The BEACON SpotLight

A Study of Constitutional Issues by Topic

Issue 33: The Banks of the U.S.-vs-The Independent Treasury

All monetary legislation enacted by Congress—beyond the borrowing of money (under the express power of Article I, Section 8, Clause 2)—for the first 70 years following ratification of the Constitution dealt only with gold and silver coin.[1, 2]

Nevertheless, the early history of the United States shows a back-and-forth continuing struggle between Thomas Jefferson with his hard money advocates and Alexander Hamilton and his banking interests, who pushed their paper currencies (even if those currencies were not declared a tender).

Hamilton got the early lead, once Congress approved his favored banking bill, to establish the bank of the United States in 1791.

Of course, before the congressionally-approved bill could become law, Congress had to send it to the President for his signature, veto, or inaction.

However, since George Washington had also been the President of the Constitutional Convention of 1787, he would have undoubtedly heard the results of the vote of convention delegates, on August 16th, when nine States voted *against* the specific motion to include within their proposed draft of the Constitution, the express power for Congress to be able to "emit bills on the credit of the United States."[3, 4]

1. Copper cents and half cents were also specified and struck, but they weren't declared a legal tender.

2. U.S. Notes began being issued in 1812, but they were interest-bearing certificates (at 5.4%) given in evidence of borrowed money. These early interest-bearing notes did not answer the call of "money"—they were closer to a negotiable check (they were individually made payable to a named borrower, who could transfer them by delivery and assignment [by a signature endorsed on the back of the individual note]).

3. The nine States voting against the power to emit paper currency were New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia. Only New Jersey and Maryland voted in favor of paper currency.

Please realize that Rhode Island never attended the convention and that by August, New York was no longer present (NY delegates Robert Yates and John Lansing, Jr. left the convention on July 10, 1787 [even as Alexander Hamilton remained behind, but could not vote, since he didn't represent the minimum quorum needed for the State to vote]).[5]

4. *Madison's Notes on the Constitutional Convention of 1787*; August 16th.
https://www.consource.org/document/james-madisons-notes-of-the-constitutional-convention-1787-8-16/

5. The credentials given by New York to its delegates followed precisely the February 21, 1787 call of the Confederation Congress, for the States to meet in a convention "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress, and to the several Legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the several States, render the federal Constitution adequate to the exigencies of Government, and the preservation of the Union."[6]

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Given the convention history, President Washington was likely reluctant to sign the proposed bill, at least without first hearing from his principal officers, as the bill related to the duties of their respective offices, in accordance with his delegated power to command their answer, by way of Article II, Section 2, Clause 1.

Secretary of State Thomas Jefferson and Attorney General Edmund Randolph answered first and in the manner by which conservatives would come to answer such questions for centuries to follow—by looking to the normal rules of the Constitution, and, without finding the power in question listed there, asserting that the proposed power was therefore "unconstitutional."

Jefferson went so far as to assert that the banking bill, if enacted into law, would "break down" our "most ancient and fundamental laws" which "constitute the pillars of our whole system of jurisprudence."[7]

Randolph likewise categorically denied members of Congress had the power to charter a bank (or charter any corporation, for that matter).

Secretary of the Treasury Alexander Hamilton, however, used a wholly different tactic, to get what he wanted, when he knew full well that the normal rules of the Constitution couldn't and wouldn't get him there, as Jefferson and Randolph had already shown.

Indeed, Hamilton knew the normal rules wouldn't support his quest—he first affirmed "that the power of erecting a corporation is not included in any of the enumerated powers" and he also conceded "that the power of incorporation is not expressly given to Congress," showing that had he used a similar approach, he would have had to answer similarly.[8]

In a government of delegated powers, it would prove difficult to admit such vital concessions, yet still hope to succeed.

6. Volume 32, *Journals of the Continental Congress*, Page 71 @ 74. See also Farrand's Records of the Federal Convention of 1787, Volume III, Page 555 @ 579-581.

7. *George Washington Papers at the Library of Congress*, Series 2, Letterbook 32, Page 115:

http://memory.loc.gov/ammem/gwhtml/gwseries2.html.

