment.[78] That is why it can be seen as the prototype of central banks. Until the global financial crisis broke out in 2007 it was widely held – at least that could be seen on the regulation and supervision of the financial institutions – that money (and bank money) were created by the two-tier institutions of the monetary system[79]: the central bank generates cash that qualifies as legal tender, furthermore, the system of credit institutions create bank money. The present

[77] GALBRAITH, J. K.: *Money: Whence it came where it went*, London, Deutsch, 1975, p. 10.

[78] QUINN, S. – ROBERTS, W.: An Economic Explanation of the Early Bank of Amsterdam, Debasement, Bills of Exchange and the Emergence of the First Central Bank, Federal Reserve Bank of Atlanta Working Paper Series, WP 2006-13, September, pp. 1–3.

[79] Cf. DAVIES, G.: op. cit. (footnote 5), p. 647 ff.

financial crisis has made it clear that the creation of bank money took place in recent years at least at three levels. Alongside the activities of the banks, securitization added a new leverage but under conditions that almost totally lacked supervision. The absence of supervision meant a grave problem in the system of money generation. To make the situation worse, the third tier of credit generation, the so-called special purpose vehicles were generated outside the jurisdiction of the countries concerned, often to offshore financial centres. It is now clear – alas, only with hindsight – that the incentive system of market players, the regulatory and supervisory measures as well as tax competition created situations that were all but beyond the control of the competent authorities. It should not be forgotten that the burdens of the global crisis are carried by local taxpayers across the world.

4. An analysis of the regulation of the central bank and the institutions of the financial market (especially the credit institutions) would run beyond the scope of this paper. It is however an open question whether or not the now emerging regulatory and supervisory structures that are meant to handle the crises that hit the multinational corporations and global markets can do their job. I think the incentive systems of states and companies are in part different. Companies seek global growth and maximize profits in global markets. In doing so they attempt to benefit from and manoeuvring along gaps between jurisdictions and international treaties (e.g. tax treaties) or making use of the absence of such treaties. By contrast, the priorities of the states can be located in the realm of politics. The key incentives are to retain and perhaps increase the political and related economic power. A related priority is to preserve as many components of sovereignty as possible. Hence it follows that relinquishing certain components of sovereignty and/or yielding to occasional subordination – which is by the way a precondition for global or even regional cooperation among states – runs contrary to the main incentive. On the global arena the states stand for local interests. Global great powers are different but they too have their local political interests. The rivalry among states, the varying readiness to cooperate works against the regulation and control of markets. Small wonder, the regionalization, and even more so, the globalization of regulation and supervision has a bumpy progress. That weakens efficiency on various levels of cooperation.

5. Evident is the question whether the operation of global financial markets could be monitored more effectively by streamlining the complex structures and by introducing new rules? (Note that, although the legal background ensured by state authority: a regulated currency, a regulated institutional system and a central bank are important components of the picture, today (credit) money is not generated under the aegis of states.) I am convinced that greater scope should be ensured for the state monitoring of those processes. Some of the rules that were abolished in the course of foreign exchange liberalization and market deregulation need to be reconsidered.

It is worth giving consideration to the re-segmentation of financial markets and the centralization of monitoring structures. The new prudential rules that are foreseen by the Basel III global regulatory standards are still not fully satisfactory. They are so complicated that it will be impossible to enforce them. The new rules that seek to influence business

will only push up the costs of operation. The new compliance requirements, the raising of the costs of capital and of the taxes are to prompt companies to seek tax and regulatory arbitration in the same way as the specialized banking system a few decades ago. Since then the global marketplace has shrunk, capital has become centralized, while (at least formally) political responsibility has remained decentralized. Minor countries however have been left with very little elbow room (globally speaking).

