

The Constitutional Law of Money

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Discussion Questions for Class 8

State Development Strategies in an Illiquid World: Banks and Corporations

Readings:

Richard Sylla, "U.S. Securities Markets and the Banking System, 1790-1840." *Review of the Federal Reserve Bank of St. Louis* May/June (1998): 83-98.

Dartmouth College v. Woodward, 17 U.S. 518 (1819)

People v. Manhattan Company, 9 Wend. 351 (Sup. Ct., NY, 1832)

Bank of the United States v. Planters' Bank of Georgia, 22 U.S. 904 (1824)

Background:

From the beginning of the Republic, the states sought to support and further the economic development of their communities. The scarcity of a monetary medium constituted an elemental challenge to that goal. A variety of factors invited the states to turn towards the chartering of banks as a solution. Drawing on the reading we have done so far in the course as well as today's materials, we will start by talking about why the states turned towards banks chartered as corporations.

Next, we take a second look at what banks and corporations are. While Sylla leaves aside questions of legal and institutional definition, the constitutional law of the 19th century exposes how much work had to be done to define banks, their powers, their relationship to state and federal governments, and the nature of corporations. All of those matters were debated and changed over the course of the century. We sample some of the most salient issues here.

One such issue concerned the relationship between chartered organizations – corporations – and the political communities that created them. According to the traditional approach, governments chartered corporations for the public good and had the responsibility to oversee those entities to ensure that they did, indeed, operate for that end. After all, charters brought distinct privileges to those who organized under its auspices, a good arrangement as long as the incorporated entities benefitted society. In order to ensure that they did, political officials could require a corporation to answer a *quo warranto* that queried whether the corporation continued to fulfill the reasons for its charter. That mode of public policing of corporations appears to be changing during the early 19th century, as the courts begin to frame charters as “contracts.”

Another issue concerns the role of the judiciary, and the federal judiciary in particular, in determining how corporations related to political authorities. That issue extends to another, related question about the character of corporations that included state shareholders. We briefly consider the way jurisdictional decisions could affect the power of the courts, the relationship of state and federal governments, and the stature of corporations.

Finally, we will step back and consider the world build by the development strategies adopted by the states. Working with banks, the states supported the creation of a money supply and the expansion of local credit. The issue here is how the course adopted by the states shaped development, both quantitatively and qualitatively.

Discussion Questions:

1. Sylla writes as if the “Federalist Financial Revolution” created the conditions for economic development in the 19th century. To what extent does his argument persuade you?
 - a. How would you expand Sylla’s frame? What other factors created the conditions for the rise of state banking?
 - b. How much should we attribute to the ingenuity of state initiatives?
 - c. How much should we attribute to contingencies, unforeseen circumstances, and the oddities of the way the Supreme Court’s decisions interacted with imperatives on the ground?
2. Imagine that the New Hampshire legislature had filed a *quo warranto* action against Dartmouth College instead of amending the charter. What grounds might the *quo warranto* attorneys for the legislature have for proceeding against the College? Why do you think the state representatives did not use that route?
3. Aside from bringing the case within the letter of the Contracts Clause, how does framing the argument over the charter as a matter of “contract” change matters?
 - a. How does it affect the relationship between the parties?
 - b. . . . the character of the charter (or contract)?
 - c. . . . and the role of the court?
4. How powerful was the State’s argument for a *quo warranto* in the *Manhattan Company* case?
5. Why did it fail? Given the argument’s power, it is worth considering what political, legal, and practical circumstances contributed to the State’s loss.

6. Planters' Bank objected to jurisdiction on the ground that its incorporators included a state. But might the ability of a state to shed its sovereignty and act as a commercial entity open up opportunities for it? If it does so, how might that change the larger political culture?
7. As Sylla and Holton both report, the early 19th century was a time of significant economic development.
 - a. What factors fed that success?
 - b. Moving from quantity to quality, how would the path taken by the American states to develop their political economies through state-based banking corporations affect:
 - i. ... the way people conceptualized the public role?
 - ii. ... the assumptions they made about what "money" was (is)?
 - iii. ... the relationship between government and commercial activity?