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Dollars That Devalue are Unconstitutional

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ARTICLE

DOLLARS THAT DEVALUE ARE UNCONSTITUTIONAL

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ABSTRACT

This Article demonstrates the United States dollar has been unconstitutional since at least the Civil War. Congresses and central bankers often weaken its value. In a previous article, the Author demonstrated that the largely valueless dollar causes human poverty

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and environmental damage. If Congress restores the dollar's constitutionality by returning to a silver dollar coin standard of adequate value (at least 371.25 grains of fine silver per dollar), human economies and the environment will become more sustainable.

I. INTRODUCTION

"*There is scarcely any point, in the œconomy of national affairs of greater moment, than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend.*"

– Alexander Hamilton[1]

"Do not move the ancient boundary
Which your fathers have set."

– *Proverbs* 22:28[2]

Following the Revolutionary War, the United States Confederation Congress passed several bills in 1785 and 1786: setting the Dollar's intrinsic value as a specific weight of pure silver, naming the Dollar as the American government's "Money Unit" (or "standard"),[3] and ordering the creation of a federal mint. In the 1780s, most state governments were staggering under unrepayable foreign and domestic debts incurred during the War. Their financial plights banded them together as much as or even more than their new political independence from Britain. The states' representatives were seeking collective solutions—including a federal currency—to similar money problems.

Despite passing these above-mentioned "laws," the Confederation Congress was prohibited at the time from creating federal money, setting its value, or opening a Mint.[4] According to the Articles of Confederation—the

1. Alexander Hamilton, Final Version of the Report on the Establishment of a Mint (Jan. 28, 1791), *in* 7 THE PAPERS OF ALEXANDER HAMILTON, SEPTEMBER 1790–JANUARY 1791, at 570 (Harold C. Syrett, ed., 1963), https://founders.archives.gov/documents/Hamilton/01-07-02-0334-0004 [https://perma.cc/6GDL-8ECK].

2. *Proverbs* 22:28.

3. A "Money Unit" is the legal standard by which the relative values of all other moneys are judged. The Money Unit is a legal creation, which often is also reduced to a tangible object like a coin, in which case the Money Unit becomes a "denomination." *See infra* Sections IV, VI. The term is capitalized throughout this Article.

4. ARTICLES OF CONFEDERATION OF 1781, art. IX.

first constitution of the United States—the thirteen states each still held all power to establish money.[5]

However, in the following year 1787, the founders drafted the United States Constitution, which in several places referenced the Dollar, and also included the Article I, Section Eight, Clause Five "Coinage Clause," which was reproduced partially from the Articles of Confederation: "Congress shall have the power . . . [T]o coin Money, [and] regulate the value thereof . . . ."[6] Nine states' ratification of the Constitution—achieved when New Hampshire ratified on June 21, 1788—was legally sufficient to transfer permanently the states' individual sovereign rights to make and regulate money to Congress.[7]

Three years later, the first Secretary of the Treasury, Alexander Hamilton, and the first Secretary of State, Thomas Jefferson, each proposed a Dollar Money Unit to the Second U.S. Congress—neither of their Money Units being exactly what the Confederation Congress had established in 1786.[8] Despite their differences, the secretaries shared a belief that *whatever* Money Unit specifications the Second Congress adopted, they should be permanent.

Congress passed the Coinage Act of 1792, establishing the Dollar as both a "Money Unit" and an actual coin, to wit: 371.25 grains[9] of pure silver, contained in a 416-grain copper-alloyed[10] coin.[11] The original U.S. Dollar, first minted in 1794–1795, is depicted here:[12]

5. *Id.*

6. U.S. CONST. art. I, § 8, cl. 5.

7. *See infra* Section II.

8. *See infra* Section VI.

9. *See Grain,* BRITTANNICA, https://www.brittannica.com/science/grain-unit-of-weight [https://perma.cc/TY3P-KTWS] ("The ancient grain, varying from one culture to the next, was defined as the weight of a designated number of dry wheat (or other edible grain) kernels taken from the middle of the ear."). 437.5 grains equals 1 ounce.

10. *See* Thomas Jefferson, Notes on Coinage, (Mar. 1784–May 1784), *in* 7 THE PAPERS OF THOMAS JEFFERSON MAR. 2, 1784–FEB. 25, 1785, at 175 (Julian P. Boyd, ed., 1953), https://founders.archives.gov/documents/Jefferson/01-07-02-0151-0005 [https://perma.cc/JM22-5KNJ] (stating a fixed, specified amount of copper was fused with the silver to reduce the coin's wear-and-tear).

11. Coinage Act of 1792, ch. 16, § 9, 1 Stat. 246, 246–51 (1792) (amended in 1873).

12. *1794 Flowing Hair Silver Dollar. BB-1, B-1. Rarity-4. MS-62 (NGC).*, STACK'S BOWERS GALLERIES, https://auctions.stacksbowers.com/lots/view/3-P97N6/1794-flowing-hair-silver-dollar-bb-1-b-1-rarity-4-ms-62-ngc [https://perma.cc/A2QX-EV49].

U.S. Congresses legally amended the Dollar as a Money Unit in 1873 and have modified and weakened the Dollar's value often, particularly since the Civil War.[13] Moreover, in 1913, Congress effectively abandoned its constitutionally mandated oversight of the Dollar by leaving the matter to the Federal Reserve.[14] What is more, congresspersons and Federal Reserve chairpersons alike often tout with admiration the political independence of the Federal Reserve's staff.[15]

The current Federal Reserve Dollar is a hodgepodge of electronic credits, paper bills, base-metallic coins, and perhaps soon, digital currency.[16] That money supply dwarfs a limited modern issuance of pure silver Dollars issued by the U.S. Mint that themselves are not valued according to the 1792 Coinage Act's weight, alloy, and trimetallic exchange specifications for the

13. *U.S. Mint History: The "Crime of 1873"*, U.S. MINT (Mar. 22, 2017), https://www.usmint.gov/news/inside-the-mint/mint-history-crime-of-1873 [https://perma.cc/4MGS-WN2Q].

14. *See* RON PAUL, END THE FED 68–69 (2009) (stating the Federal Reserve is ultimately unconstitutional).

15. *See* Arthur F. Burns, *The Independence of the Federal Reserve System*, 19 CHALLENGE 21–22 (1976) (explaining the freedom the Federal Reserve has when making decisions); *see also* Robert Reich, *The Republicans' Latest Ploy to Keep the Economy Lousy through Election Day,* ROBERT REICH (Sept. 20, 2011) https://robertreich.org/post/10462900042 [https://perma.cc/2YHT-LPGE] ("Everyone underst[ands] how important it is to shield the nation's central bank from politics.").

16. *See generally Money and Payments: The U.S. Dollar in the Age of Digital Transformation,* FED. RSRV. (Jan. 2022), https://www.federalreserve.gov/publications/files/money-and-payments-20220120.pdf [https://perma.cc/4NFW-GKQ8] (describing the various types of currencies available and discussing a potential digital currency from the Federal Reserve).

Dollar.[17] Federal Reserve Dollars are worth approximately 98% less than a silver Dollar in purchasing power of foodstuffs and other life essentials.[18]

Each time the Dollar's value is weakened, whether by Congress or the Federal Reserve, the Dollar impairs U.S. government creditworthiness and ensures environmental damage and unlawful takings of private property.[19] Therefore, American law must be used to strengthen the Dollar by making it constitutional again. This Article shows what a constitutional Dollar is (a silver-based coinage standard), and perhaps just as importantly, what it is not (among other things, paper money).

In recent times, little legal academic consideration has been given to the Coinage Clause's constitutional meaning and consequences. Indeed, I have located only one recent law review article by constitutional scholar Robert Natelson directly on this point.[20] Natelson concluded that under the Clause, "the money thus 'coined' did not need to be metallic. Paper or any other material that Congress selected would suffice."[21] Indeed, Natelson's sentiment that the Clause effectively left it to successive U.S. Congresses to modify the definition and value of U.S. money at their whims echoes what has often been said in Congress and courts for nearly two centuries. As early as 1810, Congressman Lemuel James Alston, speaking in favor of federal paper money, took a liberal interpretation of the Constitution (much like Natelson 178 years later):

> In the 10th article, 1st section, of the Constitution, it is said, 'No state shall coin money, emit bills of credit, or make any thing but gold and silver coin a legal tender in payment of debts.' The interpretation which I give to it is, that the United States possess power to make any thing, besides gold and silver, a

17. *See American Eagle Silver One Ounce Uncirculated Coin Subscription*, U.S. MINT, https://catalog.usmint.gov/american-eagle-silver-one-ounce-uncirculated-coin-subscription-MT.html [https://perma.cc/9GFN-B2HG] (showing a modern silver dollar).

18. *See 2022 1 oz American Silver Eagle Coin (BU)*, JM BULLION, https://www.jmbullion.com/2022-1-oz-american-silver-eagle-coin [https://perma.cc/Q4N8-8QMG] (displaying the value of a 2022 U.S. 1 ounce silver eagle is equivalent to $35.33 in September 2022). With the original silver Dollar's weight of 0.7734 troy ounces of pure silver, the approximate depreciation of the modern Federal Reserve Dollar relative to the original Flowing Hair Silver Dollar is 98%.

19. *See* Christopher P. Guzelian, *The Dollar's Deadly Laws That Cause Poverty and Destroy the Environment*, 98 NEB. L. REV. 56, 72–103 (2019) (explaining the usefulness and superiority of coin and gold currency in comparison to the current U.S. dollar).

20. *See generally* Robert G. Natelson, *Paper Money and the Original Understanding of the Coinage Clause*, 31 HARV. J.L. & PUB. POL'Y 1017 (2008) (explaining the origins of currency in the United States).

21. *Id.* at 1079.

> legal tender. . . . [I]t must follow that they have a right to make bank paper in a legal tender.[22]

Courts too have declined to involve themselves in regulating the value of U.S. money, either by rubber-stamping Congress's decisions, or by sidestepping litigation by alluding to Congress's exclusive plenary power over the matter. In 1884, for example, the U.S. Supreme Court held that:

> [T]he question whether . . . it is, as [a] matter of fact, wise and expedient to resort to [another Money Unit like paper money], is a political question, to be determined by congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts.[23]

This Article reviews five legal aspects of any money system (*sovereignty*, *medium*, *denomination*, *intrinsic value*, and *Money Unit*) critical to understanding what the constitutional Dollar is, and what it is not. Interwoven with explanations of these constitutionally important money concepts are what I consider to be relevant historical events, persons, anecdotes, constitutional and legal proceedings, and correspondence between 1776 and approximately 1795, that established a constitutional Dollar (the U.S. Money Unit).

For my research, I relied heavily on the National Archives' *Founders Online*, which has an excellent database containing over 185,000 searchable documents from the Archives' collection written from or to seven notable Founders.[24] I consulted the Library of Congress's on-line collection *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774–1875*.[25] This database was helpful in examining the Eighteenth and Nineteenth Century Congressional floor discussions, debates, and legislation about the Dollar, and recorded comments at the various state

22. 4 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 456–57 (William S. Hein & Co., Inc., 2d ed. 1996) (1827).

23. *See e.g.*, Juilliard v. Greenman, 110 U.S. 421, 450 (1884) (showing the Supreme Court's hesitance to become involved with the issue).

24. *Correspondence and Other Writings of Seven Major Shapers of the United States*, FOUNDERS ONLINE, https://founders.archives.gov/ [https://perma.cc/G956-KPXF].

25. *See generally A Century of Lawmaking For a New Nation*: *U.S. Congressional Documents and Debates, 1774–1875,* LIBR. CONG., http://memory.loc.gov/ammem/amlaw/lawhome.html [https://perma.cc/GGL5-U8QN] (containing Congressional floor discussion and legislation pertinent to the Dollar).

conventions for the Constitution's ratification.[26] I turned to Max Farrand's three-volume reference, *The Records of the Federal Convention of 1787*, for the Founders' speeches and correspondence during the Constitutional Convention and states' ratifications.[27] This Article typically retains historical quotes from such sources without changed spellings, grammar, or syntax.

The Library of Congress also has an extensive Manuscripts Division. I did not use this resource to the detriment of this Article's historical completeness. For instance, the Library holds over 12,000 letters to and from Alexander Hamilton, one of the most influential figures in the Dollar's creation. Almost all of these letters are scanned and available for online inspection.[28] However, the letters are not easily searchable by topic (or by keyword, as Founders Online is). Moreover, the archives present only photographs of the original handwritten letters. Given time constraints and my professional incapability of easily deciphering faded, ink quill-penned, 1700s cursive writing in which the "s"s look distractingly often like "f"s, I reluctantly restricted my search to online databases with transcriptions and keyword search capability. In addition, I leave the Herculean task of locating and examining personal correspondences of all congressmen in the Second Congress to determine subtle intentions behind the 1792 Coinage Act's enactment to another, more patient, scholar.

In a few instances, I relied on professional historians' peer-reviewed publications to make research queries more efficient. Historian Max Edling's 2009 article on Alexander Hamilton's attempts to improve public creditworthiness proved particularly insightful.[29] Edling concludes that paper with a clarion call to historians to focus less on the characters of historical figures like Hamilton and more on the laws and policies they inspired and instituted.[30] I found that historian's remark comforting in preparing this Article.

26. *Id.*

27. *See generally* THE RECORDS OF THE FEDERAL CONVENTION OF 1787*,* (Max Farrand, ed. 1911) (displaying the Founders' statements and communications during the Constitutional Convention).

28. *See generally Alexander Hamilton Papers*, LIBR. CONG., https://www.loc.gov/collections/alexander-hamilton-papers/about-this-collection/ [https://perma.cc/HK3V-SWXE] (containing Alexander Hamilton's original papers).

29. *See generally* Max M. Edling, *So Immense a Power in the Affairs of War: Alexander Hamilton and the Restoration of Public Credit*, 64 WM. & MARY QUART. 287 (2007) (describing Alexander Hamilton's efforts to improve public credit).

30. Edling wrote:

It would be academic malpractice not to consult Edwin Vieira, Jr.'s two-volume, 1,700-page treatise, *Pieces of Eight*, whenever writing on the dollar's constitutional and legal history.[31] A Harvard-trained attorney and PhD chemist, Vieira has made an incomparable encyclopedic contribution to the law professor's and historian's monetary policy bookshelf. It is worth getting this rare treatise.

There is a possibility that there remain relevant, unexamined documents that would fundamentally alter my perspective on the constitutional and legal conclusions I reach in this paper. But given the strong consistency in the significant amount of historical material I did consider, the likelihood seems small that there is a historical document or group of documents from 1776–1795 that would reverse the Article's thrust. Still, research opportunities remain for others to expand on this Article or even to objectively rebut it.

Having already spoken the necessary caveats about the limitations and incompleteness of my own research, readers should guard against relying on the fluctuating opinions of later generations of politicians, judges, bankers, and economists about the Coinage Clause's and the ensuing 1792 Coinage Act's relevance to the Dollar. Some, perhaps many, such people have had ignoble profiteering motives. For others, it is clear from their statements that they did not or could not do the necessary historical research to understand the contextual constitutional and legal subtleties of the Dollar's creation before they spoke. Almost all have ignored the grave constitutional infractions that government devaluations of the Dollar cause.

This Article concludes that the Constitution forbids any Congress, past, present, or future, from devaluing the U.S. Dollar standard codified in 1792. I have shown in a previous article that besides constitutional concerns about the Dollar, its 98% decline in value causes poverty and environmental

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> In the popular imagination, Alexander Hamilton and Jefferson will surely continue to serve as symbols of conflicting visions of America's purpose and future. But professional historians at least would do well to move beyond this dichotomy by supplementing the study of ideas with study of actions and institutions. An improved understanding of American history, and especially of the nation's role in world history, does not require further investigations of the rhetorical battles between the statesmen of the early Republic as much as studies of the policies they formulated and implemented and the political institutions they created and put to use.

Id. at 326.

31. *See generally* EDWIN VIEIRA, JR., 1–2 PIECES OF EIGHT: THE MONETARY POWERS AND DISABILITIES OF THE UNITED STATES CONSTITUTION (2d ed. 2011) (providing a comprehensive history of American currency).

damage.[32] Making the Dollar constitutional again will help sustain human economies and the environment. Concrete steps towards reviving a constitutional Dollar are offered at the Article's end.

II. CONGRESS'S SOVEREIGN POWER TO ESTABLISH THE CONSTITUTIONAL DOLLAR

Prior to the Revolutionary War, the sovereign power in colonial America to choose and regulate money had been vested first in the British Monarchy,[33] and later in individual colonies and states.[34] Starting June 11, 1776, John Dickinson chaired a Continental Congress committee that drafted the Articles of Confederation, the first constitution of the United States. Dickinson's draft, presented to Congress on July 12, 1776, birthed a colonial conception of a centralized American sovereign power over money.[35] The Articles' even greater innovation was vesting Congress, the legislative branch, with that power, rather than the executive (President), which would have been more similar to Britain's monarchical money power.[36] Specific to this paper's purposes, Article XVIII provided:

32. *See* Guzelian, *supra* note 19, at 72–102 (stating the dollar's instability has caused damage outside of the economy).

33. Early notable American governors accepted that the British King exclusively held the "Royal prerogative" to coin money throughout the Empire, including the Colonies. *See, e.g.*, Letter from Governor Winthrop to Governor Bradford (Feb. 16, 1767), *in* 1 PAPERS OF JOHN ADAMS, SEPTEMBER 1755–OCTOBER 1773 (ed., Robert J. Taylor, 1977), https://founders.archives.gov/documents/Adams/06-01-02-0067-0012 [https://perma.cc/WZF8-TGS9] ("[F]or the King himself to attempt to judge of the elections, returns or qualifications of the members of the house of Commons, or of the house of Representatives, would be an invasion of their privilege, as really as for them to coin money, or issue commissions in the militia, would be an encroachment on the Royal prerogative[.]").

34. *See generally* Alexander Hamilton, *The Farmer Refuted, &c.*, (Feb. 23, 1775), *in* 1 THE PAPERS OF ALEXANDER HAMILTON 1768–1778 (ed., Harold C. Syrett, 1961), https://founders.archives.gov/documents/Hamilton/01-01-02-0057 [https://perma.cc/4FXV-6A8E] (showing the King vested the New Plymouth colony local authority to coin money).

35. Articles of Confederation and Perpetual Union (July 12, 1776), *in* JOURNALS OF THE CONTINENTAL CONGRESS 1774–1779 (Worthington Chauncey Ford ed., Gov't Printing Off. 1905), https://avalon.law.yale.edu/18th_century/contcong_07-12-76.asp [https://perma.cc/7AQR-3PV9]

36. Alexander Hamilton commented on the significance of this shift in Federalist 69, writing:

> [A U.S. President] can prescribe no rules concerning the commerce or currency of the nation: [A King] is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorise or prohibit the circulation of foreign coin.

THE FEDERALIST NO. 69, at 591 (Alexander Hamilton) (Harold C. Syrett ed., 1962).

> The United States assembled shall have the sole and exclusive Right and Power of . . . Coining Money and regulating the Value thereof . . . [and] [t]he United States assembled shall have Authority . . . To emit Bills . . . [but] . . . The United States assembled shall never . . . coin Money nor regulate the Value thereof, nor emit Bills, . . . unless the Delegates of nine Colonies freely assent to the same.[37]

After congressional discussion, revised Articles were completed on November 15, 1777, and sent to the thirteen states for ratification. Congress preserved the above Article XVIII text in the revised 1777 Articles' Article IX.[38] The only major amendment was that states would retain the right to coin money in parallel with Congress, although Congress would have power to oversee state coining and regulate its value.[39]

The 1787 U.S. Constitution's Article I, Section Eight, Clause Five, were lifted conceptually from Dickinson's 1776 Articles of Confederation draft: "Congress shall have the power . . . to coin money and regulate [its] value, and of foreign coin."[40] Importantly, as discussed in Section II, the Constitution omitted the Articles' authorization to Congress to emit federal bills of credit (unbacked paper money)[41] and expressly prohibited the states from emitting the same.[42] It added a capacity for Congress to regulate foreign coin.[43]

37. ARTICLES OF CONFEDERATION of 1781, art. XVIII.

38. *See* ARTICLES OF CONFEDERATION of 1781, art. IX (showing minor differences, such as (1) the Articles' vested the precise locus of U.S. government authority over the monetary power in Congress in 1781, whereas Congress's power was by implication when it stated "United States assembled" in Dickinson's draft; (2) the Colonies were referred to as "states" in the 1781 draft; and (3) the Articles allowed for regulation of alloy, in addition to value, for coinage in 1781).

