

A Caveat Against Injustice

or, An Inquiry into the Evils of a Fluctuating Medium of Exchange,

WHEREIN is considered, whether the Bills of Credit on the Neighboring Governments, are a legal Tender in Payment of Money, In the COLONY of CONNECTICUT for Debts due by Book, and otherwise, where the Contract Mentions only Old-Tenor Money.

by Roger Sherman

author of Article 1 Section 10 of the United States Constitution, "No State shall make any Thing but Gold and Silver Coin a tender in Payment of Debts"

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§1 Forasmuch, as there have many Disputes arisen of late concerning the Medium of Exchange in this Colony, which have been occasioned chiefly by Reason of our having such large Quantities of Paper Bills of Credit on some of the Neighboring Governments, passing in Payments among us, and some of those Governments having issued much larger sums of Bills than were necessary to supply themselves with a competent Medium of Exchange, and not having supplied their Treasuries with any Fund for the maintaining the Credit of such Bills; they have therefore been continually depreciating and growing less in their Value, and have been the principal Means of the Depreciation of the Bills of Credit emitted by this Colony, by their passing promiscuously with them; and so have been the Occasion of Much Embarrassment and Injustice, in the Trade and Commerce of the Colony, and many People and especially Widows and Orphans have been great Sufferers thereby.

§2 But our Legislature having at length taken effectual Care to prevent further Depreciation of the Bills of this Colony, and the other Governments not having taken the prudent Care, their Bills of Credit are still sinking (1) in their Value, and have in Fact sunk much below the Value of the Bills of this Colony.

§3 Yet some People among us, by long Custom, are so far prejudiced in Favour of a sinking Medium, and others not being really sensible of the true State of the Case, are inclined to think that Bills of Credit on the Neighboring Governments ought to be a legal Tender in Payments in this Colony for all Debts due by Book and otherwise where there is no special contract expressly mentioning some other Currency, and others being of a different Opinion, the Disputes have been carried on so far, as to occasion some Expence in the Law, and may be likely to occasion much more, unless prevented by those Prejudices being some way removed. And since it is a Cause wherein every one is more or less interested, I have ventured to shew my Opinion, with a sincere Desire to have Peace and Justice maintained and promoted in the Colony. Not desiring any Person

to approve of my Observations any farther than he finds them agreeable to the Principles of Justice and right Reason.

THE CASE STATED

§4 Suppose a Man comes to a Trader's Shop in this Colony to buy Goods, and the Trader sells him a certain Quantity of Goods and tells him the Price is so many Pounds, Shillings and Pence, (let it be more or less) to be paid at the Expiration of one Year, from that Time, and the Man receives the Goods but there is nothing said either by Seller or Buyer, what Currency it is to be paid in, but the Goods are charged according to the Value of Bills of Credit Old Tenor on this Colony.

§5 Now I Query what the Creditor has a Right to demand for a Debt so contracted; or what the Debtor can oblige him to accept in Payment?

§6 The Creditor says, that the Debt being contracted in the Colony of Connecticut, he ought to have what is known by the Laws of said Colony to be Money: And that he has no Right to demand any thing else.

§7 The Debtor says, That Bills of Credit on the Neighboring Governments have for many Years passed promiscuously with the Bills of Credit on this Colony as Money in all Payments, (except special Contracts) and that People in general where the Contracts ly at large have expected, and do still expect, that any of the Bills of Credit on any of the Governments in New-England, that have obtained a Currency in this Colony will answer in Payment, and in as much as the Creditor did not give him any Notice to the contrary, when he bought the Goods, therefore he thinks that such Bills of Credit ought to be accepted in Payment for the aforesaid Debt.

§8 And although there is no particular Statute in this Colony, that such Bills of Credit shall be a legal Tender in Payments of Money: Yet the Practice has been so universal for so long a Time, and the Creditor himself has both received and passed them as Money constantly without making Exceptions against them 'till this Debt was contracted, and for many Years all Demands on Book Debts have been for Old Tenor Money indifferently, without Distinction of Colonies, and Judgments in all Courts have been given thereon accordingly: And any of the aforesaid Bills of Credit have pass'd in Payment to satisfy all Judgments, so obtained and this universal Custom, the Debtor saith, ought to be esteemed as common Law and ought not without some special Reason to be set aside, and that in this Case there is nothing special; and therefore the Creditor ought not to make Demand or obtain Judgment different from the common Custom of the Colony.

