

POLITICAL SCIENCE QUARTERLY.

THE FUTURE OF BANKING IN THE UNITED STATES.

ON the 13th of July last, the Hon. A. J. Warner, of Ohio, offered an amendment to the so-called surplus resolution then pending in the House. The amendment was in these words :

Provided, that after the passage of this Act, whenever and as fast as the circulating notes of national banks are redeemed or cancelled, as provided by the Act of June 3, 1864, and amendments thereto, the Secretary of the Treasury shall cause to be issued in place of such bank notes redeemed, dollar for dollar, United States notes in denominations as nearly as may be of the bank notes redeemed, and all laws applicable to bank notes now in circulation are hereby made applicable to the notes issued under this Act.

A critical examination of Mr. Warner's speech in support of his amendment does not reveal any definition of the phrase "issuing." The issuing of a note is an act of borrowing money. But, in the case before us, the borrower already has more money than he requires. The whole argument in favor of the surplus resolution, including Mr. Warner's speech, started from the text that the government has too much money now. The surplus resolution was a device to get rid of some part of it. The belief was that the government would be able to pay all the outstanding three per cents within the current fiscal year. Three-fourths of these bonds are lodged in the Treasury by national banks, as security for their circulation. Mr. Warner proposes that when the government pays this portion of its debt, say \$75,000,000, it shall forthwith borrow \$75,000,000

more. For what purpose? There is no other debt that it can pay off at par before the year 1891. It can then pay off \$250,000,000; but it will have collected in the interim much more than that sum, unless its receipts are greatly curtailed or its expenses enormously increased. It is hardly possible to imagine a scale of expenditure sufficient to swallow up the current revenues of the next four years. Even the most rampant scheme of coast fortification and naval expenditure will fall short of the needs of the hour. What is to be done then with the \$75,000,000 that Mr. Warner thinks of borrowing now, and the \$200,000,000 or more that he contemplates borrowing when his plan shall have worked itself out?

Before advancing to the main discussion assigned to this article, let us glance at the process by which bonds, owned by the banks and held by the Treasurer of the United States as security for their circulating notes, are retired. A call for bonds to be redeemed and cancelled is made by the Secretary of the Treasury, maturing in, say, ninety days. A certain large proportion of them are these security bonds already in the Treasury. The bank cannot turn over the bonds for cancellation and receive the money for them, until it shall have retired its circulating notes or made provision for redeeming them. The notes being in the hands of the people, here, there, and everywhere, the bank cannot gather them in readily, but it can deposit "lawful money" in the Treasury to redeem them with, and then give itself no more concern about them.

Now, let us suppose that the government has \$100,000 of "surplus," and has called in \$100,000 of bonds owned by bank A, upon which \$90,000 of notes have been issued. Bank A perceives that the easiest way to transact the business is to tell the Treasurer of the United States to help himself to \$90,000 of the money (to redeem the outstanding notes with), and to remit the balance, \$10,000, to bank A. It is optional with the bank to do this, or to buy other bonds at various rates of premium to put in the place of the called bonds. But there is no pecuniary inducement to do so, and in any case the diffi-

culty is only adjourned a few years, for the time is hastening when all the bonds will have been called.¹

Now it needs no prophet to foretell that Mr. Warner's resolution will be heard of again, and very soon. The question, what shall take the place of the national bank notes, is likely to be the burning one of the next few years. The notes are gradually disappearing; and they will go at an accelerating rate, since the premium on the long bonds is not only an obstacle to their substitution for the short ones, but is an inducement to the bankers to sell such as they already have and go out of the business of note circulation.² It should be mentioned in passing that one clause of the national banking law requires all banks, whether they issue notes or not, to hold a certain amount of bonds at all times — no bank, however, being required to hold more than \$50,000. This provision of law does not concern the present discussion. It is referred to because we are told sometimes that there will be bonds sufficient to keep the national banking system going for twenty years at all events, meaning that this particular clause of the

¹ A brief calculation will show that there is a loss in buying 4 per cent bonds to issue circulating notes upon. Suppose a bank buys \$100,000 of these bonds at 130 and receives 90 per cent of the par value in circulating notes. Suppose that it is able to realize 6 per cent per annum continuously on its loans and discounts. Then by taking out notes it can realize annually:

