

A Caveat Against
Injustice

-or -

**An Inquiry into the Evils
of a Fluctuating Medium of Exchange**

By Judge Roger Sherman

Contents

A Living Voice
forward by F. Tupper Saussy

A Living Voice

I

Any student of the economic system of the United States ought to be familiar with United States monetary law. Since all laws in this country must flow in pursuance of the United States Constitution, the student should base his study of monetary law on the economic provisions contained in the Constitution.

It's not widely known that the Constitution deals with economics. Indeed, most people are surprised to learn that the sole purpose of the Constitutional Convention, as described by Alexander Hamilton in a report to Congress in 1786 recommending that there be a convention was

to take into consideration the trade and commerce of the United States.

What was wrong with trade and commerce in the United States? They were being twisted all out of shape by an inflating balloon of an elastic currency, the very stuff the Federal Reserve provides today.

Our first constitution, the Articles of Confederation (1781), was severely deficient in the economic rights department. The Articles empowered Congress to emit a paper currency, while allowing the states to retain their power to make this paper a legal tender in payment of debts, that is, to compel people to use the stuff. The result? A warping of personal and business relations in the United States that drove George Washington (and God knows how many other folks) to depression and nervous exhaustion. Suffering the compounded agonies inflicted by a paper monetary system of uncontrollable value fluctuations. Washington wrote these dismal words to James Madison on the eve of the Convention:

"The wheels of government are clogged, and we are descending into the vale of confusion and darkness. No day was ever more clouded than the present. We are fast verging into anarchy and confusion."

The deliberate purpose of the 1787 Constitutional Convention was to stop the ravages of a fluctuating medium of exchange by obligating government to maintain *reliable* medium of exchange. President Andrew Jackson validated this fact in his Eighth Annual Message to Congress, December 5th, 1836, just 47 years after the Constitution was ratified by the states.

...It was the purpose of the convention to establish a currency consisting of the precious metals. These were adopted by a permanent rule excluding the use of a perishable medium of exchange, such as of certain agricultural commodities recognized by the statutes of some States as tender for debts, or the still more pernicious expedient of paper currency.

The "permanent rule excluding the use of the pernicious expedient of paper currency" is an exquisitely framed piece of legislative machinery. In article I Section 8, the Framers gave Congress the power

...to coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standards of Weights and Measures.

In Article I Section 10, the Framers denied the states any power to coin and issue money. More importantly, they denied the states the power to ordain-in payment of debts-the use of anything but *the money Congress was empowered to coin*. The substance of that coin is named in the denial:

No State shall coin Money, emit Bills of Credit, make any Thing but gold and silver Coin a Tender in payment of Debts.

Through the Framers, then, the People of the United States appointed the states to be custodians of the American monetary system. If Congress ceased coining gold and silver, causing gold and silver coin to stop circulating, the states would be unable to compel their citizens to pay any debts, public or private. It was the responsibility of an ever-vigilant union of states to keep Congress coining gold and silver, thereby preserving interstate commerce, preserving the very Union itself.

The power the states had reserved under the Articles of Confederation, the power to make anything a legal tender, is a marvelous power indeed. The power to compel people to accept something of no intrinsic value in exchange for something of value is the power to rob people of their property "secretly," as John Maynard Keynes put in the 1920's, "and unobserved."

The United States Constitution is one of the few written compacts between people and government that actually dragged the power out into the open for all to see and condemn. In the 44th Federalist Paper, James Madison eloquently explained why the States were giving up their power to compel citizens to use either federal or state paper money:

The loss which America has sustained from the pestilent effects of paper money on the necessary confidence between man and man, on the necessary confidence in the public councils, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvertised measure, which must long remain...an accumulation of guilt, which can be expiated no otherwise than by voluntary sacrifice on the altar of justice of the power which has been the instrument of it.

The states' voluntary sacrifice hastily rescued our forefathers from the vale of confusion and darkness, unclogged the wheels of government, brightened the day, and restored peace and order. A mere nine months after the " permanent rule excluding the pernicious expedient of paper currency" was ratified by the states, the December 16th 1789 edition of *The Pennsylvania Gazette* was able to say:

Since the federal constitution has removed all danger of our having a paper tender, our trade is advanced fifty percent. Our monied people can trust their cash abroad, and have brought their coin into circulation.

And in June, 1790, a little more than a year after ratification, a much happier George Washington was able to write his friend the Marquis de LaFayette that

Our revenues have been considerable more productive than it was imagined they would be. I mention this to show the spirit of enterprise that prevails.

