Volume II: Issue 8

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
- Article I, Section 8, Clause 1

Concept Discussed:
- To lay and collect Duties

Congress imposed their first domestically-oriented Duties in a March 3rd, 1791 Act (**I Stat. 199**). The act imposed various import and domestic Duties on distilled spirits.

Section 1 of the Act imposed a higher Duty on imported spirits than allowed by previous Acts; the new range spanned from twenty to forty cents per gallon, depending upon the proof strength of the alcohol involved.

Section 14 imposed Duties at the rates between eleven and thirty cents per gallon on alcohol distilled in the United States from imported materials (again, depending upon the proof strength).

Section 15 imposed a domestic Duty on alcohol distilled in any city, town or village in the United States from domestic materials at rates between nine and twenty-five cents per gallon. It provided:

> "That upon all spirits which…shall be distilled within the United States, from any article or the growth or produce of the United States, in any city, town, or village, there shall be paid for their use the duties following; that is to say — For every gallon of those spirits more than ten per cent. below proof, according to Dicas's hydrometer, nine cents.
>
> For every gallon of those spirits under five and not more than ten per cent. below proof, according to the same hydrometer, ten cents…For every gallon of those spirits more than forty per cent. above proof, according to the same hydrometer, twenty-five cents."

Section 21 imposed a domestic annual Duty of sixty cents for every gallon of distillation *capacity* on every *still*[1] which distilled alcoholic spirits *outside* any city, town or village. Section 21 declared:

> "That upon stills…employed in distilling spirits from materials of the growth and production of the United States, in any other place than a city, town or village, there shall be paid for the use of the United States, the yearly duty of sixty cents for every gallon, English wine-measure, of the capacity or content of each and every such still, including the head thereof."

Section 24 allowed any owner of a still who distilled spirits outside any city, town or village the option to pay nine cents per gallon on all proof spirits distilled rather than the yearly Duty of sixty cents per gallon of *capacity* (provided he kept accurate records of quantities distilled and attested to those numbers).

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1. In its most basic form, a *still* is a distillation apparatus consisting of a vessel to hold liquid over heat to boil off constituent components. The liquid boiled off into a gas is caught and condensed (cooled) back into liquid form in a separate flask — that with the lowest boiling point is boiled off first. Component parts of liquids with differing boiling points can be separated from one another by switching receiving flasks according to the boiling-off temperature.

It should be noted that a still cannot *make* alcohol; it can only *concentrate* it by separating it from water and other impurities.

Alcohol is made through the process of *fermentation* of simple sugars by yeast in an anaerobic (oxygen-less) environment, where sugar is converted into ethyl alcohol and carbon dioxide.

The *head* of the still is the first-distilled product with the lowest boiling point containing various impurities (most notably, methyl alcohol — the deadly form of alcohol). The *tail* of the still is the water or other liquids (and suspended solids) remaining in the boiling pot which have not yet been distilled, and is likewise generally discarded. The product sought after is the distillate caught in the separate flask at the appropriate temperature (ethyl alcohol boils at sea level at approximately 173° F).

Fermentation of sugars from barley, hops, grapes or other agricultural products produces the low alcohol concentrations common in beer and wine. To make hard liquors such as whiskey or gin, distillation is necessary. For added purity (higher proof strength) in simple pot stills, re-distillation of the distillate will concentrate that which remains, while also leaving less product after each subsequent distillation.

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That domestic Duties were first laid in relation to the *distillation* process (*concentration* of alcohol), rather than the *fermentation* process (*creation* of alcohol), is an oddity best explained by securing revenue on the more-concentrated alcoholic drink first (that tending to cause the most "sin"[2]) to establish a Duty with the minimum amount of public resistance.

"Sin Taxes" are generally viewed with two-pronged benefit — to raise necessary funds while making morally-objectionable activities less desirable.

