From Commodity to Currency in Ancient History: On Commerce, Tyranny, and the Modern Law of Money

Benjamin Geva

Osgoode Hall Law School of York University, bgeva@osgoode.yorku.ca

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FROM COMMODITY TO CURRENCY IN ANCIENT HISTORY – ON COMMERCE, TYRANNY, AND THE MODERN LAW OF MONEY.

BY BENJAMIN GEVA**

I. INTRODUCTION: OVERVIEW OF THE LEGAL NATURE AND EVOLUTION OF MONEY

Money is essential to the smooth operation of an exchange economy. Economists define money as anything that is widely accepted in payment for goods, used as a medium of exchange, and expressed as the standard unit in which prices and debts are measured. This is a broad definition which does not explicitly exclude certain obligations to pay money, like bank drafts, money

** LL.M., S.J.D. (Harvard). Associate Professor of Law, Osgoode Hall Law School, York University. This essay is part of a study on the law relating to the allocation of risks in payment mechanisms supported by a grant from the Foundation for Legal Research of the Canadian Bar Association. For research assistance, I am grateful to Ms. Stephanie Cheung of the 1986 graduating class of Osgoode Hall Law School.

1 Conversely, "money will no longer be required" under the communist method of production where products are not exchanged, bought or sold: "They are simply stored in the communal warehouses, and are subsequently delivered to those who need them." See N. Bukharin & E. Preobrazhensky, The ABC of Communism, trans. by E.C. Paul (Harmondsworth: Penguin Books, 1969) at 116-7. For a blueprint for the gradual dying-out of the monetary system through the intermediary stage of socialism see 389-92.

orders, cheques, or demand deposits in banks. The definition is thus too broad and unacceptable for lawyers.\(^3\) Making a distinction "between money in its concrete form and the abstract conception of money,"\(^4\) F.A. Mann suggests as regards the concrete form that "in law, the quality of money is to be attributed to all chattels which, issued by the authority of the law and denominated with reference to a unit of account, are meant to serve as universal means of exchange in the State of issue."\(^5\) Money consists now of both coins (metallic money) and bank notes (paper money).\(^6\) Coins\(^7\) are pieces of metal fashioned into a prescribed shape, weight, and degree of fineness, and stamped by authority of government with certain designs, marks, and devices. They are put into circulation as money at a fixed value.\(^8\) Paper money consists of instruments (bank notes) issued by a government, or under its authority, against the credit of their issuer, engaging to pay money to the bearer on demand but not necessarily professing to be immediately convertible into specie.


\(^{4}\) Ibid.

\(^{5}\) Ibid. at 8.


\(^{7}\) "Coin, in French, signifieth a corner, and from thence hath its name, because in ancient times money was square...." See M. Hale (d. 1676), The History of the Pleas of the Crown, 1st American edition by W. A. Stokes & E. Ingersoll (Philadelphia: R.H. Small, 1847) vol. 1 at 187, note 2.

\(^{8}\) See in general definitions of "coin" in H.C. Black, Black's Law Dictionary, 5th ed. (St. Paul, Minn.: West Publishing Co., 1979) and E. Jowitt & C. Walsh, Jowitt's Dictionary of English Law, 2nd ed. (London: Sweet and Maxwell Ltd, 1977). According to Le Case De Mixt Moneys (1605), Davis 18, 80 E.R. 507, six things are essential to the legitimation of a coin: (1) a fixed weight; (2) fineness or alloy; (3) impression; (4) denomination; (5) authority of the prince; and (6) proclamation. For a detailed discussion, see particularly Hale, supra, note 7 at 196, and In general at 187 ff. See also J. Comyn (d. 1740), A Digest of the Laws of England, 3rd ed. (London: T. Longman, et al., 1792) vol. 3 at 94 and J.L. Wendell, Blackstone's Commentaries on the Laws of England (New York: Harper and Bros., 1838), vol. I at 276-78. For an earlier definition, see W. Rastall (d. 1565), Les Termes de la Ley (Boston: J. Johnson, 1812) at 91. For the materials from which coined money ought to be made, see also E. Coke (d. 1634), The Second Part of the Institutes of the Laws of England, 6th ed. (London: T. Bassett, 1681) at 577.
They are put into compulsory circulation as a substitute for coined money. Bank notes are currently the predominant form of money.

Coins and bank notes are chattels. Accordingly, a payor is normally responsible for the quality of the coins and bank notes with which he makes payment. Stated otherwise, the payor guarantees their legitimacy. Payment in counterfeit money is a nullity. It does not discharge the debt, irrespective of the innocence or lack of knowledge on the part of the payor. To assert rights following payment made in counterfeit money, the payee-creditor must return the money within reasonable time after discovering that the money is counterfeit. These rules are analogous to the rules applicable to a vendor’s warranties and conditions relating to the quality of goods sold. In this respect, payment of money in the discharge of a debt is very much like the sale of a chattel; it is a transfer of property for a price.

Nevertheless, currency, which is the most predominant legal feature of money as a chattel, represents an exception to the ordinary common law rules of property. Currency can be described as the transferability of money from hand to hand, in payment of debts, free from claims to it on the part of all persons, including prior owners or possessors. "Currency" is an exception to the fundamental common law rule that a seller can transfer no better title than he himself has, or as it is expressed in Latin, *nemo dat quod non habet*. The operation and rationale of the currency exception pertaining to money is set forth and demonstrated by Lord

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9 See, in general, the definition of "paper money" in *Black's Law Dictionary*, ibid.

10 See definition of money in text and supra, note 3.

11 For American cases dealing with liability for paying counterfeit money, namely with the payor's duties as to the quality of bank notes and coins paid by him, see W. Mack, editor in chief, *Encyclopedia of Law and Procedure*, vol. XXX (New York: The American Law Book Co., 1908) at 1215 and nn. 53-5.


13 For this rule, see, for example, Atiyah, *ibid.*, at 265-68.
Mansfield in *Miller v. Race*,\(^{14}\) where it was held that money "can not be recovered after it had passed in currency." Thus, "in case of money stolen, the true owner can not recover it, after it has been paid away [i.e. taken] fairly and honestly upon a valuable and bona fide consideration."\(^{15}\) The *bona fide* taker for value from the thief (or from someone deriving title from the thief) gets a clear title to money. As explained by Lord Mansfield, the reason money cannot be followed into the hands of a *bona fide* taker for value is not a by-product of its being fungible,\(^{16}\) of it having "no earmark."\(^{17}\) "The true reason is, upon account of the currency of it: it can not be recovered after it has passed in currency."\(^{18}\) Currency thus facilitates the use of money as a universal medium of exchange in a given time and territory.\(^{19}\)

Coins and bank notes which function as money are not ordinary chattels.\(^{20}\) According to Professors Lawson and Rudden, "[m]oney must be distinguished from other movables, for it is that with which other things are bought and it is not in itself an object

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\(^{14}\) (1758) 1 Burr. 452, 97 E.R. 398.

\(^{15}\) *Ibid.* at 457 (Burr) and 401 (E.R.).

\(^{16}\) "Fungible goods are mutually interchangeable; they can be replaced by equal quantities and qualities, and are estimated by weight, number, or measure. Typical fungibles are coins.... In the ordinary way it does not matter what coins are given to a person as change provided they add up to the right amount." Lawson and Rudden, *supra*, note 6 at 25.

\(^{17}\) Notwithstanding *Kendar v. Milward* (1702), 2 Vern. 440, 23 E.R. 882; C. Viner (d. 1756), *General Abridgment of Law and Equity* (London: G.G.J. Robinson, et al., 1793) vol. 15 at 420, where it was stated that "money has no ear-mark, and cannot be followed when invested in a Purchase."

\(^{18}\) *Supra*, note 14 at 457 (Burr) and 401 (E.R.).

\(^{19}\) For a concise summary of case law relating to the meaning of "currency," see *Banque Belge pour L'Etranger v. Hambrouck* (1920), L.J.R. 90 K.B. 322, 324-26 (C.A.) Bankes L.J.

\(^{20}\) This is not necessarily true for foreign bank notes and coins or rare coins. Outside the place and time where they are money, coins, and bank notes may be dealt with as a commodity. See, for example, U.C.C. Sec. 2-105: *Zuke v. St. Johns Community Bank* (1968), 387 F.2d 118 (8th Cir.); H.J. Bailey III, "Coins as the Subject of Pledge" (1968) 14 Pract. Law. 5 at 95. Rare coins may even be nonfungible (i.e. specific) goods. See Lawson and Rudden, *supra*, note 6 at 25.
of sale.”

Indeed, having no use-value, and hence not being purchased for direct consumption or resale, money as currency and not commodity is not a "good" as covered by legislation pertaining to the sale of goods. As currency, money is paid at the face value conferred upon it by an act of the government. Changes in the intrinsic value of money, the result of market forces as well as governmental policies, are reflected in its purchase power—in the price of goods in general. In monetary terms, as distinguished from its purchasing power, money does not have "price" separate from its face value.

Money has been used solely as a medium of exchange and not as a chattel capable of direct use. The nature of money underlies the opposition to usury, or the stigma of charging interest for the use of money borrowed. This opposition was based on biblical prohibitions. It was independently rationalized in the fourth century B.C.E. by Aristotle. Having acknowledged that "money is subject to the vagaries of the market just like other commodities," he nevertheless drew a distinction between money

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21 Lawson and Rudden, supra, note 6 at 37.


23 See, supra, note 18 and text around it.

24 "Money" is specifically excluded from the definition of "goods" in s. 61 of the Sale of Goods Act 1979 (U.K.), c. 54; s. 2-105(1) of the American UCC; and s. 1(g) of the Sale of Goods Act, R.S.O. 1980, c. 462.


26 For a compilation of Biblical verses and a discussion of the Medieval tenets against usury, see for example B. Grebanier, The Truth About Shylock (New York: Random House, 1962) at 76.

and other articles. Any article, except for money, may be used either as "the thing itself," or for exchange, only the former being "the proper use of the article." Money, on the other hand, "was intended to be a means of exchange" alone. An exchange was a natural thing designed "to re-establish nature's own equilibrium of self-sufficiency." Obtaining money for goods, as well as increasing one's property through an exchange activity, were thus legitimate, or "not contrary to nature." But inasmuch as "interest represents an increase in the money itself" and was "money produced out of money," it was a yield on a non-productive asset (namely as an asset incapable of a proper natural use or reproduction), and as such "most contrary to nature."

