THE UNIVERSITY OF CHICAGO
FOUNDED BY JOHN D. ROCKEFELLER

A STUDY OF LEGAL TENDER IN ENGLAND

A DISSERTATION

SUBMITTED TO THE FACULTY OF THE GRADUATE SCHOOL OF ARTS AND LITERATURE FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

(DEPARTMENT OF POLITICAL SCIENCE)

BY
SOPHONISBA P. BRECKINRIDGE

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[The chapters constituting this Dissertation are taken from a larger volume entitled *Legal Tender; a Study in English and American Monetary History*, which has appeared as Volume VII, Second Series, of the Decennial Publications of the University of Chicago.]

PRINTED AT THE UNIVERSITY OF CHICAGO PRESS

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CHAPTER I

INTRODUCTION

THE purpose of the present study is to obtain such understanding of the origin, nature, and function of the legal-tender quality of money as may be gained from asking the three following questions and answering them as fully as may be with respect to English and American experience:

What organ of the state has exercised the power of bestowing upon money the quality of being a legal tender? With respect to what forms of money or substitutes for money has the power been exercised? What have been the reasons for such exercise?

It has been held by some writers that the power to bestow this quality upon money is a power having its origin in tyranny,[1] and corruption[2] for its purpose. That the power is one subject to abuse is patent, and that it is a power which has been abused is one of the conspicuous facts of history; yet, allowing for these objections, certain questions suggest themselves: Has the power no legitimate place in a scheme of governmental powers? When possessed, has it been so exercised as to show that it should be prohibited altogether, or is it a power whose exercise should be care-

[1] "The origin of legal tender among English-speaking people was the decree of an English king making it a penal offense to refuse the king's money after he had debased it."—Mr. EDWARD ATKINSON, "The Unit of Value in All Trade," *Engineering Magazine*, August, 1893, p. 565.

[2] "Profligate governments having until a very modern period never scrupled for the sake of robbing their creditors to confer on all other debtors a license to rob theirs by the shallow and impudent artifice of lowering the standard; that least covert of all modes of knavery, which consists in calling a shilling a pound that a debt of a hundred pounds may be cancelled by the payment of one hundred shillings."—J. S. MILL, *Principles of Political Economy*, Book III, chap. vii, § 2.

fully guarded? Answers to such questions can be obtained only by reference to the facts of history, by an examination of the record of what has been done, what agency has been employed, what reasons have governed action. The investigation here undertaken has for its object this reference to history and this ascertainment of the agency, mode of exercise, and reasons underlying the exercise of the power to bestow the legal-tender quality upon the money of the realm.

The idea of legal tender is a legal idea. It must be defined in legal terms. A definition which may be quoted is to the effect that "money is a legal tender when it may be used in payment of a debt."[1] And it is from a plea in defense to the action of debt that the word "tender" comes.[2] The law of tender is thus a portion of the law of contract, of the private law controlling the relation between individuals in their private capacity.

This law has, however, a close connection with the public law, in that the action of debt and plea of tender relate to the payment of money; and the authority to determine what was good and lawful money, which might be used in satisfaction of such obligation, was a sovereign power, belonging to that group of powers which, in the terms of English constitutional law, constituted the prerogative of the Crown.[3]

The definition of legal tender which has been quoted is, however, a narrow definition—too narrow for the purposes to be served by this discussion. A debt is an obligation, enforceable at law,[4] growing out of an agreement between two or more persons, to be fulfilled at a later time; in other words, an obligation involving the element of time; but to

[1] BOUVIER, *Law Dictionary*, Vol. II, pp. 24, 581.

[2] COKE, *Institutes*, Vol. II, p. 577.

[3] See ANSON, *Law and Custom of the Constitution*, Vol. II, p. 2.

[4] *American and English Encyclopedia of Law*, Vol. XXV, p. 897.

limit the discussion to money used in time transactions would exclude two great classes of transactions, the scrutiny of which, from the point of view of the medium employed in them, would greatly illumine the subject. Reference is made to cash transactions between individuals, and to transactions involving the obligation of the subject or citizen to the government. So far as possible, then, those two classes of transactions will also be included in the discussion.

In order to give the discussion the scope indicated, it will be necessary, then, to employ the words "legal tender" in an enlarged sense. Legal-tender money will therefore signify in the following pages such money as carries with its possession the right to use it in any lawful transaction, whether that transaction be a cash or a time transaction; a transaction between private individuals or between an individual and the government to which he is subject.

CHAPTER II

SKETCH OF ENGLISH CONSTITUTIONAL DEVELOPMENT

Relation of Crown to Advisory Bodies Growing Out of the Witanagemot — Establishment of Parliament and Parliamentary Rights, 1154-1377 — Aggrandizement of Crown, 1377-1602/3 — Establishment of Responsible Government and Transfer of Sovereignty to House of Commons, 1602/3-1816.

Inasmuch as the scope and mode of exercise of any one of the powers which together make up the royal authority vary with the varying relation of the Crown to the conflicting powers in the state, it is not amiss, in attempting to arrive at a proper estimate of the power of the Crown over the coinage, to review briefly the familiar course of English constitutional development during the period chosen for consideration. The period begins with the Conquest, in 1066, and ends with the year 1816. The reason for selecting as the starting-point the date 1066, or the accession of the Conqueror, is obvious; the selection of the date 1816 for the termination of the period needs a few words of explanation. The second question to be asked and answered in the inquiry relates to the forms of money on which the legal-tender quality was bestowed. It will appear that after the middle of the fourteenth century that quality was possessed with certain limitations by coins of both gold and silver, until 1774, when, by temporary legislation, the legal-tender quality of silver coins was limited. In 1816 this legislation was made permanent, and gold became the only unlimited legal tender. That date has seemed, then, a suitable and convenient one at which to close this study.

It will be remembered that in the period prior to the Conquest, the Witanagemot, or Great Council of the Nation, had a direct share in government. In connection with the

king it enacted laws and levied taxes for the public service, made alliances, granted the public lands, appointed officers of church and state, and served as a supreme court of justice. Toward the close of the pre-Norman period many of these powers were in fact exercised by the king; but the right of the Witan to give counsel and consent in the two matters of legislation and extraordinary taxation was always recognized.[1]

The Conquest did not interrupt the continuity of the English government. William claimed the throne by right of inheritance, not of conquest, and adopted a policy of making as few changes as possible through legislation. Under him the ancient national council occasionally met at the accustomed times and places, and perhaps retained its ancient name.[2] But the changes incident to an assumption of power by a foreign people and the harsh administration, together with the encouragement and systematization of feudal practices, particularly those connected with the tenure of land, resulted in a government which was actually, if not legally, despotic; and as the feudal influences spread and the power of the king increased, the ancient legislative assembly changed insensibly into different councils, by which the king was advised under varying circumstances.[3] These were known as the Council,[4] the Great Council,[5] the Common Council,[6] the Curia,[7] and the Barons. The exact relation

[1] TASWELL-LANGMEAD, *English Constitutional History* (4th ed.), pp. 37, 38.

[2] *Ibid.*, p. 71.

[3] *Ibid.*, p. 181; STUBBS, *Select Charters and Other Illustrations of English Constitutional History*, p. 14.

[4] *Concilium.* This consisted of prelates, earls, and barons, selected by the king, was the supreme court of justice, and met three times a year at the great festivals— Easter, Whitsuntide, and Christmas.— BARNETT-SMITH, *History of the English Parliament*, Vol. I, p. 46.

[5] *Concilium magnum.* This was a larger assembly of persons of rank and property assembled on extraordinary occasions.—*Ibid.*, p. 43.

[6] *Concilium commune.* This was a still more numerous body collected for more general purposes.

[7] *Curia regis.* This and the *Baronagium* were generally convened on the adjournment of the king's ordinary supreme court of justice, and were in fact the king's great court.— *Ibid.*

existing between these various councils is not known; but under Henry I. (1100–35) the Curia was organized for administrative and financial purposes, became something like a permanent committee consisting of the great officers of the king's household, and was further developed under Henry II. (1154–89). The chief aim of Henry II. is recognized to have been the consolidation and centralization of kingly power in his own hands; yet he continually called together the Great Council, and without its advice and consent he transacted no public matter of importance, enacted no law.[1]

During the earlier feudal period taxation assumed the form of a personal gift to relieve the king's wants. Under Henry II. all classes of society were brought under contribution, and the result of the nationalization of taxation was a nationalization of the protest against taxation of all without the consent of all, a protest based on the maxim of the Civil Code, "what touches all should be approved by all." This protest resulted again in the addition, under Edward I., of the representatives of the third estate to the Council, and after 1295 in their participation in legislation, with occasional interruptions, and, after the year 1341, as a separate legislative chamber.[2] During the next century and a half, and particularly during the long reign of Edward III. (1326–77), the Commons succeeded in establishing as essential principles of government three great rights: the necessity of consent of Parliament to all valid taxation; the necessity of the concurrence of both Houses of Parliament to all valid legislation;[3]

[1] See TASWELL-LANGMEAD, *op. cit.*, pp. 7, 95, 97. Note clause 12 of the Great Charter: *Nullum scutagium vel auxilium ponatur in regno nostro nisi per commune Consilium regni nostri*, etc.— STUBBS, *op. cit.*, p. 299.

[2] BARNETT-SMITH, *op. cit.*, Vol. I, p. 199.

[3] HALLAM, *Constitutional History of England from the Accession of Henry VII. to the Death of George II.*, Vol. I, p. 19, cites statute of 1322 as the basis for this right; GREEN, *History of the English People* (N. Y., 1881), Vol. I, p. 414.

the right of the Commons to inquire into and amend the abuses of administration.[1]

This period coincides with that during which a money economy, as contrasted with the mediæval system of barter, was established, as the division of employments which had existed to a considerable degree in the eleventh century was extended,[2] the great trading companies developed,[3] the lords of the manors found it more profitable and convenient to accept money payments in place of the ancient services, and the tenants gladly relieved themselves of the personal performance of services. This transformation was not completed, however, before the middle of the fifteenth century.[4]

During the fifteenth century (1399–1485) Parliament, under the Lancastrian kings,[5] was busy in the consolidation and regulation of the results of former contests with the Crown, rather than in acquiring new fundamental rights. The old rights it continued to exercise with slight opposition, voting taxes, appropriating supplies conditioned on redress of grievances, sharing in legislation, etc.; and during this period the internal constitution of Parliament, its chief forms of procedure and essential privileges, were established.[6] Then came the political reaction of the sixteenth century.[7] Men then turned their thoughts to commerce, learning, religion, and left to princes the powers of the state. There were peculiar reasons for the existence of this condition in England besides those prevailing universally. They

[1] STUBBS, *op. cit.*, pp. 49, 50.