6. I am convinced that today it is impossible to address questions of the regulation of money without analysing financial markets and their institutions and examining the nature and regulation of the products those institutions generate. We could only partly answer the question of Lorenz Stein whether it is possible to regulate the economic nature of money by legislative and administrative means. Let me note that today money is less of a nature of "national economy" than 130 years ago. Consequently, the states have fewer means to influence it. By contrast, money – and let us add, credit – are public goods. It is an important question what the magnitude is of the social cost of ensuring its existence and operation. It really does matter who bears those costs and with reference to what principles. In other words, the principles that are meant to legitimate the allocation of costs need critical perusal.

SUMMARY

Constant and Changing Elements in the Regulation of Money

ISTVÁN SIMON

For thousands of years the curious history of money has been part of the broader history of humankind. Bankers, more than others, can witness its importance. As R.C. Smith and I. Walter have once put it, financial people feel in their bones that their profession goes back a long way, in the same way as that of the "world's oldest profession". We have every reason to think that it has been an indispensible building block of human society, which in the various historical eras had varying importance but it always played a role. To use Simmel's words, its importance was at times greater when the preconditions for its existence – liberty and property – were ensured. Today our globalized world has shrunk. Information technology, money and its derivative instruments are the fastest mediators in this system. Today money exists mainly in the form of electronic signals. It is worth examining the characteristics and levels of the regulation of money in modern capitalist societies. We consider to what extent continuity and change have marked the regulation of money. The paper offers two conclusions. First, money is credit and its regulation should reflect that. The concept of legal tender, then, needs to be extended to bank money and electronic money. Payment transactions are thus to attain traits of chattel and liability. Second, it would be desirable to reconsider the components and regula-

tion of the institutional system of bank money. In that connection the structural rules and segmentation of the market need to be reinterpreted.

RESÜMEE

Beständigkeit und Veränderung in der rechtlichen Regelung des Geldes

ISTVÁN SIMON

Das Mysterium des Geldes hat die Geschichte der Menschheit in den vergangenen paar Tausend Jahren begleitet. Am besten können die Banker die Bedeutung dieser Tatsache ermessen, die es – wie R. C. Smith und I. Walter es formulieren – in ihren Knochen spüren, dass ihr Beruf, der mit dem Geld zusammenhängt, mindestens so alt ist, wie das älteste Gewerbe der Welt. Es handelt sich um einen notwendigen Baustein der menschlichen Gesellschaft, dessen Bedeutung im Laufe der einzelnen Abschnitte der Geschichte abweichend war, aber grundsätzlich existierte. Diese Bedeutung war in denjenigen Phasen größer, in denen die Voraussetzungen seiner Existenz, nämlich Freiheit und Eigentum, – wie Simmel es formuliert – bestanden. In unseren Tagen, im eingeschränkteren globalen Raum, im Zeitalter der Informationstechnologie existiert das Geld in erster Linie in Form elektronischer Signale. Es scheint notwendig, zu untersuchen, mit der Festlegung welcher Charakteristika und auf welchen Regelungsebenen das Geld in den modernen, sogenannten Zivilgesellschaften vom Staat reguliert wurde. Unser Ziel ist es, einen kurzen Überblick darüber zu geben, in wie weit die sich auf das Geld beziehenden Vorschriften von Beständigkeit und Veränderung geprägt sind. Über die Vorstellung dessen hinaus, welches die ständigen und welches die sich ändernden Elemente in der Regelung des Geldes sind, enthält die Studie zwei Schlussfolgerungen: Einerseits, dass das Geld ein Kredit ist, was auch in der rechtlichen Regelung dargestellt werden muss. Die Folge dessen ist, dass der Begriff des gesetzlichen Zahlungsmittels auch auf das Buchgeld und das elektronische Geld ausgeweitet werden muss. Andererseits die Feststellung, dass es zweckmäßig ist, die Regelung des Institutionssystems, das das Kreditgeld geschaffen hat, neu zu überdenken. In diesem Kreis ist die Studie der Ansicht, dass die Strukturregeln, die Gliederung des Marktes eventuell neu durchdacht werden sollten.