

Capital as a Constitutional Issue: Land and Money, 1776-1900
New York Historical Society
Professors Elizabeth Blackmar and Christine Desan
Sessions: March 18, April 1, April 15, April 29 2016

Week I Constituting Sovereignty over Territory and Money

The British American Empire and the revolution that ended it transformed land and money – capital in the most basic sense. We propose approaching the political economic upheaval of those times as a contest to define and control those categories. Conversely, we hope that by examining the contest over those categories, we open up new ways to think about the political economic upheaval of the times. “War is the health of the state” and “the sinews of war are infinite money,” but in the case of the American Revolution, the question is which state and what money? How did inhabitants of the former colonies, both native and settler, understand the respective sovereign powers of new states, and how did the war set the terms for nation building in its aftermath?

We propose three basic themes for this week’s discussion; the readings below are arranged by theme but we expect that they will cross-fertilize the discussion more generally.

1. Land and Money as Institutions or Means of Governance

Can we approach governance as a matter of configuring material resources, understanding that process to be a complex project that includes deeply social and ideological dimensions? How did changes in the way that land was distributed shape provincial identity and/or imperial authority? Relatedly, how did the change in how land was claimed and used change the way people approached sovereignty and its attribution?

In the same vein, how about money – what was it and what were the options for creating it? How did different forms of money flow from or affect provincial identity and British authority? Relatedly, how did changes in how money was made change the way people approach sovereignty?

How were land and money related by their changing forms? How was land “valued” and how did that valuation change in relation to money? For example, how was land used to back credit? Did “money” operate differently when it was backed by land as opposed to revenue? What role did specie – commodity money – play at the time?

Readings:

Benton, Lauren. "Spatial Histories of Empire." *Itinerario* 30, no. 3 (2006): 19-34

Desan, Christine. "The Constitutional Approach to Money: Monetary Design and the Production of the Modern World." *In Money Talks: Essays in Honor of Viviana Zelizer, edited by Nina Bandelj and Fred Wherry*. Princeton: Princeton University Press, forthcoming

Ferguson, E. James. *The Power of the Purse; a History of American Public Finance, 1776-1790*. Chapel Hill: University of North Carolina Press, 1961. chapters 1-3

Gates, Paul W. *History of Public Land Law Development*. Washington, D.C.: U.S. Government Printing Office, 1968. chapter 2

2. Sovereignty as a Contested Proposition

How were the debates over land and money related to the competition or cooperation between sovereigns – imperial, state, federal, and native American? How might it illuminate “empire” or “federalism” if we approach each as the effort by groups to configure, as well as control and (re) distribute, land and money?

How, for example, did individuals define their allegiances? When and how did the ability to reshape land or money affect those allegiances? Can we tease out an imperial approach to land and/or money? A revolutionary approach? How does the contest between Federalist and Anti-Federalist look if we consider it as debate between competing visions of capital? Where do native American approaches fit into this map, and how did the changing map affect their (multiple) positions?

Readings:

Gates, Paul W. , *History of Public Land Law Development*. Washington, D.C.: U.S. Government Printing Office, 1968, chapter 3

Banner, Stuart, *How The Indians Lost Their Land*, Cambridge: Harvard University Press, 2005, chapter 3 (chapter 4 optional)

Adams, John. "Letter to the Comte De Vergennes." In *Papers of John Adams*. Boston: Massachusetts Historical Society, 1780, June 22

Pelataiah Webster, "An Essay on the Extent and Value of our Western Unlocated Lands" April 25, 1781

Land Ordinance of 1785

3. Capitalism and the Constitution

Did some character we associate with “capitalism” emerge in these early years? And if so, what was it? In what ways was “capitalism” supported by the U.S. Constitution as a legal or textual document? If that document does not define capitalism, how did the Constitution affect the debate about the character of the political economy?

What are we assuming about the definition of “capitalism” ? How do those assumptions continue to inflect our histories?

Readings:
Articles of Confederation

U.S. Constitution, in its entirety with particular attention to Art. I, Secs. 8 & 10

Alexander Hamilton, *Report on the Public Credit* (Jan. 14, 1790)

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)

Holton, Woody. "The Capitalist Constitution." In *New Histories of American Capitalism*, edited by Sven Beckert, Christine Desan and Peter Knight. New York: Columbia University Press, forthcoming 2016

Further background:

Alan Greer, "Dispossession in a Commercial Idiom: From Indian Deeds to Land Cession Treaties" in Juliana Barr and Edward Countryman, eds. *Contested Spaces of Early America* (2014) available through Project Muse

Week 2 Modes of Governing: Defining Sovereignty, Obligation and Economic Development, 1790-1832

While the Marshall court sought to consolidate national power, the new century exposed as deeply contested both the hold and reach of federal authority as well as the character of "capital." We explore here the shifting boundaries of state, federal, and indigenous efforts to define and control money, banking and land. In that struggle, debates over obligation – debt, contract, and the ability to remake them – take center stage.