[2] CUNNINGHAM, *The Growth of English Industry and Commerce During the Early and Middle Ages* (3d ed.), p. 128.

[3] *Ibid.*, p. 342.

[4] TASWELL-LANGMEAD, *op. cit.*, p. 313; CUNNINGHAM, *op. cit.*, pp. 241 ff.; POLLOCK AND MAITLAND, *History of the English Law before the Time of Edward I.*, Vol. II, p. 150.

[5] Henry IV. (1399-1412); Henry V. (1412-22); Henry VI. (1422-60); Edward IV. (1460-83); Edward V. (1483); Richard III. (1483-85).

[6] TASWELL-LANGMEAD, *op. cit.*, pp. 323–34.

[7] 1483–1603.

were to be found in the destruction during the Wars of the Roses of the old nobility who had led the struggle for liberty, and the lack on the part of the Commons of that sense of importance and self-reliance which was developed adequately only under the successors of Elizabeth.[1] During this century the power of the Crown increased to dangerous proportions, but it was generally exercised with scrupulous regard for constitutional and judicial forms;[2] and, in spite of the fact that arbitrary practices prevailed and the spirit of the constitution was often violated, the constitution remained, in theory, at least, always intact.[3]

The death of Elizabeth ushered in the doctrine of the divine right and absolute power of kings promulgated by James and openly espoused by the church, the court, and the judicial bench as a true principle of religion and policy.[4] But during the period just closed, amidst the political inertia of the people, a real transfer of power had taken place. With the growth in commercial wealth of the middle classes feudalism had died out; and the Commons, as the representatives of the class now ready to become dominant, were prepared to rescue their ancient liberties and carry on the struggle which was to result in the execution of one king, the deposition of a second, and the installation of a third on terms of agreement constituting a veritable compact with the people. Of the conflict of the seventeenth century and its result it is unnecessary to speak. The Commons won the victory for political supremacy, and the Crown became only the executive branch of a government conducted through ministers and according to statutes.[5]

[1] TASWELL-LANGMEAD, *op. cit.*, p. 380.

[2] For example, Henry VIII. obtained an act giving his proclamation the force of law, "*that the king should not be driven to extend his royal supremacy.*"—31 Henry VIII., chap. 8, cited by HALLAM, *op. cit.*, Vol. I, p. 49.

[3] TASWELL-LANGMEAD, *op. cit.*, p. 503.

[4] *Ibid.*, p. 510.

[5] MURDOCK, *Parliamentary Reform*, p. 21.

CHAPTER III

THE POWER OVER THE COINAGE A PART OF THE ROYAL PREROGATIVE

Source of the Power — Unquestioned in the Crown, 1066–1311 — Parliament Attempts to Assume, 1311–1485 — Parliament Confirms the Power of the Crown, 1485–1695 — Surrender by the Crown, Ancient Forms being Retained, 1695–1816.

THE power over the coinage was from pre-Norman times a part of the royal prerogative.[1] It was such a power as that over the public peace.[2] Thus, when Henry II. came to the throne after the anarchical reign of Stephen (1154), his programme for the restoration of order included the maintenance of the general security, the strengthening of commerce, and the striking of a uniform coinage.[3]

To so unlimited an extent had the right been secured by the feudal princes on the continent that the Norman lords had imposed upon their people a triennial contribution under the name of *le fouage* in consideration of renouncing their right to change, that is, to call in and recoin for the sake of profit, the money of the land;[4] and an effort (which was, however, unsuccessful) was made by the Conqueror, or by his son, to introduce into England a similar tax, under the name of *moneyage*.[5] The attempt exhibits the conception of the royal power held by the early Norman monarchs.

Of course the power did not remain in the hands of the Crown without efforts on the part of Parliament to assume or

[1] For the Roman theory concerning this power, see MOMMSEN, *History of Rome*, Vol. I, p. 173.

[2] STUBBS, *Constitutional History of England in its Origin and Development*, (5th ed.), Vol. I, p. 331.

[3] *Ibid.*, p. 361.

[4] ASHLEY, *Introduction to English Economic History and Theory*, p. 168.

[5] LIVERPOOL, *Coins of the Realm*, p. 121.

at least to limit it. For example, about 1311, during the regency of the Lords Ordainers, such an attempt was made. The Barons[1] then enacted an ordinance to which the temporary governors of the kingdom[2] gave their consent, to the effect that no change should be made in the money of the realm without the consent of the Barons in Parliament.[3] This was, however, revoked ten years later by the king and the attempt failed.

Several times during the reign of Edward III. (1326–77) Parliament was consulted on matters affecting the coinage. A few illustrations may be given. In 1331 (5 Edward III.) the state of the money was brought before Parliament and it was agreed that the chancellor and treasurer and such of the king's Council as they should think proper to call to them, and others also of experience in mint affairs, should ordain whatever they might think would tend to the advantage of the king and his subjects. Again, in 1335 a statute was enacted in compliance with a petition from the Commons, providing that no money should be taken from the realm.[4]

An interesting petition of the Commons presented in 1346 throws light on the relations then existing between the Crown and Parliament. It contained three requests relating to the money of the realm. The first request related to penalties for exporting good money and importing bad money, and was partly granted by the king. The second asked that money should be more frequently coined and that the mints should be open in all the places where they had been accustomed to be. This also was granted. The

[1] See above, p. 5, note 7.

[2] The Lords Ordainers were appointed by Parliament in 1310 to administer the kingdom, because of certain abuses of the king.—GREEN, *op. cit.*, Vol. I, p. 384.

[3] RUDING, *Annals of the Coinage of Britain*, Vol. I, p. 400.

[4] *Ibid.*, p. 404.

third request consisted of two parts. The first part, that the king's receivers "should take of the people in every place both gold and silver at the same rate at which the people were obliged to receive them," was granted; but the second part, that no change in the money of gold and silver should be made without the consent of Parliament, was considered an attempt to invade the royal prerogative, and to it answer was made that the king and his nobles would ordain as they should see fit.[1]

In 1351 was enacted a statute which is interpreted by Blackstone as throwing doubt upon the extent of the royal power. This statute provided that the money of gold and silver then current should not be impaired in weight or in alloy; but "as soon as a good way might be found should be put in the ancient state as in the sterling." Blackstone says: "When a given weight of gold or silver is of a given fineness, it is then of the true standard called esterling or sterling metal . . . . ; and of this esterling or sterling metal all the coin of the kingdom must be made, by the statute of 25 Edward III., chap. 13. So that the king's prerogative seemeth not to extend to the debasing or enhancing below or above the sterling value."[2]

The commentator puts upon the prerogative a construction, based upon the statute cited, which suggests the legal-tender controversy in the United States, and tries to confine that power legally within the limits which public morality would dictate; and he was fortunate in finding a statute the text of which sustained his view. But his interpretation cannot be accepted. The saving clause "as soon as a good way might be found" left the whole matter in the discretion of the executive, as is proven by the fact that two years later the Commons again petitioned that the esterling

[1] *Ibid.*, p. 430.

[2] BLACKSTONE, *Commentaries on the Laws of England*, Vol. I, chap. 7, p. 276.

(penny) might be restored to its ancient value, and that it should be provided that this should not be impaired until such alteration took place.[1]

The interpretation put upon the law by the great commentator is interesting even if not correct. As Sir Matthew Hale says of the power of the Crown to debase and enhance the value of coins without the consent of Parliament, *fieri non debet, sed factum valet.*[2]

Parliament was too helpless during this and the following reign[3] to claim for itself the power under consideration and justify that claim. This is evidenced by numerous petitions[4] concerning grievances connected with the coinage and ordinances similar to that discussed by Blackstone and similarly futile.

In 1414,[5] however, a new method of attack was employed. Parliament then acknowledged the prerogative within certain limits, but claimed the right to confirm royal acts. It was then enacted that the king should apply to the existing grievances such remedy as he should think most profitable for himself and his people, and his provision for the betterment of the money of the realm should remain in force until the next Parliament; if then approved, it should be established to endure forever.[6]

This claim on the part of Parliament was followed by a

[1] RUDING, *op. cit.*, Vol. I, p. 440.

[2] HALE, *Pleas of the Crown*, Vol. I, pp. 192–5. It is interesting to note that this argument advanced by Blackstone had been suggested by Coke, and it was in reply to Coke that the argument of Sir Matthew Hale was directed. Blackstone does not, however, make reference to Hale's comment on Coke. It should also be said that when Blackstone wrote (1765) the development of commercial interests had brought in its train not only a growth of public morality, as the interests of government were seen to be identified with the interests of the wealth-producing classes, but also a clearer understanding of the principles which should govern the policy of the state with respect to the money of the realm. The effect of the increase and organization of the public debt on the attitude of government toward the money of the realm opens up a field for investigation and speculation which cannot be gone into here.

[3] Henry V. (1399–1412).

[4] See below, chap. v.

[5] 2 Henry V.

[6] RUDING, *op. cit.*, Vol. I, p. 497.

succession of acts more or less similar,[1] and the frequent petitions of the Commons were more heeded;[2] but in the reactionary period of the reign of Henry VII.[3] all that may have been gained was abandoned, when it was declared by Parliament that all coins issuing from the royal mints and bearing the royal stamp should be accepted of all within the realm at the rate at which they were issued.[4] By this act the royal power over the coinage was fully admitted and confirmed. Nor did any change take place either in law or in practice during the two following centuries, during which occurred the excesses of Henry VIII.[5] and the variable policy of Elizabeth[6] in connection with the coin of the realm. Even during the contest of the Commons with the first Charles, although control over the coinage was actually assumed by the Commons, the state of the law was evidenced by the fact that no coin was issued during the lifetime of the king without the royal superscription and image.[7] Only after that body had been established as the sole ruling power was money appointed to be coined with the style and by the authority of the Commons.[8]

Such were the relations of the Crown to Parliament until the revolution of 1688. As evidence of the change which was then produced may be cited the speech from the throne in 1695, when William of Orange, finding himself beset

[1] Compare RUDING, *op. cit.*, Vol. I, pp. 483, 489, for previous petitions.

[2] *Ibid.*, Vol. I, pp. 502, 511; Vol. II, pp. 8, 18. [3] 1485–1509.

