

# THE COURIER

LINCOLN NEB., SATURDAY, AUGUST 8, 1896



ENTERED IN THE POST OFFICE AT LINCOLN AS SECOND-CLASS MATTER

PUBLISHED EVERY SATURDAY

THE COURIER PRINTING AND PUBLISHING CO

Office 217 North Eleventh St.

Telephone 384

W. MORTON SMITH Editor and Manager  
SARAH B. HARRIS Associate Editor

Subscription Rates—In Advance.

For annum .....	\$3.00
Six months .....	1.00
Three months .....	50
One month .....	20
Single copies .....	5



## OBSERVATIONS

The words of Daniel Webster that "the establishment of a sound and uniform currency was one of the greatest ends contemplated in the adoption of the present constitution" (Webster's Works, vol. 3, p. 395), are a sufficient justification for inquiring into the constitutionality of the silver legislation demanded by the popocratic platform. It is suggested that a free coinage law on any other basis than a near approximation to the commercial value of silver would be in contradiction of the fifth amendment to the constitution, providing that no person shall be deprived of his life, liberty or property, without due process of law.

The first coinage was under the act of April 2, 1792, and was at the ratio of fifteen to one; with the lapse of years, however, this relation in value was lost, by the relative appreciation of gold so that an ounce of gold was worth sixteen ounces of silver. As silver was not redeemed in gold at that time, the latter left the country as rapidly as coined, and it was stated in the debates in congress in 1834 that out of \$12,000,000 gold which had been coined, there was hardly a gold piece to be found in the whole United States.

"Hitherto, like the tracks to the lion's den, the colas have gone all one way—to Europe; and not one solitary eagle has ever made good its cis-Atlantic flight." (Debates, June, 1834). Congress, ever anxious to adjust the coinage to the true relative value of the metals, sought opinions upon the subject from those who had given the matter attention, and as these opinions ranged from 15.60 to 1 to 16 to 1, the latter was finally adopted as the new ratio by the act of June 28, 1834.

The California gold discoveries of 1849 again changed the relative value of gold and silver, by cheapening the former to a slight extent. Congress did not change the coinage ratio, however, probably because the gold harvest would, it was believed, be of short duration, further than to depreciate the fractional silver coins, at the same time restricting their legal tender quality to small amounts.

The status of a silver dollar worth only 53 cents has never been presented to the courts for consideration, for the simple reason that all of our currency is today on a gold basis, and the silver dollar represents the implied promise of the government to pay 47 cents. If that promise is withdrawn, as would necessarily be the case under free coinage at the present ratio, and silver retains its legal tender quality, the issue would be clearly drawn whenever a debtor should endeavor to discharge one hundred cents worth of indebtedness with fifty-three cents—is this a taking of the creditor's property without due process of law?

In the Legal Tender Cases (12 Wallace, 457) the United States supreme court upheld an act of congress providing for the issuance of paper money, which should be full legal tender for all debts. It was there contended that the act practically deprived a man of his property without due process of law, but the court rested its decision upon the fact that the legal tender notes were "promises to pay money" and not the money itself. Mr. Justice Strong, in delivering the opinion of the court said, "We do not assert that congress may make anything which has no value money. What we do assert is, that congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts." The dissentient members of the court held that congress had no such power and supported their conclusions by arguments respecting the power of congress over the coinage which was not in issue, and which have never been disputed. These arguments show clearly the distinguishing line between the legal tender cases and a hypothetical case involving the democratic platform silver dollar.

Mr. Justice Clifford said "discretion, to some extent, in prescribing the value of the coins minted, is beyond doubt vested in congress, but the plain intent of the constitution is that con-

gress, in determining that matter, shall be governed chiefly by the weight and intrinsic value of the coins." (12 Wallace, 588.)

