1 Professionalizing Impunity

From the Failures of 1709 to the Crisis of 1720

What is a lockpick to a bank share? What is the burgling of a bank to the founding of a bank?[1]

—Bertolt Brecht

Introduction

On April 7, 1709, the richest man in Europe found that he could not pay his debts. His default, or as he put it, "embarrassment," ruined his creditors, who constituted the bulk of the financial system of central Europe. The credit markets of northern Italy, the Rhine corridor, and especially Lyon froze completely, and for months it was impossible to find anyone willing to lend money at any price. The collapse in credit in turn undercut the financing for the French side of the War of the Spanish Succession, leaving troops in Spain and Italy undersupplied and unpaid. Debts in the Rhine-France-Italy credit corridor were supposed to be settled at the quarterly faire in Lyon. The faires claimed a lineage back to 1420, but by the turn of the eighteenth century, their function was not commodity trade but the trade in money. Four times a year, merchants and bankers (or their representatives) from all over Europe met to settle their debts, clear their outstanding payments, and negotiate new loans.[2] A late sixteenth-century observer described the faires as fifty to sixty men walking around with notebooks, settling balances from all over Europe in the faire's fictitious unit of account.[3] The Payment of Kings was held in March, the Easter Payment in June, the August Payment (confusingly) in September, and the Payment of Saints in December.[4]

[1] Bertolt Brecht, *Threepenny Opera* (New York: Grove Press, 1994 [1928]), Act III, Scene iii.

[2] Francesca Trivellato, *The Promise and Peril of Credit: What a Forgotten Legend About Jews and Finance Tells Us about the Making of European Commercial Society* (Princeton: Princeton University Press, 2019), 30–1.

[3] This was the Florentine writer Bernardo Davanzati, cited in Ibid, 31.

[4] W. Gregory Monahan, *Year of Sorrows: The Great Famine of 1709 in Lyon* (Columbus: Ohio State University Press, 1993), 41. The confusing naming is because the payments

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When the 1709 Payment of Kings failed, the municipal government of Lyon found no credit available and no commerce to tax, which left them in a fiscal crisis at exactly the wrong time. The winter of 1709 was the coldest in half a millennium, effectively annihilating the winter wheat crop. Ever since 1534, the *Aumône-générale* at the *Charité* hospital had provided food relief to the deserving poor and shelter for orphans. Over the course of that terrible winter, more people needed food and more children were abandoned than ever before, and the city administration had fewer resources than usual to provide for them. About 1,000 more people died in Lyon in the last half of 1709 than normal, most of them children.[5]

The man who defaulted on April 7 was Samuel Bernard, the "banker of kings."[6] Throughout the War of the Spanish Succession, he was by far the single most important figure in French war finance and provisioning, which is to say, the logistics of providing money for troops conducting the war abroad. In that capacity, he borrowed extensively on his own credit, acting as the agent of Louis XIV, and lent that money to the various holders of venal offices as treasurers and procurers who were tasked with supplying the troops. He also conducted foreign exchange operations, since specie was chronically scarce across Europe, meaning he would often obtain Spanish piasters for troops in Flanders who needed to be paid in local guilders, all the while expecting to receive a commission on the transaction in livres tournois. Finally, thanks to his access to liquidity and extensive network of correspondents and counterparties, Bernard was a key figure in rediscounting and payments settling for merchants and financiers all over Europe.

Most of the movement of money in early modern Europe was done through the use of bills of exchange. These paper credit instruments were similar to modern checks, involving four parties in two locations.[7] Someone wishing to move money, whether to pay for a commercial transaction or to settle a debt or to provision troops, would buy a bill of exchange from a local banker or merchant who had a credit relationship with another banker in the place where the purchase needed to happen. The bill of exchange would instruct the second banker to pay the receiver of the transaction. There are some differences with modern checks, but when I pay my rent, I write a check that draws on my bank (say, Citibank) that has a relationship with my landlord's bank (say, Bank of America),

were at the end of the faires, so the August Payment ended the August Faire, which did indeed begin in August.

[5] Monahan, *Year of Sorrows*, 125–6.

[6] Hence, title of his biography: Jacques Saint-Germain, *Samuel Bernard, le banquier des rois* (Paris: Hachette, 1960).

[7] For a lucid description of how these worked, see Trivellato, *Promise and Peril of Credit*, 24–30.

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which in turn credits the money to my landlord's account. What this means is that there is constantly some flow of funds that Citibank owes to Bank of America, and vice versa. This was even more true of the bills of exchange, because they were very often endorsed, meaning signed over to another person for payment without first being cashed. Sometimes bills would circulate for a long time, amassing a string of signature endorsements on the back, which tied people together into an unpredictable chain of indebtedness. Bills of exchange solved several problems. They eliminated the dangerous and expensive need to move bags or chests of physical metal from place to place. They also allowed for more transactions and credit than the limited amount of physical specie in circulation could have provided. But they also posed specific dangers. They were written in technical, coded terms that made them difficult for novices to understand. The exchange rate on each bill would be fixed when the bill was drawn, but they would not be converted to cash for quite some time, even longer if they passed from hand to hand, which allowed for savvy currency speculators to receive more or pay less than anticipated. And finally, at some point the bankers needed to clear their mutual obligations off their books, just like Citibank and Bank of America do. The Lyon faires served that clearing function, and since Samuel Bernard conducted far more transactions in far more places than anyone else, the ability of everyone else at the faire to clear their debts with each other depended on their ability to clear their balances with Bernard.

Thus, Bernard carried out several functions that in the late nineteenth and twentieth centuries would have been the responsibility of central banks: exchange rate management, discounting, interbank clearing, and management of sovereign debt. His indispensable institutional power helped make him fabulously, preposterously rich. It also made him untouchable. On March 13, in the midst of the faire, he obtained temporary immunity from prosecution by his creditors. His immunity was later extended and extended again: Samuel Bernard may have failed in 1709, leaving bankruptcy and starvation behind, but he was above, or outside of, the law.

The failure of 1709 was not the last of the old style of financial crisis in early modern Europe, but it was the most dramatic, and it contained all of the characteristics of the genre. Powerful merchants, financiers, and bankers failed again and again throughout the eighteenth and nineteenth centuries, temporarily paralyzing credit markets as their creditors tried to simultaneously deleverage and other market participants scrambled for liquidity. But even if such crises remained possible, or indeed frequent, they happened in a different institutional environment than the failure of 1709, and with different consequences. There was never another Samuel

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Bernard, with his quasi-central banking powers and his legal immunity. In this sense, 1709 was a kind of limit case of the old system of personal (which is to say, noncorporatized) financial impunity.

Ever since the very influential work of the economists Douglass North and Barry Weingast, as well as the historian John Brewer (all in 1989), it has become common to think of the Financial Revolution of the 1680s and 1690s as vastly increasing financial stability.[8] The core argument of this chapter is the gloomy corollary to that story. In the long run, the English Financial Revolution produced a more orderly financial market, to the great benefit of Britain's commercial prosperity and state power. But in the short run, the creation of new institutions also created new sorts of exceptions. All across western Europe, the Financial Revolution greatly expanded the set of people who could act with impunity in the economy, and even more greatly expanded the set of people who could be affected by malfeasance.

This chapter traces changes in financial impunity from the onset of the Financial Revolution, through the failures of 1709, and up to the *chambre de justice* of 1716. Very little has been written on the failure of 1709, though what does exist is of very high quality and striking detail.[9] The history of impunity across those years is the result of two stories: one about the expansion in the complexity of finance, and how it outstripped any scope for legal regulation; the other about the fitful, fraught, and unfinished process of trying to establish central banks as the main institutional form of immune actors in that new financial world. In 1709, as before, impunity was personalized: the prerogative of sovereign authority, granted individually on an ad hoc or even arbitrary basis. By 1720, impunity was professionalized and structural, a characteristic of skilled managers of capital operating in international markets with limited securities regulation and legal structures of inequality.

[8] Douglass North and Barry Weingast, "Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England," *The Journal of Economic History*, Vol. 49, No. 4 (December 1989), see also *inter alia*, David Stasavage, *States of Credit: Size, Power, and the Development of European Polities* (Princeton: Princeton University Press, 2011) for a more generalized application of the same point. On the fiscal-military state, John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1989).

