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MONEY AS A NORMATIVE TEXT

*Dr. Andreas Rahmatian**

ABSTRACT

The concept of money is regarded as difficult and complex. Today, lawyers leave the discussion of money to economists. Economists see money as a creation of the law and quietly presuppose its existence, so much so that money has disappeared as a separate entity in micro-economic models of market analysis. This article will show, by discussing briefly the modern double-tier system of money creation and the money multiplication within the fractional reserve banking system, that money is an unusual concept, an example of dematerialised property, created by formalised words, figures and symbols. It seems that writers and poets of the nineteenth and twentieth centuries were probably among the first who were able to realize and describe graphically the ‘alchemist’ impact of money on society and the representational and commodifying aspects of money. The article will give a few examples of literary works that delve into the concept of money.

I. THE CONCEPT OF MONEY: AN ILLUSTRATIVE PRELIMINARY DESCRIPTION IN LITERATURE

The concept of money is considered as difficult and abstract: the lawyers regard it for the most part a problem for the economists, the economists see it as a creation of law on which they rely without much thought, and micro-economists in particular tacitly presuppose its functioning in their market conceptions so that they hardly mention money at all. A too philosophical scrutiny of the phenomenon of money¹ may be regarded as somewhat unsettling. To some extent legal concepts, such as property, intellectual property, and money, have certain similarities with literature, as they both have an instruction for a performance, like a film script or theatre play. Literary and legal concepts share the same origin of fictional writing, the difference being that the words of a writer may entail a certain human behavior, whereas the words of the law must lead compulsorily to a specific human behavior.² Such a critical evaluation is probably most unsatisfactory in the case of money, an essential ingredient of our economy that relies on legal, economic and social fictions. Not only is money based on fictions, it also has a kind of alchemist, magical quality, as it brings about the conversion, or transmutation, of corporeal natural resources and labor force into an alienable

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¹ See generally GEORG SIMMEL, *THE PHILOSOPHY OF MONEY* (Tom Bottomore & David Frisby trans., 3d ed. 2011) (providing a classic philosophical overview of money).

² See J. HILLIS MILLER, *TOPOGRAPHIES* 81 (1995).

abstract entity with no intrinsic value. But at the same time, it conveys the idea of an entitlement to future intrinsic value. It cannot come as a surprise that writers of fiction, playwrights, and poets were intrigued by the phenomenon of money and the common irrational belief in its magic. It is also easy to see why, with the onset of modern capitalism, the idea of money (and financial speculation)³ began to feature prominently in many stories in the literature from the early nineteenth century onwards. It is worthwhile to look at some examples from literature before we examine the concept of money from the perspective of legal theory, because literature gives a very insightful critical illustration of the workings of the monetary system.

The first example is the ‘magical’ or quasi-alchemistic money creation process, which Johann Wolfgang Goethe had recognized at its early stage of development towards the beginning of the nineteenth century, in the second part of his play *Faust*. Alchemy was the art of turning base metals into gold, something that modern sciences would regard as superstition, but certain alchemistic concepts resurface in the role of money in the modern economic system.⁴ In *Faust II*, Faust and the devil suggest to the Emperor the scheme of creating money in the form of paper money.⁵ *Faust* recreates in the money making process the alchemist notion of gold as being already contained in a base metal (e.g., lead) and extractable from it by transmutation. In the alchemist process of money making, gold as it is in the ground (perhaps already extracted from it and turned into coins) is transformed into paper money, and in this way a worthless substance (paper) is transformed into a valuable one (money). This transformation process happens through words and behavior implementing these words. Not only is paper money much more convenient to handle,⁶ but it also suggests that the gold in the ground (without the need to extract it) and existing treasuries of gold will back the paper money,⁷ and the Emperor guarantees its value with his signature.⁸

The second case is an early description of what will be discussed below as the concept of ‘dematerialised property,’ money being a prominent example. In Nikolai Gogol’s *Dead Souls*, dematerialised property is depicted as a basis for investment and profit, here fraudulent profit. The protagonist’s scheme is to induce landowners to sell to him ‘runaway and dead souls’ who have not yet been deleted from the tax lists so that he can claim these as (fictitious) property, which he can give as security to obtain loans of money. The most succinct description of this scheme in the novel is the following passage:

