Federalist Economics

Federalist: "system of political organization uniting separate states ... in such a way as to allow each to remain a political entity ... being based on a contractual agreement (Constitution of the United States) by separate governments to share power among themselves." [1]

Economics: "The study of the creation and distribution of wealth, of the behavior of prices, and of the forces that determine national income and employment." [2]

[1] Encyclopedia Britannica, 15th Edition, Vol. IV p. 78.

[2] Encyclopedia Britannica, 15th Edition, Vol. III p. 779.

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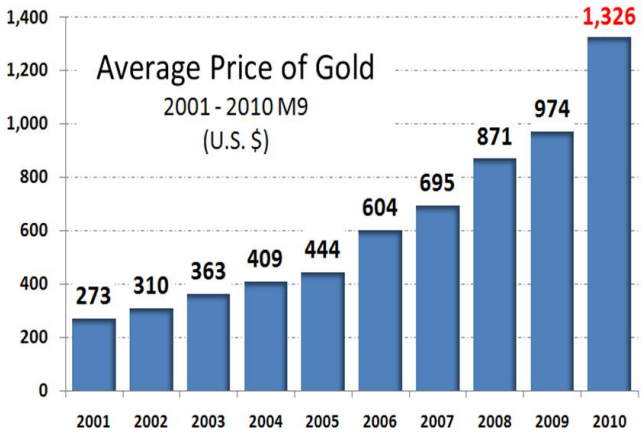

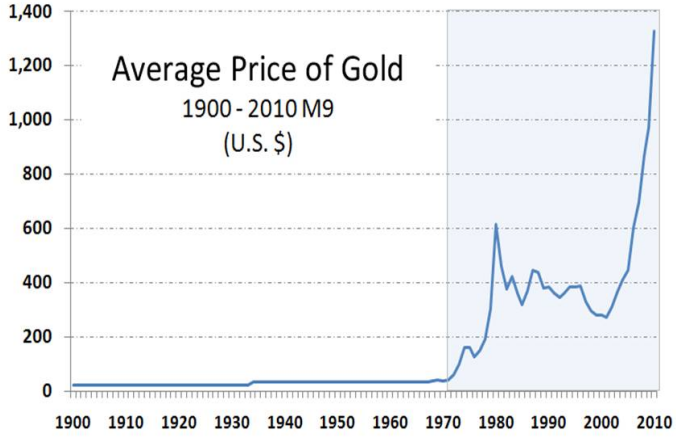

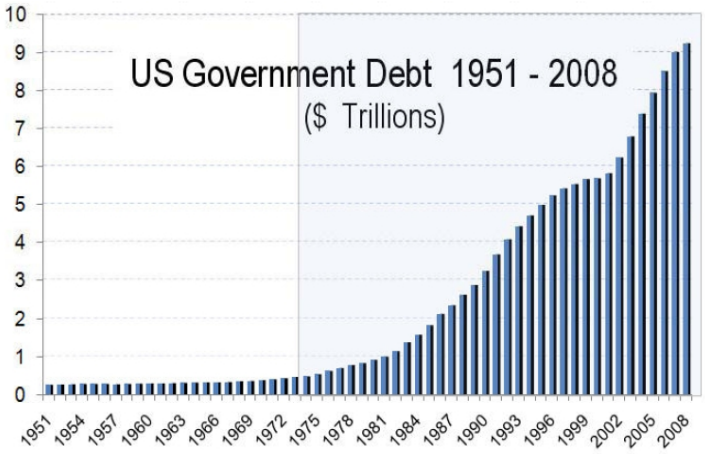

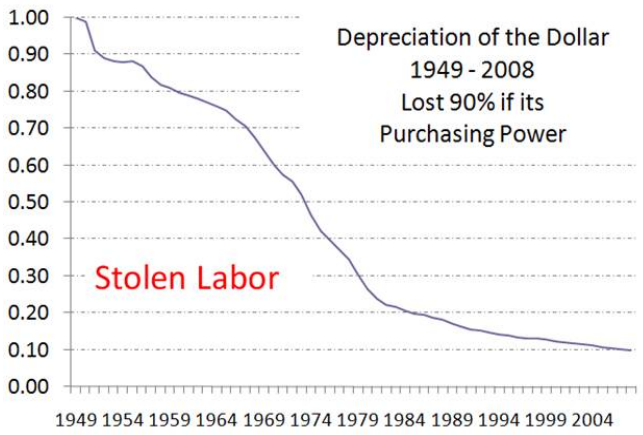

Quotable Quotes Worth Installing in Select Speeches on Economics

- George Bernard Shaw “You have to choose [as a voter] between trusting to the natural stability of gold and the natural stability of the honesty and intelligence of the members of the Government. And, with due respect for these gentlemen, I advise you, as long as the Capitalist system lasts, to vote for gold.”
- Voltaire (1694-1778) “Paper money eventually returns to its intrinsic value ---- zero.”
- Daniel Webster, speech in the Senate, 1833 “We are in danger of being overwhelmed with irredeemable paper, mere paper, representing not gold nor silver; no sir, representing nothing but broken promises, bad faith, bankrupt corporations, cheated creditors and a ruined people.”
- Thomas Jefferson to John Taylor, 1816 “I sincerely believe ... that banking establishments are more dangerous than standing armies, and that the principle of spending money to be paid by posterity under the name of funding is but swindling futurity on a large scale.”
- Daniel Webster "Of all the contrivances for cheating the laboring classes of mankind, none has been more effective than that which deludes them with paper money."
- St. Louis Federal Reserve Bank, Review, Nov. 1975, p.22 "The decrease in purchasing power incurred by holders of money due to inflation imparts gains to the issuers of money--."
- U.S. Supreme Court, Craig v. Missouri, 4 Peters 410. "Emitting bills of credit, or the creation of money by private corporations, is what is expressly forbidden by Article 1, Section 10 of the U.S. Constitution."
- James A. Garfield "Whoever controls the volume of money in any country is absolute master of all industry and commerce."
- Frederic Bastiat, The Law "When plunder becomes a way of life for a group of men living together in society, they create for themselves in the course of time a legal system that authorizes it and a moral code that glorifies it."
- Irving Fisher, 100% Money "Thus, our national circulating medium is now at the mercy of loan transactions of banks, which lend, not money, but promises to supply money they do not possess."
- John Maynard Keynes, The Economic Consequences of the Peace, 1920, page 240 "If, however, a government refrains from regulations and allows matters to take their course, essential commodities soon attain a level of price out of the reach of all but the rich, the worthlessness of the money becomes apparent, and the fraud upon the public can be concealed no longer."
- John Maynard Keynes, The Economic Consequences of the Peace, 1920, page 235ff "There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million can diagnose."
- Ralph M. Hawtrey, former Secretary of Treasury, England "Banks lend by creating credit. They create the means of payment out of nothing."
- Robert H. Hemphill, former credit manager, Federal Reserve Bank of Atlanta "Money is the most important subject intellectual persons can investigate and reflect upon. It is so important that our present civilization may collapse unless it is widely understood and its defects remedied very soon."
- Sir Josiah Stamp, former President, Bank of England "Bankers own the earth. Take it away from them, but leave them the power to create money and control credit, and with a flick of a pen they will create enough to buy it back."
- Rt. Hon. Reginald McKenna, former Chancellor of Exchequer, England "Those who create and issue money and credit direct the policies of government and hold in the hollow of their hands the destiny of the people."
- John Adams, letter to Thomas Jefferson "All the perplexities, confusion and distresses in America arise not from defects in the constitution or confederation, nor from want of honor or virtue, as much from downright ignorance of the nature of coin, credit, and circulation."
- William Jennings Bryan "Money power denounces, as public enemies, all who question its methods or throw light upon its crimes."
- George Washington, in letter to J. Bowen, Rhode Island, Jan. 9, 1787 "Paper money has had the effect in your state that it will ever have, to ruin commerce, oppress the honest, and open the door to every species of fraud and injustice."
- George Bancroft, A Plea for the Constitution (1886) "Madison, agreeing with the journal of the convention, records that the grant of power to emit bills of credit was refused by a majority of more than four to one. The evidence is perfect; no power to emit paper money was granted to the legislature of the United States."
- Article One, Section Ten, United States Constitution "No state shall emit bills of credit, make any thing but gold and silver coin a tender in payment of debts, coin money---."
- John C. Calhoun, Speech 5/27/1836 "A power has risen up in the government greater than the people themselves, consisting of many and various powerful interest, combined in one mass; and held together by the cohesive power of the vast surplus in banks."
- Andrew Jackson: To delegation of bankers discussing the Bank Renewal Bill, 1832 "You are a den of vipers and thieves. I intend to rout you out, and by the eternal God, I will rout you out."
- Treasury Secretary Woodin, 3/7/33 "Where would we be if we had I.O.U.'s scrip and certificates floating all around the country?" Instead he decided to "issue currency against the sound assets of the banks. [As opposed to issuing currency against gold.] The Federal Reserve Act lets us print all we'll need. And it won't frighten the people. It won't look like stage money. It'll be money that looks like real money." [Emphasis added.] (Source: 'Closed for the Holiday: The Bank Holiday of 1933', p20 - Federal Reserve Bank of Boston)
- John Kenneth Galbraith “The study of money, above all other fields in economics, is one in which complexity is used to disguise truth or to evade truth, not to reveal it.” Money: Whence it came, where it went - 1975, p15
- John Kenneth Galbraith “The process by which banks create money is so simple that the mind is repelled.”
- Money: Whence it came, where it went - 1975, p29 Senator Carter Glass, Author of the Banking Act of 1933 "Is there any reason why the American people should be taxed to guarantee the debts of banks, any more than they should be taxed to guarantee the debts of other institutions, including merchants, the industries, and the mills of the country?"
- Chief Justice Salmon Chase, formerly Secretary of Treasury in President Lincoln’s administration, in dissent of Knox vs. Lee (The Legal Tender Cases, 1871) “The legal tender quality [of money] is only valuable for the purposes of dishonesty.”
- John Adams "All the perplexities, confusion and distress in America arise, not from defects in their Constitution or Confederation, not from want of honor or virtue, so much as from the downright ignorance of the nature of coin, credit and circulation."
- Friedrich A. Hayek (1899-1992) Austrian Economist, Author and 1974 Nobel Prize-Winner for Economics “With the exception only of the period of the gold standard, practically all governments of history have used their exclusive power to issue money to defraud and plunder the people.”

OPEN LETTER TO STATE LEGISLATORS

Think of this as a "Continuing Education Course for State Legislators" – if you will. This booklet was assembled by the NVCCA Legislative Department to assist state legislators in understanding the nuances of economics in our federal system. There is a constitutional and proper role for the states to play in it. And while this subject may not be as "sexy" as other state affairs, nevertheless it is crucial to the survival of both the states and the nation that there be an intimate familiarity with these topics between state legislators and the executive departments of state government.

The financial health of the state – the pensions of state and local government employees, the budget in general, the assets of the government, and security of the people – all rely on legislators who are well versed in the subject matter. In that respect, this booklet may be viewed as both a primer and more detailed, advanced studies in economics from the perspective of our state-federal relationship.

The authors of the briefs contained herein are of high standing in the realm of constitutional law and research. Diligent state legislators, who take the time to read and digest this material, will benefit from a much deeper understanding of the interconnected subjects of our Constitution and the fundamental principles of economics and commerce contained within it, as well they will obtain a thorough understanding of the current banking system and its many tentacles, and how the behavior of these institutions can be corrected by a *federalist* (states sharing power and authority) approach.

We have also assembled some model legislative proposals that perform a *corrective* function to help repair some of the damage that has been done to our national economy, and federalism generally, in the past three generations.

CAUTION IS URGED that state legislators not jump onto "knee-jerk" legislation. Many notions are springing up among less-educated (but very well meaning) people. For example, creating a "state bank" or having a state "open its own mint and coin silver and gold" both seem like good ideas. But there are a plethora of problems (both constitutionally and within case law) that would doom such notions from the beginning, and actually *hamper* and confuse legitimate efforts to fix the root of the problem. Such ideas are NOT to be found among those legislative proposals contained in this book. And while there are other feasible ideas for fixing our problems, we have a suggestion for you.

If you, as a state legislator, have the heart to tackle this situation as a leader among colleagues in your State, and you have questions on what approach should be taken, or an idea not found in these pages, please contact the NVCCA's team of economic activists. We'll help you develop a plan of action that incorporates the critical elements for success; and objectively evaluate your ideas with the help of constitutionally articulate scholars on these subjects. Let's talk! aaron@nvcca.net is the place to start.

Aaron Bolinger, Legislative Director

The following monograph was originally published as a monograph of the:
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Dr. Vieira holds four degrees from Harvard: A.B. (Harvard College), A.M. and Ph.D. (Harvard Graduate School of Arts and Sciences), and J.D. (Harvard Law School).

For more than thirty years he has practiced law, with emphasis on constitutional issues. In the Supreme Court of the United States he successfully argued or briefed the cases leading to the landmark decisions Abood v. Detroit Board of Education, Chicago Teachers Union v. Hudson, and Communications Workers of America v. Beck, which established constitutional and statutory limitations on the uses to which labor unions, in both the private and the public sectors, may apply fees extracted from nonunion workers as a condition of their employment.

He has written numerous monographs and articles in scholarly journals, and lectured throughout the country. His most recent work on money and banking is the two-volume Pieces of Eight: The Monetary Powers and Disabilities of the United States Constitution (2002), the most comprehensive study in existence of American monetary law and history viewed from a constitutional perspective.

Dr. Vieira is the author of two monographs contained in this booklet. This first one is the “primer” that every human being, or at least every American legislator, should understand thoroughly. The basic question “what is a dollar?” is the foundation upon which all economic study rests (or should rest). How can one embark on “global commerce” studies where “dollars” are traded, without knowing the answer to that fundamental question? It is both simple, and extremely complex, as we shall soon see.

AN HISTORICAL ANALYSIS OF THE FUNDAMENTAL QUESTION IN MONETARY POLICY
WHAT IS A "DOLLAR"?

By Edwin Vieira, Jr., J.D., LL.D.

Introduction

The question "What is a 'dollar'?" may seem trivial. Everyone knows what a "dollar" is--or, at least almost everyone thinks he does. In fact, however, very few people could correctly define a "dollar". And even fewer know why a correct definition is vital to their continued economic and political well-being.

Analysis

1. Why is a correct definition of the term "dollar' important'?

The United States has a highly advanced free-market economy. In a free-market economy, the prices of almost all goods and services are stated in units of money. Under present law - and, as will be described below, from the very beginnings of this country - "United States money is expressed in dollars ***".[1] Moreover, all "United States coins and currency (including Federal Reserve Notes * * *) are legal tender for all debts, public charges, taxes and dues".[2] Thus, all "coins and currency (including Federal Reserve notes * * *)" that are "expressed in dollars" are both money and legal tender. For this reason, accurately defining the noun "dollar" is mandatory, in order to know what is supposedly the official "Money" of the United States and what constitutes "legal tender for all debts, public charges, taxes and dues".[3]

2. Do the present monetary statutes intelligibly define the "dollar"?

Unfortunately, the present monetary statutes do not define the "dollar" in an intelligible fashion.

a. Federal Reserve Notes. Most people associate the noun "dollar" with the Federal Reserve Note ("FRN") "dollar bill", engraved with the portrait of President George Washington. This association is mistaken.

No statute defines - or ever has defined - the "one dollar" FRN as the "dollar", or even as a species of "dollar". Moreover, the United States Code provides that FRNs "shall be redeemed in lawful money on demand at the Treasury Department of the United States or at any Federal Reserve bank". [4] Thus, FRNs are not themselves "lawful money" - otherwise, they would not be "redeemable in lawful money". And if FRNs are not even "lawful money", it is inconceivable that they are somehow "dollars", the very units in which all "United States money is expressed".[5]

People are confused on this point because of the insidious manner in which FRNs "evolved" - actually, `degenerated' is a more appropriate verb -

from the late 1920s until today. FRNs of Series 1928 through Series 1950E carried the obligation "The United States of America will pay to the bearer on demand [some number of] dollars". Prior to 1934, the notes carried the inscription "Redeemable in gold on demand at the United States Treasury, or in gold or lawful money at any Federal Reserve Bank". After 1934, the notes carried the inscription "this note * * * is redeemable in lawful money at the United States Treasury, or at any Federal Reserve Bank" (post-1934). Starting with Series 1963, the words "will pay 'To the bearer on demand" no longer appear; and each FRN simply states a particular denomination in "dollars". With and after Series 1963, the promise of redemption also vanished from the face of each note.[6] Thus, on their faces FRNs became, in the apt description of banking expert John Exter, an "I.O.U. Nothing" currency. This change in the mere language printed on FRNs could not transform their legal character, however. If FRNs were not "dollars" when they explicitly promised to pay in gold or "lawful money", they did not magically become "dollars" when they stopped explicitly promising to pay in anything at all.[7])

b. United States coins. The situation with coinage is more complex, but equally (if not more) confusing. The United States Code provides for three different types of coinage denominated in "dollars": namely, base-metallic coinage, gold coinage, and silver coinage.

(1) The base-metallic coinage consists of "a dollar coin", weighing "8.1 grams"; "a half dollar coin", weighing "11.34 grams"; "a quarter coin", weighing "5.67 grams"; and a dime coin", weighing "2.268 grams".[8] All of these coins are composed of copper and nickel.[9] The weights of the dime, the quarter, and the half dollar are in the correct arithmetical proportions, the one to each of the others.[10] But the "dollar" is disproportionately light (or the other coins disproportionately heavy). In this series of base-metallic coins, then, the questions naturally arise: Is the "dollar" a cupronickel coin weighing "8.1 grams"? Or is it two cupro-nickel coins (or four or ten coins) collectively weighing 22.68 grams? Or is it both? Or is it neither, but something else altogether, to which the weights of these coins are irrelevant?

(2) Similarly, the gold coinage consists of "[a] fifty dollar gold coin" that "weighs 33-931 grams, and contains one troy ounce of fine gold"; "[a] twenty-five dollar gold coin" that "contains one-half ounce of fine gold"; "[a] ten dollar gold coin" that "contains one fourth ounce of fine gold"; and "[a] five dollar gold coin" that "contains one-tenth ounce of fine gold". The "fifty dollar", "twenty five dollar", and "five dollar" coins are in the correct arithmetical proportions each to the others. But the "ten dollar" coin is not. Therefore, is a "dollar" one-fiftieth or one-fortieth of an ounce of gold? Or both? Or neither?

And what is the logical, economic, or other relationship between a "dollar" that contains "8.1 grams" of copper and nickel and a "dollar" that consists of 0.679 grams of gold alloy? [12]

(3) Finally, the silver coinage consists of a coin that is inscribed "One Dollar", weighs "31.103 grams", and is supposed to contain one ounce of ".999 fine silver . What is the rational relationship between this "dollar" of "31.103 grams" of ".999 fine silver", a "dollar" containing 0.679 grams of gold alloy, and a "dollar" containing "8.1 grams" of base metals? Obviously, these are not the amounts of the metals that exchange against each other in the free market - that is, the different weights of different metals do not reflect equivalent purchasing powers. So, on what theory are each of these disparate weights, and purchasing powers, equally "dollars"?

c. Currency of "equal purchasing power" * The United States Code provides no answer to this perplexing question. Indeed, it mandates that the question should not even be capable of being asked. For the Code commands that "the Secretary [of the Treasury] shall redeem gold certificates owned by the Federal reserve banks at times and in amounts the Secretary decides are necessary to maintain the equal purchasing power of each kind of United States currency. One need be no expert in currency transactions to know that a "fifty-dollar" gold coin has significantly more purchasing power than a "fifty-dollar" FRN or than fifty cupro-nickel "dollars", and that a "one-dollar" silver coin has significantly more purchasing power than a "one-dollar" FRN or one cupro-nickel "dollar". Thus, one need be no expert in administrative law to realize that the Secretary of the Treasury has defaulted on his obligation to keep forms of "United States currency" at parity with each other - that is, to maintain a "dollar" of the same purchasing power, whether it be composed of gold, silver, or base metals.

The Secretary's default cannot be traced to a lack power to perform his duty. For example,

- "With the approval of the President, the Secretary the Treasury may - (A) buy and sell gold in the way, amounts, at rates, and on conditions the Secretary considers most advantageous to the public interest; and (B) buy gold with any direct obligations of the United Stat Government or United States coins and currency authorized by law * * * ." [15]
- "The Secretary may buy silver mined from natural deposits in the United States * * * that is brought to United States mint or assay office within one year after the month in which the ore from which it is derived was mined." [16]

- "The Secretary may sell or use Government silver to mint coins * * * . The Secretary shall sell silver under conditions the Secretary considers appropriate for at least 1.2929292 a fine troy ounce." [17]
- "Except to the extent authorized in regulations the Secretary of the Treasury prescribes with the approval of the President, the Secretary may not redeem United States currency including Federal reserve notes * * * in gold. **
- When redemption in gold is authorized, the redemption may be made only in gold bullion bearing the stamp of a United States mint or assay office in an amount equal at the time of redemption to the currency presented for redemption." [18]

Thus, the United States Code simply presents another unanswered question: "Why has the Secretary of the Treasury failed 'to maintain the equal purchasing power of each kind of United States currency'?"

In sum, the present monetary statutes of the United States do not define the noun "dollar" in an unique way. Instead of monetary law - which, by hypothesis, requires clearly defined terms and rational relationships among those terms - , the country's present monetary code smacks of political psychosis - in which completely different things have the same name, things unequal to each other are treated as equivalent, and things that should have the same characteristics (e.g., "equal purchasing power[s]") are quite different.

3. What do American history and the Constitution identify as the "dollar?"

Reference to history clears away the confusion of present-day politics, by showing beyond cavil that the "dollar" is a specific coin, containing 371.25 grains (troy) of fine silver, and nothing else.

a. The "dollar" in the Constitution. Both Article 1, Section 9, Clause 1 of and the Seventh Amendment to the Constitution refer explicitly to the "dollar" - in the one case, permitting "a Tax or duty * * * not exceeding ten dollars for each Person" the States saw fit "to admit" prior to 1808; and, in the other, guaranteeing trial by jury "[i]n suits at common law, where the value in, controversy shall exceed twenty dollars". The Constitution does not define this "dollar". But, in the late 1700s, no explicit definition was necessary: Everyone conversant with political and economic affairs knew that the word imported the silver Spanish milled dollar.

Indeed, had not such an understanding been Catholic, powerful contending forces might never have agreed to support the Constitution at all. For example, the traditional interpretation of Article 1, Section 9, Clause 1 is that it elliptically refers to the slave-trade, and represents a compromise between pro and anti-slavery forces that was vital to ratification of the Constitution.[19] Self-evidently, those in the pro-slavery faction would never have accepted the "Tax or duty" phrase unless they already knew that the "dollar" identified as the measure of the "Tax" had a fixed value,, and what its value was. Otherwise, by monetary manipulation aimed at increasing the purchasing power of the "dollar", anti-slavery forces in Congress might have eliminated the slave-trade altogether. Similarly, the proponents of the fundamental right to jury-trial in the Seventh Amendment would never have accepted the "dollar" -limitation on jury-trials unless they already knew that the "dollar" had a fixed value, and what its value was. Otherwise, monetary manipulation might have eliminated common-law juries altogether. Yet both these groups also were aware of the doctrine that, if Congress had discretion to change the value of the unit of money, there could be no legal limits to the changes it might make.[20] Therefore, their support of these provisions inferentially establishes what a literal reading of them straightforwardly suggests: to wit, that the noun "dollar" refers, not to a mere name applicable to whatever Congress whimsically might decide thereafter to call a "dollar", but instead to a particular coin so familiar in American experience as to be beyond political transmogrification.

An interpretation of the term "dollar" as signifying merely the label the Constitution gives to whatever Congress decides to make the unit of money, if consistently applied to other undefined terms in the document, would render the Constitution nonsensical. For example, the noun "Year" appears repetitively in Article I - particularly in Section 2, Clause 1 ("The House of Representatives shall be composed of Members chosen every second Year"), and Section 3, Clause 1 ("The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years"). Self-evidently, the Framers used this term with the presumption that everyone would implicitly understand it to mean the time the earth actually requires for one complete revolution around the sun - rather than a mere empty shorthand for a unit of time within the discretion of Congress to adopt or change. Yet, if the word "dollar" need have no fixed, historically ascertainable meaning, neither need the word "Year". The principle of constitutional interpretation is precisely the same in both cases. And if the noun "Year" need have no meaning more fixed than the noun "dollar" does in present day monetary statutes (as discussed above), then Congress could enact laws "redefining" the "Year" so as to extend, for instance, the terms of the House and Senate to ten, twenty, one hundred, or any other number of earthly revolutions.

Of course, Congress may, with constitutional propriety, appoint astronomers, physicists, and other qualified experts to determine with scientific precision

what the "Year" actually is. Congress lacks authority, however, to decide for itself what the "Year" ought to be, or to declare the "Year" to be whatever Congress may arbitrarily desire from time to time. Analogously, Congress may, with constitutional propriety, appoint economists, monetary historians, and other experts to determine with cliometric accuracy what the "dollar" actually was in the late 1700s. In fact, this is what Congress did do, under both the Articles of Confederation and the Constitution (as described below). Congress has no authority, however, to decide for itself what the "dollar" ought to be.

Besides constitutional history and logic, economic analysis and history support an interpretation of the noun "dollar" as referring to a specific thing the character of which was an ascertainable historical fact that Congress was obliged to determine, rather than as constituting merely a political label that Congress could assign to whatever it deemed expedient. The nominalistic view that would treat the term "dollar" as simply a convenient, historically vacuous term for whatever Congress chooses to declare to be "money", and set up as the "unit of value", is incapable of answering the question: "What is an abstract 'unit of value'?", and passes over in silence the question: "Before ratification of the Constitution, was the 'dollar' something that it ceased to be thereafter?"

Economically, of course, "abstract" (or "objective") value does not exist, in monetary matters or elsewhere. In general, the notion that value is objective is "[a]n inveterate fallacy"; and the allied concept that value is measurable in terms of some definitely fixed unit is a "spurious idea". Simply put, "[t]here is no method available to construct a unit of value". More specifically, "money is not a standard for the measurement of prices; it is a medium whose exchange ratio varies in the same way * * * in which the mutual exchange ratios of the vendible commodities and services vary". Furthermore, money can never arise ex nihilo. "The acceptance of a new kind of money presupposes that the thing in question already has previous exchange value on account of the services it can render directly to consumption or production."[(21)] In short, no governmental edict can make something with no previously existing purchasing power either a "unit of value", or "money" in the economic sense.

Prior to ratification of the Constitution, no one conversant with economics and commercial practices conceived of monetary values as abstractions. Rather, "money" was generally synonymous with known weights of the precious metals, gold and silver, and (to a lesser degree) the base metals, such as copper. In particular, Anglo-American monetary history records that merchants traditionally tendered and accepted coins, the standard monetary instruments of the times, not by tale without consideration of those coins' qualities, but only as pieces of precious metal of specific weights and fineness. Where commercial practice accepted payment of coins by tale, it was always with the definite belief that those coins' stamps assured them to be of the correct weights and usual fineness for their types. Absent grounds supporting this assumption, merchants regularly resorted to weighing and chemical analyses. Thus, commercial practice always insisted that the "value" of coins was not their face-values as abstract governmental tokens, but only their market-values as pieces of actual metal. And whenever circumstances indicated that a stamp no longer reflected a coin's physical content, merchants ceased relying on the official monetary "value", and substituted their own system for measuring the coin's market-worth in precious metal.

From an early day, the law applicable to America conformed to this age-old commercial understanding. Queen Anne's Proclamation of 1704, for example, spoke not of abstract values, but of "the value of * * * coins which usually pass in payment in our said plantations America], according to their weight, and the assays made them in our mint", and specifically referred to the "Se Pillar, or Mexico pieces of eight" (various forms of Spanish silver dollars) as having "the full weight of seventeen penny-weight and an half" - thereby recognizing that the value" of a coin lay in its "weight" and "assay" according to a fixed standard or "full weight". [(22)]

Thus, at the time of ratification of the Constitution, person with any understanding of law and monetary affairs would have attributed to the noun "dollar" a meaning other than (for example): "a silver coin with a value such-and-so grains of precious metal when at weight". [(23)]

b. Adoption of the "dollar" as the unit of money prior ratification of the Constitution. The actions of the Continental Congress itself prove that the foregoing analysis is correct.

The Founding Fathers did not need explicitly to adopt the "dollar" as the national unit of money or to define the noun in the Constitution - because the Continental Congress had already performed that task.