[9] The literature on 1709, in its entirety: André Sayous, "La crise financière de 1709 à Lyon et à Genève," *Revue d'histoire économique et sociale*, Vol. 24, No. 1 (1938), 57–86 and idem, "La crise financière de 1709 à Lyon et à Genève (Fin)," *Revue d'histoire économique et sociale*, Vol. 24, No. 2 (1938), 163–77; W. Gregory Monahan, *Year of Sorrows: The Great Famine of 1709 in Lyon* (Columbus: Ohio State University Press, 1993); Guy Rowlands, *Dangerous and Dishonest Men: The International Bankers of Louis XIV's France* (London: Palgrave Macmillan, 2015).

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The chapter will begin by describing the financial world of the early eighteenth century, with an overview of the major institutional changes in the Financial Revolution. It will then discuss the failure of 1709 in some detail before setting the stage for the crisis of 1720. Throughout these years, impunity was a product of sovereign discretion. It was not an axiomatic characteristic of wealth and power, so even well connected financiers could not be absolutely certain that they would get away with anything they did. Instead, it was granted on an improvised basis – not arbitrary, but not predictable either. Individual power and influence mattered, as did scale and systemic importance, and, for that matter, who had been wronged in a financial disaster. Samuel Bernard was systemically necessary, and his defaults mostly harmed foreigners and poor people; the same was not true for other dramatic cases of financial disaster in those years. The inequality of sovereign decisionism was acted out for the last time with the *chambre de justice*. By 1720, that kind of impunity was mostly gone, or modified into something new, because the ongoing Financial Revolution shifted the balance of power toward financial markets and away from sovereign prerogative.

Sovereign Impunity: The Situation Before 1709

Part of the great drama of early modern political thought was a conflict over the source of legitimate authority. Medieval thinkers like Henry of Bracton had argued that sovereigns should rule "under the law," meaning being subject to the immemorial customary law of the land and to divine law.[10] Those who ruled under the law were legitimate kings, those who ruled as though above it were tyrants, and ultimately subject to divine justice. Rulers could show which one they were by performing rituals of office, like oaths of coronation. Ultimately, though, the difference between legitimacy and impunity was a matter of the moral character of the sovereign.

By the time of the Reformation and the Wars of Religion, that moral order had become significantly complicated by the relation between sovereigns attempting to rule populations in defined spaces and the Papacy's claim to be the final source of law. For the sixteenth-century French jurist Jean Bodin, the fundamental characteristic of sovereignty was its unity, which meant no sovereign could be subject to the laws of

[10] Gaines Post, "Bracton on Kingship," *Tulane Law Review*, Vol. 42 (April 1968): 519–54; Cary Nederman, "Bracton on Kingship Revisited," *History of Political Thought*, Vol. 5, No. 1 (Spring 1984): 61–77.

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another institution, like the Church.[11] The king's conscience had a monopoly on the interpretation of divine law: there was no scope for subjects or intermediaries to judge the legitimacy of the sovereign's decisions. But Bodin had opponents, ranging from Huguenots like François Hotman, who argued that tyrants could be legitimately overthrown, to the secular politics of Machiavelli and the early republican tradition.[12] By the end of the seventeenth century, there was an open political conflict over constitutional restraints on sovereign authority: a story familiar from the history of the English Civil War, the Glorious Revolution of 1688, and early Enlightenment opposition to Louis XIV. That conflict provided new answers to the problem of constraints on arbitrary power, the sources of constitutional legitimacy, and the possibility of economic forces to balance political power.[13]

Thus, it is tempting to think of impunity always and only as a constitutive element of sovereign power. But a substantial literature has already pointed to the various ways that powerful economic actors, especially sovereign creditors, developed mechanisms for constraining sovereign authority.[14] That work has been very influential, but it has also lent itself to overstating how widely spread and reliably effective sovereign constraint was in the early modern period. Louis XIV was both enthusiastic and inventive in his coercive approach to fundraising, employing forced loans, changing the statutes of nobility to compel families to repurchase their own titles, conducting extensive production and sale of offices and monopolies, and resorting to increasingly extractive tax farming.[15] Many

[11] Edward Andrew, "Jean Bodin on Sovereignty," *Republics of Letters: A Journal for the Study of Knowledge, Politics, and the Arts*, Vol. 2, No. 2 (June 2011), 75–84. For a thorough investigation of Bodin's absolutism, see Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973).

[12] On Hotman, see Donald R. Kelley, *François Hotman: A Revolutionary's Ordeal* (Princeton: Princeton University Press, 1973); on Machiavellian republicanism, see J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975).

[13] Eric MacGilvray, *The Invention of Market Freedom* (Cambridge: Cambridge University Press, 2011).

[14] North and Weingast, "Constitutions and Commitment"; Peter Temin and Hans-Joachim Voth, *Prometheus Shackled: Goldsmith Banks and England's Financial Revolution after 1700* (Oxford: Oxford University Press, 2013); Mauricio Drelichman and Hans-Joachim Voth, *Lending to the Borrower from Hell: Debt, Taxes, and Default in the Age of Philip II* (Princeton: Princeton University Press, 2014).

[15] Julian Dent, *Crisis in Finance: Crown, Financiers and Society in Seventeenth-Century France* (Newton Abbot: David & Charles, Ltd., 1973), chs. 2 and 3; on nobles being forced to buy back their nobility, see Franklin Ford, *Robe and Sword: The Regrouping of the French Aristocracy After Louis XIV*, (Cambridge, MA: Harvard University Press, 1962), 14–15, 111. See also Gary McCollim, *Louis XIV's Assault on Privilege: Nicolas Desmaretz and the Tax on Wealth* (Rochester: University of Rochester Press, 2012).

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of these practices diluted the exclusivity of noble office, essentially driving down the price and value of all forms of politically constituted property.[16] For example, 3,000 offices were created in Paris alone in 1689–1715, including the creation of the monopoly to sell snow in Paris (priced at 10,000 livres per year in 1701), and the office of inspector of pigs' tongues.[17] As expected, the consequence was that the Crown had very poor credit: provincial estates could borrow at 5 percent for indefinite periods, while even the Crown's short-term interest rate touched 25 percent at the end of Louis's life.[18] Rather than running countercyclically and being scarce at first, then more reliable or abundant, credit grew more and more expensive as the wars dragged on.[19] Hence the use of creatively coercive financing aside from borrowing, which suggests that the market price of credit did not fully capture the relationship between sovereignty and access to capital.

If there were costs to the Crown's coercion, was this really impunity? Yes: The mechanisms of coercion were mutually reinforcing. Higher interest rates could be paid in debased coinage or over unilaterally lengthened payment periods, and financiers demanding full repayment immediately could be prosecuted and fined under a *chambre de justice* without any recourse or appeal. This capacity for coercion does not mean that the Crown made no efforts to co-opt local elites or did not make extensive use of the personal relations of financiers as intermediaries to raise funds.[20] What it means is that the Crown could decide to ruin even its most powerful and wealthy subjects – as the chief finance minister Fouquet learned in 1659 when he found himself the target of a *chambre de justice* that confiscated the entirety of his property and imprisoned

[16] For instance, the nobleman and economic theorist Pierre le Pensant Boisguilbert complained about this to Desmaretz, the controller general of the finances. See Boisguilbert to Desmaretz, August 21, 1709, in Arthur Boislisle (ed.), *Correspondance des contrôleurs généraux des finances avec les intendants des provinces* (Paris: Imprimerie nationale, 1874–97), 3: 65. On politically constituted property, see David Bien, "Property in Office Under the Ancien Régime: The Case of the Stockbrokers," in John Brewer and Susan Staves (eds.), *Early Modern Conceptions of Property* (New York: Routledge, 1995), 481–97.

[17] François Velde, "Government Equity and Money: John Law's System in 1720 France" (Federal Reserve Bank of Chicago: Working Paper 2003–13, 2003), 4, 6.

[18] Mark Potter and Jean-Laurent Rosenthal, "Politics and Public Finance in France: The Estates of Burgundy, 1660–1790," *The Journal of Interdisciplinary History*, Vol. 27, No. 4 (Spring 1997), 577; Hilton Root, "Tying the King's Hands: Credible Commitments and Royal Fiscal Policy During the Old Regime," *Rationality and Society*, Vol. 1, No. 2 (October 1989), 243.

[19] Root, "Tying the King's Hands," 245 argues that informal networks and "repeat play" explain the behavior of noble families, but "were not enough to discipline the king from plundering the financial families he had built up."

[20] Root, "Tying the King's Hands," 244.

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him for life.[21] This sketch of the early evidence suggests that one useful way of thinking about impunity is to model it on a monopolist: to act with impunity is to set the prices – political, legal, moral – for one's actions.

