Legal Tenders, 5–20 Bonds and Politics

by FORREST W. DANIEL

The fiscal situation following the Civil War was a confusion of monetary instability, legal uncertainty and political intrigue. The principal players in the legal and political aspects of United States monetary policy were an incongruous group, many of whom had been on both sides of the greenback issue at one time or another, so a sorting-out is difficult. This bare-bones sketch was undertaken to give probable attribution to a sheet of unsigned polemical literature (and a fraction of it) usually, and wrongly, ascribed to the Greenback Party, and to suggest that Treasurer Francis E. Spinner dismissed the parody of the treasury note at the top of the sheet as no threat to the nation's currency. The sheet calls for the redemption of the 5-20 bonds of 1862 in greenbacks "according to the contract," not the gold coin demanded by the bondholders.

THE legal tender treasury notes and 5-20 bonds were issued under the same Congressional Act of February 25, 1862; Acts of March 3, 1864 and January 28,1965 expanded the limit of bond sales. The Act provided a circulating currency and an issue of bonds which could be purchased with that currency. The treasury notes, $150,000,000 of them, were intended to replace the $60,000,000 of demand notes of 1861 that call for payment in coin the government was unable to supply since specie payment had been suspended on December 28, 1861. Some opponents said the state banks would absorb the treasury notes to buy bonds and substitute their own notes. That contingency was curtailed in 1864 when the national banking act was passed and a repressive tax was placed on state bank circulation.

The Legal Tender Greenbacks

The old question of whether Congress had the power to issue bills of exchange and to make them legal tender arose again, and Attorney General Edward Bates gave an informal opinion that it had. Although Treasury Secretary Salmon P. Chase said he felt only coin should be legal tender, he conceded the requirements of the war made the issue of legal tender treasury notes necessary. Debate in Congress was thorough and heated. One of the strongest speeches in opposition was given by Congressman George H. Pendleton of Ohio. He said the proposal would void all existing contracts since they would be made payable in depreciable paper rather than the gold or silver called for or implied in any contract. He said also that it would become illegal to make a contract dealing in gold and silver coin, and he questioned the Constitutional power to issue the notes and cited several sources for his argument. Others predicted the value of the notes would fall to as much as 25 percent below par, thereby increasing the cost of the war by that amount. In the end, extraordinary times called for extraordinary measures and the legal tenders were issued.

George H. Pendleton whose "Ohio Idea" became the basis for the 1868 Democratic greenback platform. (Harper's Weekly, Sept. 17, 1864.)

The constitutionality of the legal tenders was defined first in the case of Hepburn vs. Griswold. On June 20, 1860 Susan P. Hepburn gave a promissory note to Henry Griswold pledging to pay $11,250 plus interest on February 20, 1862. When the note was made and when it was due the only lawful money was gold and silver coin. Five days after the note fell due the first legal tender act was passed by Congress. The note overdue, in March 1864 Mrs. Hepburn was sued for payment and she tendered $12,720 in legal tender notes, worth about $7,000 in coin. The tender was refused. The money was paid to the court in escrow and the debt declared satisfied; an appeal in the Kentucky Court of Errors reversed the Chancery Court. Mrs. Hepburn took the case to the United States Supreme Court in 1867 but the decision came only in December 1869. The majority (5–3) decision delivered by Chief Justice Salmon P. Chase, who as secretary of the treasury acquiesced when the act was passed, held that the legal tenders were unconstitutional. A later case with a nine-member court declared, in 1872, the legal tender acts were constitutional for contracts made both before and after their enactment. Chief Justice Chase dissented.

The war served as justification for the notes; but the war was over and many believed the nation should return to a specie-based economy. Secretary of the Treasury Hugh McCulloch, erstwhile banker from Indiana, was in favor of withdrawing and cancelling the excess of treasury notes by converting them into bonds; lessening the quantity of greenbacks would bring the remaining notes closer to par with gold and make resumption of specie payment easier. He believed failure to retire the greenbacks would result in a panic. Secretary McCulloch was convinced that with proper management the war could have been financed without suspension of specie payment and that the issue of treasury notes had produced an inflated war debt.