39. Madison explained this shared money sovereignty as follows: "The right of coining money, which is [in the Constitution] taken from the states, was left in their hands by the confederation, as a concurrent right with that of congress, under an exception in favour of the exclusive right of congress to regulate the alloy and value." THE FEDERALIST NO. 44, at 231 (James Madison) (George W. Carey & James McClellan, eds., 2001).

40. U.S. CONST. art. I, § 8, cl. 5.

41. Section III makes the case that not only was there no explicit permission, there was an explicit *prohibition* on federal bills voted upon during the Constitutional Convention. *See infra* Section III.

42. U.S. CONST. art. I, § 10, cl. 1. *Cf.* Mary M. Schweitzer, *State-Issued Currency and the Ratification of the U.S. Constitution*, 49 J. ECON. HIST. 311, 311 (1989) (discussing why states did not have the power to create paper money).

43. James Madison emphasized this to be a great advantage of the Constitution over the Articles, which made no such provision. THE FEDERALIST NO. 42, *supra* note 39, at 220 (James Madison).

The Articles vested sovereign money power in Congress but only with the consent of at least nine states. Between their 1781 ratification and the Constitution's ratification in 1789, there never was an actual formal vote to transfer the states' money powers to Congress. As discussed in Section IV, this did not stop the Confederation Congress from passing three bills related to federal money in 1785–1786. No mint was established, nor was a U.S. Dollar or other U.S. coins ever minted, because of these three Acts. One significant reason was that the Confederation Congress lacked sovereign authority to coin money absent the consent of at least nine states.

Congress gained full sovereign authority over "coining" money and "regulating its value"—and the states entirely lost those capacities—with New Hampshire's 1789 ratification of the U.S. Constitution (the ninth state to ratify).[44] All of the Confederation Congress's prior money legislation about the Dollar, denominations, and building a Mint were invalid.[45] The new Congress would have to begin its work on national money and a national Money Unit afresh.[46]

Farrand's collection of Madison's and others' Convention notes (*Records*) startlingly shows that there was little discussion among the founders about the Coinage Clause's meaning. Charles Pinckney reasoned that if the money power were not transferred to Congress, states would evade federal taxes.[47] Rufus King and James Wilson, speaking a week apart in June 1787, both simply asserted that the Constitution gave Congress exclusive power over coining money.[48] King later in the 1788 Massachusetts Convention elaborated that, like Pinckney, he was glad the Congress received power of

44. Both the Articles (Article IX) and the Constitution (Article VII) had requirements that nine states approve the transference of the coinage power. This was achieved when nine states ratified the Constitution in 1789.

45. *See* Owings v. Speed, 18 U.S. (5 Wheat.) 420, 422 (1820) (holding the new government started on March 4, 1789, and invalidating any prior legislation).

46. *Id.* at 422–23.

47. Charles Pinckney, *Observations on the Plan of Government Submitted to the Federal Convention*, *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 117–18. Pinckney went so far as to submit a draft of the Constitution that gave Congress the power "of determining in what species of Money the public Treasury shall be supplied." Charles Pinckney, *The Draught of a Federal Government Agreed Upon Between the Free and Independent States of America*, *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at app. D. The states' concern was the exact opposite—that they would be crushed by a tyrannical federal money power. *See infra* notes 53–54.

48. *See* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 413 (detailing how and why the states are not sovereign).

the purse to help urge defaulting states to pay their share of taxes.[49] But he also stressed that Congress lacked constitutional power to "compel" state tax compliance.[50] Only three Founders' recorded comments exist about "regulating the value of money": Madison, Gouverneur Morris, and Oliver Ellsworth. All spoke only in the limiting context of setting federal judges' salaries.[51] Madison alone spoke once of the "value of coin," and only in the context of dispelling his peers' concern that granting certain federal government powers (including coining) would give small states' representatives an unfair advantage in Congress.[52]

Still, it was not lost on some trepid states—most raucously Rhode Island[53]—during the Constitution's ratification phase that they would be entirely and permanently surrendering their sovereign money powers to Congress. William Goudy, a representative to North Carolina's Hillsborough Convention on Ratification in 1788, expressed well such concerns:

> The subject of our consideration therefore is, whether it be proper to give any man, or set of men, an unlimited power over our purse, without any kind of control. The purse-strings are given up by this clause. . . . There is no danger, we are told. It may be so; but I am jealous and suspicious of the liberties of mankind. . . . [I]n a matter of this magnitude, which concerns the interest of millions yet unborn, suspicion is a very noble virtue. Let us see, therefore, how far we give power; for when it is once given, we cannot take it away. It is said that those who formed this Constitution were great and good men. We do not dispute it. We also admit that great and learned people have adopted it. But I have a judgment of my own; and, though not so well informed always as others, yet I will exert it when manifest danger presents itself. When the

49. *See* 2 JONATHAN ELLIOTT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 56–57 (giving examples of defaulting states from the nation's then-short history).

50. *Id.* at 57 ("Congress now have power to call for what moneys, and in what proportion, they please; but they have no authority to compel a compliance therewith.").

51. *See infra* Section V.

52. *See* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 446 (describing Madison's recounting of the Convention's proceedings).

53. Rhode Island was generally so opposed to giving Congress federal control over money that it was the only state to send no delegates to the Constitutional Convention. State delegates during its first ratification convention in March 1790 proposed constitutional amendments including an ability to retain state control over existing state debt instruments. DECLARATION OF RIGHTS, para. 3 (R.I. 1790). Rhode Island only consented to unconditionally join the United States after the U.S. Senate passed a bill forbidding all other twelve states from trading with Rhode Island. An Act to Restrict Trade With Rhode Island (1790), *invalidated by* U.S. CONST.

> power of the purse . . . is given up, we dare not think for ourselves. In case of war, the last man and the last penny would be extorted from us. That the Constitution has a tendency to destroy the state governments, must be clear to every man of common understanding.[54]

Rhode Island was the last to ratify in May 1790. By then, the states, the new federal government, and foreign powers alike understood that Congress now had exclusive sovereign money power and states had lost theirs forever. This was a golden "blank check." In the void of any clear Founders' intent at the Convention, the constitutional contours of Congress's money power had to be filled in. The two individuals most happy to personally sign the "blank check" were Alexander Hamilton, the first Secretary of the Treasury, and Thomas Jefferson, the first Secretary of State (ironically, neither a Congressman). They offered Congress two different interpretations about American money sovereignty, and in particular, sovereignty over the U.S. Money Unit. While their motivations differed, as this Article particularly shows in Sections IV and V, Hamilton and Jefferson shared a strong common belief that once set, the U.S. Money Unit (and actual, tangible U.S. money denominations) should not devalue.

This Article subsequently marches through the remaining four legally important money aspects mentioned in the Introduction—money mediums, denominations, Value of the Money Unit, and the Money Unit itself—amassing historical evidence to paint an accurate legal picture of a constitutional Dollar.

III. CONSTITUTIONAL MEDIUMS OF MONEY

A medium of money is simply the material of which it is made. The God of the Bible decreed that only silver is a medium of money (and a Money

54. 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, *supra* note 22, at 93. Founders too were concerned about federal money tyranny. Oliver Ellsworth, a Convention attendee and later Chief Justice of the Supreme Court, chastised Luther Martin, a Convention peer:

> You espoused the tyrannic principle, that where a State refused to comply with a requisition of Congress for money, that an army should be marched into its bowels, to fall indiscriminately upon the property of the innocent and the guilty, instead of having it collected, as the Constitution proposed, by the mild and equal operation of laws.

Letter from Oliver Ellsworth to Luther Martin, *A Landholder X* (Feb. 29, 1788), TEACHING AM. HIST., https://teachingamericanhistory.org/document/a-landholder-x-maryland/ [https://perma.cc/8435-4UD3].

Unit).[55] By contrast, Isaac Newton, who was Master of the British Mint, in his 1717 Report to the King's Treasury Commissioners, called gold, silver, and copper coins, all in widespread European usage at the time, "money," and discussed the melting down of silver plates (bullion) to make coinage (money).[56] Newton distinguished between "good" and "bad" paper money, the difference being whether the paper was secured by and immediately exchangeable for on-hand gold or silver.[57]

In the 18th Century—the century that birthed American constitutional money mediums (spoiler: silver, gold, and copper coins) and a constitutional Money Unit medium (spoiler: silver)—what was recognized as an acceptable medium of money fluctuated for both everyday users and government promulgators. Prior to the Revolutionary War, American colonialists used varieties of moneys, publicly and privately issued, domestic and foreign, and paper[58] and coin. Precious metal (gold and silver) coins were often severely lacking in the colonies. During these not infrequent deficits, even barter items like wampum or tobacco served as mediums of money.[59] Practical commerce and a severe colonial lack of silver and gold coins and bullion necessitated improvisation.

55. *See generally* Christopher P. Guzelian, *Silver: A Morally Good Money*, 15 J. MKT. PROCESS 213 (2018) (reviewing the Bible to demonstrate that God uniquely recognizes silver as money). The Bible does describe the use of other mediums of pagan money besides silver. *Mark* 12:41–44 and *Luke* 21:1–4 describe copper widow's mites. 1 *Chronicles* 29:7 and *Ezra* 8:27 describe pagan gold darics. But these mediums are only rarely mentioned and do not appear to have God's full endorsement.

56. Isaac Newton, *Sir Isaac Newton's Report on the Gold and Silver Coin in 1717*, 11 NUMISMATIC CHRON. & J. NUMISMATIC SOC'Y 181, 181 (1849). More than 1,870 writings and correspondences by Newton on money, coinage, and mints are available online. THE NEWTON PROJECT, https://www.newtonproject.ox.ac.uk/search/results?cat=Mint&sort=id [https://perma.cc/G43K-89QW].

57. Isaac Newton, *Of Credit good & bad, and the usefulness of the former*, THE NEWTON PROJECT, https://www.newtonproject.ox.ac.uk/view/texts/diplomatic/MINT00268 [https://perma.cc/4GYL-F7MT].

58. The widespread use of worthless or poorly valued paper money in the colonies had important consequences for the United States indebtedness during and after the Revolutionary War. Prior to the War, the profligate colonialist use of paper money to buy British imports so irked British King George II that the Currency Act of 1751 was passed, banning the use of paper money in the New England Colonies (Rhode Island, Massachusetts Bay, New Hampshire, and Connecticut). Elizabeth E. Dunn, *Grasping at the Shadow: The Massachusetts Currency Debate, 1690–1751*, 71 NEW ENG. QUART. 54, 59 (1998). Thereafter, the Currency Act of 1764 extended the paper money ban to all thirteen colonies. *See generally* Roger W. Weiss, *The Issue of Paper Money in the American Colonies, 1720–1774*, 30 J. ECON. HIST. 770 (1970) (providing a general history of colonial paper money).

59. *See generally* PHILIP L. MOSSMAN, MONEY OF THE AMERICAN COLONIES AND CONFEDERATION (2012) (providing an extensive historical review of colonial money).

As a tyro printer, Benjamin Franklin published one of his first pamphlets, *The Nature and Necessity of a Paper-Currency*, in 1729 advocating for wide colonial adoption of paper money.[60] Franklin took an expansive view about a proper money medium: "whatever particular Thing Men have agreed to make this Medium of, whether Gold, Silver, Copper, or Tobacco."[61] He expressly rejected the biblical concept that silver is the only lawful medium of money.[62] And Franklin did advocate for paper money as a money medium, but only for the "good" paper money about which Newton had spoken earlier—that paper fully secured by land or precious metals.[63] When Franklin participated in the Albany Plan of Union in the 1750s, an early attempt to unite the American colonies in mutual defense, he spoke only of

60. Benjamin Franklin, The Nature and Necessity of a Paper-Currency, (April 3, 1729), *in* 1 THE PAPERS OF BENJAMIN FRANKLIN, JANUARY 6, 1706 THROUGH DECEMBER 31, 1734, at 139–57 (Leonard W. Labaree, ed., 1959), https://founders.archives.gov/documents/Franklin/01-01-02-0041 [https://perma.cc/PPH7-X6CB].

61. Franklin wrote:

> Men have invented Money, properly called a *Medium of Exchange*, because through or by its Means Labour is exchanged for Labour, or one Commodity for another. And whatever particular Thing Men have agreed to make this Medium of, whether Gold, Silver, Copper, or Tobacco; it is, to those who possess it (if they want any Thing) that very Thing which they want, because it will immediately procure it for them. It is Cloth to him that wants Cloth, and Corn to those that want Corn; and so of all other Necessaries, it *is* whatsoever it will procure.

Id. at 139. Others shared Franklin's appreciation for paper money. For example, sixty-one years after Franklin's first published endorsement, British physician Thomas Ruston, whom George Washington later called "a warm Friend of the American cause," wrote a letter to Franklin. *Id.* The letter states:

> Europe has long accepted the idea that public credit can only be maintained when grounded on a certain quantity of gold or silver specie . . . [but] one would be grossly mistaken in believing that only gold and silver are the proper basis for currency . . . . Paper credit is as good as silver or gold, better even, and more convenient.

Letter from Thomas Ruston to Benjamin Franklin (Sept. 9, 1780), *in* 33 THE PAPERS OF BENJAMIN FRANKLIN JULY 1 THROUGH NOVEMBER 15, 1780, at 275 (Barbara B. Oberg, ed., 1997), https://founders.archives.gov/documents/Franklin/01-33-02-0226 [https://perma.cc/B4VC-XNSM].

62. Letter from Thomas Ruston to Benjamin Franklin (Sept. 9, 1780) *supra* note 61.

63. Addressing the concern that paper money might be overdrawn, Franklin responded:

> [I]f it should ever become so plenty by indiscreet Persons continuing to take out a large Overplus, above what is necessary in Trade, so as to make People imagine it would become by that Means of less Value than their mortgaged Lands, they would immediately of Course begin to pay it in again to the Office to redeem their Land, and continue to do so till there was no more left in Trade than was absolutely necessary.

Franklin, *supra* note 60.

collecting "shillings sterling" (silver) as the medium of taxes for a centralized treasury.[64]

British jurist and judge William Blackstone's *Commentaries on the Laws of England*[65] were the primary source of common law study and practice in the early American colonies and states. While not limiting the medium of money to silver as God did, but also not as expansionist and tolerant in scope as Franklin,[66] Blackstone recognized the importance of silver and gold as the best mediums for money. He wrote in 1765 that a proper money medium is:

> [A]n universal medium, or common standard, by comparison with which the value of all merchandise may be ascertained: or it is a sign which represents the respective values of all commodities. Metals are well calculated for this sign, because they are durable and are capable of many subdivisions; and a precious metal is still better calculated for this purpose, because it is the most portable.[67]

In 1775, three months after murmurs of American independence turned into outright bloodshed at the North Bridge, Franklin created an early draft of the Articles of Confederation. He specified no particular medium in which the thirteen Colonies should pay proportionate taxes to the U.S. Treasury. Rather, he deferred to the Colonies to make that determination and the methods of tax collection for which they were responsible.[68]

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64. *See* Letter from Benjamin Franklin to James Alexander and Cadwallader Colden with Short Hints towards a Scheme for Uniting the Northern Colonies (June 8, 1754), *in* 5 THE PAPERS OF BENJAMIN FRANKLIN JULY 1, 1753 THROUGH MARCH 31, 1755, at 335 (Leonard W. Labaree, ed., 1962), https://founders.archives.gov/documents/Franklin/01-05-02-0093 [https://perma.cc/8X2A-VL6E] (describing Franklin's general plan for uniting the colonies).

65. WILLIAM BLACKSTONE, COMMENTARIES.

66. Blackstone made no mention of paper money in his 1753 or 1765 editions of *Commentaries*, but he, in an 1803 Appendix to *Commentaries,* commented on the horrific inflation and consequent economic suffering Americans had experienced with their "bad" paper money emissions. He concluded, "Paper money can only serve as a substitute for specie to a certain extent, and can never be said to represent it, but when the government exchange it for specie without reserve, whenever it is required." William Blackstone & George Tucker, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia,* Appendix E 101–02 (1803).

67. 1 WILLIAM BLACKSTONE, COMMENTARIES, *276.

68. Benjamin Franklin, Proposed Articles of Confederation (on or before July 21, 1775), https://founders.archives.gov/documents/Franklin/01-22-02-0069 [https://perma.cc/L9VG-W64A] ("Art. VI. All Charges of Wars, and all other general Expences to be incurr'd for the common Welfare, shall be defray'd out of a common Treasury, which is to be supply'd by each Colony in

During the Revolutionary War, George Washington pressed the Continental Congress to pay war debts only in "Gold and Silver, being the common Medium of Commerce among Nations," to ensure reliable procurement of soldier rations.[69] Washington also emphasized his personal disgust for paper money, telling Thomas Jefferson in 1786 that "states are falling into very foolish and wicked plans of emitting paper money,"[70] and writing in 1787 that "so many people have suffered by former emissions [of paper money], that, like a burnt child who dreads the fire, no person will touch it who can possibly avoid it."[71]

Gouverneur Morris observed in 1784 that all trade with India had to be done in silver.[72] Thomas Jefferson drafted a 1783 proposal for a Virginia Constitution that directed General Assembly members to receive "daily wages in gold or silver equal to the value of two bushels of wheat."[73] James Madison in his late 1835 memoirs referred to gold and silver as "sinew[s] of [the Revolutionary] war."[74] He acknowledged paper currency too had operated as such, but that its considerable defects became apparent with "alarming force," such that the War had to be brought to a "successful

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proportion to its Number of Male Polls between 16 and 60 Years of Age; the Taxes for paying that proportion [*interlined*: are] to be laid and levied by [*interlined*: the] Laws of each Colony.").

69. Letter from George Washington to Henry Laurens (Apr. 4, 1778), *in* 14 THE PAPERS OF GEORGE WASHINGTON 1 MARCH 1778–30 APRIL 1778, at 401 (David R. Hoth, ed., 2004), https://founders.archives.gov/documents/Washington/03-14-02-0380 [https://perma.cc/DGL8-6FHA].

70. GEORGE BANCROFT, PLEA FOR THE CONSTITUTION OF THE U.S. OF AMERICA, WOUNDED IN THE HOUSE OF ITS GUARDIANS 36 (1886).

71. Letter from George Washington to Thomas Stone (Feb. 16, 1787), *in* 5 THE PAPERS OF GEORGE WASHINGTON 1 FEBRUARY 1787–31 DECEMBER 1787, at 37 (W.W. Abbot, ed., 1997), https://founders.archives.gov/documents/Washington/04-05-02-0032 [https://perma.cc/8AS9-LARZ].

72. Gouverneur Morris, *Abstracts of Gouverneur Morris' Letters on Commerce* (May 1784), *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 350, https://founders.archives.gov/documents/Jefferson/01-07-02-0262-0011 [https://perma.cc/T6NB-P4Y3] ("We consume E. India goods to amount of half a million sterl. If we go to India, we must send silver.").

73. Thomas Jefferson, Jefferson's Draft of a Constitution for Virginia (May–June 1783), *in* 6 THE PAPERS OF THOMAS JEFFERSON 21 May 1781–1 March 1784, at 294 (Julian P. Boyd, ed., 1952), https://founders.archives.gov/documents/Jefferson/01-06-02-0255-0004 [https://perma.cc/P9CD-U2CM].

74. James Madison, *Origin of the Constitutional Convention* (Dec. 1835), *Founders Online*, NATIONAL ARCHIVES, https://founders.archives.gov/documents/Madison/99-02-02-3189 [https://perma.cc/LP6T-YRDB] (early access document to forthcoming final authoritative source). Madison also criticized state-issued paper money. THE FEDERALIST No. 44, *supra* note 39, at 231.

conclusion [only] by such foreign aids and temporary expedients as could be applied."[75]

Both Jefferson and John Adams (of opposing political parties) took sober views of money mediums in their twilight years. During the War of 1812, Jefferson rhetorically asked, "[A]re [we] to give up our gold [and] silver medium, [its] intrinsic solidity, [its] universal value, and [its] saving powers in time of war, and to substitute for it paper, with all it's train of evils, moral, political and physical, which I will not pretend to enumerate."[76] He reasoned, "[E]very paper dollar emitted banishes a silver one from the circulation."[77] John Adams too in 1819 (near the end of his life at age 84) opined that establishing sound money and controlling bankers' abuses were the singularly most important political issues in America. "Silver [and] gold are but the [only] commodities" that could constitute constitutional money mediums, Adams concluded.[78]

Alexander Hamilton was not opposed as vigorously as his founding peers to paper money as a valid money medium. Rather, he was an early advocate of fractional-reserve banking, a practice that became globally common after the 1844 British Peel Act,[79] wherein banks may issue more paper scrip exchangeable for gold and silver than they have actual gold and silver backing for.[80] He believed the formation of a National Bank that could

75. Madison, *supra* note 74.

76. Letter from Thomas Jefferson to John Wayles Eppes (Nov. 16, 1813), *in* 6 THE PAPERS OF THOMAS JEFFERSON, *supra* note 73 at 578 (J. Jefferson Looney, ed., 2009), https://founders.archives.gov/documents/Jefferson/03-06-02-0458 [https://perma.cc/T2G4-6Q3A].

