

The Greenback Union: The Politics and Law of American Money in the Civil War Era

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Abstract

This dissertation explores the growth of federal monetary powers in the United States during the American Civil War and how it realigned American political economy in the nineteenth century. Contrary to works that highlight how class interests guided Republican economic policy, my dissertation shows how the new national currency of the 1860s grew out of the failure of financial markets and state governments to create and regulate paper money. This new centralized currency of greenbacks and national bank notes expanded federal authority, rearranged national politics, remade economic exchange, and promoted a new brand of political conflict in postwar America.

Part 1, “Problems and Traditions,” recounts both the immediate and deep origins of the Legal Tender Act of 1862 and the National Banking Acts of 1863-64, and their relationship to the war and the political economy of the nineteenth-century. Chapter one considers the financial crisis faced by the Union in 1861-1862 and roots those problems, and the solutions offered by Republicans, in the practices and traditions of the prewar past. Chapter two provides a history of the constitutional law of money and legal tender and its relationship to Congress’s hesitation to pass the Legal Tender Act in early 1862. Chapter three argues for the significance of Union nationalism and the depth of the financial emergency in 1862 in pushing a reluctant Congress to create the first fiat currency in U.S. history. Chapter four lays out the problem of law and politics

surrounding the issue of state banks in the prewar period and the resolution of the problem of state bank notes in the form of the National Banking Act.

The second section “Conflict and Consolidation” documents the various reactions of northerners for and against this intrusion into their economic affairs. Chapter five deals with the immediate reactions of the northern public to these policies in the Civil War years, arguing that the centrality of the greenbacks to the war and northern commerce stifled resistance to the act in places like New York, with the lone exception of California, where legislators and jurists found a way to secede from the new monetary union created by the war, while remaining in the political union of the United States. Chapter six traces efforts to do away with the greenbacks and national banks in Congress and before the U.S. Supreme Court during Reconstruction, and the ultimate failure of these efforts to destroy the new regime of national currency. Chapter seven explains how greenbacks and national banks altered the worlds of finance, statecraft, and politics for the rest of the century.

To RaeAnne

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Introduction

The Alchemist's Crucible

The federal paper money and national banks of the American Civil War remade the relationship between Americans and their federal government in the nineteenth-century. To understand this claim, we must understand a prewar world of American capitalism that no longer exists. Prior to 1862, American currency consisted of hundreds of different kinds of notes issued by banks. While the dollar, composed of gold or silver, was the national currency, in reality a person needed to navigate a complicated world in which the currency in their pocket was constantly fluctuating in value, counterfeit, or not good in all parts of the country. The Civil War wiped out this world on two fronts. In 1862, the U.S. Congress created the first fiat money in American history since before the Revolution, what would become known as “greenbacks.” In 1863, Congress followed this act with the creation a new system of national banks, controlled by the federal government. To secure the place of these banks in the market, Congress passed a tax that destroyed the existing system of state banks. Together, these actions brought a central aspect of the country’s growing economy under the aegis of the federal government. This outcome of the war resulted in a closer bond between the federal government and Americans in the spheres of economics, law, politics, and everyday life in the nineteenth century.

The origins and significance of these two measures, and the system they created, remain obscure in our understandings of the war and its effects on American government and American capitalism. From the perspective of the war, they are part and parcel of a

slew of economic legislation passed by the Republicans in the 1860s. From the perspective of the Gilded Age, the creation phase during the war was merely an opening to the class conflict of the Gilded Age in which arguments about monetary policy would play a central part. Bray Hammond once called this new power, along with the sword, “one of the two basic supports of sovereignty.” Understanding the origins and consequences of this new form of monetary sovereignty is the focus of this dissertation.¹

Getting our bearings on the history of money, let alone American money, is a difficult proposition. Most work dealing with the history of "monetary policy" in America concentrates on the story of volume. These scholars follow and reconstruct debates in society about exactly how much money there should be--and in doing so create the conditions for economic prosperity. In our histories of the money question, as it is often called, in post-Civil War America, scholars document a rich debate about how much money there should be, which dictated their support for either paper or gold money. In the past, scholars have used the volume question to uncover and describe the growing class and regional divisions that divided the country in nineteenth century America. Yet, what these works presuppose, or glide over, is the story of how nineteenth-century Americans decided who would create and control their money. In other words, existing parallel to this traditional framework is another history of money that looks at government power.

¹ Bray Hammond, *Sovereignty and an Empty Purse: Banks and Politics in the Civil War* (Princeton: Princeton University Press, 1970), 360; Bray Hammond, *Banks and Politics in America, from the Revolution to the Civil War* (Princeton: Princeton University Press, 1957); Robert P. Sharkey, *Money, Class and Party: An Economic Study of Civil War and Reconstruction* (Baltimore: The Johns Hopkins Press, 1967); Irwin Unger, *The Greenback Era: A Social and Political History of American Finance, 1865-1879* (Princeton: Princeton University Press, 1964); Leonard Curry, *Blueprint for Modern America: Non-Military Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968) ; Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge, MA: Harvard University Press, 1997).

Money, in the modern world, is something that we often take for granted. Despite the arguments of eighteenth-century and nineteenth-century liberals to the contrary, money is the product of human hands. As an idea and an object, money provides a medium that can seemingly convert anything, an hour's work, a ton of steel, or a home, into a form that can be traded for something else one desires. Nevertheless, acceptance of a slip of paper or a metal token requires an act of trust in the idea that the object will retain its value. Using a precious metal, or other commodity that everyone in a community values can inspire confidence. But as a historical fact the state, or government authority of some kind, has been at the center of this development for centuries.²

What follows is a history of American money during the mid-nineteenth century that is attuned to this key. I follow the history of who possessed the power to create, authenticate, and regulate money in nineteenth-century America. Because it is a creation of human hands, a history of how Americans created money can tell us a great deal about the relationship between state and society. In short, I argue that before the Civil War, Americans shied away from government created paper money, afraid of what would happen if a democracy held such a powerful tool. The pressures of the Civil War forced a rethinking of this system and this fear. Starting in 1862, a generation of lawmakers shifted control over the creation of money from the market and the states to the federal government in order to reform the chaotic currency system of the antebellum period. While that shift has deep roots in the history of American political economy before 1862, the heart of this story lies in the crucible of the American Civil War. Hammond, and a few others, have pointed out that this shift, the move from banknotes to greenbacks and

² Stephen H. Haber, Douglass Cecil North and Barry R. Weingast, eds., *Political Institutions and Financial Development* (Stanford University Press, 2008).

national banks, represented a growth of U.S. “sovereignty.” To date, we have never had a full reckoning of what that claim means. To understand this larger statement, and place it in its proper context, this dissertation makes several points about the origins and consequences of this transformation.³

The Problem of American Money

The greenbacks and national banks, as answers to immediate problems faced by the Republicans in the war, grew out of the heterogeneous, de-centralized monetary system of the antebellum years. In nineteenth-century America, the term “money” had two faces, a legal definition and a more popular definition. The distance between the two definitions would allow for a space to develop in American law by which the States and their creatures, the State banks, controlled the money of the United States in the period before the Civil War. Legally, money was that medium declared a lawful tender for settling debts before a court. Built on top of the coinage of the country was the broader category of credit instruments, bills, notes, and checks, which most Americans used like money in the years and decades before the Civil War. Economists of the day called this category the “currency” of the country, what Daniel Webster defined it as “all that adjusts exchanges, and settles balances, in the operation of trade and business.” Specie was rare, and while cities like New York and Boston had ample reserves on the eve of the war, Americans in the South and West pooled what money they had (and some cases they did not have) in the creation of banks. The banks, in turn issued banknotes; promissory notes that could be redeemed for the face value in coin at the pleasure of the holder.⁴

³ Hammond, *Sovereignty and an Empty Purse*; Steven Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the making of the United States* (Cambridge: Harvard University Press, 2007).

⁴ *Cong. Globe*, 24th Cong., 2nd Sess, Appendix, 54.

Thus when antebellum Americans railed against or praised paper money in the pre-Civil War period, they were talking about banknotes. This was the money that most people carried in their pockets and that fueled a generation of political conflict.

According to one estimate by the economic historian Peter Temin, Americans held only 5% of their money in the form of specie in the period between 1831-1832. Nathan Appleton explained that banknotes were “generally preferred to the coin which they represent. They thus perform all the functions of money and in common parlances are called money.” To critics of the system, preference and utility played little role in their use. Banks routinely failed to redeem notes and used a variety of policies to prevent redemption. This system made exchanges between regions and communities risky and expensive. William M. Gouge, the great Jacksonian critic of banks and banknotes, argued that the banks controlled all the specie of the country and banknotes were “in point of fact, the only actual tender.”⁵

For all their disgust, antebellum Americans resisted any notion of creating a federal fiat currency or centrally controlling the banks that created banknotes before 1862. It is not proper to say that the federal government gave up or lost its sovereignty over money—as it never really held the monetary system in its thrall. The Constitution did strip the states of their power to issue bills of credit and the power to make a tender. The federal government retained the right to create coins. Yet, if the comments of the Constitutional Convention are any guide, the attractive point about creating a hard money

⁵ Peter Temin, *The Jacksonian Economy* (New York: W.W. Norton & Co., 1969), 77; Nathan Appleton, *Remarks on Currency and Banking; Having Present Reference to the Present Derangement of the Circulating Medium in the United States* (Boston: Charles C. Little and James Brown, 1841); 7; William Gouge, *A Short History of Paper-Money and Banking in the United States* (New York: B.S. Collins, 1835), 2.

republic was that it was not subject to the political power of democracies as had been the colonial bills of credit in the eighteenth-century.

What happened next had more to do with changes in the world of finance than a loss of sovereignty. In 1789, there were only three banks in the country. No one predicted the rise of private banks that would supply the money of the country. These banks sprung up across the country before the War of 1812 to help supply the capital and credit that Americans craved to fuel the economic growth of the era. Once in place, the Jeffersonian and Jacksonian generations stoutly defended a monetary system that favored local and market created money over a nationally regulated system. The major solutions of the Whigs and Democrats, either a Bank of the United States or all hard money, depended on the market-operations of a quasi-public bank, or the worldwide supply of gold to stabilize the rough and tumble capitalism of the antebellum era. When these ideas failed, banks banded together in the market to support each other or looked to a piecemeal program of state regulation. Neither party, nor few people before the 1850s, even mentioned the idea of monetary system controlled by Congress.

Behind this backdrop, the proposal for legal tender money issued by the federal government appears to be a bolt out of the blue that marks a stark transition point between a laissez-faire past and the leviathan central state of the Civil War. The story, however, is not so simple. In reacting to the financial crisis, the Republicans acted within a tradition that began long before the 1860s. Viewed in the wider scope of the nineteenth-century, the power of Congress to issue a currency owed its origins to a tradition of federal emergency finance dating back to the War of 1812. For over forty years, the federal government issued a currency, not a legal tender, in times of war and financial

distress. This currency, known as Treasury notes, provided the government with a nimble and flexible tool of finance, despite the limitations of the Independent Treasury system or the lack of a central bank. Indeed, Treasury notes emerged as a corollary to the debates about government power in the antebellum period that gave rise to both the death of the Bank of the United States and the Independent Treasury.

Two generations of Jeffersonian-Jacksonian leaders recognized the need for a temporary extension of federal purchasing power in times of crisis. By the time of the Civil War, this practice was so well-established that Congress authorized fifty million dollars in paper currency in the summer of 1861 without debate. When the Ways and Means Committee presented the idea of a legal tender currency in December of 1861, it grafted legal tender onto the existing assumption and practices of Treasury note finance. That tradition provided an intellectual and institutional bridge to the proposal to create fiat money in 1861. Ironically, in trying to prevent the growth of federal authority through the creation of a national bank, the Jeffersonian and Jacksonians created a tradition that would bring the federal government directly into the pockets and bank accounts of its citizens over the course of the century.

The origins of the national banks present a different point about the effect of the Civil War on the federal government. The brainchild of Secretary of the Treasury, Salmon P. Chase, the National Banking System (NBS) had deep antebellum origins as well. The National Banking Acts of 1863 and 1864 authorized the creation of federally chartered banks, which could issue a new national currency, backed by U.S. bonds. Critically, this proposal was not another Bank of the United States. Rather, Chase combined Whig and Democratic thought in building a system of banks, open to all who

had the capital, and rooted in their local communities—but bounded in a national purpose. Support for this act was lukewarm and only passed Congress with the full efforts of the Lincoln administration. Republicans were wary of destroying or replacing their established state systems with an untried novelty. Nevertheless, the war years provided the political space within which the Republicans could rethink past practices and experiment with reform. After reflecting on the benefits of this system the financiers of the North and the leadership in the Republican Party embraced Chase's system of national banks. In fact, they embraced this new proposition with such zeal that in 1865 they took the once unthinkable step of destroying the state banks with a ten percent tax on banknotes. Thus the greenbacks were an extension of past practices and ideas, the national banking system was a product of the possibilities in policy and politics created by the war.

Both of these policies might have had a history that ended with Appomattox. In 1864, a year after the creation of the NBS few banks joined the system and this new enterprise looked in danger. In 1865, Hugh McCulloch attempted to treat the greenbacks as every Secretary of the Treasury had treated the old Treasury notes, by redeeming them for gold and bring the country back to specie standard. The critical transformation occurred quietly across the country as policymakers, financiers, and voters across the North accepted the larger proposition that the government should retain a permanent role in their lives in the form of paper money and national banks. Well before what Irwin Unger called the "Greenback Era" starting in 1865, petitioners to Congress asked for

national currency to bring order to the chaos of the banknotes era.⁶

This enmeshment of the greenbacks into American life did not happen without resistance. With political parties divided on the money question, as it was known, during the war and Reconstruction, the law and courts emerged as the primary means of direct conflict with the federal government's new powers. Creditors refused greenbacks as payment calling them unconstitutional, immoral, and destructive to property rights. In politics, the end of the war allowed for a cohort of liberally minded Republicans and Democrats to push hard for a contraction of the greenbacks and a return to specie during a brief window after 1865. On both fronts the financial conservatives won a limited victory. In *the Legal Tender Cases* the U.S. Supreme Court upheld the right of the government to create greenbacks, but a series of other decisions protected the right of Americans to make contracts for gold money, providing a legal shield from the power of the government's fiat. The United States did return to specie payments in 1879. But, under the terms of the Specie Resumption Act of 1875, the Civil War greenbacks stayed in circulation well into the twentieth century.⁷

Nevertheless, these two policies bound the United States together into a new union, what I call the Greenback Union. Monetary unions, as a concept in economics and policy, unite disparate regions together under a common currency to make transactions and exchanges cheaper, faster, and safer throughout the area they encompass. The Greenback Union did this for the United States starting in the Civil War, and helped feed America's industrial growth in the 60s and 70s. Yet this common currency helped

⁶ Unger, *The Greenback Era*; See for example "Petition of B.H. Smith and 41 other Citizens of Illinois...", undated, "Petition of Andrew Siders and 49 other citizens of Illinois," undated, file HR 37A-G20.2, RG 233, 37th Congress, Records of the Ways and Means Committee, National Archives, Washington, D.C.

⁷ *The Legal Tender Cases* U.S. 79 U.S. 457 (1871).

nationalize other parts of American life. As it regarded the federal government, the task of creating and managing the greenbacks expanded the capacities, and reach of the central state through new agencies meant to oversee and police this new union. In politics, greenbacks and national banks brought about new alignments in national elections that encouraged workers, farmers, and capitalists to articulate their economic grievances and aspirations through the language of national monetary policy.⁸

It is critical to note that not very much about this process went according to any grand plan or central notion. Here, the Civil War served as part cause and catalyst at several stages of the story. While I argue for the deep origins of these policies, there is no doubt that each came into existence at the moments that they did as a result of the immediate pressure and economic realities of the war, the absence of a strong Democratic counterweight in Congress, or the general impulse for national solutions and vigorous action in the years between 1861-1865. The details of the various acts and how they eventually came together in the Specie Resumption Act of 1875, was also a contingent process of economics and politics. Moreover, at no point did federal officials master this new power. If political economy is a delicate ecology of market and state, the greenbacks and national banks created havoc and bred new relationships, networks, and practices. Everyone living in or managing the Greenback Union struggled to understand these new powers and its relationship to a new economy. Greenbacks and national banks, meant as a reform to amend the issues of the past, created new problems and issues that would plague the country until the creation of the Federal Reserve in 1913. For all its

⁸ Robert A. Mundell, "Monetary Union and the Problems of Sovereignty," *Annals of the American Academy of Political Science* 579 (January 2002):123-152.

imperfections, that fact that the system created in the 1860s survived into the twentieth century is testament to memory of the problems of the antebellum past.

This story involves a wide cast of participants, including many of the most prominent political leaders, jurists, financiers, and writers of the nineteenth-century in general, and the Civil War specifically. The problem of American money touched so many aspects of America's economic development and so many lives, thus it is natural that several generations of nineteenth-century Americans formulated their own responses to the issue. This company included Alexander Hamilton, James Madison, Thomas Jefferson, John Calhoun Andrew Jackson, Thomas Hart Benton, John Marshall, Roger B. Taney and others.

At the heart of the story are the financial policymakers of the young Republican Party, a party founded on the issue of the slavery, thrust into a project of reform in the midst of a gigantic financial undertaking to put down the Confederacy. There was John Sherman, a freshman Republican senator from Ohio in 1861, who would help shape almost every major monetary measure of the nineteenth century. Or Elbridge G. Spaulding, a lesser known Republican in the House from New York during the war, who one night in Willard's Hotel in the December of 1861 determined that Congress would have to create a fiat currency to survive the first year of the war. Paramount among them was Salmon P. Chase, secretary of the treasury during the war and chief justice of the U.S. Supreme Court during Reconstruction. Better known for his roles in the antislavery movement and the formation of the Republican Party, Chase left a deep mark on the style and substance of American monetary powers in the Civil War Era. The picture of Chase presented here is not as inept as previous scholars would have us believe. Neither is he an

unheralded figure that deserves to stand along side Alexander Hamilton or Albert Gallatin in terms of his inventiveness. Rather, with Chase and his contemporaries I have taken pains to understand the responses of these actors by carefully reconstructing their ideologies and views concerning political economy at the time. With all these figures, I document the very subtle way that a belief in the government's power to create and regulate the currency worked itself into the fabric of American politics and law.⁹

Power as Money, Money as Power

This story of the origins and effects of the government's power over money pierces and intersects with concerns at several points in the historiography of nineteenth-century America. As a history of the Civil War Era, the approach taken here argues for a long-view of the genesis and consequences of actions taken between 1861-1865. Historians of the mid-nineteenth century still divide themselves into those who study the coming of the war, the war years, or Reconstruction. Yet to truly understand what was world shattering about the war, we must understand the style and substance of the prewar past and how the Civil War generation either conformed or broke with these traditions. That sensibility applies to the postbellum years as well. In recent years, scholars have probed cultural changes related to race and memory during Reconstruction. Yet we still have much to understand about how about how the war "reconstructed" the material, social, and political landscape of the country beyond the traditional end date of 1877. In focusing on one topic and theme that connects all three eras, I hope to provide a new vista with which to consider the war. The findings present here reaffirm the centrality of the war to the narrative of the century, while redirecting our gaze to ways that it altered American life in ways that no one planned when Abraham Lincoln called for the

⁹ See especially Hammond, *Sovereignty and an Empty Purse*.

suppression of rebellion in the South. Topically, this dissertation returns our attention to an older set of questions about the rise of American capitalism and the state in the later nineteenth century.¹⁰

It was Charles and Mary Beard who first began a discussion about the war and the rise of the industrial North in their influential survey *The Rise of American Civilization* published in 1927. With sweeping prose, the Beards dismissed all the images of the war years that his readers were accustomed to. The battles and generals were only a romantic gloss to the real substance of change that Beard found:

“the core of the vortex lay elsewhere. It was in the flowing substance of things limned by statistical reports on finance, commerce, capital, industry, railways, and agriculture, by provisions of constitutional law, and by the pages of statute books—prosaic muniments which show that the so-called civil war was in reality a Second American Revolution and in a strict sense, the First.”

The Beards even softened the significance of emancipation in the light of the ascendance of this new power. To the Progressive movement, it provided an origin point for understanding exactly how business captured the federal government in the Gilded Age. Many other authors prior to World War II picked up on this notion and fleshed out the narrative to include Reconstruction.¹¹

The thesis underwent an intense examination over the course of the 1960s. The Beards emphasized that the real revolution could be found in the economic indicators of

¹⁰ Aaron Sheehan-Dean, “The Long Civil War,” *Virginia Magazine of History & Biography* 119 (2011):106-153, esp. 107-110; Thomas J. Brown, ed., *Reconstructions: New Perspectives on the Postbellum United States* (New York: Oxford University Press), 7; A works that shares the long-view are Mark R. Wilson, *The Business of Civil War: Military Mobilization and the State, 1861-1865* (Baltimore, MD: Johns Hopkins University Press, 2006) and Wayne Wei-siang Hsieh, *West Pointers and the Civil War: The Old Army in War and Peace* (Chapel Hill, N.C.; University of North Carolina Press, 2009).

¹¹ Charles A. Beard and Mary R. Beard, *The Rise of American Civilization*, vol. 2, *The Industrial Era* (New York: The MacMillan Company, 1927), 52-121, 54; Philip Shaw Paludan, “What Did the Winners Win?: The Social and Economic History of the North during the Civil War,” in *Writing the Civil War: The Quest to Understand*, ed. James M. McPherson and William J. Cooper, Jr. (Columbia, SC: University of South Carolina Press, 1998), 174-200.; Robert P. Sharkey, *Money, Class, and Party: An Economic Study of Civil War and Reconstruction*, (Johns Hopkins University Press, 1967), 3-14.

the northern economy, yet they did no real economic analysis to support this point. Thomas Cochran and Stanley Engerman famously refuted the notion that there was an economic take-off during the Civil War years. Their economic research concluded that the war actually had the opposite effect on GDP and industrial output, and most likely slowed the pace of industrial growth. Moreover, Robert P. Sharkey and Irwin Unger disassembled the idea that there was a united North during Reconstruction on the greenback issue. Iron producers in Pennsylvania clashed with northeast financial elites over the questions of contraction of, resumption of specie payments, and by extension the economic future of the country.¹² Yet, it cannot be denied that while the specifics of the Beard thesis have lost their luster, the thrust of his argument that an industrial North trumped the agricultural South seems to largely remain in place. James McPherson's widely read survey of the Civil War, *Battle Cry of Freedom* endorsed this view. Richard Franklin Bense's 1990 *Yankee Leviathan* Bense's work remains as our central work on how and why the federal government became stronger in the civil war years, and largely rests on the Beardian view.¹³

To be sure, Bense refined and brought up to date the Beardian Civil War with careful attention to the nature of state development in the mid-nineteenth century. Bense posited that the Civil War allowed for the Republican party to capture the U.S. government and use it as a tool for their developmental policies. Prior to 1860, the stagnation of national authority was a result of southern leaders who kept the central state

¹² Thomas Cochran, "Did the Civil War Retard Industrialization?," *Mississippi Valley Historical Review* 48 (September 1961): 197-210; Stanley Engerman, "The Economic Impact of the Civil War," *Explorations in Entrepreneurial History*, 3 (1966): 176-99; Sharkey, *Money, Class, and Party*; Irwin Unger, *The Greenback Era*.

¹³ James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (Oxford University press, 1988), 452; Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (Cambridge University Press, 1990).

weak to prevent its interference in the protection of slavery. Bensel avoided the Beards's oversimplifications by adding the wrinkle that the state helped create class. In short, he suggested that the national debt created a new class of financial elites, who then used their power over national policy to cut short the reconstruction of the South, foreshadowing a state that would use its powers to the advantage of capital over that of agrarians and laborers in the Gilded Age.¹⁴

Rather than a story of the ascendance of capital, I argue that the growth of the Greenback Union was a move to reform and restrain the perceived problems of markets and finance that preceded the war. To be sure, financial capitalists would find ways to use and shape the web of federal legislation and power to their needs, but it is difficult to say that any one class or region ever controlled or captured the system. Very little about the Greenback Union appeared as a financier in New York might want it. The national banking system itself was a major testament to the influence of Democratic antimonopoly thought, even though later antimonopolists hated the NBS. Up to the National Banking Act of 1864, the bankers of that city desired a new national bank, located in New York, rather than a national bank with a hundred nodes across the country. The capture story fails us as regards the money question, as the Republican party lacked any single perspective on the money issue well into the 1870s. Most importantly, the greenbacks never disappeared from public use. For the rest of the century, greenbacks and national banknotes co-existed in circulation. People even preferred to turn their hard money into gold certificates or silver certificates, rather than use hard coin. While classes and regions would argue over the composition and size of the money stock, no side ever challenged the utility of a federal currency created and regulated by the central government. At a

¹⁴ Bensel, *Yankee Leviathan*, 10-17, 68-69, 238-302.

larger level, the story of the “Greenback Union” is not just about reopening old debates. It also has something to contribute to a broad swath of scholars concerned with the meaning of nation and freedom and its many guises in the Civil War Era.

This dissertation is very much a part of the emerging conversation about the history of American capitalism. Synthesizing the work of scholars working on the history of economics, finance, labor, business, and the state, the history of capitalism provides a new synthetic field with which to understand the themes of material and commercial prosperity and freedom. The recent works about nineteenth-century capitalism, however, have largely painted a picture of a federal government that is largely absent from the rise of financial markets or terribly corrupt and inept in its use of what power it has. Neither perspective fits the narrative here. Rather, I have strived to show how federal power in the form of these two policies, set the conditions and environment within which corporations, labor, farmers, and policymakers argued and acted in the mid to late nineteenth century.¹⁵

Lastly, this work is very much a history of government power. To that end, the story must integrate all the various ways that government power expressed itself in the nineteenth-century, along with a healthy understanding of the practices and nature of business and finance at that time. In these chapters you will find, congressional policy making, constitutional doctrine, the growth of financial markets and a nascent administrative state as parts of understanding how Americans crafted their political economy in this period. This story in particular lends it self to this approach. A constitutional scholar who only looked at the opinions of the Supreme Court for the story

¹⁵ Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge: Harvard University Press, 2012); Richard White, *Railroaded: The Transcontinental and the Making of Modern America* (New York: W.W. Norton, 2011).

of the government's power over money, would be disappointed because no justice made any grand pronouncements on the question until 1869, well after the creation of the greenbacks. Moreover, we cannot understand the reasons why antebellum Americans resisted a national reform of their state banks without a background in the commitment to federalism and local control of corporations that permeated policymaking circles before the war. Lastly, we cannot understand how this notion of a national currency took hold without looking at the reactions of a broad swath of Americans when they encountered a greenback or national banknote in their hand for the first time, and not just the highest levels of policymaking in Washington.

I have broken this history of the greenbacks into two sections. In the first section “Problems and Traditions,” I consider the origins of the Legal Tender Act of 1862 and the National Banking Act of 1863. While each chapter contains a heavy focus on the prewar past, I have always tried to root these policies in the exact moment of their creation. Chapter one considers the initial financial crisis of the war in 1861-1862 and its relationship to past practices of the federal government in times of financial emergency. Chapter two provides a history of the constitutional law of money and legal tender and its relationship to Congress's hesitation to pass the Legal Tender Act in 1862. Chapter three argues for the significance of Union nationalism and the depth of emergency in 1862 in pushing a reluctant Congress to create the U.S.'s first fiat currency. Chapter four lays out the problem of law and politics surrounding the issue of state banks in the antebellum period and the passage of the National Banking Act.

The second section “Conflict and Consolidation” documents the various reactions of northerners for and against this intrusion into their economic affairs. Chapter five deals

with the immediate reactions to these policies in the Civil War years, arguing that the centrality of the government's currency to the war and northern commerce stifled resistance to the act, with the lone exception of California, where legislators and jurists found a way to secede from the Greenback Union, while remaining in the political union of the United States. Chapter six traces efforts to remove the greenbacks and national banks in the U.S. Congress and before the U.S. Supreme Court during Reconstruction. Emerging from these battles intact, chapter seven provides an overview of how greenbacks and national banks altered the worlds of finance, statecraft, and politics for the rest of the century.

I

Problems and Traditions

1

The Invention of a Tradition

For most of the nineteenth century, the conflict over slavery's extension in the United States largely confined itself to a war of words, with periodic flashes of violence in places like Osawatomie, Kansas and Alton, Illinois. On Friday, April 12, 1861, the character of that conflict changed permanently when General P. G.T. Beauregard's cannons bombarded a federal fort sitting in Charleston Harbor. In the wake of the firing on Fort Sumter, President Abraham Lincoln issued a proclamation declaring the presence of an insurrection in the southern states of "combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the Marshals by law" and calling for 75,000 state militia troops to suppress the rebellion, take back the forts and "to maintain the honor, the integrity, and the existence of our National Union." In Europe and in the North, there were commentators aplenty who doubted the strength of the government to do just that, when it had never done more than collect tariffs on the coast, deliver the mail or defend the western frontier. Lincoln acknowledged these fears when he asked Congress "must a government, of necessity, be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?"¹

The newly elected Republican leadership in the Federal Government and the loyal states would need to use their existing institutions and powers to mobilize the American public for a war to defend the union. As Lincoln's message to Congress made clear, the

¹ Proclamation of April 15, 1861, in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents 1789-1897* (Washington, D.C.), 6:13, 23; Harold Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction* (New York: Alfred A. Knopf, 1973), 105.

central government was not without its weaknesses. In 1860 the size of the regular United States army was about 16,000 and mostly stationed on the western frontier. As one historian later put it, this force was “well trained, and at least adequate in size for the policing of New York City.” In the War of 1812 and the Mexican-American War, the Federal government depended on the money and manpower of the individual states to mobilize a force that could prevail. The Lincoln Administration again looked to the states and their militias as their main means of mobilization.²

That initial mobilization would be loud and patriotic, but from an organizational point of view it would also be disorganized, haphazard and at times, chaotic. After Lincoln’s initial call in April for militia to serve for ninety days, thousands of men responded to the call. Several northern states took the bull by the horns, raising troops, buying equipment, taking out loans and passing taxes to pay for the troops, all with the expectation that the U.S. government would eventually reimburse them. With so many states competing to buy limited arms and supplies at the same time, the price of war essentials spiked dramatically. Even then, in April of 1861 the state-raised troops were irregularly trained and disciplined, wore uniforms that were anything but uniform in color and cut. The problems of logistics and organization were so great that in July of 1861, Lincoln would confess to Congress that the government was suffering from “one of the greatest perplexities... to avoid receiving troops faster than it can provide for them. In a word, the people will save their government, if the government itself will do its part, only indifferently well.” Montgomery C. Meigs, quartermaster general of the Union army,

² Frank A. Shannon, *Organization and Administration of the Union Army 1861-1865*, 2 vols., (Cleveland: Arthur H. Clarke Company, 1928), 1:27.

complained in the aftermath of First Bull Run in 1861 that some men had to “go on guard in drawers for want of pantaloons.”³

Without a doubt, money would prove to be one of the most perplexing problems facing the government in the first months and years of the Civil War for the United States. While novice troops could be disciplined and gain experience, the government would need a continuous stream of money to put rifles in their hands and hardtack in their stomachs. Senator John Sherman of Ohio, looking back at the end of his life, remarked that by 1862 the U.S. was “physically strong but financially weak...the problem of this contest was not as to whether we could muster men, but whether we could raise money.” While the people of the Union possessed ample manpower and the industrial capacity to fight a war with the Confederacy, the Federal government labored under serious financial restraints as a result of the political history of the early nineteenth century.⁴

Limitations of the Past

Unlike other western European powers of the time, the United States lacked a central bank from whom they could borrow on favorable terms. Modern warfare had encouraged both Great Britain and France to create large banks with which they could contract a national debt to finance war and imperial expansion. The U.S. government

³ Frank A. Shannon, *Organization and Administration of the Union Army 1861-1865*, 2 vols., (Cleveland: Arthur H. Clarke Company, 1928), 1:23-24; A. Howard Meneely, *The War Department, 1861: A Study in Mobilization and Administration* (New York: Columbia University Press, 1928); Mark Wilson, *The Business of Civil War: Military Mobilization and the State, 1861-1865* (Baltimore: The Johns Hopkins University Press, 2006), 9-10, 23-31; A discussion of the antebellum claims system can be found in Kyle S. Sinisi, *Sacred Debts: State Civil War Claims and American Federalism, 1861-1880* (New York: Fordham University Press, 2003), 3-9; ³ Lincoln, “Special Session Message” 4 July 1861 in Richardson, ed., *Messages and Papers*, 6:26; Montgomery Meigs to Francis Laurens Vinton July 24, 1861, Montgomery Meigs Papers, Library of Congress, cited in Nevins, *War for Union: War Becomes Revolution*, 291.

⁴ To get a sense of the size of the Union Army’s material needs a few illustrations are in order. In 1861, Alan Nevins estimates that uniforms for 500 regiments would cost around \$10 million dollars. Union wool consumption pushed domestic use up as much as 200 million pounds, up from 86 million pounds in 1859.

created three such banks on the model of the Bank of England to act as their fiscal agent before the Civil War. Each of these iterations of the bank succumbed to charges that it was unconstitutional, had too much power over the economy, or was subversive to democracy. After destroying the last of these in 1832, the Second Bank of the United States (BUS), President Andrew Jackson and his successors attempted to divorce the U.S. government from the banks and limit their presence in the credit markets by creating what they called the sub-treasury or “Independent Treasury” system. Essentially the Independent Treasury Act of 1846, barred the government from accepting or paying out anything but specie, with the exception of Treasury notes, and required the Treasury to keep all federal money in their own vaults. This tied the hands of the government in the money market, as the Treasury could not accept credit on the books of lending banks. Any loans made to the federal government under the Independent Treasury Act would require a prompt payment in nothing but hard coin.⁵

Nevins, *War for Union*, 291, 294; John Sherman, *Recollections of Forty Years in the House, Senate and Cabinet, An Autobiography* (New York: The Werner Company, 1895), 1:281.

⁵ John Brewer, *The Sinews of Power: War, Money, and the English State, 1688-1783* (Cambridge, Mass.: Harvard University Press, 1990); M.J. Braddick, *State Formation in Early Modern England, c.1550-1700* (New York: Cambridge University Press, 2000). Keith J. Horsefield, *British Monetary Experiments, 1650-1710* (Cambridge, Mass.: Harvard University Press, 1960); Hammond, *Sovereignty and an Empty Purse: Banks and Politics in the Civil War* (Princeton, N.J.: Princeton University Press, 1970), 18-26, 73; The best overview of American politics and banking in this period is still Bray Hammond, *Banks and Politics in America, from the Revolution to the Civil War* (Princeton: Princeton University Press, 1957); This was actually the 2nd incarnation of the sub-treasury system. The sub-treasury act of 1840 was actually less stringent than the second. At the time, conservative Democrats who were friendlier to banks than the so-called radical Democrats, succeeded in rewriting the act, so that the system would accept and pay out some paper. On the forces surrounding the passage of the 1st Independent Treasury Act see Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945), 227-241, Bray Hammond, *Banks and Politics in America*, 490-499, 542-545. John M. McFaul, *The Politics of Jacksonian Finance* (New York: Cornell University Press, 1972), 178-209. Michael F. Holt, *The Rise of and Fall of the American Whig Party*, 67-68; Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton. 2005), 456-465; The literature on the 1846 act is surprisingly slim. According to Wilentz, the ease with which the act passed can be attributed to the large Democratic majority and the passing of what he termed “the Jackson-Van Buren era”. Wilentz, *Rise of American Democracy*, 580. None of which accounts for the act’s strict specie clauses, or the debates over the need for flexibility in the system in the face of

With the limitations posed by a lack of central banking and the terms of the Independent Treasury, the government had to rely on borrowing coin from a network of smaller state-chartered banks or European banks when a fiscal emergency struck. During the War of 1812, the Mexican-American War, and the Civil War this mostly meant the banks of the three strongest financial cities in the country, Philadelphia, Boston, and New York, with the New York banks the undisputed leaders of the group. During the Mexican-American War, European lenders were also an important source of capital, but owing to the policy of neutrality embraced by Great Britain and France, and a belief among English bankers that the Union would not survive the Civil War, the United States would not be able to depend on Europe as a source of funds for the entire Civil War. Politicians and the press all understood that the success or failure of their financial efforts in 1861 depended on the mood in Chestnut Street, State Street and of course, Wall Street. The New York *Evening Post* quoted a Union general who said “if Washington were now in the hands of the rebels, such a vote of confidence on the part of Wall street would alone save the Union.”⁶

With the growing threat of secession following the 1860 election, the bankers of the three cities increasingly believed that lending money to the federal government was a poor investment. In reaction to uncertainty about the future of the country, business

the Mexican War which is discussed below; An Act for the better Organization of the Treasury..., ch.90, 9 Stat. 59.

⁶ Hammond, *Sovereignty and an Empty Purse*, 73; European capital, especially British capital was key in funding American internal improvements and territorial expansion in the nineteenth century. For the entire period in question see Jay Sexton, *Debtor Diplomacy: Finance and American Foreign Relations* (Oxford: Clarendon Press, 2005). For the significance of European capital in financing the Mexican-American War see James Cummings, *Towards Modern Public Finance: The American War With Mexico, 1846-1848* (London: Pickering & Chatto Ltd, 2009). On the failures of the European loan see Sexton, *Debtor Diplomacy*, 82-133. Also see James T. Worthington to Salmon P. Chase, Salmon P. Chase Papers, Library of Congress, Washington, D.C., text-fiche, reel 17 [Chase hereafter cited as SPC, collection hereafter cited as Chase Papers, LOC]; *Evening Post* August 15, 1861.

slowed in the major northern cities and consequently the banks did very little business in the way of commercial loans and credit. Business in the West was in disarray owing to a string of bank failures by Midwestern banks that had invested in southern state bonds that were now worth nothing. This should have made the banks anxious to lend to anyone with a shred of credit, but when the Buchanan administration asked for more loans, the bankers held onto their money alarmed at rumors that southern sympathizers within the cabinet were funneling money and material into the South.⁷

As it happened, the government was in particularly dire straits at the time of Lincoln's election and already in debt to the Wall Street bankers. Since 1857, the U.S. government was running a deficit owing to the lower duties of the Tariff of 1857, followed by the financial panic of 1857 that generally depressed imports coupled with increased military spending to deal with fighting between Mormon settlers and U.S. troops in the Utah Territory. Between 1857 and 1860, the Buchanan administration asked for, and Congress authorized, several loans just to meet the normal operating expenses of the federal government.⁸

Howell Cobb, Buchanan's first secretary of the treasury, reported to Congress in December of 1860 that he could not attract enough bids on a loan meant simply to pay the principal and interest on debts that would fall due that winter. On the floor of the Senate, Zachariah Chandler, Republican from Michigan, explained the problem when he

⁷ Hammond, *Sovereignty and an Empty Purse*, 37-38; Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Policies during the Civil War* (Cambridge: Harvard University Press, 1997), 67-68; In January of 1861, the *New York Times* reported the unusual trend of people paying their debts off early. *New York Times* January 8, 1861. Throughout the course of January and February northern papers reported hesitancy on the part of buyers and sellers to enter the market due to secession in the South, *New York Times*, January 23, 1861.

⁸ "Report of the Secretary of the Treasury on the State of the Finances, December 8, 1857", *H.Doc. No. 3*, 35th Cong., 1st sess., 12-16; Wesley C. Mitchell, *A History of the Greenbacks: With Special Reference to*

exclaimed “had there not been traitors in your Cabinet and imbeciles in your presidential chair—your credit to-day would have stood as high as it ever stood.” These fears seemed to be confirmed when Cobb resigned in December to promote secession in his native Georgia. John S. Coe, president of the Bank of Commerce in New York, believed that Cobb’s replacement, Philip Thomas of Maryland, was attempting to “transfer the money into the confederate region where it would be captured.”⁹

Thomas lasted a month in his post before Buchanan selected John A. Dix of New York. Dix had the confidence of the New Yorkers, but there was little he could do to raise public confidence in government credit. Newspapers reported that federal employees, soldiers and sailors could not collect their pay and that corruption and disarray were the order of business at the Treasury in Washington. In February, Dix told Congress that public credit had fallen so low, that he thought that only “superadding to the plighted faith of the federal government that of the individual States” would attract the money of the bankers. Without such a pledge he feared that the government would have to accept terribly high interest rates to attract any money in the market. Dix’s desperate plan was to offer a loan to be backed by federal funds that the several states held as a result of the Distribution Act of 1836, which had deposited with each state at the time the proceeds of a federal surplus. Dix believed that the government could sell bonds

the Economic Consequences of Their Issue, 1862-1865 (Chicago: University of Chicago Press, 1903, 5; Jane Flaherty, *The Revenue Imperative* (London: Pickering and Chatto, 2009).

⁹ Cobb advertised for \$10 million in bids on September 8, 1860. At that time, Cobb successfully attracted bids for the entire amount at 5% interest. But before the banks were required to deposit the funds with the Treasury, Lincoln was elected and some banks hesitated or backed out of the loan at the last minute. Cobb gave the banks extensions on the due dates but in the end, Cobb only realized about \$7 million of the original \$10 million in bids. See “Report of the Secretary of the Treasury on the State of the Finances, House of Representatives”, *Ex. Doc., No. 2*, 36th Congress, 2nd Sess., 8-9; *Cong. Globe*, 37th Cong., 2nd Sess., 1018; Horatio King, *Turning on the Light: A Dispassionate Survey of President Buchanan’s Administration from 1860 to its Close* (Philadelphia: J.B. Lippincott Company, 1895), 186. King served as

backed by these long forgotten funds, with the additional pledge of support of the several states. The House summarily rejected the idea and eventually passed a \$25 million loan that February, followed by a new tariff to raise revenue and another \$10 million issue of Treasury notes in March. But the Dix plan was a barometer of how low the credit and faith in the federal government had fallen on the eve of Lincoln's inauguration. One paper reacted to the Dix plan by exclaiming, "money lenders entertain so little confidence in the future of the United States that in order to secure loans for the use of government its bonds must be endorsed *by the individual states!*"¹⁰

In the best of times, the Independent Treasury and the dependence on the state banks of the northeast was a delicate system that required a financially talented minister in the Treasury Department. On the eve of Lincoln's inaugural, the system was far from working optimally. Wall Street was nervous, midwestern banks were failing and Europe would not open its purse to the Union. In the coming months, the credit of the Union would depend on a combination of Lincoln's policies toward the South and who he chose at this moment to steer the government's finances.

A Democrat in the Treasury

While Dix had strong connections to the New York commercial world, his successor was an unknown in financial circles. Abraham Lincoln tendered the Treasury portfolio to Salmon Portland Chase of Ohio before the inauguration in March 1861.

Chase did not receive the office from Lincoln because of his prodigious experience in

postmaster-general during the Buchanan administration and collected correspondence between himself and others commenting on politics within Buchanan's cabinet.

¹⁰ On the state of the Treasury upon Dix's arrival see *New York Herald* January 17, 1861; *H. Doc, Misc. Doc., No.20*, 36th Cong., 2nd Sess., (1861); Hammond, *Sovereignty and an Empty Purse*, 32. An Act Authorizing a Loan, February 8, 1861, ch. 29, 12 Stat. 129 (1861); An Act to provide for the Payment of

financial affairs. Chase had made his name in national politics as an antislavery politician and lawyer, first defending fugitive slaves in the Ohio and then as a leader in the Liberty, Free-Soil and Republican parties. Chase told Frederick A. Conkling that he was disinclined to take the post at all because “his education and habits had not fitted him to the duties of the place.” The Ohio legislature had just returned him to the Senate, and he believed he could do better fighting the slave power from the Capitol building than managing the funds of the government at the Treasury building.¹¹

Chase’s more relevant qualifications for the Treasury in 1861 were his status as a leader of the ex-Democrats in the party and a serious candidate for the Republican nomination for president at the Chicago convention in 1860. With Chase and several other former Democrats in key positions, Lincoln sought to balance all the conflicting factions within the party. Having granted the secretary of state portfolio to his chief rival at Chicago and a former Whig, William H. Seward of New York, Lincoln proceeded to give the next most prestigious post to Seward’s bitter rival and the other contender at Chicago, Chase. Chase was also much more preferable to the other leading candidate, Simon Cameron of Pennsylvania who had a reputation for corruption.¹²

The press generally reacted well, probably with the thought of a corrupt Cameron in the back of their minds, many praising Chase’s honesty and integrity in public affairs.

outstanding Treasury Notes, to authorize a Loan, to regulate and fix the Duties on Imports, and for other Purposes, March 2, 1861, ch. 68, 12 Stat. 178 (1861); *Newark Advocate*, February 22, 1861.

¹¹ Frederick J. Blue, *Salmon P. Chase: A Life In Politics* (Kent, Ohio: Kent State University Press, 1987); John Niven, *Salmon P. Chase: A Biography* (New York: Oxford University Press, 1995); The story of Chase’s hesitancy is taken from a letter from F.A. Conkling to E.G. Spaulding dated 17 October 1875 and is reprinted in Spaulding, *History of the Legal Tender Paper Money* (1875), 84; William Cullen Bryant to Abraham Lincoln, January 22, 1861, in William Cullen Bryant II and Thomas G. Voss, eds., *The Letters of William Cullen Bryant*, (New York: Fordham University Press, 1984), 4:201.

¹² The fullest account of the politics behind the Treasury battle, with an eye towards its effects on economic policy, can be found in Arthur M. Lee, “The Development of An Economic Policy In the Early Republican Party” (PhD diss., Syracuse University, 1953).

The New York *Herald's* only concern, which proved to be prophetic in the years to come, was that Chase and Seward in the same cabinet would tend toward “a constant struggle for power, between embittered rivals.” Almost no one gave a thought to Chase’s ideas about finance because secession, slavery and the survival of the Republican coalition were first and foremost in the mind of Lincoln and the Republican leadership as they took up their work in Washington D.C. Some Pennsylvania Republicans objected to Chase because he had a reputation as a free trader and they actively sought a protectionist tariff for their iron and steel mills, but it seems that Lincoln was not worried about that becoming an issue.¹³

Prior to the formation of the Republican Party, the issues of banks, money and the economy generally shaped the platforms of Whigs and Democrats as they tried to offer the American public solutions to the financial booms and busts that plagued society, especially between 1837 and 1844. Most of the political leadership in both the North and South learned their political catechisms by listening to speeches on and taking stands on issues like the Bank of the United States, the tariff, internal improvements and monetary policy. The Republican Party emerged in the 1850s as a national party resting on the issue of slavery’s westward expansion, a position that could attract ex-Whigs and free-soil Democrats alike. But these issues defined a generation so much so that the Republicans needed to take pains in writing their 1856 and 1860 platforms to avoid reawakening old political divisions within the party on the topics of credit, banking and especially the tariff. The Republican Party would never survive without defections from the old Democracy, and thus ex-Whigs made sure to place ex-Democrats at the top of

¹³ *New York Times*, March 2, 1861; *New York Herald*, February 27, 1861; David Donald, *Lincoln*, (New York, Simon & Schuster, 1995), 264.

their tickets across the North in an effort to entice more of the friends of Jackson to convert to the new Republican fold.¹⁴

Despite their representation in the higher ranks of the party leadership, these Democratic-Republicans were constantly fearful that the Republican coalition would devolve into the old Whig Party. One ex-Democrat wrote Chase insisting that he must “save us from the mortification of finding in the Republican Party the old Whig Party, under a new name.” Chase’s ex-Democrat friends and allies saw the Treasury position as a necessary acknowledgement of their faction within the party and Chase’s presence as a necessary counter to the power of Cameron, Seward and the New York political boss, Thurlow Weed in the coming distribution of patronage and power. These ex-Democrats wrote to Chase and urged him to trade his Senate seat for the Treasury. Joshua Levitt thought that Lincoln should definitely not just appoint “old whigs” to his cabinet and should give a nod to the “Benton Democracy.” Another correspondent of Chase’s thought that if Lincoln excluded the ex-Democrats within the Cabinet “*the knife would be put to every Republican of democratic antecedents.*”¹⁵

Thus it was largely as a means of keeping the young Republican coalition together that Lincoln appointed Chase to the Treasury. Nevertheless, a small cadre of ex-Democrats, including William Cullen Bryant, editor of the *Evening Post* and George Opdyke in New York City, believed that with Chase in the Treasury the new Republican Party would not simply reenact the old Whig economic programs. The ex-Democrats

¹⁴ Holt, *The American Whig Party*, 61; See generally Lee, “Economic Policy In the Early Republican Party”; Eric Foner, *Free Soil, Free Labor and Free Men: The Ideology of The Republican Party Before The Civil War* (New York: Oxford University Press, 1995), 165-168.

¹⁵ William Endicott, Jr. to SPC, January 17, 1861, Chase Papers, LOC, reel 12; Quoted in Lee, “Economic Policy In the Early Republican Party,” 212; *New York Herald*, March 6, 1861; J. Levitt to SPC, November 7, 1860, Chase Papers, LOC, reel 12; Bradford R. Wood to SPC, March 5, 1861, Chase Papers, LOC, reel 12.

harbored fear about policy as well as patronage. In a letter to Lincoln, Bryant advised the president that issues such as the tariff should “regarded as an open question” for the Republican Party to avoid “a controversy on that question that would be carried on with zeal, perhaps with heat.” Chase himself advised Opdyke that he should lobby the president to not appoint Cameron if he wanted the “proper financial & economic policy represented in the Cabinet.” What constituted “proper financial & economic policy” of course had everything to do with the positions staked out by the old Whig and Democratic parties at the height of the Second Party System.¹⁶

In its heyday, the national Whig Party stood for increased government support for internal improvements and a protective tariff that would stimulate domestic production. Whigs favored a specie-basis for money but argued that banks should have freedom to expand the credit that was the lifeblood of commerce. The primary means of doing this were the bills of exchange and promissory notes (known as banknotes) issued by banks that circulated as currency in the market. In theory, a holder of a banknote could exchange their note for hard coin by presenting it at the cashier’s window of the issuing bank. State charters and laws tried to enforce this theory by declaring that banks must keep a certain percentage of specie in the vaults to redeem these notes and bills, but lax enforcement by several states led banks to over issue their notes in attempt to maximize profit. If a bank did not have the specie on hand to redeem its banknotes it might suspend

¹⁶ Opdyke, along with Hiram Barney and a Judge Hogeboom, made a trip out to Springfield in January 1861 for the purpose of preventing Cameron’s appointment to the Treasury. The *Herald* called the trio “the damned New York free traders” and “representatives of the genuine radical democracy of New York.” *New York Herald*, January 22, 1861; Lee, “Economic Policy in the Early Republican Party,” 212-214; Patronage was an issue. See William C. Bryant to Gideon Welles, March 24, 1861, in Bryant and Voss, eds., *The Letters of William Cullen Bryant*, 4:212; William C. Bryant to Abraham Lincoln, December 25, 1860, in Bryant and Voss, eds., *The Letters of William Cullen Bryant*, 4:188; SPC to George Opdyke, January 9, 1861,

all specie payments, which in turn could cause a crisis of confidence in the credit markets generally. To help regulate the credit markets, Whigs championed the idea of the Bank of the United States, a nationally chartered bank that would have the capital and power to help prevent over-expansions of credit by the smaller regional banks by dint of its sheer size and weight in the market.

The Democracy believed that government, especially the federal government, should confine itself to only a few areas for the benefit of all Americans and not favor certain corporations or businesses with special charters or grants of money. In terms of monetary and banking policy, they emphasized banks and credit as the causes of financial busts rather than the sources of commercial growth and argued for restricting the issue of banknotes and credit. In the end, when the banks failed, it was the common laborer, paid in banknotes, who suffered. In 1858, Chase himself enunciated this idea when he said that “a leading object in all regulations of currency should be to secure the interests of the mass of people, by such provisions as will insure labor just compensation in actual value.” But instead of creating a national bank to achieve this, they dismantled the Second Bank of the United States and took the federal government out of the money market all together by creating the Independent Treasury. It was hoped that by reducing the amount of gold in hands of bankers, the Independent Treasury would to restrict the ability of banks to create a credit bubble. In their most radical incarnations, some Democrats dreamed of a day when the country would be free of banks and coin, or “hard money,” would serve as the sole means of payment in the United States.¹⁷

Salmon P. Chase Papers, Historical Society of Pennsylvania, cited in Lee, “Economic Policy in the Early Republican Party,” 213.

¹⁷ In many ways, the monetary manifesto of the Democrats was William Gouge’s *A Short History of Paper-Money and Banking in the United States* (New York: B.S. Collins, 1835). The book was wildly popular with

Owing to these differing political antecedents, Lincoln and Chase were farther apart on monetary and financial issues than anyone cared to notice in 1861. A life-long admirer and devotee of Henry Clay, Lincoln held decidedly whiggish ideas, advocating for a third Bank of the United States, a protective tariff, and denouncing the sub-treasury system in the course of his public career. Chase, while raised in the “Whig school” in his youth, underwent a political conversion when he started associating with Ohio Democrats in the 1840s and won a seat in the U.S. Senate largely based on the support of the Ohio Democracy. In response to accusations that he simply changed his political stripes to gain elective office, he told Lyman W. Hall that he had been a Whig but found the Whigs too soft on slavery. In studying the principles of the Democrats he said that he “*became unreservedly a Democrat*” owing to of the ideals of equal rights and free soil and their hard line against slavery extension. Along with these tenets of free soil thought, Chase accepted the idea of the sub-treasury system and strict economy in dealing with banks and credit. In 1842, he told the Liberty Party Convention in Columbus Ohio that he understood the need for a system of credit, like banknotes, but that he was “utterly opposed to a *mere paper-money system*—to all bank frauds—to all bank suspensions on their issue or deposits—to all bank expansions.” In a letter to friend he confessed, “I do not believe in a high tariff, in a Bank of the United States, or a system of corporate

prominent thinkers and leaders within the pro-Jackson movement including William Leggett, Orestes A. Brownson and William Cullen Bryant, Thomas Hart Benton and Francis P. Blair, Sr. See Schlesinger, *Age of Jackson*, 117-118; Wilentz, *Rise of Democracy*, 439-440; Benjamin G. Rader, “William M. Gouge Jacksonian Economic Theorist,” *Pennsylvania History* 30 (1963):443-453; *Messages of the Governor of Ohio to the Fifty Third General Assembly* (Columbus, OH: Richard Nevins, 1858), 13.

banking.” All of which was a bit ironic given that Chase’s first steady work as a lawyer was serving as counsel to a BUS branch in Cincinnati.¹⁸

As governor of Ohio from 1856 to 1859, Chase dealt with effects of the Panic of 1857 and series of problems dealing with the Ohio banks. If Chase’s anti-bank tendencies were just rhetoric in the 1840s, the tone and tenor of his messages as governor proved that they had risen to the level of an absolute conviction by the 1850s. In 1858, Chase attempted to clamp down on the Ohio banks by creating an ironclad system of banking regulation in Ohio to prevent suspension on the model of the Independent Treasury. Moreover he argued that private banknotes were unconstitutional and that the Federal Government should ban small notes from circulation and create a national currency of large notes that could be used in large commercial transactions. From the sum of these messages a picture emerged showing that Chase harbored a smoldering hostility toward banks, banking and banknotes but also remained aware of the necessity of credit. Chase’s Democratic ideals would have a profound effect on how he ran the Treasury, interacted with the financiers of the North, and attempted to pay for the Civil War.¹⁹

An Adaptive Government

Before accepting the Treasury post, a friend told Chase “your position will be no sinecure, with a treasury already depleted and a civil war in prospect.” With the call for troops in April, Chase needed to find money quickly. Under loan acts authorized by the

¹⁸ Quoted in Jacob W. Shuckers, *The Life and Public Services of Salmon Portland Chase* (New York: D. Appleton and Co, 1874), 99; Blue, *Salmon P. Chase*, 18.

¹⁹ *Message of the Governor of Ohio to the Fifty-Third General Assembly*, 19-20; *Inaugural Address of Salmon P. Chase, Governor of the State of Ohio, delivered before the Senate and House of Representative, January 11, 1858* (Columbus: Richard Nevins, 1858); This picture of Chase conflicts with Lee’s assessment that Chase had yet to make up his mind on several economic measures when he took up the Treasury post in 1861. To prove his point Lee rests heavily on Chase’s attitude and actions concerning the tariff, but not credit and banking. See Lee, “Economic Policy In The Early Republican Party,” 231.

previous Congress, Chase was able to raise almost 16 million in loans from the banks; a sum that he thought would tide the government over until the new Congress met in special session in July. In the meantime a crush of office seekers bombarded Chase with requests for patronage and appointments, while he attempted to learn the intricacies of the Treasury Department, in addition to his involvement in general military policy all while trying to formulate a long-term plan of how to pay for the costs of the growing effort to put down the rebellion. Chase would not need to reinvent the wheel in doing this, and no one expected him to. Over the course of the nineteenth century, Congressional leaders and heads of the Treasury had developed a standard approach to financing the government's operations in peace and war, and Chase, who was not a financier by trade, derived his plan from this tradition. Moreover it was a tradition crafted by two generations of Jeffersonians and Jacksonians that Chase professed to follow. It was one that found a way to finance the government without a central bank but also took the government perilously close to issuing a national paper currency in times of war and emergency.²⁰

In peace, the only sources of revenue for the federal government were the sales of western land and the tariff on imports. In the very first Congress in 1789, Alexander Hamilton proposed and secured several internal taxes on luxury items such as watches, carriages, and infamously, whiskey. But Thomas Jefferson's desire to keep the central government small and limited in its reach led him and his Democratic Republicans to end

²⁰ William Mills to SPC, March 6, 1861, Chase Papers, LOC, reel 12; These were a combination of bonds and U.S. notes authorized by the loan acts of February 8 and March 2, 1861. See "Report of the Secretary of the Treasury," *S. Ex. Docs, No. 2*, 37th Congress, 1st Sess., 11 (1861); Chase struggled that spring to get any money out of the major banks of the country, see SPC to Samuel Hooper, April 27, 1861 and SPC to John J. Cisco, May 17, 1861, in John Niven, ed., *The Salmon P. Chase Papers*, 5 vols. (Kent, OH: Kent State University Press, 1993-1998), 3:62-63, 64-65 [hereafter cited as *Chase Papers*].

the excise taxes in 1801. Except for a brief interlude during the War of 1812, the tariff was the only federal tax before 1862. By the time of the Civil War, the tariff produced nearly 90 percent of the government's revenue. Overall, the American model of war finance owed less to the ideas of Hamilton and more to the ideals of Jefferson and Jackson. Borrowing and not heavy taxation would be the means by which the federal government raised its funds in time of need.

It was Jefferson's secretary of the treasury, Swiss-born Albert Gallatin who proposed a means of wartime finance based on this limited revenue stream. When he took the Treasury post under Jefferson in 1801, Gallatin confined his energies to paying off the government's debts through a policy of retrenchment in government spending while keeping the tax burden relatively light. The threat of war with Britain forced Gallatin to formulate a means of coupling his Jeffersonian desire to keep the government small with a greater, but temporary, need for funding. In essence, Gallatin believed that the Congress should use the income from tariff and land sales to meet the normal costs of the government, and simply borrow the money needed to meet the extraordinary costs. This theory rested on two assumptions. First, Gallatin only had in mind Europe as a possible opponent and thus he reasoned that America's distance from Europe would make wars short and unlikely. Second, Gallatin was supremely confident in the commercial future of the United States. Thus, he predicted that increases in agriculture and commerce would produce growing revenue that would be more than ample to retire the debt between possible conflicts. The standard form of borrowing would be in the form of long-term

bonds running between fifteen and thirty years and carrying an interest around six and seven percent.²¹

The central problem with Gallatin's plan was that the U.S. needed someone from whom to borrow. This meant banks, but in the early nineteenth century there were no banks in the United States with the amount of resources that the government required and the Napoleonic Wars had made loans from other European powers unlikely. A large central bank like the Bank of England could meet that need by acting as the government's fiscal agent and first stop for loans, but Congress let their own First Bank of the United States die two years before the start of war with Britain. Gallatin had resisted such a move, writing to Jefferson that while he agreed that the BUS should not be allowed to become a monopoly, the government needed a means to manage their assets and more importantly "if we shall be hard run and want money, to them we must apply for a loan."²²

Gallatin's worries went unheeded, and when war with Britain broke out, Gallatin found that he could not negotiate the amounts he needed with the then existing state banks. Two years before war erupted, Gallatin speculated about possibility of a new form of borrowing that he dubbed a "Treasury Note." The fundamental difference between a traditional bond (known then as government "stocks") and a note was that a note ran for only a very short period of time, usually one or two years. The notes, as proposed by Gallatin, bore interest and came in denominations no lower than \$100.00. The short

²¹ State of the Finances for 1807, November 7, 1807, *American State Papers: Finance*, 2:248-249; Albert Gallatin to John W. Eppes, February 26, 1810, *American State Papers: Finance*: 2:412-414; For an overview see Alexander Balink, *Albert Gallatin: Fiscal Theories and Policies* (New Brunswick, N.J., Rutgers University Press, 1958); State of the Finances, December 16, 1807, *American State Papers: Finance*: 3:309

²² Albert Gallatin to Thomas Jefferson, June 18, 1802, in Henry Adams, ed., *Writing of Albert Gallatin*, (Philadelphia London J.B. Lippincott & co., 1879), 1:80.

running period, made the notes an attractive investment for anyone looking to make a quick profit on their money, while avoiding the risk associated with locking up their funds in bonds for twenty or thirty years. Assuming the government could pay them off in one or two years, they could potentially save millions in interest payments that came with the long-term bonds. Additionally, Treasury notes carried another interesting feature in that they could be used to pay all government dues and taxes. This part of the notes was key, as Gallatin thought he could use the notes less as a loan and more like money “in payment of supplies.”²³

That a government or a person might use a debt to pay its debts was a common feature of the nineteenth-century economy. Before the Civil War, the only national “money” in the United States was gold and silver coin. This was the only legal tender, meaning that in private law, if two people made a contract in which one party was to pay “dollars” the only way to satisfy that contract was coin. But before the discovery of gold and silver mines in the West, Americans perpetually struggled with a dearth of specie to pass from hand to hand in transactions: there simply was not enough money to go around. Most Americans resorted to representations of gold and silver in the form of banknotes, bills of exchange, and checks issued by hundreds of banks across the country. Each of these instruments was a debt. The holder could eventually get their hands on cold, hard coin at some specified time in the future. If the reputation of the issuing person or bank was good, a banknote might not be redeemed right away and “run” from hand to hand in the market. Many banks hoped this would happen, because the longer that note circulated in the market, the bank could put the gold that would be required to redeem the note to work by lending and investing it in other enterprises. While the system was unstable and

²³ Albert Gallatin to John W. Eppes, February 26, 1810, *American State Papers: Finance*, 2:319, 412- 413.

poorly regulated, this was the currency most Americans carried before the Civil War. Thus in a very real way, debt instruments and not coin was the real money of the United States in the nineteenth century.²⁴

In terms of government finance, what Gallatin was proposing was nothing new, as governments in America had pioneered the use of debt currency prior to the growth of private banking. In the early modern period, English Kings and later Parliament often resorted to notes called “exchequer bills” as a means of turning the coming year’s anticipated income into a form of payment in the present. Owing to the lack of specie, the colonies of British North America took this instrument to a new level, issuing what they called “bills of credit.” Colonies favored the bill of credit as a means to pay for war, and occasionally as a means to provide a circulating medium to keep their colonial economies healthy. From time to time, different colonies made these bills a “legal tender,” a measure that could make the notes more valuable by allowing bill holders to use the notes to pay their preexisting debts, rents or taxes. The colonies were generally responsible with managing and redeeming these bills, but consistent criticisms by English merchants led Parliament to restrict the colonial power to issue legal tender notes in 1754 and 1764. During the American Revolution, the Continental Congress infamously issued their own bills called “Continental” to pay for troops and supplies. The Continentals lacked a redemption date, or any pledge of money to redeem them and Congress needed to ask each state to make them a legal tender in their respective jurisdiction. Lacking security or revenue, as Congress issued more continentals, their value dropped so low that the phrase “not worth a continental” would cast a long shadow over American experiments with

²⁴ On antebellum banking generally see Hammond, *Banks and Politics* and Howard Bodenhorn, *A History of Banking in Antebellum America: Financial Market and Economic Development in an Era of Nation-*

government paper money. Indeed, with the example of the Continentals before them, a majority of the delegates to the Constitutional Convention in 1787 voted to strike a clause empowering Congress to issue their own bills of credit.²⁵

A little over twenty years after the ratification of the Constitution, Gallatin's Treasury note quickly morphed into a bill of credit under a new name. In May of 1812, Gallatin failed to attract bids on the full amount of an eleven million dollar loan meant to raise funds in anticipation of a conflict with the British. Gallatin informed Congress that the Treasury note was his best hope of attracting the needed funds money in the money market. On June 12, 1814 a bill authorizing the issue of five million dollars of Treasury notes came up in the House for debate. The proposed notes would be redeemable one year after issue, bear just over 5 percent interest, and be receivable for all government dues. While strictly speaking the notes would merely be a short-term form of borrowing, Gallatin and the members of Congress were well aware of the inchoate line between debt and money in the nineteenth-century economy and consequently understood that this measure would bring the U.S. government into the business of making paper money for the first time since the Revolution, a fact that some embraced. In a defense of the Treasury note bill widely thought to be written by Gallatin, the author thought that notes combined "the cheapest and best" option in public borrowing with the fact that "these

Building (New York: Cambridge University Press, 2000).

²⁵ Horsefield, *British Monetary Experiments*, 114-124 esp. 122-124; Hammond, *Banks and Politics*, 9-26, 103-106; Jack M. Sosin, 'Imperial Regulation of Colonial Paper Money, 1764-1773', *The Pennsylvania Magazine of History and Biography*, 88 (1964), 174-198; Joseph A. Ernst, *Money and Politics in America, 1755-1775* (Chapel Hill: University of North Carolina Press, 1973); Kenneth W. Dam, "The Legal Tender Cases," 382-389.

notes will be received everywhere, and have the advantages of a superior currency to the greatest convenience and benefit of all our citizens."²⁶

Opposition to the bill came mostly from Federalists who doubted that the banks or the American people would accept the notes at face value, and perhaps not at all. Several members of Congress spoke out against the notes fearing that government revenue would never be enough to redeem them and that the government would quickly over-issue them and cause a general inflation of prices and war essentials. Thomas Ruggles Gold, a Federalist from New York, attempted to use the memory of the not so distant Revolution to shame Congress into rejecting the bill. "The fate of Continental money" he explained "ought to be a warning and solemn admonition to the American Government in all future times."²⁷

Several Democratic Republicans embraced the measure as a useful and convenient means of employing the government's credit to pay for the war. Several congressmen thought the notes would actually be better than specie because they would continually bear interest. Others dismissed the comparison with the Continental, citing that the new Treasury notes did have a redemption date, bore interest and the government's credit was vastly improved since that last conflict. Moreover, some proponents of the bill thought that the Treasury notes would be a welcome addition to the American monetary system. William Wyatt Bibb of Georgia remarked that the government's notes would freely circulate throughout the Union. It was Alexander McKim who took the widest view of the Treasury notes. First and foremost, he stressed that "with the demand for supplies" the Treasury notes "gives the ability to pay by the

²⁶ Albert Gallatin to Langdon Cheves, May 14, 1812, *American State Papers: Finance*, 3:564-565; *National Intelligencer* May 23, 1812

paper it issues to those who lend.” He also understood that in war, with increases in taxes and prices, that money would become increasingly scarce. McKim argued that a form of government paper money would provide a means of keeping the entire American economy alive and healthy. He explained "it is this medium that gives life and activity to the industry of the nation, and energy to the operations of war; and it is essential to the prosperity of the nation that this medium be kept in constant action."²⁸

The bill passed 85 to 41 in the House, soon passing the Senate and signed into law by President James Madison on June 30, 1812. Some in Congress supported the measure with a tentative mood. Samuel Latham Mitchill of New York explained that the Treasury note was “was an experiment hitherto untried under our Government. And as he was desirous of making a fair experiment in the mode proposed." The press also generally seemed to support the measure. The *Connecticut Herald* exclaimed "the thing will take. *Treasury notes* will be all the rage. The multitude will be enraptured." In reality, few Americans actually saw the notes from the first issue. While the law allowed the President to issue them in any denomination, Gallatin chose to issue them no lower than \$100.00. The supporters of the bill turned out to be correct, as many banks held onto the notes as reserves. Yet it was not the immediate issue of Treasury notes that troubled the Federalists. Members of Congress feared that such an act established a precedent, which might encourage future legislators to resort to the expediency of issuing more paper in a pinch. As Silas Stow put it, the Treasury notes were "engrafting a new and foreign branch

²⁷ *Annals of Congress*, 12th Cong., 1st Sess., 1502.

²⁸ *Annals of Congress*, 12th Cong., 1st Sess., 1497, 1501.

on the stock of our finances-- a branch, from which, I confess, I do not expect to gather any good fruit, but one from which I fear much evil."²⁹

The dangers inherent in the Treasury note were many and real. Congressmen and newspaper editors told and retold the cautionary tales of inflation and financial ruin brought about by the Continental or the *Assignats* of revolutionary France. What would prevent Congress from issuing more notes than the government could reasonably pay in time? Given the right circumstances, what would prevent the government from crossing the line between borrowing at a reasonable rate and forcing a loan on the people by making the notes a legal tender? In the minds of its defenders, the Treasury note was simply a means by which the U.S. government could capitalize on its superior credit. In his defense of the bill, Mitchill assumed that a contractor or supplier might take Treasury notes in payment like money "but he may refuse it if he pleases." Underlying this argument was the premise that the government would play by the rules of free-market capitalism and not try to get something for nothing by forcing U.S. creditors to accept their notes by command and not negotiation.³⁰

The bud of evil fruit, feared by Wright and others, almost bloomed four years after the first issue of Treasury notes. As war with Britain dragged on, the Treasury and Congress became quite comfortable issuing Treasury notes: a total of five times between 1812 and 1815. But it was in the summer and fall of 1814 that the many latent possibilities of the Treasury note became clear to Congress and the American public. In

²⁹ An Act to authorize the issuing of Treasury Notes, June 30, 1812, ch. 111, 2 Stat. 766 (1812); *Annals of Congress*, 12th Cong., 1st sess., 1506-07; *Connecticut Herald* (New Haven, CT), June 2, 1812; Donald H. Kagin, "Monetary Aspects of the Treasury Notes of the War of 1812," *Journal of Economic History* 44 (1984), 69-88; Richard H. Timberlake, *Monetary Policy in the United States: An Intellectual and Institutional History* (University of Chicago Press, 1993), 14-18.

³⁰ *Annals of Congress*, 12th Cong., 1st Sess., 1507.

early summer, President Madison called a special session of Congress to deal with the sorry state of the Treasury, which according to his estimates had less than five million dollars on hand in June of 1814. In early August the banks of New England, quickly followed by the other major banks of the country, suspended specie payments. To compound matters, the British routed U.S. forces at the Battle of Bladensburg and razed parts of Washington, D.C, forcing Congress to meet in the Post Office and Patent Office buildings.³¹

Most Americans now had no money with which to carry on their business and the government, which deposited its funds with several banks, could not access the money it did have on hand. In October, the U.S. government suffered the humiliation of defaulting on the payment of interest to bondholders in the Boston area. George W. Cambell, who had replaced Gallatin as Secretary of the Treasury in 1814, failed miserably in obtaining loans. Credit was at a standstill for the government and private citizen alike and everyone looked to Congress to rectify both problems. Senator Abner Lacock of Pennsylvania told Madison “the public patient is so very sick that we must swallow anything, however nauseous.”³²

Two possible solutions dominated public discourse in this period. The first was particularly nauseating to any good Jeffersonian: a new Bank of the United States. Like its predecessors, a national bank could supply the government with a ready source of loans at favorable interest rates, while simultaneously providing the country with a

³¹ John Jay Knox, *United States Notes: A History of Various Issues of Paper Money By The Government of the United States* (New York: Charles Scribner’s Sons, 1892), 21-39; Henry Adams, *History of the United States of America During the Second Administration of James Madison* (New York: C. Scribner's Sons, 1891), 239.

³² Adams, *History of the United States*, 243 (quote), 244; *The Repertory* (Boston, MA), October 3, 1814; *Evening Post*, October 4, 1814; *Boston Daily Advertiser*, October 7, 1814.

circulating medium through its own note issue. Madison, who had opposed the first bank of the United States in the very first Congress, now selected a known friend of the BUS to take the Treasury post, perhaps signaling a change in attitude. In his first message to Congress, Alexander J. Dallas acknowledged that at the moment there "is no adequate circulating medium, common to the citizens of the United States" and that "The moneyed transactions of private life are at a stand; and the fiscal operations of the Government, labor with extreme inconvenience." While he thought another issue of Treasury notes would do in the short term he believed that a currency issued by a well-managed national bank was the only viable solution.³³

The other solution was a complete reliance on Treasury notes. John W. Eppes, chairman of the House Ways and Means committee, suggested just this in his report to Congress a few days before Dallas unveiled his plan for a national bank. Eppes's proposals sought to make the Treasury notes a national currency by issuing them in denominations low enough for the "ordinary purposes of society" and by shoring up their credit by an increase in internal taxes and the option of refunding them into regular long-term bonds. Eppes's father in law, Thomas Jefferson, purposed this idea as early as the summer of 1813. Jefferson, who was witnessing with disgust the reliance of the government and the country on the state banks, believed that "we have so improvidently suffered the field of circulating medium to be filched from us." He envisioned a system in which well managed Treasury note issues could force out banknotes from circulation and "carry us thro' any war." When the peace returned the government would call in the notes and return the country to specie "until another war should require its yielding place again to the National medium." Jefferson disliked paper money to be sure, but if forced to take

³³ Alexander J. Dallas to John W. Eppes, October 17, 1814, *American State Papers: Finance*, 3:866.

the poison of a paper currency he would rather it come from the government and not from the banks that he so distrusted.³⁴

The Treasury note plan quickly became a bellwether for congressmen hostile to the state banks and opposed to a national bank on constitutional and practical grounds. Treasury notes, they proclaimed, were patriotic and employed the people's credit to their advantage as opposed to the bankers who sought to make a premium on their own notes. Some thought a new national bank could not provide quick enough relief to the country, and would actually make matters worse by draining what specie was left in government vaults to provide the capital for the new bank.³⁵

In the press, anti-bank sentiment generated the even more radical proposition to make Treasury notes a legal tender. Given the weak state of the country's finances and the poor course of the war, legal tender notes would allow the government to bypass the banks and pay out the paper it needed to win the war. A few papers pioneered the idea of legal tender before Congress met in September. With the idea of legal tender openly circulating in the press, Dallas made a point in his first message of quashing these plans with the admonition "that the acceptance of the paper in a course of payments and receipts must be forever optional with the citizens. The extremity of that day cannot be anticipated, when any honest and enlightened statesman will again venture upon the desperate expedient of a tender law."³⁶

³⁴ Thomas Jefferson to John W. Eppes, 24 June 1813 in J. Jefferson Looney, ed., *The Papers of Thomas Jefferson Retirement Series* (Princeton: Princeton University Press, 2010) 6:224; Donald F. Swanson, "Bank-Notes Will Be but as Oak Leaves: Thomas Jefferson on Paper Money" *Virginia Magazine of History and Biography* 101 (1993), 42-44, 47.

³⁵ *Annals of Congress*, 13th Cong., 3rd Sess., 560.

³⁶ *The National Advocate* (New York, N.Y.) July 23, 1814; reprinted in *Daily National Intelligencer* August 12, 1814; *New Bedford Mercury* (New Bedford, MA) August 26, 1814; Alexander J. Dallas to John W. Eppes, October 17, 1814, *American State Papers: Finance*, 2:866.

Bolling Hall, a Republican from Georgia, proposed just that on November 5, 1814: to make Treasury notes “a legal tender in all debts due, or which may hereafter become due, between the citizens of the United States, or between a citizens of the United States and a citizen or subject of any foreign State or Kingdom.” Hall explained that with the bank suspension, people had no way to pay taxes and the government needed to take drastic measures to make sure the “general credit was immediately established” or he feared “incalculable evils would result, &c.” Hall’s proposal died a quick death on the floor of the House by a vote of 95 to 42. But the idea of legal tender or a national currency would not. Through the winter, calls for legal tender circulated through the country. Assemblymen in New York State openly called for the government to make Treasury notes a legal tender in December of 1814. In a move that surprised many, a group of major New York bankers asked for a legal tender law, most likely in the hope that they could resume business by paying out government paper as opposed to specie. The economic situation compelled a diverse cross section of the public to embrace the measure, but with news of a treaty with the British and a bill for a national bank pending, Congress probably believed that they could do without it.³⁷

Instead, Congress leaned heavily on the Treasury note as a crutch while working on the terms of a new national bank. The month after Hall’s proposal, Congress took the unprecedented step of issuing notes as small as five dollars. By February 1815 the war with Britain was formally over but with the credit of the country still in ruins Congress again issued small notes, this time without interest and solely as a means of providing the

³⁷ *Annals of Congress*, 13th Cong., 3rd Sess., 557, 559; *National Advocate*, October 17, 1814; *Daily National Intelligencer*, November 10, 1814; *The Northern Whig* (Hudson, N.Y.), November 11, 1814; *Albany Gazette* (Albany, N.Y.), February 23, 1815; Many New York bankers supported the passage of the Legal Tender Act

country with a circulating medium. After much debate and modification of Dallas's initial proposal, Congress chartered the Second Bank of the United States, no doubt hoping that Congress would not need to resort to the Treasury note as a form of borrowing or as a form of currency.

Both born of the war, the two measures stood in opposition to each other. The bank-model of war finance rested on a suspicion in American politics that democracies could not be trusted with the full measure of monetary power. As explained by Hamilton, a legislature would always print paper in an emergency before it would raise taxes, and thus, "so certain of being abused, that the wisdom of government will be shown in never trusting itself with the use of so seducing and dangerous an expedient." Instead, Dallas, Madison and a majority of Congress entrusted that responsibility to a quasi-public bank that they hoped could better manage the finances of the country in peace and war. Support for the Treasury note was more diffuse and tepid. Jefferson and some of the Republicans trusted government paper over a national bank, but for most leaders support for the notes was a case of using what was available in the absence of a bank. Congress issued no more Treasury notes for the next eighteen years.³⁸

It is ironic, then, that the Treasury note's rebirth stems from the growth of the hard money movement in American politics. President Andrew Jackson and his inner-circle were convinced that restricting the circulating medium of the country to gold and silver could prevent the cycle of boom and bust created by the paper money issued by American banks. To this end, Jackson and the Democrats largely dismantled the system put in place after the War of 1812. By the end of Jackson's second term, the Democrats

of 1862 on the same grounds. See Hammond, *Sovereignty and an Empty Purse*, 162; *Albany Gazette*, December 22, 1814; *The Repertory*, December 22, 1814.

had destroyed the BUS and encouraged the use of hard money in the 1836 Specie Circular and the 1834 Coinage Act. Needing a place to deposit their funds, the Jacksonians reverted to the system of depositing the government's money in state banks that had been such a source of problems in the War of 1812. This arrangement was far from optimal for hard-money Democrats, but Jackson could look back with approval on his monetary accomplishments when he left office in March 1837.

That same month exposed the fragility of the government position when the banks of the country suspended specie payments and, as had happened in 1814, the government could no longer access its own deposits. Now Jackson's successor in the White House, Martin Van Buren, and the Democrats in Congress found themselves in the awkward position of needing government credit in the form of Treasury notes to make up for a six million dollar deficit for the coming year. Levi Woodbury, Van Buren's secretary of the treasury, asked for this amount in notes in denominations as low as twenty dollars. The newly formed opposition to the Democrats, the Whigs, denounced the measure and called for long-term loans and the establishment of a new BUS to rectify the situation.

Senator Thomas Hart Benton found his party's predicament precarious to say the least. Benton, a Democrat from Missouri, was his party's foremost advocate for hard-money policies earning the nickname "old bullion." Sitting in Washington and facing this rapidly expanding problem, Benton acknowledged that only a Treasury note issue could keep the government afloat. But as a party leader he realized that such a measure would be hard for the Democracy to swallow. In New York City, Tammany Hall split over the issue between younger radicals and older conservative Democrats. Even ex-president Jackson, watching events from the Hermitage, made his views against Treasury notes

³⁸ Alexander Hamilton, "Report on a National Bank", *Annals of Congress*, 1st Cong., 1st Sess., 2096.

known. In the end, Benton succeeded in pushing the denomination up to \$100.00 to prevent the note's wide circulation, and the measure passed both houses. But Benton's support came with the realization that the government was on a slippery slope. Treasury notes, he said, were "a disguised mode of borrowing, and easy to slide into a currency: as a currency, it is the most seductive, the most dangerous, and the most liable to abuse of all the descriptions of paper money." Yet for the Democracy, just as for Thomas Jefferson in 1813, government paper was imminently preferable to the paper of a new BUS.³⁹

Congress did not return to the example of the small-note issues of 1815 in the aftermath of the Panic of 1837. But it kept the tradition of the Treasury note alive, passing eight acts authorizing the issue and reissue 47 million dollars' worth of notes. The Whigs attempted to make the notes a party issue and frequently attacked the constitutionality and wisdom of purposed note issues. In March of 1840, Whigs went so far as to refuse to vote on a Treasury note proposal and denied the Democrats a quorum to pass a measure. The standard Whig rebuttal, short of a new BUS, was that the United States depend solely on long term loans. But when the Whigs finally took control of the 27th Congress, they too found it necessary to propose and pass a Treasury note issues in January and August of 1842 to make up for revenue deficits after they failed to reinstate the BUS. Neither Whigs nor Democrats professed any great love for the Treasury notes,

³⁹ *The Globe* (Washington, D.C.), August 9, 1837; Thomas Hart Benton, *Thirty Years' View: Or, A History of the Working of the American Government for Thirty Years, from 1820 to 1850, Chiefly Taken from the Congress Debates, the Private Papers of General Jackson, and the Speeches of ex-Senator Benton, with His Actual View of Men and Affairs: with Historical Notes and Illustrations, and Some Notices of Eminent Deceased Contemporaries* (D. Appleton, 1856), 34.

but Whig inability to re-charter a BUS and Democratic adherence to hard money policies left the Treasury note as the only policy option acceptable to a majority in both parties.⁴⁰

The reliance on the Treasury note was so great that the Democrats spared its life in their quest to create a hard-money republic in 1846. Facing a largely Democratic Congress President James K. Polk outlined his expansionist policies along with his desire to create a “constitutional treasury” to hold the government’s money and “without any power to make loans or discounts or to issue any paper whatever as a currency or circulation.” This was the controversial Independent Treasury system, or sub-Treasury, enacted by Van Buren’s administration and killed off by the Whigs in 1841. In response to the latter, House Democrats passed a bill that created a system of government vaults and limiting government dues and payments in “gold and silver coin only.” This actually represented a departure from the earlier system of sub-Treasuries that allowed some paper money as payments and receipts to the government. The new restrictions on government credit would be a difficult enough proposition in a time of peace. As it happened, Polk’s first desire, annexation of Texas pushed the United States into war with Mexico the same month as Polk was trying to reform the finance of the government.

It was a recipe for disaster unless some flexibility could be worked into the Independent Treasury Act. Robert J. Walker, Polk’s secretary of the treasury, immediately requested millions in Treasury notes in anticipation of the Army’s pending needs. The House reported out a bill authorizing ten million in Treasury notes or bonds. It was a Whig, Garret Davis of Kentucky, who wondered aloud how the Treasury notes, a form of paper money, could be compatible with the sub-treasury bill’s demand that the government pay only gold and silver. The bill’s manager, James Iver McKay of North

⁴⁰ Knox, *U.S. Notes*, 41, 46, 51-59.

Carolina, gave a weak explanation that the one bill modified the other. In the Senate, Daniel Webster, realizing that the Independent Treasury bill would pass over his resistance, argued the Treasury would have to pay out and accept the notes or face an impossible credit situation in fighting the war. "If this sub-treasury system is to be adopted, the system of treasury notes will be coeval with it in duration. As long as the one stands the other must be resorted to; for the law would be altogether intolerable without such relief." Benton was apoplectic; he attacked a clause of the Treasury note bill that allowed the continuous reissue of notes. In his view the sub-treasury was to become a giant government bank "where the same note is shuffled out again and again, as long as it will hold together." In the end, the Senate amended, and the House concurred in the modification of the Independent Treasury Act to accept and pay out Treasury notes. For the rest of the war, the government successfully used the Treasury notes and the Independent Treasury, financing the war without the credit crisis that followed from the War of 1812.⁴¹

Benton lamented that the government had a firm habit of resorting to Treasury notes first and taxation and long-term debt last. Now he could see that they were taking on a life of their own. "The mischief had been done in the first step; once issued, treasury notes were strong enough to reissue themselves, and slide into paper currency." Yet the

⁴¹ *Cong. Globe*, 29th Cong. 1st Sess., 1099, 1175, 1110; The entire process of amending the bill is difficult to follow. Reverdy Johnson made the motion for amending the sub-treasury bill so that it would pay out Treasury notes in the Senate on July 20, 1846. (*Cong. Globe*, 29 Cong., 1st Sess., 1167). There is no record of anyone making the motion to amend the bill so that the government can accept Treasury notes. Yet we know that the original draft passed by the House had a strict specie clauses on both counts. The Senate at some point amended what would be sections 18 and 19 of the law. The House concurred in the amendments made by the Senate on August 5, 1846. *Cong. Globe*, 29th Cong. 1st Sess., 1197. The act signed into law by Polk allows for payment and acceptance of Treasury notes in addition to specie. See, An Act to provide for the better Organization of the Treasury, and for the Collection, Safe-Keeping, Transfer, and Disbursement of the public Revenue, ch.90, 9 Stat. 59 at 64 (1846); See generally Cummings, *Toward Modern Public Finance*.

reliance on notes was itself a product of Jeffersonian-Jacksonian financial policies. An aversion to aggressive tax policies and a national bank by both movements hindered the ability of the government to raise funds quickly. As would become clear in the Civil War, even if Congress wanted to raise taxes or borrow long-term, the lack of financial infrastructure to accomplish either task would make the process painfully slow.⁴²

Therefore, over forty years of usage by the federal government established the Treasury notes as a quasi-national currency in times of emergency. The notes of 1815 were a true currency. The notes of the Jacksonian period veered toward borrowing, but even then they were in practice the government's currency in payment to creditors, and in payments for public dues. In fact, it quickly became the first recourse of the federal government in their time of need. When the Panic of 1857 hit the country, the Treasury and Congress conformed to their traditional pattern of Treasury note issue to make up for its deficits. When the rebellion broke out in 1861, the financial columns and Chase had every expectation that loans negotiated with the major east coast banks would be the standard course for raising the needed funds and that the Independent Treasury could handle the job. But as Benton noticed, the long history of the Treasury notes proved that legislators could be willing to make them into a national currency if the conditions (and fears) were ripe.

