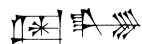

The Founders' Constitution

The Founders' Constitution

Edited by
Philip B. Kurland
and
Ralph Lerner

VOLUME THREE

Article 1, Section 8, Clause 5,
through Article 2, Section 1



Liberty Fund
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To Julie, Martha, and Ellen

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References to documents follow a consistent pattern both in the cross-references (in the detailed tables of contents) and in the indexes. Where a document in volume 1 is being cited, reference is to chapter and document number: thus, for example, ch. 15, no. 23. Where the document is to be found in one of the subsequent volumes, which are organized by Constitutional article, section, and clause, or by amendment, reference is in this mode: 1.8.8, no. 12; or, Amend. I (religion), no. 66. Each document heading consists of its serial number in that particular chapter; an author and title (or letter writer and addressee, or speaker and forum); date of publication, writing, or speaking; and, where not given in the first part of the heading, an identification of the source of the text being reprinted. These sources are presented in short-title form, the author of the source volume being presumed (unless otherwise noted) to be the first proper name mentioned in the document heading. Thus, for example, in the case of a letter from Alexander Hamilton to Governor George Clinton, "Papers 1:425–28" would be understood to refer

to the edition fully described under "Hamilton, Papers" in the list of short titles found at the back of each volume.

A somewhat different form has been followed in the case of the proceedings of the Constitutional Convention that met in Philadelphia from late May to mid-September of 1787. As might be expected, we have included many extracts from the various records kept by the participants while they were deliberating over the shape and character of a new charter of government. For any particular chapter or unit, those extracts have been grouped as a single document, titled "Records of the Federal Convention," and placed undated in that chapter's proper time slot. The bracketed note that precedes each segment within that selection of the "Records" lists the volume and opening page numbers in the printed source (Max Farrand's edition), the name of the participant whose notes are here being reproduced (overwhelmingly Madison, but also Mason, Yates, others, and the Convention's official Journal), and the month and day of 1787 when the reported transaction took place.

Article 1, Section 8, Clause 5

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

- | | |
|---|---|
| 1. William Blackstone, Commentaries (1765) | 6. Records of the Federal Convention |
| 2. Robert Morris to President of Congress, 15 Jan. 1782 | 7. James Madison, Federalist, no. 42, 22 Jan. 1788 |
| 3. Robert Morris to Thomas Jefferson, 1 May 1784 | 8. John Jay to George Washington, 13 Nov. 1790 |
| 4. <i>Wharton v. Morris</i> , 1 Dall. 125 (Pa. 1785) | 9. St. George Tucker, Blackstone's Commentaries (1803) |
| 5. Thomas Jefferson, Propositions respecting Coinage, 13 May 1785 | 10. Joseph Story, Commentaries on the Constitution (1833) |

1

WILLIAM BLACKSTONE, COMMENTARIES 1:264–68
1765

Secondly, the regulation of weights and measures. These, for the advantage of the public, ought to be universally the same throughout the kingdom; being the general criterions which reduce all things to the same or an equivalent value. But, as weight and measure are things in their nature arbitrary and uncertain, it is therefore expedient that they be reduced to some fixed rule or standard: which standard it is impossible to fix by any written law or oral proclamation; for no man can, by words only, give another an adequate idea of a foot-rule, or a pound-weight. It is therefore necessary to have recourse to some visible, palpable, material standard; by forming a comparison with which, all weights and measures may be reduced to one uniform size: and the prerogative of fixing this standard, our antient law vested in the crown; as in Normandy it belonged to the duke. This standard was originally kept at Winchester: and we find in the laws of king Edgar, near a century before the conquest, an injunction that the one measure, which was kept at Winchester, should be observed throughout the realm. Most nations have regulated the standard of measures of length by comparison with the parts of the human body; as the palm, the hand, the span, the foot, the cubit, the ell, (*ulna*, or arm) the pace, and the fathom. But, as these are of different dimensions in men of different proportions, our antient historians inform us, that a new standard of longitudinal measure was ascertained by king Henry the first; who commanded that the *ulna* or antient ell, which answers to the modern yard, should be made of the exact length of his own arm. And, one standard of measures of length being gained, all oth-

ers are easily derived from thence; those of greater length by multiplying, those of less by subdividing, that original standard. Thus, by the statute called *compositio ulnarum et perticarum*, five yards and an half make a perch; and the yard is subdivided into three feet, and each foot into twelve inches; which inches will be each of the length of three grains of barley. Superficial measures are derived by squaring those of length; and measures of capacity by cubing them. The standard of weights was originally taken from corns of wheat, whence the lowest denomination of weights we have is still called a grain; thirty two of which are directed, by the statute called *compositio mensurarum*, to compose a penny weight, whereof twenty make an ounce, twelve ounces a pound, and so upwards. And upon these principles the first standards were made; which, being originally so fixed by the crown, their subsequent regulations have been generally made by the king in parliament. Thus, under king Richard I, in his parliament holden at Westminster, A.D. 1197, it was ordained that there shall be only one weight and one measure throughout the kingdom, and that the custody of the assise or standard of weights and measures shall be committed to certain persons in every city and borough; from whence the antient office of the king's aulnager seems to have been derived, whose duty it was, for a certain fee, to measure all cloths made for sale, till the office was abolished by the statute 11 & 12 W. III. c. 20. In king John's time this ordinance of king Richard was frequently dispensed with for money; which occasioned a provision to be made for enforcing it, in the great charters of king John and his son. These original standards were called *pondus regis*, and *mensura domini regis*; and are directed by a variety of subsequent statutes to be kept in the exchequer, and all weights and measures to be made conformable thereto. But, as sir Edward Coke observes, though this hath so often by authority of parliament been enacted, yet it could never be effected; so forcible is custom with the multitude, when it hath gotten an head.

Thirdly, as money is the medium of commerce, it is the king's prerogative, as the arbiter of domestic commerce, to give it authority or make it current. Money is an universal medium, or common standard, by comparison with which the value of all merchandize may be ascertained: or it is a sign, which represents the respective values of all commodities. Metals are well calculated for this sign, because they are durable and are capable of many subdivisions: and a precious metal is still better calculated for this purpose, because it is the most portable. A metal is also the most proper for a common measure, because it can easily be reduced to the same standard in all nations: and every particular nation fixes on it its own impression, that the weight and standard (wherein consists the intrinsic value) may both be known by inspection only.

As the quantity of precious metals increases, that is, the more of them there is extracted from the mine, this universal medium or common sign will sink in value, and grow less precious. Above a thousand millions of bullion are calculated to have been imported into Europe from America within less than three centuries; and the quantity is daily increasing. The consequence is, that more money must be given now for the same commodity than was given an hundred years ago. And, if any accident was to diminish the quantity of gold and silver, their value would proportionably rise. A horse, that was formerly worth ten pounds, is now perhaps worth twenty; and, by any failure of current specie, the price may be reduced to what it was. Yet is the horse in reality neither dearer nor cheaper at one time than another: for, if the metal which constitutes the coin was formerly twice as scarce as at present, the commodity was then as dear at half the price, as now it is at the whole.

The coining of money is in all states the act of the sovereign power; for the reason just mentioned, that its value may be known on inspection. And with respect to coinage in general, there are three things to be considered therein; the materials, the impression, and the denomination.

With regard to the materials, sir Edward Coke lays it down, that the money of England must either be of gold or silver; and none other was ever issued by the royal authority till 1672, when copper farthings and half-pence were coined by king Charles the second, and ordered by proclamation to be current in all payments, under the value of six-pence, and not otherwise. But this copper coin is not upon the same footing with the other in many respects, particularly with regard to the offence of counterfeiting it.

As to the impression, the stamping thereof is the unquestionable prerogative of the crown: for, though divers bishops and monasteries had formerly the privilege of coining money, yet, as sir Matthew Hale observes, this was usually done by special grant from the king, or by prescription which supposes one; and therefore was derived from, and not in derogation of, the royal prerogative. Besides that they had only the profit of the coinage, and not the power of instituting either the impression or denomination; but had usually the stamp sent them from the exchequer.