Use of the dollar as a standard coin and monetary unit did not begin with the Continental Congress, however. Monetary historians generally first associate the dollar with one Count Schlick, who began striking such silver coins in 1519 in Joachim's Thal, Bavaria. Then called "Schlicktenthalers" or "Joachimsthalers", the coins became known simply as "thalers", which transliterated into "dollars". Interestingly, the American Colonies did not adopt the dollar from England, but from Spain. Under that country's monetary reforms of 1497, the silver real became the Spanish money-unit, or unit of account. A new coin consisting of eight reales also appeared. Variously known as pesos, duros, piezas de a ocho ("pieces of eight"), or Spanish dollars (because of their similarity in weight and fineness to the thaler), the

coins quickly achieved predominance in financial markets of the New World because of Spain's then-important commercial and political position. [24] Indeed, by 1704, the "pieces of eight" had in fact become a unit of account of the Colonies, as Queen Arine's Proclamation of 1704 recognized, when it decreed that all other current foreign silver coins "stand regulated, according to their weight and fineness, according and in proportion to the rate before limited and set for the pieces of eight of Sevil, Pillar, and Mexico". [25]

By the War of Independence, the Spanish dollar was, for all practical purposes, rapidly becoming the monetary unit of the American people as a matter of economics. Not surprisingly, the Continental Congress first used, and then took formal steps to adopt, that dollar as the nation's standard of value. On 22 May 1776, a Congressional committee reported on "the value of the several species of gold and silver coins current in these colonies, and the proportions they ought to bear to Spanish milled dollars". And on 2 September of that year, a further committee report undertook to "declar[e] the precise weight and fineness of the * * * Spanish milled dollar * * * now becoming the Money-Unit or common measure of other coins in these states", and to "explai[n) the principles and establis[h] the rules by which * * * the said common measure shall be applied to other coins * * * in order to estimate their comparitive value." [26]

Meanwhile, Congress and its agents were carefully exploring the basis of, and possible structures for, a nation monetary system. In his letter to Congress of 15 January 1782, Robert Morris, Superintendent of the Office Finance, commented that, "although most nations have coined copper, yet that metal is so impure, that it has never been considered as constituting the money standard. This I affixed to the two precious metals [ie., silver and gold because they alone will admit of having their intrinsic value precisely ascertained". "Arguments are unnecessary t shew that the scale by which every thing is to be measure ought to be as fixed as the nature of things will permit" wrote Morris, concluding that "[t]here can be no doubt therefore that our money standard ought to be affixed to silver". Although Morris personally favored creating a entirely new standard coin, he recognized that "[the various coins which have circulated in America, have undergone different changes in their value, so that there is hardly an which can be considered as a general standard unless it be Spanish dollars." [27]

In a plan first published on 24 July 1784, Thomas Jefferson strongly concurred that "[the Spanish dollar seems to fulfill all * * * conditions" applicable to "fixing the unit of money." "Taking into our view all money transactions, great and small," he ventured, "I question if a common measure, of more convenient size than the dollar, could be proposed." "The unit, or dollar," he wrote, equating the one with the other, "is a known coin, and the most familiar of all to the minds of people. It is already adopted from south to north; has identified our currency, and therefore happily offers itself as an unit already introduced. Our public debt, our requisitions and their apportionments, have given it actual and long possession of the place of unit." [28]

Yet Jefferson recognized the necessity of certain practical steps to adopt the dollar as the "Money-Unit": "If we determine that a dollar shall be our unit, we must then say with precision what a dollar is. This coin as struck at different times, of different weight and fineness, is of different values." This, though, Jefferson saw as a problem for economic science to solve through objective measurement, not as a matter for politics to dictate according to arbitrary policy. "If the dollars circulating among us be of every date equal, we should examine the quantity of pure metal in each, and from them form an average for our unit. This is a work proper to be committed to the mathematicians as well as merchants, and which should be decided on actual and accurate experiments." "The proportion between the value of gold and silver", he added, "is a mercantile problem altogether". Given "[t]he quantity of fine silver which shall constitute the unit", and "the proportion of the value of gold to that of silver", Jefferson went on, "a table should be formed * * * classing the several foreign coins according to their fineness, declaring the worth * * * in each class, and that they should be lawful tenders at those rates, if not clipped or otherwise diminished." [29]

Concluding, he encouraged Congress:

To appoint proper persons to assay and examine, with the utmost accuracy practicable, the Spanish milled dollars of different dates in circulation with us.

To assay and examine in like manner the fineness of all the other coins which may be found in circulation within these states.

To appoint also proper persons to enquire what are the proportions between the values in fine gold and fine silver, at the markets of the several countries with which we are or probably may be connected in commerce; and what would be a proper proportion here, having regard to the average of their values at those markets ***.

To prepare an ordinance for establishing the unit of money within these states * * * on the * * * principle[:] That the money-unit of these states shall be equal in value to a Spanish milled dollar, containing so much fine silver as the assay * * * shall shew to be contained on an average in dollars of the several dates in circulation with us. [30]

Jefferson's cogent and straight forward analysis of the problem of selecting and defining a unit of money should be compared - contrasted, really - with the present mishmash of monetary statutes that leave

the definition of the "dollar" in a state of hopeless confusion today.

* First, for Jefferson, the "unit" was to be "a known coin" that was "familiar" to the people because it was "already adopted" in the marketplace. None of the coins that Congress now authorizes - be it of silver, gold, or base metals - was (before its authorization) a "known coin" "familiar" to anyone in the United States, even in terms of its content of metal.

* Second, having settled on the "dollar" as the "unit", for Jefferson the problem of fixing the standard "unit" reduced to determining "what a dollar is" in terms of "the quantity of pure metal" [ie., silver] contained in "an average" coin that actually circulated in the marketplace. Thus, for Jefferson it was not the prerogative of Congress to create the "dollar" ex-nihilo, but the responsibility of Congress to determine what the "dollar" in common use among the people actually was. Today's Congress assumes that it may declare anything a "dollar", and then impose that ersatz, political pseudo-"dollar" on the people whether they want it or not.

* Third, for Jefferson, to settle the relative values of silver and gold coins was also a matter of studying actual economic relationships in the marketplace: to wit, "the proportion of the value of gold to that of silver" in the various coins in circulation. For today's Congress, economic relationships between silver and gold are irrelevant. And, of course, there is no rational economic relationship between the coins of base metals and the coins of precious metals, either. Moreover, even within the sets of gold and base metallic coins themselves, rational economic relationships are irrelevant to Congress!

Obviously, Jefferson's free-market, scientific approach is a world apart from the arbitrary way in which Congress has set up the mutually incompatible and internally irrational sets of silver, gold, and base-metallic coins that exist today.

On 13 May 1785, a committee presented Congress with "Propositions Respecting the Coinage of Gold, Silver, and Copper", which referred to the "Plan * * * which proposes * * * that the Money Unit be One Dollar". "In favor of this Plan", the committee reported, is "that a Dollar, the proposed Unit, has long been in general Use. Its Value is familiar. This accords with the national mode of keeping Accounts". Later, the report referred to the "dollar" as the "Money of Account", thereby equating that term with the term "Money-Unit". (31)

On 6 July 1785, Congress unanimously "Resolved, That the money unit of the United States be one dollar". (32)

Almost another year elapsed until, on 8 April 1786, the Board of Treasury reported to Congress on the establishment of a mint:

Congress by their Act of the 6th July last resolved, that the Money Unit of the United States should be a Dollar, but did not determine what number of grains of Fine Silver should constitute the Dollar.

We have concluded that Congress by their Act aforesaid, intended the common Dollars that are Current in the United States, and we have made our calculations accordingly.

The Money Unit or Dollar will contain three hundred and seventy five grains and sixty four hundredths of a Grain of fine Silver. A Dollar containing this number of grains of fine Silver, will be worth as much as the New Spanish Dollars. (33)

Shortly thereafter, on 8 August 1787, Congress adopted this standard as "the money Unit of the United States. (34)

Again, stark and striking is the contrast between how the committee of the Continental Congress - composed of the Founding Fathers - approached the problem of fixing the unit of money, and how the modern Congress deals with the same matter. The committee determined that an American "dollar" should contain a known, unchangeable weight of silver, and would be "worth as much as the New Spanish Dollars" because it actually contained this weight of precious metal, not simply because Congress said it was a "dollar". Today's Congress, however, assumes that the "dollar" need have no rational relationship to a weight of silver, of gold, or even of base metals. Thus, today's Congress assumes that the value of money has nothing to do with the substance that composes a coin, but is merely the product of a political decree. In today's Washington, D.C., might not only makes right, but also creates economic value!

Many of the same people who served in the Continental Congress participated in the Federal Convention that drafted the Constitution. And even those members of the Convention who had not served in the Continental Congress knew what that Congress had done. Therefore, when the Convention used the noun "dollar" in Article 1, Section 9, Clause 1 of the Constitution, it was with the tacit understanding of all the history surrounding that noun.

Thus, the lesson here is clear: The constitutional "dollar", the constitutional "Money-Unit" or "Money of Account" of the United States, is an historically determinate, fixed weight of fine silver in the form of a coin - in essence, a unit of measure - adopted, not created, first by the American market and then by the Continental Congress well before ratification of the Constitution.

c. Adoption of the "dollar--" as the unit of money immediately after ratification of the Constitution. Upon ratification of the Constitution, Congress and the Executive began work on a national monetary system.

(1) Alexander Hamilton's Report on the Mint. On 28 January 1791, Secretary of the Treasury Alexander Hamilton presented to Congress his Report on the

Subject of a Mint. "A plan for an establishment of this nature", he wrote, "involves a great variety of considerations intricate, nice, and important." Indeed, the erection of a mint was essential to the continued integrity of the nation's coinage:

The dollar originally contemplated in the money transactions of this country [ie., the silver Spanish milled dollar], by successive diminutions of its weight and fineness [in the Spanish mints], has sustained a depreciation of five per cent, and yet the new dollar has a currency in all payments in place of the old, with scarcely any attention to the difference between them. The operation of this in depreciating the value of property depending upon past contracts, and * * * of all other property, is apparent. Nor can it require argument to prove that a nation ought not to suffer the value of the property of its citizens to fluctuate with the fluctuations of a foreign mint, or to change with the changes in the regulations of a foreign sovereign. This, nevertheless, is the condition of one which, having no coins of its own, adopts with implicit confidence those of other countries.

It was with great reason, therefore, that the attention of Congress, under the late Confederation, was repeatedly drawn to the establishment of a mint; and it is with equal reason that the subject has been resumed * * * [(35)]

To form "a right judgment of what ought to be done", Hamilton posed two questions, "1st. What ought to be the nature of the money unit of the United States?", and "2d. What the proportion between gold and silver, if coins of both metals are to be established? [(36)]

Recognizing that "[a] pre-requisite to determining with propriety what ought to be the money-unit of the United States" is "to form as accurate an idea as the nature of the case will admit, of what it actually is", Hamilton referred to the resolutions of the Continental Congress on the subject, noted that they had resulted in "no formal regulation on the point", and concluded that "usage and practice * * * indicate the dollar as best entitled to that character". As to "what kind of dollar ought to be understood; or, * * * what precise quantity of fine silver", he surveyed the various pieces in circulation over the years, and recommended that "[t]he actual dollar in common circulation has a much better claim to be regarded as the actual money unit.[(37)]

Hamilton recognized that "[t]he suggestions and proceedings hitherto have had for object the annexing of [the title of 'money unit'] emphatically to the silver dollar". Yet, his personal view was that "a preference ought to be given to neither of the metals for the money unit" - at least "[i]f each of them be as valid as the other in payments to any amount". He realized, of course, that adopting equivalent, interchangeable "money units" of both silver and gold would pose practical problems "from the fluctuations in the relative [market-]value of the metals"; but he suggested that this could be overcome "if care be taken to regulate the proportion between them with an eye to their average commercial value". [(38)]

Turning to "the proportion which ought to subsist between [gold and silver] in the coins", Hamilton proposed two "option[s]": namely, "[t]o approach as nearly as can be ascertained, the * * * average proportion * * * in * * the commercial world"; or "[t]o retain that which now exists in the United States". The first alternative "requir[ing] better materials than are possessed, or than could be obtained without an inconvenient delay", he recommended instead the domestic market-ratio of "about as 1 to 15". "There can hardly be a better rule in any country for the legal than the market proportion", he explained, "if this can be supposed to have been produced by the free and steady course of commercial principles. The presumption in such a case is that each metal finds its true level, according to its intrinsic utility, in the general system of money operation".[(39)]

In the course of determining the method by which the government would defray the expenses of coining silver and gold brought to the mint by private parties (the system of "free coinage"[40]), Hamilton restated the traditional policy against monetary debasement in emphatic terms:

[R]aising the denomination of the coin [is] a measure which has been disapproved by the wisest men in the nations in which it has been practiced, and condemned by the rest of the world. To declare that a less weight of gold or silver shall pass for the same sum, which before represented a greater weight, or to ordain that the same weight shall pass for a greater sum, are things substantially of one nature. The consequence of either of them * * * is to degrade the money unit; obliging creditors to receive less than their just dues, and depreciating property of every kind.

The quantity of gold and silver in the national coins, corresponding with a given sum, cannot be made less than heretofore without disturbing the balance of intrinsic value, and making every acre of land, as well as every bushel of wheat, of less actual worth than in time past. * * *

[A debasement would cause] a rise of prices proportioned to the diminution of the intrinsic value of the coins. This might be looked for in every enlightened commercial country; but, perhaps, in none with greater certainty than in this; because in none are men less liable to be the dupes of sounds; in none has authority so little resource for substituting names for things.

A general revolution in prices * * * could not fail to distract the ideas of the community, and would be apt to breed discontents as well among those who live on the income of their money as among the poorer

classes of the people, to whom the necessaries of life would * * * become dearer. * * *

Among the evils attendant on such an operation are these: creditors, both of the public and of individuals would lose a part of their property; public and private credits would receive a wound; the effective revenues of the Government would be diminished. There is scarcely any point, in the economy of national affairs, of greater moment than the uniform preservation of the intrinsic value of the money unit.

On this the security and steady value of property essentially depend. [41]

In sum, Hamilton recommended two equivalent statutory money-units based on weight, a gold coin of 24.75 grains of fine gold, and a silver coin of 371.25 grains of fine silver. "[N]othing better", he wrote, "can be done * * * than to pursue the track marked out by the resolution [of the Continental Congress] of the 8th of August, 1786. [42]

Hamilton's Report thus restated the traditional monetary principles of American law, as the Continental Congress applied them, and as the Federal Convention embodied them in the Constitution. Congress, Hamilton urged, should adopt silver and gold as the nation's monetary substances, at an exchange-ratio representing the average proportionate value between the metals in the domestic free market. Congress should continue on "the track marked out" under the Articles of Confederation and the Constitution by employing the "dollar" as the "money-unit", or "money of account" - a silver "dollar" derived directly from the Spanish milled dollar, and a new gold coin containing a silver "dollar's" worth of gold. The government should provide "free coinage" of both silver and gold for the public. And it should guarantee the preservation of the intrinsic value of the coinage.

Of enduring importance is Hamilton's admonition that "[there is scarcely any point, in the economy of national affairs, of greater moment than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend." Apparently, however, although Hamilton's statue stands before the Department of the Treasury, his words have been forgotten in contemporary Washington, DC.

(2) The Coinage Act of 1792. Little more than a year after Hamilton's Report, Congress enacted its principles into law. The Coinage Act of 1792" [43] initiated a new statutory system embodying the constitutional principles that Hamilton had reaffirmed. First, Congress followed consistent American common-law tradition by continuing the use of silver, gold, and copper as "Money." [44] Second, it reiterated the judgment of the Continental Congress and the Constitution that "the money of account of the United States shall be expressed in dollars or units," [45] and defined the "DOLLARS OR UNITS" in terms of weight, as "of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure * * * silver". [46] Recognizing that to adopt Hamilton's suggestion of a "gold dollar" would cause confusion and require constant governmental supervision to "regulate Value[s][47] Congress created no such coin, instead mandating the coinage of "EAGLES", "each to be of the value of ten dollars or units", [48] that is, of the weight of fine gold equivalent in the marketplace to 3,712.50 grains of fine silver. Following Hamilton's recommendation, though, it fixed "the proportional value of gold to silver in all coins which shall by law be current as money within the United States" at "fifteen to one, according to quantity in weight, of pure gold or pure silver". [49] And it made "all the gold and silver coins * * * issued from the * * * mint * * * a lawful tender in all payments whatsoever, those of full weight according to the respective values [established in the Act], and those of less than full weight at values proportional to their respective weights".[50]

Thus, Congress did not establish a "gold dollar", or enact a "gold standard", as the popular misconception holds. For example, the Encyclopaedia Britannica erroneously reports that the "dollar * * * was defined in the Coinage Act of 1792 as either 24 gr. (troy) of fine gold or 371.25 gr. (troy) of fine silver." [51] The Act did no such thing. It explicitly defined the "dollar" as a fixed weight of silver, and "regulate[d] the Value" of gold coins according to this standard unit (or money of account) and the market exchange-ratio between the two metals. Nowhere did the Act refer to a "gold dollar", only to various gold coins of other names that it valued in "dollars". [52]

Congress also provided free coinage "for any person or persons", [53] and affixed the penalty of death for the crime of debasing the coinage.[54]

Thus did the first Congress - which knew what the Constitution meant if any Congress ever did - rigorously apply the Constitution's mandate: It determined as a fact "the value of a Spanish milled dollar as the same is now current", and thereby permanently fixed the constitutional standard of value, or "money of account", as a unit of weight consisting of 371.25 grains of fine silver in the form of coin. It coined American "dollars" as "Money", containing this intrinsic value of silver. It coined American "eagles" as "Money", containing a fixed weight of pure gold - and "regulate[d]" their "Value" at so-many "dollars" by comparing their intrinsic value in (weight of) fine gold to the market-equivalent of silver. It gave both the silver and gold coins legal-tender character for their intrinsic values in all payments. It opened the mint to free coinage of the precious metals. And it outlawed debasement of the nation's new "Money".

The handiwork of the statesmen who drafted and approved these measures is more than a merely coincidental embodiment of the traditional principles of Anglo-American common law, the experiences of the Continental Congress, and the explicit provisions of the Constitution. Rather, taking into account the vicissitudes of the time, the Coinage Act of 1792 perfectly reflects what the common law and the law under the Articles of Confederation had been before ratification of the Constitution, and what the constitutional and remains today. [55] It is a definitive elaboration, and application of the with, in some of its Sections at least, a law was then and remains today. It is a definitive interpretation, elaboration, and application of the Constitution - with, in some of its sections at least, a clearly constitutional character of its own: in particular, Sections 9 (definition of the "dollar"), 14-15 (free coinage of silver and gold), 16 (legal-tender character for silver and gold coins)," [56] and 20 ("dollar" identified as the "money of account"). [57]

Most importantly, Congress' determination of the proper weight of the "dollar" is, for all practical purposes today, a statement of constitutional law unalterable except by amendment of the Constitution itself. For, at the remove of almost two centuries, to check the accuracy of the conclusion that 371.25 grains (troy) of fine silver best represents an average weight of the various Spanish milled "dollars" in circulation in the United States in 1792 is most probably impossible.

Conclusion

In the light of this history, the present monetary provisions of the United States Code demonstrate that official Washington, D.C., has no conception of what a "dollar" really is. The reason for this self-imposed ignorance is obvious. By reducing the "dollar" to a political abstraction, the national government has empowered itself to engage in limitless debasement (depreciation in purchasing power) of the currency. A "dollar" that contains - and must perforce of the Constitution contain - 371.25 grains of fine silver cannot be reduced in value below the market exchange value of silver for other commodities. A pseudo-"dollar" that contains no fixed amount of any particular substance per "dollar" can be reduced in value infinitely. As debasement of currency amounts to a hidden tax, Congress' silent refusal to recognize the constitutional "dollar" amounts to the usurpation of an unlimited power to tax through manipulation of the monetary system. Thus, modern "money" has become a means for the total confiscation of private property by the government.

More ominously, this scheme of surreptitious confiscation remains hidden from the vast majority of Americans, who seem blissfully unconcerned about the issue most important to the soundness of the country's monetary system: namely, the character of the monetary unit. One need not be overly pessimistic to predict that misuse by politicians of the fictional, constantly depreciating pseudo-"dollar" to expropriate unsuspecting citizens will continue until an economic crisis finally shocks an increasingly impoverished American people out of its slumber, and forces the people to ask the simple question: "What is a 'dollar'?" At that time, the answer will be no different from what it is today, and has been since 1704 - but the opportunity to use that knowledge to prevent a catastrophe may be long gone.

Therefore, those few who do know what a "dollar" is, and why that definition is important, need to inform as many of their fellow-citizens as possible. If time has not already run out for re-education of the American people in this area, it is racing towards the historic exit. Under these circumstances, silence by the friends of sound money and honest government is not "golden", but potentially fatal.

APPENDIX

Excerpts from the Coinage Act of 1792 Act of 2 April 1792, 1 Statutes at Large 246

[246] CHAPTER XVI. - An Act establishing a Mint, and regulating the Coins of the United States.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, and it is hereby enacted and declared, That a mint for the purpose of a national coinage be, and the same is established *** .

[2481 SEC. 9. And be it further enacted, That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions, viz., EAGLES - each to be of the value of ten dollars or units, and to contain two hundred and forty-seven grains and four eights of a grain of pure, or two hundred and seventy grains of standard gold. HALF EAGLES - each to be of the value of five dollars, and to contain one hundred and twenty-three grains and six eights of a grain of pure, or one hundred and thirty five grains of standard gold. QUARTER EAGLES - each of be of the value of two dollars and a half dollar, and to contain sixty-one grains and seven eights of a grain of pure, or sixty seven grains and four eights of a grain of standard gold. DOLLARS or UNITS - each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver. HALF DOLLARS - each to be of half the value of the dollar or unit, and to contain one hundred and eighty-five grains and ten sixteenth parts of a grain of pure, or two hundred and eight grains of standard silver. QUARTER DOLLAR - each to be of one fourth the value of the dollar or unit, and to contain ninety-two grains and thirteen sixteenth parts of a grain of pure, or one hundred and four grains of standard silver. DISMES - each to be of the value of one tenth of a

dollar or unit, and to contain thirty-seven grains and two sixteenth parts of a grain of pure, or forty-one grains and two sixteenth parts of a grain of standard silver. HALF DISMES - each to be of the value of one twentieth of a dollar, and to contain eighteen grains and nine sixteenth parts of a grain of pure, or twenty grains and four fifth parts of a grain of standard silver. CENTS each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper. HALF CENTS - each to be of the value of half a cent, and to contain five penny-weights and a half penny-weight of copper.

SEC. 11. And be it further enacted, That the proportional value of gold to silver in all coins which shall by law be current as money within [249] the United States, shall be as fifteen to one, according to quantity in weight, of pure gold or pure silver; that is to say, every fifteen pounds weight of pure silver shall be of equal value in all payments, with one pound weight of pure gold, and so in proportion as to any greater or less quantities of the respective metals.

SEC. 12. And be it further enacted, That the standard for all gold coins of the United States shall be eleven parts fine to one part alloy; and accordingly that eleven parts in twelve of the entire weight of each of the said coins shall consist of pure gold, and the remaining one twelfth part of alloy; and the said alloy shall be composed of silver and copper, in such proportions not exceeding one half silver as shall be found convenient; to be regulated by the director of the mint, for the time being, with the approbation of the President of the United States, until further provision shall be made by law. * * *

SEC. 13. And be it further enacted, That the standard for all silver coins of the United States, shall be one thousand four hundred and eighty-five parts fine to one hundred and seventy-nine parts alloy; and accordingly that one thousand four hundred and eighty-five parts in one thousand six hundred and four parts of the entire weight of each of the said coins shall consist of pure silver, and the remaining one hundred and seventy-nine parts of alloy; which alloy shall be wholly of copper.

SEC. 14. And be it further enacted, That it shall be lawful for any person or persons to bring to the said mint gold and silver bullion, in order to their being coined; and that the bullion so brought shall be there assayed and coined as speedily as may be after the receipt thereof, and that free of expense to the person or persons by whom the same shall have been brought. And as soon as the said bullion shall have been coined, the person or persons by whom the same shall have been delivered, shall upon demand receive in lieu thereof coins of the same species of bullion which shall have been delivered, weight for weight, of the pure gold or pure silver therein contained: Provided nevertheless, That it shall be at the mutual option of the party or parties bringing such bullion, and of the director of the said mint, to make an immediate exchange of coins for standard bullion, with a deduction of one half per cent. from the weight of the pure gold, or pure silver contained in the said bullion, as an indemnification to the mint for the time which will necessarily be required for coining the said bullion, and for the advance which shall have been so made in coins.

[250] SEC. 16. And be it further enacted, That all the gold and silver coins which shall have been struck at, and issued from the said mint, shall be a lawful tender in all payments whatsoever, those of full weight according to the respective values herein before described, and those of less than full weight at values proportional to their respective weights.

SEC. 17. And be it further enacted, That it shall be the duty of the respective officers of the said mint, carefully and faithfully to use their best endeavours that all the gold and silver coins which shall be struck at the said mint shall be, as nearly as may be, conformable to the several standards and weights aforesaid * * * .

SEC. 19. And be it further enacted, That if any of the gold or silver coins which shall be struck or coined at the said mint shall be debased or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be pursuant to the directions of this act, through the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise with a fraudulent intent, * * * every such officer or person who shall be guilty of any * * * of the said offenses, shall be deemed guilty of felony, and shall suffer death.

SEC. 20. And be it further enacted, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thou-[251] sandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation.

APPROVED, April 2, 1792.

ENDNOTES

(1) 31 U.S.C. § 5101 (emphasis supplied). See Act of 2 April 1792, ch. XVI, § 95 1 Stat. 246, 248.
(2) 31 U.S.C. § 5103.
(3) Use of the modifier "supposedly" is necessary, because not everything that Congress may declare by statute to be "money" may qualify as the "Money" Congress may "coin" or "borrow" under the Constitution. See U.S. Const. art. I, § 8, cls. 2 and 5.
(4) 12 U.S.C. § 411.
(5) 31 U.S.C. § 5101.
(6) See Hewitt-Donlon Catalog of United States Small Size Paper Money (M. Hudgeons ed., 4th ed., 1979), at 66-153.
(7) The adverb "explicitly" deserves careful attention, because no matter what FRNs do not state on their faces, they are required by law to be "redeemed in lawful money". 12 U.S.C. § 411.
(8) 31 U.S.C. § 5112(a)(1-4).
(9) 31 U.S.C. § 5112(b).

(10) One half dollar equals five dimes. One half dollar equals two quarters. And one quarter equals two and one-half dimes.
(11) 31 U.S.C. § 5112(a)(7-10).
(12) Based on this set of coins, a "dollar's"- worth of coined gold is one-fiftieth of the weight of the "fifty dollar" gold coin ("33.931 grams"), or 0.679 grams.
(13) 31 U.S.C. § 5112(e).
(14) 31 U.S.C. § 5119(a) (emphasis supplied).
(15) 31 U.S.C. § 5116(a)(1)
(16) 31 U.S.C. § 5116(b)(1)
(17) 31 U.S.C. § 5116(b)(2)
(18) 31 U.S.C. § 5119(a).
(19) Eg., 2 J. Story, Commentaries on the Constitution of the United States (5th ed. 1891), § 1335, at 211 & n.2.
(20) See, e.g, McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 425-33 (1819).
(21) L. von Mises, Human Action: A Treatise on Economics (3rd rev. ed. 1963), at 203-04, 351-52, 41 1. See also 1 M. Rothbard, Man, Economy, and State: A Treatise on Economic Principles (1 970), at 237.
(22) See An Act for ascertaining the rates of foreign coins in her Majesty' plantations in America, 1707, 6 Anne, ch. 30, § I (emphasis supplied in part).
(23) Cf NLRB v. Amax Coal Co., A Division of Amax, Inc., 483 U.S. 322, 329 (1981): "Where Congress uses terms that have accumulated settled meaning under * * * the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms."
(24) See Sumner, "The Spanish Dollar and the Colonial Shilling", 3Amer. Hist. Rev. 607 (1898).
(25) Note 22, ante.
(26) 4 Journals of the Continental Congress, 1777-1789 (W. Ford ed. 1905), at 381-82; 5 id at 725.
(27) Propositions respecting the Coinage of Gold, Silver, and Copper (printed folio pamphlet presented to the Continental Congress 13 May 1785), at 4, 5.
(28) NOTES on the Establishment of a MONEY MINT, and of a COINAGE for the United States", The Providence Gazette and Country Journal, Vol. XXI, No. 1073 (24 July 1784), in Propositions, ante note 27, at 9, 10.
(29) Id. at 11, 12.
(30) Id. at 12.
(31) 28 Journals of the Continental Congress, ante note 26, at 355, 357.
(32) 29 id. at 499-500.
(33) 30 id. at 162-63. After ratification of the Constitution, Congress made a more accurate determination of the value of the dollar, setting it at 371.25 grains of fine silver (as described post).
(34) 31 Journals of the Continental Congress, ante note 26, at 503.
(35) Hamilton's observation that it requires no "argument to prove that a nation ought not to suffer the value of the property of its citizens to fluctuate with the fluctuations of a foreign mint, or to change with the changes in the regulations of a foreign sovereign" should serve as a warning to those who rashly advocate a new "one-world" currency-system in which the United States would participate.
(36) 2 The Debates and Proceedings in the Congress of the United States (J. Gales compil. 1834), Appendix, at 2059, 2060, 2061.
(37) Id. at 2061-63.
(38) Id. at 2064-65. This is the source of the (unfulfilled) modern duty of the Secretary of the Treasury "to maintain the equal purchasing power of each kind of United States currency". 31 U.S.C. § 5119(a). See ante, pp. 5-7.
(39) Appendix, ante note 36, at 2066, 2068, 2069.
(40) See Act of 2 April 1792, ch. XVI, §§ 14-15, 1 Stat. 246, 249-50.
(41) Appendix, ante note 36, at 2071-73.
(42) Id. at 2082.
(43) Act of 2 April 1792, ch. XVII I Stat. 246. See the Appendix hereto.
(44) § 9, 1 Stat. at 248.
(45) § 20, 1 Stat. at 250.
(46) § 91 1 Stat. at 248.
(47) See U.S. Const. art. 1, § 8, cl. 5.
(48) Coinage Act of 1792, § 9@ 1 Stat. at 248.
(49) § 11, I Stat. at 248-49.
(50) § 16, 1 Stat. at 250.
(51) Vol. 7, "Dollar" (1963 ed.) at 558.
(52) For the correct interpretation of the Act, see, e.g., A. Hepburn, History of Coinage and Currency in the United States and the]Perennial Contest for Sound Money (1903), at 22.
(53) Coinage Act of 1792, §§ 14-15@ 1 Stat. at 249-50.
(54) § 19, 1 Stat. at 250.
(55) Section 11 of the Coinage Act was clearly constitutional in 1792, representing as it did a reasonable means of "regulat[ing] the Value" of gold coins as against the (silver) "dollar" in an era in which financial data were uncertain and difficult to communicate with dispatch. Today, such a statutorily fixed exchange-ratio for the precious metals would be unreasonable.

Given the technical sophistication of existing financial institutions, Section 11 of a parallel modern act ought to read, perhaps, "That the proportional value of gold to silver in all coins which shall by law be current as money within the United States, on any particular day or days, shall be the proportion between pure gold and pure silver, according to quantity in weight, existing at the beginning of the business day or days in [here Congress would identify a financial market], or, if the particular day or days is or are not a business day or days, on the last preceding business day or days." Cf H.R. 6054, 97th Cong., 2d Sess. (1982), § 4.
(56) See U.S. Const. art. 1, § 10, cl. 1.
(57) 1 Stat. at 248, 249, 250-5 1.

[Federalist Economics 201]

[NOTE: The “201" level study by Larry Becraft, an attorney from Huntsville Alabama, delves into “case law” on “hard money.” Questions on these points of law frequently arise in public forums. As a means to intercept objections, and provide the proper rebuttals to these common misunderstandings, this brief will greatly enhance your knowledge.]

MEMORANDUM OF LAW: THE MONEY ISSUE

By Larry Becraft, Esq.

This brief is addressed to an issue commonly referred to as the "money" or "specie" issue which is based, in addition to other authority, upon Article 1, § 10, clause 1 of the United States Constitution which reads as follows:

> "No State shall * * * coin Money; Emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts."

