

STRICTURES ON TENDER-ACTS *

by Pelatiah Webster

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The Tender-Act of November 29, 1780, is published by order of the Assembly of Pennsylvania for public consideration, and therefore the duty and respect due to the

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The fatal error, that the credit and currency of the Continental money could be kept up and supported by acts of compulsion, entered so deep into the mind of Congress and of all departments of administration thro' the States, that no considerations of justice, religion, or policy, or even experience of its utter inefficacy, could eradicate it; it seemed to be a kind of obstinate delirium, totally deaf to every argument drawn from justice and right, from its natural tendency and mischief, from common sense, and even common safety.

Congress began, as early as January 11, 1776, to hold up and recommend this maxim of maniasm, when Continental money was but 5 months old (for its actual circulation commenced the beginning of August 1775, tho' the bills were dated May 10, preceding, that being the first day of that session of Congress) Congress then resolved that "whoever should refuse to receive in payment, Continental bills &c. should be deemed and treated as an enemy of his country, and be precluded from all trade and intercourse with the inhabitants," &c. i.e. should be outlawed; which is the severest penalty (except of life and limb) known in our laws.

This ruinous principle was continued in practice for five successive years, and appeared in all shapes and forms, i.e. in tender-acts, in limitations of prices, in awful and threatening declarations, in penal laws with dreadful and ruinous punishments, and in every other way that could be devised, and all executed with a relentless severity, by the highest authorities then in being, viz. by Congress, Assemblies and Conventions of the States, by committees of inspection (whose powers in those days were nearly sovereign) and even by military force; and tho' men of all descriptions stood trembling before this monster of force, without daring to lift a hand against it, during all this period, yet its unrestrained energy ever proved ineffectual to its purposes, but in every instance increased the evils it was designed to remedy, and destroyed the benefits it was intended to promote; at best its utmost effect was like that of water sprinkled on a blacksmith's forge, which indeed deadens the flame for a moment, but never fails to increase the heat and force of the internal fire. Many thousand families of full and easy fortune were ruined by these fatal measures, and lie in ruins to this day, without the least benefit to the country, or to the great and noble cause in which we were then engaged.

I do not mention these things from any pleasure I have in opening the wounds of my country, or exposing its errors, but with a hope that our fatal mistakes may be a caution and warning to future financiers, who may live and act in any country which may happen to be in circumstances similar to ours at that time.

N.B. The act of November 29, 1780, herein referred to, was passed into a law, December 19, 1780.

Assembly and the Public obliges every one to consider it, and offer such remarks on it as deserve public notice. In compliance with this duty, I have considered the said act, and the following Strictures appear to me of importance sufficient to engage the public attention.

The nature of a Tender-Act is no more or less than establishing by law the standard value of money, and has the same use with respect to the currency, that the legal standard pound, bushel, yard, or gallon has to those goods, the quantities of which are usually ascertained by those weights and measures; therefore to call any thing a pound or shilling, which really is not so, and make it a legal standard, is an error of the same nature as diminishing the standard bushel, yard, gallon, &c. or making a law that a foot shall be the legal yard, an ounce the legal pound, a peck the legal bushel, or a quart the legal gallon, and compelling every body to receive all goods due to them by such deficient measures.

Further, to make any thing the legal standard of any of these, which is not of fixed but variable nature, is an error of the same kind and mischief as the others; e.g. to make a turnip the standard pound weight, which may dry up in the course of a year to a pith of not more than two or three ounces, or to make a flannel string the standard yard, which will shrink in using to half its length. The absurdity of this is too glaring to need any thing further said on it.

But to come to the matter now in question.

The first observation which occurs to me is, that the bills, which are made a tender, contain a public promise of money to be paid in six years. On which I beg leave to remark that the best and most indubitable security of money to be paid in six years, or any future time, is not so good or valuable as ready cash. The truth

of this proposition is so evident and obvious to every body, that it cannot need proof.

Therefore the law, which obliges a man to accept these bills instead of ready cash, obliges him to receive a less valuable thing in full payment of a more valuable one, and injures him to amount of the difference; and is so far a direct violation of the laws of commutative justice -- laws grounded in the nature of human rights, supported by the most necessary natural principles, and enjoined by the most express authority of God Almighty, and which it is not possible that any legislature on earth should have right to infringe or abrogate.