Proceeds from the Duties imposed by this Act were earmarked first for payment of interest on government debt. **Section 60** made such provision by stating:

> "That the nett product of the duties herein before specified, which shall be raised, levied and collected by virtue of this act, or so much thereof as may be necessary, shall be, and is hereby pledged and appropriated for the payment of the interest of the several and respective loans which had been made in foreign countries, prior to the fourth day of August last; and also upon all and every of the loan and loans which have been and shall be made, and obtained pursuant to the act, intituled '*An act making provision for the debt of the United States*'."

Section 61 provided that any funds raised over the amount necessary to pay interest be applied to principal to reduce the public debt, specifying:

> "That the unappropriated surplus, if any there shall be, of the revenue arising under this act, at the end of this and every succeeding year, shall be applied to the reduction of the public debt…"

No other uses of the funds were allowed besides interest and principal payments — no subsidies, no welfare (corporate or individual) or entitlement programs, nor funding of any other bureaucratic agencies to interfere with productive private companies.

Section 60 pointedly and additionally guaranteed government debts incurred before and by an August 4th, 1790 Act entitled "*An Act making provision for the Debt of the United States*" (I Stat. 138).

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2. Alexander Hamilton wrote in his January 9, 1790 Report "Public Credit" given to the House of Representatives on January 14, 1790 (Vol. 1, American State Papers, Finance, page 15 @ 22):

> "The Secretary conceives that it will be sound policy to carry the duties, upon articles of this kind, as high as will be consistent with the practicability of a safe collection…
>
> "The consumption of ardent spirits, particularly, no doubt very much on account of their cheapness, is carried to an extreme which is truly to be regretted, as well in regard to the health and morals, as to the economy of the community."

Hamilton's logic, of raising the price of such spirits by imposition of a Duty, would tend to lower excessive consumption while raising needed revenue.

This 1790 Act put into effect Secretary of the Treasury Alexander Hamilton's plan for assumption of State debts incurred from fighting the Revolutionary War by the United States.

The **Preamble** or Recital of the 1790 Act declared the stated reason for the debt assumption:

> "Whereas, justice and the support of public credit require, that provision should be made for fulfilling the engagements of the United States, in respect to their foreign debt, and for funding their domestic debt upon equitable and satisfactory terms…"

Section 1 of the 1790 Act, in conformance with the ends specified in its Preamble, then appropriated out of the Duties laid upon imported goods and tonnage, the annual sum of six hundred thousand dollars for payment of interest.

Section 2 authorized the President of the United States to borrow up to $12 million "to the paying off the whole of the said foreign debt" and Section 3 a "loan to the full amount of the said domestic debt".

In essence, Sections 2 and 3 allowed for new borrowing to pay off old creditors who may have been waiting years for repayment. New debt instruments were swapped for old at the discretion of the creditor. **Section 8** provided that:

> "And as it may happen that some of the creditors of the United States may not think fit to become subscribers to the said loan."

Section 9 thereby provided:

> "That nothing in this act contained shall be construed in any wise to alter, abridge or impair the rights of those creditors of the United States, who shall not subscribe to the said loan, or the contracts upon which their respective claims are founded; but the said contracts and rights shall remain in full force and virtue."

Section 3 of the Act provided that new certificates be issued for the newly-incurred debt, in place of the old, including for replacement of:

> "the bills of credit issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in the said bills, for one dollar in specie."

Such penny-on-the-dollar exchange-rate (100 dollars in Continental Currency for one dollar in new debt certificates) amounted to only a token redemption of the old continental currency which had been emitted by the Second Continental Congress beginning in 1775. Such a low rate of conversion points to the inherent weakness of paper money — the subsequent monetary devaluation (hyper-inflation) resulting from over-emission.

Debt instruments other than the bills of credit, such as interest-bearing notes and bonds, were paid at full par value, even if the current holders of that debt bought at great discounts from earlier holders.

That some types of government debt instruments (notes/bonds) were paid at full par value and another (bills of credit) at only a penny-on-the-dollar had less to do with differing terms or responsibility for repayment and more to do with the responsibility of issuance.