Others believed withdrawal of the bills would cause distress in the marketplace by reducing prices to the detriment of trade; that government revenue would be reduced; that reduction of government notes would force national banks into liquidation; and, among other objections, debtors would be forced to repay their inflated debts with deflated money. The sponsors of the sheet to be discussed later clearly fall in the latter class.

The 5-20 Bonds

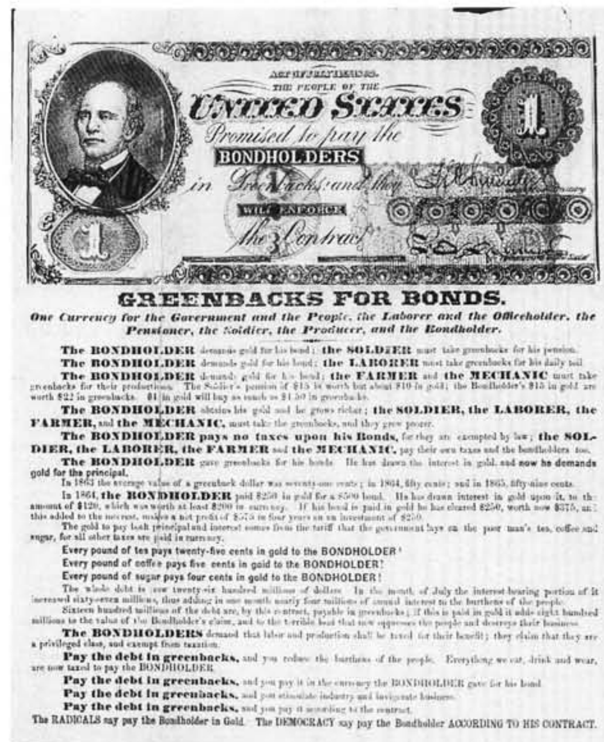
The Act of February 25, 1862, which authorized the legal tender notes also authorized up to $500,000,000 of 6 percent bonds redeemable at the pleasure of the United States after five years, and payable twenty years from date. The bonds, called 5-20s for their redemption period, could be sold at par for treasury notes or for gold at its value in paper; officials hoped the bonds would absorb many of the notes and control excess issue. Interest was payable in gold and was tax exempt; but there was no statement of the medium to be used to pay the principal. That became a point of contention at redemption day.

When sales of the 5-20s lagged, Philadelphia banker Jay Cooke was employed to market the bonds. His commission was one-half of one percent on the first $10,000,000 of bonds sold, and three-eighths of one percent on the rest. A very aggressive sales campaign oversold the issue and the Act of March 3, 1864 authorized another $11,000,000 of 5-20s to fill the orders. Although the medium for payment of the principal was not stated in the Act, Cooke intimated broadly that the bonds would be redeemed in gold; and that may well have influenced the popularity of the issue. Besides, almost everyone believed specie payment would be resumed well before the bonds fell due, making payment in gold a matter of course. An additional $4,000,000 5-20s for sale in Europe as well as the United States was authorized on January 28, 1865.

The first of the 5-20 bonds became eligible for redemption in 1867 and the medium of payment became a focus of political contention.

The Pro-Greenback Flyer

A propaganda sheet in opposition to the Treasury Department policy of paying out gold to redeem the 5-20 bonds of 1862 is headed with a full-size, two-color simulation of a $1 United States treasury note. That flyer appears to be the first, or at least a very early, piece of political rhetoric which developed, some ten years later, into the political Greenback Party. Although it bears no signature of sponsorship it is surely a Democratic campaign piece from 1868; evidence for that attribution will follow. The text on the front reads:



Front of the 1868 Democratic campaign literature.

GREENBACKS FOR BONDS.

One Currency for the Government and the People, the Laborer and the Officeholder, the Pensioner, the Soldier, the Producer, and the Bondholder.

The BONDHOLDER demands gold for his bond; the SOLDIER must take greenbacks for his pension.

The BONDHOLDER demands gold for his bond; the LABORER must take greenbacks for his daily toil.

The BONDHOLDER demands gold for his bond; the FARMER and the MECHANIC must take greenbacks for their productions. The Soldier's pension of $15 is worth but about $10 in gold; the Bondholder's $15 in gold are worth $22 in greenbacks. $1 in gold will buy as much as $1.50 in greenbacks.