Again, the security arising from the public promise is not generally deemed certain. The public faith has been so often violated, and the sufferings of individuals thence arising have been so multiplied and extensive, that the general confidence of our people in that security is much lessened; and as a chance or uncertainty can never be so valuable as a certainty, those bills must and will be considered as less valuable than they would be, was the security on which they depended, free of all doubt or uncertainty; and consequently, the discount of their value will always be estimated by, and of course be equal to, this difference. Therefore, the injustice of forcing them on the subject at full value of present cash, is greatly increased.

These positions and reasonings are grounded on such notoriety of fact, that any explanation or proof is needless; and I hope an objection against a law, drawn from the most manifest and acknowledged injustice of its operation and effect, will not be deemed trivial, or be easily set aside or got over.

Naked facts are powerful things, and arguments sometimes do best, and have the greatest effect, when addressed to the feelings of mankind; and that I may press the

matter as close as I can, I beg leave to propose the following case, viz.

Suppose a man of grave phiz and character should, in distress, apply to his neighbour for the loan of 1000 silver dollars, with solemn promise on his honor and truth to repay them in a month, and in the mean time the tender-act under consideration should pass into a law, and the borrower, at the month's end, should tender 1000 of the new paper dollars in payment.

I beg leave here to propose to every Member of the Assembly who voted for that law, and to every other man, who is a member of this State, what their sentiments of that action would be, and in what light they would view the borrower, who tendered the paper dollars (i.e. 2/5 of the debt) in payment of the silver ones he had received; i.e. would they consider him as an upright, honest man, or a shameless rascal?

In whichever of the two characters they may choose to consider such a man, it may be proper to note, that the act in question, if passed into a law, would protect him, and not only so, but would subject the lender to the loss of the whole money if he refused to receive it. This is a somewhat delicate matter, which it is painful to dwell long upon. I will therefore close what I have to say on it with a few very serious remarks, the truth, justice, and propriety of which I humbly submit to the reader.

1. The worst kind of evil, and that which corrupts and endangers any community most, is that iniquity which is framed by a law; for this places the mischief in the very spot, on the very seat, to which every one ought to look and apply for a remedy.

2. It cannot be consistent with the honor, the policy, the interest, or character of an Assembly of Pennsylvania, to make a law, which, by its natural operation, shall afford protection to manifest injustice, deliberate knavery, and known wrong.

3. No cause or end can be so good, i.e. so heavenly in its origin, so excellent in

its nature, so perfect in its principles, and so useful in its operation, as to require or justify infernal means to promote it. By infernal means I mean such as are most opposed to Heaven and its laws; most repugnant to natural principles of equity, which are all derived from Heaven; and most destructive of the rights of human nature, which are essential to the happiness of society, the laws of which are engraven by Heaven on the heart of every man; some wicked men have formerly said, "let us do evil, that good may come, whose damnation is just."

But perhaps this sort of argument may not have all the effect I could wish on the mind of every reader. I therefore proceed to another argument, which goes to the nature and principle of the act itself, viz. that the credit or value of money cannot, in the very nature of the thing, be supplied, preserved, or restored by penal laws, or any coercive methods. The subject is incompatible to force, it is out of its reach, and never can be made susceptible of it, or controllable by it. The thing which makes money an object of desire, which gives it strength of motive on the hearts of all men, is the general confidence, the opinion which it gains, as a sovereign means of obtaining every thing needful. This confidence, this opinion, exists in the mind only, and is not compellable or assailable by force, but must be grounded on that evidence and reason which the mind can see and believe; and is no more subject to the action of force, than any other passion, sentiment, or affection of the mind; any more than faith, love, or esteem.

It is not more absurd to attempt to impel faith into the heart of an unbeliever by fire and faggot, or to whip love into your mistress with a cowskin, than to force value or credit into your money by penal laws.

You may, indeed, by force compel a man to deliver his goods for money which he

does not esteem, and the same force may compel him to deliver his goods without any money at all; but the credit or value of the money cannot be helped by all this, as appears by numberless examples. Plain facts are stubborn and undeniable proofs of this. Indeed, this has been tried among ourselves in such extent of places and variety of shapes, and in every instance been found ineffectual, that I am amazed to see any attempt to revive it, under any devisable form whatsoever. Numberless are the instances of flagrant oppression and wrong, and even ruin, which have been the sad effects of these dreadful experiments, with infinite detriment to the community in general, without effecting in any one instance the ends intended. The facts on which this argument depends, are fresh in every one's memory.

