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SPLENDID ASSOCIATIONS OF FAVORED INDIVIDUALS: FEDERAL AND STATE COMMERCIAL BANKING POLICY IN THE FEDERALIST ERA

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Working Paper 15135
http://www.nber.org/papers/w15135

NATIONAL BUREAU OF ECONOMIC RESEARCH
1050 Massachusetts Avenue
Cambridge, MA 02138
July 2009

I thank Farley Grubb, John Wallis and Eugene White, and the other participants at the NBER Founding Choices Conference for many helpful comments. I also thank Pam Bodenhorn for exceptional assistance in collecting the hundred or so early bank charters studied in this endeavor. The views expressed herein are those of the author(s) and do not necessarily reflect the views of the National Bureau of Economic Research.

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NBER Working Paper No. 15135
July 2009
JEL No. N2,N21

ABSTRACT

Early American firms were shaped by contemporary social conceptions of appropriate horizontal power relations inside the firm and the Federalist era bank was shaped by these conceptions. The Federalist era debate on the corporation was much broader than how shareholders would treat with one another. Contemporary Americans who had no direct stake in the business corporation took great interest in its internal governance because rules for how the elite shared power within the corporation spoke to their attitudes toward sharing power in the wider civic polity. Was governance to be plutocratic or democratic? It was within this debate that the first banks were established. This debate influenced how banks were governed, which ultimately influenced how banks did their business. The political debates surrounding the establishment of the Bank of North America (1782) and the Bank of the United States (1791) defined these banks and nearly every bank chartered thereafter up to the mid-1830s and beyond. Specifically, the liberal Bank of North American charter that imposed few meaningful restrictions on the bank's operation, accountability or governance gave way to the Bank of the United States's more restrictive charter that sharply limited its operations, made it accountable to government, and defined many of its internal governance procedures. Subsequent state charters were more closely modeled on the Bank of the United States model than the Bank of North America charter.

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1. Introduction

In his study of the development of American law, historian Lawrence Friedman (1993) reminded us that the Bill of Rights applies only to the federal government, not the states. Although the Virginia Declaration of Rights predated the Bill of Rights by 13 years and provided its philosophical underpinnings, the direction of influence was from federal to state levels. Many states simply copied the first ten amendments to the Constitution when drafting their own constitutions. The hypothesis offered here is that the same federal-to-state line of influence is evident in early American banking law and policy. Pennsylvania, Massachusetts, Maryland and New York chartered banks prior to Congress's charter of the Bank of the United States in 1791. Yet it was the Bank of the United States charter that served as a model for most subsequent bank charters.

The transition was not seamless. To many late-eighteenth and early nineteenth century Americans, banking was something to be entered into with caution if at all. Henry Clay, an otherwise ardent spokesman for pro-growth internal improvements such a roads, turnpikes and canals, was less enthusiastic about banks, which were viewed by some others as vital infrastructure. During Congressional debate in 1811, Henry Clay labeled the Bank of the United States a "splendid association of favoured individuals invested with exemptions and surrounded by immunities and privilege" (quoted in Dorfman1946, p. 341). Clay's distaste for the bank sprang not just from a

western agrarian's conception of banks as promoters of speculation and sharp dealing. Rather, his distaste sprang from a more general view of the corporation as an instrument of oppression capable of robbing the country of its hard-won republicanism. Americans had fought a war to rid itself of aristocratic privilege. Corporations smacked of a return to government sanction of privilege.

Lamoreaux (1997) and Dunlavy (2006) argue that early American firms were shaped by contemporary social conceptions of appropriate horizontal power relations inside the firm and the Federalist era bank, as a corporation, was shaped by those conceptions. But the debate was much broader than how partners or shareholders would treat with one another. Contemporary Americans who had no direct stake in the business corporation took great interest in its internal governance because rules for how the elite – and make no mistake about it, the elite controlled America's earliest financial corporations – shared power within the corporate body politic spoke to their attitudes toward sharing power in the wider civic polity.

Incorporating a bank or other business enterprise in the Federalist period was contentious because of different beliefs about the nature of governance. Was governance to be plutocratic or democratic? It was within this debate that the first banks were established and this debate influenced how banks were governed, which ultimately influenced how banks did their business. The political debates surrounding the establishment of the Bank of North America (1782) and the Bank of the United States (1791) defined these banks and nearly every bank chartered thereafter up to the mid-1830s and beyond. Specifically, the liberal Bank of North American charter that imposed few meaningful restrictions on the bank's operation, accountability or governance gave way to the Bank of the United States's more restrictive charter that sharply limited its operations, made it accountable to government, and defined many of its internal governance procedures. Subsequent state charters

were more closely modeled on the Bank of the United States model than the Bank of North America model. And, as all students of early American history are aware, concerns with the role of the corporation, especially the large corporation, remained unresolved until well after Jackson's war on the second Bank of the United States.

Section 2 describes the conditions under which the Bank of North America was established and how the terms of its original charter came under attack less than three years after the bank's formation. The debate over the bank reflected contemporary concerns with the relationship between economic and political power. Because the bank's managers were unrepentant defenders of a plutocraticly organized bank, its charter was revoked. Although the charter was reinstated within two years, the bank implemented several new internal procedures that smacked less of privilege and plutocracy. Section 3 demonstrates how the debate in the mid-1780s over the Bank of North America influenced the features of the Bank of the United States's charter. Alexander Hamilton was aware of the concerns expressed in the earlier debate and tailored the charter of the Bank of the United States to deflect many of those concerns. Hamilton's plan, crafted in response to contemporary concerns, became the model of bank charters from Maine to Mississippi. Thus, the line of influence in Federalist bank policy ran, as Friedman might have expected, from the federal to the state level.

2. The Bank of North America: The Debate on Corporate Privilege is Joined

The Bank of North America (hereafter BONA) was born of crisis. In spring 1781 the English army was moving easily through the South. The currency was depreciated to the point of near collapse, Congress had exhausted its fiscal resources, patriotic fervor had given way to frustration,

and American morale sank lower by the day. Facing a grave situation, Congress centralized the army and other administrative departments. It also created the office of the Superintendent of Finance and appointed Robert Morris to the post. The new superintendent was the second most powerful figure in the reorganized government, second only to George Washington, and was granted almost complete control over fiscal policy (Rappaport 1970).

Morris's entered his post with a sweeping vision of fiscal reform (Riesman 1987). Morris's public finance plan featured a bank as its centerpiece, a bank that was to provide assistance during the war and contribute to the country's postwar prosperity.[1] In addition to the bank, Morris asked for new domestic taxes and import tariffs. Although integral to the entire proposal's success, Morris's revenue plan met stiff resistance. Rhode Island's David Howell, an articulate spokesman for local sovereignty, convinced the powerful Virginia and New York delegations to defeat Morris's tax measures.

With taxes and tariffs shelved for the moment, Morris's plan now turned exclusively on the bank. Rappaport (1970) contended that Morris unveiled his banking plan so quickly after assuming office that he must have contemplated it long before. Morris later claimed that he had a plan for a commercial bank before the war, but hostilities forced him to set them aside (Carey 1786). We also know that Hamilton, while still a member of Washington's staff, twice wrote to Morris with bank proposals. But Morris thought Hamilton's schemes too bold, too audacious – one called for a bank of $200 million capital – and proposed a more modest institution. Morris's plan called for a bank

[1] Morris originally believed that the BONA's profits would be sufficient to retire the Congressional debt and envisioned refunding the debt and financing it through a sinking fund made up of the bank's profits. Riesman (1987, p. 144) argues that Morris formulated this plan after reading the work of the English Whig Richard Price, who in 1772 formulated a comparable plan for extinguishing Britain's massive debt.

with just $400,000 in capital, divided into $400 shares. The difference between Hamilton and Morris on the bank was that Hamilton envisioned a bank as an arm of government that might serve commercial interests; Morris envisioned the bank as arm of commerce that might serve the government. It did not occur to Morris that the government would own shares, perhaps because the government was effectively bankrupt and more in need of capital than a supplier of it.