77. Letter from Thomas Jefferson to John Wayles Eppes (June 24, 1813), *in* 6 THE PAPERS OF THOMAS JEFFERSON, *supra* note 73 at 220, https://founders.archives.gov/documents/Jefferson/03-06-02-0200 [https://perma.cc/VHT6-TXJM].

78. Letter from John Adams to John Taylor (Mar. 12, 1819), *Founders Online*, NATIONAL ARCHIVES, https://founders.archives.gov/documents/Adams/99-02-02-7096 [https://perma.cc/LN9C-NDNW] (early access document to forthcoming final authoritative source). Adams was consistent in his dislike for paper money. In 1777, he wrote: "a Quantity of Paper more than is necessary for a Medium of Trade, introduces so many Distresses into the Community, and so much Embarrasses our public Councils and Arms." Letter from John Adams to John Thaxter (Apr. 8, 1777), *in* 2 THE ADAMS PAPERS: THE ADAMS FAMILY CORRESPONDENCE JUNE 1776–MARCH 1778, at 205 (L.H. Butterfield, ed., 1963), https://founders.archives.gov/documents/Adams/04-02-02-0155 [https://perma.cc/NS3W-775W].

79. *See* Jesús Huerta de Soto, *Economic Recessions, Banking Reform and the Future of Capitalism*, 31 J. INST. ECON. AFFS. 76, 77 (2011) (connecting the negative effects of the Peel Act to similarities in modern financial crises).

80. Hamilton wrote:

store gold and silver, and issue public debt and circulate currency, would guarantee good public creditworthiness as much as, if not more than, incessant deliberations about constitutional and legal specifications for a government currency.[81] Hamilton's emphasis on good public creditworthiness as the primary way to ensure smooth government operations, security of private property, and readiness for war, is an essential theme in understanding the contours of what ultimately became a constitutional Dollar. We will return to this in Section V.

Despite his public creditworthiness obsession, Hamilton in greater candor recognized, like the other prominent founders, that silver and gold are the only true forms of "effective wealth," are "the money of the world," and that "it [is] of great concern to the state, that it possess a sufficiency of [precious metals] to face any [creditor] demands."[82] Furthermore, although Hamilton was not resolutely opposed to paper money and bills of credit, he acknowledged that if paper money "is [] to be tolerated as the substitute for gold and silver, in all the transactions of business, it becomes . . . a national concern of the first magnitude."[83]

> It is a well established fact, that Banks in good credit can circulate a far greater sum than the actual quantum of their capital in Gold [and] Silver. . . . [T]he faculty of a bank to lend and circulate a greater sum than the amount of its stock in coin are to all the purposes of trade and industry an absolute increase of capital. Purchases and undertakings, in general, can be carried on by any given sum of bank paper or credit, as effectually as by an equal sum of gold and silver. And thus by contributing to enlarge the mass of industrious and commercial enterprise, banks become nurseries of national wealth: a consequence, as satisfactorily verified by experience, as it is clearly deducible in theory.

Alexander Hamilton, Final Version of the Second Report on the Further Provision Necessary for Establishing Public Credit (Report on a National Bank) (Dec. 13, 1790), ***in*** 7 The Papers of Alexander Hamilton, *supra* note 1, at 305, https://founders.archives.gov/documents/Hamilton/01-07-02-0229-0003 [https://perma.cc/6WW3-C29U]. Hamilton admitted that fractional-reserve bank credit could result in "overtrading" but dismissed this as "an occasional ill." *Id.* Yet some prominent modern economists denounce fractional-reserve banking as an improper way to achieve temporary, artificial, and illusory economic booms. They assert fractional-reserve banking also *assures* overtrading and the eventual destabilization and collapse of an affected economy, rather than overtrading merely being Hamilton's "occasional ill." *See, e.g.*, JESÚS HUERTA DE SOTO, MONEY, BANK CREDIT, AND ECONOMIC CYCLES 118 (4th ed. 2020) (pointing to failures of fractional-reserve banking). *Cf.* Christopher P. Guzelian & Robert F. Mulligan, *The Wisselbank and Amsterdam Price Volatility: A Fractal Test of the Austrian Fractional-Reserve Banking Hypothesis*, 12 J. MKT. PROCESS 13, 14–15 (2015) (confirming commodity price destabilization in 1780s Amsterdam after the Dutch prototypical Central Bank began significant fractional-reserve banking).

81. Hamilton, *supra* note 80.
82. *Id.*
83. *Id.*

To sum up, silver and gold both were considered ideal mediums for coins, spoken about on nearly all political celebrities' tongues in 1700s America. Copper too had its place.[84] But the spirited 1770s, 1780s, and 1790s discussion of money mediums unavoidably invoked debate about the legality and economic helpfulness of paper money. As in colonial times prior to British intervention in 1751 and again in 1764,[85] paper money not backed by specie (that is, Newton's "bad" paper money) was issued by both the federal Continental Congress (Continental Dollars) and even more so, the thirteen states during the Revolutionary War. Initially during the 1770s, most colonialists, including the later first Supreme Court Justice John Jay, welcomed the sanguine economic boom these notes produced by increasing the nominal money supply in the usual absence of colonial coinage.[86] One historian commented:

> [T]he country was prosperous . . . . Paper money seemed to be the "poor man's friend"; to it were ascribed the full employment and the high price of farm products that prevailed during the first years of the war. By 1778, for example, the farmers of New Jersey were generally well off and rapidly getting out of debt, and farms were selling for twice the price they had brought during the period 1765–1775. Trade and commerce were likewise stimulated; despite the curtailment of foreign trade, businessmen had never been so prosperous.[87]

Yet even before 1780, the United States federal and state governments found themselves in extreme indebtedness as they defaulted on payments of gold and silver specie for worthless federal "Continentals" and state paper

84. In 1785, the Confederation Congress, although not yet constitutionally authorized to do so, passed an unanimously approved bill recognizing copper as the U.S. Dollar's medium. *A Century of Lawmaking For a New Nation*: *U.S. Congressional Documents and Debates, 1774–1875*, JOURNALS OF THE CONTINENTAL CONGRESS 500 (July 6, 1785), https://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(jc0295)) [https://perma.cc/T3VS-GGBH].

85. *See* Dunn, *supra* note 58 (highlighting the political divide among specie backers and their opponents).

86. John Jay, Circular Letter from Congress to Their Constituents (Sept. 13, 1779), *in* 1 THE SELECTED PAPERS OF JOHN JAY 1760–1779, at 667 (Elizabeth M. Nuxoll, ed., 2010), https://founders.archives.gov/documents/Jay/01-01-02-0401 [https://perma.cc/YB55-DVA9] ("Let it also be remembered that paper money is the only kind of money which cannot 'make unto itself wings and fly away.' It remains with us, it will not forsake us, it is always ready and at hand for the purpose of commerce or taxes, and every industrious man can find it.").

87. JOHN C. MILLER, TRIUMPH OF FREEDOM: 1775–1783 438 (1948).

currencies.[88] So steep was the inflation for these notes that Washington lamented, "[A] wagon load of money will scarcely purchase a wagon load of provisions."[89] In 1781, Founder Robert Morris graphically described to Franklin the pitiable state of the Continental Army and the wartime colonies.[90] The colonies faced simultaneously a collapse of faith in their public creditworthiness due to paper money debt defaults, as well as the absence of sufficient coinage for basic economic transactions, as evident by Morris writing that southern states like the Carolinas and Georgia "have not Coin to pay."[91] He concluded to Franklin, "[T]hese Sir are Circumstances which forbid the most sanguine Temper to expect a full compliance."[92] Madison, like Newton, distinguished between "good" paper money (backed by silver and gold specie) and "bad" paper money, the mass issuance of which he believed to cause terrible public creditworthiness.[93] Alexander Hamilton urged federal seizure of private property and goods due to

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88. Letter from Thomas Jefferson to George Hammond (May 2, 1792), *in* 23 THE PAPERS OF THOMAS JEFFERSON 1 JANUARY–31 MAY 1792, at 551 (Charles T. Cullen, ed., 1990), https://founders.archives.gov/documents/Jefferson/01-23-02-0506 [https://perma.cc/KV9G-LD6F]; *see also* G.K. van Hogendorp, *A Short Account of the Finances of the United States* (May 4, 1784), *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 212, https://founders.archives.gov/documents/Jefferson/01-07-02-0156-0003 [https://perma.cc/7MW7-XD9Z] (detailing history of paper money issuance and debt due to the Revolutionary War and shortage of coinage in the U.S.).

89. ALBERT S. BOLLES, 1 *THE FINANCIAL HISTORY OF THE UNITED STATES* 132 (4th ed. 1896); *see also* Letter from James Madison to Thomas Jefferson (May 5, 1781), *in* 3 THE PAPERS OF JAMES MADISON 3 MARCH 1781–31 DECEMBER 1781, at 108 (William T. Hutchinson and William M.E. Rachal, eds., 1963), https://founders.archives.gov/documents/Madison/01-03-02-0052 [https://perma.cc/4754-254C] (noting paper currency in Virginia had devalued to 1/700 of its original).

90. Letter from Robert Morris to Benjamin Franklin (Nov. 27, 1781), *in* 36 THE PAPERS OF BENJAMIN FRANKLIN, NOVEMBER 1, 1781 THROUGH MARCH 15, 1782, at 135 (Ellen R. Cohn, ed., 2001), https://founders.archives.gov/documents/Franklin/01-36-02-0099 [https://perma.cc/J9XS-GTLY].

91. Letter from Robert Morris to Benjamin Franklin (Jan. 7, 1782), *in* 36 THE PAPERS OF BENJAMIN FRANKLIN, *supra* note 90, at 403, https://founders.archives.gov/documents/Franklin/01-36-02-0268 [https://perma.cc/WV4D-W9HR].

92. Letter from Robert Morris to Benjamin Franklin (Nov. 27, 1781), *supra* note 90.

93. James Madison, Money (Sept. 1779 – March 1780), *in* 1 THE PAPERS OF JAMES MADISON, MARCH 16, 1751 THROUGH DECEMBER 16, 1779, at 302 (William T. Hutchinson & William M.E. Rachal, eds., 1962), https://founders.archives.gov/documents/Madison/01-01-02-0103 [https://perma.cc/HQ9H-P9N6]; *see also* THE FEDERALIST NO. 69, *supra* note 39 (noting "[t]he loss which America has sustained since the peace, 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 . . . .").

Congress not being able to receive tax revenues in suitable coinage and paper with worth.[94] Historian Clarence Carson summarizes: "Congress resolved to issue no more [unbacked paper money] in 1779, but it was all to no avail. Runaway inflation was at hand. In 1781, Congress no longer accepted its own paper money in payment for debts, and the Continentals ceased to have any value at all."[95]

The total collapse in paper money value left Americans with an even greater deficit in money supply than they had accustomed to during the Colonial Era's common coin shortages.[96] Extreme monetary inflation turned to deflation as coins (gold, silver, and copper) were sought, farmer incomes from produce declined, and land prices dropped (resulting in record foreclosures in 1785-86).[97] Some states, like Rhode Island, turned to printing even more unbacked paper money to accommodate protesting citizens who were losing their shirts.[98] Indeed, a Rhode Island political party, the Country Party, even formed to advocate for and sustain state issuance of "bad" paper money.[99]

We must now identify which of those mediums—silver , gold, copper, paper (both "good" and "bad"), or today even digital—is constitutional. Farrand's *Records* does not record a mention of gold, silver, or copper during the entire Convention. But the above Section III discussion shows the founders considered gold, silver, and, to a lesser extent, copper[100] to be

94. Letter from Alexander Hamilton to James Duane (Sept. 3, 1780), *in* 2 THE PAPERS OF ALEXANDER HAMILTON 1779–1781, at 400 (Harold C. Syrett, ed., 1961), https://founders.archives.gov/documents/Hamilton/01-02-02-0838 [https://perma.cc/J2R4-DAGV] ("[T]he money in circulation is not a sufficient representative of the productions of the country . . . . The public therefore to obtain its due or satisfy its just demands and its wants must call for a part of those products themselves.").

95. Clarence Carson, *The Constitution and Paper Money*, FOUND. FOR ECON. EDUC. (July 1, 1983), https://fee.org/articles/the-constitution-and-paper-money/ [https://perma.cc/8MN2-7G5M].

96. In 1784–1786, the U.S. exported around £2½ million and imported £8 million in goods with Britain. "An unfavorable balance of trade, considerably in excess of £5,000,000, acted like a magnet to draw gold and silver from America to Britain." CURTIS P. NETTELS, THE EMERGENCE OF A NATIONAL ECONOMY 1775–1815 49 (1962).

97. Carson, *supra* note 95.

98. *See* Alexander Hamilton, The Defence of the Funding System (July 1795), *in* 19 THE PAPERS OF ALEXANDER HAMILTON, JULY THROUGH DECEMBER 1795, at 1 (Harold C. Syrett, ed., 1973), https://founders.archives.gov/documents/Hamilton/01-19-02-0001 [https://perma.cc/PS8C-FPK5] (describing how Rhode Island "embarked on a policy of monetary inflation" to settle its debts).

99. *See* IRWIN H. POLISHOOK, RHODE ISLAND AND THE UNION, 1774–1795 125 (1969) (discussing the Country Party's specific support for paper money in the 1786 elections).

100. Frequently, copper coins were debased or counterfeited, leading to a loss of public confidence in copper specie. In the Copper Panic of 1789, New York residents completely abandoned

constitutionally valid mediums of money. Section VI and the Conclusion will show that only silver appears to be a constitutional medium for the Money Unit (Dollar) itself.

By contrast, most founders frowned on federal paper money.[101] Late during the Convention, a debate broke out about whether to constitutionally authorize Congress to promulgate federal paper money.[102] "Congress had such a power under the Articles of Confederation, and most of the powers held by Congress under the Articles were introduced in the convention to be extended to the new government."[103] Pennsylvania delegate Gouverneur Morris "moved to strike out" the language lifted from the Articles "and emit bills on the credit of the United States."[104] That is, he proposed to strike language that would allow federal paper money.[105] (Morris, in an 1814 letter, boasted that his greatest achievement at the Convention was ensuring paper money—whether federally or state-issued—is unconstitutional.[106]) Over the course of two days, the founders wrangled with this issue. At least a dozen men spoke both for and against the matter.[107]

Charles Carson succinctly summarized the recorded statements of all founders who spoke about federal paper money at the Convention.[108] After discussion, the matter was put to a vote. The Journal of the Convention for

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use of copper coins and resorted to small change notes in their absence. *See* Louis Jordan, *The Copper Panic and Small Change Notes 1789–1799*, COLONIAL CURRENCY (1998), https://coins.nd.edu/colcurrency/CurrencyIntros/IntroCopperPanic.html [https://perma.cc/S6XV-WP52] (discussing the circulation of counterfeit coppers leading to the devaluation of copper currency). Nevertheless, the Second Congress included copper coins as cent and half-cent denominations in its 1792 Coinage Act. United States Mint, *Coinage Act of April 2, 1972*, UNITED STATES MINT, CONNECTING AMERICA THROUGH COINS (Apr. 19, 2017), https://www.usmint.gov/learn/history/historical-documents/coinage-act-of-april-2-1792 [https://perma.cc/67G2-ZRBU].

101. *See* Carson, *supra* note 95 (describing the founders' trepidation about paper money).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Letter from Gouverneur Morris to Timothy Pickering (Dec. 22, 1814), *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 419–20.

107. *See* Carson, *supra* note 95 (describing Madison's being won over at the Convention to opposing federal paper money).

108. *Id.* In addition, a subcommittee at the Convention left indication that their belief was that federal paper money was constitutionally prohibited. *See* 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 144 ("To (regulate) (The exclusive right of) coining (money (Paper prohibit) . . . .").

August 16, 1787, made this record: "It was moved and seconded to strike out the words 'and emit [federal] bills,'" and the motion to strike out these words "passed in the affirmative. Yeas: New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia — 9. Nays: New Jersey, Maryland — 2.'"[109] Thus the founders, by a vote of more than four to one, refused to express grant Congress the constitutional power "to emit bills on the credit of the United States." In interpreting this event, Madison believed striking out the words cut off the pretext for a paper currency, and particularly for making the bills a tender either for public or private debts.[110] Luther Martin, who left the Convention early in protest, had pressed for a states' right to continue to issue paper money, because even he too acknowledged that the question of federal paper money's constitutionality had been voted upon and settled.[111]

Based on the founders' discussions and the subsequent vote, Carson concluded: "It is a reasonable inference from the discussion that the delegates believed that by voting to strike out the words they had removed the power from the [federal] government to emit bills of credit."[112] I refer the interested reader to Vieira's far more extensive research and his like determination that federal paper money is unconstitutional.[113]

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109. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 27, at 303–04.

110. BANCROFT, *supra* note 70, at 40 (1886). A discounting view of Madison's contrary comment was given by a late 19th century legal commentator, who stated:

> [Madison] does not give us the course of argument by which he arrived at this [conclusion]. Nor does he give us any clue as to whether the other members of the convention agreed with him. In a word, it is a purely private opinion of Mr. Madison which events have proved to be wrong. This is not the first time that an individual, in drawing a public document, thinking that he had included and excluded certain things, found out afterwards, when the instrument came up for adjudication, that he had made a mistake.

Edmund J. James, *Some Considerations on the Legal-Tender Decisions*, 3 PUB. AM. ECON. ASS'N. 49, 66 (1888).

111. Letter from Luther Martin to Thomas Cockey Deye (1787), *in* 1 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 376 (William S. Hein & Co., Inc., 2d ed. 1996) (1827) ("It was my opinion, sir, that the states ought not be totally deprived of the right to emit bills of credit, and that, *as we had not given an authority to the general government for that purpose*, it was the more necessary to retain it in the states.") (emphasis added).

112. Carson, *supra* note 95.

113. *See* VIEIRA, *supra* note 31, at 94–96, 141–54, 169–77, 241–59, 561–670 (2d ed. 2011) (detailing the unconstitutional nature of paper money).

Thus, the founders at the 1787 Constitutional Convention decided that both state[114] and, more importantly, *federal* paper money (such as now circulating Federal Reserve Dollar notes) would be permanently unconstitutional. Later commentators, politicians, and bankers up to present have insisted otherwise, but the historical evidence simply is not on their side.[115] Paper money's unconstitutionality obviously did not stop its issuance. Indeed, by 1808, then-President Jefferson received complaints of continued state paper money issuances, despite an express constitutional prohibition in Article I, § 10.[116]

This Section's analysis yields the following conclusions: gold, silver, and copper coins were unobjectionable mediums of money after the Revolutionary War. The founders considered federal and state paper moneys unconstitutional. Section VI and the Conclusion will show that silver is the only constitutional medium of the Dollar as a Money Unit.

IV. CONSTITUTIONAL DENOMINATIONS

A denomination of U.S. money involves two factors: (1) a name recognized in the market; (2) a physical money with an exchange rate, either

114. *See* U.S. CONST. art. I, § 10 ("No State shall . . . emit bills of credit.").