The historical evolution of money reveals three themes. First, there has been a continuous evolution of money from commodity to currency. Second, the roles of commerce and tyranny, or of economic and financial conditions on one hand and governmental power on the other, were important in the emergence and development of coined money. Third, the principal doctrines applicable to money as a legal concept have been shaped in the course of the evolution of metallic money in ancient history. In the modern era, these doctrines came to embrace paper money in the course of its evolution as a derivative of coin.

The modern legal concept of money reflects the ancient history of metallic money and its evolution as a concept and institution. This article presents the evolutionary process which has given rise to metallic money and hence to the law which governs money. In this process, commodity was transformed into currency.

\[\text{\textsuperscript{29}}\text{Ibid. at 46.}\]
\[\text{\textsuperscript{30}}\text{Ibid. at 42.}\]
\[\text{\textsuperscript{31}}\text{Ibid. at 41-42.}\]
\[\text{\textsuperscript{32}}\text{Ibid. at 46.}\]
\[\text{\textsuperscript{33}}\text{Throughout this article "tyranny" is used to denote any type of government power, rather than in the usual (or even historical) sense of the term.}\]
through evolving economic and political conditions. An appreciation of the evolutionary process which has taken place in the ancient era is likely to enhance our understanding of the legal nature of metallic money, and hence of money in general. The central thesis is presented in Part II. Part III sets forth the evolution of paper money in England in the post-medieval era. The discussion in Part III presents the process under which paper money has developed as a promise to pay metallic money. The objective of the discussion in Part III is twofold. First, it is designed to demonstrate that insofar as paper money is a promise to pay money, it does not involve distinct concepts (as opposed to a mere form) of money. Secondly, insofar as paper money has emerged out of the deficiencies of the coined money system, it is a part of the evolutionary process that produced coined money in the pre-medieval era.

II. METALLIC MONEY — FROM COMMODITY TO CURRENCY IN ANCIENT HISTORY

Money has evolved from a commodity traded for its use-value into currency transferred in payment of debts. The ensuing discussion describes this evolution from chattels exchanged in barter systems to specific chattels having utility and use-value while serving as primitive money up to the ultimate stage of modern metallic money, which consists of standardized metallic chattels denominated with reference to a unit of account and stamped with the authority of the State. Thus, chattels having intrinsic utility and use-value, exchanged in a barter system, have finally evolved to chattels which serve solely as a medium of exchange.

It should be stated at the outset that the evolutionary process has not been uninterrupted. Thus, the process described below is a theoretical model reflecting the general direction in history. It does not take into account temporary deviations and setbacks.\footnote{For example, during the 3rd and 4th centuries B.C.E., substantially after the rise of modern metallic money, there was "a marked return towards primitive money" throughout the Roman Empire. See P. Einzig, \textit{Primitive Money}, 2nd ed. (Oxford: Pergamon Press, 1966) at 229. See also \textit{ibid.} at 250-77 for primitive money in the medieval period. "Primitive money" is defined and explained in text & notes 42-59, \textit{infra}.}
Furthermore, non-commercial payments, which were quite significant in the ancient world, are taken into account only inasmuch as they were relevant to the emergence of money. To the extent that non-commercial transfers were served well by old forms of payment, the needs arising therefrom did not seem to play a significant role in any of the successive improvements of the payment system.

In the analysis which follows, attention is primarily focused on developments which have culminated in the introduction of metallic money as a unitary concept. Specific types of coins will be discussed only insofar as they represent an evolutionary stage in this development. As a rule, discussions on the evolution of various kinds of metallic money, classified according to coin types, coin material, coin fineness, or coin weights and measures are eliminated. Indeed, from a legal perspective, metallic money has been treated as a unitary concept. There are no separate rules dealing with gold or silver coins, or with coins bearing a legendary figure or the image of an emperor. Therefore, for our purposes, a unitary discussion is most appropriate.

Natural economy, in its pristine state, serves as a convenient starting point for the theoretical model that explains the evolution of metallic money. Natural economy is characterized by self-sufficiency; each economic unit produces for consumption alone and no exchange is conducted. The simplest form of exchange economy is the barter system, or the exchange of goods for goods. As an exchange method, barter suffers from two serious drawbacks. First, there is no a priori measure of value, or a common denominator for the evaluation of goods. To facilitate an improved

35 For the overwhelming importance of non-commercial payments in primitive life, see for example Einzig, ibid. at 314.


37 Historically, it is doubtful whether such an economy, in its pristine state, ever existed. See for example M.M. Postan, "The Rise of a Money Economy" (1944) 14 Ec. His. Rev. 123 at 127. Compare to text and note 46, infra.

38 "Goods," "chattels," and occasionally "objects" or "commodities," are used herein interchangeably.
barter system, value of objects must be reduced to a common denominator. This was done already in Ancient Egypt, where a unit weight of copper served as an account unit for measuring the value of goods so as to facilitate their exchange.\textsuperscript{39}

The second drawback is that in a barter transaction the buyer must also be a seller. The smooth operation of a barter system requires that the buyer commands resources sought by the particular seller. Thus, it is not enough for a buyer to find a seller; the buyer must possess, or purchase in advance, goods that the seller wishes to buy in return for the object offered for sale. This requires an abundance of superfluous transactions.\textsuperscript{40} Also, in anything less than a perfect informational system,\textsuperscript{41} this means that a barter system often fails to maximize the satisfaction of its participants. For example, a would-be seller may not sell a chattel sought by a would-be buyer, when the latter fails to procure the specific goods sought by the former.

To meet the second drawback, "primitive money" grew out of the solution to the first drawback.\textsuperscript{42} If a chattel could be used as an account unit, or as a common denominator for which value of all objects might be measured, the chattel itself might also be given in payment of goods. Thus, a buyer did not need to inquire as to what the seller wanted to buy; after being paid by chattels serving as a universal medium of exchange, the seller would be able to use the

\textsuperscript{39} Einzig, supra, note 34 at 194-95. Accordingly, an ox, valued at 120 deben of copper, could be sold in Pharaonic Egypt for two pots of fat valued at 60 deben, five good shirts valued at 25 deben, one dress valued at 20 deben, and one hide valued at 15 deben. For this example, see P. Grierson, The Origins of Money (London: Athlone Press, 1977, being the Creighton Lecture in History, 1970) at 17 n. 33.

\textsuperscript{40} For a fascinating short account of this drawback in the context of a discussion on the important role of barter in today East Europe's economic life (national as well as international), see K.W. Banta, "A Forklift for a Song" Time Magazine (29 September 1986) at 57, where an Austrian businessman is quoted to describe a middleman's role in arranging a sale of Japanese video monitors to Romania as follows: "You can find yourself swapping Rumanian chickens for Polish sausage for East German machine tools before you finally deliver Japanese video monitors in Bucharest."


\textsuperscript{42} See text and supra, note 39.
purchasing power expressed therein to buy what the seller wished, from whatever available source. Primitive money was "a unit or an object conforming to a reasonable degree to some standard of uniformity, which is employed for reckoning or for making a large proportion of the payments customary in the community concerned, and which is accepted in payment largely with the intention of employing it for making payments." Primitive money was in fact a chattel with intrinsic utility and economic value, which in a given society served as a unit of account as well as a medium of exchange. Where a chattel served only as a unit of account, as it was with a unit weight of copper in Ancient Egypt, it fell short of being money.

In the prehistoric era, useful objects like weapons and rings, side by side with metals, were used as money. Subsequently, in the pre-classical world, numerous objects served as primitive money. In Ancient Egypt, where economic exchange was predominantly done on a barter basis, various types of sticks or staves, copper objects, and gold served as a limited medium of exchange. Barley and precious metals, particularly silver, were used as money in Babylonia and Assyria. Sealed silver and copper ingots served this function in Cappadocia. Sheep and weighed silver were the currency of the Hittite Empire. The ancient Hebrews paid by livestock as well as

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43 Einzig, supra, note 34 at 317.

44 For the existence of this stage of the evolution of money, see also A. J. Toynbee, *A Study of History*, abridgement by P. C. Somervell (London: Oxford University Press, 1960) at 60.

45 See text and Einzig, supra, note 34 at 194-5.

46 Einzig, supra, note 34 at 187-92.


50 Einzig, *supra*, note 34 at 210-11.
by weighed silver. Thus, we learn from Genesis, chapter 23, that, in payment for the Cave of Machpelah, "Abraham weighted to Ephron ... four hundred shekels of silver, current money with the merchant." Weighed metals served as money in domestic trade in Phoenicia. Concurrently with metals, oxen, and sheep were used as currency in Ancient Persia. The Greeks and Romans used oxen and base metals as currency; pecunia, the Latin word for money, comes from pecus, or cattle.

In an economy characterized by an increasing amount of payments, whether in trade, to labourers, or to mercenaries, primitive money proved cumbersome. Cattle were not easily moved.

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51 Ibid. at 211-14. For a compilation of biblical authorities, see L. Kadman & A. Kindler, Coins in Palestine Throughout the Ages, 17 (Tel Aviv: Dvir Co. and La Da'ath Publishers, 1963) [in Hebrew]. See also Y. Grintz, "Banking Services as Mentioned in the Bible" (1981) 20:80 Quarterly Banking Rev. 83 [in Hebrew].

52 For a legal analysis of the transaction, see R. Westbrook, "Purchase of the Cave of Machpelah" (1971) 6 Israel L. Rev. 29.

53 "Shekel" is a weight unit. In semitic languages, the word is of the same root as "weigh." The Shekel is nowadays the official currency of the modern State of Israel. On the origin of the shekel, see Burns, supra, note 36 at 174-75.

54 In semitic languages, the same word denotes "money" and "silver." The linguistic confusion is noted by Einzig, supra, note 34 at 212 note 5, who uses in the text a translation omitting altogether the word "money."


56 Einzig, supra, note 34 at 215-16. As for foreign trade, see text and notes 67-8, infra.

57 Einzig, ibid. at 219.

58 Ibid. at 220-25.

59 Ibid. at 225-28.

60 "Money (pecunia) is so called from cattle (pecus), because all the wealth of our ancestors consisted in cattle.... So chattels (cattle) means all tangible personality." See Jowitt's Dictionary of English Law, supra, note 8, under "Pecunia dicitur a pecus omnes enim veterum divitiae in animalibus consistebant" (sic pecus: ed).

