The Constitutional Law of Money

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Discussion Questions for Class 19

The Constitutional Charge of Administrative Accountability and Independence:
The Fed and Monetary Policy

Readings:

Raichle v. Federal Reserve Bank of N.Y., 84 F.2d 910 (2d Cir., 1929)

Kathleen R. McNamara, "Rational Fictions: Central Bank Independence and the Social Logic of Delegation." *West European Politics* 25, no. 1 (2002): 47-76.

Sarah Binder and Mark Spindel, "Independence and Accountability: Congress and the Fed in a Polarized Era," Center for Effective Public Management at Brookings (April 2016).

Peter Conti-Brown, "The Institutions of Federal Reserve Independence," Rock Center for Corporate Governance, Working Paper Series No. 139 (2014).

Background:

The materials today consider the relationship of the Federal Reserve to the courts, Congress, and the private sector. Note that *Raichle* is a challenge to the Fed's attempts to use open market operations and discount rate to quell the market exuberance that preceded the Great Depression.

We leave aside here a number of issues that further affect the independence of the Fed. One is the relationship between the Fed and the president, which is determined both by statute and political tradition. Members of the Board of Governors serve 14-year, nonrenewable terms, an arrangement intended to reduce the ability of the president to stack the Board. In practice, the president's influence on the membership on the Board depends on how many members resign short of their 14-year term. The president also has the power to appoint the Chair of the Board, a post that lasts for four years and is renewable. The president nominates members of the Board and the Chair; both are subject to Senate confirmation. Governors are removable for cause, but the Federal Reserve Act is silent on the removability of the Chair. A second issue is the relationship of the Fed to the Treasury Department. As the experience of the United States during war-time suggests, the Federal Reserve has acceded to Treasury direction in those periods.

Discussion Questions:

1. *Raichle v. Federal Reserve Bank* provides one of the rare instances in which an individual demanded a judicial determination about the legality of the Federal Reserve's activity managing the money supply. Raichle was an investor trying to make money by buying stocks on margin. What is Raichle's tort argument against the New York Fed? Could you do better?

2. Kathleen McNamara argues that the premium put by central banks on price stability is at odds with popular support for prioritizing employment and growth. (The Federal Reserve, in its *Purposes and Functions*, identifies both stable prices and maximum employment as equal goals. It does, however, identify explicit guidelines for stable prices while judging employment levels as a more complex matter.)
    a. Assuming she is correct, is that priority justifiable in a democratic polity?

    b. If it is problematic, how does it come to be institutionalized as the dominant concern?

3. Both McNamara and Binder & Spindel approach the Fed as a "political," if not partisan, actor. How do their approaches to the "political" nature of the Fed compare? Would you define the Fed as a "political" actor and, if so, in what sense?

4. Binder & Spindel track congressional attention to the Fed and legislation aimed to constrain the Fed. To what extent do their findings demonstrate that Congress is holding the Federal Reserve accountable?

5. Is the connection between the Federal Reserve and the banking industry appropriate or inappropriate, given the mandate and function of the Federal Reserve?
    a. Why is the connection as close as it is?

    b. Are there ways to introduce wider citizen participation in the structure of the Federal Reserve system?