The BEACON SpotLight
A Study of Constitutional Issues by Topic

Issue 34: The February 25, 1862 Legal Tender Act

This 34th issue of *The Beacon Spotlight* examines the 1862 legislative Act that issued the first paper currency notes declared a legal tender and lawful money.

It isn't necessary to follow all the nuances of this Act (or the few Acts before it). Primarily, it is important to realize that the status of the currency notes was difficult to comprehend at any given point in time and that Congress changed it, repeatedly.

This newsletter issue will also analyze several U.S. Supreme Court cases which touched upon the matter, including the one which explicitly ruled that paper currency notes declared to be a legal tender and lawful money were not and could not be, because the U.S. Constitution only allows those enviable designations for gold and silver coin.

It is within Americans' power and right to demand accountability—but first, one must understand what actually happened, so efforts to right the wrongs of the past and present are properly targeted, to keep them from reoccurring in the future.

1861, July 17 Act

Three months after the opening salvo of shots were fired at Fort Sumter, Congress authorized the borrowing of money not to exceed $250,000,000, by the Act of July 17, 1861.[1]

1. 12 Stat. 259

Various government securities were authorized to be given in evidence for the money that the government would borrow from willing creditors under this new Act, including coupon bonds transferable between creditors by delivery, registered bonds transferable on the books of the Treasury after delivery of the certificate, and various bearer treasury notes, all transferrable by delivery.

The bonds paid seven percent per year during their 20-year irredeemability period.

Three types of treasury notes were offered; the first were issued in denominations of $50 and upwards, payable three years after issuance, and earned 7.3% interest per year, interest payable semi-annually.

The second type of treasury notes were issued in denominations less than $50 (but at least $10), bore interest at 3.65%, and were payable in one year.

The third type of treasury notes were payable on demand and bore no interest, similar with the demand notes of 1815, both of which largely answered the [loose] call of paper currency (but, importantly, neither were forced upon creditors as a declared legal tender or lawful money).[2]

2. February 24, 1815 (3 Stat. 213 @ 214).
Note that an 1817 Act ordered all earlier-issued treasury notes cancelled and destroyed, once they became property of the United States (i.e., once the U.S. Government paid off individual creditors for the notes).[3]

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The total amount of demand treasury notes authorized to be issued under the July, 1861 Act couldn't exceed fifty million dollars, by Section 1.

Curiously, the July, 1861 Act made no mention about the notes being receivable for any government dues.

1861, August 5 Act

Four months into the Civil War, the Independent Treasury Act of August 6, 1846 sustained its first direct political hit, as banks were again made central figures in the world of government finance, by Congress lifting the 1846 prohibition on depositing federal public funds into banks.[5]

Section 6 of the August 5, 1861 Act authorized the Secretary of the Treasury to deposit public funds in "solvent specie-paying banks."[6]

Section 5 of the August 5th Act corrected the omission from the July 17, 1861 Act and made the demand treasury notes allowed under that July Act to be "receivable in payment of public dues."[7]

1862, February 25 Act

On February 25, 1862, Congress signed into law an Act authorizing the first issuance of "United States notes," called by that name, within the body of the Act.[8]

These notes were popularly-called "greenbacks," for the green ink used to print their reverse side.

The February 25, 1862 Act required the demand notes of July 17, 1861 be withdrawn from circulation and substituted instead with the new United States notes (to minimize the earlier-notes' legal shortcomings and to increase the demand for the new notes with their newly-declared status [see below]).

Under Section 1 of the February 25, 1862 Act, the United States notes therein authorized were made:

> "receivable in payment of all taxes, internal duties, excises, debts, and demands of every

3. 3 Stat. 377. Sections 1-3. March 3, 1817.

During the reign of the second bank of the United States (1816-1836), no treasury notes were issued

On October 12, 1837, after the second bank shuttered, new (interest-bearing) treasury notes were again authorized, which were transferable by delivery and assignment, endorsed on the back by the person individually named on the face of the document.[4]

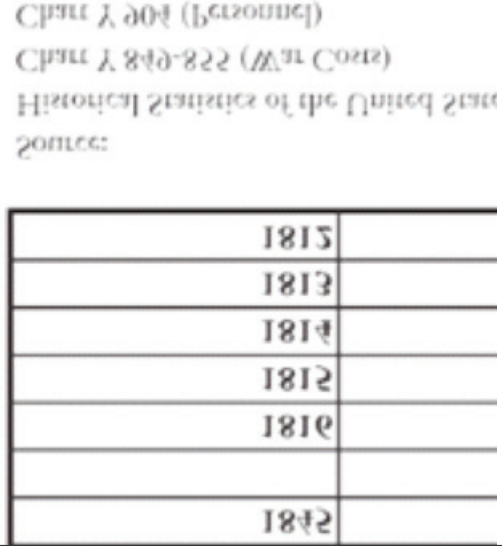
4. 5 Stat. 201.