“What a pleasure it is to find unanimity of thought!” said Chichikov. “I, too, have a certain business on hand that is both legal and illegal; it may appear illegal, but essentially is legal. I have to put through certain mortgages; at the same time I don’t want to involve anybody in the risk of having to pay a two-rouble tax on each living soul. Well, now, should my affairs happen to go up the chimney – which God forbid! – the matter will be unpleasant to the previous owner; I have therefore

³ See, e.g., ÉMILE ZOLA, *MONEY (L’ARGENT)* (Ernest A. Vizetelly trans., 1894).

⁴ HANS CHRISTOPH BINSWANGER, *MONEY AND MAGIC: A CRITIQUE OF THE MODERN ECONOMY IN THE LIGHT OF GOETHE’S FAUST* 20-23, 56, 61 (J.E. Harrison trans., 1994) (1985).

⁵ See JOHAN WOLFGANG VON GOETHE, *Faust I & II*, in 2 *GOETHE THE COLLECTED WORKS* 1, 155-58, (Stuart Atkins ed. & trans., 1984).

⁶ *Id.* at 156.

⁷ *Id.* at 155.

⁸ *Id.* at 155-56.

MONEY AS A NORMATIVE TEXT

decided to avail myself of runaway and dead souls, which have not yet been crossed off the census at the Bureau of Audits, so that I might at the one stroke perform both a Christian deed and relieve the poor owner of the burden of having to pay taxes upon them [...] it would be most advantageous to you as well to transfer all the dead souls on your estate to me. We will execute, merely between us, a *pro forma* purchase deed, as though the souls were still alive.”

“However, this matter is a most strange one”, thought Lenitzin, and moved back, chair and all, finding himself in an utter quandary.

“But then, the matter, now ... is of such a nature—” he began.

“I have no doubt whatsoever that you will agree in this matter,” Chichikov answered him quite straightforwardly and frankly. “The business is of the same nature as the one we were discussing just now; it is between people of good intent, of prudent years, and, it would seem, of good social position and, with all that, it is undertaken in secrecy.” And as he said this he looked with a frank and noble air straight into the other’s eyes.⁹

Even aspects of modern investment securitization vehicles and the financial crisis of 2008, which was largely triggered by these vehicles,¹⁰ can be explained on the basis of this almost prophetic passage. The essence is that human beings are reduced to text (census revision list) that signifies (dematerialised) property, and that property created by text obtains, through human behaviour, a paper value that serves as a security (mortgage) against which loans can be obtained. Gogol’s novel therefore also foresees the commodification of human beings, whether dead or alive, whereby the human being and its labor force are reduced to a unit of property, which can be valued, and a price expressed in money can be put to it. Today, that increasingly also happens with intellectual property rights, especially copyright.¹¹

We all are actors of the law; we perform the normative text of legal rules, and arguably we create these rules by way of our performance in the belief of enforcing them.¹² Our performance makes legal relations and legal concepts. The concepts of property and money illustrate this situation well.

⁹ NIKOLAI V. GOGOL, CHICHIKOV’S JOURNEYS; OR, HOME LIFE IN OLD RUSSIA 433 (Bernard Guilbert Guemey trans., 1942).

¹⁰ E.g., ALASTAIR HUDSON, THE LAW OF FINANCE 832-37, 1198-1200 (Sweet & Maxwell, 1st ed., 2009).

¹¹ See ANDREAS RAHMATIAN, COPYRIGHT AND CREATIVITY: THE MAKING OF PROPERTY RIGHTS IN CREATIVE WORKS 231-32 (Edward Elgar, 2011).

¹² JES BJARUP, *Scepticism and Scandinavian Legal Realists*, in PROPERTIES OF LAW: ESSAYS IN HONOUR OF JIM HARRIS 52, 60-63 (Timothy Endicott et al. eds., 2006).