115. Yes, there remained some dissenters among the voting founders on this question after the Constitution's ratification. Charles Pinckney subtly commented on May 20, 1788, at the South Carolina ratifying convention that "if paper should become necessary, the general government still possess the power of emitting it." ELLIOT, *supra* note 22, at 335. Thomas Jefferson, as Secretary of State, even wrote in alarm to President George Washington in 1792 that he (Jefferson) feared and sensed the ultimate true aim of these paper money lovers: to institute an American monarchy by bleeding the country of its specie and achieve as elected members of Congress what they did not at the Convention. Letter from Thomas Jefferson to George Washington (May 23, 1792), *in* 10 THE PAPERS OF GEORGE WASHINGTON 1 MARCH 1792–15 AUGUST 1792, at 408 (Robert F. Haggard & Mark A. Mastromarino, eds., 2002), https://founders.archives.gov/documents/Washington/05-10-02-0268 [https://perma.cc/6CDF-KXMX]. Jefferson's letter suggests that, in his mind, the Convention had determined the fate of federal paper money, but some Congressmen were trying to undo the Convention's decision. *See* Edling, *supra* note 29, at 291 (detailing Jefferson's complaints about Congressional "factions" that were subservient to Alexander Hamilton's finance directives and his fear that those members were seeking to overthrow the Republic and establish a monarchy).

116. *See* Letter from James Sullivan to Thomas Jefferson (Feb. 7, 1808), *Founders Online*, NATIONAL ARCHIVES, https://founders.archives.gov/documents/Jefferson/99-01-02-7368 [https://perma.cc/P4HF-QMWX] (early access document to forthcoming final source) (describing how the state issuance of paper money is a violation of the Constitution). Today, the Dollar's medium is not necessarily relevant to the Fed. They state that Dollars come in multiple forms: commodity money (coins), paper bills, and digital currency. Because the Fed is now contemplating a digital currency, for which the "medium" is more ethereal than ever, the Fed recently shifted the definition of money to include "means of payment," rather than "medium of exchange." *Money and Payments: The U.S. Dollar in the Age of Digital Transformation, supra* note 16, at 5.

fixed or market-variable, with other denominations and with the Money Unit (Dollar) itself. Denominations can be national, e.g., Dollars, Pounds, Euros, Yen, Yuan, etc., with fluctuating foreign exchange rates (FOREX[117]) between them. Or, within a national currency system, denominations exist as fractions or multiples of the "Money Unit," e.g., in America: quarters, dimes, nickels, cents, Benjamins ($100), etc., all valued relative to each other and ultimately to the U.S. Dollar; or in Great Britain: pence, fiver (£5), tenner (£10), etc., all relative to each other and to the British Pound (quid) (British Money Unit).

Often within the same nation, there are different national denominations, even with the same name to make it more confusing,[118] circulating simultaneously. Such was the case in colonial and Revolutionary America. Library of Congress curator Julie Miller describes that historical monetary setting: "[A]ctual British currency was scarce in the American colonies. As a result, Americans used whatever coins they had at hand. Spanish and Portuguese coins, such as the *dollar* and *pistole* and the Portuguese Joe (short for *Johannes*) and half-Joe were widely used in the American colonies."[119]

A denomination may imply a particular medium but not always in practice. The 1792 Coinage Act permitted only copper as the Cent's medium.[120] A modern Federal Reserve Dollar appears as base-metallic, silver, paper, and electronic. Conversely, a particular medium of money (e.g., gold) may have different denominational names. For example, Krugerrands (South Africa) and Eagles (U.S.A.) are both 1-ounce gold coins.

Before the U.S. Dollar became a statutorily mandated name of a U.S. denomination and the U.S. Money Unit, "dollar" coins from foreign countries—most notably Spain and Mexico—circulated in the colonies and early states. Vieira describes the pre-Revolutionary history of the Spanish and Mexican dollar denominations:

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117. There has always been a need to set denominational exchange rates. Indeed, George Washington negotiated exchange rates for Dollars to shillings in his personal contracts. Letter from George Washington to William Shaw (July 8, 1785), *in* 3 THE PAPERS OF GEORGE WASHINGTON, CONFEDERATION SERIES, MAY 19, 1785 THROUGH MARCH 31, 1786, at 108 (W. W. Abbot, ed., 1994), https://founders.archives.gov/documents/Washington/04-03-02-0103 [https://perma.cc/Z8D3-E5KX].

118. *See infra* Sections IV, VI.

119. Julie Miller, *Colonial Currency*, LIBR. CONG. (May 2020), https://crowd-media.loc.gov/cm-uploads/resources/colonial_currency.pdf [https://perma.cc/5YWM-VNZH].

120. Coinage Act of 1792 § 9.

> Historians generally first associate the "dollar" with one Count Schlick, who began striking such silver coins in 1519 in Joachim's Thal, Bavaria. [Originally called] "Schlicktenthalers" or "Joachimsthalers," the coins became known simply as "Thalers," which transliterated into "dollars." Interestingly, the American Colonies did not adopt the "dollar" from Germany or England, but from Spain, where it was first coined by order of Ferdinand and Isabella. Under that country's monetary reforms of 1497, the silver *real* became the unit of account. A new coin consisting of eight *reales* also appeared. Variously known as *colonatas*, *piastres*, *pesos*, *duros*, "Spanish dollars" (because of their similarity to *Thalers*), and "pieces of eight" (because they contained eight *reales*), the coins achieved predominance in the New World because of Spain's then-important commercial and political position there. Recognized by law in the Colonies in 1672, by 1704 the "pieces of eight" had become a unit of account, as Queen Anne's Proclamation of 1704 made clear, when it decreed that all other current foreign silver coins "stand regulated, . . . in Proportion to the Rate limited and set for the Pieces of eight of *Sevil*, *Pillar*, and *Mexico*. By the time of the War of Independence, the "piece of eight" [denomination] was, for all practical purposes, rapidly becoming the [de facto] monetary unit of the American people.[121]

Founder Robert Morris in 1782 urged the Confederation Congress to adopt the Dollar as a denomination and the U.S. Money Unit to standardize money usage throughout the states. He observed general confusion that money exchange between various denominations caused in the early states:

> The Ideas annexed to a Pound a Shilling and a Penny are almost as various as the States themselves. . . . . [I]f [someone] were told that . . . [something] is worth twenty one Shillings and eight Pence, he would be obliged to make many Enquiries and form some Calculations before he could know that this Sum meant in general what he would call four Shillings. And even then he would have to enquire what Kind of Coin that four Shillings was paid in before he could estimate it in his own Mind according to the Ideas of Money which he had imbibed. Difficulties of this Sort do not occur to Farmers alone, they are perplexing to most Men and troublesome to all.[122]

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121. *See* VIEIRA, *supra* note 31, at 137–38.

122. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *in* 7 THE PAPERS of Thomas Jefferson, *supra* note 10, at 160, https://founders.archives.gov/documents/Jefferson/01-07-02-0151-0002 [https://perma.cc/73LJ-J5KB]. Another part of Morris's motivation for establishing U.S. denominations was to provide coinage because the peace treaty with Britain and a lack of regulation on specie export had led to a great deal of American coinage being shipped overseas. *See*

In 1782, Morris accordingly proposed to Congress a system of denominations with a small silver coin dubbed the "Money Unit," as well as cents (100 units), quints (500 units), and marks (1,000 units).[123] Thomas Jefferson created a different denomination and Money Unit proposal.[124] Jefferson wanted to base his standard and actual coin on the Spanish dollar (piece of eight), along with other fractional and multiple denominations relative to the U.S. Dollar based on Jefferson's own decimal system.[125] Jefferson noted that the advantage of his U.S. Dollar over Morris's Unit, besides a coin size more convenient for "money arithmetic," was that "a dollar . . . has long been in general use," and would therefore better serve as a coin and the money unit.[126] Although it had no binding effect on the states, the Confederation Congress in 1785 heeded Jefferson and unanimously passed a bill recognizing a United States "Dollar" Money Unit (to be comprised of 200 coins of copper),[127] and in the subsequent year, a bill that provided for an actual Dollar coin. As noted in Section II, however, the Confederation Congress did not have the sovereign authority to establish a Money Unit or make these denominations, and never even created a mint.

The Constitution itself does not expressly declare the Dollar to be an official U.S. denomination. However, the document invokes the Dollar twice by name,[128] and mentions no other denomination, domestic or foreign. Thus, the idea of the Dollar as a U.S. government coin had evidently already captured the public imagination by 1787. Thereafter, the 1792 Coinage Act was passed, naming in §9 the Dollar as a U.S. denomination, consistent with Congress's Coinage Clause power to coin money (which customarily implies the naming of denominations and a specifications of the minting specifications). The first minted U.S. Dollar

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Letter from Robert Morris to Thomas Jefferson (Apr. 8, 1784), *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 85, https://founders.archives.gov/documents/Jefferson/01-07-02-0074 [https://perma.cc/E666-7QFF].

123. THOMAS JEFFERSON, Propositions Respecting the Coinage of Gold, Silver, and Copper (May 13, 1785), *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 85, https://founders.archives.gov/documents/Jefferson/01-07-02-0151-0008 [https://perma.cc/7K84-58BX].

124. *Id.*

125. *Id.*

126. *Id.*

127. *A Century of Lawmaking For a New Nation*: *U.S. Congressional Documents and Debates*, *supra* note 84.

128. U.S. CONST. art. I, § 9, cl. 1; U.S. CONST. amend. VII.

was the silver Flowing Hair Dollar in 1794, a fine specimen sold at auction in 2013 for over $10 million.[129] (A picture of a Flowing Hair Dollar can be seen in the Introduction.) The 1792 Coinage Act established other denominations. The gold $10 Capped Bust eagle was minted:[130]

As was the copper cent:[131]

In sum, the Dollar is a constitutional denomination. In fact, it is the only explicitly mentioned denomination in the Constitution. Two questions naturally follow. First, may Congress add other denominations to its U.S. currency "bucket" whenever it pleases? Second, could Congress abolish the Dollar as a publicly distributed denomination, even if it kept the Dollar as the Money Unit? First, the 1792 Coinage Act established other constitutional denominations: eagles ($10 gold coins); half eagles ($5 gold coins); quarter-eagles ($2.50 gold coins); half dollars ($0.50 silver coins); quarter dollars ($0.25 silver coins); dimes ($0.10 silver coins); half dimes

129. James Royal, *9 of the World's Most Valuable Coins*, BANKRATE (Feb. 2, 2022), https://www.bankrate.com/investing/worlds-most-valuable-coins/ [https://perma.cc/768B-AZQT]; *see also 1794 Flowing Hair Silver Dollar. BB-1, B-1. Rarity-4. MS-62 (NGC).*, *supra* note 12 (displaying a picture of the 1794 Silver Hair dollar).

130. *1795 Turban Head Gold $10 Eagle: 13 Leaves*, USA COIN BOOK, https://www.usacoinbook.com/coins/4057/gold-10-eagle/turban-head/1795-P/13-leaves/ [https://perma.cc/K2H4-EANY].

131. *Liberty Cap Large Cents*, USA COIN BOOK, https://www.usacoinbook.com/coins/large-cents/liberty-cap/ [https://perma.cc/9NPU-B7VG].

($0.05 silver coins); cents ($0.01 copper coins); half cents ($0.005 copper coins).[132] Hypothetically, if Congress were to direct the U.S. mint to issue a "nickel" denomination (as it did in 1866), nothing in the Convention or founders' comments suggests that a denomination's name change is unconstitutional (the Dollar is alternatively referred to as the "unit" in the 1792 Coinage Act). However, if an additional denomination were to use a different medium than the ones specified above, or a different intrinsic value, or both, it could be a denomination fraught with constitutional problems. The current nickel is 75% copper and 25% nickel. Its exchange rate to the U.S. Dollar is 20:1, the same as the original 1792 silver half dime. Yet silver is more intrinsically valuable than copper and nickel, and as such, the introduction of such a nickel would displace the half dime in the money system (as it did). This is unconstitutional.[133]

Second, a government in theory for some unclear reason could cease to make physical U.S. Dollars, while the Dollar still serves as the United States Money Unit. If that happened, the Dollar would be an imaginary money unit. It would be a strange currency indeed!

V. THE CONSTITUTIONAL VALUE OF THE MONEY UNIT AND ITS RELATION TO PUBLIC CREDIT

In the early 1780s, the founders were convinced that they needed to establish a Money Unit for the new Republic that would have more intrinsic value than the worthless and unredeemable Continentals and state paper monies.[134] Founder Robert Morris was as much the inventor of the post-Revolution U.S. financial system as anyone, except perhaps Alexander Hamilton.[135] In 1782, Morris spoke of the importance of establishing sovereign money's value in a letter to the Confederation Congress: "[I]t is right that Money should acquire a Value, as Money distinct from that which it Possesses as a Commodity in Order that it should be a fixed Rule whereby to Measure the Value of all other Things."[136]

Morris's thought was consistent with Isaac Newton's monetary distinction between *extrinsic value* (the value of government coined or

132. Coinage Act of 1792 § 9.

133. *See* VIEIRA, *supra* note 31, at 1403–05 (arguing the dollar is unconstitutional, in part, due to these differences in values).

134. *See supra* Section III.

135. *See generally* CHARLES RAPPLEYE, ROBERT MORRIS: FINANCIER OF THE AMERICAN REVOLUTION (2010) (explaining Morris' role in shaping the American financial system).

136. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *supra* note 122.

stamped gold and silver) and *intrinsic value* (the market value of a precious metal simply as weight of bullion).[137] Morris was undoubtedly a keen observer of Americans' widespread confusion about denominations' values. Library of Congress curator Julie Miller explains: "The value of American pounds, shillings, and pence was local. A New York pound, for example, had a different value than a Pennsylvania pound, and neither was a British pound [e]ven though American colonists expressed monetary values in British terms . . . ."[138]

Other founders also desired a stable Money Unit and coinage with lasting, if not permanent, value allowing for reliable marketplace commerce. They had been burned by the paper money years, and there were far too many varieties of coinage—often debased—floating around the new Republic. Consequently, commerce was impeded. Madison insisted in Federalist 42 that there should be a "uniformity in the *value* of the current coin."[139] Thomas Jefferson looked forward to banishing the "discordant pounds, shillings, pence and farthings of the different states, and [] establish[ing] in their stead the new denominations."[140]

But to many founders, money with "intrinsic value" involved something different than Newton's and Morris's simple definition (marketplace price of bullion). Rather, there was a commonly held conception that silver (and perhaps gold) *as money mediums*, had unreproducible, "intrinsic" value.[141] Founder Charles Pinckney made this point most forcefully when he stated: "[E]very medium of trade should have an intrinsic value, which paper money has not; gold and silver are therefore the fittest for this medium, as

137. Isaac Newton, *Definition of 'intrinsic value'* (1701), THE NEWTON PROJECT, https://dev.newtonproject.ox.ac.uk/transcriptions/normalised/MINT00674 [https://perma.cc/QF4M-97H7].

138. Miller, *supra* note 119.

139. THE FEDERALIST, NO. 42, *supra* note 39, at 220.

140. Thomas Jefferson, Plan for Establishing Uniformity in the Coinage, Weights and Measures of the United States (July 4, 1790), *in* 16 THE PAPERS OF THOMAS JEFFERSON 30 NOVEMBER 1789–4 JULY 1790, at 650 (Julian P. Boyd, ed., 1961), https://founders.archives.gov/documents/Jefferson/01-16-02-0359-0009 [https://perma.cc/EE24-GGW2].

141. There are at least three different sources of authority from which a precious metal's intrinsic value reputedly can emanate: (1) God who makes the medium and decrees it valuable; (2) a sovereign who decrees it valuable "by fiat" (government proclamation); (3) a spontaneous "emergence" of subjectively recognized value in the marketplace that is both enduring and widespread. *See* Guzelian, *supra* note 19, at 75–78 (examining how currency ratios and relative values of money to commodities are properly established).

they are an equivalent, which paper can never be . . . ."[142] The greater the weight of a precious metal coin or bullion, the more its intrinsic value.

This inseparable combination of a lawful money medium and a "correct" weight standard from which to derive money value is an ancient Biblical concept. In the Hebrew Bible, silver was the only lawful form of money medium. Silver coinages' weights (and thereby relative values) were measured according to the Israelite temple weight standard, the "Sanctuary Shekel," which God had revealed to Moses.[143]

Madison and Gouverneur Morris spoke at the Constitutional Convention of the "permanent" value of wheat in the context of determining how to select a money standard by which to pay judges' salaries.[144] Absent a national Money Unit, Jefferson creatively linked wheat, a daily living essential with permanent value, to intrinsic value in his 1783 draft of a Virginia Constitution, when he proposed paying delegates' daily wages in:

> [G]old or silver equal to the value of two bushels of wheat. This value shall be deemed one dollar by the bushel till the year 1790 in which and in every tenth year thereafter the General court at their first sessions in the year shall cause a special jury of the most respectable merchants and farmers to be summoned to declare what shall have been the averaged value of wheat during

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142. ELLIOT, *supra* note 22, at 334.

143. These concepts are based in ancient, foundational texts:

> The Hebrew Scripture refers to only three commodities measured by the Sanctuary Shekel: gold (Ex. 38:24; Num. 7:86), spices (Ex. 30:23-25), and silver (Ex. 30:13, 38:25-26; Lev. 5:15, 27:3; Num. 3:47, 3:50, 7 *passim*, 18:6). In the case of gold, contributions made as stipulated by God per the Sanctuary Shekel were a one-time expense in the construction of the Temple. Spices measured according to the Sanctuary Shekel were used to prepare the anointing altar oil. Thus this application of the Sanctuary Shekel was only relevant to the priestly Levites. However . . . there were continual, frequent interactions, both obligatory and free-willed, between lay Israelites and the Temple that involved silver transfers measured per the Sanctuary Shekel. In other words, silver and the Sanctuary Shekel were indelibly linked as far as most of ancient Israel was concerned.

Guzelian, *supra* note 55, at 229.

144. Madison: "The variations in the value of money, may be guarded agst. by taking for a standard wheat or some other thing of permanent value." Morris:

> The value of money may not only alter but the State of Society may alter. In this event the same quantity of wheat, the same value would not be the same compensation. The Amount of salaries must always be regulated by the manners [and] the style of living in a Country.

2 THE RECORDS OF THE FEDERAL CONVENTION, *supra* note 27, at 45.

> the last ten years; which averaged value shall be the measure of wages for the ten subsequent years.[145]

Despite widespread adulation for silver and gold coins as money with lasting "intrinsic" value, there was some skepticism about their value's stability. Benjamin Franklin published in 1729 that only labor had special permanent economic value, not silver.[146] George Mason alluded in 1787 to "changes in the value of metals."[147] Thomas McKean during the Pennsylvania Ratification Convention observed that the mining reserves of gold and silver were not fixed and therefore "in the course of a man's life, a very great [change in the value of money] may take place from the discovery of silver and gold mines, and the great influx of those metals."[148] Alexander Hamilton concluded in Federalist 79, "the fluctuations in the value of money . . . rendered a fixed rate of compensation in the Constitution inadmissible."[149]

In 1789, a "Gentleman of Virginia" argued in a Federalist Party newspaper for "a unit 'purely imaginary, for every thing, which is real, is exposed to the danger of fluctuation,' gold and silver being improper as a common standard because they not only fluctuated in value but did so relative to each other."[150] And James Madison rhetorically asked at the 1788 Virginia Convention on Ratification, "What authorises us to conclude, that the value of coins will continue always the same?"[151] Still, even with these occasional Platonic frustrations, most Founders recognized certain practical objects—notably silver, gold, and copper—had intrinsic monetary value whereas all others had lesser (or, in the case of paper, no) value.

The question of how, if possible, to scientifically create sovereign money and a Money Unit, both with "intrinsic" value, intrigued the Founders from 1776 on. Thomas Jefferson later described that challenge as "a work proper

145. Jefferson, *supra* note 73. At the Constitutional Convention, one subcommittee entertained a nearly identical proposal to affix U.S. Senators' salaries. 2 THE RECORDS OF THE FEDERAL CONVENTION, *supra* note 27, at 142.

146. Franklin, *supra* note 60.

147. 5 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 482 (William S. Hein & Co., Inc., 2d ed. 1996) (1827).

148. ELLIOT, *supra* note 49, at 539.

149. THE FEDERALIST NO. 79, at 1 (Alexander Hamilton) (McLean's ed., 2008).

150. Editorial Note, *Report on Weights and Measures*, *in* 16 THE PAPERS OF THOMAS JEFFERSON 30 NOVEMBER 1789–4 JULY 1790, at 602 (Julian P. Boyd, ed., 1961), https://founders.archives.gov/documents/Jefferson/01-16-02-0359-0001 [https://perma.cc/P2XQ-UY8P].