5. Argument could be made—given that the Civil War severely undermined Jefferson's ideal for hard money and limited government, after his followers had decisively won the 55-year political battle against Hamilton's banking, paper currency, and omnipotent government advocates, with enactment of the 1846 Independent Treasury Act—that the Civil War was ultimately waged to destroy limited government under strict construction of the U.S. Constitution, even as slavery became the only admitted topic of conversation.

The Independent Treasury had amply proved its economic stability over the previous 15 years, even during a period of declared war.

The Mexican War of 1846 was largely similar in size and scope as the War of 1812, but the U.S. suffered little of the inflationary effects that followed the War of 1812, after which the second bank had been chartered and monetary creation soon followed.

Since in 1861 we had already won recent war against our neighbors to the south, and were still on friendly terms with our neighbors to the north, and without credible threat from Europe or Asia during a period of decided American non-intervention in foreign lands, only by waging war against ourselves, funding both sides of a major conflict, could expenses and losses be so high as to overwhelm the Independent Treasury system and end its reign, to help usher in expansive federal powers of inherent discretion.



6. 12 Stat. 313, Section 6.

7. 12 Stat. 313, Section 5. August 5, 1861.

> kind whatsoever, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin, and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid."[9]

These February 25, 1862 U. S. notes were the first notes (since ratification of the U.S. Constitution) declared a "lawful money" and a "legal tender."

When studying history to learn where and how things went wrong, it is important to note peculiar actions and strange events which don't quite make sense, to begin compiling evidence of odd events brewing behind the scenes and under the radar.

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8. Realize that a minor legislative Act of February 12, 1862 (12 Stat. 338) had been entitled "An Act to authorize an additional issue of United States Notes," but the notes therein authorized were NOT referenced within the body of that law as "United States notes"—instead they were specifically designated as "treasury notes" (realize that titles of law are NOT a part of the law actually enacted by Congress; titles are typically added after enactment, for convenience).

Of course, since the February 12th Act was for "an additional issue" of United States notes, then the February 12th Act was not, according to the February 25th Act, the first to issue United States notes.

And, since the February 12th Act also held its demand notes as "like notes, and for like purposes" as the [demand] notes of July 17, 1861 and the [demand] notes of August 5, 1861, then notes issued under all three earlier Acts were effectively treated by the February 25, 1862 Act as "United States notes," even though the first two Acts chronologically referred to the notes issued thereunder specifically as "treasury notes."

The February 25, 1862 Act was the first Act to legally refer within the body of the law, to "United States notes."

9. 12 Stat. 345. Section 1, which also said, in part:

> *"Provided, however,* That fifty millions of said notes shall be in lieu of the demand Treasury notes authorized to be issued by the act of July seventeen, eighteen hundred and sixty-one; which said demand notes shall be taken up as rapidly as practicable, and the notes herein provided substituted for them."
>
> February 25, 1862.

In this situation, realize that the first treasury notes were issued in 1812, simply for a more convenient form of government securities than the earlier-issued subscriber certificates.[10] These 1812 notes were made "receivable" in payment of all duties and taxes laid by the United States, and could also be used for payment of public land purchases from the United States.

Section 6 of the Act of June 30, 1812 stated that the treasury notes therein authorized would be:

> "every where received in payment of all duties and taxes laid by the authority of the United States, and of all public lands sold by the said authority."[11]

Section 6 of the February 24, 1815 Act made the treasury notes therein authorized:

> "every where received in all payments to the United States."[12]

And, Section 6 of the Act of October 12, 1837 declared that the treasury notes therein authorized:

> "shall be received in payment of all duties and taxes laid by the authority of the United States, of all public lands sold by the said authority, and of all debts to the United States, of any character whatsoever, which may be due and payable."[13]

Also realize that none of these earlier treasury notes were ever made a legal tender or lawful money, even as they were all made acceptable for all payments due the U.S. Government.

Now, however, these new February 25, 1862 United States notes—the first notes specifically delineated both a "legal tender" and a "lawful money"—could NOT be used by government to pay interest or principal due its creditors, on government-issued bonds and notes! And, even more significantly, neither could these legal tender, lawful money notes be used by private parties to make payment for the duties they owed to the U.S. Government, upon imported goods!

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10. See the Act of August 4, 1790 (I Stat. 138), for example.

11. 2 Stat. 766 @ 767.

12. 3 Stat. 213 @ 214.

13. 5 Stat. 201 @ 202.

The very paper Congress specifically declared a legal tender and lawful money could NOT be used for all payments even due the federal government!

This rather absurd conundrum provides fair evidence that something was not entirely right with these legal tender paper currency notes—that they may not actually be all that they were declared.