II. THE CREATION OF THE NORMATIVE CONCEPT OF MONEY THROUGH WORDS AND FIGURES

A. The Concept of Dematerialised Property: Money as an Example

Money, as well as property in general, does not exist naturally; a stone is not property by lying on a beach, nor is a tree by growing in a forest. Property rights are conventional rights, not 'natural' rights; they are invented, not reflected, by the law. Usually Jeremy Bentham is credited with this positivist view,¹³ but we can find this position earlier with Hume.¹⁴ In the present context, one could say that property and property rights are concepts and characters of fiction invented by the text of the law, directed at ordering the readers and interpreters to assume a certain behavior, especially to refrain from interfering with an object and to have the right to demand from others freedom from interference. This performance creates the property right through its perceived enforcement.

Thus, property rights are behavioral patterns of human beings, as prescribed by the text of the law. Property rights in an object of the material world do not physically exist; what exists is a social behavior or performance of human beings in relation to other humans and with regard to a certain object, which manifests the right in the object claimed.¹⁵ It is the social behavior of human beings in relation to one another and their performance ordered and enforced, or scripted, by the law, which makes the normative idea of the property right a reality.

The property object or *res* is also an abstract conception, created by the property rights referring to it; there is no property (object) in law if there are no property rights (potentially)¹⁶ attached to it. The physical object 'table,' for example, is not necessary for the existence and the functioning of the abstraction 'property object' or '*res*.' However, it acts as a social reifier, which represents and denotes, but does not constitute, the abstract concept of the *res*. Since the *res* may, but does not have to be, represented or reified by a tangible thing (e.g., a table), the object of property can also be intangible (e.g., gas) or can remain purely abstract (e.g. intellectual property). This is the essence of the concept of *dematerialised property*.¹⁷ the concept of the *res* is independent from the materiality of a possible reifier.

The legal conceptualisation of dematerialised property is effected by words. For example, in case of copyright, it would be copyright statutes and case law, similar to stage directions that order human beings to adopt a certain behavior. It is obvious that 'copyright'

¹³ See JEREMY BENTHAM, THEORY OF LEGISLATION 111-13 (R. Hildreth trans., 7th ed., 1891) (stating that "there is no such thing as natural property, and that it is entirely the work of law.").

¹⁴ See DAVID HUME, A TREATISE OF HUMAN NATURE, reprinted in 3 DAVID HUME, A TREATISE OF HUMAN NATURE 491 (L.A. Selby-Bigge, ed., 1960).

¹⁵ Typical behavioural manifestations of the right claimed in the object are: use, possession etc. See Arthur L. Corbin, Comment, *Taxation of Seats on the Stock Exchange*, 31 YALE L.J. 429, 429 (1922) ("And finally, 'property' has ceased to describe any *res*, or object of sense, at all, and has become merely a bundle of legal relations—rights, powers, privileges, immunities."). Corbin follows Hohfeld here.

¹⁶ This includes *res nullius* (things belonging to no-one). In that case, no property rights actually attach to the object, but *could* attach to it. Alejandro Madrazo, *Bicolonialism: Trips and the Genetic No Man's Land*, 25 GEO. INT'L ENVTL. L. REV. 487, 492 (2013) ("[W]hat was nobody's would become the property of the first person to occupy or possess it.").

¹⁷ Andreas Rahmatian, *Intellectual Property and the Concept of Dematerialised Property*, in 6 MODERN STUDIES IN PROPERTY LAW 363, 363-71 (Susan Bright ed., 2011).

MONEY AS A NORMATIVE TEXT

or indeed any notion of ‘property’ only materializes by being performed according to the text scripted by legal commands. The performance creates the legal concept it purportedly enforces and transforms the ‘ought’ of the legal rule into the ‘is’ of reality.

A rather extreme example of the idea of dematerialised property is the concept of *money*. The *res* of money is, in the same way as with all other property, an abstract legal conception that may be represented or reified by a tangible thing, such as a coin or a banknote (cash), but does not have to be (bank money). That means that money has also been created by way of normative words, and in this case, particularly, figures; the words and figures prompt a behavior that creates the concept it purportedly gives effect to. The dematerialisation is here in two stages: the property right refers to the underlying debt as *res*, and that *res* (‘money’) refers to an expectation of a future entitlement to another *res*, reified by a social reifier of genuine value (e.g., food, clothes).