The Republicans Look to the Treasury Note

Chase started paying government contractors in Treasury notes as early as March 1861, while simultaneously trying to use the notes to borrow money from the New York bankers. In a letter to Cameron dated June 19th, he directed the War department to “use a considerable amount of *Treasury Notes* in payment of large contracts.” Chase was

⁴² *Cong. Globe*, 29th Cong. 1st Sess., 1110.

painfully aware of how such an act took the government perilously close to depending on what a younger Chase had called a “mere paper-money system” to make ends meet. He insisted that Cameron use the notes “without publicity, and only in the largest contracts” because, he admitted, “it is a dangerous experiment for a Government to pay in anything but money.” Despite his hard-money scruples, Chase, like so many Congresses and Treasury secretaries before him, realized that the Treasury note was an attractive, malleable tool that could meet the financial needs of the government in an emergency.⁴³

In the spring and summer of 1861, members of Congress and the press were well aware that the Treasury note could potentially become a revolutionary tool of government finance and currency. Tremors of this idea started as early as the December session of the last Congress under Buchanan. In December 1860, Cobb asked for another \$11 million in bonds and notes to meet the government’s debts and deficit. That same month, Republicans in the House successfully dropped the denomination for the proposed Treasury notes in the new loan bill from \$100.00 to \$50.00 in an effort to attract more investors in the money market. At one point during the debates, then Senator Cameron of Pennsylvania suggested an amendment that would drop the denomination even lower to twenty dollars. Cameron’s position is worth noting because his logic was similar to the logic that would play out on the floor of the Congress in the summer of 1861 and beyond.⁴⁴

Cameron provided several reasons for dropping the denomination of the notes. First he stressed the grave financial needs of the government. At that particular point, the Treasury needed at least two million dollars just to pay the principal on notes issued back

⁴³ SPC to Simeon Cameron, June 19, 1861, in Niven ed., *Chase Papers*, 3:68.

in 1857, in effect borrowing just to keep their head above water. Congress feared that the bankers of Wall Street would demand a higher interest rate than the government could afford; as it had in the past, Congress looked to the Treasury note to coax more money out of investors looking for a quick return on their capital. The argument put forward by Cameron and others was one heard before: short-term securities meant a cheaper means of borrowing. Where Cameron departed from custom was in his belief that lowering the denomination would attract a new kind of investor while doubling as a means of payment. He speculated that twenty dollar notes could be used to pay federal employees their weekly or monthly wages and it might be used to attract investments from people of “small means but thrifty habits” who perhaps saved ten to twenty dollars a year in gold and who would be glad to invest in the small notes that would repay them in interest.

Cameron and his supporters emphasized the small notes as a means of borrowing and a means of payment, moreover a patriotic one. Republican senator John P. Hale of New Hampshire countered Democrats who criticized the small notes as a means of creating a paper currency by arguing, “currency is a mere term. It may mean anything or nothing.” As long as a measure helped sustain the government’s credit and served a public good, he would support it. Cameron also sensed the difficulties in drawing the line between debt and currency, arguing that the real difference was merely which class benefited from the distinction. “Is there any difference in principle between issuing a twenty-dollar note and a fifty-dollar note? The only difference is, that practically the one becomes a currency for the rich and the other a currency for the poor.”⁴⁵

⁴⁴ “Report of the Secretary of the Treasury on the State of the Finances,” *H. Doc. No.2*, 36th Cong., 2nd Sess., 9.

⁴⁵ *Cong. Globe*, 36th Cong. 2nd Sess., 66, 69.

That was December 1860. Cameron failed, but already ideas about augmenting the Treasury notes circulated in public circles. In the months preceding the firing on Fort Sumter, with an even greater need for money, some in the northern press again seized on the malleability of the Treasury note as a means of war finance and as a means of national currency. The Boston *Daily Advertiser* suggested a “national Loan” of small Treasury notes that would accomplish exactly what Cameron had envisioned back in December: mobilize popular support at low interest without the need to look to the big bankers. Such a plan would empower “patriotic citizens” to support their government while checking the power of “a comparatively small number of individuals in the large cities” to dictate the terms of the loans. The *Advertiser* also favored government notes that bore no interest and could serve as a national currency. The Boston writer thought that a national currency could provide “the occasion for providing the country with a currency which is imperatively needed to facilitate the exchanges between remote geographical points.” Specifically, they pointed to the notorious instability of western banks in comparison with the East and the need for a uniform currency that could “grease the wheels” of our domestic commerce.⁴⁶

An unsigned letter to the *New York Times* a few days before Congress started their special session raised many of the same points as the column in the *Advertiser*. While the writer favored an interest rate, they too noted the double-nature of the Treasury note as a currency and as a debt and in fact thought the needs of the economy and war finance as one in the same. “The Country wants a sound, reliable currency, and its shape may be that of an investment as well as a currency.” Like the *Advertiser*, the author noted the instability of East to West payments. “With an equalized currency throughout the

⁴⁶ *Boston Daily Advertiser*, June 12, 1861.

country, business would revive. Labor will again be in demand. Let no man be idle. Government must encourage in every way the employment of mechanics and laboring men.” But the letter ended on an ominous note that stated how far the logic of the Treasury note in wartime might go. “Were it not that the imagination would fancy it another name for a *forced loan*, I would suggest making the Treasury into a *legal tender*.” Legal tender was not a panacea, but if done, government contractors would have to accept the notes as payment. The notes would be a “forced loan” in so much as the author believed that Congress would provide for a future date when contractors could finally get coin for their troubles. While the author did not think it necessarily wise, they emphasized “the machinery of Government must not be clogged for a *day*.” It was clear in the grasp of war that if Wall Street would not accept loans on the open market “forced loans must be submitted to.”⁴⁷

Thus in the Treasury, on the floor of Congress and in the press, leaders and writers were all looking to the humble Treasury note to serve as the workhorse of wartime finance and as cure to the ills American monetary policy. Yet nothing about the future of the Treasury note was inevitable at this point. The *Herald* called such plans for the issue of Treasury notes “wild schemes.” The rejection of Cameron’s bid to drop the notes to twenty dollars and Chase’s own sensitivity to the use of the notes suggested the deep apprehension in financial and political circles at the thought of using the Treasury note as anything more than a form of borrowing.⁴⁸

⁴⁷ *New York Times*, July 1, 1861.

⁴⁸ *New York Herald*, June 3, 1861.

The Chase Plan

When Chase proposed his plan to Congress in July 1861, as expected it conformed to many of the canons of American public finance. He estimated that the cost of running the war and the government for the next year would amount to \$318, 519, 581.87, of which he would only raise 80 million by taxes and the remaining 240 million by loans. Like so many others in the North in the time before battles like 1st Bull Run and Shiloh, Chase assumed a short war based on the assumption that the wayward southerners would quickly realize the error of their ways and rejoin the Union, after which Chase predicted “prosperity renewed in a degree and measure without parallel in the past experience of our country.” As to taxes, Chase suggested altering the tariff to include imposts on sugar, coffee and tea. He left it to Congress whether there should be some sort of direct tax apportioned amongst the states, as authorized by the Constitution. Rather he seemed to favor a tax on Hamilton’s favorite objects of internal levies, watches, carriages and whiskey with the interesting addition of banknotes to the list. In terms of bonds, he proposed raising 100 million by selling bonds running for thirty years at no more than 7% interest.⁴⁹

The plan contained two variations on the standard theme that departed from previous wartime precedent, and both rested on the custom and practice of the Treasury note. First, Chase proposed raising millions of dollars through what he called a “NATIONAL LOAN.” Through this plan, government agents at regional sub-treasuries, post-offices or banks would sell Treasury notes directly to the public in denominations as low as \$50.00 at rate of 7.30% interest (which were eventually called 7-30s). The 7-30’s

⁴⁹ “Report of the Secretary of the Treasury, 4 July 1861,” *S. Doc. No. 2*, 37th Cong., 1st Sess., 6, 8, 13-14.

yield amounted to a penny a day, making calculations, as one newspaper put it, “within the ability of any man who can count on his fingers.”⁵⁰

The second variation was a proposed \$50 million of a new form of Treasury note that bore little or no interest was receivable for public dues and could be redeemed for coin at the pleasure of the holder. These were to be eventually called “Demand Notes” on account of the fact that the holder could obtain coin on demand at a sub-treasury. In this way, they were exactly like a banknote, except they were now supported by all the coin held in the Independent Treasury. If the 7-30s were a means of borrowing, the demand note was clearly intended as a means of payment. The provision of the eventual bill read that the purpose of the notes “may pay for salaries or other dues from the United States.” Chase understood that these notes came perilously close to a form of paper money. What was to prevent the government from suspending specie payments and leaving the American public with worthless paper to show for it? His only counter to this possibility, as he assured Congress, was “the greatest care, will, however, be requisite to prevent the degradation of such issues into an irredeemable paper currency, that which no more certainly fatal experiment for improvising the masses and discrediting the government of any country can well be devised.”⁵¹

Despite their revolutionary aspects, the demand notes of 1861 worked on the same principle as any other notes issued by the government in the past. They offered Chase a flexible financial tool to meet the needs of the government if and when he could not get enough money selling long term bonds or the 7-30s. On the one hand they acted as money, in that Chase could use them to pay soldiers, contractors and government

⁵⁰ *Evening Post*, July 8, 1861.

employees. Chase himself took the lead in this regard by taking them as pay when Congress approved Chase's plan in July. The notes could also theoretically still be categorized as a "loan" in that a demand note was in essence a debt owed by the government to the holder, payable at their pleasure. In fact, the *Herald* reported that New Yorkers would take their demand notes and quickly walk down to the sub-treasury where they would exchange them for "real" money.⁵²

Congress approved every aspect of Chase's plan with few amendments at the special session in July. The National Loan Act of 1861 authorized Chase to borrow \$250 million in bonds and Treasury notes. Included in the package were the twenty-year bonds at no more than 7 percent interest, the 7-30s to be issued to the public at large through locations specified by Chase, and two other types of Treasury notes—one with half the interest of the bonds and redeemable in one year and fifty million worth of the demand notes, redeemable for coin at any time, bearing no interest and issued in denominations no lower than ten dollars. There were rumbles from conservative Democrats like Senator Willard Saulsbury of Delaware who thought the government needed \$100 million less in loans than they were requesting. In the House, Clement L. Vallandigham of Ohio used the occasion of debate on the national loan to lambast the Lincoln's suspension of habeas corpus and the creation of a blockade around the Confederacy that had occurred since April. For him, the huge appropriation authorized by the loan was just one more proof that the United States was on the verge of a "consolidated monarchy or vast centralized military despotism." But on the whole there was little debate of the bill's provisions, and the plan passed the House on its first vote by a margin of 150 to 5. The Senate added a

⁵¹ An Act to Authorize a National Loan and for other Purposes, July 17, 1861, ch.5, 12 Stat. 259; "Report of the Secretary of the Treasury, July 4, 1861," *S. Doc. No. 2*, 37th Cong., 1st Sess., 14.

few amendments and the bill passed without a roll call five days later. The House agreed to the amendments, and Lincoln signed the act into law on July 17, 1861.⁵³

The rising tensions of the summer were having a clear effect on the mood in Congress and Washington. Chase had asked for more money than any other Treasury Secretary in American history, but it only took two weeks to pass the loan bill.

“Measures which involve millions of men and money, which inaugurate or abolish systems of revenue and administration, which create armies and navies, and give to the Executive the plenary powers requisite in such grand National emergencies” remarked the *New York Times*, “are hastened from committee-room to the engrossing clerk with a rapidity which in ordinary time, would suggest the idea of the Legislature having surrendered all but the formal exercise of its constitutional functions.” At the same time that the National Loan bill came down, The House Ways and Means Committee was hard at work on a new tariff, a direct tax on the states and the first income tax in American history. It seemed that Vollandigham’s specter of a vast centralized government might have been closer to the truth than most Republicans wanted to admit.⁵⁴

But the *Times* approved of it all. They reasoned that executive power could return to normal, debts paid off and expenditures reduced. Nothing was more important than preservation of the Union and the strong message that laws like the National Loan Act conveyed to all that were watching. “It is necessary to impress not only the rebels, but the entire world, with a just sense of our power, earnestness and unanimity.”⁵⁵

⁵² *New York Herald*, October 5, 1861.

⁵³ An Act to Authorize a National Loan and for other Purposes, July 17, 1861, ch.5, 12 Stat. 259; *Congressional Globe*, 37th Cong. 1st Sess, 61; *Cong. Globe*, 37th Cong. 1st Sess., 60;

⁵⁴ *New York Times*, July 17, 1861.

⁵⁵ *New York Times*, July 17, 1861.

Patriotism aside, things were moving perhaps a bit too quickly through the “committee-room to the engrossing clerk” in the heady days of July 1861. Lincoln signed the loan bill into law on Monday, July 17. By Saturday, Chase and members of the Senate Finance Committee realized that they had left out important parts in the original act. Senator William Pitt Fessenden of Maine, chaired the Senate Finance committee and was the acknowledged expert on financial matters in that chamber. His committee spoke first on July 22, 1861, proposing six percent bonds and some details on how to sign and process the notes and bonds which easily passed the Senate the same day. In the House, Thaddeus Stevens of Pennsylvania chaired the prestigious Ways and Means committee, and though not thought of as a financial expert he was an effective parliamentary leader who could navigate legislation through the House. From Stevens’ comments on the floor of the House, it seems Chase told the Ways and Means committee that he believed that the bonds and notes in the national loan act would not attract investors. Chase again went to the Treasury note as his solution, this time suggesting that Congress raise the interest on one year notes up to nine percent, give him power to issue notes below ten dollars and that Congress specifically pledge funds from the new tariff duties to pay the debt. The former measure designed to entice, while the latter meant to reassure that the U.S. would pay. Stevens communicated Chase’s worries. The war, according to the secretary, was costing nearly a million dollars a day and “under the calamity which has befallen us, it is found impossible to negotiate the loan with sufficient promptness to meet the demand of the Treasury.” In the weeks that followed, several proposed amendments came up in debate, only to die on the floor of Congress. In fact, the first moves outlined above, did not make it into the final bill that passed on August 5, 1861.⁵⁶

⁵⁶ *Cong. Globe*, 37th Cong, 1st Sess. 267.

Significant debate emerged on two issues, both relating to currency. The first was the issue of the lowest denomination for the demand notes. Back during the debates over the National Loan bill, there was only one moment of real debate when Senator Preston King of New York, a former Democrat, attempted to push the denomination of the demand notes back up to twenty dollars. It seemed that even back then, King felt constrained to openly criticize the use of notes, simply stating that his idea was merely “an expression of opinion” that he would not argue. Fessenden had easily fought this off. Now in the House, Stevens explained that Chase wanted even smaller notes that he thought, “may be passed off in the payment of dues,” in other words, used as means of payment.

The second problem related to the mechanics of borrowing so much money. The core problem of Chase’s plan was that he was asking to borrow more money than existed in the banks of New York, Boston and Philadelphia. Chase needed to borrow around \$100 million from the banks of the Northeast. In early July, the banks of the three cities held around \$58 million in specie in their vaults. Under the terms of the Independent Treasury Act, a loan to the government literally meant (in the case of the New York banks) taking the coin out of the banks vaults, loading it onto a cart and trucking it to the sub-treasury building on Nassau and Wall Street in New York City. Draining the banks of all money would mean that depositors could not withdraw funds by check or redeem their banknotes, and in a city like New York where thousands of dollars passed from hand to hand by check each day, such a drain of gold to the banks would freeze credit, arrest commerce and most likely cause a financial panic in the midst of a civil war.⁵⁷

⁵⁷ Data from Mitchell, *History of the Greenbacks*, 30.

This fragility of the banks was not due to any weakness in the American money market but was inherent in the financial system of the era. In fact, the banks had historic amounts of specie in their vaults owing to several factors during the summer and fall of 1861. Gold flowed into the Northeast banks from California, where the mines were still producing, and from Europe, where a series of poor harvests meant that English and French gold poured into the port cities to purchase Midwestern grain for shipment back across the Atlantic. Very little gold left the banks because of the generally sluggish domestic business scene since Lincoln's election. But even with these historic amounts of gold, the banks still operated in a financial system where the stability of credit depended on a stable supply of coin in their vaults.⁵⁸

Added to this practical problem was a legal problem. Even if the banks wanted to lend the government every last coin in their vaults, their state-charters and laws required them to have a certain amount of money on hand at all times. If they bought all the U.S. debt possible, the state governments could suspend their charters and put them permanently out of business. The plan Chase eventually settled on was that the government would not borrow the entire sum at one time and through payments to suppliers, contractors, employees, soldiers and sailors the money would find its way back into the banks, eventually. The critical question festering in the minds of the bankers was would the coin return fast enough?

The New York and Massachusetts banks had long faced the problem of stabilizing shifts of gold from one bank to another. In both states, the major banks set up "clearing houses" that provided a safety valve to make inter-bank payments without moving huge

⁵⁸ For discussions of the Atlantic economy at this point see *The Economist* 19 January 1861; *New York Herald*, February 3, 1861, *New York Times*, January 23, 1861. On gold flows see Hammond, *Sovereignty*

amounts of gold from bank to bank each day. In effect, the bankers wanted Chase to accept credit on their books for the amount loaned and then pay the government's bills with checks drawn on these accounts or with banknotes, thus allowing the banks to use their clearing-house system to maintain a balance in the amount of specie.

While it is not clear where the original impulse came from, after the passage of the loan act Elbridge Spaulding drafted a bill that would suspend the Independent Treasury Act and allow Chase to take credit and not coin for the loans. Spaulding, a former Whig and banker sat on the Ways and Means committee and quickly became the committee's expert on currency and banking. In 1870, Spaulding wrote that in the summer of 1861 he and two other members of the Ways and Means committee feared that "if the gold reserves of the banks were drawn upon for such large loans, there would be a general suspension of specie payments in less than six months." Spaulding, in good Whig-style, thought the Independent Treasury archaic "the clearing-house, locomotive and telegraph are among the most useful of modern inventions, and that the sub-treasury law is better adapted to the sixteenth than the nineteenth century." Spaulding wrote a bill that did suspend the sub-treasury and allowed the government to accept credit. While he had some support in the House and the Senate, he found that the Independent Treasury "seemed to be popular" with Chase and others in Congress. Chase rewrote Spaulding's bill "considerably modified and limited its terms."⁵⁹

The bill that Chase wrote did suspend the 1846 treasury act and allowed him to deposit money from the loan with specie-paying banks "to the credit of the Treasurer of

and an Empty Purse, 123-28 and Mitchell, *History of The Greenbacks*, 20-23.

⁵⁹ E.G. Spaulding, *A Resource of War—The Credit of the Government Made Immediately Available, The History of the Legal Tender Paper Money Issued During The Great Rebellion Being A Loan Without Interest*

the United States.” The critical phrase was that the loan money “may be withdrawn for such deposit for deposit with regular authorized depositories or for the payment of public dues.” While vague, some hoped this meant that Chase would take his money out of the banks in the form of banknotes to pay the public dues. As Chase later interpreted this phrase, and as several members of Congress explained it, all this meant was that the banks did not have to pay their money to the sub-treasury *immediately* and at most it meant that the banks could also simply pay the coin to the government’s creditors directly without first making a stop at the sub-treasury. On the floor of Congress, it was clear that no one had a solid grasp on the meaning of the bill. In the House, Stevens took Chase’s view of the bill as a limited change of the sub-treasury. In the Senate, Fessenden explained it as if the government could start accepting banknotes again. Worse yet, the day after the bill passed the Senate, Senators Jesse Bright and Lyman Trumbull (the former a Democrat and the latter an ex-Democrat) both confessed that they had no idea that they had just voted to repeal the sub-treasury bill that they had supported in the 40s and tried to get the vote reconsidered. Ex-democrats in the party had little to worry about. Chase’s July plan took the Jeffersonian route of depending on government paper and as his relationship with the banks would show, he would rather destroy the banks than let them destroy the Independent Treasury.⁶⁰

and a National Currency, 2nd ed. (Buffalo: Express Printing Company, 1875), 51 [hereafter referred to as Spaulding, *History of the Legal Tender Paper Money* (1875)].

⁶⁰ An Act supplementary to an Act entitled 'An Act to authorize a National Loan, and for other Purposes, 5 August 1861, ch. 46, 12 Stat. 313 at 314; *Cong. Globe*, 37th Cong., 1st Sess., 397-396. James A. McDougall, Democratic senator from California explained to Trumbull and Bright that he too fought for the sub-

The Threat of a Thousand Dollar Breakfast

On the evening of August 9, 1861, in New York City, Chase had the first of a series of meetings with the most powerful bankers in the country. That night George S. Coe, president of the American Exchange Bank, proposed that “the banks of the North by some organization that would combine them into an efficient and inseparable body, for the purposes of advancing the capital of the country.” The bankers of the three cities agreed, forming what was to be known as the “War Loan Association.” In subsequent meetings held that week, the banks developed an unprecedented vision of private-public cooperation to finance the war. In effect, the bankers wanted to unite their several banks to do the job of a single BUS, while at the same time remain free to transact their normal commercial business. As Coe later underlined, the association held 121 million dollars in coin that August, more than “the Bank of England and the Bank of France combined.” This was a sum, he reasoned, large enough to fight any war. What the government needed was a means of stabilizing and managing its credit. The bankers proposed that Chase deposit his loan funds with the banks, and pay contractors, soldiers and creditors through checks and banknotes payable at the Association banks. Coe even suggested an association banknote, bearing the seal of the government, which could circulate as a national currency. That way, the banks could retain and manage the gold supply, and prevent the possible hoarding of gold that could destroy the credit of the banks and the government’s credit alike.⁶¹

Treasury in the 40s. Yet, he pointed out that the government needed money in the current crisis and this was the only means to achieve that.

⁶¹ An account of the meetings was written by George S. Coe, years after the fact. While the letter itself presents the facts in such a way as to place the blame for the December suspension squarely on Chase’s shoulders the details he presents are largely corroborated by a letter written by another banker two months after the negotiations. Few details that made into the papers of the time. George S. Coe to E.G.

To the astonishment of the bankers, Chase firmly refused. In reference of the act of August 5' he stated that "from his personal knowledge of its purpose" the act was not intended to suspend the sub-treasury. In later years, several bankers would explain this refusal as stemming from Chase's "hard-money" beliefs. This was an oversimplification. Chase understood the need for credit, but believed that convertibility into coin needed to be assured somehow. Firmly in the Jeffersonian-Jacksonian tradition, he believed that the banks were incapable of preventing their own failure and suspension. This is what he meant years earlier by his opposition to "*mere paper-money system*—to all bank frauds—to all bank suspensions on their issue or deposits—to all bank expansions." As governor of Ohio, he had been outraged at the ease with which the banks could suspend payments and ruin the credit of the people. Now the banks were asking him to entrust them with the credit of the entire country in the middle of a civil war. According to Chase, he was skeptical that they would always pay out coin on his drafts or that they could manage the government's payments, which given the nature of the war, would stretch across the Union.⁶²

Chase essentially took a Jeffersonian view of public-finance. Like Jefferson and Eppes during the War of 1812, Chase embraced the Treasury notes as a means to bypass the banks and preserve the public's credit from embarrassment. Back in 1813, Jefferson imagined, and Chase in 1861 created, a system of Treasury notes that rendered banknotes unnecessary—the demand notes. The banks complained that the demand notes would

Spaulding, October 8, 1875, and J.E. Williams to Salmon P. Chase, October 4, 1861, both reprinted in E.G. Spaulding, *History of the Legal Tender Paper Money* (1875), 89-96; 97-99; *Boston Daily Advertiser*, August 16, 1861; *New York Times*, August 16, 1861; *Evening Post*, August 17, 1861; John Earl Williams, *The War-Loans of the Associated Banks to the Government in 1861* (New York: 1876).

destroy their own note issuing powers and force them to hemorrhage gold. Echoing Jefferson years earlier, Chase implied that he would never accept credit from them, he preferred “to put the credit of the people into notes and use them as money.” He believed the banknotes to be unconstitutional, and his statements as younger man and actions to save the Independent Treasury from statutory destruction underlined his belief in that institution as the best means to maintain the credit of the notes.⁶³

Given these prejudices against the banks, it is unsurprising that he essentially refused to negotiate with the bankers on fundamentals. He also refused their request to let the interest rate on Treasury notes to float, something he viewed as beneficial only to the banks. According to Chase, he left the bankers with a threat; a threat that left little room for cooperation. “Gentlemen, I am sure you wish to do all you can, and I hope you will find that you can take the loans required on terms which can be admitted. If not, I must go back to Washington and issue notes for circulation; for gentlemen, the war must go on until this rebellion is put down, if we have to put out paper until it takes a thousand dollars to buy a breakfast.” This was the threat inherent in over fifty years of Treasury note usage. The government was unlike any other debtor in the American market and had little room to negotiate in the depths of a crisis. The government would use its credit and power, even if that meant flooding the money market and upsetting the stability of the American financial system.⁶⁴

⁶² Williams, *War-Loans of the Associated Banks*, 2; Chase wrote his account of the negotiations in 1864 in a letter to the writer John T. Trowbridge who requested the information for a biography of Chase. SPC to John T. Trowbridge, March 21, 1864, in Niven, ed., *Chase Papers*, 4:349.

⁶³ George S. Coe to E.G. Spaulding, in Spaulding, *History of the Legal Tender Paper Money* (1875), 92; *Boston Daily Advertiser* 16 August 1861.

⁶⁴ This picture stands in contrast to the picture of Chase and the banker’s relationship in Richardson, *Greatest Nation*, 39, 43. Richardson argues that in April and during the summer of 1861, Chase did trust the bankers to take his loans; she also passes over any and all of the tensions at the conference in August.

The threat must have worked. The banks, against their better judgment, agreed to a \$50 million loan of the 7-30s at par, with an option for two other \$50 million loans in October and December. The association apportioned the loan among the three cities, with the largest amount coming from New York. The Associated banks would, in turn, sell the 7-30s to the public, with an option to convert the 7-30s into the longer-term 6 percent bonds. Simultaneously, the government would undertake the novelty of selling 7-30s directly to the public and paying out demand notes to its contractors, employees and soldiers. Some in the press noted the tension between Chase and the bankers over the demand notes, with the Boston *Daily Advertiser* expressing approval that the bankers did not kill the notes.⁶⁵ In general the press said nothing of the tensions in New York and praised the agreement as historic in its size and scope. The *Times* thought that the loans should “be regarded as determining the result if the contest. It will every where carry conviction of success.” A little less than a week after the end of negotiations, the Union suffered its first major military defeat near the little town of Manassas Junction. By the end of the year, the banks of the North would suspend specie payments; an action that would propel the government to go off the specie standard for the first time in its history.

66

What happened between August and December to lead the banks to suspend specie payments is still a matter of controversy among historians. We do know that the system worked well enough for a time. The bankers took the option of the next \$50 million in October. In August, the press praised the loan and described scenes of old

Problems only emerge later (45); SPC to John T. Trowbridge, March 21, 1864, in Niven, ed., *Chase Papers*, 4: 348.

⁶⁵ Boston *Daily Advertiser* 16 August 1861.

⁶⁶ New York *Times* 16 August 1861.

women and workingmen coming into the banks to help support the Union war effort. By the time of that the November option rolled around, it was clear that the popular loan was not attracting investors. The banks were now wary of taking on any more of the 7-30s. The banks took the third option, but instead of Treasury notes they opted for the 6 percent bonds. Throughout this period the gold the gold levels in the banker's vaults remained steady and the 7-30s sold near par.⁶⁷

Meanwhile at the Treasury, Chase was having trouble keeping the Union finances afloat. In a letter to General William T. Sherman, Chase apologized for the delays in payments of requisitions and the salary of his troops. He explained that European bankers had snubbed his requests for a loan, and the popular loan could not produce enough money to keep up with demand. He confessed that “for the last six weeks requisitions have largely exceeded even the great sum of a million a day.” The bankers were also at Chase's throat, complaining that his policies would lead to suspension. J.E. Williams of the Metropolitan Bank wrote Chase in October complaining that “Congress *meant something*” when passing the act of August 5. He explained that an “increase in the Sub-Treasury's coin weakens us and the Government too” and that the hoarding of coin would lead to bank suspension. Moreover, Williams resented Chase's attitude that he knew better than banks “While you speculate as to what is best for sound banks, they think,

⁶⁷ Hammond is inclined to blame Chase's use of the demand notes. He argues that the government hoarded gold to support the notes. Later he claims that government was not keeping up with its disbursements and this blocked the flow of specie back to the banks. Whether Hammond thinks government hoarding was a matter of policy or an accident is unclear. Mitchell believes that the problem was the overall system itself. Hammond, *Sovereignty*, 115-118. As long as the system relied on a gold standard any hoarding would force the banks to suspend, it just so happens that the political situation forced that to happen in December 1861. Mitchell, *History of the Greenbacks*, 41-43. Hammond is more convincing in arguing that hoarding was happening earlier in the fall based on his calculation of what the banks should have had in reserve accounting for California and European gold deliveries. Hammond, *Sovereignty*, 122. Without a systematic study of actual Treasury disbursements and policy in this period it would be difficult to sustain Hammond's argument.

with practical experience, they *know* what is best for their institutions.” On the other side of the ledger, Chase could do nothing to control how much the government spent. In a letter to Secretary of War Cameron, Chase complained that he required accurate estimates on the size of the army and its expenses. Chase’s own policies depended on how much the military required, and he underlined to Cameron that the “vague and indefinite bases upon which Requisitions upon the Treasury are issued” would in the end “seriously interfere with my future negotiations.” The government’s bills and troops went unpaid, the government’s financial creditors were anxious if not hostile toward Chase’s policies and Chase himself could not get a grip on how much money went out the door of the Treasury.⁶⁸

By December a series of financial and political events raised the anxiety of the bankers to a fever pitch. Militarily, the Union’s chances of a quick victory seemed to be dimming. Union forces followed up their defeat at Bull Run with another at the battle of Ball’s Bluff in October. On November 1861, news reached New York City that the U.S. Navy captured two Confederate envoys headed to Europe on the British Steamer *Trent*. The British demanded that Lincoln release James M. Mason and John Slidell, and made preparations for war. Northern newspapers were filled with calls for a war with Britain. By mid-December, Lincoln agreed to release Mason and Slidell and Britain backed down, but the damage was already done to the credit markets. Fearful that Britain might withdraw all its coin from New York, customers at the banks started withdrawing their

⁶⁸ SPC to William T. Sherman, October 13, 1861, in Niven, ed., *Chase Papers*, 3:101; J.E. Williams to SPC, October 4, 1861, in Spaulding, *History of the Legal Tender Paper Money* (1875), 98-99; SPC to Simon Cameron, November 21, 1861, in Niven, ed., *Chase Papers*, 3:111.

deposits and hoarding gold. The New York banks had more gold during the first week in December than in August, but each week brought more and more withdrawals.⁶⁹

Perhaps the most disturbing turn of events, from the perspective of the bankers, was Chase's December report. News first reached New York of his report on December 10. The banks had hoped that Chase would recommend aggressive new taxes that would help shore up American credit. Instead Chase was determined to depend on loans and only projected a need for \$50 million in new taxes. This news was disappointing to be sure, but Chase's next move was revolutionary.⁷⁰

In effect, Chase wanted Congress to nationalize all the currency of the country. According to Chase, Congress already made the first move in this direction when they approved his demand note proposal in July. That summer, Chase said nothing of the larger designs of this proposal, and nothing to the bankers in August of his grand scheme. In fact, in his negotiations he agreed to temper his issue of the notes as not to interfere with the banks. Now he proposed to extend the reach of the demand notes and couple it with a tax on banknotes to drive out the paper of the country's banks. But Chase did not plan to leave the banks with nothing. He proposed a system by which the banks would buy government stock with their gold, and in return the government would allow them to issue a new national currency printed and regulated by the government. The banks could still, in theory, make profits on loaning the notes, while the government would acquire a new demand for their securities. Lastly, in a style reminiscent of Hamilton's report on the public debt, Chase suggested that his plan would inspire "increased security of the Union, springing from the common interest in its preservation" based on the investment the

⁶⁹ Hammond, *Sovereignty and an Empty Purse*, 154; Mitchell, *History of the Greenbacks*, 30.

⁷⁰ *New York Herald*, December 10, 1861.

people made in government securities and notes. Overall, Chase sold the plan as a means of fixing a long-standing problem in the American currency system, and secondly as a means of raising a war revenue. Along with the BUS and the sub-treasury, it was one of boldest monetary plans in American history to date. Yet Chase could still write in all seriousness “it avoids almost, if not altogether, the evils of a great and sudden change in the currency.”⁷¹

The accumulated effects of these developments convinced the bankers of New York City to suspend specie payments on the evening of Saturday, December 28, 1861. In a “rather long and stormy session of some seven hours” the bankers determined to keep their doors open, but stop all payments of checks and banknotes. At this point, the bankers knew that the chances of a war with Britain was slim, but that had not stopped the withdrawal of coin from their vaults or their anxieties about the future of the war or Chase’s ability to finance it. Moreover, Chase’s plans for a national currency threatened to undermine their state-charters and their clearing-house system, subjecting them to a new and unknown national system. The *Herald* predicted such an outcome weeks earlier when it wrote, “In view of the uncertainties of the future, as well in reference to the rebellion as to our foreign relations, a general bank suspension might prove a measure of natural defense and conservatism.” Philadelphia and Boston quickly followed New York in suspending. On December 29, Chase ordered that the sub-Treasury also suspend specie payments, as “the government cannot pay coin unless the Banks do.”⁷²

⁷¹ “Report of the Secretary of the Treasury, on the State of the Finances, for the Year Ending June 30, 1861,” *S. Ex. Doc. 2*, 37th Cong., 2nd Sess., 17-20.

⁷² *New York Herald*, December 6, 1861; SPC to John J. Cisco, December 29, 1861, in Niven, ed., *Chase Papers*, 3:114.

Back in Washington, the city was mostly empty on account of the Christmas holiday. At Willard's hotel, a few members of the House Ways and Means committee stayed behind to draft a bill that would bring into reality Chase's national currency proposal. It fell to Spaulding and Samuel Hooper, a Boston merchant and former Whig, to give substance to Chase's vision. The two drafted a large 60-section "national currency bank bill" sometime before Christmas. When news of the suspension reached Washington, Spaulding realized that Chase's plan could no longer work. Practically, the bill would require too much debate and it was already clear that bankers in New York and other states opposed the new plan. "Upon more mature consideration" Spaulding scrapped Chase's plan and wrote a new Treasury note bill that would make the notes a legal tender for all debts, public and private.⁷³

The first draft of the Legal Tender Act is proof of the bridge between the old Treasury notes of the pre-war period and the greenbacks of the war and beyond. Spaulding introduced H.R. 182 on the floor of the House three days after the New York suspension. The original title was a bill "to authorize the issue of treasury notes payable on demand" and refers to the notes to be created as Treasury notes "payable on demand." These notes, however, would by no means be payable on demand. There was no provision in the bill for their redemption in coin and the legal tender clause meant that they would satisfy existing contractual claims on the government, not to mention that the whole point of the act was to avoid paying coin. Spaulding, it seems, borrowed the language from the section of the national loan act authorizing the demand notes in the confusion of the suspension. The important point was that the Republicans spliced the idea of legal tender paper money onto a well-established tool of federal finance. In the

⁷³ Spaulding, *History of the Legal Tender Paper Money* (1875), 7-15.

press, articles in late December and early January repeatedly referred to the act as the “demand note” bill.⁷⁴

Spaulding’s legal tender proposal, far from being revolutionary, was already proposed and speculated in the press and banking circles before the suspension and Chase’s report. The *New York Times* reported that innumerable theories circulated throughout New York, but the columnist only commented on the idea of making notes a legal tender. The *Herald* added “there are many who believe that the difficulty will be overcome by authorizing a further issue of say \$200,000,000 of United States notes, bearing no interest, and creating them a legal tender. The public is fully prepared for something of the kind.” Several bankers were also behind the proposal, writing to Chase and members of Congress that given the present circumstances and the sums required by the government, making U.S. notes a legal tender was the only way to restore liquidity to the money markets. If the government made its notes a legal tender, the banks could redeem checks and banknotes in paper instead of gold. Simply put, he offered an issue of Treasury notes with a new feature grafted onto them.⁷⁵

The idea to use legal tender paper money in the winter of 1861 sprung from a long tradition in American public finance of turning to government paper in times of emergency. The potential for legal tender had long lurked behind the government’s growing monetary powers over the course of the nineteenth century. In the face of several wars and financial panics, the U.S. government developed a new currency power in the

⁷⁴ *Vermont Chronicle* (Bellows Falls, VT), January 7, 1862; *Boston Daily Advertiser*, January 8-9, 1862; *North American and United States Gazette* (Philadelphia, PA), January 10, 1862; *Daily National Intelligencer*, January 11, 1862.

⁷⁵ *New York Herald*, December 6, 1861; The argument for the banker’s role in proposing legal tender can be found in Hammond, *Sovereignty and an Empty Purse*, and in a more condensed form in Bray Hammond, “The North’s Empty Purse, 1861-1862,” *American Historical Review* 67 (1961):1-18.

guise of the Treasury notes. Given the tension in American politics between pro-central banking and pro-hard money politics, the Treasury note emerged from the political battles of the nineteenth century as compromise measure that all sides turned to in time of need. Nevertheless, making government paper a legal tender faced serious hurdles. Congress would need to overcome several generation's worth of fears about fiat currency old as American government and woven into the fabric of policy and law.

2

Custom Leavened by Crisis

In late December of 1861, Elbridge G. Spaulding suggested the unimaginable. Spaulding, a Republican on the House Ways and Means committee, drafted a bill that would make U.S. Treasury notes a legal tender in all debts public and private. No one disagreed that the country was in poor shape financially: the major banks and the government had suspended specie payments after Christmas. All the while, the cost of the Civil War was hovering around a million dollars a day. News of Spaulding's legal tender bill received a lukewarm reception in the northern press in the days and weeks before it came up for debate in Congress. In Boston, New York and Philadelphia, columnists balanced their concession that the government needed money immediately with a demand that Congress pass new taxes to support the growing national debt and maintain U.S. credit. Yet the idea that the federal government would start declaring gold equal to paper clearly got under the skin of many in the northern press. William Cullen Bryant's *Evening Post*, once the mouth-piece of the hard-money movement in New York, unsurprisingly rejected the whole scheme of finance and repeatedly stressed the need for new taxes alone. Horace Greely's New York *Tribune* thought that the government did not need to go "to rags at all" blaming their fiscal problems on the weak progress of northern

arms. Both were staunch Republican sheets before this moment: legal tender was already dividing Republicans in a way that the secession and slavery issue never had.¹

The critique of the legal tender bill went deeper than just debates about political economy and wartime finance. It defied American understandings of the place of the federal government in the economic sphere. Legally, the concept of legal tender properly belongs to the field of contracts, especially executory contracts for money. If *A* makes a contract to pay *B* \$100, legal tender is the medium that a court would recognize as satisfying the definition of “dollars” when the debt came due. Before the Civil War, this would mean the debtor would have to pay \$100 in coins minted by the federal government; the equivalent amount of un-minted gold would not satisfy the debt, as federal statutes only recognized coin as a legal tender. Now, Congress proposed to step into that contractual sphere between *A* and *B* and redefine the word “dollar” to mean pieces of paper issued by the federal government. In cases where the U.S. was the debtor, it could use the legal tender clause to force creditors to accept these notes as payment. To a generation deeply imbued with the idea of the sanctity of contracts and unaccustomed to having the federal government loom over their everyday transactions, the legal tender bill defied all logic. “It is absurd,” exclaimed one California newspaper “to suppose that the Government will ever interfere with the private contracts of our citizens.”²

¹ *North American and United States Gazette*, January 10, 1862; *Boston Daily Advertiser*, January 9, 1862; *New York Times*, January 12-13, 1862; *New York Evening Post*, January 2, 7, 14, 25, 1862; *New York Daily Tribune*, February 18, 1862. This kind of critique, that the source of all problems during the Civil War could be traced to a lack of aggressiveness on the part of the Union army, was fairly prevalent during the war. See Mark Neely Jr., *The Union Divided: Party Politics in the Civil War North* (Cambridge, MA: Harvard University Press, 2002).

² Joseph Chitty and J.C. Perkins, *A Practical Treatise on the Law of Contracts, Not Under Seal; and upon The Usual Defenses to Actions Thereon* (Springfield: G. and C. Merriam, 1839), 622-623. According to the notes on American law, Perkins adds that in several states, courts accepted promissory notes issued by banks (bank notes) as a tender if both parties agreed to the substitution; Federal laws relating to legal tender came as sections to laws dealing with the regulation of the gold and silver currency. For example

The constitutional problems and questions posed by the legal tender bill were not new in American history. The American colonies famously ran afoul of British merchants who persuaded Parliament to strip them of their legal tender powers on the eve of the Revolution. A post-Independence flurry of legal tender paper issued by the states led to their ban in the Constitution. When it came to Congress's power to issue paper money, the framers were decidedly against the idea of making anything but specie a tender. Yet they inserted no prohibitions. Because money and currency were themselves forms of credit in the modern financial world, in effect the framers left a door open to some form of federal paper money through the unrestrained power of the borrowing clause.

This constitutional door had the effect of leaving the extent and shape of Congress's power to issue a currency in the hands of Congress itself. Two generations of U.S. policymakers embraced this power in times of emergency in the form of U.S. Treasury notes. In every major conflict and financial crisis prior to the Civil War, the government issued Treasury notes both as means of payment and as a form of borrowing. But it always performed this act without forcing anyone to take those notes. Now, in what was possibly the greatest financial crisis in the government's history since ratification of the Constitution, some Republicans wanted to take the power a step farther by passing over the legal tender barrier in American constitutionalism. The traditions of federal war

the act of 1853 revaluing the half-dollar, quarter, dime and half-dime, declared that silver coins would be a legal tender for debts under five-dollars, ch.79, 10 Stat.160 (1853). Also see An Act Establishing a Mint, ch.16, 1 Stat., 246 at 250 (1792); For discussions of the wide currency of contractual thinking in American political ideology and culture see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1995) and Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998). Though they were accustomed to its presence through the agency of the Post-office see Richard R. John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, MA: Harvard University Press, 1998). Also see the comments of David Dudley Field in 1893 as explained by Charles W. McCurdy, "The Liberty of Contract" Regime in American Law" in Harry N. Scheiber, ed., *The State and Freedom of Contract* (Stanford, CA: Stanford University Press, 1998): 161-197; *Daily Evening Bulletin* (San Francisco, CA), January 15, 1862.

finance brought them to this point, but the legal tender proposal gave them pause. With financial doom knocking at their door, the 37th Congress would have to examine the monetary powers of the federal government carefully and decide in what direction to take these powers. How they approached that question would affect not only the war, but also the place of the federal government in American public life.³

An Unofficial Opinion

Back in Washington, the constitutional question quickly took center stage in debates among members of the Committee of Ways and Means on Spaulding's draft of the legal tender bill. In several sessions in early January, the committee divided almost in half on the bill. Spaulding and Samuel Hooper supported the proposal, but Thaddeus Stevens needed to overcome some constitutional objections before he supported it. Justin Morrill of Vermont led the opposition, joined by Valentine Horton of Ohio and Erastus Corning of New York. Horace Maynard, the Union party member from Tennessee, and John Stratton of New Jersey were both absent, but Spaulding believed that Maynard would go his way eventually. John Smith Phelps of Missouri, who along with Corning were the only Democrats in the committee, was absent for all the debates.⁴

³ For a work that takes a similar view on the place of institutions in constitutional change see William N. Eskridge and John A. Ferejohn, *A Republic of Statutes: The New American Constitution* (New Haven, CT: Yale University Press, 2010). For representative works that stress the effects of constitutionalism on the creation of policy in Congress see Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York: W.W. Norton, 1975); Benedict, *Preserving the Constitution: Essays on Politics and the Constitution in the Reconstruction Era* (New York: Fordham Press, 2006) and McCurdy, "The Knight Sugar Decision of 1895 and the Modernization of American Corporation Law, 1869-1903," *Business History Review*, 53, no. 3 (1979): 304-342.

⁴ Political antecedents do not explain the division in the committee. Corning was a former Democrat but Morrill was Whig and so was Horton. On Horton see, William A. Taylor, *Ohio in Congress from 1803 to 1901 with Notes and Sketches of Senators and Representatives* (Columbus, OH: The XX Century Publishing Co, 1900), 206; All the above information comes from Spaulding, *History of Legal Tender Paper Money* (1875), 15.

On January 6, 1862, Spaulding attempted to shore up the constitutionality of the bill by trying to obtain the support of the attorney general. Lincoln's attorney general, Edward Bates, was an old-line Whig from Missouri and for a time one of the favored candidates for Republican presidential nomination at the Chicago Convention in 1860. As attorney general, Bates wrote several opinions supporting the war powers of the president during the Civil War but on the whole took a strict view of the Constitution and his duties as attorney general. In December of 1861, Bates replied to a request from the Senate to provide his views on a question of law and fact with a letter stating his belief that the attorney general's office had no statutory power to provide the legislative department with official opinions. "The assumption of such a power by the Attorney General would be in violation of his oath of office and of dangerous example."⁵

Given his penchant for a conservative view of the Constitution and his duties as attorney general, Bates' reaction to the question of legal tender was curious. After their interview, Spaulding received a letter in which Bates unsurprisingly declined to provide an official opinion given "my views of the place I hold." Despite this, Bates felt compelled to answer the question as a "private man, and a professed constitutional legalist." It's unclear what Spaulding said to Bates at their meeting, but he undoubtedly stressed the gravity of the situation, which he was doing in letters to friends and supporters back in New York at this same time. Spaulding would go on to use Bates' letter on the floor of the House to support the constitutionality of legal tender, practically

⁵ See generally Marvin R Cain, *Lincoln's Attorney General* (Columbia: University of Missouri Press, 1965); John P. Frank, "Edward Bates, Lincoln's Attorney General", *The American Journal of Legal History*, 10 (1966), 34-50, esp. 189; Doris Kearns Goodwin, *Team of Rivals : The Political Genius of Abraham Lincoln* (New York :Simon & Schuster, 2005). Bates cited a lack of statutory authorization in the Judiciary Act of 1789 and the opinions of former Attorney General's William Wirt and John Crittenden to support this claim. Edward Bates to Hannibal Hamlin, December 24, 1861, *S. Doc. No. 5*, 37th Congress, 2nd Sess., (1861).

acting as if the letter was an official opinion. Possibly, Bates, like so many other men in Washington in the winter of 1862, felt the weight of the money issue forced them to bend their own rules in the face of possible disaster.⁶

Bates' answer was short but revealing of the state of thinking on the constitutional law surrounding the monetary powers of Congress at the time. Spaulding's proposed bill authorized the issue of millions in treasury notes with the crucial addition that those notes "shall be a *legal tender* in payment of *all* debts, public and private within the United States." The question before Bates was quite simple: did the U.S. have the constitutional power to make its notes a legal tender?⁷

The text of the Constitution contains only a few clauses dealing with currency and monetary powers. Article I, Section 8 grants Congress the ability to "borrow money" and "coin money and regulate the value thereof," but it says nothing of the power to create a paper currency or regulate any currency beyond domestic and foreign coins. The other place where monetary powers are specifically mentioned is Article I, Section 10's limits on the powers of the several states. These clauses explicitly take power away from the states by limiting them to making gold and silver a legal tender and prohibiting state-issued paper money, known as bills of credit. Between this grant of power to the Federal government and the prohibition to the states was a vast sea of uncertainty. What about legal tender powers of the federal government and federal bills of credit, not made a legal

⁶ E.G. Spaulding to Isaac Sherman, January 8, 1862 in Spaulding, *History of the Legal Tender Paper Money* (1875), 17; *Cong. Globe* 37th Cong., 2nd Sess., 525; Curiously enough, Bates makes no mention of his interview with Spaulding or the legal tender issue in his diary for this period. See Howard K. Beale, ed., *The Diary of Edward Bates, 1859-1866* (Washington, D.C.: GPO, 1933).

⁷ Edward Bates to E.G. Spaulding, January 6 1862, reprinted in Spaulding, *History of the Legal Tender Paper Money* (1875), 15-16. "The bill, after providing for the issue of Treasury notes, contains i.e. this clause, 'and which treasury notes shall be a *legal tender* in payment of *all* debts, public and private, within the United States,' and you desire my opinion whether this clause is, or is not, constitutional."

tender? Bates could not look to the courts on the matter, as no federal court ever passed on the power of Congress to issue a currency or make it a tender. Despite this paucity of sources, Bates thought it plainly apparent that Congress had some sort of power to issue a currency and make it a legal tender, but unlike a Hamilton or a Marshall he did not find it wholly in the text of the Constitution.⁸

Bates' first move was to find any direct prohibitions against the power to make the notes a legal tender in the Constitution. Finding none, he looked to anything touching on the question of tender at all. There he found Article I, Section 10's limitations on the states to make anything but gold and silver a legal tender and the ban on state-issued bills of credit. Bates' hurried opinion failed to take note of neither Congress's power to "coin money" nor its power to "borrow money" under Article I, section eight. From this limited analysis he was content to conclude that no implied or expressed limitations existed. But rather than clinch his argument with some variation of John Marshall's rule in *McCulloch v. Maryland*, that because the power was not expressly prohibited and given the fact that it was essential to some expressed power of Congress (which he did not bother to find) it was left to Congress's discretion to employ the power, Bates concluded with the insight that "nobody doubts—Congress does not doubt its power to issue bills of credit. Treasury notes *are* bills of credit, and I think the one is just as much prohibited as the other—neither is forbidden to Congress."⁹

The premise to Bates's entire search for the power for legal tender began with an unspoken assumption that the government could issue notes in the first place. He then

⁸ U.S. Const. art.I, sec § 8 and sec § 10; It is implied in the 1819 case *Thorndike v. U.S.* that Congress can declare what it likes a tender in debts owed the U.S. see 23 F.Cas 1124 (1819).

⁹ U.S. Const. art.I, sec § 10; *McCulloch v. Maryland* 17 U.S. 316 (1819); Edward Bates to E.G. Spaulding, January 6 1862, reprinted in Spaulding, *History of the Legal Tender Paper Money* (1875), 16.

constructed a syllogism by which if one was acceptable the other must follow. More than a few members of Congress would hack away at such logic in debate on the floor of Congress. But Bates said more than he knew. Treasury notes *were* the major premise of Congressional monetary powers in the nineteenth century. Bates was not alone in his unquestioned support for Congress's power to emit bills of credit. The financial debates and strategy of the Republicans in the summer of 1861 rested on the use of Treasury notes, including notes designed to act as a currency, and there was not a single argument of unconstitutionality during the July session or in the press. Seventy-five years earlier, that power was far from clear when the framers drafted Congress's powers in 1787. Understanding the constitutional road to the greenbacks requires an explanation of how a disputed question in 1787 could become a shared assumption by 1862.¹⁰

Leaving the Door Ajar: 1787

In the Anglo-American constitutional tradition, legal tender was a fairly young concept. As a constitutional concept legal tender requires one to accept the idea that anything can be money, but in the Early Modern period, Europeans confined their

¹⁰ This approach to the origins of the Legal Tender Act stands in opposition to most other works on the subject. The first serious work stressed the pressure of war in explaining the policy, Wesley C. Mitchell, *History of the Greenbacks* (Chicago: University of Chicago Press, 1903). As does Leonard P. Curry, *Blueprint for Modern America: Nonmilitary Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968), 181-197, esp. 196; Heather Cox Richardson explains the act in terms of a change in Republican ideology that made Congress hostile to bankers, Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge, MA: Harvard University Press, 1997), 66-102; Bray Hammond applies his "entrepreneurial" vision of the centrality of business-interests in policy-formation by arguing how it was the bankers that pushed the idea of legal tender. Bray Hammond, "The North's Empty Purse, 1861-1862," *American Historical Review* 67 (1961):1-18; None of these views take account of the institutional development of Congress's monetary powers over the course of the nineteenth century and how they affected the options and preferences of Congress in 1862. Constitutional historians have thought about the question of Congress's monetary powers in the nineteenth century, but from the perspective of explaining the opinions of the court in the *Legal Tender Case*. See James B. Thayer, "Legal Tender," *Harvard Law Review* 1 (1891):73-97; and Kenneth W. Dam, "The Legal Tender Cases," *The Supreme Court Review* (1981):367-412; Charles Fairman, *Reconstruction and Reunion*, pt. 1, 1864-88 (New York: The Macmillan Company, 1971), 677-775. A work that shares and inspired the analysis here is James Willard Hurst, *A Legal History of Money in the United States, 1174-1970* (Lincoln, NE: University of Nebraska Press, 1973), 134-138.

concept of money to precious metals. Across Europe, monarchs traditionally controlled the money supply of their kingdoms by regulating the fineness, weight and the impression of gold and silver coins. Some European writers did debate the power of sovereigns to debase the currency, but few thought outside these boundaries. Writing in the early fifteenth century, Sir Edward Coke and then Sir William Blackstone in the eighteenth century treated the crown's powers as inherently limited by the nature of money as gold and silver. Their formulation was tautology: gold and silver are a legal tender because legal tender is gold and silver. In this view, there was little place for thinking of legal tender as quality that might be bestowed on various other materials or media. Blackstone granted that as "the arbiter of domestic commerce" the stamping, impression and value of coin were all "in the breast of the king..." But Blackstone placed two limitations on this prerogative; all coins had to be gold or silver and they could not be debased above or below "the true standard...sterling metal or sterling." Sir Matthew Hale, writing in reaction to Coke, grasped the irony in granting the king a full prerogative over coinage and then restricting it. He declared that the power to debase, though perhaps not wise, rested with the king. Hale, though, was also caught in thinking about tender powers as linked to a specific material. In practice, the crown did as Hale suggested and in the infamous Case of the Mixt Monies, the King's Bench declared that the sovereign could modify contracts by debasing the currency in one of their realms.¹¹

¹¹ On coinage regulation in medieval Europe see P. Spufford, "Coinage and Currency," in M.M. Postan, E.E. Rich, Edward Miller, eds., *Economic Organization and Policies in the Middle Ages*, vol. 3, *The Cambridge Economic History of Europe* (Cambridge: Cambridge University Press, 1963), 576-602; On coinage in England see S.P. Breckinridge, *Legal Tender: A Study in English and American Monetary History* (Chicago: University of Chicago Press, 1903), esp. 24-25; For a discussion of state institutions in the history of financial markets see the introduction and essays in Stephen H. Haber, Douglass Cecil North and Barry R. Weingast, eds., *Political Institutions and Financial Development* (Stanford University Press, 2008); Both writing in the modern period, compare the contrary views of Alexander Von Humboldt and Francois

It was a financial revolution that occurred in northern Europe in the fifteenth and sixteenth centuries that lent the concept of legal tender urgency when applied outside precious metals. In Antwerp, Amsterdam and London, merchants were using increasingly sophisticated financial instruments written on paper to conduct their business in lieu of specie. It was only a matter of time before governments hit upon the idea of making their own credit into a form of money to help pay for war and the needs of their expanding governments. In England, the crown started down this road by issuing exchequer bills, not a legal tender, but backed by the coming year's tax revenue. In the seventeenth century, price inflation coupled with a deranged silver currency, pushed English pamphleteers and essayists to flood the public with ideas and schemes on how to make various forms of credit instruments a legal tender to increase the money supply. Parliament declined to do this at the time, and settled on the Bank of England as their solution. But across the Atlantic, his Majesty's plantations in America were busy exercising the power of legal tender and perfecting its use in public finance.¹²

Within the trans-Atlantic constitution of the British Empire, the colonies developed their own monetary powers out of neglect and necessity. Colonial charters said little or nothing about the monetary powers of the assemblies. The Crown, however,

Grimaudet in William Maude, trans., *The Fluctuations of Gold by Baron Alexander Von Humboldt and The Law of Payment by Francois Grimaudet* (New York: Cambridge Encyclopedia Co., 1900); For Coke defined the "lawful money of England" as gold and silver stamped by the Crown or foreign coins regulated by royal proclamation in a section dealing with the plea of tender. Edward Coke, *The First Part of the Institutes of the Laws of England, or A Commentary Upon Littleton*, notes by Francis Hargrave and Charles Butler (Philadelphia: Robert H. Small, 1853), Sec. 335; William Blackstone, *Commentaries on the Laws of England* 9th ed (London: W. Strahan, T. Cadell and D. Prince, 1783), 276-278; Matthew Hale, *Historia Placitorum Cornuoe; The History of the Pleas of the Crown*, vol. 1, notes by George Wilson (London: E. Rider, 1800), 190-192.

¹² Herman Van Der Wee, "Monetary, Credit and Banking Systems," in E.E. Rich and C.H. Wilson, *The Cambridge Economic History of Europe: The Economic Organization of Early Modern Europe* (Cambridge, UK: Cambridge University Press, 1977), 290-391; Horsefield, *British Monetary Experiments*, xi-xix, 114-124, esp. 122-124

aggressively controlled coin by denying the colonies the power to set up their own mints, banning the export of specie from England and setting the value of foreign coins in America. The colonies, starved for some sort of medium of exchange and means of payment in time of war, hit upon government -issued credit instruments (known as bills of credit) as a suitable solution at the end of the seventeenth century. Over the course of the eighteenth century, most colonies became fairly adept at issuing their notes and retiring them, sometime making them a legal tender and sometimes not. In the eyes of colonial legislators, legal tender was a valuable technique of government finance that could stabilize the value of their notes in circulation and provide their people with a means to pay taxes and debts. Colonists embraced it as necessary to supply their communities with some sort of circulating medium. Thus, in America bills of credit and the power to declare them a tender emerged together, with the former an ancillary power of the other. In America and Europe, government credit instruments preceded and inspired the idea of making them a legal tender as a tool of public finance in an increasingly complicated world of trade, finance and war.¹³

¹³ In using the term “trans-Atlantic” constitution I am borrowing from Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard University Press, 2004), 1. My own research on the constitutional debates dealing with currency issues in this period largely conform to the model suggested by Bilder. Colonial officials defended their actions based on the fact that they were not “repugnant” to the laws of England, with the important addition that they thought that the silent acquiescence by the Board of Trade and the usage of the colonies constitutionalized the power of legal tender. See Leo Francis Stock, ed., *Proceedings and Debates of the British Parliaments respecting North America* (Washington, D.C.: Carnegie Institution of Washington, 1941) 5:305-320; The exception was Virginia’s charter that allowed the colonial council to “lawfully may, establish and cause to be made a Coin, to pass current there between the people of those several Colonies, for the more Ease of Traffick and Bargaining between and amongst them and the Natives there, of such Metal, and in such Manner and Form, as the said several Councils there shall limit and appoint.” This clause was deleted from the colony’s second charter in 1609. See “The First Charter of Virginia; April 10, 1606,” The Avalon Project, Yale Law School, accessed February 20, 2012 http://avalon.law.yale.edu/17th_century/va01.asp and “The Second Charter of Virginia; May 23, 1609,” The Avalon Project, Yale Law School, accessed February 20, 2012 http://avalon.law.yale.edu/17th_century/va02.asp The original clause, no doubt, had something to do with English expectations of finding gold in America. See Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial America* (New York: W.W.Norton, 1975); “Royal Edict Repealing the ‘Law

As fast as legal tender paper made friends, its enemies, usually creditors, placed pressure on governments to limit or end their issues. The Crown was always uncomfortable with the bills of credit, especially legal tender bills, and restricted colonial monetary powers in the years before the American Revolution. Royal officials constantly feared depreciation of the bills and their irresponsible issue on the part of the colonies. The Board of Trade that oversaw colonial legislation, did realize that the colonists had to be allowed to provide some sort of currency in the face of a perennial specie shortages. So they attempted to institute policies that would force assemblies to provide a security (taxes, a pledged fund, or lands) and a redemption date for their notes. As to legal tender, the Board silently acquiesced in its continued usage. Outraged English and Scottish merchants, however, thought the laws unfairly reduced the value of their contracts with American debtors. These merchants wanted to be paid in sterling; or, if they chose, colonial money at exchange rates negotiated by the parties to the contract and not by the caprice of colonial assemblies.¹⁴

The Board of Trade was unable to restrain the colonies and in the Currency Acts of 1751 and 1764, Parliament stepped into the fray to strip first New England and then all the colonies of their power to make paper a legal tender. On its surface, the acts were a

On a Mint House,' May, 24, 1665," and "Queen Anne's Proclamation, December 4, 1704" in Herman E. Kross, ed., *Documentary History of Banking and Currency in the United States* (New York: Chelsea House, 1969), 1:16-17; Earlier experiments making wampum, tobacco and beaver pelts a legal tender failed miserably as a currency due to over-supply and the unstable nature of most commodities as money. The first to issue bills of credit was Massachusetts who did so in order to pay for a campaign against the French and Native American forces in 1690. See Dror Goldberg, "The Massachusetts Paper Money of 1690," *The Journal of Economic History* 69 (2009):1092-1106, Leslie V. Brock, *The Currency of the American Colonies 1700-1764: A Study in Colonial Finance and Imperial Relations* (New York: Arno Press, 1975), 1-16; Curtis Putnam Nettles, *The Money Supply of the American Colonies Before 1720* (Madison, Wisc.: University of Wisconsin Studies in the Social Sciences and History, No. 20, 1934), 202-283; See Hammond, *Banks and Politics*, 12-35.

¹⁴ Brock, *Currency of the American Colonies*, 179-180; Joseph Albert Ernst, *Money and Politics in America, 1755-1775: A Study in the Currency Act of 1764 and the Political Economy of the Revolution* (Chapel Hill: University of North Carolina Press, 1973), 18-37.

result of incessant lobbying by British merchants protesting a string colonial issues that depreciated, especially in the wake of the Seven Year's War. At its heart, the problem was a lack of trust in the popular assemblies of America. William Douglass of Boston lay the blame squarely on the fact that "the Popular or *Democratick* Part of the Constitution are generally in Debt" and who through their numbers "*impose upon the Creditor side in private Contracts*, which the most despotick Powers never assumed." How could assemblies made up of debtors be trusted to manage monetary policy responsibly? In the end, Parliament would not trust them with this power. In the Currency Acts, Parliament invented the idea of absolute legal tender bans in American constitutionalism as a means of controlling the monetary powers of the assemblies.¹⁵

Americans protested Parliament's currency acts as oppressive, along with the Stamp Acts, but independence ironically exposed the need for greater centralization. The government created by the Articles of Confederation lacked the full panoply of fiscal and monetary powers usually accorded to states, especially states in the midst of a war. The Continental Congress held full power to borrow money and issue bills of credit. It was under this power that the Congress embarked on the infamous program of issuing a national bill of credit, the "Continental," as a means of paying for the war with Britain. The text of the Articles says nothing about legal tender, but Congress assumed that it lacked this power and issued proclamations asking the several states to make the Continental legal tender within their jurisdictions. Critically, the Articles granted Congress no power to levy the taxes necessary to retire old Continentals and maintain

¹⁵ Brock, *Currency of the American Colonies* 185-186. Ernst, *Money and Politics*, 3-88, esp. 43-88; William Douglass, *A Discourse Concerning the Currencies of the British Plantation in America, Especially with Regard to Paper Money: More Particularly, in relation to the Province of the Massachusetts-Bay in New England* (Boston: S Knelland & T Green, 1740), 21.

national credit. Congress had to ask the states for requisitions of coin, funds that the States might not pay, or pay in their own paper money. Under such conditions, Congress could not prevent the depreciation of the Continentals during the war or in the peace that followed. Many Americans took a dim view of the Continental, and cited it as a parable of the evils of government-issued currency. Others, like Benjamin Franklin, recognized the Continental as an essential tool of government finance, one that helped win the war for the Americans. Both traditions would shape the monetary powers of the Constitution.¹⁶

The states, under the Articles, retained all their pre-1751 powers, but without any supervision from the Board of Trade or the Continental Congress they issued paper money in excess. The new state constitutions, unlike the Articles, did not expressly confer the power to issue bills of credit or the power to make them a tender. In practice, the states reverted to old customs and issued a flood of paper between Independence and the ratification of the Constitution, mostly a legal tender. A post-war Depression following peace with Britain caused many states to raise taxes, pass debtor relief laws and issue more paper money, all which damaged government credit at home and abroad.¹⁷

¹⁶ For colonial reactions to the 1764 Act see Ernst, *Money and Politics* and Jack P. Greene and Richard M. Jellison, "The Currency Act of 1764 in Imperial-Colonial Relations, 1764-1776," *William and Mary Quarterly*, 3rd Series, 18 (1961), 485-518; U.S. Articles of Confederation. Art. IX and Art. VIII; E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776-1790* (Chapel Hill: University of North Carolina Press, 1961), 25-47; See the Board of Treasury suggesting the states make Continentals a tender, dated January 25, 1781 and again on March 30, 1781, *Journals of the Continental Congress, 1774-1789*, ed. Worthington C. Ford et al. (Washington, D.C., 1904-37), 19:89-90, 381 [hereafter cited as *JCC, 1774-1789*, ed. Ford et al.,]; *JCC, 1774-1789*, ed. Ford et al., 20:524; Hammond, *Banks and Politics*, 29.

¹⁷ In May of 1781 a committee report of the Continental Congress could simply "recommend" the states end their use of tender laws. *JCC, 1774-1789*, ed. Worthington C. Ford et al., 20:524; None of the state constitutions ratified after Independence contains a specific grant of monetary, or even borrowing powers. The only limits that occur with any frequency are the requirement that "money bills" originate in the lower house of states with a bicameral system; For a narrative of this story see Woody Holton, *Unruly*

The emerging American monetary system created commercial confusion and financial problems. Merchants doing inter-state business had difficulty settling accounts and complained about depreciation. In a speech before the Virginia assembly, James Madison argued that state bills of credit violated the state constitution by altering the value of contracts and promoted “antifederal” tendencies by contributing to the morass of paper coming out of the states. When it seemed unlikely that the individual states would be able reform their ways in regards to tender and a host of other issues, Madison and others looked to framing a new central government that could impose some order on the system.¹⁸

It was the collective legacy of the colonial and post-war bills of credit that shaped the thinking of the delegates to the Constitutional Convention in 1787 on the question of monetary powers for a new federal union. On the question of the state’s monetary powers, the delegates almost unanimously agreed on a stark solution: a total ban on state bills of credit, state coinage and a prohibition on making anything but gold and silver a legal tender in Article I, Section 10 of the new Constitution. The latter clause was most likely aimed at states who might try to work around the ban on bills of credit by making commodities a tender or “*old horses and enormous rocks*, in return for money loaned upon interest.” Roger Sherman of Connecticut thought a total ban the only option. In a criticism reminiscent of Douglass in the 1740s, Sherman thought that if the states retained the power “friends of paper money would make every exertion to get into the Legislature

Americans and the Origins of the Constitution (New York: Hill and Wang, 2007); Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard, University Press, 2002), 170-177; Ferguson, *Power of the Purse*.

¹⁸ “Notes for Speech Opposing Paper Money, ca. 1 November 1786,” in J.C.A. Stagg, ed., *The Papers of James Madison Digital Edition* (Charlottesville: University of Virginia Press, 2010), accessed September 21, 2011 <http://rotunda.upress.virginia.edu/founders/JSMN-01-09-0066>.

in order to license” new bills of credit. In Federalist 44, James Madison laid full blame on the states for the “loss which America has sustained since the peace, from the pestilent effects of paper money” and explained that and that the only solution was a “voluntary sacrifice on the altar of justice” on the part of the states “of the power which has been the instrument of it.” Antifederalists listed the ban on bills of credit as an example of how the new Constitution infringed on state sovereignty, but on the whole the ban received a warm reception across the country.¹⁹

Congress’s monetary powers presented a more difficult problem for the delegates at Philadelphia. On August 16, 1787, the clauses of the Constitution touching on Congress’s monetary powers came up for debate. The new constitution vested full coinage powers with the Congress, whereas the Articles only allowed Congress to set the weight and fineness of coins. The delegates agreed to this clause without objection, most likely on the grounds of uniformity argued by Madison in Federalist 42. Yet coinage powers had not aroused serious debate in American politics since Queen Anne’s reign. The real battleground was paper money. The clause reported out by the committee of detail copied the Articles in granting Congress the ability to “borrow and emit bills on the credit of the United States.” Gouverneur Morris, representing Pennsylvania, immediately moved to strike the clause “and emit bills.” On that question six states agreed with Morris and two favored keeping the clause, leading to its deletion from the final draft of the

¹⁹ U.S. Const. art. I, § 10; Hurst, *A Legal History of Money*, 8-9; “Cassius VI” *Massachusetts Gazette*, December 18, 1787; Max Farrand, ed., *The Records of the Federal Convention of 1787*, vol. 2, (New Haven: Yale University Press, 1911), 439 [Hereafter cited as *Farrand’s Records II.*]; “James Madison, Federalist, no.44, 299-302” *The Founder’s Constitution* (Chicago: University of Chicago Press), accessed on September 10, 2012, http://press-pubs.uchicago.edu/founders/documents/a1_10_1s5.html; Hammond, *Banks and Politics*, 103.

Constitution in Art I, Section 8. But there is reason to believe that what that action meant was far from universal among the delegates who debated the question.²⁰

Among the delegates who spoke on the question, the legacy of the war and the state's post-war financial troubles weighed heavily. The speakers thought about paper money through two different prisms. Bills of credit could be used as a tool of war finance, as in the case of the continental. Or they could be a means of inflation and debtor-relief, as in the case of the state bills of credit after the war. Those who thought about in terms of the state bills were the most fervent in their hatred of paper money and their distaste for popular demands for relief. Morris thought that the "Monied interest will oppose the plan of Government, if paper emissions be not prohibited." Oliver Ellsworth agreed, noting that banning federal bills would gain the Constitution the support of the "respectable part of America." Those who thought about the question as a means of war finance, all felt hesitant to ban the power. George Mason of Virginia had a "moral hatred to paper money" but realized that "the late war could not have been carried on, had such a prohibition existed." When someone argued that no country in Europe made paper a tender, Mason retorted that no country in Europe attempted to restrain their governments "on this head," meaning bills of credit generally. Madison actually bridged the divide when he suggested keeping the clause and simply prohibiting "making them a *tender*." He thought that this safeguard "will remove the temptation to emit them with unjust

²⁰ *Farrand's Record* II, 308-309 310; U.S. Articles of Confederation. Art. IX; "G. Draft Constitution By the Committee of Detail, 6 August 1787," ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan, eds., *The Documentary History of the Ratification of the Constitution Digital Edition* (Charlottesville: University of Virginia Press, 2009), accessed Feb 3, 2012, <http://rotunda.upress.virginia.edu/founders/RNCN-01-01-02-0007-0008>; "James Madison, Federalist, no.42, 285" *The Founder's Constitution* (Chicago: University of Chicago Press) accessed on 10 September 2012 http://press-pubs.uchicago.edu/founders/documents/a1_8_5s7.html; See Brock, *Currency of the American Colonies*, 130-167; U.S. Const. art.I, §.8, cl 2.

views... promissory notes in that shape may in some emergencies be best.” Such a view mirrored the assumption of the Parliament’s currency acts by recognizing the need for paper, but isolating legal tender as the problem. By instituting a wall between the two powers, Madison hoped that American could reap the benefits in war but avoid the pitfalls of paper money in peace. But did Madison lose this compromise when the delegates voted to strike the clause? ²¹

An interesting perspective on that question arises when comparing if the delegates thought voting for deletion of the clause actually prohibited the power to issue bills of credit absolutely. Mercer thought so, as did his colleague from Maryland, Luther Martin who later criticized the idea of a government without the power to issue notes. Mason also stated that he thought silence was tantamount to a restriction. Morris and James Wilson of Pennsylvania both argued that prohibition left room for credit of some sort, with Morris suggesting that the “notes of a *responsible* minister” would still be allowed under the borrowing clause. The most interesting comment of the whole episode, however, belongs to Nathaniel Gorham of Connecticut. Gorham believed that silence allowed the federal government to avoid the political trouble of paper money as represented in the post-war state bills, while leaving the door open to bills of credit if an emergency arose. He was for striking, but not inserting a positive prohibition, which appeared to signal his support for federal paper money. Gorham explained that a positive grant of power might encourage legislators to issue notes at the whim of majorities. Madison shared this logic, stating that he decided to support striking, based on the idea that it would “cut off the pretext for a paper currency and particularly for making the bills

²¹ *Farrand’s Record* II, 303-304, 309-310.

a tender either for public or private debts.” Madison, however, did think that the power to borrow allowed for some sort of “public notes as far as they could be safe and proper.”²²

As another scholar later pointed out, there were fifty-five delegates who attended the Convention at one time or another, and understanding what they all thought when they voted on this question is impossible. But based on those who spoke, it seems safe to assume that most believed that they were banning bills of credit. Even safer to assume is that even if some believed notes were still possible, they should never be used to support debtor-relief and never made a legal tender. There is of course the contingent of speakers that thought some paper was acceptable. What Madison meant by “public notes” or Morris’s “notes of a *responsible* minister” is unclear. Given that “notes” in the eighteenth century usually meant a debt instrument with interest and a date of redemption, they might have meant something closer to modern government bonds, not meant as a currency. But this is debatable. The financial term “notes” was almost always used in reference to private parties or banks, and in the case of banknotes these did circulate. Even then, there are cases of state governments and other persons calling their bills of credit, notes. Perhaps most important, there is a very good chance that there was only a hazy idea of what would fall within the acceptable category of government “notes” for these speakers. After the convention, delegates made opposing statements about the

²² *Farrand’s Record* II, 303-304, 309-310; Luther Martin, “Genuine Information VI,” *Baltimore Maryland Gazette*, January 15, 1788.

question in public: Martin was convinced the power did not exist during the Maryland debates and Charles Pinckney to the contrary in the South Carolina debates.²³

It is also important to take account of what the language of the borrowing clause made possible in the minds of people who ratified the Constitution and who were not at the debates. Gorham thought, “the power” of issuing bills of credit “as far as it will be necessary or safe, is involved in that of borrowing.” When one remembers that Madison’s notes describing the debates would not be available until the 1840s, it is interesting to see how others shared Gorham’s logic about the new federal government. Luther aside, there was a contingent of Federalists who thought that federal bills of credit were possible under the new constitution during the ratification process. In the South Carolina ratification debates, Robert Barnwell declared “if to strike off a paper medium becomes necessary, Congress, by the Constitution, still have the right, and may exercise it when they think proper.”²⁴

²³ Thayer. “Legal Tender,” 77; This is the argument of Dam, ‘The Legal Tender Cases’, 387-388; For example, “a Promissory Notes is a written promise, for the payment of money absolutely and at all events.” John Bayley, *A Summary of the Law of Bills of Exchange, Cash Bills, and Promissory Notes*, 2nd ed. (London: E and R Brooke, 1797), 1. Joseph Chitty only lists “promissory notes, bankers’ notes...and bank of England Notes” in *A Treatise on the Law of Bills of Exchange, Checks on Bankers, Promissory Notes, Bankers Cash Notes, and Bank-Notes* (New York: Brisban & Brannan, New-York, 1807), 165; A google books search for the term “public notes” for the period between 1740 and 1820 turns up very few uses of the term in a financial sense, the few that do treat the term in the sense of a bill of credit. W. Winterbotham refers to the states paying out “public notes” and the US paying troops “promissory notes” which were “evidences of public debt.” 577, 584 in *An Historical Geographical, Commercial, and Philosophical View of the American United States...* (Newark: Ridgway, Symonds & Holt, 1795), 1:577, 584. *The Tradesman*, 13, 23 (1814), refers to paper money coming in the from “banks, public notes, &c.” 355. A Massachusetts law from 1785 dealing with payment of taxes refers to “Public Notes, orders, and certificates” as payments. *Acts and Laws of the Commonwealth of Massachusetts* (Boston: Adams & Nourse, 1784), 602; Jonathan Elliott, *The Debates In the Several State Constitutions on the Adoption of the Federal Constitution* (Washington: Jonathan Elliott, 1836) 4:335. Luther, “Genuine Information VI,” *Baltimore Maryland Gazette*, January 15, 1788.

²⁴ *Farrand’s Record* II, 309; “Civis,” *Charleston Columbian Herald*, February 4, 1788; “A Farmer” *Philadelphia Freeman’s Journal*, April 23, 1788; “Cassius VI,” *Massachusetts Gazette*, December 18, 1787; Elliott, *Debates*, 4:294.

Getting to that position would not be difficult for a financially savvy eighteenth or nineteenth century lawyer or politician. The borrowing clause of the Constitution has no limitations and prescribes no single form of borrowing. During ratification a New York writer explained that “the *manner* of exercising it must *necessarily* be *discretionary*, in this respect it must *unavoidably* remain *unlimited* and *indefinite*.” The Antifederalist *Brutus* agreed, thinking it was a problem that Congress might borrow in any number of ways without “limitation or restriction.” At their bottom, all bills of credit were understood as a form of borrowing, even the ones made a legal tender, because they were always issued with a date of redemption and the understanding that coin could be had one day. Debt, especially public debt, constituted an important foundation for the currency of America and Britain. In his *Commentaries*, Blackstone associated the idea of public borrowing and debt with “creating a new species of money, always ready to be employed in any beneficial undertaking.” Intentionally or not, the Constitutional convention left the door open to federal bills of credit through the borrowing clause. The specter of the Revolutionary-era bills of credit would prevent any Congress from seeking the power in times of peace. But the unrestrained power of the borrowing clause and the nature of credit would make it possible for someone to argue that the government could issue some sort of notes as a means of borrowing, especially if their back were against the wall. Over the course of the early nineteenth century, two generations of federal policymakers did just that and in the process developed a doctrine that sanctioned Congress’s power to issue a currency within parameters they designed to justify the free-market rationale of borrowing, and paying, with the new federal bill of credit: US Treasury notes.²⁵

²⁵ “Americanus VII” *New York Daily Advertiser*, January 21, 1788; “Brutus VIII”, *New York Journal*, January 10, 1788; A North Carolina note from 1771 for £2 reads “The Province of NORTH CAROLINA is indebted

The Constitutional Safeguards of Borrowing

The U.S. government found itself squarely against the wall in the War of 1812. Deprived a national bank, the government encountered serious problems negotiating a loan in the country's existing state banks during the war with the British. Secretary of the Treasury Albert Gallatin proposed an instrument he dubbed a "treasury note" to serve the double function of paying the government's creditors and attracting specie in the money market. President Madison and Congress embraced the idea and the first Treasury note issue passed on June 30, 1812. The notes danced on a delicate line between notes as a currency and as a means of borrowing. They would bear interest and be payable one year after issue. But, they would be low enough in denomination that the government could use them to pay its creditors for war supplies and essentials. They would also be receivable in payment for public dues owed the U.S., and thus serve as legal money in payments to the government. At the time, members of Congress recognized the notes as a species of paper money by actively comparing them to the Revolutionary continentals to

to the Possessor here of TWO POUNDS Proc Money to be paid out if the Public Treasury according to the Act of Assembly passed Dec 1771" from "Colonial Currency, North Carolina, 2 pounds, 1771," Federal Reserve Bank of San Francisco, accessed September 19, 2012, <http://www.frbsf.org/currency/independence/original/s11.html>; A Maryland note for \$8 from 1774 promises bills of exchange or gold and silver payable "at the rate of Four Shillings and Six-pence Sterling per dollar for the said Bill." "Colonial Currency, Maryland,\$8, 1774," Federal Reserve Bank of San Francisco, accessed September 19, 2012,<http://www.frbsf.org/currency/independence/original/s04.html>; Blackstone, *Commentaries*, 330; This view of the original intent question stands in opposition to Hammond, *Banks and Politics* 94-95. and Dam, "The Legal Tender Cases," 386-389. My perspective most closely follows the arguments of Thayer, "Legal Tender," 79-80, Hurst, *Legal History of Money*, 15 and Charles W. McCurdy, "Monetary Power," in Leonard W. Levy, ed., *Encyclopedia of the American Constitution*, vol.3 (New York: MacMillan Publishing, 1986), 1270-1273. The difference between the conclusions offered here and in these works is one of emphasis. Whereas these authors deal with the original intent question and conclude that the Gorham position proved the possibility of some kind of paper being authorized in the Constitution, the argument presented here attempts to build on that finding by dealing with the latent possibilities inherent in the borrowing clause to people outside the framers. By thinking of paper money as credit and linking it with the borrowing clause, what becomes possible in the way of emissions, changes. In my view the most important act of the convention was probably not the deletion of the "emit bills" clause but the fact that no one inserted a positive prohibition, the object of Gorham's concerns (a concern shared by no one by Gorham in the debate). See *Farrand's Records*, II:309-310.

prove or disprove the soundness of the plan. Silas Stow thought that no matter what Congress did "the public will associate with it the idea of old Continental money." What is surprising is that the constitutionality of the measure received almost no discussion and it seemed the power was implied on the grounds of its facility to serve as means of borrowing.²⁶

The idea that the Constitution forbade this particular form of borrowing found no voice in the Federalists or Republicans who opposed the measure. Stow, a Republican who opposed the measure on financial grounds, admitted that there was little difference between various borrowing instruments and the Treasury notes; "bank notes, bonds, certificates of public debt, or Treasury notes, are essentially the same." The bill's supporters embraced the dual-nature of the Treasury notes as both borrowing and paying. Alexander McKim boasted that "here the loan is made by an issue of a circulating paper that, in many transactions, will have all the effect of money." He explained that "being made receivable in all duties and taxes, payable to the United States, they must have a currency, the banks will be able to pass them off as specie." The only mention of constitutionality during the debates emerged upon comparison of Treasury notes with the legality of another national bank. Joseph Desha, a Kentucky Republican, explained that a national bank was clearly unconstitutional, in regard to Treasury note "no such difficulty attended them." Up at Monticello, a now retired Thomas Jefferson signaled his implicit

²⁶ Gallatin's first official reference to this idea was in a letter to the Ways and Means Committee in 1810. See Albert Gallatin to John W. Eppes, February 26, 1810, *American State Papers: Finance*, 2:412; The act authorized \$5 million in notes bearing 5 2/5% interest, payable one year from issue. "Act of to Authorize the issuing of Treasury Notes," ch. 111, 2 Stat 766; The terms of the first act specified no denomination and the subject was not widely discussed in Congress. In practice, Gallatin authorized no notes under \$100.00. See Kagin, "Monetary Aspects of the Treasury Notes of the War of 1812," 69-88; Democratic Republicans generally supported while Federalists spoke out against the measure. See *Annals of Congress*, 12th Cong., 1st Sess., 1493-1510; *Annals of Congress*, 12th Cong., 1st Sess., 1505.

acceptance of the notes as constitutional when he encouraged his son-in-law on the Ways and Means Committee to use the notes as a wartime currency to supplant bank-issued paper.²⁷

Perhaps the single best evidence of wide support of the constitutionality of the Treasury notes occurred with each successive issue over the course of the war, five in total. The first two issues did not go below \$100, but the next two brought the notes down to \$20 and finally in 1815 the government went as low as \$3. The 1815 act authorized the issue twenty-five million dollars' worth of treasury notes bearing no interest and issued in denominations under one hundred dollars. The act also allowed the Treasury to re-issue the notes when they were received in payment of public dues. The immediate cause of the bill was the suspension of specie payments in 1814 that deprived both the government and many Americans of any source of credit or a currency. Perhaps financial desperation explains why the pages of the *Annals of Congress* contain no recorded debate of this momentous step. But the notes pushed the logic of borrowing to its limits, with no interest and clearly designed to pass as currency, as the country suffered with a lack of specie or banknotes in the face of a general bank suspension.²⁸

In the end, the generation that fought the War of 1812 resolved the debate about monetary powers of the Constitution in favor of a broad national currency power. In his

²⁷ *Annals of Congress* 12th Cong., 1st Sess., 1504, 1500, 1494; *Annals of Congress*, 13th Cong., 2nd Sess., 1953; Thomas Jefferson to John W. Eppes, June 24, 1813, in Looney, ed., *The Papers of Thomas Jefferson Retirement Series*, 6:222-225.

²⁸ Act of June 30 1812, ch. 111, 2 *Stat.* 766; Act of February 25 1813, ch.27, 2 *Stat.* 801; Act of March 4, 1814, ch.18, 3 *Stat.* 100; An Act supplementary to the acts authorizing a loan... December 26, 1814, ch.17, 3 *Stat.* 161; Act of February 24, 1815, ch.56, 3 *Stat.* 213; See the reprint of the letter from Secretary of the Treasury Alexander J. Dallas to the Ways and Means Committee dated December 2, 1814, complaining that owing to the bank suspension and the "general state of the circulating medium" the US government was on the same footing as rich citizens who could not access their bank accounts. Dallas suggested an infusion of Treasury notes to stabilize and improve the government's credit. *Annals of Congress*, 13th Cong., 3rd Sess., 765-766.

1816 address to Congress, Madison had clearly expanded his thinking since 1787. “The Constitution has entrusted Congress exclusively with the power of creating and regulating a currency.” Dallas openly spoke of Congress’s “constitutional authority to issue bills of credit” without feeling the need to mount an extended defense of that power. Importantly, both Madison and Dallas thought that power could be best wielded by a national bank in the years after the war, and not Congress. Albert Cuthbert, a Republican, recognized “the Government had, by long usage, given credit to the present paper [Treasury notes], making it in fact the currency of the country.” In his history of U.S. Treasury notes, John Jay Knox later called this moment “a fatal precedent out of which has grown latitude of constitutional construction not anticipated.” The War of 1812 established a precedent for a national currency, but the “latitude” allowed by that generation was far from infinite.²⁹

The constitutional limits on Treasury notes, in the minds of Congress and the public, existed in regard to time and tender. Jefferson and his party famously rejected the idea of a permanent national debt as blessing. In the Jeffersonian view of government finance articulated by Gallatin, Congress should only borrow to meet “extraordinary circumstances.” Applied to the Treasury notes, this meant that they could only be justified for the duration of the financial emergency. Moreover, all notes carried a redemption date printed on their face that underlined the nature of the notes as a temporary borrowing measure. Dallas believed that the power of Congress to issue bills of credit “will not be questioned” but that each issue required “an adequate motive.” He pointed out that the motive was quickly dissipating as he anticipated the government

²⁹ James Madison, “Eighth Annual Message, 3 December 1816,” in Richardson, *Messages and Papers of the Presidents 1789-1897*, 1:578-579; Knox, *United States Notes*, v.

revenue would outstrip its demands in the years after the war. Jefferson, in all his enthusiasm called the notes the “sole resource for loans in an agricultural country” and embraced them “provided that in the interval between war & war all the outstanding paper should be called in and, coin be permitted to flow in again.”³⁰

The logic that tied Treasury notes to borrowing also meant that the government could never force a single creditor to accept them. In a speech against conscription on the floor of the House, Daniel Sheffey attacked the idea that Congress’s delegated powers allowed it a wide choice of means. “With this convenient power at your command” he asked, “why not *borrow* money at the point of the bayonet?” Despite multiple financial and military setbacks, Congress declined to make notes a tender. When Bolling Hall of Georgia offered a bill making Treasury notes a legal tender, the House rejected the idea by a margin of 95 to 42 in November of 1814. Samuel Mitchill stressed that “It would be always recollected, that a power to borrow did not carry with it a command to borrow.” Dallas chided Congress that acceptance of Treasury notes “must be forever optional with the citizens.”³¹

The courts rigidly enforced the free-market analogy as applied to the rights of the government. In the case *Thorndike v. US* at question was the duty of the U.S. to pay interest to a creditor beyond the redemption date stamped on the notes. Justice Joseph Story, on circuit in Massachusetts, stressed that the government had to be treated like any other debtor before the law. Story declared that “If the present then [Treasury notes] were

³⁰ For examples of the text on each Treasury note issued between the War of 1812 and the Civil War see Knox, *United States Notes*, 35-36; State of the Finances, December 8, 1815, *American State Papers: Finance* 3:19; Thomas Jefferson to John W. Eppes, June 24, 1813, in Looney, ed., *Papers of Thomas Jefferson Retirement Series*, 6:222-225.