§9 In Answer to this the Creditor saith, that although Bills of Credit on the Neighboring Governments have for a Number of Years been passed and received in Payments: Yet it

has been only by the voluntary Consent of the Persons receiving them, and not because they were under any Obligation to receive them; and that it is no Argument that a Person shall be obliged to receive any Species where it won't answer his End, because in Time past he has received it when it would answer.

§10 And the Creditor further saith, that such Bills of Credit are of no intrinsic Value, and their Extrinsic Value is fluctuating and very uncertain, and therefore it would be unjust that any Person should be obliged to receive them in Payment as Money in this Colony, (since neither the Colony nor any of the Inhabitants thereof are under any Obligation either to Refunds said Bills or to maintain the Credit of them) for Money ought to be something of certain Value, it being that whereby other Things are to be valued. (2)

§11 And I think it is a Principle that must be granted that no Government has Right to impose on its Subjects any foreign Currency to be received in Payments as Money which is not of intrinsic Value; unless such Government will assume and undertake to secure and make Good to the Possessor of such Currency the full Value which they oblige him to receive it for. Because in so doing they would oblige Men to part with their Estates for that which is worth nothing in it self and which they don't know will ever procure him any Thing.

§12 And Rhode-Island Bills of Credit have been so far from being of certain Value and securing to the Possessor the Value that they were first stated at, that they have depreciated almost four seventh Parts in nine Years last past, as appears by their own Acts of Assembly.

§13 For in the year 1743, it appears by the Face of the Bills then emitted that Twenty-seven Shillings Old-Tenor was equal to one Ounce of Silver. And by an Act of their General Assembly passed in March last, they stated Fifty-four Shilling Old-Tenor Bills equal to one Ounce of Silver, which sunk their Value one half. And by another Act in June last, (viz. 1751) they stated Sixty-four Shillings in their Old-Tenor Bills equal to one Ounce of Silver. And by another Act in August last they gave Order and Direction to the Courts in that Colony to make Allowance to the Creditors in making up Judgment from Time to Time as the Bills shall depreciate for the Future, which shews that they expect their Bills of Credit to depreciate for the Future.

§14 And since the Value of The Bills of Credit depend wholly on the Rate at which they are stated and on the Credit of the Government by whom they are emitted and that being the only Reason and Foundation upon which they obtained their first Currency and by which the same has been upheld ever since their first being current and therefor e when the Public Faith and Credit of such Government is violated, then the Reason upon which such Bill obtained their Currency ceases and there remains no Reason why they should be any longer current.

§15 And this I would lay down as a Principle that can't be denied that a Debtor ought not to pay any Debts with less Value than was contracted for, without the Consent or against the Will of the Creditor.

§16 And the Creditor further saith, that his accepting Rhode-Island Bills of Credit when they stood stated equal to Silver at Twenty-seven Shillings an Ounce, can be no Reason that he should receive them at the same Value when they are stated equal to Silver at Fifty-four Shillings an Ounce, and still to receive them at the same Rate when they are so reduced down that Sixty-four Shillings is equal to but one Ounce of Silver, and whoever does receive them so must not only act without, but against Reason.

§17 And the Debtor can't possibly plead without any Truth that he expected to pay in Rhode Island Bills of Credit at their present Value and under their present Circumstances, (any Debts contracted before the aforesaid Acts of Rhode Island were published) because there was no such Thing (as those Bills are under their present Circumstances) existing at the Time of Contract, for as was observed before, the Value of such Bills of Credit depend wholly upon the Rate at which they are stated and on the Credit of the Government by whom they are emitted, and a Bill of Credit for the same Sum that is stated equal to Silver at Twenty-seven Shillings an Ounce, must be of more than double the Value of one stated equal to Silver at Sixty-four Shillings an Ounce if the Credit of the Emitter may be depended on: But if the Emitter's Credit can't be depended on then neither of the Bills aforesaid are of any Value, because it is evident that no Bills of Credit have any Value in themselves, but are given to secure something of intrinsic Value, to the Possessor.