151. 5 THE WRITINGS OF JAMES MADISON, 1787–1790 188 (Gaillard Hunt, ed., 1904).

to be committed to Mathematicians as well as Merchants."[152] In April 1776, the Continental Congress, even before the Declaration of Independence, convened a committee headed by George Wythe, Thomas Jefferson's mentor, to evaluate the values of various coins, both domestic and foreign, circulating in the colonies relative to the Spanish dollar (piece of eight).[153] Thomas Jefferson later joined the committee. A National Archives editor wrote, "Whereas the Wythe report had expressed values in vulgar fractions of dollars, Jefferson's report was an elaborate and careful estimate of values 'expressed by decimal notation in Dollars and parts of a dollar.'"[154] This, evidently, was the first effort to employ decimal reckoning in the money system of the United States. Jefferson's report . . . was handed in on the day he left Congress and was promptly tabled."[155]

In 1782 and 1784, Morris and Jefferson, respectively, offered competing plans to Congress for a U.S. Money Unit.[156] Both men agreed that the Dollar should be the U.S. Money Unit (see Section VI, below).[157] Both men believed the Dollar should be a silver coin. They differed only as to the Dollar's proper weight and as to other U.S. denominations as "parts and multiples" of the Dollar. As noted immediately above, Jefferson unlike Morris desired a decimal-based coinage system and saw it as part of his larger personal calling to establish a United States, decimal-based, standardized "Weights, Measures, and Currency" system.[158]

The Confederation Congress, as discussed in Section IV above, did adopt the U.S. Dollar as a denomination and its medium as silver.[159] In a separate 1786 Act, that Congress also "fixed" the Dollar's weight as 375.64 "grains"[160] of pure silver, with "eleven parts" pure silver ("fine") and "one

152. Jefferson, *supra* note 10.

153. 4 Continental Congress, *Journals of the Continental Congress 1774–1789*, at 381–83 (Worthington C. Ford et al., eds., 1904–37).

154. *See* Editorial Note, *Jefferson's Notes on Coinage*, *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 150, https://founders.archives.gov/documents/Jefferson/01-07-02-0151-0001 [https://perma.cc/DD3C-BZRW] (distinguishing between Wythe and Jefferson's reports on rational numbers).

155. *Id.*

156. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *supra* note 122; Jefferson, *supra* note 10.

157. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *supra* note 122; Jefferson, *supra* note 10.

158. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *supra* note 122; Jefferson, *supra* note 10.

159. *See supra* Section IV.

160. 437.5 grains equal 1 ounce.

part alloy."[161] The 1786 Act also created gold Eagle ($10) coins and half-Eagle ($5) coins, also with fixed weights in grains. Implicitly, therefore, Congress was guaranteeing a fixed government conversion rate of 15.2533:1 between pure silver and gold.

That there was a fixed proportion of copper alloy mixed in the Dollar coin did not affect the Dollar's "intrinsic value" of 375.64 grains of pure silver as a Money Unit. Jefferson explained that "[s]ome alloy is necessary to prevent the coin from wearing too fast."[162] But too much alloy might make a coin too heavy (Jefferson: "Too much fills our pockets with copper instead of silver."[163]), or more susceptible to counterfeiting (Morris: "[T]he Quantity of Alloy in the Silver is not material to the Value but if it be sufficiently hard all Alloy beyond that Point renders it more liable to Imitation by a baser Composition."[164]).

Thus, the 1786 Act was the United States' first attempt to establish its own sovereign value of money for its currency and Money Unit. The Confederation Congress did not have clear legal authority to do so under the Articles of Confederation.[165] But in the eyes of Jefferson, Morris, and the Confederation Congress that proclaimed it, the U.S. Dollar's value was an "intrinsic" one, based on the Dollar's: (1) medium (silver); (2) weight (which we will see in Section V was similar to already circulating Spanish dollars); and (3) exchangeability at a fixed, market-competitive ratio to gold (which they also believed to have intrinsic value).

But to be historically complete, we must now turn our attention to a different philosophy about "the value of money" than the "intrinsic value" theory just presented. Lurking in the background—most often in the minds of those who favored paper money—was a belief that *anything* the government legally calls "money" has value, if only it is able to: (1) attract loans and sustain good credit for the sovereign issuer, and (2) ensure that lenders will not cut off additional borrowing, especially during wartimes. We will refer to this as the "public credit" perspective on the "value of money."

161. *See* United States in Congress, *On a Report of the Board of Treasury* (Aug. 8, 1786), LIBR. CONG., https://www.loc.gov/resource/bdsdcc.19801/?st=text [https://perma.cc/SRJ8-55G3] (explaining the fixed components of the dollar).

162. Jefferson, *supra* note 10.

163. *Id.*

164. Letter from Robert Morris to Thomas Jefferson (May 1, 1784), *in* 7 THE PAPERS OF THOMAS JEFFERSON, *supra* note 10, at 189, https://founders.archives.gov/documents/Jefferson/01-07-02-0151-0006 [https://perma.cc/MF7F-KAJT].

165. ARTICLES OF CONFEDERATION of 1781.

Alexander Hamilton, whose unparalleled influence on the constitutional Dollar will be described subsequently, held a public credit perspective on money value. Hamilton was a camp-de-aide (reporting military officer) to General George Washington throughout the Revolutionary War. He and his brothers-in-arms suffered the dire inability time and again to acquire necessary items to wage war.[166] Naturally, money was how many supplies and other military advantages were acquired—for example, when Washington recruited spies, they expected payment in silver.[167] Often lacking money, troops had to resort to inefficient barter, even for shoes.[168] Yet Hamilton concluded that the army's material poverty and supply problems were due not just to a lack of money with "intrinsic value," but rather the lack of Patriots' *good public creditworthiness* that limited funding from foreign and domestic lenders and supporters.[169] Hamilton concluded from his military experiences that a successful government should not concern itself firstly with the acquisition and regulation of money. Rather it should concentrate on securing its creditworthiness, which is particularly necessary in inevitable wartimes, through whatever means necessary.[170]

Hamilton was a pragmatic opportunist who saw that the Constitution's ratification offered a unique moment in which to resurrect America's wretched[171] public creditworthiness based only on America's new, improved political reputation. William Short, whom Hamilton and George

166. *See* Letter from George Washington to the Board of War (Sept. 14, 1778), *in* 16 THE PAPERS OF GEORGE WASHINGTON 1 JULY–14 SEPTEMBER 1778, at 604 (David R. Hoth, ed., 2006), https://founders.archives.gov/documents/Washington/03-16-02-0645 [https://perma.cc/2JJX-WF7F] (describing monetary issues among the troops).

167. Letter from George Washington to Robert Morris (Dec. 30, 1776), *in* 7 THE PAPERS OF GEORGE WASHINGTON 21 OCTOBER 1776–5 JANUARY 1777, at 489 (Philander D. Chase, ed., 1997), https://founders.archives.gov/documents/Washington/03-07-02-0382 [https://perma.cc/C3PH-WZZM] ("We have the greatest Occasion at present for hard Money, to pay a certain set of People who are of particular use to us. . . Silver would be most convenient.").

168. *See* Letter from George Washington to the Board of War (Sept. 14, 1778), *supra* note 166 (detailing economic hardships of the troops).

169. For example, in Federalist 85, Hamilton referred to the "foundations" of America as "property *and credit*." THE FEDERALIST NO. 85, *supra* note 39, at 453 (emphasis added).

170. *See* Edling, *supra* note 29, at 295 (summarizing multiple Hamiltonian correspondences linking battlefield success with good public credit).

171. *See* Letter from Alexander Hamilton to Robert Morris (April 30, 1781), *in* 2 THE PAPERS OF ALEXANDER HAMILTON, *supra* note 94, at 604, https://founders.archives.gov/documents/Hamilton/01-02-02-1167 [https://perma.cc/M4TN-SSRA] ("It is palpable that the people have lost all confidence in our public councils, and it is a fact of which I dare say you are as well apprised as my self, that our friends in Europe are in the same disposition. I have been in a situation that has enabled me to obtain a better idea of this than most others . . . .").

Washington had authorized to renegotiate America's debts to France, exuberantly wrote Hamilton from Paris in 1791 that "the U.S. have an entirely new ground to begin on" in creating money.[172] Hamilton himself believed that the Constitution had vested Congress with all sovereign money powers.[173] His only perceived limitation on Congress's use of these many powers was that Congress had to ensure "the *effectual* administration of the finances of the United States,"[174] which in Hamilton's mind equated to maintaining good public creditworthiness and only secondarily owning and controlling lots of silver and gold.

As far back as John Dickinson's first draft of the Articles of Confederation in 1776, most Founders expressed desire to pay back the country's debts in full with silver and gold specie.[175] Yet most states failed

172. Letter from William Short to Alexander Hamilton (Aug. 23, 1791), *in* 9 THE PAPERS OF ALEXANDER HAMILTON AUGUST 1791–DECEMBER 1791, at 97 (Harold C. Syrett, ed., 1965), https://founders.archives.gov/documents/Hamilton/01-09-02-0080 [https://perma.cc/MMG6-GJS3].

173. Hamilton wrote:

> The very general power of laying [and] collecting taxes [and] appropriating their proceeds—that of borrowing money indefinitely—that of coining money [and] regulating foreign coins—that of making all needful rules and regulations respecting the property of the United States—these powers combined, as well as the reason [and] nature of the thing speak strongly this language: That it is the manifest design and scope of the constitution to vest in congress all the powers requisite to the effectual administration of the finances of the United States. As far as concerns this object, there appears to be no parsimony of power.

Alexander Hamilton, Final Version of an Opinion on the Constitutionality of an Act to Establish a Bank (Feb. 23, 1791), *in* 8 THE PAPERS OF ALEXANDER HAMILTON FEBRUARY 1791–JULY 1791, at 97 (Harold C. Syrett, ed., 1965), https://founders.archives.gov/documents/Hamilton/01-08-02-0060-0003 [https://perma.cc/S9FY-RHU8].

174. *Id.* (emphasis added).

175. Dickinson scrawled on the margin of his July 12, 1776 Articles' draft: "Q. If no Notice should be taken of the Bills already emitted, and if there should not be a Contract to contribute in due Proportion towards sinking them?" Articles of Confederation and Perpetual Union (July 12, 1776), *supra* note 35. Dickinson's musing was later incorporated into the formal Articles as Article XII*:*

> All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLES OF CONFEDERATION OF 1781, art. XII; *see also* Letter from Elbridge Gerry to John Adams (May 5, 1780), *in* 9 THE ADAMS PAPERS MARCH 1780–JULY 1780, at 273 (Gregg L. Lint & Richard Alan Ryerson, eds., 1996), https://founders.archives.gov/documents/Adams/06-09-02-0162 [https://perma.cc/9TRF-9V4E] ("I had forgot to mention a Resolution of Congress to pay off the Continental Certificates according to the Value of Money at the Time of their being respectively issued. This is but Justice, and will undoubtedly be satisfactory to Foreigners.").

themselves to pay back creditors for state-issued debts, and the federal government lacked adequate revenue from states and citizens to pay its debts. Washington complained in 1780, "One state will comply with a requisition of Congress—another neglects to do it—a third executes it by halves—and all differ either in the manner—the matter—or so much in point of time, that we are always working up hill, [and] ever shall be . . . ."[176] Hamilton and Morris's joint attempts to collect impost taxes from Americans to cover the national government's debts had failed spectacularly in 1781[177] and 1783.[178] In fact, Hamilton believed that the primary reason the Founders called the Constitutional Convention in 1787 was to authorize a federal tax collection system to pay back American debt.[179]

Hamilton's primary concern was not ensuring America's creditors immediately got back true "intrinsic value" for their worthless Continentals and state paper money.[180] He was not opposed to full payment if the opportunity existed; indeed he gladly authorized gold and silver payments in 1795 as those resources became available to the U.S. government in the then-prosperous U.S. economy.[181] But Hamilton foremost wanted America to gain appearance of good public creditworthiness—regardless of whether that creditworthiness was (partially) verisimilitude or instead deserved owing to full debt repayment in gold and silver specie—so that debtholders and

176. Letter from George Washington to Joseph Jones (May 31, 1780), *in* 26 THE PAPERS OF GEORGE WASHINGTON 13 MAY–4 JULY 1780, at 272 (Benjamin L. Huggins & Adrina Garbooshian-Huggins, eds., 2018), https://founders.archives.gov/documents/Washington/03-26-02-0180 [https://perma.cc/XX7G-DAUQ].

177. *See* Letter from Alexander Hamilton to Robert Morris (April 30, 1781), *supra* note 171 (stating in his remarks on the proposed Articles 14 and 15 that Congress "must demand an instant, positive and perpetual investiture of an impost on trade, a land tax and a poll-tax to be collected by their own agents . . . It is essential that all taxes should be raised throughout the United States in specie, or bank notes at par, or the old paper at its current [lesser] value at the time of payment.")

178. *See* James Madison, *Report on Restoring Public Credit* (March 6, 1783)), *in* 6 THE PAPERS OF JAMES MADISON JANUARY 1, 1783 THROUGH APRIL 30, 1783, at 311 (William T. Hutchinson & William M.E. Rachal ed., 1969), https://founders.archives.gov/documents/Madison/01-06-02-0100 [https://perma.cc/XRX3-LL39] ("Resolved that it be recommended to the several States as indispensably necessary to the restoration of public credit and the punctual & honorable discharge of the public debts . . . .").

179. Alexander Hamilton, New York Ratifying Convention, *Notes for Second Speech of July 17* (July 17, 1788), *in* 5 THE PAPERS OF ALEXANDER HAMILTON JUNE 1788 THROUGH NOVEMBER 1789, at 173 (Harold C. Syrett ed., 1962), https://founders.archives.gov/documents/Hamilton/01-05-02-0012-0073 [https://perma.cc/A5JF-8KKZ] ("Impost begat Convention.").

180. Letter from Alexander Hamilton to Robert Morris (April 30, 1781), *supra* note 171.

181. *Id.*

prospective creditors would be willing to lend to the U.S. government *again*.[182]

Like the intrinsic value theorists, Hamilton believed that a sustainable government had to create valuable money.[183] But the Hamiltonian view of "valuable money" was a combination of precious metal specie assets, taxable property and goods readily convertible to money, *and* revolving debt. In Federalist No. 30, Hamilton wrote, "[W]e are sure the resources of the community, in their full extent, will be brought into activity for the benefit of the union . . . [but] whatever deficiencies there may be, can without difficulty be supplied by loans."[184]

Hamilton's public credit method for establishing the "value of money" was seen by some as outright dangerous. As Hamilton's public credit plan and motive unfurled in the early 1790s, George Mason wrote, alarmed, to Thomas Jefferson: "Hamilton [has] done us more injury than Gr. Britain & all her fleets & armies."[185] Edling also noted:

> In the congressional debate on [Hamilton's] "Report on Public Credit," Michael Jenifer Stone rejected all [public credit] funding systems as "monuments of the folly and vice of mankind" precisely because they made nations able to wage war. They gave a government without "money of its own" the ability to pursue "mad schemes of ambition" and "the means of purchasing soldiers, of shedding the blood of their neighbors, and of cutting many more throats than they would otherwise be able to do.[186]

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182. Hamilton's belief in the primacy of a sovereign's "good appearance" over actual fiscal responsibility seemed to pervade his political philosophy, even early in his political life. *See* Letter from Alexander Hamilton to James Duane (Sept. 3, 1780), *supra* note 94 ("Men are governed by opinion; this opinion is as much influenced by appearances as by realities; if a Government appears to be confident of its own powers, it is the surest way to inspire the same confidence in others; if it is diffident, it may be certain, there will be a still greater diffidence in others, and that its authority will not only be distrusted, controverted, but contemned.").

183. THE FEDERALIST NO. 30, at 145–46 (Alexander Hamilton) (Gideon ed., 2001) ("Money is with propriety considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions.").

184. *Id.* at 149.

185. Notes of a Conversation with George Mason (Sept. 30, 1792), *in* 24 THE PAPERS OF THOMAS JEFFERSON, 1 JUNE–31 DECEMBER 1792, at 428 (John Catanzariti, ed., 1990), https://founders.archives.gov/documents/Jefferson/01-24-02-0387 [https://perma.cc/6L85-AZAE].

186. Edling, *supra* note 29, at 300 (quoting 12 MICHAEL JENIFER STONE, 12 DEBATES IN THE HOUSE OF REPRESENTATIVES 262 (Helen E. Veit et al., eds., 1994)).

Although always giving a token nod to Congress as the rightful sovereign authority over money affairs, Hamilton believed that creditors, particularly "our friends in Europe," would not trust a political entity like Congress to make wise decisions about money policy.[187] Instead, he reasoned to Morris in 1780, practical day-to-day administration and long-term policy goal setting should be "intrusted to [a few] individuals of established reputation and con⟨spicuous⟩ for probity, abilities and fortune."[188] Hamilton's sentiments were not necessarily driven only by his personal ambition for power (although he had such[189]). Benjamin Franklin too had acknowledged in 1780: "[Congress] is, as you well suppose not well skilled in Financing."[190] On the heels of the Coinage Clause's "blank check" that left legally unresolved what precisely was meant for Congress "to coin money and regulate the value thereof," someone competent would need to jump into the power void and establish constitutional money and a Money Unit. Hamilton, as Treasury Secretary, believed he was just that someone. But Thomas Jefferson, as Secretary of State, thought himself the better man for the (unofficial) job.

Hamilton perceived his aim as much bigger than just establishing a constitutional money; his task was establishing a holistic federal monetary system. Thus, he planned to turn his attention first to the matter of consolidating and restructuring the behemoth public debt, effectively under

187. *See* Letter from Alexander Hamilton to Robert Morris (April 30, 1781), *supra* note 171 ("I venture to assert, that the Court of France will never give half the succours to this Country while Congress holds the reins of administration in their own hands . . . .").

188. *Id.*

189. In 1792, Hamilton angrily responded to accusations that, as Secretary of the Treasury, he was secretly trying to erect an American monarchy. Letter from Alexander Hamilton to Edward Carrington (May 26, 1792), *in* 11 THE PAPERS OF ALEXANDER HAMILTON, FEBRUARY 1792 THROUGH JUNE 1792, at 426 (Harold C. Syrett ed., 1966), https://founders.archives.gov/documents/Hamilton/01-11-02-0349 [https://perma.cc/T3TY-LJGD]. He offered as rebuttal evidence that his personal government authority was so great that he could have achieved a monarchy had he truly wished:

> If I were disposed to promote Monarchy & overthrow State Governments, I would mount the hobby horse of popularity—I would cry out usurpation—danger to liberty &c. &c—I would endeavour to prostrate the National Government—raise a ferment—and then 'ride in the Whirlwind and direct the Storm.

Id.

190. Letter from Benjamin Franklin to Thomas Ruston (Oct. 9, 1780), *in* 33 THE PAPERS OF BENJAMIN FRANKLIN, *supra* note 61, at 390 (Barbara B. Oberg ed., 1997), https://founders.archives.gov/documents/Franklin/01-33-02-0331 [https://perma.cc/2XKA-PJLX].

his supervision with legislative support from Congress. In the Compromise of 1790, Hamilton convinced Jefferson to support Congressional legislation that would allow the federal government to assume responsibility for handling all state and federal debts, totaling around $80 million.[191] Hamilton accordingly prepared a *Report on Public Credit* in January 1790.[192] Only after creating such a public debt repayment plan, would he turn to the creation of a constitutional money to repay creditors and to use for government purchases. With some modifications, the First Congress acted on Hamilton's *Report* and passed the August 1790 Funding Act to handle consolidated federal and state public debt.[193]

Immediately after the Funding Act's passage, Hamilton published an anonymous letter to creditors in the *Gazette of the United States* (a Federalist Party newspaper), giving them assurances "By a Friend" of the astoundingly good news that "[our public debt] is to be paid to you not in new certificates, or paper money, but in actual gold and silver."[194] Therefore, the Funding Act held out the tantalizing lure to creditors of full repayment in money with intrinsic value. In reality, the Funding Act was effectively a subtly disguised and strategically timed public debt write-down, economically piggybacking on renewed optimism about America's political independence fueled by the Constitution's ratification.