61 First Carthaginian coins were issued during the invasion of Sicily in 410 B.C.E., for the payment to mercenaries "more accustomed to the use of money than their employers." See Burns, supra, note 36 at 48.
Like any farm product, it was particularly unfit for transactions in towns. On the other hand, precious metals could not pass freely from hand to hand without being first weighed and their quality tested. Perhaps these inconveniences explain why, throughout the pre-classical era, international trade, whether between kings or in sea-borne traffic, was conducted on a barter basis. Kings and large merchants commanded vast resources and could come up with goods sought by their trading partners; it was unnecessary for them to resort to a medium of exchange as an intermediary in their exchanges.

Accordingly, the Book of First Kings, chapter 5, informed us that in connection with the purchase of building materials for the construction of the First Temple in Jerusalem by Solomon King of Israel, "Hiram [King of Tyre] gave Solomon timber of cedar and timber of cypress ... And Solomon gave Hiram twenty thousand measures of wheat for food to his household, and twenty measures of beaten oil ... year by year." Likewise, it is well established that the Phoenicians, "who were probably the most enterprising commercial race for all times," did not use money in their extensive sea-borne trade operations. Rather, they bartered goods according to their value in terms of weighed metals.

Nonetheless, barter did not dominate the long distance caravan trade. Perhaps the network of commercial relations was

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62 In Mesopotamia, Code of Hammurabi (2123-2081 B.C.E.) provided that payments in the country be made in grain, while payments in town be made in silver. See Einzig, supra, note 34 at 204. But the debtor (though not the creditor) was permitted to switch to the other currency. Ibid.

63 But not in the caravan trade. See text and notes 69-72, infra.

64 See Einzig, supra, note 34 at 214-16.

65 Compare to text around note 41, supra.

66 See, supra, note 55 at 1 Kings 5:24-25.

67 Einzig, supra, note 34 at 487.

68 Ibid. at 215.

69 Ibid. at 216 and Burns, supra, note 36 at 53.
much more complex compared to that existing in sea-borne commerce. It may have been harder for those trading by means of land caravans to match supply with demand — to master the exact mixture of goods that would satisfy their prospective sellers. Also, the bulk of commodities was of greater concern in caravan trade than in sea commerce. Hence, the carriage of goods which were designed to entice sellers of other goods, rather than the carriage of goods as objects for resale as an end in itself, proved a greater problem in the land-borne trade. In this trade, resorting to barter would have been a step backward.

In theory, the deficiencies of the primitive money system, particularly as used in the caravan trade, could have been solved by the development of payment mechanisms. In fact, throughout the ninth and eighth centuries B.C.E., merchants in Babylonia and Chaldea paid by instruments "very like bills of exchange," inscribed on clay bricks. These instruments were drawn by one person on another for a sum expressed in weights of silver or copper. They were used as a means of reducing the transport of primitive money in the land-borne trade, where the caravans "passed over routes infested by robbers." These early bills of exchange were used to avoid the problem of bulk, as well as the need to weigh and test the quality of precious metals tendered in payment. It seems that the cure for the deficiencies of primitive money, particularly as employed in the caravan trade, could have rested upon these instruments.

Nonetheless, these early bills of exchange did not proliferate and their use was abandoned. Indeed, payment by such instruments presupposed that the reputation of those liable thereon was well established. A seller would not accept from a distant buyer such an

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70 Compare to text containing note 41 and that containing note 65, supra.

71 See references, supra, note 69.

72 See text supra, at note 41.

73 Burns, supra, note 36 at 284.

74 Ibid. at 285. See also Einzig, supra, note 34 at 206-207.

75 For these deficiencies, see supra, at notes 62, 69-72.
instrument instead of payment *in specie*, unless the seller recognized the seal and completely relied on the creditworthiness of the one liable on the instrument. It seems plausible to conclude that throughout the ancient era banking was not sufficiently developed to provide a universal system of payment by instruments which carried a banker's undertaking to pay *in specie*.

Nor did the use of temples as depositary institutions bring about the emergence of a payment system. Indeed, the great shrines of the ancient world served as treasuries or depositories, at least to the extent of receiving primitive money, particularly precious metals, for safe-keeping. In theory, receipts given by temple authorities to depositors could have been substitutes for primitive money. The receipt issued to the depositor embodied the temple authority's payment undertaking. Its redirection by the depositor-payor to the payee could have been treated as the equivalent of payment *in specie*. There is, however, no indication that such a payment mechanism ever significantly developed anywhere in the ancient world.

Thus, the deficiencies of primitive money did not result in the evolution of payment mechanisms as a means to avoid the transportation of money. Nor did the cure for these deficiencies come by way of replacing or phasing out primitive money, or withdrawal to a barter system. Rather, the solution lay in the improvement of primitive money and its adaptation to the needs of commerce. Weighed precious metals were to supersede cattle. In that process, metallic pieces were to be made of standard size and quality. Compared to oxen, metals "are durable and can be stored without any cost of maintenance." Particularly, precious metals were easy to hide. "Gold and silver, though not copper and iron [or lead], are also easily portable." Thus, "[t]he custom of making them into rings and spirals doubtless arose because people desired to carry their most precious possessions with them and therefore, placed them on their arms and legs." Last, there "was the homogeneity and

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76 For the great old shrines as lenders or depositaries, see for example Einzig, *supra*, note 34 at 206 (Babylonia) and 214 (the Jerusalem Temple), and Burns, *supra*, note 36 at 79 note 2 (Greece and Rome).

77 For the evolution of English paper money along such lines during the 17th and 18th centuries, see Part III, *infra*. 
divisibility of the metals" and the ability to make pieces of metal of any size that was desired.  

Indeed, among all chattels, small fungible small size goods were the most suitable to be used as a medium of exchange. Fungible goods were mutually interchangeable; they could be replaced by equal quantities and qualities, and were estimated by weight, number, or measure. Their individual identity, if it existed, was irrelevant. Small fungible goods, unlike oxen or sheep, were easily portable and could easily be hidden.

Compared to other small fungible chattels like corn, barley or wheat, standardized metallic pieces were more durable and not depreciable. The supply of precious metals was neither abundant nor scarce, and hence each piece could represent meaningful purchasing power while retaining a small size. It was true that, unlike grain or cattle, metallic pieces vary in size and quality; "[n]ature supplies no natural unit of the metals as she does of cattle." Metallic units might be carved out and made into standard size and quality, each representing a fixed value. Thus, by a process of elimination, precious metals, shaped into standard pieces, were destined to prevail as a universal medium of exchange.

The evolution of modern metallic money out of primitive metallic money came in a gradual process of refinement. To begin with, inasmuch as precious metals had to be weighed and their quality be attested to, they could not pass freely from hand to hand in the discharge of debts. In that respect, standardization, or the production of standard size and quality metallic pieces, was an improvement. Nonetheless, mere standardization did not provide for the ultimate solution, since a payee needed to be satisfied that the metallic piece tendered complied with the accepted standard. Some

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78 Burns, supra, note 36 at 28.

79 See in general, Lawson & Rudden, supra, note 6 at 25.

80 Burns, supra, note 36 at 28.

81 From the biblical account of the famine in Egypt, see, supra, note 55 at Gen. 47:13-20, we gain insight into the hierarchy of payment devices. In this instance, Egyptian peasants paid for food first by silver, then by cattle, and only finally by land. Unfortunately, the interchangeability between "silver" and "money" in semitic languages, is reflected in the English translation also of this passage.
kind of assurance as to the quality of metallic money was thus required. Such assurance was forthcoming with the introduction of coins.

Coining was designed to facilitate the free transferability of metallic money by providing a guaranty of the fineness and weight of pieces of metal used as money. Tentative experiments in the sealing of metal ingots took place in India, Assyria and Cappadocia, and Crete. Cappadocia was probably the first country where ingots stamped by state authority were used as money. Silver ingots bearing official seals were already used there in regular commercial transactions between 2250 and 2150 B.C.E. The experiment was, however, abandoned.

The effective source of coining in Europe and Asia was in the Aegean basin in the Greek or "half-hellenized" city-state of Lydia in Asia Minor. Coinage developed in Lydia around the 7th century B.C.E. According to one theory, the roots of Lydian money were in prehistoric discs and roundels found by Schliemann in Mycenae: "These objects ... do not appear to have served any practical non-monetary purpose, and approach therefore the idea of modern money. All that was needed to achieve this end was the seal of some authority to guarantee the weight and fineness of these primitive coins. Indeed, it is conceivable that the uniform design of these discs and roundels implied such a guarantee. This guarantee was actually expressed by means of a punchmark in the 7th century B.C.E. in Lydia. Lydian electrum coins were "crude bean-shaped ingots: [a]ll they bore was a primitive punchmark and there is a

\[82\] Burns, supra, note 36 at 51.
\[83\] Einzig, supra, note 34 at 209-10. See also Burns, ibid. at 38.
\[84\] According to Burns, "[t]he foundation laid by the Greeks or their half-hellenized neighbours, the Lydians, for the institution of coinage, was ... one aspect of an intellectual development that embraced philosophy, art and commerce." Ibid. at 41.
\[85\] See for example Einzig, supra, note 34 at 217-19.
\[86\] Ibid. at 192. Perhaps, the alleged prehistorical origins are an overstatement. The Mycenae tablets do not give any clear indication of the medium of exchange by which contemporary business was transacted. Nor do they contain any evidence "of anything approaching currency." See M. Ventris & J. Chadwick, Documents in Mycenaean Greek, 2nd ed. by J. Chadwick (Cambridge: University Press, 1973) at 113 and 198.
difference of opinion whether it guaranteed weight or fineness only, or both." Probably "these primitive coins continued to change hands by weight" and as such "they may be considered to be on the borderline between primitive and modern money." 87

While there is evidence that coinage did not originate in Lydia but was imported from elsewhere, the overwhelming consensus is that Lydia was the springboard for its subsequent spread and universal expansion. 88 Insofar as Lydian coinage was the first to gain a substantial degree of acceptability in its own territory so as to be an exemplar for others to follow, Lydia can truly be regarded as the effective source of coinage.