The denomination, or the value for which the coin is to

pass current, is likewise in the breast of the king; and, if any unusual pieces are coined, that value must be ascertained by proclamation. In order to fix the value, the weight, and the fineness of the metal are to be taken into consideration together. When a given weight of gold or silver is of a given fineness, it is then of the true standard, and called sterling metal; a name for which there are various reasons given, but none of them entirely satisfactory. And of this sterling metal all the coin of the kingdom must be made by the statute 25 Edw. III. c. 13. So that the king's prerogative seemeth not to extend to the debasing or inhancing the value of the coin, below or above the sterling value: though sir Matthew Hale appears to be of another opinion. The king may also, by his proclamation, legitimate foreign coin, and make it current here; declaring at what value it shall be taken in payments. But this, I apprehend, ought to be by comparison with the standard of our own coin; otherwise the consent of parliament will be necessary. There is at present no such legitimated money; Portugal coin being only current by private consent, so that any one who pleases may refuse to take it in payment. The king may also at any time decry, or cry down, any coin of the kingdom, and make it no longer current.

2

ROBERT MORRIS TO PRESIDENT OF CONGRESS
15 Jan. 1782

Jefferson Papers 7:160-68

Finding by the Act of the United States in Congress of the seventh Instant that I am Instructed to prepare and report a Table of Rates at which the different Species of foreign Coins most likely to circulate within the United States shall be received at the Treasury I have been induced again to turn my Attention to an Object which has employed my Thoughts very frequently and which would have been long since submitted to Congress had I not been prevented by other Business and much delayed by those Things relating to this Business which depended upon others. I shall now pray Leave to deliver my Sentiments somewhat at large on this Subject.

The United States labor under many Inconveniences and even Disadvantages which may at present be remedied but which if suffered to continue would become incurable and lead to pernicious Consequences. It is very fortunate for us that the Weights and Measures used throughout America are the same. Experience has shewn in other Countries that the Efforts of the Legislator to Change Weights and Measures altho fully seconded by the more enlightened Part of the Community have been so strongly opposed by the popular Habits and Prejudices that Ages have elapsed without producing the desired Effect. I repeat therefore that it is happy for us to have throughout the Union the same Ideas of a Mile and an Inch a Hogshead and a Quart, a Pound an Ounce. So far our com-

mercial Dealings are simplified and brought down to the level of every Capacity. With respect to our Money the Case is very widely different. The Ideas annexed to a Pound a Shilling and a Penny are almost as various as the States themselves. Calculations are therefore as necessary for our inland Commerce as upon foreign Exchanges and the commonest Things become intricate where Money has any thing to do with them. A Farmer in New Hampshire for Instance can readily form an Idea of a Bushell of Wheat in South Carolina weighing sixty Pounds and placed at one hundred Miles from Charlestown but if he were told that in such Situation it is worth twenty one Shillings and eight Pence, he would be obliged to make many Enquiries and form some Calculations before he could know that this Sum meant in general what he would call four Shillings. And even then he would have to enquire what Kind of Coin that four Shillings was paid in before he could estimate it in his own Mind according to the Ideas of Money which he had imbibed. Difficulties of this Sort do not occur to Farmers alone, they are perplexing to most Men and troublesome to all. It is however a fortunate Circumstance that Money is so much in the Power of the Sovereign as that he can easily lead the People into new Ideas of it and even if that were not the Case yet the loose State in which our Currency has been for some Years past has opened the Way for receiving any Impressions on that Subject. As we are now shaking off the Inconveniencies of a depreciating Medium the present Moment seems to be that in which a general Currency can best be established so as that in a few Months the same Names of Money will mean the same Things in the several Parts of the United States.

Another Inconvenience which admits of the same easy Remedy and which would indeed be cured by the very same Act is the Want of a legal Tender. This is as necessary for the Purposes of Jurisprudence as a general Currency is for those of Commerce. For altho there is great Impropriety not to say Injustice in compelling a Man to receive a Part of his Debt in discharge of the whole yet it is both Just and proper that the Law should protect the honest Debtor who is willing to pay against the vexatious Suits of an Oppressive Creditor who refuses to receive the full Value.

The Nature Value and Use of Money have always occasioned strong Temptations to the Commission of Fraud and of Consequence the Practice of counterfeiting is coeval with that of Coining. No Government can Guard its Subjects entirely against the wicked Ingenuity which has been exercised in this respect. But it has always been the Object of every wise Government to take all the Precautions against it which are within the Compass of human Ability. These Precautions will be most effectual where the Coins are few and simple because they by that Means become familiar to all Ranks and Degrees of Men but where the Coins are so numerous that the Knowledge of them is a kind of Science the lower Order of Citizens are constantly injured by those who carry on the Business of debasing sweating clipping counterfeiting and the like. It is therefore to be lamented that we have so many different Coins in the United States.

It is not necessary to mention what is in every Body's Mouth that the precious Metals were first used as Bullion and that the Inconvenience of weighing and the Difficulty of Assaying introduced the Practice of Coining in Order that the weight and fineness might be known at the first View and of Consequence the Value be instantly ascertained. It is equally unnecessary to observe that the great Privilege of declaring this Value by particular Marks has among all Nations been vested exclusively in the Sovereign. A Trust so important could not indeed be vested any where else because the Danger of abusing it was too great. And History informs us that Sovereigns themselves have not on this Occasion behaved with that Integrity which was alike due to their Subjects and to themselves to the Interests of their People and to their own personal Glory. Experience has already told us that the advantage of Gold as a Coin is in this Country very considerably diminished for every distinct Piece must be weighed before it can be safely received. Both Gold and Silver Coins are indeed preferable, in one respect to common Bullion that the Standard is presumed to be just and consequently they are received without the Delays and Expences of assaying. It must however be remembered that they are all foreign Coins and of Course we are not only exposed to the Tricks of Individuals but should it suit the Interest or Convenience of any Sovereign to make base Money for us there is Nothing to prevent it. If for Instance the King of England or any of his Birmingham Artists should coin Guineas worth but sixteen shillings Sterling our Citizens would readily and freely receive them at twenty one Shillings Sterling. It is my Duty to mention to Congress Information I have received that Guineas of base Metal are coined at Birmingham so well as to escape any common Attention. Now there can be no Doubt but that every such Guinea received here would be a national Loss to us of an English Crown. How much we suffer in this Way at present it is impossible to estimate.

What I have already had the Honor to observe contains some of the reasons why it appears to me highly necessary that an American Coin should be adopted without Delay and to these Reasons it may be added that there is a want of small Money for the common Occasions of Trade and that it is more felt by our Soldiery than any other Persons. For the little Pay which they do receive being either in Gold or at best in Dollars the Sutlers and others with whom they have Dealings continually take the Advantage of their want of Change and rate the Prices of their Goods accordingly.

Shortly after my Appointment finding that there was a considerable Quantity of public Copper at Boston I ordered it round to this Place. It has safely arrived and will when coined amount to a considerable Sum. The necessary Machinery of a Mint can be easily made and there are Persons who can perform the whole Business. I must pray leave therefore to submit to Congress some few more particular remarks on this Subject as introductory to a Plan for an American Coin.

Altho most Nations have coined Copper yet that Metal is so impure that it has never been considered as constituting the Money Standard. This is affixed to the two pre-

cious Metals because they alone will admit of having their intrinsic Value precisely ascertained. But Nations differ very much in the relation they have established between Gold and Silver. In some European Countries an Ounce of pure Gold passes for fifteen Ounces of pure Silver. In others for fourteen. In China it passes for much less. The Standard therefore which is affixed to both Metals is in Reality affixed to neither. In England Gold is to Silver nearly in the Proportion of one to fifteen and in France nearly of one to fourteen. If a Man carries fourteen ounces of Gold from France to England he receives two hundred and ten Ounces of Silver which in France purchase fifteen ounces of Gold so that he gains on that Exchange one ounce of Gold. In like Manner he who carries from England fourteen Ounces of Silver to France receives one Ounce of Gold which in England purchases fifteen Ounces of Silver wherefore he gains on that Exchange one Ounce of Silver. If it be then supposed that the Coins of these two Countries were alike pure it must follow that in a short Time all the gold Coin of full Weight would be in England and all the silver Coin of full weight in France. But the light Silver circulating in England and the light Gold in France the real Standard of Coin in each would be different from the legal and seek a Medium of fourteen and an half of Silver for one of Gold altho the legal Standard might still be in the one Place fifteen and in the other fourteen.

