

# The Constitutional Law of Money

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## Discussion Questions for Class 1

### The Dollar as a Democratic Medium

#### Readings:

##### The Legal Tender Cases:

*Knox v. Lee*, 79 U.S. 457 (1871)  
and *Parker v. Davis*, \_\_\_\_\_

#### Background:

In 1869 and 1870, a series of cases challenging portions of the federal legislation authoring United States notes or greenbacks came to the Supreme Court. The first case, *Hepburn v. Griswold*, began when a debtor offered greenbacks to pay off an obligation contracted shortly before the greenbacks legislation. Her creditor, Henry Griswold, refused to accept greenbacks in payment of the debt. When the case reached the Supreme Court, a majority (5-3) determined that while Congress could authorize the issue of United States notes, it could not provide that those notes were legal tender for debts contracted before the legislation. Less than a year later, another set of cases testing the legislation came up to the Supreme Court. In *Knox v. Lee* and *Parker v. Davis*, the Supreme Court reversed *Hepburn*. (A member of the *Hepburn* Court had retired and President Grant had appointed two new members, Justices Strong and Bradley, the day that the *Hepburn* decision was handed down. Grant was later accused of packing the Court.)

In *Knox*, the Court considered the source of federal power to issue sovereign debt in the form of cash – the greenbacks were effectively small, non-interest bearing IOUs that the United States spent into circulation and received back in taxes. During the War and for some time afterwards, they were not redeemable in gold or silver coin. As a matter of law, the Court determined whether Congress could make those United States notes “legal tender” for payment of private debts. (Note that, when Justice Bradley in his concurrence discusses the “bills of credit” issued during the Revolution, he is referring to currency issued according to the same logic: those bills were also sovereign IOUs that held value because they could be used to pay taxes in the future.)

### Discussion Questions:

1. How did greenbacks hold value? How might their identity as “legal tender” have contributed to their value? Who would most value that attribute?
2. The Legal Tender cases did not contest the power of Congress to issue the greenbacks, only its authority to make those notes legal tender in private transactions. Why was the privilege of legal tender bestowed by Congress so controversial?
3. Where does Congress get the authority to privilege a sovereign IOU like the greenback as legal tender?
  - a. Was it necessary for the Court to determine that, even if Congress could have gotten along without making the greenbacks legal tender, it had the authority to choose the means it preferred as long as that means was appropriate to its end?
  - b. Under the Court’s reasoning, could Congress order the mint to make gold coin with only a fraction (a tenth? a fiftieth?) of the gold content it had established in the inaugural legislation creating a gold dollar?
  - c. Why do these decisions evoke such adamant statements from the majority in favor of expansive federal authority?

Note that *McCulloch v. Maryland* figured in each of the Legal Tender cases. Arguably, *Knox* revitalized *McCulloch*, long dormant, and made it a powerhouse in the following century.
  - d. Why do you think Justice Bradley wrote a separate concurrence in the case? What does his perspective add to the majority opinion?
4. What are the strongest arguments *against* congressional authority to make a sovereign IOU into legal tender? Note that Salmon Chase, Secretary of the Treasury from 1861 to 1864, was appointed to the Supreme Court that year and served until 1873. He authored the majority opinion in *Hepburn* in 1870 and the dissent in *Knox* the next year.
5. If contracts are a matter of state law, how can the Court determine that the federal government can dictate the kind of money that can be used in such a transaction?
6. According to the majority, how is congressional authority over money related to sovereignty? How about according to Justice Bradley? How about according to the dissent?