§18 So that the Arguments draw from Custom are of no Force, because the Reasons upon which that Custom were grounded do now cease.

§19 I grant that if any Thing whose Value is intrinsical and invariable the same should obtain a Currency as a Medium of Exchange for a great Number of Years in any Colony, it might with some Reason be urged that it ought to be accepted in Payments for Debts where there is no special Agreement for any other Species.

§20 But if what is used as a Medium of Exchange is fluctuating in its Value it is no better than unjust Weights and Measures, both which are condemned by the Laws of GOD and Man, and therefore the longest and most universal Custom could never make the Use of such a Medium either lawful or reasonable.

§21 Now suppose that Gold or Silver Coins that pass current in Payments at a certain Rate by Tale should have a considerable Part of their Weight filed or clipped off will any reasonable Man judge that they ought to pass for the same Value as those of full Weight?

§22 But the State of R...I...d Bills of Credit is much worse than that of Coins that are clipped, because what is left of those Coins is of intrinsic Value: But the General Assembly of Rhode Island having depreciated their Bills of Credit have thereby violated their Promise from Time to Time, and there is just Reason to suspect their Credit for the

Future for the small Value which they now promise for said Bills, and they have not only violated their Promise as to the Value, pretended to be secured to the Possessor by said Bills; but also as to the Time of calling them in and paying the same, they have lengthened out the Time Fifteen Years.

§23 So that if the Possessor must be kept out of the Use of his Money until that Term is expired (and the Bills secure nothing to him sooner.) One Ounce of Silver paid down now, would be worth more than Seven pounds Ten Shillings in such Bills of Credit computing the Interest at 6 per Cent per Annum.

§24 These Things considered, can any reasonable Man think that such Bills of Credit (or rather of no Credit) ought to be a legal Tender in Payment of Money in this Colony for Debts, for which the Debtor received Species of much more Value than those Bills provided the Creditor could get the full Value of them in Silver that they are now stated at.

§25 For it must be remembered that according to the State of the Case now in Question the Goods were charged according to the Value of Old-Tenor Bills of this Colony. Wherefore upon the whole it appears that it would be evidently unjust to impose Rhode-Island Bills of Credit in payment for such a Debt, or any other in this Colony, unless the Creditor obliged himself by a special Agreement to receive them in Payment.

§26 And if he had agreed to receive them in Payment for Debts contracted any Time between last March and June it would be unjust to oblige him to take them without three Shillings on the Pound Allowance, for the General Assembly of Rhode Island depreciated them so much in June below both their current and stated Value in March preceding.

§27 And to oblige People to receive them without such Allowance in this Colony; would be, to more dishonest than they are in Rhode-Island Colony for they are obliged by Law to make Allowance for the Depreciation.

§28 But in as much as we are not under the Jurisdiction of Rhode-Island Government and therefore can take no Benefit by equitable Acts, I suppose that according to the Rules of the Law, upon a Contract made in this Colony for the Payment of Bills of Credit on the Colony of Rhode-Island or any of the Neighboring Governments,

§29 if the Debtor could not produce such Bills under the same Circumstances that they were at the Time of Contract, the Courts would assess Damages for Connecticut Money, according to the Value of such Bills at the Time of Contract.

§30 And the Reason is, because if on the one Hand all such Bills should be called in and burnt between the Time of Contract and the Time of Payment it would be unreasonable to oblige the Debtor to an impossibility, and on the other Hand if there should between the Time of Contract and the Time of Payment be an Act passed that all such Bills should be brought into the Treasurer to be redeemed by a certain Time or else be Outlawed and rendered of no value and that Time should be expired before the Time of

Payment, or if by an Act of Assembly they should be depreciated and sunk one half or two thirds of their Value, it would be unreasonable that the Creditor should be thereby defrauded of his just Due and lose so much of his Estate.

§31 But to impose Rhode-Island Bills of Credit in Payments for Debts in this Colony when the Creditor never agreed to take them, and that without any Allowance for the Depreciation, would be to take away Men's Estates and wrong them of their just and righteous Dues without either Law or Reason.

§32 And instead of having our Properties defended and secured to us by the Protection of the Government under which we live; we should be always exposed to have them taken from us by Fraud at the Pleasure of other Governments, who have no Right of Jurisdiction over us.