This brief discusses this issue at length for the purpose of conclusively demonstrating the premises

that constitutional money in our country can only be gold and silver coin and that the States are constitutionally compelled to operate on a specie basis. It is the contention herein that Article 1, § 10, clause 1 of the U. S. Constitution is an absolute prohibition upon the States which cannot be circumvented by permission or command of the federal government, and that such provision prohibits the States from utilizing any paper note or credit issued by any private banking institution, whether the same be Federal Reserve Notes, bookkeeping entries of liability or otherwise.

PRE-CONSTITUTIONAL CONCEPTS OF MONEY

The history of money is surely as old as the history of mankind, but no attempt shall be made here to elucidate that full history other than to recount certain authoritative works of antiquity which without question affected the concepts of money in western civilization and particularly in English speaking countries, especially the United States.

Gold and silver, particularly in coin form, have since time immemorial been the best medium of exchange ever devised. The reason for this is that both are relatively scarce in comparison with other substances which might serve the purpose of a medium of exchange between men, tribes, societies, and nations. In addition to scarcity, the fact that both are metals further adds to their usefulness as money. A scarce metal is the most obvious form of money imaginable in that it is indestructible in comparison to precious stones, agricultural commodities and especially paper, and this indestructibility gives to it long life as a medium of exchange and thus it is capable of surviving all sorts of calamities, including changes in government. Further, gold and silver are ideally suited for use as a medium of exchange in that both are easily divisible; by being divisible, a bar of gold or silver can be divided into smaller units with relative ease. Therefore, gold and silver, being highly malleable precious metals which consume relatively little space in storage are ideally suited as no other substance on this earth to be used as money.

The value of gold and silver as a medium of exchange was quickly learned by man. The oldest known history book, the Bible, is replete with references to gold and silver as money. The Bible discloses land being sold for gold and silver coin, trade and commerce being conducted through the use of this medium, wars being fought to acquire this metal, taxes being exacted in coin and, most importantly, tithes being paid in gold and silver coin. Judas betrayed Christ for the price of silver coins. While mention of gold and silver as money in the Bible is everywhere, no reference to paper as money is to be found.

The history of virtually every ancient nation and empire reveals use of gold and silver coin as money. Some students of monetary history assert the proposition that nations attain greatness in part through the use of gold and silver in pure form as money. So long as ancient nations and states operated on a pure form of specie money, they retained the viability of their societies as well as their trade and commerce. However, when such societies allowed the debasement of their coin by either the national monarch or a private group, societal decay occurred, that nation quickly lost its strength and was either conquered or otherwise destroyed and became a part of history.

Delving deeper, it is quite easy to see how an adverse change in an ancient and established monetary system presages social destruction. Monarchs and rulers of ancient civilizations always sought to acquire wealth and power, and the ability to direct economic activity. The method for doing such was always ready at hand: the monetary system. These rulers, princes and monarchs would debase the coin coming through their treasuries by blending the precious metals with baser metals in order to have more coins to spend. Operating under this unsound supposition, these unprincipled rulers would soon debase the ancient monetary standard, and the result would always be social ruin.

Another method demonstrated in history through which monarchs attempted to gain wealth and power involved delegation of certain powers over the national monetary system to certain private interests. The lifeblood of any nation is its monetary system; however, whenever any nation's monetary system has been delivered into the hands of any private group, that private group has always manipulated the monetary system for its own benefit at the expense of the rest of society. Social ruin is always the natural and proximate result of such an unlawful delegation of monetary powers to a private group.

There are certain medieval monetary scholars of considerable note who established certain basic premises for any monetary system, one of whom was Bishop Nicholas Oresme. Bishop Oresme wrote a book in Latin in the 14th century, De Moneta, which discussed the basic parameters for any just and lawful monetary system. According to Oresme, "money" could only be gold and silver coin, as it had always been in every society except those of a primitive nature. The basic premises of Oresme's treatise were that the monarch should coin the money, but he could not, without certain limited and just reasons, alter the coin, change its form or name, change the ratio of exchange between the precious metals, change the weight or material of the coins, or otherwise unjustly profit by any method of changing the basic monetary unit of a society. To do any of these, according to Oresme, was an act of tyranny:

> "I am of opinion that the main and final cause why the prince pretends to the power of altering the coinage is the profit or gain which he can get from it.

"Therefore, from the moment when the prince unjustly usurps this essentially unjust privilege, it is impossible that he can justly take profit from it. Besides, the amount of the prince's profit is necessarily that of the community's loss. But whatever loss the prince inflicts on the community is injustice and the act of a tyrant and not of a king * * *

"And so the prince would be at length able to draw to himself almost all the money or riches of his subjects and reduce them to slavery. And this would be tyrannical, indeed true and absolute tyranny."

Bishop Oresme is probably the least known monetary scholar in history. Nonetheless, the timeless, permanent monetary maxims so ably demonstrated by Oresme are clearly embodied in the framework of the common law as regards money.

Insofar as the common law is concerned, there are many instances of English monarchs attempting to violate Oresme's monetary principles. Some examples of these unfortunate endeavors quickly demonstrate the fallacy of any attempt to debase coin. King Edward IV, during the time of his reign, determined that the English nation was plagued by various impure coins of sundry weights. One of the outstanding achievements of Edward IV was to perfect the standard of coin of the realm, which produced excellent results. Subsequently during the reigns of Henry VI and Henry VIII, these extravagant kings sought monetary gain by debasement of the coin of the realm, which attempts produced adverse results not only for the nation but for the monarchs themselves as well. When Queen Elizabeth succeeded her father, Henry VIII, she restored Edward's ancient standard and thereafter during her reign resisted the advice of her ministers to engage in debasement. Her efforts at monetary order produced very favorable results.

Of particular importance to the subject of the American constitutional monetary standard are two periods during the 17th century. One such period was in 1626. In 1625, after the death of King James I, Charles I assumed the throne and was faced with a less than compliant Parliament. Needing money, Charles sought to engage in the old fashioned method of coin debasement, but here he met stiff resistance. In September of 1626, Sir Robert Cotton addressed the Privy Council and expressed his opposition to any attempt to debase the coin:

"And wealth in every Kingdom is one of the essential Marks of their Greatness: And that is best expressed in the Measure and Purity of their Monies. Hence was it, that so long as the Roman Empire (a Pattern of best Government) held up their Glory and Greatness, they ever maintained, with little or no change, the Standard of their Coin. But after the loose times of Commodus had led in Need by Excess, and so that Shift of Changing the Standard, the Majesty of that Empire fell by degrees. And as Vopiscus saith, the steps by which that State descended, were visibly known most by the gradual Alteration of their coin; and there is no surer symptom of a Consumption in State, than the Corruption in Money.

"To avoid the Trick of Permutation, Coin was devised as a Rate and Measure of Merchandize and Manufactures; which if mutable, no Man can tell either what he hath, or what he oweth; no Contract can be certain; and so all Commerce, both publick and private, destroyed; and Men again enforced to Permutation with things not subject to Wit or Fraud.

"Experience hath taught us, that the enfeebling of Coin is but a shift for a while, as Drink to one in a Dropsie, to make him swell the more; But the State was never thoroughly cured, as we saw by Henry the Eighth's time and the late Queens, until the Coin was made rich again."

As a result of the study made in 1626 concerning debasement, a report was issued which stated that debasement served no purpose other than injustice and the decision was made against any attempt to debase. The argument against debasement was cogently stated as follows:

"The Measures in a Kingdom ought to be constant: It is the Justice and Honour of the King; for if they be altered, all Men at that instant are deceived in their precedent Contracts, either for Lands or Mony, and the King most of all; for no Man knoweth then, either what he hath or what he oweth."

Thus having his efforts to debase denied to him, Charles sought other methods for raising revenue to finance his wars upon the continent. The expedient upon which he chose was forced loans made by seizing coin in the Tower of London. Five Knights were incarcerated for their refusal to acknowledge the forced loans. This brought controversy with the Parliament, the net result of which was the Petition of Right of 1628, which denied to the King the inherent right to make forced loans. The Petition was the final straw that caused Charles to disband Parliament for 12 years during which he conducted his personal rule of England. When Parliament was finally reconvened in 1640, the "Long Parliament" produced the Grand Remonstrance. The implacability of Charles eventually lead to the Civil War, which ended in rule by Oliver Cromwell. The moral of the story here is that attempts to debase the coin and make forced loans eventually can cause the ultimate destruction of society, civil war.

The second period of the 17th century of importance to this issue is that shortly after the Glorious Revolution of 1688 when William and Mary assumed the English throne. By 1691, there was a great debate concerning the alleged need to once again debase the coin of the realm. Between 1691 and 1695, John Locke, whose writings had considerable impact upon our founding fathers, wrote three treatises against the proposal to debase the coin of the realm by

the small percentage of 5%. In these treatises, Locke made the following cogent arguments:

"For an ounce of silver, whether in pence, groats, or crown pieces, stivers, or ducatoons, or in bullion, is, and always eternally will be, of equal value to any other ounce of silver, under what stamp or denomination soever.

"All then that can be done in this great mystery of raising money, is only to alter the denomination, and call that a crown now, which before, by the law, was but a part of a crown.

"The quantity of silver, that is in each piece, or species of coin, being that which makes its real and intrinsic value, the due proportions of silver ought to be kept in each species, according to the respective rate, set on each of them by law. And when this is ever varied from, it is but a trick to serve some present occasion, but is always with loss to the country where the trick is played * * * For it not being the denomination, but the quantity of silver, that gives the value to any coin.

"Silver, i.e. the quantity of pure silver, separable from the alloy, makes the real value of money. If it does not, coin copper with the same stamp and denomination and see whether it will be of the same value. I suspect your stamp will make it of no more worth than the copper money of Ireland is, which is its weight in copper and no more.

"The stamp was a warranty of the public that, under such a denomination, they should receive a piece of such a weight, and such a fineness; that is, they should receive so much silver. And this is the reason why the counterfeiting the stamp is made the highest crime, and has the weight of treason laid upon it; because the stamp is the public voucher of the intrinsic value. The royal authority gives the stamp, the law allows and confirms the denomination, and both together give, as it were, the public faith, as a security, that sums of money contracted for under such denominations shall be of such a value, that is, shall have in them so much silver; for it is silver, and not names, that pays debts, and purchases commodities.

"Money is the measure of commerce, and of the rate of every thing, and therefore ought to be kept (as all other measures) as steady and invariable as may be.

"It is the interest of every country, that all the current money of it should be of one and the same metal; that the several species should be of the same alloy, and none of a baser mixture; and that the standard, once thus settled, should be inviolably and immutably kept to perpetuity. For whenever that is altered, upon what pretence soever, the public will lose by it."

As a result of the debate concerning the proposal to debase coin, Parliament refused to adopt it. Some 23 years later, Parliament enacted in January, 1718, a resolution that stated there shall not be any alteration made to the ancient coin standard of England.

One of the most significant expositions of the common law of England, and therefore the heritage of American law, consists of Sir William Blackstone's Commentaries on the Laws of England. In Blackstone's exhaustive treatment of the common law, he aptly stated the common law concerning money:

"Money is an universal medium, or common standard, by comparison with which the value of all merchandize may be ascertained: or it is sign, which represents the respective values of all commodities. Metals are well calculated for this sign, because they are durable and are capable of many subdivisions: and a precious metal is still better calculated for this purpose, because it is the most portable. A metal is also the most proper for a common measure, because it can easily be reduced to the same standard in all nations: and every particular nation fixes on it its own impression, that the weight and standard (wherein consists the intrinsic value) may both be known by inspection only.

"The coining of money is in all states the act of the sovereign power; for the reason just mentioned, that it's value may be known on inspection. And with respect to coinage in general, there are three things to be considered therein; the materials, the impression, and the denomination.

"With regard to the materials, Sir Edward Coke lays it down, that the money of England must either be of gold or silver; and none other was ever issued by the royal authority till 1762, when copper farthings and half pence were coined by King Charles the Second * * * But this copper coin is not upon the same footing with the other in many respects * * *

"As to the impression, the stamping thereof is the unquestionable prerogative of the crown * * *
"The denomination, or the value for which the coin is to pass current, is likewise in the breast of the king * * * In order to fix the value, the weight and the fineness of the metal are to be taken into consideration together. When a given weight of gold or silver is of a given fineness, it is then of the true standard, and called sterling metal * * * And of this sterling metal all the coin of the kingdom must be made, by the statute 25 Edw. III c. 13 (Coinage, 1351). So that the king's prerogative seemeth not to extend to the debasing or inhancing the value of the coin, below or above the sterling value * * * The king may also, by his proclamation, legitimate foreign coin, and make it current here; declaring at what value it shall be taken in payments. But this, I apprehend, ought to be by comparison with the standard of our own coin; otherwise the consent of parliament will be necessary."

From the above authorities of Bishop Oresme, Sir Robert Cotton, John Locke and Blackstone the basic parameters of a just monetary system can be discovered as well as a concise summary of the common law of money. History and these authorities

demonstrate that gold and silver coin was always money and these substances alone were money and will always be; and the common law sanctioned no other medium of exchange other than gold and silver coin of the standard as determined by Edward. Further, debasement of the specie coin of any nation is unjust and unlawful, and was expressly forbidden by the common law. Thus, the refined essence of the common law was that gold and silver alone were money, and the coins so minted had to conform to the ancient and established standard coin of the realm; further, this standard was immutable and could not be debased.[1]

COLONIAL MONETARY EXPERIMENTS

The actions of Charles I in dismissing Parliament in 1628 and thereafter conducting his personal rule of England for 12 years was a primary cause of the exodus of English citizens to the New World, America, in the early 17th century. However, conditions then in this country were primitive to say the least, and the colonies were controlled by English governors and the monopolistic privileges granted by the Crown to particular court favorites. Trade with the mother country, England, was especially one sided to the detriment of the colonies and their citizens, and this created a shortage of a medium of exchange, especially gold and silver coin. Barter was extensively used to consummate trade, and agricultural products such as tobacco, cattle, land, wampum and other items were used as a substitute "legal tender."

The first paper money experiment in colonial America occurred in 1690 when Massachusetts, anticipating a need to pay soldiers sent to war in Canada, made the first emission of paper money. After the soldiers returned from this unsuccessful invasion attempt, they received their pay in this scrip; see Craig v. Missouri, 29 U.S. 410 (1830). The direct result of this improvident experiment brought Gresham's Law ("bad money drives out good money") into operation and such specie as existed in the colony soon departed for use in England. Notwithstanding the apparent adverse effects of paper emissions, the supposed short term benefit was noticed by other colonies and over succeeding years, they repeated the same experiment. In May, 1703, South Carolina engaged in this same expedient. Thereafter, New Hampshire followed in 1709, Connecticut in June, 1709, New York in November, 1709, Rhode Island in July, 1710, Pennsylvania in March, 1723, and Maryland in 1733. The remainder of the colonies, particularly Virginia, seems to have escaped the urge of the dreadful expedient of paper money. [2] George Bancroft noted that the colonies, once addicted to use of paper money, continued with further emissions which only proved to be disastrous.

During the period when many of the colonies were emitting a paper currency, the value of the notes of one colony constantly fluctuated against the value of all other colonial notes. This uncertainty in value was directly proportional to the number and amount of the emissions made by any particular colony; the results were certain and caused the destruction of trade and commerce as well as confidence in the medium of exchange. This was aptly demonstrated by the example of Rhode Island. In 1743, Rhode Island issued "bills of credit" wherein 27 shillings in paper denomination were alleged to equal one ounce of silver. But in 1751, the Rhode Island General Assembly devalued these bills to the point where, at law, 54 shillings in paper were exchangeable for one ounce of silver. Undeterred by the ill effects of devaluation, the Assembly thereafter made the exchange rate equal 64 shillings of paper for an ounce of silver. Not only did the colonies violate the express dictates of Oresme and the common law by making paper be money and not gold and silver, but they further violated the law against debasement and debased their paper.

In 1751, one of our founding fathers, Roger Sherman, the very man who made Article 1, § 10, cl. 1 a prominent part of our Constitution, was engaged in business in Connecticut. While so employed, he extended credit to a merchant from Rhode Island, who later attempted to discharge his liability to Sherman with Rhode Island paper money. Sherman refused, and a legal controversy thereafter ensued. While Roger Sherman plead in this suit that the law required specie payment, the Rhode Island merchant defended himself on the basis of custom of the people. The decision in the case was in favor of the Rhode Island merchant.

Sherman was incensed at the verdict and decided, in the great tradition of Oresme, Cotton, Locke and Blackstone, to espouse his views in book form. In 1752, Sherman wrote a short treatise entitled A Caveat Against Injustice, or An Inquiry Into the Evil Consequences of a Fluctuating Medium of Exchange. This treatise of Roger Sherman, in addition to its value in noting the injustice and inequity of a fluctuating medium of exchange, is of immense value in determining the true intent and meaning of Art. 1, § 10. He demonstrated that the viability of commerce was dependent upon traders and businessmen exchanging their goods and commodities for currency of intrinsic value. Such businessmen had surrendered property of specific value in order to accumulate the commodities they were selling. At the time of sale, the contract price of the goods sold included the cost of such goods as well as a return for the labors of the businessman. If the currency utilized to effect this commercial exchange was without intrinsic value, or its intrinsic value was being deflated by actions of a sovereign government, the businessman was being unfairly and unjustly deprived of his property and labor. Sherman concluded:

"But if what is us'd as a Medium of Exchange is fluctuating in its Value it is no better than unjust

Weights and Measures, both which are condemn'd by the Laws of GOD and Man, and therefore the longest and most universal Custom could never make the Use of such a Medium either lawful or reasonable.

"And instead of having our Properties defended and secured to us by the Protection of the Government under which we live; we should be always exposed to have them taken from us by Fraud at the Pleasure of our Government, who have no Right of Jurisdiction over us.

"But so long as we part with our most valuable Commodities for such Bills of credit as are no Profit; but rather a Cheat, Vexation and Snare to us, and become a Medium whereby we are continually cheating and wronging one another in our Dealings and Commerce * * * we shall spend a great Part of our labour and Substance for that which will not profit us." [3]

While Roger Sherman had concisely stated the reasons and need for a stable currency of specie, he was denied the opportunity to remedy this vicious problem until he attended the Constitutional Convention in 1787.

In 1755, war with France, who was attempting to settle the basin of the Mississippi River, commenced in the colonies. To aid the war effort and to acquire the necessary resources for it, the colonies used the expedient of paper money. The cessation of this conflict came in 1763, but thereafter the paper money dread continued and the "need" for paper money was exacerbated with the advent of the Revolutionary War.

In varying degrees prior to the Revolutionary War, the colonies attempted to redress the problems caused by paper money. Massachusetts declared that lawful money was only gold and silver. Others, however, either ceased emissions or reduced their total amount; see Bancroft's Plea. But by 1775, relations with England had become so hostile that this impending conflict caused the colonies, in a compulsion of monetary insanity, to reach for the old expedient, more paper money.

THE PERIOD OF THE REVOLUTION AND THE ARTICLES OF CONFEDERATION

With the advent of the Revolutionary War, the colonial governments as well as the Continental Congress sought the services of a bandit commonly referred to as paper money. Be it in times of war or peace, the tool of paper money allows any entity, either government or a private group or consortium, to obtain real resources or wealth of extraordinary value for the mere cost of printing paper. With the services of paper money willingly enlisted by the Revolutionary governments, these governments exchanged their bills of credit, which promised redemption in specie at some future date, for war materiel, supplies and men. But as time passed and the paper emissions became greater, it became apparent that these governments could not possibly honor the promise to redeem these notes for value.

During the War, all of the colonies emitted bills of credit, and most declared the same to be a legal tender, the States claiming unto themselves the right to declare any thing, especially paper, a legal tender. As the Continental Congress did not possess the power to declare a legal tender, it was compelled to enlist the aid of the sovereign States, which thereafter declared the Continental Notes, along with their own notes, a legal tender for debts.[4] As time and the war passed, more and more paper notes were put into circulation and the constant increase in this quantity caused the decline in value of all outstanding notes. This process is commonly referred to as "inflation."

Christopher Collier's book, Roger Sherman's Connecticut, ably recounts the general inflation of this period and the specific monetary difficulties caused to Sherman by these paper emissions:

> "One hundred dollars printed in September of 1777 was worth only twenty four a year later and but four in 1779. By March 1780 it took $3732 to buy what could have been bought for $100 in late 1777. Sherman had run up a bill of $99 at the barber's; he owed for eight bottles of wine at $58 each and two barrels of 'cyder' at $100 apiece; 'washing for self and servant $639; for 15 weeks 4 days board self and waiter, $8330; 1 pair silk hose, $300; mending watch, $210; 1 pair leather breeches, $420.'"

Not only did Sherman suffer the extraordinary ravages of inflation, he had an extremely hard time obtaining payment from the government of Connecticut as its representative to the Continental Congress. This lack of payment occurred notwithstanding the constant paper emissions of Connecticut.

Other accounts of inflation during this War disclosed that in January, 1781, it took $100 in paper to acquire one dollar in specie coin. But by May of the same year, the exchange rate exceeded 500 to 1, and later all paper currency became entirely worthless, hence the phrase "not worth a Continental." It is almost certain that the members of the Continental Congress, many of whom attended the Convention of 1787, were as wise and intelligent as any subsequent Congress of the United States, but these gentlemen were unable to make any laws which would effectively repeal the operation of natural economic laws, particularly Gresham's. When the Revolutionary War ended, the state and national governments had obtained all the resources necessary for the War merely by tendering paper. The real cost of the War, in terms of wealth, was borne by those who were forced to part with their property for paper which eventually became worthless. It was through the tool of a paper money that the governments of the Revolutionary War obtained all resources for the War without surrendering corresponding value in exchange. The people who lost their wealth and property as a result of being forced to

part with their property did not receive fair compensation.

Paper money was not only the instrument of theft, its vicious nature permeated the whole of society. In 1789, Peletiah Webster aptly described the entire social damage resulting from the experiments in paper money:

"Paper money polluted the equity of our laws, turned them into engines of oppression, corrupted the justice of our public administration, destroyed the fortunes of thousands who had confidence in it, enervated the trade, husbandry and manufactures of our country, and went far to destroy the morality of our people."

Between the end of the War and the time of the Philadelphia Convention of 1787, our young nation suffered economic distress as a result of continuing paper emissions. However, the Congress under the Articles of Confederation did attempt to render some order out of chaos. In common circulation in our country at that time was the Spanish Milled Silver Dollar, and due to its universal use, accounts were kept in this "dollar" unit. On July 6, 1785, Congress declared that the money unit of the United States was a "dollar;" see 29 Journals of the Continental Congress 499. On April 8, 1786, Congress went further and declared:

"Congress by their Act of the 6th July last resolved, that the Money Unit of the United States should be a Dollar, but did not determine what number of grains of Fine Silver should constitute the Dollar.

"We have concluded that Congress by their Act aforesaid, intended the common Dollars that are Current in the United States, and we have made our calculations accordingly * * *

"The Money Unit or Dollar will contain three hundred and seventy five and sixty four hundredths of a Grain of fine Silver. A Dollar containing this number of Grains of fine Silver, will be worth as much as the New Spanish Dollars." [5]

Thus, prior to the Convention of 1787, Congress had made a factual determination that the common money or currency in use by the people of our country was the Spanish Milled Silver Dollar, and further that experiments, tests and analyses of these coins revealed that they contained 375.64 grains of pure silver. Many members of Congress were also delegates to the Philadelphia Constitutional Convention of 1787 and it was based upon the factual findings made by Congress previously that the word "dollar" as mentioned in the Constitution had meaning.

THE CONSTITUTIONAL CONVENTION OF 1787

In May, 1787, pursuant to a Congressional plan to revise and amend the Articles of Confederation, delegates from the various states met in Philadelphia. The union of the States created by the Articles had been imperfect and therefore a better organization of unity among them was needed. However, a substantial problem confronting all the States at that time was economic and was caused by the monetary system, therefore it was essential that the best monetary system possible also result from the work of the Convention.

The best source of information available concerning the secret debates of the Convention is James Madison's notes. Insofar as the monetary provisions of the Constitution are concerned, Madison's notes reveal that on Thursday, August 16, 1787, the Convention was discussing the proposed Constitution's provisions contained in Article 1, 8, wherein Congress was to be given the power to "emit bills on the credit of the United States." Gouverneur Morris on this date moved to strike this proposed phrase from the Constitution. In response, Mr. Elseworth stated that he "thought this a favorable moment to shut and bar the door against paper money." He further stated, "the mischiefs of the various experiments which had been made were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new government, more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good." Mr. Wilson commented that, "it will have a most salutary influence on the credit of the United States to remove the possibility of paper money." Mr. Read noted that he "thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelations." Even more emphatically voiced was Mr. Langdon's remark that he "would rather reject the whole plan than retain the three words, 'and emit bills'." The motion to strike these words from the Constitution carried by a vote of nine states in favor and two opposed.

On Tuesday, August 28, 1787, the Convention was discussing the provisions contained in Article 1, § 10 of the Constitution. Mr. Roger Sherman and Mr. Wilson moved to amend the proposed Article 1, § 10 to include the words "nor emit bills of credit, nor make anything but gold and silver coin a tender in payment of debts." The discussion concerning this proposed amendment concerned only the portion regarding "emit bills of credit." In support of his motion, Mr. Sherman stated that he "thought this a favorable crisis for crushing paper money," reasoning that "if the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it." The voting concerning the power to emit bills of credit was eight states in favor and two opposed. The remainder of the proposed amendment concerning gold and silver coin passed with no opposition.

The work of the Convention was completed on September 17, 1787, and the end result was the Constitution of the United States of America. In

reference to the much needed revision of the monetary system, Congress had been granted the power to "coin money and regulate the value thereof," virtually the identical powers in reference to the currency which it possessed under the Articles, which did not include the power to declare a legal tender. Further, certain binding, absolute and uncircumventable prohibitions had been placed upon the States in Article 1, § 10, cl. 1, one of which limited the legal tender power of the States to gold and silver coin. The chief architect of the monetary powers and disabilities contained in the U.S. Constitution was none other than Roger Sherman, who had so ably expressed his opinion of paper money 35 years earlier and resoundingly condemned it. At the convention, virtually all the delegates held views identical with Sherman, and they were certain that paper money had been permanently prohibited by the "Supreme Law of the Land." The intent of the drafters of the Constitution was to grant to Congress the power to coin gold and silver which could be the only legal tender pursuant to Article 1, § 10. Thus the Constitution was deliberately designed to insure gold and silver coin as the "money of the realm."

The proposed Constitution was thereafter submitted to the states for ratification. In Maryland, a delegate to the Convention, a lawyer named Luther Martin who was probably one of the few men to oppose prohibitions upon paper currency, summarized the work of the Convention:

"By our original articles of confederation, the Congress have a power to borrow money and emit bills of credit, on the credit of the United States; agreeably to which, was the report on this system as made by the committee of detail. When we came to this part of the report, a motion was made to strike out the words 'to emit bills of credit.' Against the motion we urged, that it would be improper to deprive the Congress of that power. But, Sir, a majority of the convention, being wise beyond every event, and being willing to risk any political evil, rather than admit the idea of a paper emission, in any possible event, refused to trust this authority to a government, to which they were lavishing the most unlimited powers of taxation, and they erased that clause from the system.

"By the tenth section every State is prohibited from emitting bills of credit. As it was reported by the committee of detail, the States were only prohibited from emitting them without the consent of Congress; but the convention was so smitten with the paper money dread, that they insisted the prohibition should be absolute. It was my opinion, Sir, that the States ought not to be totally deprived of the right to emit bills of credit, and that, as we had not given an authority to the general government for that purpose, it was the more necessary to retain it in the States. I therefore thought it my duty to vote against this part of the system."

Thus, it is clear from both the proponents of the constitutional ban upon paper money and one of its most ardent foes that the clear design of the Constitution in reference to monetary powers was an absolute prohibition upon any paper money.

In New York, debate concerning ratification of the Constitution was heated. There, Alexander Hamilton, James Madison and John Jay came to the defense of the proposed Constitution by publication of a series of articles concerning the Constitution in New York newspapers. This series, now known as the Federalist Papers, contains virtually the best source of information concerning the interpretation of our Constitution. In Article number 44, written by Madison, the following comments were made regarding the intent of Article 1, § 10:

"The extension of the prohibition to bills of credit must give pleasure to every citizen in proportion to his love of justice and his knowledge of the true springs of public prosperity. The loss which America has sustained since the peace, from the pestilent effects of paper money on the necessary confidence between man and man, on the industry and morals of the people, and on the character of republican government, constitutes an enormous debt against the States chargeable with this unadvised measure which must long remain unsatisfied, or rather an accumulation of guilt which can be expiated no otherwise than by a voluntary sacrifice on the alter of justice of the power which has been the instrument of it. In addition to these persuasive considerations, it may be observed that the same reasons which show the necessity of denying to the States the power of regulating coin prove with equal force that they ought not to be at liberty to substitute a paper medium in the place of coin. Had every State a right to regulate the value of its coin, there must be as many different currencies as States, and thus the intercourse among them would be impeded; retrospective alterations in its value might be made, and thus citizens of other States be injured, and animosities be kindled among the States themselves. The subjects of foreign powers might suffer from the same cause, and hence the Union be discredited and embroiled by the indiscretion of a single member. No one of these mischiefs is less incident to a power in the States to emit paper money than to coin gold or silver. The power to make anything but gold and silver a tender in payment of debts is withdrawn from the States on the same principle with that of issuing a paper currency."

The success of the Federalist was evident in the fact that the proponents of the Constitution were successful in securing ratification in New York.

The adoption of the U.S. Constitution in 1789 paved the way for the intended "more perfect union." An analysis of the method of construction of the constitutional provisions in reference to the currency powers thereof and of the contemporaneous expressions of these provisions leads to the unmistakable conclusion that the Constitution designed a monetary system based upon gold and silver coin,

and the standard so built was enduring, perfect and immutable. The influence of Oresme, Cotton, Locke and Blackstone is easily perceived.

PERIOD I: TO THE CIVIL WAR

After the adoption of the U.S. Constitution, establishment of the three great departments thereof and the construction of a political order in harmony with that great document, Congress embarked upon the task of providing monetary order to the affairs of the young nation. One of the first monetary tasks undertaken by the new Congress was obtaining from Alexander Hamilton his "Report on the Subject of a Mint." [6] Therein, Hamilton relied upon the previously mentioned Congressional resolutions of 1785 and 1786, and determined as a matter of fact that the Spanish Milled Silver Dollar was by accepted custom the monetary unit of the United States. Hamilton proffered the suggestion that such a "dollar" was in fact equal to 371.25 grains of pure silver and he suggested an exchange ratio, established by the market, between gold and silver as 1 to 15. Based upon Hamilton's Report, Congress adopted "The Coinage Act of 1792," 1 Stat. 246, which found that a "dollar" was equal to 371.25 grains of pure silver. This Act of Congress, therefore, immutably set the value of a "dollar" at 371.25 grains of pure silver, and Congress, in accordance with the principles of Oresme, Cotton, Locke and Blackstone, lacked all power to ever debase this standard.