For example, when the Second Continental Congress first resolved in 1775 to emit bills of credit, the 12 confederated colonies[3] pledging for their redemption acted in a responsible manner (if such can be said when printing paper money) by limiting the run to $2 million. As time progressed, and as the need for money intensified, Congress emitted greater sums in less-responsible fashion.

The **June 22, 1775 resolves** to emit the first bills of credit were worded:

> "*Resolved*, That a sum not exceeding two millions of Spanish milled dollars be emitted by the Congress in bills of Credit, for the defence of America.
>
> "*Resolved*, That the twelve confederated colonies be pledged for the redemption of the bills of credit, now directed to be emitted."[4]

With subsequent over-emission, it became obvious to even the least-learned Citizen that things were afoul with Continental Currency. Merchants began refusing the currency, at least without appropriate discounts taken, as did also customers when accepting change.

The Congress, as too often attempted by government, tried to later control the behavior of the Citizens they were supposed to serve and protect.

On Thursday, **January 11, 1776**, the Second Continental Congress propounded and **resolved**:

> "*Whereas* it appears to this Congress, that several evil disposed persons, in order to obstruct and defeat the efforts of the United Colonies, in the defence of their just rights, have attempted to depreciate the bills of credit emitted by the authority of this Congress,
>
> "*Resolved, therefore*, That if any person shall hereafter be so lost to all virtue and regard for his country, as to 'refuse to receive said bills in payment,' or obstruct or discourage the currency or circulation thereof, and shall be duly convicted by the committee of the city, county, or district, or in case of appeal from their decision, by the assembly, convention, council or committee of safety of the colony where he shall reside, such person shall be deemed, published, and treated as an enemy of his country, and precluded from all trade or intercourse with the inhabitants of these colonies."[5]

Rather than take the responsibility for their over-emission (which directly caused the devaluation), Congress attempted to blame individuals who merely sought to retain value for their efforts or products by appropriately discounting the bills from their face value to their actual purchasing power (exchange value).

A Person of "evil-disposition", who was "so lost to all virtue and regard for his country" was to be branded as an "enemy of his country" and "precluded from all trade" when he refused payment in the bills at face value. This character-assassination attempt was from the government which stated in the same sentence that the efforts of the Congress should be in the "defence of their just rights".

When the Congress insisted that the United Colonies had "just rights", they implied that colonists, still as mere British *Subjects* (who were not even represented in Britain), had none. This may have been essentially correct, but is unworthy of the united government beginning to form in contradistinction to the colonial governments. Within the next dozen or so years, at least, government would be properly understood to have *powers*, *duties* and *responsibilities* and it was Citizens who have *rights* (& powers).

This proposal to belittle the Colonists who defended their property, of course, did not stop the rapid depreciation of the purchasing power of the currency. Congress next attempted to thereby force the bills of credit as a lawful tender in all payments, which no person, merchant or creditor, could refuse. The said **June 7, 1776 proposal** of the Second Continental Congress was worded:

> "That it be recommended to the respective Legislatures of the United Colonies to pass Acts of Legislation for making the continental Bills of Credit a lawful tender in all payments…"[6]

This attempt never reached sufficient steam; it was ordered to "lie on the table" where it died without passage for lack of sufficient numbers of delegates to vote for it (nor was it later brought back).

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3. Rhode Island (or, more properly, Rhode Island and Providence Plantations) was not yet present in the Congress and was therefore excepted.

4. Volume II, Journals of the Continental Congress, page 103.

5. Volume IV Journals of the Continental Congress, page 49.

6. Volume V, Journals of the Continental Congress, page 426.

The ninth of the **Articles of Confederation** authorized the Confederate Congress to emit bills of credit provided nine States assented to the emission.

The **twelfth Article**, despite later repudiation (of 99 cents-on-the-dollar under the 1790 Act), stated:

> "All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged."

Debt incurred under the Second Continental Congress, which operated loosely for the States prior to the Articles of Confederation being ratified in 1781, was to be applicable to the United States operating under the Confederation by this article. It should be noted that there was no differentiation between the bills of credit emitted or money borrowed through other means — the "public faith" was "solemnly pledged" on all forms of debt.