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| On \$100,000 bonds | \$4,000 |
| On bank notes | \$90,000 |
| Less 5 per cent redemption fund | <u>4,500</u> |
| | \$85,500 |
| | <u>5,130</u> |
| | \$9,130 |
| Less shrinkage in premium on bonds (\$30,000 in 20 years), \$1,500 | |
| Tax on circulation 1 per cent | <u>900</u> |
| | 2,400 |
| | \$6,730 |
| Against 6 per cent interest on \$130,000 cash | 7,800 |
| Difference against circulation | \$1,070 |

When the rate of interest obtainable on loans is 5 per cent, the figures stand \$5,875 annual profit on taking out circulating notes, and \$6,500 on not doing so. At 4 per cent, they are \$5,020 and \$5,200 respectively.

² The progressive decline in the bank circulation is shown in the monthly circulars of the Comptroller of the Currency. That of October 1, 1886, is as follows:

STATEMENT of the Comptroller of the Currency on October 1, 1886, showing the amounts of National Bank Notes and of Legal Tender Notes outstanding at the

law, which has hitherto been a *sine qua non* of every bank charter, can be complied with as long as \$100,000,000 of bonds of any class are to be had. This has nothing to do with bank circulation. Congress might repeal this clause of the law without altering any fact now material to the banks or to the government. It was originally put in the law in order to improve the market for the bonds. There is no lack of a market now. Indeed, for banking purposes there is rather too much. The portion of the law which concerns us is the provision that every bank note issued shall be secured at the rate of 110 per cent, par value, of United States bonds deposited with the Treasurer at Washington City. It is this provision which makes the national banking system, in popular phrase, and truly, I think, "the best banking system the world ever saw." It is this provision, or rather the inability to comply with it, that is surely making an end of the system.

The question is frequently asked, why may we not let a portion of the public debt sufficient to comply with this provision run on indefinitely, in order to keep the best banking

dates of the passage of the Acts of June 20, 1874, January 14, 1875, and May 31, 1878, together with the amounts outstanding at date, and the increase or decrease.

NATIONAL BANK NOTES.

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| Amount outstanding June 20, 1874 | \$349,894,182 |
| Amount outstanding January 14, 1875 | 351,861,450 |
| Amount outstanding May 31, 1878 | 322,555,965 |
| Amount outstanding at date | 303,212,152 |
| Decrease during the last month | 1,157,593 |
| Decrease since October 1, 1885 | 13,810,652 |

LEGAL TENDER NOTES.

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| Amount outstanding June 20, 1874 | \$382,000,000 |
| Amount outstanding January 14, 1875 | 382,000,000 |
| Amount retired under Act of January 14, 1875, to May 31, 1878 | 35,318,984 |
| Amount outstanding on and since May 31, 1878 | 346,681,016 |
| Amount on deposit with the Treasurer U. S. to redeem notes of insolvent and liquidating banks, and banks retiring circulation under Acts of June 20, 1874, and July 12, 1882 | \$68,529,417 |
| Increase in deposit during the last month | 6,327,918 |
| Increase in deposit since October 1, 1885 | 28,655,274 |

The net amount of outstanding circulation is, of course, \$303,212,152, less the amount of legal tenders deposited to redeem notes of insolvent banks, etc., \$68,529,417. In other words, the net bank-note circulation is now only \$234,682,735.

