SILVER OR LEGAL TENDER NOTES.

A PROPOSITION has recently been advanced, from a very excellent financial authority, that appeared so plausible in its promise of introducing an improvement into the monetary system of the country as to command attention and approval in many quarters. The growing restlessness of many important interests, under the curious course of financial legislation that has been enforced since 1876, and its effects in modifying the quality or nature of the circulating medium, have led to many efforts to reach a more satisfactory basis. The increasing store of silver, the retirement of the national bank circulation and the occasional flurry caused by an export of gold, are so many factors producing a state of financial uneasiness, mischievous to business interests as well as involving the nation's honor. Since the passage of the silver law in 1878, although a conservative policy has been steadily followed and the action under the law has been maintained at the minimum prescribed, this uneasiness has existed, and has in a measure neutralized the undeniably great and lasting advantages gained by resumption of specie payments in 1879. There are few interests so sensitive to a threatened disaster as those of finance; few interests in which it is more easy to commit errors, apparently of little moment, but entailing great consequences. But it is impossible to measure the loss and derangement of business methods and business morality occasioned by a debasement of the currency.

The proposition made by Mr. St. John, president of the Mercantile national bank of New York, is that Congress be recommended to require the secretary of the Treasury to invest monthly in silver bullion the full authorized sum of $4,000,000, provided that he shall not pay more than ninety-nine and one-half cents for the bullion required by the dollar coin; that in coining the silver the secretary shall concurrently withdraw and cancel the like sum of United States legal tender notes, less the sum of national bank notes concurrently surrendered; and that the gold and silver certificates shall be appointed legal tender. In a few words, the object of this proposition is to retire the legal tenders, and to substitute for them standard silver dollars or their representatives, the silver certificates; in this way, he holds, a dangerous element of the currency will be removed and a safer quality substituted, without any increase of the currency. If this claim be perfectly just, it involves an end much to be desired; but the question of the currency has become so involved with relations other than purely economic, that a final decision can safely be reached only by giving these political and social relations their due weight. This being done, the proposition has much in it of danger to commercial and financial interests, and threatens to work, if adopted, a greater injury than benefit.

Let us first consider it from the economic or purely financial standpoint. Any proposition to cancel the legal tenders or "greenbacks" may be regarded as worthy of consideration, as embodying a desirable reform.

The original act of February 25, 1862, authorized the issue of $150,000,000 of legal tender notes, one-third of which were to be in lieu of demand notes issued by an act of 1861. This was in itself a remarkable innovation on the financial policy of the country since 1789, although it was but one step from the treasury note, issued for a short period and bearing interest, to a promissory note, redeemable at no stated time and carrying no interest. The former was rather an investment offered to capitalists; the latter a forced loan, taken in the first instance from those who had dealings with the government, but afterwards, through a legal tender quality conferred upon it, passed from hand to hand in settlement of any debt, public or private, and recognized in every transaction except the payment of interest of the public debt or customs duties and the determination of a contract specifying a particular medium of payment. The needs of the government, occasioned by the war, were the excuse for resorting to such paper; and it was only because of this necessity that the notes were condoned and tolerated.

While it continued, further issues were made, until the maximum amount outstanding was nearly $450,000,000.

In the meantime some modifications of the manner of issuing may be noticed. The lowest denomination in the notes of the first issue was five dollars, and the notes could be exchanged for six-twenty bonds. These limitations in a measure promised to restrict the use of these notes in small transactions, and to afford the holder an opportunity of obtaining for them an interest-bearing bond, thus providing in a measure against excessive inflation. The demand for small notes, however, became urgent, and Congress determined to repeal the law prohibiting the circulation of bank notes of a less denomination than five dollars in the district of Columbia. Mr. Lincoln vetoed the measure, but urged the expediency of providing a small-note currency that "would save a considerable amount to the Treasury, in interest; would greatly facilitate payments to soldiers and other creditors of small sums; and would furnish to the people a currency as safe as their own government." The suggestion was acted upon, and in July not only were small notes authorized, but notes of the fractional part of a dollar of a limited legal tender quality. Thus in less than six months from the first issue of the "greenback," paper had taken all the forms of coin hitherto in circulation, and nothing remained but to limit the amount issued, which was not done till 1864, when the maximum issue allowed was placed at $400,000,000.