Money is only a representation of (precarious) entitlement to future value, but the representational aspect is usually discarded, and money is seen as the thing itself with an intrinsic value.¹⁸ This attitude is so ingrained in the imagination of the general public that only a specialist is aware that money is purely a notion created by a normative ‘text’ in a broader sense, without physical existence and particularly no tangible value beyond that. In this regard, the concept of money is as much ‘fiction’ as the characters of Thérèse Raquin and her lover Laurent by Émile Zola. Yet, it is present because people behave as if it were there.¹⁹ Money is crucially based on the fact that some have an authority to issue a text with normative effect (most visibly, but not necessarily in form of a sheet of printed paper, the banknote), while others have not. Paul Valéry identified the problem quite correctly in *Tel quel*:

Ce qui distingue un billet faux d’un billet vrai, ne dépend que du faussaire.
Un homme passait en justice accusé de faux,
et deux billets portant les mêmes numéros étaient sur la table du juge.
Il fut absolument impossible de les distinguer.
De quoi m’accusez-vous ? disait-il ... Où est le corps du délit ?²⁰

The actual normative text that creates money is in reality difficult to ascertain. Banknotes in the UK, both in England and in Scotland, still appear as if they retained the original, though today purely historical, function of a promissory note that entitled the holder to obtain real value in form of gold. The Scottish banknotes are unusual because Scotland is one of the very few countries in which three retail banks still have the right to issue

¹⁸ See SIMMEL, *supra* note 1, at 352-54, for a discussion on the role of money as the symbol and extension of self. The miser is the person who renounces the realization of tangible goods and relishes the potential of the realization which money symbolizes. *Id.* at 353-54.

¹⁹ This idea connects to the *esse est percipi* argument of George Berkeley. See GEORGE BERKELEY, THE PRINCIPLES OF HUMAN KNOWLEDGE: THREE DIALOGUES BETWEEN HYLAS AND PHILONOUS 66-68 (G. J. Warnock ed., 1989).

²⁰ PAUL VALÉRY, *TEL QUEL* 135 (Gallimard 1941). A related problem is the effect of false money which can be the same as of real money. See CHARLES BAUDELAIRE, *La Fausse Monnaie* [Counterfeit Money], in PETITS POÈME EN PROSE [LITTLE POEMS IN PROSE] (Louis Conrad ed., 1869) (Fr.).

banknotes.²¹ A £10 banknote of the Royal Bank of Scotland, for example, says, “The Royal Bank of Scotland plc promise to pay the Bearer on Demand Ten Pounds Sterling at their Head Office here in Edinburgh by Order of the Board.” In fact, the bank does nothing of that sort if someone indeed appears at its Head Office, and today, it has no responsibility to do so under the law, nor would it be able to from an economic perspective, regardless of what the text on the note ostensibly says. But that is not the relevant text. To understand this, one needs to look briefly at the definition of money and the money creation mechanism.

B. The Modern Double-Tier System of Money Creation

Money today has a functional value but no longer an intrinsic value, and it appears that the more developed an economy is, the less important a physical relation between the values of goods and money is.²² The intrinsic value of paper money (banknotes) and of numbers written on a balance sheet and stored in a computer (bank money) is indeed nil. If one defines money, *initially*, not as an economic concept, but as a *legal* concept, then one should see money as another instance of *dematerialised property*, as previously discussed. The *res* (money) represented by the banknote, is not more than a basis of expectation, inducing the actors of the transaction to a behaviour that may make the expectation a reality, perhaps encouraged and guided by a text, such as ‘X promise to pay the bearer on demand’ similar to the script of a playwright. It is noteworthy that Jeremy Bentham, a principal founder of utilitarianism and a forefather of economic theories, defined any kind of property, and not only money, in this way: “Property is nothing but a basis of expectation; the expectation of deriving certain advantages from a thing we are said to possess.”²³ The modern money creation and money supply mechanism of the banks shows these underlying ideas well, whereby a good deal of the conduct required for the functioning of the system is not just based on belief, but also on concerted pretence.