The Demand which Commerce might make for any one of the precious Metals in Preference of the other would vary this real Standard from Time to Time and in every Payment a Man would get more or less of real Value for his Debt according as he were paid in the Coin of greater or lesser Value in relation to the real Standard. If for Instance the Debt were contracted when the Silver was to Gold as one to fifteen and paid when as one to fourteen; if the Debt were paid in Silver he would gain one thirtieth and if in Gold he would loose one thirtieth. In England the Money Standard is rather affixed to Gold than to Silver because all Payments are made in the former and in France it is rather affixed to Silver than to Gold.

Arguments are unnecessary to shew that the Scale by which every thing is to be measured ought to be as fixed as the Nature of Things will permit of. Since therefore a Money Standard affixed to both the precious Metals will not give this certain Scale it is better to make use of one only. Gold is more valuable than Silver and so far must have the Preference but it is from that very Circumstance the more exposed to fraudulent Practices. Its Value rendering it more portable is an Advantage. But it is an Advantage which Paper possesses in a much greater Degree and of Consequence the commercial Nation of England has had recourse to Paper for the Purposes of it's Trade altho the Mass of circulating Coin is Gold. It will always be in our Power to carry a Paper Circulation to every proper Extent. There can be no doubt therefore that our Money Standard ought to be affixed to Silver.

But Silver is liable like every Thing else to a Change of Value, if there is a Demand for it, to export, the Value will rise, if the Contrary it will fall, and so far it cannot be considered as a fixed Measure of Value. Before this Objec-

tion be considered it will be proper to make a few reflexions on another Part of the present Subject but in this Place I remark that if the Objection cannot be removed we must not suffer it to preponderate because it weighs alike against every other Metal.

To Coin Money is a certain Expence and of Course it is an Expence which must be borne by the People. In England the Coin when melted will sell as Bullion for just as much as its Weight in other Coin. The Expence of Coinage is paid by the Crown and of Course it is raised by Taxes from the People. In France the Coinage instead of being expensive yields a Profit. The Price given for Metal at the Mint is about eight Pr. Cent less than the same Quantity will yield when coined at the french Standard. Both of these Methods are liable to Objections. When Commerce demands an Exportation of Bullion from England the Coin of the Kingdom goes out in common with others; this increases of Course the National Expence of Coinage. Laws to prevent the Exportation or Importation of any Thing so valuable as Money are always Nugatory because they always *can* be eluded and therefore when private Interest requires they always *will* be eluded. That the Guineas of England therefore are not continually going away is to be attributed to the extraordinary Value affixed to Gold which has been just mentioned and which banishes silver continually. In France the People are not liable to this Inconvenience because their Money passing for more than its Value in Bullion, Bullion will always be exported in Preference of Coin. But for the same Reason there is always a strong Temptation to imitate their Coin and send it for the Purchase of their Commodities. It would be both impossible and unnecessary to distinguish the True from the false because both would be of equal intrinsic Value. The Place at which they were struck would be indifferent to the Receiver, of Consequence the foreigner who made french Coin would gain by his Trade and the french Nation would loose proportionately.

The Money paid for Coining or the Coinage of France has however this Advantage that the Money is a Standard which does not fluctuate with the Price of Bullion. This Coinage is as has been said about eight Pr. Cent. When Bullion is below ninety two it is carried to the Mint when above ninety two to the Broker or Silver Smith. The Coin still continues fixed nor will it bear Exportation until Bullion rises to an hundred when the french Coin would be as liable to Exportation as the English. In that Case it would be exported on one Hand, while on the other no more would have been coined for a considerable Period because to make the eight Pr. Cent Coinage it is necessary that the Mint Price should be ninety two. The Coin therefore could not long be exported if at all but would soon resume it's Value. The Price of Bullion must float between ninety two and an hundred while the Coin would preserve its fixed Quality as Money.

Hence then it appears proper that the Price of Coining should be defrayed by the Coinage because first it is natural and proper that the Price should be paid when the Benefit is received and that the Citizen in Return for the Advantage of being ascertained in the Value of the Medium of Commerce by the Sovereign should pay for ascer-

taining it just as that he should pay for the fashion of the Plate he uses or the Construction of the Cart he employs. Secondly it is right that Money should acquire a Value, as Money distinct from that which it Possesses as a Commodity in Order that it should be a fixed Rule whereby to Measure the Value of all other Things and thirdly it is wise to prevent the Exportation of the Coin which would involve an unnecessary national Expence and also to prevent the Imitation of it abroad so as to create a national Loss: For both which Purposes it is proper that the Coinage should only defray the Expence without making any considerable Profit. The Laws usual in all Countries with respect to the Money will then fully operate the Effect intended.

In Order that a Coin may be perfectly intelligible to the whole People it must have some Affinity to the former Currency. This therefore will be requisite in the present Case. The Purposes of Commerce require that the lowest divisible Point of Money or what is more properly called the Money Unit should be very small because by that Means Price can be brought in the smallest Things to bear a Proportion to the Value. And altho it is not absolutely necessary yet it is very desirable that Money should be increased in a decimal Ratio because by that Means all Calculations of Interest Exchange Insurance and the like are rendered much more simple and accurate and of Course more within the Power of the great Mass of People. Wherever such Things require much Labor Time and Reflection the greater Number who do not know are made the Dupes of the lesser Number who do.

The various Coins which have circulated in America have undergone different Changes in their Value so that there is hardly any which can be considered as a general Standard unless it be spanish Dollars. These pass in Georgia at five Shillings in North Carolina and New York at eight Shillings in Virginia and the four Eastern states at six Shillings in all the other States except South Carolina at seven Shillings and six Pence and in South Carolina at thirty two Shillings and six Pence: The Money Unit of a new Coin to agree without a Fraction with all these different Values of a Dollar except the last will be the fourteen hundred and fortieth Part of a Dollar equal to the sixteen hundredth Part of a Crown. Of these Units twenty four will be a Penny of Georgia, fifteen will be a Penny of North Carolina, or New York, twenty will be a Penny of Virginia and the four Eastern States sixteen will be a Penny of all the other States except South Carolina and forty eight will be thirteen Pence of South Carolina.

It has been already observed that to have the Money Unit very small is advantageous to Commerce but there is no Necessity that this Money Unit be exactly represented in Coin it is sufficient that its Value be precisely known. On the present Occasion two Copper Coins will be proper the one of eight Units and the other of five. These may be called an eight and a five two of the former will make a Penny Proclamation or Pennsylvania Money and three a Penny Georgia Money, of the latter three will make a Penny York Money and four a Penny lawful or Virginia Money. The Money Unit will be equal to a quarter of a Grain of fine Silver in coined Money. Proceeding thence in a decimal Ratio one hundred would be the lowest Silver

Coin and might be called a Cent. It would contain twenty five Grains of fine Silver to which may be added two Grains of Copper and the whole would weigh one Penny Weight three Grains. Five of these would make a Quint or five hundred Units weighing five Penny Weight fifteen Grains and ten would make a Mark or one thousand Units weighing Seven Penny weight six Grains.

If the Mint Price of fine Silver be established at 22,237. Units per Pound. This being coined would be four Times 5,760 Grains or 23,040 Units. The difference is 803. Units and therefore the Coinage is 803 on 23,040 or somewhat more than $3\frac{4}{100}$ P. Cent, which would be about the Expence attending it. A Dollar contains by the best Assays which I have been able to get about 373 Grains of fine Silver and that at the Mint Price would be 1,440 Units. In like Manner if Crowns contain from 414. to 415 Grains of fine Silver they would at the Mint Price be worth 1600 Units.

When such a Coin shall have been established the Value of all others would be easily ascertained because Nothing more would be necessary than to have them assayed at the Mint. The Advantage of Possessing legal Money in Preference of any other would induce People to carry foreign Coin to the Mint until a sufficiency were struck for the circulating Medium. The remainder of the foreign Silver together with the Gold should be left entirely to the Operations of Commerce as Bullion.