The BONDHOLDER demands his gold and he grows richer; the SOLDIER, the LABORER, the FARMER, and the MECHANIC, must take the greenbacks, and they grow poorer.

The BONDHOLDER pays no taxes on his Bonds, they are exempted by law; the SOLDIER, the LABORER, the FARMER and the MECHANIC, pay their own taxes and the bondholders too.

The BONDHOLDER gave greenbacks for his bonds. He has drawn the interest in gold, and now he demands gold for the principal.

In 1863 the average value of a greenback dollar was seventy-five cents; in 1864, fifty cents; and in 1865, fifty-nine cents.

In 1864, the BONDHOLDER paid $250 in gold for a $500 bond. He has drawn interest in gold upon it, to the amount of $120, which was worth at least $200 in currency. If his bond is paid in gold he has cleared $250, worth now $375, and this added to the interest, makes a net profit of $575 in four years on an investment of $250.

The gold to pay both principal and interest comes from the tariffthat the government lays on the poor man's tea, coffee and sugar, for all other taxes are paid in currency.

Every pound of tea pays twenty-five cents in gold to the BONDHOLDER!

Every pound of coffee pays five cents in gold to the BONDHOLDER!

Every pound of sugar pays four cents in gold to the BONDHOLDER!

The whole debt is now twenty-six hundred millions of dollars. In the month of July the interest-bearing portion of it increased sixty-seven millions, thus adding in one month nearly four millions of annual interest to the burthens of the people.

Sixteen hundred millions of the debt are, by this contract, payable in greenbacks; if this is paid in gold it adds eight hundred millions to the value of the Bondholder's claim, and to the terrible load that now oppresses the people and destroys their business.

The BONDHOLDERS demand that labor and production shall be taxed for their benefit; they claim that they are a privileged class, and exempt from taxation.

Pay the debt in greenbacks, and you reduce the burthens of the people. Everything we eat, drink and wear, we are now taxed to pay the BONDHOLDERS.

Pay the debt in greenbacks, and you pay it in the currency the BONDHOLDER gave for his bond.

Pay the debt in greenbacks, and you stimulate industry and invigorate business.

Pay the debt in greenbacks, and you pay it according to the contract.

The RADICALS say pay the Bondholder in Gold. The DEMOCRACY say pay the Bondholder ACCORDING TO HIS CONTRACT.

The text on the back of the sheet quotes, with emphasis, part of the law of February 25, 1862, which authorized the first issue of United States notes (greenbacks) and so-called 5-20 bonds.

THE CONTRACT.

The Law authorizing the first issue of Greenbacks and 5.20 Bonds, is as follows:

ACT OF FEBRUARY 25, 1862.

SECTION 1. The Secretary of the Treasury is hereby authorized to issue, on the credit of the United States, one hundred and fifty millions of dollars of United States notes, not bearing interest, payable to bearer at the Treasury of the United States, and of such denominations as he may deem expedient, not less than five dollars each. * * * And such notes shall be receivable in payment of all taxes, internal duties, excises, debts, dues and demands of every kind due to the United States, 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, except duties on imports and interest as aforesaid. * * * And such United States notes ***shall be received the same as coin, at their par value,*** **IN PAYMENT FOR ANY LOANS** ***that may be hereafter sold or negotiated by the Secretary of the Treasury.***

SECTION 2. The Secretary of the Treasury is hereby authorized to issue coupon bonds or registered bonds, to an amount not exceeding five hundred millions of dollars, redeemable at the pleasure of the United States after five years, and payable twenty years from date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the Secretary of the Treasury may dispose of such bonds at any time, ***at the market value thereof*** for the coin of the United States, ***or for any of the Treasury notes that have been or may hereafter be issued*** under the provisions of this act; and all stocks, bonds, and other securities of the United States held by individuals, corporations or associations within the United States, ***shall be exempt from taxation*** by or under State authority.

Back of the 1868 Democratic campaign sheet; written in pencil is, "Warrensburg NY Oct 30th 1868".

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The monetary situation in 1868 into which the propaganda for an exclusive greenback currency intruded was a confused one. But which group espousing the greenback cause was it?