I could wish, for the honor of my country, to draw a veil over what is past, and that wisdom might be derived from past errors, sufficient to induce every one to avoid them in future. In fine, from the contemplation of the nature of the thing, and of the facts and experiments which have been made in every variety of mode, and supported by every degree of power and exertion, it appears as plain and undeniable as intuitive proof, that the credit or value of money is not in its nature controllable by force, and therefore, any attempt to reach it in that way, must end in disappointment, and the greater the efforts, and the higher the authority which may be exerted in that way, the greater must be the chagrin, shame, and mortification, when the baseless fabric shall vanish into smoke.

The only possible method then of giving value or credit to money is, to give it such qualities, and clothe it with such circumstances, as shall make it a sure means of procuring every needful thing; for money that will not answer all things, is defective, and has not in it the full nature and qualities of money. In this way only it will grow

fast enough into esteem, and become a sufficient object of desire, to answer every end and use of money. Therefore, when the question is proposed, how shall we give credit or value to our money? the answer, the only true answer, is, bring it into demand, make it necessary to every one, make it a high means of happiness, and a sure remedy of misery. To attempt this in any other way is to go out of nature, and of course into difficulty, only to obtain shameful disappointment in the end.

There is nothing better than to take things in their natural way. A great and difficult work may be accomplished by easy diligence, if a good method and a wise choice of means are adopted; but a small work may be made difficult, very soon, if taken at the wrong end, and pursued by unnatural means. There is a right and a wrong method of doing every thing. You may lead with a thread what you cannot drive with whips and scorpions. The Britons have found this to their cost, in the unnatural means they have pursued to preserve and recover their dominions in America. I wish we might be made wise by their errors.

Felix quem faciunt aliena pericula cautum

I would be willing to learn wisdom from Great Britain. Fas est ab hoste doceri. Amidst all their madness, and in all their distresses for money, they never once thought of making their bank or exchequer bills a tender, or supporting their currency by penal laws. But these considerations may have little effect on some minds, who are not very delicate in their choice of means, but seem resolved to carry their point, volente nolente Deo.

I therefore hasten to another topic of argument, viz. It appears to me the act is founded in mistaken and very bad policy, and by its natural operation must produce many effects extremely prejudicial to our great and most important interests.

1. It seems plain to me, that the act has a fatal tendency to destroy the great motives of industry, and to dishearten and discourage men of every profession and occupation from pursuing their business on any large scale or to any great effect, and therefore will prevent the production of those supplies derived from husbandry and manufactures, which are essential to our safety, support and comfort. Few men will bestow their labor, attention, and good money, with zeal, to procure goods and commodities for sale, which they know they must sell for money which they esteem bad, or at best doubtful. This proposition is so obvious and natural, that it strikes the mind with conviction at first sight without proof, and is so amply confirmed by our past experience, that it can admit no doubt as to its truth or consequence.

The extent and dreadful effects of this are unavoidable and immense. If the industry of the farmer and tradesman is discouraged, and they cease to lay themselves out for large crops and fabrics, the consequence must be an universal diminution and scarcity of the produce of the country and most important articles of living, as well as commerce. The general industry of the country is of such vast importance, is an object of such magnitude, that to check it, is to bring on ruin, poverty, famine, and distress, with idleness, vice, corruption of morals, and every species of evil; but enumeration or enlargement is unnecessary here.

As money is the sinews of every business, the introducing a doubtful medium, and forcing it into currency by penal laws, must weaken and lessen every branch of business, in proportion to the diminution of inducement found in the money.

2. The same thing will render the procurement of supplies for the army difficult, if not utterly impracticable. Most men will hold back their goods from the market, rather than sell them for money of a doubtful credit; and there will be no possible way of collecting them, but to send a superior force into the country, and there take them

by violence from the owner, which will occasion such an expense as will double the cost of the supplies by the time they get to the army, be subject to a thousand frauds, &c. &c. &c. This is the most obvious and natural operation of the act, if we consider its own nature only, and is confirmed by such ample experience, recent in the memory of every man, that it can leave no doubt but all this train of mischiefs must follow the act from its first operation.

3. I apprehend the act will, by its natural operation, tend to corrupt the morality of the people, sap the support, if not the very foundation, of our independence, lessen the respect due to our Legislature, and destroy that reverence for our laws, which is absolutely necessary to their proper operation, and the peace and protection of society. Many people will be so terrified with the apprehension of seeing their real substance, the fruit of their labor and anxious attention, converted into a bundle of paper bills of uncertain value, that, to avoid this evil, they will have strong inducements to rack their invention for all devisable ways and methods of avoiding it; and this will give rise to such numberless frauds, ambiguities, lies, quibbles, and shams, as will introduce the habit and give a kind of facility to the practice of such guile and feats of art, as will endanger the uprightness, plain honesty, and noble sincerity, which ever mark the character of a happy and virtuous people.