The **Constitution**, in **Article VI**, acted in similar fashion for the States operating under the Articles (and before) as they converted to operation under the Constitution. **Clause 1** states:

> "All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation."

By express constitutional mandate, then, there was no legal differentiation between types of debt to which the United States were obligated.

It was the sheer volume of continental currency emitted, however, which generally precluded the United States from honoring this debt at face value. Alexander Hamilton, in his **January 9, 1790 report**[7] to Congress, in his normal lengthy prose, wrote volumes about the virtues of paying the debts of the United States through the assumption of the State debts. However, the following was one of his only comments regarding bills of credit:

> "And let all sums of continental money, now in the treasuries of the respective States, which shall be paid into the treasury of the United States, be credited at specie value."

The said *specie value* was later determined by statute (in the August 4, 1790 Act) to be *one dollar of specie* (gold/silver coin) for every *100 dollars of currency*.

7. Volume I, American State Papers, Finance Series, Report #6 entitled "Public Credit". Page 15, at 18.

Hamilton detailed the war debt on the next page of his report, which is summarized as follows:

Foreign debt	$10,070,307.00
Arrears in Interest (@ 4% & 5%)	$1,640,071.62
Domestic debt	$27,383,917.74
Arrears in Interest on domestic debt	$13,030,168.20
Total debt	$52,124,464.56

Hamilton writes in the next paragraph:

> "The unliquidated part of the domestic debt, which consists chiefly of the continental bills of credit, is not ascertained, but may be estimated at 2,000,000 dollars."

Hamilton's report was recommending the debt which the United States *ought* to assume, not the amount to which the United States were legally *obligated*. Since Hamilton figured the continental bills of credit at their "specie-value", the debt amount attributable to these bills was actually 100 times higher, or $200,000,000.

The amount the United States really owed, then, was approximately $252,124,464.56, of which they would pay 100 cents-on-the-dollar for $52,124,464.56 of debt. On $200,000,000 of debt denominated in bills of credit, the United States would pay $2,000,000, or one penny-on-the-dollar. Adding together Hamilton's $52,124,464.56 with his discounted $2,000,000 comes to a total of $54,124,464.56 in *acknowledged* obligations.

Of course, since history provides that it was a difficult (though workable) struggle for the United States to pay the $54 million, it would have been improbable (if not financially impossible) to pay off $252 million.

The option existed, of course, to pay 20 cents-on-the-dollar for *every* total dollar of debt. Equal treatment of all forms of debt would have been more in accordance with the Articles of Confederation and the Constitution (which, of course, mandated full payment; except to the extent which the Constitution brought in the "validity" argument; i.e., if a debt was not valid against the confederate government, then neither would it be valid against the constitutional government).

That one type of debt instrument was used quite responsibly given the circumstances and the other so abused gives 198,000,000 reasons (all dollars) and better understanding why the United States were not given authority under the Constitution to emit bills of credit.

That Congress would later default on the Continental Currency would have been strongly evident from the currency's deep discount. Such default would have made improbable further emission under the Constitution, even if Congress were given express authority to emit such currency (as first proposed and later withdrawn after defeat).

That bills of credit were so irresponsibly emitted by government authority before ratification of the Constitution gives better understanding why private/public corporations[8] in the United States have emitted the bills of credit (rather than the government itself) since ratification of the Constitution.

Paper money emitted by government essentially amounted to the game of musical chairs or Old Maid™: he without a chair or with the Old Maid™ when the music stops or when the game ends, loses.

Though one will find little constitutional justification as to why the government should license (a private monopoly on) the creation of debt-money by public charter (certainly not without full and proper compensation to the government by such firm for the [exclusive] privilege), history provides America with just cause as to why the government itself should not be in control of such matters. At least private firms have enough sense and self-interest to keep the game going at some level of fiscal responsibility.