The generation of men who drafted the U.S. Constitution and the generation immediately following were acutely aware of the precise monetary powers and disabilities embodied in our national charter. The men who sat in the state courts and the United States Supreme Court up to the outbreak of the Civil War demonstrated these principles in the decisions they wrote. Insofar as the U.S. Supreme Court is concerned, these principles can be found by examining certain of the opinions rendered during this period, among which include the following:

Calder v. Bull, 3 U.S. (3 Dall.) 386, 390 (1798):

"The prohibitions not to make anything but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligations of contracts, were inserted to secure private rights."

Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122 (1819):

"It was notorious that the States had emitted paper money, and made it a tender; had compelled creditors to receive payment of debts due to them in various articles of property of inadequate value; had allowed debts to be paid by installments, and prohibited a recovery of the interest. All these evils, so destructive of public and private faith, and so embarrassing to commerce, the convention intended, doubtless, to prevent in future. The language employed speaks only of paper money and tender laws, by a particular description," 4 Wheat. at 133.

"That the prevailing evil of the times, which produced this clause in the constitution, was the practice of emitting paper money, of making property which was useless to the creditor a discharge of his debt, and of changing the time of payment by authorizing distant installments. Laws of this description, not insolvent laws, constituted, it is said, the mischief to be remedied," 4 Wheat. at 199.

"We are told they were such as grew out of the general distress following the war in which our independence was established. To relieve this distress, paper money was issued, worthless lands and other property of no use to the creditor were made a tender in payment of debts; and the time of payment, stipulated in the contract, was extended by law. These were the peculiar evils of the day. So much mischief was done, and so much more was apprehended, that general distrust prevailed, and all confidence between man and man was destroyed.

"Was the general prohibition intended to prevent paper money? We are not allowed to say so because it is expressly provided that no states shall 'emit bills of credit;' neither could these words be intended to restrain the states from enabling debtors to discharge their debts by the tender of property of no real value to the creditor because for that subject also particular provision is made. Nothing but gold and silver coin can be made a tender in payment of debts," 4 Wheat. at 204.

Ogden v. Saunders, 25 U.S. (12 Wheat.) 213 (1827):

"It declares that 'no state shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts.' These prohibitions, associated with the powers granted to Congress 'to coin money, and to regulate the value thereof, and of foreign coin' most obviously constitute members of the same family, being upon the same subject and governed by the same policy.

"This policy was to provide a fixed and uniform standard of value throughout the United States, by which the commercial and other dealings between the citizens thereof, or between them and foreigners, as well as the monied transactions of the government, should be regulated. For it might well be asked, why vest in Congress the power to establish a uniform standard of value by the means pointed out, if the states might use the same means, and thus defeat the uniformity of the standard and, consequently, the standard itself? And why establish a standard at all, for the government of the various contracts which might be entered into, if those contracts might afterwards be discharged by a different standard, or by that which is not money, under the authority of tender laws," 12 Wheat. at 265.

"The prohibition in the constitution to make anything but gold or silver coin a tender in payment of debts is express and universal. The framers of the

constitution regarded it as an evil to be repelled without modification; they have, therefore, left nothing to be inferred or deduced from construction on this subject," 12 Wheat. at 288.

"The next in order is, or 'make anything but gold and silver a tender in payment of debts;' this is founded upon the same principles of public and national policy as the prohibition to coin money and emit bills of credit, and is so considered in the commentary on this clause in the number of the Federalist I have referred to. It is there said, the power to make anything but gold and silver a tender in payment of debts, is withdrawn from the states, on the same principles with that of issuing a paper currency. All these prohibitions, therefore, relate to powers of a public nature, and are general and universal in their application and inseparably connected with national policy," 12 Wheat. at 306.

"The prohibition is not, that no state shall pass any law, but that even if a law does exist, the 'state shall not make anything but gold and silver coin a legal tender.' The language plainly imports that the prohibited tender shall not be made a legal tender, whether a law of the state exists or not. The whole subject of tender, except in gold and silver, is withdrawn from the states," 12 Wheat. at 328.

"The second class of prohibited laws comprehends those whose operation consists in their action on individuals. These are laws which make anything but gold and silver coin a tender in payment of debts, * * *

"In all these cases, whether the thing prohibited be the exercise of mere political power, or legislative action on individuals, the prohibition is complete and total. There is no exception from it. Legislation of every description is comprehended within it," 12 Wheat. at 335.

Craig v. Missouri, 29 U.S. (4 Peters) 410 (1830):

"At a very early period of our colonial history the attempt to supply the want of the precious metals by a paper medium was made to a considerable extent, and the bills emitted for this purpose have been frequently denominated bills of credit. During the war of our revolution we were driven to this expedient, and necessity compelled us to use it to a most fearful extent. The term has acquired an appropriate meaning; and 'bills of credit' signify a paper medium, intended to circulate between individuals and between government and individuals, for the ordinary purposes of society. Such a medium has been always liable to considerable fluctuation. Its value is continually changing; and these changes, often great and sudden, expose individuals to immense loss, are the sources of ruinous speculations, and destroy all confidence between man and man. To cut up this mischief by the roots, a mischief which was felt through the United States, and which deeply affected the interest and prosperity of all, the people declared in their Constitution that no State should emit bills of credit. If the prohibition means anything, if the words are not empty sounds, it must comprehend the emission of any paper medium by a State government for the purpose of commons circulation," 4 Peters, at 431-32.

"The Constitution, therefore, considers the emission of bills of credit and enactment of tender laws as distinct operations, independent of each other which may be separately performed. Both are forbidden," 4 Peters, at 434.

"Congress emitted bills of credit to a large amount and did not, perhaps could not, make them a legal tender. This power resided in the States," 4 Peters, at 435.

Dissenting opinion of J. Johnson:

"The great end and object of this restriction on the power of the States, will furnish the best definition of the terms under the consideration. The whole was intended to exclude everything from use as a circulating medium except gold and silver, and to give to the United States the exclusive control over the coining and valuing of the metallic medium. That the real dollar may represent property, and not the shadow of it," 4 Peters, at 442-43.

Briscoe v. Bank of the Commonwealth of Kentucky, 36 U.S. (11 Peters) 257 (1837):

"If the Legislature of a State attempt to make the notes of any bank a tender, the act will be unconstitutional * * *, " 11 Peters, at 316.

"They acted upon known facts and not theories, and meant, by prohibiting the States from emitting bills of credit, to prohibit any issue in any form, to pass as paper currency or paper money, whose basis was the credit, or funds or debts, or promises of the states * * * They knew that whatever paper currency is not directly and immediately, at the mere will of the holder, redeemable in gold and silver, is, and forever must be liable to constant depreciation," 11 Peters, at 339.

United States v. Marigold, 50 U.S. (9 How.) 560, 567-68 (1850):

"They appertain rather to the execution of an important trust invested by the Constitution, and to the obligation to fulfill that trust on the part of the government, namely, the trust and the duty of creating and maintaining a uniform and pure metallic standard of value throughout the Union. The power of coining money and of regulating its value was delegated to Congress by the Constitution for the very purpose, as assigned by the framers of that instrument, of creating and preserving the uniformity and purity of such standard of value * * *

"If the medium which the government was authorized to create and establish could immediately be expelled, and substituted by one it had neither created, estimated, nor authorized & one possessing no intrinsic value ... then the power conferred by the Constitution would be useless & wholly fruitless of every end it was designed to accomplish. Whatever functions Congress are, by the Constitution, authorized

to perform, they are, when the public good requires it, bound to perform; and on this principle, having emitted a circulating medium, a standard of value indispensable for the purposes of the community, and for the action of the government itself, they are accordingly authorized and bound in duty to prevent its debasement and expulsion, and the destruction of the general confidence and convenience, by the influx and substitution of a spurious coin in lieu of the constitutional currency."

Thus, from diverse pronouncements and opinions of the United States Supreme Court, a steady allegiance to the original and true intent of our founding fathers in reference to the monetary provisions of the U.S. Constitution can be discerned. In none of these various decisions is there any reference or allusion to any power of the States to enforce a tender in anything but gold and silver coin; further, there was no mention of any power in the federal government to permit, sanction or even compel the States to violate the constraint of Article 1, § 10, cl. 1 as such was an absolute and mandatory provision. Further, it was considered heresy to intimate any power in the federal government to issue any paper money. The adherence of the Supreme Court to the intent of the framers must surely have had a beneficial effect upon our nation.

Not only was the Supreme Court a guardian of the true intent of the framers during this period of time, the high courts of the various States of our Union were also as well. During the time prior to the Civil War, these state courts rendered opinions in many cases regarding the monetary provisions of the U.S. Constitution and all these decisions had one common theme: nothing but gold and silver coin could be a tender in payment of debts. Notwithstanding the imaginative schemes of men and governments calculated to find a way to circumvent Article 1, § 10, these state courts held fast and maintained their allegiance to the Constitution. The following cases are indicative of the decisions made by these courts:

I. ALABAMA:

Carter and Carter v. Penn, 4 Ala. 140, 141 (1842):

"But the notes of the Banks which are not redeemable in coin, on demand, cannot, with any propriety be regarded as such; in fact, the best Bank paper passes as money by consent only, and it cannot be otherwise so long as the inhibition of the Federal Constitution upon the rights of the States to dispense with gold and silver coin as the only lawful tender continues in force."

II. ARKANSAS:

Dillard v. Evans, 4 Ark. 175, 177 (1842):

"Bank issues are not, in the constitutional sense of the term, lawful money or legal coin. Gold and silver alone are a legal tender in payment of debts; and the only true constitutional currency known to the laws."

Bone v. Torry, 16 Ark. 83, 87 (1855):

"The judgment was for dollars, and the payment, so far as the facts are before us, could only have been made in gold or silver, the constitutional coin."

III. CONNECTICUT:

Foquet v. Hoadley, 3 Conn. 534, 536 (1821):

"A promissory note, payable in money, cannot be discharged, by the act of the debtor, without the co operation of the creditor, unless in gold and silver coin. Const. U.S. art. 1 sec. 10. Bank notes are not a legal tender, if the creditor objects to receive them."

IV. INDIANA:

State v. Beackmo, 8 Blackf. 246 (Ind. 1846):

"But the constitution here interposes, and declares that a 'just compensation' shall be made for the property so appropriated that the injured party may have his damages assessed by a jury of the country; and it will not be disputed that when they are so assessed, they become a 'debt' in the constitutional sense of the word, and being so, the constitution of the United States restrains the state from enforcing their payment in any thing but gold and silver," 8 Blackf., at 249-50.

"And we think we hazard nothing in saying, that a law authorizing compulsory payment for real estate or damage thereto, when appropriated by the State or its authority, in any thing but gold and silver, would not make adequate provision for a just compensation * * * Nothing short of gold and silver, the value of which is comparatively certain and changeless, and with which, better than with any thing else, can at any time be commanded what the possessor may desire, can adequately compensate a proprietor for what he is compelled to surrender to the public use," 8 Blackf., at 251.

Prather v. State Bank, 3 Ind. 356 (1852):

"No clerk, nor sheriff, nor constable, as such, has a right, under the constitution and law, to receive payment of a judgment in anything but the legal currency of the country. Griffin v. Thompson, 2 How. 244."

V. KENTUCKY:

McChord v. Ford, 19 Ky. 166, 167 (1826):

"But as bank notes are not money, it also follows that this note cannot intend bank notes, but gold or silver."

Sinclair v. Piercy, 28 Ky. 63, 64 (1830):

"The result from an examination of all the cases is, that money in its strict legal sense, means gold or silver coin, and that an obligation for money alone can not be satisfied with anything else."

Pryor v. Commonwealth, 32 Ky. 298 (1834):

"Yet, that its true technical import is lawful money of the United States, in other words, gold or

silver coin, and when used in judicial proceedings it is always to be taken in this technical sense."

VI. MISSISSIPPI:
Gasquet v. Warren, 10 Miss. 514, 517 (1844):

"It means that which in fact and law is money, which is gold or silver coin. This in law is money and nothing else is."

VII. MISSOURI:
Bailey v. Gentry, 1 Mo. 164 (1822):

"The 1st clause of the 10th section of the 1st article of the Constitution of the United States, provides that 'No State shall make any thing but gold and silver coin a tender in payment of debts * * * "

"Construing the Constitution, then, to prohibit the States from passing laws, the effect of which would be to induce the creditor to receive something else than gold and silver coin in payment of the debt due him, in order to avoid an inconvenience that would result on his failure to do so, we are lead to the conclusion that the act under consideration is repugnant to the provisions of the Constitution of the United States last referred to," 1 Mo., at 172-73.

Cockrill v. Kirkpatrick, 9 Mo. 697, 701 (1846):

"These terms import either, first, gold or silver coin, which is constitutional currency of the United States, the 'tender money' of the several states of the Union. * * * "

"But if the note was 'payable in the current money of Missouri,' as the obligor subsequently stated, then all necessity for construction is absolutely excluded, for the terms explain themselves, and can only mean 'tender money,' gold or silver coin."

VIII. PENNSYLVANIA:
Shelby v. Boyd, 3 Yeats (Pa.) 321 (1801):

"By the 10th section of the 1st article of the constitution of the United States, no state shall emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts," 3 Yeats, at 322.
"If the agreement had respected the continental bills of credit, and no legal tender had been pleaded, the court would not suffer the paper emitted by Congress to be paid into court, but only its specie value when the agreement was entered into * * * It does not appear to us, that the bills of credit offered to be paid into court, are a legal tender, and therefore we cannot admit them to be brought into court," 3 Yeats, at 323.
Gray v. Donahoe, 4 Watts (Pa.) 400 (1835):

"No principle is better established nor more necessary to be maintained than that bank notes are not money in the legal sense of the word. * * * Coins struck at the Mint or authorized by act of Congress are alone lawful money. They possess a fixed and permanent value or, at least as nearly so as human affairs admit of. Bank notes are merely promissory notes for the payment of money; ordinarily, it is true, convertible into coin on demand at the bank where they are issued."

IX. SOUTH CAROLINA:
Clarin v. Nesbitt, 2 Nott. and McC. (11 S.C.) 519 (1820):

"If Congress can create a legal tender, it must be by virtue of the 'power to coin money,' for no where in the constitution is the power to make a legal tender expressly given to them, nor is there any other power directly given, from which the power to make a legal tender can be incidentally deduced," 2 Nott. and McC., at 520.

"At common law, only gold and silver were a legal tender. * * * In this State, where the common law has been expressly adopted, anterior to all legislative and constitutional provisions on the subject, gold and silver were the only legal tenders," 2 Nott. and McC., at 521.

"From the passage of this act to the adoption of the constitution of the United States, the only legal tenders in this State were gold and silver, and those were so by virtue of the common law. Prior to the adoption of the constitution of the United States, the States, respectively, possessed and exercised jurisdiction over the 'legal tender,'" 2 Nott. and McC., at 522.

"If Congress did not possess the power of creating a legal tender under the confederation, they do not possess the power under the constitution, for the grant in both instruments is the same, 'to coin money.' The States have been limited in their exercise of power over the legal tender to gold and silver, but it does not follow, because power has been taken from the States, it has been given to Congress," 2 Nott. and McC., at 522-23.

"They have further said, that nothing but gold and silver coin shall be a legal tender for the payment of debts. The language of the 10th sec. of the 1st article, is, 'no State shall make any thing but gold and silver coin a legal tender in the payment of debts.' The language of the 5th clause of the 8th sec. of the 1st Article, is, 'congress shall have power to coin money, and regulate the value thereof.' Construe the two sections together, and the constitution appears to intend to limit the power of the States over the legal tender, to gold and silver, and to give to congress the power of coining gold and silver. This construction is further supported by the two following considerations:

1. One of the great objects which led to the adoption of the constitution, was the annihilation of a spurious currency, which had for years afflicted the people of this country. Give to congress the power of making legal tender, and you but change the hand from which the affliction is to proceed; so construe the constitution as to restrict the legal tender to gold and silver, and one of the great objects for which it was ordained, is accomplished.

2. The constitution, no where gives to congress any control over contracts. It is indeed scrupulously avoided. If, however, they derive the power of making a legal tender from the power of coining money, they indirectly obtain that which was intended to be withheld," 2 Nott. and McC., at 523-24.

Lange v. Kohne, 1 McCord (12 S.C. Law) 115, 116 (1821):

"The note in question, however, is not payable in money, but in paper medium. That paper medium is not money, appears from the 8th and 10th sections of the Constitution of the United States, which declare that Congress shall coin money; and that no state shall coin money, emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts."

X. TENNESSEE:

Townsend v. Townsend, 7 Tenn. 1 (1821):

"First, then, let us take into consideration Art. 1, section 10, of the Constitution of the United States: 'No State shall * * * emit bills of credit or make anything but gold and silver coin a tender in payment of debts. * * * ' The first two sentences respect tender laws and paper money; the construction to be put on them should repress and prevent the evils they were intended to obviate; and what these are, must be understood by the actual evils which paper money and tender laws produced in the time of the colonial governments," 7 Tenn., at 2-3.

"One cause of depreciation is that the paper could not be remitted to foreign countries. No matter how small the emission may be, it is not equal to gold and silver. He who exchanges it for gold and silver must give a greater quantity of paper," 7 Tenn., at 5.

"With respect to the disorders produced by paper money and tender laws, both theory and experience present them to view. Who will be so imprudent as to give credit to the citizens of a State that makes paper money a tender, and where he can be told, take for a gold and silver debt depreciated paper, depreciating still more in the moment it is paid? Who would trust the value of his property to the citizens of another State or of his own State, who can be protected by law against the just demands of creditors by forcing them to receive depreciated paper, or to be delayed of payment from year to year until the Legislature will not longer interfere?" 7 Tenn., at 6.

"One of the most powerful remedies was the tenth clause of the first article, and particularly the two sentences which we are now considering. They operated most efficaciously. The new course of thinking, which had been inspired by the adoption of a constitution that was understood to prohibit all laws for the emission of paper money, and for the making anything a tender but gold and silver, restored the confidence which was so essential to the internal prosperity of nations," 7 Tenn., at 8.

"The framers of the Federal Constitution believed it to be of indispensable importance not to leave this power any longer in the hands of the State Legislatures. Experience had demonstrated the baneful effects of its exercise. The known disposition of man excluded the hope that it would not be used for the same pernicious purposes in future. Under the smart of this experience, such were the feelings of the American people at the time, still suffering under repeated emissions of depreciated paper, that not a dissenting voice was raised against the clause before us. No state required it to be expunged, nor did any state propose an amendment. It was universally received without an exception, and the effects of the clauses themselves were miraculous. Public and private confidence took deep root. The people of America were reinstated in the admiration of the world. The precious metals flowed in upon them. Paper money suddenly stopped in its career of depreciation and took a stand from which it never departed; industry revived universally; and to us in America was given a notable proof, that whenever a nation is virtuous and honest it will prosper both in wealth and character; and that whenever a contrary course is pursued, such is the wise decree of providence, that prosperity of either kind will not long follow in her train," 7 Tenn., at 9.

Lowry v. McGhee and McDermott, 16 Tenn. 242 (1835):

"By the Constitution of the United States nothing can be a tender in payment of debt but gold and silver coin," 16 Tenn., at 244.

"The answer to this argument is that the Constitution of the United States is the supreme law, and that no law can be valid which, in violation of that instrument, shall attempt to make anything but gold and silver coin a tender," 16 Tenn., at 245.

"The constitution of the United States (art. 1, sec. 10) prohibits any state making 'anything but gold and silver coin a tender in payment of debts;" 16 Tenn., at 246.

"This provision was inserted to prevent the existence of a spurious and worthless currency, and is of positive and paramount obligation," 16 Tenn., at 246-47.

XI. TEXAS:

Ogden v. Slade, 1 Tex. 13, 14 (1846):

"The note calls for four hundred dollars, lawful funds of the United States. What is the plain meaning of 'lawful funds?' Gold and silver is the only lawful tender in the United States. It must therefore mean payment in gold or silver. By equivalent, the parties must have meant such paper currency as passed at par with gold and silver."

XII. VERMONT:

Wainright v. Webster, 11 Ver. 576 (1839):

"No state is authorized to coin money, or pass any law whereby anything but gold and silver shall be made a legal tender in payment of debt. * * * This conventional understanding that bank bills are to pass

as money is founded upon the solvency of the bank and upon the supposition that the bills are equivalent in value to specie and are, at any time, convertible into specie at the option of the holder. Upon no other ground do bank bills, by common consent, pass as money," 11 Ver., at 580.

"When, therefore, a bank stops payment, the bills thereof cease, by this conventional arrangement, to be the representative of money," 11 Ver., at 581.

Thus, from a reading of decisions rendered by state courts and the U.S. Supreme Court, Article 1, § 10, cl. 1 of the U.S. Constitution had a fixed and determined meaning. This understanding was not limited to the courts of our nation, and it was clearly understood by both Congress and the Presidents of our nation. For example, during the debate on the question of whether to renew the charter of the Second Bank of the United States (3 Stat. 266) in 1836, Senator Daniel Webster observed regarding the monetary provisions of the Constitution:

"Currency, in a large and perhaps just sense, includes not only gold and silver and bank bills, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business; but if we understand by currency the legal money of the country, and that which constitutes a legal tender for debts, and is the standard measure of value, then undoubtedly nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a constitutional principle, perfectly plain and of the highest importance. The States are expressly prohibited from making anything but gold and silver a legal tender in payment of debts, and although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it in this respect but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper or anything else for coin as a tender in payment of debts and in discharge of contracts. Congress has exercised this power fully in both its branches; it has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and can not be overthrown. To overthrow it would shake the whole system," 4 Webster's Works, 271.

Further, on December 5, 1836, President Jackson stated in his 8th Annual Address to Congress:

"It is apparent from the whole context of the Constitution, as well as the history of the times which gave birth to it, that it was the purpose of the Convention to establish a currency consisting of the precious metals. These, from their peculiar properties which rendered them the standard of value in all other countries, were adopted in this as well to establish its commercial standard in reference to foreign countries by a permanent rule as to exclude the use of a mutable medium of exchange, such as of certain agricultural commodities recognized by the statutes of some states as a tender for debts, or the still more pernicious expedient of a paper currency."

Beyond the scope of this necessarily brief treatment of the monetary provisions of the U.S. Constitution is any consideration of the development of banking in our country during this period. Excellent references for this separate topic are A Short History of Paper Money and Banking, written by William Gouge in 1833, and Dr. Ron Paul's and Lewis Lehrman's work entitled The Case for Gold. These sources disclose the evils caused to our young nation by private banking establishments, which were as injurious as the paper money issued by colonial governments. Notwithstanding the adverse consequences caused by private note issuance by banks, which then caused and now continue to cause financial ruin for Americans, the clear and unmistakable voice of government of this period, be it from the courts, the legislative or executive branches, held gold and silver coin as the only money, pursuant to the express commands of the Constitution.

PERIOD II: A DIFFERENT DAY FROM THE CIVIL WAR TO 1933

With the advent of the Civil War in 1861, the alluring call of the "Sirens" beckoning further experiments with that expedient thief, paper money, was heard by both governments north and south of the Mason Dixon line. For real and imagined reasons, the southern States departed the Union, established the Confederacy and fired upon Fort Sumter. No sooner had the Confederate Flag been flown from Montgomery than that ill fated rebellious government reached for the ever ready tool of wealth expropriation, paper money. It was through the services of paper money that the Confederacy obtained everything necessary for war without surrendering anything of comparable value in exchange.

Insofar as the Union was concerned, it quickly learned that taxation and borrowing to meet war expenses would be extremely unpolitical. But, there apparently were some extremely perceptive minds in Washington which perceived the real lessons of the Revolutionary War. The Continental Notes of the Revolutionary War would not have become worthless if there had been an appropriate mechanism for taxing the notes out of circulation for the purpose of maintaining their value. Realizing the importance of this principle, Congress enacted such a vehicle in July, 1861, and passed the first national income tax act. Once this legislation was in place, the Union, following the lead of the Confederacy, succumbed to the paper money call in early 1862.

Treasury Secretary Chase, later to become Chief Justice of the U.S. Supreme Court, began the

call for paper money to meet the exigent expenses of war. In Congress, the debate concerning this proposal was extremely heated. [7] Some Congressmen condemned the act to make Treasury notes a legal tender as unconstitutional while others argued in its favor. In the end, Congress, obviously as an act of desperation and expedience, passed the Legal Tender Act of 1862, 12 Stat. 345. With the passage of this act, Congress ignored both the lessons of history and the plain intent of the framers of the U.S. Constitution.

In the interim of 8 years from the passage of the first of the series of legal tender acts until the Supreme Court was finally called upon to address this issue, the state courts of our nation were presented with the horns of a dilemma. Nowhere in any judicial decision of the past, or even in any uttering from Congress or the Executive, was there the slightest indication of such a Congressional power to declare paper Treasury notes a legal tender. Allegiance to the intent of the law as expounded by the framers required a holding that the acts were unconstitutional; however, doing such would surely damage the cause of the Union and its war effort.

An example of this problem faced by the state courts is clearly seen in the decisions of the Indiana Supreme Court. In Reynolds v. State Bank of Indiana, 18 Ind. 467 (1862), the Court held the Legal Tender Act of 1862 constitutional, only after giving every reason to rule against the act. In so holding, that court stated:

"The convention which adopted the constitution not only did not grant, but they expressly rejected it as a substantive power, and for the distinctly declared purpose of preventing its exercise, by Congress, under any pretext or circumstances whatever; and this, too, after the power had been once expressly granted to the Federal Government; and the States subsequently ratified the constitution with this understanding," 18 Ind., at 470-71.

"Currency, as a medium of exchange, is a great necessity of commerce, and it is an acknowledged power of every government to ordain what shall constitute that currency. Governments have done so; and, throughout the civilized world, they have all concurred in declaring that gold and silver shall be that currency. Why they have so declared will be seen as we advance. Now, the precise question of what should be the currency of this nation, what should be its medium of commerce, what should be used to meet that necessity, was the one that was before the convention which constructed the frame of our government, and they ordained and established, by the paramount, the fundamental law of the nation, that that currency should be gold and silver, or paper issued upon, and as the representative, of gold and silver, and not bills of credit issued simply upon the indebtedness and faith of the government," 18 Ind., at 471-72.

But, within 2 years of the rendition of the opinion in Reynolds, supra, the Indiana Supreme Court had occasion to reconsider the prior opinion and this time, in Thayer v. Hedges, 22 Ind. 282 (1864), found the legal tender acts of Congress expressly unconstitutional:

"In another aspect, it enables the government to make, by indirection, forced loans as actual if not as oppressive as those of Charles I, as they are made without interest, against the will of the lender, and without repayment of but a part of the principal; thus, in this case, as an example. The government desires Thayer to loan it 500 dollars. Thayer expresses his inability or unwillingness to spare the money. The government then goes to Hedges and Kleiger and says to them, you owe Thayer 500 dollars, which you are about to pay him. The government wants that money, but he will not loan it. You pay it to the government, and it will give you a piece of paper which it will compel him to take of you, instead of the money contracted for, in payment of your debt," 22 Ind., at 286-87.

"That the power to coin money is one power, and the power to declare anything a legal tender is another, and different power; that both were possessed by the States severally at the adoption of the Constitution; that by that adoption, the power to coin money was delegated to the Federal Government, while the power to declare a legal tender was not, but was retained by the States with a limitation, thus: 'Congress should have power to coin money' and 'no State shall coin money,' and 'no State shall make anything but gold and silver coin a legal tender.' States, then, though they can not coin money, can declare that gold or silver coin, or both, whether coined by the Federal, or the Spanish or the Mexican Government, shall be legal tender. And as Congress was authorized to make money only out of coin, and the States were forbidden to make anything but coin a legal tender, a specie currency was secured in both the Federal and States governments. There was thus no need of delegating to Congress the power of declaring a legal tender in transactions within the domain of Federal legislation. The money coined by it was the necessary medium," 22 Ind., at 300-01.

"Walker, in his Am. Law, p. 145, declares it an act of despotic power to make paper a legal tender. The principal interference of government with the currency has been to debase it. Say gives an account of the acts of the French monarchs, of this character, in his Political Economy, book 1, chap. 21, sec. 5, and adds: 'Let no government imagine that, to strip them of the power of defrauding their subjects, is to deprive them of a valuable privilege.' Says Mr. Gouge: 'No instance is on record of a nation's having arrived at great wealth without the use of gold and silver money. Nor is there, on the other hand, any instance of a nation's endeavoring to supplant this natural money, without involving itself in distress and embarrassment,'" 22 Ind., at 305.

"It was the intention, by the Federal Constitution, to withhold this power of supplanting

natural money from the general government, and to strip the states of it, and thus extinguish it, and insure to the people and nation a sound currency forever. Of this we have not the slightest doubt. Money should be to values, what weights and measures are to quantities, the exact measure, and a uniform, stable one. The States were prohibited from making anything but gold and silver a tender for debts, and the general government was authorized, touching this subject, only 'to coin money, regulate the value thereof, and of foreign coin,' * * * It will be observed that while the States are forbidden to make anything but gold and silver a tender, Congress is empowered to coin money, without being limited to the two kinds of coin to which the States are restricted," 22 Ind., at 306.

"Now, the power is no where expressly given to Congress to make even coin a legal tender, but the prohibition to the States to make anything but gold and silver such tender, goes upon the assumption that the power over the subject of legal tender is possessed by the States; * * * and the Constitution restricts them to two articles, either or both of which they may make thus; and the general government has not the power to make anything a legal tender except as an incident to the power to coin," 22 Ind., at 307-08.

Other states found need to construe the Legal Tender Acts in reference to the issue of whether "greenbacks" could be used to pay state taxes. In Perry v. Washburn, 20 Cal. 318 (1862), the California Supreme Court ruled that United States notes could not be used to pay state taxes, especially where a California statute required taxes to be paid in coin. In State Treasurer v. Collector Sangamon County, 28 Ill. 509, 512 (1862), the Illinois Supreme Court ruled in the same fashion, and reasoned:

"The jurisdiction of the State on the subject of taxation, for all State purposes, is supreme, and over which, the government of the United States can have no power or control. That government acts through delegated power and can exercise no other except such as may be necessary to carry into effect a granted power. The power has been, nowhere, delegated to the Congress to interfere with the mode which a state may adopt to raise a revenue for its own purposes, or the manner or funds in which it shall be collected. This is a subject peculiarly belonging to the States, and wholly under State control, so that should it be deemed by the State expedient to collect its revenue for its own use, in the productions of its own soil, no power on earth could interfere to forbid it."