Many, who wish well to our independence, and have many necessaries for our army which they would wish to supply, will be yet held back from offering their goods, from the sole consideration of the doubtful value of the bills in which those supplies must be paid for; and instances of this sort I conceive will be so numerous, as greatly to affect the supplies of our army, and of course the support of our independence. The injuries and sufferings of people, who are compelled to take said bills in satisfaction

of contracts for real money, will induce them in their rage to use the legislature, who formed the act, with great liberty, and perhaps gross disrespect; whilst the habit of reproaching the legislature, and eluding the injurious act, will become general, and pave the way to an habitual and universal abhorrence of our legislature and contempt of our laws, with a kind of facility and artful dexterity in eluding the force of the whole code.

I freely submit it to my reader, if these consequences are at all unnatural or ill-drawn, if the surmises are at all groundless, or the painting a whit too strong. No art of government is more necessary, than that of keeping up the dignity and respectability of the legislatures, and all courts and officers of government, and exciting and preserving in the hearts of the people a high reverence for the laws; and any thing which endangers these great supports of the state ought to be avoided as a deadly evil.

4. The act, I apprehend, will give a bad appearance to our credit, honor and respectability, in the eyes of our neighbours on this continent, and the nations of Europe, and other more distant parts of the world. For when they come to be informed that our own people must be compelled, by the loss of half their estates and imprisonment of their persons, to trust the public faith, they will at once conclude there must be some great danger, some shocking mischief dormant there, which the people nearest to and best acquainted with it, abhor so much; and of course, as they are out of the reach of our confiscations and imprisonments, will have little inducement to trust or esteem us. And

5. Will give great exultation and encouragement to our enemies, and induce them to prolong the war, and thereby increase the horrid penalty of imprisonment, which

is to last during the war. When they see that our money is become so detestable, that it requires such an act as this to compel our own people to take it, they must at least be convinced that its nature is greatly corrupted, and its efficacy and use nearly at an end. When we see the passionate admirers of a great beauty forced by lashes and tortures into her embraces, we at once conclude that she has lost her charms, and is become dangerous and loathsome.

It cannot be fairly objected to these Strictures, that they suppose the bills funded by this act are of less value than hard money. The act itself implies this. The Assembly never thought of wasting time in framing an act to compel people to take guineas, joes, and Spanish dollars, under penalty of confiscation and imprisonment. Besides, the fact stands in such glaring light in the eyes of all men, that it is mere trifling to dispute it.

I dare think that there is not a man to be found, either in the Assembly or out of it, that would esteem himself so rich and safe in the possession of 1000 of these dollars, as of 1000 Spanish ones; and the most effectual way to impress a sense of the deficiency of the act on the minds of all men, and even discover the idea which the Assembly themselves have of it, is to enforce it by penalties of extreme severity; for were there no deficiency in the act, it could not possibly require such penalties to give it all necessary effect, not is it supposable that the Assembly would add the sanction of horrid penalties to any of their acts, unless they thought there was need of them.

The enormity of the penalty deserves remark. The penalty for refusing a dollar of these bills is greater than for stealing ten times the sum.

Further, the act alters, and of course destroys, the nature and value of public

and private contracts, and of consequence strikes at the root of all public and private credit. Who can lend money with any security, and of course who can borrow, let his necessity and distress be ever so great? who can purchase on credit, or make any contract for future payment? in very deed all confidence of our fellow-citizens in one another is hereby destroyed, as well as all faith of individuals in the public credit.

Upon the whole matter, the bills must rest on the credit of their funds, their quantity, and other circumstances. If these are sufficient to give them a currency at full value, they will pass readily enough without the help of penal laws. If these are not sufficient, they must and will depreciate, and thereby destroy the end of their own creation; and this will proceed from such strong natural principles, such physical causes, as cannot, in the nature of the thing, be checked or controlled by penal laws, or any other application of force.

These Strictures are humbly offered to public consideration. The facts alleged are all open to view, and well understood. If the remarks and reasonings are just, they will carry conviction; if they are not so, they are liable to any one's correction.