³¹ *Annals of Congress*, 13 Cong., 3rd Sess., 558; *Annals of Congress*, 12th Cong., 1st Sess., 1508; Alexander J. Dallas to John W. Eppes, October 17, 1814, *American State Papers: Finance*, 13th Cong., 3rd Sess., 866.

a contract between private citizens, there can be no doubt” that the debtor would have to pay further interest if they failed to pay on the date the debt was due. The government could not arbitrarily alter what Story called “the general principals of law.” He stressed that the “United States have no prerogative to claim one law upon their own contracts, as creditors, and another as debtors.” By this same logic the government had at least a scintilla of tender power. Private creditors, by their assent, could accept promissory notes or bills of credit as a good tender from their debtors in court. Standing in the place of the creditor, when it came to tariff dues and fees for public lands, Story implicitly recognized the power of the Congress to declare their notes a tender payment to itself. The government, however, was never and could never be like any other actor in the free market. By virtue of its size and powers, making Treasury notes a public tender probably only increased their circulation among Americans. That fact might smash the barrier between public and private tender one day; but for the time being the general views of Congress and the courts kept the government within the boundaries of the market.³²

That did not mean the idea of legal tender in private debts did not have its proponents in the period before the Civil War. Aside from giving birth to the Treasury notes of the nineteenth century, the War of 1812 also inspired the first and only sustained calls for making government paper a tender before 1861. Owing to the general bank suspensions, arguments in favor of legal tender paper money grew louder over the fall and winter of 1814-1815. In New York, the state assembly approved a set of

³² *Thorndike v. US*, 23 F.Cas. 1124 at 1130 (1819); See discussion of cases in Joseph Chitty and J.C. Perkins, *A Practical Treatise on the Law of Contracts, Not Under Seal; and upon The Usual Defenses to Actions Thereon* (Springfield: G. and C. Merriam, 1839), 623, note 1; Even the author of the Specie Circular (making specie the only viable tender in payment for public lands), Thomas Hart Benton, had to recognize the power of the government to make something other than gold and silver a tender. “I do not doubt the power of the Government to receive its dues in any thing it may deem most expedient, and such has been its constant and undeviating practice.” *Register of Debates*, 25th Cong., 1st Sess., 842.

recommendations to the New York congressional delegation to propose and support a measure to make Treasury notes a legal tender. Isaac Sargent spoke out on the floor of the state assembly in favor of the constitutionality of legal tender, presaging many of the arguments made over fifty years later in the Civil War and Reconstruction. Sargent pointed to handful of clauses in the Constitution to find federal power to make notes a tender. He included the general welfare clause, Congress's power to raise and support armies and its taxation powers, wrapped together with the necessary and proper clause. Patriotic newspapers declared that the notes would overcome the need to depend on the state banks and would empower farmers. One writer insisted that he did not have "anything to expect or to dread even from the irresistible fiat of the Sovereign People" in declaring gold equal to paper. James Emot retorted to Sargent that such a style of constitutional argument could be used to "prove anything or everything." The real question was "has congress the power as between citizen and citizen, in this or any state, to make that a payment which was never contemplated by the parties[?]"³³

That question would have to wait nearly fifty years to receive its first sustained discussion. But the logic of war opened up many new pathways that expanded the reach of government and established the precedent and practice of Treasury notes in the face of a fiscal emergency. The Panic of 1837, the Mexican-American War and the Panic of 1857 would all serve to cement the legislative precedents of the War of 1812 regarding Treasury notes. The next generation, however, would not embrace the wide view of national currency powers as epitomized by Madison and Dallas. Jackson famously

³³ *Albany Gazette* (Albany, NY), February 23, 1815; *The National Advocate* (New York, N.Y.), July 23 1814; reprinted in *Daily National Intelligencer* August 12, 1814; *New Bedford Mercury* (New Bedford, MA), August 26, 1814; *National Advocate*, October 17, 1814; *Daily National Intelligencer*, November 10, 1814; *The Albany Register* (Albany, NY), January 13, 1815; *Albany Gazette*, February 23, 1815

rejected that premise in his veto of the bill re-chartering Second Bank of the United States. But while Jacksonians rejected the principle of broad congressional monetary powers, another fiscal emergency would force them acknowledge the utility of them as a matter of policy. To make constitutional and policy ends meet, the Jacksonians would rework the design of the Treasury notes to better comport with their views of political economy.

1837: The Year of Monetary Thinking

The Panic of 1837 occurred during a long-simmering political battle about the monetary powers of the US government and the states. Since 1832, President Andrew Jackson and his allies had embarked on an ambitious program to restore what he called the “constitutional currency” of the country; gold and silver, what political foes, in their more generous moments, called his “experiments” to reform the currency. In the course of two terms the hard-money Jacksonians dismantled the bank of the United States, required the use of specie to buy western lands in the Specie Circular of 1836, and successfully revalued the gold coinage in 1834— all in an effort to promote the circulation of coin in the country by which they hoped to stabilize the economy. Anti-Jackson factions gathered around the banner of a new party, the Whigs, and supported the re-charter of a new BUS to supply the country with a stable national currency and regulate the smaller state banks. Modern day scholarship blames the Panic of 1837 on a range of international and domestic causes, but for the Whigs the “proximate cause” of the Panic of 1837 rested with five years of Jacksonian experiments. On the floor of the

Senate, William C. Preston squarely blamed the panic on the “the experimenters, who have broken and blown up their laboratory, to the destruction and ruin of the country.”³⁴

The Panic presented several thorny constitutional and policy problems for the Jacksonians. Constitutionally, the Jacksonians favored a strict reading of Congress’s powers in Art. I, Sec 8. Jackson’s attack on the BUS and support for hard-money policies rested on his observation that the coinage clause represented the only available power to Congress in dealing with currency. Thus all that Jackson’s successor, Martin Van Buren, could offer the country in the form of relief for the growing depression was further retreat from the money markets of the country. This was the “sub-treasury” plan: restricting payments to the government to specie and keeping all funds in a network of government vaults, all in an effort to restrain speculation and banknote over-issue. Van Buren denied any power to control national exchanges in the country through the medium of a national bank. To understand this line of thought, it is important to remember that the “constitutional currency” policies and their ilk found their genesis in Democratic efforts to reform and regulate the welter of state banks that supplied most of the currency used by Americans. But along with the more familiar banknote reform issues, the panic posed

³⁴ Hammond, *Banks and Politics*, 326-499; Sean Wilentz, *The Rise of American Democracy*, 436-465; Daniel Walker Howe, *What Hath God Wrought*, 373-395, 501-512; John McFaul, *The Politics of Jacksonian Finance* (Ithaca: Cornell University Press, 1972), 43-61; For the most concise explanation of the tenets of Jacksonian monetary policy see Schlesinger, *The Age of Jackson*, 115-131; Timberlake, *Monetary Policy in the United States*, 43-61; Reginald Charles McGrane, *The Panic of 1837: Some Financial Problems of the Jacksonian Era* (Chicago: University of Chicago Press, 1924); For the view that blames the panic on international causes see Peter Temin, *The Jacksonian Economy*; For a view that blames the panic on the Deposit Act of 1836 see Richard H. Timberlake, “The Specie Circular and Distribution of the Surplus,” *The Journal of Political Economy* 68 (1960): 109-117; Also see Harry N. Scheiber, “The Pet Banks in Jacksonian Politics and Finance,” *The Journal of Economic History* 23 (1963):196-214; and Peter Rousseau, “Jacksonian Monetary Policy, Specie Flows, and the Panic of 1837,” *The Journal of Economic History* 62 (2002):457-488; The quote is taken from *The Daily National Intelligencer* (Washington, D.C.), April 11, 1837; *Register of Debates*, 25th Cong., 1st Sess., 44.

altogether new questions for the Democrats on questions of government-emergency finance.³⁵

That was because the panic not only affected the pocketbooks of American citizens, but that of the government as well. The revulsion in trade that followed the collapse of the state banks lowered the government's revenues and made it impossible to access its existing funds. That was because government funds were deposited in the very same state banks that were now refusing to pay specie. The Treasury, Woodbury pleaded, was in need of "any judicious and lawful measure to remedy it, which was within the power of the department." Van Buren and Woodbury both proposed an issue of Treasury notes to temporarily provide for the wants of the government. Indeed, Woodbury's report called for a return to the model of the 1815 notes, suggesting notes without interest, payable for public dues and as low as \$20 "in anticipation of future revenue and issued to a limited amount."³⁶

The proposal placed the Democracy in an awkward position. After years of advocating for what one Whig called the "*aqua regia*-gold currency," the Democrats were now in the embarrassing position of calling for what seemed to be a paper currency.

³⁵ Schlesinger outlines the "hard-money" views of the Jacksonians in terms of political, economic and social aims. The view taken here is that a third, overlapping category, of constitutional concerns also structured Jacksonian monetary policy in the 1830s-40s, as constitutionalism would play a role in the Civil War monetary policy as well. The argument presented here is that monetary policymaking in the nineteenth century required a complicated "fit" between ideas of constitutionalism and political economy. See Schlesinger, *Age of Jackson*, 119; For Jackson's views of art.I, § 8 see Andrew Jackson "Farwell Address, March 4, 1837," in James D. Richardson, *A Compilation of the Messages and Papers of the Presidents 1789-1897* (Washington, D.C.: US Congress, 1898), 3:298-299; "It is apparent from the whole context of the Constitution, as well as the history of the times which gave birth to it, that it was the purpose of the Convention to establish a currency consisting of the precious metals." "Eight Annual Message, December 5, 1836," in Richardson, ed., *Messages and Papers*, 3:246; "Special Session Message, September 4, 1837," in Richardson, ed., *Messages and Papers*, 3:335-338; Martin Van Buren, "Special Session Message, September 4, 1837," in Richardson, ed., *Messages and Papers*, 3:330.

³⁶ "Report of the Secretary of the Treasury, September 18, 1837," *Congressional Globe*, 25th Cong., 1st sess., Appendix, 1-3; Van Buren, "Special Session Message, September 4, 1837," in Richardson, ed., *Messages and Papers*, 3:343.

For political and constitutional reasons, Van Buren could not simply re-charter the BUS without destroying the young party's identity. Yet they could not revert to long-term borrowing in a devastated market that stretched across the Atlantic. The Treasury needed something to pay its creditors in the coming months. Treasury notes could do the job; but after years of expounding the doctrine of constitutional currency, the Democrats needed to distinguish Treasury paper from the "lampblacks and rags" that Benton railed against. In effect, the Jacksonians needed to sanitize the Treasury notes of their currency aspects and better associate them with the concept of borrowing. As John Mercer Patton explained, there could be no power to issue bills of credit vested in the Congress, but Treasury notes with interest "were substantially a loan" and thus acceptable to the Jacksonians. The result was a series of legislative practices that stressed the requirement of a financial emergency, the issue of Treasury notes in denominations no lower than \$50, and all bearing interest.³⁷

Legislative precedent served as an important justification for the issue of the notes in 1837. It not only served the Democrats as a shield to Whig critics, but it also placated critics within the party. Daniel Webster, after giving a speech that amounted to a constitutional argument for a new national bank, exclaimed that the proposed Treasury notes were unfounded in U.S. history. "This, sir, is quite new in the history of this Government; it belongs to that of the Confederation which has passed away." Silas Wright of New York rebutted Webster by reading from the Treasury note act of 1815 that authorized the no interest notes. Wright found that the government had a history of "emissions of Treasury notes paying no interest, payable to bearer, transferable by

³⁷ Whigs made sure to capitalize on the disjunction. See the speech of Daniel Webster and Caleb Cushing, *Register of Debates*, 25th Cong., 1st Sess., 19, 864. The quote was made by Preston, *Register of Debates*, 25th Cong., 1st Sess., 44. ; *Register of Debates*, 25th Cong., 1st Sess., 203, 1321.

delivery alone, and without any restrictions as to the denomination of the notes so issued, had been authorized.” The 1837 bill for Treasury notes were simply “in conformity with the previous practice of Congress.” The *Globe* took special delight in reporting that Webster seemed to forget that he was a member of the House when the 1815 measure passed. James Buchanan joined Wright in correcting Webster’s calling up “the ghost of the ancient Confederation to act as godfather to these Treasury notes.” He too found “that Congress had done the very thing which he had declared had not been done since the days of the Confederation.” Legislative precedent cut the other way when “old Bullion” Benton was forced to admit that Treasury notes as a form of borrowing and as a currency “were known to our laws” despite his self-proclaimed status as “no friend to the issue of Treasury notes of any kind.”³⁸

The exact constitutional foundation for the power needed to center on the borrowing clause of the Constitution. Benton felt especially uneasy about the notes. While he conceded that Congress had a clear power to borrow, "but; to find authority to issue these notes, we must enter the field of constructive powers." Other Democrats were not so sure. Familiar with the use and operation of commercial paper in the world, where bills of exchange, banknotes and other financial instruments passed from hand to hand, what was to separate the concept of “currency” from “debt”? To build a bridge from the borrowing clause to the notes, Democrats described the position of the government as akin to any person in debt. When the government needed notes again in 1841, Walter Coles of Virginia pointed out that the US was simple doing “what individuals are in the

³⁸ *Register of Debates*, 25th Cong., 1st Sess., 19; *Cong. Globe* 25th Cong., 1st Sess., 30. Other examples of Democrats using the precedent of the War of 1812 are the speeches of Thomas Lyon Hamer (House, D-OH), *Register of Debates*, 25th Cong., 1st Sess., 1049. Bedford Brown (Senate, D-NC), *Cong. Globe*, 25th Cong., 2nd Sess., 389. Walter Coles (House, D-VA), *Cong. Globe*, 26th Cong., 2nd Sess., 368; *The Globe*, September 16, 1837; *Register of Debates*, 25th Cong., 1st sess., 36-27, 67, 70.

constant habit of doing, give their own notes” instead of taking a long-term loan. If Congress could note issue these notes, said Jacob Thompson of Mississippi in 1841, “neither had it the [power] to issue bonds or script.” During the 1837 debates Hugh Swinton Legaré told the House that he had spent days and nights trying to draw the line. In all his research he could only conclude that in comparing commercial paper and bills of credit in “all their effects commercial and political, they are evidently the same.”³⁹

Whigs like Caleb Cushing tried to build a constitutional firewall between emission of paper and borrowing by stressing that an important power like the ability to issue notes needed its own express power and could not be auxiliary to borrowing. Cushing attempted to use John Marshall’s definition of bills of credit coupled with a history of paper money in America to shame the Democrats into rejecting the idea. It was an irony, though, apparent to the Democratic press that the arguments used by Cushing and Webster for a national bank could easily be used to support a national currency in Treasury notes. But with a Democratic majority in the 25th Congress, the real opposition consisted of hard-money Democrats. From their comments and votes in favor of the notes, most Democrats agreed with Legaré’s notion that Treasury notes “were one of the simplest and most usual forms of borrowing money, within the very letter of the constitution.” The borrowing clause vested in Congress unlimited power and the power to decide “the manner in which it will be exercised.” Like the War of 1812, repeated usage signaled a constitutional consensus. Van Buren and the Democrats authorized seven issues and re-issues to supply government needs in the period between 1837 and 1841. Even when the Whigs took control of the 27th Congress, they too resorted to an issue of

³⁹*Register of Debates*, 25th Cong., 1st Sess., 70; *Cong. Globe* 26th Cong., 2nd Sess., 368, 120; *Register of Debates*, 25th Cong., 1st Sess., 1314.

Treasury notes to make up government deficits. By 1842 even Whigs must have agreed with the Jacksonian view of the notes “as the most convenient mode of borrowing.”⁴⁰

The devil, however, was in the details. The administration, it will be remembered, favored notes as low as \$20 bearing no interest. A few other Democrats favored these notes in their defense of the original 1837 bill. Most Jacksonians soon jettisoned this idea, however, and agreed to issue the notes only as long as they stayed above \$50 and bore some sort of interest. Benton explained that interest and high denomination were features that “invite investment, and forbid and impede circulation” would identify the notes as a form of borrowing as opposed to one for a currency. This meant that the administration’s \$20 notes had to go. In the Senate, Benton raised the denomination floor to \$100 and the notes passed the Senate 42-5, with Whigs providing the only dissenting votes. The House concurred in principle but lowered the denomination to \$50 bearing interest no higher than 6%. The rules of denomination and interest set by the Jacksonians remained constant through the depression of the 40s and the notes of the Mexican war, all the way until the demand notes of July, 1861. As C.C. Camberleng explained in the House in 1838, Treasury notes were meant to “raise money, where there are no immediate resources...They should never be issued of a small denomination.”⁴¹

⁴⁰ *Register of Debates*, 25th Cong., 1st Sess., 1263, 1321; *The Globe*, June 10, 1837; *Register of Debates*, 25th Cong., 1st Sess., 1312; For a list of these issues see Knox, *U.S. Notes*, 62; *Cong. Globe*, 26th Cong., 2nd Sess., Appendix, 388.

⁴¹ The vote on the no-interest clause to the bill died 6 yeas to 40 nays. The six were John Black (W-MS), Calhoun (D-SC), Samuel McKean (D-PA), Robert Strange (D-NC), and Robert John Walker (D-MS), *Register of Debates*, 25th Congress, 1st Sess., 75. Walker was the most outspoken in its defense arguing that the notes would help bring down the price of cotton, a fact that might have convinced Black to also vote for no interest; *Register of Debates*, 25th Cong., 1st Sess., 67, 75 ; The dissenters were Henry Clay (W-KY), John J. Crittenden (W-KY), William C. Preston (Nullifier-SC), who was a Nullifier at the time but returned to the Whig fold that same year; Samuel Lewis Southard (W-NJ) and John Selby Spence (W-MD); The bill passed the House 127-98, *Register of Debates*, 25th Cong., 1st Sess., 1369-1370, 1372; See Knox, *U.S. Notes*, 63-79; *Cong. Globe*, 25th Cong, 1st Sess., 364.

A corollary of the Jacksonian doctrine linked the exercise of the Treasury note power to emergencies only. The peace-time use of this power had few friends in Congress. Webster and the Whigs, of course, embraced a version of peace-time currency powers, but only through the agency of a national bank. For reasons of Whig political-economy, this power could never be entrusted to Congress. Henry Clay originated a popular claim of the Whigs that in conjunction with the proposed Independent Treasury, Van Buren meant to create a grand “Treasury bank” that would issue government paper to destroy the state banks and increase executive power and patronage. The only other voice on national currency powers was Calhoun in the Senate who proposed a permanent issue of Treasury notes as a cure to the banknote evil. Most Democrats could only support the notes based on the narrow grounds of emergency. The central reason was a premise of Jacksonian political economy that filtered how Democrats understood the limits of borrowing. Even if one could see clear to a permanent currency through the borrowing clause that meant a permanent debt. Jackson argued repeatedly that a permanent national debt led to corruption and should be resisted at all costs. Whigs grudgingly accepted this logic of emergency notes as short-term borrowing, especially in the years after 1837. In 1841, Henry S. Lane of Indiana argued that the notes were only constitutional as an auxiliary to borrowing in war, not peace. That argument must have held some sway in his mind when he voted for the Legal Tender Act in 1862.⁴²

⁴² Webster expressed his views in a lengthy speech that began the special session in 1837. *Register of Debates*, 25th Cong., 1st Sess., 17-19; The problem in sum, was stated best by Alexander Hamilton in his report on the Bank of the United States Alexander Hamilton, “Report on a National Bank”, *Annals of Congress*, 1st Cong., 1st Sess., 2096. A legislature, he explained, a legislature would always print paper in an emergency before it would raise taxes, and thus, “so certain of being abused, that the wisdom of government will be shown in never trusting itself with the use of so seducing and dangerous an expedient.” Preston echoed this view in a speech he gave in 1837 on the idea of entrusting monetary powers to politicians. ““Sir, I will not trust this government with such a power, no matter who administers

In common with the Republicans of the War of 1812, Democrats upheld the legal tender barrier in American law by stressing the free-market rationale of the Treasury notes. Thomas Lyon Hamer of Ohio explained “we tell him [government creditor or employee] we cannot pay for want of funds, but we give our note, payable at the end of the year. He is not obliged to take this. He has the right to demand gold or silver.” But unlike the War of 1812, both Democrats and Whigs understood that the great size of the government in the market made all of its transactions decidedly one-sided. Especially during the panic, creditors and employees could ill-afford to walk away empty handed from the government. These circumstances, Webster thought, made Treasury notes “to all intents and purposes, a forced payment.” Benton too, darkly noted that “necessity has no law, and the necessitous claimant must take what is tendered.”⁴³

It should be noted that the logic of Jacksonian constitutionalism did not lead to just one form of notes. There were derivative strains of thinking among the Democratic faithful. In Van Buren’s special message, he reasoned, “the Government is on the same footing with the private citizen and may resort to the same legal means.” What Van Buren and Woodbury had in mind was a system of “bills drawn by itself” or “certificates” backed by specie in the Treasury, a public tender, bearing no interest, and payable on demand or date. In fact the government was already doing that in the form of Treasury drafts, essentially bills of exchange drawn on Treasury funds and paid to order.

it....” Even, George Washington he added. *Register of Debates*, 25th Cong., 1st Sess., 95; For examples of this argument by Whigs see *Register of Debates*, 25th Cong., 1st Sess., 101, 391-395, 521 (Clay), 854, 910; *Register of Debates*, 25th Cong., 1st Sess., 50-72; See arguments to this effect by Kenneth Rayner (W-NC), Daniel Dewey Barnard (NY), Eugenius Aristides Nisbet (W-GA), *Cong. Globe*, 26th Cong., 2nd Sess., Appendix, 227, 259, 306, 264; By this time Lane was a Senator. His vote is recorded in *Cong. Globe* 37th Cong., 2nd Sess., 804.

⁴³ *Register of Debates*, 25th Cong., 1st Sess., 1049; *Cong. Globe*, 25th Cong., 2nd Sess., 385; *Register of Debates*, 25th Cong., 1st Sess., 71.

Jackson supported the idea, noting that “treasury drafts upon actual deposit are constitutional, and do not partake of paper credits as Treasury notes.” The idea never caught on in Congress, perhaps because it would confirm Clay’s claims of a grand Treasury bank. More importantly, it violated the borrowing rationale of the Jacksonians. When the Tyler administration floated the idea of small notes payable on demand issued by the Treasury, the Democratic-controlled House Ways and Means committee issued a scathing report that reiterated the canons of the Jacksonian view: borrowing in emergency only, no low denominations, and bearing interest. Thus the idea was a dead end in Democratic monetary thought. That is, until Salmon P. Chase resurrected it in the guise of the demand notes of 1861.⁴⁴

By the time of the Mexican-American War, the broad outlines of congressional Treasury note practice were well settled. In that conflict, and the Panic of 1857, Congress resorted to further Treasury note issues to supply quick credit when long-term sources of borrowing or taxation were either unavailable or would not answer their needs in time. The Jacksonians thought that the Treasury notes were important enough that they were the great exception to the ironclad specie requirement in the Sub-Treasury Act signed into law by President James K. Polk in 1846. While there was some talk of unconstitutionality in 1846, by the Panic of 1857 there was none. In both cases, the government, controlled by Democrats, confined these issues to the Jacksonian model of

⁴⁴ Van Buren, “Special Session Message, September 4, 1837,” in Richardson, ed., *Messages and Papers*, 3:329; Van Buren described them as bills of exchange, which were the precursors of modern checks. Woodbury called them “certificates” but described them as being along the lines of bills also. Woodbury and Van Buren were vague on the question of when a holder could obtain payment, and I would guess they probably meant on demand for the substance of Woodbury’s comments in his report, *Cong. Globe*, 25th Cong., 1st Sess., Appendix, 7; Meaning that they were drawn up in denominations according to the debt owed by the government and not regular denominations. This fact impeded but did not halt the circulation of Treasury drafts during 1837. See *The Globe*, June 20, 1837; The letter is dated July 23, 1837 and reprinted in *The Globe*, August 9, 1837; Treasury Notes, March 28, 1844, *H.Doc*, No. 379, 28th Cong., 1st Sess., 1-19

interest-bearing, high denomination notes to avoid the calls of unconstitutionality. In reality, the government continued to use the notes as a means of payment to its creditors when the Treasury was empty. The Jacksonian could try and limit, but they could not fully restrict the slippery ability of debt to serve as money, a fact Benton noted when he complained that they Treasury notes were “a disguised mode of borrowing, and easy to slide into a currency: as a currency, it is the most seductive, the most dangerous, and the most liable to abuse of all the descriptions of paper money.”⁴⁵

The generation prior to the Civil War wrote their views of political economy into the unwritten constitutional law of the United States through the borrowing clause of the Constitution. Repeated practice by Congress solidified what war and crisis created. Yet that same view of political economy that expanded the power of the government in time of war also placed important limits on Congresses power—very few Americans before 1861 could imagine a world of irredeemable paper money issued by the government. The assumption of this limit was implicit in every discussion of the issue of government credit before 1861. In 1838, an aggravated Silas Wright once asked the Whigs what they expected Congress to do with no money to pay their creditors - "we cannot by our fiat here, place money in the Treasury at a moment's warning. Then can we do anything better than to give to the creditors of the Government the best paper in our power—that issued upon the faith and credit of the Government itself?" Why couldn't the government simply use their “fiat” to make money on the spot? As Bates noted years later during the war, the text of the Constitution did not clearly prevent this; the ban on legal tender was a product of American history and custom.⁴⁶

⁴⁵ Knox, *U.S. Notes*, 63-79; Benton, *Thirty Years' View*, 34.

⁴⁶ *Cong. Globe* 25th Cong., 2nd Sess, 385.

1862: Old Views and New Realities

The financial realities of 1861 and 1862 were now creating an exception in the minds of many in the Union leadership. With the defeats at Bull Run and Ball's Bluff, even the most optimistic predictions put Union victory at some time during the spring. Chase had, for some time, told Congress and the bankers that the war was easily costing a million dollars a day. At that rate, the government would run out of money before the spring thaw, let alone a spring offensive. An aggressive new taxation policy, Chase's national banking plan, or even a third bank of the United States would take time to draft, debate, and implement. There was always the option that the government could simply try and borrow money at whatever interest the bankers demanded, but with ballooning cost of war and the suspension of the banks, this could mean a drop in the value of U.S. bonds anywhere from seven to seventy cents on the dollar. Suddenly, legal tender became a very real possibility to the Congressmen dealing with the problem on Capitol Hill.⁴⁷

Down Pennsylvania Avenue, at the Treasury, Chase was looking at the same facts and coming to different conclusions. Perhaps better than anyone in the government he was watching the Union struggle without proper funds for months prior to the suspension in the telegrams, letters and reports that he received from across the country.⁴⁸ Even after the suspension and the decision by Spaulding to make legal tender the first order of business for Congress, Chase refused to accept the shifting wind in policy. As late as early January he was still writing letters expressing his confidence to the hope that

⁴⁷ *New York Times*, February 2, 1862.

⁴⁸ See Edward L. Pierce to SPC, September 11, 1861; James R. Doolittle to SPC, September 13, 1861; William T. Sherman to SPC, September 14, 1861; Simeon Nash to SPC, September 17, 1861; SPC to Robert Buchanan, October 4, 1861 in John Niven, ed., *The Papers of Salmon P. Chase*, (Frederick, MD: University Publications of America, 1987), text-fiche, reel 17 [microfilm collection hereafter cited as Niven, ed., *Papers of Chase*].

Congress might pass his national banking plan and set the finances of the country right.⁴⁹ Chase was so desperate to avoid legal tender that he had changed his tune to the bankers and was no longer willing to sell government bonds to the bankers at their prices, provided they took demand notes as money. Bryant wrote Chase telling him that the legal tender bill created “alarm in many minds” in New York City.⁵⁰ In a letter to the New York *World*, the old Whig, Gulian C. Verplanck explained that legal tender was not only unconstitutional but at odds with “the political, historical, legal, and financial evidence which attests to the same important truth.”⁵¹

The object of the war and its significance in public opinion bred a different attitude about tradition and custom. It seemed obvious to many that the Union’s finances might collapse, and along with it the cause of the Union. When put in those terms, some in the North would prefer the “nauseating pill” of legal tender to defeat. The *New York Times* was not enthusiastic for the bill, but it would support “prompt action upon *some* feasible plan.” The *Times* did not doubt that it would command the “willing consent of the vast majority of the People of the loyal States, who desire to see the sovereign power of the Government asserted and exercised.”⁵² George Opdyke, John J. Cisco, Morris Ketchum and others from “the old Democratic hard-money faith” came out in favor of legal tender in late January and early February, all with the realization that their peacetime theories of finance could would no longer work in the midst of war.⁵³

“But, it will be said,” wrote Henry Ward Beecher, “this cannot be done without changing the Constitution.” To which he replied, “Then change the Constitution. When

⁴⁹ SPC to Fessenden, January 7, 1862 in Niven, ed., *Papers of Chase*, reel 18.

⁵⁰ W.C. Bryant to SPC, February 2, 1862 in Niven, ed., *Papers of Chase*, reel 19.

⁵¹ *The World* (New York), February 7, 1862.

⁵² *New York Times*, January 13, 1862.

⁵³ *New York Times*, February 2, 1862.

we fully realize that we are at WAR, then we shall be willing to adopt any measures to help us through our troubles.”⁵⁴ The logic of the Civil War would provide the next chapter in the curious story in which the power to borrow became the power to pay.

⁵⁴ *The Independent* (New York), December 26, 1861.

3

The Legal Tender Moment

Impatience muddled with fear marked the atmosphere in Washington and in the North in the winter of 1862. Within the Union leadership the war effort seemed endangered on several fronts. From July 1861 to March 1862, General George B. McClellan appeared unwilling to use the Army of the Potomac to bring the war to the Confederacy. At the same time, the Union's ability to field and maintain the army beyond January was seriously in question. With each passing day the government's list of unpaid soldiers, government employees and contractors grew longer. Government laborers from New York to San Francisco went unpaid, and Union generals wrote Chase directly pleading for cash to pay their soldiers in the field. With the government in suspension, Chase directed assistant secretaries in the major cities to pay coin to no one except for the odd bondholder. Sometime in January, Chase reportedly pointed to a pile of papers on his desk at the Treasury and exclaimed "here are fifty millions of dollars in these unsigned warrants for adjusted accounts, and I have not one dollar in the Treasury." In the wake of the New York suspension, the possibility of a new loan from northern bankers looked slim and public interest in Chase's popular loan had dried up well before December. In fact, evidence suggested that the banks were openly hostile to the government. At the Treasury's offices in New York City, John J. Cisco and his staff worked through the

night to find a solution. George Harrington, an assistant secretary from New York, closed a letter to Chase with the confession that “all night I did not close my eyes.”¹

Among the northern press and the public, impatience with the government’s inability to act on the military or financial fronts overflowed in the pages of newspapers and letters to Congress and the President. One Bostonian wrote to Senator William Pitt Fessenden “we want the army to kill somebody.” The stock market responded well when Lincoln replaced the inept Simon Cameron with Edwin M. Stanton and there was general relief across the country with a conclusion of the Trent Affair without causing a new war with Britain. Yet in the public, legal tender was the most significant unresolved issue before Congress at the start of 1862. It was a widespread belief that, alongside a new tax bill, legal tender could strengthen the sinews of war and prepare the army to crush the rebellion. The *Herald* pronounced “let there be no hesitation, therefore, about passing the financial bills immediately; and when that business is done let Congress disperse and go home, and leave the suppression of the rebellion to the President, the Secretary of War

¹ McPherson, *Battle Cry of Freedom*, 361-365; Philip Shaw Paludan, *The Presidency of Abraham Lincoln* (Lawrence: University of Kansas Press, 1994), 97; SPC to Gideon Welles, January 1, 1862, SPC to Simeon Cameron, January 9, 1862, Niven, ed., Papers of Chase, reel 18; SPC to Joseph Seligman, January 25, 1862, Edward L. Pierce to SPC, February 16, 1862, Gideon Welles to SPC, March 6, 1862, Niven, ed., Papers of Chase, reel 19; SPC to Gideon Welles, January 21, 1862, Niven, ed., Papers of Chase, reel 18; Montgomery C. Meigs to SPC, February 4, 1862, SPC to J. Miller, Et. Al., February 17, 1862, Niven, ed., Papers of Chase, reel 19; SPC to John Jay Cisco, December 29, 1861, SPC to Enoch T. Carson, December 30, 1861; Samuel G. Ward to SPC, December 30, 1861; Henry W. Hoffman to SPC, December 31, 1862, SPC to Ezra Lincoln, January 10, 1862, SPC to Henry W. Hoffman, January 11, 1862, Niven, ed., Papers of Chase, reel 18; Silas M. Stillwell, *Private History of the Origin and Purpose of the National Banking Law and System of Organized Credits for the United States* (New York: Trow’s Printing and Bookbinding Co., 1879), 5; We know that Chase was planning to pay contractors while he awaited congressional action on the issue, SPC to Francis E. Spinner, January 18, 1862, Niven, ed., Papers of Chase, reel 18; On February 25, 1862, Chase estimated that the government owed \$26,430,557.83 in unpaid requisitions and debts in excess of \$45 million, see SPC to William P. Fessenden, February 25, 1862, File Sen. 37A-E4 Treasury Department, Records of the Senate Finance Committee, RG 46.11, National Archives, Washington, D.C. [repository hereafter cited as NARA I]; Hammond, *Sovereignty and an Empty Purse*, 109; George Harrington to SPC, December 29, 1861, Niven ed., Papers of Chase, reel 18; Jay Cooke to SPC, January 31, 1862, Niven ed., Papers of Chase, reel 19; George Harrington to SPC, December 29, 1861, Niven, ed., Papers of Chase, reel 18.

and General McClellan.” The combination of events led to the sense of optimism that one strong push by the combined forces of the government would result in a quick victory.

One Philadelphia paper pronounced “the people are yet united and confident, and if there is life and energy displayed they are sure that the day is ours.” If they failed, however, the *Chicago Tribune* predicted that credit and the economy would collapse and “the worst evils of revolution and anarchy will settle down upon us.”²

After two generations of resistance to the idea of federal paper money, it was within this environment that legal tender now appeared not only financially viable but as a symbolic manifestation of the federal government’s willingness to pursue civil war, no matter the means. As Bray Hammond wrote, legal tender was a revolution because it “established a national monetary medium which derived its value from the will of government” despite a strong and vibrant cultural attachment to the idea of gold and silver as money. Getting to that moment required a unique blend of popular support engendered by the nature of the war, the efforts and blunderings of economic elites trying to control federal policy and the combined weight of economics and politics on the shoulders of Congress in early 1862.³

The catchword during the legal tender debates was “necessity.” John Basset Alley, a House Republican from Massachusetts, confessed “nothing could induce me to

² George L. Ward to William Pitt Fessenden, January 23, 1862, William Pitt Fessenden Papers, Library of Congress, Washington, D.C., text-fiche, reel 2 [William Pitt Fessenden hereafter referred to as Fessenden, collection hereafter cited as Fessenden Papers, LOC]; “Commercial Matters,” *Christian Advocate and Journal* 37 (January 9, 1862):16; *North American and United States Gazette*, January 13, 1862; Norman B. Ferris, *The Trent Affair: A Diplomatic Crisis* (Knoxville: University of Tennessee Press, 1977), 189-191; Howard Jones, *Blue and Gray Diplomacy: A History of Union and Confederate Foreign Relations* (Chapel Hill: University of North Carolina Press, 2009), 102-109; *New York Herald*, January 24, 1862; *North American and United States Gazette*, January 10, 1862; *Chicago Tribune*, January 7, 1862.

³ Hammond, *Sovereignty and an Empty Purse*, 226; Bray Hammond, “The North’s Empty Purse, 1861-1862,” *American Historical Review* 67 (1961):1-18; Curry, *Blueprint for Modern America*, 196; Richardson, *The Greatest Nation of the Earth*, 66-102.

give it sanction but uncontrollable necessity.” Necessity, however, is a protean term and historians have not acknowledged the unique blend of economics, fear and nationalism that colored the use of the term necessity in the North in 1862. Well aware that the only other option was to place increased power into the hands of the banking elite over the finances of the war, legislators embraced legal tender as what Spaulding called “a most powerful instrumentality in saving the government and maintaining the national unity.” Necessity, as it appeared in the context of the second year of the Civil War, favored bold federal action rather than placing more power in private hands. Spaulding, however, did not go far enough in describing the effects of the act. The Legal Tender Act might have saved the government in the short term, but more importantly it also *transformed* the national government and the nature of national unity for decades to come.⁴

Nestled within the story of the legal tender moment of 1862 was more than a temporary effusion of nationalistic zeal, anti-bank rhetoric and wartime necessity. The Legal Tender Act of 1862 was a revolution for how it broke with past political, economic, constitutional and cultural ideas about money, and opened the door to a new relationship between the national government and its citizens. Despite a sea of promises that the first act would be the last, it was not. Having overcome the legal tender barrier in law and politics, Congress passed three additional acts before the end of the war. Moreover, these greenbacks would not disappear after Appomattox and began a contentious career that would continue into the Twentieth century.⁵

⁴ *Cong. Globe*, 37th Cong., 2nd Sess. 659; Hammond, *Sovereignty and an Empty Purse*, 243; Spaulding, *History of the Legal Tender Paper Money* (1875), 5.

⁵ There were four legal tender acts in all authorizing a total of 450 million greenbacks. Act of February 25, 1862, ch.32, 12 *Stat.* 345; Act of July 11, 1862, ch.142, 12 *Stat.* 532; Joint Resolution of January 17, 1863, no.9, 12 *Stat.*, 822; Act of March 3, 1863, ch.73, 12 *Stat.* 709.

A close examination of Congressional debates in January and February 1862 shows how the war forced Republicans to generate new ideas and arguments that would provide the political and legal foundations for expanded national authority. While the legal tender moment was an origin point for new beginnings, Republicans also embraced the previous tradition of Treasury notes as proof of the constitutionality of their authority to create money. With the Treasury note as foundation, Republican supporters began drafting new arguments that would reconfigure federal power in the era to come. They challenged firmly held ideas about classical political economy and bred a notion that perhaps governments can make paper equal to gold. Lastly, it brought the federal government into the pockets of its citizens and created the possibility of a new national economy and a new national politics of monetary policy. Looking at his creation from the perspective of 1869, Spaulding admitted that this wartime policy “still exerts a mighty influence socially, commercially and politically, over the people of this great nation, and all the ramified and extensive business in which they are engaged. Whether for good or evil, it has been and still is a most powerful element in all business affairs of the people, as well as the government.” Ultimately, within the story of the First Legal Tender Act were the rough outlines of a new species of federal authority in American life.⁶

The Problem with Bankers

The mood in the bank boardrooms of New York, Philadelphia and Boston must have been tense as they awaited congressional action in early January 1862. The decision to suspend specie payments was, as one paper put it, an act of “conservatism.” By suspending when they did, the major banks could protect the coin in their vaults from future financial risks that might bankrupt them. It was also a bold political statement.

⁶ Spaulding, *History of the Legal Tender Paper Money* (1875), 6.

Suspension signaled their unwillingness to work under what one Boston banker called the “hand to mouth” system of borrowing large amounts of coin, instituted by Chase. The problem with suspension as a political statement, however, was that the bankers could not retract it by simply reversing course and resuming specie payments to appease public opinion. A resumption of specie payments in the early days of 1862 would almost certainly cause a run on the banks and lead to even greater gold hoarding. The banks could not resume specie payments until the government resumed specie payments, and that would not happen until the war ended, whenever that might be. For the time being, Congress held the fate of the Union’s purse and that of the banks in their hands. This fact informed the political machinations of northern financiers as they tried to coax and guide Congress on the question of legal tender.⁷

Nevertheless, the bankers were not of a single mind on how to move forward. Some bankers took the lead in supporting legal tender as a reasonable means of temporary wartime finance that could benefit their institutions. By creating a wholly new system of legal tender paper money the banks could safely protect their gold reserves, while resuming normal business by simply paying out and taking federal notes instead of coin at their counters. These new legal tender notes would be supported by new taxes that would buoy government credit and assure creditors that the union had the requisite will to pay its debts. A conservative cadre of bankers, on the other hand, could never trust Congress with the power to expand and inflate the money supply. They desired that Congress place the entire power to finance the war in their more capable hands. Neither side, however, was sure how Congress would react. Spaulding’s legal tender proposal

⁷ *New York Herald*, December 6, 1861; “Gallatin on the Currency,” *The Banker’s Magazine*, 11 (February 1862):625; J.C. Grey to Fessenden, January 28, 1862, Fessenden Papers, LOC, reel 2.

was in the air, but many hoped or feared that it could never get the requisite votes in Congress. Both sides embarked on an ambitious program of lobbying Congress to achieve their visions of war finance. From New York, John Jay, grandson of the Chief Justice, wrote that “Some of our New York bankers are greatly excited.”⁸

The leader of the conservative faction was James Gallatin, son of Albert Gallatin, and president of the Gallatin Bank in New York City. It was Gallatin, along with George S. Coe of the American Exchange Bank, who led the movement for suspension in late December. For quite some time, Gallatin had been a constant critic of Chase’s financial plans. In the months leading up to suspension, allies of Gallatin or Gallatin himself wrote scathing articles about the stupidity of the Independent Treasury and Chase’s system of demand notes. After successfully winning the votes for suspension among the New York banks, Gallatin and his allies actively sought to drain the Treasury of as much coin as possible by cashing in their supply of demand notes in New York and Boston. At the same time, some banks were refusing to take Treasury notes as deposits or payments. George Harrington, a treasury official in New York, wrote Chase “Mr. Cisco says there are strong indications of an attempt to make direct war on the treasury.”⁹

⁸ John Jay to SPC, January 4, 1862, Niven, ed., Papers of Chase, reel 18.

⁹ Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896* (New York: Cambridge University Press, 2001), 120; Harrington to SPC, December 29, 1861, Niven, ed., Papers of Chase, reel 18. It was the impression of Harrington, at the New York sub-treasury, that Gallatin and Coe were the leaders of the anti-legal tender faction which he referred to as “Gallatin, Coe + Co.”; G “From a Wall-Street Banker,” *The Independent* 14 (January 23, 1862):8; A New-York Bank Officer, “Objections to Government Demand Notes,” 11 *The Banker’s Magazine* (November 1861): 353-358. I have been unable to discover the true identity of the authors of these articles. The arguments, nevertheless, are in line with Gallatin’s other published statements; Hammond, *Sovereignty and an Empty Purse*, 186; John E. Williams of the Metropolitan Bank told Chase that the banks had never “agreed” to paying contractors 7-30s. See John Earle Williams to SPC, January 21, 1862, Niven, ed., Papers of Chase, reel 19. Anger about the banks refusal Treasury notes can be found in *New York Times*, February 3, 4, 1862; Harrington to SPC, December 29, 1861, Niven, ed., Papers of Chase, reel 18.

What Gallatin and the other conservatives wanted was a bank-centric system, similar in spirit to the plan suggested by the Associated Banks back in August. In letters to federal officials, Gallatin outlined that the government could only succeed by borrowing from the banks at whatever interest rate they might pay, a position Congress and Chase had rejected. Understanding that the government needed cash immediately, he suggested they issue Treasury notes with low interest and convertible into 6 percent bonds, a mechanism, which he thought, would prevent inflation. More than this, Gallatin wanted a true suspension of the Independent Treasury, and for the government to accept bank credit and banknotes in exchange for their loans. There were other proposals in this vein. A Gallatin ally from Boston, James Grey, went so far as to add to this plan the idea that Congress should establish a board of loans made up of “prominent men in N.Y.” who would have full power to negotiate the terms of future loans between the bankers and the federal government—it was implied by Grey that by prominent men he meant New York financiers.¹⁰

Deep within the conservative position was a festering anger at the distrust of banks and banking prevalent in American political culture. In an editorial written by a “New York banker,” possibly Gallatin, the author claimed that the current financial problems could be blamed on popular politics. Through the constant attacks on banks in politics since the time of Jefferson “the people have gradually learned the lesson that gold is better than the banks, or bank-notes.” He wanted to educate his readers to the realities of the financial world: “Bank credit is the very life of commercial transactions” and by

¹⁰ James Gallatin to Fessenden, December 14, 1861, Fessenden Papers, LOC, reel 2; Spaulding, *History of the Legal Tender Paper Money* (1875), 20; For Chase’s rejection of sub-par bids on government securities see Richardson, *Greatest Nation of the Earth*, 36-37; This position was pushed for by Coe as early as December, 3, 1861. See George S. Coe to SPC, December 3, 1861, Niven, ed., Papers of Chase, reel 18; James Grey to Fessenden, January 12, 1862, Fessenden Papers, LOC, reel 2.

extension, they could trust that private bank paper could do the work of paying for war. This feeling colored Gallatin's impulse to suspend specie payments and siphon as much gold away from the government as possible. In his remarks to the bankers during the "stormy sessions" of late December, he explained that suspension was a matter of who should hold the nation's gold—the government or the banks—"If we hold it, the people and the government will be alike benefited. If the government takes it, the whole will be expected and hoarded by a few people." In another editorial, possibly written by one of the Cooke brothers, the writer argued that a national paper currency was fine, as long as bankers managed it. The problem was that politicians had no professional training to understand what amount of notes would "safe and expedient" for the economy. The author of this editorial could call this action a "patriotic agency" of the banks because he believed, like Gallatin, that only a banker could properly control the money supply of the country.¹¹

Now, Gallatin was attempting to guide federal policy by helping to organize a conference between government officials and the financiers of the three cities in early January. In August, it was Chase who came to New York to negotiate with the capitalists. Now, under vastly different circumstances, Gallatin and his supporters travelled to Washington D.C. in a last ditch effort to find allies within the Republican leadership and stop the Legal Tender bill from passing. The politics of legal tender made strange alliances in Washington during these winter months. Gallatin's strongest ally in Washington was none other than Chase, the man whose capabilities and policies he had ridiculed and fought since the start of the war. Chase, who had made no public statements

¹¹ G "From a Wall-Street Banker" *The Independent* 14 (January 23, 1862):8.; James Gallatin, "Gallatin on the Currency," *The Banker's Magazine*, 11 (February 1862):627; C, "A Currency of Treasury Notes," *The Banker's Magazine* 11 (January 1862):6.

on the idea of legal tender in the first weeks of January, was privately hostile to the act. Before the meetings began, Chase wrote to Fessenden that more loans and the national banking scheme were the best possible solutions to the current crisis. With legal tender in the background of his letter, Chase wrote, “no other measure, in my judgment, will meet the necessities of the occasion.”¹²

The meetings, though, did not go as well as Gallatin might have hoped. On January 11, 1862, delegations from the major banks and the boards of trade and commerce of New York, Boston and Philadelphia began a week of talks in Washington. Members from the House and Senate financial committees attended the first day of talks, but gave very little indication that they would accept the terms of Gallatin and his allies. Hooper, from the House committee, was quite vocal in his refusal of Gallatin’s proposals. Sensing hostility from Congress, these bankers appeared desperate to defeat the Legal Tender bill, because the agreement that they achieved with Chase sacrificed many of their initial points. In a message, authored by Chase, and given to the Associate Press on January 15, 1862, the bankers conceded “the general views of the Secretary of Treasury are assented to.” This meant that the banks would accept the existing demand notes for deposits and payment, but they would not be made a legal tender—thus rejecting the use of bank paper as money during the war. They both agreed on the need for a new set of taxes that would raise \$125 million in revenue. In one last submission to Chase, they accepted his national banking plan as a necessity. There were some rumors, however, that Chase agreed privately that he would postpone enactment of the national banking scheme for some time and that he would limit the use of the demand notes. In return for all this,

¹² SPC to Fessenden, January 7, 1862, Niven, ed., Papers of Chase, reel 18.

Chase accepted that the government would pay the market rate for loans and he publicly stated that this plan would make legal tender “unnecessary.”¹³

The message from the bankers and Chase fell on deaf ears in the public. No matter their intentions, the conservative bankers were creating a political backlash that was compounding their financial problems. Gallatin’s position that the US pay bankers the market rate for loans seemed like a gross act of profiteering in the midst of a war for national survival. The pro-legal tender press hit hard especially on the idea that the banks should control interest rates during the war. One Philadelphia paper wrote that the “factious course” of the banks “was not calculated to win friends from them.” At its worst, the press and the public imagined the bankers as some sort pro-southern-conspiracy. One correspondent wrote Fessenden “the people believe that the banks are...up under the influence of foreign capitalists whom sympathize with the South.” Morris Ketchum, another New York banker, wrote that if he did not know these conservative bankers personally, he should “question their loyalty.”¹⁴

There was also a regional flavor to the backlash. While there was a healthy pro-legal tender sentiment across the North, several factors contributed to a strong strain of Midwestern support for legal tender. Starting soon after the election of Abraham Lincoln, a banking crisis emerged in Illinois that would destroy banks across the region. Since almost everyone depended on banknotes for their currency, economic life became

¹³ Spaulding, *History of the Legal Tender Paper Money* (1875), 18-22. *New York Daily Tribune*, January 13, 1862; SPC, “Memorandum on Financial Measures,” January 15, 1862, Niven, ed., *Papers of Chase*, reel 42. This is an original draft of the joint message from the bankers and Chase. A reprint of the final draft submitted to the Associated Press can be found in Spaulding, *History of the Legal Tender Paper Money* (1875), 21-22; Jay Cooke to SPC, January 18, 1862, SPC to John A. Stevens, January 17, 1862, Niven, ed., *Paper of Chase*, reel 19.

¹⁴ *North American and United States Gazette*, January 10, 1862; A. Campbell to Fessenden, January 2, 1862, Fessenden Papers, LOC, reel 2; Morris Ketchum to Fessenden, January 30, 1862, Reel 2, Fessenden Papers, LOC.

increasingly difficult in 1861. This economic situation bred enthusiasm for the idea of a national currency backed by the government before December 1861 in the form of the demand notes and a push for legal tender afterwards. Federal action on this front not only served the cause of the war, but offered a federal solution to a longstanding problems in banking and currency regulation.¹⁵

Thus, Midwesterners generated an enormous hostility to the conservative bankers as Congress pondered making their paper a tender. Sherman received multiple letters from his Ohio constituents touting the importance of not putting the government in the hands of the bankers. A.A. Guthrie wrote both Sherman and Benjamin Wade telling them that there was division between “We of the West” and the “Metropolitan influences” on the legal tender question. Another correspondent agreed with Guthrie and justified legal tender using the same style of Jeffersonian rhetoric embraced by Chase in his early dealings with the bankers. J.C. Day wrote Sherman that out West “We are all in favor of the citizens of the Republic becoming its *creditors*, rather than the *debtors* of the bankers and capitalists.” The economic situation in the Midwest also placed the bankers of the region in opposition to the Gallatin faction. They too, adopted the rhetoric about “shinning” and painted the conservative plan as one calculated to benefit the bottom line of the opposition bankers. If Congress gave control over monetary policy to the banks one Ohio banker wrote, “every nook and cranny” would fill up with *their* banknotes and the cost of the war would be “doubled.”¹⁶

¹⁵ Emerson David Fite, *Social and Industrial Conditions in the North During the Civil War* (New York: Peter Smith, 1930), 110-112.

¹⁶ R. Buchanan to John Sherman, February 11, 1862, John Sherman Papers, Library of Congress, Washington, D.C., vol.46 [John Sherman hereafter referred to as Sherman, collection hereafter cited as Sherman Papers, LOC]; A.A. Guthrie to B. Wade and Sherman, Sherman Papers, LOC, vol.46; J.C. Day to Sherman, February 11, 1862, Sherman Papers, LOC, vol.46. For another letter in the same style see R.

While a New York broker or banker might ignore the clamor in the public, a politician in Washington did not have the same luxury. Anger at the banks was now affecting the way that Congress thought about the financial problems of the Union in January and February 1862. Grey admitted that “the ground swell has become too powerful” and that “it is difficult to consider the question calmly, and decide the true remedy.” When the Legal Tender bill finally came before Congress in late January, that anger would find its channel in the anti-bank positions of a number of Republicans, including Henry Wilson and Timothy O. Howe in the Senate. This impulse no doubt influenced Spaulding’s public reaction to the banker’s conference reported in the *Tribune* of January 13. Spaulding “as a banker and legislator” embraced the populist rhetoric of the time when he objected to the price gouging or “shinning” by the “shaving shops of New York, Boston or Philadelphia.” When John Basset Alley of Massachusetts introduced the overarching financial plan of the Ways and Means Committee to Congress in early January, he articulated the new posture of the government in relation to the bankers. He said that Congress must consult “those who have chief control of the financial and business interests of the country,” but he added “we must never forget that the Government is supreme and that individual will and corporate interests must be subordinated to the overshadowing necessities of the Government.”¹⁷

Buchanan to Sherman, February 11, 1862, Sherman Papers, LOC, vol. 46; George Carlisle to SPC, February 3, 1862, Niven, ed., Papers of Chase, reel 19, discusses the division between the financiers of the West and East over Treasury notes. Robert P. Sharkey, *Money, Class and Party: An Economic Study of Civil War and Reconstruction* (Baltimore: The Johns Hopkins Press, 1967), long ago made the point that there was no united “capitalist” class in politics during Reconstruction; John D. Martin to Sherman, January 17, 1862, Sherman Papers, LOC, vol.44; Martin helped found the Exchange Bank in Lancaster Ohio. For background see Hervey Scott, *A Complete History of Fairfield County, Ohio, 1795-1876* (Columbus, Ohio: Sibert & Lilley, 1877), 284.

¹⁷ *North American and United States Gazette*, January 10, 1862; See *Cong. Globe*, 37th Cong., 2nd Sess. 788, Appendix, 53. Anti-bank sentiments are emphasized by Richardson, *The Greatest Nation of the Earth*, 76; *New York Daily Tribune*, January 13, 1862 ; *Cong Globe*, 37th Cong., 2nd Sess. 458.

Spaulding's rhetoric possessed heat but he himself was not in direct opposition to the financiers of the country. As Alley suggested, Spaulding, Sherman, Fessenden and others were in constant contact with the business community on the possibility of legal tender paper money. The reality was that the financiers of New York, Boston and Philadelphia were not of one mind on the subject of legal tender. Behind the rhetoric of Spaulding was an equally strong phalanx of northern bankers who supported the Legal Tender bill. They did so for reasons that existed somewhere between patriotism and self-interest. Led by John A. Stevens of the Bank of Commerce in New York, these bankers accepted mild inflation in war as a natural and desirable policy, up to a point. Stevens stressed to Chase the point that making the notes a legal tender was the only way to empower the banks to accept and pay out the notes under the terms of their charters. They played down the size of the conservative faction and reassured Congress that the majority of American bankers were on their side, and that the legal tender policy did not have to result in financial disaster. Moses H. Grinnell wrote Spaulding from New York that Gallatin "is an odd fish—has very little influence here." These bankers also outlined the several unforeseen benefits of legal tender. Expanding the monetary supply would, make money cheaper and create a natural boost to business. It would also create a stable circulating medium in places like Illinois where all the banks had already collapsed. Some writers stressed that without a new circulating medium; people would not actually have the money to pay increased taxes and duties. Grey, the conservative, pointed out that these bankers were equally motivated by self-interest. By replacing gold with paper as the national circulating medium, the banks could hold onto their gold for the duration of the war and simply pay out and accept federal notes for all their business. As a Buffalo

banker put it, the government's notes would quickly become "a tender for deposits in State banks a tender for State banknotes, and receivable for *all* Government dues."¹⁸

A Union War

The nature of Union nationalism during the Civil War also made legal tender appear in a favorable light to the public in 1862. One underappreciated result of the secession crisis was a transformation of how Americans perceived their national government and its power over their lives and the powers of the states. The Federal government, as an institution, did not command the full attention of nationalistic feeling before the Civil War. Rather, Americans from all sections held up the "Union of States," as represented in the Constitution, as one of the primary ligaments that bound them together as Americans. This Union existed in literature and commentary more than in the exercise of the practical power of the federal government, as Americans rarely experienced direct national power before 1861. Commentators celebrated the fact that theirs was a limited and composite government with carefully laid out rights and responsibilities that allowed the states and the national government to exist in perfect harmony. It was this union of governments within their proper spheres that allowed for

¹⁸ Support came from bankers and brokers alike. See, Winslow Lanier to Sherman, January 18, 1863, J.F.D. Lanier to Sherman, January 18, 1862, Sherman Papers, LOC, vol. 44; R. Crain to Fessenden, February 7, 1862, H.C. Townsend to Sherman, February 7, 1862, Sherman Papers, LOC, vol.45; John E. Williams to Spaulding, January 20, 1862, Thomas Denny to Spaulding, January 13, 1862, John A. Stevens, January 29, 1862, Thomas Lord to Spaulding, January 31, 1862, in Spaulding, *History of the Legal Tender Paper Money* (1875), 24-25, 47, 51; U.L. Shaffer to SPC, January 22, 1862, John A. Stevens to SPC, January 21, 1862, Niven, ed., Papers of Chase, reel 19; John A. Stevens to SPC, January 21, 1862,; Henry F. Boody stressed the technical reasons for banker support when he explained that "the banks of New York, Boston and Philadelphia cannot take them; and they cannot take them simply because they cannot use them if they do." Henry F. Boody to Fessenden, February 8, 1862, Sherman Papers, LOC, vol.45; Moses H. Grinnell [Grinnell] to Spaulding, January 20, 1862, in Spaulding, *History of the Legal Tender Paper Money* (1875), 23; Thomas Denny to Spaulding, January 13, 1862 in Spaulding, *History of the Legal Tender Paper Money* (1875), 25; Edwards Pierrepont to SPC, January 20, 1862, Niven, ed., Papers of Chase, reel 19;... J.C. Grey to Fessenden, January 23, 1862, Fessenden Papers, LOC, reel 2; J.M. Ganson to Spaulding, January 13, 1862 in Spaulding, *History of the Legal Tender Paper Money* (1875), 22.

liberty and freedom to flourish in America. The Union existed as a “spirit” or as an abstract ideal that generated an enormous amount of romantic commentary before 1861. On occasion that romanticism could be converted into dynamic federal action. In 1832, Andrew Jackson translated love of Union into a tangible threat against South Carolina. And as the Treasury note episodes of the nineteenth century highlighted, Americans could tolerate incursions of the national government into their lives, as long as they were not compelled. Yet between these periodic and irregular moments of power, many Americans continued to love and admire their Union from afar without allowing the federal government a greater share of direct power in their lives.¹⁹

The secession crisis and the actions of the Buchanan administration focused the attention of the North on the powers and health of Federal government that translated into aggressive federal policy during the war. In late 1860 and early 1861, President James

¹⁹ Melinda Lawson, *Patriot Fires: forging a New American Nationalism in the Civil War North* (Lawrence: University of Kansas Press, 2002), describes how the war transformed concepts of the nation and nationalism. The analysis here is much more circumscribed, pointing out how unionism and the war became fertile ground to support greater incursions of the national government into everyday American life; John L. Brooke, “Cultures of Nationalism, Movements of Reform, and the Composite-Federal Polity: From Revolutionary Settlement to Antebellum Crisis,” *Journal of the Early Republic* 29 (Spring 2009):4-11; Andrew W. Robertson, “‘Look on This Picture...And on This!’ Nationalism, Localism, and Partisan Images of Otherness in the United States,” *American Historical Review* 106 (October 2001):1264, 1278; Paul C. Nagel, *One Nation Indivisible: The Union in American Thought, 1776-1861* (New York: Oxford University Press, 1964); David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997), 248-251; Elizabeth R. Varon, *Disunion! The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008); Gary W. Gallagher, *The Union War* (Cambridge, MA: Harvard University Press, 2011), 45-48. (Cambridge, MA: Harvard University Press, 2011), 45-48. Peter J. Parish, *The North and the Nation in the Era of the Civil War*, ed. Adam I.P. Smith and Susan-Mary Grant (New York: Fordham University Press, 2003), 73-75, argues for the centrality of the Constitution in American nationalism prior to 1861 as the “institutional” focus of Americans in lieu of a central state; Wallace D. Farnham, “The Weakened Spring of Government: A Study in Nineteenth-Century American History,” *American Historical Review* 68 (April 1963):620-680, is a classic statement of the Federal government’s weakness prior to 1861; Brian Balogh, *A Government Out of Sight: The Mystery of National Authority in Nineteenth-Century America* (New York: Cambridge, 2009), corrects this picture; Nicholas and Peter Onuf, *Nations, Markets, and War: Modern History and the American Civil War* (Charlottesville: University of Virginia Press, 2006); Parish, *North and the Nation*, 98-99; Kenneth Stamp, “The Concept of Perpetual Union,” *Journal of American History* 65 (1978): ; Richard Ellis, *The Union at Risk: Jacksonian Democracy, States’ Rights, and the Nullification Crisis* (New York: Oxford University Press, 1989), 48-51.

Buchanan infuriated northerners with his conciliatory statement to southerners and his seeming inability to initiate any policy that would actively preserve the Union. The siege of Fort Sumter symbolized the impotency of the government to defend its property and rights. To many in the North, the torpor of federal activity was unacceptable. Northern newspapers, in the last days of the Buchanan administration, asked “have we a government?” One western paper denounced the state of their paralyzed government and the “paramount duty of the Federal Government to maintain its position” and “*manifest its intentions* of doing so.” Y.J. Young wrote Chase during the Fort Sumter crisis that if the government could not resupply and hold Sumter “I fear I shall be obliged to become a monarchist, or be in favor of a military despotism, that forceful thing.”²⁰

With the inauguration of Lincoln came new faith that the days of “infamy and weakness” on the part of the federal government were over and that the North now possessed an “a government of sufficient courage.” A subtle shift was occurring in Union nationalism as intensity of emotion focused on the federal government. In a letter to the *National Intelligencer*, one writer proclaimed that he was “wedded in body and soul, by a warm heartfelt devotion as well as by a strong sense of duty to the Government of which I seem to form a part.” Newspaper editors cried for the Republicans to “strengthen the government by every possible means—to urge its most extensive armament in its support.” Even the *Liberator*, the mouthpiece of Garrisonian abolitionists who generally

²⁰ David M. Potter, *The Impending Crisis, 1848-1861* (New York: Harper & Row, 1976), 519-522, 542; William W. Freehling, *The Road to Disunion*, 2 vols. (New York: Oxford University Press, 2007), 489, Unique among scholars, Freehling attempts to paint a more sympathetic picture of Buchanan by noting his order to send the *Star of the West* to resupply Fort Sumter. Jean H. Baker, *James Buchanan* (New York: Times Books, 2004), 127-143; *Milwaukee Daily Sentinel*, December 29, 1860; Horace Greely, “DO We Live Under a Government!,” *The Independent* 12 (November 29, 1860):1; *New York Herald*, December 29, 1860, April 6, 1861; *Philadelphia Inquirer*, January 30, 1861; *New York Daily Tribune*, February 28, 1861; “Have We a Government? *The Independent* 13 (April 11, 1861):4; *Milwaukee Daily Sentinel*, December 29, 1860; Y.J. Young to SPC, March 12, 1861, Chase Papers, LOC, reel 12.

rejected all government coercion, called up the memory of Jackson in 1832 and called for “hurrying up the government.” Lincoln and Congress did not disappoint, suspending *habeas corpus*, instituting a blockade of the Confederacy, and seizing Confederate property. The northern public it seemed embraced this new mood for federal action on all fronts. The *Boston Advertiser* lamented that if the Constitution was to be re-written in 1861 that “the general voice would be for a strong government. The advocates of a ‘high mounted’ government would not be so ill supported as they were in the federal convention.”²¹

The emergence of a Union nationalism that favored strong government recast legal tender as a financial and military panacea that would demonstrate this newfound strength. When the financial crisis emerged in December 1861, the press and public quickly linked legal tender and Union survival in the same vein as they had in the *habeas corpus* episode and the first Confiscation Act. The effect was that voices from the press and public supported legal tender with little concern for its constitutional and economic effects in the light of Union survival. A prominent Republican from Boston, George F. Morey, wrote that “if we can...live sixty or ninety days longer, I think we can live forever.” All that was needed was the Legal Tender bill to bridge the gap to the next offensive. Some even thought that legal tender would “do away with the dissatisfaction and despondency” created by the military failures of the fall and summer. Most

²¹ *North American and United States Gazette*, March 11, 1862; See *The Daily Cleveland Herald*, April 12, 1861; *Daily National Intelligencer*, April 23, 1861; *North American and United States Gazette*, April 20, 1861; See also *New York Herald*, April 25, 1861; *The Liberator* (Boston, MA), May 17, 1861; Harold Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York: Alfred A. Knop, 1973), 34-80, is still the classic statement of how the shock of war and unionism created a new view of the Constitution as “adequate” to the war; Mark Neely, *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (Chapel Hill: University of North Carolina Press, 2011), 29-61, 63-111, discusses in more depth the relationship between pre-war nationalism and Lincoln’s actions in 1861; *Boston Daily Advertiser*, March 11, 1861.

importantly, the *Times* gave a ringing support of the Legal Tender bill as proof of the strength of the federal union. It would, they thought, be supported by “all who desire to see the sovereign power of this Government asserted and exercised in every practical way through the present crisis of its own existence.” The *Independent* added “the country is prepared for it.” Legal tender, the paper said, will be welcomed by “all who believe the Federal authority a power for the general good of the whole people as well as the symbol of sovereignty and allegiance.” It was in this vein that Congress and Chase received numerous letters claiming popular support from the streets of New York to the streets of Cincinnati in support of the Legal Tender bill.²²

Despite the new atmosphere for vigorous action fostered by the war, the division of the bankers proved that elites within the Union could still cling to their old views of political economy and limited government, no matter the public outcry. LeGrand Lockwood, a prominent New York broker, wrote to Sherman that he knew his anti-legal tender views were not “popular” but correct “in the light of history and political economy.” It still needed to be proved that many in Congress, especially in the Senate, had been moved by the popular out cry for legal tender. Yet there was one last variable that could move Congress: fear. Fear of financial collapse and the ensuing breakdown of the Union war effort might compel many to act against their better intentions. T.W. Olcott, a banker from Buffalo, summed up this view when he wrote that legal tender was “*not a debatable question. The struggle is for life. The knife is at our throat. We must*

²² George F. Morey to Fessenden, February 8, 1862, Sherman Papers, LOC, vol.45; H.C. Townsend to Sherman, February 7, 1862, Sherman Papers, LOC, vol.45; *New York Times*, January 13, 1862; “Financial Items” *The Independent* 14 (January 9, 1862):8; Cincinnati Chamber of Commerce to Sherman, February 10, 1862, Sherman Papers, LOC, vol.46; H. Brandy to Sherman, February 12, 1862, Sherman Papers, LOC, vol.46; *New York Times*, February 7, 1862 and Henry H. Boody to Fessenden, February 8, 1862, Sherman Papers, LOC, vol.45.

strike with the most available weapon, and leave theory for a more convenient season.”

The new unionism, politics, economics and fear would provide the complicated web in which Congress would face the legal tender question.²³

A Problem of Policy

Spaulding’s statement, the incessant lobbying, and the attention of the press signaled a new dynamic in Union policy making. The old system of Chase setting the broad vision and directing talks with the bankers was now at an end. Back in July and August of 1861, Congress passed all of Chase’s recommendations. Chase even had enough political clout to foil Spaulding’s attempt to suspend the Independent Treasury Act. Yet following the suspension, public and private criticism of Chase’s abilities began to circulate and grow. Well into January, Chase became more estranged from the mainstream as he continued to hold out his national banking plan as the solution, despite clear opposition from the business community, state governments, and political hurdles required to design, pass and implement a massive reconfiguration of American banking. Furthermore, Lincoln’s voice and influence was nowhere to be found during the entire legal tender imbroglio. The suspension and the failure of Chase’s plan to finance the war passed power for crafting policy from the executive to the legislative branch in 1862.

Congress increasingly looked inward to envision, draft and implement policy.²⁴

²³ LeGrand Lockwood to Sherman, January 13, 1862, Sherman Papers, LOC, vol.44; T.W. Olcott to E.G. Spaulding, January 31, 1862, in Spaulding, *History of the Legal Tender Paper Money* (1875), 51.

²⁴ James Grey to Fessenden, January 23, 1862, Fessenden Papers, LOC reel 2; George Opdyke, “Mr. Opdyke on the Currency,” *New York Times*, February 2, 1862; Why was this so? One possible reason would be Lincoln’s Whig background that favored legislative supremacy over domestic economic policy. See David Donald, *Lincoln Reconsidered: Essays on the Civil War Era* (New York: Knopf, 1956), 133-147; David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1995), 331; Allan G. Bogue, *The Congressmen’s Civil War* (New York: Cambridge University Press, 1989), 31, 57-59, points out Lincoln’s strengths and limits in dealing with Congress; G.S. Boritt, *Lincoln and the Economics of the American Dream* (Memphis, Tenn: Memphis State University Press, 1978), 195-199, says nothing on the Legal Tender Act; Another compounding factor would be the illness and death of Lincoln’s son Willie in February of 1862. David

The second session of the 37th Congress is remembered as one of the great congresses in American history. Before they adjourned in March 1863, they would pass a slew of legislation that would affect such diverse topics as taxation, slavery, education, and the settling of the West. At the time, though, the press was less than enthused about the ability of Congress to meet the pressing financial crisis. The *New Hampshire Statesmen* lamented that “there is no Hamilton, nor Sully, nor Colbert in this Congress, but a work as great as that to which either of those statesmen addressed himself, is now presented for willing and skillful hands.” The election of 1860 and the departure of most of the southern delegations granted the Republicans clear control of both houses of Congress. Yet that fact would not assure the easy passage of the Legal Tender bill. The Republicans in Congress lacked any clear mechanism of party control. In the past, party caucuses and caucus chairmen exercised great power over directing legislation. During the Civil War the caucuses were poorly attended and had little effect on policy. In the House, the Speaker of the 37th Congress, Galusha Grow of Pennsylvania, was known to be an ineffectual leader. Power over policy mostly rested in the hands of committee chairmen and congeries of important leaders that could attract the votes of other members.²⁵

The members of the House and Senate Finance committees would bear most of this work. Henry Cooke remarked to Sherman that “You gentlemen of the ‘Finance,’ and

Donald, *Lincoln*, 336, reports that during the period of Willie’s sickness, Lincoln “was able to transact little business, and he seemed to stumble through his duties.”

²⁵ For overviews of the 37th Congresses economic policies see Curry, *Blueprint for Modern America*; Richardson, *Greatest Nation of the Earth*; *New Hampshire Statesman* (Concord, NH), January 11, 1862; In the House there were 106 Republicans, 42 Democrats and 28 Unionists. In the Senate there were 31 Republicans and 17 Democrats. Bouge, *The Congressman’s Civil War*, xiv; Bogue, *The Congressman’s Civil War*, 122-123. Allan G. Bogue, *The Earnest Men: Republicans of the Civil War Senate* (Ithaca, NY: Cornell University Press, 1981), 76-77; Bogue, *The Congressman’s Civil War*, 114, contrast with the brighter picture of Grow offered in Curry, *Blueprint for Modern America*, 26.

‘Ways and Means’ committees now have a splendid chance to establish a national financial policy that will carry the country through the existing crisis, and provide for its permanent prosperity when peace returns.” The provisions of the Constitution, requiring all money bills to originate in the House, placed the bulk of work for drafting a new policy on the Ways and Means. It was Spaulding and Hooper that emerged as the real architects of policy after the December suspension. Both men had experience in commercial finance, Spaulding as a Buffalo banker, and Hooper as a Boston importer. Hooper had even greater credentials, serving as chairman of the Committee on Banks in the Massachusetts legislature, and authoring a pamphlet and a book on monetary policy and banking regulation before the war.²⁶

After the initial committee meetings in which the Ways and Means divided on the Legal Tender bill, the legal tender issue entered a new critical phase. As a practical matter, legal tender emerged very quickly as Spaulding’s reaction to suspension. The government lacked funds; the banks would no longer lend money, so Spaulding proposed that the government start making their own money. Yet Spaulding knew that the bill faced great opposition. It only passed Ways and Means because one or two members who voted for the bill in committee wanted to see it get a fuller discussion on the floor of the House. In early January, the press was overflowing with letters and editorials on how to best manage the finances. The finance committees were absolutely inundated with letters

²⁶ John D. Martin to Sherman, January 17, 1862, Sherman Papers, LOC, vol.44; Henry Cooke to Sherman, January 27, 1862, Sherman Papers, LOC, vol.45; Edwin Merrick Dodd, *American Business Corporations until 1860: With Special Reference to Massachusetts* (Cambridge, MA: Harvard University Press, 1954), 286-287. Samuel Hooper, *Specie Currency: The True Interests of the People* (Boston: Bee Office, 1855); Samuel Hooper, *An Examination of the Theory and the Effects of Laws Regulating the Amount of Specie in Banks* (Boston: Little, Brown and Company, 1860). The *Times* commented that Hooper was a “Boston Merchant and manufacturer of large experience, and a political economist, who has devoted much time and written much upon the question of banking.” *New York Times*, February 5, 1862.

from bankers, merchants and political friends on how to handle this situation. Spaulding and Hooper would have to justify legal tender as a measure within a larger war-finance plan.²⁷

Taxation, of some sort, was on the lips of every politician and editor in early 1862. Back in 1861 Congress approved a direct tax on the states of \$20 million. Now, it was universally accepted by all factions in the legal tender debates, including all the members of the finance committees, that a more aggressive taxation policy would be required, not as a way to pay for the war, but as a means of maintaining the government's ability to borrow even more. Beyond this point, ideas diverged on the necessity of taxation *and* legal tender in conjunction. Old hard-money Democrats held the most extreme views offering taxation as a financial panacea that would solve all the government's fiscal problems. In short, they argued that the North was home to some of the richest resources in the world. They desired not just a "direct tax" which was a lump sum set by Congress and collected by the states—but a broad spectrum of excise taxes and taxes on incomes that would touch millions of Americans and liquefy their property into the cash necessary to support the war.²⁸

The peculiarity of a pro-tax movement in American politics was not lost on anyone at the time. Henry Jarvis Raymond, speaker of the house in the New York Assembly and founder of the *New York Times* noted that the general American attitude was "to depreciate taxation, to regard it is as an evil,—something to be shunned." As one New Hampshire newspaper put it, prior to the war "the nation hardly knew that the government cost a thing." Now, the call for taxes could be heard in every quarter.

²⁷ Spaulding, *History of the Legal Tender Paper Money* (1875), 16.

²⁸ Act of August 5, 1861, ch.45, 12 Stat. 294; *Boston Daily Advertiser*, January 24, 1862; *North American and United States Gazette*, January 21, 1862; *The World*, February 2, 1862.

Bankers, boards of trade, old Whigs and old Democrats alike cried out for Congress to tax the country. William Cullen Bryant put a patriotic gloss on taxation calling it “the same spirit which has prompted the flower of our young men to volunteer for the army makes those who remain at home willing to be taxed for the purpose of paying them their wages.” George L. Ward, president of a Boston manufacturing firm thought that “the whole country is ready—more than this, it is willing, even desirous, to be taxed, heavily taxed to furnish all needful means.” At one level, the taxation rhetoric was proof of how far the Civil War was warping American political culture. At another level, though, taxation underlined the sheer amount of fear that legal tender engendered among some in the North. Taxation was always offered in the context of decrying legal tender. It was in some ways a case of northerners preferring the devil of taxation they knew to the devil of legal tender, which no one had seen since the Revolution.²⁹

While ideologically attractive, Spaulding and Hooper, along with anyone familiar with the logistics of taxation, realized that it could never be the panacea that the country needed. Taxation requires a schedule of what to tax and a means of collecting that tax. The U.S. government had neither in 1862. While Spaulding pushed forward the Legal Tender bill in the House, Justin S. Morrill, head of the Ways and Means sub-committee on taxation, had to wade into a thicket of local interests that must have been overwhelming and mind numbing. Grumblings in Congress about the snail’s pace of

²⁹ *New York Times*, February 1, 1862; *New Hampshire Statesman*, January 11, 1862; *North American and United States Gazette*, January 21, 1862; Sherman presented the petitions of New Yorkers in support of taxation equal to the governments’ needs, *Congressional Globe*, 37th Cong., 2nd Sess., 333; Preston King submitted resolutions from the New York legislature and the Chamber of Commerce of New York asking for greater taxation. *Congressional Globe*, 37th Cong., 2nd Sess., 719; *Evening Post*, February 1, 1862, reprinted in Parke Godwin, *A Biography of William Cullen Bryant, with Extracts From His Private Correspondence*, 2 vols. (New York: D. Appleton and Company, 1883), 2:164; George L. Ward to Fessenden, January 23, 1862, Fessenden Papers, LOC, reel 2.

Morrill's committee were routine, but what few in Congress appreciated was the fact that Morrill had to negotiate the appropriate levels of taxation for numerous articles like molasses, whisky, hats and newspapers without upsetting every interest involved. More importantly, the new taxes would also require some machinery of federal administration to go out and actually collect these taxes. At the start of the Civil War the Treasury only had a small force of customs agents stationed at major ports. Some writers from the Midwest reminded members of Congress of another problem. With suspension in place, people would not have any legal tender (gold coins) with which to pay these new taxes. Theoretically, people would have to pay a premium to the banks to buy gold to simply pay the new tax. Taxation alone could not save the Union war effort in the winter of 1862.³⁰

Borrowing at the market rate seemed equally unpractical to the Ways and Means committee. No one was exactly sure what the value of government bonds would be in the current environment. The government was admittedly out of money and finding it increasingly difficult to produce the military victories that would reassure investors. George Opdyke thought that government bonds could lose as much as 70 cents on the dollar if issued in the current climate. Morris Ketchum, another New York banker, predicted that more bonds would create a "panic...which will sunder the Government powerless." There was another problem built into the idea of selling bonds without creating paper money. Since the banks were in suspension, it would require the

³⁰ *New York Times*, March 3, 1862; Horace Greely to Justin S. Morrill, March 18, 1862, Erasmus Plimpton to Justin S. Morrill, March 20, 1862, Justin S. Morrill Papers, Library of Congress, Washington, D.C. text-fiche, reel 5; Thomas Wosley, et.al. to Sherman, March, 1862, Sherman Papers, LOC, vol. 47, [perfume], S. Baker to Sherman, April 1, 1862, Sherman Papers, LOC, vol. 48 [sugar], John Zimmerman to Sherman, April 12, 1862, Sherman Papers, LOC, vol. 48 [wine]; See Paludan, *A People's Contest: The Union and Civil War, 1861-1865* (New York: Harper & Row, 1988), 118-122, for an overview of Morrill's tax package; *Cong. Globe*, 37th Cong., 2nd Sess., 459, this insight was explained by Alley on the floor.

government to take banknotes as payment for the loans, which would require the government to accept and effectively promote the paper money of the banks. Someone was going to lose in this situation. Grey directly told Fessenden that the government should take the loss and not the bankers. Facing the possibility of massive losses at best or a panic at worst, Spaulding and Hooper remained committed to legal tender as a solution.³¹

Nevertheless, the legal tender proposal was not a given before the bill came up for debate at the end of January. There was a general sense that Congress was venturing into unknown territory. After passage of the bill, it was difficult to know what would happen once the new federal paper money went into circulation, or if it would circulate at all. Legal tender paper money might have been a measure to compel payment in courts for debts, but there were any number of ways that it could be avoided or shunned in practical usage. Understanding this, Spaulding and Hooper situated the bill within a tri-partite plan that they hoped would soothe fears that the legal tenders might produce ruin in the country. The first leg, \$150 million in legal tender Treasury notes, would help Congress bridge the immediate gap caused by suspension and break up the frozen stream of commerce in the North. These notes were not meant to be permanent, but a wartime measure only. Next, they called for an equal amount of money to be raised by taxation, thus preventing inflation by soaking up excess money, and reassuring the government's creditors that it was committed to eventually paying its bills. As the *Herald* put it, "without this basis the super-structure would be like a castle built in the air." The last leg was not focused on war at all, but was a call for the passage of Chase's national banking

³¹ Morris Ketchum to Fessenden, January 30, 1862, Fessenden Papers, LOC, reel 2; J.C. Gray to Fessenden, January 4, 1862, Fessenden Papers, LOC, reel 2.

scheme. While not clear, this part of their plan might have been an olive branch to Chase. More plausible is the fact that Hooper, the political economist, believed that Congress had a unique opportunity to assert control over the problem of state banks and their welter of banknotes that had flooded the markets in the pre-war period.³²

Thus legal tender had a certain internal financial logic that seemed reasonable to Spaulding and Hooper as they prepared to bring their case to the House. Yet as the problem with the bankers, and the new rhetoric of taxation revealed, civil war and policy-making did not exist in a simple world where individuals acted out of motives of material gain and loss. There were intellectual and cultural barriers that the bill would have to overcome. The majority men who made up the 37th Congress were lawyers, thus the constitutional question that plagued the bill in committee would undoubtedly come up in debate. Moreover, every member of Congress held views about political economy and the nature of the market born in an era of negotiation, consent and credit. At both the level of law and visions of the market, the fight for legal tender faced serious legislative hurdles. Nevertheless, the fear of defeat and the ultimate objects of the war were breeding a culture within which the rules of constitutionalism and political economy could be bent and broken. It was a culture that could never accept the government bowing to the needs of the banks, and that converted legal tender into an act of strength, and not an act of desperation.³³

³² *Cong Globe*, 37th Cong., 2nd Sess., 524, speech of Spaulding on the need for taxes and legal tender combined; *New York Herald*, January 24, 1862; See Hooper's comments at *Cong. Globe*, 37th Cong., 2nd Sess., 616, on the goals of Chase's national banking plan.

³³ Bouge, *The Earnest Men*, 54, 26, noted that the war created "an atmosphere of recurrent crisis" that made "extreme proposals" attractive to even the most conservative members of Congress; Bouge, *The Congressmen's Civil War*, 14.

A Sabbath Made For Men

The government's financial position was the most pressing issue when Congress returned to session after the Christmas break. Nevertheless, the House would not start officially discussing the bill until January 28, 1862. Instead, Congress passed the time debating what Clement Vallandigham of Ohio dubbed "goose questions." These included such matters as the expulsion of Senator Jesse Bright, the franking privilege in Congress, and even military appropriation bills, which would be meaningless without the ways and means to fund them. Congressmen complained, and the press complained alike. A northern editorial fumed that "it is high time that Congress dropped the discussion of secondary matters and gave its earnest attention to the settlement of this paramount question of ways and means."³⁴

The delay in legislation seems to have stemmed from the politics of presenting the Legal Tender bill. It will be remembered that the bankers' conference in mid-January exposed the divisions between Chase and the majority of the Ways and Means committee. *The New York Times* blamed the delay on the banker's meetings with Chase. There might have been ongoing talks during this period that led Spaulding and Hooper to the tri-partite plan. New York Treasury officials John J. Cisco and Hiram Barney did not leave Washington until January 25, perhaps to place pressure on Chase. Spaulding, Hooper and Thaddeus Stevens (who was in charge of directing debate on the floor) must have thought it unwise to take the bill to the floor while Chase was still opposed. There was also some possibility that Ways and Means wanted to have a mature tax bill ready to

³⁴ *Congressional Globe*, 37th Cong., 2nd Sess., 345; See *Chicago Tribune*, January 7, 1862; *New Hampshire Statesman*, January 11, 1862; *Railway Times* January 22, 1862.

pass after the Legal Tender bill, as a means of reassuring the public. At least a few petitions reached Congress asking for reassurance that Congress would pass a new tax.³⁵

Morrill would not have the tax bill ready until March. In its place, Erastus Corning, a Democratic representative from New York sitting on the Ways and Means Committee, presented a Joint Resolution on January 15, 1862 declaring Congress' intention to pass a new tax bill as soon as possible. The resolution passed the House on the same day by a margin of 134 to 5 and in the Senate 39 to 1, a few days later. Fessenden expressed the perspective of the finance committees when he explained that the resolution could go far in buying them time and perhaps buoying the fragile confidence in the market. By late January, Spaulding and Hooper were ready to mount a defense of the Legal Tender bill. On January 22, 1862, Spaulding scrapped the old version his bill and proposed a new one, H.R. 240, which allowed Chase to borrow even more money.³⁶

Once begun, it would take well over a month for Congress to pass H.R. 240 at the end of February 1862, despite the clear message from the Treasury and the public that the bill needed to pass immediately. Modern students of these legislative debates have thrown up their hands at the hundreds of pages of commentary. Many have found it difficult to find a deeper meaning in these pages, aside from dutifully recounting their contents. Yet the debates themselves were a critical turning point in the history of federal power and policy. Congress faced the novelty of dealing with two different problems simultaneously. First, Congress would have to answer the question of if whether they had the legal power to exercise a power that did not exist in the Constitution. Second, they

³⁵ *New York Times* January 25, 1862; *Cong. Globe*, 37th Cong., 2nd Sess., 333, 719.

³⁶ Hammond, *Sovereignty and an Empty Purse*, 269; *Cong. Globe*, 37th Cong., 2nd Sess., 344-349, 376, 435.

would need to consider, even if it was legal, if it was a wise financial policy. In other words, Congress would have to act as policymaker and judge. The battle call of necessity would rule the day, but many of the themes and arguments begun in the winter of 1862 would continue on into the late 1860s and 1870s and beyond.³⁷

The constitutional question emerged as the major object of contention among members of Congress from the start. Many of the speakers in the House and the Senate spent either all or part of their time dealing with Congressional authority to make paper a legal tender. The reasons were several. Most Congressmen were lawyers by trade and understood public policy problems through this lens. More importantly, many in Congress and in the public were openly befuddled by the nature of the question. In an editorial attacking the act as unconstitutional, Gulian C. Verplanck confessed that all the all the great jurists and expounders of the Constitution had never been “called upon, by the circumstance of the time” to deal with the legal tender question directly. Jacob Merritt Howard said “the thing was so anomalous, so unusual to me, that I could scarcely entertain the idea, and I confess my mind struggled strongly against it.” Enemies of the act, like Albert Gallatin Riddle of Ohio, called it a “constitutional vagabond.” The reality was that Americans had a customary constitution and a written constitution. The legal and political culture of the nineteenth-century valued the forensic process of arguing about constitutional powers by reasoning from clauses and interpretations of the written

³⁷ Mitchell, *History of the Greenbacks*, 54, complained that Congress “multiplied words to little purpose.” Other scholars have not made much of these debates. See Ali Khan, “The Evolution of Money: A Story of Constitutional Nullification,” *University of Cincinnati Law Review* 67 (1999): 425; Ajit V. Pai, “Congress and the Constitution: The Legal Tender Act of 1862,” *Oregon Law Review* 77 (1998), 535-599; Curry, *Blueprint for Modern America*, 181-197; Richardson, *The Greatest Nation of the Earth*, 102, does see the debates as important in the Republicans disillusionment with the harmony of classes idea; Hammond, *Sovereignty and Empty Purse*, 227-228, also sees broad significance in the passage of the act, but not the ideas employed to get there.

Constitution. Yet a host of government powers existed as a matter of government practice and custom. In the legal tender debates both modes of constitutional understanding overlapped in the minds of legislators. The result was a vast sea of commentary trying to pin down and come to grips with this new power of government.³⁸

The very first constitutional defense of the act came from Spaulding, whose approach to the question of legal tender reflected the major themes of the wartime atmosphere. Spaulding carefully explained that financial necessity with an array of facts and figures and his conclusions that taxation and Chase's national banking would be too slow to react to the financial crisis. He then tapped into the nationalistic view of necessity by framing legal tender as essential to the survival of the Union itself. Wielding both strands of necessity, his constitutional argument simply capitalized on the fact that necessity is a category of constitutional law by way of the Necessary and Proper Clause. He indicated that legal tender was a necessary and proper policy, given the circumstances, to fulfill Congress's enumerated power to "raise and support armies," and to "provide and maintain a navy" under Art. I, Sec. 8. "This necessity," he declared, "will not be questioned by any loyal member on this floor."³⁹

This argument worked well with Spaulding's view of political economy. Throughout the crisis, Spaulding never believed in legal tender as a permanent policy. He made it very clear that once the war was over he would be the "first to advocate a speedy return to specie payments" and redeem the legal tender notes for gold and silver. By linking legal tender to the support of the Army and Navy, the constitutional backing for

³⁸ *The World*, February 7, 1862; *Congressional Globe*, 37th Cong., 2nd Sess., 796, 685.