Today we have a double-tier system of money creation. One tier is the money supply by the Central Banks and the other by commercial (high-street) banks.²⁴ Historically, the Central Bank (for example the Bank of England which served as a role model for central banking worldwide) determined the volume of money that is made available to the public.²⁵ The most visible purpose of a Central Bank is that it issues paper money; it is the issuing bank of banknotes (such as the Bank of England for England and Wales, but not for Scotland and Northern Ireland). A Government would be entirely competent to do that itself, without a need of a bank. But over the last two hundred years or so, the Bank of England as the Central Bank of the UK as well as the Central Banks in other countries during the nineteenth century gradually grew into this role and acquired this exclusive privilege.²⁶ The first important

²¹ This has been retained (with restrictions) in the Banking Act 2009. See Banking Act 2009, 2009, c. 1, § 213 (U.K.).

²² See SIMMEL, *supra* note 1, at 197.

²³ BENTHAM, *supra* note 13, at 111-12.

²⁴ HANS CHRISTOPH BINSWANGER, DIE WACHSTUMSSPIRALE [THE GROWTH SPIRAL] 115 (Metropolis 2009) (Ger.), translated in HANS CHRISTOPH BINSWANGER, THE GROWTH SPIRAL: MONEY, ENERGY, AND IMAGINATION IN THE DYNAMICS OF THE MARKET PROCESS 38 (Springer 2013).

²⁵ GEOFFREY CROWTHER, AN OUTLINE OF MONEY 65 (Thomas Nelson & Sons 1940).

²⁶ Legal basis for the exclusive privilege of the Bank of England to issue banknotes is the Bank Charter Act 1844, c. 32, s. 12. See CROWTHER, *supra* note 25, at 75; NIALL FERGUSON, THE CASH NEXUS 16-17, 109-10,

MONEY AS A NORMATIVE TEXT

consequence is this that the banknote, of no intrinsic value, cannot be converted into any commodity of intrinsic value because the gold standard has finally been abandoned in the 1970s. Therefore, if a banknote says 'XX promise to pay the bearer on demand', one cannot claim more than other banknotes of the same value and lower denominations. The promise rests on nothing more than a further promise;²⁷ the system is self-referential. This also applies to commercial banks, which have retained the privilege to issue banknotes, such as some Scottish banks.²⁸ To follow up from the example earlier, if somebody appears at the Head Office of the Royal Bank of Scotland with a £10 note, he is only entitled to another £10 note or two £5 notes or ten £1 coins. Although even these coins have almost no intrinsic value, he *has to* accept them as *legal tender* in satisfaction of the debt of £10 to him, which the £10 banknote embodies, and in England and in most other counties, he is also *forced to* accept the (entirely valueless) banknote as payment and extinction of the debt. This so-called *fiat money* or compulsory tender is an order by law according to which banknotes and coins without intrinsic value *have to* be accepted as satisfaction of debts.²⁹ Thus, texts without an underlining reality compel human beings to a behaviour that creates a reality.

Although 'money' is only a concept written down on the social reifier of a banknote, the law compels a human performance, which behaves as if money had an existence and an intrinsic value. Here, the lawgiver has a role similar to that of a playwright: the underlying language of both law and literature is like a score, which prescribes a type of performance, either in one's mind, or in the real world. It causes a pattern of human behavior and makes the fiction real. There is also a second essential point: money in the conception adopted in the present monetary systems is necessarily a debt, so without a debt, there is no money. A £10 banknote of the Bank of England, for example, represents a public debt of the State, ultimately to be serviced by the taxpayer.

