



O'MELVENY & MYERS LLP

Thomas P. Brown
Federal Reserve Bank of Chicago
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An (Often) Unhappy Threesome Payments, Law and Innovation

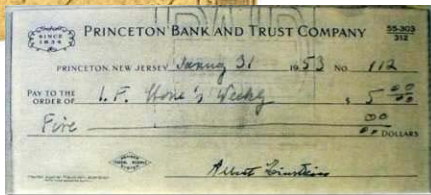
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Payments, Law And Innovation

- A (very) short history of payments
- A (brief) examination of the public role
- A (modest) suggestion for improvement

“Turning the accomplishment of many years into an hour-glass”

Past



Present



Future



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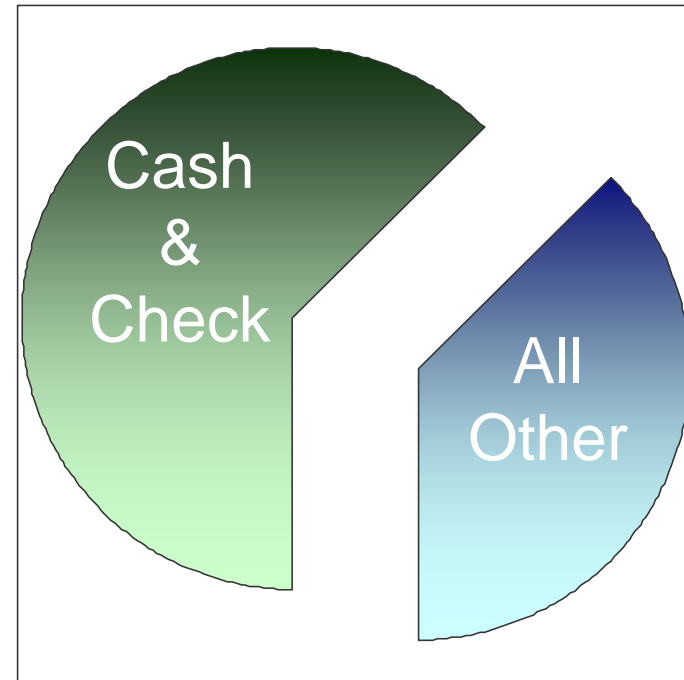
No Role For Public Authorities?