[4] RUDING, *op. cit.*, Vol. II, p. 59. The act is cited as 19 Henry VII., c. 5. See also 5 and 6 Edw. VI., c. 19. RUDING, *op. cit.*, Vol. II, p. 118.

[5] See below, p. 40. [6] See below, p. 42. [7] RUDING, *op. cit.*, Vol. II, p. 286.

[8] It is unnecessary to point out that an act of the Crown now is an act of the ministry; that is, virtually of a majority of the House of Commons. "This was certainly a question [to remedy the defects of the silver coinage] upon which the crown by its prerogative had a peculiar right to decide, but when the matter is of so much importance, and so directly and immediately connected with the interests of all classes of the community, no ministry would be disposed to give advice to the crown of the proper mode of proceeding without submitting that advice to the consideration of Parliament."—Lord Liverpool, May 30, 1816, HANSARD, *Parliamentary Debates*, First Series, Vol. XXXIV, p. 911.

with the problems of a foreign war and of a domestic situation of extreme difficulty, was glad to throw the responsibility of the great recoinage of that year upon his Parliament. "I must likewise," said the speech from the throne, "take notice of a great difficulty we lie under at this time by reason of the ill state of the coin, the redress of which may perhaps prove a further charge to the nation; but this is a matter of so general concern and of so great importance that I have thought it fit to leave it entirely to my Parliament."[1]

Having discussed the source of the coinage power, its content and the mode of exercising it should be presented. As to the content, the power included the determination of weight, alloy, and denominative value of *new* coin; the alteration[2] of coin *already in use;* and the legitimation of *foreign coin.*[3]

The method in which this power was exercised was by a royal proclamation, or by an indenture entered into between the king and the master of the mint, in which a clause was inserted declaring the value at which the coins should pass.[4] This latter method, though less formal, was as legal whenever it was possible to employ it, as was shown in the decision of the court (1702) in the case of Dixon *v.* Willows,[5] when it was said of certain gold coins whose authentication rested only on indenture—"though there is no act of parliament or

[1] King's Speech, November 26, 1695, *Commons Journal*, Vol. XV, p. 339. The precedent then established is still observed. The Lords and Commons considered the subject separately and adopted resolutions, which were made known in an address to the king and constituted the substance of a proclamation.—See COBBETT, *Parliamentary History*, Vol. V, p. 967; Vol. VII, p. 524; also HANSARD, *Parliamentary Debates*, Vol. XXXIV, p. 946.

[2] This extended to taking away the currency of, that is, "crying down," coin in use.

[3] HALE, *Pleas of the Crown*, Vol. I, p. 188; RUDING, *op. cit.*, Vol. I, p. 4.

[4] *Ibid.*, pp. 57, 370, 458; LIVERPOOL, *op. cit.*, p. 23.

[5] 3 SALKELD (English Reports), 238. This method, by indenture, was obviously inapplicable in connection with foreign coins, or domestic coins already in circulation.

order of state for these guineas, yet being coined at the mint, and having the king's insignia upon them, they are lawful money at the value they were entered at the mint."

Summing up the results of the foregoing pages, it may be said that the legitimacy of currency, or lawfulness of English money and its denomination or value, rested upon an act of the Crown which assumed the form of a proclamation or indenture between the king and the master of the mint. If it can be shown that the legal-tender quality inhered in all lawful money, it would follow that in the acts of the Crown regulating the money could be traced the legal-tender policy of the English government. In the following chapter an attempt will be made to show that such was the fact.

CHAPTER IV

ALL LAWFUL MONEY A LEGAL TENDER

English and American Forms of Legislation Contrasted — Distinction Between Cash and Time Transactions — Cash Transactions — Transactions with King's Officers — Time Transactions.

By the constitution of the United States two distinct prohibitions are laid upon the states: "No state shall coin money; . . . . make anything but gold and silver coin a legal tender in payment of debts."[1] By the act of April 2, 1792,[2] establishing a mint and regulating the coin of the United States, it was expressly provided[3] that "all gold and silver coins which shall have been struck at and issued from said mint shall be a lawful tender in all payments whatsoever." That is, under our American legislation, the legal-tender quality is a power expressly conferred upon certain forms of money, while withheld from other forms, or perhaps conferred to a limited extent upon others. Such express bestowal of this power was not, however, essential under the English law, but the quality of being a "tender in payment of debts" inhered in all lawful money. "Currency," being "current coin," meant coin or money which was full legal tender unless the contrary was expressed. If the coin was not to be an unlimited legal tender, current in respect to all transactions, whatever the amount involved, and to all persons, the limitation was clearly stated.

Money transactions readily divide themselves into such as are begun and completed at one and the same time, in which, as in bargain and sale, money passes for goods; and those in which a period of time elapses between the date on

[1] Constitution of the United States, I, 10, 1.

[2] *United States Statutes at Large*, Vol. I, p. 246. [3] *Ibid.*, Sec. 16.

which an agreement is made and that on which that agreement is fulfilled. For these two classes the familiar terms "executed" and "executory" contracts may be accepted.

In considering this class of contracts it should be borne in mind that in the early portion of the period under consideration freedom of contract and of commerce did not exist in England in the sense in which we understand these terms. Government monopolized[1] the function of coinage and enforced its monopoly by imposing penalties for the offense of refusing the king's coins at the values set upon them by the king, and by prohibiting the currency of coins whose circulation would interfere with the coins issued from the king's mints.[2] This legislation had its counterpart, of course, in other legislation regulating prices,[3] so that as the value of the coin went down the price charged for goods might, if possible, be kept from going up.

It should also be borne in mind that in discussing so long a period as the one under consideration words employed may have different signification where applied to different divisions of the period. For example, at the time of the Conquest, and for a considerable period thereafter,[4] payments were often made by weight instead of by tale. The extent of this practice cannot be stated; but such a practice would obviously have an effect on legislation proclaiming certain money current at stated rates.

[1] ASHLEY, *op. cit.*, p. 175.

[2] For example, by the Statute of the Staple, in 1353 (27 Edward III.), it was provided that if any person wished to receive good money of gold or silver in payment, other than the king's money, he should be allowed to do so: but no one should be compelled to take such money against his will. This was repeated in 1367 (41 Edward III.) because of light foreign money which has been imported.—RUDING, *op. cit.*, Vol. I, p. 440.

[3] See p. 40, for illustration.

[4] For discussion of extent and duration of this practice, see CUNNINGHAM, *Growth of English Industry and Commerce During the Early and Middle Ages*, p. 326, note 5. See also MADOX, *History of the Exchequer*, Vol. I, chap. ix, for forms of payment to treasury in early times.

In ascertaining the relations which existed between coins of the two metals in executed contracts, the history of the first issue of gold coins will prove instructive. When, in 1257, Henry III. tried to introduce gold into the English currency, he issued pennies of fine gold, each weighing as much as two silver pennies, $\frac{1}{120}$ of a tower pound, and ordered that each of them should pass at the value of twenty silver pennies. "A writ issued commanding the mayor of London to proclaim in that city that the gold money which the king had caused to be made should be immediately[1] current there and elsewhere within the realm of England in all transactions of buying and selling at the rate of twenty pennies of sterlings for every gold penny; and that the king's money of silver should be current as it had been before."[2] Here is an illustration of an early exercise of the legal-tender power. The issue of gold pennies[3] was unfavorably received, and protest was made by the citizens of London, whereupon a second proclamation issued[4] declaring that no one should be obliged to receive the gold coins; and those who had taken them might bring them to the royal exchange and there receive the value for which they had been made current.[5]

Again, in the early time,[6] the penny was the only silver coin struck, and it was provided that, "on account of the poor, whenever necessity required the penny might be divided into half-pennies and farthings." On complaint that the fractional pieces resulting from this crude device were rejected, it was proclaimed sometime during the century following the experiment with the gold pennies[7] that

[1] August 16, 1257.

[2] RUDING, *op. cit.*, Vol. I, p. 358.

[3] LIVERPOOL, *op. cit.*, p. 46.

[4] November 16.

[5] These pennies seem never to have gained popularity.—LIVERPOOL, *op. cit.*, p. 46.

[6] Edward I. coined groats, 4 pennies, but they did not become generally current until the reign of Edward III.—*Ibid.*, p. 31.

[7] Prior to 1336, when provisions were made for the coinage of half-pennies and farthings.—RUDING, *op. cit.*, Vol. I, pp. 402, 408.

whoever, whether in buying or selling, should refuse any half-penny or farthing of lawful metal and proper form, should be seized as a contemner of the king's majesty, be thrown into prison, and suffer the punishment of the pillory.

In 1343 a second effort was made to introduce gold into the coinage system. Edward III. then coined the noble[1] and ordered it to be current at a certain value. Finding that this valuation was incorrect, and that the coins were overvalued, it was subsequently proclaimed[2] that no one should be forced to take them against his will. In the same year another set of coins was issued to be current at a different value, but it was ordered that they need not be taken in payments of less than twenty shillings.[3] Soon afterward, possibly because they had become popular, possibly to accustom the people to their use, it was ordered that these coins should not be refused in any payment whatever.[4]

From these illustrations, taken from the earlier portion of the period, it may be concluded that in cash transactions the money of gold and silver which was issued from the king's mint as lawful money, or to be current throughout the realm, was good in all cash payments, unless limitations or exceptions were expressly made known ; that is to say, of different forms of money current at any time the buyer had the right to select the form to be used. Coming to a more recent date, the same fact may be established. In 1662, for example, a certain base money had been issued for use in Ireland, and was ordered to be current in England also, except that no one should be compelled to take more than two in every twenty shillings of the baser kind.[5]

[1] See p. 33. These coins were issued January 27, 1343. The noble, $\frac{1}{6}$ of a pound of gold, $\frac{23}{24}$ fine, was declared current at 6s., a ratio of $12\frac{11}{23}$ to 1.—LIVERPOOL, *op. cit.*, p. 49.

[2] July 9, 1344.—KENYON, *Gold Coins of England*, p. 16.

[3] *Ibid.*, p. 18.

[4] See below, p. 33; HALE, *op. cit.*, Vol. I, p. 193.

[5] RUDING, *op. cit.*, Vol. II, p. 333. Similarly, when the minor copper coinage was introduced (1672), the limitation upon its currency was expressed.—*Ibid.*, p. 344.

