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The US Constitution and monetary powers: an analysis of the 1787 constitutional convention and the constitutional transformation of the US monetary system

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In 1787, just over three years after the Treaty of Paris recognised US independence, the founding fathers met from 25 May through 17 September in Philadelphia to craft a new national Constitution to replace the Articles of Confederation. This new US Constitution, ratified by the states and then adopted by Congress in 1789, profoundly altered the nation's monetary structure. It was nothing short of revolutionary. Before the Constitution, the principal 'inside' paper money in circulation was issued directly by government legislatures and backed by future taxes, not specie (the 'outside' money of the times). Very few banks existed – none before 1782 and only three by 1787. After the Constitution, governments were prohibited from issuing paper money. Instead, government-chartered, but privately run and largely unregulated, banks proliferated – numbering 76 by 1805 – and filled the inside paper money void by issuing banknotes backed by fractional reserves in specie. By banning the chief alternative competitor, the Constitution established the legal framework that allowed for the ascendance in the US of the modern bank-based financial system.[2]

[1] The author thanks an anonymous correspondent on a related project and discussions with Christine Desan for planting the seeds of the current paper. An earlier draft was presented at the 30th Annual Meeting of the Social Science Association, Nov. 2005, Portland, OR. The author thanks the conference participants and Howard Bodenhorn, Fred Smith, Tom Weiss, and the editor and referees for this journal for helpful comments on earlier drafts. Financial support provided by a 2003–4 American Philosophical Society Sabbatical Fellowship Grant, resource support provided by Harvard University Department of Economics, research assistance provided by Eric O'Connor, and editorial assistance provided by Tracy M. Cass and Anne Pfaelzer de Ortiz are gratefully acknowledged.

[2] For the extended version of this article with more detailed analysis and nuanced argumentation, see F. Grubb, 'The US Constitution and monetary powers', NBER Working Paper 11783. By 'outside' money I mean money (specie) that is used to clear international (trans-government-jurisdictional) debts for both private and public trades. See also J. E. Ferguson, 'Political economy, public liberty, and the formation of the Constitution', *William and Mary Quarterly*, 3rd series, 40 (1983), pp. 404–5.

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The constitutional monetary powers of interest are defined here as (1) the power to emit bills of credit – paper money, (2) the power to determine what money is legal tender, and (3) the power to charter banks. These powers restructured the means of payment in society by circumscribing the money supply. The Constitution did not directly or legally impose a common monetary unit of account or medium of exchange onto the nation. Post-Constitution, a plethora of different private banknotes and specie coins in different foreign monetary standards circulated as currency. The Constitution at best limited the medium of exchange to specie and specie-linked paper substitutes. A common monetary unit of account – the US dollar – would emerge as a byproduct of the market's optimal transactions-cost adjustment to the restructured means of payment brought about by the Constitution.[3]

At the constitutional convention the founding fathers explicitly voted not to grant the national government the power to emit bills of credit and (debatably) not to charter banks.[4] Article 1, section 10 absolutely prohibits individual states from emitting bills of credit and determining what could be legal tender. States, however, retained the right to charter banks.

These radical decisions did not emerge until rather late in the convention, and were not obviously anticipated by its prior deliberations. Thus, they were not only revolutionary in their impact, but were arguably somewhat unexpected. Why mid-convention did the founding fathers shift gears and reject the colonial experience of stable fiat paper money regimes?[5] Moreover, why did they opt for a total constitutional ban on paper money issues at all levels of government after 1787?

[3] Although the US Constitution enumerated a congressional power to 'coin money, regulate the value thereof, and of foreign coin', it allowed any specie unit of account to be used in legal tender transactions. Even the federal government accepted the gold coins of Great Britain, France, Spain and Portugal, and the silver coins of France and Spain as a legal tender until 1857. M. Muhlenman, *Monetary Systems of the World* (New York, 1895), p. 39.

[4] A common error repeated often in the literature is the claim that the convention intentionally crafted a Constitution in which Congress was allowed the power to emit bills of credit. For example, see B. Baack, 'Forging a nation state: the Continental Congress and the financing of the War of American Independence', *Economic History Review*, 54 (2002), p. 653; J. E. Ferguson, 'The nationalists of 1781–1783 and the economic interpretation of the Constitution', *Journal of American History*, 56 (1969), pp. 254, 258; C. P. Nettels, *The Emergence of a National Economy, 1775–1815* (New York, 1962), pp. 98–9; A. J. Rolnick, B. D. Smith and W. E. Weber, 'In order to form a more perfect monetary union', *Federal Reserve Bank of Minneapolis Quarterly Review*, 17 (1993), p. 3; M. M. Schweitzer, 'State-issued currency and the ratification of the US Constitution', *Journal of Economic History*, 49 (1989), p. 311. The analysis here, if nothing else, is a valuable corrective in showing that under almost any logically consistent and coherent interpretation such a claim cannot be easily sustained.

[5] Ferguson, 'The nationalists', p. 249; and 'Political economy, public liberty', p. 405. See also F. Grubb, 'US dollar currency union, 1748–1811: a quest for monetary stability or a usurpation of state sovereignty for personal gain?', *American Economic Review*, 93 (2003); 'The circulating medium of exchange in colonial Pennsylvania, 1729–1775: new estimates of monetary composition, performance, and economic growth', *Explorations in Economic History*, 41 (2004); and E. J. Perkins, *American Public Finance and Financial Services, 1700–1815* (Columbus, OH, 1994).

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The evolution of the debates and decisions at the convention may be important to our understanding of what emerged. And it may also resolve the larger political economic debate, still current, regarding the role of money creation in financing wars, the costs and benefits of public versus private inside money supply systems, and the degree of political independence and regulation of these suppliers.

The following analysis traces out and deconstructs the 'what' and 'how' of this dramatic, constitutionally manufactured transformation of governmental monetary powers during the constitutional convention.[6] These powers were not a reason why the convention was called. They were not issues at the 1785 Mount Vernon conference or at the 1786 Annapolis convention, nor were they issues in the numerous amendments to the Articles of Confederation from 1781 through 1786. The convention was convened mainly to solve trade and navigation disputes between the states and to secure an independent source of tax revenue for the national government. By giving the national government independent power to tax and to regulate trade between the states, the structural allocation of power among the states within the national government became a paramount concern and occupied most of the convention's time. However, the issue of monetary powers, like the issues of slavery and curbing the excesses of democracy, became one of the prominent subtexts of the convention.[7]

I

The British North American colonies were the first modern western economies to experiment with large-scale government issues of fiat paper money. Colonial legislatures directly issued bills of credit to pay for their expenses and to fund mortgage loans to subjects who pledged their lands as collateral. These bills were not government bonds. Typically, they earned no interest, came in small denominations, circulated at market-determined rates of exchange to specie and the paper monies of other colonies, and were accepted by the issuing government in payment

[6] I will rely primarily on convention records and supporting documents as compiled in M. Farrand (ed.), *The Records of the Federal Convention of 1787* (New Haven, CT, 1966), vols. I–III, and on Farrand's interpretation of those records and documents. (Because of the frequent citations to this source, I will refer to it in the text by volume and page number, e.g. Farrand, vol. I, p. 1.) The most detailed records of the debates at the convention are the notes taken by James Madison. These 'have remained the standard authority for the proceedings of the Convention' (Farrand, vol. I, p. xvi). As such, unless otherwise indicated, quotations of convention debates are taken from Madison's notes. At the convention, votes on motions were recorded by state, not by individual delegate. Thus, when votes are reported in the text, e.g. eight to three against, they refer to the number of states on either side of the issue.

[7] On the reasons for calling the convention, see Grubb, 'US dollar currency union'; M. Jensen (ed.), *The Documentary History of the Ratification of the Constitution*, vol. I, (Madison, WI, 1976), pp. 140–229; and R. A. Rutland (ed.), *Papers of George Mason*, vol. II (Chapel Hill, NC, 1970), pp. 814–22. See also Ferguson, 'The nationalists'; and 'Political economy, public liberty'.

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of its fees and taxes. These bills circulated inside, but seldom outside, the colony of issue and augmented specie monies, which only entered and exited the colony through merchant foreign trade and government transfers.

By the middle of the eighteenth century, these bills comprised a substantial portion of the money supply within their respective colonies. Colonial legislatures backed their paper money by linking it to future taxes and mortgage payments, not to specie. Each colony maintained the market value of its paper money through its timely injection and then redemption (i.e. through its fiscal policy), thereby controlling the quantity of paper money in circulation.[8]

Through an extension of the Bubble Act in 1741 and the Currency Acts of 1751 and 1764, the British government first effectively eliminated banks and then imposed regulations on paper money issues within the colonies. The Currency Acts allowed the colonies to emit paper money as long as it met two requirements, namely (1) that it not be made a legal tender and (2) that ample taxes be put in place to redeem each issue in a reasonable time. These two regulatory pillars helped make the colonial paper money system function successfully. Some colonies had instituted such policies of their own accord long before these regulations were passed. After 1748, unlike most other colonies, Massachusetts renounced paper money and returned to the specie standard for the rest of the colonial period.