"The writers of the constitution knew exactly what they were doing when they wrote in Article I Section 10 paragraph 1 'No state shall... make anything but gold and silver coin a tender in payment of debts. ' People able to barter with gold and silver coin control government and are free. Loss of the right to trade in gold and silver coin enslaves people to the creators of psychological 'money.'":

-Merrill Jenkins, Sr.,
The Greatest Hoax on Earth

"The voice of legislators is a living voice."
-10 COKE 101 (England)

II

The Framers who perfected the design of our country's monetary system was a man who had spent most of his life struggling with-and publicly condemning-a fluctuating medium of exchange.

That man was Roger Sherman (1721-1793), a delegate from Connecticut. It was he who, on August 28th, 1787, proposed that the states sacrifice the power to participate in paper money schemes. When it was counter-proposed that the states allowed by Congress make other things than gold and silver coin a tender in payment of debts, we're told by James Madison that Sherman exclaimed, "We are making these measures absolute. This is a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it."

The reader of Madison's Notes on the Debates of the Convention would naturally infer that Sherman was prejudiced against paper money. But where is any material explaining *why* Sherman disliked paper money? None can be found. There's a black hole in history where Roger Sherman's monetary philosophy should be.

It's been estimated that there are more than 500 million copies in print of Karl Marx's *Manifesto of the Communist Party* and *Das Kapital*. How many billions of impressions of Marx's monetary philosophy have been etched into human consciousness nobody can

calculate. He is celebrated as the founding father of the Communist movement and is regarded as one of the greatest thinkers of all time not only in the communist countries, but also in most American colleges and universities, where he is Required Reading in many sociology, history, economics, and philosophy courses. Karl Marx (1818-1883), of course, was a friend of paper money. He held that a central bank empowered to emit paper money and compel the people to use it was essential to government's control of individual property.

We don't have to estimate how many copies of Roger Sherman's only book there are in existence. There are considerably fewer than 500 million. In fact, there are only two. Only two copies of ***A CAVEAT AGAINST INJUSTICE*** left in the world. Think about it. Five HUNDRED MILLION that say paper money is good vs two that say paper money is evil.

Admitted, other people have written that paper money is evil. But they weren't the Framers of the United States Constitution's monetary clauses.

One of the two copies of ***A CAVEAT AGAINST INJUSTICE*** was in the collection of the late Senator George Frisbie Hoar (1826-1904), lawyer, representative, and grandson of Roger Sherman. In this copy, according to a *A Dictionary of Books Relating to America, From Its Discovery To The Present Time* (New York:1891), Sherman had scratched through the pseudonym Philoenomos (Greek for "lover of good law") on the title page and written "By Roger Sherman." Beneath his signature, Sherman had inscribed the book "For Mr. Edward Wigglesworth." The only other original copy sleeps in the Beinecke Rare Book Library at Yale, the university of which the author served as Treasurer from 1765 to 1776.

The Spencer Judd edition of ***A CAVEAT AGAINST INJUSTICE*** is the first known public presentation of this vital book after more than 200 years of undeserved obscurity.

Now, I'm not suggesting that ***A CAVEAT AGAINST INJUSTICE*** might have been suppressed by those who prosper from people's unawareness of their economic rights secured by the Constitution, but it is strange that the *only comprehensive indictment of paper money written by the Framers of the Constitution's guarantee of individual economic security* should be allowed to dwindle down to two copies. Two copies from oblivion! This, mind you, is the *only* book written by the *only* man to sign all four of our most precious political documents-The Continental Association of 1774, The Declaration of Independence, The Articles of Confederation, and The United States Constitution. Do the Guardians of our American Heritage think it's not worth remembering?

First Published in 1752, ***A CAVEAT AGAINST INJUSTICE*** is an economics treatise anyone can understand, in spite of its period literary style. Considering the stature of the author, it's probably the most important economics treatise ever written. For all the influence of Marx, Adam Smith, Ricardo, Bastiat, Engels, Keynes, Samuelson, Hayek and Friedman may exert over a student's monetary thinking, not one of them has enjoyed

the privilege of standing on the floor of a legislative body, proposing his philosophy, and having it enacted into law ratified by the people, in the way Roger Sherman has.