Subscriptions came in slowly. By October 1781 only $70,000 had been subscribed so that the third, and remaining pillar of Morris's three-pillared plan appeared to be in doubt. The arrival of a French frigate with $470,000 in specie to support the revolutionary cause afforded Morris the opportunity to subscribe to the bank's capital on the government's behalf. After providing the army with supplies, Morris invested the remaining $254,000 in BONA stock. When another $15,000 in private investment came in, Morris applied for a Congressional charter of incorporation.

Congress chartered the bank on 31 December 1781, but lingering concerns over whether it actually had the power to do so led it to ask states to enact similar supporting legislation (Lewis 1882). Massachusetts, Rhode Island, Connecticut, New York, New Jersey and North Carolina all passed enabling legislation. It was not until Morris petitioned the Pennsylvania legislature for a charter that serious concerns were raised. Critics feared the consequences of the original grant's concession of a perpetual charter and its right to amass up to $10 million in assets. The latter was troublesome because it held the potential for the establishment of a "monied aristocracy;" the former was equally troublesome because a perpetual charter placed this large and potentially dangerous institution beyond legislative control. Neither argument got traction. Despite concerns voiced by some legislators, the usually vociferous press's silence as well as the few references to the bank in the politicians' correspondence are notable.

Except for the profits earned in its early years, the BONA did not become noteworthy until 1785, when the bank's operations and its charter provoked a larger debate over the meaning of democracy and the corporation's place within it. The opening shot was fired at the bank in an advertisement that appeared in the *Pennsylvania Evening Herald* on 23 February 1785. It informed the public of a petition asking for repeal of the bank's charter. Legislative speeches for and against the bank followed and a bill to repeal the charter was drafted. The spring 1785 legislative session ended without the Assembly taking action. When the Assembly reconvened in the autumn the debate resumed and an act repealing the BONA's charter passed in September 1785, less than four years after Congress had chartered it.

What had the bank done to turn the Assembly against it? To many legislators the better question was what hadn't the bank done. Hammond (1957, p. 53) listed the sundry charges leveled against the bank: it encouraged usury; it refused to lend on long terms to farmers; it refused to lend on mortgage security, again, to farmers; it insisted on punctuality in meeting one's debts to the bank; it allowed foreigners (which included not only Europeans, but individuals from neighboring states) to invest in the bank; and, it demonstrated favoritism to certain borrowers, mostly shareholders. The bank's real sins, however, were its opposition to the chartering of a rival institution, its opposition to the state's emission of £100,000 in bills of credit to meet debt obligations, its refusal to accept notes issued by a £50,000 loan office, or land bank and, above all, its adoption of high-pressure lobbying practices against all three otherwise popular (and populist) measures.

Morris was quick to defend his bank and denied that its actions in any way undermined democratic institutions. But his arguments failed to sway many critics because he was also quick to point out that it had been established on the idea that it could lend to whomever it saw fit. Reisman

(1987, p. 148) observed that Morris was blind “to charges that the bank was a monopoly favoring some and not others” and he failed to grasp why others cared so deeply about the larger issues raised by the bank and its practices.

Care they did, and deeply, too. Although the bank’s critics provided a laundry list of the bank’s transgressions, many of which were fallacious, the legislative committee recommending the annulment of the bank’s charter stated “that the accumulation of enormous wealth in the hands of a society who claim perpetual duration, will necessarily produce a degree of influence and power, which cannot be entrusted in the hands of any one sett [sic] of men whatsoever, without endangering the public safety” (Carey 1786, p. 52). Further, the bank, which was envisioned by Congress as an arm of government, was no longer dependent on that government and thus without an effective check on its operations.[2] Because the bank’s president, Thomas Willing, and other officers and supporters, including Morris, failed to take the legislature’s annulment threat seriously, few arguments in support of the bank were offered until the matter was all but decided. The breadth of opposition to the bank took its supporters by surprise. The vote to annul was lopsided as legislators from every region of the state, including Philadelphia, voted against the bank. Outside the legislature, criticism came from all quarters: farmers and mechanics opposed it because it confined its loans to mercantile firms and mercantile firms on whom the bank did not bestow its favors opposed it for its favoritism.

The ink on the act annulling the charter was barely dry before plans to have the charter restored were put in motion. Robert Morris and two of the bank’s other directors successfully ran

[2] The federal government had repaid its large loans to the bank by selling off the interest it took when Morris subscribed to $254,000 in stock on its behalf.

for legislative seats. Their election and a simultaneous mass petitioning campaign asking for reinstatement of the charter guaranteed that the issue would be revisited. Carey's (1786) transcription of the legislative debates offers a window into contemporary attitudes about republican government and whether it could survive economic modernization. The foundational political disagreement centered not on favoritism in lending or the bank's opposition to a state loan office and the emission of bills of credit, but on the internal governance of the bank, which reflected wider concerns with the nature of republican governance writ large. If the corporation was, as Samuel Blodgett insisted, a "moneyed commonwealth" within a commonwealth, a "moneyed republic" within a republic, then the nature of corporate governance reflected on the possibilities and the pitfalls of political governance.[3]

What were the governance features inside the bank that so offended republican sensibilities? Two features of the bank's internal operations – one share-one vote and the absence of any mechanism to ensure the rotation in office for directors – became recurring themes of the debate. Assemblymen Lollar and Smilie attacked the one share-one vote rule directly because it concentrated power, a practice that Smilie argued was "highly dangerous" because it would inevitably lead to "direct tyranny" by the large shareholders over the small (Carey 1786, p. 109). He raised the rhetoric further by drawing an analogy between the bank and the wider polity, asking whether members of the assembly would ever agree to vest power in any similarly small group of men through a voting rule that allocated votes by wealth.[4]

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[3] Blodgett is quoted in Dorfman (1946, p. 338).

[4] It is ironic that legislators voted into office by the fraction of the potential electorate who met the property requirement for voting spoke against voting rights allocated by wealth. It was the case, of course, that once a man met the property requirement, he received only one vote

Most members were undoubtedly aware of the common law of corporations, which recognized a one shareholder-one vote rule unless the charter or bylaws established an alternative voting rule.[5] Greater wealth did not establish a basis for multiple votes in the polity, so there was no reason for it to do so within the corporation. Voting power determined by wealth, in fact, was likely to spill over into the polity. William Findlay, skilled debater, western Republican, lover of large beaver hats, and outspoken opponent of the bank, provided an alarming vision of proportional voting rules. Liberal corporate charters, like that given the bank, created not little republics but "little aristocracies" that would ultimately "engross all the wealth, power, and influence of the state," and if made large enough would first monopolize land holding, then trade and finally the government itself (Carey 1786, pp. 66-69).