While paper money could not be made a legal tender for all debts, it was always accepted at par in payment for the issuing government's taxes. The property of a *de facto* legal tender for public debts provided the anchor that allowed bills to circulate as cash within the issuing colony. By 1750 colonial legislatures had learned, for the most part, how to handle their tax-backed paper money regimes. This colonial monetary system produced remarkable long-run stability in terms of low inflation rates and stationarity in prices, exchange rates, and purchasing power parity.

This system continued through the Revolution. Under the Articles of Confederation both individual states and the Continental Congress issued their own tax-backed paper money. Beginning in 1775, the Continental Congress issued bills of credit – Continental dollars – that depreciated to near zero and ceased to circulate after April 1781.[9] Without the power to levy taxes directly, Congress under the

[8] In addition to the standard references to Ferguson, Grubb and Perkins cited above, see K. L. Behrens, 'Paper money in Maryland 1727–1789', *Johns Hopkins University Studies in Historical and Political Science*, 41 (1923); M. D. Bordo and I. A. Marcotte, 'Purchasing power parity in colonial America: some evidence for South Carolina 1732–1774', *Carnegie-Rochester Conference Series on Public Policy*, 27 (1987); L.V. Brock, *The Currency of the American Colonies, 1700–1764* (New York, 1975); C. Priest, 'Currency policies and legal development in colonial New England', *The Yale Law Journal*, 110 (2001); and B. Smith, 'Some colonial evidence on two theories of money: Maryland and the Carolinas', *Journal of Political Economy*, 93 (1985).

[9] General references on the revolutionary period are: A. Bezanson, *Prices and Inflation during the American Revolution: Pennsylvania, 1770–1790* (Philadelphia, 1951); C.W. Calomiris, 'Institutional failure, monetary scarcity, and the depreciation of the Continental', *Journal of Economic History*, 48 (1988); Nettels, *Emergence of a National Economy*, pp. 1–44; H. Rockoff, *Drastic Measures: A History of Wage and Price Controls in the United States* (New York, 1984), pp. 14–42.

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Articles of Confederation could not credibly commit to redeeming its bills of credit. This structural flaw along with the exigencies of wartime finance and doubts about the legitimacy of the Revolutionary government were the likely sources of the monetary troubles behind the Continental dollar, not just the emission of paper money *per se*. The Treaty of Paris resolved the issue of legitimacy and wartime financial pressure. And one of the primary goals of the 1787 constitutional convention was to correct the structural flaw by giving the national government the direct power of taxation. This in turn would let Congress credibly commit to redeeming its bills of credit and so potentially solve the national government's paper money problems.

Each of the 13 colony/states also issued its own paper money during the Revolution. They too depreciated but to a lesser extent than did the Continental dollar, in part because states had the power to tax and so could credibly back their currencies. Still, the overwhelming cost of financing the war and the net specie export drain caused by wartime trade disruptions swamped their ability to raise sufficient taxes to back note issues fully.

After the collapse of the Continental dollar in 1781, the national government did not issue fiat paper money. New issues by states were also less common post-Revolution. Within three years of the Treaty of Paris, seven of the 13 states – Pennsylvania, North Carolina, and South Carolina in 1785; Rhode Island, New York, New Jersey and Georgia in 1786 – issued paper money to pay taxes and to fund land mortgages. State legislatures in Virginia, Maryland, New Hampshire and Massachusetts were also debating whether or not to issue new bills of credit.[10] States were considering such measures because of the substantial post-Revolution trade depression that devastated their economies between 1782 and 1790. The problem facing the US and the founding fathers in the half decade leading up to the constitutional convention was not inflation, but deflation caused by a temporary but substantial trade deficit that drained foreign reserves (specie) out of the economy.[11]

Some founding fathers clearly saw this dilemma. James Wilson, convention delegate from Pennsylvania and a major architect of the constitutional monetary powers, explained in 1785:

> The disagreeable state of our commerce has been the effect of extravagant and injudicious importation . . . [W]e observed no proportion between our imports, and our produce and other natural means of remittance. What was the consequence? Those who made any payments [to foreigners] made them chiefly in specie; and in that way diminished our circulation.[12]

[10] Grubb, 'US dollar currency union'; W. Holton, '"Divide et impera": *Federalist* 10 in wider sphere', *William and Mary Quarterly*, 62 (2005), p. 198.

[11] W. Holton, 'Did the Constitution save the economy?', *Journal of American History*, 42 (2005); Nettels, *Emergence of a National Economy*, pp. 45–64, 105.

[12] R. G. Adams (ed.), *Selected Political Essays of James Wilson* (New York, 1930), p. 145.

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Likewise, James Madison, Virginia delegate and one of the principal architects of the Constitution, remarked in a letter to Jefferson dated 18 March 1786 that:

> Another unhappy effect of a continuance of the present anarchy of our commerce, will be a continuance of the unfavorable balance on it, which by draining us our metals furnishes pretexts for the pernicious substitution of paper money, for indulgences to debtors, for postponement of taxes. In fact most of our political evils may be traced up to our commerce ones . . . This view of our situation presents the proposed Convention as a remedial experiment which ought to command every assent . . . The price of our Staple is down . . . [and the] price has notwithstanding been falling ever since . . . The scarcity of money must of necessary sink the price of every article.[13]

Similar views were expressed by other pivotal convention delegates (e.g. Alexander Hamilton and Gouverneur Morris) and in the popular press and writings of other prominent people.

Urban price indices, denominated in their respective state paper currency, also show significant deflationary pressures from the end of the Revolutionary War in 1783 until the adoption of the Constitution in 1789.[14] For example, the Philadelphia price index fell 18 per cent; the Charleston, South Carolina, price index fell 20 per cent; and the New York City price index fell at least 6 per cent. When prices are declining, the currency is actually appreciating in terms of real goods and services. So, when the founding fathers (and most scholars to this day) speak of depreciation of state paper money, they are referring to its value in terms of specie (foreign exchange).

State paper money appreciating in terms of real goods but depreciating in terms of specie implies that specie was getting increasingly scarce relative both to goods and paper money. This is consistent with a massive short-run unexpected trade deficit temporarily draining specie overseas. In other words, the specie price of goods in the US between 1783 and 1789 must have been falling even faster than the paper money price of goods. The problem was not with state paper money *per se*, but with foreign trade and specie. In fact, the states that stepped in to issue paper money post-Revolution can be seen as trying to stem the price collapse due to the collapse of the specie money supply by providing temporarily needed liquidity to support at least domestic trade.[15]

The key difference between the colonial system and this latter state system of paper money, with a few notable exceptions, was the extensive use of legal tender laws. This was caused by the exigencies of wartime finance and the trade recession

[13] R. A. Rutland (ed.), *Papers of James Madison*, vol. VIII (Charlottesville, VA, 1973), pp. 502–3. See also Holton, 'Did the Constitution'.

[14] Grubb, 'US dollar currency union', pp. 1782–3. See also A. Bezanson et al., *Wholesale Prices in Philadelphia, 1784–1861* (Philadelphia, 1936), p. 392; and A. H. Cole, *Wholesale Commodity Prices in the United States, 1700–1861* (Cambridge, MA, 1938), pp. 121–2.

[15] Holton, 'Did the Constitution'.

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that led to a net drain of specie out of the economy.[16] Legal tender laws were price controls, and wars and their immediate aftermath have often necessitated some type of price-control exercise.[17]

Legal tender laws have an economic impact when the official tender is not competitively priced in the marketplace, typically due to government-imposed price or exchange rate controls that artificially peg its value above the market rate. To distinguish this condition from the formal legal view, it will be called 'binding legal tender'. Under this condition a person must accept the official currency at its par value in payment of a debt and so receive less than the market equivalent of other goods or monies. As such, this person is no longer indifferent between payment in the official tender or an alternative form. Without a binding legal tender law, by contrast, the market rate of exchange between the official currency and specie could deviate from the par rate, and currency prices would adjust accordingly.

In the colonial and early republican periods legal tender laws implied binding legal tender. Governments resorted to this legal expedient typically during wartime emergencies and/or periods characterised by a temporary unexpected dearth of specie. It is the binding legal tender problem that the founding fathers faced.

The founding fathers seemed to understand the difference between binding legal tender laws and the emission of paper money *per se*. Most had lived and commercially prospered before the Revolution under colonial paper money regimes. It would seem unlikely that they would not have been aware of British regulations regarding legal tender status versus paper money *per se*. In addition, several notable individuals like Connecticut delegate Roger Sherman and Peyton Randolph, uncle of Virginia delegate Edmund Randolph, had clearly recognised the difference between binding legal tender laws and the emissions of paper money *per se* in their earlier writings.[18]

This distinction was also made by many founding fathers shortly before the convention. For example, New Jersey delegate William Paterson wrote in 1786, 'An increase of paper money *if it be a tender*, will destroy what little credit is left; will bewilder conscience in the maze of dishonest speculations; will allure some and constrain others into perpetuation of knavish tricks, will turn vice into *legal* virtue; and will sanctify iniquity *by law*.'[19] The debate in the *New Jersey Gazette* on

[16] W. Holton, '"From the labours of others": the war bonds controversy and the origins of the Constitution in New England', *William and Mary Quarterly*, 61 (2004), pp. 271–316; and 'Did the Constitution'; Nettels, *Emergence of a National Economy*, pp. 23–88. See also Rockoff, *Drastic Measures*.

[17] Rockoff, *Drastic Measures*.