The war being ended, the problem of paying the cost came before Congress. As a preliminary it was publicly and formally announced that "any attempt to repudiate or in any manner to impair or scale the debt should be universally discountenanced and promptly rejected by Congress if proposed." [1] Had it been then suggested to cancel the bonds by paying seventy-five or eighty cents on the dollar, the idea would have been scouted, although the bonds might then have been purchased in the open market at a heavy discount. Three years later, when President Johnson assumed that the holders of United States securities had already received upon their bonds a larger amount than

[1] House of Representatives Resolution, December 5, 1865.

their original investment, measured by a gold basis, and proposed that the interest payable on these securities should be applied to the principal, the holders to be satisfied with what they had received, both House and Senate passed resolutions in terms of strong indignation condemning the idea. All through this period the purpose of legislation was to provide for the speedy extinction of the debt, while preserving inviolate the public faith. In spite of the depreciation of the currency and a coincident depreciation of other securities issued by the government, it was intended to pay to the creditor the full amount which the government contracted to pay him, and to pay him in coin.

In such measures the "greenback" was included. In 1865 the House pledged its co-operative action to aid the then secretary of the Treasury — Mr. Hugh McCulloch — to contract the currency and resume specie payments at as early a date as the business interests of the country would permit. In 1866 the redemption was begun, and $44,000,000 were called in and cancelled at a rate similar to that proposed by Mr. St. John, $4,000,000 a month; but early in 1868 this contraction was suspended, and in subsequent years re-issues of these cancelled notes were made from time to time, the largest being made in 1873–74 to relieve the stringency in the money market due to the panic, although the power to make such re-issues was a matter of doubt, in and out of Congress. The panic, however, placed the value of the greenback nearly at par, and opened up a currency discussion that has continued to the present day; for "inflation" of the currency became from that time an issue. The legal decision in favor of the legal tender quality of the "greenback"; the re-issue of the cancelled greenbacks, in a time of peace and to meet no public exigency, by the executive branch of government, without color of any law in the matter; the after-effects of the financial crash of 1873; the rise in the coin value of the greenback; the passage of a bill by Congress virtually adding $100,000,000 to the currency, — these were so many measures tending to increase a popular movement for more money (which was, as usual, generally interpreted as meaning also cheap money) that, gathering force, became the grossly exaggerated "inflation" or "greenback" policy.

Fortunately the efforts of the inflationists to flood the country with their nostrum-currency were defeated, but the struggle was long and severe. The passage of the resumption act (1875) was the most important of the measures that determined the question of unlimited issues of an irredeemable paper; but it crystallized the opposition into definite form, and the "greenback party," essentially endorsing Jefferson's position "that bank paper must be suppressed and the circulation restored to the nation, to whom it belongs," became an active political factor. Of the strength of this party at this time there can be no question; the very existence of such a faction, bent upon repealing the resumption law and resolved to depend to an unlimited extent upon greenbacks, was a disturbing influence. The natural course of events destroyed the basis on which the party could best assert its propaganda — the deepening depression of commerce and industry, — until now it is little more than a name. But it has been succeeded by a movement quite as dangerous, because it appeals to the same interested motives as did the greenback party. An excessive coinage of silver is quite as impolitic as an excessive issue of paper; especially when from the beginning the coin pretends to be what it is not — of full value. From an economic standpoint a silver coin, claiming to be of the value of one dollar, but in reality worth but seventy-two cents, is as bad as a piece of paper claiming to be worth one hundred cents, but in reality passing at a discount or depreciation of twenty-eight per cent. In a time of disturbance the silver dollar would be a better possession than mere paper: because at least so much silver bullion is held, which can be disposed of in open market at the current price; while in the case of the greenback there may be nothing but credit behind it (and a much abused credit at that); and that gone, the possessor holds nothing but a bit of paper. To substitute a silver coin for a paper promise might on this ground be regarded as a signal advance towards strengthening the currency; and the proposition has been made on more than one occasion. When the silver law of 1878 was framed, it was proposed by Senator Kernan to issue silver dollars in exchange for legal tenders, in sums not less than fifty dollars, the greenbacks so obtained to be cancelled. The object of this proposition, as the senator explained, was to aid resumption by substituting a specie for a paper medium. But the inflation spirit, substituting the word "re-issued" for "cancelled," stultified the promise of the government to "redeem" these notes; and even with this concession, the proposition was rejected,[1] by a vote of fifty-four to ten, as it was recognized that such a measure was a blow aimed at resumption.