A particularly important decision against the constitutionality of the legal tender acts of Congress was Griswold v. Hepburn, 63 Ky. 20 (1865). Here, the Kentucky Supreme Court was required to decide the constitutionality of the acts and the decision made was that the acts contravened the U.S. Constitution:

"When the Constitution was adopted, as even yet, all foreign money was metallic coin; and therefore the power to regulate such coin was constructively restricted to coined metal, and did not include notes on the Bank of England, or consols, or other government bonds or securities. The conclusion is plain, and apparently inevitable, that the power to coin money was intended to mean to coin metal as the money of the United States; and the curse of the paper currency of the revolution, the fiscal ruin of the confederation, and the history of the adoption of the Federal Constitution, conduce strongly to prove that, when the people who adopted it delegated to Congress exclusive power 'to coin money,' they intended that nothing else than metallic coin should be money, or be a legal tender, in invitum, as money; and it is almost certain that they did not intend to confer on Congress any more or other power to make money, or declare any thing else to be money, or compel the circulation of any thing else as money," 63 Ky., at 30.

"The power to coin 'money' is the only moneymaking power delegated to Congress. Without express grant, Congress could have had no power whatever over money. The only grant made is specific and well defined, and beyond this Congress can have no express authority to go; and any attempt to go further would defeat the great purpose of defining and establishing coin as the money of the United States; and, therefore, and also because no such substantive power could be implied, Congress can have no implied power to make any thing else than coin money. Knowing that Congress could have no power over money except so far as delegated, the people chose, for national reasons, to delegate the single power 'to coin money,' and there stopped. And anxious to maintain coin as the only money, they tied the hands of their own Legislature, and not only abandoned all their inherent power over money, except a qualified power over the legal tender, expressly restricted to gold and silver, but, for the same immutable reason, withheld from Congress any power over tender. That renunciation of their absolute power and reservation of a qualified power over tender, is itself, and alone, sufficient proof of a constructive and purposeful denial to Congress of any power over it," 63 Ky., at 34. "And if we are right, as we feel well assured we are, no one can pretend that the power assumed is, or could be, implied, because it is an axiomatic truth, that nothing inconsistent with the Constitution can be implied as constitutional. And had there been no other objection to the assumed implication in this case, it would be repelled by the fact that to make money and fix the law of tender are great substantive powers, recognized and disposed of by the Constitution, and, therefore, no power on that subject can be implied beyond or different from that expressed," 63 Ky., at 43. While some state courts found, as above, that the legal tender acts were unconstitutional, other courts in different states upheld them. In Metropolitan Bank v. Van Dyck, 27 N.Y. 400 (1863), and Shollenberger v. Brinton, 52 Pa. St. 9 (1866), the Supreme Courts of New York and Pennsylvania upheld their

constitutionality. Thus, the war torn nation was divided not only physically, but also judicially insofar as the lawfulness of the Congressional legislation regarding legal tender Treasury notes was concerned.

Of related importance to the issue of legal tender Treasury notes is the issue of the lawfulness of the Confederacy's paper money. At the commencement of the Civil War, the C.S.A. had issued paper money to obtain resources for the war effort, and the emissions of this paper were virtually constant. Payment of these notes was based upon a contingency, the contingency being the ratification of a peace treaty between the C.S.A. and the U.S.A. With the surrender of that great soldier, Gen. Robert E. Lee, the Confederacy ceased to exist. The downfall of the rebellion thus presented to the federal courts the serious problem of how to treat debts contracted before and during the war in the South which debts had been partially paid with Confederate money.

One of the first cases rendered by the U.S. Supreme Court wherein the confederate currency was an issue was Thorington v. Smith, 75 U.S. (8 Wall.) 1 (1869). Here, the Supreme Court reasoned that the Confederacy was a de facto government imposed by irresistible force and that, while it existed, citizens of the Confederacy of necessity had to obey its civil authority. Insofar as Confederate notes were concerned, the Court described them as follows:

"As contracts in themselves, except in the contingency of successful revolution, these notes were nullities; for, except in that event, there could be no payer. They bore, indeed, this character upon their face, for they were made payable only 'after the ratification of a treaty of peace between the Confederate States and the United States of America.' While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency imposed on the community by irresistable force," 8 Wall., at 11.

"Considered in themselves, and in the light of subsequent events, these notes had no real value, but they were made current as dollars by irresistable force. They were the only measure of value which the people had, and their use was a matter of almost absolute necessity. And this use gave them a sort of value, insignificant and precarious enough it is true, but always having a sufficiently definite relation to gold and silver, the universal measure of value, so that it was always easy to ascertain how much gold and silver was the real equivalent of a sum expressed in this currency," 8 Wall., at 13.

Other Civil War, Confederate currency cases include Hanauer v. Woodruff, 82 U.S. (15 Wall.) 439 (1872), wherein a note given in consideration of Confederate bonds was voided on principles of illegal consideration; see also Planters Bank of Tennessee v. Union Bank of Louisiana, 83 U.S. (16 Wall.) 483 (1873); The Atlantic, Tennessee and Ohio Railroad Company v. Carolina National Bank, 86 U.S. (19 Wall.) 548 (1873); and Stewart v. Salamon, 94 U.S. 434 (1877).

In reference to the lawfulness of the "greenback" currency of the Union, this issue involved not one single case but a multiple of cases spanning some 15 years. Before delivering any opinion wherein a challenge to the constitutionality of the Legal Tender Acts was concerned, the U.S. Supreme Court rendered certain opinions in cases related to this issue. In Bronson v. Rodes, 74 U.S. (7 Wall.) 229 (1869), the Court held that a bond requiring payment in specie coin could not be discharged by paying "greenbacks":

"The design of all this minuteness and strictness in the regulation of coinage is easily seen. It indicates the intention of the legislature to give a sure guaranty to the people that the coins made current in payments contain the precise weight of gold or silver of the precise degree of purity declared by the statute. It recognizes the fact accepted by all men throughout the world, that value is inherent in the precious metals; that gold and silver are in themselves values, and being such, * * * are the only proper measures of value; that these values are determined by weight and purity; and that form and impress are simply certificates of value worthy of absolute reliance only because of the known integrity and good faith of the government which gives them.

"The propositions just stated are believed to be incontestable. If they are so in fact, the inquiry concerning the legal import of the phrase 'dollars payable in gold and silver coin, lawful money of the United States,' may be answered without much difficulty. Each such dollar is a piece of gold or silver, certified to be of a certain weight and purity, by the form and impress given to it at the mint of the United States, and therefore declared to be legal tender in payments. Any number of such dollars is the number of grains of standard gold or silver in one dollar multiplied by the given number," 74 U.S., at 249-50.

In the case immediately following Bronson, supra, the Court, in Butler v. Horowitz, 74 U.S. (7 Wall.) 258 (1869), held the same way in reference to a contract requiring payment in specie. In New York v. Supervisors, County of New York, 74 U.S. (7 Wall.) 26 (1869), the Court held that legal tender Treasury notes were exempt from state taxation.

By 1870, some 8 years after the adoption of the first Legal Tender Act in 1862, the Court was finally required to pass upon the constitutionality of those acts. As noted above, the Kentucky Supreme Court had held these acts to be unconstitutional in Griswold v. Hepburn, supra, and it was to this case that the Supreme Court granted certiorari. The chief architect of the Legal Tender Acts had been Treasury Secretary Chase, who by now was sitting on the Court as its Chief Justice, and it was Chase who wrote the majority opinion in Hepburn v. Griswold, 75 U.S. 603, 625 (1870). The issue in this case involved whether legal

tender notes could be used to discharge a debt contracted before the passage of the first legal tender act, and this determination necessarily involved the constitutionality of those Congressional acts. Chase noted in the opinion that the legislation adopted by Congress making Treasury notes a legal tender occurred at the height of troubling times and that the motive for the acts was patriotic in nature; this was obviously stated because of his own personal involvement in obtaining passage of the acts. Nonetheless, and notwithstanding personal motives and convictions which certainly played a part in passage of this legislation, it was time to test the conformity of the acts with the U.S. Constitution. Chase analyzed the specific provisions of the Constitution which granted Congress various powers, and determined there was no express grant to declare Treasury notes a legal tender. There being no such express grant, he then examined specific Congressional powers to determine if any implied power would sustain the acts. He examined the power to coin money, to borrow, to regulate commerce and to declare war, but there he found no method for developing an implied power which would uphold the acts. He examined the spirit of the Constitution as well as certain prohibitions contained therein, none of which could be useful in supporting an implied power. Finding no support for the constitutionality of the challenged acts, he found them unconstitutional:

"We are obliged to conclude that an Act making mere promises to pay dollars a legal tender in payment of debts previously contracted, is not a means appropriate, plainly adapted, really calculated to carry into effect any express power vested in Congress; that such an Act is inconsistent with the spirit of the Constitution; and that it is prohibited by the Constitution."

It must have taken considerable courage for a man such as Chase, in high public office in the Lincoln administration and who had sought these acts, to declare his own actions unconstitutional.

The decision in Hepburn had been pending for 2 years, and during the interim Congress decided to increase the number of Justices on the Supreme Court from 8 to 9. The decision in Hepburn was a 5 to 3 decision, but shortly before the rendering of that opinion, Justice Grier resigned from the Court for health reasons. This resignation made the number of Justices on the Court who opposed this legislation be 4, with 3 remaining who supported the acts.

On the same day that Hepburn was decided, President Grant nominated two men, William Strong and Joseph Bradley, to fill the vacancies on the Court. After confirmation, the new Court was requested to reconsider the constitutionality of the Legal Tender Acts at the request of the U.S. Attorney General. This event has lead to the charge that Grant "packed" the Court for the express purpose of securing a favorable ruling on the challenged acts.

At the time of the rendition of Hepburn, the Supreme Court had pending before it two other cases which concerned the validity of the Legal Tender Acts, which cases had come to the Court at the same time as Hepburn. After Strong and Bradley came to the Court, these other two cases were reargued in February and April, 1871. On May 1, 1871, the Supreme Court rendered its opinion in Knox v. Lee, 79 U.S. 457, 534 (1871), which overruled Hepburn and found the Legal Tender Acts to be constitutional. Justice Strong delivered the majority opinion in Knox, and he upheld the Legal Tender Acts as constitutional on the basis of auxiliary powers possessed by Congress:

"And here it is to be observed it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred."

To sustain these acts, Strong used McCulloch v. Maryland analysis to find them constitutional, without specifying the precise origin from which such a resulting or auxiliary power was derived from any particular single power or group of powers. In effect, Justice Strong merely pointed to the Constitution and said the power arose from that instrument. However, he made no attempt to address the extremely powerful arguments against the acts made by Clarkson Potter other than to state:

"The Legal Tender Acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their omission is coinage, or any regulation of the value of money; nor do we assert that Congress may make anything which has no value money. What we do assert is that Congress has power to enact that the government's promises to pay money shall be for the time being equivalent in value to the representative of value determined by the coinage acts or to multiplies thereof. It is hardly correct to speak of a standard of value * * * It is, then, a mistake to regard the Legal Tender Acts as either fixing a standard of value or regulating money values, or making that money which has no intrinsic value," 79 U.S., at 553.

Dissenting from the decision in Knox were Chief Justice Chase, and Justices Clifford and Field, who rose to the occasion and set forth innumerable law, facts and arguments against the acts.

The decision in Knox resolved the issue of the constitutionality of federal "bills of credit" during war, but it was still an open question as to their use in times of peace. In 1875, Congress enacted the Specie Resumption Act, which became effective in 1879. In 1878, Congress passed additional legislation

permitting the reissuance of Treasury notes after redemption. By 1884, the Supreme Court was confronted with the issue of whether legal tender Treasury notes could be reissued in peacetime. In Juilliard v. Greenman, 110 U.S. 421, 448 (1884), the Supreme Court expanded the Knox doctrine to allow peacetime issuance of legal tender Treasury notes:

"Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals."

In writing this opinion, Justice Gray successfully located the origin of this power in the express grant to Congress to "borrow money;" this was apparent notwithstanding the fact that the microscopic examination of the Constitution by Justice Strong in Knox failed to reveal the source of this hidden power. As justification for this holding, Justice Gray relied upon the sovereign powers of European governments, something which was totally new to construction of the American Constitution.

The dissents in both Knox and Juilliard were exceptionally well written and documented rebuttals of the erroneous findings of historical fact relied upon by the majority in both cases. Justice Field aptly stated the case of the dissenters by noting that no jurist or statesman in our country, prior to the Civil War, ever mentioned or alluded to the power so readily found by the majority in both Knox and Juilliard; "All conceded, as an axiom of constitutional law, that the power did not exist," 110 U.S., at 454. The defects in findings of historical fact, argument and reasoning in both cases were ably pointed out by George Bancroft in his work, A Plea for the Constitution, written in direct response to the Juilliard decision. If Bancroft did not fully destroy the fallacies of Juilliard, Dr. Edwin Vieira in his book, Pieces of Eight, has conclusively done so.

It is not the capable works as above described which have limited the scope of the Legal Tender Cases; instead, it is the decisions of the same Court which rendered both Knox and Juilliard that define the limits of the legal tender powers of Congress. A full two years before the Supreme Court decided Hepburn and three years before Knox, the Supreme Court determined a limitation on federal "bills of credit" in the case of Lane County v. Oregon, 74 U.S. (7 Wall.) 71, 77 (1868). The rationale found in both Perry v. Washburn, supra, and in State Treasurer v. Collector, supra, was followed in Lane County, and the Court there held that a state law requiring taxes to be paid in specie coin could not be circumvented by payment in "greenbacks," reasoning:

"There is nothing in the Constitution which contemplates or authorizes any direct abridgement of this power by national legislation."

Lane County was rendered by the same Court which rendered Hepburn and the majority of which decided Knox. And a similar case was rendered after Juilliard, that case being Hagar v. Reclamation District No. 108, 111 U.S. 701, 706 (1884), decided only 2 months after Juilliard. In Hagar, one issue involved the type of currency to be used to discharge a liability for state taxes. In holding that such taxes had to be paid in specie coin pursuant to state law, Justice Field relied upon Lane County and stated:

"The extent to which the power of taxation of the state should be exercised, the subjects upon which it should be exercised, and the mode in which it should be exercised, were all equally within the discretion of its legislature, except as restrained by its own constitution and that of the United States."

To determine the full scope of the alleged legal tender powers of Congress, reliance upon the Juilliard decision alone is insufficient. Knox merely found the existence of the federal power to emit bills of credit, without specifying any source other than auxiliary or resulting powers; the scope of this power is not mentioned in Knox and can only be found by looking at the style of the case, the names being individuals. But Knox did not in any way destroy Bronson v. Rodes, supra, which required specie payment if a contract called for such. Nor did Knox in any way destroy the efficacy of Lane County, wherein state taxes were required to be paid in specie coin. Juilliard is only important for specifically defining the full scope of the legal tender powers of Congress; there, the Court described the full reach of the Congressional power of legal tender as only affecting the relationship between citizens and the national government, and among citizens, in a federal forum. The decision of Hagar, which closely followed Juilliard, continued the principal that federal legal tender powers could not constitutionally affect the relationship between a citizen of a state and his state government. What appears as a broad statement of federal currency powers in Juilliard is not as all encompassing as many would imagine. The limit of Congressional legal tender power is set forth in the Constitution in Article 1, § 10, cl. 1, which is the very subject of this brief. And in accordance with Article 1, § 10, clause 1, both Oregon and California had state laws requiring payment of taxes in specie, and these laws were not voided by the exercise of the Congressional legal tender power.

An additional point of consideration arises from the fact that neither Knox or Juilliard sanctioned an irredeemable currency. The court in Knox expressly held that representatives of federal liability, Treasury notes, were to be taken as the equal of coin, with the understanding that these notes would eventually be paid. Redemption began in 1879, and at the time of the Juilliard decision, such notes were convertible into specie coin. The Court has never sanctioned the complete suspension of specie payment, as was plainly demonstrated in Ward v. Smith, 74 U.S. 447 (1869):

"Notes not thus current at their par value, nor redeemable on presentation, are not a good tender to

principal or agent, whether they are objected to at the time or not," 74 U.S., at 451-52.
Therefore, a federal currency which is not redeemable in specie coin is repugnant to the Constitution.

For this second period in the history of the monetary provisions of the Constitution, the paramount events concerned the Supreme Court decisions on the legal tender acts, and the establishment of the Federal Reserve System in 1913. But, before considering the Federal Reserve issue, it is crucial to first discuss the power of Congress to delegate legislative functions. Perhaps one of the most significant cases regarding Congressional delegation of authority is that of Field v. Clark, 143, U.S. 649, 12 S.Ct. 495 (1892), wherein this issue of authority of Congress to delegate was considered. Although the Court there upheld the challenged delegation, the decision plainly stated that the Constitution prevented a delegation of legislative power by Congress to any person or entity. The Court reasoned that there was a distinct difference between delegation of legislative power, which is unlawful, and authority or discretion vested in some official as to execution of the law, which is permitted. In Union Bridge Company v. United States, 204 U.S. 364, 27 S.Ct. 367 (1907), the Court noted the requirement that an administrative agency had to give notice of hearings, conduct hearings and afford an opportunity to be heard in order to proceed against a party adversely; see also Hampton and Company v. United States, 276 U.S. 394, 48 S.Ct. 348 (1928). In United States v. Grimaud, 220 U.S. 506, 31 S.Ct. 480 (1911), the Court upheld the use of agency rules and regulations as the basis for a criminal prosecution, the reason being that Congress had set forth in its legislation standards for such rules. In United States v. Shreveport Grain and Elevator Company, 287 U.S. 77, 53 S.Ct. 42 (1932), the requirement of rules and regulations for agencies was demonstrated.

But, it is 3 cases decided by the Supreme Court in 1935 and 1936 which are of particular significance to the issue of Congressional delegation. In Panama Refining Company v. Ryan, 293 U.S. 388, 55 S.Ct. 241 (1935), the challenged legislation involved Congressional delegation to the President of extraordinary powers over oil, which were virtually dictatorial. The Supreme Court held the purported Congressional delegation to be violative of the Constitution for the reason that the act itself declared no policy, established no standard, and had no rules for action, required no findings of fact and thus empowered the President with unprecedented, uncontrolled legislative power to act in whatever way he deemed appropriate. In Schechter Poultry Corp. v. United States, 295 U.S. 495, 537, 55 S.Ct. 837 (1935), the challenged legislation involved a delegation of authority to industrial trade groups to enact certain codes to regulate trade in the poultry industry. This act was likewise found unconstitutional by the Court, it being stated that "a delegation of legislative power is unknown to our law, and is utterly inconsistent with the constitutional prerogatives and duties of Congress." In Carter v. Carter Coal Company, 298 U.S. 238, 56 S.Ct. 855 (1936), the challenged act involved delegation of legislative power to private coal producer boards to control the coal industry through codes similar to those mentioned in Schechter. The Court was particularly offended at the attempt to delegate legislative power to a private group and likewise found the legislation unconstitutional. Thus, the rule of the cases demonstrates that, in order for Congress to delegate discretionary power to any entity, the legislation permitting such must set forth a Congressional purpose and policy, a standard for action in conformity with that policy, and guidelines for rules, procedures, finding of fact by the delegate, and administrative procedures which afford due process of law. The delegate of legislative power simply has authority to act pursuant to the authority of the statute and "fill in the details" by following Congressional intent.

In 1907, a money panic occurred which many have concluded was caused by deliberate international gold shipments which affected bank reserves. As a result of the damage caused by this panic, the people of our nation and various politicians agitated for monetary reform. Paul Warburg, a German who immigrated to our country in 1902 and who was an officer of the banking firm of Kuhn Loeb and Company, thereafter proposed a great central bank in the European tradition. Congress established a monetary commission to study this proposal, and the multitude of reports so made can now be found in the Senate and House Documents and Reports of that period. In 1909, the 16th Amendment to the U.S. Constitution, the income tax amendment, was proposed and it was eventually, allegedly, ratified in February, 1913. The income tax is a condition precedent for any fiat currency system. Between 1909 and 1913, the proposed central bank plan began to take shape; finally, the Federal Reserve Act was refined enough to secure its passage and enactment on December 23, 1913. [8]

The Federal Reserve Act as promoted to the American public by its proponents gave the outward appearance that the "Money Trust" was being destroyed and was being replaced by a governmental agency which would operate for the benefit of the public. It was necessary that the American people be defrauded and deceived because the Act did not dethrone the "Money Trust" but in fact granted to that Trust thereto fore vast and unknown powers. As noted at the beginning of this brief, private groups have always desired to have the power to provide currency to a nation and this act in fact gave the Juilliard powers of Congress to a private, powerful, financial group. The Act [9] established 12 privately owned Federal Reserve Banks, the stock in which was to be, and is now, owned by member banks which are likewise privately owned. These 12 private, regional central

banks comprised the whole system known as the Federal Reserve System. The only public attribute of this system arose from the fact that the System was to be controlled by a 12 man Board of Governors, 7 of whom were to be appointed by the President. Without question, the System as constructed in this legislation, and now, is totally private, having only some titular "public" heads. The financial powers that sought and obtained this legislation desired a complete privately owned system with enough public facade to render a deceptive appearance. Not only does the legislation disclose the private nature of this System, the federal courts of our nation have now recognized this fact; see Lewis v. United States, 680 F.2d 1239 (9th Cir. 1982). [10]

The original act establishing the Federal Reserve System authorized the issuance of Federal Reserve Notes which were to be redeemed in "lawful money of the United States;" see 12 U.S.C. 411. Prior to its repeal in 1994, 12 U.S.C. 152 defined "lawful money" to be gold and silver coin, and therefore the act called for specie redemption of such notes. The fact that such notes were also deemed "obligations" of the United States conclusively shows that the Juilliard powers of Congress were conveyed to the System, since such powers were ostensibly derived from the Congressional power to "borrow money."

Since the Federal Reserve Act conveyed to a private banking cartel a very substantial Congressional power, the question naturally arises as to whether this legislation is constitutional on this basis. It is unnecessary to consider the infinite, numerous transactions of the System such as its open market operations, discount operations and flagrant, abusive, tortious manipulations of the reserve requirement ratio. Since the only crucial link to the Juilliard powers of Congress consists of the fact that Federal Reserve Notes are U.S. obligations, analysis can be limited to this one aspect. Here, Congress in the Act established no discernible policy or purpose insofar as the issuance of such obligations is concerned; there is no standard by which action taken pursuant to such nonexistent policy can be controlled; there are no rules, regulations or procedures to be followed concerning the issuance of these obligations; there are no requirement for finding of facts in reference to issuance of these obligations; and certainly there are no administrative procedures such as public hearings and opportunity to be heard. It appears that the conveyance of Congressional Juilliard powers to these banks was an outright gift to a very powerful, self interested financial group, subject to no control or restraint by Congress. The Federal Reserve System was given unbridled power to expand or contract the number and amount of outstanding federal "bills of credit." This legislation is unconstitutional for this reason.

It is "fortunate" that the Federal Reserve System was in place just in time for World War I. The System was successful in creating instantly all the additional credit needed to finance that great conflict. Federal bonds were sold to the System in exchange for credit extended to the government for the bonds. Further, these bonds became the basis upon which Federal Reserve Notes were issued. As the war progressed, the paper currency and credit supply greatly expanded and this directly caused inflation.

With the successful conclusion of the War, the monetary powers in control of the Federal Reserve System schemed a deliberate, premeditated, intentional contraction of the currency supply. The new Federal Reserve System had demonstrated its currency expansion abilities and it was now time to test its contraction capabilities. On May 18, 1920, a secret meeting of the Federal Reserve Board devised a criminal plan to severely damage the commerce of our nation, particularly the agriculture industry. During this meeting, plans were made which were shortly thereafter implemented to raise severely the discount rate and reserve requirement ratio. The results were predictable and agriculture and its support industries received a severe financial blow, all for the purpose of reducing prices. Much financial ruin was caused and those who were damaged were without fault. Nonetheless, the System proved efficient at currency contraction, thus laying the groundwork for the Great Depression. [11]

After this criminal and vicious currency contraction experiment, the System engaged in a general inflationary policy, which created the "roaring twenties." By 1926, 1927, and 1928, newspapers, bank officials, stockbrokers, and even the President and state governors commented on the "good" times and encouraged everyone to enter the stock market because "prosperity was now here." However, sometime in the spring or summer of 1929, plans similar to those devised on May 18, 1920, must have been made, and these plans were obviously made operational before October, 1929. On October 29, 1929, the speculative bubble caused by the inflationary policy of the "Fed" was burst and the Great Depression was ushered into our nation. Fortunes are made not only by inflationary currency policies but contractionary policies as well. The trick is to know when they will occur; those who knew made fortunes during the Depression, compliments of the System created by Congress.

While the Great Depression was caused by improvident currency and credit contraction, the Federal Reserve System still at that time possessed the same amount, if not more, ability to create credit. In fact, its credit creating potential is endless. The System assuredly withdrew credit from the private sector of our economy to cause the Depression, but its credit creating potential did not remain idle. Between the collapse in October, 1929, and June 1, 1933, the Federal Reserve Banks of our nation used their credit capacity to purchase federal bonds payable in gold. By

June 1, 1933, the entire System held virtually all of the United States gold bonds which were to mature between June 1, 1933, and January 1, 1934. This ownership of these bonds put the Federal Reserve Banks in a position to dictate the fate of the nation to Congress, and these Banks exercised that power.

PERIOD III: THE WAR ON SPECIE
1933 TO 1968

Franklin Roosevelt was inaugurated on March 4, 1933, at a very troubling time in the Depression. On March 6, 1933, Roosevelt declared a banking holiday and closed the doors of the nation's banks; Roosevelt's authority to do such was based upon the expired World War I Trading With the Enemy Act, 40 Stat. 411, which authorized the President to prevent hoarding of gold, but which had expired at the termination of that War. Some of the banks closed as a result of Roosevelt's proclamation never reopened, to the damage of their creditors, customer depositors.

Roosevelt also called an extra session of Congress for March 9, 1933. When the House convened, the 1933 Emergency Banking Act was passed immediately with no copy of the proposed legislation provided to any House member and with only 40 minutes debate. Never before or since was a piece of legislation "railroaded" as this one was. A similar railroad occurred in the Senate, and at the end of the day, Roosevelt's after the fact legislative approval of his actions which closed the banks became law. In addition to this benefit, the new law enabled the Secretary of the Treasury to acquire possession of all gold in the United States. With the new powers conferred upon him, Roosevelt extended the bank holiday, and on March 10, 1933, issued another Executive Order the objective of which was to divest Americans of their right to possess gold. Thus commenced a war upon gold initiated by an American President.

By June 1, 1933, a Congressional Joint Resolution, number 192, was proposed to make it against public policy to pay any obligation in gold. It was during the debate on this resolution that the fact was made known that the Federal Reserve Banks possessed virtually all the federal gold clause bonds to mature within the next 6 months. [12] This resolution was enacted on June 5, 1933, and notwithstanding the fact that it was only a joint resolution, it was accorded the force of law. On August 28, 1933, Roosevelt issued another Executive Order which required information returns for gold ownership and prohibited possession of gold except by license. Failure to file the required returns and possession of gold without license were made criminal offenses. All the fervent work by Roosevelt to outlaw gold and make the federal government the biggest "hoarder" of gold put American currency on the light, inconvertible currency standard. Such a standard was deemed "modern" like the architecture of the 1930's and the "boat tail" Duesenbergs, Auburns, and Cords. [13] The final piece of legislation secured by Roosevelt in his war upon gold ownership by American citizens was the Gold Reserve Act of January 30, 1934, 48 Stat. 337. In the tradition used to obtain the Emergency Banking Act of 1933, this legislation was likewise railroaded through Congress. Throughout this period, Roosevelt and Congress used an alleged "national emergency" as the predicate for the hasty legislation and orders so issued.

As a direct and proximate result of the far reaching changes made in monetary law in 1933 and 1934, litigation on these points arose. The 3 major Supreme Court decisions made as a consequence were Norman v. Baltimore and O. R. Co., 294 U.S. 240, 55 S.Ct. 407 (1935), Nortz v. United States, 294 U.S. 317, 55 S.Ct. 428 (1935), and Perry v. United States, 294 U.S. 330, 55 S.Ct. 432 (1935). Norman, supra, dealt with a railroad bond payable in gold coin; Norman sought payment of $38.10 on a bond payable in the amount of $22.50, his basis for asking for more arising from the change made in the statutory gold dollar. Seeing the inherent justice in denying relief to a person seeking more than he was entitled, the Supreme Court in Norman denied the relief sought. In Nortz, a plaintiff seeking similar relief got similar judgment as Norman. Nortz had $106,300 in gold certificates and was forced to exchange the same for inconvertible currency of the light standard. Based upon a higher market value of gold than legal value of the same, Nortz instituted suit to recover $64,334.07, the alleged difference between the market price of gold and the legal price. The Court denied his request for unjust enrichment. In Perry, the issue concerned a federal gold bond and the method of its payment in light of the June 5, 1933, Joint Resolution. Although the Court in Perry held the Joint Resolution to be unconstitutional insofar as it applied to federal bonds, it ultimately determined that Perry had neither alleged nor proven any damage in his breach of contract action and was therefore not entitled to any. In this trilogy of cases, all parties were seeking a gain or benefit as a result of the monetary changes caused by the President and Congress. The Joint Resolution of June 5, 1933, has no significance today because it has been effectively repealed; see 91 Stat. 1229. See Fay Corp. v. Frederick & Nelson Seattle, Inc., 896 F.2d 1227 (9th Cir. 1990), for explanation of the ending of HJR 192's application in 1977.

Since the monetary changes of the 1930's, the federal government has unilaterally ceased fulfilling its monetary responsibilities required by the Constitution (its Marigold duties) and has allowed the function of providing currency to the nation to be assumed by the Federal Reserve System. The minting of dollars of silver ceased in the 1930's, and the gold reserves so violently taken from the American people were used to support greater and greater quantities of notes as the

gold reserve requirement was lowered over a span of many years.

The vacuum created by Congressional nonfeasance, or malfeasance, insofar as the currency system is concerned, enabled the Federal Reserve System to play a greater and greater role in providing currency. This favorable environment followed directly as a result of this System demonstrating its ability to bankrupt the federal government by the gold bonds it held immediately prior to June 5, 1933. The open question is whether the Federal Reserve System did in fact obtain the gold required to pay the gold bonds the System held at that time. A possible answer to this question appears to lie in the fact that the Federal Reserve Bank of New York has many tons of gold in its possession beneath the streets of New York City and the further fact that the Federal Reserve Banks claim a lien upon or title to all gold possessed by the government.