[18] M. E. Bradford, *Founding Fathers: Brief Lives of the Framers of the United States*, 2nd edn (Lawrence, KS, 1994), pp. 22, 166; Philoeunomos [Sherman, Roger], *A Caveat Against Injustice or an Enquiry into the Evil Consequences of a Fluctuating Medium of Exchange, Wherein is Considered, Whether the Bills of Credit on the Neighbouring Governments, are a Legal Tender in Payments of Money*. Reprinted in *Pennsylvania Archives*, 8th series, 4 (1931); [P. Randolph], *A Letter to a Gentleman in London from Virginia* (Williamsburg, VA, 1759).

[19] C. Warren, *The Making of the Constitution* (Littleton, CO, 1993), p. 551 [italics added].

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30 January 1786 focused on the difference between a non-legal tender and a binding legal tender paper money, where the latter was clearly seen as bad. New Jersey nevertheless made its 1786 emission of paper money a legal tender.

In his address to the New York Assembly in February 1787, just a few months before the convention, Hamilton pointed out the potential regional inequities that would arise if states paid their share of federal taxes in their own state paper monies. In effect, binding legal tender laws would allow states with higher paper money depreciation rates to pay less tax in specie equivalents than states with lower paper money depreciation rates.[20] Hamilton's logic, thus, presumes the problem is legal tender laws, not emissions of paper money *per se*.

Similarly, in a letter written on 15 April 1787 just a month before the convention, Pennsylvania delegate Benjamin Franklin commented, 'What you mention of our paper money, if you mean that of this State, Pennsylvania, is not well understood. It was made before my arrival [1785], and *not being a legal tender can do no injustice* to anybody nor does anyone here complain of it, though many are justly averse to an increase of the quantity at this time . . .' Likewise, in a letter to Virginia delegate George Mason, Richard Henry Lee wrote, 'Knaves assure, and fools believe, that calling paper "money" *and making it a tender* is the way to be rich and happy: thus the national mind is kept in continual disturbance by the intrigues of wicked men for fraudulent purposes, for speculative designs.'[21] And in the ratification debates in Pennsylvania shortly after the convention, Wilson remarked, 'It is true we have *no tender law* in Pennsylvania; but the moment you are conveyed across the Delaware [into New Jersey] you find it haunts your journey and follows close upon your heels. The paper [in New Jersey] passes commonly at twenty-five or thirty percent discount. How insecure is property!'[22]

II

The convention began in earnest on 29 May with an address by Edmund Randolph of Virginia. Speaking for the Virginia delegation he explained: (1) the characteristics of a proper government, (2) the defects of the Articles of Confederation, (3) the present dangers being faced, and (4) a remedy, 15 resolutions traditionally known as the Virginia Plan (Farrand, vol. I, pp. 15–28; vol. IV, pp. 593–4). In assessing the defects of the Articles of Confederation, Randolph praised its authors, but noted that they could not have foreseen certain problems, in particular 'the havoc of paper money' in 1776. Randolph's choice of words without further need of elucidation would be consistent with a common understanding among the delegates that the

[20] H. C. Syrett, *Papers of Alexander Hamilton*, vol. IV (New York, 1961), p. 87. Hamilton's argument here is basically the same as that made by Charles Pinckney at the opening of the convention.

[21] A. H. Smyth (ed.), *The Writings of Benjamin Franklin*, vol. IX (New York, 1907), p. 561; Warren, *Making of the Constitution*, pp. 551–2; Rutland, *George Mason*, p. 861 [italics added].

[22] Jensen, *Documentary History*, vol. II, p. 500 [italics added].

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paper money emissions of the colonial governments prior to the Revolution had not caused havoc. In other words, fiat paper money *per se* was not the problem.

When Randolph elaborated the Virginia Plan of government, he presented no specific resolution on paper money. However, resolution 6 would give the national government new general powers that could potentially be applied to monetary issues. 'The National Legislature,' it stated, 'ought to be impowered . . . to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union . . .' Deciding what monies could be a legal tender in interstate trade and national government transactions would appear to fall within this new power.

State paper money that was made a legal tender only for the payment of its own taxes would appear to be untouchable by national legislation. Such paper money would not 'contravene . . . the articles of Union' nor would the 'harmony of the United States . . . be interrupted by this exercise of individual [state] Legislation . . .' This resolution can be interpreted as restoring one pillar of the British colonial monetary regime. As strictly worded, it is doubtful that the resolution empowered Congress to ban state paper money emissions *per se*.[23]

Finally, resolution 6 would also appear to give the national legislature the power to issue its own national paper currency, which with its new powers of direct taxation it could redeem in a timely fashion. Thus, the Virginia Plan potentially restored the other pillar of the colonial monetary regime, i.e. a stable fiat paper money (albeit on a national level) fully backed by future tax receipts. According to this interpretation, the Virginia Plan endowed the national government with the powers and constraints required to reestablish the colonial monetary regime.

At the end of the same day, Charles Pinckney of South Carolina read his plan of government to the convention. Pinckney's speech and plan were not recorded, though Madison wrote that his and the Virginia Plan were 'referred to the Committee of the whole [the entire convention] . . .' According to Robert Yates of New York, Pinckney 'confessed that it [his plan] was grounded on the same principle as of the above resolutions [the Virginia Plan]' (Farrand, vol. I, pp. 16, 23, 24). Over the next two months the convention debated the details of the Virginia Plan, using it as the edifice for a new plan of government. The Pinckney Plan disappeared into the shadows, but would reemerge after 26 July in the Committee of Detail and reshape the amended Virginia Plan on monetary issues. It is important, therefore, to reconstruct Pinckney's speech and plan of 29 May with regard to monetary powers.

[23] On 29 May, while taking notes on Randolph's speech, James McHenry of Maryland jotted down, 'Congress ought to possess a power to prevent emissions of bills of credit' (Farrand, vol. I, p. 26). Was McHenry quoting Randolph's speech or was this phrase simply McHenry's own sentiment expressed in his notes? The evidence strongly points against the former and in favour of the latter interpretation; see Grubb, 'US Constitution and monetary powers' for details.

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After the convention, Pinckney published a pamphlet purporting to be the speech he delivered at the opening of the convention. It is uncertain how much of this material comprises additions and deletions after the fact (Farrand, vol. III, pp. 106–23, 595–609). Pinckney argued that the national Congress should have the power both to revise and negate any state laws that it finds improper. 'The proceedings of the States,' Pinckney wrote, 'which merely respect their local concerns, will always be passed [by the national congress] as matters of form, and objections only arise where they shall endeavor to contravene the Federal Authority' (Farrand, vol. III, pp. 112–15). Applied to monetary issues, it would lead to the same outcome as the Virginia Plan. The national government could not stop states from issuing a non-legal tender inside paper money, because that would be a purely local concern. It could prevent states from making their paper money a legal tender, particularly in outside-money transactions.

Pinckney insisted that the national government should have 'The exclusive right of . . . determining in what species of money the common Treasury shall be supplied.' 'If you allow the States to . . . emit Bills of Credit,' he argued, 'they will force you to take them in payment for Federal Taxes and Duties . . . and though, Congress may determine, that nothing but Specie shall be received in payment of Federal Taxes or Duties, yet, while the States retain the rights they at present possess, they will always have it in their power, if not totally to defeat, yet very much to retard and confuse the collection of Federal Revenues.' Still, despite his concerns about state paper monies, he concluded only that the federal government should have 'the exclusive right of coining, and determining in what manner the Federal Taxes shall be paid' (Farrand, vol. III, pp. 117–18). The New York State Assembly addressed the same issue early in 1787 when it debated how the states would pay for Congress' proposed Continental Impost (national tariff).[24]

Taken out of context, the second sentence quoted above suggests that Pinckney favoured an outright ban on state emissions of paper money. A careful reading of the full passage yields an alternative interpretation. Pinckney's reference to states' retaining 'the rights they at present possess . . .' could be referring to their power to make money a legal tender, not to the power to issue paper currency *per se*. This interpretation, in turn, explains why Pinckney only proposes that the national government be given the power to determine 'in what manner Federal Taxes shall be paid' and makes no proposal to ban state emissions of paper money.[25]

From 30 May to 26 July the entire convention debated and amended the Virginia Plan, including hearing rival plans. Monetary powers, while not directly addressed, remained a subtext and played a role in defining the future path taken. The first explicit mention of state paper money in the convention did not occur until 6 June, in the debate over whether the national legislature should be elected by the people

[24] Hamilton's speech indicates concern with binding legal tender laws and not the emission of paper money *per se*; Syrett, *Alexander Hamilton*, vol. IV, p. 87.

[25] See also the interpretation in Farrand, vol. III, pp. 134–7.

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or by the state legislatures.[26] Mason argued that 'there was a better chance for proper elections by the people . . . than by the State Legislatures'. As an example, he cited paper money, which 'had been issued by the latter when the former were against it' (Farrand, vol. I, p. 134). Pinckney and Elbridge Gerry of Massachusetts likewise referred to the paper money experience of their own states to make the contrary case in support of election by state legislatures, not the people (Farrand, vol. I, pp. 137, 154–5).[27]

This initial foray into the state paper money controversy illustrates two rhetorical devices used at the convention that would continue and escalate in intensity over the remainder of the convention. The first conflates paper money emissions *per se* with legal tender powers. Pinckney's statement distinguished between the two, but only for the first and second-to-last time at the convention. Instead, as illustrated by Mason's and Gerry's remarks, the subsequent comments on monetary powers will increasingly treat the two as synonymous. The rhetoric will then just refer to the emission of paper money *per se* – forcing it to take on the entire mantle of what is evil about legislative monetary powers. The second device is the presumption that paper money *per se* is bad and that the power to emit paper money is evil.