8. *Ibid.*, Pages 121and 136, respectively.

But, the brilliant scoundrel Hamilton rose to the occasion, discussing the normal rules of the Constitution while twisting their meaning, to obscure within his lengthy response his crown jewel, that concentrated on the Constitution's single exception to all its normal rules (to keep from tipping his hand too directly, yet still support his cause). Hamilton wrote:

> "Surely it can never be believed that Congress with exclusive powers of legislation in all cases whatsoever, cannot erect a corporation within the district which shall become the seat of government...And yet there is an unqualified denial of the power to erect corporations in every case on the part both of the Secretary of State and of the Attorney General."[9]

After citing the express power of Congress under Article I, Section 8, Clause 17, to exercise exclusive legislation in all cases whatsoever, Hamilton stated:

> "Here then is express power to exercise exclusive legislation in all cases whatsoever over certain places, that is, to do in respect to those places all that any government whatsoever may do; For language does not afford a more complete designation of sovereign power than in those comprehensive terms."[10]

It is no coincidence that Hamilton's once-admitted words, which pointed to the express power members of Congress could tap to do as they pleased, centered upon the wholly-misunderstood power of Congress, to exercise exclusive legislation "in all Cases whatsoever," that they may look to, in and for the District Seat.

Congress may "do in respect to those places all that any government whatsoever may do," Hamilton argued, because "language does not afford a more complete designation of sovereign power than in those comprehensive terms."

It is important to note that Hamilton pointedly said that Congress may do "in respect *to those places"* all that any government whatsoever may do"—admitting that the exclusive legislation power is actually limited to "those places"—at least if his adversaries were ever

9. *Ibid.*, Page 137. Italics added.

10. *Ibid.*

to argue the correct points needed to stop Hamilton's unethical advances that used largely hidden means.

Hamilton pointed to the expressly-listed power of Congress being able to do as members pleased, except in the few cases expressly prohibited them. Federal servants could become political masters, at least in the District Seat, simply by tapping into their inherent discretion expressly allowed them under Clause 17.

Time would prove that this inherent power is THE SOURCE of unlimited federal authority, to do as members of Congress and federal officials pleased, "simply" extended beyond District borders. In other words, this Constitution-bypass mechanism uses an allowed power, ingeniously, beyond its rightful geographic limitations.

Jefferson and Randolph only proved that one cannot assert that given actions are [always] "unconstitutional" (i.e., "facially" unconstitutional [unconstitutional on their face]), because one clause of the Constitution authorizes most all actions within members' inherent discretion, except those precious few things expressly prohibited (the few expressly-mentioned prohibitions such as those found in the Bill of Rights).

There is only *one* method to bypass the Constitution—the one which the Constitution itself makes, for the District Seat and other exclusive legislation properties, by Article I, Section 8, Clause 17.

These special "exclusive legislation" areas—the District Seat and exclusive legislation forts, magazines, arsenals, dockyards and other needful buildings that are scattered throughout the Union—after all, are not really "the United States," as the U.S. Constitution literally understands the term.

Indeed, the U.S. Constitution never considers "the United States" as a single entity, but instead views the term like the Declaration of Independence views it—as the (now) fifty independent States united together in a common Union, where the States delegated specified powers to Congress and the U.S. Government, while reserving unto themselves the remaining governing powers.

The United States—properly understood—is where the U.S. Constitution DIVIDES allowable governing powers into enumerated federal powers and reserved State powers, and holds them resolute and inviolable. But, in exclusive legislation areas (i.e., the corporate "UNITED STATES"), ALL governing powers were UNITED in Congress and the U.S. Government, without any governing powers remaining within any State of the Union.

Indeed, the single States—the "particular" States (Maryland and for a time, Virginia)—which originally governed these areas, ceded their ability to govern therein, to Congress and the U.S. Government in 1791. After the State cessions and after full acceptance by Congress (in 1800), all governing powers within the District of Columbia became vested in Congress and the Government of the United States.