The failure of the bank's charter or bylaws to establish a system of rotation among the directors also smacked of privilege and aristocracy. It conjured up, as Reisman (1987, p. 157) observed, a vision of aristocrats with permanent, powerful positions. Even more troubling was that it conjured a "vision of placemen and tax gatherers [or, in this case, usurers] swarming the countryside .. to support wealthy men in high places." Moreover, without established term limits "the bank will remain under the present directors, during their lives, which is a direct tyranny" (Carey 1786, p. 109).

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regardless of how many times over he satisfied the requirement. I thank Eugene White for pointing this out.

[5] Harris (2009) reported that it was the charter of the English East Indies company that established the one shareholder-one vote rule. It was only later that the voting rule was altered. The original Bank of England charter also imposed a one shareholder-one vote rule (Redlich 1968). Redlich argued that Americans were aware of the Bank of England rule and purposely adopted an alternative.

In his defense of the bank Robert Morris dismissed Republican concerns as “bugaboo” (Carey 1786, p. 58). Instead of allaying fears of concentrated power, he celebrated it. It might be true, as charged, that the directors of the bank remained in office for long periods and were elected by “six or seven men, largely concerned in stock,” but how else might it be? Would it be right for those with small numbers of shares to have power equal to those with many? “Voting according to property,” he asserted, “is the only proper mode of election” (Carey 1786, p. 117). If the legislature was to tamper with the proportional voting rule inside the corporation, it may as well pass an agrarian law – contemporary code words for radical mass reallocation of land from rich to poor – and divide all property equally. Such would be the tyranny of the small shareholders over the large and, ultimately, the poor over the rich. So Morris, too, believed the debate over internal corporate governance was about something deeper and more fundamental than corporate governance *per se*. If corporate governance, as constituted in the BONA charter at least, was a mirror in which to view the potentialities of republican governance generally, Morris liked what he saw inside the bank; his opponents feared it.

The BONA’s proponents carried the day, however. The act annulling the charter was itself annulled, but the legislature imposed several new restrictions on the bank, among them a 14-year charter, and stricter limits on the amount and type of assets it might hold, most notably a restriction on land ownership except what was needed to operate the bank. The new charter did not overturn the one share-one vote rule, but under pressure the bank’s shareholders adopted a bylaw that established an upper limit on the number of votes a single shareholder could cast.

To modern sensibilities, the late-eighteenth century debate over the corporation seems a tempest in a teapot. To contemporaries, however, the concern was very real. Historians note

contemporary beliefs that republics were inherently fragile. The risks were so great and the prospect of failure so ever present, that the institutions of modernity, including the corporation and all it represented, spelled its eventual but certain doom (Lewis 1993, p.117). Findlay and Jefferson were products of an eighteenth-century political tradition that saw the political world as “consensual, deferential, and elitist” in which the citizens agreed to be led by men of talent and social standing who in turn agreed to protect the citizenry from the consequences of faction and privilege (Lienesch 1993, p. 324). Leaders walked the razor’s edge of fair governance and corruption. Modern influences, notably the corporation, threatened to corrupt the healthy republic (Wood 1993, p. 411).

Hundreds of petitioners opposed to the bank complained that the bankers, though in business for only a short time, had already begun to acquire inordinate influence in “public councils” (Bouton 2007, p. 111). That they had thwarted the chartering of a competitor and had delayed, and nearly stopped, passage of the loan office act, demonstrated that a small number of men might subvert popular rule. Republican government was at risk because a few large shareholders and their representatives – directors not subject to popular election – could establish a shadow government out of reach of popular control.

The modern conception of representative democracy as one in which multiple interest groups vie with one another in shaping policy had not yet revealed itself to late-eighteenth century politicians, *Federalist No. 10* notwithstanding. Most Americans, including those in power or aspiring to it, whether Federalist or Republican, believed in a “unitary, definable public good and common purpose that could be discerned and articulated by virtuous and selfless men” (Sharp 1993, p. 89). This approach became what later historians labeled the *politics of the absolute*, or the belief that there was a single, definable objective and that dissent emerged not from a legitimate and

alternate view of the public good, but from a desire to undermine the republic and subvert the constitution (Elkins and McKitrick 1993).

Parties and other political groups developed not to broker between myriad interests – such as a group of profit-seeking capitalists who sought exclusive, corporate banking privileges and an opposing group who sought a state-subsidized, mortgage-based loan office – but to preserve the true legacy of the Revolution. John Taylor and his Republican friends, therefore, saw themselves less as an emergent political party than a "band of patriots" who had temporarily joined together to protect the country from the treachery of the few (Sharp 1993, p. 135). Thus Jefferson could, in reflecting on Hamilton, praise his opponent for being a "singular and honest character," but one who was "so bewitched & perverted by the British example, as to be under thoro' conviction that corruption was essential to the government of a nation" (quoted in Lewis 1993, p. 123).

An appreciation of the political debates of the 1780s matters because only in understanding it can later state banking policies be understood. Although modern political parties had not yet emerged by the time the original thirteen states started chartering banks, the battle lines were already sharply drawn. What would later be labeled "Federalist" or "Republican" found expression in the Pennsylvania debates transcribed by Carey. Moreover, Carey's decision to publish the transcripts put the debate on the national stage and provided the foundational arguments for two or three subsequent generations of banking proponents and critics alike. When Sullivan (1792) attacked the Massachusetts Bank, he expressed many of the same concerns in the same terms as those raised in the BONA debates. The bank was run by a handful of Boston's wealthiest families; it favored insiders; and the legislative charter had failed to place any meaningful restrictions on it. Like the revisions to the BONA charter in 1786, the Massachusetts Bank's charter was amended in 1792 in

an attempt to place more effective limits its corporate powers. That same year Massachusetts incorporated the Union Bank, the charter of which can only be read as a legislative attempt to balance the growing demand for commercial banking with democratic principles. Instead of dividing the Union Bank's capital stock into $400 (par) shares, as it had done with the Massachusetts Bank, its $800,000 capital was divided into $8 (par) shares to disperse shareholding as widely as possible. It was an everyman's bank and, therefore, neither as prone to insider favoritism nor as dire a threat to the republic. We now turn to the influence of Hamilton's Bank of the United States. Where Morris's Bank of North America opened the door for commercial banking, it was Hamilton's Bank of the United States that established it broad outlines for the next half century or more.

3. Hamilton's Legacy: The Bank of the United States and Early State Banking Policy

Like Morris a decade earlier, when Hamilton assumed leadership of the Treasury Department, he was bedeviled by three questions of public finance: How would the government raise revenues? How would the government raise funds in anticipation of future revenues? And how would it transfer funds from the place of collection to the place of disbursement? Hamilton's answers comprised what Sylla (1998) labeled the three pillars of the Federalist financial revolution. Hamilton's plan included, among other features, domestic taxes and import tariffs, the assumption, consolidation and re-funding of the remaining Congressional and state Revolutionary-era debts into federal debt, and the establishment of the Bank of the United States (hereafter BUS).

Hamilton produced a number of documents in support of his plan, but it was his *Report on the Bank* that is considered groundbreaking by some (Cowen 2000; Wright and Cowen 2006). A national bank, Hamilton argued, was indispensable to the "prosperous administration of the

finances, and would be of the greatest utility in the operations connected with the support of the public credit" (Clarke and Hall 1832, p. 15). His *Report* did not represent Hamilton's first thinking about a bank. He had previously corresponded with Robert Morris about the desirability of a national bank and he was the principal author of the Bank of New York's 1784 articles of association (Hammond 1957, Redlich 1968).