Louis XIV was an enthusiast of sovereign impunity, but he was not alone in that field. His relationship to the French financial system was not a singular artifact of French absolutism, but rather the limit case of the general pattern in sovereign–capital relations before the Financial Revolution. To take another example, Charles II of England performed a partial sovereign default with the Stop of the Exchequer in 1672.[22] The Stop delayed payment on £1,365,733 of the royal debt plus outstanding interest, relative to an average Crown revenue of less than £2 million.[23] Partial though the default was, it affected creditors for loans charged against old revenue, as well as pensioners and goldsmith bankers, who were the hardest hit.[24] In 1672, 97.5 percent of the *total* royal debt was held by only twelve goldsmith bankers, most of whom were utterly ruined by the Stop, and who in turn ruined their counterparties, thanks to their informal systems of bilateral clearances and their role in settling bills of exchange.[25] The two most powerful bankers – Robert Viner and Edward Backwell – together held around 60 percent of the outstanding debt. Backwell died bankrupt in the Netherlands in 1683, but Viner was luckier. He defaulted on his own creditors and secured a government annuity, dying in 1688.[26] In 1672, Parliament had no control over the royal debt or the appropriation of tax revenue, and they extended the initial one-year of the Stop for two more years, at which point the old

[21] Daniel Dessert, *Argent, pouvoir et société au Grand Siècle* (Paris: Fayard, 1984), 847–71.

[22] John Horsefield, "The 'Stop of the Exchequer' Revisited," *The Economic History Review*, New Series, Vol. 35, No. 4 (November 1982); Moshe Arye Milevsky, *The Day the King Defaulted: Financial Lessons from the Stop of the Exchequer in 1672* (Cham, Switzerland: Palgrave Macmillan, 2017); Ling-Fan Li, "The Stop of the Exchequer and the Secondary Market for English Sovereign Debt, 1677–1705," *Journal of Economic History*, Vol. 79, No. 1 (March 2019): 176–200.

[23] Christine Desan, *Making Money: Coin, Currency, and the Coming of Capitalism* (Cambridge, MA: Harvard University Press, 2015), 281.

[24] Horsefield, "Revisited," 513.

[25] Bruce Carruthers, *City of Capital: Politics and Markets in the English Financial Revolution* (Princeton: Princeton University Press, 1996), 62.

[26] Milevsky, *Day the King Defaulted*, 55–62. Viner had used Samuel Pepys as an intermediary. See Samuel Pepys, *The Diary of Samuel Pepys* (New York: Croscup & Sterling Col., 1892–99), Vol. 5, Part 1, September 7, 1665. Pepys goes on to mention, "He showed me a black boy that he had, that died of a consumption, and being dead, he caused him to be dried in an oven, and lies there entire in a box." There are different kinds of impunity.

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contracts expired, rendering the Stop permanent. Much like in France, English sovereign debt drew a very high interest rate before 1688 – higher than any other borrower, since the Crown was not subject to usury laws.[27]

The surviving bankers sued in the Court of the Exchequer in 1691, lost, filed an appeal in 1696, and finally won a determination by the House of Lords in 1700.[28] Along the way, they and their lawyers articulated a new idea of the relationship between sovereign authority and economic contracts, in which the Crown was a contracting party like any other, while their opponents crystalized an explicit justification for sovereign immunity, drawing both on natural rights and historical narrative of the need for discretionary powers.[29] This Case of the Bankers was a venue for the explicit formulation of the legitimacy of sovereign impunity versus the primacy of public law governing individuals who freely contracted in the marketplace. The bankers' final victory hardly constitutes evidence against impunity. The few surviving goldsmith bankers were paid a reduced portion of what they were owed in 1701, three decades and a new constitutional settlement after the Stop itself.[30] The shift from sovereign immunity winning legal judgments in 1691 to market contracts winning in 1701 illustrates exactly the transition this chapter intends to illuminate. Again, there were some costs to the Crown's economic impunity, but the Crown was willing to pay them, and restitution to the goldsmith bankers only followed the Glorious Revolution's constraints on sovereign impunity.

There is no doubt that sovereign impunity in both cases reduced the amount of capital supplied in both private and public investment, and also raised its price. But the fact that people continued to lend to the Crown does not necessarily suggest their confidence in the ability of informal institutions to protect their investments in the long run. Instead, it probably reflects the limited options available to lenders, especially in France where investment in land was still complicated by claims of heredity and seigniorial subcontracting. Investment in overseas commerce was dangerous, highly variable, and slow to produce returns; there were few if any private securities to buy, and regional borrowers like the French Estates had both a limited demand for funds and a statutory cap on interest rates. The Crown's appetite was insatiable, so it was always a willing borrower, and individuals who lent handsomely to the Crown could attempt to leverage their claims into political property in the form of offices and patronage.

[27] Dickson, *Financial Revolution*, 39. [28] Desan, *Making Money*, 284–7.
[29] Ibid, 283–5. [30] Horsefield, "'Stop of the Exchequer' Revisited," 522.

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There is one final point of intersection between the law, sovereign power, and economic impunity which is salient for my argument, and that is monetary manipulation. By 1720, both Britain and France had engaged in numerous monetary experiments. As was common practice in early modern Europe, in both countries the unit of account – the pound and the livre – differed from the metal coins that were actually in circulation.[31] In France, for instance, the silver *écu*, one of the most common coins in circulation after 1577, was usually valued at around 3 livres, while the *louis d'or* was around 24 livres. They were "around" these values because the relationship between the accounting unit and the monetary unit could be changed by the will of the Crown, effectively devaluing the currency, such that the same physical silver *écu* coin could conceivably be worth 3 livres one day and 2 livres the next.[32] Or vice versa. The logic here was that the Crown's contracts – especially its debt – were denominated in livres, so by manipulating the relationship between physical coins and fictitious livres, the Crown could make the same payments with less physical silver. This was done forty times under the reign of Louis XIV.[33]

In England, changing the money ratio had been a tactic used by both Henry VIII and Elizabeth I, but not since.[34] Instead, Britain suffered from a different source of monetary debasement, which was the clipping of coins. Since most coins in domestic circulation were made of silver, they could be cut, shaved, hammered, or otherwise abused to separate part of the metal, which in turn could be melted down and made into other coins. By 1694, it is estimated that the English monetary stock was circulating at 60 percent of its legal weight.[35]

The clipping of coins became an acute crisis during the Nine Years' War (1688–1697). In order to fund the armies on the Continent, the Bank of England had to remit an enormous amount of money through its representatives in Antwerp.[36] By the spring of 1695, so many silver coins were clipped that they were declining in value. This can be seen by comparison with the guinea, which was the main gold coin in circulation,

[31] Thomas Luckett, "Imaginary Currency and Real Guillotines: The Intellectual Origins of the Financial Terror in France," *Historical Reflections*, Vol. 31, No. 1, Money in the Enlightenment (Spring 2005), 118–19.

[32] Angela Redish, *Bimetallism: An Economic and Historical Analysis* (Cambridge: Cambridge University Press, 2000), 84–5, Tables 3.2 and 3.3 documents these many alterations.

[33] Murphy, *John Law*, 150–1.

[34] Charles Kindleberger, *A Financial History of Western Europe* (Oxford: Oxford University Press, 1993), 28.

[35] Patrick Kelly (ed.), *Locke on Money* (Oxford: Oxford University Press, 1991), 116.

[36] John Clapham, *The Bank of England: A History* (Cambridge: Cambridge University Press, 1944), 1: 26.

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nominally valued at 22 shillings. By 1695, guineas had a market price of 29–30 shillings, meaning it took more silver to buy the same amount of gold, while the exchange rate on Amsterdam fell from 37 to 27 schellingen to the pound, meaning English money specifically was worth less than Dutch.[37] In 1694–95, the Bank of England had remitted £1,698,808 to the Continent, with a further £902,288 in 1695–96, so the falling exchange rate was producing both a balance-of-payments crisis and substantial difficulty in supplying the armies abroad.[38] Put simply, feeding and supplying the same number of soldiers cost at least 25 percent more in 1696 than it had in 1694, and Britain was running out of specie. Further, the shortages of specie threatened the legitimacy of the new Bank of England, which was still a fledgling political project. Its foundation had been followed by a wave of anti-bank pamphlets, many of them authored by its goldsmith rivals, and on May 6, 1696, a group of goldsmiths apparently realized the Bank was short of reserves and attempted to coordinate a run on it to kill it before it could grow.[39]

Consequently, Parliament decided to take in the old clipped coins and issue newly minted ones. This Great Recoinage of 1696 provoked a famous controversy that was directly concerned with whether the sovereign had total control over the money supply and thus could revalue all existing transactions and contracts at will, or whether money and contracts were the product of natural rights and free individuals. William Lowndes, the secretary of the Treasury, argued that the occasion of the Recoinage was an opportunity to devalue the currency by 20 percent, in a similar maneuver to the French debasements.[40] Isaac Newton, then Master of the Mint, agreed, and a public pamphlet discussion of some 250 publications ensued.[41] Lowndes's principal opponent was John Locke, writing shortly before taking up his post at the new Council of Trade. Locke did not argue that debasement would be unjust because it would harm creditors to the benefit of debtors (as John Law did in his 1705 *Money and Trade Considered*, to which we will return later), but rather as part of his broader opinion that the government did not have the legitimate ability to exercise arbitrary authority over the economy.[42]

[37] R. G. Hawtrey, *Currency and Credit* (London: Longmans, Green, 1919), 290.