On 8 June Pinckney and Madison proposed strengthening resolution 6 of the Virginia Plan so that the national legislature would have the power to negate any state law it thought was improper, rather than just those contravening the articles of union. Though not directly mentioned, this change would give the national legislature the unconditional power to stop all state emissions of paper money if it so wanted. In the ensuing debate, Gerry argued that he 'could not see the extent of such a power, and was against every power that was not necessary . . . [But] He had no objection to authorize a negative to paper money and similar measures.' Gerry's money comment was not taken up by the convention. Sherman wanted the cases enumerated where a negative could be applied. However, Wilson again stated, 'A definition of the cases in which the Negative should be exercised, is impracticable.' Others thought it would become a tool whereby the large states would tyrannise the small states. The convention voted down the change, seven states to three (Farrand, vol. I, pp. 162–8).

Gerry's comment is the first and last mention of a specific monetary power suggested for the national government before 26 July, when the convention's deliberations were submitted to the Committee of Detail. On 15 June Paterson presented what is traditionally referred to as the New Jersey or 'small state' Plan, but it did not advance the debate over monetary powers (Farrand, vol. I, pp. 241–80; vol. III,

[26] Randolph's opening speech only referred to the 'havoc of paper money'. As such, it may have been only referring to the national government's paper Continental dollar.

[27] Hamilton's notes for 6 June also mention paper money. His notes, however, are cryptic and lacking in context, and so their meaning is hard to interpret. He wrote, 'Paper money is capable of giving a general impulse. It is easy to conceive a popular sentiment pervading the E states' (Farrand, vol. I, pp. 146–7).

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pp. 611–15). On 18 June Hamilton's major speech also contained nothing new on monetary powers, although he did take the opportunity to join the critics of state paper money issues, which he regarded as an evil that had to be stopped (Farrand, vol. I, pp. 282–311; vol. III, pp. 617–30).

On 19 June Madison argued that the New Jersey Plan would not 'prevent trespasses of the States on each other'. As an example, he referred to 'emissions of paper money', which he insisted 'threatened danger not to the harmony only, but the tranquility of the Union'.[28] Madison, thus, decries the 'evil' of states' rights to issue paper money, but only by equating it to their power to designate their official currency as a legal tender.

On 16 and 17 July the convention revisited the controversial clause of resolution 6. Of particular interest is Sherman's proposal to rule out national legislation that would 'interfere with the Government of the individual States in any matters of internal police which respect the Government of such States only, and wherein the General welfare of the United States is not concerned'. Gouverneur Morris opposed this wording, because '[t]he internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected' (Farrand, vol. II, pp. 25–6). Sherman's proposal was voted down, eight states to two, and the original clause of resolution 6, with some slight rewording, was passed, six states to four (Farrand, vol. II, pp. 25–6).

The debate over the clause, as it applies to monetary powers, is most relevant. A strict construction of the clause would appear to give the national legislature no power to stop state emissions of paper money *per se*, but only power to stop them from declaring said money a legal tender in interstate or national transactions. However, Morris appears to construe the clause more broadly, namely to include national prohibition of even a purely inside state paper money. Morris's statement seems to give the national legislature a final say over any state legislation that will possibly affect a citizen of another state, because it may disrupt the 'harmony of the United States'.

Yet, later on the same day, Morris seems to contradict himself and strongly opposes giving the national legislature the power to veto the 'laws passed by the several States' (Farrand, vol. II, pp. 27–8). Taken together, Morris's statements would appear to yield one consistent and narrow concern, i.e. to prohibit states from issuing paper money *per se*. In a letter to Timothy Pickering on 22 December 1814, Morris admitted that he had 'little recollection' of the details of the convention, but

[28] Farrand, vol. I, pp. 317–18. The reference here is to the paper money emitted by Rhode Island in 1786. Rhode Island made its paper money a legal tender so that out-of-state creditors would have to accept its paper money for payment of loans made within Rhode Island. The retaliation of which Madison speaks was laws passed by Connecticut and Massachusetts, which allowed their citizens to repay Rhode Island debts in Rhode Island paper money; Grubb, 'US dollar currency union', p. 1782.

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that 'Propositions to countenance the issue of paper money, and the consequent violation of contracts, must have met with all the opposition I could make' (Farrand, vol. III, pp. 419–20). Significantly, Morris continued to muddle the lines between paper money issues *per se* and legal tender laws by equating the former to the 'consequent violation of contract'.

On 17 July the convention also revisited the clause of resolution 6 giving the national legislature the power 'To negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union, or any treaties subsisting under the authority of ye Union.' Although agreed to on 31 May without debate or dissent, it now excited significant opposition and was deleted by a vote of seven states to three (Farrand, vol. II, pp. 27–8). Removal of this power would make it more difficult for the national government using the power in the prior clause in resolution 6 to stop a state from issuing a legal tender paper money.

On 21 July, while debating whether the national judiciary along with the executive should have the power to revise or veto laws passed by the national legislature, Morris continued the drumbeat of the evils of legislative emissions of paper money *per se*. He said, 'Emissions of paper money, largesses to the people – a remission of debts and similar measures, will at sometimes be popular, and will be pushed for that reason . . . The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether' (Farrand, vol. II, p. 76). By treating the power to issue paper money as 'largesses to the public' and 'a remission of debts', Morris again confuses it with legal tender laws.[29]

On 26 July the convention's deliberations were submitted to a Committee of Detail to craft a draft constitution. Up to this point no explicit or direct proposals regarding monetary powers had been made. At best, what remained of resolution 6 of the Virginia Plan potentially gave the national government the power to determine what monies could be legal tender for cross-state trade and in transactions with the national government, but could probably not be construed as giving the national government power to prohibit state emissions of a non-legal tender inside paper money. However, by repeatedly conflating paper money with legal tender laws, the rhetoric of Gerry, Mason, Madison, Hamilton and Morris set the stage for the Committee of Detail to incorporate explicit clauses into the Constitution dealing with paper money emission *per se*. Rhetoric alone, however, may not explain this innovation. What may have fully convinced delegates was a timely demonstration of the 'evils' of state paper money on the streets of Philadelphia.

A riot over Pennsylvania State paper money broke out in Philadelphia in mid-July. The *Pennsylvania Herald and General Advertiser* described two incidents – the first on 14 July:

A correspondent observes that the speculations of a few artful people have been frequently found extremely detrimental to the public; and no class is too low; that it cannot by a bold

[29] Holton, '"From the labours of others"'.

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combination, accomplishith its object. The hucksters lately came to a resolution not to receive the copper-currency at less than 24 pieces for a shilling; but this depreciation was not publicly divulged til they had passed all their stock of half-pence at the former value. There are others who derive a livelihood from the exchange between the current mediums, that without any regard to the relative value, keep it in constant fluctuation, and, from day to day, pronounce upon the rate at which paper-money shall be taken for specie. The first instance is a reproach to the policy and morals of the state, for government should never leave it in the power of one part of the citizens to take advantage of the innocent ignorance of another; and the second instance is a reproach to the folly and weakness of those people, who will passively adopt the suggestions of interested men, instead of exercising their own judgment to show, that the security of the paper money is of an improving rather than a decaying nature.

And the second on 21 July:

A correspondent remarks that the panic which prevailed on Saturday last [14 July], respecting the paper-money of this state has not been more distressing to the poor, than astonishing to the intelligent part of the community. Many causes have been assigned for the sudden event, some grounded on mercantile negotiations, that never existed, and others drawn from mistaken or perverted interpretation of an expression which lately dropt from an eminent law character – but not one can stand a rational investigation.

Convention delegates were aware of the goings-on and took away a darker view than that painted in the newspaper. In a letter dated 18 July 1787, for example, Madison related the events to Thomas Jefferson, who was in Paris:

The paper money here ceased to circulate very suddenly a few days ago ... The entire stagnation is said to have proceeded from a combination of a few people with whom the Country people deal on market days against receiving it. The consequence was that it was refused in the market, and great distress brought on the poorer Citizens. Some of the latter began in turn to form combinations of a more serious nature in order to take revenge on the supposed authors of the stagnation. The timely interposition of some influential characters prevented a riot, and prevailed on the persons who were opposed to the paper, to publish their willingness to receive it. This has stifled the popular rage, and got the paper into circulation again ... Nothing but evil springs from this imaginary money whenever it is tried, and yet the appetite for it, when it has not been tried, continues to be felt.[30]

An interesting question for further research is whether these troubles were engineered by Morris's 'monied interest' and/or the Bank of North America to help pave the way for an outright constitutional ban on paper money. Allan Nevins concluded that the bank was involved. 'In July of 1787, by concerted action,' he stated, 'the banks and markets of Philadelphia ceased to accept them [Pennsylvania State paper money].'[31]

[30] J. M. Smith (ed.), *The Republic of Letters: The Correspondence Between Thomas Jefferson and James Madison, 1776–1826*, vol. I (New York, 1995), p. 484.