Hamilton's *Report* reveals a student of history, contemporary theory and, importantly, contemporary domestic politics. Hamilton discussed the advantages of Dutch, Italian and English banks and how those advantages would accrue to Americans. His discourse is clearly influenced by Adam Smith's writings.[6] More important for its long-term influence on corporate governance and state banking policy, Hamilton crafted his proposal cognizant of the political arguments raised during the 1785 Pennsylvania debates and elsewhere.

So what was Hamilton's plan for a national bank? He began with a discussion of what the bank should not be. First, it should be a bank without branches or, at least, far-flung branches.[7] Branches would be too difficult to manage, especially in the bank's formative years, and these difficulties would inevitably undermine public confidence in the bank. Second, it should not be a land or mortgage bank. It was important that the national bank be a specie-based commercial bank that could realize and liquidate its assets promptly. Third, it should not be a wholly state-owned bank. Hamilton understood the importance of private interest and believed that the profit motive

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[6] Redlich (1968) highlighted Hamilton's reliance on Smith's examples and parallels in language between the relevant passages of Hamilton's *Report* and Smith's *Wealth of Nations*.

[7] Interestingly, later in the *Report* Hamilton recommends that the charter include a provision for the establishment of branches. Instead of inconsistency, these seemingly contradictory statements probably mean that Hamilton was uncomfortable with the establishment of branches at the outset, but anticipated their eventual utility.

should guide its operations. Nevertheless, it was imperative that the government was a part owner so that it could receive dividends and exercise some direction or management. Finally, the bank should not be without supervision. A vital element of Hamilton's plan was that some officer of the state, preferably the Treasury secretary, should retain the right to conduct inquiries and inspect its books (Clarke and Hall 1832, p. 30).

// Table 1 about here //

The features of the 1791 BUS charter are provided in Table 1, and can be usefully divided into *general* provisions, *regulations*, and *governance* rules. The general provisions include features such as the capitalization and share value described in Section 1, how, when and where the shares would be subscribed and paid for (§2), the time limit of the charter (§3), the reservation of shares for the government (§11) and the promise to not charter a competing bank for the duration of the BUS's charter (§12). Regulatory provisions included such features as Section 7.8, which forbade the bank from trading in real estate, section 7.9 that limited its banknote issues, section 7.10 that restricted its dealings in public debt, as well as sections 8 and 9 that prescribed punishments for violations of these restrictions. Finally, and perhaps, most importantly, the charter included several conditions – found mostly in Sections 4 and 7 – that established internal governance procedures for the bank. Internal governance rules, as was evident in the BONA debates, not only affected shareholders and managers but influenced the perceptions of outsiders.

The BUS charter became the model that many legislatures followed in drafting state bank charters and, therefore, shaped the contractual relationship between hundreds of banks and the states

in which they operated.[8] The nature of these contracts determined how well banks performed their intermediation functions and how they responded (or failed to respond) to contemporary political and economic circumstances. This is not to diminish the BUS as an important agent of Treasury's fiscal policy or independent monetary policy. Those features of the BUS have been explored elsewhere (Holdsworth and Dewey 1910; Timberlake 1978; Kaplan 1999; Sylla, Wright and Cowen [forthcoming]). What is less well appreciated is the fundamental role the BUS – and by implication Hamilton – played in shaping state banking policy up to the adoption of free banking by several states after 1837 and, ultimately, by the federal government in 1863.[9]

// Table 2 about here //

The extent to which the BUS charter influenced state bank policy becomes evident by even a casual reading of Table 2, which lists 25 features of the BUS charter and their appearance in the charters of four banks organized prior to the establishment of the BUS in 1791 and 4 banks chartered thereafter. Some variant of the most basic general provisions appear in the earliest bank charters (or articles of association), including the total capital, the number of shares and the grant of corporate status. Few restrictions appear in the pre-1791 charters. It is particularly notable that the earliest bank organizers imposed relatively few internal governance rules on themselves. Compared to the

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[8] Redlich (1968, p. 21) recognized this fact when he wrote: "the tendency to model charters of newer banks on those of certain older ones led to integration. In fact some bank charters became models to whole groups of banks in the same state and even elsewhere." Redlich was correct, but he failed to trace the influence back to the BUS charter and how it shaped state banking policy or how it influenced financial sector performance. Space limitations prohibit me from pursuing an analysis of the latter as well. I leave that to future research.

[9] Bodenhorn (2006) argued that free banking represented a fundamental break from previous banking policy and, by implication, a reordering of the relationship between the state and the financial sector.

BUS charter, the governance rules were a patchwork and tended to the innocuous, such as the requirement that directors stood for annual reelection. It is notable that not one of the pre-BUS banks afforded shareholders the right to call extraordinary meetings. Of course, banks might provide some of the governance features not included in their charters through bylaws or other internal operating rules, but bylaws provided a lesser guarantee that investors would ever realize a return on their investment (Shleifer and Vishny 1997). Directors might change bylaws whenever they no longer suited the directors' purposes so that, compared to explicit charter provisions, internal rules were a second-best guarantee of shareholder rights at best.

The influence of the BUS charter on state banking policy becomes apparent when we consider the charters of post-BUS banks. Although the banks listed in Table 2 were not randomly selected, they are indicative of the wide and long-lasting influence of the BUS charter. Nearly every charter imposed a time limit, required regular reports of condition to the government, and reserved some shares for the state. Every legislature reserved the right, most implicitly, to charter other banks. There are similar commonalities between the BUS and the state banks in the restrictions placed on banks' activities and in the basic corporate governance rules. The remainder of this chapter investigates the logic underlying the general, regulatory and governance provisions included in the charters.

3.1 General provisions and state banking policy

It is notable that, in his 24-point plan for a bank in his *Report*, Hamilton accepted a de facto term limit for the BUS (p.31) when earlier in the document he dismissed the suggestion that the BONA become the national bank because in accepting its Pennsylvania charter it had "rendered

[itself] a mere bank of a particular state, liable to dissolution at the expiration of fourteen years" (p. 26). That it faced the prospect of another contentious rechartering debate in 1800 rendered the BONA unfit to be a national bank. Why did legislatures impose term limits on banks? At least three reasons, two philosophical and one practical, present themselves. In the 1785 BONA debates, one of the principal objections of the bank's critics was its perpetual charter. Under the theory that a charter represented an inviolable contract between a state and a corporation, a perpetual charter was troublesome because it placed the corporation beyond effective legislative control. When this concern was raised by some Pennsylvania legislators in the 1782 during the debate over the BONA's original charter, their fears were allayed when they were assured that any subsequent legislature could amend the charter at will (Rappaport 1970, p. 26).

Contemporary belief accorded with pre-*Dartmouth College* views that the state retained absolute power over corporations.[10] In 1784, in fact, the Pennsylvania legislature rejected the contract theory of corporate charter when the College of Pennsylvania claimed that amendments made to its charter were unconstitutional. During the College debate, one member expressly argued that such could not be true because if it were, the legislature had no control over BONA "a monster of weight and influence" (quoted in Rappaport 1970, p. 82). In short, some contemporaries objected to perpetual charters because, in granting them, the state surrendered its power over a subordinate "body politic." Regular recontracting placed the state in the superior position and afforded it regular opportunities to rein in a corporation. John Taylor of Caroline was not along in his fear that a

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[10] The famous Dartmouth College case (*Trustees of Dartmouth College v. Woodward*, 4 Wheaton [1819]) had not yet been decided. In *Dartmouth College*, the Supreme Court of the United States held that corporate grants were protected under the contract clause of the federal Constitution. Once granted, governments had limited power to amend charters.

corporation might hide behind its charter, outlive its original purpose, and threaten the republic (Conkin 1980, p. 65).