Though the paying of interest would not be a problem when government emitted bills of credit, history has shown that Citizens are faced with the more-serious and rapid *monetary debasement* problem, which causes far greater economic devastation (versus the slower debasement from private emission [at interest]).

The Road not Taken

Another obvious alternative which could have occurred in 1790 was that the United States would not assume the State war debts. Without that indirect debt, the United States would have been in a better financial position to pay more of the debts to which *they* were legally-obligated.

It would seem to make little sense to assume debts for which other parties were directly liable while skipping out on debts to which the United States were legally obligated.

This is true especially when one considers that a number of the wealthy Southern States (such as Virginia) were, at least initially, opposed to the assumption of State debts because they had paid off a good portion of their debts by 1790.

8. The first Bank of the United States operated from 1791 until 1811; the second Bank of the United States from 1816-1836 and the Federal Reserve System from 1914 (Act of December 23, 1913) to present. These publicly-chartered private banks emitted bills of credit and notes as currency. Of course, private State banks also emitted a great deal of their own currency in the 19th century.

Basically, the end result of the assumption was that bills of credit were sacrificed to notes and bonds, to better-assure that the latter forms of debt certificates had a yet-promising future.

Excessive debt necessitated that something be sacrificed. As common with every bankrupt, a settlement paying something beats nothing being paid.

Security Interest Provided in 1790

Section 21 of the **August 4th, 1790 Act**, regarding the public debt, specifically stated:

> "That the faith of the United States be, and the same is hereby pledged to provide…payment of the interest… on…the loans aforesaid, in conformity…to this act."

Section 22 provided:

> "That the proceeds of the sales which shall be made of lands in the western territory[9], now belonging, or that may hereafter belong to the United States, shall be, and are hereby appropriated towards

9. Massachusetts, Connecticut, New York, and Virginia (& South Carolina, of a narrow strip across present-day Mississippi/Alabama/Georgia) ceded their claims to their unapportioned[10] Western lands, including the "territory Northwest of the river Ohio", to the United States assembled under the Articles of Confederation.

North Carolina ceded her claims to the "Cumberland District" (future Tennessee) to the United States assembled under the Constitution (see Art. IV:3:2 regarding Western lands) in 1790.

Georgia was the final State with unapportioned Western lands and finally ceded the Mississippi Territory (future Mississippi & Alabama) to the United States in 1802 after the United States agreed to remove the Indian claims on her apportioned lands at their expense (which lead to the relocation of the Creek tribe of Indians and later the Cherokee; a.k.a, the "Trail of Tears").

With the United States selling property to private individuals to reduce the common war debt, population would naturally increase in these previously-unpopulated areas. Once population numbers in pre-defined areas reached minimum numbers[11], new States could then form and enter the Union "on an equal footing" with the original States.

10. *Unapportioned* lands were the unpopulated, and therefore, untaxed lands; i.e., the unapportioned lands were those lands not apportioned for direct Taxation purposes.

11. The Northwest Ordinance of July 13, 1787 (Vol. 32, Journals of the Continental Congress, Page 334), passed under the Congress assembled under the Articles of Confederation, established that *general assemblies* could form when population numbers reached "five thousand free male inhabitants".[12]

"Article the Fifth" of the Northwest Ordinance provided that "whenever any of the said States shall have sixty thousand free Inhabitants[12] therein, such State shall be admitted by its Delegates into the Congress of the United States, on an equal footing with the original States, in all respects whatever".

12. To the Credit of the Confederate Congress, the "Article the Sixth" prohibited slavery and involuntary servitude (except in criminal punishment following conviction) in the Northwest Territory.

sinking or discharging the debts…and shall be applied solely to that use until the said debts shall be fully satisfied."

Hamilton and the Congress set in motion a fiscal process by which new debt would be guaranteed to the full extent of the borrowing and taxation capabilities of the United States, as well as their assets (Western lands) destined to be sold. From this pool of assets, of course, loans would be uniformly guaranteed, better ensuring marketability of those loans to investors.