A comparison of the qualities of the greenback and silver dollar are, at present, in favor of the former. I say, *at present*, for there are conditions in which any form of circulating medium would be fraught with danger. The greenback is a credit money, a promise to pay based upon the credit of the government; it is no longer a forced loan, irredeemable at the wish of the holder. Of the high credit of the government and its ability to float a much larger quantity of credit paper than is now outstanding, nothing need be said, as the daily quotations of its securities and the monthly reports of its transactions are evidence of its estimation and the resources on which that estimation is based. The legal tenders are evidences of a debt due to the holder from this debtor of unquestioned standing, and may at any time be presented at the Treasury to be exchanged for coin should such an exchange be desired. The original nature of the notes has been continued, so that they are a loan from the people to the government without interest, and contribute an advantage to the government which otherwise would be divided among private interests or individuals. The public have become so accustomed to this form of paper — indeed, the popular prejudice in its favor is so strong — that it is not likely to consent to its retirement merely to favor any special interest, whether it be that of the national banks or the silver supporters, by offering a wider field for their issues. Moreover

[1] February 15, 1878.

this prejudice has been strengthened by the steady maintenance of the value of the greenback since 1879, which has given it a marked advantage over silver as a medium, and by the final removal of any doubt as to its constitutionality by the last decision of the Supreme Court. If the limit of issue now fixed be maintained, there is little danger of depreciation, or abuse; and though there is much that is anomalous in the laws controlling the issue and management, much that can be condemned on economic and even constitutional grounds, there is also much to commend.

The danger attending a paper credit money is the temptation to unwarrantably increase the issue until depreciation sets in, which may proceed so far as to destroy the value entirely. The experience of the country during the revolutionary war, and in the wild-cat banking era, is to the point, without considering the quite as striking examples offered by similar experiments in France and Austria. During the civil war the depreciation was partial, more severe than occurred in England during the Napoleonic war, and imposing a fearful tax upon the productive resources of the country. There may occur a combination of circumstances, enforced by necessity or imposed by interest, that will lead to a dangerous inflation, to an excessive issue of the legal tenders; but such a combination appears so remote and unlikely that it may be set aside. Congress has the power to issue such notes under any and all circumstances. The highest court in the land has decided such issues to be constitutional, and their propriety to depend solely upon the will of the majority. That here is a power that may prove mischievous is not to be denied; but the "greenback fallacy" has had no standing in that body since 1877, and it is not likely to have, until some period of great and grinding depression again gives vitality to a demand for cheap money and an abundance of it — for money so cheap that silver will seem too good.

It is a trite remark that a dollar is what a dollar does, and its value is determined as much by its utility as money as by its intrinsic worth. Were it possible to coin all the gold and silver on the face of the earth, the sphere of their utility as money would not be increased through the inflation, but notably diminished; many pieces would be employed to do the work that is now done by one. The uses of coin are as much limited by natural causes as the uses of any other commodity, and an excess or deficiency of supply is met and corrected as readily as a similar discrepancy between demand and supply in any other commodity. The nearer, therefore, that the quantity of coin is controlled automatically, that is by its natural conditions, the closer we approach to a perfect currency.

Our mint laws that provide for the coinage of silver are directly opposed to these natural conditions; they substitute an artificial arrangement resting upon an artificial foundation. Free and unlimited coinage of silver, at a ratio to gold arbitrarily determined at a point at wide variance from the market ratio, is out of the question, unless it is intended to establish by such an indirect means a single standard of either gold or silver. Having such an artificial ratio, it would be wise to rest the coinage upon the demand for silver coins, upon the actual quantity that the circulating needs of the country call for. Certainly it is unwise to direct that a certain quantity of coin be made each month to be merely stored in vaults.

Were the circulating needs of the nation to be taken as a test, the limit of silver would be found to have been reached nearly ten years ago. That is to say: the manufacture of standard dollars could have ceased in 1880, and the interests of the country would have been in no wise injured. By the end of June, 1880, the total coinage amounted to $63,734,750, of which only about one-fifth were in actual circulation; at the end of June, 1888, the coin in circulation had risen to $55,545,303, and the total coinage to nearly $300,000,000. Of the total coinage effected in the twelve months ending June 30, 1888, less than $40,000 passed out of the Treasury, or only one-tenth of one per cent of the year's coinage. It is impossible to get these pieces into circulation, as the paper certificate is so much more convenient. But the certificate could be as well issued on the value of a bar of silver; thus saving the expense of coinage and offering a more convenient method of storing and of counting.