In the present Moment it is by no Means of such Consequence to establish the relative Value of different Coins as to provide a Standard of our own by which in future to estimate them. If the Value were now sought they must all be estimated in Dollars because Dollars are called for in the several requisitions of Congress. Without noticing the Preference thus given to one foreign Coin over another it is sufficient to observe that if a greater Alloy should be introduced by the Spanish Government into their Dollars our interior regulations as to Money would be overturned and certainly we have no Security that this will not happen. There is not any great Inconvenience from leaving Matters on their present footing until they can be remedied by the Operations of a Mint for it is not to be supposed that all the Money raised by Taxes in a State is to be brought out of it. I expect that there will be very little Occasion to transport money from Place to Place. It is much easier to negotiate than to carry it and if any Species of Money is generally received within a State at the same Rate in which it is paid in Taxes there will be no Difficulty in expending it at its Value. Whenever Money shall be struck by Authority of the United States then indeed it will be proper to receive in Taxes no other Coin.

If Congress are of Opinion with me that it will be proper to Coin Money I will immediately obey their Orders and establish a Mint. And I think I can say with Safety that no better Moment could be chosen for the Purpose than the present. Neither will any thing have a greater tendency to restore public Credit for altho it is possible that the new Money will at first be received with Diffidence by some Yet when it has been fairly assayed it will gain full Confidence from all; and the Advantage of holding the only Money which can Pay Debts or Discharge

Taxes will soon give it the Preference over all and indeed banish all other from Circulation. Whereas fixing a Relation of Value now on whatever Principles attempted might give Offence to the Power whose Coin should in any Instance be reduced from its present numerary Value among us.

3

ROBERT MORRIS TO THOMAS JEFFERSON
1 May 1784

Jefferson Papers 7:189–92

I have received your favor of the twenty sixth Instant for which I pray you to accept my Thanks. Enclosed you have the Copy of my Letter of the fifteenth of January 1782. to Congress and also Mr. Gouverneur Morris's Letter to Mr. Helmlly of the thirtieth of April 1783. I will add to these such Observations as have occurred on your Notes which agreeably to your Desire are herewith returned.

I agree with you as to your Idea of a Money Unit in the first and second Points but to the third must submit an Alteration. Premising however that in this Letter I shall adopt the Term *Unit* in the Sense in which you have used it viz: as the largest Silver Coin instead of that Sense in which it is applied in my Letter viz. as the lowest fractional Money of Account not represented precisely by any Coin, similar in this Respect to the Portuguese Rea. I think then the third Proposition would stand best in this Way *That its Parts be so correspondent to the present Money of Account as to be of easy Adoption to the People.*

I take it to be a self Evident Proposition that any Coin may be Circulated at a Rate nearly proportioned to it's intrinsic Worth and in that Point of View it is unimportant what the Size or Standard shall be. But the present Object is to go farther and adopt such a Coin as shall become exclusively the circulating Medium and a new Money of Account. It is true that Dollars form our general Circulation but they are not any where the Money of Account. No Merchants Books are kept in Dollars few if any Purchases are made at a Rate specified in Dollars and Parts of Dollars. Let it be supposed then that a Dollar be taken as the *Unit* and divided into an hundred Parts and that a Merchant desirous of adopting the New Coin should balance his Books to open them in it. Let it be a Merchant of Boston and let the first Sum he wants to reduce be £365. this would be expressed thus in the new Coin 1216.66%. His first Essay therefore would oblige him to combine both Vulgar and decimal fractions. If the same Essay be made on the Books of any other Merchant it would be attended with the same Effect. It is therefore of little Avail that the unit be nearly or even exactly of the Value of known Coins unless it's Parts correspond with the present Money of Account.

In this Letter you will find enclosed my original Letter to Congress of the twenty third of April 1783. together

with the Specimens of a Coin there mentioned. These you will be so kind as to deliver to the Secretary of Congress after you have done with them and as the Reasoning on such Subjects is facilitated by a Reference to visible Objects let us take the largest of those Silver Coins as the Money *Unit* divisible into a thousand Parts each containing $\frac{1}{4}$ of a Grain of pure Silver. Here then we have a Piece of Money of convenient Size containing 250 grains of pure Silver, and worth about two thirds of a Dollar viz: $\frac{4}{2}$ Virginia Money. The smallest Copper Piece is worth one Farthing Virginia Money and £365. is expressed thus 1752. Suppose we add 6.d. $\frac{1}{4}$ it will then stand 1752.125. Trials upon other Currencies will shew that all Sums can be brought to agree not only *nearly* but *exactly* to this unless in a very few Cases indeed where $\frac{1}{15}$ of the small Copper Piece must be rejected. The Objection you State against this Coin is that the Unit is divided into 1000 Parts whereas you would divide a Unit one third larger into no more than 100 Parts but we must consider that the $\frac{1}{100}$ of a Dollar is not sufficiently small to be rejected in any Matter of Accot. and then when the Poor are Purchasers or Venders it does not admit of the Divisibility necessary for their Affairs. The Rea of Portugal is $\frac{1}{800}$ of a Dollar and is not found to make any Difficulty in Calculations or Entries but on the contrary to occasion much Convenience. Names are of little Consequence but they are not quite indifferent. Suppose that we call the largest Piece a Dollar the smallest a Shilling and that the Shilling be divisible into an hundred Pence. If a Gold Coin be struck it may be made equal to five Dollars and it's value about that of a Pistole. This might be called a Pound and would be exactly $\frac{20}{10}$ of the Currency of New Hampshire Massachusetts Rhodes Island Connecticut and Virginia. In point of Size I believe that these Pieces of Money would be convenient and I do not think it of small Consequence that the lowest fractional Part be a Quantity of pure Silver equal to an established Weight because in considering foreign Exchanges we can by that Means always bring the Money of Account of foreign Nations to an exact analogy with our own.

On the whole there are but two Points in which we differ the first is as to the Value of the lowest fractional Part of the Money Unit for we agree that it should proceed from thence upwards in a decimal Ratio. The second is as to the Proportion which Gold should bear to Silver. I wish this to be rather too small than too large because I think the Bank Paper may supply the Place of Gold and not of Silver. If therefore we give more for Silver and less for Gold the Gold will be exported and the Silver will stay. To this I add that our direct Means of importing Bullion is Gold from Lisbon and not Silver from the Spanish Territories because the latter will probably continue to be shut against us and we know by Experience that Silver was exported to England in Preference to Gold while our legal Proportion was the same as theirs because theirs being too high Silver always was worth more at Market than the Mint Price. To shew that this continues to be the Case I will observe that the lowest Price Current of Dollars yet received from England is for old Dollars $\frac{63}{9}$ and for new Dollars $\frac{62}{6}$. per Pound, altho neither of them are so fine as the Sterling Standard which according to Law is worth

but 62/. Hence you will see that the *actual* is below the *legal* Proportion and the fixing of the legal Proportion so high is the Cause why all but light Silver is banished from Circulation. If the Piece of five Dollars were made to contain 84 Grains of pure Gold and seven of Alloy this would establish a Proportion of 1. to 14. $\frac{37}{42}$ and would be attended with this Advantage that the Piece would weigh exactly three Pennyweight nineteen Grains, without any fractions of a Grain either in the pure [gold or in the] Alloy. The Quantity of Alloy in the Silver is not material to the Value but if it be sufficiently hard all Alloy beyond that Point renders it more liable to Imitation by a baser Composition. Let the Plan be what it may I think it would be advantageous to make the different Pieces of Money consist of Weights represented by a Number of Pennyweights or Grains without Fractions and also to have in each Piece an integral Number of Grains of pure Metal.

I do not think it will be necessary to cause Assays of the different Coins to be made because I have already a Work more perfect in its Kind than any Assays we can have made. It is the Production of a Person employed by the french Court for the Purpose and the only Difficulty in the Application of it consists in the Difference between their Weights and ours. This however is easily surmounted by Approximation. I should suppose that Congress might adopt (before their Adjournment) a Plan for the Coinage and certainly it is an Object which merits immediate Attention. So far from being attached to the Plan which I have held out I am ready to confess that the Subject is not so familiar as I could wish and that I am not for that Reason competent to a decisive Judgment. All which I can pretend to is a general Sketch to be matured by the Wisdom of Congress but I wish that it may meet their speedy Determination.