Thomas Jefferson, though opposed to the assumption of State debts, removed his opposition when Hamilton and the Federalists agreed to remove their opposition to permanently locate the federal (government) seat on the Potomac River.

Next Cornerstone of Monetary Policy

With this process of debt assumption and a mass of uniformly-guaranteed debt firmly set in place by the August 4th, 1790 Act, Hamilton and the Congress laid the next cornerstone of their monetary policy on February 25, 1791 by enacting the "*Act to incorporate the subscribers to the Bank of the United States*" (I Stat. 191).

Subscribers to the bank headquartered in Philadelphia were incorporated as a corporation and body politic for a period of twenty years (to continue until March 4, 1811) by the name and style of *The President, Directors and Company, of the Bank of the United States* (as detailed in Section 3). Subscribers were allowed in Section 2 to pay for their share "one fourth in gold and silver, and three fourths in that part of the public debt" which had been established by the Act of August 4, 1790.

Section 1 allowed a capital stock issuance of up to $10,000,000, of which the United States were allowed in Section 11 to subscribe to the amount of $2,000,000, for a 20% share-holder. "Any person, co-partnership, or body politic" was allowed, as provided in Section 2, to purchase the other 80%.

The United States, being only a 20% partner with private individuals (including foreigners, who were prohibited from being bank directors) or other public or private entities, could not extend their governing character to these other persons. This private-public partnership would therefore enter into business in a private capacity, though by express government charter with the government owning 20%.

When government enters into the field of business, especially when it partners with private individuals, it takes on the attributes of a private (corporate) enterprise. It is thus freed in many ways from the express limitations of government and able to conduct business as could any private or corporate individual. Though this business would not be clothed in express government powers, neither would it be directly limited by express restrictions upon government as provided by the Constitution.

The government would have all the powers of government as provided by the Constitution. In attempt to "have its cake and eat it too" [13], where the government was expressly limited by law, it could transcend from the "lofty" heights of government and enter into the field of business. By such tactics, the government could act with diverse authority and widespread action because it would be inherently difficult to separate in which capacity it was operating.

Government corporations (and Independent Establishments), though not expressly authorized by the Constitution (convincing arguments can be made that neither were they envisioned), have taken on an extensive role in (outside) government since 1790.[14] That such actions were (begrudgingly) accepted so early in government under the Constitution (and during the lives of the framers of the Constitution) gives Americans 200 years later little hope that such circumvented government action will subside.

When the Senate bill proposing the (first) Bank of the United States reached President Washington's desk, Washington asked his principal officers for their opinion, in accordance with Art. II:2:1 of the Constitution, on the constitutionality of the United

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13. In the 1819 supreme Court case McCulloch v. Maryland (17 U.S. 316 @ 341),[15] Joseph Hopkinson, an attorney arguing for the State of Maryland, aptly charged that the bank (here, actually the *second* Bank of the United States) was acting "private, in its direction and interest; public in its rights and privileges".

14. A glance at the U.S. Government Chart included with *The Beacon of Liberty*, Vol. I, Issue 3 shows the central prominence such similar entities currently play.

15. McCulloch v. Maryland may also be cited as "4 Wheaton 316".

Early volumes are often cited with reference to the individual who acted as the Reporter of Decisions for the Supreme Court who made private deals with book publishers to print the volumes of court actions; in this case, Henry Wheaton.

Persons holding this position were Alexander James Dallas who first took it upon himself to publish Pennsylvania court decisions and added the supreme Court (in 4 volumes) in 1790; William Cranch in 1801 (9 vol.); Wheaton in 1816 (12 vol.) ; Richard Peters in 1828 (16 vol.) ; Benjamin C. Howard in 1843 (24 vol.) ; Jeremiah Sullivan Black in 1861 (2 vol.) ; and John William Wallace in 1863 (23 vol.).

The tradition of citing the Court decisions after the respective Reporter of Decisions ended with Wallace in 1875 when Congress appropriated sufficient funds to shoulder the responsibility of publishing the opinions themselves. Later cases are cited simply by the volume number of the United States Reports and page number (and often year).