On November 1, 1878, the national bank circulation was $319,652,121; a sum nearly equal to that of the outstanding legal tenders, $346,681,016. The coinage of silver dollars had been practised but a few months under the law of 1878, and had not reached a total of $13,400,000, while the gold held by the Treasury and the banks was only about $157,000,000. To secure a paper currency of more than $666,000,000 (for I omit the fractional currency which would make this figure still larger), only $170,000,000 in coin was held — a stock so small that many feared that resumption under these circumstances would be impossible. Circumstances favored the change, and gold poured into the country through trade influences, not only making resumption possible but almost a necessity; for this gold, spreading itself over the country, gave a stimulus to industry and trade that threatened to run the usual exaggerated course of such movements and terminate in a financial crash. During all this time a change in the quality of the circulation was being worked out, and it is instructive to note the last reported results — those at the end of the fiscal year of 1888. The amount of legal tenders remained unchanged, and still was $346,681,016; the national bank circulation had been reduced to $151,702,809 (October, 1888); the paper currency was thus $498,383,825, exclusive of gold and silver certificates. Behind this the Treasury and the national banks held $194,713,000 in gold coin and bullion, and $50,398,000 in silver; a total of $245,111,000. This on its face should show a marked improvement in the quality of the currency; but a slight examination will show the weak point.

The legal tender rests upon the high credit of the government, and also upon a fund (maintained by custom rather than by law) of $100,000,000 in gold, a margin amply safe when judged by the usual criteria of safe banking. The basis of the national bank note is also above question, as it rests upon the credit of the government. We come now to the elastic part of the currency, to that part which can grow almost indefinitely, but cannot contract, and thus threatens to become the principal element of the circulating medium — the silver dollar and the certificate issued upon it. So long as the issue of national bank notes offered a reasonable return to the banks, that was the elastic member; for wherever a medium was needed a bank would be established, and when the conditions showed it no longer to be profitable, the bank would wind up its affairs — a simple and safe automatic system. Now the national bank circulation no longer increases but, through the rapid payment of the public debt, the high premium on long-term government bonds and the generally low returns on investments, steadily diminishes. The silver dollar alone increases in quantity, but its value is becoming less each year. In 1878, when the coinage was first begun, its bullion value was eighty-nine cents, and it should have contained 416.66 grains of pure silver (instead of 371.25) to have made it full value. In 1887 its bullion value was seventy-five and eight-tenths cents, the fall being nearly continuous each year, broken only by some temporary and abnormal demands for silver from the East. To be of full bullion value the coin should be increased in weight, so as to contain 489.78 grains of pure silver. The proposition that we are considering therefore involves the substitution of an over valued coin, worth in the markets of the world only about seventy-five cents, or three-fourths of its nominal value, for a convenient paper medium of full value.

There are political reasons that still further militate against the adoption of Mr. St. John's proposition. The history of the first silver legislation — that of 1878 — is too well known to require a detailed statement. It was a compromise effected between the friends of a free and unlimited coinage of silver, and the favorers of a single unit of gold. The limitation in the monthly amount to be coined, a unique chapter in mint legislation, was reached only after a long struggle and after a full discussion of the existing conditions and probable results. The policy of the Treasury has been to coin the minimum quantity allowed by the law; its attitude, without a single exception, has been one of protest against the provisions of the act that require the manufacture of silver coin that cannot be made to circulate, and that is so difficult and costly to store. This attitude did not imply a hostility to silver, for it was recognized that silver must be a part of the national currency, and its friends have been strong enough to enforce that recognition. But careful and judicious observers of the financial market have noted from time to time the approach of what has seemed to be the displacement of gold by silver, threatened or actual flurries caused by a possible or real export of gold. That such a displacement must occur as soon as the quantity of silver becomes excessive, is taught by economic theory and experience; and it has only been the extraordinary capacity of this country to draw in gold from other countries that has prevented such a change before this. The sensitiveness of the money market here and in foreign financial centres shows how strained the situation has become, and how slight a change may result in precipitating a financial reaction.

It certainly cannot bode well for the future to find a strong movement in favor of an extension of the silver coinage, supported by the strength of a great party, and by the power of the administration. Could we be assured that Mr. St. John's proposition would be accepted in the spirit in which it is offered — that is, that the coinage should continue at the rate of four millions a month until all the legal tenders were retired, and then cease, — we should welcome it as a compromise involving a gain. For the silver men have refused to listen to any compromise looking to a reduction in the coinage, and seem to regard that feature of the Bland law as the all-important item of the measure. That they have the power to hold what they have secured is proved by their action towards Mr. Cleveland, who (ably assisted by Mr. Manning) has proved one of the most persistent of the opponents of the law of 1878. His efforts were in vain; but it was well understood that while he was in the White House any effort to extend the silver policy would be discountenanced by him; and this was a strong moral check upon such action in or out of Congress.

There is every appearance that this policy is to be modified in the direction of greater liberality towards silver. The political influence of such a step in the mining states of the West and South is sufficient to justify it in the eyes of the party managers, and thus a strong and not over-scrupulous factor is added to those that favor the extension of silver coining from interest, through ownership of mines, from an honest belief in the possibility and expediency of such a policy, and from a conviction that the country cannot have too much currency. This is a combination that means a power to do mischief. The addition of a new element gives the others the organization they so much needed, and without which they have hitherto proved powerless in action save on the side of opposition. To be able to pass from a position of defence to one of offence and aggression is certainly an indication of strength.

