

The Constitutional Law of Money

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Fall, 2017

Discussion Questions for Class 5

Money and Nation-building: The Revolution and the Constitution

Readings:

Adams, John. "Letter to the Comte De Vergennes." In *Papers of John Adams*. Boston: Massachusetts Historical Society, 1780, June 22, at [URL](#)

Benjamin Franklin, "Of the Paper Money of America" (1780?), in *The Papers of Benjamin Franklin*, Digital edition, [URL](#)

James Madison, "Vices of the Political System of the United States" (April 1787), in *The Papers of James Madison*, William T. Hutchinson et al., eds. (Charlottesville: University Press of Virginia, 1977), [URL](#)

Woody Holton, "The Capitalist Constitution," in Sven Beckert and Christine Desan, eds., *American Capitalism: New Histories* (New York: Columbia University Press, forthcoming 2017).

U.S. Constitution, Art. I, Secs. 8 & 10

Background:

Money fueled nation-building in dramatic ways in early America. First, the British provoked the Revolution with their attempt to regain control of the provincial political economies. Americans had engineered those economies in significant part with paper money.

Americans in turn fought the Revolution in significant part on the strength of the Continental dollar, a paper medium made according to familiar colonial practice. Just as the Massachusetts assembly spent the first bills of credit into circulation by paying soldiers returning from the expedition against Quebec, so the Continental Congress spent its dollars into circulation by paying the revolutionary army and its suppliers. Unlike Massachusetts province, however, the Continental Congress did not have the authority to tax. Instead, it relied on the states to tax in the dollar for the Confederation. When the states, themselves at war, failed to tax sufficiently, the Continental dollar lost value. Both John Adams and Benjamin Franklin defended the decision of Congress to devalue the dollar in 1780.

Second, debate over money catalyzed Federalist initiatives to create a new and more centralized order. As Woody Holton relates, a number of states continued to use paper money after the Revolution. That practice, like other debt relief measures taken by the

states, was enormously controversial; Holton lays out the debate. His article also provides context for James Madison's "Vices of the Political System of the United States," a brainstorming document that Madison produced in 1787, the period when he was most creatively synthesizing the political theory that would inform his approach to the Constitution. Read carefully, the essay reveals how state activities during the 1780s, including experiments with paper money, directly informed Madison's political theory. That theory encompassed the arguments later made in *Federalists 10* and *51*, that a larger republic and the appropriate electoral process might dampen the effects of faction. More generally, Federalist reaction against traditional paper money practices alert us to the fact that they would have to remake the monetary order.

Discussion Questions:

1. John Adams, a lawyer by training, makes an extended argument about money as a public contract. What are the central points of the argument?
2. How many doctrinal elements from contract law can you identify? How does the argument compare with your assumptions from modern private law contract?
3. What does Adams mean by "the public faith"? Is the public faith binding and if so, how?
4. How would you compare Franklin's interest and orientation to paper money? What does his analysis add to Adams's?
5. Could the logic developed by Adams and Franklin be used to defend the measures taken by the states, including the issue of paper money, during the 1780s? Indeed, does their logic necessitate those measures?
6. Does "The Vices of the Political System" read consistently with Holton's argument that Madison wanted to establish a commercial order that would make America safe terrain for investors?