The Lydian practice of placing punch marks upon the metallic unit medium spread quickly during the 7th century B.C.E. to Asia Minor, continental Greece, and the neighbouring islands. 89 By the middle of the sixth century B.C.E., the practice "was well established." 90 Towards the close of that century, "there was hardly a country in which the Greeks were established where coins were not in use." 91 The Persians, having conquered Lydia in the middle of the sixth century B.C.E., adopted the idea of coinage from the conquered Lydians and facilitated its further expansion. 92

Significant technological improvements in coin issuing took place in the Greek world towards the end of the sixth century, and particularly during the fifth and the fourth centuries B.C.E. A reverse design on the ingots was added and silver replaced electrum. 93 Also, the mark of the coin had finally developed into a

87 Einzig, ibid. at 218.
88 For the various views, see in general Burns, supra, note 36 at 39-43.
89 See in general, Burns, ibid. at 43-5.
90 Ibid. at 44.
91 Ibid. at 45.
92 Ibid.
93 Ibid. at 44.
mark of guaranty of weight as well as of fineness. In fact, it had turned into a mark which vouched for the purchasing power embodied in each coin, normally as an expression of the value of its metallic content, namely, its commodity-value. The mark also came to serve another function. Covering most of the surface on both sides of a coin, the mark made it more difficult to cheat by clipping, that is by cutting off the edge of the coin. In Athens during this period, developments in mint organization occurred allowing production of coins of uniform weight. All these developments together with improvements in the technical standard of the coin as well as the imposition of severe punishments for counterfeiting ensured that coins passed freely by tale. Greek coins from that period thus constituted the oldest form of modern metallic money.

Roman coinage dates back to the third century B.C.E. At the time of the Twelve Tables, around 450 B.C.E., fines were still reckoned in terms of cattle and sheep. Nonetheless, by about 1000 B.C.E. copper had appeared in Italy as a medium of exchange.

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94 Compare to text and supra, note 87.

95 The practice of marking the nominal value of coins on the coins themselves was introduced by the Greek colonies in Italy and then adopted by Rome "where there was a persistent policy of stating the value of coins upon their face." Prior to that practice, in Greece, reliance must have been placed on the size of the coin to distinguish one denomination from another. Burns, supra, note 36 at 134-35.

96 The value of coins as money, that is to say, the purchase power embodied therein, "can never, for any long period, fall below their value as a commodity, because they can always be converted from coin into metal by melting." Coins circulating above their bullion value are token coins. Burns, supra, note 36 at 284. For the circumstances giving rise to token coinage, see Burns, ibid. at 284-313. "The predominant reason for the issue of token money was the need for a small change money...." Ibid. at 311. But see Part III, text around notes 153-60, infra. Nearly all modern coins are token. See R.D. Cooper, Coins and Minting (Aylesbury, Bucks: Shire Publications, 1983) at 3.

97 Needless to say, marxist economic theory steps one step backwards and sees the commodity-value (that is, the exchange value) as determined by the quantity of labour necessary to produce the commodity. In general, see for example E. Mandel, An Introduction to Marxist Economic Theory, 2nd ed. (New York: Pathfinder, 1973) particularly at 17-19.

98 See in general Burns, supra, note 36, at 58-61.

Coins were brought to Italy by Greek settlers. The foundations of local coinage in Italy was laid by the practice of marking large square copper and bronze bars, weighing four and five pounds each, usually with figures of cattle. The practice made its way to Rome around 450 B.C.E., about the time of the Twelve Tables. Around the same time, clumsy round copper coins, weighing a pound each, were issued in Rome under State authority. These coins, known as aes grave, were regarded as the first Roman coins. They were soon to be replaced by more advanced silver coins.\textsuperscript{100} The first silver coinage was issued in Rome towards the middle of the third century B.C.E. It was modelled upon the earlier silver issues of Etruria and Campania. The model for these Italian silver issues was provided by the Greek cities of Southern Italy. Later, with the expansion of Roman trade and sphere of influence, Roman silver coins were introduced into Spain, Gaul, and Britain.\textsuperscript{101}

Having considered the socio-economic conditions which shaped the evolution of money, I will now consider the political conditions under which coin issuing emerged and developed. These conditions and their interaction with the socio-economic circumstances of the ancient world have led to the evolution of coins as chattels stamped with state authority.

The circumstances under which the first coins were originally invented in Lydia remains a controversy.\textsuperscript{102} According to some historians, Lydia was a highly developed commercial community, a centre of land-borne international trade, situated on an important trade route.\textsuperscript{103} To these historians, the invention of coin under such circumstances was obviously of no surprise. But according to other historians, Lydia was a predominantly pastoral and non-commercial community.\textsuperscript{104} Under this view, coins were introduced to Lydia by

\textsuperscript{100} See in general Burns, supra, note 36 at 48-9. For the continuing ceremonial use of the aes grave, see Einzig, supra, note 34 at 229.

\textsuperscript{101} Burns, ibid. at 50.

\textsuperscript{102} Compare to text and note 88, supra, and reference.

\textsuperscript{103} For this view, see Burns, supra, note 36 at 42.

\textsuperscript{104} For this view, see Einzig, supra, note 34 at 215 and 218.
the Ionian Greeks who had settled in Asia Minor, and in any event, were used by the Lydians as a means to export metals of which they had abundant supply. But there is no dispute as to why coinage originated in a small city-state such as Lydia. Universal acceptance of a standardized medium of exchange must have originated in a small territory with an effective central government. As Arnold Toynbee wrote, "a state with a minimum area and population" was a perfect laboratory for experimenting with the management of a coinage. Nonetheless, he asserted, "it is equally evident that the utility of a coinage increases with the enlargement of the area in which it is legal tender." Such a step was taken in the early decades of the sixth century B.C.E., when Lydia "conquered all the Greek city-states along the western coast of Anatolia, except Miletus, as well as the interior as far as the River Halys." But the most decisive step occurred when Lydia fell and was incorporated into the Persian empire. With the adoption of coinage by that Empire, "the future of coined money was assured."

Existing evidence does not support the mercantile origin of metallic money. The earliest coins were too valuable to have been of use in the petty commerce of daily life. Furthermore, most coins were used within the area of issue. Their overwhelming local circulation does not indicate at their alleged function as a medium of exchange in international trade. In general, there was no continuous supply of fractional denominations required to satisfy the needs of ongoing commerce.

Indeed, it appears that original coin systems were intended to serve administrative rather than economic needs. The state issued coins to pay mercenaries as well as to facilitate expenditure on

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105 Toynbee, supra, note 44 at 619.

106 Ibid.

107 Ibid.

108 See text and supra, note 92.

109 Toynbee, supra, note 44 at 61.

public works and the payment of state salaries. By the same token, the state was to accept coins issued by it in payment of taxes and other payments made to it.\textsuperscript{111}

Nevertheless, once instituted by the state, coin became an object of trade and accumulation of riches as an end in itself. Furthermore, acceptance of coins by governments paved the way to their acceptance by merchants in payment for goods. The widespread adoption of base metal for coinage, facilitating the use of coins also in low-value retail transactions, took place during the fourth century B.C.E. It is in the course of this process that the use of coins came to remedy the deficiencies of the primitive money system.\textsuperscript{112}

It thus appears that international trade, while giving rise to the need for coinage, did not set the stage for its emergence. Nor was international trade the predominant force behind the expansion of coinage. That was so since, in commerce between distant parties, the local stamp on metallic money might have been of a limited value. A payee unfamiliar with a particular seal, would not accept metallic money thus at its stamped face value.\textsuperscript{113} Inasmuch as contemporary technology could not be wholly trusted in facilitating the production of coins at the exact respective stated value, the acceptability of any coin by a payee must have turned on that payee’s reliance on the seal, that is, on the issuer’s undertaking to stand behind the stated value. This explains the local circulation of ancient coins even when used in commerce: "Coins will have been in greatest demand in the area controlled by the minting authority; beyond that they will have been in demand in places in regular contact with the area of origin; elsewhere they will have tended to revert to the value of bullion."\textsuperscript{114}

\textsuperscript{111} Ibid.

\textsuperscript{112} Ibid.

\textsuperscript{113} This may explain why Phoenicia was quite late to adopt coinage. See for example Einzig, \textit{supra}, note 34 at 216. "Not until the middle of the 5th century [B.C.] did the great Phoenician cities of Tyre and Sidon make issues of coins." Burns, \textit{supra}, note 36 at 46. For the position of Phoenicia as a leading bartering maritime trader, see text and \textit{supra}, notes 66-8.

\textsuperscript{114} Kraay, \textit{supra}, note 110 at 323.
Indeed, the original monetary system, under which each small political entity issued its own coinage, had built-in impediments to the universal expansion of coinage. A limited expansion through international trade was staged by the rise of some local coins to international acceptability and by the establishment of monetary unions in the Greek world.\textsuperscript{115} But as was already indicated,\textsuperscript{116} the big push forward, the irreversible territorial expansion, occurred in the East, in Imperial Lydia and its successor Persia. Philip of Macedon and his successor Alexander the Great, who, throughout the fourth century B.C.E., united the Greek world and subsequently conquered the Persian Empire, had not modified the foundation of the coinage system.\textsuperscript{117} It was left to Imperial Rome to consolidate coinage issue and provide for a uniform system of coinage universally accepted throughout the Roman Empire.\textsuperscript{118} Thus, imperial power and its despotic control over a vast territory was the primary driving force behind the free transferability by tale of metallic money. Its contribution to that end was greater than that of the voluntary consensus of either the international business community or the separate political entities of the ancient world.

Coinage may have originally been issued privately\textsuperscript{119} as an outgrowth of the use of weighed metal money.\textsuperscript{120} But the State was soon to nationalize private coinage. Two main reasons accounted for that process. The first reason was the reliability and

\textsuperscript{115} See in general, Burns, supra, note 36 at 85-95.

\textsuperscript{116} Text and supra, notes 107-8.

\textsuperscript{117} Burns, supra, note 36 at 95-6. Alexander the Great "left the states under his suzerainty to manage their currency systems for themselves.... Perhaps if he had lived a few years longer he would have set up a coinage for the whole of the ancient world, and enforced its circulation by the same methods as the Persians before and the Romans after him." Ibid. at 96.

\textsuperscript{118} Ibid. at 100-108. As was in previous empires, local bodies were usually left to supply coinage for small change (Ibid. at 109). But this was essentially a matter of devolution of power. Cf. infra, note 140.

\textsuperscript{119} For early private coining, see in general, Burns, supra, note 36 at 75-7. For traces of private coinage in Babylonia and Assyria, see Einzig, supra, note 34 at 203, 205, and 207.