§33 And according to this Argument, if Rhode-Island General Assembly has been pleased last June to have stated their Old-Tenor Bills equal to Silver at Forty-eight Pounds Twelve Shillings an Ounce, instead of Sixty-four Shillings, and to have cut off the Value of them Eighteen Shillings on the Pound, instead of Three Shillings, all Creditors in this Colony would thereby have been necessitated to lose Ninety Pounds out of every Hundred Pounds of their Debts which were then out standing, for if they could take away one Sixth Part of their Value and reduce them so much below the Old-Tenor Bills of this Colony and the Creditor be notwithstanding obliged to receive them without Allowance, by the Rule they might have taken away three Quarters of Nine Tenths or indeed the whole, and the Creditor have had no more Remedy than he has now.

§34 And the Estates of poor Widows and Orphans must according to this Principle in the same unjust Manner be taken away from them and given to others that have no Right to them, (for what the Creditor loses in this way the Debtor gains because the more the Bills of Credit depreciate the less Value the Debtor can produce them for) and according to the Debtor's Argument the Executive Courts in this Colony must give Judgment in Favour of all this Fraud and Iniquity at least, 'till there is some special Act of Assembly to order them to the contrary; but I believe that every honest Man of Common Sense, upon mature Consideration of the Circumstances of the Case, will think that this is an Iniquity not to be countenanced, but rather to be punished by the Judges.

§35 But in Answer to what is said concerning Demands being made for Old-Tenor Money indifferently and the Courts giving Judgment accordingly. The Creditor saith that Phrase in all Demands made in this Colony ought to be understood to be the Old-Tenor Money of this Colony, and no other, for there never was any Law in this Colony that Bills of Credit on the Neighboring Governments should be a legal Tender in Payments of Money, and I have observed before that it would be unreasonable, that any such Foreign Currency should be imposed as Money, and the same Phrase is used in taxing Bills of Cost in the Executive Courts, but it is understood to be the Old-Tenor Money of this Colony only, for a Thousand Pounds in Bills of Credit on the Neighboring

Governments would not be sufficient in the Law to satisfy a Bill of Cost of Twenty Shillings Old-Tenor.

§36 And the General Assembly of this Colony have sufficiently declared that they don't Esteem such Bills of Credit as Money, and that no Person ought to be obliged to receive them as such. In that, they themselves will not receive them for their Wages, neither do they oblige any other Person whose Fees or Wages are stated by Law to receive them, but have made Provision how they shall be paid exclusive of such Bills.

§37 And as to the Objection that they have been received in Payment to satisfy all Judgments given as aforesaid, the Creditor faith, that it was only by the same reasons that they should be received now at the same Value as Bills of Credit on this Colony that there was formerly because it is evident that there is now a real Difference in their Values.

§38 For by a Law of the Province of the Massachusetts Bay, their Bills of Old-Tenor are stated equal to Silver at Fifty Shillings an Ounce and Seven Shillings and Six Pence are equal to One Shilling Proclamation Money, and the Executive Courts in this Colony reckon Eight Shillings Old-Tenor Bills of this Colony equal to One Shilling Proclamation Money which is equal to Silver at Fifty-four Shillings Old-Tenor an Ounce.

§39 And by an Act of Rhode-Island General Assembly Sixty four Shillings of their Old-Tenor Bills is stated equal to one Ounce of Silver, at which Rate nine Shillings and Six pence is equal to but One Shilling Proclamation Money, whereas three Years ago the Bills of Old-Tenor on all the three Governments aforesaid were of equal Value.

§40 And since it appears, that there is such a Difference in the stated Value of the aforesaid Bills of Credit, no Man can with any Propriety be said to make them all without Distinction, a Standard to value Things by; for a Man could afford to sell any Goods or Merchandise for a less Sum in Old-Tenor Bills of the Massachusetts Bay, than for the Old-Tenor Bills of this Colony and he could afford to sell Goods for a less Sum by 15 per Cent for the Old-Tenor Bills of this Colony, than for the Old-Tenor Bills on Rhode-Island Colony.

§41 And to say that an Account is charged in Old-Tenor Money indifferently of this and the Neighboring Governments, is to say that 7s.-6d. and 8s. and 9s.-6.d are one and the same Sum, or that there is no Difference between Fifty and Fifty-four, or between Fifty-four and Sixty-four Q.E.D.