Since the debacle of the 1930's, the "Fed" has provided monumental amounts of credit to the Federal government to finance World War II, the Korean War, and the vast increase in social programs enacted by Congress. The increasing quantities of credit provided to the federal government has enabled it to acquire more and more control over the G.N.P. of our nation. On the day President Kennedy was buried, the first irredeemable Federal Reserve Notes were shipped from the U.S. Treasury. Shortly thereafter, the Treasury consulted Merrill Jenkins, a nationally renown expert on vending machines, to determine how "slugs" could be used to operate vending machines; Jenkins suggested a "sandwiched" coin. Thereafter, President Johnson used the media to promote the idea of a silver shortage, and soon clad coins came into circulation pursuant to the Coinage Act of 1965, 79 Stat. 254.

Once debased clads had been provided to the nation by the Treasury, the one remaining step necessary to put the nation itself on the "fiat" standard was to prevent redemption of circulating notes with silver. This came in 1967 with the Silver Certificate Act, 81 Stat. 77, which provided that redemption of silver certificates would end on June 24, 1968. On June 25, 1968, the nation was placed on a completely fiat monetary standard; since then, the nation has been floating upon a "vast sea" of paper money and credit.

PERIOD IV: FIAT LAW EQUALS FIAT CURRENCY 1968 TO THE PRESENT

The Viet Nam war, or, properly, U.N. peacekeeping action, was financed with Federal Reserve credit; that war began for our society the "endless war for endless peace" proposition of Orwell's 1984. Since then, endless new wars labeled social programs have increased in the federal government's unveiled attempt to reduce the entire U.S. economy to its control. Such a blatant grab for power by the federal government could not have occurred with a constitutional monetary system.

The silver dollar, the "dollar of our daddies," was killed prior to this period. It was replaced by "bastard" sons and daughters such as the Eisenhower dollar and "Susan B. Agony," which were utterly repugnant to the coins intended by the framers of our Constitution.

President Nixon closed the "gold window" in 1971 to prevent foreign redemption of our paper currency with gold. But this did not result in damage to those international holders of currency because the federal government provided compensation via a vast foreign aid program.

Since 1968, federal budget deficits have vastly increased; the difference between federal revenues and federal expenditures has been provided, in the majority, by new credit created by the "Fed." This apparently alarming development has spawned state efforts to amend the Constitution to provide for a balanced budget. The proponents of a balanced budget apparently lack understanding of the precise social role played by budget deficits; if these advocates are successful in their endeavor, the end of life as we know it here in the United States will surely come to an end.

The scientific art of creating booms or depressions for our economy has been fully developed by the "Fed." This organization can now totally control the U.S. economy, and this ability allows it to totally control any particular industry. The past few years have clearly shown the ability of the "Fed" to attack any industry, be it the automotive, oil, or transportation, and bring that industry into its control. The current industry under concerted attack by the creditor creators is agriculture.

Of particular significance presently is the war of the "Fed" against its own kind, private commercial banks. The Fed desires to bring all banks directly under its control and to create out of some 14,000 independent banks a few large industry giants. The fewer the number of banks, the greater the control by the "Fed." A deposit made into a bank in heartland America can quickly result in credit extended to Red China.

There are many other detrimental effects to be noted as a result of the banishment of specie as the only component of our monetary system and its replacement by fiat currency, but such would serve no purpose here. It only needs to be noted that specie coin is "free man's" money; it is unpolitical and a circulating currency of specie coin cannot result in any governmentally imposed favoritism or benefit to debtors at the expense of creditors. Fiat currency, however, is political money and can be used to favor one group against another or to destroy any group, including an independent sovereign state.

THE IMPOLICY OF THE PRESENT CURRENCY SYSTEM

The U.S. Constitution was adopted, as stated in its preamble, to insure justice and promote domestic

tranquility and comparison of Congressional legislation and programs with such standards is beneficial notwithstanding the fact that the preamble's ideals have no legal import. If an act or program established by Congress conforms with these ideals, the merit of the same becomes readily apparent. However, if any act or program is calculated to promote injustice or is disruptive of popular tranquility, serious attention should be undertaken to neutralize these negative effects. The question of concern here is whether the present currency system of the United States promotes or denies justice and domestic tranquility.

Any analysis of the current monetary system must, of necessity, begin with an examination of the instruments of this system, which consist of the "clad" coin, Federal Reserve Note and demand deposit. It is through these instruments, this media of exchange, that the commerce of this nation is consummated. The apparent infirmity of all these instruments arises from the fact that each is virtually worthless and cannot by any stretch of the imagination be considered a standard of value. The cost to produce a "clad" coin is reputed to be less than 10% of the face value. The penny is made of zinc with a copper coating for purposes of deception; being some of the most common elements of the earth, they have relatively little value. The "higher" coins are likewise made of the cheap, plentiful elements of copper and nickel. In reference to the Federal Reserve Note, the cost to print the same is alleged to be $25.00 per 1000 bills, regardless of denomination. The substance of that note is paper, made of extremely plentiful wood. The only redeeming quality of that note consists of its fancy engraving, at least in comparison with other notes of the world. Notes used in other nations such as England and Saudi Arabia have a "comic book" or bathroom tissue quality or appearance. [14] While clads and notes have an actual existence, the same cannot be stated in reference to that "instrument" which plays the major role in our currency system, the demand deposit. The demand deposit does not exist in reality, it having no physical form. Such a deposit cannot be brought to court and placed into evidence. A demand deposit is nothing more than a chose in action; it is nothing more than a claim against a financial institution such as a private commercial bank. It exists, if at all possible, only as an electronic "glitch" in the memory of the computer terminals of the banks of our nation. While the quantity of clad coins and paper notes in circulation is somewhat limited by resources and production, the total amount of demand deposits which can be produced is virtually endless.

The defect of our present currency system insofar as the instruments thereof is concerned, consists of the total lack of any quality or value. Barter is the system of exchange whereby property is directly exchanged for other and different property. No one can be damaged by barter. Specie coin is an improvement of barter exchange; here exchange occurs via a common form of property, gold or silver, and property and wealth are exchanged for property and wealth. Trade and commerce achieved through the use of specie coin is similar to barter and nobody gets damaged thereby. However, to prostitute the specie coin exchange by replacing it with something of worthless value results in wealth and property being exchanged for nothing of value. This is nothing more nor less than theft. Our nation is nothing more than a society of thieves and we steal each other's wealth, property and labor with something that is inherently worthless.

However, while citizens of this nation unknowingly steal one from another, the creators of these monetary instruments are the greatest of thieves. The Federal Reserve Banks and all the private commercial banks of this nation are the creators of Federal Reserve Notes and bank demand deposits. These institutions obtain whatever real resources, wealth and labor they need or desire merely by printing on paper and issuing credit. These institutions truly acquire everything they need or desire, such as bank buildings, employee labor, farmlands or factories, for nothing but the cost of printing.

Another serious defect of our currency system consists of the fact that the supply of this purported currency can be manipulated at will by the Federal Reserve System. By purchasing government bonds, the Federal Open Market Committee can expand the credit supply; by selling bonds, it can contract that supply. By the Federal Reserve Board decreasing bank reserve requirements, private banks can increase deposits; the inverse works for an increase in the reserve requirement ratio. The American people have absolutely no control over the volume of currency and credit in circulation. When the currency supply is deliberately and intentionally decreased by this manipulation, innocent victims are created who cannot repay loans; this results in loss of property through foreclosure.

Perhaps the most reprehensible feature of our currency system arises from the fact that this currency originates by being loaned into circulation. An apt example of this process is a fictional card game. Assume the existence of 4 card players who borrow their playing cards from another person. The players execute and deliver notes promising to repay 13 cards plus 1 in the way of interest in exchange for 13 cards with which to play. This process put into circulation among the players the total sum of 52 cards. However, the aggregate liabilities of all the players is 56 cards, thus it is impossible for all players to extinguish the debt to the card owner. By loaning the cards into circulation, greater liabilities were created than there were cards in circulation. The card owner creditor will surely acquire the collateral of the players through foreclosure.

Our currency originates in the same identical fashion: it is loaned into circulation. Thus, our debt

based currency system has created greater liabilities among us than there is currency and credit in circulation. The world is full of demonstrations of this principle. Mexico has borrowed and put into circulation a great amount of currency and credit. However, notwithstanding the fact that the loan proceeds are put into circulation, if Mexico taxes that currency out of circulation to repay the loan, it will only recover the principal amount of the loan. The currency to pay interest never has an existence. Here in the United States, the aggregate liabilities of our economy exceed all of the circulating currency and credit. We will forever be in debt bondage so long as we continue to maintain the present currency system.

In reference to the problem of the federal deficit, it must be noted that it plays a vital social role. Since our medium of exchange is loaned or borrowed into circulation, only the aggregate principal of all loans is in circulation. The currency to pay the interest does not exist. To provide the means to pay the annual interest charges the economy of our nation accrues, the federal government via its budget deficits supplies new currency to the economy so that 85% to 90% of the interest can be paid. So long as currency originates via the loaning mechanism, some part of society must bear the burden of providing the currency to pay interest, and this role is being played by the budget deficit. If the federal government is prevented by law from playing this crucial social role, then the private sector will have to assume that duty. It will take just a short time to mortgage all of the assets of America if this should occur. Then, the credit creators will shut down the American economy and foreclose on all of America.

The above are the principle defects of our currency system. This system is not designed to insure justice and promote domestic tranquility. It is designed for the exact opposite. This system is not just unconstitutional, it is anti constitutional. The last refuge of the American people from sure and swift destruction at the hands of this monetary system is through the judiciary of our nation. And a little known and totally unused law is ready and waiting to be used for this purpose. That law is embodied in the "Supreme Law of the Land;" it is found in Article 1, § 10, cl. 1 of the U.S. Constitution.

SUMMARY AND CONCLUSION

John Adams once made a statement which aptly described the problems facing our nation: "All the perplexities, confusion and distress in America arise not from defects in our Constitution; not from want of honor or virtue, so much as from downright ignorance of the nature of coin, credit and circulation."

For a brief period in our Constitutional history, the judiciary of our nation understood the true nature of coin, credit and circulation. But when such knowledge became uncommon or forgotten, errors discernible only through history were repeated, the consequences of which we are now suffering.

The common law, that ancient river of habit and custom of the English peoples flowing backward into time, dealt decisively with the topic of money. At common law, money was only gold and silver coin; the minting of gold and silver was performed by the King according to the ancient standard coin of the realm. There was no authority granted by the people empowering the King with the prerogative to debase coin. But, as history has plainly shown, monarchs and other forms of government have frequently tended toward usurpation of power and abridgment of the rights of the people. Whenever this has occurred, it has been necessary for the people to actively reclaim their lost liberties.

Although the common law precepts, maxims, and principles of money applied to the early colonial governments of our nation, these governments considered themselves at liberty to violate the same. But, as the common law was nothing more than an embodiment of natural, universal law, the violation thereof by colonial paper money emissions resulted in punishment being administered by natural, universal law. Colonial paper money experiments, which spanned a century, caused economic tribulation for everyone involved.

Shortly prior to the Revolutionary War, the baneful consequences of paper money had surely been perceived, but not to the degree of severity to prohibit it altogether. It took the experience of the Revolutionary War to permanently imbed in the mind of Americans that paper money was an evil of the first order to be banished forever from our shores.

The paper money experiments of early America and the consequent disastrous results thereof were fresh in the minds of the framers of the Constitution when they met in Philadelphia in 1787. When they came to a consideration of the monetary system to be constructed by the Constitution, they determined that a uniform specie currency must be the money of America. To insure this uniformity, they empowered Congress with the right to coin money. While they did not choose to transfer the legal tender power of the States to the federal government, they did place the limitation of Article 1, § 10, clause 1 of the U.S. Constitution on that power and this limitation made only gold and silver coin the legal tender. Power to declare a legal tender, limited to gold and silver, was expressly left in the possession of the States.

The intent of the framers in this respect is perfectly clear. Every single written record of this period confirms the proposition that the Constitution absolutely commanded a specie currency and prohibited any governmentally sanctioned paper money. There exist no records of this period that would slightly indicate any contrary intent. During the first period in our constitutional history, the resounding voice of all three branches of government, state and

federal, repeated the position taken by the framers of the Constitution. All authorities uniformly agreed that the money of the Constitution was gold and silver coin, and this was so because of express provision. At that time, there was not a single voice that denied this principle, which was considered one of the highest principles of Constitutional law.

The advent of the Civil War brought the supreme test to government. Although doubting the lawfulness of such a measure, Congress authorized the emission of federal "bills of credit." After having done so, Congressional damage to constitutional principles had to withstand scrutiny by the judiciary of our nation. Some state courts voided the acts while others upheld them. Resolution of this issue thereafter could only come from the U.S. Supreme Court. When the Supreme Court finally spoke on this issue, it was through the voice of the very man who devised the legal tender acts in the first place. If there was any man in the country then who knew perfectly well both sides of this issue, it was Chief Justice Chase. Chase had personal reasons to uphold the validity of the acts, yet when he found the acts to be unconstitutional, he demonstrated himself to be a jurist of the highest order. There certainly was never a member of the Supreme Court who was thrust into this position, and there may never again be a similar situation. Chase occupies a special place in the history of American jurisprudence.

While the Hepburn decision followed the common law and all previous case law in America, political intrigue entered the picture for the purpose of a direct assault upon the United States Constitution. The success of this endeavor resulted in new members on the Supreme Court, and one of these new members then wrote the opinion in Knox, which expressly overruled Hepburn. Knox set a precedent in ways other than the issue of money; it started the trend away from the proposition that the federal government is one of limited powers. If Knox rationale in reference to construction of Congressional constitutional powers is followed, then every questionable exercise of power by the federal government can and will be justified similarly, with the proximate result being tyranny by the federal government. What the Supreme Court did in Knox was to amend the U.S. Constitution without complying with Article V.

The subsequent legal tender case of Juilliard not only refined Knox, but it placed a limit on its rationale. The scope of the legal tender power does not abridge the powers and constitutional restraints on the States as that case demonstrated. And this maxim is clearly shown when Juilliard is compared with the decisions in Lane County and Hagar. The net result is that the Legal Tender Cases have not impinged upon or transgressed any part of the constraint upon the States as enumerated in Article 1, § 10.

If a crime against the law and mankind has ever occurred, then it was surely a crime that Congress committed when it established in 1913 the Federal Reserve System. This act created 12 privately owned banks of issue, which were unified into one system and then given a public facade for appearance sake. For no consideration and without any restraints being placed upon the grant, Congress empowered these banks to issue notes which were deemed to be obligations of the federal government.

After creation, these banks assumed quickly a prominent position in the financial affairs of this nation which they have ever since held. Their power was adversely exercised in 1920 and 1921 and the result was a depression in agriculture. Thereafter, these banks created a boom which ended in the worst economic calamity known to modern man, the Great Depression.

During the Depression, these banks readied a war against the federal government. Gold and silver coins have always been and always will be the enemy of paper money. The friends of paper money during this dark era in our history made certain that gold would never again offend them; the embarrassing predicament in which they placed the federal government was sufficient to cause the federal government to take an action unprecedented in the annals of the history of money. This action was the bold move to divest all gold from the possession of the American citizens and to forever lock it up in the vaults of Fort Knox. All of this occurred during a "national emergency," and this emergency was the predicate for the actions taken.

The knowledge and experience gained by the central bankers in the 30's was put to use in the 60's when a very silent war against silver was conducted, which resulted in the obliteration of all connections between this precious metal and our currency. While the attention of the American public was focused upon the preparations for sending men to the moon, one of the deadliest social diseases ever known to man, fiat money, was introduced to our nation.

Today, the currency system in our country is totally privately owned and controlled; it is manipulated at will and is specifically designed to conquer financially the American people. The chief bank note which this system issues is totally irredeemable. These notes, in addition to credit claims against the Federal Reserve Banks, constitute the reserves upon which the nation's private banks issue a multiple of demand deposits, which are likewise irredeemable. The issue of all these private banks is plainly unconstitutional. And this entire system has been imposed upon the American people with irresistible force and power. Is our entire currency system as unconstitutional as the Confederate currency system described in Thorington?

Since the advent of the fiat paper money, our nation has suffered from the identical ills which the framers of the Constitution endured. Inflation is endemic, taxes are constantly rising, crime is rampant, Americans are unemployed, and that great institution,

the American family, is about to disintegrate. These are always the direct social consequences whenever any nation has permitted its currency to be debauched and replaced with paper, as history has clearly shown.

Neither the national executive or legislative branches display any inclination to remedy this severe social problem. Further, state governors and legislators are afflicted with a lack of knowledge of the true nature of coin, credit and circulation and are thus impotent to offer redress. However, the judiciary of our nation does offer hope and has a ready remedy: it can implement and revitalize the perfect solution found in Article 1, § 10, clause 1 of the U.S. Constitution.

END NOTES:

[1] For a more definitive treatment of this subject and period of time, reference is made to "The Gold Clause Cases in the Light of History," 23 Georgetown Law Journal 359 (1935), and Edwin Vieira's fine work, Pieces of Eight, The Monetary Powers and Disabilities of the United States Constitution.

[2] See George Bancroft's excellent treatment in A Plea for the Constitution, Wounded in the House of Its Guardians.

[3] Further discussions of the disastrous and ruinous effects of bills of credit can be found in Craig v. Missouri, supra, and Townsend v. Townsend, 7 Tenn. 1 (1821), among many others.

[4] See Vieira's Pieces of Eight.

[5] 30 Journals of the Continental Congress 162.

[6] 2 Debates and Proceedings in the Congress of the United States, Appendix at 2059.

[7] See Vieira's Pieces of Eight.

[8] The corrupt struggle involved in securing this certainly unconstitutional piece of legislation is definitively stated in Eustace Mullin's authoritative work, The Secrets of the Federal Reserve.

[9] 38 Stat. 251.

[10] See also Comm. for Monetary Reform v. Board of Governors of the F.R.S., 766 F.2d 538, 539 (D.C. Cir. 1985)(Federal Reserve Banks are private); and South Central Iowa P.C.A. v. Scanlan, 380 N.W.2d 699, 703 (Iowa 1986)(production credit associations are private).

[11] The story of this criminal meeting of May 18, 1920, is spread upon the pages of the Congressional Record of February 23, 1923, pages 4362 through 4369.

[12] See Congressional Record, June 1, 1933, page 4899.

[13] For a more definitive analysis of this period, see Henry Mark Holzer's law review article entitled "How Americans Lost Their Right To Own Gold - And Became Criminals in the Process," 39 Brooklyn Law Review 517 (1973).

[14] No slander of the American Banknote Company intended.

HOW BANKS OPERATE

It is well recognized by banking textbooks and experts that banks engage in a practice known as "deposit creation," which in essence is simply the creation of credit by bookkeeping entry. As the Federal Reserve Bank of Chicago has so aptly stated in its publication, Modern Money Mechanics:

"The actual process of money creation takes place in the banks. As noted earlier, checkable liabilities of banks are money. These liabilities are customers' accounts. They increase when the customers deposit currency and checks and when the proceeds of loans made by the banks are credited to borrowers' accounts.

"In the absence of legal reserve requirements, banks can build up deposits by increasing loans and investments so long as they keep enough currency on hand to redeem whatever amounts the holders of deposits want to convert into currency."

Thus, banks simply extend credit when loans are made. The "currency" for which these and all others loans in America can be redeemed is known as the Federal Reserve Note ("FRN").

The reserves held by Federal Reserve Banks have been admitted by the government in its work titled A Primer on Money to be "backed" by nothing:

"Today, the American people use coins, currency (paper money), and commercial bank demand deposits (checkbook money)," Id., at 17.

"The private commercial banks issue 'checkbook money.' * * *

"Imagine there is only one bank in the country and that it has two private depositors, each with $50 in his checking account. Total bank demand deposits would then be $100. Suppose John Jones asked for a $50 loan from the bank, and the bank approved the loan. The bank would then lend the money to Mr. Jones by simply opening a checking account for him and depositing $50 in it. This is what ordinarily happens when anyone-- business or private individual-- borrows from a bank. The bank deposits the amount of the loan in the relevant checking account.

"In making the loan to Mr. Jones, the bank did not reduce anyone's previous bank balance. It simply credited the Jones account with $50. The total amount held in bank demand deposits now becomes $150. The bank has, therefore, issued $50 in 'checkbook money.'

"The natural question to ask is, Where does the bank get the additional $50 to issue and lend to Mr. Jones? The answer, as will become clear in the next chapter, is that the bank did not 'get' the money at all. Money has been created," Id. at 19-20.

"All money used in this country and in most countries of the world is of two types. One is 'printing press money,' which is money printed by the Government. The other type of money in use is 'pen-and-ink money.' Pen-and-ink money is created by the private commercial banks each time a bank makes a loan, buys a U.S. Government security, or buys any other asset. Printing press money is engraved on special paper and with special inks; and it costs about eight one-thousandths of 1 cent per bill, whether a $1 bill or a $10,000 bill. Pen-and-ink money is created by a private banker simply by making ink marks on

the books of the bank. However, in recent years many of the banks have installed electronic office machines which make the entries in the banks' books; so someday we may come to refer to bank-created money as 'office machine money' or perhaps 'Univac money,'" Id., at 48-49.

"In the first place, one of the major functions of the private commercial banks is to create money. A large portion of bank profits come from the fact that the banks do create money. And, as we have pointed out, banks create money without cost to themselves, in the process of lending or investing in securities such as Government bonds. Bank profits come from interest on the money lent and invested, while the cost of creating money is negligible. (Banks do incur costs, of course, from bookkeeping to loan officers' salaries.) The power to create money has been delegated, or loaned, by Congress to the private banks for their free use. There is no charge," Id., at 89.

"Since I had also seen reports that the member banks of the Federal Reserve System had a certain number of millions of dollars in 'cash reserves' on deposit with the Federal Reserve bank, I then asked if I might be allowed to see these cash reserves. This time my question was met with some looks of surprise; the bank officials then patiently explained to me that there were no cash reserves. The cash, in truth, does not exist and never has existed. What are called cash reserves are simply bookkeeping credits entered into the ledgers of the Federal Reserve banks. These credits are first created by the Federal Reserve and then passed along through the banking system.

"On another occasion, in the spring of 1960, I paid a visit to the Federal Reserve Bank of Richmond, along with several other Members of Congress, and in the course of the visit asked the President of that bank if I could see the cash reserves which the member banks had on deposit with that bank. Here the answer was in substance the same. There is no cash in the so-called cash reserves. In other words, the cash making up the banks' 'cash reserves' with the Federal Reserve bank is just a myth," Id., at 38.

Mr. Russell Munk, an official employed at the United States Treasury Department, has declared that common banking practices today involve mere extensions of credit via loans:

"If the money supply is to be increased, money must be created. The Federal Reserve Board (or 'the Fed' as it is often called) has several ways of allowing money to be created, but the actual creation of money always involves the extension of credit by private commercial banks."

"In both the goldsmiths' practice and in modern banking, new money is created by offering loans to customers. A private commercial bank which has just received extra reserves from the Fed (by borrowing reserves for example) can make roughly six dollars in loans for every one dollar in reserves it obtains from the Fed. How does it get six dollars from one dollar? It simply makes book entries for its loan customers saying 'you have a deposit of six dollars with us."

But banks are prohibited by law from loaning their credit; see Citizens' Nat. Bank of Cameron v. Good Roads Gravel Co., 236 S.W. 153, 161 (Texas App. 1922); National Bank of Commerce of Kansas City v. Atkinson, 55 F. 465, 471 (D.Kan. 1893); Bowen v. Needles Nat. Bank, 94 F. 925, 927 (9th Cir. 1899); Merchants' Bank of Valdosta v. Baird, 160 F. 642, 645 (8th Cir. 1908); First Nat. Bank of Tallapoosa v. Monroe, 69 S.E. 1123, 1124 (Ga. 1911); American Express Co. v. Citizens' State Bank, 194 N.W. 427, 429 (Wis. 1923); Howard & Foster Co. v. Citizens' Nat. Bank of Union, 130 S.E. 758, 759 (S.C. 1925); Farmers' & Miners' Bank v. Bluefield Nat. Bank, 11 F.2d 83, 85 (4th Cir. 1926); Best v. State Bank of Bruce, 221 N.W. 379, 380 (Wis. 1928); Norton Grocery Co. v. People's Nat. Bank of Abingdon, 144 S.E. 501, 503 (Va.App. 1928); Federal Intermediate Credit Bank v. L'Herisson, 33 F.2d 841 (8th Cir. 1929); First Nat. Bank of Amarillo v. Slaton Ind. School Dist., 58 S.W.2d 870, 875 (Texas App. 1933); and Ferguson v. Five Points National Bank of Miami, 187 So.2d 45, 47 (Fla. App. 1966).

A WARNING!

Starting in the seventies, a variety of pro se litigants decided to raise the money issue and none were successful. I have read lots of briefs drafted by such parties and the least critical comment that can be made is that they lacked scholarship and readability. Those cases are the following:

ADVERSE FEDERAL DECISIONS ON MONEY ISSUE:

1. United States v. Daly, 481 F.2d 28 (8th Cir. 1973).
2. Milam v. United States, 524 F.2d 629 (9th Cir. 1974).
3. Koll v. Wayzata State Bank, 397 F.2d 124 (8th Cir. 1968).
4. United States v. Gardiner, 531 F.2d 953 (9th Cir. 1976).
5. United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976).
6. United States v. Kelley, 539 F.2d 1199 (9th Cir. 1976).
7. United States v. Schmitz, 542 F.2d 782 (9th Cir. 1976).
8. United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976).
9. Mathes v. Commissioner, 576 F.2d 70 (5th Cir. 1978).
10. United States v. Rifen, 577 F.2d 1111 (8th Cir. 1978).
11. United States v. Anderson, 584 F.2d 369 (10th Cir. 1978).
12. United States v. Benson, 592 F.2d 257 (5th Cir. 1979).
13. Nyhus v. Commissioner, 594 F.2d 1213 (8th Cir. 1979).
14. United States v. Moon, 616 F.2d 1043 (8th Cir. 1980).
15. United States v. Rickman, 638 F.2d 182 (10th Cir. 1980).
16. Birkenstock v. Commissioner, 646 F.2d 1185 (7th Cir. 1981).
17. United States v. Scott, 521 F.2d 1188 (9th Cir. 1975).
18. United States v. Hurd, 549 F.2d 118 (9th Cir. 1977).
19. United States v. Hori, 470 F.Supp. 1209 (C.D.Cal. 1979).
20. United States v. Tissi, 601 F.2d 372 (8th Cir. 1979).
21. United States v. Ware, 608 F.2d 400 (10th Cir. 1979).
22. Lary v. Commissioner, 842 F.2d 296 (11th Cir. 1988).

ADVERSE STATE DECISIONS ON MONEY ISSUE:

1. Chermack v. Bjornson, 302 Minn. 213, 223 N.W.2d 659 (1974).
2. Radue v. Zanaty, 293 Ala. 585, 308 So.2d 242 (1975).

3. Allen v. Craig, 1 Kan.App.2d 301, 564 P.2d 552 (1977).
4. Dorgan v. Kouba, 274 N.W.2d 167 (N.D. 1978).
5. State v. Gasser, 306 N.W.2d 205 (N.D. 1981).
6. Epperly v. Alaska, 648 P.2d 609 (Ak.App. 1982).
7. People v. Lawrence, 124 Mich.App. 230, 333 N.W.2d 525 (Mich.App. 1983).
8. Leitch v. Oregon Dept. of Revenue, 519 P.2d 1045 (Or.App. 1974).
9. Rush v. Casco Bank & Trust Co., 348 A.2d 237 (Me. 1975).
10. Middlebrook v. Miss. State Tax Comm., 387 So.2d 726 (Miss. 1980).
11. Trohimovich v. Dir., Dept. of Labor & Industry, 21 Wash.App. 243, 584 P.2d 467 (1978).
12. Union State Bank v. Miller, 335 N.W.2d 807 (N.D. 1983).
13. Richardson v. Richardson, 332 N.W.2d 524 (Mich.App. 1983).
14. State v. Pina, 90 N.M. 181, 561 P.2d 43 (N.M. 1977).
15. Daniels v. Arkansas Power & Light Co., 601 S.W.2d 845 (Ark. 1980).
16. City of Colton v. Corbly, 323 N.W.2d 138 (S.D. 1982).
17. Cohn v. Tucson Elec. Power Co., 138 Ariz. 136, 673 P.2d 334 (1983).
18. First Nat. Bank of Black Hills v. Treadway, 339 N.W.2d 119 (S.D. 1983).
19. Herald v. State, 107 Idaho 640, 691 P.2d 1255 (1984).
20. Allnutt v. State, 59 Md.App. 694, 478 A.2d 321 (1984).
21. Spurgeon v. F.T.B., 160 Cal.App.3d 524, 206 Cal.Rptr. 636 (1984).
22. Rothaker v. Rockwall County Central Appraisal Dist., 703 S.W.2d 235 (Tex.App. 1985).
23. De Jong v. County of Chester, 98 Pa. Cmwlth. 85, 510 A.2d 902 (1986).
24. Baird v. County Assessors of Salt Lake & Utah Counties, 779 P.2d 676 (Utah 1989).

The only case which has ever been plead the best was Solyom v. Maryland-National Capital Park & Planning Comm., 452 A.2d 1283 (Md.App. 1982), and this is attributable to Dr. Edwin Vieira, the most knowledgeable attorney in America regarding the money issue. However, due to the adverse decisions then existing, Solyom was unable to prevail.

Pro ses do not need to raise this issue.

Larry Becraft
Huntsville, Alabama

[Federalist Economics 301]

[NOTES: This monograph is an excerpt from the author's book, "Downsizing Government" which was written to be an analytical expose of the entire federal government. Consulting and working largely from the United States Government Manual (the official publication of the federal government itemizing and explaining the operations of every tentacle of that government), the research accomplished several unique things. First, the notion of "federalism" was explained in detail, showing many tools available to those who seek to fundamentally shrink the size of the federal establishment. Secondly, very few people have ever actually studied the complexity of this federal system, and such an undertaking was completely required in order that proposals could actually be put forth. In short, it is difficult to say to "eliminate" some component of a government that people do not even know exists. Finally, the "acid test" of constitutionality is applied to each of these tentacles of government to expose clearly those elements thereof that are ripe for picking. This monograph consists only in the research resulting from Chapter 5 of that book – completely focused on the economic machinery of the Federal Reserve System, and related economic "regulatory" arms of both government and these government-chartered banks that control the "economy" of our united States. To clearly identify every component of this banking system is essential, as many are now calling for "investigations" or "complete audits" of this system. How could such an audit take place, unless someone knows what, and who, to actually audit? With that in mind, here is the breakdown of the federal banking system, how it operates, and who controls which elements thereof; along with recommendations as to what pieces of this machine could be structurally eliminated to benefit the people of this nation.]