Under the Funding Act and Hamilton's direction, all creditors were to be put on equal footing, whether original holders of paper money or speculators who in the late 1780s scooped up masses of devalued

191. Chris Meyers Asch, *The Grand Bargain on Debt that Made D.C. a Slave Capital*, WASH. POST (July 21, 2011) https://www.washingtonpost.com/opinions/the-founders-grand-bargain-on-debt-that-made-dc-a-slavery-capital/2011/07/18/gIQAN1fNSI_story.html [https://perma.cc/ZT7D-DY4E]; *see also* Jacob E. Cooke, *The Compromise of 1790*, 27 WM. & MARY QUART. 523, 523 (1970) ("The compromise was on two controversial issues, the location of the national capital, which Virginians fervently wished to be situated on the Potomac River, and the assumption of state debts, a measure which Hamilton regarded as an indispensable feature of the fiscal program he proposed in his Report on Public Credit . . . .").

192. Alexander Hamilton, Report Relative to a Provision for the Support of Public Credit (Jan. 9, 1790), *in* 6 THE PAPERS OF ALEXANDER HAMILTON, DECEMBER 1789–AUGUST 1790, at 65 (Harold C. Syrett ed., 1962), https://founders.archives.gov/documents/Hamilton/01-06-02-0076-0002-0001 [https://perma.cc/P2ET-7F6K].

193. Funding Act of 1790, ch. 34, § 1, 1 Stat. 138 (1790).

194. Address to the Public Creditors By a Friend (Sept. 1, 1790), *in* 7 THE PAPERS OF ALEXANDER HAMILTON, *supra* note 1, at 1, https://founders.archives/gov/documents/Hamilton/01-07-02-001 [https://perma.cc/6VGY-NDM4].

certificates.[195] Yet in practice debts to foreign creditors—namely Holland and France—were prioritized as senior; domestic debts were junior.[196] Additionally, despite Hamilton's anonymous pledge in the *Gazette*, there was no immediate realistic possibility of paying back debts with specie. Indeed, there was not yet a constitutional money. Moreover, the U.S. government was still assessing states' prior proportionate debt repayments so as to collect fair federal imposts.[197]

Possibly in contravention of the U.S. Constitution that had just banned federal paper money,[198] the Funding Act provided that "the domestic debt could be converted to new issues of [reduced interest rate] funded bonds. Three new types of bonds would be issued: 6% coupon bonds, deferred 6% coupon bonds, and 3% coupon bonds, all of which paid interest quarterly."[199] There was no maturity date for the bonds. And there was to be no interest paid on interest in arrears.[200]

Madison far back in 1779 had foreseen and cautioned against paper-for-paper debt swaps, "a piece of dexterity in finance, by *emitting loan-office certificates*, to elude the necessity of *emitting bills of credit*."[201] An exasperated Jefferson later expressed to President Washington that Hamilton's actions were just a scheme of switching one debt certificate for another and that Hamilton "wishes [the public debt] never to be paid, but always to be a thing wherewith to corrupt and manage the legislature."[202] Jefferson concluded, "I would wish the debt paid tomorrow."[203]

195. To Madison, setting speculators who purchased discounted certificates on par with original holders "seemed a blatant act of injustice, [because] the funding act disregarded the original holders' right to compensation." Edling, *supra* note 29, at 289.

196. Peter M. Garber, *Alexander Hamilton's Market Based Debt Reduction Plan* 19, (Nat'l Bureau of Econ. Rsch., Working Paper No. 3597, 1991), https://www.nber.org/papers/w3597 [https://perma.cc/KA4Y-RH7N]. Garber states: "Hamilton claimed there was general agreement on paying foreign debt on the precise terms of the contracts." *Id.* at 12 n.15.

197. Edling, *supra* note 29, at 289–90.

198. *See supra* Section III.

199. Garber, *supra* note 196, at 14.

200. *Id.* at 12.

201. Madison, *supra* note 93 (emphasis in original).

202. Edling, *supra* note 29, at 291 (quoting Letter from Thomas Jefferson to George Washington (May 23, 1792), *in* 23 THE PAPERS OF THOMAS JEFFERSON *supra* note 88, at 535).

203. *Id.* Jefferson's persistent efforts to convince Americans to pay their foreign war debts in full, particularly to the French, have gone less noticed among his many pursuits. *See* Editorial Note, *Proposals for Funding the Foreign Debt*, *in* 14 THE PAPERS OF THOMAS JEFFERSON, 8 OCTOBER 1788–26 MARCH, 1789, at 190 (Julian P. Boyd ed., 1958), https://founders.archives.gov/documents/Jefferson/01-14-02-0063-0001 [https://perma.cc/DUY4-SWB5] (containing Jefferson's proposals for paying the French Debt).

Economist Peter Garber has estimated the de facto amount of debt restructuring Hamilton's bonds accomplished.[204] Dutch loans, up to 1788, were given "100% of service payments as scheduled [and] French Loans [were] paid off at $.80/dollar."[205] For bond exchanges on domestic debts, Garber estimates the debt write-down was "$.49/dollar in [November] 1790" and "$.63[/dollar] in [January] 1791."[206] For the state debts, the value of bond exchange packages was "$.49/dollar [in 1790]," "$.63/dollar [in 1791]," and "$.91/dollar [in 1792]."[207] For creditors who decided *not* to exchange their previous debt certificates for the new bonds, there was a "[p]romise of interest payments for [one] year in 1791," but "[n]o provision for principal and cumulated arrears in [the] future; [and] [n]o interest on arrears."[208] Garber values the write-down of these "hold out" certificates at "$.49[/dollar] in [November] 1790" and "$.63[/dollar] in [January] 1791."[209] Thus, in practical terms the Funding Act wrote down up to half of the domestic debt. The write-down was opaque to many creditors because the offer was to exchange debt instruments with the new bonds "at par."[210] Hamiltonian emphasis on the appearance of good public credit had thus trumped Jeffersonian appeals to paying off public debts immediately in full (with what means, it is not clear).

With modern hindsight, it would be a mistake to share Jefferson's anxious sentiments that Hamilton intended to make the United States a permanent revolving public debt purveyor. True, in 1790 when Hamilton wrote his initial Report on Public Credit, historian Max Edling says Hamilton had hoped that "creditors would consent to new terms because as enlightened men they would realize that the original terms were not realistic."[211] But Edling concludes that Hamilton always had purposed to eventually restore the United States to a debt-free system, issue money with intrinsic value, *and* enjoying good public creditworthiness.[212] Indeed, Hamilton's pledges

204. Garber, *supra* note 196, at 37.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.* In 1795, the subscription offer was resurrected for another year. *Id.* at 15 n.19.

209. *Id.* at 37.

210. "While Hamilton's scheme did redeem the old debt 'at par' through the exchange, the value of this converted package was only 49 cents on the dollar on November 10, 1790." *Id.* at 16.

211. *See* Edling, *supra* note 29, at 312 (describing Hamilton's views on creditors and public debt in the United States).

212. Edling writes:

proved true; as the country began to prosper by 1795, Hamilton achieved a plan and path—ironically executed partly by President Thomas Jefferson—for the United States to nearly debt-free status in the 1800s.[213]

To summarize this Section, the founders at the Constitutional Convention did not clearly settle what the "value of money" is. In this void, there arose two competing views. The Hamiltonian view was that maintaining public credit in preparation for inevitable war was the paramount aim of any government money system.[214] For Hamilton, good public credit meant that "the value of money" had to become a flexible concept in that unique time of existentially dangerous levels of public debt inherited from different governments, as was the case in the early 1790s.[215] Importantly, Hamilton saw this "bending" of money value as a one-time event, not to be repeated. Even under the dire debt circumstances, he endorsed extinguishing debts with money that had "intrinsic value" (silver and gold specie). By 1795, he also repeatedly expressed his desire that the United States avoid ever again issuing future debt unbacked by specie, all to increase public creditworthiness.[216] By contrast, the Jeffersonian view was that the "value of money" is found in a specific medium (preferably silver or gold specie), a set weight and purity of that medium, and an immediate exchangeability for other valuable mediums of money (and perhaps

> [Hamilton] had declared a wish to "see it incorporated, as a fundamental maxim, in the system of public credit of the United States, that the creation of debt should always be accompanied with the means of extinguishment" . . . . It is true that the funding act did not supply such means[, but] George Washington asked Congress to adopt "a definite plan for the redemption of the public debt" in his annual message of 1794. As far as practicable, such a plan should place "credit on grounds which can not be disturbed" as well as "prevent that progressive accumulation of debt which must ultimately endanger all governments." In response to the [P]resident's message, Congress asked the Treasury [S]ecretary to work out a plan for debt redemption, and Hamilton . . . repeatedly declared . . . his wish to make American public credit "immortal" by avoiding the accumulation of debt.

Id. at 314–15, 319 (first quoting Report Relative to a Provision for the Support of Public Debt, *supra* note 192; then quoting George Washington, Sixth Annual Address, *in* 1 A Compilation of the Messages and Papers of the Presidents, 1789–1902, at 167 (James D. Richardson, comp., Washington D.C. 1905); and then quoting Alexander Hamilton, Report on a Plan for the Further Support of Public Credit (Jan. 16, 1795), *in* 18 THE PAPERS OF ALEXANDER HAMILTON JANUARY 1795–JULY 1795, at 56 (Harold C. Syrett, ed., 1973), https://founders.archives.gov/documents/Hamilton/01-18-02-0052-0002 [https://perma.cc/APU8-2S2V]).

213. *See* Edling, *supra* note 29, at 322–24 (depicting the rapid public debt paydown).

214. Hamilton, *supra* note 212.

215. *Id.*

216. *Id.*

foodstuffs). To Jefferson, the value of money should never change in service of public debt relief at the unjust expense of existing creditors.[217]

What I will show in the next section is precisely how the legally relevant aspects of constitutional money that we have discussed thus far (medium, denomination, and value) converge to form the most essential aspect of constitutional money (or any sovereign money): the Money Unit (Unit of Account).

VI. THE CONSTITUTIONAL DOLLAR: A MONEY UNIT

There has always been a human desire to have a "standard"—ideal money, whether imaginary or real and with "intrinsic value," against which to judge the value of and exchange rate to and between all other moneys. This standard is also called a "Money Unit" or "Unit of Account." God Himself offered Moses such a Money Unit 3,500 years ago. As I have written elsewhere:

> God attempted to establish the world's first moral [money unit], using silver as the [medium], the Sanctuary Shekel as the fixed measure of silver weight, and various requirements about how much silver, and under which circumstances, citizens were required or encouraged to give to his Temple, which functioned as the theocratic 'sharer of last resort' with the poor.[218]

Much of God's sensibilities about how to create an effective Money Unit were preserved in Blackstone's *Commentaries*:

> A [precious] metal is . . . the most proper for a common measure, because it can easily be reduced to the same standard in all nations; and every particular nation fixed on it it's own impression, that the weight and standard (wherein consists the intrinsic value) may both be known by inspection only.[219]

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217. *See* Letter from Thomas Jefferson to Alexander Hamilton (Jan. 24, 1791), *in* 18 THE PAPERS OF THOMAS JEFFERSON 4 NOVEMBER 1790–24 JANUARY 1790, at 460 (Julian P. Boyd, ed., 1971), https://founders.archives.gov/documents/Jefferson/01-18-02-0143-0004 [https://perma.cc/V7UR-GK3R] ("I very much doubt a right now to change the value [of money], and especially to lessen it. It would lead to so easy a mode of paying off their debts. Besides, the parties injured by this reduction of the value would have so much matter to urge in support of the first point of fixation.").

218. *See* Guzelian, *supra* note 55, at 231 (discussing the biblical and historical origins of humanity desiring an ideal standard of money).

219. BLACKSTONE, *supra* note 65, at *276.

In 1784, Thomas Jefferson was eager to introduce his unprecedented decimal denominations as fractions or multiples of the Money Unit[220] and proposed that Congress should identify the U.S. Money Unit as an averaged weight of various[221] circulations of the Spanish silver dollar (Piece of Eight). He reasoned:

> The Unit or Dollar is . . . the most familiar of all [coins] to the minds of the people. It is already adopted from South to North; has identified our currency, and therefore happily offers itself as an Unit already introduced. Our public debt, our requisitions, and their apportionments have given it actual and long possession of the place of Unit. The course of our commerce too will bring us more of this than of any other foreign coin, and therefore renders it more worthy of attention. I know of no Unit which can be proposed in competition with the Dollar, but the Pound. But what is the Pound?
>
> . . . .
>
> . . . [Robert Morris] states the old dollar as containing 376 grains of fine silver, and the new 365 grains. If the dollars circulating among us be of every date equally, we should examine the quantity of pure metal in each and from them form an average for our Unit.[222]

The Confederation Congress made attempts to set a U.S. Money Unit. In 1785, per Jefferson's and Morris's shared recommendation, it adopted the Dollar not just as a denomination but as the U.S. Money Unit.[223] In 1786, it then "fixed" the Dollar's (Money Unit's) weight as 375.64 "grains" of pure silver, with "eleven parts" pure silver ("fine") and "one part alloy."[224] By also simultaneously creating fixed-weight gold coin denominations, that Congress legislatively fixed a government conversion rate of 15.2533:1 between the Dollar's pure silver content and the crown gold content of any other coin denomination, foreign or domestic. But the Confederation

220. *See* Jefferson, *supra* note 10 (proposing fractional versions of the Money Unit due to their convenience).

221. As part of his larger interest in forming an official American system of weights and measures, over the course of more than a decade Jefferson carefully studied and recorded the weights and purities of circulating Spanish dollars. *See* Editorial Note, *Coinage and the Unit of Money*, *in* 18 THE PAPERS OF THOMAS JEFFERSON, *supra* note 217, at 454, https://founders.archives.gov/documents/Jefferson/01-18-02-0143-0001 [https://perma.cc/E5ZW-RDU8] (discussing Thomas Jefferson's "report on weights and measures," which included detailed information about the Spanish dollar).

222. Jefferson, *supra* note 10.

223. *A Century of Lawmaking For a New Nation*, *supra* note 25.

224. *On a Report of the Board of Treasury*, *supra* note 161.

Congress lacked the clear constitutional authority to establish a Money Unit, and never got around to minting any actual coinage.[225] Still, federal monetary inertia had been overcome, and seeds were planted in the Founders' minds that a U.S. money unit could be articulated and maintained and that actual coinage could, in theory, be minted according to the Unit's legislated specifications.

Even though the Constitutional Convention gave Congress authority to establish a Money Unit, Farrand's *Records* reveals only a few Founders' mentions of the "Dollar" during the Convention. In the times the Dollar was mentioned, none was in the context of fixing the Dollar as a Money Unit or regulating its value. Similarly, the Founders at the Convention never invoked the understood terms "Money Unit" or "Unit of Account." Therefore, just as for the medium, denomination, and value of money, it is reasonable to conclude that the Constitution granted Congress a "blank check" to establish the constitutional Money Unit (but not reasonable to conclude, as shall be shown, that Congresses could treat it as a floating, amendable standard).

On January 8, 1790, even before Rhode Island had ratified the Constitution, the first constitutionally elected President, George Washington, addressed the first constitutionally elected U.S. Congress in Washington's first annual "State of the Union." In that speech, Washington said, "Uniformity in the Currency, Weights[,] and Measures of the United States is an object of great importance, and will I am persuaded be duly attended to."[226]

After Washington's first State of the Union, Thomas Jefferson drafted a *Report on Weights and Measures* for the Congress in July 1790.[227] The Report was mostly an updated recount of his long-running experiments to create a standardized, comprehensive, decimal-based measuring system that he fervently hoped Congress would adopt.[228] Jefferson still saw "the Money

225. *See* U.S. CONST. art. 1, § 1 (referring to the lack of constitutional authority the Confederation congress possessed in establishing a Money Unit).

226. George Washington, First Annual Message to Congress (Jan. 8, 1790), *in* UNIV. VA. MILLER CTR., https://millercenter.org/the-presidency/presidential-speeches/january-8-1790-first-annual-message-congress [https://perma.cc/U9SL-FG99].

227. Jefferson, *supra* note 140; *see also Report on Weights and Measures*, *supra* note 150 (providing historical context for Jefferson's *Report*). The Constitution permits Congress to "fix the Standard of Weights and Measures." U.S. CONST. art. I, § 8, cl. 5. Jefferson always hoped Congress would adopt his system formally, but it never did.

228. Jefferson, *supra* note 140.

unit, or Dollar of the U.S."[229] as a natural part of his comprehensive American system of weights and measures. As such, his Report proposed a slightly more valuable U.S. Dollar than he or the Confederation Congress had sought in the 1780s (then, 375.64 grains). Jefferson noted his Money Unit would permit minting actual Dollar coins weighing exactly one ounce, that is, 410.7 grains (a geometric nicety as "the weight of a cubic inch of rain-water").[230] He wanted other denominations to remain the same: "The series of Mills, Cents, Dimes, Dollars[,] and Eagles to remain as already established [in 1786]."[231]

Jefferson recognized the legislated 1786 value as valid because the French *Encyclopedie* reported that the Spanish dollar minted before 1772 contained a nearly equivalent 376.72824 pure grains.[232] Jefferson noted, "It is evident that when the American debt was contracted the idea of a dollar in America must have been that of the [pre-1772 Spanish dollar, as that Spanish dollar] of 1772 could not have been yet so much circulated here as to have reduced the public opinion to it as a [Money Unit]."[233] Jefferson observed that the Spanish government had reduced the pure silver value of the Spanish dollar starting in 1772 to 370.95548 grains.[234] As such, he was consistently adamant that the considerable public debt, issued mostly through paper money, supposedly redeemable in Spanish dollars, should be paid back in coinage with a value approximate to the pre-1772 Spanish dollar (that is: 376.72824 grains). He said: "[T]he Spanish Dollar previous to 1772 which was the one we were generally acquainted with when we contracted our debt (for the subsequent ones could not then have come into general circulation) and was therefore the honest measure of that debt."[235]

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229. *Id.*

230. *Id.*

231. *Id.*

232. Memorandum from Thomas Jefferson to James Monroe (after Dec. 21, 1791), *in* 27 THE PAPERS OF THOMAS JEFFERSON 1 SEPTEMBER–31 DECEMBER 1793, at 809 (John Catanzariti, ed., 1997), https://founders.archives.gov/documents/Jefferson/01-27-02-0766 [https://perma.cc/5P3L-WFAN].

233. *Id.*

234. *Id.*

235. Memorandum from Thomas Jefferson to James Monroe (before April 4, 1792), *in* 27 THE PAPERS OF THOMAS JEFFERSON, *supra* note 232, at 818, https://founders.archives.gov/documents/Jefferson/01-27-02-0782 [https://perma.cc/GV49-J73M].

Despite the *Report*'s widespread acclaim, including George Washington's and Alexander Hamilton's support,[236] it led to no legislation in the First Congress (or any subsequent Congress).[237] President Washington again visited the First Congress on December 8, 1790, for his Second State of the Union. Again, he stressed that "[t]he establishment . . . of a mint [and] of standards of weights and measures . . . are subjects which (I presume) you will resume of course, and which are abundantly urged by their own importance."[238] Immediately thereafter, in January 1791, at the First Congress's request, Alexander Hamilton prepared and submitted his own *Report on Establishing a Mint*.[239] In the *Mint Report*, Hamilton also proposed a U.S. Money Unit, which differed from Jefferson's proposal in several respects.[240]

As noted in the previous discussion of the constitutional value of money, "Hamilton's belief in the primacy of a sovereign's 'good appearance' over actual fiscal responsibleness seemed to pervade his political philosophy, even early in his political life."[241] Thus, of great interest to Hamilton in establishing a U.S. Money Unit and American denominations was giving them uniquely American names:

> The denominations of the silver Coins contained in the Resolution of the 8th. of August 1786[] are conceived [by me] to be significant and proper. The dollar is recommended [by me] by its correspondency with the present [Spanish] coin of that name, for which it is designed to be a substitute; which will facilitate its ready adoption as such in the minds of the Citizens. . . .

236. *See* Jefferson, *supra* note 140 (discussing the popularity and support the report generated); *see also Report on Weights and Measures*, *supra* note 150, at 602 (attesting to Washington's endorsement of Jefferson's report).

237. In 1795, a bill based on Jefferson's weights and measures passed the House of Representatives on President Washington's recommendation, but it was not advanced in the Senate. *See* C. Doris Hellman, *Jefferson's Efforts towards the Decimalization of United States Weights and Measures*, 16 ISIS 266, 302–04 (1931) (detailing how the House introduced and "engrossed" the bill before it "fell by the wayside" in the Senate).

238. George Washington, Second Annual Message to Congress (Dec. 8, 1790), *in* UNIV. VA. MILLER CTR., https://millercenter.org/the-presidency/presidential-speeches/december-8-1790-second-annual-message-congress [https://perma.cc/SM9R-8G2N].