³⁹ *Cong. Globe*, 37th Cong., 2nd Sess., 523, 525, to make his point Spaulding included tables that laid out the financial position of the government in relation to the real estate values of the country; U.S. Const. art.I, § 8; *Cong. Globe*, 37th Cong., 2nd Sess., 524.

the act would wither with the conclusion of hostilities, thus preventing any fears that they were opening up a Pandora's Box of irredeemable paper money in time of peace and time of war. Frederick A. Pike of Massachusetts agreed that Congress need not "fear that what we do will be used as a dangerous precedent, for the circumstances which form our justification must be duplicated before our action can be taken as an example of others."⁴⁰

Given the significance of linking the formal constitution to their policy, it is not surprising that proponents of legal tender attempted to locate other resting places for the legal tender power in the written Constitution, but with less persuasive effect. James McDougall of California attempted the novelty of using strict-constructionism against the strict-constructionist that claimed there was no express power of legal tender by using the coinage clause. To McDougall, the words empowering Congress to "coin money" did not refer to the stamping of metal tokens. Strictly speaking, McDougall explained "these two talismanic words, money and coin" meant any form of money in the modern world. McDougall's conversion of the Coinage Clause into a general money power found few adherents. Slightly more popular was John Bingham's use of the Commerce Clause. The Republican from Ohio found Daniel Webster's 1837 views on Congress's ability to create a currency (in the form of a national bank) under the Commerce Clause as conclusive on the legal tender question. Opponents easily disarmed Bingham's argument by pointing out the radical scope of the legal tender power. The common view of the era was that the Commerce Clause only touched "interstate" business. Webster could use this power back in 1837 because he envisioned BUS notes as a currency between regions, with local state banks providing the local currency. The Legal Tender bill would touch everyone, interstate transactions and intrastate transactions alike. It would be eighty years

⁴⁰ *Cong. Globe*, 37th Cong., 2nd Sess., 526, 658.

until the courts would recognize the ability of Congress to legislate on local economic affairs through the Commerce Clause.⁴¹

Union nationalism produced other, more blunt arguments for new national power. A strong strain of thought in favor of legal tender flowed directly from the arguments for a new wartime constitutionalism popular within the Lincoln Administration at that time. Under this view, the Federal Government possessed extraordinary powers as a result of the Civil War. Lincoln, using arguments first crafted by William Whiting, justified the suspension of *habeas corpus* and the blockade of the South as constitutional under virtue of his status as commander in chief. At the same time, Congress was developing its own version of war powers. Prior to legal tender Congress passed the 1st Confiscation Act and an act empowering the President to seize and control railroads and telegraphs across the country. Charles Sumner expressly placed Legal Tender in this lineage saying that it was a “kindred” policy to the suspension of *habeas corpus*, conscription and seizure of private property.⁴²

During the legal tender debates, the wartime constitutionalism argument found many adherents in Congress. Pike cited Lincoln’s justification for his extraordinary actions in the summer of 1861 that it is “better to assume powers, the exercise of which shall violate a portion of the Constitution” than to let the entire constitutional system fall. A related thesis forwarded by several Congressmen borrowed from the legal maxim *salus populi est suprema lex* (the people’s welfare is the greatest law). This concept, when used by the antebellum state legislatures and courts could justify the seizure and destruction of property without compensation. Pike said that the Civil War was analogous to his house

⁴¹ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 60; *Cong. Globe*, 37th Cong., 2nd Sess., 636-637; See *Register of Debates*, 25th Cong., 1st sess., 319; *Wickard v. Filburn* 317 U.S. 111 (1942).

⁴² Hyman, *A More Perfect Union*, 168, 193-194; *Cong. Globe*, 37th Cong., 2nd Sess., 799.

catching on fire and the firemen having sanction to tear down his house or adjacent homes to save the community. Other Congressmen simply breathed fire. Kellogg viewed legal tender as a weapon and as he saw it “Sir, we must give to this Government arms of iron and muscles of steel. We must think as with fire and strike as with spears.” James H. Campbell, who was also a major in the Twenty-Fifth Regiment of Pennsylvania Infantry, denounced all constitutional “sophistry” and announced his intent to vote for legal tender based on the principle that anything that was necessary to the survival of the Union was constitutional. For some Republicans, there was a great impatience with the idea that constitutionalism was a limit on their policy options. As one commentator put it “The Sabbath was made for man, and not the man for the Sabbath.”⁴³

Tucked within these arguments was another vital constitutional distinction pioneered during the debates concerning separation of powers, one that would bear fruit long after the war when the Supreme Court reviewed the constitutionality of legal tender. Several representatives and senators rejected the notion that their decision was up for review by the Supreme Court. They fully embraced John Marshall’s decision in *McCulloch v. Maryland* that they alone were the best judges of the “necessity” in the Necessary and Proper clause. Stevens explained that “if Congress should decide this measure be necessary to a granted power, no department of the Government can re-judge it.” In effect, Stevens told Congress, the final vote on the Legal Tender bill would be the last and only review of the subject’s constitutionality.⁴⁴

⁴³ *Congressional Globe*, 37th Cong., 2nd Sess., 657, 679, 686; William J. Novak, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), examines the power of this concept in American governance.

⁴⁴ *Cong. Globe*, 37th Cong., 2nd Sess., 688.

The constitutional argument against legal tender cohered together fairly well across the opposition made up of both Republicans and Democrats. George S. Pendleton of Ohio, one of the leading Democrats in the Civil War Congress, presented the fullest version of that view on the second day of debates. In classic strict-constructionist style, Pendleton pointed out that the Federal Government had no expressly granted power to make paper a tender, and tried to put this power firmly out of the reach of the Necessary and Proper clause by rhetorically asking how a great power “which proposes to disturb vested rights in such an immense extent” could be simply inferred from the other enumerated powers. He congratulated Spaulding on not trying to twist and turn the Coinage and Commerce clauses to his ends but made the rather weak argument that Spaulding failed to prove the relationship between legal tender paper money and the support of the Army and Navy.⁴⁵

Historians have long noted both modes of constitutionalism when discussing Civil War policy. In essence, though, both these descriptions are still bound to conceiving of Union constitutionalism as bound to the text, with wartime arguments merely a temporary exemption, or in some cases derived from clauses in the Constitution. This however was not the only grounds for sources of national power, or even limitations on that power for legal tender. The nature of monetary powers in America would lead both factions to probe the outer limits of American constitutionalism.

Spaulding’s second major argument left the boundaries of the textual Constitution for the ether of Union sovereignty. The war, he pronounced, required Congress to “bring into exercise all the sovereign powers of the Government to sustain itself.” The power to make paper a legal tender, he posited, was an incident of that sovereignty. Spaulding

⁴⁵ *Cong. Globe*, 37th Cong., 2nd Sess., 635, 550.

reasoned that money, even gold and silver, is not inherently valuable without the stamp of a government authority. Moreover, he analogized that the U.S. must hold this power because the British and “other Governments of Europe have exercised the same high prerogative whenever necessary to preserve their existence.” The implication being, that the United States as a sovereign nation inherently possessed this power. During the legal tender debates, Harrison Blake, an Ohio Republican, theorized that many of the government’s powers over the territories arose from the nature of “political society” and not the formal constitution. Thus “to make Treasury notes a legal tender is but an exercise of the sovereign power of the nation.” This style of argument was not unheard of in American constitutionalism. James Wilson and Alexander Hamilton employed similar logic in defending the constitutionality of a national bank. Yet after Hamilton, even the most nationalistic of Whigs found their springs of national power within the text of the Constitution itself. The resurrection of the inherent sovereign powers argument was a product of the new Union nationalism. Moreover, this argument if pursued to its logical ends could possibly allow Congress to justify peacetime paper money.⁴⁶

It was Spaulding’s sovereignty argument that incensed Pendleton and the opposition the most. John W. Crisfield, a Maryland Unionist, exclaimed “Congress is not sovereign. It has no inherent power.” Pendleton took a standard view of American federalism of the time that neither the states nor national government were fully “sovereign.” To the rest of the world, the national government was the face of sovereignty. Yet within the United States, that government could only exercise certain powers, with the remainder left to the states. Of course, legal tender was denied to the states. Pendleton took the metaphysical position that the power existed in a sort of

⁴⁶ *Cong. Globe*, 37th Cong., 2nd Sess., 524, 525, 686.

constitutional purgatory. He explained that at the time of the framing, the power was never transferred to the federal government from the people and thus resided within the ether of popular sovereignty by virtue of the Ninth Amendment “beyond the power of any government to affect.” Pendleton utilized the history of the founding to shore up his theory of national sovereignty by citing quotations from Madison’s notes on the Constitutional Convention to support his claim that the Framers never intended for the government to have the tender power.⁴⁷

Strict construction, though, was not without its own serious logical inconsistencies that only further highlighted the weakness of taking a textual approach to the question of Congress’s monetary powers. Bingham caused a serious stir among the opposition when he observed that there was no textual support for the claim that Congress could only make gold and silver a tender. In fact, the tender power was completely absent from the coinage clause. What, he asked, granted Congress authority to declare gold and silver coin a tender in the numerous coinage acts in the previous decades? The answer was custom, and both sides would use the raw material of prior tradition to construct and articulate new views of American constitutionalism in 1862.⁴⁸

The supporters of legal tender acknowledged that there was a host of powers that did not find their origin in the Constitution itself and that most of the federal government’s powers were a result of custom and usage. The organization of every executive department and a hundred other details of the federal government were not enumerated in the Constitution. To achieve that “would require a volume larger than the *Pandects of Justinian* or the *Code of Napoleon* to make such enumeration” exclaimed

⁴⁷ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 48; *Congressional Globe*, 37th Cong., 2nd Sess., 550.

⁴⁸ *Cong. Globe*, 37th Cong., 2nd Sess., 637.

Stevens. Alley added that crisis and circumstance were constantly modifying the constitutional order. Different circumstances compelled Jefferson and Madison to borrow from the “Hamiltonian School” view of the government authority when they sanctioned the Louisiana Purchase and the creation of a Second Bank of the United States, respectively.⁴⁹

The single best example of this customary constitution was the very Treasury notes that Congress was arguing about, and that almost everyone in Congress and in the northern public accepted without debate. At that very moment, Morrill, Vallindigham and others within the opposition were offering either substitutes or amendments to the Legal Tender bill that would strip the notes of their legal tender feature. Thus it was never up for debate in 1862 if the government could provide a currency, the only question was their status as a tender. Pendleton had made a brief statement that he believed all federal currency was unconstitutional, legal tender or not, but he later backed away from this position. Only Bryant publicly stated that he believed all Treasury notes were unconstitutional in the pages of the *Evening Post*.⁵⁰

A chorus of other senators and congressmen now used this tradition to justify a new departure in federal policy and new expansion of national power in wartime. Edwards asked the opposition where was the power to make Treasury notes, or bills of credit, in the Constitution? “The power to emit bills of credit when the necessity for its exercise arose in the war of 1812, found its recognition as a constitutional power, and has been acted upon at various periods without question.” Charles Sumner was more generous than Edwards. Even then if there were some lingering doubts after the War of

⁴⁹ *Cong. Globe*, 37th Cong., 2nd Sess., 687, 659.

⁵⁰ *Cong. Globe*, 37th Cong., 2nd Sess., 632, 693, Appendix, 47; *Cong. Globe*, 37th Cong., 2nd Sess., 551, 636; Goodwin, *A Biography of Bryant*, 2:171.

1812, Congressional policy in 1837, the Mexican American War and even as recently as last summer made the notes “an unquestioned practice, sanctioned by successive Congresses.” They too, offered a different interpretation of the framing moment that stressed while the delegates voted against the “emit bills” clause, this did not necessarily mean that the government was stripped of a power to create paper money. Howe, echoing the logic of Gorham so many decades before, that this omission prevented paper money from being “one of the ordinary powers of the Government, and the question of its exercise would be one of expedience” in the hands of Congress.⁵¹

Proving to their satisfaction that Treasury notes were an unassailable power of Congress, the legal tender faction needed to show how the power to issue credit as money carried with it the power to compel and force payment. History proved to be a critical tool. Sumner provided the most careful analysis of the question after a fair amount of hand wringing. He admitted that he was a hard-money man; as a matter of pure policy, he doubted the expediency of legal tender. That doubt did not extend to the constitutional basis for legal tender. To his mind, the power to issue bills of credit, Treasury notes, carried with it the power to make them a tender because of custom and usage “from time immemorial the two have gone together, one the incident of the other, and unless expressly severed, they naturally go together.” To prove this he recounted the long history of colonial bills of credit and how legislatures sometimes did or did not make their notes a tender as they saw fit. He made much of the fact that that Parliament went out of their way to isolate legal tender in the Currency Acts, which attested to “the customary association between these two ideas.” The framers, he posited, knew this history better than anyone yet they declined to expressly prohibit either federal bills of

⁵¹ *Cong. Globe*, 37th Cong., 2nd Sess., 684, 797; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 54.

credit or legal tender. Sumner found this silence “irresistible” and when the silence was “practically supplied by Congress” with the creation of the first Treasury notes it brought along with it an inherent option to make them tender. Other commentators simply reasoned that even if you justified Treasury notes as an act of borrowing, the Borrowing clause did not prohibit the government from taking certain steps to maintain their value by making them a tender. Either way, the Treasury notes were a constitutional Trojan horse providing the justification for exactly the kind of paper money that people like Thomas Hart Benton feared all along. Collamer lamented, “the time has come however, when perhaps the memory of those things has passed away, and now it is attempted.”⁵²

The old guard attempted to distinguish the old notes from the new using all the classic canons of Treasury note practice developed since the war of 1812. Collamer defended Treasury notes as an act of borrowing that was only a tender to the government and always optional on the part of the holder. Vallandigham sounded the Jacksonian view that Treasury notes were never “fitted to run or pass as money” and that they in no way served as a substitute for coin. Riddle, however, realized the weakness in holding up distinctions based on nothing but legislative custom. If you accepted, as the supporters had, that the effect of the silence on bills of credit in the Constitution left the entire matter in congressional hands, the only real barrier was a shared belief in Congress that no one should transcend that line. Old Jacksonians could talk about the notes being an act of borrowing all they wanted, but Sherman countered that everyone in the country had long looked at these notes practically as money. Sherman pounced on these arguments, saying that if these legislators consented to issuing notes (which they had and currently were doing) “especially to issue a note payable to the bearer without interest” the constitutional

⁵² *Cong. Globe*, 37th Cong., 2nd Sess., 797, 796, 679, 769.

question of the government's power to issue paper money was moot. Prior to this point, congressional discretion was held back by a cultural abhorrence of paper money and government compulsion in the market. Yet a growing group of Republicans thought that the circumstances warranted altering the rules of federal emergency finance. In this light, the mere existence of a government currency for decades, Riddle said, "gives to those who contend for the main proposition a serious advantage."⁵³

If government currency in times of emergency was a legislative custom, the opposition harnessed the other side of the old Treasury note custom in their attack on the Legal Tender bill. The essential problem with legal tender, said Pendleton, was that it upset thousands of contracts made for "dollars" which hitherto meant gold and silver coin. Moreover, it altered the power of every judgment and decree by a court to pay damages. But at the core was the problem that legal tender used government power to exempt debtors from the very terms of a contract that they agreed to. It was a cheat and a dodge that Pendleton said shocked the minds of a generation "so thoroughly imbued with the idea of the sanctity of contracts." By this, Pendleton meant the widespread American cultural norm against the idea that "the settled expectations of contracting parties should be upset by retrospective legislation." This idea was trumpeted by Democrats and Whigs alike and stood at the heart of John Marshall's use of the ban on state powers to modify contracts in Art I, Sec. 10 of the Constitution. But the bar on modifying contracts only applied to the states in the Constitution, unless one counted the due process clause in the

⁵³ *Cong. Globe*, 37th Cong., 2nd Sess., 767; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 43; *Cong. Globe*, 37th Cong., 2nd Sess., 790, 685.

Fifth Amendment, or the ban on ex post facto laws, neither of which had been applied to the area of federal power over contracts.⁵⁴

To the contrary, Bingham and several other Republicans pointed to the bankruptcy clause as a proof of Congress's power to modify contracts. More importantly, as it applied to contracts for money, Bingham and others noted that the government had been doing this for quite some time when they adjusted the exact meaning of the word "dollar" with several modifications of the amount of gold or silver in American coins over the decades. The opposition had perhaps less textual support for their contractual claim than the pro-legal tender side. But it was a fact that generations of Americans believed that it was a "the sanctity of the obligation of contracts" was one of the "beneficent maxims of constitutional law." Cowan feared that legal tender might lead to government interference in contracts for real estate and property. This, he said, went against the basic role of governments to "make men stand upon their contracts" and not help them break them. Riddle, in a strange departure for a strict-constructionist Democrat held that "its exercise violates the whole spirit of the Constitution." Many years later, Chase, now a chief justice, would wield this very same "spirit" idea to declare legal tender notes unconstitutional in the case *Hepburn v. Griswold*.⁵⁵

What No Man Can Control

The line separating issues of political economy and policy from constitutional law and constitutionalism was ever so thin in the course of the debates over legal tender.

Much of what informed the "spirit" argument was rooted in ideas about the proper

⁵⁴ *Cong. Globe*, 37th Cong., 2nd Sess., 550; On the ideal of contracts in public culture see Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839-1865* (Chapel Hill: University of North Carolina Press, 2001), 30; *Cong. Globe*, 37th Cong., 2nd Sess., 688.

⁵⁵ *Cong. Globe*, 37th Cong., 2nd Sess., 550; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 49; *Hepburn v. Griswold* 75 U.S. 603 (1870).

relationship between the government and people's rights to "truck, barter and trade." Yet even after all the rhetoric about sovereignty and legislative discretion, many within Congress doubted that they could control these "paper devils" once they were introduced into the market. Critics added that perhaps the most important reason that the power was held back in the Constitution was because the entire history of modern finance proved to the framers that government could not properly manage a supply of paper money. Beside the cultural attachment to the freedom to contract principle, defenders of legal tender would need to overcome the very strong belief that money was a product of nature and not a product of human imagination that could be manipulated and controlled by the whim of kings, parliaments or bankers. If Congress attempted to tamper with the delicate balance of the free market they would cause economic, moral and political ruin. As one businessman cried "this forcing process is wrong in every way—it is dishonest in fact, unsound financially."⁵⁶

The opposition, like the opposition on constitutional grounds, brought together Democrats and Republicans. The reason being that legal tender was just as much an anomaly within the political economy of the time as it was in constitutional thought. Both Whigs and Democrats shared a consensus that gold and silver served as the only possible basis for the monetary system. Morrill, an old Maine Whig himself, explained that in the days of Jackson and Webster, the only thing that separated the parties on political economy was the whiggish belief that the economy could benefit from a mixed-currency

⁵⁶ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 44; George L. Ward to Fessenden, January 23, 1862, Fessenden Papers, LOC, reel 2.

of credit and coin. The Whigs were for credit based on solid specie, Morrill explained, and they never supported the “alchemical transmutation of paper into gold and silver.”⁵⁷

To the opposition, and many of the supporters of the act, money and the rules of the market was a product of nature itself. Gold and silver carried an “inherent” value within that natural system that made it the money of the entire world. Riddle went so far to portray gold and silver itself as sovereign, and not the governments that minted them. “It is a singular fact that the various national standards thus made up, as applied to a given piece of these metals of known weight and fineness, are nearly identical. Below this standard real money never falls.” Governments never controlled this system; they could only harness its power when they obeyed the rules of political economy. He added “a scheme of national finance, to be successful, must be so adjusted that its workings will harmonize and not conflict with these laws.” One of the basic tenets of this view was that credit could only work when a holder could reliably convert their paper into coin, and even then its value was still a matter of negotiation between parties. Treasury notes had worked within this worldview because they passed from holder on “its *own merits*, not by virtue of the law” as a kind of investment. All the policies that came before, the Bank of the United States, Treasury notes, even state banknotes, were superior to legal tender paper money because they worked with rather than against “the specie standard according to our old notions of gold and silver.” Collamer indicated that the notes in the Legal Tender bill stood for a new proposition that money would be “payable by coercion and receivable by force by all persons to whom the nation is indebted.”⁵⁸

⁵⁷ *Cong. Globe*, 37th Cong., 2nd Sess., 630.

⁵⁸ *Cong. Globe*, 37th Cong., 2nd Sess., 685, 631; George L. Ward to Fessenden, January 23, 1862, Fessenden Papers, LOC, reel 2; *Cong. Globe*, 37th Cong., 2nd Sess., 664, 767.

The opposition fully doubted the power of the government to declare a dollar a dollar. Lovejoy compared legal tender to a flight of theological faith. Legal tender, he said, had “the same foundation as the old theological dogma—believe that you eat the flesh of Christ in the wafer, and you eat it. Believe that this piece of paper is a five dollar gold piece, and it is a five dollar gold piece.” The people would never believe it, and they would do everything in their power to avoid and subvert the law. Commentators began to speculate on the many ways that this might take place. The New York broker, Lockwood, told Sherman that merchants would simply start charging two prices, one for gold and one for legal tender notes. Opponents of the bill also highlighted that contracting parties could simply work around the Legal Tender Act by making contracts for a certain weight in gold and not “dollars” generally, something that people like Bingham and Stevens admitted they were powerless to stop.⁵⁹

The market would not just ignore legal tender; the notes could fundamentally disturb the system and inculcate financial ruin. Flooding the market with paper money would naturally cause inflation of prices across the country, inflation that Fessenden noted would hurt the wage laborers whose earnings would most likely not catch up with the rise in the price of food or rent. Congressmen painted dramatic pictures of laborers who worked hard to save their money in a savings bank, only to find that their life savings was now replaced with a paper currency worth only a fraction of the value. A common critique was that the law would inculcate bad morals in the people. The government would encourage Americans to speculate and break their promises. It was, the opposition posited, as if the US government was announcing to the world that it “assisted me to break private contracts.” Conkling, Vallandigham, Morrill and others

⁵⁹ *Cong. Globe*, 37th Cong., 2nd Sess., 691, 684, 792, 639.

thought that debtors would band together against the smaller creditor class to control the government and once they did “the doors of the temple of paper money would not soon again be closed” and the whole country would become “debauched.” Or, Vallandigham believed, it was the opening salvo in the death of American republic through the creation of an enormous debt that could never be paid off and that would “subjugate the States and the people perpetually to the Federal government.”⁶⁰

Hyperbole was a keystone of Vallandigham rhetoric but this was not just idle speculation in the minds of these speakers. Each utilized the history of modern public finance to prove the general maxim that “there never was an effort by legislation to make paper pass as money that did not produce a disastrous depreciation.” Speakers cited the examples of Russia under Catherine the Great, and in their own time, the policies of the Austrian and Ottoman empires. The most popular reference point was the French Republic, which Cowan darkly noted, resulted in “an imperial despotism” under Napoleon. The historical argument underlined the classical conservative reaction of many in Congress that the laws of nature, as proved through history made extremely clear: legal tender paper money would not work and it would create even greater problems. The pleas of the opposition were filled with images of bottomless “chasms” and “gulfs” from which, they feared, the country could never recover if the Legal Tender bill received enough votes.⁶¹

Nevertheless, some of the more adventurous thinkers among the supporters found themselves arguing for the proposition that money could not have any value without the

⁶⁰ *Cong. Globe*, 37th Cong., 2nd Sess., 766, 635, 770, 631; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 45.

⁶¹ *Cong. Globe*, 37th Cong., 2nd Sess., 794, 770, 796, 803, 793; For more references to the French Revolution see *Cong. Globe*, 37th Cong., 2nd Sess., 656, 770, 793, 798, Appendix, 55; *Cong. Globe*, 37th Cong., 2nd sess., 691, 793, Appendix, 49.

power of government behind it. Alley's first speech on legal tender, which introduced the topic to Congress, essentially sought to use history to convince his peers that governments could control and regulate a paper currency. "Strange as it may appear," he said, "greater stability and less fluctuation" occurred with the introduction of a mixed currency of coin and paper in the world. Alley and many others held up the example of Britain during the Napoleonic Wars, who successfully made the notes of the Bank of England a quasi-legal tender for several years, as proof that the system could work with the proper measures. Opdyke wrote in the *New York Times* that "our people have been frightened at Government paper money" by the history of other governments and the Revolution. But he said the problem was "the abuse of the system, not its use."⁶²

The supporters of the bill charged that dichotomy between gold and paper was not the real question. Legal tender represented a divide between the interests of the government and the interests of the bankers. With the war and suspension in place, the people would be forced to use the notes of banks that would not pay out coin. Seizing the general malcontent in the public with the banks at the moment, several speakers said that given those choices they would prefer government paper by all means. Upon close examination, many proclaimed the inferiority of bank paper, and trumpeted how a form of money created by and for the people was superior in every respect to the banks. Howe thought that the new notes would not depreciate because their value was "equivalent to a note signed by every individual in the United States and by all their posterity." A small band of petitioners from Perry County, Pennsylvania wrote Congress that they did not need to worry about depreciation, as "the patriotism of our people will sustain the policy." Even the old Whig Spaulding sounded almost Jacksonian when he asked why the

⁶² *Cong. Globe*, 37th Cong., 2nd Sess., 458, 525-526, 689, 799; *New York Times*, February 2, 1862.

United States government “should go into Wall street, State Street, Chestnut Street, or any other street begging for money? Their money is not as secure as Government money.” Thoughts in this vein were just the starting outlines of the view of legal tender as “the people’s money,” that would eventually culminate in the movement for a permanent currency of legal tenders in the late 1860s and 70s.⁶³

This position, however, only existed at the fringes of the larger conversation. The overwhelming majority of those who defended the bill did not share the view of John Maynard Keynes in the twentieth century that governments should permanently manage the currency of their people. Their position, in the light of Britain’s experience with legal tender, was best put by Sumner who said, “we must be content with the best we can command.” Enthusiasm was not rampant among the ranks of the bill’s supporters. Howe said that he did not vote for the bill because he saw the millions of government money as “national blessings,” rather they were “medicines, and harsh ones. But when demanded for the salvation of a State they should be prescribed without hesitation and to be taken without grimace.” Many of the voices who spoke in favor of legal tender added that in calculating their support of the act they kept in mind that they believed the war would be very short and they thought that the tax bill coming out of Morrill’s sub-committee would be equal to the task of stabilizing the value of the notes. Once victory was accomplished

⁶³ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 53; “From a number of highly respectable citizens of Perry Co. Pa...,” February 7, 1862, File HR 37A-G.20.2, RG 233, 37th Congress, Records of the Ways and Means Committee, NARA I; *Cong. Globe*, 37th Cong., 2nd Sess., 526; See Irwin Unger, *The Greenback Era: A Social and Political History of American Finance, 1865-1879* (Princeton: Princeton University Press, 1964), 41-119; David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862-1872* (New York: Knopf, 1967), 425-447.

it would only be a matter of time before the notes and bonds would be redeemed and “coin is again recognized as the legal currency.”⁶⁴

Voting with a Mouth Full of Ash

When the measure finally came down for a vote, Republicans overwhelmingly swallowed the harsh medicine of legal tender. In both houses, the first measure to come up for a vote was not Spaulding’s bill, but a substitute or amendment that would have stripped the Treasury notes of their legal tender power. The substitute in the House failed 95 to 55. The final bill passed 93 yeas to 59 nays. In both cases over 80% of Republicans and Democrats voted with their party. When the bill passed the House on February 6, the Democratic *World* gave up hope that the Republican-controlled Senate would reject the bill. In reality, the bill faced much more serious Republican opposition in the Senate. A substitute measure offered by Collamer failed by a much smaller margin of 22 to 17. Seven Republican senators voted to repeal the legal tender act, including important leaders like Preston King and Fessenden who as the chairman of the Finance committee introduced the bill on the floor for debate. Fessenden, especially, was unwilling to take such a drastic step and confessed that he was not convinced of the necessity of the bill. But once the substitute failed, many Senators could see the political tide changing and switched their votes on the final bill or abstained. The bill finally passed the Senate 30 to 7, now with the support of half of the Democratic senators.⁶⁵

The final roll-call votes, which provided greater majorities for the bill than expected, are proof of the level of anxiety inside and outside Congress over what would happen if legal tender would not pass. January turned into February, many in the North

⁶⁴ *Cong. Globe*, 37th Cong., 2nd Sess., 799; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 55.

⁶⁵ *Cong. Globe*, 37th Cong., 2nd Sess., 695; *The World*, February 7, 1862; *Cong. Globe*, 37th Cong., 2nd Sess., 800.

feared a panic, or a collapse of the Union war effort if legal tender, the only policy that would have near-immediate results, failed to pass. Fessenden wrote that he was “beset with letters and telegrams” in support of the act. Personally, he failed to believe a panic would come, but doubt weighed heavily on him. In a moment of despair he hoped “that some kind of spirit would only lift the curtain and tell me what I ought to do.” In what Bryant called “a season of discouragement,” people were quickly changing opinions. In New York City, “men of the New York Democracy” like Barney, Cisco and Opdyke abandoned their hard money proclivities in favor of legal tender as a wartime measure. As the debates dragged on in Congress, even several bankers changed their positions as they fretfully wondered what would happen if the government did nothing. Grey, who wrote Fessenden a letter ten days before declaiming the policy, now believed that the bill must pass, despite his moral and financial beliefs to the contrary. He ended his letter “truly and anxiously yours.” Henry F. Boody wrote Sherman that opinions had differed wildly in New York but now a majority was “satisfied that this is the least of several evils which threaten.”⁶⁶

Perhaps no single person better summed up the effects of this financial pressure than Chase. Sherman called Chase the last man who would abandon his beliefs for the policy of an irredeemable paper currency. Chase silently resisted legal tender for most of January, to such a point that the opposition in Congress tried to embarrass Spaulding by asking them for a formal opinion by the Secretary. But by late January, Chase must have begun to see no other way out. Proponents of the bill long argued that without the legal

⁶⁶ Francis Fessenden, *Life and Public Services of William Pitt Fessenden*, 2 vols. (Boston: Houghton, Mifflin and Company, 1907), 2:194.; Goodwin, *A Biography of Bryant*, 2:170; J.C. Gray to Fessenden, February 10, 1862, Fessenden Papers, LOC, reel 2. Contrast with J.C. Gray to Fessenden, January 23, 1862, Fessenden papers, LOC, reel 2; Henry F. Boody to Sherman, February 8, 1862, vol.45, Sherman Papers, LOC.

tender clause, bankers and contractors would refuse government currency. Theory became reality as he increasingly received reports from assistant treasury secretaries that banks were refusing to take the demand notes as deposits. Silas M. Stilwell, a New York lawyer and politician, who had been advising Chase at the Treasury, claimed to see Chase breakdown under the pressure and exclaim, “I believe it has been done to make me do an unconstitutional act.” He finally relented when he wrote a letter to Thaddeus Stevens, which was read on the floor of the House, registering his support for the bill in spite of his “great aversion” to legal tender paper money. He explained that only the impossibility of paying coin “in consequence of the large expenditure entailed by the war, and the suspension of the banks” pushed him to his new position. In what must have been a painful act of explanation, Chase wrote Bryant that while no one regretted legal tender more than him, he felt it was his duty to do whatever it took to defend the safety of the country that pushed him to this new position. Once converted, Chase became an active partisan for the cause and repeatedly placed pressure on Congress to wrap up debate quickly and pass the bill so that he could start paying contractors and troops. By the end of 1862 he was working on a plan to have the government issue fractional paper notes, all worth under a dollar, to replace the small change of the country. When Gideon Welles reacted with horror to the idea in a cabinet meeting, Chase apparently replied that Welles “belonged to the race of hard-money men, whose ideas were not exactly adapted to these times.”⁶⁷

⁶⁷ *Cong. Globe*, 37th Cong., 2nd Sess., 789, 514; Jay Cooke to SPC, January 31, 1862, Niven, ed., *Papers of Chase*, reel 19; Stilwell, *A Private History on the National Banking Law and System*, 5; SPC to Thaddeus Stevens, January 29, 1862, File HR 37A-E20, RG 233, 37th Congress, Records of the Ways and Means Committee, NARA I; *Cong. Globe*, 37th Cong., 2nd Sess., 618; SPC to William Cullen Bryant, February 4, 1862, Niven, ed., *Papers of Chase*, reel 19; Gideon Welles, *Diary of Gideon Welles, Secretary of the Navy under Lincoln and Johnson*, 3 vols., (Boston: Houghton Mifflin Company, 1911), 1:168.

Republicans echoed Chase's sentiments and made sure to put in the record that they were voting against their better judgment. Doolittle, an old Jacksonian who personally thought the notes were unconstitutional, said that none of that mattered in the face of a "gigantic war." He regretted it "deeply regret it. Words can hardly express that regret." Sumner, who harbored hard-money tendencies and "reluctantly painfully" consented to the act, said that it was a "remedy which at another moment you would reject." McDougall said that he felt compelled by the cold reality of soldiers without pay in places like St. Louis and Cairo, Illinois. There was more than a touch of politics involved, as Senator Latham of California and Henry Anthony, both changed their votes after the failure of the anti-legal tender substitute because they did not want to be on record as opposing a necessary government measure. Then there were votes that have no clear explanation. Riddle, who denounced the bill in a speech in the House, silently avoided the anti-legal tender substitute and voted for the bill in the final House vote. A year later, Elija Ward, a Democratic congressman from New York who voted against the act, summed up the anxiety in Congress and complimented the Republicans when he said of the legal tender vote, "I know of no greater trial for a statesmen or legislator than this—to be compelled to choose between two measures when his judgment condemns them both."⁶⁸

Many voices in Congress took solace in the fact that this \$150 million in proposed legal tender would be the only issue of the war, which they thought would be quickly

⁶⁸ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 56; *Cong. Globe*, 37th Cong., 2nd Sess., 800; *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 58; *Cong. Globe*, 37th Cong., 2nd Sess., 804; One possible explanation in the case of Riddle is increased pressure from Chase. Chase wrote John A. Bingham to circulate a letter to the other members of the Ohio delegation in the House stressing that the condition of the Treasury was as bad as supporters of the bill purported it to be. SPC to John A. Bingham, February 6, 1862, Niven., ed., Papers of Chase, reel 19; *Cong. Globe*, 37th Cong., 3rd Sess., 335.

concluded after the spring offensive. Along with these comforting thoughts, Senators and Congressmen rejoiced that they were not “the judges of last resort.” Rather than embrace legislative supremacy, as Stevens and Spaulding had suggested, even supporters of the bill looked forward to a possible Supreme Court case to decide the question of the bill’s constitutionality. The situation was perhaps ideal for some uncomfortable Republicans who could vote for the act and support the war, but hope to have the policy voided by the Supreme Court when the war was finally over. Howe said that he voted for the act despite his inclinations “because our decision of the question is not final. It may be reviewed by the judicial tribunals, especially if we affirm the power.”⁶⁹

Of more immediate comfort were a series of “safeguards” added to the bill in the Senate that would preserve some of the traditional tenets of political economy that legal tender paper money rejected. The bill passed by the House simply authorized Chase to issue \$150 million in legal tender notes that would be good for all debts public and private. When the bill went to Fessenden’s finance committee, the Senate added three new features. First, the Treasury would pay interest on U.S. bonds in coin only. Because, under the proposed House bill, a person with a certain amount of legal tender notes could convert them into bonds, the Senate was offering a means, albeit restrictive and convoluted, to some sort of gold standard. The second feature was a provision that allowed holders of legal tender notes to deposit them in a sub-treasury and for which the government would pay a set rate of interest. Essentially, this amendment was meant reinforce the idea of these notes as capital. It was a guarantee to bankers that they could always find a place to make money on the legal tender notes, while creating a kind of cheap loan for the government. The last provision empowered Chase to sell government

⁶⁹ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 54.

bonds at whatever rate they could fetch. Well before debate started on legal tender, conservative bankers like Grey wrote Fessenden that these safeguards were required to “remove the apprehensions of the Banks.” Bankers in favor of legal tender also lined up behind the amendments as necessary.⁷⁰

On the verge of passage, the Legal Tender bill entered a last critical phase. General Ulysses S. Grant’s victory at Fort Donelson in Tennessee bolstered the hopes of some in Congress that the law would no longer be needed. In the House, the Senate amendments outraged many supporters who, after attacking the greed of the bankers, perceived that the safeguards were really another means to favor the capitalists. The amendment allowing coin for bondholders in particular outraged many of the Republicans, including Spaulding and Hooper, who voted for the original bill. Stevens said that the bill was so deformed that “its very father would not know it.” The Senate had not created a new national currency, what they had done is to make “two classes of money—one for the banks and brokers, and another for the people.” Yet this time, the old opponents of the bill like Morrill, saw these amendments as their best chance to save some semblance of financial responsibility. With these new votes, the House approved all the Senate amendments over the dissenting voice of Spaulding, Stevens and Hooper. To move the bill as fast as possible, the Senate agreed to a committee of conference made up of three members from each chamber to iron out a few last disagreements between the House and Senate bills. In one last major concession, the committee agreed to require that all customs duties be paid in coin. This, they hoped, would prevent depreciation and

⁷⁰ James Grey to Fessenden, January 4, 1862, Fessenden Papers, LOC, reel 2; John A Stevens to SPC, February 8, 1862, Niven, ed., Papers of Chase, reel 19; Chase informed Stevens that he did believe that the coin clause would pass the Senate. SPC to Stevens, February 12, 1862, Niven, ed., Papers of Chase, reel 19.

signal to the public that the United States was committed to resumption in the future. The final bill passed the House 97 to 22 on February 24 and in the Senate without division on February 25. Lincoln signed the bill into law on the same day.⁷¹

The popularity of the safeguards in conjunction with the legal tender clause was itself an excellent proof of the limits of the radicalization of American political economy occasioned by war. In the House, Pike of Massachusetts explained that there were two models of finance in the world, what he called the “mercantile idea” and the idea of governments simply issuing as much money as they needed. In the mercantile model, governments borrow according to the rule of capitalism, that is, they must compete in the market by offering their securities with all the things an investor looked for: a good return, liquidity and security. If a government failed to do this, they would fall on their face, something that Pike thought granted financiers a greater share of power over a government’s survival than they deserved. On the other hand, simply ignoring the market, and issuing money to whatever degree necessary “makes the Government assert an omnipotence it does not possess.” To the contrary, northerners unaccustomed to being forced into using these notes would find ways to reject them. “The theory of power must be taken in connection with the practices and habits of the people. We must bear in mind that all logic has its limitations.” The Legal Tender Act did not fully unmoor the federal government from the practices and culture of the past. The notes themselves were the descendants of the old Treasury notes of previous wars and panics, a fact that lent the new notes a degree of constitutionality. In terms of its design, the new law merged models of political economy into a mixture, somewhere between state compulsion and

⁷¹ See the comments of Pike, Spaulding, *History of the Legal Tender Paper Money* (1875), 138-139; *Cong. Globe*, 37th Cong., 2nd sess., 881-883, 899, 900; Spaulding, *History of the Legal Tender Paper Money* (1875), 142; *Cong. Globe*, 37th Cong., 2nd Sess., 901, 939, 947; Act of February 25, 1862, ch.32, 12 Stat. 345.

the free market. The combination was a potentially powerful one. When the notes finally started to stream off the printing press, no one could be sure where they might lead the country.⁷²

What Hath Congress Wrought?

Despite all the talk about this being a temporary measure, everyone in Congress was aware of the historic implications of their action. During the debates, Horton predicted the Civil War and legal tender would “be the point from which we shall date a new financial system in the United States. Old things will have been done away; all things will become new.” Congress under enormous pressure had placed the government in a new position over the American economy, all in the name of war necessity. Nevertheless, once unleashed, this new power raised a host of new questions for the future.⁷³

Of immediate concern, of course, was the effect of the legal tender notes on the finances of the government and the course of the war. Manton Marble’s *World* was correct in predicting that \$150 million in Treasury notes would not be sufficient if the Army failed to best the Confederacy in the spring. If they failed, Congress would have to go on “repeating the doses every two months.” The Army of the Potomac did not take Richmond that spring and the size of military expenditures only increased as 1862 passed. Neither the new taxation law, nor Chase’s continued efforts to borrow the money needed fully succeeded. By July 1862, Chase had asked, and Congress quickly authorized, another \$150 million, of what the public was now calling “greenbacks.” The process was repeated again in January and March of 1863 for a total authorization of

⁷²*Cong. Globe*, 37th Cong., 2nd Sess., 657.

⁷³*Cong. Globe*, 37th Cong., 2nd Sess., 663.

\$450 million greenbacks. After the 3rd Legal Tender Act, the successes of the popular loan and the income from tax revenues made further expansion of the greenback supply unnecessary.⁷⁴

As time passed the character of the debates made an important shift as they became shorter, and less focused on the legitimacy of a government currency. The Senate, for example, introduced, debated and passed the Second Legal Tender Act in a single day in July of 1862. Chase fully embraced the notes as a tool to bridge shortfalls in the Union budget and old opponents, like Lovejoy, who still opposed legal tender as an idea, stated that he would no longer “persist in any factious opposition to what is a forgone conclusion.” Like the Treasury notes before them, repeated usage during the war lent a patina of legitimacy to what had been a contentious question in the span of just over a year. Yet greenbacks only appeared legitimate to Republicans in Washington in the light of war necessity. It was altogether unclear how the people of the loyal states would react to this new kind of money, or how legislators might react to the idea of making the notes a permanent part of government policy.⁷⁵

In January and February 1862, a few Republicans were already imagining a Union in which greenbacks had taken the place of bank notes in everyday economic life. The state banknotes, which were the real money of the country prior to the Legal Tender Act, were highly volatile in their value. Western Republicans were particularly enthusiastic for the Legal Tender bill in light of the Midwest banking crisis. Trumbull of Illinois thought with people using regional sub-treasuries as a quasi-bank for their

⁷⁴ *The World*, February 7, 1862; Mitchell, *A History of the Greenbacks*, 82-98, 119-126.

⁷⁵ *Cong. Globe*, 37th Cong., 2nd Sess., 3071-3079, most of the debate centered around the proposal of Sherman to tack on a tax on state banks notes that would reduce their circulation, and not the constitutionality or wisdom of another issue of greenbacks; *Cong. Globe*, 37th Cong., 2nd Sess., 2885, Lovejoy also wanted to suppress state bank notes as part of his approval of the greenback policy.

deposits, the new notes would go into circulation immediately. Sherman and Doolittle suggested in their defense of the 1st Legal Tender act that greenbacks could become a stable national medium that would allow merchants to buy and sell goods without the hassle and additional cost of discounting out of state notes and bills of exchange. Stevens, who would become a lifelong supporter of the greenbacks, contended during the debates “that this currency will be better than any this country can produce. Bank notes are merely local.” With this new form of money, Stevens could imagine merchants and businessmen making transactions all over the Union with a federally enforced currency. In the months following the passage of the act, Ways and Means received many more petitions on the currency that began to push for a more permanent place for the greenbacks. A group of Illinois petitioners pushed the radical idea that the government wipe out its debts with more greenbacks and “authorize them to circulate among the people as a medium of exchange forever.” These two ideas were, in their very early and embryonic form, the “Ohio Idea,” and the main plank the of the Greenback party that would emerge in the late 1860s and 1870s.⁷⁶

There were other numerous problems ahead unleashed by the Legal Tender Act. Doolittle was almost alone in Congress realizing that the new notes could actually *increase* the amount of bank notes in circulation as opposed to driving them out as Sherman and Stevens hoped that they might. Nothing in the law prevented the banks from using the new notes just as they had used coin for decades, as a reserve in support of

⁷⁶ Around 88% of western Republicans in the House voted for the Legal Tender Act in contrast to 75% of Northeastern Republicans. In the final Senate vote, all western Senators voted for the act. *Cong. Globe*, 37th Cong., 2nd Sess., 695, 800; *Cong. Globe*, 37th Cong., 2nd Sess., 791, Appendix, 57; *Cong. Globe*, 37th Cong., 2nd Sess., 688; “Petition of B.H. Smith and 41 other Citizens of Illinois...,” undated, “Petition of Andrew Siders and 49 other citizens of Illinois,” undated, file HR 37A-G20.2, RG 233, 37th Congress, Records of the Ways and Means Committee, NARA I.

their own paper money. With the new source of legal tender, Doolittle feared that “for every five-dollar Treasury note they put in their vaults, they will issue three five-dollar notes, or perhaps fifteen one-dollar notes of their own currency.” Thus the inflation that everyone feared would actually be worse due to the multiplying effect of the banks.⁷⁷

Another vital point was that Congress had not actually replaced gold with paper, or even outlawed gold as money as President Franklin Roosevelt would do in the 1930s. Anyone who was lucky enough to still hold coin, now held a class of money that would be more valuable than paper money as a result of its scarcity. This quickly led to a thriving market for gold, especially in New York, where the famed “Gold Room” provided a place for importers and speculators to buy and sell gold futures. The distance between the value of gold and paper, the “premium,” became a prime indicator of the financial and political health of the Union cause. Moreover, it would cause problems in the economy, because manufacturers and merchants would use the gold premium as a measure of the value of greenbacks and then raise or lower prices accordingly. Thus, by building a new monetary regime of paper on top of the old gold standard, Congress was undoubtedly inflating the cost of fighting the Civil War.

Beyond these specific problems there was a general sense of anxiety of how the people in the loyal states would react to this new monetary order and expansion of government power into their lives. Americans had long lived in a complicated financial world filled with bank notes, checks, and credit. Yet, in part, the legitimacy of that world rested on the idea that one could somehow get back to coin at the end of the paper trail. American culture had long idealized coin, a fact that the London *Times* pointed out. They

⁷⁷ *Cong. Globe*, 37th Cong., 2nd Sess., Appendix, 58.

quoted an old French adage that money is made round “that it may roll.” What would happen in America when money could no longer roll? ⁷⁸

⁷⁸ *London Times*, January 15, 1862.

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One Union, One Currency, Many Banks

Creating and controlling money has long been considered a fundamental attribute of sovereignty. For centuries, states monopolized the creation and management of the money supply within their sphere. The U.S. Constitution, in this tradition, divested the states of any power to print paper money or define the legal tender of the country. Under the coinage clause, Congress was the only branch of government directly empowered to create money. But as Daniel Webster once explained, there is money and there is currency. Currency, Webster clarified, was any representation of coin that circulated as payment, including checks, bills of exchange and bank notes. Until 1862, the U.S. minted and regulated the only “legal” money of America—gold and silver coin. Yet there was a perpetual dearth of this kind of money for most of the pre-war period. To fill the void, Americans created banks of issue, so-called because their prime business was the issuing of bank notes that served as the “practical” money of the country. By circulating these promises to pay, the banks effectively seized control of the American monetary system. Thus the hundreds of banks, all issuing their own notes, and not the Federal government defined the practical money of America before the 1860s. Even the vaunted Legal Tender Act of 1862 did not consolidate the government’s power, because the banks simply used greenbacks instead of gold to fuel their fires. If the United States government wanted to

control and define money in America they would have to destroy and supplant the banks of issue.¹

Before the Civil War, a direct attack on the banks of issue by the federal government was out of the question. It was not simply a matter of politics—it was a matter of federalism. State legislatures incorporated and regulated the banks, making banking and note-issue functions of state power. With the Constitution silent on the subject of currency created by state corporations, decades of custom and usage led to a widespread belief that the states had acquired a right to create banks that produced paper money. An attack on that right would require a rethinking of American federalism that the Jeffersonian-Jacksonian generation refused to consider. The bitterest enemies of the banks, including President Andrew Jackson and Thomas Hart Benton conceded that the state banks were out of federal reach. It was not that they did not understand the problem of a heterogeneous currency. Massive bank failures during the War of 1812 and the Panic of 1837 created outrage against bank “rags” and “shinplasters.” In his farewell message, Jackson could only implore the American people to use their state governments to reform

¹ For a discussion of state institutions in the history of financial markets see the introduction and essays in Stephen H. Haber, Douglass Cecil North and Barry R. Weingast, eds., *Political Institutions and Financial Development* (Stanford University Press, 2008); U.S. Const. art.I, sec § 10; *Register of Debates*, 24th Cong., 2nd Sess., 93; With the passage of the Legal Tender Act of 1862, Congress declared paper, as well as specie, a legal tender. For examples of congressional regulation of the coinage see, An Act Establishing a Mint, ch. 16, 1 Stat. 246 at 250, §16 (1792); An Act to authorize the Coinage of Gold Dollars and Double Eagles, ch.109, 9 Stat. 397 (1849); An Act Amendatory of Existing law to the Half dollar Quarter Dollar, dime and half Dime, ch.79, 10 Stat. 160 (1853); Especially in the period between the seventeenth century and the California gold strikes of the 1840s. See Hammond, *Banks and Politics*, 10-11; David A. Martin, “Bimetallism in the United States before 1850,” *Journal of Political Economy* 76 (1968):428-442;Edward J. Stevens, “Composition of the Money Stock Prior to the Civil War,” *Journal of Money, Credit and Banking* 3 (1971): 84-101;David A. Martin, “U.S. Gold Production Prior to the California Gold Rush,” *Explorations in Economic History* 13 (1976): 437-449. Exceptions, of course, always existed. Coin always accumulated in the port cities of the country by virtue of the use of gold and silver in international payments. Coin flowed to these cities from foreign payments, or as a means to pay foreign debts. Contrary to the vast majority of banks discussed in this paper, banks in the cities of New York, Boston and Philadelphia relied less and less on note issue, and more on deposit credit as the century wore on, by virtue of their superior specie reserves.

and restrain their creatures. Limited by constitutionalism, federal legislators crafted policies such as the Bank of the United States and the Sub-Treasury, as an indirect means to restrain the banks while leaving state power intact. Whigs and Democrats, however, could not agree on the constitutional power to create a national currency, with Whigs favoring the notes of a national bank and Democrats championing the destruction of paper money and the creation of a hard coin alone.²

In the Civil War, Republicans overcame the inhibitions of the previous generation by taxing state bank notes out of existence and initiating a system of national banks that provided a uniform currency throughout the country. By the end of the war, the central government created, authenticated, and managed the currency used by most Americans—a palpable expression of the government’s growth in power. The rise of that power, though, required two concurrent movements that began before 1861. The first was the erosion of the belief in the constitutionality of the state bank notes and their protection from federal regulation. The second required a synthesis of Democratic and Whiggish constitutionalism and policy that would bring the government back into the permanent business of creating a currency. Both found their origins in a slowly developing conviction among American leaders and commentators that the state banks were a failure and that if they desired to enjoy the commercial benefits of their Union, it would require

² Compare with James Roger Sharp, *The Jacksonians versus the Banks: Politics in the States After the Panic of 1837* (New York: Columbia University Press, 1970), 8-14; John M. McFaul, *The Politics of Jacksonian Finance*, (Ithaca, NY: Cornell University Press, 1972), 107-142. This view is represented in the major syntheses of the Jacksonian period as well. Wilentz, *The Rise of American Democracy*, 457-465; Howe, *What Hath God Wrought*, 498-508; Andrew Jackson “Farwell Address, March 4, 1837,” in Richardson, *A Messages and Papers of the Presidents*, 3:301-306.

one uniform currency, issued by many banks, all through the power of the Federal government.³

The origins of the national banking system offered here is a reappraisal of the effects of the Civil War on American politics, American constitutionalism and the growth of the American national state. Scholars treat the topic of banks and money in the nineteenth century United States as essentially one continuous political, economic and ideological struggle. Yet, if we view the subject as a constitutional struggle, the differences on either side of Appomattox become clear. Underlying the well-trod narrative of the politics of specie and credit was a debate in American society over the fundamental question of who should have the power to define, regulate, and create currency. The Jacksonian generation accepted a division of that power between the states and central government. The Civil War generation rejected that understanding in favor of the centralization of monetary power that would only grow with time. After the 1860s, Americans might debate the type and amount of money needed, but they would never again suggest that the states play any part in exercising power over the currency of the country. Thus the story of banks and money in the nineteenth century can be, and should be, viewed as part of the wider history of American federalism—with the Civil War as the critical turning point in the centralization of monetary powers in America. As such, it is an altogether overlooked chapter in the constitutional history of the Civil War and constitutional history generally.⁴

³ The tax can be found in Act of March 3, 1865, ch. 13, 13 *Stat.* 484; The first iteration of the National Banking Act can be found in An Act to provide a National Currency, February 25, 1863, ch.58, 12 *Stat.* 665; modified by An Act to provide a National Currency, June 3, 1864," ch. 106, 13 *Stat.* 99.

⁴ This was the ultimate conclusion of Irwin Unger's study of the politics of money and banks in the late 60s and 70s. He found a large amount of continuity on the politics of money on both sides of the Civil War. Irwin Unger, *The Greenback Era*, 407 and Sharp, *Jacksonians versus the Banks*, 6; This narrative is

As constitutional history, national banking serves in the customary nature of institutional and constitutional development in American history. Unlike other scholars who confine themselves to 1861-1865, this chapter argues for taking a long and broad view of American constitutional and political development. The centralization of currency creation and control depended on the rise and fall of a constitutional understanding rooted primarily in custom. The death of the customary power of the states required a new understanding that had its origins in the social and political experiences of the Civil War generation. The sites of this process were many and varied, occurring in courts, legislative halls, and the press. It was this long simmering process, brought to a boil by the Civil War, that encouraged Republicans to rework the boundaries of American monetary powers and federalism.⁵

represented by such works as McFaul, *Jacksonian Finance*; Unger, *The Greenback Era*; Robert P. Sharkey, *Money, Class, and Party: An Economic Study of Civil War and Reconstruction* (Baltimore: Johns Hopkins Press, 1967); Walter T.K. Nugent, *Money and American Society 1865-1880* (New York: The Free Press, 1968); Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America, 1865-1896* (New York: Cambridge University Press, 1997); See Hurst, *A Legal History of Money*, esp. 175-248 and Timberlake, *Monetary Policy in the United States*, for the arc of federal monetary policy in US history; One proponent of this view was Bray Hammond. His work attempted to use economic, political, legal, cultural and constitutional factors to explain the history of banks and money in America. His final chapter "Federal Monetary Control Restored, 1863-1865" informs this essay. Hammond's weakness, though, was in quickly passing over the exact mechanics of exactly how the federal government regained that control. See *Banks and Politics*. He carries the story through the war years in *Sovereignty and an Empty Purse: Banks and Politics in the Civil War* (Princeton: Princeton, University Press, 1970); Constitutional historians disregard the story favoring histories of war powers and civil rights, the major works of constitutional history in this era do not discuss the national banking story. See James G. Randall, *Constitutional Problems Under Lincoln* (New York: D. Appleton and Company, 1926); Harold M. Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York: Knopf, 1973); Herman Belz, *Abraham Lincoln, Constitutionalism, and Equal Rights in the Civil War Era* (New York: Fordham University Press, 1998); Mark E. Neely, *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (Chapel Hill: University of North Carolina Press, 2011).⁵ For a work that takes a similar view on the place of institutions in constitutional change see William N. Eskridge and John A. Ferejohn, *A Republic of Statutes: The New American Constitution* (New Haven, CT: Yale University Press, 2010); The "origins" works that we do have on national banking are essentially political or ideological in their approach, and confine their context to the war years alone, often with overtones that look toward the Western agrarian versus Eastern capitalists tensions of the 1870s. See, Richardson, *The Greatest Nation of the Earth*, 84-92; Paludan, *A People's Contest*, 122-123; Curry, *Blueprint for Modern America*, 724-734; Sharkey does note the influence of the failure of the old state banks see *Money, Class, and Party*, 221-231; Fritz Redlich, *The Molding of American Banking: Men and*

Lastly, understanding national banking as a constitutional movement provides a consensus view of the growth of the American state during the Civil War. Since the work of Charles Beard, Republican banking and currency policies have served as proof for how Republicans sought to use the federal government to favor capital and industry. This view unfairly reads the history of the “Greenback Era” backwards and obscures the origins and initial goal of national banking and the bank note tax—a safe, uniform currency after a generation of problems with the state banks. In short, a Republican party made of ex-Democrats and ex-Whigs sought a solution to a long standing financial and economic problem. This was not a victory created by and for “two generations of Federalists and Whigs.” Democrats opposed the tax and national banking in the Civil War and Reconstruction—but this had more to do with the new political landscape of the war and post-war era. Before the firing on Fort Sumter, many in America were ready for a reform of the monetary system. One postwar commentator noted “the practical advantages of a uniform currency equally good everywhere are so great, that we are not likely to go back to the days of state banks.”⁶

Ideas, 2 vols. (New York: Johnson Reprint Corp., 1968), 2:99-117; Two exceptions that take a long-view, but not the constitutional view taken here, are Leonard Clinton Helderman, *National and State Banks: A Study of Their Origins* (New York: Houghton Mifflin company, 1931); Andrew McFarland Davis, *The Origin of the National Banking System* (Washington, D.C.: GPO, 1910).

⁶ See Charles A. Beard and Mary R. Beard, *The Rise of American Civilization*, 2 vols. (New York: MacMillan Company, 1927), 2:52-121, esp. 105-110; Sharkey, *Money, Class, and Party*, modifies but does not dispute this view, 292 note 20. The most recent expression, with significant modifications, of this view can be found in Bensel, *Yankee Leviathan*; The Beard view of the Republican Party has other modern adherents as well. Timberlake, *Monetary Policy in the United States*, 86. A more troubling trend is to ignore the mixed nature of the Republicans, and its effects on policy, all together. See Bensel, *Yankee Leviathan*. Others do note and deal with these divisions, especially as to how they affected the division into conservative, moderate and radical Republicans. See Curry, *Blueprint for Modern America*; Bouge, *The Earnest Men*; Unger, *Greenback Era*, 72-76; Charles A. Kent, “Constitutional Development in the United States, As Influenced By Decisions of the Supreme Court Since 1864,” in Thomas M. Cooley, Henry Hitchcock, George W. Biddle, et.al, *Constitutional History of the United States as seen in the Development of American Law* (New York: G.P. Putnam’s Sons, 1889), 223-224.

Old Wine in New Bottles

On its face, the Constitution vests wide power over the money supply in the hands of the central government. The degree to which it does is a reflection of the strong desires that permeated the Constitutional Convention of 1787 to restructure and centralize control over monetary powers in America. Since the colonial period, the several colonies each directed their own monetary policy by creating their own paper money called bills of credit. During and after the Revolutionary War, a series of inflationary measures created economic chaos and political conflict within the Union. Banning state bills of credit and tender laws become one of the rallying calls for a new Constitution in the late 1780s. In the end, almost all the delegations agreed to strip their states of their power to coin money, issue bills of credit or make anything but gold and silver a legal tender embodied in Article I, Section 10 of the new Constitution.⁷

The delegates believed that this solution meant the end of paper money in America. Roger Sherman probably spoke for many at the Convention when he declared that 1787 was a “favorable crisis for crushing paper money.” The framers could believe that because government-issued bills of credit had been the sole form of currency in America for over a century. Everyone seemed to assume that by destroying this one form of credit they were embarking on an era of centralized monetary policy. Antifederalist critics decried the loss of monetary powers as an affront to state rights, while most in the ratifying conventions welcomed the loss as a salutary measure after the bills of credit that came out of the Revolution. Madison explained in Federalist 44 that under the old system

⁷ Brock, *The Currency of the American Colonies*, 1-16; Nettles, *The Money Supply of the American Colonies Before 1720*, 202-283; Ernst, *Money and Politics in America, 1755-1775*; see Holton, *Unruly Americans*; Mann, *Republic of Debtors*, 170-177; Ferguson, *The Power of the Purse*; Hammond, *Banks and Politics*, 89-91; U.S. Const. art.I, sec § 10. The vote was 8 Ayes, 1 No (Virginia) and 1 Divided (Maryland), *Farrand’s Records*, II:439.

“there might be as many different currencies as States; and thus the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus the citizens of other States be injured; and animosities be kindled among the States themselves...” Ironically, Madison would live long enough to see that become exactly the case in American society in the years before the Civil War.⁸

The presumptions of the framers would be defeated by a new financial technology in American life—the bank of issue. The Constitution banned publicly created credit that passed as money. At precisely the same time, the concept of privately issued currency started to take hold in the states, mainly through the medium of banking. In America, as opposed to Europe, banking had its origins as a means of creating credit as a substitute for coin in a specie-poor world. Shareholders would pool capital and, through the principle of fractional reserves, start circulating a paper currency in excess of their actual coin in the vault. Alexander Hamilton, borrowing the concept from the Bank of England, popularized note issue by banks in his influential charter for the Bank of New York. By the War of 1812 the concept of banking in early America was firmly attached to the idea of producing paper money that served as the circulating medium for the community. On the eve of the Civil War, there were 1,392 banks across the country with a circulation of \$207 million based on an estimated specie supply of \$83 million. Before 1862 most Americans did not carry the coin of the realm in their pockets, but a multitude of notes of varying value and quality depending on the bank. Thus the real coin of the realm was not coin at all, but debts in the form of bank-paper. It was a power so great that critics like

⁸ *Farrand's Records*, II:439; Hammond, *Banks and Politics*, 103; “James Madison, Federalist, no.44, 299-302” *The Founder's Constitution* (Chicago: University of Chicago Press), accessed on September 10, 2012, http://press-pubs.uchicago.edu/founders/documents/a1_10_1s5.html.

Jabez Hammond wrote “it gave soulless institutions a power equal to the exclusive power of coining money for the use of the community.”⁹

Banks manufactured money, and the banks were created by the states. Early in American history, colonies and then the states passed so-called restraining acts that prevented private associations from pooling capital and issuing notes to pass as currency. Capitalists who wanted to go into the business of banking would have to obtain corporate charters; charters granted the power of note issue, and especially after the Panic of 1837, subjected the banks to varying levels of supervision and inspection by state officials. Thus, control over the monetary supply in early America rested, in large part, with the policies of the bank directors that issued bank notes and the states that granted that right and incorporated their banks.¹⁰

The founding generation and the Jacksonian generation both realized that the states, through their banks, had found a way around the prohibitions of the Constitution. In 1831, James Madison confessed that while state banks were a “great evil” they were “not foreseen” at the time of the writing of the Constitution. In 1798 there were only

⁹ Hammond, *Banks and Politics*, 69, 4-6, 128-143; Howard Bodenhorn, *A History of Banking in Antebellum America: Financial Markets and Economic Development in an Era of Nation Building* (New York: Cambridge University Press, 2000); Howard Bodenhorn, *State Banking in Early America: A New Economic History* (New York: Oxford University Press, 2003); For a comparison of European and American banking see the essays on the rise of banking in southern and northern Europe in the early modern period and the essay by Larry Schweikart on banking in North America in Alice Teichova, Ginette Kurgan-Van Hentenryk, and Dieter Ziegler, eds., *Banking Trade and Industry: Europe, America and Asia to the Twentieth Century* (New York: Cambridge University Press, 1997), esp. 1-6, 297-298; Peter Temin, *The Jacksonian Economy* (New York: W.W. Norton & Co., 1969), 31-35; Temin, *The Jacksonian Economy*, 77; Total number of banks and branches for the year 1860 were 1,562. In addition to the specie in the banks, the Treasury held \$6, 695, 225 in specie making for a total of \$90, 289, 762 in specie held by the banks and the sub treasury. *Annual Report of the Secretary of the Treasury on the Condition of the Banks in the United States at the Commencement of the Year, 1863* (Washington, D.C.: GPO, 1863), 219; Jabez Delano Hammond, *The History of Political Parties in the State of New York*, 4th ed., 2 vols. (New York: H. & E. Phinney, 1846), II:489.

¹⁰ Hammond, *Banks and Politics*, 184-185, 578; Bodenhorn, *State Banking*, 11-43; Helderman, *National and State Banks*, 9.

three incorporated banks in the country, and no one could predict the hydra-headed system of state banks on the horizon. In 1837, William Cabell Rives of Virginia explained that the delegates could no more predict “the immense multiplication of banks” than they could the “steamboats and railroads --which have had so extra-ordinary an influence on the wealth and resources of the country.” Thomas Hart Benton bemoaned that a “new power has sprung up among us, and has annulled the whole of these prohibitions. That new power is the oligarchy of the banks.” Thomas Jefferson was more succinct, he wrote his son-in-law that “we have so improvidently suffered the field of circulating medium to be filched from us.” Because the money of the country was in the hands of the state banks, any policy to reform the currency of the country would have to find a way to affect and regulate those institutions. To do that, would require a revolution in American constitutionalism that no one wanted. American lawmakers would have to work within the boundaries of American law and constitutionalism to find a way to restore order in a rapidly changing world of canals, steamboats, railroads and credit.¹¹

Building a Cage for a Hydra

In 1830 the Supreme Court struck down a Missouri law that empowered a state loan office to issue certificates designed to pass as money as a violation of the ban on

¹¹ “James Madison to Charles J. Ingersoll, February 1831,” *The Founder’s Constitution* (Chicago: University of Chicago Press), accessed 12 September 2012, http://press-pubs.uchicago.edu/founders/documents/a1_10_1s22.html; *Register of Debates*, 25th Cong. 1st sess., 87, 548; Thomas Jefferson to John W. Eppes, June 24, 1813 in Looney, ed., *Papers of Thomas Jefferson Retirement Series*, 6:223; Legal scholars have long noted how the American legal order adapted to the technological changes of the nineteenth century. Strangely enough, none have as yet noted the problems and transformations caused by the state banks. See generally, James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century* (Madison: University of Wisconsin Press, 1956); Lawrence M. Fredman, *A History of American Law* 3rd rev. ed. (New York: Simon & Schuster, 2005); Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977); Novak, *The People’s Welfare*; Stanley I. Kutler, *Privilege and Creative Destruction: The Charles River Bridge Case* (Philadelphia: J.B. Lippincott Co, 1971); James W. Ely, Jr. *Railroads and American Law* (Lawrence: University of Kansas Press, 2001).

bills of credit. The law was an attempt by the legislature to provide relief in specie-poor Missouri while avoiding the constitutional ban by making them to appear like an act of borrowing. In his opinion to the Court, Chief Justice John Marshall defined a bill of credit as “the emission of any paper medium, by a state government, for the purpose of common circulation,” which he thought included the Missouri paper. In responding to the idea that “certificates” were not “bills of credit” Marshall did not think it possible that Constitution might “be openly evaded by giving a new name to an old thing.” At the same time, the bank note was doing exactly this, but neither Marshall nor any other federal leaders tried directly to attack the notes. The state banks survived the “bills of credit” clause because bank notes were not directly issued by states but by corporations empowered to do so by their charters. Touching a state loan office was easy, but touching bank corporations would require a partial nullification of state chartering powers. To the Jacksonian-Jeffersonian generation, this was an unthinkable violation of customary federalism. All three branches of the federal government agreed on this premise, independent of party or region. This view structured the tone and tenor of politics and policy on the “currency” and “banking” questions during the Jacksonian period.¹²

In American law, incorporation was a special power exercised by the sovereign for the benefit of the community. States used the power of incorporation to create turnpikes, railroads, canals and credit (in the form of banks) to spur their economies.

¹² *Craig v. Missouri* 29 U.S. 410 (1830); Thomas Hart Benton admitted as much in his defense for the state of Missouri. Under the state law, state loan commissioners could loan money, in the form of the state certificates, on security from the borrowers, usually land. The certificates were clearly designed to circulate as they came in low denominations and were a legal tender for all public debts owed to the state. Using land security as the backing for a currency was an old idea that went back to early modern England and the colonial era. For Benton’s comments and the text of the law see *Craig v. Missouri* 29 U.S. 410 at 429 and 431. For more on the loan-office model of currency in American and Europe see, Keith J. Horsefield, *British Monetary Experiments*, 156-217; Hammond, *Banks and Politics*, 10; *Craig v. Missouri* 29 U.S. 410 at 432-433.

Each corporation was therefore the “creature” of a given state’s laws. If a another state or the federal government attempted to regulate, restrain or destroy another state’s creature, it would be considered an affront to that state’s sovereignty. That principle undergirded Marshall’s opinion in *McCulloch v. Maryland*. After establishing the constitutionality of Congress’s power to incorporate a bank, Marshall struck down a Maryland tax on the Bank of the United States as impinging on the sovereignty of the U.S. In talking about the principles that guided his actions, he said that one government did not have a right to “pull down what there is an acknowledged right in another to build up... to destroy what there is a right in another to preserve.” By the time of the Panic of 1837 it was a well-acknowledged right of the states to incorporate banks, and thus Congress could not imagine a constitutional means to touch the banks directly, even though the financial downturn placed enormous political pressure on national leaders to deal with them. Senator William Cabell Rives of Virginia explained, “what sir, are the banks? Are they not institutions of the States, created by the States, and dependent on the States? A breath of the States has made, and a breath of the States can unmake them.”¹³

Constitutional law further insulated the state banks. A few months before the panic, the Court declared the bills of a state-chartered bank not bills of credit within the meaning of the Constitution in *Briscoe v. Bank of Kentucky*. The Bank of Kentucky was not only created by the state legislature, but state owned and controlled. In his opinion for the Court, Justice John McLean distinguished bank notes from bills of credit by noting

¹³ James Willard Hurst, *The Legitimacy of the Business Corporation in the Law of the United States, 1780-1970* (Charlottesville, VA: University of Virginia Press, 1970), 15-24; Edwin Merrick Dodd, *American Business Corporations Until 1860* (Cambridge, MA: Harvard University Press, 1954), 41-44; Howe, *What Hath God Wrought*, 213-222, 557-558, 373-395, 501-512; *McCulloch v. Maryland* 17 U.S. 316 at 430(1819); Hammond, *Banks and Politics*, 326-499; Wilentz, *The Rise of American Democracy*, 436-465; Michael F. Holt, *The American Whig Party*, 64-76; *Register of Debates*, 25th Cong., 1st Sess., 100.

that bank notes were backed by a named fund, payable at the pleasure of the holder. Moreover, he refused to draw a line between a bank merely chartered by the state and one owned by the state. He refused, it seemed, because of its implications for the charter rights of the states, saying “a state may grant acts of incorporation for the attainment of those objects which are essential to the interest of society...there is no limitation on the federal constitution, on its exercise by the states, in respect to the incorporation of banks.” Even in his dissent, Justice Joseph Story agreed that the Constitution placed no bar on states creating banks that created currency—the only real question in *Briscoe* was the degree of state ownership and not the act of issuing notes. *Briscoe* reflected the state rights view of its time, while expanding on that view by making all state banks, no matter their relation to their incorporating state, safe from the restrictions of the Constitution.¹⁴

The strongest protection of the state banks, however, was supplied by a solid wall of constitutional custom built up since the Revolution. For some time before the opinion in *Briscoe*, and after, public opinion held that state banking was constitutional based on customary usage. In 1836, Aaron Vanderpoel, a Democrat from New York, thought the intent against a fractured currency system was clear in the Constitution but noted that custom and usage had turned Article I, Section 10 into a “dead letter.” He explained, based on common law principles, “the states had for more than forty years exercised the power of incorporating banks with power to issue notes; and if the original exercise of this power was founded in usurpation and error...it was in all events, an error so old and so general as to have acquired the authority of *right* and *law*.” Madison shared this sentiment as early as 1831, and Martin Van Buren during the 1836 election said the

¹⁴ *Briscoe v. Bank of Kentucky* 36 U.S 257 (1837); Hammond, *Banks and Politics*, 566; *Briscoe v. Bank of Kentucky* 36 U.S at 315, 316-317, 348; Hurst, *A Legal History of Money*, 140.

question “must be regarded as settled in favor of the continued authority of the States.” And so agreed Daniel Webster, Henry Clay, John C. Calhoun and in speech after speech, members of the House and Senate in the depth of the Panic of 1837. It seemed the customary wall around the states was strong enough to survive even the strongest crisis.

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That idea inspired some anger and fear in Congress and in the public about the fate of the federal union. A memorial from the New York Board of Trade put the situation plainly “Here then are 27 sovereignties with an indefinite power to make currency. They cannot control each other, the state governments cannot control them, since the power of the state government is fitted more to prepare than to prevent the excesses of banking, so there is no efficient check on the exercise of a power upon which every man's property depends...” Henry Clay in the Senate and Caleb Cushing in the House both put the problem in terms of Union. If the government could not regulate the currency of the country, they argued, what would hold this Union together? Cushing thought the currency issue was “simply the old question, Union or not? Benton vented his frustration over the lack of control when he famously exclaimed “Are men, with pens sticking behind their ears to be allowed to put an end to this republic?”¹⁶

The national solution to the credit bubbles created by the state banks was indirect pressure. By creating some sort of federal agency or agent armed with the hefty specie reserves of the federal government, federal legislators could use their weight in the credit markets to indirectly restrain the banks. When Alexander Hamilton suggested the original

¹⁵ *Cong. Globe*, 24th Cong., 2nd Sess., Appendix, 50.; “James Madison to Charles J. Ingersoll, February 1831,” The Founder’s Constitution website; “Mr. Van Buren’s Letter to Sherrod Williams,” *The Plaindealer* I, 31 (1 July 1837), 486.

¹⁶ “Memorial of the Board of Trade of the City of New York,” *Niles Weekly Register*, 1, Fifth Series, 22, (28 January 1837), 343; *Register of Debates*, 25th Congress, 1st sess., 260, 873, 194.

Bank of the United States (BUS), of its many benefits, he did not see it as a regulator of other state banks. By the death of the Second BUS, the bank had developed a system for restraining the state banks by accumulating and then presenting notes for payment at the cashier's window of the issuing bank. A local bank, far from the BUS in Philadelphia, would theoretically restrain its issues out of fear that the BUS could compel them to pay at any moment. In 1837, and well into the 1840s, the Whigs would offer the BUS model as the only responsible form of state-bank regulation.¹⁷

Another model, favored by conservative Democrats in the 1830s, was the so-called “pet banking” system. When there was no BUS, Jackson placed the government's money with several selected state banks. The Treasury imposed strict regulations on banks holding federal money, most importantly, a requirement that all deposit banks maintain specie payments on their notes. In conjunction with that, Democrats wanted the government to accept the notes of specie paying banks and rejected all low denomination notes—all in an effort to encourage the state legislatures and state banks to reform themselves. The hard money Democrats favored negative pressure, and policies that conferred no monopoly on government business like the BUS or the Pet Banks. The so-called Independent Treasury system would confine the government to all business in specie and would keep the government's money in its own vaults and out of circulation. The most radical Democrats conceived of the plan as a “divorce” from the credit of the country and justified it as a means to protect the government's revenue, but others

¹⁷ Alexander Hamilton, “Report on a National Bank”, *Annals of Congress*, 1st Cong., 1st Sess., 2096. Hamilton spoke more in terms of the bank as a provider of the national currency, as opposed to banking regulator. At the time of the creation of the BUS, Hamilton believed that the BUS and state banks would either co-exist or that the BUS would destroy its competition. He seems to have not envisaged the system of note redemption utilized by the Second BUS. See Stuart Bruchey, “Alexander Hamilton and the State Banks, 1789 to 1795,” *William and Mary Quarterly*, 3d series., 27, no. 3 (1970), 347-378, esp. 350-351.

understood that by keeping the single largest fund of specie out of circulation, the government might be able to reign in the circulation of the banks. While these policies divided parties and defined national politics for over a decade, they all found their origin in an unwillingness to directly coerce the states. The one option suggested at the time that would do that, a constitutional amendment banning state bank notes, never made it past the committee stage.¹⁸

Of the three models, the Independent Treasury emerged victorious in 1846 and would, in some form or another, stay in continuous operation into the twentieth century. At times, and especially during the Mexican-American War, the Independent Treasury actually could affect the money markets by manipulating the government's specie reserves. Yet that policy did not displace the state banks or even reform a number of festering problems within the system. It could not, for example, provide a means of national exchange for interstate commerce, or inspect and supervise the specie reserves of banks to make sure they had the money that they said they did. Especially in the western states, stories abounded of "wildcat" banks that issued bank notes backed by nothing more than the I.O.U.'s of the bank's directors. There were tales of state bank inspectors who would open a box of specie to find a thin layer of coin with crushed glass underneath or a bank that wheeled the same pile of specie in and out of the vaults to give the impression of having more coin than it actually did.¹⁹

¹⁸ See the speech and explanation of William Cabell Rives (D-VA), *Resister of Debates*, 25th Cong., 1st Sess., 87-118; McFaul, *The Politics of Jacksonian Finance*, 60-64, 72-74; In the Senate, see the remarks of Rives (D-VA) and Silas Wright (D-NY), *Resister of Debates*, 25th Cong., 1st Sess., 117, and 457; See *Cong. Globe*, 24th Cong., 2nd Sess., Appendix, 50-51. Comments of William Campbell Preston (Nullifier-SC), *Resister of Debates*, 25th Cong., 1st Sess., 389.

¹⁹ Timberlake, *Monetary Policy in the United States*, 65-83 ; also see Timberlake's "The Independent Treasury and Monetary Policy Before the Civil War," *Southern Economic Journal* 27, 2 (1960): 92-103; James W. Cummings, *Toward Modern Public Finance: The American War with Mexico, 1846-1848*

Given the highly unstable nature of bank notes, most merchants turned to another credit instrument handled by banks—the bill of exchange—as the currency of interstate business in antebellum America. Here again, federalism weakened the bonds of the national market. In *Briscoe*, the Court protected banks that issued paper money, but by basing their power in the sovereignty of their incorporating state, a bank's power and paper could only reach as far its host state's borders. In the eyes of other state courts, out-of state corporations, or foreign corporations, were not a legal entity entitled to sue or be sued in their courts. That meant that the terms of loans, contracts and credit instruments negotiated by banks and merchants in interstate business depended on a morass of conflicting state laws. As Jackson's Secretary of the Treasury, no one expressed more hatred for the BUS and a desire to protect the states, than Roger B. Taney. Yet Taney also understood the need for a centralized, uniform means of regulating the credit that was the lifeblood of the economy. How could a Jacksonian promote uniformity without another monster bank? During Taney's chief justiceship, the Court carefully constructed a body of law that promoted the free movement of credit across the country, without sacrificing state sovereignty.²⁰

In the case *Bank of Augusta v. Earle*, an Alabama merchant claimed that he did not have to pay back his debts owed to a Georgia-incorporated bank, because the bank did not exist in the eyes of his state's laws and could not rightfully sue him for

(London: Pickering & Chatto, 2009); Alexander Hamilton had understood that this would be a problem of federal regulation strategies well before the rise of the state banks. See Bruchey, "Alexander Hamilton and the State Banks, 1789 to 1795," 350; *House Ex. Doc. No. 227*, 25th Cong., 3d Sess., 640-42 (1838); Hammond, *Banks and Politics*, 70; Helderman, *National and States Banks*, 27-28.

²⁰ Tony A. Freyer, "Negotiable Instruments and the Federal Courts in Antebellum American Business," *The Business History Review* 50, 4 (1976): 436-440, 436, 443, 448; He seems to have gained this appreciation while dealing with the pet banks. See McFaul, *The Politics of Jacksonian Finance*, 59-64. McFaul notes that the lessons Taney learned while at the Treasury "evaporated" after he left office. The above account suggests otherwise.

repayment. In his opinion, Taney conceded, “that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created...It must dwell in the place of its creation, and cannot migrate to sovereignty.” To get around this, he reasoned from the commercial law of nations that each state also possessed the power to recognize out-of-state corporations. He placed the threshold for recognition very low by saying that a lack of legislation on the topic was tantamount to recognition. As long as a state did not pass a statute banning out-of-state banks, a bank could discount out-of-state bills of exchange and circulate its notes outside its state borders. *Bank of Augusta*, thus, helped promote acknowledgment of state banks in state courts outside their charter state.²¹

In the 1842 case *Swift v. Tyson*, the Court went a step further by creating a federal commercial law governing almost all interstate transactions. The basis for federal jurisdiction in cases between citizens of different states, the Judiciary Act of 1789, indicated that “the laws of the several states...shall be regarded as rules of decision, in trials at common law.” Prior to *Swift*, this meant that in cases of commercial dispute between citizens of different states, a federal court would be bound by the commercial law of the state where the contract was made. The case of *Swift v. Tyson*, involving the validity of a New York contract involving parties in New York and Maine, turned on conflicting rules, handed down by the New York state courts, on how and if a credit instrument could be used to pay a preexisting debt. Justice Joseph Story, who wrote the opinion for the Court in the case, understood the economic effects of having a conflicting body of commercial law that made passing bills and notes more difficult. “It is for the benefit and convenience of the commercial world,” he wrote, “to give as wide an extent

²¹ *Bank of Augusta v. Earle* 38 U.S. 519 at 588, 592-595 (1839).

as practicable to the credit and circulation of negotiable paper that it may pass not only as security for new purchases...but also in payment of...preexisting debts.”²²

To clear up the confusion, and promote the circulation of paper, Story’s opinion placed the Court in charge of overseeing commercial transactions among citizens from different states. As the arbiter of that body of law, his opinion declared rules that eased the passage of negotiable paper over state lines. His first move was a jurisdictional revolution, in which he declared that under his reading of the 1789 judiciary act, the term “laws of the several states” referred only to statutes enacted by state legislatures. Now, Story declared that in the absence of a clear state law, the court was only bound by a general common law, and not the specific rulings of the state courts. His second move was to say that in his research into the general law of bills and notes, it was universally accepted that a note could be used to pay a preexisting debt. Coupled with a decision by the Taney Court expanding the ability of corporations to sue in federal courts, *Swift* meant that banks and individuals from the several states could now sue on contracts involving their bills of exchange and bank notes in interstate transactions, subject to one body of law.²³

The doctrine of the federal courts, though, did not solve many of the problems within the federal system. People across the country appealed for federal help with the plague of state banks. Van Buren and the other Democrats, though, told Americans that they could find no help in Washington. As one Democrat in the Senate put it “to [the states]...it belongs to regulate, if they can, These creatures of their own hands.” That

²² *Swift v. Tyson* 41 U.S. 1 at 16 (1842); Act of September 24, 1789, ch. 20, 1 Stat. 92; *Swift v. Tyson* 41 U.S. 1 at 17, 20.

²³ *Swift v. Tyson* 41 U.S. 1 at 18-19, 40-41; See *Louisville, Cincinnati & Charleston R. Co. v. Letson* 43 U.S. 497 (1844).

message translated into two decades of policy experimentation at the state level to stabilize their banking institutions. New York took the lead in this regard, by passing several policy reforms that would be followed by a number of states. The most famous being the policy of free banking, forged in aftermath of the Panic of 1837. Free banking, despite its name, was not pure *laissez-faire*. As a concession to the radical Democrats in the state, the Assembly opened up the privilege of banking to any one who could raise the capital requirement. Prior to this, states usually incorporated banks by means of a special act of the legislature, a process that Loco-Focos complained unfairly granted powerful privileges to those capable of getting the votes. Its other key feature was a requirement that banks back up their note-issues with some sort of security that would be deposited with the state's comptroller of the currency.²⁴

States used a variety of institutional and legal techniques to restrain their banks. Michigan, Ohio, New Orleans would create their own variations on the free-banking model, but all shared the attributes of general incorporation and security-backed note issue. Other states used techniques such as banning low-denomination notes and taxing banks notes to control and restrict their usage. States could also use *quo warranto* proceedings to revoke the charters of their wayward banks. Many states created agencies to inspect bank holdings and accounts. In several western states, including California, Iowa and Wisconsin, the state constitutions simply banned note issue altogether. The late 30s and 40s were a breeding ground for new ideas for banking regulation (or outright

²⁴ *Register of Debates*. 25th Cong. 1st Sess., 150; Hammond, *Banks and Politics*, 572-604; Helderman, *National and State Banks*, 19-24; Bodenhorn, *State Banking*, 183-218.

rejection), but it was an uneven project—the federal problem remained. With the death of the BUS, America entered a dark age for the supporters of a national currency.²⁵

1850-1860: Prelude to Reform

Yet, the idea that Constitution empowered the Congress to suppress the state banks or create a currency was not unheard of before the Civil War. The constitutional idea, which rested on several clauses of the Constitution, had a long presence in national affairs. During the debates over the bill to re-charter the First BUS, William Branch Giles of Virginia inferred Congress's power over the currency. During the War of 1812, Calhoun provided a vigorous argument for Congress's monetary powers over the issues of the state banks by using a historical gloss of the coinage clause. He claimed that given the history of paper money before the Constitution, the broad intent of the coinage clause was a uniform currency, including representations of coin. In the 1830s, Webster carried the torch of the national currency power in his several defenses of the BUS in which he envisioned a broad positive power for the government. The Democrats did not necessarily disagree with the Whigs on the idea of national currency powers—it was just that their view of the power was negative and narrow. Jacksonians believed that the framers intended a hard-money republic. Instead of trying to control or issue paper, they would try to ban it and return the country to an all-specie basis. In all these cases, the

²⁵ Helderman, *National and State Banks*, 25-29, 41-46, 91-100, 101-132; William G. Shade, *Banks or No Banks: The Money Issue in Western Politics, 1832-1865* (Detroit: Wayne State University Press, 1972); James Roger Sharp, *Jacksonians versus the Banks: Politics in the States after the Panic of 1837* (New York: Columbia University Press, 1970); For an in-depth study of the application of state regulation of banking in Massachusetts during the pre-war period see Dodd, *America Business Corporations*, 272-292.

theory was stymied by the concurrent admission that the states also had a power to create banks of issue.²⁶

The Panic of 1857 changed this status quo. During the late 1840s, the country finally started to pull out of a long depression, and with the growing prosperity came an increase in the number of banks, which increased by 50 percent with a corresponding increase in their note-issues. When the bubble burst late in the summer of 1857, it not only put thousands out of work, but inspired a renewed interest in reigning in the state banks. This discourse on currency reform did not occur at the national level, where the federalism view still reigned supreme. James Buchanan, in his annual message for 1857, confessed that under the system, “which has now prevailed too long to be changed,” 1,400 state banks effectively controlled the currency of the country. Like Van Buren before him, Buchanan left the problem with the states, as he told a devastated country “we must mainly rely upon the patriotism and wisdom of the States for the prevention and redress of the evil.” Moreover the old issues of banking and money no longer monopolized national politics as they had in the heyday of Whigs and Democrats; 1857 was the year of the *Dred Scott* decision, and Buchanan’s rejection of the antislavery Lecompton Constitution. The emerging Republican Party in the North focused all its heat and fervor into the slavery extension question and did not try to use the economic reform issue in their campaign platforms.²⁷

²⁶ *Annals of Congress*, 11th Cong. 3rd Sess., 182-188, 1060-1065; For two examples see his speeches at *Register of Debates*, 25th Cong. 1st sess., 17-20, 311-331; For example see Andrew Jackson, “Eight Annual Message, December 5, 1836,” in Richardson, *Messages and Papers of the Presidents*, 3:246.

²⁷ McPherson, *The Battle Cry of Freedom*, 190; James Buchanan, “First Annual Message, December 8, 1857,” in Richardson, ed., *Messages and Papers of the Presidents*, 5:437, 441; James L. Huston, *The Panic of 1857 and the Coming of the Civil War* (Baton Rouge: LSU Press, 1987), 261-263. For a view of how these issues dominated national politics see Potter, *The Impending Crisis, 1848-1861* (New York: Harper & Row, 1976) and Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New

Yet the slavery issue did not fully displace the currency issue. It merely redirected the discussion. Within the pages of the *Banker's Magazine* and *Hunt's Merchant Magazine*, numerous articles appeared on the nature of the state banking problem and its remedies. In New York City, a "Currency Reform Association" published papers on how to fix the nation's currency and another group of New York bankers formed a "Friends of Sound Currency" club that met weekly and also published reports of suggestions on how to reform the system. In almost every case the solution was some sort of national currency to replace or supplement the existing regime of state bank notes. Understanding the constitutional limitations that barred such a policy, writers and thinkers from both Whig and Democratic backgrounds began to resuscitate the idea of a national power over the currency. They returned to the analysis of the Constitution used by Calhoun back in the War of 1812; often they recounted the long troublesome history of state bills of credit and its relation to the prohibitions in the Constitution. To those living through the effects of the Panic, the line that separated a "bill of credit" from a bank note strained their patience and common sense—it was clear that the framers meant something by their words. "Why not let the obvious intention prevail," thundered one magazine editor.²⁸

The impulse for reform also came from the state level where governors in Indiana, Michigan, New Jersey, Ohio, and Kentucky all decried the instability of the state banking

York: Oxford University Press, 1978); Arthur M. Lee, "The Development of An Economic Policy In the Early Republican Party" (PhD diss., Syracuse University, 1953).