Mr. Justice Field, in his opinion in these cases in 1870 (12 Wallace, 634), declared, and repeated in 1884 (4 Sup. Ct. Rep., 139) as follows: "The power to coin money, as declared by this court, is a great trust devolved upon congress, carrying with it the duty of creating and maintaining a uniform standard of value throughout the union, and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value. By debasing the coins, when once the standard is fixed, is meant giving to the coins by their form and impress a certificate of their having a relation to that standard different from that which in truth they possess; in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and imprudent artifice, the 'least covert of all modes of knavery, which consists in calling a shilling a pound, that a debt of one hundred pounds may be cancelled by the payment of one hundred shillings.'" No such debasement has ever been attempted in this country, and none ever will be so long as any sentiment of honor influences the governing power of the nation. The changes from time to time in the quantity of alloy in the different coins have been made to preserve the proper relative value between gold and silver, or to prevent exportation, and not with a view of debasing them. Whatever power may be vested in the government of the United States, it has none to perpetrate such a monstrous iniquity. One of the great purposes of its creation, as expressed in the preamble of the constitution, was the establishment of justice, and not a line nor a word is found in that instrument which sanctions any intentional wrong to the citizen, either in war or in peace."

The clause of the constitution providing that no person shall be deprived of his life, liberty or property without due process of law, was founded upon the forty-sixth articles of Magna Charta, which uses the equivalent expression "law of the land." It was deemed to be of such importance that the same clause was included in the fourteenth amendment as a prohibition to the states. Due process of law means more than a mere statutory enactment. It involves the idea of a hearing and of compensation. Its prohibitive effect is not restricted to a taking of one's property by the public, but extends to and protects vested rights. (Black Const. Law 429). It is remarked by Judge Cooley in his work on constitutional limitations, p. 435, that "there is no rule or principle known to our system under which private property can be taken from one person and transferred to another, for the private use and benefit of such other person, whether by general law or spe-

cial enactment."

It would seem that if the avowed purpose of the law to maintain gold and silver at a parity be withdrawn, the silver dollar coined at the ratio of sixteen to one must therefore be a clear violence of the constitution, unless, perchance, silver should at once regain its old value—and this is conceded to be a very remote possibility.

As there is no justification for such a dollar, under the express powers over the coinage given to congress as interpreted by our highest courts, and ablest statesmen, and as it does not fall within the express powers to borrow money, and emit bills of credit, as do the legal tender notes, it necessarily follows that a fifty-three cent dollar, invested with full legal tender qualities and not backed by a gold reserve to maintain "the parity" between the coins is not only without warrant in the constitution, but falls squarely within the provision that no man shall be deprived of his life, liberty or property without due process by law, respecting the forty-seven cents, as the difference between the coinage and bullion value.

Who will contend as a matter of law that the government has the constitutional power to take a penny's worth of iron, stamp it as a dollar, and provide that such a dollar, which represents neither the government's promise to pay value, nor the value itself, should be a legal tender for the payment of debts to the extent of one hundred cents? The difference between such a dollar and the proposed free silver dollar is only in degree. It is no answer to say that as the coinage value of silver has never exactly represented the bullion value, congress therefore has the right to make a wide departure from such value. It is manifestly impossible to exactly represent the bullion value in the coins, since it is certain to change from day to day, but it is entirely possible to approximate such value very closely, as stated in the words of Mr. Justice Clifford above quoted.

Attention is called to the sentiment expressed by Mr. Bryan, in a speech delivered during the extra session of congress in 1893, in which he said: "While the government can say that a given weight of gold or silver shall constitute a dollar and invest that dollar with legal tender qualities, it cannot fix the purchasing power of the dollar. That must depend upon the law of supply and demand."

In this connection it should be remembered that Mr. Bryan as a member of the ways and means committee of the house, was one of the leading champions of the income tax—another unconstitutional measure.

Mr. Bryan's severest critics have usually given him credit for the possession, to an unusual degree, of the quality of personal integrity. Whenever and wherever Mr. Bryan has been