Section 1 also details that United States notes:

> "shall be received the same as coin, at their par value, in payment for any loans that may hereafter be sold or negotiated…and may be re-issued from time to time as the exigencies of the public interest may require."[14]

This passage gave creditors of the United States notice that future principal and interest payments on new government issued debts could and would be paid in United States notes. Prospective government creditors unwilling to lend money to the U.S. Government under such new terms and conditions would have to take their investments elsewhere.

By these words, no longer would government accepting the notes extinguish them, but the notes could be re-issued, as the "exigencies of the public interest may require." This rule extended circulation of the notes into a discretionary perpetuity, allowing the buildup of debt, long past its original term.

1862, March 17 Act

On March 17, 1862, Congress retroactively made the demand treasury notes of July 17, 1861 (but not the two other types of treasury notes therein authorized that bore interest) receivable in payment for duties and imports (even as the February 25, 1862 Act had earlier ordered the demand notes of July 17, 1861 be "taken up as rapidly as practicable," so that the February 25, 1862 notes could be "substituted for them").[15]

The March 17, 1862 Act also made those July, 1861 notes and February 12, 1862 notes "lawful money and a legal tender, in like manner, and for the same purposes, and to the same extent," as the notes authorized by the February 25, 1862 Act.[16]

14. 12 *Stat.* 345. Section 1. February 25, 1862.
15. 12 *Stat.* 370. Section 2.

1862, July 11 Act

On July 11, 1862, Congress authorized the issuance of $150,000,000 of additional United States notes not bearing interest and payable to bearer, in denominations of at least one dollar.

The United States notes were made, like their February 25, 1862 cousins:

> "receivable in payment of all loans made to the United States, and of all taxes, internal duties, excises, debts, and demands of every kind due to the United States, except duties on imports and interest, and of all claims and demands against the United States, except for interest on bonds, notes, and certificates of debt or deposit ; and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest, as aforesaid."[17]

Had existing debtors willingly honored their original promises—paying principal and interest for their old loans in gold and silver coin—there would have been no controversies for the courts later to parse out.

But, being people, some sought to repay their debts with the cheapest-possible dollars.

With the new legal tender United States notes falling in value to some 44 cents-on-the-[gold]-dollar in just a few years, strong incentives made it all but inevitable that several cases would make their way up to the U.S. Supreme Court.

Bronson v. Rodes, 74 US 229, 1869

In *Bronson v. Rodes*, the central question considered by the Supreme Court was whether Bronson (who held the private mortgage) was:

> "bound by law to accept from Rodes United States notes equal in nominal amount to the sum due him as full performance and satisfaction of a contract which stipulated for the payment of that sum in gold and silver coin, lawful money of the United States?"[18]

16. *Ibid.*
17. 12 *Stat.* 532
18. 74 *U.S.* 229 @ 245. Italics added.

In answering that question, the Court observed that "there was no necessity in law for such stipulation" (as italicized in the passage above) "for at that time no money, except gold and silver, had been made a legal tender. The bond without any stipulation to that effect would have been legally payable only in coin."[19]

The Court appropriately ruled that the word "debts" as used in the February 25, 1862 Act which made United States notes "legal tender…of all debts" did NOT include obligations when at the time a loan contract was written, that only gold and silver coin were legal tender, saying:

> "it must be held…that express contracts to pay coined dollars can only be satisfied by the payment of coined dollars. They are not "debts" which may be satisfied by the tender of United States notes."[20]

But, in giving its ruling, *Bronson* didn't go any further than it needed to decide the particular issue before the Court, stating that it wasn't:

> "necessary now to examine the question whether the clauses of the currency acts, making the United States notes a legal tender, are warranted by the Constitution."[21]

As is customary, if the Court can decide the issue before them, without resorting to larger issues of constitutionality, it will first do so.

The Court nevertheless commented on general principles of the various coinage Acts of Congress, for instance saying:

> "The design of all this minuteness and strictness in the regulation of coinage is easily seen. It indicates the intention of the legislature to give a sure guaranty to the people that the coins made current in payments contain the precise weight of gold or silver of the precise degree of purity declared by the statute. It recognizes the fact, accepted by all men throughout the world, that value is inherent in the precious metals; that gold and silver are in themselves values, and being such, and being in other respects best adapted to the purpose, are the only proper measures of value; that these values are determined by weight and purity; and that form and impress are simply certificates of value, worthy of absolute reliance only because of the known integrity and good faith of the government which give them."[22]

But, the Court also gave warning to creditors, to write their new contracts clearly, so debtors would know when they were required to make payments in gold or silver coin, rather than having the option of paying in paper currency (with benefit going to the debtor, if the creditor did not clearly specify such terms in his contract), saying:

> "When, therefore, two descriptions of money are sanctioned by law, both expressed in dollars and both made current in payments, it is necessary, in order to avoid ambiguity and prevent a failure of justice, to regard this regulation as applicable alike to both. When, therefore, contracts made payable in coin are sued upon, judgments may be entered for coined dollars and parts of dollars; and when contracts have been made payable in dollars generally, without specifying in what description of currency payment is to be made, judgments may be entered generally, without such specification."[23]

However, the Court also said:

> "It follows that there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature. The coined dollar was, as we have said, a piece of gold or silver of prescribed degree of purity, weighing a prescribed number of grains. The note dollar was a promise to pay a coined dollar; but it was not a promise to pay on demand nor at any fixed time, nor was it, in fact, convertible into a coined dollar. It was impossible, in the nature of things, that these two dollars should be the actual

19. *Ibid.*, Pg. 246.
20. *Ibid.*, Pg. 254.
21. *Ibid.*, Pg. 251.
22. Ibid., Pg. 249.
23. *Ibid.*

equivalents of each other, nor was there anything in the currency acts purporting to make them such."[24]

Because Rodes had assumed a mortgage that was originally taken out when legal tender consisted only of gold and silver coin, Rodes had to pay back in gold or silver coin, even though during his repayment period, new laws were enacted which declared paper notes a tender for all debts, including private debts.

Hepburn v. Griswold, 75 US 603, 1870.

While the *Bronson* Court issued its ruling without examining the constitutionality of the 1862 Legal Tender Act itself, the factors involved with the 1870 *Hepburn v. Griswold* case required a different approach. The justices in *Hepburn* specifically declared that they were:

> "brought to the question, whether Congress has power to make notes issued under its authority a legal tender in payment of debts, which, when contracted, were payable by law in gold and silver coin."[25]

Therefore, *Hepburn* went much further than *Bronson*, into a full and open investigation of the true legal authority of Congress, to even be able to enact legal tender paper currencies in the first place.

The *Hepburn* Court appropriately and spectacularly upheld only gold and silver coin as legal tender, concluding:

> "We are obliged to conclude that an act making mere promises to pay dollars a legal tender in payment of debts previously contracted, is not a means appropriate, plainly adapted, really calculated to carry into effect any express power vested in Congress; that such an act is inconsistent with the spirit of the Constitution; and that it is prohibited by the Constitution."[26]

The U.S. Supreme Court squarely ruled *against* paper currency being a legal tender and lawful money, even though Congress had specifically declared their new paper currency notes to be both a tender and lawful money.

Hepburn had other comments which help people understand what is money, including acknowledging that the power of "regulating" money:

> "is a power to determine the weight, purity, form, impression, and denomination of the several coins, and their relation to each other, and the relations of the foreign coins to the monetary unit of the United States."[27]

The *Hepburn* justices also said that the power of Congress to issue paper currency notes and the power to make them a legal tender are not one in the same, saying:

> "Indeed, we are not aware that it has ever been claimed that the power to issue bills or notes has any identity with the power to make them a legal tender. On the contrary, the whole history of the country refutes the notion."[28]

The Court admitted, as too often occurs during time of war, that:

> "It is not surprising that amid the tumult of the late civil war, and under the influence of apprehensions for the safety of the Republic almost universal, different view, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered their conclusions."[29]

24. *Ibid.*, Pages 251 – 252. Italics added.
25. 75 U.S. 603 @ 610.
26. *Ibid.*, Pg. 625. Italics added.
27. *Ibid.*, Pg. 616.
28. *Ibid.*, Italics added.
29. *Ibid.*

The Court lastly stated that the Fifth Amendment prohibition against depriving any person of (life, liberty, or) property without due process of law "cannot have its full and intended effect unless construed as a direct prohibition of the legislation which we have been considering" and that "it is quite clear, that whatever may be the operation of such an act, *due process of law makes no part of it.*"[30]

Both the *Bronson* and *Hepburn* cases supported honest money, with the latter fully refuting the idea that paper currencies were legal tender under the U.S. Constitution for direct use, throughout the Union.[31]

Of course, those pushing for government to be all things at all times couldn't permanently accede to this understanding, for tyranny financially-limited hasn't chance to grow and blossom to reward them accordingly.

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30. *Ibid*. Pg. 624. Italics added.

31. Also see *Lane County v. Oregon*, where the U.S. Supreme Court ruled: "that the clause making the United States notes a legal tender for debts has no reference to taxes imposed by state authority."[32]

While *Bronson* and *Hepburn* said that U.S. notes declared a legal tender and a lawful money weren't a tender in payment of debts previously incurred and that Congress had not the enumerated power to make paper currency a legal tender, respectively, *Lane County* also said paper currency notes declared a tender could not be used to pay taxes imposed by State authority, when State law says the opposite.

32. *Lane County v. Oregon,* 74 U.S. 71 @ 81 (1868).