An apparent exception to this rule is found by Lord Liverpool[1] in the fact that in 1663 the mint indenture providing for the issue of guineas declared that twenty shillings should be the legal value of the coin, while the authorities made no effort to enforce this rate when the coin became generally current at from twenty-one to twenty-two shillings. Color is lent to this view by the fact that the attorney-general was directed by an order in council to issue a proclamation declaring the coins current at the rate of the mint indenture, and no such proclamation was ever issued; while in 1717, when the guinea was declared to be a twenty-one shilling piece, such a proclamation issued, and every indication was given of intention to enforce it.[2] But the case of Dixson *v.* Willows,[3] already cited, shows this to be no more than a seeming exception, if an exception at all.

The method of enforcing the provisions here discussed becomes of interest. It was the method of imposing a penalty of greater or less severity for their violation; that is to say, the police power of the state was invoked in their support.

The question arises as to whether or not the Crown was bound by the rates indicated in the proclamation and indentures, and whether they applied to all royal revenues. It may be said at least that in those instruments no exception[4] is made with regard to the royal revenues; and yet there are acts of the Crown, or petitions in Parliament, which indicate that in these matters as in others the poor and lowly in position were imposed upon, not only by the king's officers, but by the great lords or their receivers. For

[1] *Op. cit.*, p. 76. [2] *Ibid.*, p. 95.

[3] Or Dixson *v.* Willoughs, 3 SALKELD (English Reports), 238.

[4] An interesting exception to this fact may be cited: In 1689, when James II. was becoming desperate, he issued in Ireland "brass money" (six-penny pieces of brass and copper), declaring by his proclamation that they should be current in all payments, except the duties of customs and excise on importation of foreign goods, money left in trust, etc.—RUDING, *op. cit.*, Vol. II, p. 363.

example, in 1343 the Commons petitioned that the sheriffs and other officers of the king should receive for debts due him half-pennies as well as sterlings, and that all the great men and others of the realm should receive half-pennies for the debts, rents, and services due them, and that the half-penny should be of the same weight as the sterling (proportionately) and of as good silver, or be wholly put down;[1] but they received only an evasive answer to their prayer.[2] And in 1504 it was declared by proclamation that, "pence being silver and having the king's print, should be current to him in all his receipts and to all his receivers, and to all other lords, spiritual and temporal, and their receivers, and to all others within the realm."[3]

And from a proclamation issued by Henry VIII. at the time of his first debasement of the coinage (1526), wherein the dates at which the new values are to apply to antecedent obligations are carefully fixed,[4] it may be inferred that, making allowances for the influences referred to,[5] the same values prevailed in payments to the king's officers as in those to other individuals.

The commercial and industrial development of the sixteenth and seventeenth centuries, necessitating, as it did, freedom from governmental interference,[6] and transferring the emphasis to time transactions, as commercial life grew more complex and industrial processes involved more and more the time element, renders the class of cash transactions and regulations regarding the money to be used in

[1] *Ibid.*, Vol. I, p. 417.

[2] Indeed, a similar petition was offered three years later (1346), and seems to have been granted.—*Ibid.*, p. 431.

[3] See *Ibid.*, Vol. II, p. 59, for a similar provision.

[4] *Ibid.*, Vol. II, p. 78.

[5] See Statutes 7 and 8 William III., chap. 1; 8 William III., chap. 2; 8 and 9 William III., chap. 6—cited by LIVERPOOL, *op. cit.*, p. 83, for evidence of express permission to receive the clipped and defective coin prior to and during the great recoinage.

[6] It was in 1531 that Gresham protested against the restrictions on exchanges of different forms of money as injurious to Engligh trade.—RUDING, *op. cit.*, Vol. II, p. 82.

them interesting chiefly from the historical and theoretical point of view. Interest now centers in transactions involving time, and, as was said before,[1] the more general use of the words "legal tender" is in connection with this limited class of operations.

Turning, then, to time transactions, to executory contracts, of them, too, it may be said that in the English law all "lawful money," all money issued from the mints as current money, was a legal tender in satisfaction of debts,[2] unless the contrary was expressed or limitations were imposed.

It was the doctrine of the middle ages that for every commodity or service there was a just money equivalent.[3] This had been the dictum of the Roman law. "However diversified may be the object of an obligation, it is always transferable, in the eyes of the law, into the payment of a certain sum of money."[4] Though the English law of contract was not fully developed before the time of Henry VIII., the action of debt which lay to recover a sum of money was one of the early actions developed, being in use at least as early as the time of Henry I., and it is from the pleas allowed in defense of such action that we have the word "tender." The debtor could of course discharge his obligation by payment of the sum claimed; but sometimes, when there was dissatisfaction on the part of the creditor, he could acquit himself by tender to the creditor of the amount admitted by him as due. Should the creditor refuse the sum tendered, the debtor could then deposit it with the court, leaving with the court the question of the adequacy of the tender.

[1] Chap. I, p. 2.

[2] "A debt is an obligation arising out of contract express or implied, as of a lending, or borrowing, or letting out, or some other just cause inducing a contract." —GLANVIL (Beames's Translation), book X, chap. 3.

[3] ASHLEY, *op. cit.*, p. 163.

[4] POSTE, *Institutes of Gaius* (ed. 3), pp. 340, 341.

The doctrine of the law as finally developed was that for every wrong involved in breach of contract there was, as in case of goods and services, a money equivalent, a money compensation. Only in so far as, by the payment of money damage, the parties could be put into the position in which they would have been had there been no breach, did the common law attempt to give relief.[1]

In deciding the question whether, when an alteration had been made in the money of the realm, a contract made before the alteration should be satisfied in the coin current at the time of making the agreement or in that current at the maturity of the obligation, the courts might have adopted either of two possible theories:

On the one hand, it might have been said that the logic of the doctrine that there was always a money equivalent for any breach of contract involved the requirement that in actions for the payment of money such money should be required of the debtor as was a fair equivalent for what he had agreed to pay. This would not have involved the decision that there could have been no alteration in the relative value of money to commodities, which would have been obviously impossible; but it would have necessitated the decision that such changes as had resulted from an arbitrary exercise of power should not apply to pre-existing obligations.

On the other hand, it might be held that the supreme authority which lends its force to bring about the satisfaction of the obligation may determine wholly the conditions on which that force will be exerted; that is, the state may say to the creditor that his claim will be enforced if he will submit to conditions imposed. Such a conclusion is to a certain extent inevitable. Conditions of time, of

[1] Herein lay one of the deficiencies of the common law, leading to the development of the court of chancery, which gave remedy, not by money damage, but by requiring specific performance of the agreement.

place, of form, etc., must be prescribed in order to insure the final settlement of controversies, to prevent the debtor from being harassed, etc. But when the state prescribes conditions which require of the creditor that he sacrifice what is morally and justly due him in order to obtain the advantage of the administration of justice, those conditions partake of the nature of a selling of justice. And against this the Crown was pledged by the provision in Magna Charta, "to none will we sell, deny, or defer justice."[1]

This position, however, was practically that taken by the courts. The Crown was the fountain and source of justice, and could prescribe the terms on which that justice would be administered. This doctrine was based fully and frankly on the theory of the royal prerogative. Owing, perhaps, to the amount of governmental regulation and the lack of general freedom of intercourse, there seems to be no question as to the royal power in this respect prior to the reign of Edward VI. In 1552–53, at the Hilary term of the year 6 and 7 Edward VI., we have the case of Poug *v.* DeLindsay[2], as follows: "In debt on bond in payment of £24 sterling, plea of tender that at the time of payment of said sum of money certain money was current in England in the place of sterlings, called Pollards, *held*, that if at the time appointed for payment a base money is current in lieu of sterling, tender at the time and place of that base money is good and the creditor can recover no other."

And in 1601, the forty-third year of Elizabeth's reign, the same question came up in the great legal-tender case known as Brett's Case, the "Case of *Mixt Monies:*"

"*April, 43 Eliz. Brett* bought wares of one *Gilbert* a merchant in London, and became bound to him in £200

[1] "*Nulli vendemus, nulli negabimus, nulli differemus rectum aut justitiam.*"—*Magna Charta*, chap. 40; STUBBS, *Select Charters, etc.*, p. 301.

[2] DYER (English Reports), 82A. This case is cited in the dissenting opinion in Griswold *v.* Hepburn, 2 DUVAL (Ky.), 71.

conditioned for the payment of one hundred pound *Sterling* current and lawful money of *England* in *September* following at *Dublin* in *Ireland:* 24th May, *43 Eliz.* the queen sent to *Ireland* certain mixt money from the tower of *London* with the usual stamp and inscription, and declared by her proclamation, that it should be lawful and current money of *Ireland, viz.* a shilling for a shilling, and sixpence for sixpence, and that accordingly it should pass in payment, and none to refuse, and declared that from the 10th of *July* next all other money should be decried and esteemed only as bullion and not current money. Upon the day of payment *Brett* tendered the £100 in this mixt money, and resolved on great consideration that the tender was good, the place of payment being in *Ireland* and the day of payment happening after the proclamation was made; that altho this were not in truth *Sterling*, but of a baser allay, nor a money current in *England* by the proclamation, yet the payment being to be made in *Ireland*, it was, as to that purpose, current money of *England;* but if the day had been passed before the proclamation, then he must have answered the value as it was when payment was to have been made."

The report of this case is given in full as quoted from Sir John Davis by Sir Matthew Hale, because it is the basis of the English law of tender.[1] Thus the question was squarely raised whether the money with which a contract should be fulfilled was that current at the time of making the agreement or that current at the time of payment, and the law was settled in favor of the latter.

It has been said previously that the law regulating cash transactions was sanctioned by penal provisions. In the case of time transactions, such provisions are evidently unneces-

[1] Another case seems to have been decided in the same way in the same year, but of the decision only a quotation has been available. The substance of that is that every coin legitimated by royal proclamation becomes legal tender.— Wade's Case, cited from 43 Eliz. 406 by Rot.; HALE, *op. cit.*, Vol. I, p. 192.

sary. The power of the courts to declare a contract satisfied and the debtor acquitted of all obligation, *i. e.*, the civil power of the courts, is obviously adequate. In this power the law found its sanction.

In cash transactions, then, the buyer had the right of selecting the form of money to be used. In the same way, in time transactions the debtor had the power of choice as to the form of money in which his obligation would be satisfied.

The significance of this state of the law was that every act of state dealing with the lawful money of the realm, altering it in any way, was a legal-tender act, affecting the value of the monetary unit to be employed by any subject in the payment of his debts.