The second way of creating money is by way of credit granted by commercial banks. Nowadays, this is the principal method of money supply. When a bank makes a loan of £10,000 to a customer, this customer obtains £10,000 which he transfers to a seller of, say, a car, who in turn deposits these £10,000 in an account with the same or another bank (so it appears in the accounts of the bank as a debt owed to the car seller). The £10,000 are bank money, so money that exists in the accounts of the bank only—nowadays as a figure typed into the bank computer. The bank money can be converted into cash (banknotes), as the customer (as well as the third party, the seller) can at some point require a payout of some or all of the bank balance in cash. The debt of the bank of £10,000 to the customer is money created 'out of nothing', by way of a loan for £10,000 given to the customer as recorded in the accounts of the bank, and the customer deposits this loan in his bank account, and/or the £10,000 are deposited in a third party's bank account, following a business transaction in which these £10,000 were transferred.

153 (Basic Books 2001); GEORGE SOUTHGATE, ENGLISH ECONOMIC HISTORY, 290-94 (J.M. Dent & Sons Ltd. 1948) (U.K.).

²⁷ CROWTHER, *supra* note 25, at 63. For banknotes of the Bank of England, see the Currency and Bank Notes Act 1954, c. 12, § 1 (4).

²⁸ Banking Act, 2009, c. 1, §213. Scottish banknotes are not legal tender, not even in Scotland. DONALD B. CASKIE, WALLACE AND MCNEIL'S BANKING LAW 18 (Green/Sweet & Maxwell, 10th ed. 1991).

²⁹ FREDERICK A. MANN, THE LEGAL ASPECTS OF MONEY 41-42 (Clarendon Press, 4th ed. 1982); Currency & Bank Notes Act, 1954, 2 & 3 Eliz. 2, c.12 § 1(2) (U.K.); Currency Act, 1983, c. 9, § 1 (U.K.).

The next step in the process of money creation by commercial banks is that of money multiplication: the £10,000 which another bank B may have obtained because it was deposited in an account by the car seller can be used to give credit of £10,000 to another customer who pays his debt of £10,000 to his creditor by transferring the debt to the creditor's bank account with bank C. Bank C can then also grant a loan for £10,000, and so on.³⁰ In reality this process of deposit multiplication (grant of loans, etc.) on the basis of that money placed on deposit (current or deposit account) with the banks is limited by the *fractional-reserve banking system*.³¹ If one assumes that this reserve requirement is 10%,³² then £1,000 of the £10,000 have to be retained (put simply, deposited with the Central Bank or kept as cash, because cash is also a debt of the Central Bank owed to the commercial bank), and only £9,000 are available for giving credit, and for the next transaction, it will be £8,100 (£9,000-10%), for the next transaction £7,290 and so on.

Commercial banks can therefore create bank money by indebting themselves, and this method of money creation also appears in the way in which banks record the granting of loans in their accounts. When a bank grants a loan to its customer it credits itself with the amount of the loan the customer owes (on the assets side of the bank's balance sheet), and at the same time debits itself with the loan amount as deposit of the customer owed to him by the bank (on the liabilities side of the bank's balance sheet) because the loan money has been paid into the customer's account.³³ So the creation of bank money is nothing but an accounting process. For the purposes of this article, it is not more than a normative text, very much stylized (a table of figures, a ledger) which creates a fiction, that of deferred wealth (i.e., money) or future potential entitlement to assets of intrinsic value. It has qualities in effect similar to a film script or the text of a theatre play, although the enactment or acting out of this particular system is really much based on belief. This includes particularly the belief in certain 'alchemist' qualities of money: in a symbolizing reifier of no intrinsic value lies the perceived power of extracting genuine value by transmutation. Hence, the German Central Bank could say in an information brochure about the money creation process of the commercial banks: "*Der Geldschöpfungsprozess erscheint damit wie Zauberei*,"³⁴ which, in

³⁰ See the instructive example by the German Central Bank (Deutsche Bundesbank) in its brochure: DEUTSCHE BUNDESBANK, GELD UND GELDPOLITIK [MONEY AND MONETARY POLICY] 60 (Frankfurt am Main 2008)[hereinafter DEUTSCHE BUNDESBANK 2008] (Ger.).