\textsuperscript{120} See text around notes 69-101, supra.
familiarity of the seal of a public servant. Free transferability of standardized metallic pieces required complete faith in the assurances given by the seal as to the quality and quantity of the metallic unit. In this respect, a public seal appeared most credible. Coinage became an expression of State prerogative relating to the standardization of weights and measures, exercised as a matter of social concern in the pursuit of enforcing honest dealing standards in the marketplace. To that end, the alternative to State issue monopoly, that is, the establishment of public facilities for passing the metals by weight and the giving of a guaranty by a weigh-master, turned out to be less successful. Unlike State coinage, such a system neither generated standard metallic pieces nor eliminated the need for at least one weighing in connection with the first payment in which a given piece was used.

The second reason for the early nationalization of private coinage was historical. Merchants and bankers, who under one view made the first issues in Lydia, were soon to assume the ultimate political power in the city. When economic might was thus transferred into direct political power, the tyrant "kicked away the ladder by which he had risen lest others might attempt to use it." Tyranny as well as coinage were said to have originated in Lydia.

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121 Burns, supra, note 36 at 108.
122 Compare to text around note 116, supra.
124 See for example Burns, supra, note 36 at 109.
125 Needless to say, "bankers" is used here in a loose meaning denoting financiers in general.
126 Burns, supra, note 36 at 76-7.
127 Ibid. at 82-3.
Apart from serving the citizens, coinage also began to serve the interests of those ruling them.\(^{128}\)

Indeed, the first reason given for the early nationalization of private coinage\(^{129}\) could not support a complete theory. By itself, the absence of an internationally reputed banking network in the ancient world\(^{130}\) did not explain the formation of State monopoly of coin issuing. The "territorial reach" of the reputation of a locally known banker need not be smaller than that of the local ruler.\(^{131}\) In fact, there was no evidence whatsoever that in a given territory, the seal of an officer of the State was universally more reliable than that of a well-reputed banker.\(^{132}\) But where the banker had acquired the monopoly, he translated it into political power, and transferred the coinage authority to the State as a means of protecting his newly acquired power. Whether placed there by virtue of public confidence or political struggle for domination, coinage was laid solely in the State's hands. Inasmuch as imperial power preceded financial power in enforcing the acceptance of a universal medium of exchange in a vast territory,\(^{133}\) State prerogative of coin issuing was reinforced.

Soon, inscriptions upon coins came to express political power and the position of coins as State instruments had thereby been

\(^{128}\) Toynbee, supra, note 44 at 620. For the view that universally, "government's exclusive right to issue and regulate money" has not served the citizens but only those who rule them, see F. A. Hayek, Denationalisation of Money (Sussex: The Institute of Economic Affairs, 1976) at 26-7, where the author contends that this exclusive right "has certainly not helped to give us a better money...." Rather, "it has ... become a chief instrument for prevailing governmental policies and profoundly assisted the general growth of governmental power," that "was regularly used to exploit and defraud [people]."

\(^{129}\) See text, paragraph containing notes 119-124, supra.

\(^{130}\) For this point, see text around notes 75-77, supra.

\(^{131}\) For the difficulties raised by the limited territorial reach of the reputation of each seal, see text around note 113, supra.

\(^{132}\) See for example Burns, supra, note 36 at 78 and 83. In fact, in Lydia and Persia, as of the beginning of the 6th century B.C.E., "after state issues were instituted merchants and bankers continued to use their punches and marked the new coins, possibly because some of their clients, faithful to tradition, trusted only their banker's mark. Persians stekels are often found with their surface almost covered with these small punch marks." Burns, ibid. at 83.

\(^{133}\) As explained in text around notes 116-118, supra.
bolstered. One expression of this trend was the change of attitude towards the placing of the ruler’s portrait upon coins. Thus, in the Greek world and the Roman Republic, democratic opinion ran counter to the engraving of the portraits of living persons upon coins. The practice of placing the ruler’s effigy on coins was introduced by Imperial Persia. Alexander the Great’s portrait was put on coins only after his death. But the tradition of engraving the portraits of living rulers upon coins was soon to become predominant and thus came to be regarded as a valid expression of the divinity of the reigning monarch and his sovereign power.134

The process was carried even further in the Roman Empire:

From the middle of the first century onwards the Imperial Government had appreciated ... not only the function of coinage as a mirror of contemporary life - of the political, social, spiritual, and artistic aspirations of the age - but also its immense and unique possibilities as a far reaching instrument of propaganda. Modern methods of disseminating news and modern vehicles of propaganda ... have their counterpart in the imperial coinage, where ... novelties and variations in types record the sequence of public events and reflect the aims and ideologies of those who control the state.135

Circulation of coins carrying news about military victories, political achievements (even imaginary) and other information on the greatness of an incumbent ruler (whether true or false) had thus become a primary State interest. Needless to say, this rationale for circulation had nothing to do with the function of coins as a medium of exchange. Nevertheless, by becoming an end in itself, the State stamp served to bolster the use of metallic money.

The legitimacy of assigning coinage to State prerogative was expressed in a classic New Testament passage. Jesus said, "Render to Caesar the things that are Caesar's, and to God the things that are God's,"136 explicitly referring to a coin bearing the emperor's image and title. Such a coin was the example *par excellence* of "the things that are Caesar’s."137 Also, as Toynbee correctly pointed out,

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134 Burns, supra, note 36 at 113-35, specifically at 133-35.


137 Ibid. Also see Toynbee, supra, note 44 at 621.
the same Jews who vehemently opposed the displaying of the Roman Emperor’s image in Jerusalem in 26 C.E., "had schooled themselves meekly, not only to seeing but to handling, using, earning, and hoarding the abominable image on Caesar’s coinage."\footnote{138} Having the hated Emperor’s image impressed on the current metallic money was thus inoffensive and quite acceptable. By itself, it did not offer grounds for resistance.

Within each State, the location of the coinage power depended on the form of political organization.\footnote{139} In Lydia, Persia, and Macedon the power was in the King’s hands.\footnote{140} In democratic Greek cities and the Roman Republic, control was in the people’s hands. In Imperial Rome, the prerogative to issue gold and silver coinage was held by the Emperor.\footnote{141} Administratively, coinage was typically controlled by magistrates or commissioners.\footnote{142} The English word "money" comes from the Latin moneta, after the temple of Juno Moneta on the Capitoline Hill where the mint at Rome was set up in 268 B.C.E. or possibly earlier.\footnote{143}

During the Roman Empire, metallic money acquired, conclusively and irreversibly, the form of a standardized small size metallic chattel, issued by the State and stamped by its authority with certain marks and devices. Such marks and devices began to guarantee the quantity and quality of the materials embodied in the metallic piece, and ultimately its nominal purchasing power, normally as an expression of the value of its metallic content. These marks also served as a medium for the political expression of sovereignty. Such metallic pieces were put into circulation to be used solely as

\begin{footnotes}
\item[138] Toynbee, \textit{ibid.} at 621.
\item[139] Burns, \textit{supra}, note 36 at 110.
\item[140] The power could however be delegated by the Imperial King to heads of vassal states, as we read in Maccabees 15:6 on the authority given (in the 130s B.C.E.) by the Seleucid King Antiochus VII to Simon, Ethnarch of Judea, to "issue special currency legal tender in your land." Hartom, ed. \textit{Apocrypha} (Tel-Aviv: Yavneh, 4th ed., printed 1979).
\item[141] \textit{Ibid.} at 108-10. Compare note 118, \textit{supra}.
\item[142] They were frequently required to place their mark on all coins made under their surveillance. \textit{Ibid.} at 62.
\item[143] \textit{Ibid.} at 65.
\end{footnotes}
a universal medium of exchange at the fixed value expressed on their face. The evolutionary process whereby a chattel was adopted to serve exclusively as a medium of exchange in an exchange economy was thus completed.

In connection with the completion of this evolutionary process, two points are noteworthy. First, it emerges from the preceding discussion that "tyranny" invented coinage as well as set the stage for its expansion. Nevertheless, it was through its adoption in "commerce," that coin was transformed from "commodity" to "currency." Secondly, it is inaccurate to speak of the completion of the evolutionary process in the ancient era as a matter of a concrete factual occurrence. Indeed, a comprehensive monetary system is premised on the existence of a universally accepted unit for measuring value. Such standardization was brought upon neither in the ancient era nor in the course of commerce. Rather, it might have originated from terminology employed as late as in the early part of the Middle Ages, and applicable to the practice of "wergeld," namely that of paying compensation primarily for the killing of a man but by extension also for personal injuries or to the family and household. What was completed in the ancient era, in a process where "tyranny" and "commerce" interacted, was the evolution of the coin as a chattel with quite specific attributes. The invention of the coin culminated in the process whereby the passage from countable objects to measurable ones, ultimately by weight, was followed by the reversion of such objects to the category of artificial units capable of being counted, and hence transferable by tally. "Commodity" thus transformed to "currency" even before the emergence of a full scale money-economy.

III. PAPER MONEY - ENGAGEMENT TO PAY MONEY

Coined money was current in Britain long before the Roman conquest and had been known to the Angles, Saxons, and Jutes.
before they invaded the island.\footnote{146} Anglo-Saxon money was coined in Britain at least as early as the sixth century C.E.\footnote{147} Around 760, Offa, King of the Saxon Kingdom of Mercia, coined the silver penny.\footnote{148} Having survived the 1066 Norman conquest,\footnote{149} the penny remained the basic unit of currency in England in the early Middle Ages.\footnote{150} The issue of coins in medieval England was controlled by the King.\footnote{151} As a rule, the universal conception of money\footnote{152} was applied to English coins.\footnote{153}

The Middle Ages introduced a modification in the philosophy concerning metallic money. In the Ancient Era, the function of the government seal impressed upon a coin and denoting it was to certify its intrinsic value.\footnote{154} During the Middle Ages, the seal came to confer upon the coin its exchange value.\footnote{155} In fact, this transformation was inevitable. The value of the metallic content of

\footnote{146} See for example Postan, supra, note 37 at 125. For English coined money, see J. Kent, 2000 Years of British Coins and Medals (London: British Museum Publications, 1978, published for the Trustees of the British Museum). For "primitive money" used in Great Britain and Europe in the Ancient Era and the Middle Ages, see Einzig, supra, note 34 at 231-72.

\footnote{147} Postan, ibid. at 126.

\footnote{148} A. Feavearyear, The Pound Sterling – A History of English Money (Oxford: Clarendon Press, 1963, 2nd ed. revised by E. V. Morgan) at 7. For the first coins of the English, see Kent, supra, note 145 at 15, where the penny is traced to Pepin, a predecessor of King Offa.