There is little need of specifying here the various indications that have been given of this change of policy. The Republican platform of 1888 was a sad surprise to those who had so long fought for an honest currency under the leadership of this party. The inaugural address of President Harrison contained a repetition of this glance towards a depreciated silver medium. The long delay in the decision on the question of Mexican ores, a delay that was freely attributed to a desire to influence the votes in the elections in the new states and that ended merely in a full affirmation of what had been the Treasury policy in the matter; a noticeable activity in silver agitation in quarters where such a thing had never occurred before; and a combined attack on the "Cleveland anti-silver policy," — these are a few of the many indications that have recently come before the public. It is little to be wondered that the supporters of silver have imbibed a feeling of confidence and have prepared a bill for the coming session providing for the "free and unlimited coinage of silver," and have expectations of success; while the old cry is raised of the "tyranny of the money classes," a tyranny that is defined as dear money and cheap property and labor.

It is reasonable to conclude that this is not a suitable time for urging any extension of the coinage, however strong may be the grounds of expediency on which Mr. St. John bases his proposition. A step down is readily taken, and it is a simple matter to depreciate the currency; but the recall of such a move is attended with enormous difficulties and involves great loss and disturbance. The popular view would, of itself, probably lean towards "cheap money"; for the debtor class is large and ever active in seeking relief from its burdens. Besides, there are those who believe that a little excess of money over the demands of trade imparts a stimulus, and may produce a feverish activity that ends in a speculative movement in which gains are expected. This has always been the case; and it has therefore required a continuous (and not always successful) struggle to maintain a high monetary standard or even (what is quite as important) a steady and uniform standard. There is a common belief that a movement looking to a debasement of the currency through an excessive use of silver is impending. Such a movement cannot be countenanced by the men who defeated paper money in 1877, and ought not so much as to be considered by the party who conducted that contest to a successful issue. The honest money policy is now that marked out by Mr. Cleveland, and under it there can be no room for the substitution of silver for legal tender notes.

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MATERIALS FOR ENGLISH LEGAL HISTORY. II.

[Synopsis of preceding article: I. *England before the Norman Conquest.* (1) Dooms. (2) Diplomata. (3) Ecclesiastical Documents. II. *Norman Law.* (1) Exchequer Rolls. (2) Collections of Judgments. (3) Law Books. (4) Diplomata. III. *From the Norman Conquest to Glanvill and the Beginning of Legal Memory.* (1) Laws. (2) Private Collections of Laws and Legal Text-books. (3) Work upon Roman and Canon Law.]

(4) *The diplomata* of this period are numerous and of great interest; they are brief, formal documents, contrasting strongly with the lax and verbose land books of an earlier age; they are for the more part charters of feoffment and grants or confirmations of franchises; they have never been properly collected. Charters of liberties granted to towns should perhaps form a class by themselves, but those coming from this age are not numerous.[1]

(5) *Domesday Book, surveys, public accounts, etc.* By far the greatest monument of Norman government is Domesday Book, the record of the survey of England instituted by the Conqueror and effected by inquests of local jurors; it was completed in the summer of 1086.[2] The form of this document is generally

[1] Few aids would be more grateful to the historian of law or even to the historian of England than a "Codex Diplomaticus Normannici Aevi." As it is, the documents must be sought for in the Monasticon and the cartularies and annals of various religious houses. Some of these have been published in the Rolls series; those of Abingdon, Malmesbury, Gloucester, Ramsey and St. Albans (Mat. Par. Chron. Maj. vol. vi) may be mentioned. A useful selection for this and later times is given by Thomas Madox, Formulare Anglicanum (1702), with good remarks on matters diplomatic; another small selection of early charters has just been edited by J. Horace Round for the Pipe Roll society. Stubbs, Select Charters, gives the municipal charters of this time.

[2] Domesday, or the Exchequer Domesday, as it is sometimes called, was published by royal command in 1783 in two volumes; in 1811 a volume of indexes appeared; in 1816 the work was completed by a supplementary volume containing (*a*) the Exon Domesday, a survey of the south-western counties, the exact relation of which to the Exchequer Domesday is disputed, (*b*) the Inquisitio Eliensis, containing the returns relating to the possessions of the church of Ely, and two later documents, *viz.* (*c*) the Winton Domesday, a survey of Winchester in the time of Henry I, and (*d*) the