There is one Point on which you have not said any Thing but which appears to be of Importance viz: how the Expence is to be defrayed. Supposing you to be with me in Opinion that it ought to be by what is called *Coinage* I would hint that the Price to be given for fine Silver or *Mint Price* should be established and if you make a Golden Coin that of Gold also. If the Mint Price of an Ounce of fine Gold be fixed at 28. Dollars this at the Rate of 84. Grains for 5 Dollars would when coined amount to 28.571. being a little more than two per Cent Difference.

I must intreat your Excuse for the Crudeness of this hasty Production which is not so attentively digested as it might have been because I am unwilling to delay it.

4

WHARTON v. MORRIS
1 Dall. 125 (Pa. 1785)

The bond is made payable in current money of Pennsylvania; but, I would ask, what is the *current money of Pennsylvania*? For my part, I know of none, that can properly

be so called, for current and lawful are synonymous. In Great Britain, the king, by his proclamation, may render any species of coin a lawful currency. But here, it can only be done by an act of assembly; and except in the temporary laws for supporting the former emissions of paper-money, there is no pretence that the legislature has ever interfered upon this subject. The expressions in the 2d section of the act of the 27th January 1777 (P.L. p. 6), cannot be construed to make the Spanish milled dollars a legal tender, as they are only mentioned by words of reference; but that which was declared to be a lawful tender, and consequently became the legal currency of the land, was the money emitted under the authority of congress.

To that species of money, therefore, the bond must be taken to relate; and the jury will either reduce the penalty to gold or silver, according to the scale of depreciation; or, if they think it more equitable, they will find a verdict for the value of the tobacco, and give the plaintiffs legal interest from the day of the sale.

5

THOMAS JEFFERSON, PROPOSITIONS
RESPECTING COINAGE
13 May 1785
Papers 7:194-98, 202

First. The value of silver compared with gold. Second. The weight or size of the several pieces of money that are to be made. Third. The money arithmetic, or the mode in which it is to be counted; and fourth, The charges of coinage are to be considered.

1. In France, 1 grain of pure gold is counted worth 15 grains of silver. In Spain, 16 grains of silver are exchanged for 1 of gold, and in England $15\frac{1}{5}$. In both of the kingdoms last mentioned, gold is the prevailing money; because silver is undervalued. In France silver prevails. Sundry advantages would arise to us from a system by which silver might become the prevailing money. This would operate as a bounty to draw it from our neighbours, by whom it is not sufficiently esteemed. Silver is not exported so easily as gold, and it is a more useful metal.

Certainly our exchange should not be more than 15 grains of silver for one of gold. It has been alledged by the late financier, that we should not give more than $14\frac{1}{2}$; perhaps $14\frac{3}{4}$ would be a better medium, considering the quantity of gold that may be expected from Portugal.

2. The weight, size or value of the several pieces of money that shall be made, or rather the most convenient value of the money unit, is a question not easily determined, considering that most of the citizens of the United States, are accustomed to count in pounds, shillings and pence; and that those sums are of different values in the different states: hence they convey no distinct ideas. The money of the United States should be equally fitted to all. The late financier has proposed to make gold and silver

pieces of particular weight; and there is a very simple process, by which the imaginary money of the several states may be translated into such pieces, or vice versa. He proposes that the money unit be one quarter of a grain of pure silver. That the smallest coin be of copper, which shall be worth 5 of those units. The smallest silver coin to be worth 100 units; another to be worth 500; another of 1000; and thus increasing decimally.

The objections to this plan are, that it introduces a coin unlike in value to any thing now in use. It departs from the national mode of keeping accounts, and tends to preserve inconvenient prejudices. Whence it must prevent national uniformity in accounts; a thing greatly to be desired.

Another plan has been offered, which proposes, that the money unit be one dollar; and the smallest coin is to be of copper, of which 200 shall pass for one dollar. This plan also proposes, that the several pieces shall increase in a decimal ratio; and that all accounts be kept in decimals, which is certainly by much the most short and simple mode.

In favour of this plan it is urged, that a dollar, the proposed unit, has long been in general use. Its value is familiar. This accords with the national mode of keeping accounts, and may in time produce the happy effect of uniformity in counting money throughout the union.

3. The money arithmetic, though an important question, is one that can admit of little dispute. All accountants must prefer decimals.

4. What is the best mode of defraying the expence of coinage? Different nations have adopted different systems. The British value their silver when coined, no higher than bullion. Hence it follows, that the expence of the mint, increasing the civil list, must be paid by a general tax; and tradesmen are disposed to work up the current coin, by which the tax is increased and continued. In some other countries silver or gold when coined, are valued above the price of bullion; whence tradesmen are discouraged from melting or working up the current coin, and the mint is rather profitable than burdensome. Certainly there are good and conclusive reasons, why we should value the national coin above the price of bullion; but there is a certain point beyond which we may not proceed, lest we encourage counterfeits, or private imitations of our coin. It has been proposed to make a difference of $2\frac{1}{2}$ per cent. nearly, as an allowance for the coinage of gold, and of 3.013 per cent. for the coinage of silver. It is probable that 3 per cent. would more than defray the expence of coining silver, in which case it would be a temptation to private imitation, and would operate against the free circulation of the money, as being valued too high. It is to be remembered that silver coin ought to be encouraged, and probably 2 per cent. or $2\frac{1}{4}$ per cent. would be a proper difference between silver coined and bullion. The same difference to be made in the price of gold. If this does not fully pay the expences of the mint, there will be a much larger gain on the coinage of copper; and if there should remain a small balance against the mint, its operation will not be unfavourable.

The coinage of copper is a subject that claims our immediate attention. From the small value of the several pieces of copper coin, this medium of exchange has been too much neglected. The more valuable metals are daily giving place to base British halfpence, and no means are used to prevent the fraud. This disease, which is neglected in the beginning, because it appears trifling, may finally prove very destructive to commerce. It is admitted that copper may at this instant be purchased in America at $\frac{1}{8}$ of a dollar the pound. British halfpence made at the tower are 48 to the pound. Those manufactured at Birmingham, and shipped in thousands for our use, are much lighter, and they are of base metal. It can hardly be said that 72 of them are worth a pound of copper. Hence it will follow, that we give for British halfpence, about six times their value. There are no materials from which we can estimate the weight of halfpence that have been imported from Britain since the late war. But we have heard of sundry shipments being ordered, to the nominal amount of 1000 guineas; and we are told, that no packet arrives from England, without some hundred weight of base halfpence. It is a very moderate computation which states our loss on the last twelve months, at 30,000 dollars, by the commerce of vile coin. The whole expence of a mint would not have amounted to half of that sum, and the whole expence of domestic coinage would remain in the country.

The following forms of money are submitted.

	Dollars.
1 piece of gold of	5
1 piece of silver of	1 containing 362 grains pure silver. This is the unit or money of account.
	dol.
1 ditto,	$\frac{1}{2}$ or .5
1 ditto,	$\frac{1}{4}$ or .25
1 ditto,	$\frac{1}{10}$ or .1
1 ditto,	$\frac{1}{20}$ or .05
1 piece of copper of	$\frac{1}{100}$ or .01
1 ditto,	$\frac{1}{200}$ or .005

The quantity of pure silver being fixed that is to be in the unit or dollar, and the relation between silver and gold being fixed, all the other weights must follow.

When it is considered, that the Spaniards have been reducing the weight of their dollars, and that instead of 385.5 the grains of pure silver in the old Mexican dollar, the new dollars have not more than 365 grains, it will hardly be thought that 362 grains of pure silver is too little for the federal coin, which is to be current in all payments for one dollar. Some of the old dollars will admit of a second coinage; but the new ones will not. If the value of gold compared to that of silver, be fixed at 15 to one, and the alloy in each be $\frac{1}{12}$, the weight of the several denominations will be readily determined.