According to author Irwin Unger there were at least three well-defined currents in the soft money doctrine in the early post-war years. One was identified with western and Pennsylvania Republican business components often considered the controlling elite. The second group was a mixture of political philosophies: Jeffersonian agrarianism, Democratic opportunism and Copperhead thirst for revenge. They were largely Democratic, but there were Republicans who felt too strong opposition to greenbacks would lose the election; overall they were western rural agrarians. The third element, which may have held the germ of the later Greenback Party, was utopian in nature, drawing on the frustrations and aspirations of labor and the extremist humanitarian reformers in an uncongenial era. Groups overlapped.

Greenback advocates included Henry Carey, an iron manufacturer, who in the 1840s proposed an economic system for the country and Brick Pomeroy, who a decade later published many of the Greenback Party ephermera notes. Leaders for years in the hard money camp, including Senator John Sherman, who was firmly opposed to the contraction of the legal tenders, were attracted to the greenback idea. There was a confusion of parties and philosophies, established leaders, and newcomers who became leaders in the future Greenback Party.

George Hunt Pendleton of Ohio, opponent of the legal tenders in 1862 and Democratic vice-presidential candidate in 1864, was a hard money man and anti-greenback as late as April 1867. (Throughout the war the Democratic party held greenbacks to be an example of Republican dishonesty.) While seeking the presidential nomination in 1868, Pendleton advanced a plan—so called the "Ohio idea"—to pay the principal of the government bonds in greenbacks instead of coin. Although Pendleton failed to get the nomination, and the "Ohio idea" lost its name, the thesis took unexpected root.

The financial plank of the Democratic platform drawn up by Henry C. Murphy, a Tammany stalwart, was almost completely

Pendletonian. It recommended repayment of federal obligations in "strict accordance with their terms," taxation of government bonds and "one currency for the Government and the people, the laborer and the officeholder, the pensioner and the soldier, the producer and the bondholder." That last clause clearly identifies the flyer as a Democratic campaign document since it is quoted as the second headline on the front page.

The first clause, "In strict accordance with their terms," was ambiguous, since greenbackers and anti-greenbackers could interpret "terms" in opposite ways. To clear any confusion the committee revised the clause to commit the party to payment of the debt "in lawful money of the United States"—either greenbacks or gold where there was no provision to the contrary. On the flyer that became: "The DEMOCRACY say pay the Bondholder ACCORDING TO HIS CONTRACT." A second point of identification.

Presidential candidate Horatio Seymour was a hard money man nominated to run on a greenback platform. Manton Marble, in the *New York World*, wrote the financial plank was sound; and that a single currency for government, pensioner and bondholder actually meant a uniform gold standard. The plank was agreeable to everyone. Campaign emphasis was tailored to fit every audience and area: where greenbacks were popular, that issue was stressed; where they were not, other issues were focused and greenbacks ignored. Republicans took just the opposite tack in the same areas. In the end Seymour thought the financial plank lost the election for the Democrats.

Spinner and the Democratic Flyer

A flyer similar, if not identical, to the one just described came into the hands of Robert C. Davis, a druggist in Philadelphia. He was alarmed about it and sent a copy to Treasurer Francis E. Spinner for his comments. Spinner replied:

Washington, September 4, 1868

My Dear Sir:—

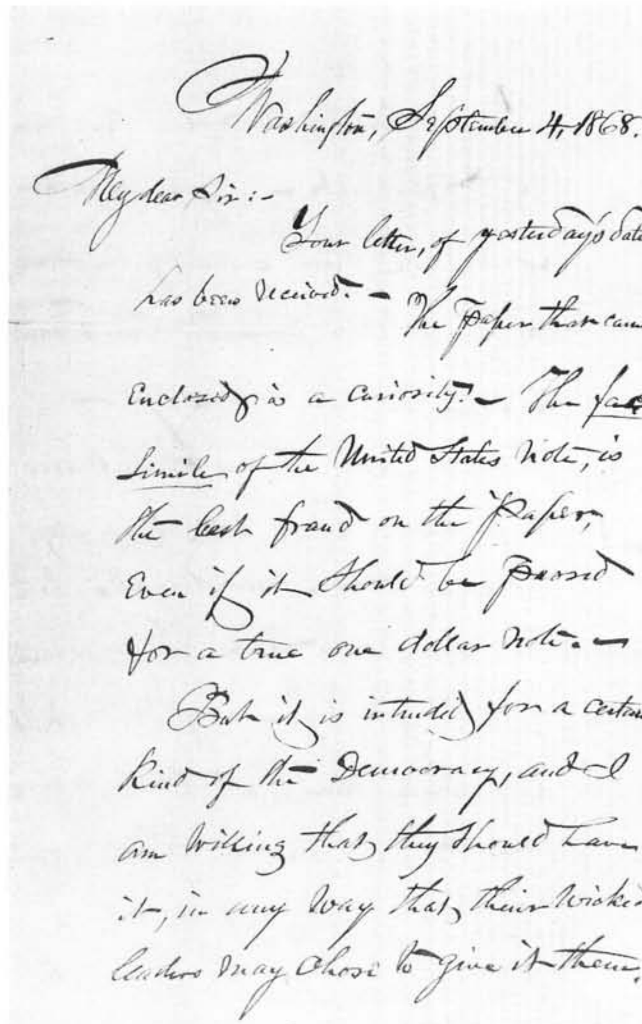
Your letter, of yesterday's date, has been received.—

The paper that came enclosed is a curiosity.—The fac-simile of the United States note, is the least fraud on the paper, even if it should be passed for a true one dollar note.—

But it is intended for a certain kind of the Democracy, and I am willing that they should have it, in any way that their wicked leaders may chose to give it them....

[The rest of the letter is unrelated to the flyer.]

Very respectfully yours,
F. E. Spinner



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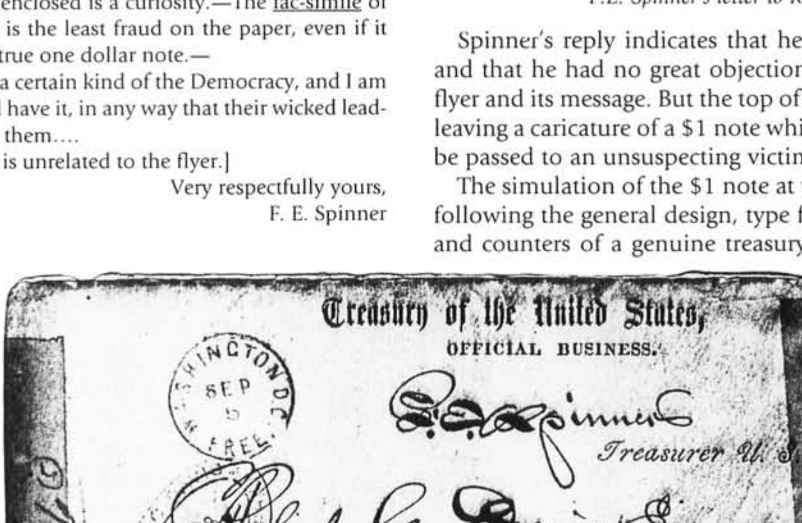
F.E. Spinner's letter to Robert C. Davis.

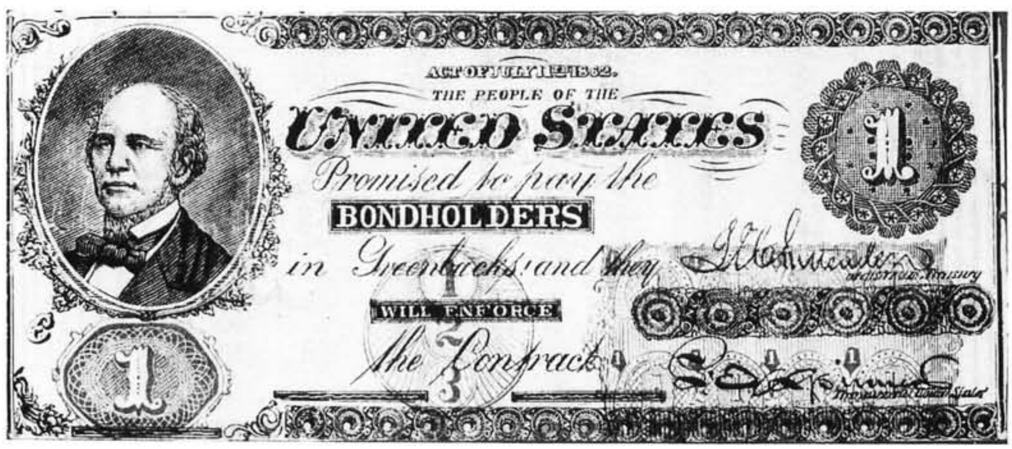
Spinner's reply indicates that he received the entire sheet and that he had no great objection to the circulation of the flyer and its message. But the top of the sheet could be cut off, leaving a caricature of a $1 note which Spinner implied might be passed to an unsuspecting victim.