[38] Jones, "London Merchants," 317.

[39] Kynaston, *Till Time's Last Sand*, 12–14.

[40] Horsefield, *British Monetary Experiments*, 52 and Carl Wennerlind, *Casualties of Credit: The English Financial Revolution, 1620–1720* (Cambridge, MA: Harvard University Press, 2011), 133–4. William Lowndes, *An Essay for the Amendment of the Silver Coins* (London: Charles Bill, 1695), 91 shows that he really did have the French expedient in mind.

[41] Horsefield, *British Monetary Experiments*, 37.

[42] Joyce Appleby, *Economic Thought and Ideology in Seventeenth Century England* (Princeton: Princeton University Press, 1978), 217. See also John Law, *Money and Trade Considered,*

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In the end, Locke's view and the weight of public opinion prevailed, and the new coins were issued between May 1696 and early 1698 at par – another indication that sovereign impunity had declined in England by the end of the seventeenth century.[43] Yet despite Locke's rhetorical victory, the actual implementation of the Recoinage had a deeply unequal effect, because the old coins were only exchanged as a result of payments made to the government, privileging taxpaying property owners and the politically connected.[44] The government collected about £10 million in clipped coin, and slowly returned £6.8 million to circulation, producing a general shortfall of cash and liquidity.[45] Anyone who had access to money preferred to hold it, and would only lend it at punishing costs. Interest rates approached 16–17 percent, the Bank of England was forced to briefly suspend payments, and its notes fell into a 24 percent discount, reflecting the widespread preference for metal over paper.[46] Only after the Recoinage, and with the renewal of the Bank's monopoly to 1710, did Bank bills and notes take on the functional status of legal tender, and therefore the Bank itself took on the function of a bank of issue, with special legal protections not granted to other institutions. By 1710, then, the English Financial Revolution had produced a new monetary stability and a new legal theory of the relation between sovereignty and market contracts. The same was not true in France.

To the public, money was an especially fraught expression of sovereignty, and one with very high stakes, because money was something that most people encountered regularly. The control of the money supply, and thus the control over the everyday experience of "value," is something that confers tremendous power on its owner. Whether money and value are controlled by sovereign power or prudent professional central bankers or the impersonal laws of supply and demand has profound implications for claims about the primacy and autonomy of the economic sphere relative to the political. Early modern sovereigns were therefore very anxious to have effective control over money, especially after the destabilizing example of the Price Revolution of the sixteenth century.[47] Early modern coins bore the image of their kings, who claimed that

With a Proposal for Supplying the Nation With Money (New York: Augustus M. Kelley, 1966 [1705]), 79–80.

[43] Wennerlind, *Casualties of Credit*, 152–3.

[44] Horsefield, *British Monetary Experiments*, 62.

[45] Desan, *Making Money*, 366.

[46] Ibid, 321.

[47] For an account of the deranging consequences of the Price Revolution, see Elvira Vilches, *New World Gold: Cultural Anxiety and Monetary Disorder in Early Modern Spain* (Chicago: University of Chicago Press, 2010).

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the value of money derived from their divine capacity to rule.[48] In his *Six Livres de la République*, Jean Bodin wrote, "As for the right of coining money, it is of the same nature as law, and only he who has the power to make law can regulate the coinage."[49] This claim to divine privilege was the Crown's principal method of legitimating its collection of seigniorage, the difference between the amount of bullion brought to a mint, and the amount of coins received, extracted as a royal tax. According to the sovereign, therefore, the clipping of coins was akin to an assault on the body of the monarch himself – which is to say, treason.[50] It was therefore subject to strident punishment. During Isaac Newton's first year as Master of the Mint, he was personally responsible for prosecuting twenty-three clippers and counterfeiters, and refusing them pardons from public execution.[51] In France, capital punishment extended even to corrupt mint officials, as well as to clippers and counterfeiters.[52]

But for all of the Crown's protestations, the public seems to have regarded clipping coins as well within the customary moral economy, similar to poaching.[53] Merchants involved in overseas trade and denizens of border areas were well aware that coins' exchange value derived from their precious metal content, and the flow of silver and gold were outside the control of even the most absolute sovereign. The world of recoinages, augmentations, and defaults was one in which essentially all financial activity was conducted by and between individuals, predicated on their own assessments of each other's trustworthiness and relative power. As we shall see, control over the monetary system ultimately required another para-sovereign institution, which was a central bank.

The Five Grievances of the Hogguer Brothers

The first sign that the hectic structure of French finance was heading for disaster was the failure of the Hogguer brothers in 1708. They did everything right, but the incoherence of the unregulated and capricious monetary system destroyed them anyway and the sovereign chose not to save them. In doing so, their failure set the conditions for the bigger

[48] Jotham Parsons, "Money and Sovereignty in Early Modern France," *Journal of the History of Ideas*, Vol. 62, No. 1 (January 2001), 68.

[49] Cited in Thomas Luckett, "Imaginary Currency and Real Guillotines: The Intellectual Origins of the Financial Terror in France," *Historical Reflections*, Vol. 31, No. 1 (Spring 2005), 121–2.

[50] Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957).

[51] Wennerlind, *Casualties of Credit*, 152.

[52] Luckett, "Imaginary Currency," 124.

[53] Wennerlind, *Casualties of Credit*, 142.

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financial panic the next year. In order to understand the ordeal of the Hogguer brothers, and indeed to understand the crisis of 1709, it is necessary to first become comfortable with the Mint Bills.

As in England, the French government faced consistent and considerable challenges in controlling their currency. In addition to the many augmentations and diminutions of the ratio between the book value and the face value of the coins in circulation, between 1689 and 1715, France carried out five physical recoinages. Four of them (1689, 1693, 1701, and 1704) were restampings, in which old coins were surrendered to the mints restamped with new values, usually by pressing a small numerical multiplier into the face of the coin, such that a coin initially worth, say, three livres, would be stamped with a numeral II, indicating it was now worth six.[54] The initial bearer of the coins would receive back the same number of livres at face value, but on fewer physical coins of higher denomination.[55] The fifth recoinage, in May of 1709, was an actual re-minting, in which coins were melted down and recast, along the lines of the 1695–96 Great Recoinage in Britain. Since the process of restamping and recoining took a considerable amount of time, mints would issue receipts for the coins they received, called *billets de monnoye*, or Mint Bills. These would carry an interest rate, usually of 4 percent, to compensate the depositor for the inconvenience of being without their cash for some period of time. In this sense, they were a kind of contract between the mints (which held royal monopolies) and the people. At first the Mint Bills circulated in relatively small denominations for relatively short periods of time, more like a credit instrument than a currency. After the 1701 restamping, the volume of Mint Bills in circulation continued to increase, up to some 6.7 million livres tournois (henceforth lt.) in December 1703. On December 2, an *arrêt* ordered the redemption of all outstanding Mint Bills, effectively cashing them out and successfully ending the experiment. Those early successes built confidence and familiarity, so when a credit crunch hit in the spring of 1704, the controller general of the finances Michel Chamillart reached for the Mint Bills to cover the ongoing cost of the war.

[54] Thomas Sargent and François Velde, *The Big Problem of Small Change* (Princeton: Princeton University Press, 2001), 234–6.

[55] Joel Felix, "'The Most Difficult Financial Matter that has Ever Presented Itself': Paper Money and the Financing of Warfare Under Louis XIV," *Financial History Review*, Vol. 25, No. 1 (2018), 43–70. Imagine you deliver $100 to the Bureau of Engraving and Printing, in the form of 100 $1 bills. You receive back $100 in 20 $5 bills, and the Bureau erases the images on the remaining 80 pieces of green paper and reprints them as 80 $5 bills, thereby instantly making $400.