The price of bullion is immediately determined by the per centage that is charged towards the expences of the mint.

If the United States determine to adhere to the dollar as their money of account, and to simplify accounts by the

use of decimals, there is nothing to prevent the immediate commencement of a coinage of copper.

Let the copper pieces, of which 100 are to pass for a dollar, contain each 131 grains of pure copper, or 44 of them weigh one pound. In this case our copper coin, when compared with the money of account, will be 6 per cent. better than that of Great-Britain. There will remain a sufficient profit on the coinage.

Copper at the best quality in plates, may be purchased in Europe at 10d. ½ sterling. In cutting blanks there will be a waste of 22 per cent. Those clippings are worth 7d. ½ per pound. Thence the blanks will cost 11d. ½ nearly; it may be stated at 1s.9d. New-York money per pound, exclusive of the expence of cutting them, which is not great, as one man can readily cut 100 weight in a day.

The operation, improperly called milling, by which the sharp edges are worn off from the coppers, is not more expensive than cutting the blanks.

In the process of coining copper, eight artists or labourers may be required.

One engraver, 1 labourer for the blank press.

One smith, 5 labourers for the coining press.

By those people 100 weight of copper may readily be coined every day, or the value of 44 dollars. Deducting the necessary expences, there may be saved 30 per cent.

The advantages of coining money in this country are, first, those which arise from the same operation in all other countries; and secondly, that of reducing all our currencies to one. The advantages from the coin here proposed are, first, that none other will effect the object already mentioned of banishing other currencies, because that alone applies without fractions to them all. Secondly, that the minuteness of its lowest denomination would render it an accurate measure of the smallest variations of quantity or quality in any commodity. Thirdly, that the decimal proportion of its parts would render all calculations in it easy, as appears in the calculations and consequent rates of exchange above mentioned: And lastly, that few figures would be used for the largest sum, while at the same time the smallest sums would be comprehended. For if the lowest denomination be of considerable value, recourse must be had to fractions, as in England, where the penny is divided into fourths, eights, and sometimes sixteenths, and even then without sufficient accuracy; whereas the lowest denomination of the coin here proposed will be about 1/27 of a penny sterling.

Lastly, as to the names above chosen, they, like all other names, are arbitrary, and better may perhaps be substituted. The word crown occurred from the following idea of an impression for the gold coin—An Indian, his right foot on a crown, a bow in his left-hand, in his right-hand thirteen arrows; and the inscription Manus inimica Tyrannis.

6

RECORDS OF THE FEDERAL CONVENTION

[2:136, 144, 159, 167; *Committee of Detail*]

16. S & H.D. in C. ass. shall have the exclusive Right of coining Money—regulating its Alloy & Value—fixing the Standard of Weights and Measures throughout U.S.

10. To (regulate)* The exclusive right of coining money (Paper prohibit) no State to be perd. in future to emit Paper Bills of Credit witht. the App: of the Natl. Legisle nor to make any (Article) Thing but Specie a Tender in paymt of debts

. . . of coining Money—fixing the Standard of Weights and Measures—of determining in what Species of Money the public Treasury shall be supplied.

The Legislature of the United States shall have the (Right and) Power . . . to coin Money, to regulate the (Alloy and) Value of foreign Coin; to fix the Standard of Weights and Measures; . . .

[2:308; *Madison, 16 Aug.*]

for coining money. agd. to nem. con.

for regulating foreign coin. d. do.

for fixing the standard of weights & measures. do. do.

[2:569, 595; *Committee of Style*]

Sect. I. The Legislature shall have power . . .

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures; . . .

[e] To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

*[EDITORS' NOTE.— Words in parentheses were crossed out in the original.]

7

JAMES MADISON, FEDERALIST, NO. 42, 285
22 Jan. 1788

All that need be remarked on the power to coin money, regulate the value thereof, and of foreign coin, is that by providing for this last case, the Constitution has supplied a material omission in the articles of confederation. The authority of the existing Congress is restrained to the regulation of coin *struck* by their own authority, or that of the respective States. It must be seen at once, that the proposed uniformity in the *value* of the current coin might be

destroyed by subjecting that of foreign coin to the different regulations of the different States.

The punishment of counterfeiting the public securities as well as of the current coin, is submitted of course to that authority, which is to secure the value of both.

The regulation of weights and measures is transferred from the articles of confederation, and is founded on like considerations with the preceding power of regulating coin.

8

JOHN JAY TO GEORGE WASHINGTON

13 Nov. 1790

Correspondence 3:406–7

The Constitution gives power to the Congress “to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the securities and current coin of the United States.” If the word *current* had been omitted, it might have been doubted whether the Congress could have punished the counterfeiting of foreign coin. Mexican dollars have long been known in our public acts as *current* coin. The 55th section of the act “to provide more effectually for the collection of the duties,” etc., enumerates a variety of foreign coins which shall be received for the duties and fees mentioned in it.

The late penal act (as it is generally called) provides punishment for counterfeiting paper, but not coin, foreign or domestic. Whether this omission was accidental or designed, I am uninformed. It appears to me more expedient that this offence, as it respects current coin, should be punished in a uniform manner throughout the nation, rather than be left to State laws and State courts.

The Constitution provides, that “no State shall coin money, nor make any thing but gold or silver coin a *tender* in payment of debts.” Must not this gold and silver coin be such only as shall be either struck or made current by the Congress? At present, I do not recollect any act which designates, unless perhaps by implication, what coins shall be a *legal tender* between citizen and citizen.

9

ST. GEORGE TUCKER,
BLACKSTONE’S COMMENTARIES

1:APP. 261–62

1803

By the former articles of confederation it was agreed that the United States in congress assembled, should have the

sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; and fixing the standard of weights and measures throughout the United States. By the present constitution the respective states are interdicted from coining money. All the powers mentioned in this clause are branches of the royal prerogative in England, but are with much greater propriety vested in the legislative department by the federal constitution. The history of England affords numberless instances, where this prerogative has been exercised to the great oppression of the subject. The power of debasing the value of the coin, at pleasure, has in fact been frequently used as an expedient for raising a revenue, and is accordingly reckoned as one of the indirect modes of taxation, by the author of the treatise on political economy: for if the government gives coin of an inferior standard, for purer coin of the same weight, as is generally done in these cases; or if it receives more for the coin, than the value of the bullion, and the expence of the coinage, as is likewise frequently practised, the difference is an acquisition of revenue, paid by him who brings his bullion to the mint. According to the principles of our constitution, therefore, such a tax can not be imposed but by the representatives of the people.

Mr. Barrington, in his readings upon the English statutes, doubts whether the regulation of weights and measures be practicable, by law. He remarks, that in England it has been attempted by at least six different statutes, all of which have been ineffectual. He quotes an observation of Montesquieu’s that it is the mark of a little mind in a legislature to attempt regulations of this kind. In England, perhaps, the attempt has not succeeded from some defect in the system. That proposed by Mr. Jefferson, when secretary of state, appears to be perfectly simple, and, I should apprehend, easily practicable: and the standard of measure, especially, may be obtained with a mathematical exactness sufficient for all the purposes of commerce, and even of arts and sciences.

It appears by the journals of the senate of the United States, March the 1st, 1791. “That a proposition had been made to the national assembly of France for obtaining a standard of measure, which shall at all times be invariable, and communicable to all nations, and at all times. That a similar proposition had been submitted to the British parliament: as the avowed object of these is to introduce an uniformity in the weights and measures of commercial nations; and as a coincidence of regulation by the government of the United States on so interesting a subject would be desirable, the senate resolved, that it would not be eligible at that time to introduce any alterations in the weights and measures of the United States.”

10

JOSEPH STORY, COMMENTARIES ON THE
CONSTITUTION 3:§§ 1112–17
1833

§ 1112. Under the confederation, the continental congress had delegated to them, “the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the states,” and “fixing the standard of weights and measures throughout the United States.” It is observable, that, under the confederation, there was no power given to regulate the value of foreign coin, an omission, which in a great measure would destroy any uniformity in the value of the current coin, since the respective states might, by different regulations, create a different value in each. The constitution has, with great propriety, cured this defect; and, indeed, the whole clause, as it now stands, does not seem to have attracted any discussion in the convention. It has been justly remarked, that the power “to coin money” would, doubtless, include that of regulating its value, had the latter power not been expressly inserted. But the constitution abounds with pleonasm and repetitions of this nature.