A second philosophical objection to a perpetual charter is summarized in Jefferson's oft-quoted phrase that "the Earth belongs in usufruct to the living." This idea, which Jefferson set out in a letter to James Madison, reflected a fundamental tenet of contemporary Republican political philosophy that each generation owed to its successors the freedom to make their own choices (Sloan 1993). Because it was easier to renew good laws than repeal bad ones, it was imperative that laws be written with limited duration. Even bad laws have a constituency, Jefferson observed (Sloan 1993, p. 284). Automatic expiration was necessary and, because Jefferson had calculated the length of a generation as 19 years, every law should expire approximately every 20 years. It is not surprising then that the BUS charter and many that followed expired 20 years after enactment. As time passed, terms lengthened to 30 or even 40 years, but term limits became institutionalized in bank charters.[11]

A third reason for charter term limits reflects the states' ongoing search for sources of revenue. State governments quickly learned that prospective bankers were willing to pay for bank charters. Sometimes banks paid by providing the state with shares in the newly chartered company for free or at a reduced rate so that the state treasury would receive dividends. The charter of the Farmers' Bank of Virginia, for example, required that the bank give the state shares. Sometimes

[11] It is notable that Madison was less enthusiastic about regular rewriting of laws than Jefferson. Madison, in fact, viewed the prospect of rewriting laws every 19 years with alarm (Sloan 1993, p. 300; see Madison to Jefferson, 4 February 1790). The difference in approach between the two probably reflects Madison's pragmatism born of his more extensive legislative experience. It was also the case that some present improvements were of sufficient magnitude that it was efficient to burden future generations with some of their costs.

banks paid with direct "bonus" payments to the legislature, such as the Philadelphia Bank's payment of $135,000 in 1803 after a contentious political battle to obtain its charter (Schwartz 1947). By comparison, the South Carolina Bank paid the bargain price of $15,000 in 1801. At other times banks filled the state treasuries through taxes on capital (Massachusetts) or dividends (Pennsylvania). By the 1820s banks had emerged as the most important revenue source for many states (Sylla et al 1987).

In reserving one-fifth of the shares of the BUS for itself, the federal government became the largest residual claimant to the profits of the country's single largest enterprise. Several states followed suit. Virginia, for example, subscribed to shares in the Bank of Virginia, whose charter was modeled closely after the BUS charter. North Carolina and Kentucky later followed Virginia's example. The state, in effect, created local monopolies or oligopolies and then extracted some fraction of the banks' rents and returned them to the taxpayer.[12] Rational, forward-looking legislators recognized that the stream of future rents was uncertain and that risk averse prospective bankers might underbid for a charter. In taking a direct ownership stake, the state ensured that it received a proportionate share of the rents. But other states did not take direct ownership stakes and found other mechanisms, such as bonus payments, to extract rents at the outset. By forcing the bankers to come back to renegotiate their agreements on a regular basis, the state could better tailor the bonus payment to the current needs of the treasury. In 1830, for example, the Pennsylvania legislature, then busy finding ways to fund the state's massive canal-building project, rechartered the Bank of Pennsylvania. Under the terms of the new charter, the bank was required to lend the state $4 million

[12] Not surprisingly, this system also led to legislative corruption and bribery (Bodenhorn 2006).

dollars at below-market rates. Moreover, the bank was forced to accept the responsibility of maintaining the transfer books for the state debt. Providing this uncompensated service to the state treasury cost the bank an estimated $9000 per year over the next two decades (Holdsworth 1928, pp. 148-50).

Hamilton's plan was generally sound and well reasoned, but not all of the BUS's charter provisions set a good example and at least one – the provision allowing the federal government to borrow its subscription and repay it over ten years – set a bad example and established the precedent for paying for subscriptions through stock notes. Stock notes arose when the subscribing shareholder borrowed from the bank, using the subscribed stock as collateral, to pay the next instalment on the stock. Critics claimed that this system undermined the very premise of a bank's capital, which was supposed to be contributed by the shareholders with money to lend rather than created through a credit transaction (Raguet 1840; Holdsworth 1928). Despite contemporary concerns, stock notes were widely used. In 1824, a Maine legislative committee found that nearly 69 percent of the capital of 6 banks was made up of stock notes (Chadbourne 1936, p. 12). Similarly, in 1831 New York's bank commissioners expressed grave concerns over the use of stock notes. They feared that the practice encouraged men of limited means and dubious character to take control of a weak bank and defraud the other shareholders and the public (New York 1831, p. 30). Kentucky and South Carolina law expressly forbade the practice and further forbade the payment of any loan through the direct surrender of the bank's stock (Morehead and Brown 1834, p. 209). On the other hand, in order to encourage private investment in the State Bank, Indiana loaned up to $32.50 toward the $50 share subscription price. These were just stock notes once removed because the state borrowed on its own account to subsidize private subscribers.

Although it was subject to abuse, the use of stock notes was not necessarily bad practice. In the early nineteenth century, specie was scarce and requiring payment of stock subscription instalments with specie would have slowed the development of a banking industry. Thus some subscriptions were paid with state or federal bonds; others were paid with stock notes. Even Hammond (1957, p. 124), who was not loathe to criticize contemporary bank policy, contended that complaints about the use of stock notes were "unrealistic and inconsistent." Finding useful alternatives to specie reflected American pragmatism. If Americans had allowed the chronic shortage of specie to retard the formation of banks, the circle of capital shortages and underdevelopment observed in other economies might have plagued the United States as well. The pretense of the stock note encouraged the creation of banking services that stimulated trade and growth (Bodenhorn 2003, p. 22).

3.2 Portfolio and other restrictions

The second set of *regulatory* provisions included in the BUS charter directly or indirectly influenced the conditions under which state banks functioned. Most of the regulations reflect either contemporary common sense or political concerns. The common-sense restrictions included requirements that officers with fiduciary responsibilities post surety bonds, that branches be allowed, and that the bank provide regular reports of condition to some state officer or agency. The requirement that the bank continuously redeem its notes in specie imposed market discipline on banks (Calomiris and Kahn 1991). Banknote holders with a redemption option had incentives to monitor banks and created incentives for banks to maintain adequate specie reserves. If market incentives broke down, the BUS charter limited the bank's debts, exclusive of deposits, to two times

its paid-in capital. The continuous redemption clause and the two-times-capital clause are nearly universal elements of subsequent bank charters. These restrictions did not appear in the four pre-BUS charters (see Table 2).

Limitations on non-bank assets and the prohibition on dealing in anything other than bills of exchange, specie and bullion were included so that the bank would neither accumulate large land holdings nor compete with merchants. In his arguments against BONA in 1785 William Findlay argued that because the bank's capital was so large, there was little that stood in the way of its monopolizing trade or land ownership (Carey 1786, p. 69). To these men who equated land ownership and political participation, land ownership by banks presented a frightening prospect because it was a short step from control of large tracts of land to control of government itself. Morris was probably correct in calling this argument a "bugaboo," but Findlay's concern resonated. Many, if not most state bank charters granted through the first half of the nineteenth century included some variation on the following:

> The said company shall not purchase or hold any lands, tenements or other real estate, other than what may be necessary for the convenient transaction of its business, unless such lands, tenements and real estate shall have been *bona fide* mortgaged to the company by way of security, or conveyed to it in satisfaction of debt previously contracted in the course of dealings, or purchased to secure debts contracted with or due to the company.... (*Laws of the State of Missouri* 1825, p. 179).