§42 And since it appears that it would be evidently absurd to make a Demand for Old-Tenor Money indifferently of this and the Neighboring Governments, it follows that all Demands made for Old-Tenor Money in this Colony must be for the Money of this Colony exclusive of the Old-Tenor of the Neighboring Governments, or else for the Old-Tenor Money of some one of the other Governments exclusive of the Old-Tenor of this and the rest.

§43 And since nothing but a special Contract can entitle any Person to demand the Money of any other Government, for a Debt contracted and demanded in this Colony: It necessarily follows, that all Demands for Debts due by Book, where the Contract lies at large must be for the Money of this Colony only.

§44 What I would be understood to mean by Old-Tenor Money of the Colony of Connecticut is, whatsoever is established by Law in said Colony to pass as, or in Lieu of Money, rated according to its Value in Old-Tenor Bills on said Colony, and I supposed that the Words (Old-Tenor) when used in Contracts are universally understood to be intended only to ascertain the Value of the Sum to which they are affixed and they must be so understood when the Executive Courts tax Bills of Cost in Old-Tenor Money, for they have no Right neither do they mean to exclude Bills of the New-Tenor, or any of those Coins established by Law (to pass in Payment for Fees) from being a sufficient Tender in Payment of such Costs.

§45 And now I have gone through with what I first proposed, But perhaps some, may be ready to say, that we are sensible that it is of bad Consequence to have a fluctuating Medium of Exchange, but what can be done to Remedy it?

§46 I answer take away the Cause, and the Effect will necessarily cease.

§47 But it may be further objected, that if it were not for the Bills of Credit on the Neighboring Governments, we should have no Money to Trade with, and what should we do for a Medium of Exchange? or how could we live without?

§48 To this I answer, that if that were indeed the Case, we had better die in a good Cause than live in a bad one. But I apprehend that the Case in Fact is quite the reverse, for we in this Colony are seated on a very fruitful Soil, the Product whereof, with our Labour and Industry and the Divine Blessing thereon, would sufficiently furnish us with and procure us all the Necessaries of Life and as good a Medium of Exchange as any People in the World have or can desire.

§49 But so long as we part with our most valuable Commodities for such Bills of Credit as are no Profit; but rather a Cheat, Vexation and Snare to us, and become a Medium whereby we are continually cheating and wronging one another in our Dealings and Commerce.

§50 And so long as we import so much more foreign Goods than are necessary, and keep so many Merchants and Trader employed to procure and deal them out to us: Great Part of which, we might as well make among ourselves; and another great Part of which, we had much better be without, especially the Spiritous Liquors of which vast Quantities are consumed in this Colony every Year, unnecessarily to the great Destruction of the Estates, Morals, Health and even the Lives of many of the Inhabitants.

§51 I say so long as these Things are so we shall spend great Part of our Labour and Substance for that which will not profit us.

§52 Whereas if these Things were reformed, the Provisions and other Commodities which we might have to export yearly, and which other Governments are dependent upon us for, would procure us Gold and Silver abundantly sufficient for a Medium of Trade. And we might be as independent, flourishing and happy a Colony as any in the British Dominions.

§53 And with Submission I would humbly beg Leave to propose it to the wise Consideration of the Honourable General Assembly of this Colony; whether it would not be conducive to the welfare of the Colony to pass some act to prevent the Bills last emitted by Rhode Island Colony from obtaining a Currency among us.

§54 And to appoint some reasonable Time (not exceeding the Term that our Bills of Credit are allowed to pass) after the Expiration of which none of the Bills of Credit on New Hampshire or Rhode Island, shall be allowed to pass in this Colony, that so People having previous Notice thereof may order their Affairs so as to get rid of such Bills to the best Advantage that they can before the Expiration of such Term.

§55 And whether it would not be very much for the Public Good to lay a large Excise upon all Rum imported into this Colony or distilled herein, thereby effectually to restrain the excessive use thereof, which is such a growing Evil among us and is leading to almost all other Vices.

§56 And I doubt not but that if those two great Evils that have been mentioned were restrained we should soon see better Times.

FINIS