The simulation of the $1 note at the top of the sheet, while following the general design, type faces and green color tints and counters of a genuine treasury note had distinct differ-



Envelope which contained Spinner's letter relating to the campaign sheet.

Face of a genuine legal tender note and a parody cut from a sheet of 1868 Democratic campaign ephemera.



ences from it in the portrait and text. The woodcut portrait of Salmon P. Chase faces left rather than right and the head is rather larger and cruder than the original. The text reads, "Act of July 11th 1862. / THE PEOPLE OF THE / UNITED STATES / Promised to pay the / BONDHOLDERS / in Greenbacks! and they / WILL ENFORCE / the Contract"; while the text on a genuine note is "Act of July 11th 1862. / THE / UNITED STATES / Will pay the bearer / ONE DOLLAR / at the Treasury in New York / WASHINGTON / August 1st 1862." The simulation has no red serial number or seal.

To the obligation on the back of a genuine note: "This Note is a LEGAL TENDER for all Debts Public and Private Except Duties on Imports and Interest on the Public Debt; and is Receivable in Payment of all Loans made to the United States" the fantasy adds "Including the 5-20 Bonds."

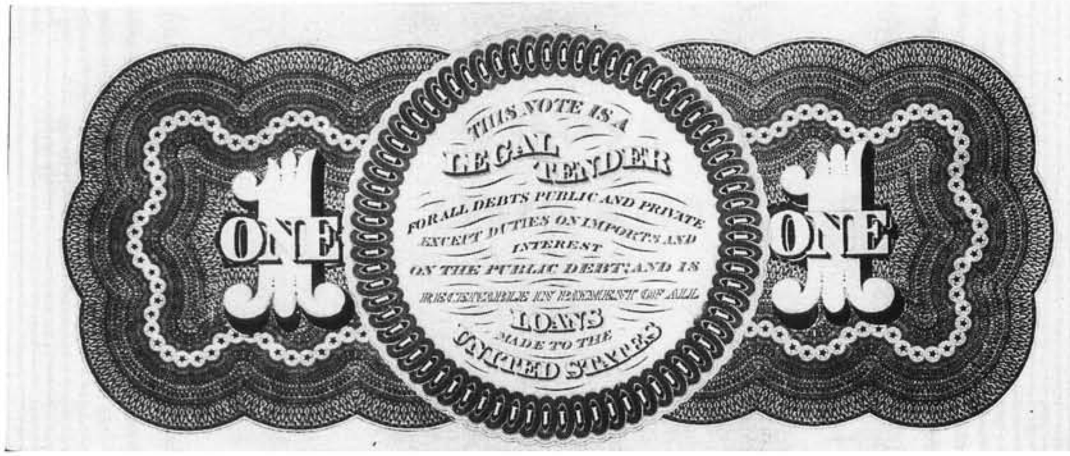
To discourage "a certain kind of the Democracy" from cutting the illustration from the sheet for other than honest purposes, the back page was printed so that about half of the headline "THE CONTRACT." would overlap the bottom edge of the face design and appear on the back of a cut-offnote. However, in *The Essay-Proof Journal*, Whole No. 169, first Quarter, 1986, Dr. Glenn E. Jackson illustrated a sheet in which the cut could be made without the telltale lettering on the back.

