

August Thoughts on Central Banking

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Jeffrey Sklansky, *The Moneylender as Magistrate: Nicholas Biddle and the Ideological Origins of Central Banking in the United States*, 11 *Theoretical Inquiries in Law* No. 1, Article 12 (2010), available at [BePress](#).

I signed up for the August review slot before considering the August mindset. Several things about August make it ill-suited to reviewing: summer is gone, May ideas have hit the wall, and Congress picked July to pass a law that is too-hard-to-teach but too-big-to-skip. I yearn for holiday fun, theoretical breakthrough, and instructional clarity, combined. And I happen on last winter's symposium in *Theoretical Inquiries in Law*, [Money Matters: The Law, Economics, and Politics of Currency](#), and historian [Jeffrey Sklansky's article on Nicholas Biddle](#), President of the Second Bank of the United States.

The volume is part of a wave of crisis-inspired scholarship that is helping fill the wide and widely-acknowledged gap in legal treatments of macroeconomics and finance. This lot stands out for its thorough interdisciplinarity, its thematic coherence, and the gratifying match between what it promises and what it delivers. Contributions from law, economics, history, sociology, and political science are all at impressive levels, but more importantly, they work well together while exploiting the particular advantage of each discipline. Although none offers a grand legal theory of money or a spell to stop crises, together, the articles begin to tease out a picture of the law's role in constructing money at the intersection of public and private credit, domestic and international regulation—exposing the political, contingent, and instrumental character of money law, even as they highlight the power of legal ideas and techniques.

For an article to shine in this group, it helps to have a colorful protagonist. Biddle served as President of the Second Bank for sixteen years beginning in 1823 (four years after *McCulloch v Maryland*), and led its losing battle with Andrew Jackson. He was also a litigator specializing in "international debt-collection," a legislator, a bureaucrat, a poet and an editor. He edited, among other things, a digest of commercial laws of the United States' major trading partners, Lewis and Clark's journals, and a literary weekly. And he graduated from Princeton at 15.

Like its talented subject, Sklansky's piece moves easily among history, law, economics, architecture, politics and literature. Morsels of Biddle's poetry, his part in fueling the Greek revival, and the contemporary political uses of Mary Shelley's *Frankenstein* are enjoyable and rewarding, more for the way the author combines them to frame Biddle's civic vision in context:

[I]n the solid geometry of pillars and planes, Biddle found an analog for his notion of banking as the poetry of capital, distilling the Platonic ideals concealed within the hustle and bustle of market relations.

Then there is the theoretical insight. In mapping its lawyer-subject's worldview, the article hits on what I think is still the core legal challenge of central banking: steering aggregate economic activity through the medium of individually regulated financial institutions, while maintaining both technocratic autonomy and political legitimacy. Decades before federal paper money took hold, Biddle headed a hybrid institution that was quite unlike today's Federal Reserve. Yet he too grappled with a fast-growing gaggle of money-printing private banks, which he sought to control and whose actions reflected back on him with real estate bubbles, financial crises, and urgent demands for public accountability.

Biddle's conceptions of monetary policy and regulation projected nationalist ambition rooted in international trade and debt experience; they were global to begin with, and from the start, appeared to struggle with the relationship between finance and the real economy. Biddle's answer to the accountability challenge, in Sklansky's telling, constructed the central banker as a public servant autonomous from the markets and politics alike, protecting both from themselves and each other, and legitimate thereby. (Curiously, this was similar to his vision of the lawyer.) Whether it is compelling or delusional is beside the point; we are still arguing about central bank independence and regulatory capture with lawyers under-represented in the debate.

Biddle is a famous guy and I am not a Biddle buff, so have limited capacity to assess Sklansky's contribution to the Biddle canon. However, in my August moment, this historian gave me food for thought on framing legal approaches to central banking. Seeing as I have been looking for a while, and as the Fed did rather well in the recent financial overhaul, I am very grateful.

Separately and in brief, do not miss [Marcus Miller and Joseph Stiglitz on macro-bankruptcy](#), or "Super Chapter 11." They started this project after the Asian financial crises in the 1990s, and have recently published the latest iteration. Then and now it is hardly pragmatic, but important for forcing us to face the logical implications of deploying bankruptcy in a financial crisis.

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