§ 1113. The grounds, upon which the general power to coin money, and regulate the value of foreign and domestic coin, is granted to the national government, cannot require much illustration in order to vindicate it. The object of the power is to produce uniformity of value throughout the Union, and thus to preclude us from the embarrassments of a perpetually fluctuating and variable currency. Money is the universal medium or common standard, by a comparison with which the value of all merchandise may be ascertained, or, it is a sign, which represents the respective values of all commodities. It is, therefore, indispensable for the wants and conveniences of commerce, domestic as well as foreign. The power to coin money is one of the ordinary prerogatives of sovereignty, and is almost universally exercised in order to preserve a proper circulation of good coin of a known value in the home market. In order to secure it from debasement it is necessary, that it should be exclusively under the control and regulation of the government; for if every individual were permitted to make and circulate, what coin he should please, there would be an opening to the grossest frauds and impositions upon the public, by the use of base and false coin. And the same remark applies with equal force to foreign coin, if allowed to circulate freely in a country without any control by the government. Every civilized government, therefore, with a view to prevent such abuses, to facilitate exchanges, and thereby to encourage all sorts of industry and commerce, as well as to guard itself against the embarrassments of an undue scarcity of currency, injurious to its own interests and credits, has found it necessary to coin money, and affix to it a public stamp and value, and to regulate the introduction and use of foreign coins. In

England, this prerogative belongs to the crown; and, in former ages, it was greatly abused; for base coin was often coined and circulated by its authority, at a value far above its intrinsic worth; and thus taxes of a burthensome nature were laid indirectly upon the people. There is great propriety, therefore, in confiding it to the legislature, not only as the more immediate representatives of the public interests, but as the more safe depositaries of the power.

§ 1114. The only question, which could properly arise under our political institutions, is, whether it should be confided to the national, or to the state government. It is manifest, that the former could alone give it complete effect, and secure a wholesome and uniform currency throughout the Union. The varying standards and regulations of the different states would introduce infinite embarrassments and vexations in the course of trade; and often subject the innocent to the grossest frauds. The evils of this nature were so extensively felt, that the power was unhesitatingly confided by the articles of confederation exclusively to the general government, notwithstanding the extraordinary jealousy, which pervades every clause of that instrument. But the concurrent power thereby reserved to the states, (as well as the want of a power to regulate the value of foreign coin,) was, under that feeble pageant of sovereignty, soon found to destroy the whole importance of the grant. The floods of depreciated paper money, with which most of the states of the Union, during the last war, as well as the revolutionary war with England, were inundated, to the dismay of the traveller and the ruin of commerce, afford a lively proof of the mischiefs of a currency exclusively under the control of the states.

§ 1115. It will be hereafter seen, that this is an exclusive power in congress, the states being expressly prohibited from coining money. And it has been said by an eminent statesman, that it is difficult to maintain, on the face of the constitution itself and independent of long continued practice, the doctrine, that the states, not being at liberty to coin money, can authorize the circulation of bank paper, as currency, at all. His reasoning deserves grave consideration, and is to the following effect. The states cannot coin money. Can they, then, coin that, which becomes the actual and almost universal substitute for money? Is not the right of issuing paper, intended for circulation in the place, and as the representative of metallic currency, derived merely from the power of coining and regulating the metallic currency? Could congress, if it did not possess the power of coining money and regulating the value of foreign coins, create a bank with the power to circulate bills? It would be difficult to make it out. Where, then, do the states, to whom all control over the metallic currency is altogether prohibited, obtain this power? It is true, that in other countries, private bankers, having no legal authority over the coin, issue notes for circulation. But this they do always with the consent of government, express or implied; and government restrains and regulates all their operations at its pleasure. It would be a startling proposition in any other part of the world, that the prerogative of coining money, held by government, was liable to be defeated, counteracted, or impeded by another prerogative,

held in other hands, of authorizing a paper circulation. It is further to be observed, that the states cannot issue bills of credit; not that they cannot make them a legal tender; but that they cannot issue them at all. This is a clear indication of the intent of the constitution to restrain the states, as well from establishing a paper circulation, as from interfering with the metallic circulation. Banks have been created by states with no capital whatever, their notes being put in circulation simply on the credit of the state. What are the issues of such banks, but bills of credit issued by the state?

§ 1116. Whatever may be the force of this reasoning, it is probably too late to correct the error, if error there be, in the assumption of this power by the states, since it has an inveterate practice in its favour through a very long period, and indeed ever since the adoption of the constitution.

§ 1117. The other power, “to fix the standard of weights and measures,” was, doubtless, given from like motives of public policy, for the sake of uniformity, and the convenience of commerce. Hitherto, however, it has remained a dormant power, from the many difficulties attendant upon the subject, although it has been repeatedly brought to the attention of congress in most elaborate reports. Until congress shall fix a standard, the understanding seems to be, that the states possess the power to fix their own weights

and measures; or, at least, the existing standards at the adoption of the constitution remain in full force. Under the confederation, congress possessed the like exclusive power. In England, the power to regulate weights and measures is said by Mr. Justice Blackstone to belong to the royal prerogative. But it has been remarked by a learned commentator on his work, that the power cannot, with propriety, be referred to the king’s prerogative; for, from Magna Charta to the present time, there are above twenty acts of parliament to fix and establish the standard and uniformity of weights and measures.

SEE ALSO:

- Articles of Confederation, art. 9, 1 Mar. 1781
- Gouverneur Morris to William Hemsley, 30 Apr. 1783, Jefferson Papers 7:169–72
- Thomas Jefferson, Some Thoughts on Coinage, Mar. 1784, Papers 7:173–75
- Thomas Jefferson, Notes on Coinage, Mar.–May 1784, Papers 7:175–85
- Thomas Jefferson, Notes for Reply to Robert Morris, 7–9 May 1784, Papers 7:193–94
- An Act Establishing a Mint, and Regulating the Coins of the United States, 1 Stat. 246 (1792)
- An Act to Authorize the Issuing of Treasury Notes, 2 Stat. 766 (1812)

Article 1, Section 8, Clause 6

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States:

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| <ol style="list-style-type: none"> 1. Records of the Federal Convention 2. St. George Tucker, Blackstone’s Commentaries (1803) | <ol style="list-style-type: none"> 3. <i>State v. Randall</i>, 2 Aiken 89 (Vt. 1827) 4. <i>State v. Tutt</i>, 2 Bailey 44 (S.C. 1830) |
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I

RECORDS OF THE FEDERAL CONVENTION

[2:315; Madison, 17 Aug.]

Mr. Governr Morris thought it would be necessary to extend the authority farther, so as to provide for the punishment of counterfeiting in general. Bills of exchange for

example might be forged in one State and carried into another:

It was suggested by some other member that *foreign* paper might be counterfeited by Citizens; and that it might be politic to provide national authority for the punishment of it. . . .

Mr. Elseworth enlarged the motion so as to read “to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the U. States, and offences agst. the law of Nations” which was agreed to, nem. con.

2

ST. GEORGE TUCKER,
BLACKSTONE'S COMMENTARIES
1:APP. 262–64
1803

This power seems to be a natural incident to two others, of which we have before taken notice: the power of borrowing money on the credit of the United States, and that of coining money, and regulating the value thereof.

But congress appear to have extended the interpretation of this article much further than it might have been supposed it would bear: and possibly much further than the framers of the constitution intended. I allude to the act of 5 cong. c. 78, to punish frauds committed on the bank of the United States, which inflicts the penalty of fine and imprisonment, for forging or counterfeiting any bill or note, issued by order of the president, directors and company of the bank of the United States.