CHAPTER V

EXERCISE OF THE COINAGE POWER BY THE ENGLISH GOVERNMENT

Original Standard of Coinage — Attempt through Debasement to Obtain Good Circulating Medium — Efforts to Secure International Currency — Reasons for Later Debasement — Chaotic Condition under Henry VIII. — Efforts to Obtain Concurrent Circulation of Gold and Silver Coin.

If the conclusions of the preceding chapters are accepted, there may be obtained from a survey of the acts of the Crown issuing new coin, altering coin already in circulation, or legitimating foreign coin, a view of the legal-tender policy of the English government. The presentation of such a view will be attempted in the present chapter.

For convenience, the long period to be discussed may be divided and those reigns considered together concerning which it is possible to make general statements. These divisions include, first, the reign of Henry II., Richard I., John, Henry III., covering the years from 1154 to 1272; second, the reigns of Edward I. and Edward II. (1272–1326/7); third, that of Edward III. (1326/7); fourth, from the accession of Richard II. through the reign of Henry VII.; fifth, the reigns of Henry VIII., Edward VI., Mary, and Elizabeth (1377–1602/3); sixth, and last, from the reign of James I. through that of George IV. (1602/3–1816).

Before proceeding to this discussion, it should first be remarked of the original standard of coinage in England that at the time of the Conquest the standard unit at the English mint was the *tower*, or *Saxon*, pound of silver, weighing 5,400 grains, and $\frac{37}{40}$ fine; that is, 11 oz. 2 dwt. of silver to

18 dwts. alloy. This remained the unit until 1527, when Henry VIII. substituted the Troy pound of 5,760 grains.[1] To the tower pound the pound in tale conformed, being divided into twenty shillings, which were in turn divided into twelve pence, or esterlings.[2]

As in many other respects, so in the coinage, the Conqueror left affairs as he found them, and retained the weight, standard, and denomination of his predecessors. At first only pennies (sterlings) were coined; then fractions of a penny; and finally, in the time of Henry VII. (1485–1509), silver coins of higher denominations. Up to this time these denominations denoted only money of account; and payments of large sums were doubtless often made by weight[3]—a practice which diminished the inconvenience arising from having coins of only one denomination and that a low one.

It has been noted[4] that one of the reforms promised by Henry II. when he came to the throne (1154) was the reformation of the coinage. This was carried out by him, and there seems to be some evidence that he raised somewhat the standard of fineness.[5] At all events, from the date of his accession until 1299[6] no alteration for the worse took place.

During this period there were, however, interesting occasions for the exercise of the coinage power, growing out of the worn state of the English coins and the importation of poorer money from the continent. As the uncertainties con-

[1] This tower pound was probably identical with the unit of Charles the Great. —See KENYON, *Gold Coins of England*, p. 84; RIDGEWAY, *Origin of Metallic Currency and Weight Standards*, p. 385; CUNNINGHAM, *Growth of English Industry and Commerce in Mediæval Times*, p. 118.

[2] The same word "sterling" or "esterling" or "aesterling," designated the standard fineness of the silver metal, $\frac{37}{40}$ fine, and the coin, the penny, made of that standard. Note Blackstone's use of it in passages cited, p. 12. "As in the esterling" meant "as in the penny of the good old times." On the continent it was a general term for the money of England.—RUDING, *op. cit.*, Vol. I, p. 17; compare HALE, *op. cit.*, Vol. I, p. 189.

[3] MADOX, *History of the Exchequer*, Vol. I, p. 272.

[4] P. 9. [5] HALE, *op. cit.*, Vol. I, p. 190. [6] 28 Edw. I.

nected with the value of the coin, which constituted the only circulating medium, caused great distress among the people, a general council "of all the nobles of England, bishops, earls, and barons," was held before the king at Oxford, in the year 1247. It was then proposed to look for the remedy in an alteration of the standard.[1] This proposition was rejected; but during the next year (1248) resort was had to a great recoinage, under the following conditions:[2] First, from every pound was taken thirteen pence to cover cost of coinage;[3] offices of exchange were established at which the new money could be obtained for the old, but they were few and distant the one from the other, so that persons had to suffer loss of time and strength in making the journey; and the new money was given for the old only by weight, which of course meant a greatly diminished number of pieces. These were surely arduous terms. Matthew Paris, the historian of this early period,[4] says that where thirty shillings should have been received scarce twenty were got. So great were the obstacles that it was found necessary to "cry down"[5] the old coins, which seems to have been rarely done in English history;[6] but the purpose seems to have been an honest purpose.

Again, the effort to obtain a good circulating medium may be seen in the attempt of the king to introduce gold coins into England, to which allusion has been made.[7] The attempt failed, perhaps from simple conservatism on the part of the people, perhaps because the method employed was a poor one;[8]

[1] RUDING, *op. cit.*, Vol. I, p. 353.

[2] 32 Henry III.—*Ibid.*, p. 355.

[3] This included a seigniorage of 7d. in the pound.

[4] Cited, *ibid.*, p. 370.

[5] Deprive of its currency or legal-tender quality.

[6] *Ibid.*, p. 355.

[7] P. 18.

[8] These coins were known as "pennies" and were $\frac{23}{24}$ fine. They weighed as much as two silver pennies, or 45 grains, and were to pass at twenty pennies.—LIVERPOOL, *op. cit.*, p. 45.

but ruler and people were alike honestly seeking remedies for the distressing condition of the money of the realm.

In the year 1299 Edward I. caused the first reduction in the legal weight of the penny to be made. He then had the pound weight divided into 20s. 3d.,[1] and thus reduced the penny by $1\frac{1}{81}$ per cent. There seems to have been no other reason for this than the desire to adapt the legal value of the coin to the worn condition of those already in use.[2] The king was but adopting the suggestion made by the council of nobles a half century before.[3]

During the reign of Edward I. (1272–1307) and his successor,[4] efforts were chiefly directed toward preventing the importation of "weak" foreign money, of which there was an increasing quantity as intercourse with the continent became freer. Thus, in 1292, there was enacted under the authority of Parliament the *statutum de moneta*, consisting of three parts. The first of these seems to be a true statute, or act of general legislation, and provided that no one should presume to pay or receive any money but the coins of the king of England, of Ireland, and of Scotland, on pain of forfeiture;[5] nor should anyone bring into England money except for his expenses, or, unless driven by tempest, land at any port other than those at which there were inspectors, to whom the amounts and kinds of money brought in should be made known.[6]

Edward II. made no change in his coins; but he found them in a sadly depreciated[7] condition, because of such practices as clipping, or bringing in light foreign coin; and so in 1310 it was ordered by proclamation that money should

[1] *Ibid.*, p. 39.

[2] RUDING, *op. cit.*, Vol. I, p. 388.

[3] 1247.

[4] Edward II., 1307-1326/7.

[5] 20 Edward I., chap. 4, cited by RUDING, *op. cit.*, Vol. I, p. 382.

[6] The other portions of the statute simply looked to the enforcement of these provisions.

[7] It seems to have been depreciated by one-half.—*Ibid.*, p. 399.

be current at the value it had borne in the reign of Edward I., and that no one should on that account enhance the price of his goods, "because it was the King's pleasure that the coins should be kept up to the same value as they were wont to bear." [1]

Passing to the next period, the long reign of Edward III. (1326/7–77), it may be said, in general, that he was facing the same difficulties connected with a worn, depreciated, and confused money which had baffled his predecessors and were then confronting his contemporaries on the continent.[2]

The inadequacy of the amount of bullion brought to the mints he tried to overcome by requiring the exporters of wool to pledge the importation of a certain amount of bullion for every sack of wool exported.[3] The difficulties arising from the importation of inferior foreign coin he met by the attempt to agree with the Flemish upon certain principles to be applied in the coinage, with the understanding that the coins of each country should be given currency in the other.[4] He also provided for the coinage of half pence and farthings,[5] and introduced the coinage of gold into his monetary system.[6] But he seems finally to have become discouraged, and resorted to the debasement of the silver coins and of his new gold pieces.

The difficulties of the situation and the method of coping with them may be illustrated by the incidents of the Turney, a certain "black money" made in Ireland and circulated in

[1] *Ibid.*, p. 399.

[2] CUNNINGHAM, *op. cit.*, p. 354, n. The general principles of coinage and monetary problems were arousing attention at the time, as is evidenced by the appearance of the first treatise on money—that of Oresme, Bishop of Lisieux, *De Mutatione Monetarum.*

[3] 40s. was the sum proposed in 1339; 13s. 4d. was decreed in 1340.—RUDING, *op. cit.*, Vol. I, p. 410.

[4] *Ibid.*, p. 416. The Flemish coins, while allowed to circulate, were not to be forced into circulation, but taken by those "who of their own accord would receive them."—*Ibid.*, pp. 416, 421.

[5] *Ibid.*, p. 408.

[6] KENYON, *op. cit.*, p. 17. This was a part of the plan for an international currency.

England, "to the injury of the king's sterling money and his no little loss and prejudice." Proclamation was therefore made to prohibit the circulation of it on pain of forfeiture of money and goods.[1] But great inconvenience was found to result from the prohibition, on account of the scarcity of sterling money. When this was made known to the king it was provided that if, on inquiry, it should be found more advantageous to the public to allow the circulation of the black money, a proclamation should issue authorizing it until an adequate supply of other money was provided.[2]

Four years later (1343) another unsuccessful attempt was made to introduce gold into the English coinage system. After an examination before Parliament of merchants, goldsmiths, and moneyers, experts in the subject, it was ordered that one kind of gold money should be made both in England and in Flanders,[3] to be current at such weight, alloy, and value as the king and Council should appoint, all other gold money being prohibited in both countries. Accordingly, three kinds of gold coin were provided for by an indenture: The florin, weighing 108 grains, the half and the quarter florin, of proportionate weight, and of a fineness equal to 23 carats, $3\frac{1}{2}$ grains of pure gold to $\frac{1}{2}$ grain of alloy.[4] These coins were at first declared current at 6s. 3d. and 1s. 6d., respectively;[5] but the following year (1344) it was found that they were rated too high in terms of silver,[6] and it was accordingly ordered that they should be taken in payment only with the consent of those to whom they were offered; and then a month later they were declared to be bullion to be received according to their value as such.[7] Another experiment yet had

[1] An illustration of the mode of sanction in legal-tender provisions applying to executed contracts.

[2] RUDING, *op. cit.*, Vol. I, p. 409.

[3] KENYON, *op. cit.*, pp. 17, 18.

[4] $\frac{23}{24}$ fine.