³¹ See, e.g., PAUL KRUGMAN & ROBIN WELLS, ECONOMICS 804-13 (2d ed. 2009) (showing the usual standard on the functioning of money multiplier on the basis of bank deposits by economics textbooks).

³² See Commission Regulation 1745/2003, art. 4, 2003 O.J. (L 250) 12 (EC) (noting that it may be lower depending on the type of liability, which can be seen when comparing the Eurozone within this European Union regulation).

³³ See, e.g., DEUTSCHE BUNDESBANK, GELD UND GELDPOLITIK [MONEY AND MONETARY POLICY] 89 (Frankfurt am Main 2009) (Ger.); DEUTSCHE BUNDESBANK, GELD UND GELDPOLITIK [MONEY AND MONETARY POLICY] 69 (Frankfurt am Main 2010) (Ger.); FEDERAL RESERVE BANK OF CHICAGO, MODERN MONEY MECHANICS 7-10 (1994); PETER HOWELLS & KEITH BAIN, THE ECONOMICS OF MONEY, BANKING AND FINANCE: A EUROPEAN TEXT 235-39 (3d ed. 2005). This outline disregards the important aspect of interest on loans. One can calculate the interest according to the formula $M = P \times (1+i)^n$, whereby M is the final amount, P the principal sum, i is the interest rate per year and n the number of years. If the principal loan sum is 100 to be repaid after 10 years with 5% interest, the final amount will be $100 \times (1+0.05)^{10} = 162.89$, thus almost a 63% increase. That interest sum is *not* created by any lending bank, but has to be acquired by the debtor from elsewhere. So this may require additional income by 63% (investment, longer working hours by 63%) to be able to pay back the loan and interest at the future date if rates of capital are not repaid as from the first year.

³⁴ DEUTSCHE BUNDESBANK 2008, *supra* note 30, at 62 (Frankfurt am Main 2008).

MONEY AS A NORMATIVE TEXT

English, means, so the money creation process appears like magic. It is understandable that the banks do not normally promote too extensive knowledge of this state of affairs. Money in the modern economy is a concept created by words and figures which seek to instil in its users the belief in deferred wealth.

The question remains why banks have the power to create a concept by words and figures that makes an impact on the natural world while a playwright has not. As noted, a bank can create money by inputting in its computers the following accounting entry in the bank's ledger:

Assets	Liabilities
Loan to borrower £10,000	Borrower deposit £10,000

(This is an example of the accounting entry in the bank's ledger of a grant of a loan of £10,000 by a commercial bank). However, a private individual, perfectly capable of doing the same, cannot create money in this way,—indeed not at all. Why, to return to Paul Valéry's quote, can one not print one's own banknotes? The simple answer is that the law, itself a normative text, orders other texts to be normative, provided they come from a particular source.³⁵ A more detailed answer can probably only be given by a social historian or political scientist who has studied the development of political and economic power relationships over the last centuries.³⁶ He or she will notice that the structure of the system of money through debt is in some way related to the Christian theological idea of permanent indebtedness to God, of sin, and of redemption, a concept created by another normative text, the Bible, and the writings by the Church Fathers.³⁷

III. CONCLUSIONS

This brings us back to texts, also texts of literature, as normative texts. The underlying language of the law is a score that prescribes a type of performance or a pattern of human behavior. Money requires, for its existence, the textual prescription of human behavior. This prescription by text and figures is made by entities (Central and commercial banks), which are, unlike ordinary creditors lending money, empowered by law to do so. These entities create money by postulating dematerialised property through text. This created money is an expectation of a later realization of actual value, and, more generally, the 'performative fiat' of human behavior: who is to behave like a creditor or debtor by virtue of

³⁵ For the United Kingdom., one important legal basis is the Currency and Bank Notes Act, 1954, 2 & 3 Eliz. 2, c. 12, § 1(1). See generally JOHN A. USHER, *THE LAW OF MONEY AND FINANCIAL SERVICES IN THE EUROPEAN COMMUNITY* 3-7, 88-100, 172 (Clarendon Press 1994) (providing an overview for relevant legal provisions of the European Union).