States incorporating a bank. Secretary of State Thomas Jefferson was opposed to it and thought it unconstitutional; Secretary of the Treasury Alexander Hamilton (in his February 23, 1791 report to the President), of course, was strongly in favor.

Hamilton based much of his response to the President on Hamilton's December 13th, 1790 National Bank report[16] to the House of Representatives, which had requested a report from him on establishing the public credit.

Hamilton had an easier time justifying the need for a national bank in 1790 and 1791 than would proponents of the second Bank of the United States decades later (when State banks were then prevalent). As Hamilton acknowledged in his December 13th report to the House (page 72), only *three*[17] banks existed in the United States as of 1790. With so few banks, the United States could very well have difficulty meeting their financial needs.

Hamilton, it should be noted, was not a proponent of the government *controlling* the bank. Hamilton wanted the government to own a share of the bank to lend credence to the bank which it could not obtain privately without government. That the government owned shares was therefore much a ruse to better establish banking and a monetary credit policy which used debt as the foundation of money. He writes[18], that:

> "It is evident that the principle of private interest must be prevalent in the management of the bank."

He continues in the next paragraph:

> "It will only follow that it (government) ought not to desire any participation in the direction of it (bank), and, therefore, ought not to own the whole or a principal part of the stock".

Hamilton, in a most-telling fashion, also stated on the same page that the government is to:

> "reserve to itself the right of ascertaining…the state of the bank; excluding, however, all pretension to control".

Washington, in opposition to Jefferson, supported the course of action proposed by Congress, which had followed the recommendations of the Secretary of the Treasury.

16. Vol. I, American State Papers, Finance Series, Report #18 entitled "National Bank". Page 67.

17. The Bank of North America in Philadelphia was established by a Resolution of Congress (under the Articles) on May 26th, 1781 and was carried into execution on December 31st (bank directors later, however, accepted a State charter to replace the confederate; which confined it to $2 million [from $10 million] of bank stock). New York had a bank in New York City and Massachusetts had one in Boston.

18. Volume I, American State Papers, Finance Series, Report #18 entitled "National Bank". Page 74.

Hamilton's financial policy allowed the Bank of the United States to emit a paper currency. This currency of IOU's rested on the bank stock, which consisted of one part gold and silver to three parts government debt; the government debt backed by the taxation power of the government and the government's Western lands.

The charter for the Bank of the United States terminated in 1811 through express action of the original terms of the 1791 Act. When the 11th Congress failed to renew the bank's charter at the direction from President James Madison, it closed.[19]

Things were quite different in 1811 from 1791, of course. Twenty years of payments on public debt without war or government extravagance lead to slowly decreasing debt levels and private prosperity.

19. From February 15th through February 18th, 1811, Congress enacted five successive statutes incorporating private banks to operate within the District of Columbia.

In 1811, in **II Stat. 621**, Congress enacted "*An act concerning the Bank of Alexandria*". This bank, originally incorporated in Virginia in 1792 when Alexandria County was then a County of the State of Virginia, was continued in form under a Congressional charter, being now within the area ceded to the United States for the District of Columbia

Section 20 of the Act stated:

> "That the said bank shall continue to transact its business of discount and deposit in the county of Alexandria, in the district of Columbia."

In **II Stat. 625**, Congress enacted "*An Act to incorporate the Bank of Washington*" which had been a State banking association. Section 3 stated:

> "That the said bank shall transact its business in the city of Washington."

In **II Stat. 629**, Congress enacted "*An Act to incorporate the Farmers' Bank of Alexandria*".

In **II Stat. 633**, Congress enacted "*An Act to incorporate the Bank of Potomac*".

In **II Stat. 636**, Congress enacted "*An Act to incorporate the Union Bank of Georgetown*".

Limiting the operation of these banks to the physical jurisdiction of the District of Columbia removed the opposition to Congress incorporating banks.