²⁸ "National Currency," *The American Whig Review* 16, 5 (Nov. 1852); "Currency and Trade—The Duty of the Government," *The United States Democratic Review* (Nov. 1857); "The Currency and the Constitution" *The United States Democratic Review*, (Jan. 1858); James Ross Snowden, "Suggestions for a National Currency," *Bankers Magazine and Statistical Register*, 7, 8 (Feb. 1858); John A. Dix, "New Views on the Currency Question," *Bankers Magazine and Statistical Register* 8, 7 (Jan. 1859); Peter Cooper, "Remarks on the Present Currency System," *Bankers Magazine and Statistical Register* 9, 2 (Aug. 1859); J.S. Ropes, "Currency, Banking and Credit," *Bankers Magazine and Statistical Register* 9, 3 (Sep. 1859); "Currency of the United States," *Hunt's Merchant Magazine* 43, 5 (1 November 1860); Committee on the Currency, *A Report on the Currency* (New York: John F. Trow, 1858); "The Currency and the Constitution" *The United States Democratic Review*, (Jan. 1858).

system. In his first annual message to the Ohio legislature in January 1858, Governor Salmon P. Chase described the devastated condition of Ohio banks and currency in the wake of the Panic. Chase could not put his faith in the “conflicting policies of thirty-one States,” rather, he argued, “the remedy is with the Federal Government.” He could not, he told the assembly, “doubt the power of the National Legislature to prohibit the circulation as money of any substitute for coin.” Doubt had reigned over that proposition since the time of Thomas Jefferson, but now the Panic of 1857 was sowing a revolution.²⁹

At its deepest level, the growing strength of the new constitutional understanding had its roots in several decades of experience with the state banking system. If the power of the state over its banks was a product of custom and usage, the failure to work together or stabilize the currency created an antithesis tradition. Within this emerging view, commentators viewed the banks as the cause of the cycles of economic boom and bust in the antebellum period and that the states could not be trusted to manage their affairs. Chase told the Ohio assembly that the history of 1837 and 1857 proved that “the cause of each...may be reduced to the same general expression” and that was the expansion of credit fermented by the banks. The failure of the indirect method of regulation was now leading to a growing view that direct legislation against the state banks might be necessary.³⁰

While the experiences of the 1850s strengthened the belief, at least among editors and some politicians, that the federal government possessed a right and duty to control and create a currency, the form of creation—national banking—resulted from the re-

²⁹ See the abstracts of governors reports in “Condition of the banks Throughout the United States, April 22, 1858,” *H.R. Doc. No. 107*, 35th Cong., 1st Sess. (1858); Salmon P. Chase, *Message of the Governor of Ohio to the Fifty-Third General Assembly at the Regular Session Commencing January 4, 1858* (Columbus: Richard Nevins, 1858), 14.

³⁰ Chase, *Message of the Governor of Ohio, 1858*, 9.

organization of party politics in the 1850s and 1860s. In the early days of Whig-Democratic conflict, each side constructed and supported policies that comported with their ideas of political economy and constitutionalism. Whigs, who favored federal power and distrusted state legislatures in managing the economy, supported the BUS as their model of currency creation. The Democrats, distrustful of granting monopoly and privilege to private parties in the economy supported the Independent Treasury and the Mint. Party imperatives discouraged experimentation and synthesis. Whigs and Democrats used the BUS and Sub-Treasury issues as political banners to rally voters and distinguish themselves from their opponents. Compromise on economic policy would require the parties to undermine the very things they stood for, and risk losing voters. At the same time, as party lines hardened so did American thinking on policy reform. New ideas that might find compromise between the two positions could not long survive the political context.³¹

A single episode is instructive on this point. In the election of 1840, William Henry Harrison and the Whigs won on a platform that promised repudiation of the Independent Treasury and a 3rd BUS. But when Harrison died, his democratic-leaning vice-president, John Tyler, vetoed the BUS on grounds similar to Jackson. Yet he offered a compromise plan, a bank chartered in D.C. with the power to issue notes and take deposits, but shorn of its commercial loan business and run by the Treasury—what he called a “Board of Exchequer”. It was a compromise measure, because it would create a currency, while keeping the bank under full government control and out of the states. Clay in the Senate, outraged by the veto of the crown jewel of the Whig program, made sure the plan never made it to the floor. Clay, furthermore, could not support the

³¹ Michael F. Holt, *The Political Crisis of the 1850s* (New York: W.W. Norton, 1978), 31-38.

Exchequer because the Whigs promised a bank to their voters, and the Congress could not just jettison that promise because “men who have been betrayed will not fight.” Perhaps most importantly, the 1840s were not years for imaginative policy. Clay could not even comprehend such a plan, writing that the Democrats would not accept it and “having rejected a Nat. Bank, the State banks, and the S. Treasury, I could not conceive what other project of an Agent even Mr. Tyler’s ingenuity could present.” No one wanted to find a way to square the circle in antebellum America; perhaps, they did not think such a thing possible.³²

The death of the BUS as a viable institution and the death of the Whig Party created new vistas for rethinking national currency policy. After the intense battle for re-charter and the failure to achieve a third BUS in 1841, the Whig Party started to distance itself from the BUS as a national issue, as it no longer seemed a winner at the polls. In 1842, Webster called the BUS an “an obsolete idea.” The economic developments of the late 1840s seemed to seal its fate. The rise in specie levels stemming from the California gold strikes and the increase in European investments in American industry all buoyed the economy and softened the old economic divisions. The issue of a sound currency no longer seemed to attract voters in Whig state and national campaigns at the end of the decade. Senator John M. Clayton declared that while he would never renounce the principle of Whig faith in the BUS, he predicted that “no Whig will ever start that question again.” By 1848, a Whig representative in the House from Illinois, Abraham

³²Holt, *The American Whig Party*, 127-136; Henry Clay to Peter B. Porter, October 24, 1841, in Robert Seager II, ed., *The Papers of Henry Clay: The Whig Leader*, Vol. 9, (Lexington: University of Kentucky Press, 1988), 616; Holt, *The American Whig Party*, 160-161; On Clay’s conjectures that the Democrats would not take Tyler see Henry Clay to John Sloane, October 23, 1841; the quote comes from Henry Clay to Francis T. Brooke, October 28, 1841; also see Henry Clay to Nathaniel P. Tallmadge, October 30, 1841; all in Seager II, ed., *The Papers of Henry Clay*, 9:615, 617, 619.

Lincoln, wrote to himself “the question of a national bank is at rest; were I president I should not urge it.”³³

With the new space created by the absence of the BUS, Whigs and Democratic-leaning politicians began to propose new ideas. In matter of fact, compromise between the two sides had already occurred at the state level, especially in New York. There, hard-money Loco-Focos compromised with conservative Democrats and Whigs to create a currency system that was anti-monopolistic, but one that recognized the use of paper money and regulated and restricted its use. Such an atmosphere of new ideas spurred one Whig, Millard Fillmore, to suggest that the country would benefit from extending the free banking idea of a currency backed by U.S. stocks to the entire Union. If one story is to be believed, he apparently got the idea from a French banker living in New York City, who wrote thoroughly Democratic editorials and pamphlets supporting free banking and equal rights. True or not, everyone acknowledged that if a new policy was to emerge, it would have to fuse the two sides and find a way past the old animosities and positions. The *American Whig Review* admitted, “the best teacher of the Democratic party is the Whig; and the tutors of the Whigs are the Democrats.” In 1858, the Governor of Kentucky, Charles S. Morehead (an old Whig--then a Know-Nothing) thought that the main obstacle to change were the old party lines: “it is only necessary to lay aside for a season

³³ For example, after Tyler’s veto of the BUS in 1841 and Whig defeats in the state elections that same year, Northeastern Whigs started to distance themselves from the BUS as a policy objective, while western Whigs still clung to the issue. See, Holt, *The American Whig Party*, 166, 684-689; “Reception at Boston,” September 30, 1842 in Charles M. Wiltse, ed., *The Papers of Daniel Webster: Speeches and Formal Writings*, 4th Series (University Press of New England, 1988), 2:350; John M. Clayton, *Speech of John M. Clayton, Of Delaware In Defense of Zachary Taylor* (Washington, D.C.: Towers, c.1848); “Fragment: What General Taylor Ought to Say” March ?, 1848 in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, 9 vols. (New Brunswick, N.J.: Rutgers University Press, 1953-1955), 1:454.

prejudices growing out of past party issues to produce a general conviction that it is the only remedy for the acknowledged evils under which we are laboring."³⁴

The death of the Whigs and the displacement of economic issues by the issue of slavery extension helped to facilitate the union of old Democrats and Whigs under the new tent that was the Republican party. The issue of slavery in the territories could, and did, attract free soil Democrats to abandon the Democracy in the mid-50s in numbers. While old Whigs probably outnumbered ex-Democrats within the new organization, the Whigs took pains to place Democrats in places of power as a means of encouraging more defections to the new Republican banner. This also meant that the party worked hard to suppress the old economic divisions that might rip the party apart. William Cullen Bryant, a former Democrat, wrote to Lincoln, the old Whig, to stress the need to keep economic issues out of the limelight, issues that "would be carried on with zeal, perhaps with heat." To balance his cabinet, Lincoln appointed Salmon P. Chase, leader of the ex-democrats in the party, as Secretary of the Treasury. There seems to be no evidence that either Lincoln or Chase was looking to use victory of the Republicans in 1860 to institute a new age of monetary powers for the government. But with Democrats and Whigs under the same roof and an admitted need for change, the conditions were now ripe for a revolution.³⁵

³⁴ Helderman, *National and State Banks*, 134-5; The banker was Laurent Bonnefoux. The claim that the idea of national banking backed by US securities began with him is in Bonnefoux, "Financial Policy of the Government," *Banker's Magazine and Statistical Register* 11, 6 (Dec. 1861). For further proof of Bonnefoux's democratic credentials see L. Bonnefoux, "Fellow Citizens," *Evening Post*, 5 November 1834; Fritz Redlich, *The Molding of American Banking: Men and Ideas* (New York: Johnson Reprint Corp., 1968), 2:100; "National Currency," *The American Whig Review* 16, 5 (November, 1852), 434; *Journal of the House of Representatives of the Commonwealth of Kentucky* (Frankfort. K.Y.: A.G. Hodges, 1857), 15.

³⁵ Eric Foner, *Free Soil, Free Labor and Free Men: The Ideology of The Republican Party Before The Civil War* (New York: Oxford University Press, 1995), 165-168; William Cullen Bryant to A. Lincoln December 25, 1860, in Bryant and Voss, eds., *The Letters of William Cullen Bryant*, 4:188.

From Creation Come Destruction

The Civil War was not fought to centralize the monetary supply. It was just that some northerners believed it the perfect occasion to achieve that end. In the summer of 1861, newspapers in the North speculated and argued for some national currency to deal with the festering state bank problem. Chase received letters that summer asking for him to reform the system. Laurent Bonnefoux, the French banker who supposedly influenced Fillmore in 1848, wrote a lengthy article in the *Banker's Magazine* arguing that the Civil War was the perfect moment to nationalize the currency on the model of the free-banking plan. If anyone forgot that there was such a thing as a currency problem, events that summer served to remind them. Illinois, like several states in the Union, had adopted the free banking model of New York in 1851. Yet, its banks had the singular misfortune of investing in southern state bonds to back their currency. When those states left the Union, and people realized that the bonds were likely to be sequestered or repudiated, it caused a collapse of the entire Illinois bank system. The ensuing chaos created a currency vacuum where railroads and merchants in the Midwest attempted to find a means to supply their want for a safe, uniform national currency.³⁶

Salmon P. Chase was receptive to these calls and unveiled his plan in December 1861. The plan essentially called for a national version of the New York free-banking plan. Like the New York plan, upon deposit of a certain amount of U.S. bonds with the Treasury, “associations” of banks would have the privilege of issuing a new U.S.

³⁶ *Boston Daily Advertiser*, June 12, 1861, June 19, 1861; *New York Herald*, June 3, 1861, July 1, 1861; July 7, 1861, December 2, 1861; *New York Times*, June 24, 1861; *Chicago Tribune*, October 6, 1861; L.M. Kellogg to SPC, January 8, 1861, Chase Papers, LOC, reel 11; John W. Caldwell to SPC, October 22, 1861, Chase Papers, LOC, reel 12; Bonnefoux, “Financial Policy of the Government,” *Banker's Magazine and Statistical Register* 11, 6 (Dec. 1861); Hammond, *Banks and Politics*, 618; Hammond, *Sovereignty and an Empty Purse*, 37-38; Richardson, *Greatest Nation of the Earth*, 67-68; Solomon Sturges to SPC, c.1861-1862, Chase Papers, LOC, reel 19.

currency, redeemable on demand. While the policy's design was not revolutionary, in terms of constitutionalism and ideology, the plan represented a synthesis of sorts, while clearly leaning toward the Democratic end of the spectrum.³⁷

In explaining the constitutional power behind the idea, Chase used language that obscured the fundamental transition in thinking on currency regulation. He called the power "too clear to be reasonably disputed" and in 1863 he called it "difficult to conceive by what logic" the Congress lacked a power over the currency. Despite this, his view was essentially the national currency thesis of the 1850s. He took the interpretation that while not mentioning bank bills, these were "within the spirit, if not the letter" of the Constitution's prohibitions. In 1863, he added the idea that the coinage clause granted the power to control "private or corporate substitutes that effect its values." This argument provided him with the power to regulate and restrain the state banks, but Chase also believed that the government needed the constructive policy of a national banking currency to replace the notes of the state banks in commerce.³⁸

National banking required Chase to accept the Whiggish idea that the government could create corporations within the states, as announced in the Marshall court opinion of *McCulloch v. Maryland*. While he left no record of why he accepted that premise, Chase, who disliked the idea of an irredeemable paper currency and realistically recognized the need for some sort of paper in commercial affairs, thought the mixture of private and public credit under a national corporation preferable to the Scylla and Charybdis of either an irredeemable government currency or a morass of state bank notes. The creation of national banks within the several states perhaps seemed offset by the value of many

³⁷ Chase, "Report of the Secretary of the Treasury, December 9, 1861," *S. Doc. No. 2*, 37th Cong., 2nd Sess., 19 (1861).

³⁸ *S. Doc. No. 2*, 37th Cong., 2d Sess. (1861), 17; *Congressional Globe*, 37th Cong., 3d Sess., Appendix, 26.

banks as compared to a single “monster bank.” As he explained near the end of the war, the old BUS policies depended on the creation of “odious monopolies,” but he had found “another mode.” A national free banking law would embody the antimonopoly views of the Jacksonians. In defending the idea on the floor of the Senate, James R. Doolittle, educated in the “school of the Democracy” but now a Republican, praised national banking as “the very reverse of anything like a monopoly...everybody standing equal before the law.” The act seemed to capture, for Doolittle, an irony that seemed impossible to the previous generation-- a national policy that had “none of this power of centralization; it is a decentralizing thing altogether.”³⁹

Yet like the good Jacksonian he was, Chase did not want to kill any of the state banks. He wanted to attract them with a better system and patriotism. His scheme would depend on the “voluntary action of existing institutions” that he seems to have believed would not turn down the opportunity to issue a currency receivable in all parts of the country. Chase added that the plan would also help create a market for U.S. securities. But the national currency plan was a not a war-time measure. Chase’s vision was fixed on the horizon beyond the war; his main defense of the system pointed to the long history of unstable state banks, and he cited the recent events in Illinois as a reminder. Always the reformer, Chase proclaimed that a national banking system would create “the great transition from a currency heterogeneous, unequal, and unsafe, to one uniform, equal, and safe.”⁴⁰

As it turned out, it was exactly the wrong time for the “great transition.” The press could not understand the focus on reform when the country needed cash and new taxes

³⁹ *Cincinnati Daily Gazette*, November 12, 1864; *Cong. Globe*, 37th Cong., 3rd Sess., 882.

⁴⁰ *S. Doc. No. 2*, 37th Cong., 2nd Sess., 20; Redlich, *The Molding of American Banking*, 2:104.

immediately to pay the army, something Chase had played down in his December message. The bankers who were supplying the lion's share of the government's loans could also not understand the timing of the proposal. Chase was now suggesting that the bankers give up their old charters and join his new, untried system in the middle of a war. George S. Coe, President of the American Exchange Bank, wrote Chase that he thought "a bare mention of your idea on this occasion may prove a bomb shell that will scatter our B[ank] Gentlemen in alarm." The Chase proposal coupled with massive gold hoarding in the North and fear of war with Great Britain pushed the banks of the North to suspend specie payments at the end of December. The House Ways and Means subcommittee on currency, headed by Elbridge G. Spaulding, had drafted a national banking bill based on the text of the Massachusetts free banking law, but Spaulding tore it up when he heard about the suspension. For the next two months, Congress focused all its energy on the passage of the first Legal Tender Act, a law that would declare U.S. notes equivalent to gold in law, making them a tender in private and public transactions. It was a controversial move, but one that the bankers supported, as they would be able to resume specie payments by paying out, what were to be known popularly, as greenbacks. Chase deeply regretted the law, and even after suspension, seemed to still think that Congress would pass his banking plan. He would have to wait over a year to see any progress on that front.⁴¹

The road to the passage of the act did not start with the constructive policy of Chase's banking plan but with a strong desire within Congress to place negative pressure

⁴¹ *Boston Daily Advertiser*, December 11, 1861; *New York Herald*, December 13, 1861; "National Ways and Means," *Railway Times* 14 (January 11, 1862); George S. Coe to SPC, November 11, 1861, Niven, ed., Papers of Chase, reel 18; Hammond, *Sovereignty and an Empty Purse*, 131-159; See for example SPC to Enoch T. Carson, December 30 1861, Niven, ed., Papers of Chase, reel 18.

on the state banks. By the time that Congress met in December of 1862, it was clear that the state banks were standing in the way of the Union's financial policies. The Legal Tender Act, for all its symbolism as a measure of government strength, did not restrain or control the American monetary system. The greenbacks merely expanded the base of legal tender money that the banks could utilize to issue their own bank notes. Like a virus converting a cell to its own purposes, the banks swallowed the legal tenders up on the open market and quickly converted them into reserves for their own bank notes. Congress had approved 300 million in legal tenders before December, more than the circulation of all the loyal state banks in January 1861, and it was still not enough. It was not just a matter of the war's costs, as Chase reported that the great cause was a "redundancy" in the circulation caused by the bank's use of the notes as reserves. In his December 1862 report, Chase recommended a tax on state bank notes to restrain the banks. In both the House and Senate of that session, Republicans repeated the refrain that something needed to be done, and in the guise of taxation they seemed to find the proper tool.⁴²

Taxation proved to be the policy and power that could finally reach past the barrier of federalism and control the state banks. Congress had started to experiment with currency control in the summer of 1862, when in passing a law creating a fractional postal currency (stamps that would be worth less than a dollar and take the place of small change), Congress banned all bank issued notes under a dollar. Nevertheless, members of Congress doubted the constitutionality of that act, and believed that the Supreme Court would declare a direct ban on bank notes unconstitutional. The taxation clause of the Constitution only required that taxes be uniform. Historically, the Supreme Court placed very few limitations on the taxation clause in the period before the Civil War. In an

⁴² *Cong. Globe*, 37th Cong., 3d Sess., Appendix, 24-25.

impassioned speech on the floor of the Senate, John Sherman of Ohio thought he had found the way, “the States cannot by an act of incorporation place their property beyond the power of Congress.” By taxing state bank notes, the bills would no longer be profitable and the state banks, Sherman hoped, would confine themselves to their deposits and discounts on commercial paper ever after.⁴³

Within Congress, low taxation emerged as the consensus measure to reign in, but not destroy, the banks. Thaddeus Stevens, chairman of the Ways and Means committee, disliked national banking and silently killed an attempt to discuss the issue in July 1862. Yet he favored a tax on state notes that exceeded a sliding scale of bank reserves. Such a tax would not make the notes unprofitable, but it would restrict them past a certain point. In a bill that would double the amount of greenbacks in circulation, Steven’s committee included the tax as a necessary means to prevent further inflation. Moderate Republicans like Spaulding made it clear that they would not support a total destruction of the state banks, but thought a two percent tax acceptable. Democrats, of course, decried the tax. Charles John Biddle perceptively noted that Congress was trying to run around the Supreme Court opinion in *Briscoe* that protected state bank notes by using taxation “for the avowed object of entirely suppressing what we have not the constitutional right directly to prohibit.” On the other end of the spectrum, Owen Lovejoy and Amasa Walker supported a 5-6 percent tax that would crush the banks of issue. The mass of Republicans recognized the need for state restraint but wanted to avoid national banking or killing the state banks because of what it might do to the politics of the country. House Republican Frederick Pike thought it was all too much--“while we have this great political war on our

⁴³ Act of July 17, 1862, ch. 196, 12 *Stat.* 592-93; The leading case was *Hylton v. US* 3 U.S. 171 (1796); *Congressional Globe*, 37th Cong., 3rd Sess., 287, Appendix, 49.

hands, we shall, on top of it, initiate a financial war against all banks.” In the end, the Senate with House concurrence, lowered the tax to 1 percent as a gentle means of restraining the banks.⁴⁴

The power to create an alternative to the state banks found its immediate origins in a political push by the Lincoln administration in the winter of 1862-63. In a section of his 1862 annual message authored by Chase, Lincoln explicitly made the national banking idea an administration measure. Now, if Stevens and the other critics desired to avoid the issue, they would have to openly break with the President. When Congress sent the President an emergency authorization for \$50 million more in greenbacks, Lincoln replied that he would sign off on the bill, but he expected Congress to find a more permanent solution in the form of Chase’s bank bill. Chase, through Henry Cooke, found a powerful voice in support in the person of John Sherman. Sherman resurrected the national bank bill in the Senate, and went about guiding it through the legislative process. Moreover, Lincoln used his connections, and sent his personal secretaries to lobby in the House and Senate to change the mind of hesitant Congressmen.⁴⁵

Political pressure from Lincoln and Chase was the driving force for this new policy, because within Congress, talk was lukewarm at best. While many representatives understood the evils of the state banking system, they were not all convinced that this program at this time was the right policy. Sherman gave the bill its strongest support arguing that it was state’s rights that caused the Civil War and that “the policy of this country ought to be to make everything national so far as possible.” The bill passed Congress and Lincoln signed it into law on February 25, 1863. But it was far from a

⁴⁴ *Cong. Globe*, 37th Cong., 3rd Sess., 146, 284, 286-287, 236, 341, 339, 345, 347, 940-941.

⁴⁵ *Cong. Globe*, 37th Cong., 3rd Sess., Appendix, 2; *Cong. Globe*, 37th Cong., 3rd Sess., 392-393; Blue, *Salmon P. Chase*, 158-161.

triumph of the national government over the states, as the mood among supporters in the Congress was explicitly against outright destruction.⁴⁶

Congress would accomplish the destruction of the state banks only through a combination of carrots and sticks. The 1863 act was not an immediate success. At the end of 1864, there were only 467 national banks versus 1089 state banks. To attract more conversions, Congress reformed the system by lowering reserve requirements, getting rid of a regional system of note quotas, and letting state banks retain their old names. These moves encouraged a rash of conversions, putting the national banks ahead of state banks for the first time in 1865, 1294 to 349. Yet the state banks would not die, and by the end of the war the tri-partite currency system of greenbacks, national bank notes and state bank notes seemed like too much. The American currency union would have to move toward centralization or suffer under growing inflation.⁴⁷

The mood in Washington now favored a future without the state banks. Comptroller of the Currency Hugh McCulloch thought that the state banks were “unfitted for a commercial nation as well as a Union of States.” Sherman and others in Congress changed their rhetoric about the banking act, as saying it was “intended to supersede the state banks. Both cannot exist together.” Former opponents, like Henry Laurens Dawes in the House, accepted the National banking plan as a necessary means “to cure an existing and acknowledged evil.” Over an extended debate in 1865, in which some senators darkly predicted “a centralization of power...strong enough to wield an empire,”

⁴⁶ *Cong. Globe*, 37th Cong., 3rd Sess., 843; An Act to provide a National Currency, February 25, 1863, ch.58, 12 Stat. 665; Hammond, *Sovereignty and an Empty Purse*, 332; *Cong. Globe*, 37th Cong., 3rd Sess., 875.

⁴⁷ Richard S. Grossman, “U.S. Banking History, Civil War to World War II,” EH.Net Encyclopedia, accessed May 1, 2012, http://eh.net/encyclopedia/article/grossman.banking.history.us.civil.war.wwii#_ftn2; David M. Gische, “The New York City banks and the Development of the National Banking System 1860-1870,” *The American Journal of Legal History* 23, 1 (1979), 49-55.

Congress approved a ten percent tax on state notes that effectively drove any state bank of issue out of existence.⁴⁸

⁴⁸ Quoted in Hammond, *Sovereignty and Empty Purse*, 346; *Cong. Globe*, 38th Cong., 2nd Sess., 1139, 833, 1197;; Act of March 3, 1865, Ch. 13, 13 *Stat.* 484 (1865).

II

Conflict and Consolidation

5

Enmeshed in Greenbacks

With the passage of the Legal Tender Acts and the National Banking acts, Congress reshaped American political economy during the Civil War. On its face, the power of the federal government seemed ascendant on monetary matters. Across the loyal states, Americans increasingly learned to live within a world of federally controlled paper money and banks, and in some cases fell in love with the idea that the greenbacks could be the key to the Union prosperity beyond the war. Yet, Secretary of the Treasury Salmon P. Chase and the Republicans in Congress were constantly frustrated in their efforts to control their creation in the market by the countless people who speculated in stocks or futures, raised prices or simply hid their gold in an effort to protect their own economic future. All these affected the value of the greenbacks. More importantly, federal officials faced significant pockets of resistance to this new order across the country. Two states, New York and California, led the charge against the government's grip on the monetary system. Resistance though national politics would prove a failure, as the economics and politics of war made a serious alternative to the greenbacks unrealistic. In the end, resistance found limited success in state courts as citizens directly challenged the claim that government intervene in their economic affairs, starting a process that would eventually place boundaries on Congress inchoate power over money.

The Greenback Zone

Monetary policy during the war has mostly been studied from the perspective of macroeconomic history. Focusing on the rate of inflation and its effects on key economic

indicators, economic historians have concluded that the greenbacks had an overall negative effect on the economy that made the war more expensive in the end. Some go as far to say that that the government should have never turned to fiat currency. Scholars, studying the effects of the war on state and society, have often concluded that if an economic class benefited from the Civil War, it was eastern financial elites. These works argue that the war forged a new bond between capital and the state against labor. These conclusions, however, fail to capture the depth and breadth of how the government's new power rearranged American political economy.¹

The Legal Tender Act and the National Banking Act touched every person in the cash economy. "There are now railroad bonds, mortgages, annuities, ground rents, life insurance, bank stocks, saving's deposits, and numerous other credits" touched by "Mr. Chase's paper scheme," explained one critic. Beyond the rate of inflation, greenbacks structurally changed how people conducted business. Federal currency centralized and homogenized what had been a chaotic world of bank paper. It altered how people interacted in the market, and altered their attitudes towards federal involvement in their everyday lives. Yet there was no simple dichotomy of capital and state against labor

¹ Mitchell, *History of the Greenbacks*; Timberlake, *Monetary Policy in the United States*, 86; Mark Thornton and Robert B. Ekelund Jr., *Tariffs, Blockades, and Inflation: The Economics of the Civil War* (Wilmington, DE: SR Books, 2004), 68-72; Stephen J. DeCanio and Joel Mokyr, "Inflation and the Wage Law during the American Civil War," *Explorations in Economic History* 14, (October 1977): 311-36; Scholars have suggested that more than the greenbacks affected inflation, see Reuben A. Kessel and Armen A. Alchian, "Real Wages in the North During the Civil War: Mitchell's Data Reinterpreted," in Ralph Andreano, *The Economic Impact of the American Civil War* (Cambridge, MA: Schenkman Publishing, 1967), 11-30; Iver Bernstein, *The New York City Draft Riots: Their Significance for American Society and Politics in the Age of the Civil War* (New York: Oxford University Press, 1990.); Grace Palladino, *Another Civil War: Labor, Capital, and the State in the Anthracite Regions of Pennsylvania. 1840-1868* (New York: Fordham University Press, 2006); Richard Franklin Bense, *Yankee Leviathan*; Beckert, *The Monied Metropolis*, 111-144.

during the war years. Praise for and defiance to federal policy coexisted within the Union during the Civil War.²

Spatially, the greenbacks and the National Banking System (NBS) knit together much of the United States into what might be called the Greenback Zone. In what was a radical shift from the era of the state banks, soldiers, merchants, and farmers all started to receive and pay out these notes as their primary form of cash. This zone covered the entire North, and Midwest, and limited parts of the Mountain West and Pacific Coast. The gold fields of California allowed the West Coast to make greenbacks a marginal currency. Greenbacks did make their way into the Confederacy, and became the central form of money in areas close to Union lines. Some northern patriots saw greenbacks in the South as a sign of the superiority of the Union, but in reality their overall presence there was limited until well after the war. Within the zone, federal currency accelerated exchanges between regions and lowered transaction costs, as merchants no longer needed to buy bills of exchange to trade with wholesalers and importers. Merchants and financial writers during the war spoke of how the use of any form of credit was promptly replaced with cash purchases across the country during the war. Greenbacks also pushed out gold as the primary reserve currency of banks. Gold shifted to the periphery of the American monetary world, albeit as a highly profitable commodity.³

² "The Cost of the War and Who Must Pay It," *The Old Guard*, no.1 (January, 1863): 1-6; Such a perspective echoes Harry Scheiber's call for economic historians to look beyond quantitative data and examine the ways that the war altered the structure of the northern economy during the war. Harry N. Scheiber, "Economic Change in the Civil War Era: An Analysis of Recent Studies," *Civil War History* 11 (1965), 17.

³ Paul W. Gates, *Agriculture and the Civil War* (New York: Knopf, 1956), 54; *New York Times* March 6, 1863; George L. Anderson, "The South and Problems of Post-Civil War Finance," *Journal of Southern History* 9 (May, 1943), 184; David F. Weiman and John A. James, "The Political Economy of the US Monetary Union: The Civil War as a Watershed," *American Economic Review* 97, issue 2, (2007): 271-275; "Where the Funds for the War Have Come From," *Scientific American* 10 (April 30, 1864), 281;

Federal monetary policy, once confined to the minting of gold and silver, tightened its grip on financial and commercial life, touching everything from the price of goods to the change in a person's pockets. With the Union practically off the gold standard, the value of greenbacks floated in reaction to the progress of the war, international exchange, and overall domestic supply and demand. On Wall Street, traders bought and sold gold at the "Gold Room" as a hedge against inflation, and in many cases, just to make a profit off the depreciation of the greenbacks. Bulls on gold would whistle "Dixie," while bears would sing the "John Brown's Body" depending on the news flashing over the wires. In Washington, Chase and Congress were convinced that this trade was pushing up inflation and eroding government credit. In 1864, Congress attempted to control speculation in Wall Street by first selling gold, and then passing an act outlawing futures contracts in gold. Both strategies failed. Wall Street called the government's bluff and pushed the price of gold even higher, forcing Congress to repeal the ban a month after its passage.⁴

When almost all the small silver change of the country disappeared in the summer of 1862, Congress scrambled to react, printing millions in small paper notes so that people could simply break a dollar. There were other new forms of paper money, including two types of greenbacks that bore interest. By wars end there were seven different forms of federal currency in use, not counting bonds and other forms of federal debt. In the House, Fernando Wood, formerly the fiercely anti-administration mayor of New York before being elected to the House of Representatives in 1863, criticized calling

"Commercial Chronicle and Review," *Merchant Magazine and Commercial Review* 49, (August 1, 1863): 128.

⁴ James Knowles Medbery, *Men and Mysteries of Wall Street* (New York: Field, Osgood & Company, 1870), 235-256; Kinahan Cornwallis, *The Gold Room, and The New York Stock Exchange and Clearing House* (A.S. Barnes, 1879), 3-10; Richardson, *The Greatest Nation of the Earth*, 98-99.

federal paper a “uniform currency” as a “joke, a sarcasm” when it was, in reality, a confusing morass of paper with nothing uniform but the propensity to float in value. The *London Times* chided the government’s inchoate currency “Washington is showering paper of the States, and involving the whole people in one matted mass of indebtedness.” The Gold Room fiasco and the problem of the small change underlined how federal officials, accustomed to taking a limited role in the economy for most of the antebellum period, struggled to find a way to guide and control their newfound power during the war years.⁵

The first greenbacks went into circulation sometime in April of 1862. Prior to then, Chase continued to use U.S. debt to pay contractors in the form of 7-30s and Certificates of Indebtedness, while many soldiers in the field simply went without pay. The legal tender notes, printed by the American and National Bank Note Companies, were much like the demand notes of the previous summer in their appearance and design. The notes were printed on cream-colored paper, with their value and images of Columbia and figures such as Hamilton in elaborate green filigree on the back. Each note was a fairly complicated document to read. On one hand, the back declared to the holder “this notes is a Legal Tender for all debts public and private,” but with a significant caveat. The notes were not acceptable for customs dues, and reminded the holder that the notes could be converted into gold-paying bonds; both proof of the conservative impulse to retain a link to gold. The notes also served as quasi-campaign documents by carrying likenesses of key figures in the Republican administration. The five-dollar note carried Lincoln’s face and the one-dollar note bore a portrait of Chase. It was and is widely

⁵ Mitchell, *History of Greenbacks*, 156-165, 179; *Cong. Globe*, 38th Cong., 1st Sess., 1728; *London Times* reprinted in *Milwaukee Daily Sentinel* August 29, 1862.

supposed that Chase put his face on the most common note as means in advance of his push for the Republican presidential nomination in 1864. Referred to as “United States Notes” or “legal tenders” the press and the public quickly dubbed them “greenbacks,” owing to their unique green hue. The green ink was chosen at the time because it was thought to be the hardest color to counterfeit. John E. Williams, at the Metropolitan Bank, suggested to William Pitt Fessenden that they be made yellow so that the public would “know, by the color that they held the nearest representative of gold.” Americans, however, would have to adjust to green and not gold as the color of money.⁶



U.S. Note, “Greenback,” 1862 the National Numismatic Collection at the Smithsonian Institution.

⁶ James Shields to Salmon P. Chase, March 30, 1862, reel 19; Chase to Stanton, April 8, 1862, reel 20, in Niven, ed., *Papers of Chase*; Hammond, *Sovereignty and an Empty Purse*, 239-244; Act of February 25, 1862, ch.32, 12 Stat. 345; Niven, *Salmon P. Chase*, 332; John E. Williams to William Pitt Fessenden, January 12, 1862, Fessenden Papers, LOC, reel 2.

By the summer of 1862, the notes were everywhere. “In the merchants’ petty cash-box, and in the farmers’ greasy old wallets,” as one Wall Street operator put it. The very first reactions to the government currency were mixed. In New York City, the notes first stimulated alarm. But as the economy improved in spring of 1862, greenbacks quickly became “like the kiss of the price on the cheek of the sleep-enchanted lady in the fairy tale.” Financial columns for the year noted the increased pace of business and praised the greenbacks for their stimulus to the commerce of the North. Soldiers, who must have been some of the first Americans to get the notes as pay, were also hesitant at first. But after months with no pay, soldiers quickly learned to accept the notes without question. One newspaper reported that by April 1862 soldiers stationed in Lawrence Kansas “no longer stare with an avaricious gaze upon a ‘green-back’ ...all agree that they are pleasant and agreeable acquaintances, and seem perfectly willing to ‘take in’ these comparatively former strangers.” In turn, the soldiers explained the value of the currency to others on the home front. Milton E. McJunkin wrote home to Pennsylvania explaining that greenbacks would pay all debts and would be “good as long as there is any land in the United States.”⁷

Union soldiers also served as a vector, bringing greenbacks wherever they went in the South. Soldiers would buy food and other goods from southerners who often took the notes at a premium over the Confederacy’s own legal tender notes. To be sure, some

⁷ William Worthington Fowler, *Inside Life in Wall Street* (Hartford, CT: Dustin, Gilman & Co., 1873), 158, 155; “Commercial Chronicle and Review,” *Merchant Magazine and Commercial Review* 46, (June, 1862): 577-585; “Business Prosperity,” *Railway Times* 14 (October 4, 1862), 319; For example of soldiers anxiously waiting for their greenbacks to show see Caroline Cox Wyatt, and Lorna Lutes Sylvester, eds., “The Civil War Letters of Charles Harding Cox,” *Indiana Magazine of History* 68, (March, 1972): 45; *Barre Gazette* (Barre, MA.), April, 9, 1862; Milton E. McJunkin to Mary Eliza West, March 2, 1862 in *The Bloody 85th: The Letters of Milton McJunkin, a Western Pennsylvania Soldier in the Civil War*, eds. and comps. Ronn Palm, Richard Sauers, and Patrick A. Schroeder, (Cambridge: MA: Zoland Books, 1999), 21.

southerners refused the notes on patriotic grounds. One Confederate woman told a Union soldier near Franklin Tennessee that she would not take greenbacks as payment for a turkey, and that she would “not wipe her !!! with it.” Yet there is evidence that greenbacks also circulated at a premium in Confederate cities that were far from Union lines. Recently freed African Americans also came into contact with the greenbacks through their interactions with the Union Army. African Americans sold goods to Union soldiers and received them as pay for service in the Army. The WPA Slave narrative collection contains several accounts of their experience with these notes during the war. Some remembered the greenbacks as the first money they ever encountered. Others who possessed Confederate money quickly embraced the greenbacks. James Lucas, who dug trenches for the Union at Vicksburg, went home to his family and threw all the Confederate notes they saved in the fire and presented his parents with greenbacks from his pay. Remembering his first contact with Union currency during the war, Elijah Henry Hopkins said that he thought they were “good money issued by the government.”⁸

Far from the battlefield, greenbacks looked attractive to the business community of the North for very different reasons. Merchants, who had suffered from a downturn in business since the start of the war, looked forward to the easy money and expanded government spending that the legal tender notes made possible. As business improved over the course of 1862, businessmen cited the new currency as the cause and began to contemplate the long-term possibilities of a uniform government currency. At a meeting

⁸ Eugene Forbes, *Diary of a Soldier and Prisoner of War in the Rebel Prisons* (Trenton, NJ: Bechtel Printers, 1865), 60; *Wisconsin Daily Patriot* (Madison, WI), July 17, 1862; Forbes, *Diary of a Soldier*, 55; Cora Slack, “Albert L. Slack, 121st Ohio Volunteer Infantry, Delaware and Marion Counties, Ohio,” *Ohio Civil War Genealogy Journal* 13 (December 2009):163; *Wisconsin Daily Patriot*, August 20, 1862; *Littell’s Living Age*, March 21, 1863; *Slave Narratives: A Folk History of Slavery in the United States From Interviews with Former Slaves* (Washington, 1941), 13:349, 9:95-96, 2: 313.

to create the Union Pacific Railroad in Chicago, S. Dewitt Bloodgood called greenbacks better than gold and declared that the Legal Tender Act “will enable us to build this road.” In response to a questionnaire sent out by *Banker’s* magazine, several bankers and merchants insisted that the war had created a new system that could be the key to a prosperous future beyond the war. The *Philadelphia Inquirer* opined “the sooner the ‘green-backs’ become the universal medium of exchange the better for us all.”⁹

Support for the greenbacks existed among communities across the country, but in no place was it stronger than in the Midwest. In the light of their previous troubles with wildcat banks, government currency fit perfectly with the economic needs and political sensibilities of Midwesterners. The enthusiasm for government paper money began before the rest of the country, due to the Midwest bank failures of 1861 that left the region with no secure paper money. After the collapse, banks in places as far away as New York and Canada overwhelmed Midwesterners with worthless paper. From the start of the war, Chase received letters and clippings of Midwest newspapers begging for more Treasury notes. With the introduction of the greenbacks in 1862, the enthusiasm only increased. Both businessmen and farmers registered consistent support for the stability that federal paper provided. At a farmers’ convention in Dixon Illinois held in December of 1862, Charles Walker of Chicago predicted to the crowd that greenbacks “will be the system of the 19th century.”¹⁰

Uninterested in the tenets of classical economics, Midwesterners saw the greenbacks as a fair and stable medium in opposition to the long history of unstable bank

⁹ *Railway Times* 14 (March 15, 1862): 82; *Merchants Magazine* 47 (October 1862): 322; “New Views of the Currency,” *Bankers Magazine* 12, (December, 1862): 406, 491; *Philadelphia Inquirer*, September 10, 1862.

¹⁰ See William D. Gallagher to SPC, November 11, 1861, December 6, 1861, Niven, ed., *Papers of Chase*, reel 18; *Chicago Tribune*, December 3, 1862; Gates, *Agriculture and the Civil War*, 352-353.

notes. Ironically, federal paper money held the same antimonopoly character for these early supporters, as gold coin had for the Jacksonians in the period after 1837. Echoing Jacksonian rhetoric, proponents described Greenbacks as a democratic form of currency, because it wrested control over money from a small circle of financial elites and placed in the hands of the people's representatives in Congress. Numerous petitions to Congress during the Civil War carried this antimonopoly message. One petition from Lyndon, Illinois asked Congress "give the people this legal currency, with the privilege of determining for themselves the amount of circulation necessary, and they will take care of themselves." When Chase took a Midwest tour during the 1864 election, everywhere he travelled he met cries of public in support for the greenbacks. When he stepped off the train in Columbus, Ohio he was met with a crowd who chanted, "How are you old Greenbacks!" Chase embraced the antimonopoly theme when he told an audience in Cincinnati "if labor was henceforth to have fair wages, it was highly desirable to have for a medium of payment, a substantial, permanent, and uniform medium."¹¹

The Limits of Dissent

Admiration for the government's currency, however, was far from universal within the Union. The Legal Tender Act violated the classical political economy enshrined in the works of British economists by divorcing the dollar from gold. Just like an inch could never be anything but an inch, true money could never be anything but gold and silver according to this view of economics. History had proven that paper money could do nothing more than represent gold. With repeated expansions in the volume of

¹¹ *Milwaukee Daily Sentinel* January 3, 1863; February 13, 1863; Petitions from Pennsylvania, Illinois and Ohio can be found in HR 37A-G20.2, Files 1, 2, RG 233, House of Representatives, Committee on Ways and Means, NARA I; Petition to Congress from Lyndon, Illinois, January 13, 1863, HR 37A-G20.2, file 2, RG 233, House of Representatives, Committee on Ways and Means, NARA I; Niven, *Salmon P. Chase*, 335-338, 336.

currency, several commercial publications predicted financial doom. The relative prosperity of 1862 silenced some critics. A column in *Merchants Magazine* admitted that the financial success of 1862 might require rethinking the maxim that paper money had to be redeemable in gold. But when greenbacks started to seriously depreciate, conservative economic writers resumed their attacks on the system. The Wall Street banking firm of Hallett & Co. advised investors that without resumption of specie payments derangement of the economy was inescapable. Depreciation of the dollar was "the necessary result of a law which is as certain and unerring in its operation as that of gravity...It is an attempt to make a shadow perform the office substance." Despite their belief that they possessed a force as strong as gravity on their side, opponents of the greenbacks found translating this view into political action near impossible during the war.¹²

The Democratic Party was the obvious place to consolidate anti-greenback sentiment within the Union. As the party of Jackson, the Democrats had strong attachments to hard money and an antipathy to centralized government, principles that the greenbacks and national banking system clearly violated. At the Congressional level, Democratic minorities stayed true to their economic roots and systematically opposed all the monetary legislation of Congress, with just a handful joining the Republicans in critical votes. Throughout the 37th and 38th Congresses, Democrats persisted in attacking the overall drift of federal monetary policy as disastrous. In the course of debate on a new taxation measure in the spring of 1864, Wood of New York launched into a full scale attack of currency issues as the roots of all that was wrong with the northern economy. Looking at what Congress had wrought in these new policies, S.S. Cox of Ohio

¹² *Merchants Magazine* 46 (March 1862): 236-238; *Merchants Magazine* 46 (June 1862): 577-585; *New York Herald*, March 10, 1863; Quoted in *Railway Times* 14 (July 26, 1862), 238.

exclaimed that they had created a new central power with "control over the property and pecuniary interests of the people."¹³

Democratic intellectuals criticized the greenbacks throughout the war. In 1864, Alexander Del Mar published a pamphlet entitled *The Great Paper Bubble; Or The Coming Financial Explosion*. Del Mar, a member of the Young Men's Democratic Union Association, was a polymath with advanced degrees in mining and engineering. He would go on to make a name for himself as a newspaper editor and as one of America's first serious monetary economists. *The Great Paper Bubble* and his *Gold Money and Paper Money* were perhaps the fullest and most sophisticated of the democratic attacks on the greenbacks and the national banking system. Published in 1863, *Gold Money and Paper Money* distilled Del Mar's research on the history of gold coin, containing a sophisticated analysis of the political economy of gold money in comparison with paper money. *The Great Paper Bubble* was Del Mar's attempt to popularize his views for the 1864 campaign, complete with cartoons, statistics, and attacks on Republican "financial *negromancer*" playing upon the fears that racial egalitarianism would lead to financial death.¹⁴

The first chapter of *The Great Paper Bubble*, written in the style of a platonic dialogue, featured Del Mar speaking through the character of the "Countryman" who distrusts paper money and educates his interlocutors on the evils of the greenbacks. In one scene, the Countryman spoke for many Democrats when he pulled out a bill, and

¹³ Richardson, *The Greatest Nation of the Earth*, 66-102; *Cong. Globe*, 38th Cong., 1st Sess., 1723, 1728-2683.

¹⁴ Joseph Aschheim and George S. Talvas, "Academic Exclusion: The Case of Alexander Del Mar," *European Journal of Political Economy* 20 (March 2004):31-60; Alexander Del Mar, *Gold Money and Paper Money*, (New York: Anson D.F. Randolph, 1863); Alexander Del Mar, *The Great Paper Bubble; Or, the Coming Financial Explosion...A Campaign Document for 1864* (New York: Office of the Metropolitan Record, 1864), 42.

pointed to the legal tender clause of the back and exclaimed "did you ever see so much rascality in a little space as there is on the back of this bill?" The rascality Democratic writers complained of came in three interrelated forms. First, it offended the classical liberal conception of money. Gold and silver were the only possible "money" on the planet. Del Mar stressed that paper could never be a standard of value, it could only promise to pay something in the future. The farther and more distant the promise from the possibility of payment, the more disjointed the economy would become. In trying to disprove Republicans who might say otherwise, Del Mar instructed his readers "No quantity of any other substance is money. It may be worth money, but is not money itself."¹⁵

Democrats interpreted the woes of the northern economy, rapid inflation of the basics of life and the corresponding enrichment of financiers who speculated in gold, as the result of the repeated issues of greenbacks. Del Mar countered the idea that inflation was the product of expanded government spending or the loss of a major portion of the labor force to the war. The last point was political; greenbacks and the National Banking System centralized government in favor the Republicans. Del Mar harped on the NBS pointing out that the new banking system's "central management" would be located in Washington, a fact that would only increase Republican patronage.¹⁶

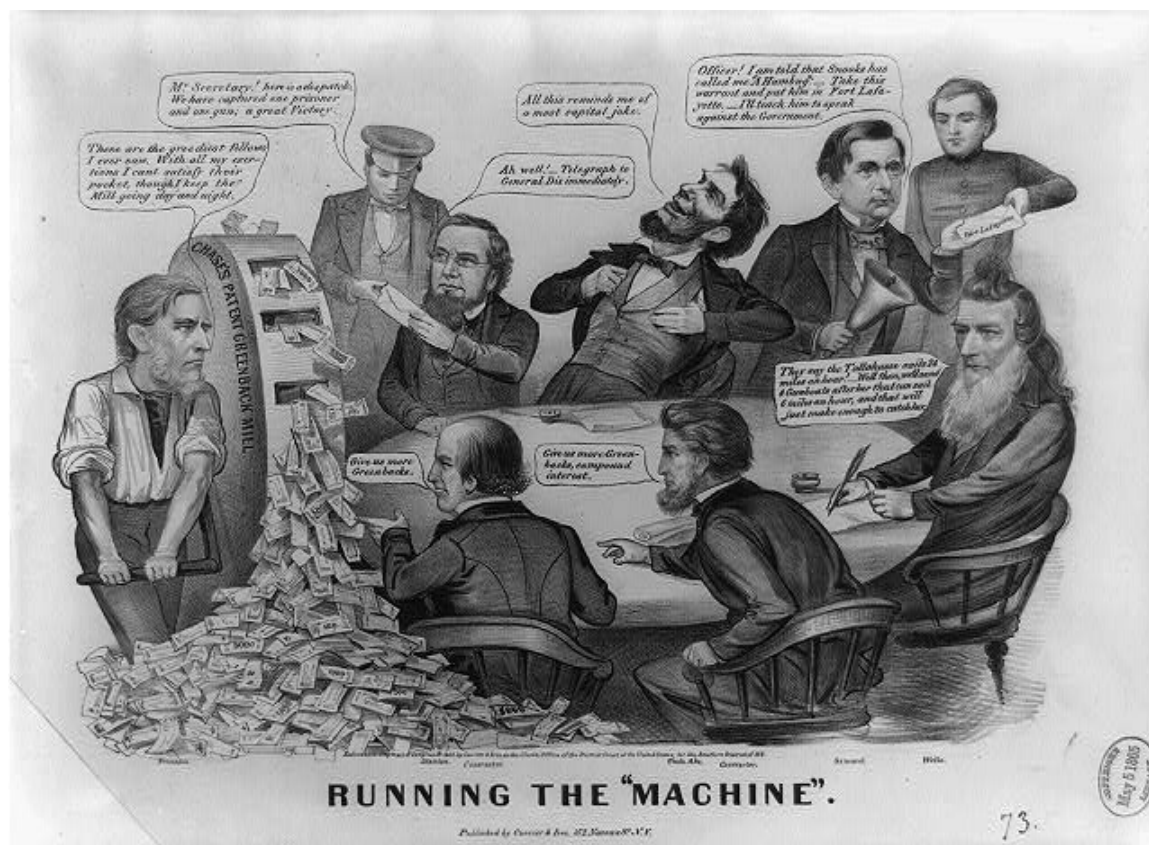
Del Mar's was only the most prominent and sustained example of slew of articles and speeches by Democrats aimed at the new national monetary authority. In 1863 and 1864, as inflation took its toll, Democrats liberally mixed attacks on the greenbacks with their central strategy of attacking the Republican violations of civil liberties and their

¹⁵ Del Mar, *The Great Paper Bubble*, 4, 6-7, 19.

¹⁶ Del Mar, *The Great Paper Bubble*, 18.

racial egalitarianism. Linking Republican monetary policy with the rise in prices of basic foodstuffs was an excellent campaign tool because the price of these material necessities touched the lives of millions of voters. One campaign document included tables of basic goods with one column marked "Democratic Prices" (or prewar prices) and the other dubbed "Abolition Prices." A democratic satire of 1863, "The Lincoln Catechism of Abraham Africanus I," instructed readers that the task of the Secretary of the Treasury was "To destroy State banks, and fill the pockets of the people with irredeemable, United States shinplasters." Within the Democratic rhetoric of the era, "greenback" became a synonym for extravagance and corruption, especially when combined with the specter of emancipation. Democrats, on different occasions, dubbed compensated emancipation "greenback abolitionism," and called greenbacks "abolition rags."¹⁷

¹⁷ "Green-Back to his Country Friends" (New York: 1862); "The Cost of the War, and Who Must Pay It," *The Old Guard* 1 (January 1863): 1; "National Notes vs Labor," *The Old Guard* 2 (January 1864): 8-12; Society for the Diffusion of Political Knowledge, *Hand-Book of the Democracy for 1863 & 64* (New York: 1864), Document 29, 16; "Omnium: The Lincoln Catechism," *The Old Guard* 1 (March 1863), 69; *New York Herald*, March 8, 1863; *Scioto Gazette*, March 31, 1863.



Currier & Ives, "Running the 'Machine' " (1864), Prints and Photographs Division, Library of Congress, Washington, D.C, in this image "Chase's Patent Greenback Mill," feeds the corruption and incompetence of the Lincoln Administration.

Nevertheless greenbacks and national banks were never a major component of the Democracy's national campaign strategy. Open defiance of these policies was generally muted during the war. The reasons were partly structural and partly political. Outside of the Pacific Coast, there was no real alternative to federal paper money during the war years. In states where the Democrats did control the legislature, their options for fighting the Legal Tender Act were limited. While people could use banknotes as an alternative to greenbacks, the only reason that there were banknotes at all during the war was because banks held greenbacks in their vaults. Congressional action would also have proven complicated. With the price of gold shooting higher and higher during the war, a quick

return to specie payments would be out of the question. The cost of buying enough gold to redeem the greenbacks in circulation would have only driven up large the national debt that Democrats bemoaned.

The Democrats, along with everyone else in the northern economy were now rowing together in the same boat. Simply destroying the greenbacks, if such a thing were possible, would cause them all to drown together. As the *North American Gazette* put it "The United States notes supply the vacuum, and if they be withdrawn, either the whole fabric of our property must suddenly collapse, and involve all in one general ruin..." The best that a hostile state legislature might muster was a toothless resolution denouncing the greenbacks. Democratic legislatures in Illinois and New York took this step in 1862.¹⁸

The Democrats were also hemmed in by the popularity of the notes within their own ranks. In the trans-Appalachia West, a cash-poor region that had suffered under poorly managed banks, Democratic voters learned to love the stability and promise of easy times that greenbacks and national banking offered. In Chicago, a city that was solidly Democratic in this period and was home to the 1864 Democratic convention, labor and capital united in their determination to shun all banknotes and only use greenbacks and national bank notes in all transactions. In the East, Democrats stayed true to the strictures of Jackson and Benton, yet unlike the West they had long ago tamed their bank paper problem. Presaging the difficulties that the Democrats would face on this issue after the war, the leaders of the party realized that taking a firm stand on the greenbacks would only divide them farther. One newspaper remarked, "the experienced civilians who managed that body very well knew that they could take no ground which

¹⁸ *North American and United States Gazette*, September 12, 1864; *Chicago Tribune*, February 17, 1862; *New York Times*, February 1, 1862.

their followers would not differ." In order to avoid the issue, the 1864 platform omitted a discussion of federal paper money altogether. It was a telling silence, especially as almost every national platform of the Democracy since the 1840s contained a plank about currency and banking. In his formal letter of the nomination for the presidency, George B. McClellan did decry the depreciation of the greenbacks and their effects on the economy at large, but the overall tone of the campaign focused on race and the violations of civil liberties by Republicans.¹⁹

Open resistance to the notes in everyday economic life was also muted during the war. Francis R. Rives, a Virginian turned New Yorker before the war, wrote home to Charlottesville that he knew of very few people in New York city who openly rejected the currency. He explained that the "wag of resistance" against greenbacks was simply not worth it because of the "*practical* difficulties dangers & delays" in conducting business. He added, however, that even at the level of everyday transactions, politics and war nationalism constrained a would-be resister. Nationalism could a powerful tool for keeping the notes in circulation. Rives lamented that anyone who refused the notes would be "denounced as disloyal" and treated as such by an "abolition judge" if someone refused to take the notes as cash. Indeed, northern newspapers labeled anyone who refused greenbacks, or who pushed down their value by speculating in gold, as a traitor. In a letter to the *Post*, "A Loyal Citizen," remarked that any person who told their neighbors that the greenbacks would never be redeemed "is of the Copperhead persuasion," and "loves party more than the Republic." A popular poem of the war

¹⁹ *Chicago Tribune*, April 12, 1864, May 9, 1864, May 2, 1864, May 12, 1864; *North American and United States Gazette*, September 12, 1864; Joel H. Silbey, *A Respectable Minority: The Democratic Party in the Civil War Era* (New York: W.W. Norton, 1977), 130, 194; *North American and United States Gazette*, September 12, 1864.

summed up the patriotic impulse by describing the notes as "Pledge of the people's credit, By furnishing the sinews, In a Currency at par, With enough cash left over, When they've cancelled every note. To buy half the thrones of Europe, With crowns tossed in to boot."²⁰

Yet something less than resistance occurred everyday within the Greenback Zone. Rives bluntly told his friend in Virginia that the only real way to protect oneself from the greenback economy was to raise prices or convert cash into gold or securities. It is impossible to quantify how many people in the North charged higher prices, renegotiated contracts, or bought stocks, bonds or gold to protect themselves from the vicissitudes of the government's fiat. And yet, the combined effect of these individual moves made the government's overall management of currency more difficult by affecting credit and fermenting political backlash to ever-higher prices. Even more elusive is the nature of the motive behind such actions. In some cases people used these economic strategies out of political considerations. George F. Lee of Philadelphia, a longtime Democrat, continually bought U.S. bonds as a sign of his patriotism. But when his debtors tried to pay in greenbacks, he resisted or passed the notes off as quickly as possible. He explained that while he would do all that he could to support the government with constitutional borrowing he would not "sanction the unconstitutional acts of the administration." For every Lee, there were many more who simply could not resist the lure of easy returns that came from speculation in gold or the raising of prices. With dreams of great profits people from all walks of life invested in oil, stocks, and gold

²⁰ Francis R. Rives to G.A. Magruder, January 27, 1863, MSS 8282, Letters and Documents Pertaining to Virginia, 1846-1887, Small Special Collections Library, University of Virginia; *Evening Post* reprinted in *San Francisco Bulletin*, March 28, 1863. ; "Greenbacks," *Littell's Living Age*, no. 1051 (July 23, 1864): 192; "Lines Written on a Greenback," *Daily Cleveland Herald*, September 8, 1864.

during the ways years. James Knowles Medberry, who wrote a reminiscence of his time on Wall Street, described the line between patriotism and profit this way: "It was the gentlemanly thing to sell gold, and the stock operators chose to be gentlemen." Clearly, there was a class dimension to these strategies of resistance, as these were not the weapons of the poor but the weapons of the commercially savvy.²¹

Road to the Courts

In an editorial entitled "the Battle in the Courts," the *Evening Post* pointed out that in the case of many war measures—confiscation, emancipation, and conscription--the courts were the only real means of stopping the government. If the ballot-box could not be used to influence Congress, individuals could look to the courts as a bulwark against the centralizing policies of the administration. This was especially true for the greenbacks. The *Post* admitted that "our best lawyers" called the Legal Tender Act into question, and that its opponents labeled it a "flagrant abominable and pernicious outrage of the fundamental principles of the constitution." As much as the greenbacks could create allies, Congress had foreseen that the legal tender clause would also create a legal controversy across the country when they passed the act in early 1862.²²

Legal tender, as one congressman feared, would affect every contract made for money before February 25, 1862. It would not just affect simple debts, but mortgages, rents and any other annuity payment made in dollars. Some in Congress has asked that the bill be amended to only be a tender for debts made after passage, but Senator John Sherman, on the Senate Finance Committee, explained that they had concluded in committee that such a distinction would only create more financial confusion. Members

²¹ Quoted in J. Matthew Gallman, *Mastering Wartime: A Social History of Philadelphia during the Civil War* (New York: Cambridge, 1990), 296; James Knowles Medberry, *Men and Mysteries of Wall Street*, 244.

²² *Evening Post*, October 1, 1863.

of Congress darkly predicted the moment that debtors attempted to pay creditors with this new money, creditors like the “princely merchants of Boston” would bring suit in court. Senator James Bayard of Delaware, a Democrat, predicted that people’s patriotism might sustain the notes for a time, but that “after a while there will be a conflict; and there is one class of creditors that you cannot expect to reaching that way...” There was much fear about how the courts would interpret the commanding phrase “a legal tender for all debts public and private.” While the supporters of the bill prided themselves on the fact that patriotism would help keep the notes afloat, others in Congress were not so sure. A state or federal court, upon review, might declare the notes either partially or fully unconstitutional and that could destroy the credit of the notes on open market. Moreover, members of Congress openly assumed that the US Supreme Court would take up the issue at some point in the future.²³

At the core of every case dealing with the greenbacks was a refusal. Someone, somewhere in the United States would refuse a greenback as payment. Creditors and landlords might refuse the notes as payment. In many cases, the refusal was a product of a simple desire of parties to avoid the loss that came along with taking a greenback when they expected gold. Yet there were several cases in which parties colluded to make a case as a means of getting the constitutional question before an appeals court. Unsure of what the legal tender clause meant, political and business leaders needed these court decisions to sort out the practical meaning of greenbacks for a range of situations. Across the country, banks and clearing houses rejected the notes as payments, afraid that the greenbacks would violate their state charters requiring them to pay out specie. Refusal often led to court, where the payee would claim that greenbacks were not money. Prior to

²³ *Cong. Globe*, 37th Cong., 2nd Sess., 801, 792, 795

the war, cases of a refusal of tender turned on how the tender was presented. The greenbacks, however, forced every judge to determine if the notes were a tender at all.²⁴

New York and California proved to be hotbeds of resistance to the government's power over money. Both states had strong attachments to hard money policies and robust Democratic parties during the war years. The story of resistance in New York is ultimately a story of the limits of dissent within the economic constraints of the war and its political culture of strong federal nationalism. In contrast, Californians found a way to "secede" from the Greenback Zone. On the Pacific coast, a native gold supply made resistance plausible. The state legislature, in conjunction with the business community and the state courts, crafted a formula for resistance that successfully constrained Congress's ability to reach into California.

New York

New York, both city and state, was the central eastern battleground in the fight against the government's power to control the country's currency. New York was home to a vibrant Democratic party that had contributed as much to the cause of economic liberalism and the hard money faith in American thought. While the draft riots loom large in the history of New York City during the war, New Yorkers of all classes chafed under the growing federal authority. The city's banking elite resisted conversion to the national banking system. James Gallatin of the Gallatin bank continued to attack all of Chase's policies well after passage of the Legal Tender Act. In the period before and after the draft riots, the city experienced a pandemic of strikes as workers pushed for higher wages to compensate for the skyrocketing cost of food and rent. A "meeting of mechanics" held

²⁴ The Boston Clearing House took this position early in 1862, see Ezra Lincoln to SPC, April 14, 1862, Niven, ed., *Papers of Chase*, reel 20; McCulloch, *Men and Measures of Half a Century* (New York: Charles Scribner's Sons, 1889), 137.

at Tammany Hall in the winter of 1863, workers decried greenbacks and emancipation in the same breath.²⁵

In 1863, the Democrats recaptured Albany, and put Horatio Seymour in the governor's seat. Once in control of the legislature, Seymour and the Democrats organized in opposition to the Republicans centralizing tendencies. After decades of intraparty strife, and defections to the rising Republicans, the war was a boon to the New York Democracy. Pitting their belief in limited government against the Republicans made some of the older Democrats feel like they were back in the thick of the 1840s when the Democracy faced off with the Whigs. Most were so-called War Democrats, and supported the war, but their chief complaint was that at every turn the Republicans expanded government beyond what was necessary.²⁶

The intrusion of the Federal state into New York's financial system stood high on the list of Democratic complaints. Greenbacks deranged prices, encouraged speculation, while the government's national banking system would replace the state's banking system with an untried experiment in the hands of Republicans in Washington. Moreover, Republican policy nullified the state's established powers over their own economy. For example, by the terms of the Legal Tender Act and the National Banking Act, all federal securities and institutions were exempt from state taxation. This meant, that even in the case of their own state banks, the state would not be able to tax their holdings, as it had

²⁵ Edward K. Spann, *Ideas and Politics: New York Intellectuals and Liberal Democracy, 1820-1880* (Albany: State University of New York, 1972); Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984); David M. Gische, "The New York City Banks and the Development of the National Banking System 1860-1870," *The American Journal of Legal History* 23, no.1 ((January, 1979): 21-67; *Handbook of the Democracy for 1863 & '64*, Document 30; Basil Leo Lee, *Discontent in New York City 1861-1865* (Washington: Catholic University of America, 1943), 200-227; *New York Times*, February 8, 1863.

²⁶ John Frederick Kirn, "Voters, Parties, and Legislative Politics in New York State, 1846-1876," (PhD diss., University of Virginia, 2003), 827-832.

traditionally done.

In his 1864 message to the legislature, Seymour asked it to devise a way to defend their native state banking system from federal interference. No state could prevent greenbacks from flowing into their economy, but state Democrats thought they saw an opportunity to stop the banks in an emerging problem for the NBS. After its passage in 1863, Chase and Comptroller of the Currency Hugh McCulloch, both realized that the future success of the system depended on the conversion of the old state banks to new NBS charters, especially the wealthy and powerful banks of New York City. By bringing their capital and prestige into the system, they could build confidence in every national bank. Of course, that required a state bank to divest itself of its existing charter by winding up its affairs. Under New York law that meant a bank would have to sell off all its securities and holdings, satisfy all its creditors and shareholders, and literally close up shop before they could apply for a federal charter. In practice, this process usually took a number of years to accomplish. Some New York banks that wanted to convert, like the Clinton Bank in Buffalo, did start to wind up in 1863, but had to remain "closed up...& gone out of existence" in the interval between charters. H. Henry Van Dyck, superintendent of state banks, and the official responsible for the winding up process, predicted "dire consequences to the whole community" if every New York bank tried to do this at the same time. In essence, the banks would have to completely disassemble and then reassemble all their capital and property as national banks, and hope that nothing went wrong in between. Bankers naturally could foresee a host of problems with this process, not least of all the fact that a massive sell-off of state and federal securities held by the banks might send financial markets into a panic. Chase and McCulloch realized

that they needed state legislatures to pass statutes that allowed an existing bank to rescind its old charter and take up a federal charter without formally winding up.²⁷

It was on this point that New York Democrats put up a fight. State Republicans introduced a bill that would accomplish all Chase had wanted, but a coalition of Democrats and Republicans held up the bill. A Chase ally within the Assembly, told Chase that even "loyal men" could not see "that one State, pet system, is to be merged & lost in the comprehensive, grand & better National scheme; and anything that suggests to them radical change, is distasteful." In April 1864, the state banking committee produced a "majority report" on the issue that criticized and rejected all of Chase's policies. In its pages, state Democrats poured out everything that disgusted them about the new federal financial power, including inflation and the decline of their state's power. The report dealt with the fact that greenbacks and national banks were popular in other parts of the country because the war had created a "disposition of the popular mind" to uphold the government in all its policies, no matter the practical effects. The majority took the conservative viewpoint that New Yorkers had perfected a system that had withstood several financial and commercial revulsions. Picking up on the old attack of the Jacksonians against the Bank of the United States, the majority took the position that the federal government had no power to create corporations within their boundaries without their permission. "The action of Congress, as to leave it quite problematical whether, in the opinion of that body, it exists by the primitive assent of the States, or whether the States continue to exist by the consent of Congress." The report produced outrage by Republicans who called its tone disloyal, and tried to bury it. A bill authorizing

²⁷ Gische, "The New York City Banks," 47; Hanson A. Risley to SPC, April 10, 1863, Niven, ed., Papers of Chase, reel 26;" Annual Report of the Superintendent of the Banking Department of the State of New York, January 7. 1864, " *Banker's Magazine* 13, no. 10 (April 1864): 821.

conversion passed that month, but Seymour refused to sign. It was not until 1865, that a new Republican governor signed the act into law. Even then, Democrats passed another act allowing National Banks to reconvert to state charters in 1867.²⁸

Resistance was not confined to the ranks of the Democratic Party. New York Republicans, especially former Democrats, also freely criticized the greenbacks and national banks during the war. At the same time that Congress was in the midst of debating the Legal Tender Act, the New York assembly considered a resolution that denounced the policy as unconstitutional and dangerous. Party distinctions forged over the question of slavery seemed to melt away as Republicans returned to the hard money ideals of their younger days, including the Republican chair of the ways and means committee, Calvin Tilden Hulburd. Henry Raymond, assemblyman and editor of the *Times*, was the only prominent Republican voice for the policy in the debate. The *Argus* delighted in "the reunion of legislators" from both parties on the principle and policies "matured by the Old Democratic party." State Republicans also supported the Democratic fight against allowing the banks to convert; they simply could not take the same hostile tone to Republican policy as the 1864 majority report. The state's Republican comptroller and Superintendent of Banking made anti-legal tender and anti-national banking sentiments in their public reports. Lucius Robinson, the comptroller, could barely hide his anger at how the greenbacks deranged the state's finances at the end of 1862. He predicted ruin and openly doubted the government's

²⁸ Risley to SPC, April 10, 1863, Niven, ed., Papers of Chase, reel 26; *Report of the Majority of the Committee on Banks to the Legislature of the State, Made April 1, 1864* (Albany: C. Van Benthuyzen, 1864), 3; Kirn, Voters, Parties, and Legislative Politics in New York State," 858; "An Act Enabling National Banking Associations to become State Banking Associations and to amend the banking laws of this state, passed April 20, 1867," State Enabling Acts for National Banks 1865-67, PC46-51, Entry 20, RG 101 Records of the Comptroller of the Currency, National Archives, College Park, MD [repository hereafter cited as NARA II].

power to maintain their value. "Depart from that standard as far as we may, the laws of trade, more potent than all statutes, will ultimately drive us back to it."²⁹

From his perch looking across the entire state system, no one was as cognizant of how much the federal government was infiltrating the state's economy than Henry H. Van Dyck. Van Dyck was a Republican, and would be appointed by Lincoln to the lofty position of Assistant Secretary of the Treasury for New York at the end of the war. Yet, he was also a former Democrat who clearly cherished New York's monetary system. Everywhere he looked, the federal government was corrupting the careful mix of hard-money policy and banking regulation enshrined in state law. For example, the state constitution of 1846 prevented the state from letting banks redeem their notes in anything but specie, but the greenbacks seemingly trumped the intent of the state's framers on this point and freed them of their state obligations. Van Dyck was also an early and vocal opponent of Chase's banking plan, repeatedly attacking the power of the government to insert new banking corporations into New York, and criticizing the overall design of the NBS. He saw it as his duty to uphold the state's system, and threatened to take the issue to the courts, "that we may learn authoritatively what powers over local institutions are still left to the states." In 1863 he saw his opportunity to act.³⁰

On March 26, 1863, between the hours of ten and three o'clock, D. Valentine attempted to get gold for a ten dollar bank note that he held from the Metropolitan Bank, in New York City. The bank's cashier declined and tendered to Valentine a \$10 greenback, which Valentine refused. Valentine repeated the same scene at the Leather and Shoe Bank, also located in the city. Unwilling to take the greenbacks, Valentine

²⁹ *The Argus* (Albany), February 3, 1862; *New York Times*, January 7, 1863.

³⁰ N.Y. Constitution (1846), Art. 8, § 5; Hammond, *Sovereignty and an Empty Purse*, 342.

appealed to Van Dyck's department. Under state law, each bank deposited a certain amount of Federal or New York bonds with Bank Department as an emergency fund to back their notes. In the event that a bank failed to redeem its notes in specie, the Bank Department would sell the securities and liquidate the notes of the offending bank. Thus, Van Dyck took measures to liquidate the bonds of the two banks, which amounted to \$100,000 each. The banks sued in the state's Supreme Court to stop Van Dyck, claiming that the Legal Tender Act freed them of the need to redeem their notes in gold. Most likely, Van Dyck was behind Valentine's conflict with the two banks. Van Dyck claimed that he had been overwhelmed by banks asking if the greenbacks did change their obligations under state law, and other similar cases were pending before the state's lower tribunals. In the light of his prior comments, he also might have wanted to bloody the government's nose on this point. He certainly hired the state's best lawyers to argue his cause, including George Ticknor Curtis, who had argued the *Dred Scott* case. After the Supreme Court for the 7th District found for the banks, Van Dyck appealed the case to the state's highest tribunal, the Court of Appeals.³¹

The Court of Appeals combined *Metropolitan Bank v. Van Dyck* with another case that asked the court to deal with the constitutionality of the Legal Tender Act. The case of *Metropolitan Bank v. Van Dyck* can be best thought of as centering on Van Dyck's problem--the power of the states over their currency in the light of the Legal Tender Act. Its twin case, *Meyer v. Roosevelt* moved the focus to the Legal Tender Act's effects away from the state and onto the individual conflicts between creditors and debtors. Across New York, and the country, cases of creditors who refused to take the

³¹ William Blair Lord, *Arguments of Counsel in the Court of Appeals of the State of New York, Upon the Power of Congress to Make United States Treasury Notes a Legal Tender* (New York: Wm. C. Bryant & Co., 1863), 3, 9.

greenbacks as payment for a debt multiplied quickly. In at least one other case, a lower court found the legal tender act constitutional for all debts, including debts created before February 1862.³²

Emerging out of Manhattan's 1st District, *Meyer* concerned a mortgage made in 1857. Lewis H. Meyer had bought a property on Staten Island that was mortgaged to James I. Roosevelt for the sum of \$8,000, plus interest. On June 11, 1862, Meyer tried to pay off his mortgage with greenbacks; Roosevelt promptly refused claiming that a contract made from gold in 1857 should be paid in gold in 1862. Roosevelt, an Oyster Bay Roosevelt and great uncle to Theodore Roosevelt, was an active state Democrat, serving in Congress and the state assembly. The case was agreed to by the parties, with the understanding that if Roosevelt won, Meyer would have to pay a premium in greenbacks.³³

At the time, it was widely rumored that Democrats in the city organized the dispute in an effort to nullify the greenbacks by bringing a test case before a sympathetic judicial panel. Bernard Roelker, counsel for Meyer said that this was not the case. Nevertheless, the justices of the 1st District Supreme Court were all Democrats. Moreover, as the nation's financial nerve center, uneasiness about the greenbacks on Wall Street could place pressure on Washington. The court, Francis Rives observed, was constrained by wartime nationalism, indicating "by their delay, to be afraid to decide in the negative and ashamed to decide in the affirmative." Horace Greely's *Tribune* claimed that the court leaked their intent two month prior and that the information made its way to

³² *Hauge v. Powers* reprinted in *Bankers Magazine* 13 (August 1863): 112-137.

³³ Lord, *Arguments of Counsel...*, 149-152.

Wall Street where dealers in mortgages and securities prepared for the coming storm.³⁴

Announced just a month before the Draft Riots, the opinion of the court took one step back from a total rejection of the greenbacks. Presiding Justice Daniel Phoenix Ingraham spoke for the court and decided to focus his opinion on the inability of Congress to retrospectively alter the terms of contracts made prior to the act's passage, and sidestepped the general question of the constitutionality of the greenbacks. Justices Rufus Peckham and William H. Leonard both took the harder stance that the government had no power to issue notes at all. Both Peckham and Leonard denied that one could extrapolate the power from any part of the Constitution, which in their view only allowed for the creation and management of a system of hard money. Roosevelt, and every other creditor in the country, therefore had a right to coin from Meyer. In all three opinions the Justices openly rejected the arguments of a recent case out of New York's 7th district, *Hauge v. Powers*, in which a unanimous court held in favor of the government ability make its paper a tender. The case was quickly appealed to the Court of Appeals.³⁵

The combined cases of *Metropolitan Bank* and *Meyer* were quickly recognized as having national significance. A decision from New York, one of the most prestigious bench and bar in the country, would set the tone for the states across the country. One paper summed up the mood when it remarked that the cases would “furnish much useful information in a condensed form in relation to the power of Congress to regulate the power of the currency.” Watching from Washington, Chase must have been just as anxious. Newspapers, judges, and lawyers all spoke of the eventuality of a Supreme

³⁴ *Boston Daily Advertiser*, June 22, 1863; Lord, *Arguments of Counsel...*, 154-155; Francis R. Rives to G.A. Magruder, January 27, 1863, MSS 8282, Letters and Documents Pertaining to Virginia, 1846-1887, Small Special Collections Library, University of Virginia; *New York Daily Tribune*, June 4, 1863.

³⁵ *Meyer v. Roosevelt*, 25 How. Pr. 97 (1863).

Court decision, and some predicted that *Meyer* would be that case. Moreover, with Chief Justice Roger B. Taney still clinging to his seat on the Court, it was possible that there would be enough votes to limit the effects of the greenbacks, as Ingraham had done. Unbeknownst to anyone at the time, Taney had already penned a draft against the constitutionality of the greenbacks in preparation for a likely case. Not leaving the outcome to chance, Chase hired David Dudley Field and S.A. Foote to argue on behalf of the government that summer in Albany. Possibly under orders from Chase, Field and Foote kept a low profile. They only submitted written briefs and took no part in oral argument. Curtis, nevertheless, wrote Chase to protest "the improper effort on the part of the administration to influence the court of the State."³⁶

Approaching the legal tender question in June of 1863, court and counsel faced four factors complicating their decision. First was the novelty of the question. No one was exactly sure how to conceptualize the issue of legal tender or currency powers in general, as they had largely been a matter of legislative practice and not active litigation, except on the question of state bank notes. As had been clear in the Congressional debates, the legal foundations of American money were a confusing morass, which did not lend itself to a tightly argued case hinging on one clause or even one section of the Constitution. Even something as basic as the government's power to make coins a legal tender eluded a simple analysis of the Constitution. Everyone who mused on the question felt puzzled by the query. This problem, however, left ample room for counsel to generate a range of arguments about how legal tender was or was not implied. It also presented an opportunity for the lawyers to try and graft their visions of political

³⁶ *Havana Journal* (Havana, NY), June 20, 1863; *New York Evening Post*, June 4, 1863; David M. Silver, *Lincoln's Supreme Court* (Urbana, IL: University of Illinois Press, 1956), 146; Quoted in Albert Bushnell Hart, *Salmon P. Chase* (Boston: Houghton, Mifflin and Company, 1899), 389;

economy to the Constitution. The opposition especially pushed the view that the framers created a hard money country in the Constitution. In general, bench and bar went far and wide in finding the forensic means of proving their point, almost always at the cost of presenting a clear and direct argument on the question. This type of discussion was not unique to *Metropolitan Bank-Meyer*. In *Hauge*, for example, the opinions of the court expressed four distinct ways to prove that the government had the authority to make the greenbacks.³⁷

The economic context was also heavy in the air. All sides admitted in the *Meyer* case that any modification to the existing system could cause commercial and financial upheaval. Lastly, and intertwined with the above issues, was the war. In a time of peace, a state court striking down a federal statute would have aroused attention. Striking down a law widely viewed as critical to government's efforts to save the Union increased that tension exponentially. The *Tribune* linked economics and war when it noted that the greenbacks were the foundation “on which industrial prosperity of the country and the solvency, if not the existence, of the Government depend.” The justices were well aware of these pressures. Justice Samuel L. Selden, a former Democrat who was running for another term under the Union Party banner, let it be known that he felt that the war atmosphere prevented him from ruling against legal tender. Counsel against the greenbacks made a special effort to make it clear that disagreeing with the constitutionality of the Legal Tender Act was not tantamount to treason, and lectured the justices on their duty to find the law as it truly was, no matter its political import. Meanwhile, lawyers for the greenbacks and like-minded justices on the court made numerous statements concerning the centrality of this law to the war effort and their

³⁷ *Hauge v. Powers* reprinted in *Bankers Magazine* 13, no.2 (August 1863): 112-137.

dedication to the war for Union.³⁸

Argued over two days in June of 1863, the court heard arguments from a phalanx of New York's best lawyers. Curtis was the linchpin of the opposition, arguing in both cases along with the help of J.V.W Doty in *Metropolitan Bank* and by himself in *Meyer*. Arguing for the greenbacks was John K. Porter and Lyman Tremain for the banks in the first case and Bernard Roelker and William C. Noyes in the second. Field and Foote confidently predicted that the opinion of the court would be unanimous in favor of their cause.³⁹

When the dust settled, and the Court announced its opinion in September, the vote was 6 to 2 in favor of the constitutionality of the greenbacks. The majority also found that New York state banks could pay out the notes without violating their state charters. The vote ran largely along party lines, with the Democrats on the bench, Chief Justice Hiram Denio and Justice Samuel G. Selden against. Justice Henry E. Davies, a Buffalo Whig turned Republican, wrote the opinion of the court. Four of the justices wrote concurring opinions, while Denio wrote the sole minority opinion.⁴⁰

Each of the opinions from the majority used a *mélange* of arguments offered by counsel, providing no one path to finding the notes constitutional. The reasons of the majority overlapped, and diverged on various points. Justice James Emott could not stomach the argument of Roelker that the power to make paper money was implied in government's sovereignty, believing that it was unbecoming a polity based on written

³⁸ *New York Daily Tribune*, June 4, 1863; *New York Daily Tribune*, September 30, 1863; Lord, *Arguments of Counsel...*, 23, 58, 93, 187-88.

³⁹ S.A. Foote to SPC, June 27, 1863, Reel 27, Chase Papers, Niven; David D. Field to SPC, June 29, 1863, Reel 27, Chase Papers, Niven.

⁴⁰ *Metropolitan Bank and the Shoe Leather Bank v. Van Dyck, Superintendent of the Bank Department: Meyer v. Roosevelt* 27 N.Y. 400 (1863), [Hereafter cited as *Metropolitan Bank-Meyer*]; For a brief biography of Davies see *New York Times*, December 18, 1881.

constitutions, and looked elsewhere for the power. Justice Richard P. Marvin stood alone in his emphasis on the commerce clause, taking a perspective that was decades ahead of its time when he said he thought almost all transactions across the country came under the authority of Congress. Citing the Embargo Act, and the Bankruptcy Clause, and every instance in which Congress had changed the content of their coins as authority—the justices found a clear tradition of federal power to alter agreements. Davies cited early American and English cases to the effect that when governments changed their currencies, courts of law could not take notice of any difference in their market values—to the law all dollars were the same.⁴¹

Davies, as the voice of the Court, produced the most balanced opinion, giving time to discussions of custom, implied powers, federal sovereignty, and the wartime context. The power to issue a currency, and make anything a legal tender were implied powers that Congress practiced over and over again in the nineteenth century. The textual roots of this power grew out of several clauses in Art. I sec.8 including the power to borrow, to tax, to regulate commerce, and to support the Army and Navy. In concluding he seemed to find the ultimate source in the Borrowing Clause, but then refused to prioritize or choose one source of authority over all the others and restated all the possible candidates. “It is sufficient for the present discussion that the power which has been exercised by the Congress is believed to be authorized by the Constitution.”⁴²

Being a broad opinion, it lacked a cohesive and well-defined vision for the

⁴¹ *Metropolitan Bank-Meyer* 27 N.Y. 400 at 489; “I apprehend that any attempt to distinguish, so far as commerce is to be affected by money, between commerce in a state, and commerce ‘among the several states,’ will always prove a failure. The products of any state enter directly or indirectly into the commerce ‘among the states.’ ” *Metropolitan Bank-Meyer* 27 N.Y. 400 at 512; *Metropolitan Bank-Meyer* 27 N.Y. 400 at 456.

⁴² *Metropolitan Bank-Meyer* 27 N.Y. 400 at 462.

government's power over money. Could legal tender only be valid in time of war? No justice embraced a robust national currency power that would allow Congress to control the monetary system in times of peace and war. Overall the justices felt comfortable with legal tender within the war context. Justice Balcom hinted that "it is not probable such an act as tis will ever be deemed necessary or proper in time of peace." Almost all the justices noted the needs of the war, and two cited the Supreme Court's recent opinion in *The Prize Cases*, namely Justice Grier's statement that as a court that had to have their eyes open to the fact that there was a war going on.⁴³

Denio's dissent was brief and reflected the mixture of state's rights and free market capitalism that marked Curtis's brief. The power to regulate contracts, he reminded the justices, mostly belonged to the states. The only way around that fact was to find an express or implied power of Congress in the Constitution that would trump the state's authority. He agreed that *McCulloch* was central, but denied that it meant that Congress could do as they like, a notion that would "break down all limitations upon the power of the general government." In general, he found that the majority stretched and pulled the logic of the clauses they cited beyond any sensible meaning. The Coinage clause meant metal coins, not paper. The Commerce clause referred to interstate commerce, not every transaction across the country. Denio directed his ire at the majority's treatment of the Borrowing clause. "Was it ever supposed to be incident to the contract of loan, that rights of other persons, strangers to the transaction, were to be controlled or affected?" Calling legal tender an ancillary power to borrowing flew in the face of what it meant when two parties negotiated an agreement. Greenbacks rested on coercion and not the consensus implicit in a true act of "borrowing." Once paid out, the

⁴³ *Metropolitan Bank-Meyer* 27 N.Y. 400 at 470.

greenbacks became an economic pariah, thrust into the hands of someone else and further perpetuating the cycle of coercion. Perhaps a “consolidated government” might control the economy in this way, but not the United States. In his finishing move, Denio found that the framers intended a hard money republic. He did this very simply by pointing to the limit on the states to silver and gold as a legal tender to prove that the “money” mentioned in the coinage clause meant those two precious metals. The question of the special case of debts prior to passage of the bill did not matter to Denio. He affirmed that “the power to create money does not extend beyond the fabrication of coins,” and, that in fact, Congress had nullified the Coinage Clause. Denio closed with an exhortation that if he could follow the “passionate desire of his heart” for the success of the Union, he might find for the greenbacks. Yet his duty as a judge would not admit an exception.⁴⁴

Several New York newspapers breathed a sigh of relief at the majority opinion. Greely’s *Tribune* pronounced, “all is well.” The *Evening Post*, whose editors tried to initially dissuade Congress from creating legal tender notes, now cited the opinion with approval. Both papers had criticized the volume of greenbacks that Congress was pumping into the economy, but neither paper could tolerate the nullification of what they deemed an essential government policy. The *Post*’s financial column, in light of the Court’s endorsement of the usage of greenbacks by the state’s banks, predicted an increase in loan capital, and with it a consequent stimulation of business and speculation.⁴⁵

Another prominent strain of commentary took the view that this was the only

⁴⁴ *Metropolitan Bank-Meyer* 27 N.Y. 400 at 525-536.

⁴⁵ *New York Daily Evening Tribune*, September 30, 1863; *New York Evening Post*, October 1, 1863; *New York Evening Post*, September 30, 1863: For the contraction of currency prior to the Court’s opinion see *Merchants Magazine* 49, no.2 (August 1, 1863):134.

possible decision given the current state of the economy. The *Railway Times* editorialized that a contrary finding on the constitutionality of the greenbacks for debts might have caused havoc “wherever buyers are keen, and creditors rapacious.” The author of the column predicted that forcing all creditors to start paying debts in gold would result in “nothing less than the bankruptcy of the debtor class.” Dismantling the Greenback Zone would not be simple. The *Post* made the shrewd observation that even if the Court had found against the Legal Tender Act, there was no real way for creditors to get gold. In their hypothetical situation, if a court ordered the liquidation of a debtor’s property, a sheriff would find that they would get greenback at an auction. The *New York Times* expressed a similar sentiment as the other papers, but did so by saying that the opinion of the courts had no real influence over the commercial realm. They noted that when Ingraham struck down the Legal Tender Act in New York City, “nobody cared a fig for the decision.” Creditors and debtors continued to use greenbacks and “business went on exactly as usual.” The people, the *Times* concluded, had already decided the constitutionality of the greenbacks “much more promptly and with ever higher authority, than our Court of law.”⁴⁶

Back in Albany, Van Dyck concurred that trying to get rid of the greenbacks was pointless for the duration of the war. Soon after the decision, Curtis wrote Van Dyck asking for his permission to appeal his case to the Supreme Court. Curtis was at that very moment preparing to appeal Roosevelt’s case, and wanted to bring both cases to the country’s highest tribunal. Van Dyck politely declined and admitted defeat, explaining:

“The currency issued by the national government has become so interwoven with the business of the country—the maintenance of its legality seems so essential to the support of the government in its present struggle for existence—that a *reversal* of the recent decision in favor of its validity (if such a result were

⁴⁶ *Railway Times*, April 25, 1863; *New York Evening Post*, June 4, 1863; *New York Times*, October 7, 1863.

practicable on grounds of strict constitutional construction) must be regarded as the most serious blow which, under existing circumstances, could be struck at the life of the nation.”