In other words, banks were allowed to own the lot on which their banking house was located, they could take possession of real estate signed over as security for a defaulted loan, or they could purchase collateralized property at sheriffs' sales that might otherwise fetch less than the defaulting borrower's debt. Some states found even these restrictions insufficiently strict because banks might still accumulate large blocks of real estate through a wave of defaults. To guard against such a

possibility, Kentucky required banks to divest of any seized lands within five years of their having taken possession. If they failed to do so, the lands escheated to the commonwealth (Morehead and Brown 1834, p. 209).

Other restrictions on bank dealings reflected local concerns. Article VII of the Bank of New York's articles of association is curious in that it prohibits the bank from dealing in foreign exchange. Foreign and domestic exchange dealings later became the mainstay of money center banks and a business that encouraged the integration of the country's regional financial markets (Bodenhorn 1992; 2000). But in 1784 foreign exchange was the province of the city's large international merchants and they were not prepared to support the incorporation of a potential competitor (Redlich 1968, p. 28). Some variation on this clause reappears in dozens of state bank charters. The charter of the Bank of Missouri, for example, provides that the bank "shall in no case be owners [sic] of any ship or vessel" and the charter of the Planters' and Mechanics' Bank of South Carolina forbade the bank trading in any product of the land (cotton) or public debt (*Laws of the State of Missouri* 1825; McCord 1840). The prohibition on cotton dealing insulated cotton factors from competition, while the prohibition on dealing in public debts protected existing stock and note traders. It was clear that banks were to facilitate trade; they were not to compete with traders.

The other notable restrictions included in the charter limited the bank's lending to both foreign and domestic governments. Concerns with the bank trading with foreign governments were first articulated during the 1785 BONA debates. Contemporaries feared that foreign share ownership and lending to foreign governments would allow the bank to "become subject to foreign influence" (Carey 1786, p. 56). Jefferson charged that, should a foreign power with whom hostilities broke out be indebted to the bank, the bank might intercede on the foreign power's behalf to protect its

investment. Banks had no business in foreign affairs and the best way to avoid that eventuality was to have no truck with foreigners. Again, such statements reveal contemporary beliefs about the inherent fragility of representative democracy and the difficulties it would face internally and globally.

Hamilton did not explain why he thought it proper to limit bank lending to domestic governments, but he may have been concerned with independent executive action. At the federal level, tax and spending bills must originate in the House. If the executive could borrow large sums from banks to fund a pet project, the power to do so would afford him a de facto spending initiative. And because the state would be contractually obligated to repay the loan, the executive's action would demand the imposition of future taxes without the prior consent of elected representatives. Similar concerns appear in the debates surrounding the establishment of the Bank of England in 1694, and a clause was inserted in its charter prohibiting the Crown from borrowing without express consent by Parliament (Andréadès 1909). Early in the century the borrowing limit imposed meaningful restrictions on the executive. The charter of the BUS, for instance, limited total unauthorized borrowing to just $100,000, which represented a small fraction of the federal budget even in the 1790s. Each charter issued by Maryland, however, contained a $50,000 limit on the executive without express legislative authorization. When there were only two banks, a $50,000 per bank limit was a binding constraint. But with 11 banks by 1810 Maryland's $50,000 limit no longer represented the constraint it had earlier. The governor might borrow and bind the taxpayers to the repayment of substantial amounts without taxpayer assent. Thus, the borrowing limit included in each charter offered less protection as banks proliferated, which may explain why the clause disappeared in the 1820s in Maryland and elsewhere.

3.3 Governance rules and their spread

The final set of rules Hamilton incorporated into the BUS charter and that spread through state charters were governance rules, many of which were a direct response to objections leveled at the BONA's internal governance structure during the 1785 debates. Three features raised the greatest concerns: rotation in office for directors, proxy voting rules, and the one share-one vote rule. Hamilton's *Report* and the BUS charter addressed all three.

In his *Report* Hamilton detailed his objections to having the BONA become the federal bank. As we have already seen, one concern was that the bank's charter was due to expire in 1800 and, given the intensity of the 1785 debates and the continued ill-will harbored by some toward the bank, he feared for its recharter. The "want of a principle of rotation" among the directors was a second concern. Here again, contemporaries drew analogies between civic and corporate governance. Hamilton acknowledged the potential gains from longer experience in managing a bank, but because bank management was "regulated by a few simple fixed maxims, the application of which is [sic] not difficult to any man of judgment," it was better that the bank sacrifice some key personnel from time to time than lose public confidence (Clarke and Hall 1832, p. 27). Because the bank's directors would not be elected by the larger electorate but by a smaller group of wealthy elites, it was easy to imagine an institution fallen under the sway of a few men, which would ultimately "excite distrust and discontent" (Clarke and Hall 1832, p. 27). A lack of rotation, combined with the secrecy necessary in decision making, would invite conspiracy theories and undermine the bank as an arm of government. Hamilton's effort to balance managerial continuity and turnover led him to recommend that one-fourth of the board not stand for reelection each year. The exception was the President, elected from the board by the board, who could retain his presidency so long as

shareholders elected him to the board and the board elected him president.

Lines 17 and 18 of Table 2 reveal that annual elections and a rotation clause like that appearing in the BUS charter did not appear in pre-BUS charters, but became nearly universal for a decade or so afterward. By the 1810s and 1820s, when fears over corporate subversion of democracy abated somewhat, the clauses appear less often. The disappearance of the rotation clause from bank charters may also reflect that such clauses had few teeth. Although a rotation clause forced out one-fourth of the board in any given year, extant evidence on board composition reveals long-term membership. Not surprisingly, three-fourths of bank boards remained in place for extended periods while one-fourth experienced turnover. It is unlikely that the short-tenured one-fourth offered significant leadership in the face of an entrenched board of old timers.

Voting rights, especially how votes would be cast and by whom, represented a second critical governance feature outlined in the *Report* and in the BUS charter. It turned out that shareholders resident in the United States could vote in person or by proxy. Foreign shareholders were excluded from exercising any control rights. They retained their residual rights, but were unable to directly influence management. "Due caution," wrote Hamilton, was called for in order to "guard against a foreign influence insinuating itself" into the bank (Clarke and Hall 1832, p.28).

Item 11 of the *Report* recommended proxy voting. During debate on the BUS bill, Rep. Smith of South Carolina asked that the bill be recommitted (ibid, p. 37). Smith had several objections, among them the clause excluding foreigners from voting by proxy. He considered the exclusion exceptional and worthy of additional debate. Yet no further discussion of proxy voting by foreigners or otherwise is found in the transcripts of the ensuing debate. Contemporaries recognized that liberal voting rights assured stockholders that managers could not substantially

modify the terms of the stockholders' investment without their consent. Voting rights were to stockholders what covenants were to bond holders: they limited managerial discretion and protected against expropriation (Baum 1997; La Porta et al. 1998). Of course occasions might arise when substantial modifications to the agreement might benefit stockholders so that gaining their consent was vital for profit maximization. Because share holding was widely dispersed, renegotiations would be costly to organize and mediate. Proxy voting reduced the costs of gaining majority consent and effecting change in corporate policy. Charter clauses allowing proxy voting are missing from all pre-1792 charters. After the clause is included in the BUS charter, the clause becomes ubiquitous in state bank charters. In this instance, the BUS influence on state banking policy is unmistakable.