system the world ever saw alive? The reason is that the public will not allow any part of the debt to stand a moment beyond the time when it is possible to pay it. This determination is not based upon popular error. It is in accord with sound principles of finance. A national debt is never a national blessing, not even when supporting the best banking system the world ever saw. It would be an extremely fortunate thing if the whole of it could be paid off to-morrow. A national debt is akin to a mortgage on a farm. The annual interest enables the mortgagee to live without helping to cultivate the land. It may be, for a time, more advantageous to the farmer to pay the interest than to discharge the principal. But when he can no longer use the borrowed capital to an advantage equal to the interest, he will pay off the mortgage in obedience to a correct instinct. A government debt is in nowise different in its underlying principles. All the people of the United States make their living off the land in one way and another. The land is mortgaged and the interest on the mortgage enables a portion of their number to subsist without joining in the work of production. The larger the debt, the greater the number who can be and will be supported without plowing and hoeing, or using their mental powers for increasing the national wealth. In proportion as the debt is lessened the number of contributors to the common stock is augmented. A case may be imagined where it would be better for all that the public debt should not be paid, as for instance where the tax-payers were, as a rule, more intelligent and economical than the bondholders, and where each one applied the small savings resulting from reduced taxes to the work of reproduction more scrupulously and effectively than the bondholders would apply the larger sums coming to each of them through the payment of the debt. But such a case can never exist except in imagination. Everybody knows that the small gains accruing in unseen ways to the multitude are those most likely to be squandered, least likely to be converted into capital, while the larger sums represented by the national bonds, being already capital in the hands of the owners, are quite certain not to be squandered but to be used

reproductively when returned to them. The payment of the public debt is, therefore, a true savings-bank operation to the community as a whole.

If it be asked whether there are not indirect advantages arising from the existence of a national debt, such as the perpetuation of the national banking system, and the facilities afforded for the investment of trust estates which have to be administered by the courts of law, the answer is that nothing is justifiable in the long run which necessitates more taxation than is needed to carry on the government. But all abstract argument is concluded by the fact that the people will not allow the debt to run on beyond the time when it is possible to pay it. Of this there can be no doubt; and it should be regarded as a most wholesome and reassuring fact that the greatest democracy the world has ever seen has been so eager to pay its debts that it would listen to no argument on the subject of its postponement upon any consideration whatever, even at the lowest imaginable rate of interest.

The termination of the existing security for national bank notes being conceded, it is worth while to ask whether anything else can be substituted for it. Evidently nothing else so good can be found. The government now guarantees absolutely the redemption of all the national bank notes, because it has securities in its hands composed entirely of its own obligations. It assumed no new obligation when it gave this guaranty. Its own liabilities were not increased. In an extreme case it might be called upon to redeem such notes faster than the bonds could be sold. To meet this extreme case a margin of ten per cent was required from the banks, but in no case has this margin ever been resorted to, although there have been many bank failures and two very considerable panics since the system was inaugurated. Would it be safe for the government to give its guaranty for the redemption of national bank notes, on any other conditions than those now prevailing? Of course, it must have securities to protect its own guaranty. What shall these be? Can it accept state bonds, city bonds, railroad bonds, or commercial paper? Can it accept an inferior security in

exchange for a superior one; *i.e.*, for its own endorsement on the bank note? Certainly not. State bonds, city bonds, railroad bonds, and commercial paper are of every grade of goodness or badness. The shrewdest men of business get "stuck" with these things every day. The government would fare no better, but much worse, since every sort of unbusiness-like influence would be brought to bear upon the officers charged with discrimination between the various kinds of securities offered. It is not necessary to dwell upon this point.

The government's guaranty being out of the question, would any other guaranty be acceptable? I have elsewhere¹ suggested that a guaranty by all the banks for each other's notes, together with a change in the law, so as to give note-holders the first lien on the assets of a failed bank, the other working provisions of the law remaining as they are, would suffice. There is little likelihood, however, that this mutual guaranty could be obtained. The strong banks in the large cities do not particularly desire to issue circulating notes. Some inducement must be offered to them to join in such a plan. It must be made worth their while to go into it. They must have something in exchange for their endorsement, and it is difficult to see what could be given to them.

