

The Constitutional Law of Money
Professor Christine Desan

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Discussion Questions for Class 12

National Banks II:
Constitutional Claims to Credit Outside of the Commercial System

Readings:

Southern Alliance, St. Louis Convention, Report of the Committee on the Monetary System on the Sub-Treasury Plan, Dec. 1889, as reprinted in George Brown Tindall, ed., *A Populist Reader* (Harper Torchbooks, 1966).

Harry Tracey, Supplement on the Sub-Treasury Plan, as reprinted in James Davis, *A Political Revelation*, Appendix, i-303, 305-306, 310-313, 316-317, 323-326 (Advance Publishing Co., 1894).

The Ocala Platform, Report of the Committee on Demands, Dec. 1890, as reprinted in Tindall, ed., *supra*.

Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority*, 293-302 (Cambridge: Cambridge University Press, 1990).

Background:

Agrarian populism was one of the largest social mobilizations in American history and, by many accounts, it was a monetary drama. The federal government had adopted policies that limited the money supply relative to demand after the Civil War; the goal was to force down prices in Greenbacks and National Bank notes so that it would be possible resume convertibility of those currencies into gold specie. That approach exacerbated currency scarcity in the South and left hundreds of thousands of tenant farmers in debt to “furnishing merchants” who controlled access to credit. In response, populist organizers mobilized farm families to create credit cooperatives; in 1888, the largest such effort was blocked when commercial banks refused to lend.

C.W. Macune, an extraordinary monetary theorist, proposed the Sub-Treasury Plan as a result. It proposed that the federal government take agricultural security as collateral and issue a circulating cash directly to farmers. The plan would have allowed them to escape debt peonage by providing access to credit outside the monopoly hold of the furnishing merchants. A related proposal, the Land Loan System, provided that the federal government would establish a land bank system very like that which existed in colonial Pennsylvania.

We consider the populist arguments that there existed a constitutional obligation on the part of the federal government to ensure that people had a working medium to support

their livelihood. We also consider the implications of the failure of that argument. The question here is how Congress's determination not to address the agrarian claim informed the character of the monetary system, the sphere and power of commercial banking, and the course of Reconstruction.

Discussion Questions:

1. Evaluate the soundness of the Sub-Treasury and Land Loan Plans.
 - a. Would money created under the Plans have held value if they were properly managed?
 - b. Why do you think activists in the late 19th century resurrected the land bank initiative of early Pennsylvania?
2. Tracey argues that Congress has a responsibility to ensure that all citizens have access to money. What are the strongest arguments he makes and/or you can add? Do they fail as a doctrinal matter?
3. What do you think would have been the greatest impact of the Plans at the material level? at the cultural level? at the political level?
4. How do the Plans perpetuate, obstruct, or otherwise illuminate the emerging public/private division of responsibilities in monetary matters?
5. How would you compare the political theory of the Report of the Committee on the Monetary System with Tracey's political (and constitutional) theory?
6. From which American traditions on money did Tracey draw most deeply?
7. What impacts would you hypothesize from Congress's failure to adopt the populists' proposals?
 - a. How might that decision inform people's approach to the market in the United States?
 - b. Their approach to commercial banking?
8. Benseal argues that the power of financial interests and the federal government's commitment to resumption of the Gold Standard hampered the growth of a proactive federal government during Reconstruction. Do you agree? How does the outcome of the populist drama support, weaken, or modify his argument?