If the voice of the legislator is a living voice, and if the legislator's intent constitutes the law, then the student of United States monetary law must listen carefully to Roger Sherman's voice, and be guided by the intentions it expresses. For **A CAVEAT AGAINST INJUSTICE**, word for word, is the *very soul* of the supreme law governing the money and the property of the the people of the United States. It removes the danger of judicial speculation as to the intent of the Constitution's monetary provision, being the only authoritative description *by a Framer* of the monetary system the Framers *wished to avoid, and why*; and of the system they *were advancing, and why*.

"*A prophet is not without honor, save in his own country, and in his own house.*"
-Jesus of Nazareth,
Matthew 13:53

"*Mr. Sherman exhibits the oddest shaped character I ever remember to have met with. He is awkward, un-meaning, and unaccountably strange in his manner. But in his train of thinking there is something regular, deep, and comprehensive; yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant which runs through his public and private speaking make everything that is connected with him grotesque and laughable; - and yet he deserves infinite praise;- no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object;- it is remarked that he seldom fails.*"
-Major William Pierce (Georgia),
Characters in the Convention, 1787.

III

A CAVEAT AGAINST INJUSTICE reflects events in Roger Sherman's personal life. There is on file in the Connecticut State Library in Hartford an action in which Roger, then 30 years old, and his brother William sued James Battle for paying a debt to their shop in New Milford, Connecticut, in depreciated paper currency.

Over a period of 15 months in 1750-51, Battle had charged "divers wares & merchandizes" amounting to 129 pounds of what the Shermans assumed were pounds of Connecticut "Old Tenor" currency, a stable currency whose value was well-preserved by taxation's taking it out of circulation. But Battle assumed the debt was denominated in pounds of ever-depreciating Rhode Island currency, tendered same, and the Shermans took a beating in the payment and sued for recovery for loss of depreciation.

Sherman wrote in CAVEAT:

...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.

The record of Sherman vs Battle states:

And now the Defendant Comes into Court and pleads and Says that he owes nothing to the Plaintiffs in money of the Colony of Connecticut in Manner and form of the Plaintiffs in their Declaration have supposed and therefore puts himself on the Country.

And the Plaintiffs say the Plea of the Defendant above pleaded is insufficient in the Law.

And the Defendant says his plea is sufficient, etc.

The outcome of Sherman vs Battle was a victory for paper money, because James Battle won. Why did he win? Battle "put himself on the Country." which is a way of saying that he pled "the law of the land" or " custom." Custom, in Sherman's day, meant the colonial common law: the way things were done in early America. Sherman's position was that Battle's pleas was insufficient in English Common Law, big L, under which paper currency could not pay a debt unless specifically provided for in a contract.

Without thinking much about it, the people of Connecticut obeyed their timeworn custom of allowing the currencies of the various Colonies to circulate promiscuously with one another, heedless of differences in their real purchasing power, very much as the people of our states did in the 1960's when irredeemable Federal Reserve notes began circulating promiscuously with redeemable Fed notes, United States notes, Treasury notes, and Silver Certificates.

When Federal Reserve notes were first emitted in 1914, their stated rate was one dollar of gold or lawful money for each dollar promised. Today,(1982) a one-dollar Federal Reserve note will purchase less than 1/10th of a dollar of gold or lawful money. Roger Sherman's condemnation of Rhode Island bills applies with equal force to today's Federal Reserve notes:

And since the Value of the Bills of Credit depend[s] 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 therefore when the Publick Faith and Credit of such Government is violated, then the Reason upon which such Bills obtained their Currency ceases and there remains no Reason why they should be any longer current.

In Sherman's day, a traveling man could make a fortune hopping across the State line, buying many cheap Rhode Island pound bills of credit ("or rather of *no* Credit," growled Sherman in A CAVEAT) with his few fine Connecticut pound bills, return to Connecticut and enjoy an enormous increase in purchasing power by paying in Rhode Island bills.

(Motion is traditionally associated with cheating: is not Mercury, the Roman god of travel, also the god of commerce and thievery?) And all the while, the people-stuck in the habit of dealing with paper images-let their value slip through their fingers without complaint.

Sherman addressed the law of the land, or custom, in *A CAVEAT AGAINST INJUSTICE*:

If what is us'd as a Medium of Exchange is fluctuating in its Value it is no better than unjust Weights and Measures, both which are condemn'd 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.