Restructuring the Nation's Banking System According to the Terms of the Constitution

By Aaron Bolinger, Legislative Director, NVCCA

"All the perplexities, confusion and distress in America arise, not from defects of the Constitution or Confederation; not from any want of honor or virtue, as much as downright ignorance of the nature of coin, credit and circulation." [1]

[1] John Adams in a letter to Thomas Jefferson, 1797

INTRODUCTION

The above statement could be as appropriately attributed to today's situation as it was to our early days as a nation. Our people are not mentally deficient (which would be a terminal curse on society). Rather they are educationally challenged (to use a politically correct phrase) and largely programmed by government schools to have confidence in the “professionals” at or near government. Fortunately, ignorance of that sort can be cured, but I think it will take the best part of a generation, if we get started right away, and work hard at it.

It is impossible to make sound judgements regarding money without a thorough understanding of the principles thereof. The only ethical and honest money system available to mankind is embodied in the Constitution. However, because "constitutional economics" is not a course in most education systems today (nor even in advanced constitutional law courses in college for budding lawyers seeking minors in economics), ignorance about money abounds.

We have our share of scoundrels, yes; but there are quite an ample number of ethical, moral, and decent people with a genuine concern for their fellow man, who simply lack the training needed to recognize deficiencies where they exist. That is even true among many of those elected to serve America in government (although they should fully understand the Constitution before they take an oath to God to uphold it).

In the 1990's it was demonstrated that many members of Congress continually wrote checks from personal accounts in excess of monies available. This left a really bad taste in the mouths of constituents who realized (many for the first time) that the people they elected were hardly capable of managing the financial affairs of their own families, much less the financial affairs of the richest nation on earth. The double insult is that the monies in their accounts--that which they "earn" as `professional voters'--was put there by the taxpayers in the first place! Members of Congress are paid $200,000 (dollars of “what” will soon be discussed) to act as professional voters, under the strictly limited authority vested in them by the Constitution for the United States of America.

That the constitutionally and fiscally incompetent were/are administering the budget of the USA was (and still is) a complete horror show. Yet Congress is charged with oversight of the financial affairs of the nation.

That they have the power of the purse is not without sound reason. Congress, being the primarily elected branch of government (specifically the House of Representatives), is in the best position to both cater to public opinion, and remain beholden to the electorate. If Congress should approve of any measures that would incite the public in a bad way, they are to be held accountable at the next election by their public. That is why "Bills for raising revenue" (taxes) may only begin in the House of Representatives, and why the "power to coin money" is also left to Congress.

You see, the Constitution was not laid out in a manner where one could easily study the money, commerce and taxation powers of Congress separately. Those three powers were interwoven by the framers of the Constitution. And for very good reason! When any one of the three powers is applied incorrectly, the others feel the impact. Unsound money immediately jolts commerce. The inappropriate regulation of commerce instantly shakes the foundation of revenue into the Treasury (when jobs become exported to other nations, for example). And the overuse of internal taxes has the double impact of not only injuring commerce, but defeats the purpose of raising money for the Treasury in the first place.

The United States has not had an operating constitutional money system for years, hence commerce and revenue are hurting in America. Why? Because, as John Adams aptly stated some 200 years ago, there is a woeful lack of understanding on the part of the general public as to the very definition of money, and how a money system operates. Henry Ford, years ago, is said to have commented that, "If the American people knew the corruption in our money system there would be a revolution before morning."

What corruption? He was talking about a Federal Reserve System that was arguably less corrupt in his time than it is today. But regardless of overt acts of corruption practiced by the banks, what has not changed is the fact that the Federal Reserve System we have today is constitutionally impossible.

For one thing, Congress illegally delegated their monetary powers to "professionals." If that was the worst thing going on today, it could be corrected easily enough. But there are numerous other problems; and these problems are fertilized by professional `economists' beholden, not to true intellectualism itself (which would, if given equal air time, expose the fraudulent money system we have currently), but the very interests working counter to honest money. These problems include continuing practices of spending in excess of available revenue, "debt monetisation," interest bearing instruments of debt passing as money, and other certifiable indecencies.

Let's define "money."

The most commonly used modern definition, taught in most all schools today, would explain money as "a medium of exchange." That is a fairly accurate definition, if you consider all the possibilities worldwide. Indeed, seashells, beads, paper and gold could all constitute "money" depending to whom you are addressing.

What then is a “dollar?” Most would pull out the paper with George Washington's picture on it and say "I have one here." Certainly, the piece of paper you now hold does say "one dollar" at the bottom of it.

You'll notice that the top of that same piece of paper with George's face also describes the piece of paper as a "note." Now a note is not money in itself, but like any other "note" (more generally referred to as a "promissory note" in business and banking jargon), it is a promise to pay a certain amount of money on redemption. Can a "note" be simultaneously a "dollar?"

The word "dollar" is a unit of measure (like quart, pint, yard, mile, etc.). When you are told you will be paid 100 dollars for whatever services you render, a thinking person might then pose the question, "dollars of what?" Certainly, if your boss offered to pay you "100 quarts," you would immediately ask, "quarts of what?"

What is a "dollar?"

REAL MONEY

"...DOLLARS OR UNITS--each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver..." [2]

That is a dollar. The legal definition of a dollar was, and still is denominated in terms of grains of silver. We also have a second monetary unit in the United States. It is called the "eagle." You could therefore be paid in either "dollars" or "eagles," both equally "money." "Eagles" were made are convertible into "dollars," to wit:

"*...EAGLES--each to be of the value of ten dollars or units, and to contain two hundred and fourty-seven grains and four eighths of a grain of pure, or two hundred and seventy grains of standard gold...*" [3]

"The terms "lawful money" and "lawful money of the United States" shall be construed to mean gold and silver coin of the United States." [4]

Those are the legally accepted definitions of "dollar," "eagle," and "lawful money" as determined by the Congress of the United States. What is lawful money in the United States? Gold and silver coin. Do you remember that statement from your school teacher? I don't, and I graduated in 1980. Of course, the last vestige of silver had disappeared in the late 1960's. The important thing about all this is that the same money system enacted in April of 1792, is still in effect, though unoperating, today!

What we have then are two money systems--the duly constituted one consisting of gold and silver coin, and one operating in lieu of the duly constituted one, run by a banking corporation (they are not an arm of the federal govt.–they are a private company where the stockholders are unknown to the majority of Americans) known as the Federal Reserve. The later replaced the former unequivocally as a result of the public's complete misunderstanding of the principles of "coin and credit," as Adams put it. The former has been relegated to the status of "collectibles," and "memorabilia" by the "friends of paper money."

During the worst American crisis since the Revolution, and just following the passing of the National Banking Act of 1863, Abraham Lincoln's opinion of bankers was thus:

"*The money powers prey upon the nation in times of peace and conspire against it in time of adversity. It is more despotic than a monarchy, more insolent than autocracy, more selfish than bureaucracy. It denounces, as public enemies, all who question it's methods or throw light upon it's crimes. I have two great enemies, the Southern Army in front of me and the bankers in the rear. Of the two, the one at my rear is my greatest foe.*"

To those who have not studied the nature of coin and credit, the first question one might ask could be: "is it not better for economics professionals, like the Federal Reserve, to manage a money system for our nation?" Looking at an institution like Congress might lend more than ample credibility to such an axiom.

Historical evidence shows not. But: it would require an amendment to the Constitution to authorize it. Congress is commanded by the Constitution to:

"*...coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures.*" [5]

All that is in one sentence, because fixing the standards of the weight of the coinage is essential to the power to coin money in the first place. Roger Sherman noted:

"*If what is us'd as a medium of exchange is fluctuating in its value it is no better than unjust weights and measures, both which are condemn'd by the laws of God and man, and therefore the longest and most*

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[2] 1 Stat. 246, Coinage Act of April 2, 1792

[3] Id.

[4] 12 United States Code 152

[5] U.S. Constitution Article I, § 8, Clause 5

universal custom could never make the use of such a medium either lawful or reasonable." [6]

As we begin to examine how the Federal Reserve operates, it will become obvious that Congress has been allowing this institution to operate in many ways contrary to the principles of a sound economy. Indeed, we have a fluxuating medium of exchange that is neither lawful or reasonable – especially since all the arguments and condemnations of paper money are written down in black and white, both in the Constitution and in the history books of America. These admonitions against paper are everywhere in the legislative history and original intent documents that spell out the constitutional powers of Congress.

Even worse, it is a pure curse on our nation, thus sayeth the Bible; to wit,

"Thou shalt not have in thy bag divers weights, a great and a small. Thou shalt not have in thine house divers measures, a great and a small. But thou shalt have a perfect and just weight, a perfect and just measure shalt thou have: that the days be lengthened in the land which the LORD thy God giveth thee. For all that do such things, and all that do unrighteously, are an abomination unto the LORD thy God."[7]

In evaluating the language of Article I § 8, it is obvious that the Constitution's Framers had an intimate knowledge of this quote from Deuteronomy. They gave Congress the power "to coin money" in the same sentence with the power to "fix the standard of weights and measures." Obviously their intention was to avoid angering their Creator by a fully honest and understood weight of precious metals in our coins. (So for state legislators calling themselves "deacons" or "elders" in assorted churches, who are looking for something biblical to grab onto in this battle, there it is!)

This also shows the use of the word "coin" as a VERB in this operative sentence – and in simple terms, with the most basic understanding of the English language, there is a power to "coin" "money" – but NOT to "print" it. You cannot coin paper money. You can, however, take precious metals and make them into coins. That is the ONLY power Congress has with respect to "money" of any flavor.

Following the logic of reason, the U.S. Treasury Department should supply the money of the union of states, under direction of the President, with legislative authority given by Congress. That is the Constitutional way. The coining (no power exists to `issue' money either) of money should be done by the U.S. Mint, period.

The other monetary provision of the Constitution is:

"*No state shall ... make any thing but gold and silver coin a tender in the payment of debts...*" [8]

By prohibiting the states from making any thing other than gold and silver coin a tender in the payment of debts, and giving Congress only one power, the power to coin money, the Founding Fathers legislatively prohibited paper from enjoying any legal status whatsoever, and provided quick state bankruptcy and the inherent repercussions that should bring to Congress in the event Congress ever abdicated its responsibility.

PROOF

Under the Constitution, and the coinage acts of Congress passed in conformity thereto, gold and silver coin are the only two lawful mediums of exchange. Article 1 Section 8 Clause 5 of the Constitution was created on August 16, 1787. This is how it went down:

"Mr. Gov Morris moved to strike out `and emit bills on the credit of the U. States'--If the United States had credit such bills would be unnecessary: if they had not, unjust and useless.

Mr. Butler 2d the motion.

Mr. Madison, will it not be sufficient to prohibit the making them a tender? ...

Mr. Gov Morris ... The monied interest will oppose the plan of government, if paper emissions be not prohibited.(*) ...

Mr. Elsworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By witholding the power from the new Governt. more friends of influence would be gained to it than by almost any thing else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good.

Mr. Langdon had rather reject the whole plan than retain the three words (and emit bills)." [9]

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[6] "A Caveat Against Injustice or An Inquiry into the Evils of a Fluctuating Medium of Exchange," Roger Sherman (1752)

[7] The Open Bible, KJV at Deuteronomy 25:13-15 (Thomas Nelson, Inc., 1975) @ p.198

[8] U.S. Constitution Article I, § 10

[9] 69th Congress, 1st Session, House Document No. 398 pp 556-557

(*) Note: it was believed that people with money (land, property, & accumulated wealth), would oppose paper money. Why would that be? Today, the greatest friends of paper money appear to be bankers, landed interests, etc.

On August 28 the money debate continued. Proposed was Article I §10.

"Mr Wilson and Mr. Sherman moved to insert after the words `coin money' the words `nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts' making these prohibitions absolute, instead of making the measures allowable (as in the XIII art:) with the consent of the Legislature of the U.S. ...

Mr. Sherman thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it." [10]

Interesting concept. If the legislature could license the use of paper money, its friends would try to get elected in order to do so. Fascinating. Roger Sherman predicted how far people would go to legislatively compel the use of paper money. Roger Sherman was, in the most accurate use of the word, a prophet! Not only that, he understood human nature. So with the vote having been taken to make the prohibition against the use of paper money absolute, how could the supreme Court in Julliard v. Greenman possibly state that the power of paper was not prohibited to Congress?

ENGLISH AS A FIRST LANGUAGE

Let's go back to English class for a moment. Did you ever read something possessing "double entendre?" That is to say you could interpret whatever you are reading in more than one way. Double entendre can be unintentional–occurring because the writer just missed the point entirely when the words went on paper. Examples would be newspaper headlines reading like these:

- "Man Found Beaten, Robbed By Police"
- "Girl Becomes Methodist After Delicate Operation"
- "Lawmakers Hope to Pass Water, Other Bills in Trenton" [11]

English, unlike many other languages, requires speakers and writers to be very careful of the order in which words are placed. Missing or inaccurate punctuation can completely change meanings as well. Some words and phrases appear to have similar meanings, but legally do NOT. Just for the humor of it, look at these examples:

- Place your breakfast request before going to sleep on the door.
- From my mother: Not getting any better, come home at once.
- From my wife: Not getting any, better come home at one.
- "This note is legal tender for all debts, public and private." [12]

Now let's look at a part of the English language usually studied only by bankers and lawyers. Notice the word "for" in that last perversely comical statement taken from your "dollar bill." That does not say "in payment of." The "dollar bill" you hold in your hands IS a debt, it was created BY debt, and may be used for debts. But only by people willing to accept a debt for a debt. Federal Reserve notes have never been, and could never be (without a Constitutional amendment authorizing it), declared a legal tender in payment of debts! They can pass FOR money, but they have never been declared TO BE money. They are positively NOT money, in any legal sense of the word.

If I'm going too fast, back up and read that again until it sinks in. Without that basic understanding, the rest of this will go right over your head. We have been tricked out of our honest money system by semantic Ju Jitsu!

Under Color of Law, Secretaries of the U.S. Treasury have put their signatures on private bank notes declaring them to be a legal tender for all debts public and private. These government officials lack the authority to declare Federal Reserve Notes a legal tender in payment of debts, but they have not done that. They have simply stated they maybe be exchanged FOR a public or private debt. The word "for" is linguistically impotent, and worse, deliberately confusing to all except those who understand the intricacies of semantics–or are simply paying attention and reading what is actually there, not what they think they see.

Refer to the August 16, 1787 notes of James Madison, regarding the vote taken during the Constitutional Convention forbidding United States Notes to be declared a legal tender. If even paper money printed by the United States government can not be a lawful tender, how much less possible is it for notes of a private bank be receive that status? Such action by secretaries of the U.S. Treasury violates 18 USC 241, 242 (Deprivation of rights under color of law) which provides severe criminal penalties to

[10] Id. @ pp. 627-628

[11] "More Anguished English", Richard Lederer, 1993, Bantam Books, New York

[12] An inscription on today's Federal Reserve Notes.

persons charged and convicted with depriving Constitutional rights. The effect of confusing the public into believing paper is money has created profits for private banks at the expense of the rights, privileges and immunities of the people secured by the Constitution for the United States of America. Yes, you have a right to lawful money, just like you have a right to trial by jury. Thus sayeth the Constitution. But we have been CONNED out of that right by buying into the legal argument purporting legal tender status on paper, started by the Julliard case.

Congress borrows into circulation from the Fed each paper "dollar" the government printing office prints! That fact is not widely known. It's the cosmic equivalent of a person using a coupon at the supermarket to buy something he doesn't need. Unfortunately many are so ignorant of the nature of money--we are so caught up in commercialism and marketing psychological warfare--that we perceive a "savings" by using coupons at the market for stuff that isn't on our list. That is how little many people know about the nature of coin and credit!

Congress goes to a private bank, who loans the money into circulation, and charges the government interest for the privilege of having an unlawful money system! That is the entire basis for our national economy today.

And we wonder in grand amazement why there is an unbalanced federal budget!

The following revelation is attributed to Dr. Carl F.M. Sandberg"

"From those not previously familiar with these things, have come expressions of interest and enthusiasm, but also reluctance to accept as truth the fact that our government, without getting anything whatsoever in return, gives the Federal Reserve Notes to private bankers for them to loan out at interest even back to the government itself. To them this seems so senseless as to be unbelievable."

Two Sections of Article I gave Congress the constitutional authority to handle America's money supply. To support those duties, enabling legislation had to be passed by Congress to set in motion the financial operations of the new nation. During the first years of the national legislature, Congress took its job seriously, and created a fabulous money system. Much of this legislation is still on the books, waiting only to be applied once again. Our money system has been changed by legislation that appears to have the force of law to those ignorant of the English language. But for paper money to be a "legal tender in payment of debts," a Constitutional amendment would have to be passed.

Congress has the power, under Article 1 to coin--not "print," not "issue," not "convey"--money. Their duty also extends to regulating its value and the exchange rates with foreign coin, and fixing the standards of weights and measures.

There was originally in the proposed constitution a specific paper money power which would have (had the words not been stricken out) allowed Congress powers to "print" money with "bills of credit." Of the states present at the convention, nine of the 11 voted favorably for striking out the provision that would have allowed Congress to "emit bills." George Read of Delaware thought:

"the words, if not struck out, would be as alarming as the mark of the Beast in Revelations." [13]

So much for paper money. Does the reader have any doubt that Congress was denied the power of emitting paper money, or the power to "issue bills of credit?" If the reader is still uncertain as to the reason for this prohibition, and the fears of the convention attendees with respect thereto, conduct your own research into the 13 money systems in existence (each state had its own money system) at the time of the convention. Our national economy was almost, but not quite, as bad off then as today.

I am taken back to my classes in school. Mrs. Waddlebottom almost made we children cry telling pitiful stories of how, in the 1920's, the laborers of America collected a paltry $20 for a week's work. What Mrs. Waddlebottom neglected to mention was that in 1920, with $20 you would have needed a tractor trailer to carry all the food from the market that $20 would buy (I found that out later). That 1920-$20 was directly paid in Gold, or a bank note which was redeemable into gold. Merchants accepted gold--money--in payment of services or products rendered. Today, that 1920 gold piece is convertible for hundreds of paper "dollars." (That $20 gold coin, at today's paper money exchange rate, is worth well over $1000. A thousand still buys a truck load of groceries, especially for the bargain hunter.)

This lack of dollar-for-dollar convertibility is directly the fault of a "fractional reserve" banking system established by a lame-duck session of Congress in 1913. At first, convertibility was a requirement. But over the years the Fed has requested, and been granted, gradually looser "reserve" requirements by the "Capitol Hill Corruption Brigade." Today, reserve requirements stand at about 3%.

"*It is apparent from the whole context of the Constitution as well as the history of the time which gave birth to it, that it was the purpose of the convention to establish a currency consisting of the*

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[13] 69th Congress, 1st Session, House Document No. 398 pp. 557

precious metals. These were adopted by a permanent rule excluding the use of a perishable medium of exchange... or the still more pernicious expedient of paper currency. "[14]

Such a funny money system should cause any thinking human being to immediately "panic" for convertibility into any tangible asset the paper can buy. With each passing year the value of the paper "dollar" depreciates further. All that's left of our money system today is confidence in paper--something that is, like the money's value itself, diminishing with time. The Federal Reserve Note is now going the way of the "Continental," which depreciated dramatically in the years prior to the creation of the U.S. Treasury and a money system established on silver and gold.

Public awareness of how our money system is supposed to operate, versus how it is currently operating, will create the climate necessary for a return to Constitutional money. It has taken roughly four generations to "dumb down" the American public to the nature of coin and credit. Now, in the information age, that tide can change quickly! Again, I suppose a single generation can make the needed changes.

The limited power of coinage given to Congress specifically corrected faults of the government under the Articles of Confederation. Each state had its own money system. Rates between states fluctuated daily. Commerce was nearly impossible. The phrase "day late, dollar short" was as significant then as now, because we know how inflation erodes purchasing power. History has repeated itself, because the people allowed Congress to alter our constitutional money system during the early 20th Century.

"By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. By this method they not only confiscate, but they confiscate arbitrarily; and, while the process impoverishes many, it actually enriches some. The sight of this arbitrary rearrangement of riches strikes not only at security, but at confidence in the equity of the existing distribution of wealth...As the inflation proceeds and the real value of the currency fluctuates wildly from month to month, all permanent relations between debtors and creditors, which form the ultimate foundation of capitalism, become so utterly disordered as to be almost meaningless; and the process of wealth-getting degenerates into a gamble and a lottery. Lenin was certainly right. There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose." [15]

Keynes was a Fabian socialist economist. While the Reagan Administration was promoting "trickle down" economics, citing Keynes as its mentor, in reality, the economics it was practicing was continuing the confiscation of wealth with the Fed as chief architect and contractor.

It has taken four generations to totally destroy the money system established by the Founding Fathers. The people of America first had to "buy" President Roosevelt's arguments that "hoarding gold" was the source of our economic depression (the Fed was the cause, but the friends of paper money didn't want to admit that). That led to the confiscation of all private holdings of gold via "emergency" legislation in the early 1930's. Then in the 1960's silver was removed as the last vestige of "hard money." Silver and gold certificates were no longer converted by the Treasury Department.

What remains? There exists in America circulating I.O.U.'s, and the confidence of far too many people who have little to no understanding of what money is all about.

OUR MONETARY HERITAGE

During our first 100 years under the Constitution, inflation was nearly non-existent. That is not to say that there were not economic problems. But we had a stable money system under Article 1 and the subsequent Coinage Act of 1792.

In recent years, much misinformation has been promulgated by the friends of paper money regarding our lack of need for a "gold standard" and/or "silver standard." There has never been a "gold standard" in America.

Congress, in 1792, adopted a silver standard for our new national currency, based on the preeminent medium of exchange which was, at that time, the Spanish milled dollar. The Act defined the American dollar in terms that commerce could easily translate from the Spanish variety. 371-1/4 grains of fine silver equaled one American dollar. (Gold and silver were not discovered in large quantities in America until much later.)

Silver is not circulating today for two reasons. First, Congress does not feel enough popular sentiment to require it. Put another way, the people believe in paper. They believe in Hollywood. They believe in Santa Claus, the Tooth Fairy and the power of dreams. Secondly, much of the wealth of America (our gold and silver stockpile) has been transferred to

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[14] Andrew Jackson, 8th Annual message to Congress.

[15] "The Economic Consequences of the Peace" John Maynard Keynes (New York: Harcourt, Brace and Howe, pp. 235-6

the Class “A” stockholders of the Federal Reserve Corporation.

That original coinage act created a bimetallic system that defined a gold "eagle" in terms of convertibility to silver. Therefore, the United States did not emerge from the Constitutional Convention of 1787 on a "gold standard" at all. But rather we had a three way convertibility system. It was based on silver “dollars” which were convertible to gold "eagles," and fractional components of each were convertible to copper or nickel (base metal) "cents."

Congress did have to do some additional work in 1834 to fix a few problems that banks (such as the failed experiment called the “Bank of the United States” had created. Irresponsible bankers had begun issuing bank deposit slips, or notes, against reserves of gold.

As bankers will do when they see the public preferring to carry paper rather than coin, they will print more paper than they have coin in the bank to cover it (aka-“fractional reserve banking”). All that is then required for disaster is for an educated public to get wind of it. When everybody rushes in to get their real money back, and the bank runs out, something hits the proverbial fan.

The creation of the FED was actually somewhat a response by Congress to public outcries which resulted from several "panics" in the 1800's. (Whether the "panics" were created to generate the public sentiment necessary for the creation of a "national bank" [i.e. “Hegelian Tactics”] is the subject of many other authoritative books.)

AN EXAMINATION OF THE FEDERAL RESERVE

"I believe that banking institutions are more dangerous to our liberties than standing armies. Already they have raised up a money aristocracy that has set the government at defiance. The issuing power should be taken from the banks and restored to the people to whom it properly belongs." [16]

"*The Federal Reserve is the bastard child of financial gigolos*." Aaron Bolinger, 1995

In 1913 a secret meeting occurred on Jekyll Island (off the Carolina coastline). The "professional" banking interests proposed a piece of legislation that was railroaded through Congress during a "lame-duck" (Christmas time) session. The "Federal Reserve Act of 1913" created a private corporation, with its heads (Board of Governors) appointed by the President.

Of all the political nit-wittery Congress ever managed to initiate, none have had the destructive effects on America as the "Fed."

The Federal Reserve is a private corporation, it is not a federal agency. Despite its name, it is neither "federal" nor a "reserve" of anything. It has never, since 1913, been audited by the General Accounting Office of the United States, nor any other independent source. Although it appears federal vis its creation by Congress, and the appointment of its "officers" by the President (it looks like an executive agency, doesn't it?), it is run as a corporation by stockholders who are unknown but to few.

The deliberations of its Board of Governors are not media events. In fact, they are top secret. The "Fed" makes its own policy, its own decisions, and operates a financial cartel impenetrable by even Congress itself.

Congress only has one check on the "Fed." Because it created it (and the creation of Federal corporations is not something I see within the Article I powers of Congress in the first place), it can abolish it. But it cannot direct its policy, examine its books, or hold it accountable for anything it does.

The Treasury Department's Bureau of Engraving and Printing prints paper "notes" that most people mistake for lawful money of the United States. It gives them to the Fed who then loans them back to the U.S. government in exchange for U.S. government securities like T-Bills, bonds, etc. The FED flexes interest rates when its Board of Directors decide to do a little "profit taking" or "inflating" the "economy."

No where in the Constitution is there authorization for Congress or any of its agents to print paper "money." There is a specific prohibition on the states to accept them– denying the states the authority to make anything other than gold and silver coin a tender in the payment of debts. This was done to basically bankrupt the states should Congress fail to do its job. It should be immediately apparent to any `awake' state legislatures what is going on. It would seem there are fifty sovereign Rip Van Winkles.'

Nowhere is private bank control of our nation's money system permitted.

And nowhere is Congress authorized to delegate any reserved powers to private interests, nor to form corporations to exercise any of their constitutionally framed powers.

The legislative intent of the framers of the Constitution was to "shut and bar the door against paper money" (in the words of Roger Sherman during the Constitutional Convention).

Congress no longer sets standards (okay, they are already set--just awaiting re-implementation), regulates values or coins money. Exchange rates are now set by foreign governments, private banks, and people far removed from control by American voters.

We are swimming in a sea of paper money, thanks to the failure of Congress to perform its responsibilities under the Constitution.

It is often said that regardless of the Julliard case, the original “Bank of the United States” “set a

[16] Thomas Jefferson: Letter to Elbridge Gerry, Jan 26, 1799

precedent" of the authority of Congress to establish a separate banking entity. That subject is hard to swallow, in light of the legislative history and eventual dismantling of that institution. When Andrew Jackson had the opportunity to renew that first national bank's charter, he declined to do so based on Constitutional lack of necessity and properness. The President, as a Constitutional officer, pulled out his Constitution and gave it a gander. This is what he had to say in his veto response:

"...it is the province of the Legislature to determine whether this or that particular power, privilege, or exemption is "necessary and proper" to enable the bank to discharge its duties to the Government, and from their decision there is no appeal to the courts of justice. Under the decision of the supreme Court, therefore, it is the exclusive province of Congress and the President to decide whether the particular features of this act are "necessary and proper" in order to enable the bank ... and therefore constitutional, or unnecessary and improper, and therefore unconstitutional.

"...It will be found that many of the powers and privileges conferred on it can not be supposed "necessary" for the purpose for which it is proposed to be created, and are not, therefore, means necessary to attain the end in view, and consequently not justified by the Constitution.

"If Congress possessed the power to establish one bank, they had power to establish more than one if in their opinion two or more banks had been " necessary " to facilitate the execution of the powers delegated to them in the Constitution. If they possessed the power to establish a second bank, it was a power derived from the Constitution ...

"*It can not be "necessary" or "proper" for Congress to barter away or divest themselves of any of the powers-vested in them by the Constitution to be exercised for the public good. It is not " necessary " to the efficiency of the bank, nor is it "proper" in relation to themselves and their successors. They may properly use the discretion vested in them, but they may not limit the discretion of their successors. This restriction on themselves and grant of a monopoly to the bank is therefore unconstitutional.*

"In another point of view this provision is a palpable attempt to amend the Constitution by an act of legislation. The Constitution declares that "the Congress shall have power to exercise exclusive legislation in all cases whatsoever" over the District of Columbia. Its constitutional power, therefore, to establish banks in the District of Columbia and increase their capital at will is unlimited and uncontrollable by any other power than that which gave authority to the Constitution ... The Constitution declares that Congress shall have power to exercise exclusive legislation over this District "in all cases whatsoever," and this act declares they shall not. Which is the supreme law of the land? This provision can not be "necessary" or "proper" or constitutional unless the absurdity be admitted that whenever it be "necessary and proper " in the opinion of Congress they have a right to barter away one portion of the powers vested in them by the Constitution as a means of executing the rest.

"This act authorizes and encourages transfers of its stock to foreigners and grants them an exemption from all State and national taxation. So far from being "necessary and proper" that the bank should possess this power to make it a safe and efficient agent of the Government in its fiscal operations, it is calculated to convert the Bank of the United States into a foreign bank, to impoverish our people in time of peace, to disseminate a foreign influence through every section of the Republic, and in war to endanger our independence. [17]

The American people lost control over its monetary affairs by virtue of the Federal Reserve Act of 1913. That law is the first that needs to be repealed if we are ever going to restore America to the Constitutional government it once enjoyed. In light of the serious constitutional impropriety discovered by "rout them out" Andy Jackson, and printed for posterity to review in his veto message, only a sneak attack such as occurred at Christmas time in 1913 could have given us again what was destroyed in 1832.

Congressman Louis T. McFadden, the Chairman of the House Banking Committee, sought to investigate the Fed for criminal misconduct. He gave a speech to Congress on June 10, 1932 (exactly 99 years and 11 months to the day following Jackson's veto of the Bank of the US). Rep McFadden stated, in part:

"We have in this country one of the most corrupt institutions the world has ever known. I refer to the Federal Reserve ... which have cheated the government and the people of the United States out of enough money to pay the National debt several times over. This evil institution has impoverished and ruined the people of the United States and has practically bankrupted our government. It has done this through ... the corrupt practices of the moneyed vultures who control it!"

"Some people think the Federal Reserve Banks are United States government institutions. THEY ARE NOT! They are private credit monopolies. Among those financial pirates, there are those who send money into states to buy votes to control our legislation ...