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The 1704 restamping was a failure. Only 175 million lt. were presented to the mints, as compared to 321 million in 1701, or 484 million in 1693.[56] People held the rest for the next recoinage, or exported it abroad before its face value could be further reduced. This giant act of refusal probably reflected a wide pessimism about the state of the war effort after the French defeat at Hochstedt in August 1704, as well as an accurate perception that this particular restamping was an especially bad deal. As the economic historian Joel Felix puts it, "As a result, between 1704 and 1709 France waged war with a stock of legal coins at its lowest ever level."[57] This money famine raised the price of coins against bills, as coins became ever more scarce, and Chamillart authorized the printing of far more bills than before. Interest rates rose, the price level experienced sharp deflation, and anyone who had access to cash preferred to hold onto it rather than spend it.

In practice, Mint Bills were mostly used as a kind of collateral to secure loans. An example will illuminate how this worked, and set the stage for the mechanisms of 1709 crisis proper. If Samuel Bernard in Paris wishes to borrow 40,000 lt. in coin from Jean-Antoine Lullin in Geneva, he would give Lullin 40,000 lt. in bills of exchange to be paid on his agent Bertrand Castan in Lyon. Lullin would obtain the coin from his Swiss counterparties and send it to Lyon, where Castan would trade it for the bills of exchange and send it along to an army paymaster in northern Italy. But Lullin would also receive 10,000 lt. in Mint Bills (a quarter of the loan, hence the term "*quart au-delà*" for this process). In theory, at the next quarterly faire, Bernard and Lullin would meet in Lyon, and Bernard would repay Lullin 50,000 lt. to cash out the bills of exchange and Mint Bills. But of course Bernard would not have 50,000 lt. in coin, so Bernard would reschedule the loan, giving Lullin 40,000 lt. (or more, depending on how they negotiated with each other) in fresh bills of exchange, plus another bundle of Mint Bills to be added to the initial 10,000 lt. in Mint Bills that Lullin got to keep.[58] In this way, Lullin could be sure that even if Bernard defaulted on his bills of exchange, he would still have Mint Bills that he could sell off, probably at a discount, to recoup some (or all) of his losses. If Bernard did not default, Lullin stood to make a tremendous amount of money, and one that grew all the time, provided the value of Mint Bills did not collapse (which would render his collateral worthless), and provided that Lullin would not suddenly need

[56] Felix, "Most Difficult Financial Matter," Table 1, 56.

[57] Ibid, 57.

[58] When Mint Bills functioned as collateral tied to loans, they were known as *nantissements*.

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coin of his own.[59] In this way, the Mint Bills tied the credit of the sovereign monetary system to the private credit of bankers issuing bills of exchange, while also expanding liquidity both in their own right and by expanding the set of people willing to accept bills of exchange drawn on French bankers, because even if they might not trust the banker, they would get Mint Bills as security.

The 1704 Mint Bills were different than the previous ones. They carried an interest rate of 7.5 or 8 percent and were required to be used as a portion of all private payments settled in the city of Paris. As with previous issuances of Mint Bills, they were not accepted as tax payments. By late 1706, there were 173 million lt. of Mint Bills in circulation, an increase of 2,482 percent in three years.[60] As the historian W. Gregory Monahan put it, "For merchants outside the capital, mint bills simply constituted another low-value royal credit instrument to trade, discount, or speculate upon. That Parisian merchants had now to count the bills as a substantial portion of their assets merely lowered the value of Parisian letters as credit instruments in other cities."[61]

Into the ongoing money famine, the failure of the 1704 restamping and the profusion of unbacked Mint Bills stepped the Hogguer brothers, with grand designs to repair the Crown's war finances and earn a hefty profit. There were five Hogguer brothers: Marx Friedrich, Daniel, Laurent, Jean-Jacques, and Gaspard, with operations in Paris, Lyon, Strasbourg, and Metz.[62] In the 1690s they had been linen merchants, and in 1696 they obtained the contract to deliver gold to the Lyon mint. From there they expanded their minting activities along the Rhine corridor, placing them in prime position to facilitate war remittances, and to be active participants in Chamillart's recoinage efforts. Since Alsace had its own currency, there were excellent opportunities for arbitrage on moving money in and out of France through Strasbourg, and the Hogguers earned a steady, stipulated 7 percent on Alsatian exchange. In 1702, they supplied 100,000 lt. to the Strasbourg mint, then accelerated to 500,000 lt. per month after January 1703. Sheltered by their monopoly privileges from customs officers, they obtained *piastres* from Spain (via Marseille) and bullion from Genoa, both through the Lyon money market, and reminted it in Alsace, mostly in the small-denomination

[59] This example follows Monahan, *Year of Sorrows*, 46–7, who in turn follows Lüthy, *Banque protestante*, 1: 201–3.

[60] A. Seligmann, *La première tentative d'émission fiduciaire en France: Étude sur les billets de monnaie du Trésor Royal à la fin du règne de Louis XIV* (Paris, 1925), 75–7.

[61] Monahan, *Year of Sorrows*, 44.

[62] Monahan, *Year of Sorrows*, 44 has only three brothers and Rowlands, *Dangerous and Dishonest Men*, 40 has four, but the *arrêt* of November 1708 in their defense clearly lists five. G/7/1124-6.

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silver coins that were in chronic short supply.[63] In 1704, they expanded into army supply, providing horses and 10 million lt. for paymasters in the Rhine army.[64] On October 28, 1705, they contracted with Chamillart to deliver 20.8 million lt. to Milan in order to fund the armies in Italy, as well as a further 11.1 million lt. to the armies in Alsace. They got 12 percent to cover the cost of the exchange, a blanket freedom from interest payments for three months to whoever they borrowed the coin from, and the ability to reimburse their creditors in Mint Bills. The three-month delay meant that payments would be settled at the next Lyon faire.[65]

By the time of the French defeat at Turin in November 1706, the Hogguers had successfully remitted 17,160,000 lt. to Milan, and were owed 2,369,899 lt. for their 12 percent change cost. But in the interim, the Mint Bills they had used as collateral had collapsed in value for the reasons described previously, meaning they owed some 9,551,020 lt. more than they had borrowed, and had further accumulated 2,096,774 lt. in interest payments as they waited for their commission and exchange payments from the very dilatory royal revenues.[66] Thanks to the overworked government fiscal system and the shortage of money, the August faire in Lyon was postponed to November, at which point they rolled over their debts at 4–5 percent interest, and the December faire was postponed to January 1707. The Hogguers begged Chamillart to force the use of Mint Bills as legal tender in Lyon, but he proved either unable or unwilling. He did release them from the remainder of their contract in Italy, buying them some space to make payments and keep their debts rolling over without actually defaulting. But finally in June 1708, they collapsed entirely, grinding Alsatian minting to a halt and drying up the Lyon money market.[67] Nicolas Desmaretz, having by then succeeded Chamillart as the controller general of the finances, froze private debt grievances against them for one year, and their creditors began to write to the Treasury instead, asking for payment from the government.[68] The decision point arrived as to whether they would receive immunity or not.

[63] Rowlands, *Dangerous and Dishonest Men*, 123–4. See also Lüthy, *Banque protestante*, 1: 169–87.

[64] "Arrest de défance pour les frères Hogguer" [November 1708], G/7/1124-6.

[65] "Memoire sur les Hogguers," G/7/1124-6.

[66] "Bordereau du compte dressé par les Srs. Hogguer pour la fourniture qu'ils ont faite en Italie pendant 1706"; "Italie, compte des remises faites par les Srs. Hogguer," December 15, 1707; "Strasbourg et Metz," memorandum October 1, 1708, G/7/1124-6.

[67] Daniel Hogguer to Desmaretz, July 20, 1708, G/7/1124-6; Rowlands, *Dangerous and Dishonest Men*, 127.

[68] See Daniel Hogguer to Desmaretz, July 20, 1708, asking that their creditor Antoine Saladin be ordered to leave them alone, because Saladin had posted archers outside his brother's home. And the letter from a group of their creditors on January 26, 1709; the

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In 1710, the Hogguers (or their lawyers) presented five grievances to the Treasury.[69] First, they had not been adequately informed of the losses they could take on their Mint Bills. They had been prepared for the Bills to depreciate by 10 percent, as they did in March 1706, but not 30 percent, as they did in August. Perhaps they overestimated the Crown's control of the money supply, or the strength of the implicit contract the Mint Bills represented. Second, they had to pay the bankers in Milan more on the exchange than anticipated, so their 12 percent fee did not cover the actual costs. Their deal with the French government did not adequately reflect the shifts in foreign exchange rates. Third, the delayed royal payments to them should have come with interest. Fourth, they should have gotten a 2 percent commission to cover salaries and overhead. And finally, on July 1, 1706, they held 1 million lt. in specie in a fund in Lyon when Chamillart announced a diminution of the face value of the coinage, instantly costing them 37,667 lt. All these misfortunes had befallen them while they were honestly and diligently carrying out the King's service, so they claimed that basic principles of justice demanded they receive a bailout. This they did not get, not exactly. They continued to get royal contracts through 1713, and they got protection from their angry creditors. But their reputations were ruined, their expected profits were not recouped, and their losses caused by the actions of the government were not repaid until May 1720. The Hogguers were a powerful demonstration that the complexity of early financial capitalism could ruin even very wealthy and important financiers, and their wealth alone was not a guarantee of protection. From the government's perspective, the Hogguers had taken risks and lost; from their perspective, those risks were conditioned by a set of rules that they thought the government broke. Not for the last time, what looked like risk to the winning side of a dispute looked a lot like a betrayal of trust to the losing side.