[31] A. Nevins, *The American States During and After the Revolution, 1775–1789* (New York, 1924), p. 522.

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The timing of the stoppage by itself is suspicious. This event took place soon after Morris, a chief operating officer of the Bank of North America, returned to the convention from New York, where he had been since the end of May. It also occurred right before the convention decided to revisit resolution 6 of the Virginia Plan, and right before Morris began his drumbeat on the evils of paper money in his speeches from 17 July to 21 July. And it occurred just before the convention's deliberations were turned over to the Committee of Detail of which Wilson, a member of the board of the Bank of North America, was a key member.

Up to this point Pennsylvania State paper money had remained relatively stable over the long run as measured by its relatively constant (stationary with no trend) exchange rate to pounds sterling from 1784 to 1790.[32] Finding a combination of speculators that could disrupt the specie exchange in Philadelphia and that did not somehow involve the Bank of North America would be difficult. In any event, whether by conspiratorial craft or lucky accident, this overlooked episode may have been an important contributor to the radical transformation in constitutional monetary powers about to be undertaken at the convention.

III

Assigned the task of drafting a constitution, the Committee of Detail consisted of Oliver Ellsworth of Connecticut, Gorham, Randolph, Rutledge and Wilson (Farrand, vol. II, pp. 85, 97–8, 128–37). Five working drafts attributed to the committee have survived – four written by Wilson, with the last containing emendations by Rutledge, and one written by Randolph with emendations by Rutledge. Working backwards from the final product reported to the convention on 6 August, Wilson's last working draft (with emendations by Rutledge) appears to be the principal penultimate draft of the committee. Where Randolph's draft fits within the first three Wilson drafts is hard to say; they overlap in some ways but not in others.[33] Randolph's draft, unaltered by Rutledge, and the first two Wilson drafts say nothing about the power to emit paper money or determine legal tender either by the national government or by the state governments.

Wilson's third draft includes for the first time in the constitution-creation process an explicit clause enumerating a monetary power, namely a restriction on legal tender – 'The Legislature of US shall have the exclusive Power . . . of determining in what Specie of Money the public Treasury shall be supplied' (Farrand, vol. II, pp. 158–9). Nothing else, however, is said prescriptively or proscriptively in this draft about the power to emit paper money or about determining what monies may be a legal tender within state jurisdictions. This power as explicitly enumerated here by Wilson was not mentioned in the records of the convention. But as

[32] Bezanson, *Wholesale Prices*, p. 346; Grubb, 'US dollar currency union', p. 1786.

[33] Farrand, vol. II, pp. 137–75, 177–89; W. M. Meigs, *The Growth of the Constitution in the Federal Convention of 1787* (Philadelphia, 1900), pp. 316–24.

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argued above, it seems to fall within the scope of the amended resolution 6 of the Virginia Plan. The wording of Wilson's monetary power clause closely follows the wording in Pinckney's speech to the convention on 29 May, as published after the convention (Farrand, vol. III, p. 118).

At this juncture, the proposed constitutional monetary powers closely replicated the colonial monetary system. In Wilson's third draft the national government and the state governments still retained the power to emit paper money. The national government had been given an independent power to tax directly, and so it could credibly commit to redeem its paper money. And like British colonial monetary regulations, the national government had the power to determine what could be legal tender for national government transactions.

From this point, the convention embarked on a path leading to a radical departure from the colonial system. In Wilson's last (fourth) working draft he dropped the legal tender restriction clause and substituted in its place the clause, with Rutledge reordering the words slightly, 'No State shall . . . without the Consent of the Legislature of the United States emit Bills of Credit.' In addition, the national legislature's power to emit bills of credit, part of the old powers carried over from the Articles of Confederation, was now made an explicitly enumerated power given to the national legislature (Farrand, vol. II, pp. 168–9).

No statement about legal tender powers at any level of government was included in Wilson's last draft. Perhaps, Wilson reasoned that congressional power to ban states from emitting paper money would solve the problem of determining what monies could be a legal tender for national government transactions; i.e. the former power would encompass the latter. But this change was also a radical step; it gave Congress, for the first time, the power to ban states from issuing even a non-legal tender inside paper money. This change would appear to exceed the principles laid out so far by the convention that limited national powers from interfering in matters purely internal to a state.

Besides emendating Wilson's last working draft, Rutledge also added comments to Randolph's draft. In a margin note to Randolph's enumerated powers of the national government 'To regulate coining', Rutledge inserted 'no State to be perd. in future to emit Paper Bills of Credit witht. The App: of the Natl. Legisle nor to make any Thing but Specie a Tender in paymt of debts' (Farrand, vol. II, p. 144). Given that the second half of this clause does not appear in Wilson's last working draft, which Rutledge had also emendated but does appear in the committee's final draft submitted to the convention, it seems likely that Rutledge added this note to Randolph's draft near the very end of the committee's deliberations. Perhaps Rutledge worried that Wilson's version, which limited congressional power to banning state paper money, would not necessarily solve the legal tender problem. States might declare something else to be a legal tender, such as bonds, state banknotes, tobacco contracts, or land deeds. If trans-jurisdictional (outside) money was always to be specie, then states had to be prevented from making 'any Thing but Specie' a legal tender.

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The draft constitution submitted by the committee to the convention on 6 August explicitly prohibited states 'without the consent of the Legislature of the United States ... from emit[ting] bills of credit, or mak[ing] any thing but specie a tender in payment of debts ...'[34] By explicitly enumerating individual monetary powers, the committee was forcing the convention to deal with each separately, not with an amalgam of implied monetary powers. Strikingly, Wilson, along with his Bank of North America protégé Morris, would lead the attack on the very enumerated monetary clauses that he had originally penned.

IV

From the initial Virginia Plan at the onset of the convention through all the convention's deliberations given to the Committee of Detail, the national legislature was designed to have all the rights and powers it possessed under the Articles of Confederation. The Committee of Detail drafted a list of its new and enlarged powers. In Wilson's last draft but not before, the list included the power to 'emit bills on the credit of the United States' (Farrand, vol. I, p. 21; vol. II, pp. 131, 142–4, 158–9, 167–9, 181–3). Yet, under the Articles of Confederation, Congress possessed and had exercised this power. Why the Committee of Detail took this unprecedented step and inserted an 'old' power into the last draft of specifically enumerated 'new and enlarged' powers of the federal government is unclear. One thing is clear; it made this 'old' power easier to attack and expunge.

By granting Congress the new power to tax directly, the draft constitution fixed the structural problem under the Articles of Confederation that caused the Continental dollar disaster. Under the proposed constitution, paper money issued by the federal government, if not made a legal tender, should have worked as well as paper money in the late colonial period. However, within ten days of receiving this draft constitution, the convention decided that under absolutely no circumstances should the federal government be allowed to issue paper money.

Gouverneur Morris led the attack on this power. In the 15 August debate Morris rejected the congressional power to override an executive veto, but proposed a compromise requiring a 3/4 rather than a 2/3 override vote of Congress. According to Madison, Morris

> dwelt on the importance of public Credit, and the difficulty of supporting it without some strong barrier against the instability of legislative Assemblies. ... The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. (Farrand, vol. II, p. 299)

The convention voted for a 3/4 rule (Farrand, vol. II, p. 301).

[34] Farrand, vol. III, pp. 182, 187; Meigs, *Growth of the Constitution*, pp. 134–5, 180–2, 311.

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Morris's argument explicitly links the ruinous problems of paper money to 'war'.[35] Morris may have been trying to link the general 'evils' of paper money *per se* to the disastrous episode of the Continental dollar, even though the debate was not about wartime versus peacetime powers. Morris never actually considered whether wartime inflation could have been avoided, regardless of the monetary powers of the federal government. Moreover, he implies at least that paper money issued by the federal government under the new constitution would not be a problem during peacetime.

His second indirect attack came early on 16 August, when the convention debated whether the federal government should have the power to tax exports. Morris favoured '[t]axes on exports ... [as] a necessary source of revenue'. 'For a long time,' he argued, 'the people of America will not have money to pay direct taxes. Seize and sell their effects and you push them into Revolts.' The convention, however, for other political reasons eventually rejected this power (Farrand, vol. II, pp. 307, 374, 657).

Morris's comment comes close to admitting the true source of Shay's Rebellion in Massachusetts from late 1786 to early 1787, the likely reference to 'Revolts' in the above quotation. Because Massachusetts had eliminated its inside paper money and mandated tax payments in specie, a negative trade shock could precipitate a severe liquidity crisis. Tax delinquents would be forced into bankruptcy, and their property would be sold at fire-sale bargains. The political crisis would be magnified, if those who benefited from distressed property sales actually or were just suspected of having engineered the regressive monetary-tax policies.

This scenario puts Shay's Rebellion, as well as the Whiskey Rebellion in western Pennsylvania in 1796 and Rhode Island's monetary policy in 1786, in a very different light.[36] Federalist rhetoric criticises these excesses of democracy, where the indebted majority favoured inflationary paper money at the expense of the minority of creditors. By contrast, they may illustrate the excess power of the minority, who exploited their political power to alter the rules at the expense of the poor.[37]

Having set the stage, late on 16 August Morris moved to strike out the phrase 'and emit bills on the credit of the United States' from the enumerated powers granted

[35] As Treasury Secretary in 1790 Hamilton also adopts this position in his *Report on a National Bank*: 'The emitting of paper money by the authority of Government is wisely prohibited to the individual States, by the National Constitution... In times of tranquility, it [state-issued paper money] might have no ill consequences, it might even perhaps be managed in a way to be productive of good; but in great and trying emergencies, there is almost a moral certainty of it becoming mischievous'; J. B. Freeman (ed.), *Alexander Hamilton: Writings* (New York, 2001) pp. 591–2.