The Greenback Decision

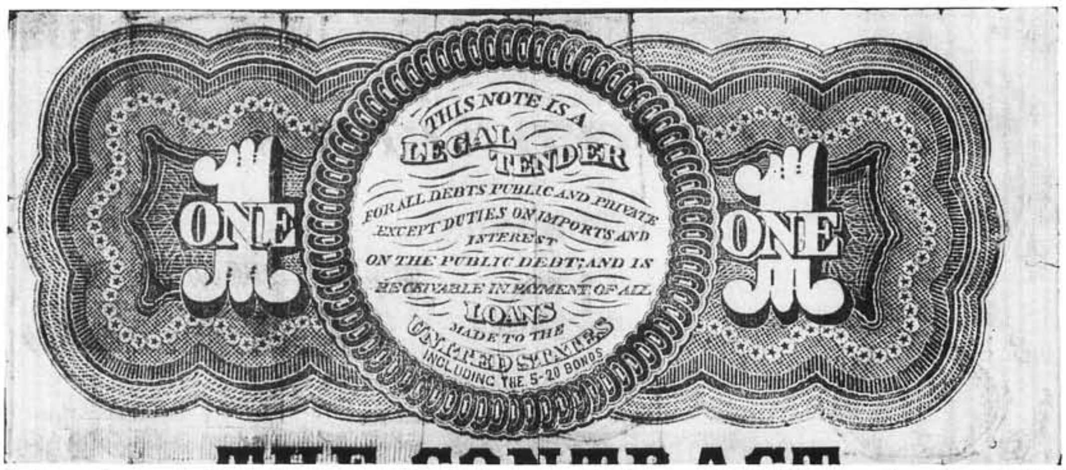
During the war $450,000,000 in greenbacks was authorized and in August 1865 $433,200,000 was part of the debt. Secretary McCulloch urged withdrawal of the greenbacks in preparation for expeditious resumption of specie payment and began their retirement out of surplus funds. On April 12, 1866 he was authorized to fund all notes into bonds or sell bonds to retire the notes and the process began. A volume limit was placed on the retirement of greenbacks: no more than $10,000,000 in the first six months, and $4,000,000 monthly thereafter. Sentiment against retirement of the legal tender notes gathered steam in 1867, by which time their circulation had been reduced to $356,000,000; but there was still a substantial premium for gold. In July 1868 a bill providing for refunding the war debt at lower interest failed to get President Andrew Johnson's signature. In March 1869 a bill to pay the bonds in coin was refused by Johnson and Congress adjourned—so no law.

Small additions to the circulation were made in 1871 and 1872, but criticism caused their withdrawal. An additional $26,000,000, covered by bond sales, was reissued during the emergency of the Panic of 1873, bringing the total back to $382,000,000. The Act of June 20, 1874 stated the amount outstanding should never exceed that total. The Resumption Act of January 14, 1875 called for resumption of specie payment on January 1, 1879, and among other provisions, greenbacks were to be cut back to $300,000,000.

Opposition to the government's fiscal policy crystalized into the Greenback Party under its various names. And in 1878, ten years after the Democratic campaign flyer of 1868, Con-



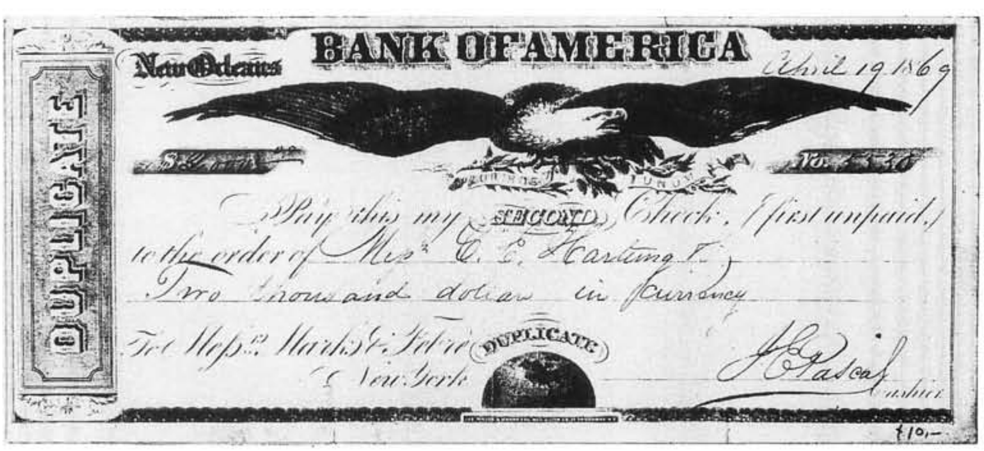
Back of a genuine note compared to the illustration cut from the back of the campaign sheet with the usual part of the top line of text.



gress ordered that retirement of legal tender greenbacks be stopped on May 31 and required the amount outstanding on that date be kept in circulation. The amount was $346,681,016.