To the five grievances of the Hogguer brothers could have been added a sixth: their failure left Samuel Bernard with a monopoly on remitting and foreign exchange in a great arc from Cadiz to Marseille to Lyon and Genoa, through Geneva and Strasbourg, to Amsterdam. He secured this monopoly exactly when the profusion of Mint Bills were already devalued against coin, with foreign confidence in French credit already low, and with money already scarce in Lyon. But he was also the richest man in Europe, and had been supplying the Crown upward of 35 million

Strasbourg banker Daniel Andre Konig, May 12, 1709; merchant M. de Chamlay, May 25,1709, all in G/7/1124-6.

[69] "Memoire sur les Hogguers," AN G/7/1124-6. This is printed and undated, but internal references suggest early 1710.

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lt. per month since 1704.[70] If anyone could stabilize and unify the French banking and monetary systems, it was Samuel Bernard.

Mr. Badhouse Goes to Amsterdam

The winter of 1708–09 was the coldest that Europe has experienced in the past half-millennium. In 2010, the European Union's "Millennium Project" expanded from the traditional dendrochronological sources for climactic reconstruction to ice cores, marine sediments, and annually banded seashells.[71] They found that average annual air temperatures in December 1708–February 1709 were about 24 degrees Fahrenheit, compared to 33 degrees the previous winter, and 30 degrees the following winter.[72] Over the night of January 5–6, temperatures dropped to a Continent-wide average of 5–10 degrees Fahrenheit, and stayed there for two weeks.[73] Contemporaries wrote of people ice-skating on the canals in Venice, wine freezing in its bottles in France, and church bells shattering when they rang.[74] People froze to death inside their homes.[75]

The French historian Marcel Lachiver estimates direct mortality from the cold due to respiratory infection and exposure at somewhere around 100,000 deaths.[76] But the complete harvest loss in the spring led to a precipitous rise in grain prices, completely pricing poor people out of the market for subsistence. The ensuing famine of 1709 probably killed a million people in France, amounting to perhaps 5–6 percent of the total population, which by any standards is an unmitigated calamity.[77] In April, the Crown issued an edict to plant barley, and by then all the weeds had died, and the soil was well irrigated with snowmelt. When the

[70] Lüthy, *Banque protestante*, 1: 152.

[71] "Millennium Project" data, accessed September 15, 2019, www.researchgate.net/publication/252662033_European_climate_of_the_last_millennium_results_of_the_"Millennium_project"

[72] J. Luterbacher, et al., "European Seasonal Temperature Reconstructions," World Data Center for Paleoclimatology Data Contribution Series # 2006-060, 2006. See also Axel Michaelow, "The Impact of Short-Term Climate Change on British and French Agriculture and Population in the First Half of the Eighteenth Century," in Phil Jones, et al. (eds.), *History and Climate: Memories of the Future?* (New York: Kluwer Press, 2001), 201–18.

[73] Marcel Lachiver, *Les années de misère: La famine au temps du Grand Roi* (Paris: Fayard, 1991), 278–9 presents data for various regions of France throughout January 1709.

[74] Several of these stories are in Monahan, *Year of Sorrows*, 72–3. For a contemporary, see William Derham, "The History of the Great Frost in the Last Winter 1708 and 1709," *Philosophical Transactions of the Royal Society* (1683–1775), Vol. 26, 453–78.

[75] Lachiver, *Les années de misère*, 349–53.

[76] Ibid, 268–316 and 349–84, esp. 352.

[77] Cormac Ó Gráda and Jean-Michel Chevet, "Famine and Market in Ancien Régime France," *The Journal of Economic History*, Vol. 62, No. 3 (September 2002), 706–33.

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barley crop finally arrived in August, it was at three or four times higher yield than normal, bringing the famine to an end.

In the southeast of France, the Great Winter and the subsequent famine coincided with a man-made crisis, in the form of the collapse of the Lyon faire. There are different views about the event that precipitated the financial crisis of 1709. Monahan and Rowlands both claim it was due to the failure of Bernard's attempt to set up a general bank. This project, which will be discussed in full shortly, hinged on several other wealthy merchants contributing start-up capital. Fayard of Lyon proved unable or unwilling to provide his pledge of 2 million lt., and the project collapsed.[78] Monahan believes this spooked the Lyon merchant community; both he and Rowlands believe it harmed Bernard's ultimate resource, which was his influence with the Crown.[79] I suspect that Bernard's difficulty in obtaining specie to cover his payments at the Payment of Saints in the winter of 1709 can also be explained by the general liquidity crisis that had existed since the failed 1704 restamping, and which was accentuated by the failure of the Hogguers. It was the product of an ongoing fracture in the relationship between sovereign authority and financial markets.

Either way, the crisis was years in the making. In late 1706, Bernard entered a partnership with Jean Nicolas, a Genevan merchant who was a close associate of Jean-Antoine Lullin, one of the richest bankers in Geneva. Lullin had access to specie through Turin and the Italian money markets, while Bernard and Nicolas dealt with him through their Lyon agent, Bertrand Castan. Throughout 1707 and 1708, Bernard borrowed huge amounts of money from Lullin in the manner explained earlier, securing his loans with Mint Bills, and settling up periodically at the Lyon faires, when 20–30 million lt. in their loans, bills of exchange, and Mint Bills would change hands.[80]

The system worked until it didn't. By the beginning of 1709, Bernard was overleveraged, having borrowed too much and with too little revenue coming in to cover his interest payments. The winter Payment of Kings was postponed three times, and on February 26, lacking an inflow of money from other people settling their debts with him, Bernard had to reschedule his debts at punishing interest rates, including 50 percent to Lullin, who forwarded 1 million lt. of Bernard's obligations to be repaid

[78] Monahan, *Year of Sorrows*, 83.

[79] Ibid, 81–3; Rowlands, *Dangerous and Dishonest Men*, 156–7.

[80] Monahan, *Year of Sorrows*, 47. At the 1708 Payment of Kings, for instance, he owed 13 million lt. with another 3 million due in Paris and 4 million in outstanding Mint Bill liabilities. His activities accelerated from there. Bernard to Chamillart, March 1, 1708, G/7/1120.

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in coin.[81] The Payment of Kings, already late, was postponed further into the spring. By that point, Lullin held 6.9 million lt. in Mint Bill collateral and 7.5 million in bills of exchange from Bernard.[82] He began to sell the bills of exchange to other people, trading on the recognition of Bernard's name, but he did not keep the Mint Bill collateral attached to their corresponding loan contracts, thereby diffusing exposure to Bernard's credit unpredictably throughout the financial world of Geneva, Turin, and Lyon. At the same time, Bernard's Lyon agent Castan turned out to be short selling Bernard's bills, anticipating a collapse in Bernard's credit so he could buy them back again at a lower price.

The much-delayed Payment of Kings opened on April 3, and on April 7, Castan announced that he refused to accept any bill of exchange drawn on Samuel Bernard. This was something like your bank announcing that it will not honor any checks you write because your account is empty; but as Keynes famously said in another context, if you owe the bank a million dollars, it's not your problem, it's the bank's problem. Bernard needed to settle 38 million livres. Lullin still held the largest share of Bernard's debt, but the entire Payment of Kings was predicated on all participants obtaining liquidity through their share of Bernard's payments, so the entire Payment collapsed. In effect, Bernard's failure evacuated all liquidity from the Lyon money market, so everyone else collapsed as well. Merchants could not secure commercial credit to buy inventory or pay their workers, and artisans found nobody able to buy their wares because nobody would (or could) serve as the banking parties in drawing up bills of exchange.[83] Commerce in general ground to a halt, exactly when the price of grain was spiking as the winter wheat harvest failed, as the frost disrupted commerce, and as livestock froze to death in the fields.