[5] January 27, 1343 —Cobbett's *Parliamentary History*, Vol. I, p. 200.

[6] See p. 35, n. 4.

[7] RUDING, *op. cit.*, Vol. I, p. 421.

evidently to be tried. The next gold coins attempted were called "nobles," and weighed $138\frac{6}{1\,3}$ grains[1] of gold of the same fineness. They were declared current at 6s. 8d. Their coinage took place during the year in which the florins were called in,[2] and they were not to be forced in payment of sums less than twenty shillings.[3] This experiment succeeded and gold became a permanent element in the coinage system of England.

In this same year (1344) occurred the second debasement of the silver coinage,[4] and two years later (1346) both the silver and the gold coins were reduced in weight.[5] By this change the silver pound in tale[6] was reduced to a weight less by more than 10 per cent. than its original weight, while the gold pound weight was divided into 42, instead of $37\frac{1}{2}$, nobles, and the gold coin thus reduced by more than 7 per cent. to pass current at 6s. 8d. as before.[7]

Notwithstanding the reduction here noted, in 1351[8] the English coins are said to have been "so much better than the coins of any other nation that they were exported and base money brought into the realm, to the impoverishment of the people." Accordingly, both gold and silver coins were reduced in weight; the gold noble to 120 grains,[9] and the silver shilling to 216.[10]

[1] That is, the pound was divided into 39½ such coins.

[2] 1344.

[3] A case of limited legal tender, the limit being a minimum. It might be stated that the ratio of these to silver was 11 $\frac{1}{2\,4\,0\,5\,3}$: 1, while that of the previously coined florins had been 12 $\frac{1}{2\,5\,9\,2\,3}$: 1.—LIVERPOOL, *op. cit.*, pp. 40, 50.

[4] *Ibid.*, p. 39. The pound was divided into 22s. 2d., thus debasing the pound in tale 8+ per cent.

[5] *Ibid.*; KENYON, *op. cit.*, p. 21.

[6] The pound in weight was then divided into 22s. 6d.

[7] This made the ratio 11 $\frac{1}{2\,5\,8\,8\,6}$: 1.—LIVERPOOL, *op. cit.*, p. 51.

[8] This date is given by RUDING, *op. cit.*, Vol. I, p. 436.—LIVERPOOL gives 1353, *op cit.*, p. 51.

[9] From 128$\frac{4}{7}$ to pass as before at 8s. 6d.

[10] From 240 grains. This made the ratio 11 $\frac{1}{2\,5\,9\,2}$: 1.—KENYON, *op. cit.*, p. 21; LIVERPOOL, *op. cit.*, pp. 40, 51.

As no other alteration was made in the coinage during this reign, or indeed for half a century, it may be well to inquire into the motives leading to these three alterations in the coinage and their effects on the condition of affairs then existing in the kingdom. In the first place, they caused great dissatisfaction among the people. The bishop of Winchester, who seems to have been held responsible for the second of the three debasements, became most unpopular, and it was said of him that "he loved the King's commoditie better than the wealth of the realme and common people."[1] It is to be noted also that the statute to which reference has been made,[2] attempting to limit the royal power, dated from the year of the third alteration; from which it may be inferred that this method was not satisfactory to the people.

The question suggests itself whether the profits which arose from calling in and recoining the money of the realm did not furnish an adequate explanation of these debasements. This question indicates the necessity of at least a brief discussion of the nature of those profits and the part they seem to have played in controlling royal policy.

The profit arising from the operations of the mint assumed two forms: that arising from the *shere*,[3] or remedy allowed because of the rudeness of the art of coinage, and that known as *seigniorage*, or contribution to the king, over and above the cost of mintage,[4] claimed by virtue of the prerogative.[5] Of the shere it is needless to speak here, as advantage seems to have been taken of it very rarely,[6] but seigniorage was an avowed right claimed by the sovereigns of Europe. It seems to have been of Gothic rather than of Roman origin, and was an important element in the royal revenues. There

[1] See LIVERPOOL, *op. cit.*, p. 39, n. [2] See above, p. 11.

[3] RUDING, *op. cit.*, Vol. I, p. 185. [4] "Brassage." [5] LIVERPOOL, *op. cit.*, p. 116.

[6] Elizabeth is charged with having underpaid the master of the mint, with the understanding that he might recoup himself by making the coins as light as possible within the limits.—See RUDING, *op. cit.*, Vol. I, p. 185.

were two methods of appropriating this forced contribution. The method which prevailed on the continent in the earlier times was that of taking the profit out of the coin itself, returning to the merchant who had brought bullion or coins to the mint a given number reduced in weight.[1] The practice which prevailed in England, however, was this: The bullion was first assayed and coined, the seigniorage and brassage then deducted in the coins already made, and the remaining coins returned to the merchant who had brought the bullion to the mint.[2] The amounts to be deducted were prescribed in the indenture with the master of the mint. For example, in the first coinage of gold nobles (1344), according to the indenture, from a pound of gold £15 sterling were to be made. Of these, 3s. 6d. was to cover expenses of mintage, £1 was to be deducted for the king, and the remainder, £13 16s. 6d., was then to be given to the merchant.[3] The following year (1345) the sum to be held by the master of the mint was reduced to 2s. in the pound,[3] that for the king to 5s., which would indicate that gold was not being brought in adequate quantities to the mint, and greater inducements in the form of diminished cost were offered.

At the same time, for the coinage of silver the seigniorage was 6d. for every pound weight, and the allowance to the master of the mint 8d., leaving for the merchant 21s. for every tower pound of silver brought to the mint.[4]

[1] LIVERPOOL, *op. cit.*, p. 118.

[2] RUDING, *op. cit.*, Vol. I, p. 184. Sometimes the larger part of the king's share was granted to induce merchants to bring bullion.—See *ibid.*, p. 434.

[3] *Ibid.*, p. 419 (see note *b*).

[4] *Ibid.*, p. 427. It would seem that there should be some definite relation between the legal ratio of gold to silver coin and the ratio actually existing under the regulations of the mint. For example, if a merchant took gold and silver bullion to the mint to be coined, he should have got a number of coins of each metal which would bear to each other a ratio approximating the legal ratio. Such was not the case, however. In 1344–45 the legal ratio of gold to silver was $1:12\frac{144}{154}$, while the ratio obtained by comparing the value in coin of a pound of gold with that of the same weight of silver to the merchant who took the bullion to the mint was

Of course, when a debasement occurred the holder of coins of the earlier weight would gladly bring them to the mint, as he would obtain a greater number of coins of the diminished weight, and so a profit on them, unless they were greatly worn and clipped; and, making allowance for these factors, the king would have his seigniorage on all the money of the realm.

Doubtless Edward III. felt the need of increasing his revenues in all possible ways;[1] but there does not seem evidence to convict him of corrupt motives in dealing with his coinage. The state of the English money was deplorable, because of the exportation of full-weight English money[2] and the importation of lighter foreign pieces, especially Scotch;[3] so that the alterations seem rather attempts to increase the amount in circulation, to prevent exportation, and to adapt the legal to the actual value of the coins in circulation.[4]

With Edward's successor, Richard II. (1377–99), was inaugurated the policy which ripened into the mercantile policy, and from the time of his reign a good currency as a public service and the accumulation of treasure as a political necessity were sought.[5] The long period during which this

1:13½. A comparison of RUDING's Tables of the Seigniorage and of those giving the legal ratios between coins shows such differences to have been the rule, and not the exception.

[1] Because of the wars with France and the poverty of the people after the scourge of the black death (1348) and the growing power of Parliament.—GREEN, *op. cit.*, pp. 429–61.

[2] See RUDING, *op. cit.*, Vol. I, pp. 414, 438, 440, 445, 447, for petitions and provisions against carrying good money out of the realm.

[3] In 1355 the coins of Scotland of an earlier date, being of the English weight and standard, were allowed currency; it was found necessary in 1367 to prohibit the currency of any foreign money.—*Ibid.*, pp. 443, 449. It should be noted that the function of exchanging coins of different metals or of different nationalities, with its attendant profits, was also monopolized by the government; see *Ibid.*, pp. 422, 443. And this, as in the case of the coinage, was enforced by penal provisions.

[4] This is put in stronger terms by CARLILE, *The Evolution of Modern Money*, p. 101, when he says that never before the time of Henry VII. were alterations made for purposes of profit. See, also, ASHLEY, *op. cit.*, p. 168.

[5] CUNNINGHAM, *History of English Industry and Commerce in Mediæval Times*, p. 377.

policy prevailed was interrupted by the chaotic condition prevailing during the reign of Henry VIII. (1509–1546/7) and his immediate successors. On that account the period may be subdivided, the years from the accession of Richard II. to the death of Henry VII. (1377–1509) being first considered together.

No alteration in the coinage occurred during the reign of Richard II., but in 1381 an interesting inquiry was conducted into the causes for its deplorable state, and various remedies were suggested.[1] A number of persons who might be considered experts were questioned before Parliament, and gave their views in brief replies to definite questions. As the state of the gold coinage demanded particular attention, it was suggested that gold should be allowed to pass by weight; and it was also proposed, if a recoinage should be determined upon, that the king should remit his seigniorage.[2] The only result of the inquiry seems to have been a statute prohibiting the exportation of the precious metals in any form,[3] and the provision for more rigorous police measures in support of this.[4] The petitions and complaints of the Commons with reference to the exportation of good and importation of bad money continued during this and the following reigns.[5]

The next alteration to be noticed occurred in 1411, when Parliament, "because of the great scarcity of money at this time within the realm of England, and because of other mischiefs and causes manifest," ordained[6] that the pound of gold should be divided into 50 nobles[7] and the pound of silver into 30 shillings.[8]

[1] RUDING, *op. cit.*, Vol. I, p. 463, *seq.* [2] This was 3s. 6d. in the pound.

[3] Except for certain purposes to France. [4] *Ibid.*, p. 468.

[5] *Ibid.*, pp. 458, 461, 462, 476, 483, 497, 502, 508.

[6] This act was called an ordinance, but had all the characteristics of a statute. —*Ibid.*, p. 494.

[7] Instead of 45. That is, the new coin weighed 108 grains.

[8] Instead of 25. That is, the new shilling weighed 180 grains. As the nobles were to pass at the same nominal value, the ratio was $10\frac{1}{12}:1$.—LIVERPOOL, *op cit.* p. 52.