[36] H. M. Bishop, 'Why Rhode Island opposed the Federal Constitution', *Rhode Island History*, 8 (1949); T. Bouton, 'Tying up the Revolution: money, power, and the regulation in Pennsylvania, 1765–1800', unpublished PhD Dissertation, Duke University, 1996; Grubb, 'US dollar currency union', pp. 1789–90; Holton, '"From the labours of others"'.

[37] Luther Martin, convention delegate from Maryland, made similar observations (Farrand, vol. III, pp. 214–15).

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the national legislature. 'If the United States had credit', he reasoned, 'such bills would be unnecessary: If they had not unjust & useless.' The debate that followed is worth quoting at length:

Mr Madison. Will it not be sufficient to prohibit the making them a *tender*? This will remove the temptation to emit them with unjust views. And promissory notes in that shape may in some emergencies be best.

Mr Gouverneur Morris. Striking out the words will leave room still for notes of a *responsible* minister which will do all the good without the mischief. The Monied interest will oppose the plan of Government, if paper emissions be not prohibited.

Mr Gorham was for striking out, without inserting any prohibition. If the words stand they may suggest and lead to the measure.

Col. Mason had doubts on the subject. Congress he thought would not have the power unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr Gorham. The power as far as it will be necessary or safe, is involved in that of borrowing.

Mr Mercer was a friend to paper money, though in the present state & temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point. It was impolitic also to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of Citizens.

Mr Ellsworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new Government more friends of influence would be gained to it than by almost any thing else – Paper money can in no case be necessary – Give the Government credit, and other resources will offer – The power may do harm, never good.

Mr Randolph, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

Mr Wilson. It will have a most salutary influence on the credit of the United States to remove the possibility of paper. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

Mr Butler remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power.

Mr Mason was still averse to tying the hands of the Legislature *altogether*. If there was no example in Europe as just remarked it might be observed on the other side, that there was none in which the Government was restrained on this head.

Mr Read thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelations.

Mr Langdon had rather reject the whole plan than retain the three words 'and emit bills'. [The motion to strike out 'and emit bills' was passed nine to two.] (Farrand, vol. II, pp. 308–10)

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McHenry's notes for this day corroborate the convention's decision to strike the words 'and emit bills' from the powers granted to the federal government (Farrand, vol. II, p. 311).

The debates reveal four key points about the delegates' positions. First, their fervour implied that the national government was denied any powers not explicitly enumerated in the Constitution (or directly implied by an explicit power). Thus, by striking out 'and emit bills of credit' from the list of enumerated powers, they were voting in effect to prohibit paper emission by the national government.

Second, for only the second (and last) time at the convention a delegate, in this case Madison, explicitly distinguished between legal tender laws and the emission of paper money *per se*. Moreover, he was careful to identify the former, not latter, as the culprit. Morris's blunt and absolute response pitted the 'monied interest' against a Constitution that retained this monetary power. It was echoed by several other delegates, who countered Madison by conflating legal tender laws and the *per se* powers to issue paper money.[38]

Third, the delegates' frequent references to recent problems with paper money suggest that the problem was due to the exigencies of wartime finance and trade cycles, not paper money *per se*. By blurring this critical qualification, supporters of the ban tried to fix the blame on the emission of paper money *per se*. By contrast, Madison and Randolph saw paper money as a necessary expedient in case of 'emergencies' or '[un]foresee[able] ... occasions'. And Mason wondered aloud whether 'the late war could not have been carried on' without paper money.

Fourth, Morris's cryptic response to Madison's legal tender question suggests that the power of note issue be delegated to 'a *responsible* minister which will do all the good without the mischief'. This '*responsible* minister' could not be an agent of a newly constituted federal government, because as Morris insisted 'The Monied interest will oppose the plan ... if paper emissions be not prohibited.' One possible candidate was Morris's own Bank of North America, which since 1782 had been trying to get its banknotes to circulate as a national paper currency.[39] In turn, Morris may have substituted the phrase '*responsible* minister' for 'bank', because the mere mention of this controversial word, even among the convention delegates, may have doomed the new Constitution.

[38] Recognising the controversies over the absolute ban on government-issued paper money, Wilson argued that ratification of the Constitution should only require seven out of the 13 states. Since six of the 13 states already ceased to issue state paper money after the Revolution and anti-paper money forces had recently gained control in Pennsylvania, Wilson's proposal is telling (Farrand, vol. II, pp. 468, 477, 562). See also Grubb, 'US dollar currency union', p. 1790.

[39] Ferguson, 'Political economy, public liberty', p. 402; Grubb, 'US dollar currency union'; L. Lewis, Jr, *A History of the Bank of North America* (Philadelphia, 1882); J. Wilson, 'The Bank of North America and Pennsylvania politics: 1781–1787', *Pennsylvania Magazine of History and Biography*, 66 (1942), pp. 3–28.

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Having absolutely banned federally issued paper money, the convention on 28 August quickly debated and approved a similar measure against state-issued paper money.[40] Instead of requiring 'the consent of the Legislature of the United States', the amended clause unconditionally banned states from issuing their own paper currencies and determining their own legal tender. The change treated state paper money like higher-order political matters such as prohibiting states from entering foreign alliances (Farrand, vol. II, pp. 187, 657). Strikingly, during the South Carolina ratification debate, Pinckney regarded this section (article 1, section 10) restricting state sovereignty to be 'the soul of the Constitution', but also recognised that the ban on state monetary powers was the most controversial element.[41]

The question was divided into two parts: a prohibition against states emitting bills of credit and against establishing their own legal tender. The first passed by a vote of eight states to two; the second, by a vote of 11 states to none (Farrand, vol. II, pp. 435, 439). This procedural matter is significant. The founding fathers, it suggests, recognised that these two powers were, in fact, not the same. They could have decided only to enact the legal tender clause, not the ban on state paper money issues. A related question concerns the vote order. If delegates had any doubts about the outcome of the second vote on the legal tender issue, they may have been induced to vote for the absolute ban on state paper money issues in the first vote. By contrast, if they had voted on and approved the legal tender clause first, then they may have taken a less severe stance on the paper money issue.

A brief debate on the same day reveals what was *not* the motive for banning state paper money. To the list of 'prohibition[s] on the States' in section 10, Rufus King of Massachusetts proposed including the power 'to interfere in private contracts'. Morris responded that, 'This would be going too far . . . and within the State itself a majority must rule, whatever may be the mischief done among themselves.' In response to Sherman's retort to Morris, 'Why then prohibit [State] bills of credit?', no answer was recorded (Farrand, vol. II, pp. 439–40). For Morris, the problem with paper money apparently was not that it could be used to alter effectively the monetary terms of private contracts. Morris recognised the myriad, simpler ways of using state laws to redistribute income than by depreciating state currency. Moreover, he apparently did not care whether intra-state political machinations

[40] On 28 August Pinckney moved again to give the national legislature the power to negate all state laws interfering with the harmony of the union. This power had already been defeated by the convention on 17 July and would not be adopted at this time either (Farrand, vol. II, pp. 27–8, 382, 390–2). Pinckney's move here does indicate that the prior demand for a general veto over state laws was not just a disguised demand to prohibit state-issued paper money.

[41] J. Elliot (ed.), *The Debates in the State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787* (Philadelphia, 1836), pp. 333–6. See also Martin's objection to the ban (Farrand, vol. III, 214–15). Finally, Main argued that many Americans, maybe even a majority, were on the side of paper money and unhappy with the Constitution over absolutely banning its emission; J. T. Main, *The Antifederalists: Critics of the Constitution, 1781–1788* (New York, 1961), pp. 268–79. See also Holton '"Divide et impera"', p. 198.

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would enact schemes to redistribute income, which was one of the common arguments for banning state paper money issues.[42]

V

With independence from British regulation, the states were free to incorporate banks. In 1781 Pennsylvania chartered the Bank of North America, and in 1784 New York and Massachusetts chartered the Bank of New York and the Bank of Massachusetts, respectively. Similar efforts were underway in other states between 1784 and 1787. These institutions were basically unregulated, fractional-reserve banks with specie serving as reserves. They issued liabilities in the form of banknotes and deposits against their assets of specie reserves and loans/discounts.

While not a legal tender, their banknotes circulated as local currency because they were redeemable in specie at par and on demand at the issuing bank (except during liquidity crises). They were sold at market discounts farther away from the issuing bank. Banknotes competed with each other and with state bills for usage as an inside paper money. Banks and bank charters were a contentious and controversial issue in many state legislatures.[43]

At the convention, the delegates did not address the states' power of incorporation, either in general or with specific reference to banks. Apparently such state powers were acceptable to the founding fathers and were to be left intact by the new Constitution. Several delegates were closely involved in state chartered banks, either as stockholders, board members, directors, legal advisors, or sponsors of banking bills. They included Hamilton, Gerry, King, McHenry, John Langdon of New Hampshire, Abraham Baldwin of Georgia, and the entire Pennsylvania delegation of Wilson, Franklin, Thomas Mifflin, George Clymer, Jared Ingersoll, Thomas Fitzsimons, Robert Morris and Gouverneur Morris.[44] Perhaps, then, it is not surprising that the convention left the state power to charter banks untouched.