Not so fast



Consumption By Type Of Payment

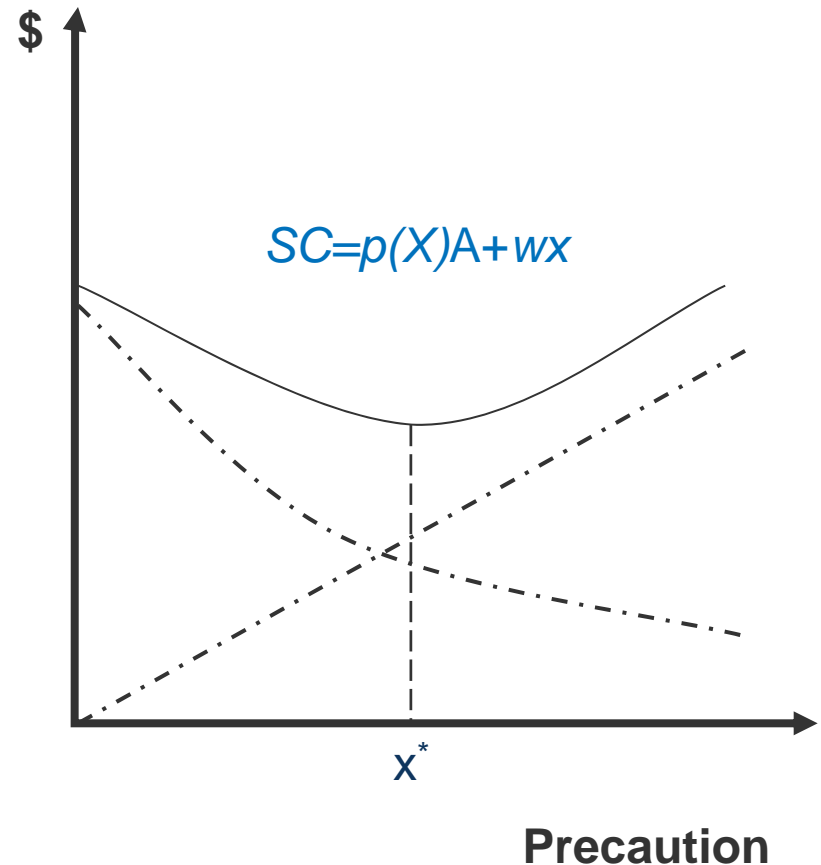
2006



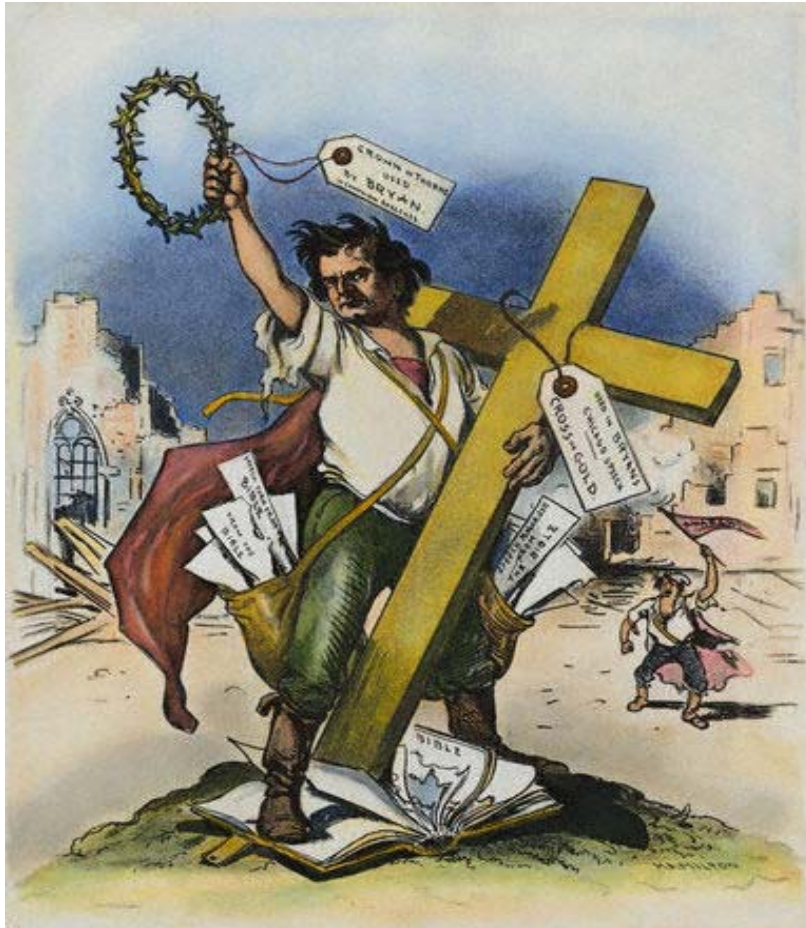
But It Only Goes So Far

It doesn't extend to "re-balancing" incentives

- Strict liability statutes like Minn § 325E.64 are a bad idea.
- Other participants in the system can still stop potential fraud.
- It makes no sense for a state to relieve them of any incentive to do so.



And We've Been Down *This* Road Before



“You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold.”

William Jennings Bryan

We Know Where It Goes

“They say that we are opposing national bank currency; it is true. If you will read what Thomas Benton said, you will find he said that, in searching history, he could find but one parallel to Andrew Jackson; that was Cicero, who destroyed the conspiracy of Cataline and saved Rome. Benton said that Cicero only did for Rome what Jackson did for us when he destroyed the bank conspiracy and saved America. **We say in our platform that we believe that the right to coin and issue money is a function of government.** We believe it. We believe that it is a part of sovereignty, and can no more with safety be delegated to private individuals than we could afford to delegate to private individuals the power to make penal statutes or levy taxes. Mr. Jefferson, who was once regarded as good Democratic authority, seems to have differed in opinion from the gentleman who has addressed us on the part of the minority. **Those who are opposed to this proposition tell us that the issue of paper money is a function of the bank, and that the Government ought to go out of the banking business. I stand with Jefferson rather than with them, and tell them, as he did, that *the issue of money is a function of government, and that the banks ought to go out of the governing business.*”**

William Jennings Bryan

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Preserve Public Confidence

By putting the bad guys in jail

“The single largest and most complex identity theft case ever charged in this country”

Attorney General Mukasey

The Fraud

- 40 million debit and credit card numbers
- TJX, BJ's, OfficeMax, and 6 other retailers
- Five years

The Prosecution

- 11 defendants from 5 countries
- Arrested in 3 countries
- Prosecuted by 3 U.S. Attorneys

And Proof That A Lawyer Can Twist Anyone's Statements To His Own Ends

(4) It is vital, therefore, to establish at **Community level a modern and coherent legal framework for payment services**, whether or not the services are compatible with the system resulting from the financial sector initiative for a single euro payments area, which is neutral so as to ensure a level playing field for all payment systems, in order to maintain consumer choice, which should mean a considerable step forward in terms of consumer cost, safety and efficiency, as compared with the present national systems.

There's A Lot At Stake

“Electronic payments act as gateways into the banking system for unbanked segments, which make up as much as 70 percent of the world’s population.”

“In a simulation of the U.S. economy, a 10 percent shift of currency into deposits or other reserves that can be used for loans increased GDP by more than 1 percent annually.”

“Electronic payment networks have the potential to provide cost savings of at least 1 percent of GDP annually over paper-based systems through increased velocity, reduced-friction, and lower costs.”

Scott Schmith
International Trade Administration

**These slides do not represent legal advice,
and they do not offer anyone's views
on this subject but my own.**

Tom Brown, Partner,
O'Melveny & Myers LLP – San Francisco, CA
tbrown@omm.com
(415) 984-8947