And, since the "District" is not a "State," but was created out of (particular) States, District residents are not guaranteed a Republican Form of Government, either. Neither do District residents enjoy legislative representation in Congress, since only "States" elect U.S. Representatives and U.S. Senators to meet in Congress.[11]

After all, while each State must follow the rules and guidelines of its respective State Constitution, there is no corresponding State Constitution, no District Constitution, and no State-like Constitution, which exist or operate within D.C., to guide and direct Congress, when members legislate exclusively therein, in place of a State.

Since someone must establish rules within the District Seat, the U.S. Constitution vests this exclusive legislation power *in Congress* "in all Cases whatsoever," without further enumeration, as elsewhere a State Constitution would guide and direct legislators as they enact law.

Therefore, members of Congress must make up all their own rules for the District Seat, within their inherent discretion. They only need to avoid the few things expressly prohibited them.

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11. See Article IV, Section 4, regarding only "States" being guaranteed "a Republican Form of Government." See Article I, Section 2, Clause 1 about U.S. Representatives being chosen only by "the People of the several States;" and see Article I, Section 3, Clause 1 and the 17th Amendment about U.S. Senators being chosen only by the people of the several States.

Concluding his thoughts, Hamilton wrote:

> "As far, then, as there is an express power to do any particular act of legislation, there is an express one to erect a corporation in the case above described."[12]

Ominously, Washington signed the bill, chartering the first bank for its designated 20-year term.

It would be difficult to find a more significant event which established a path away from the remainder of the Constitution for the next two hundred and thirty years, than this Act which first exploited the Constitution's highly-unusual exception apart from its normal rules, needing only the help of Article VI, Clause 2.

Holding that nothing in the Constitution exempts Article I, Section 8, Clause 17 from being *part* of "This Constitution"—which Article VI expressly details is "the supreme Law of the Land" that binds the States—Chief Justice Marshall later ruled that Clause 17 could also "bind all of the United States" (since Clause 17 is necessarily part of "This Constitution").[13]

This clever two-clause Constitution-bypass mechanism, absent direct and pointed challenge by opponents as they fight for limited government, enables the use of Clause 17 to bind the States beyond District borders, because liberty-minded Americans continuously make the wrong argument (that such power is *always* beyond allowable federal action).

The trick to expand this Constitution-bypass mechanism merely relies upon holding certain parts of the Constitution in an ultra-precise manner in one moment, to then be ultra-general in the next, while casting suspicion elsewhere, to hide their tracks, from those who do not take the time to discover how they have been snookered by an artificial color of law. And, it won't stop until we stop it, by finally fighting the diversion process *directly*, correctly.

12. *Ibid.*, Page 138.

Hamilton was directly referring to incorporating the District of Columbia as a government, but was inferring that if they could there incorporate a municipal government corporation, then they could incorporate for any reason, including a bank.

13. *Cohens v. Virginia*, 19 U.S. 264 @ 424 (1821).

But Hamilton was right, members of Congress are empowered by the Constitution to charter a corporation at the government seat, due to their express power to exercise exclusive legislation in all Cases whatsoever.

Of course, Philadelphia was only the acting government seat in February of 1791. And, Maryland and Virginia wouldn't even cede their respective lands for 10 more months, until December of 1791, while the District of Columbia wouldn't become the permanent seat for nearly another decade.

So, how could the District Seat power be used, even before the permanent District Seat was located, let alone ceded, built out and fully accepted?

That question is but a close cousin of the comment so many people make, upon their first hearing of using Clause 17 *beyond District borders*—that "Clause 17 cannot be used beyond District borders, since those borders are limited to ten miles square."

While the borders of these special lands ARE limited, scoundrels have nevertheless discovered how to extend exclusive powers *beyond* District boundaries.

That Americans categorical dismiss Hamilton's Constitution-bypass strategy without study is its brilliance and its recipe for resounding success.

For some reason, people refuse to believe that the most powerful clause of the Constitution, bar none, is being deviously extended beyond its legal and geographic boundaries.

These closed-minded people stubbornly refuse to see that Clause 17 is necessarily *part* of "This Constitution," and cannot fathom being duped with an allowed power, extended beyond defined boundaries.