Under the Articles of Confederation it was doubtful whether Congress had the power to charter a national bank. For example, in 1780 Hamilton suggested that a national 'Convention should assemble' to remedy the Articles of Confederation

[42] Nettels, *Emergence of a National Economy*, pp. 85–6. Madison voiced a similar assessment when explaining the new Constitution to Jefferson in a letter written on 24 October 1787 – a month after the convention had closed; Rutland, *James Madison*, vol. X, p. 212.

[43] Behrens, 'Paper money in Maryland 1727–1789', pp. 79–87; A. C. Bryan, 'History of state banking in Maryland', *Johns Hopkins University Studies in Historical and Political Science*, 17 (1899), pp. 17–19; Freeman, *Alexander Hamilton*, pp. 575–612; N. S. B. Gras, *The Massachusetts First National Bank of Boston, 1784–1934* (Cambridge, MA, 1937); Grubb, 'US dollar currency union'; Nettels, *Emergence of a National Economy*, pp. 75–81; P. Webster, *Political Essays* (New York, 1969 [originally 1791]); Wilson, 'Bank of North America'.

[44] Grubb, 'US dollar currency union'; F. McDonald, *We the People: The Economic Origins of the Constitution* (New Brunswick, NJ, 1992), p. 89.

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by granting Congress the power of 'establishing banks . . .'[45] Between 1785 and 1787 the Pennsylvania State Legislature hotly debated the state's charter of the Bank of North America, which Congress had also chartered as its national bank. The actions of pro- and anti-bank parties indicated that neither side had faith in the validity of a charter from Congress and so thought that a state charter was necessary.[46]

If the newly constituted federal government were to charter a national bank, then it would require this authority under one of the new and enlarged powers specifically enumerated in the new Constitution. This issue was taken up in a roundabout way on 14 September when the convention addressed the national government's powers of incorporation. The draft Constitution up to that point gave the national government only the specific enumerated power to establish post offices and post roads. Franklin moved that the national government also have the power to cut canals.

The debate expanded from there. The exchange between the delegates is worth quoting at length (from Madison's notes):

> Mr Madison suggested an enlargement of the motion into a power 'to grant charters of incorporation where the interest of the US might require & the legislative provisions of individual States may be incompetent'. His primary object was however to secure an easy communication between States which the free intercourse now to be opened, seemed to call for – The political obstacles being removed, a removal of the natural ones as far as possible ought to follow. Mr Randolph 2ded. the proposition.
>
> Mr King thought the power unnecessary.
>
> Mr Wilson. It is necessary to prevent *a State* from obstructing the *general* welfare.
>
> Mr King – The States will be prejudiced and divided into parties by it – In Philadelphia & New York, it will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.
>
> Mr Wilson mentioned the importance of facilitating by canals, the communication with the Western Settlements – As to Banks he did not think with Mr King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.
>
> Col. Mason was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by Mr Wilson.
>
> The motion being so modified as to admit a distinct question specifying & limited to the case of canals. [The motion failed eight to three.]
>
> The other part fell of course, as including the power rejected. (Farrand, vol. II, pp. 615–16)

McHenry's notes support Madison's on this issue. He wrote, 'Moved by Dr Franklin seconded by Mr Willson, to empower Congress to open and establish canals. This being objected to – moved by Virginia To empower Congress to grant charters of

[45] Freeman, *Alexander Hamilton*, pp. 76–7.

[46] Lewis, *Bank of North America*; G. D. Rappaport, *Stability and Change in Revolutionary Pennsylvania* (University Park, PA, 1996); Webster, *Political Essays*; Wilson, 'Bank of North America'.

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incorporation in cases where the US may require them and where the objects of them cannot be obtained by a State. Negatived' (Farrand, vol. II, p. 620).

Both versions are further corroborated by an incident recorded by Jefferson some years later. Jefferson wrote in his personal notes on 11 March 1798:

[Abraham] Baldwin [Convention delegate from Georgia] mentions at table the following fact. When the bank bill [First Bank of the US] was under discussion in the House of Representatives [1791], Judge [James] Wilson came in, and was standing by Baldwin. Baldwin reminded him of the following fact passed in the grand [1787] convention. Among the enumerated powers given Congress, was one to erect corporations. It was, on debate, stuck out. Several particular powers were then proposed. Among others, Robert Morris proposed to give Congress a power to establish a national bank. Gouverneur Morris opposed it, observing that it was extremely doubtful whether the constitution they were framing could ever be passed at all by the people of America; that to give it its best chance, however, they should make it as palatable as possible, and put nothing into it not very essential, which might raise up enemies; that his colleague (Robert Morris) well knew that 'a bank' was, in their State (Pennsylvania) the very watch-word of party; that *a bank* had been the great bone of contention between the two parties of the State ... that therefore, to insert this power, would instantly enlist against the whole instrument, the whole of the anti-banking party in Pennsylvania. Whereupon it was rejected, as was every other special power, except that of giving copyrights to authors, and patents to inventors; the general power of incorporating being whittled down to this shred. Wilson agreed to the fact. (Farrand, vol. III, pp. 375–6)

Apparently banks were more controversial than paper money. The mere mention of them, even indirectly it seems, threatened the likely ratification of the Constitution. Perhaps this is why on 16 August Gouverneur Morris had referred to a '*responsible* minister' rather than 'Bank of North America', when he suggested a paper-money substitute to federally issued bills of credit (Farrand, vol. II, p. 309).

It appears that the convention indirectly rejected giving the federal government the power of incorporation, including the particular power to charter banks. In 1791, however, Congress voted to charter a national bank – the First Bank of the US – to serve as the federal government's bank. Given the convention debate quoted above, it is not surprising that the measure sparked a sharp, prolonged controversy.[47]

By construction, the Constitution denied any new or enlarged powers to the federal government beyond those in the Articles of Confederation, unless they were explicitly enumerated. This foundational pillar explains its brevity.[48] To keep the

[47] J. T. Holdsworth, *The First Bank of the United States* [Senate Document No. 571, 61st Congress, 2nd Session] (Philadelphia, 1910), pp. 17–19.

[48] This interpretation was restated explicitly in the 10th Amendment to the Constitution adopted in 1791. By contrast, and in direct contradiction to the 10th Amendment, some scholars often assert that the federal government can do anything it wants under the Constitution as long as the Constitution does not explicitly prohibit it. This interpretation renders article 1, section 8 of the Constitution superfluous and nonsensical. It makes it difficult to understand why delegates vigorously debated the scope of the federal government's powers of incorporation (Farrand, vol. II, pp. 611, 616, 620).

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document from becoming overly long and unwieldy, the proposed enumerated powers which the convention explicitly rejected were *not* to be written into the Constitution (as negative provisions or prohibitions on the federal government). In the case of the power of incorporation, the Constitution enumerated only a new power to construct post offices and post roads, not to charter banks.

This principle opened an interpretive door that Hamilton and supporters of a national bank rushed through. New powers not explicitly enumerated in the Constitution, Hamilton reasoned, might still fall within Congress's mandate, if they are implied by other explicitly enumerated powers. In reference to the constitutionality of the First Bank of the US, Hamilton was the first to articulate this *implied*-powers doctrine.[49]

While central to US constitutional law, the implied powers doctrine was only relevant to the case of the National Bank, if the convention delegates had not explicitly voted to deny the federal government a particular power, such as to charter corporations in general and a national bank in particular. Such an explicit vote to limit federal authority would clearly trump any implied powers; in other words, the latter was a necessary but not a sufficient condition to authorise the bank.[50] To justify its relevance, then, bank supporters had to deny that any such vote took place at the convention. Because no records of the convention were published in 1791, such an argument might, and did, succeed. This was the real issue over the constitutionality of the bank.

The convention had been closed to the public. Its official journal, which was in the hands of President Washington, was not made public until 1819 (Farrand, vol. I, pp. xi–xxi; vol. II, p. 648). The *Journal*, however, recorded almost nothing on the day in question (14 September), only a vote of eight states to three against the motion 'To grant letters of incorporation for Canals &ca'(Farrand, vol. II, pp. 610–11). Clearly, the delegates debated and rejected more than just the power to incorporate canals, but the meaning of the term '&ca' could not be deciphered without additional context. Madison's notes were not public and would not be published until after his death in 1840, and McHenry's notes, the only other record of the day's debate, would not be published until even later (Farrand, vol. I, pp. xv–xxi).

In the 1791 congressional debate over the bill to charter the First Bank of the US, Madison denied its constitutionality, 'because he well recollected that a power to grant charters of incorporation had been proposed in the General Convention and rejected' (Farrand, vol. III, p. 362). Since Madison had proposed that power at the convention, he was likely to have paid close attention to the ensuing debate. Madison could also consult his convention notes. Whether Madison let anyone else see his notes is unclear. There is no indication by him or from anyone else that he did.