Losing the Battle case did not quell Roger Sherman's struggle for lawful and reasonable money. Quite the contrary, it convinced him that somehow the colonial custom of passively participating in a monetary system of fluctuating value, suffering the losses without complaint, drowning the pain in vice and sermons, had to be altered. *A CAVEAT AGAINST INJUSTICE* closes with a petition to the General Assembly of Connecticut asking that Rhode Island bills of credit be forbidden from circulating within the state borders and

...whether it would not be very much for the Publick 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. And I doubt not but that if those two great Evils that have been mentioned were restrained we should soon see better Times.

Twenty-four years later, Roger Sherman was to help write the Declaration of Independence, which ingeniously described the destructive social consequences of man's tendency to hang on to bad habits:

All experience hath shown that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed.

The Common Law, the great river of habit flowing down from the remote English past, has always held that the only money with which debts can be paid is metals of intrinsic value. But the Common Law had been shunted off course in the American colonies by a confusion of statutes which served legislators and their supporters at the expense of the people in common. This needed correction, redirection. The widespread failure of an elastic currency made necessary the forging of a brand new custom (call it the resumption of an old, if you like). The habit of using materials of *intrinsic* value -gold and silver coin-must be introduced into the American consciousness, must be secured as " law of the land;" otherwise, Sherman wrote in *CAVEAT*,

...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.

Of course, Sherman might have been specifically referring to the government of Rhode Island. But would he not have condemned the assumption of jurisdiction over us by *any* government not created by constitution? Recall House Banking Committee Chairman Wright Patman's warning a decade ago that we were being ruled by another government:

In the United States today we have in effect two governments.... We have the duly constituted Government...Then we have an independent, uncontrolled and uncoordinated government in the Federal Reserve System, operating the money powers which are reserved to Congress by the Constitution.

Doesn't Congressman Patman's testimony make it clear that the Federal Reserve banking system is our "other Government" to which we are " always exposed " to having our properties "taken from us by Fraud"?

I am loyal to a duly constituted Government. But why should I pledge loyalty to an independent, uncontrolled, and uncoordinated government not obliged to take a Constitutional oath, a government " who (has) no Right of Jurisdiction over us"?

When the Constitution was ratified on the first Wednesday in March, 1789, Roger Sherman accomplished his lifetime quest for an unalterably secure monetary system consisting of gold and silver coin. According to the 2nd Section of Article VI of the Constitution,

This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

On that first Wednesday in March 1789, the monetary system advocated in *A CAVEAT AGAINST INJUSTICE* became a vital organ in the Supreme Law of the Land. No one thereafter could "put himself on the country, " saying " we've always used this stuff for money," and hope to get a state court to ordain the use of paper money as tender in payment of debts. nor could a state court say "You must pay in paper because we've always used this stuff for money." Not even Congress could compel the states to traffic in irredeemable notes, for Sherman in Convention had insisted that the prohibition be "absolute, instead of...allowable with the consent of the Legislature of the U.S. "

Our economic right to circulating gold and silver, coined by Congress has never been amended out of the Constitution. There are only two ways this right can be denied to us: our voluntarily surrendering it, which is what most of us have done up to now; or its being taken away from us by a tyrannical force applied by our fellow countrymen, in our own land, against us.

"If the banks create ample synthetic money, we are prosperous; if not, we starve! We are absolutely without a permanent monetary system. When one gets a complete grasp of the picture, the tragic absurdity of our hopeless position is almost incredible-but there it is. It is the most important subject intelligent persons can investigate and reflect upon. It is so important that our present civilization may collapse unless it is widely understood and the defect remedied soon."

-Robert H. Hemphill, former Credit Manager,
The Federal Reserve Bank of Atlanta,
in the Forward to *100% MONEY*,
by Irving Fisher

"If Congress won't keep its part of the Constitutional bargain and coin money of gold and silver like Article 1, Section 8 Clause 5 commands, there's no way my court can require anyone to pay fines. I'm not here to protect certain people's investments. I'm here to carry out the mandate of the U.S. and the Kansas Constitutions."

-The Honorable Larry Moritz
Municipal Judge, Spearville, Kansas, 1981

IV

If Ratification of the Constitution was the Grand Finale in Roger Sherman's career, certainly *A CAVEAT AGAINST INJUSTICE* was the Overture, and both are made of the same thematic material: a quest for economic security in the Law. You could have sat down with Sherman at the close of the Convention and asked him what the purpose of Article 1 Section 10 Paragraph 1 was and he would have handed you a copy of this little book.