Perhaps they are simply too proud to believe or admit they can be tricked, that they haven't understood how their political adversaries succeed as they please.

Incredibly, limited government proponents foolishly believe their political adversaries, who absurdly claim that they may exercise powers never before imagined, as Modern-Day Masters, by reinterpreting words and phrases found in the Constitution, to give themselves more power.

Nothing could be more absurd, than to believe that federal servants may increase their own powers, for direct exercise throughout the land, as proven by their oaths, which signify their subservience to the Constitution.

Please bear in mind that the great legal minds of Jefferson, Randolph and James Madison never challenged Hamilton's devious bypass strategy, which should have become increasingly-obvious over time, if not immediately after Hamilton's 1791 bank opinion.

That none of the greatest proponents of limited-government ever challenged Hamilton's devious bypass strategy—of using two clauses of the Constitution against the remainder—provides fair evidence that either something very sinister is going on, or just how devilish was Hamilton's evil strategy, that great men couldn't recognize it, even as its evidence grew and things grew increasingly absurd.

If Jefferson, Randolph, or Madison had realized the ramifications of Hamilton's strategy and opposed it properly, after all, they could have changed American history as we now know it today.

They only needed to propose an amendment to follow the strategy used by the 11th Amendment of 1795, to stop Hamilton's devious Constitution-bypass strategy dead in its tracks, before it ever got going.

The proposal only needed to exempt from the "supreme Law of the Land" holding of Article VI, the exclusive legislation power of Article I, Section 8, Clause 17. They only needed to expressly detail that the exclusive legislation power of Congress under Article I, Section 8, Clause 17 was NOT any part of the supreme Law of the Land, under Article VI.

Indeed, Chief Justice John Marshall, in 1821, said as much, after he had gave his primary holding in *Cohens* (which was when and where he said: "The clause which gives exclusive jurisdiction is, unquestionably, a part of the Constitution, and, as such, binds all the United States"[14]).

Marshall's next words largely gave his political opponents the route they needed to overrule him, as he stated:

> "Those who contend that acts of Congress, made in pursuance of this power, do not, like acts made in pursuance of other powers, bind the nation ought to show some safe and clear rule which shall support this construction, and prove that an act of Congress, clothed in all the forms which attend other legislative acts and passed in virtue of a power conferred on, and exercised by Congress as the legislature of the Union, is not a law of the United States and does not bind them."[15]

Although Marshall knew full well that no current words of the Constitution expressly exempted Clause 17 from being part of "This Constitution" which Article VI declares is "the supreme Law of the Land," he obviously understood that such missing words could simply be added, by way of the before-mentioned clarifying amendment.[16]

Of course, Chief Justice John Marshall never details within his ruling the very limited extent to which Clause 17 actually "binds" the several States, against their will.

This "binding" is primarily restricted to allowing federal marshals to bypass extradition for alleged criminals, who break Clause 17-enacted congressional laws within D.C. and then flee the District into the surrounding States. Saying that the States are "bound" by Clause 17-enacted laws means in this case that the States could not, for example, prevent federal marshals from chasing suspects they found within the State, who allegedly broke D.C.-congressional law in D.C., and fled the area, so marshals could remove the alleged criminals from the State, to face federal justice.

While Jefferson and Randolph asserted that the banking bill was "unconstitutional," in effect arguing that no clause of the Constitution could ever authorize the action in question—Alexander Hamilton easily proved them wrong, by answering (discretely) that Clause 17 could easily authorize the charter of a banking corporation.

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14. *Ibid.*

15. *Ibid.*, Pp 424 - 425.

16. An amendment need only say something to the effect: "The seventeenth clause of the eighth section of the first article of the Constitution for the United States of America *shall not be construed* to be any part of the supreme Law of the Land holding, under the second clause of the sixth article."

Of course, that still does not necessarily mean that members of Congress could do WHAT they wanted, WHERE they wanted, but that is another argument (an argument that neither Jefferson nor Randolph ever brought up, even after Hamilton's opinion [so Hamilton didn't have to defend his position]. Jefferson and Randolph only claimed Hamilton could never do what he wanted, which was wrong).