[49] Rutland, *James Madison*, vol. XIII, pp. 370–404; Syrett, *Alexander Hamilton*, vol. VIII, pp. 62–134.

[50] Scholars have often been deflected by this implied-powers argument for federal power both to issue bills of credit and to charter banks without considering what was meant by explicit convention votes not to grant the federal government these powers.

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Madison was 'regarded by his fellow delegates to the Convention as a semi-official reporter of their proceedings' (Farrand, vol. I, p. xvi). Because the *Journal* failed to record most of the debates, convention delegates who did not recall significant events should have deferred to Madison's recollection based on his detailed semi-official notes. Some clearly did, such as Randolph, who was Attorney General in 1791, and Jefferson, then Secretary of State. For Madison, Randolph and Jefferson, implied powers were not enough, as the convention had spoken clearly on the matter. They, in turn, recommended that President Washington veto the bill as unconstitutional.[51]

With no detailed public record on the convention's deliberations, Madison's statement could be ignored or denied. President Washington was at the convention on 14 September and most likely watched Madison take notes every day (Farrand, vol. I, p. xvi). Still, in the end, he did not accept Madison's recollection as definitive, but instead sided with Hamilton. Gerry, a bank supporter who also had attended the convention on 14 September, disagreed with Madison's recollection of that day. In direct reference to Madison's last quotation above, he questioned: 'are we to depend on the memory of the gentleman [Madison] for a history of their debates . . . This would be improper, because the memories of different gentlemen would probably vary . . . with respect to those facts . . . no motion was made in that Convention, and therefore none could be rejected for establishing a National Bank . . .'(Farrand, vol. III, pp. 362–3).

Hamilton made a similar statement later that month in defending the constitutionality of First Bank of the US:

> Another argument . . . is, the rejection of a proposition by the Convention to empower Congress to make corporations, either generally, or for some special purpose.
>
> What was the precise nature or extent of this proposition, or what the reasons for refusing it, is not ascertained by any authentic document, or even by accurate recollection. As far as any such document exists, it specifies only canals . . . It must be confessed, however, that very different accounts are given the import of the proposition, and of the motives for rejecting it. Some affirm that it was confined to the opening of canals and obstructions in rivers; others, that it embraced banks; and others, that it extended to the power of incorporating generally. Some, again, allege that it was disagreed to because it was thought improper to vest in Congress a power of erecting corporations. Others, because it was thought unnecessary to *specify* the power, and inexpedient to furnish an additional topic of objection to the Constitution. In this state of the matter, no inference whatever can be drawn from it. (Farrand, vol. III, pp. 363–4)

Hamilton implicitly accepts the general principle that an actual negative vote at the convention would trump any implied-powers argument in limiting the scope of the federal government. He, therefore, disputes Madison's recollection of the debate, and observes that the only extant and 'authentic' account 'specifies' canals, not banks

[51] Farrand, vol. III, pp. 362–3; Rutland, *James Madison*, vol. XIII, pp. 370–404.

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or other corporations. This reference suggests that Hamilton had consulted the convention's *Journal* which was at that time in Washington's keeping.

While acknowledging ambiguities in the official account, Hamilton did not consider any other recollections of the convention debate including his own or Madison's. Still, if Hamilton did not remember the debate or was not in attendance, then why did he not consult Madison's notes, especially as he knew that Madison had taken copious and semi-official notes of the convention?[52]

Hamilton's remarks also raise some additional, troubling questions. In the penultimate sentence of the quotation above, he observes that some convention delegates had rejected a congressional power to charter a national bank on expedient political, not constitutional, grounds. The question, of course, is whether to minimise opposition to the Constitution, they had consciously decided to postpone consideration of this controversial issue until after the ratification vote. Hamilton, moreover, misconstrues King's response of 'unnecessary' to Madison's motion to enlarge the congressional power of incorporation (see above). From the context, King clearly rejects these powers, which he sees as too particular and regionally divisive. Hamilton, by contrast, implies that it was 'unnecessary' to *specify* a power the national government already had.

In the end Washington accepted Hamilton's arguments and did not veto the bank bill.[53] The nation got a national banknote currency that circulated alongside the increasing plethora of state-chartered banknotes. Madison might have stopped the First Bank of US, if he had made public his convention notes. He chose not to perhaps in deference to his pledge of confidentiality (Farrand, vol. I, p. 15; vol. II, p. 648).

VI

Before the US Constitution, inside paper money was issued by state and national legislatures. After the US Constitution, both state and national legislatures were banned from issuing paper money. Government-chartered, but privately run and largely unregulated, banks filled the void and proliferated their distinct paper banknote currencies. Judging by this outcome, the founding fathers did not intend

[52] Farrand, vol. I, pp. xvi, 282–3; vol. III, pp. 617–30. Hamilton even provided a copy of his convention speech to Madison so Madison could include it in his convention notes. Hamilton's silence during the convention on the issue of banks is difficult to fathom. Before the convention, Hamilton had long advocated that the national government be given the power to charter banks; Freeman, *Alexander Hamilton*, pp. 76–7 and Holdsworth, *First Bank of the United* States, pp. 9–19. After the convention, as Secretary of the Treasury, Hamilton was the chief proponent of Congress's right to charter a national bank; Freeman, *Alexander Hamilton*, pp. 575–646. Needless to say, it is difficult to reconcile Hamilton's active argumentation and pursuit of a national bank both before and after the convention with his silence during the convention; Ferguson, 'Political economy, public liberty', pp. 404–5; Grubb, 'US dollar currency union', p. 1791.

[53] Holdsworth, *First Bank of the United States*, p. 19.

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constitutionally to create a single uniform national paper currency or prevent states and their banks from competing for seignorage with each other.[54] The question is why.

Grubb offers one political-economic explanation. The convention's banking faction advocated a constitutional ban on public paper money issues to eliminate competition with their private banknotes as the dominant paper medium of exchange.[55] An alternative but related hypothesis must contend with the fact that many of the founding fathers with no banking connections also supported the ban. Many of these delegates, however, had ties to the nation's international trading community, which depended critically on access to outside money, namely specie.[56] While not a problem over the long-run, they could be embarrassed by short-run specie shortages due to severe trade fluctuations like that experienced in the 1782–9 recession.

The formation of specie reserve banks provided a simple solution to the problem. Through these intermediaries, international merchants could smooth their temporary shortfalls and surpluses of specie via short-term bank borrowing and lending. Of course, private banks could only satisfy their customers' idiosyncratic liquidity demands. They could not address systemic risks due to large macro-trade shocks, such as when Britain closed its Caribbean trade to the Americans shortly after 1783.[57]

The international-trading merchant community could secure a larger, deeper reservoir of specie reserves, if specie-reserve banks had a monopoly over the supply of inside money for domestic transactions. Under this monetary system, all citizens would in effect hold as their money specie or specie-convertible bank liability, i.e. banknotes or deposits with the specie safely stored in bank vaults. The constitutional ban achieved this goal by eliminating a viable, competitive inside money, i.e. the tax-backed, non-specie-linked currencies issued by state and the federal governments.

The country paid a social cost for this monetary system because of the exigencies of macro-trade fluctuations. During expansionary periods, short-run excess specie inflows fuelled credit expansion, investment overextension and inflationary price rises. During contractionary periods when the balance of payments turned sharply

[54] Grubb, 'US dollar currency union', p. 1782; Rolnick, Smith and Weber, 'More perfect monetary union'.

[55] Grubb, 'US dollar currency union'. See, for example, Hamilton's 1780 letter to James Duane and the letter of William Bingham, a director of the Bank of North America, to Hamilton on 25 November 1789; Freeman, *Alexander Hamilton*, pp. 83–4; and Syrett, *Alexander Hamilton*, vol. V, pp. 538–4.

[56] C. A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1986); Bradford, *Founding Fathers*; McDonald, *We the People*; R. A. McGuire, *To Form a More Perfect Union: A New Economic Interpretation of the United States Constitution* (New York, 2003), pp. 51–4.

[57] Bezanson, *Prices and Inflation*; Holton, '"From the labours of others"'; Rappaport, *Stability and Change*.

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negative, the public experienced the opposite: sharp credit contractions, money scarcity, and arguably the more costly effects of bankruptcies, deflation and investment retrenchment. Through the money multiplier, banks may have amplified these fluctuations. An inside government-issued tax-backed paper money, not directly linked to specie, could have dampened the effects of international trade-business cycles and so insulated the public from these shocks.[58] Luther Martin (and in an odd way Gouverneur Morris) probably saw the issue correctly (Farrand, vol. II, p. 307; vol. III, pp. 214–15).

The US today has a national paper money, backed not by specie but only by federal government taxes, or the good faith and credit of the federal government. This paper money is also a legal tender 'for all debts, public and private', and it is issued by the Federal Reserve Bank, a quasi-government agency in the strict legal sense but as close to a national bank chartered by the federal government as one can get. This monetary system has evolved in the context of the same written Constitution at least in terms of monetary powers that the founding fathers created in 1787. Unless we simply ignore the debates and votes of the founding fathers at the 1787 convention, it is hard not to conclude that the US has strayed far away from the monetary system that the founders tried to prohibit constitutionally.

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[58] For a discussion of these issues for contemporary economies, see M. Feldstein (ed.), *Economic and Financial Crises in Emerging Market Economies* (Chicago, 2003), pp. 1–92.

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