The financial crisis undercut the fiscal basis of the Lyon government and contracted commercial demand, exactly when the worst of the famine arrived. Monahan analyzes the results in detail: He finds that in late spring and early summer 1709, 260 children were abandoned each month at the doors of the municipal hospital, compared to a baseline of about 40 per month.[84] The debt of the *Chambre d'Abondance*, which managed the *Aumône-générale* system of poor relief, tripled across 1709.[85]

[81] Bernard apologized for his failure, but thought all would be well if he could get an annuity from the tax farm deeds to cover the payment. Bernard to Desmaretz, March 23, 1709, G/7/1121.

[82] Monahan, *Year of Sorrows*, 82.

[83] Clapeyron to Desmaretz, July 13, 1709, G/7/1121.

[84] Monahan, *Year of Sorrows*, 91, Figure 6.1.

[85] Ibid, 154.

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Fewer people married, fewer babies were born, and Lyon suffered a generalized mortality crisis from August 1709 through December 1710.

In June, Charles Trudaine, the intendant at Lyon, declared a three-month moratorium on debt prosecutions related to the 1709 Payments, similar to the procedure for the Hogguers in 1708.[86] Future Payments were also postponed, which perpetuated the credit crunch and money famine.[87] The rationale was that Lullin needed to track down the Mint Bills he had separated from the bills of exchange they were supposed to collateralize. Trudaine used the delay to secure 14 million lt. in *assignations* (government appropriation orders) from the Treasury that Bernard could use for payment. Bernard's creditors demanded that he arrive in Lyon to pay his debts in full, and Bernard used the time to force his creditors to negotiate, knowing that his failure had left them so short of money that they would soon take anything rather than nothing. On May 14, Trudaine accused Lullin of fraud, having broken contracts on 6.7 million lt. in Mint Bills, and threatened to have him arrested. Negotiations dragged through the summer, the situation in Lyon becoming ever worse, while under Trudaine's legal protection Bernard managed to scrape together money and government contracts to pacify some creditors.[88] Soon only Lullin and his "cabal" of creditors remained.[89]

But something else happened in May, which was that Desmaretz announced another recoinage. He devalued the *louis d'or* by 20 percent and the *écu* by 14 percent, and, crucially, allowed that one-sixth of the total value of money delivered to the mints could be in outstanding Mint Bills. Pairing the devaluation with accepting Mint Bills effectively meant retiring them at no cost to the Treasury. This was a wholesale recoinage, not just a restamping, and the result was a tremendous success: 620 million lt. were delivered to the mints, some 250 percent more livres than had been delivered in the 1704 restamping.[90] Some 37 million lt. in Mint Bills were retired, though liquidity still remained scarce, suggesting people were happy to get them off their hands.[91] Whether intended as a bailout for Bernard or not, Desmaretz had increased the value of the collateral on Bernard's loans and produced an institutional buyer

[86] The precedent is explicit in "Mémoire de Clapeyron, 1709," G/7/1121.

[87] Desmaretz to consuls of Lyon, June 4, 1709, G/7/1121 postponing another three months.

[88] Bernard to Desmaretz, August 11, 1709, G/7/1121. Trudaine was tracking down holders of Bernard's letters and Mint Bills.

[89] Bernard to Desmaretz, June 27, 1709, G/6/1121.

[90] Felix, "Most Difficult Financial Matter," 56.

[91] Joseph Rivet and Claude de Vin, "Affaires extraordinaires, mémoires sur les billets de monnaie sans date," G/7/1620.

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for them at the same time. At the risk of anachronism, this is not conceptually very far off from the use of quantitative easing after the 2008 crisis to use the Federal Reserve's money-creating abilities to support asset prices.

With the monetary matters effectively ended, the legal battle dragged on. Events reached a literal fever pitch on August 7. Bernard wrote two letters to Desmaretz that day.[92] Despite having settled 21 million lt. by forcing discounts on his various counterparties, his remaining creditors were descending on Lyon *en masse*, demanding he meet them there.[93] Bernard told Desmaretz he could not possibly go: he had taken sick and been to a doctor. He feared for the consequences, and felt the world was closing in around him. He claimed that Lullin especially was orchestrating a subtle conspiracy against him, in league with foreigners and distorting the mind of his garrulous lawyer M. Clapeyron.[94] Lullin was full of detours and seditions, and might go so far as to raise the populace against him.[95] Bernard asked again for protection and for the dissemination of the *arrêt* to stop these persecutions.

He got it. On September 22, Desmaretz extended Bernard's legal immunity for three years, far longer than anyone could remain solvent while waiting for full repayment.[96] Most creditors reached a deal, and Bernard paid on his structured default well into 1712.[97] Roughly 2.2 million lt. in unsecured letters remained in circulation "spread on the trading places of the Kingdom, and on foreigners, which brings an infinite prejudice to the general credit."[98] Lullin had no options left, and agreed to a deal. He returned 1.8 million lt. in Bernard's outstanding bills of exchange, but kept 2.4 million in Mint Bills. Bernard agreed to renounce his claims to 1.4 million lt. in Bills that he thought Lullin owed him.[99] That settled, Lullin promptly died, on October 10. Castan fled to Bern, and Desmaretz pursued action against him in the French courts. In August 1711, he was sentenced to serve in the galleys and repay 754,760 lt., though by then he was in prison in Bern on another charge.

[92] Bernard to Desmaretz, August 7, 1709, G/7/1121.

[93] Bernard to Desmaretz, July 20, 1709, G/7/1121.

[94] Bernard to Desmaretz, August 7 and September 23, 1709, G/7/1121 and for more on the Lullin "cabal," same to same, May 22, 1709, G/7/363.

[95] This was not altogether paranoid or self-serving: there was serious rioting in Lyon on March 25. Monahan, *Year of Sorrows*, 79.

[96] There is a copy of the Edict in G/7/1121.

[97] Memoire from Clapeyron, 1709, G/7/1121. 824,200 lt. were due in 1710, plus 22,500 in interest. Another 1,032,000 lt. was due in 1711, and a final 769,000 in 1712.

[98] Ibid.

[99] Trudaine to Desmaretz, October 10 and 22, 1709, in Boislisle, *Correspondence*, 3: 213.

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Bernard's own credit was ruined, at least temporarily, but the Crown still needed money for the war. So on December 5, Bernard travelled to Amsterdam under the name "Monseiur Malmaison," hoping to secure funds for war provisioning in Lille.[100] This he did, moving on to Antwerp by January 5, possibly before the Amsterdam financial community learned who Mr. Badhouse was. The Genevan banking community remained illiquid and prone to bankruptcy for years; French troops in Spain went unpaid and undersupplied into 1710, and the French state reached the end of the war utterly dependent for its funding on promises of future revenue because it could no longer borrow against paper collateral. Bernard's credit in Lyon and Italy was ruined, but he was able to draw on his friends in Amsterdam, like Andre Pels, to rebuild his balance sheet and resume his activities. Between 1710 and 1713, he remitted some 40 million lt. to the service of the French state, though now at the far more modest rate of return of 16–21 percent.[101] He suffered some inconvenience for his bankruptcy, but nothing compared to the people who had lent to him, or who had tried to outmaneuver him and failed.

There is one more aspect of Samuel Bernard's adventures that concerns us, and that is his proposals for starting a bank. He had made efforts to that effect in 1707 or early 1708, intending a purely private bank as a permanent facility for exchanging Mint Bills for coins at a predictable rate.[102] As will be discussed at length in Chapter 3, John Law had been attempting unsuccessfully to interest European governments in his banking projects since 1704. The debt-management benefits of the Bank of England were well recognized by 1708, as were the exchange bank functions of the Bank of Amsterdam. These were not central banks as we know them today; rather they were usually called "general banks," to differentiate them from purely private banks, like the goldsmith bankers of London or the individual banking houses of Paris and Amsterdam. General banks were different because they served public functions, serving as the intermediary institutions between the fiscal and monetary systems. Especially in France, where specie was chronically short, numerous debt instrument circulated at discount, and no single institution managed the royal debt, the utility of a general bank was very clear. But it also had opponents, as Bernard learned, and John Law after him. The Council of Commerce thought it too risky and

[100] "Projet d'assignations á donner á M. Bernard," and following list, [January 1710?], and Bernard to Desmaretz, April 17, 1710, G/7/1121; "Estat de ce qui estoit dû á M. Bernard pour les remises par lui faittes en 1710, 1711, et 1712," November 1712, G/7/1122.

[101] Rowlands, *Dangerous and Dishonest Men*, 163.