In his report to the State Assembly, Van Dyck, still clearly despised a monetary system that “releases corporations, associations and individuals from the obligations imposed upon them by the constitutional and the law.” But, he counseled patience of the “evils ... borne by our citizens” in wait for the day work towards brining back the country to the specie standard. Resistance in New York, as was true in much of the North, was unfeasible and unthinkable while soldiers marched. Enmeshed in the Greenback Zone by the forces of law, politics and economics, resistance would have to wait until peace, and the opportunities it might bring.⁴⁷

California: Defending the Hard Money Republic

Almost three thousand miles from New York, and the battlefields of the Civil War, Patrick Mulaley refused his pay at the Mare Island Navy Yard in the San Francisco Bay. Chase’s decision to suspend the government’s specie payments reverberated across the country in various ways. Since gold was only money that the assistant treasurer for San Francisco, D. W. Cheesman had at the moment, all federal employees would go without pay until the greenbacks made their way West. It was not until the summer-fall of 1862 that the money arrived, and only then because a federal port official personally saw the funds across Nicaragua and by steamer to San Francisco. The workers at Mare Island, who had gone without pay for months took these curious new greenbacks, perhaps not because they trusted them, but more because something was better than nothing.

When the paymaster of the yard called the men to line up at the post office for their pay that fall, conflict erupted. When the paymaster ordered him to take his money,

⁴⁷ H.H. Van Dyck to George T. Curtis, October 20, 1862, reprinted in *Banker’s Magazine* 13, no.10 (April, 1864): 812, 813.

Mulaley apparently replied “An es it moaney ye coall THOT Mither Paymaster? THOT’s nara money! Ye Cudn’t buy nothing weth Thot!” Mulaley was not exaggerating. Shopkeepers in nearby Vallejo refused to take these new notes at their face value, and would only accept them at a discount if they took them at all. Conrad Wiegand, a Federal assayer at the US Mint who recounted Mulaley’s exchange and collected testimony from the workers, reported seeing the wives and children of the workers going without food because the local shopkeepers would not take greenbacks. When pushed again by the anxious paymaster, Mulaley retorted “Ye con’t buy nothing with THIS! I SAID I wouldn’t take it, and WON’T—no I’m DOMN’D ef I do!”⁴⁸

The other men called him the hero of the “Mare Island Navy Yard.” In February 1863, the men sent a formal petition to Washington asking to be paid in coin. Noting that the depreciated value of greenbacks in California equaled a 48% tax on their wages, and that “the only acknowledged currency” of California was gold, they said that they understood the “distressed state of our beloved country” but that could not pay for their groceries or their debts. Of course the government could not change their policy for one Navy yard, and most of the men left the Yard and sought work in Vallejo, or in San Francisco.⁴⁹

Undergirding Mulaley’s refusal and the plight of the families on Mare Island was the fact that Californians rejected the greenbacks in favor of gold for the entirety of the war, and well into the nineteenth century. Unlike almost every other place in the Union, Californians used gold in their everyday lives. Their ability to do this was a source of great pride, and they dubbed their coins “California Currency,” in contrast to the

⁴⁸ Wiegand, *The Use of Legal Tender Notes Upon the Pacific Coast...* (Baltimore: Sherwood & Co. Printers, 1863), 39.; *Daily Evening Bulletin* (San Francisco, CA.), October 22, 1862.

⁴⁹ Wiegand, *The Use of Legal Tender Notes Upon the Pacific Coast*, 6.

banknotes used in the majority of the country. The foundations of California's attachment to hard money, and its concomitant resistance to federal paper money were partly cultural and partly geological. Californian political culture reflected the *lassiez-faire*, hard-money views forged in the aftermath of the Panic of 1837. The settlers, who made their home in the West, poured their distrust of paper money into the very structure of state government. Geologically, the dream of a hard money republic was made possible owing to the famous gold fields of northern California. But, Californians also spoke the language of Union, and had rejected a ploy to form a "Pacific Republic" during the secession crisis. The task, to be executed with diplomacy and care to be sure, was to find a way to keep California outside the Greenback Zone while remaining within the Union.⁵⁰

While associated with the year 1849, the state of California was in many respects a child of 1837. The panic of 1837 sent a shock through the country, which soon turned to disgust with the financial system of the country, specifically banks and banknotes. The discovery of gold in California in 1848 and the writing of the California constitution coincided with each other and produced a Jacksonian document on currency issues. While party lines were unclear in California in 1849, the delegates in Monterey carried with them the experiences of the Whig-Democratic battles of the East. And most of them, from what we can tell, had been Democrats in the prior to 1849. Morton Matthew McCarver, a delegate to the state constitutional convention, wrote back to Illinois that they were producing a "thoroughly democratic" constitution in California that banned banking, special incorporation and slavery. When a clause banning bank paper came up

⁵⁰ Ira B. Cross, *Financing an Empire: History of Banking in California* (San Francisco: S.J. Clarke Publishing Co., 1927), 289-362; Joseph Ellison, *California and the Nation 1850-1869* (Berkeley: University of California Press, 1927), 208-223, 178-188.

for debate many delegates expressed the belief that the creation of the state of California was a moment to capitalize on the lessons of the past. The fact of the gold rush made the banning of bank paper a real and sustainable possibility. Rodman M. Price, a Democrat from New Jersey, argued that he had just come from the East where 150 million in bank rags circulated. The gold fields, Price explained, freed California from “paper money, with its train of evils, as exhibited in the old States.” The California Constitution of 1849, in the end, contained a very specific clause lifted from the Iowa constitution that allowed the legislature to create banks for people to deposit their gold but forbade them from making or issuing “or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.”⁵¹

Californians continued to build up the idea of the state as a special hard-money republic in the years before the Civil War. In the idiom of the West, California currency meant gold coin. One Californian wrote the Secretary of the Treasury to explain “*physical* as well as *political* peculiarities of the Coast.” It was he said the state was the great financial “anomaly of the world” by virtue of its pure metallic money “the result of the studies of statesman, philosophers, and reformers throughout time as the very best system.” Newspapers and pamphleteers in the 1850s and especially the 1860s trumpeted the superiority of the California currency system as a triumph compared to their wayward sister States to the East. In 1862 one editorialist in San Francisco wrote, “the present currency of California is the best, the most perfect, that was ever known to mankind.” But not everyone in the state bought this vision of utopia. They could see how the hard

⁵¹ David Alan Johnson, *Founding the Far West: California, Oregon, and Nevada, 1840-1890* (Berkeley: University of California Press, 1992), 107-108; Quoted in Johnson, *Founding the Far West*, 102; J. Ross Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution, In September and October, 1849* (Washington: John T. Towers, 1850), 116, 113; California Constitution (1850), Art IV, Sec. 34.

money culture of the state repressed growth and placed too much power in the hands of the gold brokers. More to the point, gold was not as plentiful as it seemed. Interest rates were terribly high in the state. Money was so hard to come by in places like Los Angeles that people turned to bartering for goods and services. In 1866, when Erskine Mills complained that Californians were “beggarly, poor, and slow in reform” he was laying the blame on the hard-money culture of the state.⁵²

Californians loved their gold coin, and they loved the Union. After a brief flurry of secessionists talk in 1861, the legislature and people clearly declared their support for the Union cause. The state legislature passed laws against the flying of rebel flags or outfitting of privateers under Confederate support. The Union Party Convention for California in 1863 passed resolutions to support the national administration and pledges to sacrifice all for the cause. In public meetings, Unionist speakers gave tirades against Peace Democrats, slavery and the need for the war to go on. Thomas Starr King stumped the state raising money for the US Sanitary Commission. In the fall of 1861, King wrote a friend back East that San Francisco was “as thoroughly clamped to the government and as warlike as Boston!”⁵³

The Legal Tender Act of 1862, however, threatened the hard-money republic. California complained about the instability of the greenbacks like easterners, but they added that they were too far removed to have any effect on its fluctuating value. The value of a greenback depended on the price of gold in New York City. By that operation,

⁵² Wiegand, *The Use of Legal Tender Notes Upon the Pacific Coast*, 1; *Daily Evening Bulletin*, January 25, 1862; Gordon M. Bakken, “Law and Legal Tender in California and the West,” *Southern California Quarterly* 62, no. 3 (Fall 1980):240-241; Erskine Mills, *Legitimate Finance, A Few Thoughts on the Currency and Condition of California* (San Francisco: Francis, Valentine & Co., 1866), 5.

⁵³ Ellison, *California and the Nation 1850-1869*, 188-207; Thomas Starr King to Bellow, September 30, 1861, Reel 10, Thomas Star King Papers, The Bancroft Library, University of California at Berkeley.

one critic commented that by the click of the telegraph a person might go to bed with \$100 in their vault and wake up with \$90. They also argued that government disbursements in the West were large enough to cause trouble in the money market but never large enough to supply the currency needs of the entire state.

In an editorial for the San Francisco *Bulletin*, “O.P.Q” explained that much of this logic only applied to San Francisco’s financial and commercial elite. He complained that most Californians remained ignorant of the “mysteries of currency” and retained a deep-seated “ridiculous fear” of all paper money. A shrewd banker might play the gold premium in New York to their advantage, or profit from the higher interest for loans in gold coin. But, he lamented, most people could not see inequality wrought by a coin currency. Californians hoarded their coin and “if a ‘green back’ falls into their hands, it is offered up as a sacrifice to want of confidence in the ability and integrity of their country, while wily men laugh and grow fat on the silliness of the multitude.”⁵⁴

Californians speculated on how to avoid the law and how to maintain what they called the “constitutional currency” of gold and silver. One editorialist suggested a model by which merchants and bankers would make contracts for gold specifically to avoid having receiving paper when they wanted to gold. By using the market to their advantage the writer thought “California can maintain all her loyalty to the Union, in an honest adhesion to the constitutional currency.” While state legislators pondered this possibility, J.F. Swift of San Francisco proposed that Congress formally exempt California from the Legal Tender Act. That idea however went too far. Supporters of gold payments thought

⁵⁴ *Daily Evening Bulletin*, October 23, 1862.

such a proposal would be impolitic; one assemblyman declared he would rather see the state pass articles of secession than ask for such special treatment.⁵⁵

One other, infamous episode will help to underline the attitude of Californians to the greenbacks and the Union. In the summer of 1862 the state government was broke. The State treasury had unpaid bills from 1861 and could not afford to pay the state judges or for the schools. Californians were also not paying their taxes. The state treasurer, Delos R. Ashley, estimated that near 50,000 people did not pay various taxes owed the state. So Ashley found a way to stretch the state's tax dollars. In October of 1862 the state would owe the federal government its first payment on its portion of a direct tax levied to pay for the civil war. Under state law, the tax was collected in gold coin. That month, Ashley boarded a steamer from Sacramento to San Francisco, carrying the gold with him. When he landed in the city, he quietly found a broker that would exchange gold for greenbacks. Legally, Ashley reasoned, the government would have to recognize a gold dollar as equal to its paper. But since the notes traded at a discount, Ashley could exchange some of the gold for the notes he needed and pocket the difference for the state—in all he saved somewhere around 25,000 dollars on a tax of \$254,538. At the mint, assistant secretary of the treasury Cheesman was stunned, but after instructions from Washington reached him, he reluctantly accepted the payment.⁵⁶

The incident started a debate on the meaning of patriotism in the state. Ashley was subjected to a legislative investigation and Governor Leland Stanford in his annual address in 1863 asked that citizens of the state, “out of gratitude for many favors

⁵⁵ *Daily Evening Bulletin* January 25, 1862; *Alta California* March 12, 1863; Cross, *Financing an Empire*, 1:326.

⁵⁶ *Appendix to the Journals of Senate and Assembly of the State of California, Fourteenth Session* (Sacramento: Benj. P. Avery, 1863), 17.

bestowed upon the State by the Federal Government” that Californians should not speculate or manipulate government indebtedness (the greenbacks) to their own needs. The strange part was that Ashley completely agreed. His report for 1863 contained a lengthy polemic piece on the duty of Californians to accept the use of the greenbacks. He attacked the legislature’s petition to make an exception for California on the legal tender act. He even poked fun at the people who exalted California gold, noting the state grew a lot of potatoes—should potatoes be made a legal tender? Of course not, there was war going on and California must do her part for the Union: “we shall accept the laws, customs, and habits of our common country, and be a homogeneous part of the same, bearing our share of burdens, and enjoying equally with others the fruition of its maintenance.”⁵⁷

The twin forces of Unionism and hard-money faith created a complicated posture for Californians in the Civil War Era. It would lead to a form of cognitive dissonance in which resistance to greenbacks and loyalty to the Union existed on different levels. This attitude would structure the style of Californian resistance in the coming years. In the end, California would perfect the middle path. Californians supported the Union from afar by sending the famed California 100 to fight in Virginia, sending troops to protect New Mexico, raising money through the local Sanitary Commissions, and making all manner of speeches, parades and gatherings to support the Union cause. But they would also protect their hard-money culture and currency through a series of strategies informal and formal that would keep the greenbacks out.

The first and perhaps most widespread technique was an informal pressure on merchants and businessmen to decline taking greenbacks. There was a wide spread fear

⁵⁷ *Appendix to the Journals of Senate and Assembly of the State of California, Fourteenth Session, 4, 31.*

that especially in the case of contracts and leases made before the passage of the act, debtors and renters would pay in greenbacks. Or even in cases where people contracted with the understanding that they would pay in coin—they would show up and try to settle in greenbacks. San Francisco merchants held a meeting in November 1862 in which they agreed to not take greenbacks and to publish a list of men who attempted to use the notes to pay their debts in the city. If merchants took the notes at all, as in the case of Vallejo shopkeepers, they took them at a discount based on their value for that day. Merchants refused book credit to people paying in paper and called for “cash down over the counter” if they wanted to use paper. After the passage of the Legal Tender Act, Californians got in the habit of pricing things in two denominations—a gold price and a paper price. In some places, shame prevented the circulation of greenbacks. Frank Aleamon Leach explained, “every person who attempted to discharge an honest debt with greenbacks at their face value was ever after known as Greenback Thompson, Smith, Jones, or whatever his surname might be.”⁵⁸

The second technique was through state legislation. The common law required that any contracts made for “money” must be paid in legal tender, and for all of US history that was coin. But since the federal government was also calling its paper a legal tender that meant someone who contracted for the word “money” could use either form—the common law did not make any distinctions based on the type. Contracts might say “U.S. coin” but there was some concern that the judges might read “coin” as a synonym for money and allow debtors to pay paper. So the legislature passed a law that said that the state courts were empowered to enforce contracts for exactly the kind of money

⁵⁸ Ellison, *California and the Nation 1850-1869*, 214; Wiegand, *The Use of Legal Tender Notes Upon the Pacific Coast*, 20-21; Frank Aleamon Leach, *Recollections of a Newspaperman: A Record of Life Events in California* (San Francisco: Samuel Levinson, 1917), 120.

specified—what the legislature and press dubbed the Specific Contract Act. Nothing in the law said anything explicitly against greenbacks. In fact, defenders often touted the fact if someone made a contract for greenbacks, the law would guarantee their payment in greenbacks. The law, in sum, protected the contractual choices of private parties. In practice, the informal and formal strategies converged, as every merchant who could afford to draw up the agreements would make their contracts for gold. A few legislators questioned the constitutionality of such an act—but the bill passed both houses with solid majorities in March of 1863. It was in this way, through a law that its supporters said simply made a person pay what they said they would pay, that California “loosened the Gordian knot; and, without any damage to the Federal Government, enacted a law which saved the State from bankruptcy and ruin.”⁵⁹

The informal pressure of the San Francisco merchants and the actions of the state legislature alone could not nullify the Legal Tender Act. Greenbacks still poured into the state from the East by way of passengers arriving in San Francisco in addition to government spending. Moreover, there would always be debtors who would want to use the cheaper greenbacks to their advantage and Republicans who still dissented from the hard-money ethos and who believed that they had the force of Federal law behind them. Both sides would meet again in the course of litigation before the Supreme Court of California. By necessity, the California courts would provide the primary arena for constructing the limits and boundaries of Federal power in California through the medium of the greenbacks. Composed of good Californians, the Supreme Court of California naturally favored the use of gold as money. Yet, they too were constrained by

⁵⁹ The act passed the Assembly 17 March 63—42 to 18, and 22 to 11 in the Senate, Cross, *Financing and Empire*, 327; John Alexander Ferris, *The Financial Economy of the United States, and some of the causes which retard the progress of California* (San Francisco: A. Roman, 1867), 221.

the temper and tenor of the Civil War. Direct nullification of the law was not an option in the 1860s. Like the legislature, the courts would manipulate and build up the barriers of state's rights and individual rights to keep the greenbacks at bay.⁶⁰

First came a jab in the summer of 1862. The first major case centered on the idea that the State of California, like the men in Benicia, would be forced to take the notes of the government in payment for their own state taxes. According to the California General Revenue Law of 1861, California taxes “for all state or county purposes shall be paid in the legal coin of the United States, or in foreign coin at the value fixed for such coin.” Nevertheless, each greenback commanded on its face that it was a good tender for all “debts public and private.” At issue was whether the federal government's currency powers could override state powers and responsibilities. One view, the view of small cadre of Republicans in the state, was that the federal law overrode any and all laws dealing with money in the country. This was, in many ways, the view of the New York court *Metropolitan Bank*. Any contract, any statute that spoke of money vaguely was subject to the law. In effect, the California law might say coin but the federal government had changed it to mean paper.⁶¹

A test case arose when on July 24, 1862 John Perry, Jr. tried to pay his state taxes in greenbacks. The tax collector for the city and county of San Francisco, E.H. Washburn refused the notes. Perry asked for a writ of mandamus from the state courts to command Washburn to take his money. By the time the case reached the Supreme Court of California on appeal in the July term of 1862, a Democrat lawyer from the city and future Governor, Henry H. Haight, joined Frank Pixley, State Attorney General, in arguing the

⁶⁰ *San Francisco Bulletin*, October 8, 1862; Cross, *Financing an Empire*, 310.

⁶¹ “Case File, *Perry v. Washburn*,” WPA 6379, Records of the Supreme Court, California State Archives.

case, and provided most of the intellectual ammunition for the battle. The firm of Taylor & Hastings out of San Francisco represented Perry.⁶²

Haight quickly made the issue not the narrow question of taxation, but wanted this case to center on the constitutionality of the act itself. True to his Democratic roots, Haight took a strict reading of the Constitution, one that stressed the limited powers of the central government. Haight said that the framers never wanted paper money let alone legal tender issued by the government—to borrow money was one thing but the government could not force itself on its creditors. “It is incredible” he said, “that such a monstrous stretch of power can gravely be claimed for a Government like ours.” On the more pointed question of the state’s taxation powers, Haight made the clever argument that taxes were not debts in the meaning of the Legal Tender Act. Debts were a contractual concept that occurred when A borrowed from B, while taxes were a charge levied on all citizens in whatever media or material a state saw best. The California tax law was simply evidence of the “deep rooted and traditional antipathy of the people of this State to the use of anything but coin as a circulating medium.” Taylor & Hastings reacted with a clumsy argument that attempted to solve both issues with an elongated discussion of the phrase “coin money” in Art. I, sec. 8 of the Constitution to the effect that “Coin” meant “create” and that “money” could mean paper as well as metal tokens.⁶³

Chief Justice, and soon to be US Supreme Court associate justice, Stephen J. Field, wrote a very straightforward opinion for a unanimous court. He no doubt disappointed Haight when he declined to deal with the constitutionality of the Legal Tender Act, saying that “the question was of great magnitude” but it was not directly

⁶² Case File, *Perry v. Washburn*,” WPA 6379, Records of the Supreme Court, California State Archives.

⁶³ *Perry v. Washburne* 20 Cal. 318 at 338, 330, 319-327.

before them. As to the definition of debts, he completely agreed with Haight and found that state taxes did not fall under the power of the legal tender act, states might claim grain, pelts or gold—but the determination was completely up to the states. The state of California was now safe from the U.S. government, for now.⁶⁴

A year would pass before the Legal Tender question was properly before them. The case involved William Faulkner, who had contracted to rent 524 and 526 Sansome St. in San Francisco, payable in coin. When the landlord, James Lick, tried to collect, Faulkner tendered his rent in greenbacks, which Lick refused. When Lick sued in state court for payment, his defense was that Congress lacked the power to declare its notes a tender—it could not force him to take these pieces of paper. The San Francisco district judge found Lick’s reasons unconvincing and Lick appealed to the State Supreme Court. The court heard the case during their July Term, 1864.⁶⁵

Almost all the main lawyers that argued in *Perry* returned for a rematch in *Lick*. Taylor and Hastings, again defended the greenbacks with Haight leading the attack against them. Their arguments were largely the same, a bit more streamlined, perhaps after thinking about the question for two years. In a unanimous opinion for the Court, Chief Justice John Currey, a war Democrat, provided a ringing endorsement of federal power in wartime in his opinion upholding the constitutionality of the legal tender act. Currey held that the government could not be restricted to the explicit powers granted in the Constitution during times of war or rebellion or it would be nothing more than a “splendid bauble.” Rather, the creation of legal tender notes was a necessary and proper power ancillary to the other enumerated powers of regulating commerce, providing for

⁶⁴ *Perry v. Washburne* 20 Cal. 318 at 348-51.

⁶⁵ “Case File, *Lick v. Faulkner*,” WPA 5305, Records of the Supreme Court, California State Archives.

the army and navy and providing for the general welfare. This was California's great bow to federal power, and given the context of 1864, we should not be surprised. Between 1861 and 1865 around fourteen state courts would pass on the question of the constitutionality of the Legal Tender Act. Almost all were unanimous in their support for the measure. An adverse decision in *Lick v. Faulkner* would have left California alone among its sister states. Currey emphasized this point of unity with the other state courts when he explicitly referenced *Meyer v. Roosevelt* as support for his position.⁶⁶

The last case was another jab that directly followed the bow to power in *Lick v. Faulkner*. While the State claimed protection for itself from the effects of the legal tender act, the courts would now have to deal with the constitutionality of the specific contract act, and the degree of insulation to be afforded to individual parties. In April of 1864, Faxon D. Atherton borrowed \$500 from Horace W. Carpentier—promising to pay the debt in coin on demand. When Carpentier showed up for his money, Atherton said he could only pay in Treasury notes. Carpentier took him to court and tried to use the Specific Contract act to force the money out of Atherton.⁶⁷

Carpentier v. Atherton raised comparable questions as the ones in *Perry v. Washburn*—could individuals insulate their transactions from the power of the federal government? Whereas the state's lawyers depended on the state's power over taxation—Carpentier would depend on the contractual idea that persons should be able to specify exactly what they wanted to get in a transaction. Carpentier's lawyers would add that the state of California's specific contract law merely created a remedy in the courts and created no new rights. Atherton's lawyers argued that no one could hide behind a

⁶⁶ *Lick v. Faulkner* 25 Cal. 404 at 414-434, 421, 434.

⁶⁷ "Case File, *Carpentier v. Atherton*," WPA 2022, Records of the Supreme Court, California State Archives.

contract, when Congress said all debts public and private, they meant all debts public and private—there was no way to hide from the law’s power.⁶⁸

Currey again spoke for the court with Justice Lorenzo Sawyer concurring. The nub of their argument was that while Congress might have made their notes a legal tender, they did not also ban gold and silver as a legal tender. Congress could not have meant that people could not contract for one or other form of money and that people had practical needs to obtain one or another kind of money. California’s law was simply a technical remedy; it offered parties an institutional means to uphold agreements in “good faith” and conformed to the “dictates of a scrupulous and exact justice.” Sawyer said that the Government itself discriminated between taking coin and paper in some instances, why couldn’t others? If the debt was a pure and simple one, as Sawyer called it, then greenbacks would answer—but both justices thought that private parties in the state had a right to get exactly what they asked for. With the Specific Contract Act deemed constitutional—the California method of resistance was now solidified and passed on by the state’s courts.⁶⁹

There were more cases in that period in 1864 and 1865—but all held to the formula constructed by the Specific Contract Act and the trinity of California legal tender cases. When Cheesman spoke out against the Specific Contract Act, a mob threatened his life in the streets of San Francisco. Chase in 1864, and later McCulloch in 1865, spoke out against California discrimination against greenbacks. McCulloch did not doubt Californian patriotism, but he did their policies and the decisions of the state court “seemed like an attempted nullification of state authority.” Without a contrary finding of

⁶⁸ “Case File, *Carpentier v. Atherton*, Points and Brief for Respondent, Clarke & Carpentier” WPA 2022, Records of the Supreme Court, California State Archives.

⁶⁹ *Carpentier v. Atherton* 25 Cal. 564 at 577-583, 580.

the U.S. Supreme Court, the state of California and its citizens retained the right to opt out of that greenback union at the moment of their choosing.⁷⁰

Waiting for the World to Change

Commenting on the decision in *Meyer*, the *New York Sun* remarked, “the decision just given in Albany may be regarded as merely opening the question of the authority of Congress.” Several high courts in the Union heard cases challenging in the Legal Tender Act, and almost all of them found for the government on the overall constitutionality of the Legal Tender Act. The New York and California cases set the tone a rhythm for the rest of the country. *Meyer v. Roosevelt* and *Lick v. Faulkner* were often cited by other state jurists as leading authorities on the constitutionality of the greenbacks. While many justices echoed Davis’s opinion in *Meyer*, these courts also confessed that they felt constrained to strike down the law during the war. In no case was this clearer than the 1864 Indiana case of *Thayer v. Hedges*. In his opinion, Justice Samuel Perkins, a Democrat, found the act clearly unconstitutional, going so far to cite the Bible as proof in favor of gold coin. At the very end of his opinion, however, Perkins pulled back. He admitted, “the disastrous consequences to the country that must follow a denial of the validity of that exercise of power, press hard upon the judiciary.” Perkins found the act constitutional, but looked forward to the day the Supreme Court would pick up the issue.⁷¹

Learning from California, courts and state governments continued to find

⁷⁰ Bakken, “Law and Legal Tender in California and the West,” 245; D.W. Cheesman, *The National Currency, and on the Repeal of the Specific Contract Act...* (Washington: Judd & Detweiler Printers, 1869), 28-29; Quoted in Cross, *Financing and Empire*, 348.

⁷¹ *New York Sun*, October 3, 1863; Fairman, *Reconstruction and Reunion*, 1:698; *Schollenberger v. Brinton* 52 Pa. 9 (1865); *Griswold v. Hepburn* 63 Ky. 20 (1865); *Latham’s Case* 1 Ct. Cl. 149 (1864); *George v. Conrad* 45 N.H. 434 (1864); *Breitenbach v. Turner* 18 Wis. 140 (1864); *Milliken v. Sloat* 1 Nev. 573 (1865); *Thayer v. Hedges* 22 Ind. 282 at 283-310 (1864).

exceptions to the Legal Tender Act that loosened the government's grip on the currency. California especially set tone for of the states west of the Rocky Mountains, where keeping gold in circulation was still possible. Nevada and Idaho passed Specific Contract Acts modeled on California's law. Informal pressure kept gold and gold dust the dominant currency of the mining communities of Montana and Colorado. Chipping away at the Legal Tender Act occurred in the East as well, as courts began to hear cases in which parties claimed exceptions to greenbacks. Reacting to *Carpentier*, the *American Law Register* feared that contracts specifying gold clauses would appear across the country, allowing creditors to reclaim their power in the market, and "discredit the National currency and...clothe the lender and creditor with a new and formidable power."⁷²

After losing his cause in New York, Van Dyck consoled patience to Curtis. He thought the constitutional questions "should be deferred until they can be approached and decided without the intervention of those extraneous circumstances, over which neither the government, the courts, nor a loyal population, can as yet exercise control." Across the country, Americans came to different conclusions about the government's new power to create and control money during the Civil War. In some business circles, and among workers and farmers the reliability of the greenbacks inspired hopes that the policies would become a cornerstone of future prosperity. Others, frustrated by the limits of the wartime context, waited for the day when the calls of patriotism and necessity would no longer protect the greenbacks. The focus of attention would return to Washington, as the conditions ripened for a reexamination of the government's control of the currency with

⁷² Bakken, "Law and Legal Tender in California and the West," 251-256; *Philadelphia & R.R. Co. v. Morrison et. al.* 19 F.Cas. 487 (1864); J.F.D., "Supreme Court of California. Carpenter vs. Atherton," *The American Law Register* 13 (February, 1865), 237.

the cessation of war.⁷³

⁷³ "Annual Report of the Superintendent of the Banking Department of the State of New York, January 7. 1864," *Banker's Magazine* 13, no. 10 (April 1864): 812-13.

6

Settling Debts

Every greenback note, even those printed in the darkest days of the war, promised repayment on its face. At the end of the Civil War, the United States had \$684,138, 959 worth of the various forms of legal tender paper money in circulation. Depending on whom you asked, that sum represented either a temporary “popular loan” that saved the country, or a “forced loan” that violated the moral and constitutional boundaries of how the government should act in the market. In either case, the surrender of General Robert E. Lee at Appomattox signaled to many that it was time for a reckoning of debts and an end to the government’s experiment with fiat money.¹

The flag waving and fear that drove Congress to the greenbacks were no longer justifications. Secretary of the Treasury Hugh McCulloch thought Appomattox “seemed to leave the Government without an excuse for not paying its debts,” especially the greenbacks. A diverse group of financial conservatives, made up of economic elites and northeastern Republicans pushed to wipe out that debt with alacrity. Steeped in classical economic thought, and worried that greenbacks destroyed wealth and the position of the U.S. in the world market, these financial conservatives made the resumption of specie payments a prime political objective during Reconstruction. Much to their frustration, a rapid settling of debts did not occur in the period after 1865, as people across the country registered their support for this new brand of federal intervention in the economy. The

¹ Robert T. Patterson, *Federal Debt-Management Policies, 1865-1879* (Durham: Duke University Press, 1954), 150. This sum includes all types of legal tender currency, including interest-bearing notes. It does not include the nearly 200 million in fractional notes and National bank notes, not a legal tender.; E.G. Spaulding, *History of the Legal Tender Paper Money* (1875), 11-15.

Saturday Evening Post lamented this development and held “every greenback in circulation” simultaneously bore witness to the “solemn pledge of the Nation” and “the failure of the National Faith,” for every year that they were not redeemed. The *Post* added, “first thing for the Nation to do, is to bend all its energies to making the greenback a truth, and not a perpetual lie.”²

Between 1865 and 1873 the government’s power over the national market entered a critical phase as northerners contemplated the degree to which they wanted the government to retain its grasp on the currency. The fight began soon after Appomattox with Hugh McCulloch’s policy of quickly contracting and retiring the greenbacks from circulation. In a matter of a few years, McCulloch’s plan of contraction ran afoul of the growing popular view that greenbacks held the key to economic growth and stability in the postbellum era. Witnessing McCulloch’s failure, Salmon P. Chase, now Chief Justice of the U.S. Supreme Court, led a charge to attack the Legal Tender Act, not simply as a question of policy, but at its core by questioning the government’s power over money in the Constitution. In a series of cases that culminated in *Hepburn v. Griswold*, a Chase-led majority sought to severely limit government’s reach into money markets, state coffers, and the pockets of citizens.³ The constitutional attack, like contraction, floundered.

Threatened with a Court opinion that would keep the government confined to coin for all time, the public registered a strong desire to keep and retain this addition to the federal government’s powers under the Constitution. In the end, a new Court majority overruled

² Hugh McCulloch, *Men and Measures of Half a Century* (New York: Charles Scribner’s Sons, 1889), 251; *Saturday Evening Post*, May 23, 1868.

³ *Hepburn v. Griswold*, 75 U.S. 603 (1869); *Bronson v. Rodes*, 74 U.S. 229 (1869); *Butler v. Horwitz*, 74 U.S. 258 (1869); *Lane County v. Oregon*, 74 U.S. 71 (1869); *Willard v. Tayloe* 75 U.S. 557 (1870).

Chase in the *Legal Tender Cases*, weaving the changes wrought by the war into the federal law along with federal practice.

The expansion, contestation, and eventual retreat of federal authority are central themes of the period known as Reconstruction. In the aftermath of emancipation, the federal government intervened on the behalf of African Americans on the subjects of civil rights, voting rights, and more, all in pursuit of settling the outcome of the war. By the late 1870s, voter apathy, racism, southern violence, and an overall view that the federal government could not change society blunted the promise of social equality in American democracy. Yet, the war was pregnant with many revolutions, large and small, in how people lived their lives for the balance of the nineteenth century. Running concurrent with the “unfinished revolution” of equal rights was the completion of another transformation of federal authority over the growing American marketplace. The fight to return the country to gold backfired, entrenching what was once justified as a temporary war measure into the permanent structure of policy and law in postwar America.⁴

Status Quo Antebellum?

In 1864, after several political rows with the administration, President Abraham Lincoln replaced Salmon P. Chase with William Pitt Fessenden, former chair of the Senate Finance Committee. Fessenden, who would serve in the Treasury until March 1865, had few problems securing loans and requested no further issues of greenbacks

⁴ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), xxv-xxvii, 603-612; On the declension of federal authority after Reconstruction see Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge, MA: Belknap Press, 1977), 85, 106, 181, 285, 409; Hyman, *A More Perfect Union*, 543-553; Stephen Skowronek, *Building A New American State: The Expansion of National Administrative Capacities, 1877-1920* (New York: Cambridge, 1982), 30, 41, 45; Bense, *Yankee Leviathan*, 367; For a new picture of federal authority in this era see Balogh, *A Government Out of Sight*, 277-308; Paludan, *A People's Contest*, 380; For an example of another type of revolution spawned by the war years see Louis Menand, *The Metaphysical Club* (New York: Farrar, Straus and Giroux, 2001).

during the last years of the war. Moreover, he promoted the preeminence of the National Banking System (NBS) in the market with his support for the 10% tax that would crush the state banknotes out of existence. Nonetheless, it was no idle boast when Chase wrote in his diary “all the great work of the Department was now fairly blocked out and in progress.” With a raw outline of power in place at the conclusion of the Civil War, debate shifted to what the final draft would include.⁵

The new structure of federal power changed the meaning of conservatism on the money issue in the postbellum era. During the war, conservatives fought to retain state power over banking and the introduction of legal tender paper money, and they mostly divided on party lines. Democrats steadfastly resisted growing federal power in Congress, while Republicans, many who openly confessed doubts about these new powers, voted for the measures as a necessary means to support the war. According to the critics, both of these actions represented novel intrusions of the federal government into markets and federalism, justified only by the necessities of war. The end of the Civil War did not, however, encourage old critics to insist on a return to the full *status quo antebellum*. Aside from a few pockets of resistance in New York, very few bankers or newspaper editors called for a return to the era of state banks and bank notes. With the National Banking Act of 1864, the last major holdouts to the NBS moved their firms under

⁵ Niven, *Salmon P. Chase*, 362-366; Blue, *Salmon P. Chase*, 232-236; Robert Cook, *Civil War Senator: William Pitt Fessenden and the Fight to Save the American Republic* (Baton Rouge: Louisiana State University Press, 2011), 171-189; Charles A. Jellison, *Fessenden of Maine, Civil War Senator* (Syracuse, N.Y.: Syracuse University Press, 1962), 180-191; *Report of the Secretary of the Treasury on the State of the Finances for the Year 1864, Ex. Doc. No. 3, 38th Cong., 2nd Sess. (1864)*, 24; Salmon P. Chase, Journal Entry for July 1, 1864 in Niven, ed., *The Salmon P. Chase Papers: Journals, 1829-1872* (Kent, OH: Kent State University Press, 1993), 1: 473.

national control, and old foes of the system, like Fessenden, supported national banking as the system of the future.⁶

New cleavages along lines of class and region divided the country on *how* the federal government would create and regulate money, not *if* they would retain this responsibility. Whereas during the war, Democrats were the open critics of government monetary powers, the coming of peace freed a cohort of Northeastern Republicans, joined by likeminded Democrats, to speak their minds against greenbacks. The new financial conservatives could be found in every party and region, but the greatest concentration was in the Northeast, home to the country's richest banks and financial markets. A new hard money faith, shorn of the Jacksonian antimonopoly rhetoric, took root there for various reasons. Greenbacks eroded the profits of capitalists and made international exchanges expensive at the region's bustling ports. Moreover, in that corner of the country, there was too much currency. Under McCulloch's watch as Comptroller, the Northeast took more than their allotted regional quota of national bank charters and notes, contributing to an abundance of currency that deranged business. From their position of relative wealth, specie meshed well with northeastern religious thought and the classical liberal economics taught in most universities that both proclaimed gold as God's, or nature's money, depending on the valence of thought. A return to gold, nevertheless, did not mean what it sounded like. Northeasterners wanted the utility of paper money as much as any region, excepting the Pacific Coast. The NBS promised paper money that

⁶ There were periodic calls for abolition of the tax as late as the Democratic platform of 1892, but the call never received any serious consideration beyond this. Fritz Redlich, *The Molding of American Banking*, 2:122; Bense, *Yankee Leviathan*, 314-315; David M. Gische, "The New York City Banks and the Development of the National Banking System, 1860-1870," *American Journal of Legal History* 23 (January 1979):21-67.

could be exchanged for gold, and thus subject to the forces of the market that liberal economists praised, while enjoying the security and oversight of the federal government.⁷

In the Midwest, the growing adoration for the greenback begun during the war flourished in the postwar era, matched by an equally strong hatred for the NBS. While Midwesterners had once praised Chase's plan of national banks as superior to the state systems, the imbalance in apportionment contributed to the view that national banks were a new monopoly in the hands of eastern elites. These critics did not oppose government power either; rather they opposed its particular form. Calls for a universal currency of greenbacks became the common position of western Democrats, and increasingly Republicans, in the cash-poor trans-Appalachia West. Among merchants and industrialists, greenback talk focused on its effect on prices and the need for cash for the growing population. In labor circles, the talk veered toward the social as these paper dollars promised to end the strangle hold of capital via the NBS and the gold standard. Before the Panic of 1873, northern farmers generally stayed quiet on the money question probably owing to a period of high prices for agricultural goods. Thus, it was with much irony that departure point for a new wave of financial conservatism began with a speech at Fort Wayne, Indiana in 1865.⁸

The event was a dinner given in honor of President Andrew Johnson's new Secretary of the Treasury, Hugh McCulloch. Born in Maine, McCulloch headed west and

⁷ Irwin Unger, *The Greenback Era: A Social and Political History of American Finance, 1865-1879* (Princeton, N.J.: Princeton University Press, 1964), 26, 34-35, 57-58, 120-162 (on hard money); Robert P. Sharkey, *Money, Class, and Party: An Economic Study of Civil War and Reconstruction* paperback ed., (Baltimore: Johns Hopkins University, 1967), 163, 221-275; Redlich, *The Molding of American Banking*, 121; Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America, 1865-1896* (New York: Cambridge University Press, 1997), 78-83.

⁸ Sharkey, *Money, Class, and Party*, 104-107, 111; Unger, *The Greenback Era*, 68-71; Walter T.K. Nugent, *Money and American Society 1865-1880* (New York: The Free Press, 1968), 57, 59-60; Gretchen Ritter, *Goldbugs and Greenbacks*, 90-104.

settled in Indiana in the 1830's working as lawyer. An old Whig, McCulloch had a life long belief in the need for a Bank of the United States and free trade. Unlike previous secretaries of the treasury in the antebellum era whose appointments depended on political credentials, McCulloch was first and foremost a professional banker. From 1857 to 1863 he had overseen the management of the Bank of Indiana's branch system as its president. Afterwards, he served as the first Comptroller of the Currency, where he brought his focus on order and professionalization to the organization of the new department. McCulloch, who at first rejected the NBS as an affront to well-managed state systems like his own, came around to the view that "banks with a perfectly secured circulation, which would be current throughout the Union, were an absolute necessity..." In his several years at the comptroller's post, McCulloch was a steadfast ally of the system, encouraging the 10% tax against state banks and working to bring the largest banks into the fold through his work on the National Banking Act of 1864. After two years, Johnson nominated McCulloch to replace a weary Fessenden at the Treasury. Like most conservatives in the era, McCulloch embraced the NBS as tool for future national prosperity through a system of stable nationally backed banknotes. The critical catch for the new conservatism was an unyielding belief that those banks should rest on a foundation of gold, and not greenbacks.⁹

Destroying the country's greenbacks or, as McCulloch put it, "contracting" the volume of paper money, became a prime focus of his tenure at the Treasury. Seven months after taking office, McCulloch announced his attitude towards the greenbacks in the speech at Fort Wayne. He revealed that he was not "one of those who seem disposed to repudiate coin as a measure of value." McCulloch, and his fellow conservatives, had

⁹ McCulloch, *Men and Measures of Half a Century*, 60-61, 296, 130, 165-171, 164.

kept their criticisms of the greenbacks to themselves during the war, and stomached them “as an evil which circumstances may for a time render a necessity.” With the war over, McCulloch hit all the notes sounded by Democrats during the war, heavily criticizing the level of inflation and a huge US trade deficit as a direct result of the greenback policy.¹⁰

Like the old hard money conservatives, McCulloch believed that specie was the “only true measure of value.” Later in life, he wrote in his autobiography that government policy could not manipulate the true measure of value. The Legal Tender Act compelled “people to use it, but its real value depends upon the relation it bears to coin.” McCulloch also feared the power of the greenbacks in the hands of a democracy. The volume of money, he thought, needed to be in proportion to the “requirements of legitimate business,” something that specie would do naturally. Fiat money, he said at the end of 1865, “would give to the party in possession of the government a power which it might be under strong temptations to use for other purposes than the public good.” Weaved into his message at Fort Wayne was a religious overtone. McCulloch feared the perversion of public morals, and cited gold and silver as form of money ordained by “the Almighty for this very purpose.” A quick resumption of specie payments by bringing in and cancelling the greenbacks would return the country to the natural order of the world.¹¹

¹⁰ McCulloch, *Men and Measures*, 201-02.

¹¹ McCulloch, *Men and Measures*, 201-02, 172; “Report of the Secretary of the Treasury...for the Year 1865, “*Ex. Doc. No. 3*, 39th Cong. 1st Sess. (1865), 4.



Fig.1 Hugh McCulloch, Secretary of the Treasury, 1865-1869, Brady-Handy Collection, Prints and Photographs Division, Library of Congress.

Most of the financial elites in the country, in addition to a growing group of elite Republican “reformers” who were wary of expanded government influence in the economy, joined McCulloch in this view. The northeast was home to growing cadre of academic economists, journalists, and politicians concerned about the growth of both state and federal intervention into the market and society. These liberal critics espoused a desire for specie resumption, free trade, and a quick end to federal occupation of the

South. Many of those who would join the Liberal Republican party against Grant in 1872 were early supporters of McCulloch's policy of contraction.¹²

A few months later, McCulloch put his views into action in his first report as Secretary of the Treasury in December of 1865. The greenbacks, he told Congress, were a war measure and "they ought not to remain in force one day longer than shall be necessary to enable the people to prepare to the constitutional currency," by which he meant coin. The notes were harmful to the economy, unconstitutional in "ordinary circumstances," and dangerous. "Keeping the question of the currency constantly before the people as a political question... would be injurious to business," he told Congress. McCulloch had quietly begun this process some month before by selling bonds for the compound interest legal tender notes used by banks. Now, he asked Congress to grant him the authority to draw down the volume of greenbacks, at whatever pace he thought best. That same month in the House of Representatives, John Alley, the Republican from Massachusetts who had first introduced the plan of issuing greenbacks in January of 1862, presented a resolution endorsing McCulloch's plan of contraction. It passed the House and Senate without debate. In this, Alley and many in Congress who had voted for the greenbacks with hesitation fulfilled their promises to return to specie with the cessation of the rebellion only eight months after Appomattox.¹³

Yet, when it came to draft a bill realizing the contraction plan, McCulloch's policy revealed deep divisions among Republicans. In the House, Justin Morrill, who had

¹² Sharkey, *Money, Class, and Party*, 244; Unger, *The Greenback Era*, 126-131; Foner, *Reconstruction*, 498; Andrew L. Slap, *The Doom of Reconstruction: The Liberal Republicans in the Civil War Era* (New York: Fordham University Press, 2006), 17, 22-23, 43-44, 96-97; John G. Sproat, *The Best Men: Liberal Reformers in the Gilded Age* (New York: Oxford University Press, 1968), 170-71, 184-89.

¹³ "Report of the Secretary of the Treasury...for the Year 1865," *Ex. Doc. No. 3*, 39th Cong. 1st Sess., 4-8, 12-14; *Cong. Globe*, 39th Cong., 1st Sess. 75 (1866); Patterson, *Federal Debt-Management Policies*, 62; Sharkey, *Money, Class, and Party*, 66-67; Hammond, *Sovereignty and an Empty Purse*, 355.

opposed the Legal Tender Act in 1862, must have taken pleasure in reporting a bill that would give McCulloch the powers he requested. It was high time to end the “illimitable brood of evils” brought on by greenbacks. “Those who fear rash attempts at an early resumption,” declared Morrill, “should be quieted.” A few voices did not remain quiet. In the House, John Wentworth, a Republican from Chicago, thought contraction would upset many people in the country who were “content with the money to which they have been accustomed and which costs the Government nothing...” Most critics of contraction did not openly embrace the greenbacks as a permanent policy, but cautioned against upsetting the delicate balance of the economy at that moment. Samuel Hooper, Thaddeus Stevens, and William D. “Pig Iron” Kelly, all argued that the volume of business warranted the use of greenbacks. George S. Boutwell of Massachusetts claimed that emancipation brought millions of African Americans into the cash economy, all of whom would need government paper money to lubricate the wheels of exchange. In the Senate, John Sherman added that McCulloch’s plan placed far too much power over the economy in the hands of one man, no matter how capable. The contraction bill passed by a slim margin in the House. Without the votes of the Democrats, Republicans stood 56 to 52 on the bill. In the Senate it passed 32 to 7, with all seven votes coming from western Republicans like Sherman.¹⁴

While the Republicans who voted for contraction fulfilled their promise to settle debts at the end of the war, the changing tides of the economy worked against McCulloch’s plan. The period around the time McCulloch won the power to contract the currency marked the start of a depression in business and a lowering of prices across the board. The primary cause of the slump remains unclear, and it might have stemmed from

¹⁴ *Cong. Globe*, 39th Cong., 1st Sess. 971, 976-977, 1427, 1459; Sharkey, *Money, Class, and Party*, 66-80.

the sharp drop in federal spending after the war. No matter the actual cause, farmers, labor, and manufacturers universally blamed conditions on McCulloch's policies. Manufacturers and railroads especially favored inflation because it lowered costs for starting and expanding business. Petitions to Congress in this vein painted a picture of an ever-expanding country, both spatially and commercially, that thirsted for all the greenbacks, national bank notes, and credit that the government could pump into the market.¹⁵ The proponents of easy money, in Congress or business circles, did not avow a new age of pure fiat currency, backed only by faith in the government. The idea of specie as money was too old and well established in popular conceptions of money to be wiped out by less than a decade of greenbacks. Rather, Republicans wanted to find a way to pay lip service to an eventual return to gold while enjoying the benefits of inflation. The conservative *Commercial and Financial Chronicle* complained that the press was "teeming with all kinds of visionary projects for restoring the currency without contraction."¹⁶

A surge from the grassroots in Ohio indicated to Democrats and Republicans the shape of things to come. After failing to win elections on the questions of race and reconstruction, Democrats in Ohio found that shifting from race to issues of national currency and debt was a successful formula for winning elections. Picking up on the Midwestern discontent with contraction, George H. Pendleton, who had led the House Democrats against the Legal Tender Act in 1862, changed positions on the benefits of

¹⁵ "Remonstrance of John W. Ellis & Others of Bloomfield Iowa, against legislation depreciating or unsettling the established National Currency," February 20, 1867, and "Petition of the Citizens of McLean Co., Illinois asking to Repeal the law authorizing the withdrawal of the Legal Tenders," March 2, 1867, File HR39A-H25.2, Records of the Committee of Ways and Means, Records of the House of Representatives, RG 233, NARA I.

¹⁶ Sharkey, *Money, Class, and Party*, 81-93; *Commercial and Financial Chronicle*, 3 (September 15, 1866), 321, quoted in Patterson, *Federal Debt-Management Policies*, 177.

irremediable paper money. In April of 1867, Pendleton introduced a plan of repaying the 5-20 bonds in greenbacks, known nationally as the “Ohio Idea.” The plan was mildly inflationary, while playing on popular discontent that wealthy bondholders would profit from the war with payment in gold. As further proof of how the government’s new power over money changed the landscape of politics, William Allen, another old Jacksonian Democrat, now embraced the greenbacks as the people’s currency in the same manner that he had hard money in the 1830s. Intellectually, the jump from hard to fiat money was not as difficult as it might seem at first blush. Thomas Jefferson and Salmon Chase conceded that a government-issued paper currency was more democratic than paper issued by banks. As an anti-monopoly measure, greenbacks appeared attractive because they took power out of the hands of the national banks controlled by a growing eastern elite.¹⁷

That fall, Democrats took control of the Ohio legislature, and lost the governor’s race by less than 3,000 votes. Nationally, Republicans fretted at what the results in Ohio might mean for the upcoming 1868 presidential campaign. Schuyler Colfax, the Republican speaker of the House from Indiana, wrote Sherman “we must profit by these popular indications before ’68.” When 1868 came, Democrats faced their own issues on the money question. Eastern Democrats could not stomach the Ohio Idea or a full greenback currency and thwarted Pendleton’s bid for the presidential nomination.

Nevertheless, the lessons of ’67 were clear for the Republicans. Joseph Medill at the

¹⁷ Sharkey, *Money, Class, and Party*, 105-106; Thomas S. Mach, “Gentleman George” Hunt Pendleton: *Party Politics and Ideological Identity in Nineteenth-Century America* (Kent, OH: Kent State University Press, 2007), 118-126; Reginald Charles McGrane, *William Allen: A Study in Western Democracy* (Columbus, OH: Ohio State Archaeological and Historical Society, 1925), 180-184, 217-225; Charles Destler, “The Origin and Character of the Pendleton Plan,” *Mississippi Valley Historical Review* 24 (1937): 171-184; Max L. Shipley, “The Background and Legal Aspects of the Pendleton Plan,” *Mississippi Valley Historical Review* 24 (1937): 329-340; Ritter, *Goldbugs and Greenbacks*, 41-42.

Chicago Tribune wrote Sherman that the conclusion of Reconstruction “will hasten the disintegration of our party, unless our leaders reflect public sentiment on financial questions as accurately as they have heretofore done on questions of freedom and personal rights.”¹⁸

With the defeat in 1867 ringing in their ears, the Republicans scrambled to find a means of striking a balance between the warring economic factions in the country. In early 1868, Sherman along with other Republicans sympathetic to the greenback cause successfully passed a bill ending McCulloch’s policy of contraction by large margins in the House and Senate. A majority of Republicans could unite behind keeping the greenbacks in circulation a while longer, but they could not all agree that the public debt should be paid in greenbacks, or that the government should never return to specie. To balance interests in the party, Congress passed the Public Credit Act committing the United States to repayment of the war debt in gold, and an eventual return to specie, but without setting a timetable for resumption. John Sherman, who helped guide the legislative process in both acts, commented that “the drift of opinion was in favor of resumption without contraction, and funding at low rates of interest on a coin basis.” Saying one thing and doing another, the Republicans navigated the sticky question of greenbacks and gold by announcing principles that would delight conservatives, without taking any actions that would upset the place of the greenbacks in circulation.¹⁹

¹⁸ Sharkey, *Money, Class, and Party*, 94-97; Joseph Medill to Sherman, November 22, 1867, Sherman Papers, LOC, quoted in Sharkey, *Money* 96; Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction 1863-1869* (New York: W.W.Norton, 1974), 275;

¹⁹ Sharkey, *Money, Class, and Party*, 107-118 ; An Act to Suspend further Reduction of the Currency, ch. 6, 15 Stat. 34 (1859-1869); An Act to Strengthen the public Credit, ch.1, 16 Stat. 1 (1869); John Sherman, *Recollections of Forty Years in the House, Senate and Cabinet* (Chicago, the Werner Company, 1896), 368.

The victor of the 1868 presidential election, General Ulysses S. Grant, hero of the Civil War, committed his administration to upholding that compromise, and thus perpetuating what one historian rightly called “equipoise” in the country on the money question in his first administration. Unofficially, a few members of the cabinet, including future liberal republicans James Cox, Secretary of the Interior, and Ebenezer Rockwood Hoar, Grant’s Attorney General, were against paper money. But Grant, lacking any strong opinions on the issue, followed the policy of his Secretary of the Treasury, George S. Boutwell, for the time being. Boutwell, who had worked as grocer and eventually served as Governor of Massachusetts, embraced the middle ground on the greenback issue, arguing against repayment of the debt in currency but also against McCulloch’s policy of contraction. Boutwell favored letting the population and business activity of the country “grow up” to the current volume of paper money. Obliquely committed to resumption, he was in no hurry to resume specie payments and rarely spoke of the matter in his messages. Grant maintained this equipoise on the money question in his annual message to Congress for 1869, praising the Public Credit Act, but suggesting caution against a rapid contraction of greenbacks.²⁰

There was, however, one fly in the soup crafted by the Republicans. At any moment the U.S. Supreme Court could declare the Legal Tender Act unconstitutional. Even McCulloch was in “constant fear” that a hasty Supreme Court opinion would accelerate the timeline of resumption too quickly. Proponents of specie resumption or contraction of the currency long understood that getting rid of the greenbacks would require a process of months or years to accomplish without too much panic in the

²⁰ Unger, *The Greenback Era*, 163,-64; “Annual Message” December 6, 1869, in John Y. Simon, ed., *The Papers of Ulysses S. Grant*, 31 vols. (Carbondale: Southern Illinois University, 1967-2009), 21-22.

country's financial centers. As a policymaker, the Court could only provide crude solutions by approaching the currency question as a constitutional one. A decision that rendered the Legal Tender Act either wholly or partially unconstitutional would require an immediate change in policy. With one fell swoop, the Court could force an immediate return to specie payments and remove legal tender. Or, they might declare it partially unconstitutional, which might still precipitate a panic as financiers fretted over the nature of their debts and investments. Additionally, a constitutional decision would touch the government's wider powers at its roots by deciding the question of *if* Congress could control the money of country at all, not just the propriety of a certain policy. Within the emerging framework of politics and powers, the Court stood out as capable of shattering the equipoise of the country. In a twist of irony, it would be Salmon P. Chase that would have one last part to play in the story of the greenbacks.²¹

Old Greenbacks as Chief Justice

The Court, for its part, avoided any questions dealing with legal tender or the national banks during the war. This was not the result of a lack of cases appealed to the high court. Almost immediately after the New York Court of Appeals decision in *Meyer v. Roosevelt*, George T. Curtis appealed the decision to the Supreme Court in 1863. Curtis, and all opponents of the greenbacks were denied their day in court when the Justices declined to consider the merits of the case on jurisdictional grounds that same year. In short unanimous opinion, Justice James Moore Wayne denied Curtis's appeal by pointing to part of the Judiciary Act that stated that the Court could only review a state case when it struck down a federal statute or treaty. Since the New York Court of Appeals upheld the federal law, Wayne and the other justices believed that they could not

²¹ McCulloch, *Men and Measures*, 171.

hear the case. That meant that the Court would hear no appeals for the course of the war, as no state court had yet struck down the law as unconstitutional.²²

In 1871, the Court would reverse position in *Trebilcock v. Wilson*, another case dealing with legal tender. In his opinion for the majority, Justice Stephen J. Field admitted that the Court had made a mistake in *Roosevelt*. Yet there is little evidence that the Supreme Court intentionally dodged the issue of the greenbacks during the war. To that point there had only been two cases of Supreme Court review of federal legislation, neither of which originated in a state court. Commentators in the press, moreover, believed that the pattern of state courts upholding the Legal Tender Act denied a path to the Supreme Court. From a political angle, the Court had not avoided controversial subjects during the war as evidenced in their slim majority in favor of war powers earlier in 1863 in *the Prize Cases*. *Roosevelt* gave no mention that any of the Democrats on the bench, including Chief Justice Roger B. Taney who had already prepared arguments against the greenbacks for a future case, dissented from the opinion.²³

The very next year, however, a case dealing with legal tender came before the federal circuit court for the Eastern District of Pennsylvania. The case of *Philadelphia & R.R. Co. v. Morrison et.al.*, centered on the arcane practice of ground rents unique to parts of Pennsylvania and Maryland. Ground rents, also known as a rent charge, were rents that the original grantor of a parcel of land retained forever, no matter if the person living on the land sold or rented the land to another tenant. Historically paid in silver, the railroad sued in federal court to compel acceptance of greenbacks for a ground rent due in

²² *Roosevelt v. Meyer* 68 U.S. 512 (1863).

²³ *Trebilcock v. Wilson* 79 U.S. 687 (1872); *New York Sun*, October 3, 1863; *American Law Review* 1 (July 1867), 750, 752; Charles Fairman, *Reconstruction and Reunion, 1864-88*, 2 parts (New York: Macmillan Company, 1971), 1:696-698; David M. Silver, *Lincoln's Supreme Court* (Urbana, Ill., 1956), 104-118, 143-147; Brian McGinty, *Lincoln and the Court* (Cambridge, MA: Harvard University Press, 2008), 133-143, 203.

Philadelphia. The unusual and narrow nature of the question made the significance of the answer relatively unimportant to the political economy of the greenbacks, but how Justice Grier, acting as circuit justice, and Judge John Cadwalader, the district judge, approached the question spoke volumes about deep foreboding of the federal judiciary toward the issue of legal tender.²⁴

Judge John Cadwalader, a Democrat appointed by Buchanan in 1858, wrote an opinion that declared the entire Legal Tender Act unconstitutional, filled with firsts in the American law of money. Cadwalader became the first federal judge to clearly admit a power to issue paper money, not a tender, coming out of the Constitution. At the same time, he thought that deducing a power to make that paper a tender, twice removed from the original power to borrow money, went too far. Yet in the last line of his opinion he “removed” himself from the case leaving Grier’s opinion as the sole vote on the question. Grier sidestepped the larger issues raised by Cadwalader and without Cadwalader’s dissent prevented an appeal to the Supreme Court. Focusing on the law of ground rents in Pennsylvania, Grier announced that this particular financial arrangement was not a “debt” within the meaning of the phrase printed on each note and was thus exempt from the power of Congress. Grier, however, did agree with Cadwalader that a national currency, not a legal tender, was perfectly acceptable but that greenbacks were a dangerous new thing in American constitutional law. The act, he thought, should be “construed strictly.” Greenbacks were “doubtful in policy and dangerous as a precedent.”²⁵

²⁴ *Philadelphia & R.R. Co. v. Morrison et. al.* 19 F.Cas. 487 (1864); *Philadelphia Press*, November 11, 1864; Edward P. Allinson and Boies Penrose, *Ground Rents in Philadelphia* (Philadelphia, PA; University of Philadelphia, 1888).

²⁵ *Philadelphia & R.R. Co. v. Morrison et. al.* 19 F.Cas. 487.

That the issue of legal tender, in some form or another, would come before the Supreme Court was universally acknowledged, therefore the composition of the Court was of critical importance to Republican policy. Over the course of his presidency, President Abraham Lincoln appointed five justices who would transform a bench that still included justices appointed by Andrew Jackson. When Taney died in 1864, Lincoln, foreseeing the significance of war issues in the postwar era, chose a new chief justice who he thought would uphold the Republican's wartime policies, which included avoiding the financial chaos that would ensue if the Court struck down the Legal Tender Act. He thought that he had found the perfect fit in Salmon P. Chase.²⁶

Chase's incessant political intrigues were the stuff of legend. It was no secret in Washington that Chase did not keep himself to the business on his desk at the Treasury. His correspondence was full of opinions on the conduct of the war, and he often pushed these wider views in cabinet meetings. His relationship with Lincoln was often strained. Chase made a habit of offering his resignation if he could not get his way with Lincoln. Unwilling to replace Chase during the financial instability that plagued the nation in the early part of the war, Lincoln declined to accept it. Another constant source of annoyance was Chase's widely acknowledged obsession with becoming the next President of the United States. He had high hopes prior to 1864 that he could unseat Lincoln. When these plans failed, Chase kept his eyes on the prize of the presidency and continued to build his network of political support, especially through appointments to Treasury positions across the country. In June of 1864, a simmering conflict between Chase and Lincoln over appointments to the lucrative Customs House in New York City proved to be Chase's undoing. When Chase submitted his resignation to force Lincoln's hand on the

²⁶ McGinty, *Lincoln and the Court*, 92-117.

choice of the next collector at the port, he was shocked to find that Lincoln accepted his notice this time. Chase's political machinations and his gambit to retain control of his network of Treasury appointees left him out of public office for the first time since 1849.²⁷

Lincoln, however, contemplated a new role for Chase in the Republican cause. The death of Taney posed a unique opportunity for Lincoln. In the short term, there was the usual pressure to choose a candidate that pleased the different factions within the party. Beyond this, Lincoln could see the shape of the Court's docket in the postwar era, and sought to choose a Chief Justice who could guide the court through the shoals ahead. Lincoln confided to Boutwell, serving in the House at that time, "we wish for a Chief Justice who will sustain what has been done in regard to emancipation and the legal tenders."²⁸

On both counts Chase seemed an excellent fit. His nomination would please the radicals in Congress. In private circles, Republicans whispered that a Chief Justice Chase would end his pursuit of the presidency. Chase was an early and vocal supporter of emancipation who would undoubtedly support wartime policy. As of 1864, he had not committed to the state-suicide or conquered province theories of Reconstruction. His attitude toward the greenbacks seemed equally safe. Lincoln must have assumed, and it was an assumption shared by many in the press six years later, that the man, who lobbied Congress for successive issues of greenbacks during the war years, who spoke of a clear power to issue a currency in his first report at Secretary of the Treasury, and who put his face on the one-dollar greenback would not strike down the Legal Tender Act. Chase,

²⁷ Blue, *Salmon P. Chase*, 142-143, 234-235; Niven, *Salmon P. Chase*, 360-365.

²⁸ George S. Boutwell, *Reminiscences of Sixty Years in Public Affairs* 2 vols. (New York: McClure, Philips, 1902), 2:29.

though, was never privately vetted about his possible views. In a pattern that would reemerge in 1870, political culture forbade Lincoln from asking Chase these questions directly. He told Boutwell "we cannot ask a man what he will do...Therefore we must take a man whose opinion are known." Lincoln would never live to see what his Supreme Court appointees would do to American constitutional law. But Republicans during Reconstruction would come to realize that they had all seriously misjudged the political aspirations and constitutional vision of Salmon P. Chase.²⁹

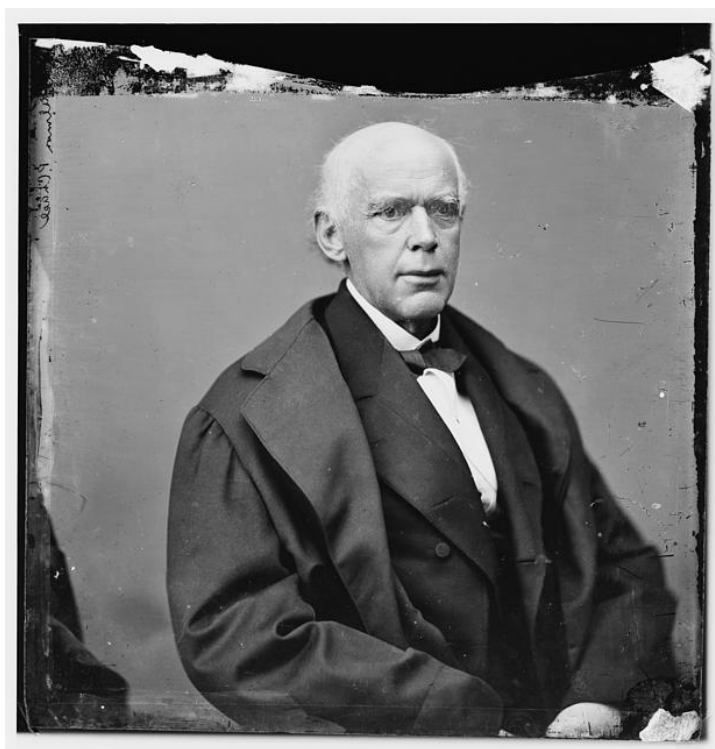


Fig 2. Chase as Chief Justice of the United States Supreme Court, Brady-Handy Collection, Prints and Photographs Division, Library of Congress.

Chase's actions and statements after four years in the Treasury concealed his essentially unchanged views of political economy. Chase, it will be remembered, came to the greenbacks reluctantly in the winter of 1862. Once committed to the bitter medicine,

²⁹ E.R. Hoar to William M. Evarts, October 30, 1864, Ebenezer Hoar Letters, Diedrich Collection, Clements Library, University of Michigan, Ann Arbor; Niven, *Salmon P. Chase*, 374; Blue, *Salmon P. Chase*, 242-246; McCulloch, *Men and Measures*, 187; Fairman, *Reconstruction and Reunion*, 1:25.

he repeatedly used the notes to keep the government afloat, and later admitted that the notes were critically important in helping to finance the war. But he never could see their utility outside war finance. True, he never denounced the greenbacks while in office. But Chase the political animal was not going to correct chanting crowds who dubbed him “Old Greenbacks.” Privately he informed his friends that he anxiously awaited a return to specie payments. In 1864, almost a month before his resignation from the Treasury, he wrote a confidant that “my whole plan...has been that of a bullionist and not that of a mere paper money man. I have been obliged by necessity to substitute paper for specie for a time, but I have never lost sight of the necessity of resumption.”³⁰

Chase’s reactions to the changing landscape of the politics of money in America revealed that he was woefully out of place. Unfulfilled by his position as Chief Justice, he attempted to realize his dream of becoming president with a run for the nomination of the Democratic Party in 1868. When he failed, Chase confessed to a friend that “the time was not for me, nor was I for the time.” As national politics shifted on the greenback issue after 1865, Chase found himself increasingly at odds with his home region and both political parties on questions of finance. An early supporter of the McCulloch plan of contraction, he vented frustration at the conciliatory moves of Republicans to put off the final date of resumption. Chase sternly advised Horace Greely “the only way to resume is

³⁰ “Schuckers’ record of conversation with Chase on the origins of national banking system and greenbacks,” c.1868-1873 in Niven, ed., *Papers of Chase*, reel 42; SPC to S. De Witt Bloodgood, May 9, 1864 in J.W. Schuckers, *The Life and Public Services of Salmon Portland Chase* (New York: D. Appleton and Company, 1874), 402-3.

resumption.” In 1868, he made clear to eastern Democrats that on “questions of finance” he believed “the old democratic principles afford the best guidance.”³¹

At that same moment, both Democratic and Republican parties of the Midwest were transforming those principles for a new era. Both parties in Ohio and Indiana proclaimed their support of the greenbacks. The entire Midwest was in open revolt against Chase’s NBS. Western Democrats, led by Pendleton, scuttled any chance of a Chase presidency as he was openly hostile to the Ohio Idea and refused to support a permanent currency of greenbacks. While he attempted to forward a watered down platform that avoided finance questions, Chase could not unite a party divided on the money question. In the last analysis, there were clear limits to Chase’s adaptability to the new politics of money. In Ohio, Pendleton and Allen could change colors on the money issue, but Chase simply could not understand the claims of greenbackers in either party. To his mind, he had provided the workingmen of the country a safe currency in the form of national bank notes. These notes promised no more “paper of irresponsible banks,” and resumption meant that labor would finally be paid in “gold or its equivalent.” That, however, was a distinctly Jacksonian understanding of the problems of American money belonging to the world before the Civil War. Chase, who had done as much as anyone to bring that era to a close, found himself in the awkward position of being lumped together with the same “eastern bondholders” that he had threatened with a thousand dollar breakfast in 1861.³²

³¹ SPC to Edward D. Mansfield, February 11, 1870, Niven, ed., *Papers of Chase*, reel 38; SPC to Horace Greely, June 5, 1866, Niven, ed., *Papers of Chase*, reel 36; SPC to August Belmont, May 30, 1868, Niven, ed., *Papers of Chase*, reel 37; Niven, *Chase*, 426.

³² Blue, *Chase*, 292-295; Niven, *Chase*, 427-432; *Annual Cyclopedia and Register of Important Events of the Year 1868*, vol.8 (New York: D. Appleton, 1873), 377-378, 603-604; Erik B. Alexander, “‘A Revival of the Old Organization’: Northern Democrats and Reconstruction,” (PhD diss., University of Virginia, 2011), 44-

Chase, however, was far from powerless in this new context, and could understand the place of his work on the Court in the mix of policy and politics over the greenbacks. Early in the run up to the 1868 election, Chase realized that in light of the political effects of the Pendleton plan and deepening divisions between hard and soft money factions, “the question of the constitutionality of the legal tender law assumes new importance.” Of which, he remarked “I have a not unimportant voice.” Structurally, a Supreme Court decision deeming the legal tender act unconstitutional would rearrange politics and the market in an instant. Resumption would come from the bench and not Congress or the Treasury. Politically, the Ohio Idea and kindred proposals would no longer be possible. The field of monetary policy would shrink to the management of the national banks and the coinage. What had tempered the hand of McCulloch and every other policy maker friendly to specie was reality that resumption at the wrong pace would most likely create a financial panic, followed by economic depression. Yet, among some financial conservatives, this draconian solution was a welcome one. Isaac F. Redfield, a Vermont judge and contributor to the *American Law Register* wrote “it almost seems as if the authors of the act would now be glad to escape responsibility by invoking the aid of the court.” With the resumption of specie payments nowhere in sight, the *Nation* fumed that “we ourselves are, we confess, losing patience; we are ready to have any knife, be it that of Congress or of the courts, thrust into the tumor. It will certainly be a very painful operation, and will cause much suffering, but we shall enjoy good health afterwards.”³³

60; George La Verne Anderson, “The National Banking System, 1865-1875: A Sectional Institution,” (PhD diss., University of Illinois), 104-144; SPC to John D. Van Buren, June 17, 1868, Niven, ed., *Papers of Chase*, reel 37; Alexander Long to SPC, June 17, 1868, quoted in Blue, *Chase*, 291.

³³ SPC to William B. Thomas, March 10, 1868, quoted in Fairman, *Reconstruction and Reunion*, 1:531; “The Supreme Court and the Legal Tenders,” *Merchants Magazine* (September, 1868): 201-212; Isaac F.

The membership of the Court beginning in 1865 suggested that there was a chance that the Supreme Court could give financial conservatives the solution that they desired. The *American Law Review*, discussing the spread of legal tender opinions at the state level, commented that the deciding factor for how a justice approached the greenback question depended on their “antecedent legal and political opinions,” with Democrats favoring strict-construction and hostile to the greenbacks, while Republicans would take that stance that the “United States are a nation, a government” and thus imbued with power over money. After the death of James M. Wayne in 1867, a vote by Chase against the Legal Tender Act would balance a bench evenly divided between justices appointed by Democrats and the new class of Republican appointees.³⁴

Upon closer examination, nothing was as clear as it seemed with the justices. Chase, as we have seen, was ready and willing to strike down legal tender, better reflecting his Democratic heritage rather than his more recent party affiliation. There was no evidence to suggest that any of the Democrats favored the law, with the possible exception of Grier, who supported Republican war powers in his majority opinion for the *Prize Cases*. Nevertheless, Grier had called legal tender dangerous in his *Philadelphia R.R.* decision. Privately, he expressed his deep-seated antipathy for the greenbacks when he scribbled on the brief for a legal tender case “Legal Tender—pure & simple prerogative of rascality.” In the summer of 1869, prior to the term in which the majority of legal tender cases would be decided, Justice Samuel Nelson, a New York Democrat appointed by John Tyler, wrote that he had always “regretted that the greenbacks were

Redfield, “Legal Tender Notes Before the Supreme Court,” *American Law Register* 17 (1869), 194; “The ‘Necessity’ of the Legal Tender Act,” *The Nation* 7 (September 3, 1868):185.

³⁴ “The Legal Tender Acts: Their Constitutionality and Effect,” *American Law Review* 2 (1868), 413; Samuel Nelson (Tyler), Robert C. Grier (Polk), Nathan Clifford (Buchanan), Noah Swayne (Lincoln), Samuel F. Miller (Lincoln), David Davis (Lincoln), Stephen J. Field (Lincoln).

made a Legal Tender,” and believed that Chase agreed with this point. Stephen F. Field, a Lincoln appointee from California belonged the Unionist War Democrats of the era,. More importantly, Field, like Chase, acquired his notions of political economy and law in the school of free soil Democrats as a young man in New York city—and had already written an important opinion limiting the scope of the act while in California.³⁵

The positions of the other Republicans were unclear as well. Samuel Freeman Miller, a Republican from Iowa, wrote to Elbridge G. Spaulding to congratulate him on the publication of his history of the Legal Tender Act in 1869. His praise for the greenbacks during the war suggested that he would vote to uphold the law. He hinted that the divisions among the justices on this question were more fluid than the above facts indicated. He told Spaulding that he knew “the views of some of its members” and thought that some justices “are probably undetermined in their own minds.” It was an open guess how David Davis, Lincoln’s former advisor and Illinois Republican, and Noah Swayne, Democrat turned Republican from Ohio, would vote. Davis, for example, proved that he could be critical of Republican war policy in *Ex Parte Milligan*. Swayne might revert to his Democratic background in judging the greenbacks. There was also the possibility that no matter their political antecedents, all the justices might concur that legal tender went to far in thrusting the government between creditors and debtors. Miller, in his lone dissent for the case *Gelpcke v. Dubuque*, believed that most on the bench were compelled to force the debtors of Iowa to pay their bonds based on “a fancied

³⁵ *Prize Cases* 67 U.S. 635 (1863); Quoted in Fairman, *Reconstruction and Reunion*, 1:717; Samuel Nelson to Elbridge G. Spaulding, August 14, 1869, in Spaulding, *History of the Legal Tender Paper Money* (1875), 58; Charles W. McCurdy, “Justice Field and the Jurisprudence of Government-Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863-1897,” *Journal of American History* 61 (1975): 970-1005; Paul Kens, *Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age* (Lawrence, KS: University of Kansas, 1997), 49-69; *Perry v. Washburne* 20 Cal. 318 (1862).

duty of this Court to enforce contracts.” These were all observations that lent credence to Miller’s view that as to how the brethren would see the legal tender clause it was “as uncertain to me as it is to you.”³⁶

The Problem of Mrs. Hepburn’s Debts

In 1865, the Court added to its docket a heavy load of legal tender related cases that would eventually provide the country with answers. The cases came from across the country, dealing with a range of issues stemming from the Legal Tender Act. There was a case dealing with the applicability of the greenbacks to state taxes from Oregon, and multiple cases dealing with contracts that specified gold as payment. The Court, however, did not respond to the greenback issue at the same pace or rhythm as Congress or national politics. Many of these cases would not be decided until 1868 or 1869, during a period of relative peace on the currency question in the national arena—a fact that only drew more attention to these cases. The delay in deciding many of the cases was the product of the normal workings of the Court in this period; the Chase court typically heard cases two to three years after docketing, and the bench delivered opinions a month after oral arguments.³⁷

The case with the best chance of destroying the greenbacks originated in Kentucky with the debts of a confederate officer and his sister. In 1860 William Preston, who would become a brigadier general in the Confederate Army and the Confederate envoy to Mexico during the war, borrowed \$11, 250.00 from Henry A. Griswold of Louisville, Kentucky on the behalf of his sister, Susan P. Hepburn, due on February 20,

³⁶ Samuel F. Miller to Elbridge G. Spaulding, August 17, 1869 in Spaulding, *History of the Legal Tender paper Money* (1875), 59; *Ex Parte Milligan* 71 U.S. 2 (1866); Willard L. King, *Lincoln’s Manager David Davis* (Cambridge: Harvard University Press, 1960), 245-258; *Gelpcke v. Dubuque* 68 U.S. 175 at 210 (1863).

³⁷ Fairman, *Reconstruction and Reunion*, 1:69-70.

1862, five days before Lincoln signed the Legal Tender Act into law. Griswold, perhaps afraid he would never see his money after Preston left Kentucky to join the Confederacy, started the process of suing Preston and his sister as early as December 1861. Almost four years later in 1864, Hepburn appeared in Chancery Court to state that she had paid Griswold \$12, 720 to settle her debts, plus interest and court fees. The problem, as had been true in so many other cases across the country, was that Hepburn tried to pay in greenbacks, which Griswold promptly refused on the grounds that the Legal Tender Act was unconstitutional. The Louisville Chancery Court gave a short opinion that year that echoed many of the sentiments raised by previous courts. They cited *Meyer v. Roosevelt*, and the pressure “in these times of trouble.” Moreover, since “the decision of this court on this subject could not be taken to the Supreme Court of the United States, and would not make an end of the national question,” the chancery court held the act constitutional. Time would prove that the chancery court wrong about the significance of the case for the country as a whole. Griswold immediately appealed the decision to the Kentucky Court of Appeals, the highest court in the commonwealth. There, Griswold would get the decision he desired and more, when the Court of Appeals would become the first state appeals court to strike down the law as unconstitutional.³⁸

Timing conspired to make the problem of Hepburn’s debts different than the previous state cases. The end of the war was a critical factor. When the chancery court delivered their opinion on April 15, 1864, General Ulysses S. Grant had yet to begin the Overland Campaign that would result in General Robert E. Lee’s surrender at

³⁸ Preston and his sister were very close and regularly collaborated on real estate and financial business, Peter J. Sehlinger, *Kentucky’s Last Cavalier: General William Preston, 1816-1887* (Lexington, KY: University Press of Kentucky, 2004), 162 -164, 213; Transcript of Record, *Susan P. Hepburn and Henry H.P. Hepburn, Plaintiffs in Error vs. Griswold, Filed December 30, 1865* (Washington D.C.: Government Printing Office, 1865), 1-8.

Appomattox Court House. By the time the Kentucky Court of Appeals voted three to one to overturn the Legal Tender Act in *Griswold v. Hepburn* in June of 1865, the war was officially over. Chief Justice George Robertson, who wrote the majority opinion holding the greenbacks unconstitutional, did not directly say that he no longer felt constrained by the war. Rather, he obliquely referred to the end of the war by calling measures of military necessity a temporary evil, but never the “law in this country.” The law, he thought, “should finally triumph through an independent judiciary” which should “right the wrong.” In a three to one opinion, Roberts sought to do exactly that by declaring the greenbacks unconstitutional for any and all debts. Party affiliation, it seems, was not a key issue. Both Robertson, and Justice R.K. Williams, who wrote the lone dissenting opinion, were Unionists. Kentucky, unlike California, was firmly enmeshed in the Greenback Zone. Despite *Griswold*, and another case upholding gold clause contracts, the legislature of Kentucky continued to pay out greenbacks to employees—a simple recognition of the fact that paying out gold was simply out of the question. Rather, like McCulloch’s bid for contraction, the opinions in *Griswold* suggested that the end of the war animated the Kentucky bench to formally decide what no other court in the country had felt possible prior to Appomattox. In his opinion, Roberts professed that the court had a duty to save the law “while salvable.”³⁹

In 1865, *Hepburn v. Griswold* joined a string of other legal tender cases that reached the docket of the Supreme Court that year. Counsel submitted briefs in January of 1867. The only arguments in the case came from Griswold, who defended himself, and, William Preston, the former Confederate general, who defended his sister by arguing

³⁹ *Griswold v. Hepburn* 53 Ky. 20 at 40, 42, 48 (1865); Thomas Speed, *The Union Cause in Kentucky* (New York: G.P. Putnam’s Sons, 1907), 2, 43, 74, 77, 87, 169; *Hall v. Hiles* 65 Ky. 532 (1866); *New York Times* March 18, 1867.

in favor of the Legal Tender Act only two years after the fall of the Confederacy. The Attorney General at the time, Henry Stanbery, realizing the significance of this case, asked for the Court to move *Hepburn* over to the next term, so that the government could prepare and present an argument. The Court agreed and continued *Hepburn* with the related case of *Bronson v. Rodes*, along with the rest of the 1865 cohort of legal tender cases, so that counsel from all the cases could “re-argue the same if they see fit on any question common to them and to [Hepburn and Bronson].” Of course, the only question that they all held in common was the overall power of the government to create the greenbacks.⁴⁰

The other cases covered a range of ancillary topics related to the central question of the government’s power over money. *Bronson v. Rodes*, coming out of New York, concerned a debt made in 1851, in which the debtor attempted to pay in greenbacks in 1865. The larger question involved was similar to *Hepburn*—whether greenbacks could satisfy debts made prior to 1862. In contrast to *Hepburn*, the original agreement specified coin, allowing counsel to argue that the clear intention of the parties for gold should trump the broad terms of the Legal Tender Act. *Butler v. Horowitz*, like *Philadelphia R.R.*, dealt with a case of ground rents in Baltimore. The lower court agreed that ground rents should be paid in coin, but found that the damages could be rendered in greenbacks. *Willard v. Tayloe* involved the lease for the famous Willard’s Hotel at 14th street and Pennsylvania Ave in Washington, D.C. Like the other contract cases, the cases turned on the terms of a lease agreement made in 1854 paid in legal tender notes in 1864. *Lane County v. Oregon*, dealt with the issue of state taxes paid in greenbacks. In that case, the state of Oregon passed a law requiring all tax payments in specie, while the officials of

⁴⁰ Fairman, *Reconstruction and Reunion*, 1:700-703.

Lane County attempted to pay their share in paper money. These cases became part of the extended conversation in which the justices considered the government's power over money from 1868 to 1870.

Oral arguments for *Hepburn* and *Bronson* began on December 8, 1868. Some of the best lawyers of the era argued on either side of the question in several of the cases. Benjamin R. Curtis, the former Supreme Court justice of *Dred Scott* fame, alongside William M. Evarts argued for legal tender. Reverdy Johnson, senator from Maryland and famed constitutional lawyer along with Clarkson N. Potter, Democratic congressman from New York, argued against it. The tension in the capitol was palpable. Evarts was so nervous for the orals that he had Henry Adams, then a reporter living in Washington, critique his presentation on carriage rides through the city. Redfield, who covered the arguments for the readers of the *American Law Register*, called the three days of discussion an “intellectual banquet.”⁴¹ A decision in *Hepburn* was not quick in coming. It would be a little over a year before the Court disposed with the question of the constitutionality of the greenbacks. But, in the meantime, the Court disposed of the rest of the legal tender cases in the next two terms. Reflecting his deep desire to shepherd this cohort of cases, Chase assigned himself the most important opinions, culminating in his opinion in *Hepburn*.

The opinions in the corpus of cases that preceded *Hepburn* illuminated Chase's economic vision and his intention, along with supporting votes of several of his brethren, to hem in the government's sphere of power over transactions for money in the wider economy. In each case, the Court found that the parties involved possessed a right to

⁴¹ Adams, *Education of Henry Adams*, 250; I.F.R., “Legal Tender Notes before the Supreme Court,” *The American Law Register* 17 (April 1869): 194-195.

circumvent the “all debts public and private” clause due to the contractual nature of their case. In all the cases, with the exception of *Lane County*, the Court decided the cases without reference to the Constitution. In fact, Chase announced that these opinions should not be construed as touching the constitutional question. Shorn of the rhetoric of constitutional right, the cases contain frank statements from Chase about his views of money and political economy that would color the majority opinion in *Hepburn*.

A concern with the market-fairness of gold over greenbacks pervaded the Court’s opinions. In *Bronson*, Chase thought it obvious that “any real payment and satisfaction of an obligation to pay fifteen hundred and seven coined dollars can be made by the tender of paper money worth in the market only six hundred and seventy coined dollars.” Field, in his opinion for *Willard v. Tayloe*, believed that the Willard brothers should pay in gold coin for their hotel because “it strikes one as inequitable to compel a transfer of the property for notes worth when tendered in the market only little more than one-half of the stipulated price.” Equity of course was a matter of perspective. Debtors claimed that demanding gold inflated prices because one would have to go “buy” gold at a premium to settle these debts. The Court echoed the concern of creditors that greenbacks inflation cheated them of the true value of their deals.⁴²

The Court’s concern for fairness stood in marked contrast to the opinions of the lower courts, who thought the law could not recognize the market-value of the two currencies. In 1865, Ebenezer Rockwood Hoar, then a justice on the Supreme Judicial Court of Massachusetts, explained that “the coined dollar of gold, fixed by law as of the value of a dollar, cannot be cannot be treated by any judicial tribunal, in any computation or judgment, as having another or different value.” State courts in this period refused to

⁴² *Bronson v. Rodes* 74 U.S. 229 at 245; *Willard v. Tayloe* 75 US 557 at 573.

recognize a difference in value when settling debts or awarding damages. Their reasons for doing so were straightforward. Courts could not take account of the constant changes in value the way that places like the New York Stock Exchange might. Rather, in the eyes of the law a dollar was a dollar no matter its composition. Since most state courts already recognized Congress's constitutional right to issue greenbacks, state courts simply recognized the two as equals for any and all debts.⁴³

In *Bronson*, Chase explained his reasons for favoring the market value approach to money. In essence, Chase took the natural view of money and believed that the power to declare a dollar a dollar did not rest with the U.S. government, or any government. In the course of recounting a tedious history of U.S. coinage laws, Chase came to the conclusion that the government did not declare the value of a gold coin. Each statute that changed the grains of specie in a single coin "recognizes the fact, accepted by men throughout the world, that value is inherent in the precious metals...gold and silver are in themselves values." U.S. coins did not, to Chase's mind, depend on the government for their value and power in the market. The government possessed a much more neutral role in the creation of money. Chase explained that the U.S. mint provided "certificates of value" in the form of coins that verified the inherent value of the specie. It would not take a clever lawyer to see that Chase would find it difficult to accept the proposition that the government could make anything it liked a legal tender when the constitutional question eventually came up.⁴⁴

To protect the ability of parties to negotiate in the market for gold coin, short of declaring the entire Legal Tender Act unconstitutional, Chase looked to the contract, or

⁴³ *James P. Bush & others v. Samuel Baldrey* 93 Mass. 367 (1865) at 369.