239. Hamilton, *supra* note 1.

240. *Id.*

241. *See* Letter from Alexander Hamilton to James Duane (Sept. 3, 1780), *supra* note 94 ("Men are governed by opinion; this opinion is as much influenced by appearances as by realities; if a Government appears to be confident of its own powers, it is the surest way to inspire the same confidence in others; if it is diffident, it may be certain, there will be a still greater diffidence in others, and that its authority will not only be distrusted, controverted, but contemned.").

> Perhaps it might be an improvement to let the dollar have the appellation either of Dollar or Unit (which last will be the most significant) and to substitute "tenth" for disme. In time, the Unit may succeed to the Dollar.[242]

What appearances-driven Hamilton sought foremost were ways to enhance creditor confidence in America's public creditworthiness. Four months earlier, he had anonymously promised to pay back public creditors "not in new certificates, or paper money, but in actual gold and silver."[243] Frankly, most creditors holding Continentals or other paper money certificates might conceivably been happy to exchange them for any assayed denomination of gold or silver coin, domestic or foreign (as Spanish dollars were). But now Hamilton had a chance to persuade Congress to: (1) to give American names to (a) the Money Unit and (b) gold, silver, and copper denominations, and (2) to actually mint American coins. Hamilton saw Money Unit legislation as his opportunity to market an enduring American money "brand" that would increase creditor confidence in the U.S. government. Piggybacking on the name of the universally circulating Spanish dollar (with a small "d") and knowing that most public creditors' paper money certificates called for redemption in Spanish dollars, calling the Money Unit a "Dollar" (with a big "D") suited Hamilton for the time being. Yet Hamilton had his sights set higher: introducing an entire brand line of American denominations based on a unique, American money unit standard (eventually to be called the "Unit," presumably to eliminate public remembrance of the Dollar's Spanish heritage).[244] For example, besides proposing to rename the "disme" a "tenth," the *Mint Report* contains Hamilton's brand marketing sentiments on the $10 "Eagle" denomination: "The Eagle . . . is not a very expressive or apt appellation for the largest gold piece, but nothing better occurs,"[245] and the "Cent": "The word Cent being in use in various transactions and instruments will without much difficulty be understood as the hundredth, and the half Cent of course as the two hundredth part."[246] Surely Hamilton had in mind the possibility that once he had extinguished the public debt, public creditor confidence would soar,

242. Hamilton, *supra* note 1.

243. Address to the Public Creditors by a Friend (Sept. 1, 1790), *supra* note 194.

244. *See* Hamilton, *supra* note 1 ("[F]oreign Coins may be *divested* of the privilege [to be a Monetary Unit], they have hitherto been permitted to enjoy, and may of course be *left* to find their value in the market, as a raw material.").

245. *Id.*

246. *Id.*

and the Dollar as both Money Unit and denomination, and other American denominations, "nomenclaturally" independent of Spain just as America was now politically independent of Britain, would become the new brand names of household money and the monetary envy of the nations.

As far back as 1784, Jefferson insisted on a single medium for the Money Unit: the "Dollar itself, of silver."[247] In this sentiment, Jefferson and Robert Morris, who would soon shepherd the Coinage Act of 1792 through Congress, were aligned, as Morris had written, "There can be no doubt . . . that our Money Standard ought to be affixed to Silver."[248] On the other hand, Hamilton's belief, influenced heavily by his reading of British economist James Steuart, was that gold has greater intrinsic value than silver owing to gold's greater market price stability.[249]

In furtherance of gold, and showing his dexterity with nomenclatural flexibility, Hamilton's *Mint Report* used a subtle naming ploy, intentionally conflating "Dollar" (as a denomination of real U.S. coin) with "Dollar" (as the *Money Unit*, which is usually reduced to a real coin with denomination and medium, but need not be). Hamilton, unlike the 1786 Confederation Congress or Jefferson, proposed minting *two* actual coins—one gold and one silver, each with 1/12 proportion of copper alloy—both bearing the same denominational name, "Dollar."[250] Yet Spanish dollars had never in their history been anything but silver. The Spanish gold coin of closest value was the *escudo*, worth approximately two Spanish (silver) dollars.[251] Thus, Hamilton had proposed a denominated coin that his contemporaries probably considered the coinage equivalent of a "pink elephant": a gold Dollar.

In specifying a "gold Dollar" coin, Hamilton's linguistic legerdemain gained him the opportunity to "backfill" the value of the Dollar Money Unit to involve not just a pure silver weight, as Jefferson had done, but also a pure gold weight. This was not happenstance; it was calculated Hamiltonian money politics. Hamilton wanted American gold coins to have the same, or better, legal tender status as American silver coins.[252] He was most likely

247. Jefferson, *supra* note 10.

248. Letter from Robert Morris to the President of Congress (Jan. 15, 1782), *supra* note 122.

249. Hamilton, *supra* note 1.

250. *Id.*

251. *See* W. A. SHAW, THE HISTORY OF CURRENCY: 1252–1894, at 392 (3d ed. 1896) (describing how the most recent Spanish recoinage before the Coinage Act of 1792 established roughly this ratio between gold Escudos and Spanish dollars).

252. Hamilton, *supra* note 1 ("[I]t is not explained, whether either of the two species of Coins, of Gold or Silver, shall have any greater legality in payments, than the other."); *see also* Guzelian, *supra*

to achieve this if gold were "the," or at least "a," Money Unit medium.[253] Thus, Hamilton said, "The Secretary is upon the whole strongly inclined to the Opinion, that a preference ought to be given to neither of the Metals for the money unit['s] [medium]: Perhaps if either were to be preferred, it ought to be Gold rather than silver."[254] Hamilton admitted that circulating both gold Dollar and silver Dollar coins would result in "*occasional* variations in the unit, from the fluctuations in the relative value of the metals,"[255] but concluded that leaving debtors legally unable to compel creditors to accept repayment in gold "would probably be a greater evil[,] . . . especially if care be taken to regulate the proportion between [gold and silver Dollar coins], with an eye to their average commercial value."[256] Further, Hamilton reasoned that bimetallic standards empirically provide for greater price stability for both metals.

Finally, Hamilton's *Mint Report* departed from Jefferson's *Weights and Measures Report* in their respective proposals for the Money Unit's value (i.e. weight of silver or gold). A "pennyweight" of gold was 24.5 grains and Hamilton observed that gold coinage based on such weights had not been frequently debased (in any event, less so than silver coinage). As such, he believed setting 24.5 grains of pure gold as a Unit's value was appropriate. Hamilton also suggested a pure silver Unit value of 371.25 grains (that is, the Unit's silver value was proportionate to the Unit's gold value at 15:1).[257] Jefferson had proposed 376 grains of pure silver, so Hamilton's silver Unit value was 1.2% less. The implications of the difference were clear to both Jefferson and Hamilton: a U.S. Dollar with less value would enable Hamilton to wipe out more public paper debt with less actual silver, while still honoring Hamilton's pledge to pay back the debts with precious metals. Hamilton in his *Mint Report* elliptically hinted to Congress that Jefferson's

note 19, at 61–67, 81, 84, 90 (detailing how gold and silver were replaced over time as legal tender by paper dollars and the catastrophic and deadly social effects of such fiat legal tender paradigms).

253. Hamilton, *supra* note 1 ("If each of them be as valid as the other, in payments to any amount, it is not obvious, in what effectual sense, either of them can be deemed the money unit, rather than the other.").

254. *Id.*

255. *Id.* (emphasis added).

256. *Id.*

257. Hamilton referenced that Isaac Newton in 1717 had estimated the exchange rate between silver and gold at "14 4/5 or 15 to 1," and Hamilton's *Mint Report* surveyed many contemporary European countries' exchange rates for precious metals to show that the value ratio had changed little since Newton in the ensuing seventy years. Hamilton concluded that the metals should be fixed in a 15:1 ratio for the U.S. Money Unit. *Id.*

376-grain proposal would make debt restructuring and restoration of public credit more challenging:

> A recurrence . . . to the ancient [pre-1772 Spanish] Dollar would be in the greatest number of cases an innovation *in fact*, and in all, an innovation in respect to opinion. The [post-1772 Spanish] dollar, in common circulation, has evidently a much better claim to be regarded as the actual money unit. . . . [T]o make such an augmentation [as Jefferson's 376 grain proposal] would be to abandon the advantage of preserving the identity of the [currently circulating, post-1772 Spanish] dollar, or to speak more accurately of having the proposed [371.25 grain U.S. Dollar] received and considered . . . .[258]

An alarmed Jefferson wrote Hamilton days after the *Mint Report* became available. His letter in part stated:

> . . . With respect to the dollar, it must be admitted by all the world that there is great incertainty in the meaning of the term, and therefore all the world will have justified Congress for their [1786] act of removing the incertainty by declaring what they understood by the term. But the incertainty once removed, exists no longer, and I very much doubt a right now to change the value, and especially to lessen it. It would lead to so easy a mode of paying off their debts. Besides, the parties injured by this reduction of the value would have so much matter to urge in support of the first point of fixation. Should it be thought however that Congress may reduce the value of the dollar I should then be for adopting for our unit, instead of the dollar, either one ounce of pure silver, or one ounce of standard silver, so as to keep the unit of money a part of the system of measures, weights and coins.[259]

I did not find a direct reply by Hamilton. The First Congress ended on March 4, 1791, not acting on the topic. The new Second Congress began to engage it promptly. By Fall 1791, a Senate committee chaired by Robert Morris began to prepare a draft of a Coinage Act. George Washington appeared before Congress to make his Third State of the Union on October 25, 1791. He spoke:

> The disorders in the existing currency, and especially the scarcity of small change, a scarcity so peculiarly distressing to the poorer classes, strongly recommend the carrying into immediate effect the resolution already entered

258. *Id.*
259. Letter from Thomas Jefferson to Alexander Hamilton (Jan. 24, 1791), *supra* note 217.

> into concerning the establishment of a mint . . . . An uniformity in the weights and measures of the country is among the important objects submitted to you by the Constitution, and if it can be derived from a standard at once invariable and universal, must be no less honorable to the public councils than conducive to the public convenience.[260]

Hamilton recounted to a confidante that immediately before Washington started speaking, Hamilton discovered that Madison had previously persuaded the President to link the two above paragraphs with wording that suggested a strong tie between the "invariable" weights and measures system and the Dollar Unit.[261] Hamilton explained the implications for debt repayment to Washington moments before the speech was distributed. Washington agreed with Hamilton to leave the paragraphs disjointed.[262] Still, Hamilton maintained he was acting in good faith and not debasing the currency by decoupling the Dollar from Jefferson's system of weights and measures (which carried with it a higher Dollar value): "[M]y propositions are to preserve the Dollar as the Unit, adhering to its present quantity of Silver, [and] establishing the same proportion of alloy in the silver as in the gold Coins."[263]

The Second Congress passed the Coinage Act on April 2, 1792, signed into law by President Washington instantly.[264] The Act provided that the Money Unit (called either a "Dollar" or a "Unit") would be a silver coin (not gold, as Hamilton had wished) valued at 371.25 grains pure silver (as Hamilton, not Jefferson, had wished), and with a copper-alloyed total weight of 416 grains standard silver (heavier than either Hamilton's proposed 405 grains or Jefferson's one ounce (410.7 grains)).[265] Other denominations of

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260. ANNALS OF CONG. 15 (1791) (Gales & Seaton eds., 1849).

261. Letter from Alexander Hamilton to Edward Carrington (May 26, 1792), *supra* note 189.

262. *Id.* Without specific focus on their separate Money Unit proposals, historian Max Edling comments that Jefferson suspected that Hamilton was directing general monetary policy treachery in Congress. Edling, *supra* note 29, at 291 ("According to Jefferson there existed a Treasury faction in Congress that followed every bid from the Treasury secretary."). Jefferson appears to have believed Hamilton had influenced Congress to raise the Dollar's alloy above what even Hamilton himself had proposed in his *Mint Report*. *See* Memorandum from Thomas Jefferson to James Monroe (after Dec. 21, 1791), *supra* note 232 ("Secy. Of Treasury makes 416. [. . .] wt. of 371. Fine & 45. Of base being ⅛ alloy. He adopts the […] of Spain. But that coin of Spn. Contained of fine 389.18 grs. More than his.").

263. Letter from Alexander Hamilton to Edward Carrington (May 26, 1792), *supra* note 189.

264. Coinage Act of 1792 § 9.

265. *Id.*

gold and silver were introduced, with the gold coins' pure gold content ratioed at 15:1 with the Dollar's pure silver.[266]

A distressed Jefferson wrote James Monroe, complaining: "the [Dollar's copper] is nearly 1/8 of the pure [silver] metal. There is not a country under the sun which has adopted so base a mixture for it's general standard."[267] Accepting legislative defeat to Hamilton's Money Unit value, Jefferson told Monroe Congress should amend the Act to reduce the alloy content, such that the total coin, albeit with less silver than he wished, would weigh exactly an ounce.[268] Jefferson also told Madison he hoped for "some future attempt to raise the [Dollar's] pure metal [value] . . . when the effect on the public debt shall be out of the question."[269]

While a coin's alloy proportion typically does not affect the coin's value, the additional alloy beyond both Jefferson's and Hamilton's proposed ratio of 1/12 raised the U.S. Dollar's gross weight to exactly that of the pre-1772 Spanish dollar, but with a lesser silver value of 371.25 grains, in comparison with that Spanish dollar's 376.72824. Thus, the U.S. Dollar coin was a monetary chimera: it had the value of the debased post-1772 Spanish dollar, but the weight of the valuable pre-1772 Spanish dollar. This cannot have been entirely accidental. As Jefferson believed, some creditors would want full repayment. Giving them lightweight U.S. coins would have been instantly recognized as a partial payment. A coin that felt as heavy as the pre-1772 Spanish dollar would obfuscate the fact that creditors were being only partially reimbursed.

Hamilton felt little trouble in promptly directing his subordinates to use the new U.S. currency to settle American public debts held by France.[270] His focus on restoring public credit using a less valuable coin than had originally been promised to public creditors had carried the day in Congress over Jefferson. Despite his assurances he was not doing so, Hamilton, in placing such nomenclatural weight on his pledge that creditors would be paid "in Dollars," blurred the line for some creditors between what they were getting: the value of the pre-1772 Spanish "dollars" (little "d") they

266. *Id.*

267. Letter from Thomas Jefferson to James Monroe (before Apr. 4, 1792), *in* 27 THE PAPERS OF THOMAS JEFFERSON, *supra* note 232, https://founders.archives.gov/documents/Jefferson/01-27-02-0782 [https://perma.cc/GV49-J73M].

268. *Id.*

269. Letter from Thomas Jefferson to James Madison (after Jan. 12, 1792), *supra* note 232.

270. Letter from Alexander Hamilton to Jean Baptiste de Ternant (June 23, 1792), *in* 11 THE PAPERS OF ALEXANDER HAMILTON, *supra* note 189, https://founders.archives.gov/documents/Hamilton/01-11-02-0465 [https://perma.cc/L9KR-ZV2B].

were owed, or the lesser value Congress gave them in the 1792 U.S. "Dollar" (Big "D"). But the Dollar remained only a silver standard as Jefferson and Morris wished, not bimetallic as Hamilton sought.

To sum up this chain of events in setting the U.S. Dollar as the U.S. Money Unit, I provide here a tabulated summary of Money Unit aspects contained in Jefferson's 1790 proposal, Hamilton's 1791 proposal, and Congress's 1792 Act:

Jefferson's 1790 Money Unit Proposal
(1) *Value*: 376.02985 grains of pure silver (2) *Denominational Exchangeability*: with gold and copper denominations, as per the 1786 Act (10 Dollars for 1 Eagle) (3) *Denominational Name*: "Dollar" or "Unit" but with small "d" or "u" emphasis (4) *Coin Medium*: 1 ounce (410.17 grains) of standard silver with 1/12 copper alloy (38.92 grains)

Hamilton's 1791 Money Unit Proposal
(1) *Value*: 24.75 grains of pure gold or 371.25 grains of pure silver (2) *Denominational Exchangeability*: with gold and copper denominations, as per the 1786 Act (10 Dollars for 1 Eagle), but at a 15:1 silver to gold exchange; additionally, there will be *both* gold Dollars and silver Dollars (3) *Denominational Name*: "Dollar" (with a big "D"), to become later the "Unit" (with a big "U") (4) *Coin Medium(s)*: (i) 27 grains of standard gold with 1/12 copper/silver alloy (2.5 grains) and (ii) 405 grains standard silver with 1/12 copper alloy (33.75 grains), but if forced to pick between silver or gold medium, choose gold

Second Congress's 1792 Money Unit

(1) *Value*: 371.25 grains of pure silver
(2) *Denominational Exchangeability*: with gold and copper denominations, as per the 1792 Act (10 Dollars for 1 Eagle)
(3) *Denominational Name*: "Dollar" and "Unit"
(4) *Coin Medium*: 416 grains standard silver with 1/9 copper alloy (44.75 grains)

VII. CONCLUSION

"*[When] may [we] trade wheat? Making the bushel small and the shekel large, Falsifying the scales by deceit . . . .*"

– Amos 8:5[271]

The Constitution's text mentions nothing about a Money Unit. According to Farrand's *Records*, the founders at the Convention did not discuss it. But the Second Congress in 1792 codified a United States Money Unit called the "Dollar" or "Unit" interchangeably.

Their Money Unit can be stated succinctly as: a Dollar (Unit) is 371.25 grains of pure silver, contained in a 416-grain, copper-alloyed coin.

Is this Money Unit constitutional? If one looks back over the sections of this article to understand the legally relevant aspects of money, one realizes Congress simply cannot invoke its Coinage Clause power to coin money(s) or regulate the value of money(s)[272] unless it first has some legal standard—

271. *Amos* 8:5.

272. From common law background understandings, it would be a mistake to understand Congress's power "to regulate the value of *money*" to mean that Congress can devalue a constitutionally valid U.S. *Money Unit*, once set. There is a constitutional distinction between "*regulation*" (identifying an actual piece of money's value, relative to the Money Unit's fixed intrinsic value) and "*devaluation*" (either overstating the value of an actual coin relative to the Money Unit or decreasing the intrinsic value of the Money Unit itself). Vieira gives examples, using the word "debase" in place of "devalue":

> [T]o "regulate the Value [of Money]" is distinct from the power to *debase* its "Value." For example, to "regulate the Value" of a silver coin means to compare the weight of pure silver it contains to the weight of pure silver in the [Money Unit], and to declare the coin's value in terms of that standard. Thus, if a silver coin contains 185-5/8 grains of fine silver, and the [Money Unit] "dollar" contains 371-1/4 grains of silver, then the "Value" of the former coin, properly

a Money Unit—against which to compare all other moneys or proposed moneys. Although the Constitution says nothing about a Money Unit, much less what would make one constitutional, establishing a constitutionally valid Unit is essential to creating money and could be thought of as "necessary and proper," incident to the Coinage Clause.[273] Therefore, any codified U.S. Money Unit *must* be constitutional. A constitutional Money Unit has a constitutional medium, intrinsic value, and denomination.

As evidenced in Sections IV and V, the most disputed question about the Money Unit at the constitutional founding was whether the "intrinsic value" of the codified 1792 Dollar (371.25 grains of pure silver) had been set too low. With about 230 years of hindsight, I say no. The 1792 Coinage Act simply set a permanent floor for the Money Unit's intrinsic value.[274] The explanation for this answer follows.

Many founders believed that any money or Money Unit must have "intrinsic value" to be constitutional. Because they believed paper money did not have intrinsic value, they constitutionally forbade it, both as a Money Unit and simply as a denomination. But for a Money Unit specifically, the issue of selecting an "intrinsic value" (or multiple values, as Hamilton would have had it)[275] was hotly contested, both because it was the standard by which all other moneys, foreign and domestic, would be established and because the issue came up at a time when the new American Republic was nearly the most indebted nation. There was no way to entirely separate considerations about a new sovereign Money Unit from its most likely

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> "regulate[d]", is one half of a "dollar[."] Conversely, to debase a silver coin means to declare its "Value" without proper reference to the [Money Unit], or to lower the silver content of the [Money Unit]. Thus, as possible instances of this practice, the hypothetical silver coin in the previous example would be debased if minted of only 150 grains of silver, yet declared to be one "dollar" [because it was never assayed]; or if minted of 185-5/8 [assayed] grains of silver, and [nevertheless] declared to be one "dollar", [because the intrinsic value of the Money Unit has been] decreased from 371-1/4 to 185-5/8 grains of silver.