³⁶ E.g., FERGUSON, *supra* note 26, at 111-33; ERIC J. HOBBSBAWM, *THE AGE OF CAPITAL: 1848 – 1875* 1 – 5, 29 – 32, 45 – 47 (Vintage Books 1996) (1975); see also JOSEPH VOGL, *DAS GESPENST DES KAPITALS [THE SPECTER OF CAPITAL]* 64-85 (Zürich Diaphanes 2011) (Ger.).

³⁷ Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (tr. Stephen Kalberg) (Oxford: Blackwell, 2002), ch. IV: 75-76, ch. V: 105-111, 115-122. For the religious roots of debt in different cultures, and the description—or invention—of the myth of the origin of debt, see DAVID GRAEBER, *DEBT: THE FIRST 5,000 YEARS* 56-66, 120-21 (2011).

a text representing future entitlement, and who will become actual creditors or debtors by virtue of their performance prescribed by the text.

In this regard, there is some similarity between law and literature. Texts of literature can become performative fiats, as do texts of manifestos and of declarations of independence, speaking in the name of a people and of (postulated) pre-existing rights that are reiterated.³⁸ Fiat money is also a proclamation for a specific social performance. Unlike the playwright or storyteller who prescribes in words, the texts of money as empowered by legal texts,—in reality difficult to ascertain,—prescribe to a large extent in figures and symbols, but the idea is the same: an originally fictitious creation becomes institutionalised in the social community as an enforceable norm and exercises a performative effect.³⁹ Money confers privileges: some entities can create money, most cannot. What law cannot accept, while literature can, is the idea of a fictitious self, being a mere construction of words or discourse.⁴⁰ There has to be a presupposition that the self exists; there must be an extant, not invented, personal identity. Otherwise there cannot be liability, for example, for debt.⁴¹

The most important role of literature in the discussion of the concept of money lies, however, not in a certain commonality in the genesis, but in the acute description of the workings of the concept of money and the effects of money on society.⁴² Writers and poets were probably among the first who had the sensitivity to realize the ‘alchemist’ nature of money, understood in a sociological sense, not in a literal sense of chemistry. They also sensed the commodification of man through the representation of things and their human makers by money. Some have understood the moral and ultimately quasi-religious underpinnings of the monetary system and of debt: giving is not a gift, but a transfer which creates an obligation for somebody else, like a loan to be repaid, but it also creates a moral debt for oneself.⁴³ The monetary system puts that idea into effect.

³⁸ See HILLIS, *supra* note 2, at 92-93 (on Heinrich von Kleist’s Michael Kohlhaas).

³⁹ See *id.* at 86, 103.

⁴⁰ Shulamit Almog, *Windows and ‘Windows’: Reflections on Law and Literature in the Digital Age*, 57 U. TORONTO L.J. 755, 767 (2007).

⁴¹ This is a problem which already troubled eighteenth-century legal philosophers. See, e.g., HENRY HOME, LORD KAMES, *Essay IV: Personal Identity in ESSAYS ON THE PRINCIPLES OF MORALITY AND NATURAL RELIGION*, 125, 128 (Mary Catherine Moran ed., Liberty Fund, Inc. 3d ed. 2005).

⁴² This would be a ‘literature alongside law’ approach. See Almog, *supra* note 40, at 759. This is beside the usual ‘law as literature’ and law in literature’ discussion. See, e.g., IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* 4-22 (Cambridge Univ. Press 1995).

⁴³ See the ironic and instructive comment by WOLFGANG HILDESHEIMER, *MITTEILUNGEN AN MAX ÜBER DEN STAND DER DINGE UND ANDERES* [MESSAGES TO MAX ABOUT THE STATE OF THINGS AND OTHER THINGS] 14-16 (Suhrkamp 1986) (Ger.). ‘It is more blessed to give than to receive, so it says in the Acts of the Apostles by Luke ... If the word *blessed* means *beatific* in a religious sense, then I have to be astonished about the stark immorality of this assertion. For by giving, I turn the one I give to into a receiver and so deprive him of his blessedness...’. (As translated by Andreas Rahmatian).