The suggestion has been made that the existing tax on national bank-note circulation (one per cent per annum) might be applied to the creation of a fund for the redemption of the notes of failed banks. The statistics of bank failures since the national system went into effect, show that a fund derived from this source might easily provide for all probable disasters. Of course, such a fund would require to be invested in something, this ultimate redemption fund being over and above the ordinary reserve required by law and by the principles of good banking. It would not be desirable to lock it up in gold coin. To carry the idea into effect, it would be incumbent on the government to deposit the fund in redemption banks at central points, to be used and accounted for, and to be drawn upon only in case of bank failures. There is some merit in this sugges-

¹ Lalor's Cyclopædia of Political Science, article "Money and its Substitutes."

tion. It is, undoubtedly, capable of being carried into execution, since it involves no greater talent than that shown in the operation of the Safety Fund system of New York before the war. The essential point is that all the banks issuing circulating notes contribute a common insurance fund to provide against disasters. This contribution is no greater than they now pay to the government in the way of tax, and the tax itself is no longer needed by the government. The right to issue circulating notes is certainly a proper subject for a tax. It is to be said, on the other hand, that if the government does not need the tax, the banks themselves are the proper beneficiaries of the remission of it, each bank for itself, and that it is not in accord with justice to compel good banks to put up a fund for the benefit of bad ones. There are grave doubts as to the constitutionality of such a measure. Moreover, the existence of an insurance fund might serve as an incentive to swindling, just as fire insurance sometimes leads to the burning of property.

The more closely we look at the conditions of national bank circulation, the greater are the difficulties of keeping it alive. The national banks were summoned into existence as a means of helping the government to borrow money in a time of great need. All of their note-issuing functions were adapted to that end. The object was accomplished, and now the reverse process is going on. The government is paying back its borrowings, and the banks are going out of existence, as issuers of notes. They may continue indefinitely as machines for receiving deposits and discounting paper under federal authorization. There are very good reasons why the system should be kept going, even if the circulation comes to an end. It is part of our business training and of our acquired knowledge. It is uniform throughout the United States. Every banker and every lawyer knows what is the legal effect of any act done under it in any part of the country. The system of inspection by public officers, although not perfect, is growing better all the time. It is far better than any that we should get under state authority. When it becomes necessary to prosecute bank officers for misconduct, the administration of the law is more

speedy and thorough, and less liable to miscarriage, than the same kind of law would be under state administration.

But the note-issuing faculty of the national banks seems destined to come to an end, and the question must soon be answered: What shall take its place? Something will take its place. The need of a paper medium of circulation is, in every civilized country, imperative. There is little doubt that the prejudice against small notes in England, which has hitherto restricted the circulation to denominations of five pounds and upwards, will soon give way. There is not the least doubt that the people of this country will have either greenbacks, or silver and gold certificates, or state bank notes, in place of the disappearing notes of the national banks.

The first objection to greenbacks has already been touched upon. The issue of such notes is an act of borrowing. The borrower in this case has no use for the money. He will shortly have no use for a considerable share of the money he gets in the usual way, and the pressing need of the hour will be to get rid of the surplus. Why should anybody imagine that it is expedient or desirable to issue greenbacks in lieu of the retiring bank notes? Mr. Warner says, because the money market will get cramped and industry will be stifled by contraction of the currency. How does he know that? The process has been going on for a long time. The bank circulation was \$351,000,000 in 1875. It is now only \$234,000,000 net. Here is a difference of \$117,000,000. Has anybody been hurt by it? Has any industry languished in consequence of it? It will be a sorry time for industry when the imaginings of congressmen, or of anybody, are substituted in place of the natural demands of commerce to determine how much paper currency is required. Mr. Warner thinks that we need just as many new greenbacks as we had of old bank notes. Other congressmen will think that we need more. Here lies the great danger. If we should give all power to decide this delicate question into Mr. Warner's hands for the time being, having confidence in his superior discernment, we have no assurance that he will be in Congress after the next election, or that he will be alive next year.

Nearly all the greenbackers place some limit upon the amount of "fiat" money that a country can usefully employ. Some of them estimate it by population, others by wealth, and others by acreage. Acreage is really a more philosophical gauge than population or wealth, because the community use less and less of either currency or coin, as they grow rich and populous, while they use more according as they are loosely scattered over wide tracts of country. The reason is that, in wealthy and densely populated districts, the rapidity of the circulation is great, and rapidity counts for more than quantity. Moreover, these districts use bank checks and clearing houses for the great bulk of their trading, and to an ever-increasing and really limitless extent. I have been expecting some genius to rise in our midst with an algebraic equation for population, wealth, acreage, and currency, so as to tell at any moment what amount of money is needed by any country, but I would advise Mr. Warner not to charge himself with such a task.