The coin seems at this time to have been the subject of corrupt practice on all sides. Individuals clipped, counterfeited, and exported it; and it appears from the account given by the historian Daniel[1] that corrupt methods prevailed at the mint. In fact, the gold coin suffered so that in 1421 it was found necessary to ordain its passage by weight.[2] The account of this particular debasement should not be left without noting the fact that it occurred in accordance with an act of Parliament.

An interesting ordinance in the nature of a legal-tender provision was published in 1429.[3] Foreign merchants had introduced a custom of refusing to exchange their goods for silver and accepting only gold coins, which they carried out of the realm. The king, therefore, ordained that no alien merchant should "constrain or bind any of his liege people by promise, covenant, or liege to make true payment in gold for any manner of debt due to him, nor refuse to receive payment in silver," upon penalty of the double value of the sum due.[4]

In 1445, an ordinance providing for something very like the token coins of today was published. Because of the lack of small coins, the Commons petitioned that the pound of silver might be divided into thirty-three instead of thirty shillings, to be coined into half-pennies and farthings, which should be given currency to this extent — that in every payment of twenty shillings twelve pence might be of these lighter coins.[5] The ordinance was to endure for two years, at the discretion of the king.

In 1464, because of the scarcity of money and the small

[1] Quoted in COBBETT, *Parliamentary History*, Vol. I, p. 313.

[2] *Ibid.*, p. 340.

[3] 8 Henry VI., chap. 28.

[4] RUDING, *op. cit.*, Vol. II, p. 14. The legislation applied evidently to both time and cash transactions.

[5] *Ibid.*, p. 18. "There is no comment by which any inference as to the extent or effect of this ordinance can be obtained."

amount of bullion brought to the mints, another reduction was made. The silver pound was then divided into 37s. 6d.[1] The weight of the gold noble was not diminished, but its nominal value was increased from 6s. 8d. to 8s. 4d., and a new gold coin[2] was introduced.[3] It may be noticed that by this time the silver pound in tale had been reduced by $46\frac{2}{3}$ per cent. of the weight it had prior to 1299.

At the end of Henry VII.'s reign the condition of the money of the country was such that resort was had to the use of private tokens to supply the lack in the circulating medium.[4] The cupidity and miserliness of the king were almost boundless, so that the administration of justice was abused, vigorous prosecutions were carried on, and excessive fines imposed to fill his coffers.[5] Yet the abuse of his coinage power for the sake of gain was not resorted to. That remained for his spendthrift son.[6]

In presenting the history of the following period no detailed account of the changes wrought in the money of the realm will be attempted. It was a period of chaos. The policy of Henry VIII., after he had dissipated the treasure left by his father, was the policy of a spendthrift; and, like other spendthrifts, he resorted to all possible measures to secure means of indulgence. The forms of law were often preserved when the spirit was grossly violated. This was particularly true in his treatment of the coinage. The prerogative had been confirmed without limit in the time of Henry VII., as

[1] That is, the shilling was reduced from 180 grains to 144.

[2] The "angel," current at 6s. 8d., the old value of the noble, but weighing 81 + grains, instead of 108 grains; making the ratio of gold to silver $1:11\frac{151}{655}$.—LIVERPOOL, *op. cit.*, p. 53.

[3] RUDING, *op. cit.*, Vol. II, p. 33; LIVERPOOL, *op. cit.*, p. 40.

[4] These circulated as late as the beginning of the seventeenth century.—RUDING, *op. cit.*, p. 69.

[5] *Ibid.*, p. 64.

[6] It is possible that he closed his eyes to corrupt practices in his mint. That would be different from an abuse of his prerogative.—See RUDING, *op. cit.*, Vol. II, p. 60.

has been pointed out.[1] Of this he took advantage in every conceivable way.

The first alteration made by him, however, was not particularly alarming, and but carried out the policy which had led to former reductions—that of preventing exportation of English money for recoinage at foreign mints. This change was made in 1527, and by it the tower pound was divided into 42, instead of $37\frac{1}{2}$, shillings.[2]

The proclamation legitimizing these new coins is particularly interesting because of two features: It prohibited any increase of prices "under color of the money being enhanced,"[3] and by it the terms in which antecedent obligations were to be satisfied were carefully regulated.[4]

Never before had the standard of the metal of either gold or silver been altered. From the time at which Edward III. had successfully introduced gold into circulation,[5] $\frac{191}{192}$ had represented the proportion of fine metal to alloy in all gold coins. From the earliest coinage in England $\frac{37}{40}$ had represented the sterling silver. On both metals Henry laid sacrilegious hands. The fineness of the gold coins he reduced successively to $\frac{184}{192}$,[6] $\frac{180}{192}$,[7] $\frac{176}{192}$,[7] and $\frac{160}{192}$.[8]

The fineness of the silver coins he reduced to $\frac{10}{12}$, $\frac{6}{12}$, and $\frac{4}{12}$.[9] This debasement was carried one degree farther by Edward VI., when $\frac{3}{12}$ represented the proportion of precious metal to alloy in English silver coins.[10]

At this point may be given a brief account of the method

[1] See above, p. 13.

[2] The tower pound was divided in 42s. 2¼d., or the Troy pound already introduced into 45s. The shilling was now reduced from 144 to 131 grains. The nominal value of gold coins was changed, but no change in their weight or alloy occurred at this time.—LIVERPOOL, *op. cit.*, p. 41; RUDING, *op. cit.*, Vol. II, p. 74.

[3] That is, the nominal value increased, while the amount of metal remained the same; or, the nominal value left the same, while the amount of metal was diminished.

[4] *Ibid.*, pp. 78, 87.

[5] 1344.

[6] 1543.—KENYON, *op. cit.*, p. 94.

[7] 1544.—*Ibid.*, p. 95.

[8] 1545.—*Ibid.*, p. 95; see also p. 90.

[9] 1543.—LIVERPOOL, *op. cit.*, p. 98.

[10] RUDING, *op. cit.*, Vol. II, p. 108.

by which the coins were restored to a condition almost equal to their former weight and fineness. The gold coins had been debased to a smaller extent than the silver coins. The relative values set upon the coins[1] had been such as to overvalue the silver in terms of gold, so that the gold coins were all hoarded. Edward VI. early gave his attention to the restoration of the coins, and the first effort put forth was in the direction of calling forth the hoarded gold. This was accomplished by raising the nominal value of the gold coins to a value one-third greater than that at which they had been estimated in 1527.[2] The next step was the issue of silver coins, likewise of one-third greater value.[3] The third step was to decry the base coins issued since 1527.[4] This was not done by one act, but two proclamations issued, by each of which they were reduced in legal value. They were finally wholly cried down by Elizabeth in 1660, after she had issued new coins of the original standard of fineness ($\frac{37}{40}$), and of the weight at which they had been made in 1527.[5] The act of crying down the coins seems to have been rarely performed in connection with English coins.[6] In those foreign jurisdictions within which frequent recoinages were had for purposes of profit[7] this process must have been a necessary one ; for only by some such compulsory act as this would the owners of coins have been induced to bring them to the mint to be recoined. Only by force could such a contribution to the king's revenues have been obtained.

[1] These values were (1545) $6\frac{2}{11} : 1$; (1546) 5 : 1.—LIVERPOOL, *op. cit.*, p. 101.

[2] The sovereign which had been current for 22s. 6d. was made current for 30s. —RUDING, *op. cit.*, Vol. II, pp. 106 ff.

[3] The tower pound was divided into 56s. 3d.—LIVERPOOL, *op. cit.*, pp. 40, 108.

[4] April 30 and May 11, 1551. Resort was had to severe police measures to prevent an increase of prices.— RUDING, *op. cit.*, Vol. II, p. 118.

[5] LIVERPOOL, *op. cit.*, pp. 110, 111; RUDING, *op. cit.*, Vol. II, 137. This proclamation crying down the debased coins defends and explains the action of the queen in attempting to restore the coinage to something of its former excellence.

[6] See above, p. 29, n. 5.

[7] CARLILE, *op. cit.*, p. 101.

In the instances cited, however, may be observed an illustration of how the power to deprive coins of their legal-tender quality could be utilized for the sake of improving the condition of the money of the realm.

The restoration of the coins is counted one of the glories of Elizabeth's reign;[1] yet before the close of her career she allowed herself to make a final reduction. The silver tower pound was then divided into 58s. $1\frac{1}{2}$d.,[2] and the gold coins were likewise reduced in weight.[3] The reasons which led to the debasements of this period are not difficult to find. Already, in 1513, the king, Henry VIII., had exhausted the millions left by his father and drained his subjects by repeated subsidies,[4] so that his chosen policy of foreign warfare was thwarted. It was not to be hoped that in the period during which "all the constitutional safeguards of English freedom were swept away," when arbitrary powers of taxation, legislation, and imprisonment were claimed and exercised,[5] such a resource as the coinage power would remain neglected. For the first debasement, in 1527, a reason was found in the difficulties of international trade;[6] for the later debasements under Henry no other reason need be sought than a desire to augment his revenues.[7]

The first debasement, under Edward VI., has a special interest, because it was frankly resorted to in order to gain a sum for the king's treasury with which the expenses of the

[1] FROUDE, *History of England from the Fall of Wolsey to the Death of Elizabeth* (N. Y., 1890), Vol. VII, p. 465.

[2] Instead of 56s. 3d.—LIVERPOOL, *op. cit.*, p. 41.

[3] So that the ratio was $11\frac{1}{2}\frac{8}{8}\frac{4}{8}$: 1 for coins of the old standard of fineness ($\frac{1}{12}\frac{1}{2}$ fine), and $11\frac{1}{10}$: 1 for coins of the Crown standard ($\frac{2}{2}\frac{2}{4}$ fine). The latter standard was that which prevailed, though coins of both standards circulated until 1732, when those of the ancient fineness were declared no longer current.—*Ibid.*, p. 32; KENYON, *op. cit.*, p. 100.

[4] GREEN, *Short History of the English People* (N. Y., 1880), p. 320.

[5] *Ibid.*, p. 341.

[6] See above, p. 40.