Yet, solid as they are, Sherman's ideas on money were ridiculed by many contemporaries as crankish. We've seen how they were rejected by the court in New Milford. Who but a fool would dare suggest that the states make nothing but gold and silver coin a tender in payment of debts when there was so little gold and silver to be had? Surely, Sherman must have heard "There's not enough gold to go around, is there?" as often as he heard "Since all the gold's in Europe, what will prevent the Europeans from flooding the market, and getting our property for nothing?"

Those questions were answered by history: it is a matter of record that after no state could make any thing but gold and silver coin a tender in payment of debts, the United States became the world's largest depository of gold and silver while simultaneously becoming the most productive nation in the history of the world.

Roger Sherman had predicted events with perfect accuracy in the closing paragraphs of *CAVEAT*:

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, and so long as we import so much more foreign Goods than are necessary, and keep so many Merchants and Traders employed to procure and deal them out to us...I say as long as these Things are so we shall spend great Part of our Labour and Substance for that will not profit us. Whereas if these Things were reformed, the Provisions and other Commodities which we might have to export yearly, and which other Governments are dependant [sic] upon us for, would procure us God And Silver abundantly sufficient for a Medium of Trade. And we might be as independent, flourishing and happy a Colony as nay in the British Dominions.

Compare this prediction with President Washington's jubilant address to both houses of Congress on December 8th, 1795, six years after the states had been forced onto a strict diet of gold and silver coin:

Our agriculture, commerce, and manufacture prosper beyond former example...Every part of the Union displays indications of rapid and various improvements, and with burdens so light as scarcely to be perceived; with resources fully adequate to our present exigencies; with governments founded on the genuine principles of rational liberty, and with mild and wholesome laws; is it too much to say, that our country exhibits a spectacle of national happiness never surpassed, if ever before equaled?

Whether you're a student of monetary law or just a participant in what Charles Riely calls " the Culture of Freedom," I pray that you'll read Roger Sherman's lost masterpiece time and time again, marking it, inwardly digesting it.

I hope you'll show it to people who have to be shown things before they'll believe. I hope you'll use it to demonstrate to skeptical neighbors as well as attorneys, both official and private, that it was the resolute intent of the Framers of the Constitution to do away with a fluctuating medium of exchange for the very reasons Roger Sherman sets down in his wondrous little document.

In ***A CAVEAT AGAINST INJUSTICE***, our forgotten Framers are warning us (*caveat* is Latin for "warning") that the form of money Congress (but no state legislature) has declared "legal tender," this monetized debt issued and regulated by " Governments who have no Right of Jurisdiction over us," is evil; and let me remind you that "evil" means "morally bad or wrong; wicked; malevolent; sinful; causing an undesirable condition, as ruin, injury, pain, harmful, injurious, undesirable, infamous; that which is destructive or corruptive". If the money-" that whereby other things are valued"-is evil, how can the things it values be good? Indeed, *an evil medium of exchange colors everything evil*. Just look around.

What passes for money in 1982 (1996) is as evil, as unpredictable, as damnable as Rhode Island Bills of Credit in a 1751 Connecticut dry goods store.

Today's official medium of exchange is " unjust weights and measures, both which are condemn'd by the Laws of GOD and Man." It is money deliberately designed to "take away Men's Estates and wrong them of their just and righteous Dues without either Law or Reason." All these charges are proved every minute of every day.

The remedy is contained in the Law.

By Law, the states have no Constitutional authority whatsoever to participate in a monetary system comprised of bills not redeemable unit for unit in gold and silver coin. In fact, any state court, judge, or ministerial officer who participates in a compulsory fluctuating medium of exchange is "obliging Men to part with their Estates for that which is worth nothing in it self."

The pages of THE MAIN STREET JOURNAL (a monthly publication that was put out by Frederick Tupper Saussy before his exile from the United States) tell monthly of the thousands of Americans who have begun withholding public dues to their states, countries, and municipalities until such time as Congress once again coins that which the states can make tender in payment of debts. Although many officials have respected this claim of right, it saddens me to report that others have worked extreme hardship on citizens who assert economic rights guaranteed by the Constitution. Why? Do these officers feel threatened? Are they frightened? If they are merely skeptical that the Constitution was designed to crush a monetary system identical to ours today, they *need A CAVEAT AGAINST INJUSTICE*.

As they read,they will hear the convincing voice of the Legislator himself declare that a monetary system comprised of a fluctuating medium of exchange such as ours today is "an Iniquity not to be countenanced, but rather to be *punished* by the Judges."