⁴⁴ *Bronson v. Rodes* 74 U.S. 229 at 249.

agreement, as the primary form of protection from the government's fiat. In *Bronson*, the main question centered on agreements made prior to the Legal Tender Act that specified coin in payment. Chase stated that it was "the appropriate function of courts of justice to enforce contracts according to the lawful intent and understanding of the parties." In the case of Rodes's debt to Bronson, the agreement stipulated payment in "gold and silver coin, lawful money of the United States" which he took as proof of intent that was the exact form of payment agreed to. The problem, however, was that the two clauses were no longer synonymous—lawful money now meant greenbacks or coin. The lower court decided that circa 1854 the intent of the clause meant money, legal tender was now money, thus the contract was solvable with greenbacks. To get around this problem, Chase converted what the previous court considered a debt into a contract for "a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight." Bronson and Rodes, in this view, were simply making an agreement to exchange gold or silver just like they might make an exchange of bushels of wheat or apples.⁴⁵

The emphasis on the contract rights of private parties in the *Bronson* opinion was not radical on its face. Nineteenth-century judges regularly decided contract cases with an eye to the intent of the parties, and not the inherent fairness of the exchange. That tradition, however, had a large exception. In conjunction with their respect for private contracts, nineteenth-century courts also overruled such agreements if they impinged on the public welfare. The other state judges who looked at these gold clause contracts, during and after the war, believed that the status of greenbacks in agreements for money was a public policy issue of prime significance that did not belong in the same category

⁴⁵ *Bronson v. Rodes* 74 U.S. 229 at 245

as agreements for bushels of grain and apples. It was in this spirit that Justice C.M. Brosnan of the Nevada Supreme Court rejected gold clause contracts as unconstitutional explaining that they stood “in direct and brazen antagonism to the policy of the nation.” Justice Smith of the New York Appeals Court who wrote the lower court opinion in *Bronson* reasoned that a sanction of these kinds of agreements would make Congress’s power over money “completely annulled in the future by inserting a similar provision in all contracts for the payment of specified sums of money.” Aware of the wider import of Chase’s opinion, Swayne and Davis concurred with Chase for this specific case, but dissented to its exact findings. Davis made it clear that he did not believe this case applied to “any other class of contracts.” Swayne said that his vote did not speak to his thoughts on the overall constitutionality of the act. Miller wrote the sole dissenting opinion in *Bronson* agreeing with the New York court that the phrase “all private debts” included any all contracts for money. The Republicans on the bench all seemed aware that Chase had empowered the market at the expense of Congress’s power over money.⁴⁶

In *Lane County v. Oregon*, the Court left the sphere of individual agreements for the relationship of the states to the Legal Tender Act, adding another layer of insulation between the greenbacks and the economy. In 1864, the officials of Lane County, Oregon paid their portion of taxes owed to the state in greenbacks. Prior to this, in the spirit of resistance to greenbacks begun in California, the Oregon legislature passed the Gold Tax Act, requiring all counties and to pay taxes due to the state in specie. Following the footsteps of Field’s opinion in *Perry v. Washburn*, the Oregon Supreme Court upheld the

⁴⁶ Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1977), 160-188; William J. Novak, *The People’s Welfare: Law & Regulation in Nineteenth-Century America* (Chapel Hill, N.C.: University of North Carolina Press, 1996), 83-113; *Milliken et. al. v. Sloat* 1 Nev. 573 at 582; (1865); *Rodes v. Bronson*, 34 N.Y. 649 at 655 (1866); *Bronson v. Rodes* 74 U.S. 229 at 255, 257.

constitutionality of the tax. In a unanimous opinion, Chase upheld the right of the states to reject the usage of greenbacks in payments for their own public dues. Looking at the American federal system, Chase echoed his logic in *Texas v. White* that the Constitution created an “indestructible Union composed of indestructible states.” What that meant in relation to the greenbacks was that under the Constitution, the states retained a full power to tax in whatever way they saw fit. Congress could not dictate state fiscal policy by making its notes a tender for all public dues at every level of the federal system. A state could make greenbacks payable for their taxes, and many states in the Greenback Zone did just that. States like California and Oregon, however, retained a powerful tool against the government’s power. Chase gestured to the significance of California on this point when he concluded with Field’s opinion in *Perry* that the Legal Tender Act only applied to “such obligations for the payment of money as founded upon contract.” Of course, Chase and his majority had already done much to limit even those debts. *Lane County*, much like the contract cases, stood for the proposition that states, like individuals, could limit the circulation of greenbacks by declaring their desire for gold.⁴⁷

Veazie Bank v. Fenno, was not part of the batch of legal tender cases argued in 1868 but was a significant thread in the fabric of doctrine that Chase was weaving at the time. *Veazie* represented the last gasp of the state banks of issue against the NBS. The case centered on the constitutionality of Congress’s 1865 tax on state banknotes that effectively brought the era of hundreds of banknotes to an end. By the time the case was argued in October 1869, the majority of Republicans, and the banking elite of the East, had formally embraced the idea of federal control of banking currency through the NBS.

⁴⁷ Joseph Ellison, “The Currency Question in Oregon during the Civil War Period,” *Oregon Historical Quarterly* 28 (March 1927):45-48; *Perry v. Washburn* 20 Cal. 318 (1862); *Whiteaker v. Haley* 2 Ore. 128 (1865); *Texas v. White* 74 U.S. 700 at 725 (1869); *Lane County v. Oregon* 74 U.S. 71 at 81 (1869).

Sporadic resistance still existed in pockets of the country. Ironically, while the bankers of New York City supported the NBS, the state of New York put up continued resistance, authorizing an act that would allow national banks to reconvert to state banks. Petitions from upstate New York and New England requested for Congress to end the tax. More significant was the growing anti-NBS sentiment of the Midwest evidenced in party platforms that called for the destruction of the national banks. Curiously enough, compared to the Legal Tender Act there were almost no constitutional challenges to the NBS at the state level; most of the litigation concerning the NBS centered on the ability of the states to tax shares of national banks. *Veazie* was perhaps more important to Chase, allowing him to constitutionally defend the system he helped create during the war.⁴⁸

The case came about when the Veazie Bank of Maine sued the local Collector of Internal Revenue, Jeremiah Fenno, on the grounds that the 10% tax levied by Congress on state banknotes was unconstitutional. Caleb Cushing, the former attorney general, defended the state banks by claiming the tax was a direct tax, and therefore subject to the Constitution's requirement of apportionment among the states. His other move, was to uphold the power of the states to create banks that issued paper money, citing *Briscoe v. Bank of Kentucky* and the 10 Amendment's command that all powers not delegated to the federal government remained with the states. In a 5 to 2 decision, Chase quickly dispensed with Cushing's argument that the tax was a direct tax by taking the view

⁴⁸ Ebnezeer R. Hoar to George S. Boutwell, May 15, 1869, Box 1, Opinions of the Solicitor of the Treasury Relating to Banks and Banking, 1865-1893, Records of the Comptroller of the Currency, RG 101, National Archives, College Park [repository hereafter NARA II]; "The Memorial of EK. Harding President of City Bank Bath Maine and 30 others..." March 15, 1866, and "New York: Petition of Citizens of Montgomery Co. relative to State Bank circulation, June 14, 1866," File 39 A-H.25.5, Petitions on Banks and Banking, RG , Records of the Committee on Ways and Means, RG 233.27, NARA I; Anderson, "The National Banking System," 104-144; *Illinois v. Bradley* 39 Ill. 130 (1866); *Smith v. Webb* 11 Minn. 500 (1866); *Illinois v. McCall* 43 Ill. 286 (1867); *Mintzer v. County of Montgomery* 54 Pa. 139 (1867).

enunciated in *Hylton v. U.S.* that direct taxes only concerned land. The 10% tax, however, was clearly designed to destroy the notes and not raise revenue. Chase would have to defend the creative destruction of the tax with something more than tax law.⁴⁹

Chase embraced a national power to control all currency as justification for the annihilation of the state banknotes. The Constitution, only containing a reference to Congress's power to coin money, would be little help in supporting that claim. Rather, he seized on the government's long history of issuing Treasury notes as definitive proof that Congress "may constitutionally authorize the emission of bills of credit." That tradition, he remarked, established that Congress could make the notes payable to itself as a tender for public dues, provide for their redemption, and generally make them "convenient and useful for circulation." This list, notably, did not include legal tender, which he thought "unimportant" in *Veazie*. Possessing as they did, this "undisputed constitutional power" over currency, Chase ruled that the Congress could pass any laws they desired to realize their grip on the Greenback Zone, including a prohibitive tax on state banknotes.⁵⁰

Chase declared more than he proved with his reasoning, a fact that Nelson pounced on in a dissent concurred with by Davis. In *Veazie*, Chase used the same breathless phrases that he favored as Secretary of the Treasury concerning the country's monetary powers. These powers, he said in *Veazie*, "cannot be doubted" and "cannot be questioned" which made it sound as if the government's power over all money had existed all along. Chase's references to Congress's custom of issuing treasury notes misrepresented how state power and federal power coexisted in the prewar period. It had

⁴⁹ *Veazie Bank v. Fenno* 75 U.S. 533 at 539-547 (1869); *Hylton v. United States* 3 U.S. 171 (1796).

⁵⁰ *Veazie Bank v. Fenno* 75 U.S. 533 at 548-549.

not been so long since the two powers were literally linked when the state banks vastly expanded their issues of banknotes using greenbacks as collateral during the war.⁵¹

In his dissent, Nelson corrected Chase's history by showing how things had not always been this way. Since the framing of the Constitution, he pointed out, the states exercised an almost unchallenged right to create banks that issued paper money. Moreover, the Court was on record on this point in *Briscoe v. Bank of Kentucky*. In sum, Nelson marshaled his own version of "long continued practice" along with stare decisis in defense of the state banks. Republican policy, Nelson thought, was behind Chase's opinion, not constitutional authority. Chase's purpose, he said was "scarcely concealed... to encourage the National banks."⁵²

Nelson was half-right. At the end of the war, policy and constitutional principle were one and the same as the Republican leadership accepted the necessity of a nationally controlled currency system. The two opinions in *Veazie* looked to competing traditions of power over money in America, but the need of Chase and Nelson to root their opinions in long-accepted precedent obscured the much more recent transition in the thought of the Republicans involved with the creation of the new monetary regime. In 1864, Fessenden admitted that if he "was not among the first" to embrace the NBS, he now saw it as a "great and obvious good to be added the benefits of government...being freed from all the uncertainties and embarrassments arising from a currency over which it can exercise no control." Within the Republican Party, full government control of bank currency moved from controversial proposal to the mainstream in the course of a few short years.⁵³

⁵¹ *Veazie Bank v. Fenno* 75 U.S. 549 at 548.

⁵² *Veazie Bank v. Fenno* 75 U.S. 549 at 449-556; *Briscoe v. Bank of Kentucky* 36 U.S. 257 (1837).

⁵³ *Report of the Secretary of the Treasury ...for the Year 1864, Ex. Doc. No. 3, 38th Cong., 2nd Sess.* (1864), 24.

Veazie represented an important moment in which Chase brought that idea, and a constitutional defense for his pet creation, into the realm of formal jurisprudence. It was for this very reason that the New York *World* thought Chase should have recused himself on the grounds that he was the father of the NBS and most important zealot of taxing state bank notes. *Harper's* praised *Veazie* and articulated the new view that "as money is an important instrument of commerce, its regulation is of national concern" calling the period of the state banks "a surrender of one of the attributes of sovereignty." Chase, of course, was delighted with the outcome and understood that *Veazie* made history, and simply did not declare it. He wrote James Shepard Pike, correspondent for the New York *Tribune*, "the great value of the judgment to the Country is the assertion of the power of Congress to restrain the circulation as money of any notes not issue under the National Sanction. This crowns the work of furnishing a National Currency. Without this that work would be in vain."⁵⁴

The collective effect of these opinions tightened the circle of the government's influence in the economy through the tools of contractualism and state's rights. Creditors gained a powerful tool in the gold clause cases, allowing them to protect their investments from inflation. The Pacific Coast states retained the ability to promote the use of gold for public taxes. All these decisions protected the right to choose gold in the larger dual-currency system in place. In larger sense, the Chase Court shifted the balance of risk in the economy towards the government and away from creditors. Contracts, as Field pointed out in *Willard*, were all about managing risk. In *Rodes v. Bronson*, the New York Court thought every person in the economy must suffer the risk that the value of

⁵⁴ *The World*, December 16, 1869; "Repeal of the tax on State Bank Circulation," *Harper's Weekly*, April 30, 1870; SPC to James Shepard Pike, December 24, 1869, Niven, Papers of Chase, reel 38.

their agreements or their property would fluctuate as the government exercised its rightful power over monetary policy. Unless “the interests of creditors are more to be regarded than that rights of debtors, and are paramount to even the vital needs of the government.” This was precisely what Chase wanted. In *Butler v. Horowitz* Chase made gold clause contracts iron clad, saying that even damages should be paid in coin so “as to give full effect to the intention of parties as to the medium of payment.”⁵⁵

At every turn, Chase made little effort in hiding the fact that he favored gold as inherently fairer than the greenbacks. The only bright spot for the government, the opinion in *Veazie*, only survived because it accorded with Chase’s views of political economy. Back in the 1840s a younger Chase made it abundantly clear that the only way he could support a regime of paper money was to ensure that it was backed by gold. To his mind, the NBS achieved this balance by ensuring a federal standard across the country for the redemption of those notes. The greenbacks were an obstacle that prevented the realization of this goal. In *Veazie* he predicted that that as soon as the gold standard reigned again in America, national bank notes would be “convertible into coin at will” and would serve as the nation’s currency “as perfectly as any mixed currency can be devised.” With a clear deference to the sanctity of debts contracted in gold, there was little question of which way Chase would go on the question of Mrs. Hepburn’s debts. And the constitutionality of the Legal Tender Act. The *Nation* agreed, “one or two more in the same direction will completely sober most of the currency madcaps” and keep the

⁵⁵ *Willard v. Tayloe* 75 U.S. 557 at 571 (1870); *Rodes v. Bronson* 34 N.Y. 649 at 654; *Butler v. Horwitz* 74 U.S. 258 at 261 (1869).

greenbacks “within the narrowest possible limits till we finally get rid of them.” The only question remained was how far the Court was willing to go on the issue.⁵⁶

The Judge as Economist

When the moment for a decision on the central question finally came, it became clear that *Hepburn* would not deal with the complete question of the constitutionality of the greenbacks for any and all debts before and *after* February 25, 1862. At the Court’s weekly Saturday conference held on November 27, 1869, the justices voted 5 to 3 to hold the act unconstitutional for debts prior to the date of passage in *Hepburn*. Years later, Chase told a friend that at the conference, Grier and Field expressed the opinion that Congress could make paper money a tender for debts after the passage. Miller later claimed that Grier seemed confused on the issue, at first holding the act constitutional, then changing his vote when another justice pointed out that he was now voting against his own position in another related case dealing with legal tender. After *Hepburn* became public, Judge Davies, on the New York Court of Appeals, claimed that Grier had told him that he thought legal tender constitutional. The evidence suggested, in the words of another historian, that Grier “wobbled.” In fact, his actions at that conference prompted a delegation of the justices to insist that Grier take the benefit of a new pension recently passed by Congress, and retire from the bench. Grier agreed and submitted his resignation to Grant on December 15, effective January 31, 1870. Thus the current Democrats, Chase, Nelson, Grier, Clifford, and Field formed the majority, while the Republicans, Miller, Swayne, and Davis opposed.

⁵⁶ *Veazie Bank v. Fenno* 75 U.S. 533 at 549 (1869); Bryant Smith, “Neglected Evidence on an Old Controversy—*Bronson v. Rodes* as Forecast of *Hepburn v. Griswold*,” *American Historical Review* 34 (1929): 532-535; “The Legal Tender Decision,” *The Nation* 8 (February 25, 1869):121, 146.

The Republican justices were outraged. It was no secret that the court currently had one vacancy and perhaps another before long. It also would have not been a secret that those vacancies were to be filled with Republicans appointed by the newly elected president, Ulysses S. Grant. Miller and the other Republicans clamored for a delay to wait for a full bench, but Chase and the others pressed their advantage—perhaps aware that this might be the only opportunity to act.⁵⁷

Despite the narrow holding of the majority to contracts prior to 1862, Chase prepared to write an opinion that would look to the loftier goal of properly aligning the relationship between the Constitution and the economy, while setting the historical record straight. In the small social circle of Washington elite, Henry Adams also had access to Chase's innermost thoughts and opinions on the issue. Adams often spoke with and "grew intimate" with Chase's thinking in this period while writing pieces for the *Nation* and the *North American Review*. Adams acknowledged that Chase's position on legal tender was "awkward" owing to his time in the Treasury. To this end, Chase was anxious to find friends in the press "who would tell his story as he wished it to be read." The story that Adams eventually told emphasized that the Legal Tender Act had been a mistake from the start and was never a financial necessity to the prosecution of the war. Chase would eventually make this claim central to his *Hepburn* opinion. Among the justices, Chase and Field spoke outside conference about the shape and tenor of the opinion prior to its announcement.⁵⁸

⁵⁷ Fairman, *Reconstruction and Reunion*, 1:716-719; "The Legal Tender Cases in 1870 and a 'Statement of Facts'..." in Charles Bradley, ed., *Miscellaneous Writings of the Late Hon. Joseph P. Bradley* (Newark, N.J.: L.J. Hardham, 1902), 71.

⁵⁸ Adams, *Education of Henry Adams*, 250; "Saturday, January 8, 1870," in John Niven, ed., *The Salmon P. Chases Papers*, vol.1, *Journals, 1829-1872* (Kent, OH: Kent State University Press, 1993), 647.

While it was clear that Chase sought to set the record straight on his wartime actions, he faced a serious intellectual hurdle in arguing against the power to make government paper a legal tender. At the heart of the issue was the opinion in *Veazie*. In that case, Chase held that the Constitution empowered Congress to create and manage the currency of the country. In discussing the scope of Congress's power he named the ability to "fit them for use by those who see fit to use them in all transactions of commerce" as an incident of that power. If that was true, there was ample evidence that making the notes a legal tender clearly supported their use in commerce. Back in the winter of 1862, many of the banking elite insisted that making the notes a tender was the only way to assure their circulation. On a related point, the Chase court had already upheld Congresses power to protect its notes in a variety of ways. In the 1869 case *Bank v. Supervisors*, a majority of the justices held that Congress could exempt federal bonds and paper money from taxation in order to protect their power to borrow, and counsel had argued along these lines in their briefs.⁵⁹

From a strictly legal perspective, if you granted the broad power of Congress to create a currency, it would be difficult to draw a hard and fast line in the Constitution that stopped just short of legal tender. The nuances in the differences between a bill of exchange, a banknote, and a gold coin were plainly apparent to anyone working in the commercial sphere. The line dividing the two in legal and constitutional thought, however, had been a source of perennial problems since the framing of the Constitution. Paper money and legal tender had always followed each other in the history of government paper. To clearly grant a power to make paper money implied a power to control all its aspects, including its status as a legal tender. To actively deny the power

⁵⁹ *Veazie Bank v. Fenno* 75 U.S. 533 at 548; *Bank v. Supervisors* 74 U.S. 26 (1869).

tied the hands of the government when it needed these power the most. Silence in the Constitution left options for policymakers, as shown in the Treasury notes of the pre-war period. The Jacksonians successfully imposed a line, but only by a tacit consensus among those in Congress. Traditions, just as pliable as any text, however, could be re-invented. The Civil War generation began this process with the first Legal Tender Act, where several Congressmen admitted that it was hard to deny a legal tender power from Congresses' tradition of Treasury notes. In the wider public, the growing greenback movement fervently embraced the idea of a paper legal tender controlled by the people. Chase had gone on record granting the general power in *Veazie*, the first such pronouncement by the Supreme Court, and some predicted that the Court would uphold the act based on the language in his *Veazie* opinion. The “seductive” process, by which a paper currency could one day become the standard of the country, expressed by Alexander Hamilton and repeated over the years, seemed close to coming true. Chase, with the support of Field, Nelson, and Clifford, needed to find a way to get this power back within its proper boundaries.⁶⁰

To get around *Veazie*, Chase had to find a means of reading a premise of political economy—that gold was the only viable money—into the text of the Constitution. Chase was uncertain about how to accomplish this task. Two weeks before he made his majority opinion public, he paid a visit to Boutwell to warn him about the outcome in *Hepburn* and any possible economic problems it might create. Boutwell directly asked Chase how he could find the notes unconstitutional in *Hepburn*, while upholding the power to create

⁶⁰ *Cincinnati Daily Chronicle*, December 15, 1869.

a currency in *Veazie*. On this delicate question Boutwell found “the Chief Justice was unable to specify a limitation.”⁶¹

Chase announced the majority opinion in *Hepburn* to a crowded Supreme Court chamber in the Capitol basement on February 7, 1870. A correspondent for the *New York Times* reported “a great deal of perturbation and much confusion at the Capitol to-day at the announcement that a decision had been rendered...involving the constitutionality of the Legal-tender act.” The official vote was a slim 4 to 3 majority, owing to Grier’s retirement before the announcement of the decision. Miller wrote the sole dissenting opinion, concurred in by Swayne and Davis. Chase’s reading “was almost wholly inaudible” and listeners strained to ascertain the scope of the decision, which made Chase visibly agitated with the crowd. What was immediately clear as newspapers rushed to print the first news of the decision was that Court had avoided the full constitutional question, and issued the narrower holding that greenbacks were unconstitutional for debts prior to February 25, 1862. Yet from what the *New York Times* could surmise that day, most agreed that the “scope of Chief Justice Chase’s opinion is fatal to the constitutionality of the act itself.”⁶²

In what one reader called a “ponderous” opinion, Chase invoked the Constitution early and often to justify the Court’s right to review congressional policy, and held up the text of that document as his ruler by which would determine if the Legal Tender Act was constitutional. The text however provided few clear answers and plenty of opportunity for him to insert his own judgment. To approach the question, Chase rejected the argument that Congress was the ultimate judge of what legislation was “necessary and

⁶¹ Boutwell, *Reminiscences of Sixty Years*, 209.

⁶² *New York Times* February 8, 1870; *Evening Bulletin* (San Francisco, CA), February 8, 1870; *Cleveland Daily Herald*, February 8, 1870

proper” under Article I Section 8 of the Constitution. While Chase rehearsed the case law on what that term meant, including a length discourse on the bounds created by *McCulloch v. Maryland*, when it came down to making the decision of what necessity meant in this context, Chase sounded more like Adam Smith than John Marshall.⁶³

Chase primarily viewed “necessity” in the Constitution as seen from his own readings of classical economics. Generally his opinion set out to prove legal tender economically unnecessary and unfair and disruptive to the wider market. He cited “eminent writers” and “all modern history” to prove the point that making a piece of paper legal tender “adds nothing to the utility of the notes.” Greenbacks were in fact harmful for the ways that they deranged business and upset property values, a claim proven, in his view, by the well-known fluctuations in the value of the greenbacks on the open market since their introduction 1862. He restated his belief that paper money only circulated when instantly redeemable for coin, and nothing that the government could do might change that fact. The laws of political economy were fixed on this point and “no act making them a legal tender can materially change the operation of these laws.” The injustice of legal tender flowed naturally from these facts. The legal tender notes “alters arbitrarily” the value of debts across the country. At the lowest point, a debt made before the war for a thousand coin dollars could have been paid in paper worth just twenty cents on the dollar. The “practical operation of such an act is contrary to justice and equity.”⁶⁴

Doing away with the idea that legal tender was necessary and proper, Chase read his sense of economic justice into the Fifth Amendment of the Constitution to cinch his case. The *Veazie* problem was front and center in the opinion. To circumvent that case,

⁶³ *Newark Advocate*, February 18, 1870; *Hepburn v. Griswold* 75 U.S. 603 at 614-615 (1869).

⁶⁴ *Hepburn v. Griswold* 75 U.S. 603 at 608-609, 620

Chase took the long history of custom in issuing notes, and stressed that at no point did Congress or the states claim a right to legal tender over paper, which proved that “the power to issue notes and the power to make them a legal tender are not the same power.” He then looked to the overall “spirit of the Constitution” to extinguish the spark of legal tender inherent in the power over currency. In a brief recounting of the history leading up to 1787, he concluded that preservation of private property and private contracts were among the central tenets of the Constitution. Even though the Constitution only restricted the states in their modification of contracts, Chase took this clause as proof of the framer’s strong belief in the protection of property. Needing a textual anchor to complete his argument about this wider spirit, Chase found the Fifth Amendment ban on the federal government’s taking of property without due process. Debts, he concluded, constituted “a very large proportion of the property of civilized men.” He resolved that a law that altered the value of debts made prior to the war were by definition a taking of property without due process of law and thus “inconsistent with the spirit of the Constitution.” Chase, in keeping with the majority vote, limited the finding just to the contracts made prior to the passage of the law, oddly noting that “no one questions the general constitutionality of law, and not very many, perhaps, the general expediency of the legislation,” which Chase had already criticized at length in the course of his opinion.⁶⁵

A deep concern for the legacy of the war pervaded his comments throughout *Hepburn*. The legal tender issue touched individuals throughout the country and like any case dealing with the private rights of citizens could “completely change the nature of American government.” He was also clearly afraid that the greenbacks might never

⁶⁵ *Hepburn v. Griswold* 75 U.S. 603 at 616, 625, 603.

disappear from public life. Chase took the repeated issues of greenbacks during war, many of which he had requested from Congress, as proof of “the tendency remarked by all who have investigated the subject of paper money...to extend indefinitely the application of the quality of legal tender.” Here was the fear of Thomas Hart Benton in 1837 when Congress issued Treasury notes, and Alexander Hamilton before him. He noted that the war was not the time to question the Legal Tender Act. No doubt speaking from his personal feelings, he thought that many supported the law from “patriotic motives” and bore its evils with “patriotic hearts.” With the war over “and under the influence of the calmer timer” many people had already “reconsidered their conclusions.” While Hepburn’s debt was unpaid, Chase might have taken satisfaction that he had settled his debt for his part in creating the greenbacks. Within a year’s time a new majority on the bench and a new batch of cases would undo all of these efforts.⁶⁶

Stuffing the Court with Greenbackers?

The counter response was swift and strong against *Hepburn*, and it began when Miller read his dissent after Chase’s mumbled reading. The Miller opinion was universally hailed as the superior of the two in the case, and possessed what one commentator called a “manlier tone and more convincing in logic.” In the opinion, Miller invoked *McCulloch* insisting that Marshall’s opinion stood for the principle that Congress needed wide boundaries in policy making to be truly effective in the “various crises of human affairs.” Miller derived the legal tender power, like so many state courts before him, from Congress’s power to borrow, pay debts, raise and supply an army. More importantly he took Chase to task for his economic analysis of necessity. Miller provided

⁶⁶ *Hepburn v. Griswold* 75 U.S. 603 at 619, 625.

a counter history of the “gloomy time” of the war that reminded readers of the desperate financial situation in the winter of 1861-62 to support his own economic analysis that “legal tender act prevented these disastrous results, and that the tender clause was necessary to prevent them...”⁶⁷

Miller, who prepared the opinion after reading the majority opinion, attacked all of Chase’s major constitutional points and found them a cover that allowed him to “substitute our ideas of policy for judicial construction.” Miller compared *Hepburn to Veazie* and noticed “it seemed strange indeed” that Congress could control every bank note in the country, but it could not declare “these notes of its own issue.” Miller found Chase’s major reason for this prohibition, the spirit of the Constitution, “too abstract and intangible” for his liking. The Constitution, in his view, did not require Congress to stay out of people’s economic affairs. In fact, Congress indirectly affected the property of the entire country every time it altered the tariff, declared an embargo, passed a bankruptcy law, or declared war. If Chase thought fluctuations in value was a taking, Miller argued that every new bond issue also violated the Constitution, for the way it lowered bond yields and prices for holders. More importantly, issues of economic policy belonged to the political realm, and not the judicial. As to Chase’s overall sense of justice, Miller held out that the greater injustice lie in upsetting every contract in the country because of the opinion of one court in the face of the “strong concurrence of opinion” on the greenbacks in America.⁶⁸

One newspaper accurately summed up the reaction to the decision when it joked “the recent decision of the Supreme Court touching the Legal tender act, has touched a

⁶⁷ *Evening Bulletin*, February 23, 1870; *Hepburn v. Griswold* 75 U.S. 603 at 632-635.

⁶⁸ *Hepburn v. Griswold* 75 U.S. 603 at 636-639.

good many people in their most tender spots.” Some in the press were taken by surprise. Several journals predicted that the Court would decide the case without reference to the Legal Tender question right up to the announcement—citing *Veazie* as strong proof in that direction. Soon after the publication of the opinion in the press, critics excoriated Chase personally and dissected the logic of his opinion to show its several fallacies. The *Boston Daily Advertiser* attacked Chase for shifting the question “from one of law to one of currency.” The *Advertiser* corrected Chase’s economic history, citing a string of examples when governments reverted to paper money in time of war. The *Independent* called the points “irrelevant and entirely inconclusive” and suggested a constitutional amendment to override the decision. One critic accused Chase of using this case to further his hopes of becoming the Democratic nominee for president. But even the hard money Democrats were unhappy with his performance. The *World*, the voice of the New York Democracy, thought that it would have been a useful opinion some years back, but in 1870 it was “only a message of condolence.”⁶⁹

The memory of the war years weighed heavily in the reaction. Miller’s dissent and the northern press essentially waved the “bloody greenback” as a means of attacking *Hepburn*. In the wake of the Republican compromise of resumption without contraction, it was politically safe to discuss the greenback’s past as an essential tool of the war, as opposed to any references to its usefulness in the present and future. Benon J. Lossing called cries of “unconstitutionality” the “cry of disloyal politicians against the efforts for the salvation of the republic.” Miller’s opinion hit all the patriotic chords of memory

⁶⁹ *Evening Bulletin*, February 26, 1870; *New York Tribune* February 1, 1870; *Boston Journal*, February 2, 1870; *Boston Daily Advertiser*, February 9, 1870; “The Legal Tender Decision: The Perils Thereof,” *The Independent* 22 (February 24, 1870): 8; *Cleveland Daily Herald*, February 8, 1870; *The World*, February 8, 1870.

when he reminded readers that the “gloomy times” of the war would “not be readily forgotten by the lover of country.” Chase’s opinion, on the other hand, would encourage rebellion and attacked the right of the government to defend itself. The *Independent* thought *Hepburn* served as “encouragement to any future Jeff. Davis.” The *Boston Daily Advertiser* even criticized the fact that *Hepburn* came out of Kentucky, a state “whose disloyalty was not easily restrained.” Throughout most of the commentary, and in Miller’s opinion as well, no one argued for the idea of a legal tender power outside of the war context.⁷⁰

The press generally thought that the Court as an institution was not suited to dealing with economic affairs, and believed that this Court in particular was out of line with the wider current of public opinion. In 1872, a young Oliver W. Holmes, Jr., writing for the *American Law Review*, noted that *Hepburn* “presented the curious spectacle of the Supreme Court reversing the determination of Congress on a point of political economy.” Many critics thought that the Court had unfairly waded into greenback politics with the decision. Resumption, contraction, or expansion of the currency belonged to the sphere of congressional action. The Court lacked the technical expertise and the ability to react quickly to adjust policy to changing circumstances. *Harper’s* feared that “it is a great error to suppose that we can with safety rely upon a court to employ a legislative function and restore the country to specie payments.” As to Chase’s point that greenbacks were unnecessary, writers argued that the Court was out of touch with how feelings about money had changed since the war. One writer thought that Chase had to ignore the “three hundred and fifty millions of them...in the pockets of the people” to reach his

⁷⁰ Benson J. Lossing to Elbridge G. Spaulding, December 27, 1869 in Spaulding, *History of the Legal Tender Paper Money* (1875), 30; *Hepburn v. Griswold* 75 U.S. 603 at 635; “The Legal Tender Decision: The Perils Thereof,” *The Independent* 22 (February 24, 1870): 8; *Boston Daily Advertiser*, February 12, 1870.

conclusions. The Court's conservative reaction denied the reality that "the law may have been gladly accepted by the people; may have become dear to them...erected a great structure of wealth, and trade and industry." The Court had usurped power from Congress, and along with its gold clause cases was "making experiments upon the laws of currency."⁷¹

In an auger of things to come, many of the journals that would join the Liberal Republican revolt against Grant, praised *Hepburn* as a corrective and a catalyst in returning the country to a gold standard. The *Journal of Commerce* cheered how the opinion "sweeps away the succession of falsehoods that grew out of the governments unredeemed promises." The *Nation*, edited by the prominent liberal E.L. Godkin, thought the opinion a salve that could "accelerate the return of specie payments, and give a useful fillip to the moral senses of the country, and especially the knavish portion of the public."⁷²

In the short-term *Hepburn* did not produce much trouble in the larger economy. Traders and merchants on Wall Street and Main Street realized that forcing gold payments for old contracts would prove harmful. At the Treasury, Boutwell was unconcerned about the economic effects of the opinion, because he knew that every creditor in the market was also a debtor, and no one would force the issue at the risk of souring their relationships in the market. It proved to be a perceptive view. After initial fears of a rush on gold and state repudiations of debt fizzled, financial markets remained calm and the price of gold remained stable in the spring of 1870. Creditors, who stood in

⁷¹ "Review, *The Legal Tender Cases of 1871*," *American Law Review* 7 (October 1872):146; "Legal Tender," *Harper's Weekly* (April 16, 1870): 243; "The Greenbacks in Court," *North American and United States Gazette* (February 26, 1870); *Boston Daily Advertiser*, February 9, 1870.

⁷² *Journal of Commerce* quoted in *Boston Daily Advertiser*, February 9, 1870; "The Legal Tender Decision and Its Effects," *Merchants Magazine* (March 1, 1870):161; *The Nation* 10 (February 19, 1870):82.

a position to extract coin, did not force the issue. Insurance firms in the East, which carried large portfolios of western farm mortgages, made public that they would not require coin payments for mortgages made before 1862.⁷³ Southern newspapers spread the news that northern creditors “will not take advantage of this decision.” Moreover, the size of the debt pool touched by *Hepburn* was relatively small, and people believed that most contracts made before February 1862 had already been settled. State bonds and railroad bonds were the biggest outstanding source of debts affected by the opinion. In those cases, most states decided to pay their interest in gold, while a few boards of directors voted to pay in paper, with some offering to pay the difference between the price of currency and gold.⁷⁴

The critical edge of the opinion for most was the fact that Chase had written an opinion that served as the foundation to destroying the greenbacks in the near future. The *Boston Daily Advertiser* put *Hepburn* in the context of the previous gold clause cases and concluded that Chase was close to “cancelling the whole legal-tender quality of our money.” They speculated “the court is watching the effect of the first step before taking the final plunge.” That fear, however, was mitigated by the reality that everyone could count noses on the Court. It was well known that Chase had handed down *Hepburn* at exactly the same moment as the Senate considering Grant’s appointments for two empty seats on the bench. Northern newspapers now called for Grant to choose justices that would save the greenbacks from the old majority. The *New York Times*, avoiding a clear

⁷³ On western land mortgages see Levy, *Freaks of Fortune*

⁷⁴ Boutwell, *Reminiscences of Sixty Years*, 209; *New York Times*, February 8, 1870; *Cleveland Daily Herald*, February 14, 1870; *North American and United States Gazette*, February 15, 1870; *Milwaukee Daily Sentinel*, February 17, 1870; *Georgia Weekly Telegraph* (Macon, GA), February 22, 1870; *Arkansas Gazette*, February 24, 1870; On the relationship between Western farmers and eastern financial firms see Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012), 159-172; Fairman, *Reconstruction and Reunion*, 1:767-771.

call to overturn the decision, pleaded that the Senate construct a court “upon a plan which instead of being harmonious with Kentucky, shall discourage personal ambition, and be in strict harmony with the loyalty of the Republic.” With this looming decision in mind, the boards of several Railroads and State legislatures agreed to pay coin on interest, with the caveat “while the said judicial opinion stands.”⁷⁵

In other words, gears within gears, begun before Chase’s stand in *Hepburn*, moved to undo the Court’s decision. In April of 1869, Congress passed a significant reorganization of the country’s judiciary system. The Judiciary Act of 1869 accomplished three important things. The first was the creation of nine circuit judges, which would lighten the circuit workload for the Court. The act also touched on the composition of the Supreme Court by raising the number of justices to nine and providing pensions for any justice who had served ten years on the bench. All of these provisions would take effect on December 6, 1869. The act was much needed reform, expanding the capacity of the federal judiciary at a time their dockets were increasing exponentially. The act, nonetheless, impinged on the drama over *Hepburn* in several ways. It was the pension provision of the Act that allowed Grier to retire in February 1870. With Grier’s resignation, and a new seat on the high bench, the Grant administration possessed a powerful tool of policy and patronage. The members of the Court were well aware of the new law at the time *Hepburn* was decided. The minority, led by Miller, had insisted Chase wait until Grant filled the empty seats to decide such an important question. While he never admitted as much, the timeline of events raises the question if Chase rushed

⁷⁵ *New York Tribune*, February 9, 1870; *North American and United States Gazette*, February 9, 1870; *Daily Evening Bulletin*, February 8, 1870; *Wisconsin State Register* (Portage, WI), February 19, 1870; Quoted in *Daily Evening Bulletin* February 23, 1870; Resolution of the State of Maine quoted in Fairman, *Reconstruction and Reunion*, 1:768; For the reactions of railroad firms see Unger, *The Greenback Era*, 176.

Hepburn to a decision without a full bench in order to grasp at a small window of opportunity.⁷⁶

Grant's timing in filling those empty seats raised suspicions that the administration planned to overturn *Hepburn* with the votes made possible by the two empty spots on the Court. The other half of the commotion at the Capitol that the *Times* reported on the day of Chase's decision was the news that Grant had submitted the names of Joseph P. Bradley of New Jersey, and George T. Strong of Pennsylvania to the Senate to fill the two vacant seats on the Court. Strong, a Democrat on the Supreme Court of Pennsylvania, was already on record upholding the constitutionality of the Legal Tender Act in the case of *Shollenberger v. Brinton*. Bradley was a renowned lawyer, who represented the Camden and Amboy railroad. A staunch Republican, his allies in the Senate circulated the fact that he supported legal tender. Critics at the time and since claimed that Grant picked Strong and Bradley explicitly to "pack" the bench in order to achieve a reversal of *Hepburn*. In the more sinister version of the story, Grant extracted promises from Strong and Bradley on their opinions dealing with legal tender, all under the pressure of railroad corporations. The evidence makes such a simple relationship between the appointments and the announcement of *Hepburn* highly unlikely, and totally disproves the malicious version of the narrative. Grant was much more preoccupied with granting judicial appointments according to party politics and patronage. Grant had initially chosen the former Secretary of War, Edwin M. Stanton, and Hoar. But Stanton

⁷⁶ Stanley I. Kutler, *Judicial Power and Reconstruction Politics* (Chicago: University of Chicago Press, 1968), 55-63; Fairman, *Reconstruction and Reunion*, 1:487-488.

died of a heart attack in December 1869, and the Senate officially rejected Hoar five days before *Hepburn*.⁷⁷

Nevertheless, it is fair to say that the Grant Administration and the Senate were aware of that these appointments had implications for the future of the greenbacks. Chase's actions, as evidenced in the public reaction, threatened to unbalance what one historian called the "equipoise" of the country on the greenbacks. Looking at the problem from the perspective of the South, where the issue of Reconstruction was stronger than the greenback issue, the *Georgia Weekly* thought that the division between Miller and Chase "reflect the sentiment which the Republicans entertain on the same subject. They differ as widely as the five judges." Another decision against the greenbacks for contracts after February 1862 would make politics and policy uncomfortably tight for Republican at the national level.⁷⁸

The question was not openly discussed in cabinet meetings, but Boutwell did know about the decision two weeks prior to the announcement and it is more than likely that he shared this news with Grant. Hoar denied any advance knowledge of the opinion for the rest of his life. When Hamilton Fish, Grant's Secretary of the Treasury, asked him to make a statement that supported Hoar's version of the story, he confessed that it would be "difficult for him to make a statement." Grant admitted that the opinions of the two candidates weighed on his mind and while he, like Lincoln before him, did "nothing to extract anything like a pledge or expression of opinion," he had "desired that the

⁷⁷ Fairman, *Reconstruction and Reunion*, I: 719-738; *New York Times*, February 8, 1870; Daniel Gerald Strong, "Supreme Court Justice William Strong," (PhD diss., Kent State University, 1986); *Shollenberger v. Brinton* 52 Pa. 9 (1865); James MacGregor, *Packing the Court: The Rise of Judicial Power and the coming Crisis of the Supreme Court* (New York: Penguin Press, 2009); For a compressive narrative of Bradley and Strong's appointment refuting the packing claim see Charles Fairman, "Mr. Justice Bradley's Appointment to the Supreme Court and the Legal Tender Cases," *Harvard Law Review* 54 (April 1941):977-1034.

⁷⁸ *Georgia Weekly Telegraph* February 22, 1870; Unger, *The Greenback Era*, 170-178.

constitutionality [of the Legal Tender Act] should be sustained by the Supreme Court.”

After *Hepburn* the opinions of the two men on legal tender became even more significant. The *New York Tribune* predicted that Strong and Bradley, incorrectly noting that Strong voted against the greenbacks in Pennsylvania, would be rejected on the ground that the radicals in Congress would demand a new decision overturning *Hepburn*. In the back room lobbying that took place, some Senators asked for proof that Bradley would be safe on legal tender. Satisfied on this point, and a number of other issues related to the appointments, the Senate confirmed both men, and Strong and Bradley took their oaths on March 14th and the 21st, respectively.⁷⁹

Things moved quickly now. On March 25, 1870, Hoar petitioned the Court for a rehearing of the constitutionality of the Legal Tender Act in two pending cases dealing with government contractors paid in greenbacks, *Latham's Case* and *Deming's Case*. On the next day, at their weekly Saturday conference, the new majority of five justices overcame the old majority in *Hepburn* to reopen the legal tender question and assigned the cases for hearing next April. Lacking to the votes to stop such a move, Chase turned to a number of stratagems to frustrate the majority. He repeatedly claimed that the Court had previously ordered that the legal tender question would not be heard in these cases, a fact that was clear to no one except Chase. When the case came up for argument that April, Potter, who had argued in *Hepburn* against the government, asked for a postponement. The new majority and Hoar pressed on. Hoar insisted “the country is

⁷⁹ E.R. Hoar, Letter to the Editor, April 15, 1872, *The Nation* 14 (April 18, 1872);256; Diary of Hamilton Fish, October 28, 1876, quoted in Allan Nevins, *Hamilton Fish: The Inner History of the Grant Administration* (New York: Dodd, Mead & Company, 1936), 306-307; Boutwell, *Reminiscences of Sixty Years*, 208-209; *New York Tribune* cited in Fairman, ““Mr. Justice Bradley's Appointment,” 1016, see 1032-1034 for Senate demands of proof of Bradley's stance on legal tender and Fairman, *Reconstruction and Reunion*, 1:735-738.

disturbed and will continue to be disturbed until the whole question at issue is settled...”

The Court exploded as the two groups of justices openly disagreed on the postponement question in a “lively scene.” The situation became so tense that Chase prepared a public statement stressing the existence of this order. Miller, Davis, Swayne, Strong, and Bradley all signed their own “statement of facts” that stressed how Chase had hung his decision on the vote of the infirm and confused Grier, calling into question *Hepburn*. In the end counsel for *Latham* and *Demming* successfully petitioned the Court to withdraw their appeal on April 20. The next day, Miller wrote his brother-in-law that he had just been through a “desperate struggle...over two cases involving the legal tender question” as “the Chief Justice has resorted to all the stratagems of the lowest political trickery to prevent their being heard, and the fight has been bitter in the conference room.”⁸⁰

Chase won the battle but not the war. Just ten days later, the majority found new material to reargue the constitutional question in the cases of *Knox v. Lee* and *Parker v. Davis* both ordered for re-argument on April 30, 1870; thereafter known as the *Legal Tender Cases*. Both cases dealt with disagreements over the value of debts contracted before 1862, with one case coming out of Texas and the other from Massachusetts. Oral arguments in this case, held in April of 1871, proceeded on much the same grounds as *Hepburn* with many of the same counsel from the last case reiterating their arguments and briefs from last time; Hoar, who had been ousted from the Grant Cabinet, was replaced by Amos T. Ackerman. Clarkson Potter reprised his role as champion of the hard money constitution. On May 1, 1871 the new majority lived up to expectations and

⁸⁰ *Latham's Case* 1 Ct. Cl. 149 (1864); *Deming's Case* 1 Ct. Cl. 190 (1865). Fairman, *Reconstruction and Reunion*, 1:738-744, 747-752, quote on 742; Samuel F. Miller to William Pitt Ballinger, Samuel F. Miller Papers, Manuscript Division, Library of Congress, Washington, D.C.

voted to overrule *Hepburn*, affirming the government's power to make paper money in the Civil War.⁸¹

This time, the voice of the new majority in the *Legal Tender Cases* was none other than the two justices whose recent appointments made the reversal of *Hepburn* possible. Strong, in what would be his most important opinion as Supreme Court Justice, wrote a majority opinion that would serve as a foundational document elaborating Congress's power over money and the economy. Strong reinforced and elaborated on several of Miller's point in the *Hepburn* dissent, finding the power implied in the same string of Constitutional clauses as Miller. Strong, more importantly, took great pains to take the Court out of greenback politics altogether by affirming that the Court was not a policy maker, and that Congress must have access to any means it sees fit in expressing its rightful powers. He then refuted Chase with *Veazie*, insisting that if the government did possess a power over the currency, then Congress must have the latitude to choose the means that were necessary and proper for expressing that power, including the power to make the notes a legal tender.⁸²

Strong provided a robust view of the government's new position in the market. As had Miller, Strong took exception with Chase's notions of a "spirit" in the Fifth Amendment that prohibited the government from interfering with property and contracts. To the contrary, Strong thought that every contract for money in America was subject "to the authority of Congress, at least so far as it relates to the means of payment." Creditors and debtors might lose value owing to the "lawful demands of the sovereign," but he stopped short of saying that gold clause contracts were unenforceable. His last point was

⁸¹ Fairman, *Reconstruction and Reunion*, 1:745-46, 752-759; *The Legal Tender Cases* 79 U.S. 457 (1870).

⁸² *The Legal Tender Cases* 79 U.S. 457 at 459-544.

perhaps the most revolutionary. Clearly frustrated with the liberal claim that gold was the only real “standard” possible as money, Strong pointed out that the dollar was not like a measure of weight or distance. “Value,” he surmised, was “an ideal thing,” of course subject to fluctuations. The Court, he said, was not trying to impose values on the market or making something out of nothing—all “we do assert is that Congress has power to enact that the government’s promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts.”⁸³

Bradley’s opinion, following on the heels of such possibly revolutionary statements, was at once more theoretical and conservative than Strong’s. Bradley deduced from the history of government in Europe and America that, short of a clear constitutional prohibition, the federal government retained a power over the currency. Bradley recounted the rise of the bills of credit in the colonies, the continentals, and lastly the Treasury Notes to prove that creating a currency was a traditional role of dealing with fiscal issues. The government, he thought, had a power to issue a currency “in times of financial pressure and threatened collapse of commercial credit.” This, in fact, was the only real way that Bradley could see the government intervening in a free market. A “constitutional government” could not just take property, not pay back debts, or compel people to work. They must purchase goods and borrow money, but he insisted that the federal government must “be able to lay its hands on the currency—that great instrument of exchange by which people transact all their own affairs with each other...and which lies at the foundation of all industrial effort and all business in the community.”⁸⁴

⁸³ *The Legal Tender Cases* 79 U.S. 457 at 551, 553

⁸⁴ *The Legal Tender Cases* 79 U.S. 457 at 556-563.

Bradley's opinion proved more conservative than Strong's because he insisted that legal tender flowed from the nature of financial emergencies, and not a robust power to create money no matter the conditions. While he stated that people should not look to the Court to solve the political problem of specie resumption, Bradley, unlike Strong, clearly stated that he thought the greenbacks amounted to a debt that would be repaid with a resumption of specie payments. Addressing the minority's concern for property rights, Bradley justified upsetting private contracts on the grounds that "exigencies of the state rightly absorb all subordinate considerations of private interest." Bradley thought, for this very reason, that gold clause contracts made during the war were unenforceable, and joined Miller on this point. When it came down to it, Bradley found the power to make money flowing from the borrowing clause of the Constitution, but insisted that "is nevertheless a power not to be resorted to except upon extraordinary and pressing occasions..."⁸⁵

The old *Hepburn* majority of Chase, Clifford, Nelson and Field, wounded by their defeat, poured all their anger and disgust for the greenbacks and the reversal into a string of dissents by all expect Nelson. Free to express their full opinions without regard to political niceties, Chase, Clifford, and Field each wrote opinions that found the Legal Tender Act unconstitutional for all debts, no matter when they were contracted. History played an even greater role in the dissents. The framers of the Constitution, the dissenters insisted, forged an absolute hard-money Constitution in the light of the Revolution where specie was, invoking the old Jacksonian refrain, "the constitutional standard."⁸⁶

⁸⁵ *The Legal Tender Cases* 79 U.S. 457 at 565, 567.

⁸⁶ *The Legal Tender Cases* 79 U.S. 457 at 616.

Chase and Field especially weaved a vision of a hard money economy as fundamental to the American polity. Treasury notes and banknotes were fine, because they were simply representations of money. Gold and silver were the only possible standards of value in the natural world, what Field called “universal law of currency.” But making paper the monetary standard through the Legal Tender Act perverted and struck at the core of what Chase called the “fundamental principle” of all law; “the legislature shall not take the property of A. and give it to B” by tampering with the universal standard in people’s agreements. Rejecting Strong’s belief that the dollar was a political construction, Field came down hard on this point. “Contracts” Field declared, “are made for things, not names or sounds.” Field, who would become a prominent voice on economic matters on the Court, went so far as to suggest that Congress could not even change the content of the coinage according to their own will; rather, Congress merely obeyed the changing tide of silver and gold on the market in their periodic coinage laws. The combined desire of all the dissenters was to place the dollar, not just paper money, far outside the reach of any human manipulation and to ensure that debts everywhere would be settled in gold. This was the law of nature, not just the law of man and Field drove home the point with a quote from the Bible “If ye love me, keep my commandments.”⁸⁷

The calls of the minority for a return to these principles fell on deaf ears. Mainstream Republican papers, in addition to Midwestern Democrats praised the opinion. The *New York Times* opined “happily for the country, the opinion of the Chief Justice did not prevail.” The liberal press predictably lamented the reversal. Instead of focusing on the logic of the new majority, the liberals put the weight of their criticisms on

⁸⁷ *The Legal Tender Cases* 79 U.S. 457 at 644, 580, 661, 681.

the idea that the Court had been “packed” by Grant. Adams, writing for the *North American Review*, popularized the court-packing narrative in an article that was widely reproduced by the Democrats for the 1873 congressional elections. When Adams rejected an article for publication in the *Review* on the unconstitutionality of Legal Tender by Emory Washburn, a former Massachusetts governor and professor of law, he revealed the reason for the focus on Grant’s appointments. He clarified in his rejection note that his focus had been to treat the *Legal Tender Cases* “as a question of politics rather than as one of law.” Later in life Adams would confess he did not care at all about the difference between greenbacks and gold at the time. But he cared about unseating the Grant administration from power, and he admitted as much to Washburn that if the attack shifted to the greenbacks as a question of constitutional power it “would not meet universal support” and their “position would be distinctly weakened. If beaten on that issue, it could not readily shift its ground back again.” Across the country, to the great consternation of the minority in the Court and the minority of hard money liberals in politics, Americans seemed content with a dollar securely controlled by the federal government.⁸⁸

What We Owe

By the time the Court handed down the opinion in *the Legal Tender Cases*, Chase was a beaten man both physically and mentally. During the summer of 1870 he suffered the first of several strokes that would eventually claim his life in 1873. After a long recovery, and several other delays, the Court was finally ready to announce the opinions of the majority and minority in another crowded court chamber on January 15, 1872.

⁸⁸ *New York Times*, May 3, 1871; Henry Adams, “The Session,” *North American Review* (July 1870), 29-62; Henry Adams to Emory Washburn, January 27, 1875 in J.C. Levenson, et. al., eds., *Letters of Henry Adams*, vol.2, 1868-1885 (Cambridge, MA: Belknap Press, 1982), 215.

Chase read his dissent and left the chamber while Field was still reading his dissent. That day he reflected on his regrets for the past. Chase, who rarely admitted fault in his public life, openly confessed his great mistake as Secretary of the Treasury in using the greenbacks in his dissent. In his diary that day, Chase reaffirmed that feeling when he wrote that he regretted “I ever expressed even a qualified opinion that the making of the United States notes a legal tender was necessary.”⁸⁹

At the end of the Civil War, a conservative faction in politics and law, favoring a quick settling of the old war debts and a return to a world without government paper money, met with stiff resistance in Congress and the Supreme Court. At every turn, these conservatives, Hugh McCulloch and Salmon P. Chase chief among them, found that Americans did not want to part with the greenbacks so quickly. Their message was not one of unqualified exuberance for fiat money like the greenbackers of the Midwest. Rather Sherman’s resumption without contraction and the reversal in *Hepburn* allowed everyone involved to enjoy the new status quo of a greenback standard without openly rejecting the idea of specie money for the time being. Of course, McCulloch and Chase did not represent a total return to the status quo antebellum. Both men favored and defended the national banks, with Chase especially stamping out the last whimpers of the state banks in *Veazie*. On all fronts, the era of a decentralized, motley currency system at the whim of markets and states gave way to a unified national economy bounded not just by railroad tracks, and national citizenship, but a green chain of greenbacks flowing through national banks across America.

The reversal of McCulloch’s policy of contraction by Congress, the growth of the greenback issue in electoral politics, and the public reaction to *Hepburn* were strong

⁸⁹ “Monday, January 15, 1872,” in Niven, ed., *Papers of Salmon P. Chase*, 1:669.

evidence that the American public were not completely decided that a rapid settling of debts was good for the country, or that the government should be restricted in its power. The *Legal Tender Cases*, more than the fight over contraction, empowered the government's power well beyond the particular politics of the greenbacks during Reconstruction. Chase represented a core value of the antebellum generation that the federal government could only exercise a limited power over money, in line with the precepts of classical liberalism. The war and reconstruction, it seem, spawned a new understanding expressed by Bradley that it was the "duty of the general government and strictly in accordance with the spirit of the Constitution" that the government control the wider world of currency and banks.⁹⁰ McCulloch fumed that *Legal Tender Cases* "clothes a republican government with imperial power."⁹¹ In the depths of the labor and agrarian unrest of the Gilded Age, Godkin later wrote that the "cause and origin" of "socialist phenomena" began with the "legal-tender decision of 1871."⁹²

And yet, the reversal of *Hepburn* represented a qualified victory for the government's power over money. *Veazie* and the *Legal Tender Cases* grounded in constitutional law the federal government's unparalleled controls over the currency of the country, and by extension the national economy, won during the Civil War. The politics of the greenbacks, and the fundamental opinion of many people that the country should return to specie standard, however, obscured the future of this power. It was still an open question if the government could go on creating greenbacks in times of peace. Spaulding, who republished his history of the greenbacks in 1874, stressed this idea, quoting the

⁹⁰ *The Legal Tender Cases* 79 U.S. 457 at 562, 563

⁹¹ McCulloch, *Men and Measures*, 179.

⁹² *The Legal Tender Cases* 79 U.S. 457 at 562, 563; McCulloch, *Men and Measures*, 179; "The Income Tax Decision," *The Nation* 60 (May 23, 1895):394.

opinion of Reverdy Johnson, that *the Legal Tender Cases* only applied to times of war. Boutwell's continued use of greenbacks, including new notes printed since the war, were ripe for a constitutional challenge.⁹³

With the benefit of hindsight, the full measure of Chase's despair was unwarranted. His insistence in *Bronson* on the limits of the government's ability to reach into people's contracts for money proved a long-lived barrier on monetary powers. Soon after the appointment of Strong and Bradley, the Court reaffirmed their belief in the power of private parties to opt-out of the greenback zone through gold clause contracts in *Trebilcock v. Wilson*. The insistence of nineteenth-century Americans on their private contractual sphere proved a durable consensus among Republicans and Democrats from the war to the great Depression in the twentieth century. In 1933, in the midst of a banking crisis, the administration of Franklin D. Roosevelt favored what the Civil War generation could never fathom, a repossession of the country's gold supply. An opinion by the Solicitor General at the time, Thomas D. Thatcher, cited *Bronson* and *Lane County* as serious impediments to federal policy. Those barriers would fall, along with a number of others during a revolution in political economy and constitutional law called the New Deal. Until then, the *Legal Tender Cases* and Sherman's resumption without contraction assured that the great shift in political economy of the nineteenth century would not be undone.⁹⁴

⁹³ Spaulding, *History of the Legal Tender Paper Money* (1875), 13.

⁹⁴ *Trebilcock v. Wilson* 79 U.S. 687 (1870); Thomas D. Thatcher to Homer S. Cummings, April 26, 1933 in George McJimsey, *Documentary History of the Franklin D. Roosevelt Presidency*, vol.10, *The Gold Standard, Monetary Reform, and the Gold Reserve Act, April 1933-January 1934* (UPA Collections, 2002), 249-254; *The Gold Clause Cases* 294 US 240 (1935).

7

The Greenback Union

The greenbacks and the National Banking System created a new era in the relationship between the federal government and the pace and rhythm of public life in the nineteenth century. Federal banks and federal paper bounded the commercial, financial, and political spheres into a new centralized relationship in comparison to the age of state banks and shiplasters. In modern economics, a monetary union or currency union unites disparate regions or under one currency or formally sets exchange rates between various currencies. Technically, it brings about faster exchanges and host of other beneficial economic results. The effects of such a union have never been confined to the economic sphere. Uniting under one currency during the Civil War fostered a true national market, enhanced the reach of the federal government into people's lives, and created a new brand of national politics.¹

This, of course, was not the first monetary Union in American history. The Constitution of 1787 formally created a monetary union by destroying the state currencies of the Revolution and uniting America under the "dollar" as the unit of currency in the new United States and led to a new national treasury and a national mint. By the time of the Civil War, the mint and the Treasury touched very few lives directly; national authority in that monetary Union was elusive and indirect. The policies of the Civil War, however, altered the relationship between market and state, and citizen and state in a dramatic way. As the debates to the Legal Tender Act and the National Bank act showed,

¹ Robert A. Mundell, "Monetary Union and the Problems of Sovereignty," *Annals of the American Academy of Political Science* 579 (January 2002):146.

Congress faced serious intellectual hurdles in creating a new monetary system. Once created, all Americans faced the challenges and opportunities of vast new national market bound together with national banks and greenbacks. Henry Adams wrote “the Civil War had made a new system in fact; the country would have to reorganize the machinery in practice and theory.” From roughly the end of the Civil War to 1913, the United States was bound together in a new monetary union, the Greenback Union, which unified control of finance, capital, and monetary policy under the aegis of the federal government. While not as tangible as the steel tracks of the transcontinental railroads or the plots of land parsed out under the Homestead Act, the Greenback Union must be considered as one of the great national projects of the nineteenth-century. But before we can consider the Greenback Union as a whole, Congress had one last great burst of legislation in the 1870s to set the terms of that Union.²

The Settlement of 1875

The Panic of 1873, just a year after the decision in the *Legal Tender Cases*, shattered the political peace on the money question in American politics. Commencing with the failure of Jay Cooke’s bank on September 18, 1873, and his troubles financing the construction of the Northern Pacific Railroad, the panic represented the bursting of a credit bubble created by inflation and overheated equity markets, especially railroad stocks. The Treasury acted quickly to free up cash by aggressively buying \$13 million worth of government bonds on the open market in the course of a week. As had been true

²Richard Sylla, “The Transition to a Monetary Union in the United States, 1787-1795,” *Financial History Review* 13 (April 2006):73-1795; Farley Grubb, “Creating the U.S. Dollar Currency Union, 1748-1811: A Quest for Monetary Stability or a Usurpation of State Sovereignty for Personal Gain?,” *American economic Review* 93 (2003):1778-1798; Ronald W. Michener and Robert E. Wright, “State ‘Currencies’ and the Transition to the U.S. Dollar: Clarifying Some Points,” *American Economic Review* 95 (2005):682-703; Adams, *The Education of Henry Adams*, 249.

since the days of the Treasury note in the 1830s and 50s, the public focused on monetary policy as their main response to the credit freeze created by the Panic. Fear was so widespread that when Ulysses S. Grant and his second Secretary of the Treasury, William Richardson, visited New York City to assess the situation, even some in the city's financial elite begged for a new "flexible" currency supply. The Panic quickly turned into a depression that reached into the country's farms and factories producing a fresh cohort of converts to the idea that a new supply of greenbacks could stop the economic hemorrhaging. Farmers who had enjoyed high profits during the earlier fights, now grasped on fiat money as a means to revive trade. The National Industrial Congress, which had opposed greenbacks in favor of a focus on trade-union membership, now endorsed a full currency of greenbacks as a solution to the problem of labor.³

The Forty Third Congress exploded with ideas on how to use the money supply to save the country. Members of Congress introduced countless bills and filled endless pages in the *Congressional Record* with debate. With Congress in the hands of the Republicans, the fight opened up divisions between factions within the party. After years of complaints about the structure of the National Banking System (NBS), the idea of free banking, or unlimited national banks and national bank notes, received serious consideration in both houses of Congress. In the end, the inflationists passed a bill with a free banking clause and an expansion of the greenbacks by 18 million. The measure was not as dramatic as the name "Inflation Bill" suggested. The bill entailed an increase of \$46 million in national bank notes and brought the greenbacks up to their wartime levels. It created a furor nonetheless, especially among the liberals like E.L. Godkin at the

³ Patterson, *Federal Debt-Management Policies*, 185; Richard White, *Railroaded: The Transcontinentals and the Making of America* (New York: W.W. Norton, 2011), 66-84; Unger, *The Greenback Era*, 213-215, 207-212, 228; Sharkey, *Money, Class, and Party*, 135-140.

Nation and the religious press who told their readers that the greenbacks were a violation of the moral pledge to pay back the national debt. In the light of the Treasury note issues of the prewar period, the precedent inherent in the Inflation Bill was powerful. By extending the use of greenbacks from the wartime context into the first large financial emergency of the postbellum era, Congress signaled their willingness to intervene in the new national economy with an expansion of the system created during the war.⁴

The actions of one person snuffed out the spark of a new tradition. Throughout the debates, public opinion confidently predicted that Grant would sign the bill into law. Several of his Cabinet members, including Richardson, suggested that anything less than signing the bill would fatally wound the Republicans in the West. Grant even snubbed a delegation of Boston bankers bent on convincing him of the evils of inflation, by leaving to confer with Benjamin Butler, one of the more radical greenbackers in Congress. Grant, as he usually did, looked to support from Hamilton Fish, Secretary of State and Grant's closest advisor. Fish, who had deep ties to the financial elites of New York, could not support Grant on this policy and thought the arguments in favor of inflation "fallacious and untenable." What shifted Grant's opinions is unclear, but sometime in April Grant decided against more greenbacks. After reviewing the bill sent to him by Congress, Grant announced to his cabinet that he would be vetoing the bill on April 24th. That day he sent a veto message in which Grant took up the topic of settling debts. The war, he explained, created "a financial system which gave us an irredeemable currency—justified at the time by necessity." Now, however, was time for "the Government to take immediate, permanent, irreparable steps towards resumption." This message contained the possibility

⁴ Nicolas Barreyre, "The Politics of Economic Crises: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics," *Journal of the Gilded Age and Progressive Era* 10 (2011): 415; Unger, *The Greenback Era*, 215-220, 233-241; Foner, *Reconstruction*, 522.

of compromise with a call for resumption, free banking, and fixed amount of greenbacks. By June, Grant abandoned that compromise stance for the hard position of a total contraction of the greenbacks and a repeal of the Legal Tender Act. Grant's motives remain obscure; some theorized that Grant's conscience to honor the war debt with gold pushed him in a new direction. Whatever the case, Grant's stand against further inflation set a counter tradition for the rest of the nineteenth century. With the population of the West increasing with each decade, 1874 was not the last time the country saw calls for inflation. Each time, the executive branch acted as a brake, vetoing all but the most mildly inflationary bills from Congress.⁵

Congress, in the wake of the veto, crafted a measure that would achieve peace in the party on the money issue. The Panic of 1873, and Grant's stand against inflation translated into a huge electoral win for Democrats in 1874, returning them to power in the House with a 70 percent majority for the first time since before the war. Perhaps more troubling than the electoral reverse was the internal dissension within the party over the currency question. In Michigan, Ohio, Illinois and across the Midwest Republicans almost tore themselves apart over taking either a hard or soft money stance in the election. Edward Atkinson, the economist and reformer, called it the "civil war in the Republican ranks." When the lame-duck session of the 43rd Congress convened in December 1874, both sides of the party agreed to seek a compromise measure that could

⁵ Unger, *The Greenback Era*, 241-248; William S. McFeeley, *Grant: A Biography* (New York: W.W. Norton, 1981), 393-398; Joan Waugh, *U.S. Grant: American Hero, American Myth* (Chapel Hill, N.C.: University of North Carolina Press, 2009), 131; Allan Nevins, *Hamilton Fish: The Inner History of the Grant Administration* (New York: Dodd, Mead & Company, 1936), 702-708, 711-714; "Message to Congress," February 27, 1874, and "Memorandum," June 1, 1874, in John Y. Simon, ed., *The Papers of Ulysses S. Grant*, 31 vols. (Carbondale: Southern Illinois University, 1967-2009), 37-42, 114-117; Brian Balogh, *A Government Out of Sight: The Mystery of National Authority* (New York: Cambridge University Press, 2009) 346-347; Richard Franklin Bense, *The Political Economy of American Industrialization, 1877-1900* (New York: Cambridge University Press, 2000), 266-373.

keep both factions content while getting past Grant's veto. Sherman, along with a number of other prominent Republicans, including George S. Boutwell, Oliver P. Morton and Roscoe Conkling, formed a secret committee to hammer out a peace treaty of sorts on the money question within the Republican Party.⁶

The compromise plan, probably written by Sherman, promised an omnibus of monetary measures that left something for everyone. Firstly, the Midwest and the South would finally get free banking and an unlimited number of national bank notes. Secondly, the Treasury would stockpile gold in preparation for a resumption of specie payments on January 1, 1879. Thirdly, greenbacks would not disappear. The Treasury would redeem and drawdown the volume of greenbacks to \$300 million from the wartime high of 450 million. Compromise angered the most rabid greenbackers and goldbugs in the Republican ranks, but the moderate core of the party held together and passed the bill over solid Democratic opposition in a burst of activity during late December and early January. Grant signed the Specie Resumption Act into law on January 14, 1875 to mixture of anger and relief across the country. Sherman would go on to join the administration of President Rutherford B. Hayes as Secretary of the Treasury and played the critical role of guiding Treasury policy to the successful resumption of specie payments on the appointed date. In March of 1878, Sherman, just months from the goal that eluded Chase, McCulloch and so many other public leaders, wrote a friend that "the promise made in 1862, and so often repeated, is about to be fulfilled."⁷

⁶ Unger, *The Greenback Era*, 249-250; Barreyre, "The Politics of Economic Crises," 416; Foner, *Reconstruction*, 522; Sherman, *Recollections of Forty Years*, 427-431.

⁷ John Sherman, *Recollections of Forty Years in the House, Senate and Cabinet* (Chicago: Werner Company, 1896), 426-439, 512; 3 *Cong. Rec.* 186-188, 208, 319 (1875); An Act to Provide for the Resumption of Specie Payments, ch.15, 18 Stat. 296 (1875).

The greenback issue gave way to a new problem. Buried within the Resumption Act were the seeds of a new policy conflict for the future: the silver issue. Aside from the problem of small change during the Civil War, silver was never a distinct issue in policy and politics from the Jacksonian period through the Civil War. Hard money adherents before the Resumption Act almost always spoke of silver in the same breath as gold as “specie.” In reality there was next to no silver in use as money in the country on the eve of the Civil War owing to its high price on world markets from the 1830s onward. Thus it was with almost no debate or fanfare that Congress decided to stop producing silver coins in 1873. The 1875 Resumption Act contained a small section replacing the fractional notes of the war with a new fractional silver coinage. At this point the issue aroused no debate from any members of Congress that would eventually take up the free silver cause. Moreover, it was simple fact that paper change worked poorly, getting torn and dirty in circulation.⁸

Like the California Gold Rush, geology impinged on politics and business in important ways. In the 1870s, the current in world silver prices shifted downward, due to new silver mines, especially in the western U.S. In 1876, George M. Weston, writing for the Republican *Boston Globe*, popularized the idea that silver, not paper, could provide a well-needed inflationary boost to the economy. The silver issue affected the hard money versus soft money division in interesting ways. Silver was “hard money,” but the increased supply promised inflation without the disgrace of repudiation. The silver issue, as had the greenback issue, proved divisive among the Republican ranks. The idea quickly caught on among a wider audience of workers and farmers in the West and South

⁸ Unger, *The Greenback Era*, 328-329; Allen Weinstein, *Prelude to Populism: Origins of the Silver Issue, 1867-1878* (New Haven, CT: Yale University Press, 1970), 35-36; See *Boston Daily Advertiser* February 2, 1863 for complaints about dirty and torn fractional notes.

than the greenback issue. In the grips of a depression caused by the Panic of 1873, the promise of unlimited silver, or “free silver,” appeared attractive. Moreover, some manufacturers, who had backed away from greenback inflation, argued for a new silver coinage. In other words, after suturing the political and economic divisions of the Republicans in the Resumption Act, the silver issue threatened to open the old wounds. Richard P. Bland, Democrat congressman from Missouri, pushed a bill that proposed government purchases of western silver, and the free coinage of silver at a ratio of 16 to 1 with gold coins. The bill successfully passed the House in 1877 with both western and southern support from Republican and Democrats. While it failed in the Senate that year, Bland resumed the attack the very next year.⁹

The Republican leadership returned to the model of compromise to prevent the silver issue from ripping the party apart, as it almost did in after the Panic of 1873. James Garfield, Republican Congressman from Ohio at the time, wrote a political confidante that he had never seen “a craze equal to that which now possesses the public mind in regard to silver.” Hugh McCulloch, no friend to silver or inflation also wrote to Garfield that “a continued and violent agitation of the currency question” was worse than a compromise position on free silver. William Allison, Republican Senator from Iowa, and Sherman, now Secretary of the Treasury under President Rutherford B. Hayes, worked through backchannels in Congress to compose a bill that would give something to each side. When Bland pushed his bill again in 1878, Allison successfully softened the inflationary edge of the original bill in the Senate. Instead of free silver, Congress only authorized the minting of 2 to 4 million dollars of coin a month. With some careful

⁹ Unger, *The Greenback Era*, 330-338; James A. Garfield to Harmon Austin, February 20, 1878, Garfield Papers, LOC quoted in Weinstein, *Prelude to Populism*, 337; Weinstein, *Prelude to Populism*, 189-203.

political work the bill passed. Hayes now took on Grant's role as the defender of the gold standard and vetoed the bill calling it a "grave breach of public faith," over the dissent of many in his cabinet. Congress, in a stinging rebuke, overrode Hayes's veto on the same day. The compromise would remain in place until a renewed silver movement in the late 1880s, the rise of the Populists, and the Democratic Party's push to unseat the Republicans with the silver issue in the Presidential Campaign of 1896.¹⁰

From the perspective of the government's grasp over the monetary system, resumption and the rise of the silver issue did not spell the death of the Greenback Union. Histories of the period focus on the question of volume in monetary policy, soft or hard, inflation or deflation, as a central battleground for understanding new class and regional tensions during Reconstruction and the Gilded Age. This era of political conflict over money undoubtedly contained those themes. Yet it also contained a background of consensus. Viewing the matter as question of government power in the economy, Specie Resumption, Bland-Allison, and free banking formalized the boundaries and terms of a new system of political economy in the United States: the Greenback Union. Building on the Greenback zone created during the war, federal leaders adjusted wartime necessities to better reflecting the realities of class, region, party politics and industrialization in the 1870s.

The grasp of the government over the economy through its power over money was never in question during this or any other period, only its form. Even in that, resumption was less of a definitive nod to the power of the worldwide flow of gold than it sounded. Almost no one during this period, except on the Pacific Coast, imagined that

¹⁰ Weinstein, *Prelude to Populism*, 301-353; Hugh McCulloch to James A. Garfield, January 30, 1878 in Garfield Papers, LOC quoted in Weinstein, *Prelude to Populism*, 322; Unger, *The Greenback Era*, 353-364; Bense, *Political Economy of American Industrialization*, 382-414;

gold would replace greenbacks in the pockets of Americans. John Jay Knox, comptroller of the currency from 1872 to 1884, remarked that on the whole “the people preferred the issues of national banks and of the Government to coin.” When resumption finally came in 1879, more people came to exchange gold for greenbacks than greenbacks for gold on the first day of resumption in New York City. In 1878, soft money forces within Congress successfully added 46 million dollars of greenbacks to the Resumption Act’s ceiling of 300 million. The act also authorized the reissue of civil war greenbacks that accumulated in the Treasury. From 1878 onward the Treasury kept the circulation of greenbacks at a steady \$346, 681, 016.00 for the rest of the century. Silver did not replace paper in American pockets either. The Bland-Allison act authorized people to deposit silver in the Treasury and receive “Silver certificates” in denominations as low as ten dollars and redeemable on demand. Holders of these coins rushed to put their coin into government paper. In 1887, the US mint created 273 million dollars worth of silver coins, of which the Treasury held \$213 million with \$154 million in silver certificates outstanding. Resumption clearly did not mean an end of the paper era, or an end to federal authority in national life.¹¹

Rivers of Green

The 1870s marked a giant transformation in the nature of the American economy, embodied by the name given to it by Mark Twain and Charles Dudley, “the Gilded Age.” Almost every facet of the way that Americans produced, sold, and consumed either

¹¹ John Jay Knox, *United States Notes: A History of the Various Issues of Paper Money By the Government of the United States* (New York: Charles Scribner’s Sons, 1892), 142-3, 152-3; Unger, *The Greenback Era*, 364-372, 401; An Act to Prevent the Further Retirement of United States legal-tender notes, ch. 146, 20 Stat. 87 (1878); Compare with Richard Bense’s claim that resumption was “anti-statist” in Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge, 1990), 294-295.

changed or intensified in the period from the 1870s to the dawn of the twentieth century. Socially, Americans in these years began a long transition from a land of Jeffersonian farmers to a nation of urban wage earners. The corporate form of business organization flowered into a powerful tool for the accumulation of capital and the management of people and resources. New technologies, like the Bessemer process in the manufacturing of steel, lowered costs, and created new opportunities for American manufacturing.¹²

The role of the Greenback Union in the restructuring of the economy of the Gilded Age remains muted in our histories of the era. Without a doubt, the economic changes of the postwar period owed much to the development of railroads, technology, and practices begun in the 1840s and 1850s. The Civil War, in the minds of many economic historians, actually delayed commercial development with its destruction of lives, capital, and resources. Nevertheless, even if federal actions did not always cause or accelerate growth, the style and substance of the national market during Reconstruction and beyond, owed much to the interventions of the federal government, especially the policies of the 37th Congress epitomized in new tariffs, the Morrill Land Grant Act, and the Pacific Rail Road Act.¹³

¹² Mark Twain and Charles Dudley Warner, *The Gilded Age: A Tale of Today* (Hartford: American Publishing Company, 1873); David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862-1872* (New York: Vintage, 1967), 26-28; Glenn Porter, *The Rise of Big Business, 1860-1910* (Arlington Heights, IL: AHM Publishing, 1973); Eric Foner, *Reconstruction: America's Unfinished Revolution* (New York: Harper & Row, 1988), 461. Alan Trachtenberg, *The Incorporation of America: Culture & Society in the Gilded Age* (New York: Hill and Wang, 1982); Jackson Lears, *Rebirth of a Nation: The Making of Modern America, 1877-1920* (New York: HarperCollins, 2009), 51-91.

¹³ Philip Shaw Paludan, "What did the Winners Win?: The Social and Economic History of the North during the Civil War," in James M. McPherson and William Copper, Jr. eds., *Writing the Civil War: The Quest to Understand* (Columbia, S.C.: University of South Carolina Press, 1998), 180-184; Ralph Andreano, ed., *The Economic Impact of the American Civil War* (Cambridge, MA: Schenkman, 1967), 165-209; Douglass C. North, *Economic Growth of the of the United States, 1790-1860* (Edgewood Cliffs, N.J., 1960); The essays in David T. Gilchrist and W. David Lewis, eds., *Economic Change in the Civil War Era* (Greenville, DE: Mills-Hagley Foundation, 1965); Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 525-569: Stressing the actions of Congress are,

Greenbacks and the NBS joined these policies by altering the substance of the American market in several ways. First, the shift to a national currency made payments easier across regions, while inflation benefitted certain sectors of the economy, especially manufacturers. Second, the structure of the Greenback Union partially determined the flow of money and capital across the country. Third, and implied in the previous points, the Greenback Union created a new national market bound by banks and money that built new relationships across the system.

Economic growth, of course, requires capital, and the greenbacks and NBS created capital or dispersed it in such a way as to lubricate the wheels of capitalism in the Gilded Age. The new federal presence in the economy, however, proved to be a two-sided affair. As it had during the war years, the high tide of dollars created by the war eroded prices and profits, but that process also made it cheaper to borrow money and start new businesses, especially endeavors with high capital costs like railroads. The postwar economy brought into stark relief the significance of how money moved around the country by means of a combination of market forces and federal policy. Structured by policies, like the Specie Resumption Act of 1875, that reflected conflicting political ideals, the structure of the Greenback Union created as many problems and it solved.¹⁴

Simply put, the creation of millions of dollars in currency created a vast river of capital that fed American industrial and commercial development in the postwar period. The geography of that river followed and flowed through the banks of the NBS. Capital

Leonard Curry, *Blueprint for Modern America: Non-Military Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968); Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge, MA: Harvard University Press, 1997); Bense, *Yankee Leviathan*; Bense, *Political Economy of Industrialization*; White, *Railroaded*, xxiii.

¹⁴ Ronald I. McKinnon, *Money and Capital in Economic Development* (Washington, D.C.: Brookings Institution, 1973).

flowed from the East into the growing metropolises of the West like Chicago, but it was not the invisible hand of the market that moved capital west. Federal legislation provided the conduits and channels that funneled capital from the hinterland to major American cities like Chicago and New York. The national banks, as banks have always been in U.S. history, were the prime vehicles for the movement of capital through the pooling of funds in the form of deposits, followed by redistribution of money in the form of loans and purchases of equity and bonds. The federal government also injected money into the economy through the accumulation of greenbacks at the Treasury, and the purchases of bonds and gold at periodic intervals. This practice, however, only directly affected the financiers of the Northeast and never touched Americans as directly as the NBS. Government spending after the war was a negligible force on the economy. Federal debts, , in the form of greenbacks or federal bonds held by national banks, however, lent volume to the river of capital.¹⁵

By the terms of the National Banking Act of 1864, New York City served as a great lake of capital in the national river, with capital flowing into and out of the city according to the pull of the market and the terms of the law. The original 1863 act allowed, in recognition of antebellum practices, the redeposit of a portion of their funds in a correspondent bank in a central “reserve city.” Thus, country banks looking to gain interest on their deposits sent their funds to correspondent banks in cities like Chicago during the summer and winter when farmers did not need their cash. New York, with its teeming call-loan market and home to Wall Street, was the most attractive place to

¹⁵ William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W.W. Norton, 1991), 269-295, 305-309, Cronon emphasizes market forces over government action generally in explaining the flow of capital in and out of Chicago; Jeffery G. Williamson, “Watershed and Turning Points: Conjectures on the Long-Term Impact of Civil War Financing,” *Journal of Economic History* 34 (1974): 636-661; John A. James, *Money and Capital Markets in Postbellum America* (Princeton, N.J.: Princeton University Press, 1978).

reinvest deposits in the entire country. Since a national bank could not open branches under the law, these correspondent relationships were critical for moving funds across the country. Congress had envisioned a more orderly monetary union in the 1864 National Banking Act. The 1864 act created a redemption plan that tied the system to the wealth of New York. The idea was that if banks had the option to redeem their notes for cash in New York, people would trust the system and the federal banknotes would circulate at par. The law allowed country banks to periodically redeem their notes for greenbacks at one of several redemption cities established by the Comptroller. Those redemption cities, in turn, redeemed their notes at the central redemption city of New York. In reality, since a national bank in Maine was required to redeem a note from Iowa at par, the redemption system never caught on. Nevertheless, the new nodes of connection and the federally enforced acceptance of notes at any point in the system marked a new unified geography of capital vastly different from the old days of shinplasters trading at heavy discounts.¹⁶

The economic effects of these capital flows helped to underwrite economic growth, especially as it applied to manufacturing and any business with high-capital costs. Early analysis of the economic effects of the greenbacks from the progressive era stressed their essentially destructive nature to the national economy, reflecting the reigning gold standard orthodoxy of the time. Nevertheless, there were several positive links between federal monetary policy and economic developments in the postwar period. One strong link was the early establishment of national banks and the rise of the manufacturing belt of the Midwest and the Midatlantic. Towns and counties that acquired

¹⁶ Redlich, *The Molding of American Banking*, 2:114-117; Sharkey, *Money, Class, and Party*, 229-235; Scott A. Redenius, "Designing a National Currency: Antebellum Payment Networks and the Structure of the National Banking System," *Financial History Review* 14 (October, 2007): 207-228; James, *Money and Capital Markets*, 105-110.

a national bank in the early to late 1860s saw a rise of available funds that could be funneled into purchasing such things as the steam engines that fed growth. Correlation does not mean causation, but it is interesting to note that heavy industries (railroads, iron manufacturing, etc.) grew faster in the period of 1859-1869 than in the rest of the Gilded Age.¹⁷

There were other relationships between federal money and the wider economy that are harder to quantify. Anecdotal evidence suggests that a steady stream of federal money made a range of purchases easier for consumers. Firms like the McCormick Reaper Company enjoyed increased sales starting in the war and going forward into Reconstruction, stemming from the new greenbacks. The presence of a federal paper built new bonds between sectors of the economy. For example, before the war, banks were unwilling to extend credit to manufacturers. Instead, antebellum manufacturers depended on credit from wholesale distributors. With the coming of the war, banks were increasingly willing to extend loans in greenbacks. This trend made for a more efficient movement of capital, but it also pushed wholesalers to focus on marketing. There are still many unanswered questions about the scope of this relationship. It is clear from the data that Americans saved more, invested in equities and other forms of capital, and generally engaged in what economists call “capital-deepening,” starting in the 1870s. The role of greenbacks and national banks in this process remains understudied. Of course we might never know the myriad ways that the shift from putting down greenbacks instead of state

¹⁷ Mitchell, *History of the Greenbacks*, 403-420; Don C. Barrett, *The Greenbacks and Resumption of Specie Payments, 1862-1879* (Cambridge: Harvard University Press, 1931), 79-107; Matthew Jaremski, “National Banking’s Role in U.S. Industrialization,” *Journal of Economic History* 74, 1 (2014): 109-140; Milton Friedman and Anna Jacobson Schwartz, *A Monetary History of the United States, 1867-1960* (Princeton, N.J.: Princeton University Press, 1963), 29-42; Harry N. Scheiber, “Economic Change in the Civil War Era: An Analysis of Recent Studies,” *Civil War History* 11 (1965), 409.

bank notes on the counter, or depositing money in a national bank changed American business. From the perspective of businessmen and industrialists during Reconstruction, the link between government policies and their own ledgers was real and palpable, directly translating into the politics of the era.¹⁸

The economic structure of the Greenback Union could change the business life of entire cities, as exemplified by the rise of New York City. New York, of course, was the financial leader of the country well before the Civil War. The re-deposit aspect of the national banking system, however, turned New York into what one Wall Street trader called “a National-clearing-house” and a “ocean of wealth, fed by the tributary streams which flow from all America.” By 1870, 24% of banking capital could be found in New York City, and 84% of that was in national banks. Banks redirected the flow to speculation and trading on Wall Street when they loaned out country funds on short-term call loans that could be called in for payment at anytime. Wall Street traders feverishly bought and sold shares of stock, commodities, and bonds before the loans fell due. While there is no economic analysis of the size and scope of how these funds influenced growth, clearly the national banking system was also feeding the rise of financial markets that contributed to the growth of railroad corporations and other industrial concerns. There is even some evidence that New York banks started to lend to Europe in this period, beginning the long shift from London to New York as financial capital of the world.

Socially, sitting at the confluence of the country’s capital created a new class of financial

¹⁸ Scheiber, “Economic Change in the Civil War,” 410; Glen Porter and Harold C. Livesay, *Merchants and Manufacturers: Studies in the Changing Structure of Nineteenth-Century Marketing* (Baltimore: 1971), 127-130; Richard Sylla, “Federal Policy, Banking Market Structure, and Capital Mobilization in the United States, 1863-1913,” *Journal of Economic History* 29 (1969): 657-686; Lance E. Davis and Robert E. Gallman, “Capital Formation in the United States during the Nineteenth Century,” in Peter Mathias and M.M. Postan, eds., *The Cambridge Economic History of Europe*, Vol. 7, *The Industrial Economies: Capital, Labour and Enterprise, Part 2: The United States, Japan and Russia* (1974); 1-69.

elites with growing power over the new national economy that pushed out the older generation of merchant bankers tied to southern agriculture. Yet for all its success, the creation of a vast man-made system of capital rivers was not without its problems and issues, and it certainly was not perfectly equitable and fair in its distribution of wealth.¹⁹

The river of green capital that flowed through the Greenback Union did not reach all parts of the country or all sectors of the economy. The first, most pressing barrier was the high entry-requirements to establish a national bank. As it stood, a group of would be bankers needed to raise the large sum of \$50,000 to start a bank in a town with a population under 6,000, \$100,000 in cities of 6,000 to 50,000 people and \$200,000 in cities with over 50,000 people. This meant, that outside the cities, usually one national bank could exercise near-monopolistic power over the capital market in given area, whereas the density of national banks in cities led to a more competitive market. Also, there were limitations on the kind of business the banks could conduct. The National Bank Act of 1864 included a critical limitation on mortgages that essentially shut out the farmers of Midwest from the benefits of the system. Up to 1875, the mal-distribution of national banks and the \$350 million limit on banknotes only lent more power to the few banks that did have charters. After 1875, the free banking clause of the Specie Resumption Act meant very little when businesspeople in the West still lacked the capital to start a national bank.²⁰

¹⁹ James Knowles Medbery, *Men and Mysteries of Wall Street* (Boston: Fields, Osgood, & Co., 1870), 66, 68; Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1869* (New York: Cambridge University Press, 2001), 123-124, 149-150; Bense, *Yankee Leviathan*, 311-312; James, *Money and Capital Markets*, 124.

²⁰ Act of June 3, 1864, ch. 106, 13 Stat. 99 at 101 § 7; Sylla, "Federal Policy, Banking Market Structure, 659-660; James, *Money and Capital Markets*, 28-29.

Lastly, the lack of elasticity in the system created a penchant for panics. The first phase of policy, the legal tender and national bank laws, imposed legislative limits on the amount of currency in the country at any given time. The Treasury, with a reserve of gold and greenbacks could sometimes inject liquidity into the market during a crisis. After 1875, free banking allowed for an unlimited amount of banknotes, but since these notes could not satisfy debts, the volume of cash that could provide liquidity was still in the hands of Congress. The politics of the Panic of 1873 proved that Congress was too slow, and the executive unwilling, to use inflation in times of emergency. Yet without a central bank like institution, banks did not have a lender of last resort in an emergency, or one that could act more nimbly than Congress. Structurally, the flow to and from New York City proved incapable of handling the seasonal demand for money during the planting and harvest seasons in the country's interior. Money would rush into the city, which would heat up the stock market and create credit bubbles, or rush out and create stringency in the market fostering panics, as it did in 1873, 1893, and 1907. To make matters worse, a statutory reserve requirement for national banks prevented each bank from dipping below a certain point. On the farmer's side, the flow of cash was not always sufficient, and farmers took to the practice of keeping enough money on hand for the next year's crops in case their local national bank failed to make good on deposits.²¹

California, and much of the Pacific Coast, stayed out of the full embrace of the Greenback Union until the twentieth century by their own volition. Congress had attempted to lure Californians into the system with the creation of National Gold Banks

²¹ Redlich, *The Moulding of American Banking*, 2: 119; Jeffery A. Miron, "Financial Panics, the Seasonality of Nominal Interest Rate, and the Founding of the Fed." *American Economic Review* 76 (1986): 125-38; Elmus Wicker, *Banking Panics of the Gilded Age* (New York: Cambridge University Press, 2000), xiii-xiv, 146.

in 1870. In order to meet the hard money views of the region, these banks would pay out coin for their notes before the rest of the country resumed specie payments. The Comptroller approved nine banks, almost all located in northern California. Thereafter national banking grew slowly in California, always dwarfed by the more numerous state banks. The first steps toward integration began in 1880, when the state of California recognized greenbacks as good for state taxes. Californians paid a price for their resistance. The cost of exchanges between New York and San Francisco were liable to rapid change and allowed merchants to sell cheap east coast goods at inflated hard money prices. Some Californian grumbled that the hard money dream translated into high interest rates and poverty for everyone else outside the San Francisco commercial elite. Standing on the periphery of the Greenback Union, in many ways San Francisco merchants enjoyed closer financial ties to London than the East coast, as they were both united by a common gold standard.²² Up until the twentieth century, when California joined the Federal Reserve System, an easy way to spot a Californian on an east coast visit was by the gold coins that they put down to pay.²³

The South, peripheral to the forging of the Greenback Union during the war, suffered from the imbalances in the system. In all the political upheaval of the 60s and 70s over greenbacks and national banks, the integration of the South into the Greenback Union remained a low priority. The reformation of the South on the basis of a free labor economy was a central tenet of Republican policy during Reconstruction. But while Republicans attempted to use the law to alter the political economy of the South, they did

²² Ira B. Cross, *Financing an Empire: History of Banking in California* (San Francisco: S.J. Clarke, 1927), 355, 381, 432, 514, 357.