Within the 1791 banking Act, the bank's charter was set to expire (via its 20-year sunset provision) in 1811, unless Congress enacted another bill to continue it.

In 1811, after a multi-year effort by banking proponents to extend the bank charter, the extension bill failed. The first bank of the United States ended its ignominious run, ultimately being rechartered, under Pennsylvania State law, as a State bank.

Of course, the war (of 1812) between Great Britain and the United States erupted the very next year (no possible coincidence, surely), putting new pressure to charter another bank.

In 1816, Congress chartered the second bank of the United States, which President James Madison indefensibly signed into law, for another 20-year term.[17]

Thankfully, President Andrew Jackson famously battled against the second bank, which ended in 1836, after banking proponents again failed to extend its charter, even though they started the effort, in 1832.

Although national banks successfully received charters following difficult periods of war, prolonged peace proved wholly unfavorable to them.

On July 4, 1840, Democratic President Martin Van Buren ceremoniously signed into law what was then widely considered America's Second Declaration of Independence—the Independent Treasury Act—to separate "bank and State."[18]

The Act sought to implement a four-year planned process, to convert, 25%-per-year, over to using only gold and silver coin, in all federal transactions.

However, in 1841, the Whig political party took control of both Congress and the Presidency, and they soon repealed the Independent Treasury Act.[19]

17. 3 *Stat.* 266. April 10, 1816.

Wasting little time, the Whig Congress sent Whig President Tyler a bill to charter a third national bank.

Despite being a central tenet of the Whig political platform, President John Tyler nevertheless vetoed the bank bill, because to approve it, he said:

> "would be to commit a crime which I would not willfully commit to gain any earthly reward."[20]

All of the President's cabinet but Secretary of State Daniel Webster resigned in protest, attempting to show a vote of no-confidence in the President, trying to force his resignation.

Banking advocates rioted in front of the White House. The D.C. police were formed in response.

The political feud that had festered since 1791 came to final blows under government strictly-limited by the U.S. Constitution in 1846, in clear favor of the hard money advocates. Democratic President James K. Polk signed into law on August 6, 1846, the second Independent Treasury Act, which thankfully became fully operational.[21]

The Treasury's fire-proof vaults and safes were made the literal treasury of the United States under the 1846 Independent Treasury system (also known as the Sub-Treasury system). The coinage mints of Philadelphia and New Orleans were made sub-treasuries, as were the custom-houses of New York and Boston and also all U.S. Post Offices.

Section 6 of the Act prohibited the deposit of any federal money into any (State) bank (there were no federal banks of this era).

With all federal funds thereafter kept only in government vaults, the monetary supply was stabilized as no federal funds could be used to augment the creation of money out of thin air by State banks (note that none of the State banks' paper currency was ever declared a legal tender, however).

18. 5 *Stat.* 385.

19. 5 *Stat.* 439. August 13, 1841.

20. https://millercenter.org/the-presidency/presidential-speeches/august-16-1841-veto-message-regarding-bank-united-states.

21. 9 *Stat.* 59.

The new law required the collectors of the public money "to keep safely…all the public money collected by them," focusing on the secure return *of* money, rather than promoting an ever-elusive and fleeting return *on* money.[22]

The real "teeth" of the Act was found in Section 16, which spectacularly declared the "deposit in any bank…any portion of the public moneys" to be felony embezzlement.[23]

All payments due government, including for postage, were required to be paid by Section 18 in silver coin, gold coin, or the government's interest-bearing Treasury notes (which notes were not "money" [they were U.S. obligations of debt, so when the federal government accepted the securities in lieu of regular payment, it was cancelling federal debt]).

Section 19 required federal officials to pay government obligations due its creditors only in gold coin or silver coin, unless the individual creditor voluntarily agreed to accept Treasury notes in lieu of payment.

Section 1 allowed the Treasury Secretary to use drafts to offset credits and debits locally, to minimize the physical transfer of gold and silver coin across broad regions of the United States.