1. The Federalist Project

Can we understand the Federalist vision as an effort to define the terrain of obligation? If so, was there a Federalist theory of obligation – debt, contract, and property – that held across money and land? How did the Federalist approach to obligation inform the technologies of money and the patterns of land settlement that were being improvised? How did those technologies conceptualize participation by individuals and groups – farmers, investors, corporations, taxpayers? How did the Federalist approach to contract involving material goods mesh with the Federalist mode of constitutional interpretation and argument?

Readings:

Alexander Hamilton, *Report on the Subject of a National Bank*, 1-23 (Dec. 13, 1790)

James Madison's Speech on the Bank Bill 2 February 1791, as reprinted in Lance Banning, ed., *Liberty and Order: The First American Party Struggle* (Indianapolis: Liberty Fund, 2004), at [URL](#)

Perkins, Edwin J. *American Public Finance and Financial Services, 1700-1815*. Historical Perspectives on Business Enterprise. Columbus: Ohio State University Press, 1994., chap. 11

Chisholm v. Georgia, 2 U.S. 419 (1793) & U.S. Constitution, Amendment XI

Fletcher v. Peck, 10 U.S. 87 (1810)

McCulloch v. Maryland, 17 U.S. 316 (1819)

2. Economic Development and Federalism

According to the new model, money in the early Republic was made by a set of banks. The most powerful, the Bank of the United States, put federal revenue backing behind the federal dollar (the national unit of account), and then invited expansion through the issue of notes against debt held as an asset (public debt and, increasing, private debt). But states could use a similar model and, as the money supply grew, so did the debate over how public power should be deployed to create the money supply. Note as you read that banks create, rather than simply transfer money between savers and borrowers. But bank capacity to create money depends on their ability to settle their obligations (often by "clearing" mutual debts with each other) in a unit of account. In the U.S., one sovereign authored that unit of account (the federal government). By contrast, different sovereigns (state and federal) could charter banks. Thus banks were related in different ways to the authority that supplied their reserves.

A new financial architecture built on debt, bank-issued money, and capital markets developed, with energizing, uneven, and at times deeply disruptive effects on economic development. What model of economic development did the new financial architecture project? How did the new architecture follow from the Federalist vision? How did it contest and transform that vision? How, for example, did the efflorescence of state-chartered banks channel the political energy and attention of citizens? How did the process of money creation work and for whom did it work? Americans moved from issuing bank notes against federal public debt toward issuing them against private assets (promises to repay). How did that transition matter in terms of economic stability? In terms of political authority? Did it recast the categories of public and private? The authority of state and federal? Can we map American political struggles against the opportunities and limits that the new financial architecture entails?

How did federal policies of land grant and settlement configure the relationship of state to federal sovereigns? How did the transformation of territory into statehood shift the governance of land and the way inhabitants connected to state and federal authorities? If, as Lisa Ford argues, the contest over federal, state and indigenous control of land revolved

around recasting the pluralities of jurisdiction, can any useful analogies be drawn between the plural jurisdictions over land before 1830 and plural jurisdictions over money and debt?

Readings:

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

Hammond, Bray, *Banks and Politics in America from the Revolution to the Civil War*, Princeton: Princeton Univ. Press, 1957, 549-563, 326-329, 351-358

Ford, Lisa, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836*, pp. 17-25, 30-42

Further Background:

Andrew Jackson and Ben Dyson, "The Current Monetary System," (Chap. 2) in *Modernizing Money* (London: Positive Money, 2013), 47-80

Morgan Ricks, "Regulating Money Creation." *Harvard Business Law Review* 1 (2011): 76-79, 103-109

Lamoreaux, Naomi, *Insider Lending: Banks, Personal Connections and Economic Development in Industrial New England*, chapters 1 & 2

3. Beyond Settler Sovereignty

How does the picture of American governance change if we enlarge the frame? How did the nation and state building projects of the settlers reframe native American strategies? How did the policies of state and federal actors and the military initiatives taken to enforce them change the way settlers understood and strategized sovereignty?

Did American political struggles divide according to the perception of European power and the best ways to access European credit? How did land and money, made according to the approaches that Americans were improvising, induce greater dependence on absentee investors or open new possibilities for local development?