The right of congress to establish this company or corporation, with exclusive privileges, was warmly contested when the bill for establishing the bank was introduced into congress. 1 cong. 3 sess. c. 10. The same congress had at their first session agreed to an amendment of the constitution, declaring, that the powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. The advocates for the bill were challenged to produce the clause in the constitution which gave congress power to erect a bank. It nevertheless passed both houses. The president of the United States hesitated; it is said that he consulted his constitutional advisers upon the subject. That two of them were of opinion the bill was unconstitutional. It nevertheless, received his assent on the last day, that the constitution allowed him to deliberate upon it. Had he turned to the journals of the convention (as on another occasion,) it has been confidently said, he would there have seen, that the proposition to authorise congress to establish a bank, had been made in convention and rejected: of this, he can not be supposed to have been ignorant, as he presided in the convention, when it happened; the journals of that body were then a secret, and in his keeping. If it was proper to resort to those journals to give a proper interpretation to the constitution in one instance, it surely was equally proper in the other; and if the rejection of one proposition in that body, was a sufficient reason for rejecting the same, when made by either house of congress, it seems difficult to assign a reason why the other should not have been treated in the same manner.

If it were, in fact, an unconstitutional exercise of power in congress to pass a law establishing the bank, nothing can manifest the impropriety of over-stepping the limits of the constitution, more than the act which we have just noticed. It shows that the most unauthorised acts of government may be drawn into precedents to justify other unwarrantable usurpations.

3

STATE V. RANDALL
2 Aiken 89 (Vt. 1827)

HUTCHINSON, J.: . . . The motion in arrest is now to be considered; and the first and second points urged will be disposed of together. The first point is, that the courts of the United States have jurisdiction of the offence charged. The second is, that the State Court has no such jurisdiction; and the reason assigned in argument is, that the courts of the United States have a paramount jurisdiction.

That the courts of the United States have this paramount jurisdiction, is inferred from the constitutional power of congress to legislate upon this subject, and from their having in fact so legislated. The power of congress upon this subject is comprised in the 8th section, article 1st, of the constitution, on the 27th page of our Statute Book, and is in these words;—"The congress shall have power to provide for the punishment of counterfeiting the securities and current coin of the United States." Whatever power upon this subject is not given to congress, by the above section, yet remains in the several states: for this is all that gives any such power, and the 12th article of the amendments, is as follows: "The powers not delegated to the United States by the constitution, not prohibited by it to the states, are reserved to the states respectively, or to the people."

Now, it is not, nor can it be, pretended, that bank notes are a current coin, and within that expression of the constitution. Nor is it easy to conceive how they can be termed the securities of the United States. The United States have not issued them, nor are they holden to pay them. The United States own some shares in the bank stock, and in this they are like other stock-holders, but not the individual stockholders, but the bank, or whole body of stockholders, who act by their agents, the President and Directors, issue the bills, and must pay them when returned for payment. Those are the securities of the United States, which are issued by their direction, and for which they receive a consideration, and which they must pay and redeem. Such are various certificates, indents and notes issued by the officers of the United States, under some law of congress, showing a debt due from the United States; such were the treasury notes issued in the time of the late war.

If congress have any right to legislate upon that subject, they derive it by implication merely. It is inferred from their right to establish a bank; but it has been a subject of great doubt whether they have that right. And, if that right be doubtful, their right to give jurisdiction to the United States' courts of the offence of counterfeiting the bank bills, must be no less doubtful.

But, if it were a conceded point, that congress have such a right to legislate upon this subject, we cannot admit, that by that merely, the state Legislatures are deprived of such

right. The congress of the United States have never so understood the constitution, and great practical difficulty would result from such a construction.

The constitution, article 3d, section 2d, defines to what the judicial power of the United States shall extend; and among other things, says, it shall extend to controversies between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, &c. Suppose congress had never passed any law giving the jurisdiction of these subjects to any particular court of the United States, or had never established any courts to whom such jurisdiction could be given, can it be pretended that these cases would be out of the pale of the law? That no action could be maintained in the courts of this state in favour of a citizen of Massachusetts, against a citizen of this state? No actions between our own citizens claiming lands under grants from different states? It is impossible that a court should so decide. In the provisions made by congress, adapted to these cases, they consider that the state courts hold jurisdiction, till some law of congress transfers the exclusive jurisdiction to the courts of the United States. Their provisions are contained in the 11th section of the judiciary act. That gives no jurisdiction whatever to the courts of the United States, in cases of common law and equity, unless the sum or value in controversy exceeds five hundred dollars, exclusive of costs: and the original jurisdiction is given in those cases only *in concurrence with the courts of the several states*. And a part of the same section gives to the circuit courts exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where said act otherwise provides, or the laws of the United States should otherwise direct, and concurrent jurisdiction with the district courts, of the crimes and offences cognizable therein. The expression, *offences cognizable under the authority of the United States*, implies, that congress must have power from the constitution to make, and in fact make, laws for the punishment of crimes, before the circuit courts can take cognizance of the same; and the exception which follows, takes out of this jurisdiction every case taken out and placed elsewhere by the same, or any other act of congress.

The foregoing views have been fully sanctioned by the supreme court of the United States, in the case of *Houston vs. Moore*, 5 *Wheaton*, page 1. A statute of Pennsylvania, of March 1814, enacted, among other things, "that every non-commissioned officer and private of the militia, who shall have neglected or refused to serve when called into actual service, in pursuance of any order or requisition of the President of the United States, shall be liable to the penalties defined in the act of the congress of the United States, passed on the 28th of February, 1795." *Houston* was called to go into actual service and refused, and was fined by a court martial, ordered under the state authority, and the fine was levied of his property; and he brought his action of trespass for taking his property, which was decided against him in the highest court of the state; and the decisions comprised in a bill of exceptions were revised upon a writ of error, brought to the supreme court of the United States, and the question to be decided was, whether

the state statute was constitutional? It was decided so to be, and the judgment was affirmed. This is a long report, and the question of concurrent jurisdiction of the United States' courts and state courts fully examined; and the result drawn, is, that where congress may give jurisdiction to the courts of the United States, yet have not done it, the state courts retain jurisdiction; or, if exclusive jurisdiction is not given to the United States' courts, the state courts retain concurrent jurisdiction.

The cases alluded to, of state bankrupt laws and steam boat grants, rest upon other parts of the constitution, and have little or no analogy to the present question. The state bankrupt laws fall within a section of the constitution which negatives the power of a state to pass laws of the nature therein named; one of which is a law impairing the obligation of contracts. And the steam boat grants import an exclusive privilege, which interferes with the powers of congress to regulate commerce with foreign nations, and among the several states, and with the powers actually exercised by congress in regulating the coasting trade.

Hence we have arrived at the conclusion, that even if congress have the power and right to give exclusive jurisdiction over this offence to the courts of the United States, until they shall have done so, the jurisdiction remains in the state courts, by force of the laws of the several states, as fully as if congress had no power to legislate upon the subject.

But it is said, that congress have legislated upon the subject, and made provision for the punishment of the same offence; and the act of congress is produced. See the statute of 1816, *Ingersol's Digest*, page 93. The terms of the body of this statute are sufficiently extensive to confer entire jurisdiction over this offence to the courts of the United States; but the whole statute must be construed together, or the correct inference will not be drawn. And the statute contains the following proviso: "Provided that nothing herein contained, shall be construed to deprive the courts of the individual states of a jurisdiction, under the laws of the individual states, over any offence declared punishable by this act." The necessary construction of this statute is, that congress admit, or concede the previous power of the states to enact laws, and their courts to execute them, over this offence, and give jurisdiction to the courts of the United States, *sub modo*, and so as not to interfere with that previous jurisdiction of the state courts. The 17th of *John. Rep.* pages 4th and 261st, is cited to show, that congress cannot give jurisdiction to the state courts. Probably they cannot give such jurisdiction, but it is unnecessary now to decide that question. It is sufficient for the present case, if the courts of this state would have had jurisdiction, had not congress interfered at all, and that the interference of congress expressly leaves the state courts enjoying all the rights of jurisdiction they had before the act of congress passed. The distinction between the conferring a jurisdiction by congress, and the refusal to take away a jurisdiction already enjoyed, is too obvious to require elucidation.

Other acts of congress, of an earlier date, punishing the counterfeiting of United States' bank bills contain each the same proviso. In fact, that subject has never by congress