Section 21, however, explicitly charged the Secretary of the Treasury to guard against these drafts from "being used or thrown into circulation, as a paper currency, or medium of exchange."[24]

Section 20 required each department head to suspend any disbursing officer who violated any portion of the Act, forwarding the facts of each incident to the President for prompt removal and, when warranted, court trial and punishment.

One must realize that enactment and full implementation of the 1846 Independent Treasury Act was game-over for proponents of Big Government, who favored national banks with their destabilizing paper currencies, at least as long as limited government under strict construction of the Constitution remained in existence.

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22. Act of August 6, 1846. 9 Stat. 59 @ 60. Section 6.

23. *Ibid.*, Page 63. Section 16.

24. *Ibid.*, Page 65. Section 21.

The back and forth 70-year political battle between the followers of Jefferson and Hamilton was over, kaput, finished, in 1846, as Jefferson's limited government/hard money side finally and divisively won the monetary war.

But, 15 years later, real war again reared its ugly head; this time, of course, in the doubly-destructive War Between the States.

The Civil War is widely understood today to have been all about slavery—nominally to make people equal.

Strictly speaking, that may well have been true, but the circumstances that followed certainly didn't make everyone equally-free. One could argue people were equally-shackled, as debt escalated and as oppressive government action increasingly bound formerly-free people, no matter the color of their skin.

During and after the war, the Republic and government operating under it would never again be the same, at least as long as expansive government action wasn't adequately confronted at its only vulnerable link—exposing its hidden lie, of using Clause 17 and Article VI as a potent weapon against everything else.

The legal tender paper currencies of 1862 and the national banking associations that followed a year later, played no small part in transforming these United States of America into a totalitarian-minded, command and control economy.

Although it was during this Civil War era when the pronounced and noticeable shift away from strict construction of the whole Constitution became highly visible, the seeds of that later diversion were sown much earlier.

One may trace the evil seeds of our destruction back to Alexander Hamilton in 1791, if not 1787 (at the Convention itself, when Clause 17 and Article VI were enumerated).

Chief Justice John Marshall increasingly brought the evil seeds to their full fruition, in the early 19th century.

The fateful Tree of Oppression planted by 1791 simply took several generations to bear fuller fruit, until the Founders and Framers had passed away.

But, not even the illustrious men who founded the country and framed the government are without guilt, for the devious tactics of Hamilton and Marshall should have been increasingly obvious, if not in 1791, 1803, or 1819, then certainly by 1821.

Marshall could have easily been stopped—he even alluded to the process for stopping him, as noted earlier.[25]

While it was true that no existing words of the Constitution at that time (or yet today) exempted Clause 17 from being part of "This Constitution" which is the supreme Law of the Land, doesn't mean that "clear words" to that effect could not have been simply added at that time, or at any time since.

Hamilton's devious diversion process could have been stopped before it even got going, which would have given the United States a wholly-different history, without the hollowing out of American principles, businesses and morals, witnessed since.

But, even as we cannot change our past, we may certainly change our future.

All it will take is a few influential patriots to finally understand how the scoundrels have long succeeded, who begin preaching far and wide to expose the scoundrels' legal shenanigans to the bright light of day and begin to either fully repeal Clause 17, or at least exempt it from being any part of the supreme Law of the Land, under Article VI.

Either we blast out of existence the inherent power for federal servants doing as they please everywhere, or we at least finally contain that allowed tyranny to the federal District Seat and other exclusive legislation properties.

We restore our American Republic, only when we correctly diagnose what we face and confront it squarely.

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25. See Footnote #15.

The inherent discretion allowed federal servants in the District Seat is so powerful and so ingrained into everyday existence now, that it cannot be collaterally attacked from the side.

It must be dealt with openly, resolutely, and directly.

We only regain our liberty and limited government when we learn to say "Stop," because we have the full knowledge of how the scoundrels altered the rightful course of the United States by falsely extending an allowed power, far beyond its proper geographical boundaries.

We either end inherent discretion exercised over every square inch of American soil, or we absolutely restrict it to exclusive legislation soil.

Nothing else will do the job, because an alternate authority has extended its throne and its absolute rule, because we haven't been paying adequate attention.