It is a living voice of the man whom Thomas Jefferson declared "Never said a foolish thing in his life."

-Frederick Tupper Saussy
Sewanee, Tennessee, April, 1982

Judge Roger Sherman

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.

§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 Neighbouring Governments, passing in Payments among us, and some of those Governments having issued much larger sums of Bills than were necessary to supply themselves witha 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 Fackt 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 neighbouring 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 som 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 [sic] 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 neighbouring 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 altho' 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, adnd the Creditor himself has both received and pass'd 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 Distiction of Colonies, and Judgements in all Courts have been given thereon accordingly: And any of the aforesaid *Bills of Credit* have pass'd in Payment to satisfy all Judgements, so obtain'd 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 Judgement different from the common Custom of the Colony.

§9 In Answer to this the Creditor saith, that altho' *Bills of Credit* on the neighbouring Governments have for a Number of Years been pass'd and receiv'd 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 receiv'd it when it would answer.

§10 And the Creditor furthur saith, that such *Bills of Credit* are of no intrinsick 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 intrinsick 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 pass'd 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 Judgement 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 Publick 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 with [\(3\)](#) 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 observ'd 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 intrinsick 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 urg'd that it ought to be accepted in Payments for Debts where there is no special Agreement for any other Species.[\(4\)](#)

§20 But if what is us'd as a *Medium of Exchange* is fluctuating in its Value it is no better than unjust Weights and Measures, both which are condemn'd 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 [\(5\)](#) should have a considerable Part of their Weight filed or clipp'd 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 clipp'd, because what is left of those Coins is of intrinsick Value: But the General Assembly of *R...I...d* 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 neighbouring 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 pass'd that all such Bills should be brought into the Treasurer to be redeem'd 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.[\(6\)](#)

§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 Quartes of Nine Tenths or indeed the whole, and the Creditor have had no more Remedy than he has now.[\(7\)](#)

§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 Judgement in Favour of all this Fraud and Iniquity at least, 'till there is some special Act of Assembly to order them to the contrary; [\(8\)](#) 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 Judgement 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 neighbouring 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 us'd 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 neighbouring 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 receiv'd in Payment to satisfy all Judgements 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 Merchandize 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 Accompt (9) is charged in Old-Tenor Money indifferently of this and the neighbouring Governments, is to say that *7s.-6d.* and *8s.* and *9s.-6d.* 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 neighbouring 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 neighbouring 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 intitle 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 lyes 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 us'd 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. [\(10\)](#)

§47 but it may be further objected, that if it were not for the *Bills of Credit* on the neighbouring 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? [\(11\)](#)

§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 Blessng 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 dependant 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 Publick 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

Thou shalt not have in thy bag divers weights, a great and a small. Thou shalt not have in thine house divers measures, a great and a small. But thou shalt have a perfect and just weight, a perfect and just measure shalt thou have: that the days be lengthened in the land which the LORD thy God giveth thee. For all that do such things, and all that do unrighteously, are an abomination unto the LORD thy God. *Deuteronomy 25*

vs 13-15

NOTES

1. "Sinking" Bills of Credit is taxing them out of circulation. The states were never able to institute truly effective systems of sinking paper money.
2. A highly useful definition of money.
3. "Without," as used in the original, renders the sentence meaningless.
4. It is a rule of Common Law that in the absence of a special agreement to receive bills, the right to value for value applies.
5. "By tale" means "by count." The root of the word "teller."
6. This is why the tender provision, Article 1 Section 10, also denies the states power to impair the obligation of contracts.
7. An accurate description of today's dilemma. The federal government (debtor) borrows from the people (creditor) to the extent the people are willing to lend. What the people will not lend, the federal government then receives in form of credit created by the Federal Reserve system. The credit increases the digital supply of "money," causing a reduction of the purchasing power of the funds in the public's hands.
8. Executive courts or courts of equity, have power to fashion a remedy where some exists in the law. In the absence of laws defining lawful tenders, the courts consistently found in favor of bills of credit. Roger Sherman was to live to legislate the "Acts of Assembly" that ordered them to the contrary. That Act was Article 1 Section 10 Paragraph 1 of the United States Constitution.
9. Account.
10. Article 1 Section 10 Paragraph 1 took away the cause. The effect promptly ceased, exactly as Sherman said it would.
11. The uninformed ask the same question today.