[102] Bernard to Desmaretz, July 7, 1708, G/7/1120. Boislisle, *Correspondence*, 3: 636–50, Appendix 3 includes the many other bank proposals of the time.

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untried, and its eventual collapse too ruinous.[103] The bloated apparatus of financiers and tax farmers were of course opposed, as were speculators on Mint Bills. That Samuel Bernard supported the idea was at once a blessing and a curse. He had the power and expertise to make it plausible, but only if it clearly served his own interests in delaying his Lyon payments and rescheduling his loans.

Even after the failure of the initial project in January and February of 1709, Bernard kept pushing the idea. In late August and early September, he presented another version of the bank proposal to Desmaretz, arguing that "the success is more secure in a time of calamity," but that it must be kept secret so it could not be destroyed by usurers.[104] He claimed that it would be so useful to the war effort that it could not fail, and would do even better once peace arrived.[105] In fact, a bank was probably the only way to restore confidence and simultaneously supply funds, given the consequences of the ongoing crisis. Bernard assured Desmaretz that he did not even intend to be a director of the bank, though of course he would be perfectly willing to serve if ordered.[106]

Bernard's personal ambitions notwithstanding, the bank proposal made sense. The Hogguers had been ruined largely because they were trying to combine private banking and remittance activity with public policy in minting and exchange. They had control over *some* of the policy tools that would condition their rates of profit, but not all of them, so it was possible for Chamillart's monetary policy and their own to run at cross-purposes. For Rowlands, the failure of the Hogguers and the bankruptcy of Bernard are examples of the principal–agent problem endemic in Ancien Régime finance. Certainly there were principal–agent problems, since every financial agent wanted to maximize their own profit rather than deliver the most money to the Treasury most efficiently. But there had been principal–agent problems before, and would be again, and they unquestionably contributed to the structural fiscal problems of the French government, but they did not always provoke financial crisis. Instead, the disasters of 1708–9 happened because the several functions that today are conducted by central banks were dispersed through a range of entities conducting overlapping public policy and private business, with no coordinating mechanisms, no policy coherence, and no clear patterns of legal responsibility. A central bank – or even a "general bank," as Bernard proposed, and as Law

[103] "Mémoire des députés du commerce sur la proposition de l'établissement á Paris d'une Banque générale et royale, semblable á celle d'Amsterdam, dont le fonds sera forme par des effets en papier." Boislisle, *Correspondence*, 3: 641–6.

[104] Bernard to Desmaretz, August 17, 1709, G/7/1121.

[105] Bernard to Desmaretz, September 4, 1709, G/7/1121.

[106] Bernard to Desmaretz, September 25, 1709, G/7/1121.

eventually established – would have alleviated many of those problems. Chamillart, Desmaretz, Bernard, and the Hogguers were all simultaneously trying to do central banking without central banking institutions. With no unified control over the money supply or over foreign exchange and no lender of last resort, they blundered into exactly the problems that central banks were eventually intended to solve. In doing so, they gained one other central aspect of central banking, which is independence from popular oversight and legal protections when they acted to save themselves and the financial system they controlled, at the cost of everyone else.

Conclusion: The *Chambre de Justice* Revisited

After the death of Louis XIV, the duc de Noailles, the hapless new controller general of the finances, was left to grapple with the enormous debts left over from Louis's wars, and part of his solution was the establishment of a *chambre de justice*.[107] Acquainted as we now are with the Mint Bills, the Hogguer brothers, and the failures of Samuel Bernard, it is easy to see how reasonable was the desire of the French government to investigate its financial system, and especially to dedicate vigilance toward *agioteurs* who might have made fortunes from speculating in paper money.

As the *chambre de justice* ground slowly through its investigations and began to pivot more toward fines than imprisonment, Noailles directed three members of the *Conseil des Finances*, Hilaire Rouillé du Coudray and the two younger brothers of the Pâris financier family, to use the public drama of the *chambre de justice* as cover to attempt a series of structured defaults, since their political position (and the position of the Regent) was not strong enough for a full repudiation.[108] Under Noailles, the Regency partially defaulted on perpetual bonds in October 1715, on outstanding wages to office holders in January 1716, on the floating debt in April 1716, and again on perpetual bonds in June 1717.[109] Coudray certainly thought the *chambre de justice* was politically necessary, writing of a unanimous public opinion ("*voix unanime*") and observing that

> the public has asked eagerly for more than twenty years for a *chambre de justice*, and their clamor has redoubled since the death of the King, evidently because the peace provides a favorable opportunity to obtain the basic facts from the businessmen.[110]

[107] For the best economic narrative, see Velde, "Government Equity and Money."

[108] Technically, the *chambre de justice* was responsible for prosecutions, while the debt reduction procedure was called a "Visa." Summary records of the *chambre*'s proceedings are in AN/E//3640.

[109] Velde, "Government Equity and Money," 9.

[110] AN/G/7/1837. He goes on to say they are historically overdue for one.

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Coudray positioned the state and the public as allies against the financiers – a maneuver commonly discussed in the context of the French Revolution, but which was also common rhetorical practice in previous *chambres de justice*.[111] The ability of the state to remain disembedded from its moneyed supporters, and even to leverage public opinion against them, was in marked contrast to the situation in Britain. It escaped no one's notice that it was Coudray who made this statement and who, along with the Pâris brothers, administered the *chambre*, despite all of them being substantial financiers in their own right. Paradoxically, the *chambre de justice* was the first step toward expanding access to impunity to a small group of professional financiers because it allowed one faction of them to create institutional protections for themselves while prosecuting the others. The sense of the *chambre*'s penchant for inequality and favoritism was well noted. The lawyer Héracle-Michel Fréteau observed after a defendant named Pommereuil (who had been a police agent) absconded to Lorraine, that it was "clear to even the most dull-headed that the Chamber had no right to render justice, except on those poor wretches whose destruction implicated no one."[112]

The *chambre de justice* of 1716 was not a judicial reckoning, or a reestablishment of order after the death of an arbitrary despot. It was the last gasp of an older form of personalized impunity, and it had the unexpected effect of opening a power vacuum for new individuals and new institutional reforms to take place. As with other judicial proceedings, the *chambre*'s targets immediately hired lawyers to inundate the proceedings with petitions for clemency, and even as late as 1719, individuals were still petitioning not to pay their fines.[113] Many fled France with their mobile assets until they could buy their amnesties at the end of 1717. Informers were encouraged to denounce them, and contemporaries wrote of terror in the world of finance.[114]

So it was that in 1715–16, the Scottish gambler, murderer, and banking theorist John Law found a gap in the personalized world of French finance and an opportunity to finally achieve his long-standing goal of establishing a new form of general bank. His biographer Antoin

[111] Mousnier shows the *chambre* of 1661 was announced in Sunday sermons along with a call for denunciations that promised informers one-sixth of confiscated property. Mousnier, *Institutions of France*, 2: 487.

[112] Cited in Goldner, "Corruption on Trial," 23.

[113] See Memoires from the lawyers of Jean Tisserand and Jean-Jacques Cailly and the amnesty of Paparet in AN/G/7/1837; also the 1719 petitions in AN/E//2007.

[114] Jean Buvat, *Gazette de la régence*, edited by E. de Barthélemy (Paris: G. Charpentier et Cie, 1887 [1715–19]), August 3, 1716, 101–2; September 18, 1716, 115–116; October 30, 1716, 116–118.

Murphy argues that it was only in the political vacuum created by the *chambre de justice* that Law's rise was possible – or, in other words, the state acting with impunity against one group opened a space for impunity of another.[115] Whether or not we accept the view of Murphy and others that the *chambre de justice* was a weapon in factional politics, it is clear that Law's public career was only possible with direct and continued personal support of the Regent, with whom he ingratiated himself by arranging the financing for the Regent's purchase of an enormous diamond.[116] He was a great beneficiary of personal access to sovereign decisionism. But unlike Chamillart or Desmaretz or Noailles, he wanted to build institutions, not merely insert himself as a better, more capable manager of the existing fiscal and monetary structure. Given the failures of his predecessors to take charge, this must have seemed an appealing option. He made the Regent quite a lot of money, yes, but, more importantly, provided him with an economic system that could be run without the consent or technical understanding of the nobility and the unruly thicket of venal officeholders. The course and consequences of John Law's new banking and monetary ideas are the subject of the next two chapters.

[115] Murphy, *John Law*, 136–8.

[116] Larry Neal, *"I Am Not Master of Events": The Speculations of John Law and Lord Londonderry in the Mississippi and South Sea Bubbles* (New Haven: Yale University Press, 2012), 40–54.

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