²³ "An Unpleasant Experience in Passing Gold Coin in New York," *Dickerman's United States Treasury Counterfeit Detector* 22 (January 1905): 5-6.

very little to link the South to the capital flows of the North. The states of the former Confederacy suffered a wholesale destruction of capital and their existing banks. Immediately after the war, northern capitalists established a few southern national banks, especially in Virginia. After 1865, the South suffered alongside the West in being denied their designated share of national banks and circulation. Greenbacks did flow south in payment for cotton, and some northerners feared that the reintegration of the South would actually soak up too much currency and lead to tight credit markets across the country. These greenbacks did not flow back North, because the paucity of national banks meant that most southerners held onto their cash.²⁴

That trickle of national currency proved insufficient, and southerners turned to old tools, in some cases very old tools, for supplying their needs for money. Railroad tickets and notes issued by merchants served as circulating medium in many southern towns and counties. The State of Alabama went so far as to issue notes in direct violation of the Constitutional ban on state-created currency. In 1875, John Jay Knox, comptroller at the time, pointed this out in his annual report, but there is no evidence that federal government prosecuted the violation. The central means for providing credit in the South depended on southern crops, much as it had before the war. Well into the Gilded Age, Southern states passed lien laws that allowed people to put up unplanted crops as collateral for loans. With the existing banks in the region uninterested in such risky loans, general stores became the common source of credit for small farmers. Reconstruction

²⁴ George L. Anderson, "The National Banking System, 1865-1875: Sectional Institution," (PhD Diss., University of Illinois, 1933), 145-186; Larry Schweikart, *Banking in the American South: From the Age of Jackson to Reconstruction* (Baton Rouge: Louisiana State University Press, 1987), 310-311; James L. Sellers, "The Economic Incidence of the Civil War in the South," in Ralph Andreano, ed., *The Economic Impact of the American Civil War* (Cambridge, MA: Schenkman, 1967), 98-108.

marked an economic downturn in the South that would not turn upward until the New Deal.²⁵

It quickly became apparent that the assumptions and ideas about the national economy that guided the creation of the NBS were already outdated at the moment of their inception. The members of Congress who framed the NBS acts, and most financial elites of the era, conceived of money as cash, pure and simple. The problem of money in America before the Civil War revolved around the idea that there needed to be a way to guarantee the redemption of banknotes at par anywhere in the country, which would inspire confidence and establish a good foundation for a prosperous future. They could assume that because credit in the form banknotes was the way that most Americans settled accounts from the start of the century to the Civil War. Starting in the 1850s, however, checks and checking accounts in general became the critical means for settling accounts in major cities of the eastern seaboard. Checking accounts increased the total pool of money in ways barely understood by postwar leader and thinkers until the twentieth century. By the 1870s, this practice spread across the country. The state banks, presumed dead after the 10% tax, regained significance. Where the NBS failed to provide relief, people looked to creating state banks. Even after the shift to national free banking in 1875, the high capital requirements and the ban on mortgagee loans drove farmers to these new state banks. A thriving trade in mortgage backed securities in the East provided another way to funnel capital to the West.²⁶

²⁵ Anderson, "The National Banking System," 145-186, esp. 179-186; Edward L. Ayers, *Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992) 13,22; Scheiber, "Economic Change in the Civil War," 404.

²⁶ Redlich, *The Molding of American Banking*, 2:175-184; Peter L. Roseau, "The Market for Bank Stocks and the rise of Deposit Banking in New York City, 1866-1897," *The Journal of Economic History* 74, 4

By the 1890s, the return of the state banks was complete. By 1900 state banks outnumbered national banks 4659 to 3732. Entry requirements for some state banks was as low as \$10,000, and state banks could deal in mortgages unlike their national counterparts. Other parts of the banking system also grew up outside federal authority. For example, the federal government had very little to do with regulating savings banks or building and loan associations. Founded as cooperative, non-profit institutions that would teach thrift to the working class, savings banks invested in long-term mortgages and developed connections to larger commercial banks in the postbellum market. The lone exception to this development was the Freedman's Savings Bank established by Congress in 1865.

In general, the NBS, and federal policy were mid-nineteenth century answers to mid-nineteenth century problems. These laws and institutions successfully knit a national marketplace together from the pieces of the divided antebellum markets. It would take another generation, which would again look to federal policy in the form of federal deposit insurance, and the Federal Reserve System, to remake the Greenback Union to accord to their own needs.²⁷

The Greenback State

No matter the actual composition of the money stock, the exercise of government power over money transformed the size and reach of the federal state after the Civil War. From the very start of the war, federal officials confronted countless details, small and

(2011): 976-1005; Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012), 155-168.

²⁷ Richard Grossman, "US Banking History, Civil War to World War II," EH.NET Encyclopedia, Robert Whaples, ed., March 16, 2008, <http://eh.net/encyclopedia/us-banking-history-civil-war-to-world-war-ii/> accessed May 19, 2014; David L. Mason, "From Building And Loans to Bail-Outs: A History of the American Savings and Loan Industry, 1831-1989," (Ph.D. Diss. Ohio State, 2001), 14-56; Jonathan Levy, *Freaks of Fortune*, 108-19, 116-117.

large in order to support and maintain the system of greenbacks and national banks put into place by Congress, much of which was unforeseen during the legislative process. There was the unexpected need for the Treasury to become a dealer in Gold, necessitated by the rise of the Gold Room in New York during the war. At the technical level, the Treasury constantly struggled with actual printing of notes that looked similar enough to warrant the name “uniform currency.” The National Banking Act of 1864 contained 54 sections—and even then it seemed at times that it was not enough to answer the myriad of questions about what a national bank could and could not do. The significance of issues, alternating between minute and gigantic in proportions, was a wholesale growth of federal capacity to organize, monitor, and police the monetary union forged by Congress in the Civil War.

In 1865, the House of Representatives, created a wholly new committee, the Committee on Banking and Currency, to supervise activity in the Greenback Union. The House Committee on Ways and Means was oldest standing committee, and had handled all financial questions since the first Congress. The breadth of questions generated by the war, monetary policy, banking creation and regulation in addition to their traditional oversight of taxation and appropriations proved too much for one committee. James Garfield thought it plain “that the national banking system has thrown a very large class of new duties upon the Committee of Ways and Means.” Samuel S. “Sunset” Cox, Democrat from Ohio, pointed out that Ways and Means regularly oversaw over 900 million dollars in appropriations, a dramatic increase over roughly 70 million a year before the war. The profusion of paper created by the government was so complicated that no one could “readily understand them.” The significance of the questions before this

overworked committee was undeniable: “All the springs of wealth and labor are more or less influenced by the action of this committee,” Cox reminded Congress. Congress needed a new tool to manage its creations. Whichever “party deals with these questions” in the future, the creation of a new committee would help Congress to “have and keep the ascendancy in the political control of the Government.” Adopted without a vote, the committee began its work that year.²⁸

The regular business of the committee included oversight of the NBS and the formulation of bills dealing with monetary policy. Banking oversight took up the majority of the committee’s work. The committee regularly received examiner’s reports of the Comptroller of the Currency on the status of various national banks in the country. In the case of a large national bank failure, like the Ocean Bank of New York in December of 1871, the committee undertook an exhaustive investigation of the bank’s practices. The committee also provided a formal node for the relationship between financial elites and Congress. When James Fisk and Jay Gould cornered the gold market and sent financial markets into a panic on September 24, 1869, the Committee undertook an extensive investigation, calling on the bankers of New York to testify.²⁹

Without a doubt, the administrative needs of the Greenback Union acutely affected the power and scope of the Treasury Department in the national economy. The greenbacks and national banks spawned three new divisions with the Department—the Comptroller of the Currency, the Bureau of Printing and Engraving, and the Secret

²⁸ *Cong. Globe*, 38th Cong., 2nd Sess. 1312-1313, 1316-1317 (1865); Keller, *Affairs of State*, 109-110.

²⁹ “Report on conditions of National Banks in general...” July 17, 1866, File HR 39A.-F3.1, Records of the Committee on Banking and Currency, RG 233.5, National Archives, Washington, D.C. [hereafter, RG 233.5, NARA I]; “Failure in December 1871 of Three Banks in New York City,” File HR 42A-F4.2, RG 233.5, NARA I; “Investigation of the Affairs of the Ocean National Bank of New York,” File HR43A-F4.4, RG 233.5, NARA I; “Minutes of the Committee of Banking and Currency, 41st Congress 2nd Session to 41st Congress 3rd Session,” RG 233.5, NARA I, 130-264.

Service. It also brought greater responsibility to the office of the Secretary of Treasury, and the department in general. Not since the days of Alexander Hamilton or Albert Gallatin, had the post of the Treasurer been so important in public affairs. Salmon P. Chase, Hugh McCulloch, George S. Boutwell, and John Sherman all played a critical part in shaping monetary policy and setting the tone for the debates over money in national politics. Chase's national banking plan, McCulloch's contraction policy, and Boutwell's "growing up" approach to monetary policy framed debate during and after the war. The power of the post was not just confined to talk. What was a large departure from the era of Hamilton or Gallatin was the new power of the Treasury to intervene in the market at a moment's notice.

The Treasury possessed a powerful tool to influence the volume of day-to-day monetary policy through the government's reserves of gold and greenbacks. For all the institutional changes of the war, Congress did not abolish the Independent Treasury system. Structurally, that meant that the Treasury accumulated large pools of gold paid in for customs, and greenbacks either paid to or redeemed by the government. In addition to these funds, the Treasury maintained what Boutwell called "the reserve." The reserve consisted of 44 million dollars in greenbacks, which represented the difference between the floor of 356 million set by Congress in 1868 and the Civil War authorized maximum of 400 million. Boutwell, under the advisement of the Solicitor of the Treasury and Attorney General, reasoned that the legal tender acts had allowed the Treasury the power to reissue notes. With these funds, the Treasury could purchase bonds or sell gold for

greenbacks, thus injecting liquidity into credit markets and affecting the value of the dollar.³⁰

The Treasury used this power several times to avert a crisis. Each Secretary of the Treasury kept a close relationship with their sub-treasurer in New York City, constantly exchanging letters and telegrams on financial conditions on Wall Street. Chase kept constant contact with John J. Cisco during the war, and McCulloch said that he wrote Henry H. Van Dyck every day except Sunday. Through this relationship, the Secretary and Assistant Secretary worked fast to stop several possible panics. In 1872, Boutwell's sub-treasurer in the city, William A. Richardson, issued 5 million from the reserve to stifle a possible panic. This power did not always work as expected. When Richardson became Secretary he returned to the reserve and bond buying to stop the contagion of the Panic of 1873, but found that he could not "furnish...all the money the frenzied people may call for." Sometimes just the news about the Treasury's funds could affect the market. In his autobiography, McCulloch recounted how he avoided a possible panic on Wall Street through an accounting trick that let everyone think that his contraction of the currency was not as aggressive as they feared. When the monthly report came out "Wall Street was relieved, and all indications of a stringent money market disappeared." This power could be felt halfway around the world. In 1866 the London money market suffered a growing panic when the bank of Overend, Gurney and Co. failed that year. The London panic pushed British creditors to collect their debts in America, which upset

³⁰ Patterson, *Federal Debt-Management*, 183-184; Timberlake, *Monetary Policy in the United States*, 100-101; Bense, *Yankee Leviathan*, 259-262, 275-278.

business and the value of the dollar. McCulloch helped stem the tide by selling around 40 million in government gold in London.³¹

This new power in an administrative agency made Congress and the public nervous. Several times, Congress investigated gold sales and note reissues by the Treasury, but never passed any legislation to stop these practices. Liberals and financial elites oscillated between constant fear and anger over a Treasury department that they felt they could not control. At the *Nation*, Godkin seethed at how the Treasury's hand interfered in the market, as such a power was never recognized by the "old political economy" of Smith, Mill or Ricardo. The *Commercial and Financial Chronicle* trembled "a greater power, a more absolute control, over the growth, the enterprise and the activity of a free people was never enjoyed by any executive than is now vested in the Treasury."³²

Whereas the Treasury influenced the money market, the office of the Comptroller of the Currency supervised the new national network of banks. The National Banking Act of 1863 provided for the creation of a "bureau" to charter and oversee member banks. The head of the bureau, the Comptroller of the Currency, possessed the power to charter banks that met the requirements of the statute, and periodically examine the banks to make sure that they conformed to all aspects of the law, as well as investigate allegations for fraud and embezzlement within the system. Congress intended the comptroller to be

³¹ McCulloch, *Men and Measures*, 212, 249-257; Sharkey, *Money, Class, and Party*, 83; Richard Timberlake, *Monetary Policy in the United States: An Intellectual and Institutional History* (Chicago: University of Chicago Press, 1993), 100-101; Patterson, *Federal Debt-Management*, 183-186; James G. Blaine, *Twenty Years of Congress: From Lincoln to Garfield* 2 vols. (Norwich: Henry Bill Publishing, 1886), 2:329; William A. Richardson to U.S. Grant, September 19, 1873 in John Y. Simon, ed., *The Papers of Ulysses S. Grant* 31 vols. (Carbondale: Southern Illinois University, 1967-2009), 23:214; James K. Medberry, *Men and Mysteries of Wall Street* (Boston: fields, Osgood, & Co., 1870), 256-257. *Commercial and Financial Chronicle*, 3 (1866): 3-4.

³² Timberlake, *Monetary Policy*, 91-92; Sharkey, *Money, Class, and Party*, 89-92; *The Nation* 15 (December 12, 1872); *Commercial and Financial Chronicle*, 3 (1866): 3-4.

more than another patronage position for the party in power, granting the holder tenure for five years, and requiring Senate approval for removal from office. Chase's choice reaffirmed the desire for professionalism when he chose the head of a state banking system, Hugh McCulloch, and not a politician, to lead the new department.³³

Almost everything about this process was new to federal officials. When the Treasury opened their books to start enrolling banks in 1863, Treasury officials scrambled to put together a process for creating hundreds of new banks. When McCulloch began his duties, he spent a great deal of time in selecting a professional staff and organizing the procedures for the office. During McCulloch's time as comptroller, the office exercised careful review of applications, requiring that applicants provide detailed information on the population and future prospects for the location of the bank. Prior to 1863 the U.S. government did not manage the business of banking. The United States created two banks prior the war. Each was, in a sense, handcrafted by Congress who worked for months on the charters of each of these banks. After their chartering, Congress had limited oversight of the two incarnations of the BUS. The only other precedent was some oversight of state banks that held federal money under the "Pet-Bank" regime of Jacksonian period. The terms of the National Banking system made the creation of nationally chartered banks and their management permanent and routine.³⁴

³³ An Act to Provide a National Currency, ch. 58, 2 Stat. 665 (1863); Blaine, *Twenty Years in Congress*, 1:486.

³⁴ Letters Sent By the Comptroller of the Currency, April 8, 1863-July 16, 1863, Records of the Office of the Comptroller of the Currency, RG 101, National Archives, College Park, Md. (Hereafter RG 101, NARA II); McCulloch, *Men and Measures*, 165-168; Ross M. Robertson, *The Comptroller and Bank Supervision: A Historical Appraisal* (Washington, D.C.: Office of the Comptroller of the Currency, 1968), 60-61; Harry N. Scheiber, "The Pet Banks in Jacksonian Politics and Finance, 1833-1841," *Journal of Economic History* 23, (1963):196-214.

With novelty came inexperience and problems for the Comptroller's office. The terms of the national banking acts provided a sea of headaches for officials. Essentially, Congress paid careful attention to creating banks that issued money, demonstrated by the name for the law "to provide a national currency." Legislators did not elaborate on banking side of the equation, saying very little on what the "business of banking" looked like for the federal system. The new banks inundated the Treasury with questions about the scope of their powers under the act. In 1865, McCulloch asked the Attorney General, James Speed, if the comptroller could create national banks that did not issue paper money. He thought they could, but lamented "The questions thus stated deeply concern the great business interests of the country; and I must be permitted to express my regret that questions of such moment to the commercial community can not promptly have the benefit of a judicial and authoritative exposition." Over the course of the century, federal courts provided some degree of relief, weaving a new federal law of banking from the acts of Congress touching the NBS. For example, in 1884 the Supreme Court found that loans based on mortgages did not violate the National Bank Act.³⁵

Administrative problems also plagued the department. The "eyes" of the Comptroller of the Currency was the corps of examiners who travelled to each bank to examine the books and business of the member banks. Examiners were paid a flat fee, depending on the size of the bank. Because the fees were hardly enough to cover travel

³⁵ An Act to Provide a National Currency..., ch. 106, 13 Stat. 99, § 5. (1864); James Speed to Hugh McCulloch, September 4, 1865, Box 1, Opinions of the Solicitor of the Treasury Relating to Banks and Banking, 1865-1893, RG 101, NARA II; *Fortier v. New Orleans Nat'l Bank* 112 U.S. 439 (1884); Also see the cases compiled in Isaac Grant Thompson, *National Bank Cases, containing all Decisions of the Federal and State courts...* (Albany, N.Y.: John D. Parsons, 1878) and, Irving Browne, *National Bank Cases, containing all Decisions of the United States Supreme Court, and the Decisions of the State...* 1881 to 1889 (San Francisco: Bancroft-Whitney, 1889).

expenses and the ability to hire assistants, examiners rushed through their work, spending maybe half a day at each bank, before moving to the next. If a bank violated the law, the penalties at the disposal of the Comptroller of the Currency were also limited. The only real weapon wielded by the office was the power to rescind the charter of a wayward bank and liquidate their assets. In reality, comptrollers depended on their relationships with banks, and the prestige of the system to keep order within the NBS. Henry W. Cannon, comptroller from 1884 to 1885, complained “there are many ways of evading [the] law, and it is a physical impossibility for the Government to maintain...constant espionage over the affairs of the national banks.” Espionage on the banks proved difficult, but criminals who tried to counterfeit and rob the NBS found the federal government not so easy to evade.³⁶

The Greenback Union contained its own brand of crime and its own police force dedicated to protecting the system. Counterfeiting, the scourge of the antebellum system, also plagued the federal government’s new notes. But the nature of the crime required a new kind of police. Counterfeiting, before and after the war, took place in major cities like New York, where criminals could find adequate resources to print the notes, and enough activity to get their notes into circulation without detection. Most police officers or constables lacked the time and resources to properly infiltrate counterfeiting rings deeply embedded in the underworld of nineteenth century cities. The federal government lacked a true detective force as well. The U.S. marshalls were largely agents of the court, and not trained detectives. The Secret Service grew organically from an appropriation in the Legal Tender Act for the suppression of counterfeiting into its own agency to meet this need. The new agency and its chiefs had to overcome a barrage of issues, including

³⁶ Robertson, *The Comptroller and Bank Supervision*, 69-81.

working with local police forces. The first generation of agents did not have the right to arrest criminals, and depended on the common-law right of a citizen to arrest a person when they witnessed a crime. With time, the chiefs of the service set standards for investigations and developed relationships with local police forces to facilitate arrests. A relatively small force in the Gilded Age, the Service proved effective. By the end of the century, reports of counterfeiting and counterfeiting arrests dwindled. This new coercive power in the government transferred over to other parts of the national state. In an era where the government lacked a dedicated investigative branch, the Secret Service became the government's stopgap detective corps, investigating Ku Klux Klan attacks in the South, and various other federal crimes for other agencies.³⁷

Lastly, the needs of the Greenback Union required the federal government to acquire the technical competence to simply produce the paper money that people put in their pockets. The production of banknotes was a technically demanding field, requiring multiple printings, special inks, and elaborate engravings to ward off possible counterfeiters. It was so challenging that in the 1850s, two firms in New York City, the American and National Banknote companies, monopolized note production for state banks. Physically, the Legal Tender and National Banking Acts necessitated millions of notes. Chase contracted the American and Nation Companies to produce the bills, notes and bonds of the war. These private firms struggled to keep up with the demand for millions in federal notes, and frustrated Chase to no end. In July of 1863, Chase helped create the Bureau of Engraving and Printing, but it was Boutwell who expanded the

³⁷ David R. Johnson, *Illegal Tender: Counterfeiting and the Secret Service in Nineteenth-Century America* (Washington, D.C.: Smithsonian Institution Press, 1995); Christopher R. Waldrep, *Jury Discrimination: The Supreme Court, Public Opinion, and a Grassroots Fight for Racial Equality* (Athens, GA: University of Georgia Press, 2010), 108-109.

division during tenure in office. During that time, Director Edward McPherson established professional standards for security in counting the sheets of paper notes created (the private firms routinely lost entire sheet of notes to fire, theft or incompetence), and the plates used to create the notes. The private firms, and several Congressmen uncomfortable with a government monopoly on printing, pushed hard for a bill requiring the government to bid out its printing work to private firms in 1877. The Bureau survived the ordeal, impressing the Congressional committee that investigated the question with its professionalism and McPherson's arguments for the economy and safety of one government-controlled printing division, over private firms in the free market. It was, McPherson argued, "a means of protecting the Government from the exactions of these corporations." Moreover, he asserted that if it was the duty of the federal government to create the nation's coin before the war, it was the public duty of the government to provide the new national paper currency of the postwar era.³⁸

The Greenback State existed betwixt the decentralized antebellum state and the administrative state of the Progressive Era and the New Deal. Because it existed as a bridge between these two worlds of governance, much of the language we use to label the national state in the nineteenth-century does not accurately describe the Greenback State. Existing in the era of court and parties, in which much of what the state did through the judicial decree and patronage, managing the money system demanded a growing force of government officials and experts to administer the national currency. To be sure, politics and the judicial construction played a part, but they did not fully define the Greenback State. Moreover, the breadth and depth of the activities that the government undertook to

³⁸ Franklin Noll, "The United State Monopolization of bank Note Production: Politics, Government, and the Greenback, 1862-1878," *American Nineteenth Century History* 13 (2012), 18, 20-22, 28-35.

uphold the national monetary system was more substantial than the patchwork reforms undertaken by the government in other area, such as railroad regulation interstate commerce. Lastly, the government departments created to manage the greenbacks and NBS survived the Civil War Era. Thus the Greenback State does not fit in the declension narrative of federal authority after a burst of energy during the war that we see in other aspects of federal intervention in American life. The Greenback State did not disappear from public life as had the Freedmen's Bureau that touched so many lives in the South or the offices like the Military Director and Superintendent of the Railroads in the United States that managed northern railroads for the war effort, or the government factories used produce uniforms and weapons during the war. From their creation in a federal printing press, to their movement through federally regulated banks, overseen by a force of federal examiners and detectives, the new monetary system enmeshed the federal state into nineteenth-century life.³⁹

Undoubtedly, professionalization and expertise were a problem. McCulloch, and perhaps one other Secretary before 1900 had any pretensions to experience in economic and fiscal affairs. Chase, William Pitt Fessenden, Boutwell, Richardson and others were leaders in their party first and experts in economic affairs second. The Bureau of Printing had a reputation as haven for patronage appointees, and the first generation of agents at the Secret Service were roguish types hired for their contacts in the underworld of the

³⁹ Leonard D. White, *The Republican Era: 1869-1901* (New York: MacMillan Company, 1963), 2-5, 114-115; Daniel J. Elazar, "Comment, Government-Business Relations," in Gilchrist and Lewis, *Economic Change in the Civil War*, 106-107; Foner, *Reconstruction*, 153-170; Jim Downs, *Sick from Freedom: African American Illness and Suffering during the Civil War and Reconstruction* (New York: Oxford University Press, 2012), 9; Allan Nevins, *The War for Union*, Vol. 3, *The Organized War, 1863-1864* (New York: Scribner's Son's), 300-301; Thomas, *The Iron Way: Railroads, the Civil War, and the Making of Modern America* (New Haven, CT: Yale University Press, 2011); Mark R. Wilson, *The Business of Civil War: Military Mobilization and the State, 1861-1865* (Baltimore, MD: Johns Hopkins University Press, 2006).

North's cities. On this point, federal officials improved over the century. The Comptroller, the Secret Service, and the Bureau of Printing all sought to create a more professional corps of federal officials in the 1880s and 1890s. Nevertheless, overall technical competence was a problem that plagued the entire monetary system at every level.⁴⁰

The biggest single issue in the Greenback state was the overall ability or vision of the government to "see" the economy and understand the effects of policy. The politicians who passed policy, and the administrators who managed the system all subscribed to a distinctly modern belief, as one scholar described it, in "the possibilities for comprehensive planning" to achieve command over the world. At the highest levels of monetary theory, this held true for the postbellum generation. The drive for specie payments was in part a way to bring the country's economy in line with the natural "laws" of political economy, thus assuring American commercial growth. Beyond their grand theories, the postbellum generation lacked the economic tools to understand how the macro-economy worked, what they were trying to achieve, or how to measure it. In the twentieth century, the government and the Federal Reserve would hire legions of experts who would compile, analyze and distill information to produce inflation rate targets or Gross National Product figures that would assist policymakers in their decision-making process. When progressives pushed for a new income-tax regime at the turn of

⁴⁰ Daniel Carpentier, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovations in Executive Agencies, 1862-1928* (Princeton, N.J.: Princeton University Press, 2001), 38, 60-63; Bensel, *Yankee Leviathan*, 279-280; Keller, *Affairs of State*, 316; Robertson, *The Comptroller and Bank Production*, 75-79; Noll, "United States Monopolization of Bank Note Production," 21, 24; Johnson, *Illegal Tender*, 76-77, 94-99.

the century, the tools of German institutional economics informed American economists and policymakers in the creation of a new regime.⁴¹

The Civil War Generation lacked almost all these tools. In the nineteenth-century the methods of economic analysis were in their infancy. Trade journals like the *Merchant's Magazine* and *Banker's Magazine* contained simple tables of prices that allowed for limited views of general trends. Economic theory at the time centered on the simple question of the volume of what modern economists call “real money.” The postbellum generation did not grasp the ancillary effects of checking accounts on the volume of money in the country. Without these tools it was difficult to grasp what it meant when politicians railed against “contraction” or argued to let the economy “grow up” to the volume of greenbacks. One correspondent wrote Sherman “can you determine the point at which a healthy currency ends and an inflated one begins?” What exactly, he asked, should bushel of wheat cost, “before you can fix a standard, how can you talk of inflation?” The *Nation* noted the lack of expertise of policymakers in the new economy. “To bring fairly into play all the tremendous moral and physical forces which lie sleeping under the peaceful exterior of a modern commercial community, is a work of increasing difficulty, in which no statesman of our time can be said to be skilled.” The *Kansas Democrat* opined that at the time of the Civil War, the average legislator knew less about currency matters than “most common laborers in the days of Jackson.” The politicians agreed. In a debate over adding \$45 million in notes to the NBS system, Benjamin Butler told the House that he did not understand what the economic effect of

⁴¹ James C. Scott, *Seeing Like A State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven, CT: Yale University Press, 1998), 4-5; Allan H. Meltzer, *A History of The Federal Reserve*, vol.1, 1913-1951 (Chicago, IL: University of Chicago Press, 2003), 736-742; Ajay K. Mehrotra, *Making the Modern American Fiscal State: Law, Politics, and the Rise of Progressive Taxation, 1877-1929* (New York: Cambridge University Press, 2013).

this amount. This prompted Garfield to rise up and exclaim "Now" says Garfield "if such able and experienced men cannot tell what this bill is, why should we vote for it?"⁴²

In this environment, the Civil War generation looked for simple solutions to complicated problems. After reviewing the testimony of the intricate world of finance in New York City, Garfield's reaction was not to set up a federal agency to oversee the gold market, or regulate financial instruments, but a resolution to return the country to specie as quickly possible. The Greenback State, and the monetary system it managed, in every sense consisted of nineteenth-century answers to nineteenth-century problems.⁴³

The policy and style of governance in the Greenback Union did not fit any simple models of laissez-faire political economy, or the more interventionist style of the mid-Twentieth century. In many ways, monetary policy fit the antebellum imperative of promoting growth by providing the resources for individuals and groups to act. After this initial "release of energy," the state stepped back as individuals finished what government policy began. The monetary system, while very much a release of energy in the way it provided people with funds to do as they wished, also required a level of constant management and engagement almost unknown in the prewar era. Political parties, especially greenbackers and populists, spoke about monetary policy in the idiom of the "release of energy," promising a gigantic release that would either save or destroy America's industrial climb. Yet Treasury operations on Wall Street, the examinations

⁴² Walter T. K. Nugent, *Money and American Society 1865-1880* (New York: Free Press 1968), 264-266; Walter A. Friedman, *Fortune Tellers: The Story of America's First Economic Forecasters* (Princeton, N.J.: Princeton University Press, 2014), 6-7; Bray Hammond, "The Banks, the States and the Federal Government," *The American Economic Review* 23, 4 (Dec., 1933), 630; Charles F. Dunbar, "Deposits as Currency," *The Quarterly Journal of Economics* 1 (July 1887): 401-419; *Kansas Democrat* (Independence, KS), May 1, 1874; *Cong. Globe*, 41st Cong., 2nd sess., 4949 (1870).

⁴³ Nugent, *Money and American Society*, 266; "Minutes of the Committee of Banking and Currency, 41st Congress 2nd Session to 41st Congress 3rd Session," RG 233.5, NARA I, 223.

conducted by the Comptroller, and the policing action of the Secret Service were all meant to stabilize and regulate the national economy. Whatever the medium, the rise of the Greenback Union heralded a closer relationship between national state and the market in American political economy that vibrated between an impulse to foster prosperity and an impulse to stabilize and regulate the national market through government force.⁴⁴

The Greenbacker's Millennium

At the level of politics, the realization that the federal government possessed a powerful tool that could alter the economy transformed party politics and political culture in the postwar era. After the sectional conflict of the 1850s and 1860s, economic issues returned to political debate in the late 60s and 70s. The political battles over the market revolution in the age of Jackson gave way to a national concern about how best to foster the growth of America's industrial rise, or how to ameliorate its worst effects. The tariff, of course, reemerged as major source of conflict between the parties in this period, as well as that nature of federal taxation. Like these other policies greenbacks and national banks were part of what one critic called "the prevailing mania for surrendering individual control into the hands of the general government." But tariffs and taxes never held the political imagination to the same degree enjoyed by monetary policy in the same period. The *New York Times* suggested that the popularity of the greenback issue testified to the voter's desire for "an idea for which they can rally, and issue to fight upon...on the live questions of the hour." As evidence of this fact, a number of small third parties proliferated in the Gilded Age, almost all of whom put monetary policy at the center of

⁴⁴ James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison, WI: University of Wisconsin Press, 1956), 3-32; David A. Moss, *When All Else Fails: Government as the Ultimate Risk Manager* (Cambridge, MA: Harvard University Press, 2002), 1-21, 85-122. Moss discusses money management, but skips over the Civil War Era in his work.

their programs for economic development. The currency question, as it was often called, became the central means in policy and rhetoric for capitalists, farmers, merchants, and workers to articulate their vision for their economic futures from Reconstruction to the Presidential Election of 1893. In other words, along with a new state apparatus and economic relationships, the Greenback Union contained its own brand of politics.⁴⁵

The rise of this new politics depended on a structural realignment on the money issue in American federalism that centralized the gaze of the public on national authority. From the colonial period through the Revolution, voters often looked to their governments to create more money as tool to remedy the economic woes of the moment. After the creation of the Constitution, a national monetary politics was sporadic and irregular because Congress did not have a full grip on the power to create a currency. This, of course, was the intent of Alexander Hamilton, who in proposing the First Bank of the United States (BUS), stressed that putting the money power in the hands of a democracy was too seductive a power. The chartering of two Banks of the United States attracted some debate about inflation, since everyone acknowledged that the bank would have an impact on capital in general. But since the bank was in the hands of its board of directors after its formation, voters could only register their economic desires indirectly at these chartering debates. The great exception to this pattern, of course, was the Presidential election that followed Jackson's veto of the 2nd BUS charter. Fighting about the coinage, as the Gilded Age generation did, held no attraction in the antebellum period. The Jackson administration's push to revalue the gold currency, while important to the hard money project of the Jacksonians, generated almost no national conflict as

⁴⁵ *Commercial and Financial Chronicle* 1 (1865), 708-709, quoted in Keller, *Affairs of State*, 173. *New York Times*, May 5, 1878.

well.⁴⁶ Only during the election of 1832 and debates to create the Treasury notes, especially during the War of 1812 and the Panic of 1837, did members of Congress feel the warmth of popular opinion on the course of national monetary policy

The states were the main arenas for voters to argue over money and credit. Jackson's veto of the 2nd BUS, and the resulting death of national banking, effectively "atomized" the issue of inflation by redirecting attention to the state banks, and the state legislatures that controlled them, as the only viable tools of inflation in the market. Whigs and Democrats within the states battled over the structure of their banking systems, and in some cases the need to destroy their banks, to attract voters up to the decade of the 1850s. The 1850s witnessed a general decline in the issue overall as most states adopted the free banking program pioneered in New York. The destruction of the state bank notes, and the creation of the greenbacks re-consolidated and amplified the politics of money at the national level.⁴⁷

Greenbacks and national banks redirected attention from the states to Congress. Almost immediately after the creation of the greenbacks and national banks, northerners turned their gaze to the federal government with petitions praying for Congress to use these policies to fix their social and economic woes. This process only intensified during Reconstruction. Democrats and Republicans incorporated monetary planks into their platforms, and the currency issue constantly vied with the issues of Reconstruction in the

⁴⁶ Joseph A. Ernst, *Money and Politics in America, 1755-1775: A Study in the Currency Act of 1764 and the Political Economy of Revolution* (Chapel Hill: UNC Press, 1973); E. James Ferguson, *The Power of the Purse: A History of American Public Finance, 1776-1790* (Chapel Hill: UNC Press, 1962); Bray Hammond, *Banks and Politics in America: From the Revolution to the Civil War* (Princeton, NJ: Princeton University Press, 1957), 117, 230-243; Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1953), 74-76, 123-124, 126-127; John M. McFaul, *The Politics of Jacksonian Finance* (New York: Cornell 1972), 115-116.

⁴⁷ Sharp, *Jacksonians Against the Banks*; Shade, *Banks or No Banks*; Leonard C. Helderman, *National and State Banks*; Holt, *The American Whig Party*, 684-689; Hurst, *A Legal History of Money*, 176-181.

minds of northern voters. Almost everyone in politics was transfixed by the possibilities of national monetary policy to transform their lives, but not everyone. Frederick Douglass, focused on the plight of African Americans, could not understand the fire behind the issue. In 1878, he told a gathering of New York Republicans that “there are some things in the world, and financial questions are among them, which like *dust*, will settle themselves, provided that they are well let *alone*.”⁴⁸

The symbiotic process between government policy and voters was central to this to the significance of the money issue. The Civil War gave rise to a new central state with new powers and a new resolve to reshape American political economy after years of southern dominance in policymaking. After the war, the states were hotbeds of new social and economic legislation. The federal government, long out of sight in national policy, played an increasing direct role in the economy. The tariff, western land policy, federal-debt management, taxation, and federal subsidies to railroads demonstrated the weight of federal lawmaking in the market. That power attracted attention.

Manufacturers, capitalists, laborers, farmers, even the widows who received Civil War pensions, all looked to Congress to legislate in their interests. In its more nefarious version, economic elites would lobby, cajole, and sometimes bribe members of Congress to achieve their policy aims. In the world of railroads, the most significant competition between roads took place in the halls of Congress and not in the marketplace. Repeated

⁴⁸ Campaign Speeches (3) on Behalf of Alonzo B. Cornell for Governor of New York (Series: Speech, Article, and Book File---A: Frederick Douglass, Dated) http://memory.loc.gov/cgi-bin/ampage?collId=mfd&fileName=23/23014/23014page.db&recNum=1&tempFile=./temp/~ammem_R6db&filecode=mfd&next_filecode=mfd&itemnum=1&ndocs=2 in the Frederick Douglass Papers, American Memory Collection, LOC. [Accessed 5 December 2008]; Bense, *The Political Economy of American Industrialization*, 133-143.

over many times, these policies created a postwar policy regime through which Americans articulated solutions to the problems of their time.⁴⁹

The creation of the Greenback Union during the Civil War was perhaps the most important new policy regime of the postwar era. Unlike the other national economic issues, money and banking touched everyone in the national economy in a very direct way. Conceived of as an ad hoc answer to the financial problems at the start of the war, the greenbacks attracted considerable attention from cash poor parts of the North as a novel tool for solving their problems with money and credit, after years of dealing with unstable state bank notes. Parties altered course in places where greenbacks were popular in order to capture the vote. The Ohio election of 1867, and the presidential election of 1868 both bore witness to this process. After the National Banking Act of 1864, economic elites chose the gold standard and the NBS as their policy positions in the national money-debate. The beneficiaries of greenbacks and the NBS made their voices heard time and time again through their representatives in Congress. That feedback loop between voters and policymakers cemented the place of the greenbacks and NBS in American business and political life.⁵⁰

⁴⁹ Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (New York: Cambridge University Press, 1990), 303-348; Brian Balogh, *A Government out of Sight: The Mystery of National Authority in Nineteenth-Century America* (New York: Cambridge University Press, 2009), 285-291, 303-308; Leonard Curry, *Blueprint for Modern America: Non-Military Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968); Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge, MA: Harvard University Press, 1997); White, *Railroaded*, 93-102; Margaret Susan Thompson, *The "Spider Web": Congress and Lobbying in the Age of Grant* (Ithaca, N.Y.: Cornell University Press, 1985); Paul Pierson, "The Study of Political Development," *Journal of Policy History* 17 (2005):34-51.

⁵⁰ "Petitions on the National Currency, Folder HR 37A G.20.2, 37th Congress, Records of the Committee on Ways and Means, RG 233.27, National Archives, Washington, D.C.; Robert P. Sharkey, *Money, Class, and Party: An Economic Study of Civil War and Reconstruction* paperback ed., (Baltimore: Johns Hopkins University, 1967), 92-97; Unger, *The Greenback Era*, 89-94; Redlich, *The Molding of American Banking*, 2:121-124; Bense, *Political Economy of American Industrialization*, 133-143.

The nature of the postwar party system, however, proved incapable of harnessing debate about the money question and led to muddy divisions between the major parties on monetary policy. In the antebellum period, the issues of the market revolution created cleavages at the national, state, and local levels. The Whigs and Democrats created strong national parties that offered clear policy choices at every level of the federal system. Issues like the Bank of the United States divided voters within North Carolina and New York, creating the possibility of cross-sectional parties organized around these issues. Moreover, since the states controlled money through their banking policies, state parties could provide locally tailored proposals that interlocked with the national message. The nationalization of money and banking shattered this national pattern of conflict. The death of state-level debates on monetary policy forged new regional and class divisions that did not fit within the old two-party patterns of the Whigs and Democrats. Now voters in North Carolina and New York found that the disagreements between each other were greater than their divisions within.⁵¹

The major parties of the Civil War struggled to stay salient in the new context. Fundamentally shaped by the sectional conflict and the issues of the war—the end of the war and the rise of American industrialization created new issues that polarized voters in new ways. These conditions might have spelled the doom of the Republicans and Democrats, and led to the rise of new parties formed around the issues of the Gilded Age.

⁵¹ Michael F. Holt, "From Center to Periphery: The Market Revolution and Major-Party Conflict, 1835-1880," in Melvyn Stokes and Stephen Conway, eds., *The Market Revolution in America: Social, Political, and Religious Expressions, 1800-1880* (Charlottesville, VA: University of Virginia Press, 1996), 224-256; Lee Benson, *The Concept of Jacksonian Democracy: New York as a Test Case* (Princeton: Princeton University Press, 1961), 47-63; Harry L. Watson, *Jacksonian Politics and Community Conflict: The Emergence of the Second American party System in Cumberland County, North Carolina* (Baton Rouge: LSU, 1981); Ritter, *Goldbugs and Greenbacks*, 113-123; Foner, *Reconstruction*, 460-511; Holt, *Political Crisis of the 1850s*; Holt, *The Whig Party*, 789-791, 952-954.

Indeed, for much of Reconstruction, Republicans and Democrats suffered from repeated bouts of intraparty strife over economic issues.

The sectional conflict, the war, and Reconstruction shifted party programs from an intense focus on political economy to the issues of westward expansion, wartime powers, race, civil rights and southern reconstruction. The Republican Party, built around these issues, found it difficult to project a coherent economic program that would keep old Democrats and Whigs together in the new political world of the 1870s. Republicans, like Lyman Trumbull, Salmon P. Chase, and Francis Preston Blair, Jr., defected back to the Democratic Party. The Democrats fought among themselves as well. The hard-money men of the East like August Belmont or Samuel J. Tilden found that they could not see eye to eye with George Pendleton and the greenbackers of the Midwest. Nevertheless, party leaders did not want to throw away patronage networks and local, state, and national organizations that took years to build. As one constituent put it to John Sherman “the Republican Party is too valuable an organization to crumble because no longer held together by the bonds that created it.”⁵²

Rather than be torn apart into new factions and parties built on new issues, the old parties fought to maintain their organizations and power by offering compromises, soft-peddled their positions on monetary policy, or used another issue altogether to rally voters. Sometimes strong divisions could appear, for example the vote on specie resumption in 1875, and the Presidential election of 1896. Yet mixed messages ruled the day in the 1870s. In 1868 the Ulysses S. Grant endorsed both the end of contraction, and

⁵² Unger, *The Greenback Era*, 84-94; Erik B. Alexander, “ ‘A Revival of the Old Organization’: Northern Democrats and Reconstruction,” (PhD diss., University of Virginia, 2011), 44-60; John G. Sprout, *The Best Men: Liberal Reformers in the Gilded Age* (New York: Oxford University Press, 1968), 87; M.F. Force to John Sherman, June 9, 1870, Sherman Papers, Vol.126, LOC, quoted in Barreyre, “The Politics of Economic Crises,” 161.

the eventual resumption of specie payments to satisfy different parts of the country. John Sherman's package of free banking, resumption of specie payments, and the continued circulation of the wartime greenbacks represented the strongest example of the compromise impulse. To cement their voting base, the Republicans evoked the memory of the war, and the issues of southern reconstruction. "Waving the Bloody Shirt," emerged as a popular means of keeping the Republican coalition together through the 1870s. Even after the 1870s, compromise ruled the politics of silver within Republican ranks as evidenced by the form of the Bland-Allison Act. Compromise or redirection by the major parties, however, did not suppress all dissent.⁵³

The lack of clear-cut national party programs led to a flowering of third party movements that put money at the center of their political programs. Arguably, the first of these was the Liberal Republican Party of 1872. The liberal cause eventually attracted all sort of anti-Grant sentiment in the election that year, but the intellectual core of the party were northeastern Republicans dissatisfied with the state-centric legislation of the postwar party. Along with a call for an end to Reconstruction, the Liberals demanded free trade and a return to specie payment. Defeated in the election of 1872, the Liberals found a new hero for their message in the unlikely person of Grant and his veto message. After 1875, many liberals returned to the Republican flock and so-called "goldbugs" made their home in either of the two major parties.⁵⁴

Greenbacks bound together the various antimonopoly movements of the Gilded Age. Tapping into old Jeffersonian-Jacksonian themes, the antimonopoly movement in

⁵³ Nicolas Barreyre, *L'or et la liberté: Une histoire spatiale des Etats-Unis après la guerre de Secession* (Paris: Ecole Hautes Etudes En Sciences Sociales, 2014).

⁵⁴ John G. Sproat, *"The Best Men:" Liberal Reformers in the Gilded Age* (New York: Oxford University Press, 1968), 170-192; Andrew Slap, *The Doom of Reconstruction: The Liberal Republicans in the Civil War Era* (New York: Fordham Press, 2006), 96-97.

this period espoused the idea that economic elites wielded too much power in the market and politics that destroyed true competition and subverted the true producers of wealth in society. Made up of various farmer's and labor movements, the "producers" of society, antimonopolists sought regulation of things like railroad freight prices as means of loosening the grip of elites in the economy. Monetary policy proved as popular as a way to channel the anger of both farmers and labor about economic inequality during the Gilded Age in a way that the movement for the eight-hour day or regulation of railroads never did. Since the volume of money affected the price of a bushel of wheat as much as it did an hour's wage, both groups could find common ground in their distaste for hard money and direct their anger at the monopoly of bankers in the East.⁵⁵

The first national organization to put greenbacks at the center of their program was the National Labor Union, an assembly of various trade unions, in 1866. The Panic of 1873, and the depression that followed, expanded the appeal of the greenback program. In 1874 a group of Indiana reformers put out a national call for all "greenback men" to meet in Indianapolis that year. After several more meetings, delegates from across the country formed the National Independent Party or Greenback Party in 1876. Later called the Greenback-Labor Party, the Greenback Party elected a number of congressmen, and was even more successful in local and state elections. The also ran presidential candidates in 1876, 1880, and 1884. The movement showed cross-sectional popularity finding electoral success in places as diverse as Texas, Maine, and Kansas.

⁵⁵ Ritter, *Goldbugs and Greenbacks*, 3-9; Montgomery, *Beyond Equality*, 237-241; White, *Railroaded*, 111-112

Most importantly, greenbackers won enough elections that Democrats and Republicans scrambled to either co-opt or smother their message, especially in the West.⁵⁶

The silver issue proved to be even more popular with voters than the pure greenback faith. After 1875, Greenbackers joined free silver supporters in the calls for inflation and found support among workers and farmers groups such as the Knights of Labor and the Grangers. A dismal showing in the 1884 Presidential Campaign spelled the death of the Greenback party. But the greenback issue lived on in the programs of the People's Party, also known as the Populists, who presented a hybrid of silver and greenbacks in their vision for the future.⁵⁷

Never large enough to unseat either parties place in the system, the Greenback party died from a thousand cuts by fusing with Democrats in elections or found itself outmaneuvered by the machines of the older parties. In the end, these various movements did succeed in thrusting the money question into discussions where the national parties would have preferred to avoid it. Moreover, greenbackers and their ilk helped push the Democrats from the hard money politics of Jackson's day to the message of William Jennings Bryant in his Cross of Gold speech on the 1896 presidential campaign.⁵⁸

⁵⁶ Unger, *The Greenback Era*, 293-321, 375-386; Montgomery, *Beyond Equality*, 433-447; Ritter, *Goldbugs and Greenbacks*, 48-52; Paul Kleppner, "The Greenback and Prohibition Parties," in Arthur M. Schlesinger, ed., *History of US Political Parties: Volume II, 1860-1910, The Gilded Age of Politics* (New York: Chelsea House, 1973), 1549-1566; Margaret Buker Jay, "The Greenback Road: A Political History of the Greenback Party in Maine," (M.A. Thesis, University of Virginia, 1977); Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999), 34-37; Matthew Hild, *Greenbackers, Knights of Labor, and Populists: Farmer-Labor Insurgency in the Late-Nineteenth-Century South* (Athens, GA: University of Georgia Press, 2007).

⁵⁷ Unger, *The Greenback Era*, 338-349; Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America*, (New York: Oxford University Press, 1976), 13-22, 141-142; Charles Postel, *The Populist Vision* (New York: Oxford University Press, 2007), 150-153.

⁵⁸ Unger, *The Greenback Era*, 336-339; Kleppner, "The Greenback and Prohibition Parties," 1550, 1558-1566.

Behind all the political planks and third party movements was the growth of the idea that within monetary policy lie the solutions to the economic, social, and political ills of the era. One strand of that thought saw monetary policy a necessary condition to America's industrial takeoff. Henry C. Carey, the voice of whiggish economic thought before the war, conjoined the greenback and protectionist tariffs in his writings after the Civil War. In Carey's view, the Greenback and the tariff insulated the American manufacturer from British goods and British flows of gold. The ironmasters of Pennsylvania, and trade associations like the American Industrial League latched onto Carey's thought. Hard money men had no Carey, but it was a wide spread argument among Northeastern financial writers that paper money hurt America's place in the world flow of capital. The growing US economy needed capital from abroad, and the greenbacks drove up the cost of borrowing from the world's largest creditor nation, the British, who were committed to the gold standard. This kind of argument permeated money politics in the nineteenth-century, but these were not the ideas that gave rise to parties and mass political movements. Both hard and soft money advocated held a more catholic view of what the nature of the monetary system could do for society.⁵⁹

At the core of the hard money movement was a call for civilization, law, science, and morality in the economic order of the country. In general, the goldbugs were liberals who believed in what one historian called "government abstention from the machinery of the social universe." Gold was central to their vision of the natural order. Along with the sister policy of free trade, academic writers such Amasa Walker and newspaper editors like Godkin, working in the anti-mercantilist tradition of David Ricardo, scorned fiat

⁵⁹ Unger, *The Greenback Era*, 50-60; Sharkey, *Money, Class, and Party*, 153-156; Richardson, *The Greatest Nation on Earth*, 19-27.

money as affront to the laws of political economy. At its most technical, hard money adherents argued that gold was the best possible money in the world because the labor that went into mining it perfectly reflected its value on the market. Thus it absorbed wealth, and unlike other media would not degrade or rot; it was nature's perfect store of value and would not fluctuate with time. More commonly hard money men rested on morality and tradition to prove their point. The idea that God deemed gold money was a strong theme among liberals in the Religious press and public officials like Hugh McCulloch and state Supreme Court justices. Paper money corrupted morals and these writers associated paper money with "barbarism" and gold with progress and civilization. Pulling these themes together, Walker explained, "the true Standard of Value exists in nature, is subject to nature's laws, and recognizes no other. Governments have rightfully nothing to do with it...Of all social wrongs, this interference [greenbacks] is one of the greatest. It strikes not only the material interests of the state, but the morals of the people. It establishes injustice by law, and introduces every species of speculation and fraud."⁶⁰

⁶⁰ Nugent, *Money and American Society*, 34-38; Walter T. K. Nugent, *The Money Question During Reconstruction* (New York: W.W. Norton, 1967), 54-58; Alexander Del Mar, *Gold Money and Paper Money*, (New York: Anson D.F. Randolph, 1863); *Bankers Magazine* (1867), 725, 738.



In this cartoon, Thomas Nast suggests that Republicans who support more greenbacks like William D. “Pig Iron” Kelley (pictured) will unleash labor conflict in America reminiscent of the sans-culottes of the French Revolution. Thomas Nast, “Iron and Blood—This “Don’t Scare Worth A Cent” *Harper’s Weekly* (July 31, 1875), 624.

The more radical version of greenbackersim embraced by farmers and labor promised nothing less than the antimonopoly millennium. Solon Chase, leader of the Greenback Party in Maine, described the moment his converted to the greenback idea in quasi-religious terms, calling it “getting religion,” said that in 1873 “like Saul of Tarsus” the idea struck him that the greenbacks were the key before breakfast and rushed out to convert the town by the afternoon. Pamphlets on the possibilities of the greenbacks flooded the country. The push for paper money in the 60s and 70s owed much to the legacy of Jeffersonian-Jacksonian thought. A concern for the “producers” of society

against the “monopoly” of the banks permeated this strain of thought. In the greenback worldview, the tillers of the soil and the worker in the factory produced the actual wealth and value in society. But through the gold standard and the NBS, financial elites, who did not live by the sweat of their brow, could manipulate and cheat the producers out of their rightful value. Up to this point the argument is mirror image of the anger of radical Jacksonians against the state banks. The solution of the loco focus was hard money that could not be manipulated by the banks. However, the scarcity of coin meant high interest rates. The Civil War provided a new answer; greenbacks cut the capitalists out of the picture by placing the money power in the hands of the people themselves by way of Congress.⁶¹

No person was more important in crafting a utopian doctrine around the greenback than Alexander Campbell. Campbell, owner of an iron foundry in Pennsylvania, built on the work of Edward Kellogg. Kellogg belonged to cadre of economic thinkers writing in the shadow of the long depression of the 1840s. Kellogg’s basic complaint was that high interest rates plagued the U.S. He advocated a national bank and a federal safety fund to stabilize the system and use a new government currency to bring down rates. Perceiving the changes wrought by the war, Kellogg published a new version of his 1849 treatise, and embraced the greenback. Campbell, however, made the greenback as the crux of his system. Agreeing with Kellogg about the nature of interest rates, Campbell thought the greenback provided a way to get around the power of banks to control the money supply. To this end, he proposed that Congress issue greenbacks. Holders of these notes had the option of changing their notes for a new “interconvertible” bond bearing 3% interest. His theory was that as soon as the money supply became too

⁶¹ Quoted in Jay, “The Greenback Road,” 27.

large, people would reinvest their funds in the bond, thus soaking up excess paper in the economy. When business required greater liquidity, people would cash in their 3% bonds, interjecting greenbacks into the system. Campbell understood the scheme as tool of social and political change. With interest lowered, he thought that increased productivity fueled by cheap money would rectify the unequal distribution of wealth in America. In an 1868 treatise, he held that the great question of the postwar era was the relations between capital and labor. Democracy and the ballot box was not enough to overcome the power of capital's "unjust centralizing power." Rather the greenback and the interconvertible bond would "make us a homogenous family of States—one in interest, one in sympathy, and one in purpose. United by these strong ties, our Union would stand proof alike against the machinations of enemies within and the assault of foes from without." The Campbellite doctrine became the central pillar of the National Labor Union's platform endorsing greenbacks in 1866, and afterwards the inconvertible bond scheme lie at the heart of the Greenback Party's platforms in the 70s and 80s.⁶²

The Campbell solution, however, stood a halfway point in the history of American attitudes towards the relationship between market and state. In its specifics Campbellite approach mixed the laissez-faire of Jacksonian political economy with the more government-oriented approach to capitalism favored by progressives at the end of the century. The greenback faith required a greater degree of reliance on federal authority through the creation of fiat currency and a federal debt to support that currency all of which were anathema to old Jacksonians. In 1877, in the wake of a string of labor unrest that year, a working-men's meeting held in Indianapolis declared themselves for federal

⁶² Unger, *The Greenback Era*, 95-100, 107-118; Alexander Campbell, *The True Greenback; or The Way to Pay the National Debt without Taxes, and Emancipate Labor* (Chicago: Republican Book and Job Office, 1868), 4-6, 38, 40.

authority and against banks and credit when they resolved that “the power to issue money and regulate its value is given to the Congress of the United States alone.” Pondering on the possibilities of the greenbacks also led ideas about money that were ahead of their time. Writers like William A. Berkey argued that money as medium did not require the backing of a commodity like gold. The true value of money, he proposed, rested solely with the credit of the government that issued it, presaging ideas about fiat currency in the twentieth century.⁶³

Campbell’s doctrine, or its derivatives, did not call for a sustained hand of the government on the lever of society. Once put into operation, greenbackers believed that the interconvertible bond would be a sort of perpetual machine that would not require further action or adjustment by Congress. The greenbackers of the 1870s did not blame capitalism as a system for their woes in life. Rather they blamed poor policies such as the NBS or Specie Resumption for the unfairness in the same way that Locofocos attacked the BUS or government subsidies. The coming of the millennium only required one decisive push from the government to set all right in the world. William Halley, a leader in the National Greenback party and the Knights of Labor, testifying before Congress explained that depressions were not the product of overproduction but “alone in the scarcity of money and failure of credit.” The greenbacker’s millennium was not a drive for aggressive government authority in the market; rather it was an attempt to achieve the producer’s republic envisioned by Jefferson with a new tool of the postwar era.⁶⁴

⁶³ Nugent, *Money and American Society*, 202-203; Unger, *The Greenback Era*, 100.

⁶⁴ “Indianapolis Working-Men’s Resolutions, August 13, 1877, “ in Kleppner, “The Greenback and Prohibition Parties,” 1588; Halley quoted in Richard Schneirov, *Labor and Urban Politics: Class Conflict and the Origins of Modern Liberalism in Chicago, 1864-97* (Urbana, IL: University of Illinois Press, 1998), 186.

The anti-monopoly movements of the late nineteenth-century carried on the greenback hope of social equality through monetary policy in their push for free silver and greenbacks in the 1880s and 90s. While the silverites argued for a different medium that would bring about an antimonopoly America, the emotional anti-bank, pro-producer rhetoric of free silver linked that movement with the greenbackers of the 1860s and 70s. In fact, the Populists, or People's party, fused greenbacks and silver into their monetary theories and political platforms. Perhaps most important of all, the Populists and antimonopoly movements continued a tradition born during the war of looking to national monetary policy, and the sphere of national politics as the place to redress their grievances.⁶⁵

A new economy, a growing federal state, the pattern of party politics, and a political culture centered around money, all testified to the significance of the federal government's power over money forged in the Civil War. In the Specie Resumption Act of 1875, the Republicans attempted to harmonize the economic and sectional conflict over the money question in national politics. In their formula of resumption without contraction and national free banking, the Republicans assured that federal paper money, be it greenbacks, national bank notes, or silver certificates, would circulate throughout the country for the rest of the century. The structure of the national banking system funneled money across the country, linking the various regional markets into a true national marketplace. The two parties of the war years, Republicans and Democrats, struggled to harness the appeal of the money power for votes, without tearing their parties apart. In their efforts to find compromise, or push aside the money question, various third

⁶⁵ Unger, *The Greenback Union*, 332-333, 336-340; Goodwin, *The Populist Moment*, 135-141; Postel, *The Populist Vision*, 51-153.

parties emerged in the Gilded Age to force. No matter the party, thinkers, writers and politicians seized on the government's new national power as a means of keeping society and politics equal and democratic during the pains of industrialization.

Epilogue

Fiat Greenbacks

The Elusive Moment

Perhaps the most elusive moment in the creation of the Greenback Union was the point at which political parties, federal officials, and Americans generally embraced full government power over their money. In everyday policy and practice, Americans placed the power over money firmly in the hands of the federal government starting with greenbacks of 1862. Elbridge Spaulding, author of that first act, perceived a shift in practice when Secretary of the Treasury George S. Boutwell ordered new plates to create a fresh series of greenbacks in 1869. Spaulding thought the new plates and the new notes unconstitutional because the war, the only justification for federal paper money, was over. Over the course of the Civil War and Reconstruction, in the policies of Congress, in the opinions of state and federal courts, in the planks of political parties, and the demands of citizens across the country, the Civil War transformed the government's temporary power to create money in an emergency into a constant fact of public life in the United States. The closest any official organ came to expressing that change was the Supreme Court in the case of *Juilliard v. Greenman* in 1884. Properly enough, it was a greenbacker, Benjamin Butler, who helped push the Supreme Court to fully articulate the scope of federal power.¹

¹ Spaulding, *History of the Legal Tender Paper Money* (1875), 13; Franklin Noll, "The United States Monopolization of Bank Note Production," 22; *Juilliard v. Greenman* 110 U.S. 421 (1884).

1884 was a bittersweet year for the greenback movement. Cresting in popularity during the election of 1878, the Greenback party declined in strength with each passing election. In 1880, James Weaver of Iowa, the Greenback Party candidate for president that year, polled a dismal 3.3% In 1884, greenbackers fused with other antimonopoly movements and the Prohibitionist Party to nominate Benjamin Butler of Massachusetts. Butler, a former Democrat turned notorious Union general, then radical Republican during Reconstruction, then back to being a Democrat, proved a popular choice for the various antimonopoly movements. Butler had never wavered in his support for the greenbacks, the Ohio Idea, the eight-hour day, or the regulation of railroads. Moreover, he was wealthy enough to help pay for his own campaign. Butler, of course, knew that he could not win an outright victory in the Electoral College. His hope was that the Greenback party could spoil the election by gaining enough votes to throw the selection of the President to the House, where he could have a chance of using his contacts and experience to his own ends. On all fronts the traditional parties routed the greenbackers. Butler, outspent and outmaneuvered by the Republicans and Democrats, garnered a paltry 1.7% of the national vote. The defeat marked the end of Butler's political career and the end of the Greenback Party. After a failed attempt at a party convention in 1886, a convention dominated by labor groups dismantled the Greenback Party and refashioned it as the national Union Labor Party in 1887. Many of the western agrarian greenbackers, feeling ostracized by the focus on labor issues, would find a new home in the Populist Party's crusade at the end of the century.²

² Edward T. James, "Ben Butler Runs for President: Labor, Greenbackers, and Anti-Monopolists in the Election of 1884," *Essex Institute Historical Collections* 113 (1977):65-88; Paul Kleppner, "The Greenback and Prohibition Parties," in Arthur M. Schlesinger, ed., *History of US Political Parties: Volume II, 1860-*

Butler, nevertheless, still managed to deliver a great victory to the friends of the greenback that same year. In the Specie Resumption Act of 1875, Congress failed to clearly spell out the fate of the wartime greenbacks. Yes, they would be redeemable for gold, but the law was ambiguous as to what the Treasury was supposed to do with the notes presented at their counter. Under the original legal tender laws, the Treasury retained the right to reissue the notes paid into the Treasury. To keep all sides happy, the Congressional caucus that drafted the Resumption act stayed quiet on the question of reissue. In 1878, still in the maw the depression caused by the Panic of 1873, Congress passed a law that explicitly preventing the Treasury from contracting the currency and authored the reissue of the war time notes. Republicans like Simeon P. Chittenden, a staunch supporter of resumption in the House, found the act controversial because it implied that the government had the power to issue greenbacks in times of peace, as well as times of war. The Supreme Court, of course, gave mixed messages on this question, with the dissent in *Hepburn* and the majority opinions in *The Legal Tender Cases* heavily emphasizing the wartime context to justify the necessity of Legal Tender Act. To clear the air, Chittenden and Butler agreed to set up a test case for the Supreme Court that would settle the question of Congress's power to issue paper money in time of peace and time of war.³

Juilliard v. Greenman rehearsed many of the arguments already made in the *Legal Tender Cases* and *Hepburn v. Griswold*. Chittenden and Butler's case involved the sale of 100 bales of cotton by Augustus D. Julliard of New York city to Thomas S.

1910, *The Gilded Age of Politics* (New York: Chelsea House, 1973), 1564-1565; Nathan Fine, *Labor and Farmer Parties in the United States, 1828-1928* (New York: Rand School of Social Science, 1928), 71-72.

³ *Juilliard v. Greenman* 110 U.S. 421; Fairman, *Reconstruction and Reunion*, 1:771-772; *Spaulding, History of the Legal Tender Paper Money* (1875), 15-16; *The Nation* 28 (March 13, 1879), 173.

Greenman of Connecticut for \$5,122.90 in 1878. Greenman tendered 22.50 in gold coins, forty cents in silver, and \$5,100 in greenbacks. Chittenden refused the tender, arguing in Federal Circuit Court that the greenbacks authorized by the Act of 1878 were unconstitutional because Congress could only issue paper money in time of war. The lower court held for Greenman. The interested parties had to wait five years to get a hearing and a decision from the Court. By that time, resumption was an accomplished fact and the delicate balance of gold and greenbacks seemed to be working. Even the liberal *Nation* feared that an adverse decision against the greenbacks would prove disastrous to the economy.⁴

In an almost unanimous decision the Supreme Court held that Congress could create a paper currency in any form they pleased at any moment of their choosing, in time of peace or in time of war. Almost all the old dissenters from the *Legal Tender Cases* were now gone. A new generation of justices, along with Miller, Strong and Bradley consolidated the power that they defended during Reconstruction. Justice Horace Gray, Jr., raised up from his seat on the Massachusetts Supreme Court by Chester A. Arthur, wrote the opinion for the majority. Gray was the perfect justice to write the opinion, a solid nationalist who Theodore Roosevelt once remarked was “sane and sound on...great national policies.” On legal tender, Gray returned to *McCulloch v. Maryland* to support Congress’s choice of policy means to support their powers. To establish the money power, Gray picked up on several important instances in the history of the government’s power over money. He returned to the Constitutional Convention Debates and cited Nathaniel Gorham’s comments in 1787 that the power to issue a currency was implied in the power to borrow. Chase’s opinion in *Veazie Bank* was also an important authority for

⁴ *Juilliard v. Greenman* 110 U.S. 421 at 421-22.

his opinion. Yet the most interesting turn was Gray's usage of the concept of sovereignty. Gray argued that the power to issue notes and make them a legal tender were "a power universally understood to belong to sovereignty in Europe and America at the time of the framing." Long exercised by governments in America since the colonial era, being one of the "powers belonging to sovereignty in other civilized nations", and not forbidden by the Constitution, Gray found for the government's broad power to make paper a legal tender. Moreover, Gray insisted that all determinations of policy belonged to the sphere politics, and outside the jurisdiction of the courts.⁵

One dissenter from the *Legal Tender Cases* was well and alive. Stephen Field, now in his third decade on the Court, provided the sole dissenting vote and voiced the concerns of an older generation on paper money. Field denied Gray's assertion that the money power rested with Congress at every point. Legal tender warped and violated the private sphere of people's dealings in the market and broke the natural laws of commerce and economics, as Field understood them. Gray's use of the borrowing clause and coinage clause infuriated the aged justice. The borrowing power could never be twisted into the power to "deal between parties to private contracts in which the government is not interested, and to compel the receipt of these promises to pay in place of the money for which the contracts stipulated." The Constitution, Field claimed, using a mixture of history and natural law, only authorized the use of gold and silver as money. Money "naturally, if not necessarily became throughout the world a standard of value." All a piece of paper could be is a promise to pay; it could never serve as the final payment to

⁵ Fairman, *Reconstruction and Reunion*, 1:773-774; Roosevelt quoted in Robert M. Spector, "Legal Historian on the United States Supreme Court: Justice Horace Gray, Jr., and the Historical Method," *American Journal of Legal History* 12 (July, 1968):186, for Gray and Julliard see same 201-202; *Juilliard v. Greenman* 110 U.S. 421 at 435-450.

settle accounts. Nevertheless, this “vicious system of legislation” was now the norm in American commerce. Borrowing a quote from Charles Sumner, Field lamented, “What was in 1862 called the ‘medicine of the Constitution’ has now become its daily bread.”⁶

Moving from judge to prophet, Field predicted conflict and economic woe until the total destruction of the greenbacks. The doctrine of fiat currency in America, Field said, “will not and ought not to be readily accepted. There will be many who will adhere to the teachings and abide the faith of their fathers. So the question has come again, and will continue to come until it is settled so as to uphold, and not impair, the contracts of parties, to promote and not defeat justice.”⁷

Field’s day of final reckoning never came. The greenbacks and national banks born of the Civil War became a common fact of national life, bringing the federal government into greater contact with its citizens than ever before. The *Hepburn* majority’s protection of gold clause contracts, reflecting nineteenth century Americans reverence for the contractual sphere did stand as a real and lasting barrier until the New Deal. In 1935, in the *Gold Clause Cases*, Chief Justice Charles Evans Hughes announced “parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.” The Court would never challenge Congress’s power to create money as they had in *Hepburn*. The question of American money, as Gray stated, would stay in the realm of democratic politics. In the end, it would be Congress that would decide to give itself to give up part of their power over money.⁸

⁶ *Juilliard v. Greenman* 110 U.S. 421 at 452-453, 462-464.

⁷ *Juilliard v. Greenman* 110 U.S. 421 at 451.

⁸ *The Gold Clause Cases* 294 U.S. 240 at 764 (1935).

Legacies

The greenbacks and national banking system were a direct result of the political and economic atmosphere of the Civil War. Their style and substance, however, found their genesis in an older conflict in American society over control over the money supply and the power of government in the market. In the colonial period, state-created money in the form of bills of credit was the chosen tool of colonists who lacked either the specie or the banks to create an alternative. The framers of the Constitution, disgusted with the disorganized nature of paper money in the new United States and the way that the democratically elected legislatures wielded power, looked to restrict the sphere of money to gold and silver alone. Their thinking proved outdated at the moment of its conception. In the early republic the rise of banks of issue, which provided their own paper currencies, became the dominant form of money in America.

Very quickly law and reality went their separate ways in the matter of money. In law, U.S. coin was the only money of account or legal tender until 1862. In reality, bank notes were the true money of the country. In law, the state banks were subject to control by state legislatures that created them. Functionally, control over the money supply rested with the larger market, in the countless decisions of bankers and the way that people valued them in their transactions. The Jeffersonian-Jacksonian generation could see how this chaos led to confusion and financial panics. Yet such was the fear and distrust of a centrally created government paper money that the major parties of the era never advocated for a federal currency managed by Congress. The two solutions offered in national politics, hard money or a national Bank of the United States, avoided

government control by putting power in the hands of the worldwide supply of specie or the board of the national bank.

The paths that led to the creation of the Greenback Zone and the national banks, and government control over the country's money, were neither straight nor smooth. In the midst of this chaos, the federal government nurtured a tradition of government-created money in time of dire emergency. In the War of 1812, the Panic of 1837, the Mexican American War, the Panic of 1857 and the first year of the Civil War, Congress turned to the Treasury note to fill the vacuum when the state banks failed. Congress crafted the Treasury notes to carefully avoid the taint of the bills of credit, while providing a viable currency. The old Treasury notes of the antebellum era were never forced on anyone and promised a date of redemption in coin. The financing of the Civil War pushed that tradition in a new direction. Faced with financial ruin and the destruction of the Union, the Republican party, led by such leaders as Elbridge G. Spaulding, John Sherman, and a weary Salmon P. Chase crossed the threshold in American political economy by creating the first fiat currency since before the Constitution in the Legal Tender Act of 1862. The 'greenbacks' as they came to be known required every person who made a contract or deal for "dollars" to take these slips of paper where once they took hard coin. Justified as temporary as a temporary expedient, the experience of the war years converted many in the North, and some in the South, of the value of the greenbacks as a national currency.

While the greenbacks came chronologically first in the order of creation, they were an unexpected solution to the money problem in America. What was to become the national banking system represented the antebellum generation's solution to the state

banks issue. In the wake of the Panic of 1857, financiers and politicians started seriously talking about the need for a national solution to the country's heterogeneous currency. Chase, an unlikely financial innovator, turned his post in the Treasury into a crusade to fix that issue with a plan for a national currency backed by federal debt and regulated by federal authority, good at all points in the country. In 1862-1863 the plan morphed into a program of national banks, because Chase and his advisors conflated banking with the production of currency. The idea of the national banks never took hold of the public like the greenbacks. Congress passed the first National Banking Act in 1863 act only because of pressure from the Lincoln Administration. It was the fact that the tripartite system of greenbacks, state bank notes, and national banks was all too much. Begrudgingly, the rest of the party came around to supporting the second act in 1864, and a 10% tax on state banks notes that would officially destroy state bank notes. Moreover, in comparison with its sister policy, the greenbacks, a national bank currency could one day be redeemable in gold.

None of these changes happened without conflict. Democrats and Republicans both fought against greenbacks and national banks during the Civil War. The war however placed interesting limits on dissent. With banks unwilling to pay specie and financial markets reacting violently to the news of victory or defeat from the front, foes of the act had no other viable solution for a currency. Even the state banks that were still issuing notes during these years could only do so because of the greenbacks. Politically, the greenbacks proved so popular with the public that even the Democrats, who assaulted the Republicans on every other issue, kept quiet about financial questions during the 1864 campaign. The country was enmeshed in the web of national authority.

When markets and politics could not succeed, the courts and constitutional law emerged as feasible avenues for destroying or limiting the government's new financial powers. Throughout the war years, northerners brought scores of cases dealing with the constitutionality of the Legal Tender Act into northern courts. Despite these cases, almost every case held the line of upholding the constitutionality of the greenbacks. Judges hostile to the Legal Tender Act expressed disgust in their opinions, but admitted the reality that these paper notes were the lifeblood of the economy. Other state jurists waved the flag in their opinions, holding up the power of the government to do anything it took to save the Union. Whereas the North remained firmly within the zone of government authority, the Pacific Coast proved the exception in finding a way out. In California, long a bastion of hard money culture and politics, the commercial community, state legislature, and courts worked together to make greenbacks a marginal currency in the far West. Californians were not secessionists, so when pushed on this point the state's high court defended the constitutionality of the act. On every other question, the state's high court and the legislature held up the right of private parties to contract, in this case in gold, as a solid barrier against Congress.

This pattern of enmeshment and legal conflict remerged during Reconstruction. Soon after Appomattox, Secretary of the Treasury, Hugh McCulloch tried to bring the government's episode with fiat currency to a close. McCulloch, hard money liberal, advocated for a quick return to specie payments, and brisk "contraction" of greenbacks in the economy. Congressional Republicans, some who had warily supported the greenbacks as a temporary measure, supported McCulloch plan. When the economy slowed in the late 1860s, political pressure from voters pushed the Democrats and

Republicans of the Midwest to push for an end of contraction. The Republicans, unwilling to lose control of Washington, changed course and stopped contraction in 1868.

With politics failing again, critics turned to the Court. Sitting in the chair of the Chief Justice, was Salmon P. Chase, the man whose face adorned every one-dollar greenback. Chase, a hard-money man from the start, wanted to use his post as chief justice to undo the damage committed by an act that he had repeatedly used during the war. In a series of cases Chase, in conjunction with the other Democrats on the Court, defended the right of states and private parties to determine what money they wanted to be paid in. In *Hepburn* Chase garnered enough votes to partially strike down the Legal Tender Act as unconstitutional. The support of the greenbacks in the Grant administration and the public proved too much. Two new Grant appointees created a new majority in the *Legal Tender Cases*, upholding the Legal Tender Act of 1862 as constitutional for any and all debts. In 1884, *Juilliard* helped tie off the loose intellectual knots left by that case. In policy, the Specie Resumption Act of 1875, despite its name, also preserved the system of the Civil War by keeping the old notes in circulation. From 1879 onward federal money in the form of gold, greenbacks, or national bank notes filled the pockets of Americans or the vaults of banks. The enmeshment begun during the Civil War was complete.

The *Legal Tender Cases* and the Specie Resumption Act and the framework of the National Banking Acts inaugurated a new era in the political economy of the United States. Before the war, the country was fractured by an unstable currency system. The era of a thousand different banks and thousand different forms of money, which all testified to the fragmented nature of the American state and economy, was over. It is not a

triumphant story in any sense. Centralization produced economic woes and political problems that eventually led to a new style of political economy in the Twentieth Century. Nevertheless, The Civil War preserved the Union created in 1776, but it also bound together the United States in a new unit, the Greenback Union.

Fiat Greenbacks

Dating the demise of the Greenback Union is difficult. The traditional way to approach the story of the greenbacks is to use the Resumption Act of 1875, or the defeat of the Democrats and Free Silver in the 1896 election, as turning points. With the Resumption of Specie Payments at the New York Customs House on January 1, 1879, Irwin Unger proclaimed the “Greenback Era” over. The silver issue begins in its shadow, only to see the defeat of the antimonopoly promise of a democratic form of money and the triumph of gold in 1896. But the penchant to think in terms of the politics of the *volume* of money instead of the *power* over it misses the essential point that in all the struggles, party platforms and utopian claims that monetary policy would save America, Americans wanted to use national authority to enact their visions.

The system created during the Civil War was far from perfect and contained several issues that were the seeds of changes. One significant issue was the continued evolution of financial markets during the nineteenth century. Throughout American history, it has always been true that the banks could move faster than the law or government institutions. The National Banking Act is often noted as the starting point of the American “dual-banking” system that endures into the twentieth-first century.⁹ Under that system, bankers can still apply for either a federal or state charter.¹⁰ Yet there was

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nothing “dual” about Congress’s language in 1865. Sherman and the Republicans thought they were killing the state banks, because to bank in America at that time meant to issue notes. They could not know that deposit credit (often in the form of checking accounts) would replace bank notes as the main form of banking liability into the future and give new life to state banks. Very few people in the pre-war period made the connection between credit and the currency supply. Rather, seeing bank notes as the only real competitor with the national currency, the Civil War generation, like the Revolutionary-era generation, confined their attention to the problem at hand. It would be up to future generations, through the Federal Reserve and the Federal Deposit Insurance Corporation, to find a way to regulate the banks that continued to serve as engines of credit in the American economy. The National Banking Act was a nineteenth-century answer to a nineteenth -century problem, and it did provide a new national currency for a reconstructed Union. That the goal of full currency control eluded the Civil War generation is a testament to the enduring power of federalism in American life and to the power and fluidity of the concept of credit to elude and overcome the boundaries of the law.¹¹

While legislators failed to keep pace with changes in financial markets, they were well aware of a more significant issue raised by Congress’s power over money; the tensions between democracy and money. Before the American Revolution Boston

¹¹ Thomas Joel Anderson, Jr., *Federal and State Control of Banking* (New York: The Banker’s Publishing Company, 1934), 53-54; Emmette S. Redford, “Dual Banking: A Case Study in Federalism,” *Law and Contemporary Problems* 31, 4 (Oct., 1966): 749-773; See for example the move of national banks to seek re-organization as state banks in the wake of the 2008 financial crisis. Jessica Silver-Greenberg, “Small Banks Shift Charters to Avoid U.S. as a Regulator,” *New York Times*, April 2, 2012; Redlich, *The Molding of American Banking*, 175-184; For a case-study of why this happened see Peter L. Rousseau, “The Market for bank Stocks and the rise of Deposit Banking in New York City, 1866-1897,” *The Journal of Economic History* 74, 4 (2011): 976-1005; Bray Hammond, “The Banks, the States and the Federal Government,” *The American Economic Review* 23, 4 (Dec., 1933), 630.

Merchant William Douglass complained that the masses, who were mostly debtors, watered down the value of their debts with the “despotick” power of creating bills of credit in colonial assemblies. The return of government paper money to American political economy during the Civil War Era revived all those old fears. The comedian David Ross Locke mocked the monetary thinking of greenbackers through his character Petroleum Vesuvius Nasby who as a great “finanseer” proclaimed, “I don’t want no gold nor silver. A paper dollar is good enuff for me, so ez it will buy likker, and I kin git enuff uv it. Wat do I keer for debt, when that debt ain’t never goin’ to be paid?”¹²

Politicians and financiers failed to find humor in the political conflict created by Congress’s new power. On Ohio Republican wrote John Sherman that “permanent relief” from the political conflict created by the greenbacks was “an early resumption...and...the destruction of the greenbacks as a *legal tender*...so as to put it beyond the reach of the demagogue as a topic of annual appeal to the ignorant masses.” At the end of the nineteenth-century, Charles Dunbar, editor of the Boston *Daily Advertiser* during the war and professor of economics at Harvard, made this point in an article on the greenbacks written in the wake of the election of 1896. While the greenbacks had won the war, they had unleashed wave after wave of conflict over monetary policy. Looking at Congressional legislation since 1862, American monetary policy was a “zigzag” in comparison to the consistent policies of England, France, and Germany. The problem, thought Dunbar, rested in popular politics. Politicians in Congress, especially the House, were subject to too much local pressure to support

¹² “Nasby on ‘Fiat Money’: A Glowing Statement of its Advantages.” *Frank Leslie’s Illustrated Newspaper* (New York, NY), November 9, 1878; for more on Ross and Nasby see, Jon Grinspan, “ ‘Sorrowfully Amusing’: The Popular Comedy of the Civil War,” *Journal of the Civil War Era* 1 (September 2011):313-338.

policies that favored the economic interests of constituents. Dunbar concluded, “a government currency, under our conditions, is an unfit subject for legislation.” No statute could every provide stability, because Congress could simply change it in the future. The answer was a “delegation of this function to banks and the complete substitution of private credit for public as the medium of exchange.” Within a decade of writing his article, Dunbar would get a version of his hoped for solution.¹³

¹³ Charles F. Dunbar, “The Safety of the Legal Tender Paper,” *The Quarterly Journal of Economics*, 11 (April 1897): 235, 239, 243.

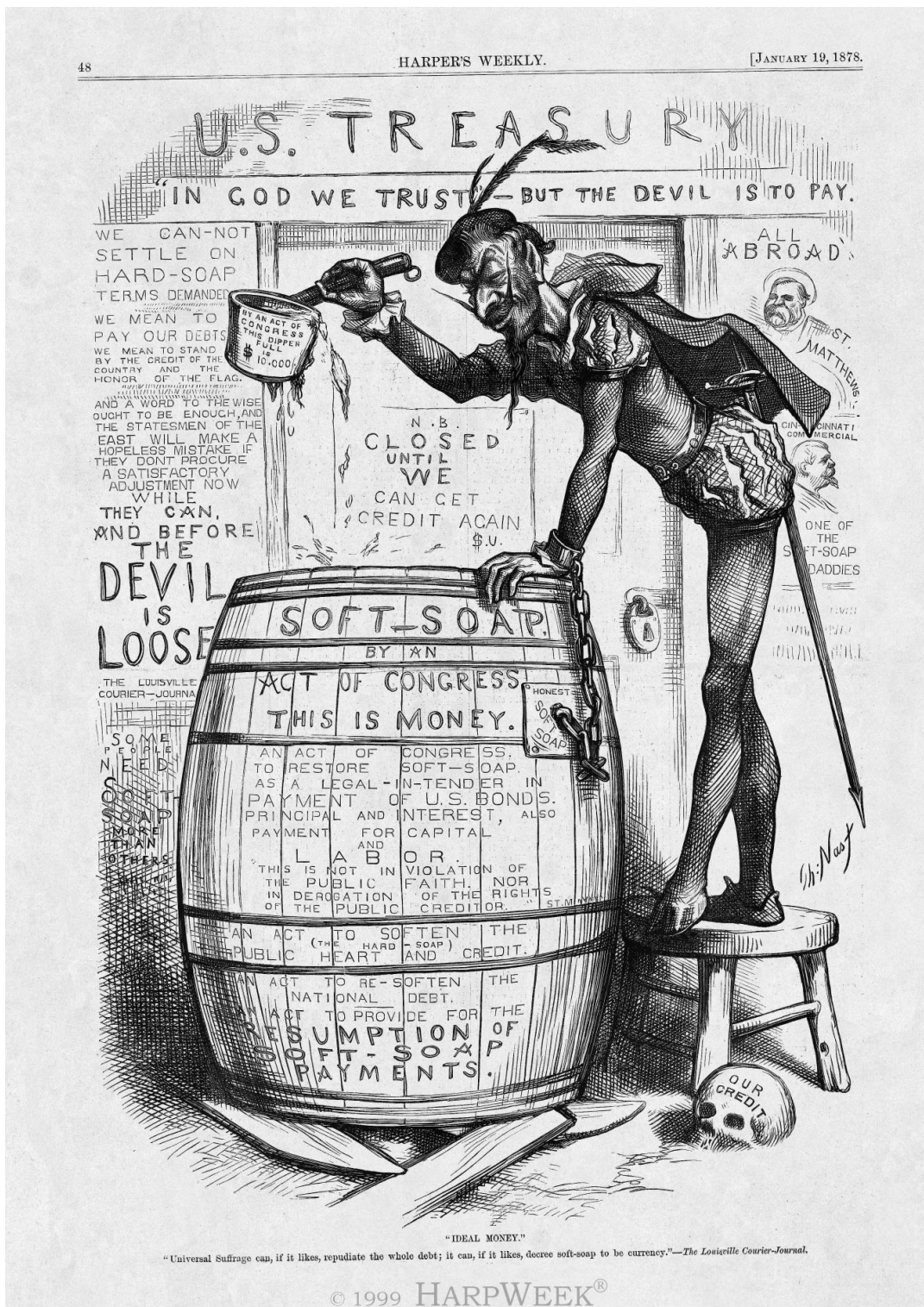


Fig 1. Here Nast ridicules the claims of greenbackers money can be made of any medium. The devil declares soft soap to be a legal tender, causing the death of "our credit" Thomas Nast, "Ideal Money" Harper's Weekly (January 19, 1878), 48.

The rise of the Federal Reserve in 1913 marked the end of a more democratic era in monetary policy and the rise, and in some ways, of a return to a small minority of bankers and federal officials, insulated from the ravages of popular politics. Created in the wake of the Panic of 1907, Congress passed the Federal Reserve Act in 1913. The Fed, as it would come to be known, consisted of 12 regional reserve banks and a Board of Governors in Washington D.C. The regional banks had the ability to issue notes, Federal Reserve notes, backed by gold and redeemable in greenbacks or gold. The regional banks, not Congress, adjusted for fluctuations in the economy by discounting paper and buying government securities. While there would be some flourishes of the old calls for free silver and greenbacks in the Depression, the Federal Reserve System restricted conversation about monetary policy to smaller circle of policy elites. Political parties and campaigns organized around monetary policy would no longer serve as the standard response of the electorate to the problems of American capitalism.¹⁴

Yet, even here, federal command of money remained ultimately in the hands of the state. The Federal Reserve Act, like the Charters of the Bank of England since the early nineteenth century, delegated power over the money supply to the Fed, but did not relinquish that power completely. The Democrats, led by Woodrow Wilson, who pushed for the act did so in the name of government control of Wall Street. At a meeting with President Wilson in 1913, it was Bryan who pushed for the creation of the Board of Governors, with seats for the Secretary of Treasury and other federal officials, to assure that the government and not the banks held the reigns of power in the new system. Even

¹⁴ Loren Clark Gatch, "The Decline of Money Politics, 1879-1933," (PhD. Diss., Cornell University, 1999), 4-13; John A. Brennan, *Silver and the First New Deal* (Reno, NV: University of Nevada Press, 1969); Ellis W. Hawley, *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (Princeton, NJ: Princeton University Press, 1966), 316-318.

the regional banks were a nod to the Jacksonian legacy, by creating banks rooted in their locality and preventing any single monster bank. The fiscal emergencies of the Twentieth century, the Great Depression and World War II, Congress and increasingly the Presidency, retained a great deal of power American money. The relationship was more removed than before, but both branches found a way to pressure Fed policy at key moments.¹⁵

In 1790, Alexander Hamilton proposed that the young United States could be bound together into one nation by the links of a common national debt. A quickly changing world of credit and banks prevented that unification from ever truly occurring. A sea of state bank notes weakened the financial linkages that bound disparate communities across the country together. In the face of a gigantic war, the Civil War generation created a new monetary system that, perhaps for the first time, truly linked the country into a single national monetary union that expanded the reach of the federal government in everyday economic life, solidified national authority in law and practice, and fostered a national politics centered around national solutions to economic problems. Writing at the start of the twenty-first century, the green Federal Reserve notes that still bear the legal tender clause and the host of national banks that dominate the country's financial system are all monuments to the change described in these pages. In a sense, the Greenback Union, a product of the antebellum generation's struggles with money in the rowdy capitalism of the nineteenth-century and forged in the Civil War, was never fully dismantled. In many ways large and small, we are all still living in it.

¹⁵ Richard T. McCulley, *Banks and Politics During the Progressive Era: The Origins of the Federal Reserve System, 1897-1913* (New York: Garland Publishing, Inc., 1992), 291-301; Thomas Havrilesky, *The Pressures on American Monetary Policy* (Norwell, Massachusetts: Kluwer Academic Publishers, 1995), 48-51; Allan H. Meltzer, *A History of the Federal Reserve*, vol.1, 1913-1951 (Chicago: University of Chicago Press, 2003), 360, 428, 436, 725-742.

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