Our paper currency consists of greenbacks, national bank notes, and certificates of deposit (silver and gold certificates). The first is a fixed quantity and the others are variable.

As the people will not handle coin, either silver or gold, more than they are obliged to, one of these variable quantities will rise or fall inversely with the other. If the volume of bank notes is lessened, that of certificates will increase, and it is well for the silver men to understand this, if we are to have a debate in Congress on Mr. Warner's proposition. Greenbacks and silver certificates cannot both fill the vacuum left by the bank notes. If any means can be devised for "issuing" greenbacks, — that is, for borrowing money by forced loan in a time of peace and plenty, — then greenbacks may be put in the vacuum; but if not, and if no substitute is found for the present banking system, then certificates will fill the place left vacant. They are filling it now from day to day. The Treasury allows anybody who will deposit gold or gold value — and all money is now at gold value — to take certificates instead thereof. This process will go on until all the bank notes are supplanted with certificates, unless it is stopped by some kind of legislation.

As the gold certificates cannot be issued under the present law in less denominations than twenty dollars, their circulation is restricted; but they are now going out more rapidly than heretofore, because the government no longer discriminates in favor of silver certificates, as it has heretofore. Until Mr. Manning became Secretary of the Treasury, the department, receiving gold drafts on New York or Washington, delivered silver certificates in exchange therefor in any part of the country free of express charges, but did not perform this office for any other kind of circulating medium. The discrimination in favor of silver no longer exists. Consequently, gold certificates are, in part, filling the vacuum left by the disappearing bank notes; but they are handled exclusively by the banks in their dealings with each other, seldom appearing in general circulation. If the bankers are wise, they will "salt down" as many of these as possible, paying out anything else rather than a gold certificate, for the time may come when a gold dollar and a silver one will be readily distinguishable from each other in value.

The reason why they are not distinguishable now is that the government receives them on the same terms at the Custom House and the tax office. It is the common belief that when the volume of silver certificates becomes greater than the government can redeem in its revenue operations, the premium on gold will make its appearance, and that then we shall be on an exclusively silver basis. This is what the silver men are aiming at, and what the anti-silver men are apprehending. I think that both will be disappointed. I think that no greater amount of silver certificates *can* get out, in a normal condition of trade, than can be kept at par by this process. I think that the overplus of silver dollars will lie in the Treasury unused and unrepresented by certificates, except in a situation of commercial affairs where a suspension of specie payments would result even if there were no silver certificates or silver dollars, — such, for instance, as the panics of 1857 and 1873. (The latter was technically not a suspension of specie payments, but it was a suspension of bank payments, and would have been a suspension of specie payments if we had been on a specie basis.) I cannot

imagine a suspension of gold payments without an adverse balance of trade of such amount as to call for a very large exportation of gold. That we are liable to such an occurrence our experience shows, but we are not more liable to it than other commercial nations. Is there anything in the mere fact that the government is engaged in buying and stamping silver bullion to the extent of twenty-five millions a year, tending to drive trade into convulsions?

I cannot see how it should have that effect any more than any other profitless expenditure of a like sum; as, for instance, raising our army or navy expenses twenty-five millions above the necessary amount. Does the mere existence of a lot of coin in the vaults of the Treasury tend to produce "inflation"? I know that this opinion is held by very respectable authorities. What is inflation? It is a condition of trade which results from an exaggerated estimate of the value of things measured by money. Inflation, speculation, expansion of credits, over-confidence, are all pretty much the same thing. Does the existence of a lot of dollars, which nobody can get hold of without paying one hundred cents apiece for them, tend to produce the state of mind which results in inflation, speculation, expansion of credits, and over-confidence? Anybody who holds the affirmative is bound to show how the existence of such dollars in the Treasury operates differently from the existence of dollars or pounds sterling elsewhere, which can be obtained on the same condition of paying for them, and not otherwise. There is always a danger of fractious congressmen "getting up on their hind legs" at sight of their own pile of silver dollars, and proposing, as Senator Beck did, that they be distributed by cyclone. This procedure would, I think, cause inflation, because it would be a forced addition to the circulating medium, tending to raise prices and to incite speculation. Not being exportable at their face value, the new dollars would operate as the successive issues of greenbacks did during the war. So long as the government is carried on economically, and the outgo of the Treasury is met by its income, and nobody is allowed to get a silver dollar, or silver certificate, without paying its face value, there will be no "silver crisis"

any more than there would be an iron crisis if the government were buying and storing two million dollars' worth of pig metal every month.