\footnote{149} In general, the Norman conquest made little initial impact on the English coinage. Kent, ibid. at 25.


\footnote{151} Bolton, ibid. For a detailed analysis, see Hale, supra, note 7 at 187-98, Blackstone, supra, note 8 at 274-78, 294-95. See also T.F. Reddaway, "The King's Mint and Exchange in London 1343-1543" (1967) 82 E. Hist. Rev. 1.

\footnote{152} As discussed in Part II, supra.

\footnote{153} See discussion in note 8 supra, and sources cited there.

\footnote{154} See text around note 95, supra. But compare text around notes 113-14, supra.

\footnote{155} For this transformation, see Hayek, supra, note 128 at 23. Another change, entirely of a different nature, which took place at the end of the Middle Ages was technological. The first coining machines were introduced late in the fifteenth century. See Cooper, supra, note 96 at 3, 10.
From Commodity to Currency

a coin is not static. Like any other commodity it is shaped by market forces and is not immune from changes. Nonetheless, frequent readjustments of nominal to real values may not always be politically desirable. This precipitated complex policies designed to ensure the stability of nominal values or to keep nominal values in line with other policies of the respective issuer of coined money.\textsuperscript{156} Ultimately, the purchasing power of any coin had to adjust to the value of its metallic content. If not by redenomination, this adjustment was to be accomplished by changes in the level of prices, so as to reflect the varying purchasing power pertaining to the coin. However, during the transition, the nominal value of the coin did not mirror the real value of its metallic content.

Instances of divorce between nominal and real values brought about policies directly designed to create a disparity between the nominal and real value of coins to the advantage of the coin issuer.\textsuperscript{157} This was reflected by the frequent debasements and recoinages practiced by princes and dukes of medieval Europe as a way of raising revenues. In medieval Europe, the prince had the right to take a percentage of all bullion brought to his mints for recasting. Bullion was attracted to mints by setting an attractive price for it; that is, by ensuring that merchants, bringing old coins to the mint to be struck into new coins, received more back in face value than they brought in. Needless to say, price tended to adjust to the value of the metallic content of a coin, in spite of its face value. A reduction in fineness, or bullion content, would eventually


\textsuperscript{157} It should be noted, as a matter of historical accuracy, that such policies go back to the ancient era as well. For example, "it is reported that Solon [during the sixth century B.C.E. in Athens] instituted special weights for use in the mint which were 5 per cent lighter than the market weights. The profit from this source could be increased from time to time by declaring certain issues 'unacceptable,' thus compelling those who needed coin to have their holdings converted into 'acceptable money' at a charge." Kraay, supra, note 110 at 322. However the employment of such policies in the ancient era was not inherent in the monetary system as subsequently in the middle ages.
lead, through rising prices, to a decline in the purchasing power of the same amount of money. In the short run, however, the merchant would reap a profit.\textsuperscript{158}

During the later part of the Middle Ages, England was the only European country which did not practice frequent recoinages.\textsuperscript{159} The result was that English coins were of good quality and had a high metal content.\textsuperscript{160} Nevertheless, psychologically, practices of debasements and recoinages, premised upon the ruler's power to confer value upon money, set the stage for the introduction of paper money. Indeed, if it is not necessary for the face value of a coin to reflect its intrinsic value, why should it be required that the "coin" be of any intrinsic value at all?

The effect of the philosophical change relating to the function of the government seal impressed upon the coin should not be overstated. This philosophical change, while facilitating the acceptance of the idea of the lack of a relationship between face value and intrinsic value of money (on which paper money was premised), did not bring about the introduction of paper money. Historically, paper money emerged as a by-product of the evolution of payment mechanisms, that is, machineries that facilitated the transmission of funds while avoiding physical delivery of money.\textsuperscript{161}

Paper money was thus born as an obligation to pay metallic money.

\textsuperscript{158} See in general, Bolton, \textit{supra}, note 150 at 297-98, 73-5.

\textsuperscript{159} \textit{Ibid.} In the \textit{Statute of Purveyors}, 1353, (U.K.) 27 Edw. 3, c. 1 bound himself not to worsen in fineness or weight the current coinage. Bolton, \textit{ibid.} at 298. According to Blackstone, the statute 25 Edw. III, c. 13, established that all coined money must be made of "sterling," namely of "the true standard" of a given fineness of a given weight of gold or silver. He concluded that "the king's prerogative seemeth not to extend to the debasing or enhancing the value of the coin below or above the sterling value." Blackstone, \textit{supra}, note 8 at 278. Hale was less categorical. He concluded that "it is neither safe nor honourable for the king to imbase his coin below Sterling; if it be at any time done, it is fit to be done by assent of parliament...." Hale, \textit{supra}, note 7 at 193.

\textsuperscript{160} Bolton, \textit{supra}, note 150 at 298. Unlike other European countries, the main vehicle for the acquisition of bullion was the wool trade. \textit{Ibid.}

\textsuperscript{161} Besides cheque and bank notes discussed below, such payment mechanisms included tallies, tokens and obligatory writings (see S.J. Bailey, "Assignments of Debts in England from the Twelfth to the Twentieth Century" (1930) 47 L.Q. Rev. 516 and (1932) 48 L.Q. Rev. 248 at 260-67), not to mention bills of exchange (see W. Holdsworth, \textit{A History of English Law}, 2nd ed. (London: Methuen and Co. Ltd, 1937) Vol. VIII at 126-45 and 151-70).
The origins of English paper money lay in the early
development of English banking. Prior to the Civil War of the
mid-seventeenth century, merchants kept their surplus money in the
King's mint in the Tower of London. In the course of the
seventeenth century, following Charles I's forcible loan from that
money in 1640, merchants commenced to leave their money in the
hands of the goldsmiths. Soon, during the Cromwellian period,
the goldsmith turned into a banker. Having acted heretofore as
bailee or custodian of money in trust, he became fully authorized
to make use of deposited money by lending it to others.

Goldsmiths issued receipts with respect to moneys deposited
with them. A receipt was in favour of a payee or bearer. The
instrument contained the goldsmith's undertaking to pay on demand
when presented with the receipt. It came to be known as a
goldsmith's or banker's note and evolved into an early form of the
promissory note. Alternatively, rather than taking goldsmiths'

\[1987\] From Commodity to Currency

162 The business of banking (borrowing in order to lend) was first carried on in England by the scriveners. But neither paper money nor payment mechanisms was instituted by them. See J. M. Holden, The History of Negotiable Instruments in English Law (London: Athlone Press, 1955) at 205-206. For more on the scriveners (whose original business was to write legal documents) as the pioneers of banking in England who preceded the goldsmiths, see R. D. Richards, The Early History of Banking in England (New York: A.M. Kelley, 1965, reprint of 1929 edition) c. 1. On the early history of English banking, in the framework of the evolution of banking in Europe in general, see Holdsworth, supra, note 160 at 177-92.

163 Holden, ibid. at 70; Richards, ibid. at 35. "Until the Civil War, the goldsmiths' business had consisted chiefly of the manufacture of gold and silver plate and jewellery and the purchase, mounting and sale of jewels." Holden, ibid. at 71, note 2. For the pre-Civil War roots of the practice of goldsmiths' acceptance of "money and plate in trust" see Richards, ibid. at 35. See also Holdsworth, ibid. at 185. It thus appears that Charles I's forcible loan had merely reinforced a process which was already under way.

164 Strictly speaking, he was never a bailee. A custodian of money for safekeeping was not allowed to use the money, but inasmuch as he was not required to return to each depositor the specific coins originally delivered to him for safekeeping, or to keep them separately, he was not liable in Detinue. The nature of the custodian's liability to the depositor, whether in Debt or Account, "was never really settled in medieval law." A.W.B. Simpson, A History of the Common Law of Contract (Oxford: Clarendon Press, 1975) at 183.

165 Richards, supra, note 162 at 37.

166 Richards, ibid. at 40-3.

167 Holden, supra, note 162 at 70-73. For the evolution of the form of the goldsmith's note, see also Feavearyear, supra, note 148 at 107-108.
notes, a depositor was allowed to draw upon the goldsmith various amounts up to the amount of the deposit. Such drafts, payable on demand and made out to a payee or bearer, were the first cheques.\textsuperscript{168}

Goldsmiths' notes and cheques were payment mechanisms, which facilitated the transmission of funds from a debtor to his creditor. Through the use of such machineries, a depositor or debtor could avoid the need of physically delivering coined money to the creditor. Payment could be made by delivering a goldsmith's note or cheque and having the account with the goldsmith debited upon the presentment of the instrument.\textsuperscript{169} Soon, goldsmiths' notes and cheques came to serve as money itself. As a new type of money, both were interchangeable and indistinguishable.\textsuperscript{170} Being dependent for its acceptance "not upon containing within itself a substance with a value apart from its value as money, but upon people's belief that a promise to exchange it for other money will be honoured,"\textsuperscript{171} the acceptability of paper money depended on the credit of its issuer, irrespective of the form of the instrument.

Gradually, however, bankers' notes superseded cheques as money. In some respects, cheques were more advantageous than bankers' notes, but their advantage was not absolute. Consequently each instrument developed to satisfy different needs of the financial community. According to Milnes Holden,

\begin{quote}
...cheques could be drawn for the exact amount of the debt ... they provided a permanent record of settlement; and ... their use made it unnecessary for customers to keep large amounts of notes and coins on their premises. On the other hand, creditors would prefer to receive bankers' notes rather than cheques from debtors whose financial standing was uncertain.\textsuperscript{172}
\end{quote}

Indeed, cheques were used primarily "by the nobility and landowning classes, whose signatures were widely known and

\begin{flushleft}
\textsuperscript{168} For this development, see Holden, \textit{ibid.} at 204 ff.
\textsuperscript{169} Feavearyear, \textit{supra}, note 147 at 107-110.
\textsuperscript{170} Feavearyear, \textit{ibid.} at 258. See also Mann, \textit{supra}, note 3 at 15.
\textsuperscript{171} Feavearyear, \textit{ibid.} at 99.
\textsuperscript{172} Holden, \textit{supra}, note 162 at 214.
\end{flushleft}
accepted."173 At the same time, inasmuch as the financial standing and the authenticity of the signature were likely to be more certain in the case of a banker than in the case of an unknown depositor, bankers' notes were a more promising and widely used medium of exchange.174 Their success could further be attributed to an improvement in the original system of receipt issue by goldsmiths. Originally, a goldsmith issued one note for the whole sum deposited with him. If any of it was paid off, the amount so paid was marked on the original note.175 It was, therefore, impossible to either pay with parts of the deposit or to transfer the note to several different creditors. Ultimately, the original system was substituted by a more sophisticated one. The gross deposit was subdivided into several receipts in various denominations; instead of one note containing a single promise to pay the entire sum, the goldsmith gave a series of promises to pay a number of smaller sums making up the total of the deposit. Finally, such notes might be given by a goldsmith not against a deposit, but rather as proceeds of a loan.176

Towards the end of the seventeenth century it was judicially acknowledged that "[t]he notes of goldsmiths (whether they be payable to order or to bearer) are always accounted among merchants as ready cash."177 Nevertheless, it was also held that a creditor could refuse a tender of goldsmiths' notes and insist on payment in metallic money.178 Underlying the latter rule was apparently the risk of goldsmiths' insolvency. Indeed, insofar as a goldsmith was authorized to lend money deposited with him,179 the

173 Feavearyear, supra, note 148 at 109.

174 At the same time cheques were more promising payment mechanisms, or devices for the transmission of funds for the purpose of avoiding the need and the risks of carrying money in specie. Holden, supra, note 162 at 213-14.

