

**THE POSITION OF LAW IN
THE
DOCTRINE OF MONEY,
AND OTHER PAPERS**

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The position of law in the doctrine of money, and other papers by S. Dana Horton

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PREFACE.

HE following paper on "The Position of Law in the Doctrine of Money" was first printed as an Explanatory Note to the introductory pages of a Bibliography of Money (an enlargement of a list printed as an Appendix to "Silver and Gold," in 1876), comprised in Mr. Horton's "Contributions to the Study of Monetary Policy," in the Document of the Monetary Conference of 1878 (Washington, 1879).

The following are the passages for which the note—which, from its length, becomes a running commentary upon the entire bibliography—was introduced as an explanation.

"AN indispensable source of knowledge about Money is


"First. That BODY OF LAW which in the different nations of the world defines and regulates the status of Money, property in Money, and Money debt, or obligations enforceable through compulsory delivery of Money.

"Second. That BODY OF LAW which determines what commodity or commodities may remain or may become Money.

"Third. That BODY OF LAW which prescribes the process by which such commodity may become Money.

"While the expression 'law' is applicable to each of these classes, yet, in its narrow sense, 'Law' belongs especially to the first

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"While the expression 'law' is applicable to each of these classes, yet, in its narrow sense, 'LAW' belongs especially to the first

class, while the second and third may be comprised in the word 'legislation.'

"Although existing in print, this material of knowledge must, for the most part, be gathered here and there in publications too numerous to be named, which are generally neither in title, nor according to common belief, germane to the subject of Money; namely, in the reports of decisions of courts, in juristic treatises, and in statutes, which are the source of the material first mentioned, while the latter are chiefly matter of statute, and sometimes of administrative regulation.

"The important questions at issue which concern Money, being political in their nature, and demanding the attention of the publicist rather than of the practising lawyer, of course no approach to a systematic treatise upon Money, or upon any department of Monetary Science, is to be looked for in such works. It must further be observed that even in matters within the direct range of their purpose, the classification of the contents of law books often leaves much to be desired. Hence, in suggesting the titles Money, Legal Tender, Debt, Loan, Interest, Negotiability, Fungibility, Specific Performance, Damages, Taxation, Fines, Penalties and Forfeitures, Coins, Coinage, Mint, &c., as being titles in the index and table of contents of legal works which bear upon the subject, I can do so only with the reservation that neither in the books themselves, excepting books of statutes, nor in the phraseology of references to their contents, will the reader find a presentation of the subject constructed with special reference to Money, nor, in fact, aught but the raw material of knowledge.

"IN GENERAL ALL WORKS ON NATIONAL ECONOMY, POLITICAL OR SOCIAL SCIENCE, CONTAIN ESSAYS UPON MONEY."

The note, as here printed, was then preceded by the following lines:—

"THE POSITION OF LAW IN THE DOCTRINE OF
MONEY.

"AN EXPLANATION.

"To the contribution to the Study of Monetary Policy here presented it may prove useful to prefix some words explanatory of certain features of this voluminous list of books, which, from all but