It is certainly a curious coincidence that, in the absence of fresh legislation, the monetary system of this country, after the national bank notes shall have been withdrawn, will be identical in method with the Bank of England note system. That system provides for a fixed amount of "uncovered" notes, say £15,500,000, and, in addition thereto, as many more as the bank has gold for in its issue department. Our system, with the national bank notes out of the reckoning, will consist of a fixed sum in greenbacks, say \$346,000,000, and, in addition thereto, as much more paper circulation in the form of certificates as the public choose to take out by depositing gold or silver dollars for. This coincidence between the Bank of England note system and the practice we are coming to, is not the result of design on our part. It is the result of a concurrence of adventitious circumstances. The war, which led to the greenback issues, was an accident in finance. So, also, was the national banking system; for it could never have come into existence without a great public debt. The gradual expiry of this system is no part of anybody's design. Indeed, the great majority of the people would be glad to keep it alive, if they could see any way to do so. The silver certificates were introduced to enable people to use silver without actually handling it, and the gold certificates were authorized to facilitate transactions between the banks. The net result, leaving out the national bank notes, is the Bank of England system. It is true that the Bank of England deals only in gold in issuing and redeeming its notes, while we employ both gold and silver. This is a difference of standard, but not of method. The difference is important, but the limits of this article do not permit me to go into the "battle of the standards."

The Bank of England system proceeds upon the assumption, or rather upon the ascertained fact, that a certain average amount of paper circulation will always be in the hands of the people, if they are satisfied beyond peradventure of its good-

ness. This assurance the government has given to the note-holders, by itself owing the bank a book-debt equal to the amount of the uncovered notes. If any more paper circulation is wanted than this average sum, it can be had by depositing gold for it. There is nothing harmful in this requirement. Any man who gets a five-pound note, whether of the covered or the uncovered issues, pays the value of one hundred shillings for it. It is no harder for him to get five gold sovereigns than it is to get the note. Therefore, if we are to have a convertible circulation at all, it is no hardship to require a gold deposit to precede the issuing of every note above the amount which experience shows will be always in the pockets of the people, or passing from hand to hand. But there are great advantages in requiring such a deposit, because the exigencies of foreign trade frequently call for payments in cash. Foreigners will not take our paper, and if we had no gold behind it, we should not be able to pay promptly.

We have seen what will happen if things are allowed to drift, if there is no new legislation in reference to banks. We shall have the currency methods of the Bank of England. The \$346,000,000 of greenbacks will be the uncovered circulation, and the certificates against coin deposited will be the other half of that system. Is this a good system? It is certainly a good one for England. It would not be as good for us as the national banking system. My vote would be given for perpetuating the latter if I could see any way to do it. As between the Bank of England system and a new lot of greenbacks, or a revival of the old state bank systems, the former should be preferred. If the alternative should be offered of more greenbacks, or state bank issues, then the latter should be preferred for a variety of reasons. Not only is there no way to put out greenbacks honestly, when the government is not a borrower but is paying what it has previously borrowed, but there is no limit to the issues except the conceits of congressmen. Every range of opinion will find expression, then, from Mr. Warner, who would limit the new issues to the amount of bank notes retired, to the socialist sputer who thinks that the government ought to issue legal

tender tickets to every man who does a day's work. When panic comes, when merchants, and bankers, and speculators are sore pressed and in danger of going to the wall, they become the most clamorous of all for government aid. So they have always been in England, when the day of reckoning has come, after a long course of bubble-blowing and kite-flying. So they were here in 1873. It will be wellnigh impossible for Congress to resist appeals for more greenbacks in such cases, reinforced, as they will be, by the fears and sufferings of laborers thrown out of employment. It is not necessary to say to any instructed person that the remedy would be worse than the disease. If we are pointed to the suspension of the Bank Act in England on certain rare occasions, we must bear in mind that the Bank is not the government. It is a great private business establishment, under the most weighty responsibilities to its shareholders and the most solemn obligation to pay its deposits promptly, capable of exercising a discretion between different borrowers, and bound to redeem its notes in gold on demand. Suspending the Bank Act does not relieve it of this duty, but merely authorizes it to issue additional notes, if it chooses to risk its own capital and solvency in that way. It rarely avails itself of the permission.