A system of voting rights that Hamilton labeled the "prudent mean" represented a third important governance feature included in the BUS charter that spread through state banking systems. The BONA debates highlighted the gravity with which contemporaries viewed corporate voting. "Like civic governance," wrote Dunlavy (2006), "corporate governance has many dimensions, but there are good reasons to single out voting rights as its foundation." Dunlavy (2006) classified voting rights along a continuum from "plutocratic" (one share-one vote) to "democratic" (one shareholder-one vote), with infinite variations in between. Hamilton labeled one point along the continuum the "prudent mean," which he defined with the following voting rule:

> For one share, and not more than two shares, one vote; for every two shares above two, and not exceeding ten, one vote; for every four shares above ten, and not exceeding thirty, one vote; for every six shares above thirty, and not exceeding sixty, one vote; for every eight shares above sixty, and not exceeding one hundred, one vote; and for every ten shares above one hundred, one vote; but no person, co-partnership, or body politic, shall be entitled to a greater number than thirty votes (Clarke and Hall 1832, p. 32).

Hamilton offered his prudent mean voting rule because he considered the one share-one vote rule

adopted by the BONA "improper" and the one shareholder-one vote rule "not less erroneous" (Clarke and Hall 1832, p. 28).

The plutocratic rule of one share-one vote increased the likelihood that a few stockholders might monopolize the bank's governance and resources. It is important to note that Hamilton was equally concerned with how the bank's political power and economic resources might be marshaled to the detriment not only of small shareholders, but of electorate more generally. Hamilton recognized that his proposed bank – the Bank of the United States – was "not a mere matter of private property, but a political machine of the greatest importance to the State" (ibid, p. 28). It was on this issue that Morris and Hamilton's opinions diverged about the connections between bank and state. Morris viewed his Bank of North America as an independent, private corporation that would assist the government on occasion. Hamilton, on the other hand, conceived of his Bank of the United States as a public corporation that would use its resources in the advancement of government policy and, secondarily, assist private agents by facilitating mercantile activities. Because the BUS was to be closely connected to the executive branch through the Treasury Department, Hamilton recognized its inherently political nature. In adopting a prudent mean voting rule, Hamilton simultaneously undermined objections raised against the BONA on account of its plutocratic voting rule and encouraged investment by offering larger shareholders a greater measure of control over the bank's operations than a purely democratic rule would have afforded.

Although one share-one vote rules were common by the end of the nineteenth century (Morris's view had prevailed), at the beginning of the century most Americans remained wary of power vested with large shareholders under one share-one vote rules and, instead, adopted rules more akin to Hamilton's prudent mean (Dunlavy 2006). Lines 21 and 21a in Table 2, again, reveal

BUS influence on American corporate governance, at least for the first half of the nineteenth century. None of the pre-BUS charters adopted prudent mean rules. Many, but not all banks, adopted it thereafter. As a measure of the limits placed on large stockholders, Line 21a reports the number of votes a stockholder holding 25 shares was allowed to cast at a stockholder's meeting. While the Hartford Bank adopted the one share-one vote rule, the other banks adopted rules that gave a shareholder with 25 shares only nine votes – the same rule imposed on stockholders in the BUS. Variations quickly appeared: stockholders with 25 shares could cast 8 votes at shareholder meetings in New Jersey, 10 votes at meetings in New Hampshire, 11 votes in Ohio, 12 or 13 in Missouri, but only 6 in Georgia. Connecticut developed no hard and fast rule, but rather responded to the organizers' wishes. Only two of the first ten banks chartered in Connecticut adopted prudent mean voting rules. The other eight adopted one share-one vote rules.[13]

Since Berle and Means (1933) famously argued that shareholders had ceded effective control over the corporation to managers, much of the scholarly corporate governance literature has focused on the consequences of vertical relations within the corporation. Less attention was focused on horizontal relations within the firm, especially relations between shareholders. But once scholars recognized that large block shareholding might improve managerial performance because large block shareholders would have greater incentives to monitor, they also recognized that large block holdings come at a cost: large shareholders might adopt rules or policies that disadvantage or expropriate from small shareholders (Shleifer and Vishny 1986; Holderness and Sheehan 2000).

[13] The source of voting rule information is the author's database of governance rules included in antebellum bank charters. Future research includes matching those governance rules to bank performance measures to determine the extent to which alternative governance provisions influenced bank operations.

Because owners and managers were not separate in the eighteenth and nineteenth-century corporation, concerns with vertical relations were clearly subsidiary to concerns with horizontal relations among shareholders.

Differential voting rights and other governance rules distributed power among shareholders in meaningful ways. The fact that different corporations adopted alternative rules meant that these rules mattered to someone. Hamilton's *Report* and the subsequent charter of the BUS laid the foundation for subsequent corporate governance by trying to limit the power of large block shareholders. It is an empirical question whether these rules were effective, but investigations into bank share ownership suggest that banks attracted small investors even in the face of large block holdings (Wright 1999). Voting rules and other governance measures thus encouraged share ownership across a broad mass of the American public, which further encouraged bank formation and financial intermediation more generally. In the end then, Hamilton's governance rules – especially his prudent mean voting rule – promoted economic growth through the encouragement of widespread share ownership.

3.4 American exceptionalism?

As previously noted, Hamilton, like many of his contemporaries, was a student of history. In his *Report on the Bank* he specifically mentions the beneficial consequences of banks in Italy, the Netherlands and Britain. To what extent did the charters, rules and bylaws governing these banks shape Hamilton's thinking about the specifics of the BUS charter and, thus, subsequent US banking policy. Even a casual reading of the terms of the act creating the Bank of England (known as the Tonnage Act, 5 & 6 Will. 3, c. 20.) reveals a direct English influence on Hamilton's thought.

Interestingly, the English debate mirrored, in one important respect, the BONA debate. While Whigs were concerned that the Bank of England would lead to "absolute monarchy" because it would provide the Crown with access to funds outside Parliament's fiscal control, despite a clause prohibiting the Crown from direct borrowing. Tories, on the other hand, opposed the bank because they viewed it as "one step toward a republic, because such institutions [were] not compatible with a monarchy" (Andréadès 1909, p. 69). Because institutions the size and complexity of the Bank of England and the BUS were unfamiliar, critics could inhere them with whatever long-term repercussions as suited their political purposes.

The specifics of the Bank of England and the BUS charters are too close to have been coincidental (Andréadès 1909; Francis 1888). The Bank of England was granted an original charter for 12 years, though Parliament retained the power to annul at will with one year's notice, a clause that may have influenced the thinking of Pennsylvania legislators who believed they could rewrite charters almost at will. Like the BUS and many other American banks, the Bank of England was prohibited from trading in any merchandise other than bills of exchange, specie and bullion, and collateral taken for nonpayment of loans. The bank's charter also adopted specific governance rules that presage those adopted by Hamilton at the BUS. The charter allowed for 24 directors, 13 of whom constituted a quorum. Only citizens who owned at least £2,000 in shares could serve as directors. Directors determined executive compensation without needing shareholder approval. The bank was required to hold quarterly shareholder meetings. Only those with £500 in shares were given a vote, and the bank followed the common law rule of one shareholder-one vote. The Bank's charter was pro-shareholder in that any nine voting shareholders could call a special shareholder's meeting.