Readings:

Lepler, Jessica, *The Many Panics of 1837: People, Politics and the Creation of a Transatlantic Financial Crisis*, New York: Cambridge Univ. Press, 2013, chapters 1-2 (chapter 3 optional)

Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836*, chapter 6

Indian Treaties, 1805

Worcester v Georgia, 35 US 313 (1832)

Mary Young, *Redskins, Ruffle-shirts, and Rednecks: Indian Allotments in Alabama and Mississippi, 1830-1860*, chapter 7 "The New York and Mississippi Land Company," 138-54

Week 3 The New Federalism and Civil War

The rise of cotton shifted both eastern merchants' and the federal government's economic/fiscal interests to the South, while states to the West began working out their own governance projects. Economic activity was reconfigured by the increasing claim of those states to land and revenue previously federal, as well as the unsettled fit of the agricultural sector with state-chartered banking and its modes of money production, including the fragility of a medium that was issued against long-term assets but was redeemable on demand in a federally authored medium. While the federal government increased its control over Western territory, states governments experimented with new ways to promote their own development, given their control over land, their ability to deploy debt, and the innovation of free banking.

1. Measuring Power in Land and Money

How do we explain the reversal of federal ascendancy in control of money, banking, and land? How did free banking "work" as a publicly structured enterprise? Why did states turn to public debt as a mechanism for backing currency issues? How did the centrality of public debt tie money and land together? And how do we think about the public-private partnerships that drove economic development in the absence of a national bank and resistance to national internal improvements? At ebb tide of national presence, were there any constraints imposed by federal governmental authority? What were the limits of sovereignty?

How was any of this "constitutional"? Did the free banking era redefine federalism?

Readings:

President Andrew Jackson's Veto Message Regarding the Bank of the United States, July 10, 1832

Briscoe v. Bank of Kentucky, 36 U.S. 257 (1837)

(Optional: compare *Craig v. Missouri* 29 U.S. 410 (1830) (vetoing state attempts to create cash medium))

Dwyer, Gerald P. "Wildcat Banking, Banking Panics, and Free Banking in the United States." *Federal Reserve Bank of Atlanta Economic Review* December (1996): 1-20

Benjamin Chabot and Charles C. Moul, "Bank Panics, Government Guarantees, and the Long-Run Size of the Sector: Evidence from Free-Banking America." *Journal of Money*,

Credit and Banking 46, no. 5 (2014), sections 1 & 2 only (pp. 965-976)

Richard Sylla, John J. Wallis, and Arthur Grinath III, "Land, Debt, and Taxes: Origins of the U.S. State Default Crisis, 1839-1842"

2. Forgotten Sovereignties

We consider here a variety of interventions that recast money or land in ways that did not last. How do they inform us about the choices that prevailed? More generally, how do they illuminate the malleable character of capital?

Readings:

John C. Calhoun, "Remarks on the Bill to Authorize an Issue of Treasury Notes" (May 18, 1838), in *The Papers of John C. Calhoun*, vol. XIV, 1837-1839, Columbia, SC: University of South Carolina Press, 1981, pp. 293-304

Erling A. Erickson, "Money and Banking in a 'Bankless' State: Iowa, 1846-1857, *Business History Review*, Vol 43, no. 2 (Summer, 1969), 171-191

Witgen, Michael, *An Infinity of Nations: How the Native New World Shaped Early North America*, pp. 338-358

Further Background:

Richard H. Kilbourne, *Slave Agriculture and Financial Markets in Antebellum America: The Bank of the United States in Mississippi, 1831-1852* (2006)

Hamalainen, Pekka, *The Comanche Empire*, New Haven: Yale University Press, 2009

3. Reconfiguring national sovereignty over money and finance

Using the trope of the Civil War as the "Second American Revolution," how did the Union reestablish the powers of making money? How did it suppress the powers of state banks? What did those methods project about the character of federal authority? . . . the character of state authority? Conversely, how might the Free Banking era have influenced federal options and strategies? How did private bankers accommodate themselves to the new regime?

Can we approach new modes of making money as contributions to the perennial debates about obligation – debt, contract, and the authority to redefine them?