[7] COBBETT'S *Parliamentary History*, Vol. I, p. 559.

restoration of the coins might be undertaken. The king's journal bears witness to this.[1]

There remains to be considered the period from 1603, when Elizabeth died, until 1816, when silver was finally given a secondary position in the English system. During this period the weight and denominations of gold coins were altered in order to secure the concurrent circulation of coins of both metals; but no change was made by law in the character of the silver coins.[2]

At the time of the reduction in 1601 the legal ratio of gold to silver was lower than it had been at any time since the early part of the fifteenth century,[3] excepting, of course, the chaotic period under Henry VIII. From this time the value of gold bullion changed rapidly in terms of silver,[4] and although the mint ratios were frequently altered, all efforts to retain both metals in circulation failed. In 1604 the mint ratio of gold to silver was raised 10 per cent.—an increase not great enough, however, to bring gold from countries where it was more highly rated. In 1611–12 an alteration in the same direction, going too far, drove the silver out as the gold came in, causing so great a scarcity of silver that the old laws against exportation were revived and re-enacted.[5] No remedy was found until, by the simple passage of time,[6] in the development then in progress, the

[1] "April 10, 1551. Also it was appointed to make 20,000 pound weight for necessity somewhat baser to get gains 160,000 pounds clear, by which the debt of the realm might be paid, the country defended from any sudden attempt, and the coin amended."—Cited by RUDING, *op. cit.*, Vol. II, p. 106; see also p. 108.

[2] The legislation in 1774, which will be noted, left them unaltered except as to their legal-tender power.—See below, p. 45.

[3] 1412.

[4] It was, in 1601, 10 $\frac{53}{62}\frac{1}{2}$: 1.—LIVERPOOL, *op. cit.*, p. 58.

[5] See the proclamation cited by LIVERPOOL, *op. cit.*, p. 69. Strangely enough another change in the same direction was made in 1620 (*Ibid.*, p. 60), increasing the difficulty.—See RUSHWORTH, cited by LIVERPOOL, *op. cit.*, p. 72.

[6] About the time of the beginning of the Commonwealth (1648).—*Ibid.*, p. 78.

market value of gold in terms of silver overtook and soon passed the mint value of that metal.[1]

Added to the difficulties growing out of the maladjustment of the mint ratios there were still great inconveniences created by the fraudulent practices of counterfeiting and clipping. "So deplorable was the condition of the coin that nothing could be purchased without a dispute. On a fair or a market day the clamours, reproaches, the taunts, the curses, were incessant, and it was well if no booth was overturned, no head broken. . . . . The labourer found that the bit of metal which, when he received it, was called a shilling would barely, when he wanted to purchase a pot of beer, go as far as a sixpence."[2]

It was to meet these conditions that William, in 1695, threw upon Parliament the responsibility of finding a remedy. Resort was first had to new and more rigorous police measures. It was then proposed that the silver coins be again reduced in weight and the same remedy be applied that had been employed by Edward I.[3] four centuries before; that is, that the legal be adapted to the actual value of the coins: but this proposition was rejected, and the great recoinage of the silver of the realm was carried out in the years 1695–98, leaving the silver coins unchanged.[4] In 1662–63 there had been an alteration in the gold coins, caused by the market value of the gold in terms of silver creeping past the mint value. Those coins in circulation had been raised in value and new twenty shilling pieces had been issued, to be known as "guineas."[5] These coins had immediately become generally

[1] Rising probably little under 33 per cent. between 1604 and 1664.—*Ibid.*, p. 66.

[2] MACAULAY, *History of England*, Vol. V, p. 89.

[3] 1299.—See above, p. 30.

[4] See MACAULAY'S account, *op. cit.*, pp. 89 f.; LOCKE'S *Writings* (London, 1823), Vol. I, p. 131; LIVERPOOL, *op. cit.*, pp. 79 f.

[5] KENYON, *op. cit.*, p. 170. In 1670 these coins were reduced in weight, but left of the same nominal value and still circulated at a great advance on their mint value.—*Ibid.*, p. 170; LIVERPOOL, *op. cit.*, p. 62.

current at a value higher than the indenture rate, and in 1695 were passing generally at 30s.[1]

The provision for the recoinage of silver caused the gold coins to fall in value relatively to silver, and it was resolved by the House of Commons that they should not pass at a value higher than 28s., which value was soon reduced to 26s. On the basis of this resolution an act was passed imposing a penalty on anyone who should receive or pay the twenty-shilling piece or guinea at a higher rate than 26s.[2] This, by another act of the same session, was reduced to 22s. In 1698 their price had fallen to 21s. 6d., at which rate they were taken by the officers of the revenue. This rating of the gold coin was not, however, such as to prevent the exportation of silver, and in 1717[3] the legal value of the guinea was reduced to 21s.[4]

Even this estimate of gold in terms of silver was still too high, however, to bring silver into circulation,[5] and during the century it remained scarce, so that gold became the customary medium of exchange and the true standard of payments.[6] In 1774 this state of facts was recognized by legislation, and the legal-tender power of silver coin was limited to £25 in any one payment, an excess of that amount being paid by weight at the rate of 3s. 2d. to the ounce.[7] This act, the duration of which was for two years, was in 1776[8] renewed for another period of the same length.

[1] KENYON, *op. cit.*, p. 178. [2] *Ibid.*, p. 185.

[3] LIVERPOOL, *op. cit.*, pp. 94 f. Newton was then master of the mint, and it was according to his suggestion that this step was taken.

[4] In his report Newton said that 8d. or 10d. would have to be taken from the value of the guinea to make its value in England accord with that in other countries. He proposed the subtraction of only 6d., however. In HORTON, *Silver Pound*, Appendix, this document may be found.—COBBETT, *Parliamentary History*, Vol. VII, pp. 523-5.

[5] Between 1717 and the end of the century the amount of silver coined at the English mint was equal to £584,760 17s. 5½d.—LIVERPOOL, *op. cit.*, p. 96.

[6] As Carlile points out (*op. cit.*, p. 742), silver coins were used in wage payments and retail trade. They were, however, merely token coins, supported in value by their relation to gold and by being actually, if not legally, limited in quantity.

[7] RUDING, *op. cit.*, Vol. IV, p. 33. [8] 16 George III., chap. 54.

In 1778[1] it was extended to 1783, when it was allowed to expire. In 1798[2] it was again revived, and continued until 1816, when the silver coins were reduced in weight and given the position of representative coins having a limited legal-tender power.[3] By this act gold was declared to be the standard coin of the realm; the silver pound was to be divided into shillings weighing $87\frac{3}{11}$ grains,[4] and it was decreed that silver coins should be considered representative coins, legal tender to the value of two guineas only.

RÉSUMÉ OF ENGLISH EXPERIENCE

The questions with which the inquiry began may now be called to mind, and such answers as have been obtained from the English experience stated.

In the first place, it appears that to the Crown belonged the power over the coinage. That power was exercised sometimes in such a manner as to accord with the expressed wishes of Parliament;[5] sometimes in such manner as deliberately to oppose those wishes;[6] sometimes without regard to whether Parliament had expressed any wish on the subject or not. It followed, therefore, that the money in which obligations were met could be altered by act of the Crown.

In the second place, the legal-tender quality was possessed by coins of both metals at specified relative values. There were inconsiderable limitations imposed upon one or the other, sometimes a maximum[7] and sometimes a

[1] 18 George III., chap. 45.

[2] 38 George III., chap. 59. These are cited by LIVERPOOL, *op. cit.*, p. 144.

[3] 56 George III., chap. 68. HORTON, *op. cit.*, p. 278, gives the report of the Lords of the Committee of Council on which the statute is based, as well as the proclamation following it.

[4] That is, the Troy pound was divided into 66s., the tower pound into 61⅞s., instead of 62s. and 58s. 1½d., as before. In 1817, the sovereign replaced the guinea as the 20s. piece of gold.—See *Ibid.*, p. 282; 57 George III., chap. 113.

[5] See above, pp. 32, 37.

[6] See above, p. 10.

[7] See above, p. 19.

minimum[1] limit being set; but, in general, it may be said that both gold and silver coins were a lawful tender; that in cash transactions the buyer, in time transactions the debtor, had the right to select the form of money to be employed. In the case of cash transactions it was found necessary to supplement this law by penal legislation and by legislation regulating prices.[2] But in the case of time transactions, the civil power of the courts was an adequate sanction.[3]

In the course of the period considered the pound in tale of silver was reduced by $65\frac{5}{9}\frac{5}{3}$ per cent. of its original weight.[4] The reasons which led to this result were two:[5] In the first place, there was the desire and purpose to remedy the "scarcity of coin," which was the chronic complaint of the people, the desire to secure a circulating medium, and to prevent criminal practices. The principles which should control the exercise of the power were ill understood. The idea of the coinage as the personal property of the prince, to be exploited for his benefit, was not wholly outgrown. Yet, on the whole, the review of the period is ill presented if it does not convey the impression of a general tendency on the part of government to do the right and honest thing and to meet the needs of the people in this vital matter of the money with which the ordinary transactions of life were performed.

In this fact—that mistaken policy controlled to so large an extent the exercise of the power—is found the answer to a question which must have suggested itself in the course of the discussion. That question is: Why did Parliament not succeed in its attempt to assume the coinage power as it succeeded in assuming the power over taxation? One reason for failure in this direction was the fact that Parliament had

[1] See above, p. 19. [2] See above, p. 20. [3] See above, p. 25.

[4] Before making silver a subsidiary element in the coinage.—LIVERPOOL, *op. cit.*, p. 42.

[5] *Ibid.*, p. 115.

no other remedy to propose, no other line of conduct to suggest than that pursued by the Crown. In 1247 it was the Council which proposed a debasement;[1] in 1411 Parliament effected one.[2] There seems to be no evidence to indicate that the power would have been more wisely exercised by Parliament than by the Crown.

But there was a second, and less worthy, motive which sometimes prevailed, namely, the desire for revenue. This was the controlling reason in the case of the debasements of Henry VIII. and Edward VI. No relief could have been expected from the degenerate Parliament of that time, however, willing as it was to give to kings' proclamations in general the force of law.[3]

It should be noted that the cases cited in which the law of tender was formulated by the courts[4] date from the period immediately subsequent to the abuses of Henry and from the period of parliamentary subservience. It should be likewise noted that from the period at which that law was formulated debasements cease. There is no intention of maintaining a direct connection between the formulation of the law and the cessation of abuses. The connection seems rather an indirect one. The law was acknowledged and acquiesced in. The Crown had the right to change the money in which contracts were settled, but the commercial development was such as to require a fixed standard of payments; the interests of the government and of the individual became closely identified through the organization of the public debt; the political development led to a keener sense of public morality; and, perhaps most important of all, the quickened intelligence and awakened public sentiment led to a more intelligent understanding of the principles which should govern the administration and exercise of such a power.

[1] See above, p. 29.

[2] See above, p. 37.

[3] See above, p. 8, n. 2.

[4] See above, p. 25.