Bryan (1899) and Starnes (1931) argued that Scottish rather than English banking provided the intellectual foundations for the American experience. In making this claim, both drew the connection because of the encouragement of branch banking from Maryland southward. Although extensive branching distinguished Scottish from English banking, Conant (1909) contends that the charters of the Scottish banks were modeled after the Bank of England's. Established in 1695, the Bank of Scotland was given a 21-year monopoly, could not trade in merchandise, could not lend to the government without previous Parliamentary approval, and could not charge more than 6 percent interest, among other restrictions reminiscent of those imposed on the Bank of England. Did the Scottish experience influence American banking? It surely did because the Scottish experience influenced David Hume's. Sir James Steuart's and Adam Smith's thinking about banking and all three were widely read by the founders. While American banking eventually adopted a uniquely American cast, it is not at all surprising to find English precedence. Bilder (2004) found that eighteenth century American legal institutions, both common law and legislative practice, were deeply influenced by English practice and that, while the two diverged after independence, post-colonial continuity was the norm.

4. Conclusion

It is historically inaccurate to think about Federalist banking policy as a clearly articulated set of objectives, statutes and administrative regulations. Federalist banking policy was an attitude and a loosely constructed approach to the establishment of and control over financial intermediaries. The clearest statement of that approach is found in Hamilton's *Report on a National Bank* and in the charter of the Bank of United States. These were the documents that defined two generations of the

contract between states and their banks. Although Hamilton was a student of history, as were many of his contemporaries, he had limited guidance in how to construct a bank and almost no guidance in constructing a system. It is clear that the Bank of England charter influenced Federalist approaches to banking, but the politicians and the bankers of the time were making up much of the script as they went along.

This is not to say that the Federalists did not impose some structure on their banks, which later developed into a banking system. They imposed structure and order through the charters they granted. Federal policies became state policies because state legislators had the same concerns as the founders about the relationship between business and government and adopted BUS charter as a model in creating state systems. It was an organic process and the model evolved over time, of course, but the Bank of the United States's DNA remains evident in state bank charters several generations removed from the 1791 original. Future research should further investigate the evolution of regulation, supervision and governance of corporations in early America. Such a research agenda would benefit from the collection and coding of features included in the more than 1,000 banks chartered between 1782 and 1862. Combining this information with bank-level data would further illuminate how state policy influenced the quality of intermediation.

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Table 1: Features of Bank of the United States Charter Originally Proposed by Hamilton and Adopted by Congress

Charter Section	Provisions of the Bank of the United States charter (1791)
1	$10 million capital in $400 shares
2	Individual subscriptions limited to 1,000 shares. Shares payable -- 1/4 in specie, 3/4 in 6% federal bonds -- in four instalments
3	Bank granted corporate powers for 20 years and may hold up to $15 million in real and personal property
4	Bank governed by 25 directors subject to annual reelection. President to be chosen from among the elected directors.
5	Bank may commence as soon as $400,000 in capital is paid in.
6	Directors have power to appoint managers and determine managerial compensation.
7.1	Prudent mean voting rule for shareholders. Only shareholders resident in US could vote by proxy.
7.2	Only 3/4 of existing directors eligible for reelection.
7.3	Directors must be shareholders.
7.4	Directors will not be paid for services unless specifically approved by shareholders.
7.5	Board quorum is 7 directors.
7.6	Any 60 stockholders with a combined 200 shares could call a special meeting of stockholders.
7.7	Officers required to post performance bonds.
7.8	Bank may only so much land as required for the conduct of business or that surrendered in judgment.
7.9	Bank's debts (banknotes) may not exceed $10 million. Directors are personally liable for any excess.
7.10	Bank may sell any of the public debt used to purchase shares, but it cannot buy additional bonds. Its trade will be limited to bills of exchange and specie. Interest charges limited to 6%.
7.11	Loans to state, federal or foreign governments limited without express Congressional consent.
7.12	Stock transferrable by rules adopted by directors.
7.13	Debts signed by president and countersigned by cashier are negotiable and transferable.
7.14	Semi-annual dividends payable from profits at discretion of directors.
7.15	Branch offices may be opened wherever directors see fit.
7.16	Secretary of Treasury may inspect the bank's books at any time, not more often than once each week.

Table 1: Features of Bank of the United States Charter Originally Proposed by Hamilton and Adopted by Congress

Charter Section	Provisions of the Bank of the United States charter (1791)
8	All officers and directors who trade or authorize trade in goods not allowed by charter are subject to treble damages.
9	All officers and directors who loan or authorize loans to governments in amounts in excess of limits are subject to treble damages.
10	Bank's notes are receivable for all debts to United States.
11	President of the United States may, at his discretion, subscribe to one-fifth of the bank's stock. The bank shall loan the amount to the government.
12	No other bank will be chartered by Congress during the term of the 20-year charter.

Sources: Hamilton's *Report* reprinted in Clarke and Hall (1832, pp.). Bank of the United States charter reprinted in Holdsworth and Dewey (1910, pp. 126-132).

Table 2: Bank of the United States Charter Provisions Adopted by Selected State Banks

BUS features	Bank of North America 1781	Massachusetts Bank 1784	Bank of Maryland 1790	Bank of New York 1791	Hartford Bank 1792	Bank of Penn 1793	Bank of Baltimore 1795	State Bank of S.C. 1802
General Provisions								
1. Capital stock			$300,000	$1m	$100,000	$3m	$1.2m	$800,000
2. Share values			$300	$500	$100	$400	$300	$100
3. Corporate status	✓	✓	✓	✓	✓	✓	✓	✓
4. Term limit (years)				20		20	20	21
5. Reports to government		✓				✓	✓	✓
6. State ownership option				✓	✓	✓	✓	✓
7. Monopoly charter								
Regulations								
8. Nonbank assets limits	✓	✓				✓	✓	✓
9. Limit on trade in merchandise		✓		✓	✓		✓	✓
10. Performance bonds					✓	✓	✓	✓
11. Debt limits				✓	✓	✓	✓	✓
12. Note redemption				✓	✓	✓	✓	

Table 2: Bank of the United States Charter Provisions Adopted by Selected State Banks

BUS features	Bank of North America 1781	Massachusetts Bank 1784	Bank of Maryland 1790	Bank of New York 1791	Hartford Bank 1792	Bank of Penn 1793	Bank of Baltimore 1795	State Bank of S.C. 1802
13. Limits on government lending						✓	✓	✓*
14. Interest rate ceilings					✓	✓	✓	✓
Governance provisions								
15. Large board	12		12	13	9	25	15	15
16. Quorum			7		3	13	9	6
17. Annual reelection			✓	✓	✓	✓	✓	✓
18. Rotation in office				✓	✓	✓	✓	✓
19. Director citizenship			✓	✓	✓	✓	✓	✓
20. Directors determine executive compensation			✓	✓	✓	✓	✓	✓
21. Prudent mean voting			✓	✓		✓	✓	✓
21a. Votes for 25 shares	25	25	21	9	25	9	9	9
22. Proxy voting					✓	✓	✓	✓
23. % of shareholders necessary to call meeting						0.03	0.05	0.09

Table 2: Bank of the United States Charter Provisions Adopted by Selected State Banks

BUS features	Bank of North America 1781	Massachusetts Bank 1784	Bank of Maryland 1790	Bank of New York 1791	Hartford Bank 1792	Bank of Penn 1793	Bank of Baltimore 1795	State Bank of S.C. 1802
24. Semi-annual dividends from profits				✓	✓	✓	✓	✓

Notes: * Lending limited to foreign, bit not domestic governments.