The dangers arising from fresh issues of greenbacks being so great, what are the objections to state banks? The principal one is heterogeneousness. There could be no one system applicable everywhere, and which all could understand. There were good state banks before the war, as well as bad ones, and good systems as well as bad ones. The state banks of Ohio, Indiana, and Missouri, for local purposes, had no superiors in any country. The bank systems of New York and New England were good. That of Louisiana was unsurpassed. Those of the South generally were good until Northern speculators went there to take advantage of their high credit, in order to manufacture currency for use in distant places. The systems of "free banking," which came in vogue in many Western states, were excessively bad. They bred an insurmountable distrust of everything, in the shape of paper currency, that has not the stamp and guar-

anty of the national government upon it. Yet the evils there were such as would not be repeated. They were born of a deficiency of capital in proportion to the real needs of the community. People believed that if they could have banks in sufficient number, there would be plenty of money. Let the notes be secured by bonds of some kind in the state treasury, and nobody need concern himself whether the bank had any capital, or even an accessible place of business. Such a system would be impossible now. It is probable that the best of the old systems would be followed everywhere. Certainly those of proved badness would be rejected.

To revive state bank notes, it is only necessary for Congress to repeal the 10 per cent tax now imposed upon such issues. All the rest will come of itself. The South, or a large part of it, is eager to have this tax repealed, and repealed it will be if the East ever says the word. But this word should not be said unless the issue is made between "fiat" money and state banks. Even state bank notes, if not downright frauds, represent discounted commercial paper; *i.e.*, property in circulation between producer and consumer. Fiat money represents the will of Congress for the time being. Better leave commerce to find its own media of exchange under present arrangements, than adopt either of these alternatives.

HORACE WHITE.

THE EXECUTIVE AND THE COURTS.

JUDICIAL REMEDIES AGAINST ADMINISTRATIVE ACTION.

ONE of the most important results of the scientific study of law in Europe during this century is the general adoption of a single, dominant principle of classification. All law is coming to be grouped, not by rights or wrongs, but according to the relations which it governs. The fundamental division — one which dates, it is true, from very early times,¹ but which has been thoroughly worked out only by modern jurisprudence — is that which separates public from private law. This division, though hinted at in the Justinian Code, was not made the basis of the arrangement of that celebrated body of law, and was, probably on that account, ignored by Blackstone and his followers in their classification. Of late years, however, it has been made the basis of all legal treatises on the continent, and is gradually creeping into the English and American law.²

Public law — one of the two great portions of the law set off by this division, and the only portion we are to consider — may be defined as that part of the law which governs the relations of the state or its organs with other states or with persons real or artificial within the state itself. Where its force is limited by the extent of the state itself, it is sometimes spoken of as *internal or national public law*.³ This in its turn is divided into constitutional and administrative law. Constitutional law, as

¹ Holland, in his *Jurisprudence*, page 81, says the distinction "is beautifully worked out by Aristotle, who classifies offences according to those against whom they are committed. They are committed, he says, either against the state (*τὸ κοινόν*) or an individual (*ἕνα τῶν κοινωνούντων*). An assault is an injury to an individual, while avoiding military service is an injury to the state. (*Rhet.* I, c. 13.)" Ulpian says: "hujus studii duae sunt positiones, publicum et privatum; publicum jus est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem." (*Inst.* I. 1, § 4.)

² See Lorimer's *Institutes*, p. 537; Holland's *Jurisprudence*, pp. 77, 245; and *Code of Iowa* of 1874.

³ In accordance with continental usage it may also be called simply public law: the public law *par excellence*: *droit public*, *Staatsrecht*.