

# The Constitutional Law of Money

Professor Christine Desan  
Fall, 2017

## Discussion Questions for Class 6

### The New Federalist Approach to Money: Public Debt and National Banking

#### Readings:

Alexander Hamilton, *Report on the Public Credit* (Jan. 14, 1790), at [URL](#)

Debt debates in the First Federal Congress, Statements of U.S. Representatives James Jackson, James Madison, Thomas Scott – Feb. 9, 11, 16, 1790, in *Documentary History of the First Federal Congress of the United States of America: Legislative Histories*, vol. 12, (Baltimore: Johns Hopkins Univ. Press, 1986).

Alexander Hamilton, *Report on the Further Provision Necessary for Establishing the Public Credit (aka, Report on the Subject of a National Bank)* (Dec. 14, 1790).

Alexander Hamilton to Edward Carrington, May 16, 1792, at Founders Online, National Archives, at [URL](#)

#### A. Sovereign Debt Restructuring Exercise:

You are a member of the First Federal Congress, meeting in caucus with some of your colleagues to discuss the proposal by Secretary of the Treasury, Alexander Hamilton, to fund the public debt. There is a consensus that the public debt should be fully paid. The issue is whether that payment should be divided between the “original holders” of the debt who had sold their bonds at amounts far below face value during the years after the War and those who had bought them. The original holders included many soldiers who were left without compensation when the U.S. government failed to service the bonds; many of those who bought the bonds were speculators. Some 80% of those bonds had changed hands by 1790. By 1790, the 280 largest holders in the country owned \$7,880,000, or 2/3 of the securities for which records of holders exist. The alternative that involved distribution of the payment is called “discrimination” in the sense that it apportioned funding between different holders. Madison, among others, proposed that solution, raising it as an amendment to a resolution calling for the payment of the “domestic debt” or that portion of the public debt due to U.S. citizens.

The issue for your caucus: will you vote with Hamilton or Madison?

1. The Hamiltonian alternative: Full payment in specie to the current holders of federal securities.

2. The Madisonian alternative: Full payment in specie to be divided in the following way:
  - a. payment of market value at a specified date (e.g., January 1, 1790) to current holders, and
  - b. payment of the remainder to the original holders who had alienated their securities after the War

As you determine which alternative you support, please consider the following questions:

- a. If the public debt is a contract, is Congress's role to arbitrate "rights" under the contract or to act as an agent bound by the contract? As you consider the question, recall that the courts could not adjudicate this case given the sovereign immunity of the United States, a doctrine that aimed to ensure Congress's full control over public monies.
- b. Could Congress have determined to pay off the debt by receiving it in payment of taxes or by receiving public debt certificates in exchange for federally owned public lands? If so, why did it not debate those alternatives?

#### B. The Money Question

By restructuring the debt to slow repayment over time, Hamilton lessened the immediate drain on the finite specie supply. In addition, he successfully advised Congress against imposing direct taxes or taxes on land; indirect taxes including customs and sales taxes were less likely to foment resistance. Despite that caution, rural inhabitants opposed the excise tax placed on whiskey from 1791 on. As that tax revealed, the country was woefully short on an internal medium. Hamilton's Report on the Bank recognized that imperative in the concluding passage of the excerpt we read.

That public need posed the question: how should the United States make a money? Hamilton recommended establishing a national bank. The proposal represented a controversial extension of federal power. Both Madison and Jefferson argued that establishing a national bank was beyond the authority of the federal government. As you read Hamilton's Report, please consider:

1. Hamilton anticipated that demand for currency would be heavy in the United States. Would you have predicted the same and if so, why?
2. Could the country have supported a network of land banks to generate a medium like that advocated by Benjamin Franklin?
3. What advantages would notes and deposits issued by a national bank have over a land bank medium? Would the culture of exchange, or the culture more generally, change?
4. Why would people accept such a bank-issued medium?

5. Aside from the fact that the public debt needed to be paid with some currency, how were the proposal to fund the public debt and the proposal for a national bank related for Hamilton?

### C. The Political Fall-out

The debates over the debt and the Bank of the United States marked the beginning of a deep and irrevocable division between Hamilton and Madison (and Jefferson). We have Hamilton's letter to Carrington as evidence for that division. Nicholas Trist later told Madison that he would be "represented as having deserted Colonial Hamilton" in a forthcoming biography by Hamilton's son. According to the memorandum written by Trist in 1834 about the conversation, Madison responded:

"I deserted Colonel Hamilton, or rather Colonel H. deserted me; in a word, the divergence between us took place – from his wishing to administration, or rather to administer the Government (these were Mr. M's very words), into what he thought it ought to be; while, on my part, I endeavored to make it conform to the Constitution as understood by the Convention that produced and recommended it, and particularly by the State conventions that adopted it."

Madison, a close ally of Hamilton's in earlier years, would go on to work with Jefferson to form the Democratic-Republican Party.