VIEIRA, supra note 31, at 126. In addition, the Coinage Clause states that Congress has the power to regulate the value of "*money*" (meaning denominations), which is not the same thing as giving Congress the power to regulate the value of a *Money Unit* (which can, but need not, be reduced to a denomination such as an actual coin). U.S. CONST. art. I, § 8, cl. 5. Therefore, invoking the words "regulate" and "money" from the Coinage Clause to infer that Congress has constitutional authority to change the Dollar's Money Unit value is improper.

273. *Cf.* McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 353–54 (1819) (holding a national bank is "necessary and proper" to Congress's enumerated powers to borrow and spend money).

274. Coinage Act of 1792 § 9.

275. *See supra* Section V.

prospective contribution: establishing the relative value(s) of actual coin(s) used to pay back seemingly insurmountable public debt.

Thomas Jefferson represented the perspective that the Money Unit needed a larger weight of pure silver than what Congress settled on.[276] Nowhere did I find evidence that he believed the 371.25 grain Dollar was an unconstitutional Money Unit value. Perhaps he was pleased that Congress established the Money Unit only in silver rather than silver and gold (as Hamilton preferred). But regardless of any unreported concerns about its constitutionality, Jefferson and his friends had two objections to the 371.25 grain weight of the Dollar: one a moral and legal issue, the other more related to Jefferson's scientific passions.

Jefferson opined that the United States had to pay back in full the equivalent "intrinsic value" of the weight of silver promised in state and federal paper war money certificates to the public creditors who owned them.[277] To the Jeffersonians, the only "constitutionally" appropriate value of the Dollar was one that would extinguish the public debt Dollar-for-pre-1772-Spanish-dollar at a 1:1 ratio. By contrast, Hamiltonian authorities believed that contracts made decades prior (and before the U.S. Constitution's ratification) could not strictly dictate the constitutionally "appropriate" weights of pure silver, gold, or copper contained in U.S. moneys.[278] Second, Jefferson as a scientist wanted the Money Unit to fit with geometrical nicety within his decimal-based system of weights and measures. Given the amount of weight he believed the Dollar *morally* should have, enough to equal the sum pledged for existing public debts (around 376 grains), it would not be possible to create a 1-oz. Dollar coin without adding more alloy than peer nations like England and France did if the Money Unit's value lay at 371.25 grains.

By contrast, Alexander Hamilton valued the Dollar at both 24.5 grains of pure gold and 371.25 grains of pure silver.[279] Thus, Hamilton expanded the set of mediums with intrinsic value for a Money Unit to two metals. He proposed a lower weight than Jefferson for the Money Unit's pure silver, and Congress chose to value the Dollar at 371.25 grains of pure silver with a simultaneous alloy increase far beyond other countries' coinage. The

276. Jefferson, *supra* note 10.
277. *Id.*
278. Hamilton, *supra* note 173.
279. Hamilton, *supra* note 1.

evidence demonstrates both Hamilton and Congress did so primarily to ease public debt repayments.

There is no correspondence I located in which Jefferson expressed alarm that Hamilton's *Mint Report* had expanded the Money Unit's medium to include gold. This could be because Jefferson knew that Senator Robert Morris was shepherding the Coinage Act through Congress, that Morris favored silver as the exclusive Money Unit medium, and thus that Hamilton's proposal stood no serious legislative chance.[280] But Jefferson, Madison, and their compatriots did levy accusations that Hamilton and Congress were devaluing the American currency by setting the Money Unit silver grainage at 371.25. Hamilton denied this charge, primarily by pointing out (correctly) that the reduction in the dollar's silver weight standard had occurred twenty years earlier and that it was Spain (over which the United States had no control or serious monetary influence) that had passed a 1772 law to devalue its Money Unit.[281]

Both Hamilton and Jefferson and their respective factions agreed in principle that currency devaluation was very wrong (and presumably, that it was so wrong that it was unconstitutionally wrong). Indeed, in the very same *Mint Report* that first proposed a 371.25 grain silver Money Unit, Alexander Hamilton himself stressed that the intrinsic value of the Dollar (as a Money Unit) must be "uniformly preserved," which does not occur if it is being devalued:

280. Hamilton in his *Mint Report* had said, correctly, that the only difference between making gold a Money Unit medium and simply making gold coins exchangeable for the Dollar reduced to coin form, was that a gold Money Unit medium would give it *legal tender* status (compelling creditors to accept it). *Id.* In my research, I never saw Jefferson express sentiments one way or the other towards the tender status of gold, but the Constitution allows states to use either to pay their debts.

281. W.G. Sumner, *The Spanish Dollar and the Colonial Shilling*, 3 AM. HIST. REV. 607, 617–18 (July 1898). This 19th Century historian sympathized with Hamilton's position:

> [I]t was a great evil that the coin . . . of account . . . was manufactured by a foreign mint, which did not work accurately but could not be controlled by those whose interests were most affected. If the English authorities had better established a mint in the colonies, that step would have served their purpose much better than what [Hamilton and Congress] did, and it would also have tended against paper-money . . . .

Id. at 619.

> There is scarcely any point, in the economy of national affairs of greater moment, than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend.[282]

If Hamilton, in proposing to set the Dollar to 371.25 grains, had really intended that Congresses could devalue the Money Unit whenever they saw fit, his statement could be interpreted cynically, perhaps by likening him and the Second Congress to alcoholics who go to a bar and say, "This is our last drink, we promise." The fact that the Second Congress raised the U.S. Dollar's total weight to that of the pre-1772 Spanish dollar through the addition of an atypical amount of copper alloy adds to the suggestion that Hamilton and Congress were engaged in currency trickery.

Yet there is additional evidence that Hamilton thought the Money Unit value, once fixed, should stay fixed. Hamilton said that if Congress used the Money Unit's name change to "Dollar" (with a big "D") or "Unit" as cover to subsequently or continually weaken the standard's intrinsic value, Americans would figure out their debasement trick immediately as price inflation kicked in. In no country "are men less liable to be the dupes of sounds [than in America]—in none has authority so little resource for substituting names to things,"[283] he observed. And a National Archives editor concluded from his research that Hamilton always held a belief that the U.S. currency should maintain value:

> There is little information concerning the extent of Hamilton's earlier interest in currency matters. . . . [But] Hamilton's stand on two questions of importance for [his Mint] Report were clear-cut at least as early as 1784. Hamilton believed in the benefits of an expanding currency and of a currency [backed by] specie if not entirely composed of coin.[284]

There is also contextual evidence that the Second Congress and George Washington did not intend to allow Congress to devalue the Money Unit. The Coinage Act's § 19 stated that the death penalty applied to any United States Mint employee who debased or embezzled the actual coins of the new currency.[285] Although Elias Budonot, the first Mint Director, told George

282. Hamilton, *supra* note 1.

283. *Id.*

284. Introductory Note, *Report on the Establishment of a Mint* (Jan. 28, 1791), *in* 7 THE PAPERS OF ALEXANDER HAMILTON, *supra* note 1, https://founders.archives.gov/documents/Hamilton/01-07-02-0334-0001 [https://perma.cc/TCX3-LS93].

285. Coinage Act of 1792 § 19.

Washington in 1795 "[i]t has been the Opinion of the former Officers of the Mint, that the legal Standard for Silver should be reconsidered," Budonot also said that initial "small" deviations in minted coins from the 1792 Coinage Act specifications would be corrected because "the Director did not think himself justifiable in permitting *so important a Measure* to be continued, without Legislative Sanction."[286] And although subsequent Congresses occasionally changed the values and other specifications of gold and copper U.S. coins,[287] and even circulated a massive amount of unconstitutional U.S. paper money notes again in the 1860s at President Abraham Lincoln's directive,[288] they all had enough sense of the Dollar Unit's sacredness to leave its 1792 codification fixed and entirely untouched until 1873.[289]

Finally, had the Second Congress truly wanted to devalue the Dollar to "pay off" public debt as rapidly as possible, they could have lowered the Money Unit's silver grainage below 371.25 or the intrinsic value of the post-1772 Spanish dollar, arguing that they had Constitutional authority to make a "fresh start" in the matter. They did not and there is no evidence they even entertained the possibility. On the whole, I believe the historical evidence points to the conclusion that Hamilton and the Second Congress thought they were permanently fixing a floor, not a ceiling or flexible standard, for the U.S. Money Unit's intrinsic value. Jefferson and Madison too agreed that no further devaluations should occur. To the contrary, Jefferson thought that Congress possibly should allow a mint of a 1-ounce pure silver Dollar, nearly a 10% value increase over the *pre-1772* Spanish dollar.[290]

Still, we are left with a nagging issue. Hamilton and Jefferson, despite their larger-than-life influences on the U.S. Dollar's birth, were not Congressmen, nor the Constitution. And the Second Congress just

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286. Elias Budonot, *Enclosure: Report on the Mint* (Dec. 3, 1795), *in* 19 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES, OCT. 1, 1795 THROUGH MAR. 31, 1796, at 232–37, (David R. Hoth, ed., 2016) (emphasis added), https://founders.archives.gov/documents/Washington/05-19-02-0178-0001 [https://perma.cc/3ALE-XAX9].

287. *See, e.g.*, 37 ANNALS OF CONG. 1005–06 (1821), http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=037/llac037.db&recNum=499 [https://perma.cc/33FF-DAJK] (proposing Eagle value change).

288. *See* VIEIRA, *supra* note 31, at 561–692 ("Congress passed the legal-tender bill; and President Lincoln signed it into law. . . . Although in law 'payable to bearer', the Greenbacks were in fact irredeemable at the time, because the government had suspended specie payments.").

289. *See id.* at 458–71 (detailing passage of the Coinage Act of 1873).

290. Letter from Thomas Jefferson to Alexander Hamilton (Jan. 24, 1791), *supra* note 217.

happened to be the first Congress that got around to establishing a Money Unit. That Congress was not the permanent Congress. Does the Constitution prevent subsequent Congresses from devaluing a constitutional Money Unit legislated by a previous Congress? James Madison asked this best at the 1788 Virginia Convention on Ratification: "What [constitutionally] authorises us to conclude, that the value of coins will continue always the same?"[291]

To understand constitutionally impermissible "devaluation," one must first understand what gives a constitutional Money Unit "intrinsic value." Most founders believed a Money Unit's medium was a large part of what gave it "intrinsic value." I have repeatedly stated the claim that the founders made federal paper money unconstitutional. This was precisely because they well understood that giving a paper medium currency legal value relative to the Money Unit (and, even worse, legal tender status) decimated the Money Unit's value. The medium for the 1792 Dollar Money Unit was silver. I have located no individual in the entirety of my research of the founders' generation who disdained silver so greatly as a money medium that they personally refused to accept it as a form of monetary payment. (Even Benjamin Franklin, who expressly rejected the "intrinsic value" of silver, wrote plans for the federal government to collect tax revenue exclusively in silver.[292]) And God, Moses, and Isaac Newton all recognized silver as a money medium.[293] Thus, it is reasonable to say that standard silver is a, if not *the only*, constitutional medium for the U.S. Dollar as a Money Unit. True, one may ask: while the U.S. Constitutional Convention identified something that is *not* a constitutional money medium (paper), did the founders mean to make silver the *exclusive* constitutional Money Unit medium? Would gold Dollars, wooden nickels, or Central Bank Digital Currencies (CBDCs)[294] qualify? The founders would likely not have

291. 5 THE WRITINGS OF JAMES MADISON, *supra* note 151, at 188.

292. Letter from Benjamin Franklin to James Alexander and Cadwallader Colden with Short Hints towards a Scheme for Uniting the Northern Colonies (June 8, 1754), *supra* note 64.

293. *See generally* Guzelian, *supra* note 55 (examining the Judeo-Christian roots of money and its related ethical questions).

294. Could virtual currencies (e.g. Bitcoin) or central bank digital currencies (CBDCs) conform to constitutional requirements? Electricity did not exist in 1792, and some scholars suggest that proper constitutional interpretation accommodates significant societal change such as technological innovation. *See, e.g.*, Lawrence Lessig, *Fidelity in Translation*, 71 TEX. L. REV. 1165, 1166 (1993) (detailing whether different readings of the Constitution stay faithful to its original text). If CBDCs were introduced, my conclusion based on the founders' reasoning is that they would be unconstitutional if they further weakened the Money Unit's intrinsic value.

recognized such as having the intrinsic value as they considered silver to have. Indeed, the 1792 Congress rejected gold Dollars as a Money Unit. But a complete defense of this conclusion requires a rebuttal of the modern economic theory of subjective value and utility that casts doubt on the entire concept of money with "intrinsic value" that the founders held so dear.[295] That important discussion is beyond the scope of the present Article.

Whether the Money Unit is silver or another medium, its devaluation causes environmental damage and many people to become materially poorer (effectively, the devaluation is an unlawful taking of their property, because compensation will necessarily be unjust).[296] It was because of such harms that the early states, drunk on paper money issuance, were asked to constitutionally transfer their money powers to Congress. James Madison in *Federalist 44* cautioned in the context of removing the states' power to coin money that:

> Had every state a right to regulate the value of its coin, . . . *retrospective alterations in its value might be made*, . . . and hence the union be discredited . . . [Therefore]

295. There are multiple modern theories of "subjective" economic value that contend no material thing, including money, has "objective" or "intrinsic" value. Modern subjectivist economists would say the Second Congress's codified penchant for silver Dollars simply reveals early American politicians' extreme valuation of the metal (and commodity money over paper money). Those economists would lecture from their doctrinal playbook that advancements in economic science prove there is no "intrinsic" economic value of money, much less a specific weight of pure silver convertible at an unchanging ratio to gold or copper. Cambridge University economics Professor Joan Robinson criticized subjective utility as circular reasoning. Her mantra was: "Utility is the quality in commodities that makes individuals want to buy them, and the fact that individuals want to buy commodities shows that they have utility." JOAN ROBINSON, ECONOMIC PHILOSOPHY 48 (1962). And after a considerable review of the historical evidence, Vieira concludes that:

> [T]he Framers understood the constitutional 'Value' of 'Money' not as some plastic notion of worth subject to the vagaries of ever-changing political policies and officeholders' edicts, but rather as a concrete substance identical, in Blackstone's phrase, with 'the weight and standard (wherein consists the intrinsic value)' of an actual coin.

VIEIRA, *supra* note 31, at 124. Vieira observes further that "Congress so interpreted the Constitution in every monetary statute enacted from that document's ratification until the 1930s." *Id.* Finally, Vieira and notable economists define inflation as an increase in market prices attributable to the existence and spending of "money" other than silver and gold. *Id.* at 3–4. By that definition, paper or digital currency unbacked by silver inevitably "devalue" the dollar. Because of space limitations, further addressing subjective theories of value is something that needs to be taken up elsewhere. *Cf.* Guzelian, *supra* note 55, at 213 (equating the moral goodness of money to godly intentions); *see also* Guzelian, *supra* note 19, at 89–90 (presenting legal circumstances under which subjectivist theories of value and revealed preferences do not reflect an actor's true economic valuations).

296. *See generally* Guzelian, *supra* note 19 (detailing the "poverty and environmental" destruction the modern dollar causes).

> [t]he power to make any thing but [full value] gold and silver a tender in payment of debts, is withdrawn from the states on the same principle with that of issuing a paper currency.[297]

If Madison was right that it was wrong for states to devalue their money, why would giving Congress the ability to devalue the Money Unit be any more legal or just? If anything, the states by ratifying the Constitution gave Congress a permanent trustee power over the Money Unit.[298] For Congress to say, "we took this power because the states were devaluing their money and thereby irreparably damaging their citizens' well-being, but now we have the right to devalue it indiscriminately as we please" is an implausible interpretation of the Founders' constitutional intent.[299]

President John Adams, a Federalist Party compatriot of Hamilton and later a reconciled friend of Jefferson's, stressed near the end of his life that avoiding all currency devaluation—by coinage debasement, by paper money issuance, or by lessening the Money Unit's practical value through naming

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297. THE FEDERALIST NO. 44, *supra* note 39, at 231–32 (emphasis added).

298. Waite, then Governor of Colorado, wrote:

> When Congress in 1792 created a money unit for the United States and specified 371¼ grains fine silver as composing that unit and the American dollar, the trust given to Congress by the States to fix the value of the American dollar and of foreign coins was executed, and thenceforth neither the trustor (the States) nor the trustee (Congress) had any power whatever to recall or change the performance of the trust. . . . [T]hat greatest of constitutional lawyers, Daniel Webster, [said]: 'gold and silver, at rates fixed by Congress, constitute the legal standard of value in this country, and *neither Congress nor any State* has authority to establish *any other standard* or to *displace that standard*.'

Davis H. Waite, *Are the Silver States Ruined?*, 158 N. AM. REV. 24, 26–27 (1894).

299. The Supreme Court in 1935 was confronted with a citizen challenging Congress's right to pay him in paper currency in lieu of a contract he held on a U.S. gold bond. Among other arguments, the plaintiff contended he was owed gold, or in its place, the number of paper dollars redeemable for gold dollars in 1918 when the contract was struck, rather than 16 years later at bond maturity when paper dollars were worth nearly 60% less relative to gold. The Court majority without explanation simply wrote that the bondholder's argument was "untenable." Perry v. United States, 294 U.S. 330, 358 (1935). Only concurring Justice Harlan Stone explicitly claimed that the constitutional power "to regulate money" permits successive Congresses to devalue money. *Id.* at 360–61 (Stone, J., concurring). *Cf.* Legal Tender Cases, 79 U.S. (12 Wall.) 457, 553 (1870) ("The legal tender acts do not attempt to make paper a standard of value. . . . [N]or do we assert that Congress may make anything which has no value money. What we do assert is, that Congress has the 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, or to multiples thereof."). The fact that almost no Justices in the centuries since 1792 have opposed this Article's primary conclusion should lend to reason that the proper interpretation is that the Constitution prohibits—not authorizes—Congress from devaluing money.

trickeries—was indispensable for the "religion, morality, tranquility, prosperity, and even wealth of the nation."[300] Adams maintained steadfastly that a silver standard was an absolute necessity for a successful money system:

> I am old enough to have seen a paper currency anihilated at a blow in Massachusetts in 1750, and a silver currency takings its place immediately [and] supplying every necessity [and] every convenience I cannot enlarge upon this subject; it has always been incomprehensible to me that a people so jealous of their liberty [and] property as the Americans should so long have borne impositions with patience and submission which would have been trampled under foot in the meanest village in Holland or undergone the fate of Woods half pence in Ireland. I beg leave to refer you to a work which Mr. Jefferson has sent me translated by himself from a French Manuscript of the Count Destutt Tracy. His Chapt. "Of Money" contains the sentiments that I have entertained all my life time. I will quote only a few lines from the anylytical table . . . .
>
> It is to be desired that coins had never borne other names than those of their weights & that the arbitrary denominations are called monies of account as £—S—d. &c. had never been used but when these denominations are admitted and employed in transacteions to diminish the quantity of metal to which they answer by an alteration of the real coins is to steal [and] it is a theft which even injures him who commits it—A theft of a greater magnitude [and] still more ruinous is the making of paper-money it is greater because in this money there is absolutely no real value it is more ruinous because by its gradual depreciation during all this time of its existence it produces the effect which would be produced by an infinity of successive deteorations of the coins; all these iniquities are founded on the false idea that money is but a sign.[301]

To sum up, I conclude the Constitution forbids any Congress, past, present, or future, from devaluing the U.S. Dollar as codified in 1792. (This conclusion tentatively applies to any future central bank digital currencies (CBDCs), which if issued should be silver-backed to avoid devaluation). How does Congress get the Dollar back? The path is to phase out paper money (again), readopt silver as a medium (and eventually the exclusive

300. Letter from John Adams to John Taylor (Mar. 12, 1819), *Founders Online*, NATIONAL ARCHIVES, https://founders.archives.gov/documents/Adams/99-02-02-7096 [https://perma.cc/LN9C-NDNW] (early access document to forthcoming final authoritative source).

301. *Id.*

medium) of the U.S. Money Unit, and mint and circulate a sufficient supply of silver Dollar coins with legal tender status, a copper alloy composition no greater than 1/9 of the Dollar coins' total weight, and incrementally legislate increases in the Money Unit's silver grainage until a minimum of 371.25 grains. Doing that would once again give the United States a valuable, constitutional Dollar.