The Old Series Currency Adjustment Act of January 30, 1961 authorized the Secretary of the Treasury to write off the books some of the old, large-size legal tenders as destroyed or irretrievably lost. The amount chosen was $24,142,000; that brought the amount required to be kept outstanding down to $322,539,016. Further contraction of circulation was made on September 13, 1982, when the statutory limit of United States notes in circulation was placed at $300,000,000 outstanding and in circulation and the term "United States currency" was substituted for "United States notes" in the United States Code.

On September 23, 1994, Section 602(g)(14) of the Riegle Community Development and Regulatory Improvement Act of 1994 Amended Section 5119(b)(2) of Title 31 of the *United States Code* to read: "The Secretary shall not be *required* to reis-



With a double monetary standard, checks were made payable specifically in gold or currency. This one in currency.

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sue United States currency notes upon redemption." (Emphasis added.) That short sentence repealed the 1878 requirement that the "legal tender" United States notes, first issued in 1862, be kept in circulation and, therefore, any authority to issue new notes.[1] (But does that "required" word leave the Secretary, or some future administration, the option to reissue $300,000,000 of United States currency in case of emergency or necessity?) The full withdrawal of the legal tender notes first proposed by Secretary McCullough as a condition for resumption of specie payment following the Civil War was finally accomplished.

Legal tender notes[2] were issued in eleven denominations, from $1 to $10,000, and several series from 1862 to 1928. Those were withdrawn from circulation in the normal course of busi ness and replaced with the smaller-size notes introduced in 1928; the new-style notes came in only four denominations and several series. After an initial release, in 1928, of fewer than two million $1 red seal United States notes, only $2s and $5s were issued to maintain the required circulation; the $2s were issued until 1966 and the $5s until 1969. The $100s of Series 1966 and 1966A were intended to maintain the statutory total by reducing the number of notes needed to comply with the law. After a draw-down of $2 and $5 notes, the $100s were released; but none have been issued to the public since 1976, according to a Treasury Department *Historical Fact Sheet.*[3]

Then, in 1986, it was proposed that the $100s be discontinued altogether. After several failed attempts, it was finally accomplished by the Act of September 23, 1994. All currently outstanding United States Notes will remain legal tender but will be withdrawn from circulation when they are received by a bank.

The Democrat-controlled 103rd Congress returned to the position the Democrats held in 1862: opposition to the necessity for United States notes. That return, however, was not as abrupt as their switch from opposition to a strident defense of the legal tender greenbacks during the presidential campaign in 1868, and their protest of the notes' retirement proposed by some Republicans in the 1870s. The departure of the Treasury Department from the issuance of paper money in 1994 went almost unnoticed—it was no longer a major political issue.

NOTES

1. The Act also repealed remnants of several Acts relating to denominations, circulation and redemption of national bank notes as far back as 1874; it also repealed the Act authorizing conversion of national gold banks. A number of revisions to the Federal Reserve Act transfer some duties of the Comptroller of the Currency to the Secretary of the Treasury. Many changes of wording in other federal banking laws are included in other parts of the Act.
2. Since the United States notes and Federal Reserve notes were required to be stocked and accounted for separately and the automated sorting equipment used by the Federal Reserve System cannot distinguish between them, the United States notes are handled as "exceptional" items. For that reason the $100 United States notes have not been released since 1976, and the number of notes officially redeemed is estimated using historical patterns and treasury transfers are made by book-entry from issued to unissued stock.
3. A letter dated July 20, 1873 from American Bank Note Company acknowledges "the decision of the Honorable Assistant Secretary requiring the use hereafter of the term 'United States' notes instead of 'Legal Tender Notes'..." (Official and miscellaneous letters received, 1864–1912, National Archives RG 318).

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