With national banks limited geographically to the District of Columbia, the rightful jurisdiction of the States would not be encroached or challenged by federal statute (the District of Columbia was created according to Article I:8:17 of the Constitution on property ceded from Virginia (though this property was later retro-ceded [transferred back] to Virginia in 1846 [IX Stat. 35]) and Maryland.

In 1791, of course, there was not yet any permanent government seat for the United States. The first Bank of the United States was located in Philadelphia, the current *temporary* seat.

Philadelphia was, of course, a city within the boundaries and jurisdiction of Pennsylvania. By locating a national bank chartered by Congress at the current seat of the United States, but within the jurisdiction of the State of Pennsylvania, State authority was directly challenged unless her authority was expressly sought and given.

Governments (State and United States) were more established in 1811 than 1791. Private industry was better instituted. State banks were far more numerous. Without the imperative of war, Congress had the opportunity to look more closely at the proper functions of government and decided that they did not include owning (stock in) a bank.

The War of 1812 soon brought a return of a national bank; the second Bank of the United States in the Act of April 10, 1816 (III Stat. 266). This bank was also given a 20-year charter.

In 1832, four year early, the Bank attempted to renew its charter (not wanting a repeat of 1811). The Senate and House sent a bill "to modify and continue" the act entitled "*An Act to incorporate the subscribers to the Bank of the United States*" to President Andrew Jackson.

On July 10, 1832, in conformance with Article I, Section 7, Clause 2 of the Constitution, President Jackson returned the bill to the Senate (where it originated) with his many objections (21, Senate Journal, 433). Congress was unable to overcome the President's veto and the second Bank of the United States likewise terminated at the end of its original 20-year term.

In 1836, the public debt of the United States reached its lowest level before or since, of approximately $38,000.[20]

Debt as Money

Debt, of course, has been prevalent for ages. That one person borrows from the plenty of another for later repayment is certainly nothing new.

This scenario first presupposes that the person loaning the excess has some of his wealth that he is willing to loan (even if he is only of modest wealth).

A true loan comes from the excess of past production. Without one person willing to forego future use of some of his assets to another, there would be nothing to lend.

When an item loaned is non-monetary, say seed-corn, then obviously a farmer has to first grow the corn, harvest it, and then save a portion from consumption for later planting.

If a productive farmer loans to another farmer 10 pounds of seed-corn, to be repaid after harvest with 11 pounds of seed-corn, then the seed-corn obviously came from prior harvest and had existence.

A tangible item, an asset, loaned to another, creates a liability to the debtor to repay to the creditor the asset loaned (the asset merely changes hands, with the debtor having an obligation to repay the asset).

If instead of a direct loan, the farmer had sold his corn for silver coin, he could loan this silver to the other farmer at interest and this second farmer could buy his seed-corn from the farm supply store. Both the corn and the coin had been harvested or mined and minted from prior effort.

When currency is loaned rather than an item directly, the promissory note signifying the loan is the creditor's asset and debtor's liability.

The use of a paper currency (other than a fully-backed certificate or *warehouse receipt* for some item such as gold or silver which merely offers a more-convenient form for economic transactions) muddies the waters, because part of its theoretical value comes out of thin air — out of an artificial *future* value.

In essence, currency allows one farmer to loan to another farmer his seed-corn from *next-year's* harvest, now. Of course, under this impossible scenario, neither farmer would really have any seed-corn to plant, so none could be harvested for repayment. One must question the true nature of currency to see if it really begins its "life" as an asset.

That one group of persons are allowed create monetary claims in excess of their actual wealth allows them the ability to buy the real wealth of others with currency little better inherently than Monopoly™ money.

That the government be the entity to emit such currency does not lessen the impact of the improper activity. Neither does the issuance of a license to a private party lessen the impact of the eventual economic devastation from monetary debasement.

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20. *Historical Statistics of the United States, Colonial Times to 1970*, 93rd Congress, 1st Session, House Document No. 93-78, U.S. Department of Commerce, Bureau of the Census, page 1118, Chart Series Y 493.

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1500 Highway 2
Leavenworth, WA 98826

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