175 For this practice, see for example Cooksey v. Boverie (1693), 2 Show. K.B. 296 at 296-97, 89 E.R. 949.

176 For this development, see Holdsworth, supra, note 160 at 190-91.

177 Tassell and Lee v. Lewis (1696), 1 Ld. Raym. 743 at 744, 91 E.R. 1397 at 1398.

178 Ibid.

179 See text, supra, note 165.
risk of his failure to meet his obligations to repay deposited money, that is, the risk of his insolvency, could not be overlooked, irrespective of his good reputation.\textsuperscript{180} A creditor who accepted from his debtor a goldsmith's notes in payment of the debt was partly protected against the risk of the goldsmith's insolvency by virtue of the "conditional payment" principle.\textsuperscript{181} In an open defiance to the prevailing mercantile view,\textsuperscript{182} this principle stated that unless agreed otherwise, "the acceptance [by a creditor] of...a [goldsmith's] note is not actual payment."\textsuperscript{183} Rather, "when such a note is given in payment, it is always intended to be taken under this condition, to be [absolute] payment [only] if the money be paid thereon...."\textsuperscript{184} That condition was dispensed with upon the creditor's failure to demand payment from the goldsmith "in convenient time."\textsuperscript{185} Stated otherwise, the "conditional payment" principle meant that upon the goldsmith's failure, the creditor was entitled to recover from the debtor, provided that a timely demand from the goldsmith had been made by the creditor.

Nevertheless, the "conditional payment" principle fell short of providing a creditor with full protection. To begin with, the contingency of a possible action against the debtor, after payment in goldsmith's notes was made, rendered such notes less attractive to creditors than coined money. Only payment by coins led to a final and immediate discharge of the debt. Secondly, a debtor who had deposited his money with a goldsmith who later became insolvent

\textsuperscript{180} Notwithstanding text which follows note 173, \textit{supra}.

\textsuperscript{181} See in general, Holden, \textit{supra}, note 162 at 85-6 and 109-11.

\textsuperscript{182} See \textit{Ward v. Evans} (1702), 2 \textit{Ld. Raym.} 928 at 930, 92 \textit{E.R.} 120 at 121, where Lord Holt C.J. stated the rule "notwithstanding the noise and cry, that it is the use of Lombard-Street, as if the contrary opinion would blow up Lombard-Street...."

\textsuperscript{183} \textit{Ibid.}

\textsuperscript{184} \textit{Ibid.}

\textsuperscript{185} \textit{Ibid.} Compare \textit{Tassel and Lee v. Lewis}, \textit{supra} note 176 at 744 (\textit{Ld. Raym.}) and 1398 (\textit{E.R.}) where the report cites \textit{Hopkins v. Geary} (1702). See also \textit{Hill v. Lewis} (1693), 1 \textit{Salk.} 132 at 133, 91 \textit{E.R.} 124 at 125, where Lord Holt C.J. instructed the jury that "what should be thought convenient time, ought to be according to the usage among traders...." The report queries "[i]f \textit{Tassell and Lee v. Lewis} [\textit{id.}] is not S.C."
might have lost a substantial sum of money upon the goldsmith's failure, so that, generally speaking, he was not a promising defendant in terms of his creditworthiness. Thirdly, the creditor's remedy against the debtor might be lost where the creditor failed to make a timely demand for payment upon the goldsmith. Faced with the risk of a goldsmith's failure and not being adequately protected against it, a creditor could not be required to accept goldsmith's notes as complete substitutes for coined money.

The recognition of the banker's note as a form of money, a complete substitute to coins, came only following the establishment of the Bank of England and its note issue. The process leading to the predominance and unqualified victory of the bank note as a specie of money was thus accomplished only when the risk of a banker's insolvency was eliminated.

The Bank of England was established in 1694. According to Milnes Holden, the creation of the Bank "was really the work of an impecunious government striving to borrow money in order to wage a war against France." Some of the Bank's designers wanted notes issued by it to circulate as money, but neither the Act of Parliament nor the Charter conferred upon the Bank an explicit note issuing power. Nonetheless, shortly after its establishment, the Bank of England began to issue to depositors, "probably to a very considerable extent," notes payable to bearer, similar to those

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187 Holden, ibid. at 90-91. For the bank and its financing of the operation of the Whig government, see in general, Holdsworth, supra, note 161 at 188, 189.

188 Holden, ibid.

189 The Act provided in s. 29 for the Bank's power to issue formal notes under seal. "These notes were used for making payments to the Exchequer from the Bank. The Exchequer then paid them out to the government's creditors, but they never seem to have become a popular form of currency." Holden, ibid. at 91. The silence of the statute as to the bank's power to issue circulating notes is explained by Feaveryear by the strong opposition to that power, and the promoters' scheme to defuse this opposition by avoiding attention to their intention as to make the Bank a bank of circulation and issue and not merely a bank of deposit. Feaveryear, supra, note 148 at 126.

of the goldsmiths. Their recognition as a universal medium of exchange came from Lord Mansfield in 1758 in *Miller v. Race*:

Now they are not goods, not securities, nor documents for debts, nor are so esteemed: but are treated as money, as cash, in the ordinary course and transaction of business, by the general consent of mankind; which gives them the credit and currency of money, to all intents and purposes. They are as much money, as guineas themselves are; or any other current coin, that is used in common payments, as money or cash.

Once introduced, the Bank of England's notes competed successfully with goldsmiths' notes and finally superseded them as paper money. The risk attached to the goldsmith's note of the goldsmith's insolvency, while generally smaller than the risk attached to the cheque, was nevertheless greater than the risk attached to the Bank of England note. "That the new institution did provide circulating notes and did not become bankrupt is a matter of history." Ironically, the continued solvency of the Bank of England had been supported by the goldsmiths themselves. Many of them "opened accounts with the Bank within a few months of its creation" and therefore did not wish "to see it financially embarrassed."

Indeed, the quality of legal tender, that is of "money that may be legally offered in payment of an obligation and that a creditor must accept," could only be conferred upon paper issued

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1. Holden, supra, note 162 at 89-90. Originally, such notes were of two types. Notes of the first type contained a promise to pay the whole of a deposit, or some irregular sum. Notes of the second type contained a promise to pay a round sum. "The note for a round sum soon became popular and gradually ousted that for an irregular amount." *Ibid.* at 89. See in general Richards, supra, note 162, Chapter VI.

2. (1758), 1 Burr 452 at 457, 97 E.R. 398 at 401.

3. Holden, supra, note 162 at 92.

4. See text, supra, notes 173-74.

5. Holden, supra, note 162 at 92.


by a creditworthy banker. Thus, after some judicial hesitation, notes of the Bank of England were made legal tender by statute, the relevant provision being s. 6 of the Bank of England Act, 1833. Today, Bank of England notes remain legal tender under the Currency and Bank Notes Act, 1954.

Issued by a state bank, a most creditworthy promissor, and being legal tender, Bank of England notes were not subject to the "conditional payment" principle. Payment in Bank of England notes was held to be as good as "payment...in gold" so as to amount to an absolute discharge.

Goldsmith's notes were never accorded a legal tender status. Their ultimate demise was nonetheless gradual. Thus, an act of 1708 forfeited the private note issuing power of large banking firms. But in 1826 this power was restored to non-London banks, provided they did not conduct business within sixty-five miles of

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198 See text around note 171, supra, and in greater detail, text and notes 177-85, supra, and paragraph which follows.

199 In Wright v. Reed (1790), 3 T.R. 554, 100 E.R. 729, Ashurt J. thought that notes issued by Bank of England "are money to all intents." [Emphasis added]. But Lord Kenyon Ch. J. understood Miller v. Race, supra note 191 (and see quote which follows) to hold that these notes "are considered money to many purposes." [Emphasis added]. Buller J. inclined to support Ashurt J., but ultimately sided with the Chief Justice. Acknowledging that "bank notes pass in the world as cash," he nonetheless stressed that "[t]his Court has never yet determined that a tender of bank notes is at all events a good tender." In Ex. P. Imeson (1815), 2 Rose's Bkcy Cas. 225, instruments payable in "Bank of England Notes" were held not to be payable in "money" within the meaning of a statute governing promissory notes.

200 3 & 4 Will, 4, c. 98. More accurately, the statute made the Bank's notes legal tender in England and Wales for all payments (except for by the Bank itself) over five pounds. See Holden, supra, note 162 at 196. For the recent removal of these limits, see text and note 218, infra.

201 2 & 3 Eliz. 2, c. 12. See Mann, supra, note 3 at 16.

202 For this principle as applied to goldsmith's notes, see text at notes 181-82, up to the end of the paragraph that follows, supra.

203 Currie v. Misa (1875), L.R. 10 Ex. 153, 164. See also The Guardians of the Poor of the Lichfield Union v. Greene (1857), 26 L.J. Ex. 140, 142.

204 This is in contrast to bank notes issued by private bankers which continued to be governed by the "conditional payment" principle. Ibid.

205 7 Ann., c. 7, s. 61. See in general, Holden, supra, note 162 at 93-4 and 213.
London, and that every member of an issuing banking firm was to be fully liable for debts under the demand notes. This note issuing power was severely curtailed and subsequently disappeared following the passage of the Bank Charter Act, 1844 (U.K.).