Readings:

Legal Tender Cases

Knox v. Lee, 79 U.S. 457 (1871)

Parker v. Davis, _____

Julliard v. Greenman 110 U.S. 421 (1884)

Week 4 The Power and Politics of National Money and Capital Markets

In the post-War period, the allocation of credit and its relationship to land take center stage in a series of dramas. First, the displacement of free banking with the national banking system located finance as a federal issue. Here, however, certain elements of continuity remained. As they had under the previous system of free banking, banks continued to issue money against public debt. That debt was now federal however, a shift that affected both control of the money supply and national fiscal capacity. Banks also remained radically decentralized, a lasting performance of American federalism. They offered credit across the American continent in ways that arguably tied them to local conditions. At the same time, banks operated through an increasing shared payments system: they cleared their obligations through New York City and its capital market. A remarkably diffuse and state-centered set of banks thus depended on an extremely concentrated money market.

Set against the development of finance by the commercial banking sector and in reaction to it was one of the greatest popular mobilizations in American history. The Populist movement turned in significant part on protest against the established system of credit allocation. The alternative approach to credit proposed by Populist leaders identified agricultural land and its products as valuable collateral and sought the federal government's endorsement of that vision.

Finally, the epic struggle over "sound money" and the banking structure that should support it closed out the century. William Jennings Bryan's vision tied money and production together to confront a position that increasingly claimed expertise and inevitability for a particular vision of the market.

1. The National Banking System

How did the National Banking System work? What forces brought banks together and what forces drove them apart? How did opportunities for economic development sort populations, regionally and/or by sector?

What were the consequences of the national banking system and national monetary policies for capitalist development? How did the national banking system work in the context of worldwide agricultural depression, on the one hand, and robust industrial development in the U.S. on the other? What was the relation of the money system and the rise of corporate finance?

How did the system revise the relationship between the national and state governments? How much of that revision was dictated by constitutional imperatives? Did the Civil War experience, for example, suggest that monetary sovereignty had to be lodged with and exercised by the federal government? If so, does management of monetary capacity, potential, and even distribution follow as a federal responsibility? How do emerging doctrines about constitutional dictates fit with or restrain government promotion of economic development or economic redistribution?

Readings:

Veazie Bank v. Fenno, 75 U.S. 533 (1869)

Richard Sylla, "Federal Policy, Banking Market Structure, and Capital Mobilization in the United States, 1863- 1913," *Journal of Economic History* Vol 29, No. 4 (Dec. 1969), 657-665 (remainder optional).

Bensel, Richard, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (1990), chapter 4 "Gold, Greenbacks and the Political Economy of Finance," 238-302

2. Populism

In the late 1880s, the Farmers Alliance and the Populist Party challenged the national system of banking and finance. Can we assess that challenge in Constitutional terms as well as political terms?

Readings:

Noam Maggor, "To 'Coddle and Caress These Great Capitalists': Eastern Money and the Politics of Market Integration in the Great American West," forthcoming, *American Historical Review*

Populist documents

Southern Alliance, St. Louis Convention, Report of the Committee on the Monetary System on the Sub-Treasury Plan, Dec. 1889, in George Brown Tindall, ed., *A Populist Reader* (1966)

Harry Tracey, Supplement on the Sub-Treasury Plan," in James Davis, *A Political Revelation*, Appendix i-303, 305-306, 310-313, 316-317, 323-326

The Ocala Platform, Report of the Committee on Demands, Dec. 1890

George K. Holmes, "A Decade of Mortgages," *Annals of the American Academy of Social and Political Science*, Vol. 4 (May 1994), 48-64 and "Concentration of Wealth," *Political Science Quarterly*, Vol. 8, no. 4 (Dec. 1893), 589-600

Pollock v. Farmers Trust & Loan, 157 U.S. 429 (1895)

3. The Politics of Capital in the Age of Gold

The last act in the 19th century drama posed advocates of the Gold Standard against proponents of a more democratic governance of capital. The debate implicated the larger banking system; each group had views about the appropriate role of credit and necessary reforms. The debate also drew participants to explicate very different approaches to economic development. Finally, we consider the trajectory in the 20th century over debates over sovereignty, land, and money as constitutional issues.

Readings:

James Livingston, *Origins of the Federal Reserve System: Money, Class, and Corporate Capitalism, 1890-1913*, Ithaca, NY: Cornell University Press, 1986, 71-102

Desan, Christine *Making Money: Coin, Currency, and the Coming of Capitalism*, Oxford: Oxford Univ. Press, 2014, chapter 11

William Jennings Bryan, Speech at the Democratic National Convention, July 9, 1896. at [URL](#)

United States v. Sioux Nation of Indians, 448 U.S. 371 (1980)

Further Background:

Bruce Carruthers and Sarah Babb, "The Color of Money and the Nature of Value: Greenbacks and Gold in Postbellum America," *American Journal of Sociology*, Vol. 101, no. 6 (May, 1996), 1556-1591