The framers of the Bank Charter Act, 1844 (U.K.) intended that the exclusive responsibility for issuing bank notes should eventually reside in the hands of the Bank of England. The statute provided that the note-issuing power was not to be conferred upon any new bank. Furthermore, in order to retain their issuing power, existing banks had to meet certain conditions relating to their solvency, their continuance of note issuing, and their corporate structure. Private note issuing was thus gradually phased out. During the latter half of the nineteenth century, the volume of notes issued by banks other than the Bank of England progressively declined. This development might have prompted an English court in 1861 to say, though in the context of Hungarian money, that "[t]he right of issuing notes for payment in money, as part of the circulating medium" belonged to "the supreme power in every State." This became true in England in 1921 when Messrs. Fox, Fowler & Co., the last surviving note-issuing banking firm, merged with Lloyds Bank Ltd. and thereby lost its power to issue notes. Exclusive authority for issuing bank notes was thenceforth in the hands of the Bank of England.

206 Country Bankers Act, 1826 (U.K.), 7 Geo. 4, c. 46. See in general, Holden, ibid. at 198-99.
207 7 & 8 Vict. c. 32.
208 Holden, supra, note 162 at 278.
209 Holden, ibid. at 197-98.
210 Ibid. at 277-78.
212 But Irish and Scottish banks may still issue notes lawfully. Such bank notes may circulate also in England. See Holden, supra, note 162 at 278, n. 3.
213 Holden, ibid. at 278; Goode, supra, note 22 at 2.
When World War I broke out in 1914, the monopoly of the
Bank of England in issuing paper money was temporarily challenged
by the *Currency and Bank Notes Act, 1914* (U.K.). This statute
authorized the issue of Treasury notes to provide emergency
currency. Such notes, as well as postal orders, were made legal
tender. These legislative provisions were repealed in 1928. The
repealing statute provided for the amalgamation of the Treasury note
issue into the note issue of the Bank of England and further
enhanced the status of the Bank of England notes as legal tender.
Thus, the Bank was expressly authorized to issue small amount
notes. In addition, notes of five pounds and more were declared
to be legal tender for payment of any amount, and not, as before,
for amounts above five pounds. The final development as to the
exclusiveness of the Bank of England notes as paper money occurred
in 1933, when the Bank fixed July 31 of that year as the last day on
which Treasury notes would be legal tender.

Bank of England notes had always contained a promise to
pay a specific sum of pounds. Indeed the right of a holder of a
banknote to demand coin, or the convertability to metallic money,
"had been an essential feature of the Bank of England Act, 1833." This principle was honoured during World War I, but was
subsequently overturned by the *Gold Standard Act, 1925* (U.K.).

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214 4 & 5 Geo. 5, c. 14, s. 1(1).

215 *Ibid.* Ss. 1(1) and 1(6), respectively.


218 S. 1(1). A sweeping prohibition applying to any person to issue bearer demand notes
for less than five pounds each had existed since 1826. See Holden, *supra*, note 162 at 195.

219 S. 1(2) of the *Currency and Bank Notes Act, supra*, note 216.

220 For these developments, see Holden, *supra*, note 162 at 278-80.

221 Mann, *supra*, note 3 at 39. For suspensions of payment occurring prior to 1833, see
Holden, *ibid.* at 192-96.

222 15 & 16 Geo. 5, c. 29. See Holden, *ibid.* at 279.
The statute "exempted the Bank of England from liability to redeem its notes with gold coin and merely placed it under the obligation to sell gold bullion at a fixed price, and, moreover, granted to the Bank of England the exclusive right of obtaining coined gold from the Mint." This "limited convertability" was abolished in 1931; the Gold Standard (Amendment) Act 1931 (U.K.) ended the gold coinage in Great Britain and has effectively completed the process of placing paper money as money itself. Today while s. 1(3) of the Currency and Bank Notes Act 1954 (U.K.) provides that notes issued by Bank of England "shall be payable" at the Bank, such payment can be made in the Bank's own notes. At present, metallic money is legal tender only for small amounts. Bank notes are legal tender to any amount. Undoubtedly, bank notes have superseded coins as the principal form of money.

In sum, paper money in the form of bank notes originated as a payment mechanism, that is, a machinery facilitating the payment of money without incurring the risks of transportation or physical delivery. As such, the bank note embodied a banker's

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223 Mann, supra, note 3 at 39.

224 Gold Standard (Amendment) Act, 1931 (U.K.), 21 & 22 Geo. 5, c. 46.

225 Ibid.

226 Holden, supra, note 162 at 279. Holden notes that a small issue was undertaken by the Royal Mint in 1949 to "preserve the inherited knowledge and craftsmanship of gold coining."

227 2 & 3 Eliz. 2, c. 12.

228 Mann, supra, note 3 at 9, nn 31 and 39.


230 Ibid.; See Goode, supra, note 22 at 9. Gold coins fall into the same category as bank notes. But see note 226 and text, supra.

231 Needless to say, for substantially large payments, any payment in specie, in coins or bank notes, is inconvenient, and practically speaking, may not be widespread. Large sum payments are accomplished through the use of payment mechanisms, a topic which is beyond the scope of the present essay. The suspicion attached to large cash payments is reflected in the United States in the Bank Records and Foreign Transactions Act of 1970, which requires banks to report cash transactions in such amounts as may be specified by the Secretary of the Treasury Department. (Pub. L. No. 91-508 (221).
engagement to pay money deposited with him. Gradually, the bank note began to circulate and was treated as money itself. With the note issuing power being taken over by the State, paper money became money.

Having turned into a specie of money itself upon the abolition of convertability, paper money was the culmination of the process of the evolution of money from an ordinary chattel to a specie of valuable chattel and, finally, into a paper (valueless chattel) containing an abstract promise to pay money. As in the case of metallic money, commerce set the stage for the evolution of paper money in order to meet mercantile needs. But unlike the coin, the bank note emerged as a predominantly private instrument. Nonetheless, it was government power which finally, irrevocably, and irreversibly, turned the bank note into paper money. As between commerce and tyranny, that is, between economic and financial conditions on one hand and government power on the other, once again, the latter tipped the balance.²³²

IV. CONCLUDING OBSERVATIONS

In a sense, the evolution of the bank note from a payment mechanism to paper money defeated the original purpose of the instrument. From a machinery designed to facilitate the transfer of funds without the need to carry money in specie, the bank note turned into a specie of money, the possession of which was subject to risks of theft and loss. Nevertheless, the mercantile community had benefitted from paper money from its early stages. First, paper money weighed less and required less space than metallic money. It was thus easier and cheaper to carry paper money than metallic money. Secondly, inasmuch as paper money was made of valueless material, its physical destruction was not always tantamount to absolute loss. Under some circumstances, its issuer might replace

²³² For the respective roles of commerce and tyranny in the evolution of metallic money, see Part II, supra.
From the issuer's viewpoint, inasmuch as the evolution of paper money coincided with the early development of banking, the issuance of bank notes to a depositor did not require the issuer to keep the deposited coins. An increase in deposits, due to the growing acceptability of the paper issued in respect of them, gave the banker more money to create loans, which resulted in higher volume of business. It was, nevertheless, the next logical step that was crucial to the development of paper money. If the deposited coins, against which bank notes were issued, did not have to stay with the banker, why did they have to be there in the first place? Paper money was acceptable on the basis of the creditworthiness of its issuer, rather than on the basis of actual coins deposited with the issuer. Hence, paper money could be issued by a creditworthy issuer irrespective of lack of actual coins in the issuer's hands.

This latter characteristic ultimately attracted the government to the business of note issuing. Bank notes could be printed against the credit of a body set up by the government, with no requirement that actual coins be deposited with it. These bank notes, backed by governmental body, were soon to be conceived and sanctioned as money. Issuance of such paper money became a powerful tool in shaping governmental policies.

In different periods, scarcity of metallic money led to debasement, evolution of payment mechanisms, and the

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233 Provided tangible verifiable evidence of any damaged money is presented. "Canadians can cook, mangle, bury and even burn their money, and as long as the Bank of Canada can find some way to authenticate the bills, the money will be redeemed at full value" (B. Yaffe, "Mangled and Burnt Cash Still Redeemable if Recognized" The [Toronto] Globe & Mail, 31 July 1985, at 4). Whether statutory provisions relating to the loss of promissory notes apply to the destruction of a bank note is a disputed question, referred to in D.V. Cowen & L. Gering, Cowen on the Law of Negotiable Instruments in South Africa, 5th ed. (Cape Town: Juta and Co., 1985) vol. I at 49, note 187.

234 A fact which underlies Hayek's devastating criticism of our current monetary system. See his book cited in note 128, supra.

235 Compare text at supra, notes 154-60.

236 Compare Bailey, supra, note 161 at 152 (1930) and 254 (1932).
emergence of paper money.\textsuperscript{237} Money became a chattel, its purchasing power dependant on the value conferred upon it by the State irrespective of its intrinsic value. Paper money was the culmination of this process.

It should be observed that the bank note emerged and was originally developed by the financial community to serve the needs of commerce. Its introduction was associated with breaking away from the monarch.\textsuperscript{238} When the State interfered, it did not affect the concept of the bank note, but merely took over the function of its issuing. Indeed, in the process, convertability was abolished and actual deposits of coins became a mere fiction. Nevertheless, the legal theory of paper money remained that of the goldsmith's note, an engagement to pay money.\textsuperscript{239} The amount of "money" paid under paper money, and hence the value of the bank note, was expressed in the engagement to be measured by reference to units of value representing a hypothetical valuable chattel. As such, metallic money remains central to the legal conception of money.

\textsuperscript{237} Compare text at supra, notes 186-91.

\textsuperscript{238} See text which follows note 162, supra.

\textsuperscript{239} Though depending on the form of the bank note, the engagement may be implied: \textit{Banco de Portugal v. Waterlow & Sons} (1932), [1932] A.C. 452, 487, Lord Atkin. In Britain, the Bank of England's engagement is expressly stated to be payable to the bearer. See s. 1(3) of the \textit{Currency and Bank Notes Act, 1954} (U.K.), supra, note 227 and see text around note 224, supra. Whether a Bank of Canada note containing an express promise to pay is a "promissory note" under legislation governing bills and notes is discussed in \textit{Bank of Canada v. Bank of Montreal} (1977), 76 D.L.R. (3d) 385 (S.C.C.). Canadian (as well as U.S.) paper money no longer contains an express promissory language. The engagement is then implied. \textit{Ibid}. 