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[17] Extract of President Jackson's Veto Message Regarding the Bank of the United States; July 10, 1832.

"These twelve credit monopolies were deceitfully and disloyally foisted upon this Country by bankers who came here from Europe ... These bankers took money out of the Country to finance Japan in a war against Russia. They created a reign of terror in Russia with our money. They planned and instigated the Russian Revolution...

In 1912 the National Monetary Association, under the chairmanship of the late Senator Nelson Aldrich, presented a vicious bill called the National Reserve Association Bill ...

"We were opposed to the Aldrich plan ... The men who ruled the Democratic Party then promised the people that if they were returned to power there would be no central bank established here while they held the reigns of government. Thirteen months later that promise was broken, and the Wilson administration, under the tutelage of sinister Wall Street figures established, here in our free Country, the worm-eaten monarchial institution of the "King's Bank" to control us from the top downward, and to shackle us from the cradle to the grave ... Every effort has been made by the Federal Reserve Board to conceal it's powers but the truth is ... the Fed has usurped the government. It controls everything here and it controls all of our foreign relations!..."

"...When the Fed was passed the people of these United States did not perceive that a world system was being set up here...A super-state controlled by international bankers, and international industrialists acting together to enslave the world for their own pleasure!"

"...I charge them ... with the crime of having reasonably conspired and acted against the peace and security of the U.S. and with having reasonably conspired to destroy constitutional Government in the U.S."

Was Congressman McFadden suggesting that Congress should alone control the money supply of America without the wisdom of the Federal Reserve and its array of economic professionals? Well, maybe not many members of the current Congress are up to the task, but the fact is that responsibility belongs, under the Constitution, to Congress, and Congress alone. As scary as that thought is, if the current members of Capitol Hill society cannot handle the job, they should either resign, or be voted out of office.

Using the United States Government Manual (USGM) we can see the witch-doctoring tentacles of the Federal Reserve in full view.

The Federal Reserve Act was passed by Congress on December 23, 1913. Many members of Congress were away for the Christmas holidays. Indeed, had the full body of Congress been present, there would not have been enough votes to favorably convert the proposal into law. This was a sneaky stunt, indeed.

Much of the introductory statements in the USGM about the Fed are surplus wordage. For example, the USGM says that "powers of central banks vary widely." So what? The conduct, policies and constitutional powers or limitations of other nations do not reflect one whit on those of the United States government. No statement of constitutional authorization for the Fed is constrained in the USGM. The reason: none exist!

The USGM asserts: "*It is the responsibility of the Federal Reserve System to contribute to the strength and vitality of the U.S. economy*."

I pose the question: "When will it start doing so?" According to Congressman McFadden, the Fed had nearly bankrupted the nation by 1932!

The USGM says the Fed influences *"lending and investment activities ... and the cost and availability of money and credit.*" This statement needs further evaluation by the English department. The phrase "cost and availability of money and credit" is enlightening. Please ponder that one for a while. In the real world, the Fed prevents the availability of real money.

The Fed, according to the USGM consists of six parts:
THE BOARD OF GOVERNORS, the 12 FEDERAL RESERVE BANKS (with their 25 branches & other facilities), the FEDERAL OPEN MARKET COMMITTEE, the FEDERAL ADVISORY COUNCIL, the CONSUMER ADVISORY COUNCIL, the THRIFT INSTITUTIONS ADVISORY COUNCIL, and each and every commercial bank, S & L association, mutual savings banks and credit union.

THE BOARD OF GOVERNORS

Much of the perceived power of the throne is in the hands of the Board of Governors. These seven members are appointed by the President with the advice and consent of the Senate. That alone does not make them a "federal" agency, although it does give the appearance of having a connection to the federal government. The President appoints whomever the money powers recommend, and the Senate rubber stamps the appointments. The money powers have influenced (a rather mild adjective, in this case) the President and Congress for nearly a century.

The BOG, according to the USGM "formulates rules and regulations to carry out the Federal Reserve Act." Congress, under Article 1 of the Constitution, is the sole legislative authority in the United States. They lack the power to delegate legislative powers to any other body--much less a private bank! No power exists for the Fed to govern, yet the USGM minces no words verifying that indeed they do.

Pursuant to the so-called "Monetary Control Act of 1980" (a more accurate title would have been the "Monetary Powers Transfer Act"), the BOG now has the power (albeit a constitutionally unauthorized one) to fix reserve requirements of depository

institutions. Ipso facto, the Fed no longer goes to Congress for permission to debase the currency. The BOG does so itself!

The BOG also are members of the FEDERAL OPEN MARKET COMMITTEE (OMC). Taken with the BOG, the OMC is the second (and much more powerful) part of the money empire. Other members of the OMC include the President of the Federal Reserve Bank of New York, and four presidents from other reserve banks. Could these be some of the “Class A Stockholders?”

It is this Open Market Committee that sets the "discount rate" (rate of interest charged to member banks), and gives the "buy" or "sell" orders for the acquisition or disposal of both domestic and foreign government and other securities. In addition, it OMC engages in setting exchange rates for foreign currency transactions (another power reserved to Congress alone).

It is this activity that determines the "money supply." When the OMC "buys" T-Bills or other federal government obligations, it is putting money into circulation. When it "sells," money is being drained. The Open Market Committee therefore, under color of law, can create inflation, cause recessions, depressions, or shrink or expand the volume of money available at will!

What the Congress has given the Fed is, my friends, is raw power at its most perverse. The OMC is not elected by the people, and is unanswerable to the people of America for activity that directly impacts on the health and welfare of our citizens (as President Jackson duly noted about the previous Bank’s private stockholders). The President and Senate go through rituals of appointing the Board of Governors. But the OMC, in very real ways, directs the operations of our government.

Congress annually votes to increase the debt limit, and then it directs the Treasury to borrow money. It borrows from the Fed when it sells to the Fed instruments of indebtedness--U.S. government securities. These instruments are bought by investors who have nothing but faith in the future ability of Congress to tax the people of America to pay off the interest and principle on the "loans."

The record from the House Banking and Currency Committee on September 30, 1941 shows the following exchange:

> *Congressman Patman: "Mr. Eccles [Chairman of the Federal Reserve Board], how did you get the money to buy those two billion of government securities?"*
> *Eccles: "We created it."*
> *Congressman Patman: "Out of what?"*
> *Eccles: "Out of the right to issue credit money."*

Now I ask you: why were the Founding Fathers mistrustful of paper money? Congress has created numerous unauthorized programs designed to spend money. These programs are administered by unauthorized agencies (as will be later shown) created by a Congress (or President, in the case of agencies created by Executive Order) rebelling against the Constitution. American citizens pay the bill at IRS gunpoint, while corporations, tax exempt foundations, and private individuals get rich from activities the Congress has been prohibited from engaging in from the beginning!

Each time the Department of Housing and Urban Development finances a construction project, the money must be borrowed from private bankers. The loan is backed by the taxpayers of these United States--or more accurately--backed by the future ability of Congress to tax the payers! (There is no surplus or reserve of money for the backing of the loan or the project. America has been bankrupt since the 1930's.)

That situation exists today in virtually every federal executive or other department or ‘grant making agency’ where "grants" are made. Those situations will be clearly identified in later chapters For now, let's return to the Fed.

The "Bank Holding Company Act of 1956" gave the Fed the power to regulate bank holding companies. Allegedly done to "avoid the creation of monopolies" and to "maintain a separation between banking and commerce," in reality, bank holding companies are de-facto monopolies, and commerce today largely runs on the credit extended by Fed member banks. Either follow the Fed's rules, or suffer the consequences. Noble intentions--or semantic ju-jitsu? You be the judge. Again, honest money, commerce, and honest taxation all work together. Corruption in one area will instantly have an adverse effect on the other two.

That is why Congress, elected by the people, was given the monetary powers of the Constitution. Servants cannot be masters. Congress exercising its duly constituted powers can be held accountable by their masters, the people. The “Fed” cannot.

In addition, the Fed has also been delegated power by Congress to loan money to foreign bank branches in the United States. The BOG is the "rule maker" for the "Equal Credit Opportunity Act," the "Fair Credit Billing Act," the "Home Mortgage Disclosure Act," the "Expedited Funds Availability Act," and certain provision of the "Federal Trade Commission Act" applicable to banking.

12 POWERFUL BANKS

Another part of the `system' are the 12 designated Federal Reserve Banks. They are located in Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, San Francisco and St. Louis. Numerous branches are spread through other cities. According to the USGM,

the Board of Directors of each Reserve bank is composed of 9 members, equally divided into three classes: A, B, & C. These classes are stockholder representative (A), business or commerce representatives (B), and unconnected (C). These banks hold clearing account deposits from other banks, and extend credit to other banks.

In addition, these 12 Banks "issue Federal Reserve Notes." The USGM states:

"These notes are obligations of the United States, and are a prior lien upon the assets of the issuing Federal Reserve Bank. They are issued against a pledge by the Reserve Bank with the Federal Reserve agent of collateral security including gold certificates, paper discounted or purchased by the bank, and direct obligations of the United States."

There it is, in black and white, straight from the United States Government Manual. Federal Reserve Notes are issued by banks (not the United States Government). But they are backed by direct obligations of the United States Government. They are not backed by money, but by obligations that have at their root, future taxes! These notes, in the words of the USGM are "a prior lien upon the assets" of the issuing bank. Those assets of the bank are, in reality, liens against taxpayers and the property of taxpayers in the United States (titles to farms, homes, etc.)!

These banks also "act as depositories and fiscal agents of the United States." Your local Fed bank has had the power given it by the Congress to be revenue agents for the government! Where does your tax check go, to the United States Treasury Department? No! Taxes are collected by the Federal Reserve System!

The plot thickens.

The Federal Reserve was ostensibly created because regional and local banks had failed miserably over the years practicing illegal "fractional reserve" banking. Of course, that was one of the snake-oil sales pitches. Simply put, banks (and greedy bankers) will often issue more "notes" than there is money in the bank. When this happens, and the public gets scared, people run to the bank to cash in their notes. Because so many small and regional banks had problems, their management teams came up with the "Fed" as a way to nationalize banking, and pool resources to minimize the effects of localized crashes. By giving in to the pressure of the banking lobby, Congress attempted to legalize that which was forbidden by the Constitution.

If the Fed was our only problem, it would still be a nightmare. But the banking cartel that is the Fed has not made the abolition of the Fed itself the only web we must unweave. In addition to the Fed, Congress has created (with a little help from the "friends of paper money") a number of other taxpayer-backed institutions that assist banks nation and even world-wide, and the Fed-run cartel specifically.

Yes, to restore constitutional government to America, the Fed must be abolished. But in addition, numerous other boards, commissions and independent federal agencies must go along with it.

These include:

THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

Established in 1933 (exactly coinciding with the time of the theft of gold from the people of America by her corrupt bankers), this "independent agency of government" (according to the USGM) is the insurance company for the banks, etc.

This "agency" insures deposits at banks and savings institutions. If a robbery occurs, for example, this agency "bails out" the depositors who lost money. With what do they bail them out? The USGM says that the FDIC does not operate on funds appropriated by Congress. Rather they fund their operation two ways. One is by "assessments on deposits held by insured banks." The other is "from interest on the required investment of its surplus funds in government securities."

So, the FDIC is required to take money from all banks and invest it in government securities. Now I ask you, how are government securities retired? No, the FDIC doesn't need the Congress to appropriate to it. It goes direct to the Treasury--bypassing the middlemen!

Please, before you continue, reread those three paragraphs. It's enough to make a Christian vomit. Where does the Constitution authorize Congress to establish an insurance company to protect banks, and then back those "policies" with securities of the United States (i.e. future tax revenue)? The banks themselves are unauthorized! It would be no different ethically if the government took upon itself to insure housing against floods. (Oops, we haven't got to "FEMA" yet – see Chapter 6. But yes, they have done that too.)

Since when should the public be responsible for bailing out bankers who practice the very policies necessary to drive people to bankruptcy and desperation to the degree necessary for bank robberies to be rather commonplace occurrences? Should they also be bailed out for general bank failures? How can a bank fail with reserve requirements at 3% or less? In a previous era, even a 95% reserve holding by a bank would have caused the public to rush for convertibility and collapse the bank out right. Under what Article and Section of the Constitution are these alleged powers to be found? I've searched long and hard for them.

THE COMMODITY FUTURES TRADING COMMISSION

The CFTC was created in 1974, a rather obscure happening while Watergate was grabbing the headlines. Its function is to "regulate futures trading."

Is it a constitutionally authorized function of Congress to regulate futures trading? If so, why did it take Congress 185 years to create such an agency? While it may seem prudent for somebody to `protect consumers' from unscrupulous investment sharks, brokers and snake oil salesmen, all I ask is to be shown the constitutional provision authorizing this type activity. In the absence thereof, don't forget to downsize (read that--eliminate) this creation of Congress also.

THE EXPORT-IMPORT BANK OF THE UNITED STATES

The Ex-Im Bank was `authorized' (an oxymoron in this case) in 1934 by Executive Order 6581 (another treat of the New Deal). The bank was `continued as an agency of the United States by acts of Congress in 1935, 1937, 1939, and 1940,' according to the United States Government Manual (hereinafter USGM). Did Congress see President Roosevelt lacked the constitutional authority to `legislate' an agency into existence, and cover his tracks with these acts?

It was made an independent agency by an Act in 1945, was amended in 1947, and changed somewhat again in 1968.

The Ex-Im Bank can have up to $40 billion outstanding in loans to export American products into nations where governments (which ones?) support the competition.

Being the curious type, I pose the question: who is politically favored enough to receive the monies?

When I look at the list of multinational corporations whose executive leadership belongs to `the club,' I believe there may be a story here for future exploration. Reader, you have a very good starting point for your research, if you care to go exploring.

The Ex-Im Bank uses an assortment of insurance programs at its disposal that are administered by the Foreign Credit Insurance Association (itself an Ex-Im Bank creature from 1961).

Let's see if I have this right. It sells insurance policies under agreement with itself? Cute arrangement. It doesn't even look ethical, much less constitutional!

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC)

This is a government agency that primarily buys and sells conventional (standard bank) mortgage loans.

Definitions:

A `conventional' loan is a loan between the lender and the buyer without outside interference (i.e. subsidies from HUD, etc.) It is the most common type of loan. It generally has a fixed interest rate structure throughout the life of the loan.

An `FHA' loan: The Federal Housing Administration was created to stimulate the economy in the 1930's (here we go again--New Deal stuff) as a result of the depression (created by the Fed in the first place). They provide government guaranteed insurance to the lender, and provide the money for the loan through HUD. FHA backed loans make it easier for buyers to get loans by a reduction in the amount of down payment required, and the government assumes some repayment obligations in the event of a foreclosure or default. Streamlined refinancing guidelines make it easier to get approval for a new loan (if interest rates drop--who drops them?--for example) with FHA loans.

VA loan: The Veterans Administration backs loans to veterans of America's services. Qualifying vets get low interest rates, need little to no money down, and pay reduced closing costs for their mortgages. Allotments are disbursed based on length of time in the services, and using other criteria. They are recoverable for future use with proper repayment. Streamlined refinancing guidelines make it easier to get approval for a new loan (if interest rates drop, for example) with VA loans. When we get into the constitutional military, we will further review the Veterans Administration in light of historical truths.

Where does the Constitution authorize the United States Government to be involved, in any way whatsoever, in banking, insurance, loan acquisition, mortgages, etc.?

Unfortunately, the banking mess is not totally disclosed yet. There are more institutions that need identified.

The World Bank
The International Monetary Fund
The African Development Bank
The Asian Development Bank
The Inter-American Development Bank
The Inter-American Foundation
The International Bank for Reconstruction and Development
The International Development Association
The International Finance Corporation
The Multilateral Investment Guarantee Agency
The Federal Housing Finance Board
The Federal Retirement Thrift Investment Board
The National Credit Union Administration
The Securities and Exchange Commission
U.S. International Development Cooperation Agency

Again, show me the constitutional authorization for American involvement in any of the above federal or international banking establishment(s). Perhaps in a future sequel to “Downsizing Government” the above can be reviewed thoroughly. For this discourse, let’s look at the potential for abuse when using money appropriated

from the U.S. Treasury for international banking purposes.

The allegation has been made that former President George W. Bush used financial leverage through the IMF/World Bank to coerce "attack Iraq" votes from members of the United Nations who would not have otherwise voted for military action against that nation. If there is truth to the notion that the land now Kuwait was taken from Iraq illegally, and that Kuwait was established to enrich international oil interests (primarily of British origin), then maybe George W. Bush, not Saddam Hussein, was the real the war criminal – especially if Hussein didn't want to accept inflated paper American dollars, thereby disrupting "commerce" for the international banking interests involved.

There existed NO congressional declaration of war. It is obvious, therefore, absent United Nations "mandate," we would not have led the effort to "protect" Kuwait. What were we really protecting? How could United States' military involvement been "proper" absent a declaration of war? And what role did the United Nations, World Bank, and International Monetary Fund play in the exchange? Were we protecting foreign financial interests in the oil?

I haven't the answers, but these are some very serious questions. It is not difficult to see at least the potential for abuse of power when absolute monetary power exists through such private financial corporations dancing around globally peddling their paper. If it could be reasonably asserted by some extraordinary legal maxim that United States participation in these institutions is authorized, such participation would be, at best, nationalistically immoral. Are they necessary or proper for the interests of the United States? Hardly.

Where does the Constitution authorize the United States Government to be involved, in any way at all, in banking, insurance, loan acquisition, mortgages, etc.? Me thinks the "power to coin money and regulate the value thereof" has been stretched a wee bit. Congress having a power to regulate commerce among the states or with other nations does NOT qualify privileged classes of international bankers or corporations to receive direct transfers of cash from the United States Treasury, whether funneled through international banking institutions or not.

The above list of independent corporations, etc. operating with the participation and funding of the United States, through the corruption of the Congress Assembled, needs to be brought to a screeching halt. Technically, we would not even be "Downsizing Government" in so doing, simply because most of these animals are NOT government entities, nor were they ever intended to be. They are, however, corporations (created by "law") who have been handed virtually carte-blanche access to the monies of the U.S. Treasury. They can thereby accomplish whatever missions abroad are deemed desirable by international financial interests. That further compounds the crimes of the government officials who condone these actions, request them, or continue to fund them from the Treasury on behalf thereof.

Our treasury finances foreign wars or "police actions" under cover of the United Nations, assists in developing foreign corporations who directly compete with American business, and support "club" member international interests who are exporting to other nations the very inventions that trademark and copyright powers of the Constitution intended as protections for American creativity. There is a growing list of atrocities directly effecting the commerce, economics and levels of taxation each individual American citizen and business must bear to repay this borrowed money.

The list of indictable offenses goes far beyond violation of oath. United Nations participation alone is prima facie treason against this nation and her people, giving aid and comfort (from our own treasury, no less) to our sworn enemies. Indeed we would not have so many international enemies if we would quit pounding sovereign nations with artillery when asked to do so by British (and other) international financial interests.

If one day we wake up to the sound of 'strafing' by United Nations forces, we can only blame ourselves for allowing this beast to establish itself within our own borders. Its financial machinery is directly connected to our own Congress!

RESTORING CONSTITUTIONAL MONEY

So far we have identified the original bi-metallic base of our money system, and our diversion from it over the past several generations. But we have left out several important pieces of the "how to fix it?" puzzle. The first solution requires more learning about the 10th Amendment movement, and how it can be used as a vehicle to launch a restoration of Constitutional money in this nation. The second piece is to have available some honest money to supplant the paper when it disappears.

The 10th Amendment movement is all about restoring the balance of power between the states and the federal government. We have identified problem agencies (more coming in Chapter 6) who write their own rules, impose them on the people, and act as judge, jury and executioner in the enforcement thereof.

And while the focus of the 10th Amendment movement seems to rally around balancing the federal budget, eliminating unfunded federal mandates on the states, and holding the United States Senate accountable to the states they purport to represent; there is one vital link in the whole process that, if ignored, will not allow the desired result to be achieved. We must use Article 1, Section 10, Clause 1 of the United States Constitution in conjunction with the 10th Amendment to force the money issue back into Congress

It's easy to be part of the education process.

First, the state legislature needs to use binding legislation on their United States Senators as a means to an end. They need to be instructed to introduce federal legislation repealing the earlier laws that created or authorized those financial institutions that operate in ultra vires realms against our Constitution. (The NVCCA model legislation entitled "United States Senate Accountability Act" is available for download from the "Documents" page on www.nvcca.net) All of this is simple federalism mechanics that we, the people, can put into motion. No letters to Congress need to be written. Just insist on transacting all your business and personal exchanges in constitutional "dollars" (the silver kind). This can put into motion a parallel money system along side the paper that most people use. (States can simply declare gold and silver to be the "legal tender" of their respective states.) You just compel those who have paper, and want to do business with you, to convert it first. All contracts get specified in terms of silver dollars, or larger ones, in gold eagles. There is a good bit of it around, and we can call it back into circulation this way ourselves!

Do you have the law on your side? You certainly do.

BALANCING THE BUDGET

For nearly a generation now, the subject of accumulated deficits have America caught in a great whirlwind of debate over passing a balanced budget amendment. I pose a few questions to the literate American.

If Congress has a habit of circumventing the Constitution to satisfy whomever it seeks to please, how can any amendment help?

If every dollar is borrowed into circulation, from whence cometh the compounding interest thereon? Therefore, how can enough money ever exist to repay both principle and interest?

If a formula exists in the existing Constitution that would achieve the end result of a balanced budget, why is it not already enforced?

Yes, the formula exists, and it has been used many times (although not in this century).[18] And no, a new amendment will not do what Congress will not do already.

The answer is simple. We don't need a new amendment. We need new Congressmen –those with honor, integrity, will power, guts, courage, and restraint. We don't have to balance the budget on the backs of the working class, the upper class, the lower class or the under class. We need it balanced by the Congress class –specifically those who will read the Constitution before they take and oath to support and defend it, and then will enter the halls of Congress with a single minded purpose to spend not one dime on anything that is not specifically authorized by the document they took that oath to support.

That is the key to deficit reduction and balancing the budget. Simply eliminate all the programs, agencies and expenses that Congress is not authorized to appropriate the public treasury to, and the budget mess will take care of itself. In addition, Congress must use the lawful revenue generating mechanisms at its disposal through duties, imposts, excises, and in emergencies, direct taxes, and ample revenue will be available for the true exigencies of government.

We need representatives who are students of history, who know what was the legislative intent of the framers of the Constitution. We need Senators who will not confirm the appointment of judges, whose ties to establishments would subject them to potential conflicts of interest, or that would be predisposed to writing precedent-setting cases in support of status-quo and entrenched ill-conceived institutions--be they agencies, departments or corporations.

We also need state delegates and senators and state judges and state attornies general who will arrest federal personnel who attempt to enforce illegal federal edicts inside the sovereign states. We need sheriffs who will protect any free citizen from federal agents who attempt to harass them for violations of illegal federal edicts.

In Maryland, for example, a state constitutional provision states:

"That all persons invested with the Legislative or Executive powers of Government are Trustees of the Public, and, as such, accountable for their conduct ... the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind." [19]

[18] Request a copy of the issue briefs published by the NVCCA on the dual subjects of the proposed Balanced Budget Amendments, and the contemporary calls for a Constitutional Convention to propose such an amendment. That subject deeply encompasses the constitutional powers of Congress to impose taxes, Article V amending, and related topics, and is therefore too much "off track" to delve into in this particular study.

[19] Maryland Constitution, Article 6, Declaration of Rights

CONSTITUTIONAL AUTHORITY OF THE STATES TO INTERVENE ON BEHALF OF SOUND MONEY

By Dr. Edwin Vieira, Jr.. JD, L.L.D
(Abridged & edited by Aaron Bolinger, Legislative Director,
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INTRODUCTION

Most state legislators are well acquainted with the *symptoms* of problems within the "economy" of these United States. Unfortunately, experience has shown that when speaking to state lawmakers of the powers they possess to intervene on matters of our monetary system, trade with other nations, and related *federalism* components of this "economy," state officials generally either lack the knowledge of these powers, or they are content to "let professionals handle it" from within the very "economic system" that created the problems, or *symptoms*, about which we are all too familiar.

The purposes of this advanced monograph are therefore two-fold. First, to explain the basic components of our "economic system" to State legislators, assisting them in understanding the complex interrelationships among these components. Secondly, we will both propose and explain *state legislative solutions* whereby the states of our Union can indeed intervene and begin correcting the inherent faults of the "system." Several model items of corrective legislation have been proposed, based on the realistic notion that some states may be willing to "dive right in" with a very direct approach, and others may wish to formally study the subject, and yet others may desire something of a "middle of the road" political approach. As a legislator, you may choose the language you feel best serves the immediate needs and particular situation within your state. These models are available, on request, from the NVCCA, or may be downloaded from the "Documents" page of www.nvcca.net

The fundamental reason for the involvement of the United States in the present day crisis of international banking is the existence and operations of the domestic corporative-state banking-monopoly known as the Federal Reserve System—and in particular, the essentially unlimited politically uncontrollable license Congress has extended to that System to generate Federal Reserve Notes: the legal tender paper tokens, irredeemable in silver or gold coin or bullion, that today function as this country's fiat currency. At the very center of the international banking-crisis are the leading private banks comprising the Federal Reserve System At the very center of the United States' own chronic domestic monetary crisis is the Federal Reserve System. Therefore, not surprisingly, the United States finds itself swept up in the flood-tide of international monetary catastrophe or, perhaps more properly, jettisoned into the maelstrom by the very "money managers" who caused the crisis in the first place.

However, from the perspective of United States law (with which this monograph is primarily concerned), the crisis of international banking is irrelevant to the monetary problems besetting this country. To be sure, the Federal Reserve System and the irredeemable Federal Reserve Note are root causative agents of the present situation. Both the Federal Reserve System and the irredeemable Federal Reserve Note are unconstitutional—the one, because of its corporative-state structure, and the other because of its irredeemability in silver or gold coin. (1) The United States government, therefore, has no legal obligation and probably no legal authority, to mitigate the international banking-crisis through any action that would support in any way the viability of the Federal Reserve System or the value of the Federal Reserve Note. Quite the contrary: The United States government has the highest legal obligation and authority to disestablish the Federal Reserve System and to decry Federal Reserve Notes as soon as possible.

The international monetary system is a disaster primarily because the United States has long attempted to impose the Federal Reserve System's debauched fiat currency as a world-wide standard of value. The global scope of the disaster, however, does not imply the necessity, let alone the practicality or even the possibility, of a global solution. Before planning a "new economic order" for other nations, the United States should first prove that it has the economic intelligence, political will, and (above all) moral virtue and courage to put its own monetary and banking houses in order by—(i) reinstituting as its domestic medium of exchange constitutional commodity money comprised of silver and gold coins; and (ii) reforming domestic banking-operations by strictly regulating or (better yet) abolishing entirely the fractional-reserve system.(2) If the United States can restore sound money to its own citizens before the collapse of the international banking-establishment not only will it weather the economic and social storms that collapse inevitably will cause, but also its example will stimulate other nations to resurrect their own stricken economies on the basis of intelligent principles, rather than simply to reinstitute in a new guise the same

fallacious ideas about money and banking that led to the present catastrophe.

The unanswered question though is: "How can the United States restore a domestic system of sound money?" The solution to this problem requires analysis of three issues:

(i) why this country now has a system of unsound money;
(ii) whither this system will lead if permitted to operate unchanged; and
(iii) whether a legal means exists to transform it.

PART I

The United States government's contemporary policy of monetary debasement is the expectable political-economic product of the normal operations of a totalitarian democracy.

One of the few historically validated axioms of political science is that an unlimited democracy cannot permanently exist as a form of government. For, from the moment the voters discover they can enrich themselves from the public treasury, the majority inevitably votes for candidates promising the greatest governmental largesse and benefits, with the inexorable results of increasingly irresponsible fiscal policy, public bankruptcy, economic and social collapse, civil strife, and the replacement of democratic profligacy with the austerity and discipline of oligarchy or tyranny. Today, notwithstanding the federal structure of national and state governments the Constitution ordains, the sharply defined and limited powers of the national government it enumerates, and the fundamental individual freedoms it guarantees, from the perspective of monetary and fiscal policy the United States is a centralized totalitarian democracy. As the democratically elected representative of the people, Congress now claims the powers:

(i) to tax any or all of the income of every person within its jurisdiction;
(ii) to spend these tax-receipts, and all other public monies, in whatever way it deems politically expedient but primarily on subsidies, "transfer payments", and other forms of redistribution of wealth from those without influence to those who exercise it; and
(iii) to emit fiat currency in order to underwrite expenditures above and beyond direct taxation through monetization of public debt by the Federal Reserve System's corporative-state banking-monopoly.

The evolution—or, more properly, the declension—of the United States from a constitutional republic to a totalitarian democracy is primarily the fault of the institution popularly believed to be the guardian of the Constitution but historically exposed as its chief enemy in the monetary and fiscal fields: the Supreme Court. By its decisions in Knox v. Lee [3] and Juilliard v. Greenman [4] in the late 1800s, erroneously upholding the power of Congress to emit bills of credit; its decisions in the Gold Clause Cases [5] in the 1930s, erroneously sustaining congressional authority to "demonetize" gold; and its consistent refusal in recent years even to hear, let alone to decide, cases raising constitutional issues concerning money and banking; [6] the Court has simply eradicated for all practical purposes, any constitutional restraint on congressional manipulation of money. [7] Similarly, by its decision in United States v. Butler, [8] erroneously declaring that Congress has unlimited authority to spend public monies for whatever the legislators claim are "public" purposes, and its decisions in Massachusetts v. Mellon (9) and Frothingham v. Mellon [10] erroneously denying both the States and private citizens any right to challenge the constitutionality of the national government's expenditures in most instances; the Court has excised from the Constitution for all practical purposes, any limitation on congressional dissipation of the public treasury. [11] As a matter of law, these decisions constitute a license for Congress to exercise constitutionally unlimited—that is, totalitarian—power to "tax and tax, spend and spend, inflate and inflate, and elect and elect."

Fundamentally, “popular statism” (the ideology of totalitarian democracy) advocates perverting the political process from its rightful purpose of protecting the lives, liberty, and property of individual citizens to the "social-democratic" goal of attacking the lives, liberty and property of politically weak minorities in order forcibly to confiscate their wealth and transfer it to politically powerful majorities, or coalitions of minorities. Popular statism fallaciously assumes, however, that government is somehow independent of the laws of economics; that it can actually create new real wealth through the emission of irredeemable legal-tender fiat currency; that it can radically redistribute existing wealth by taxation and spending without consuming capital or otherwise lowering standards of living; and overall that it can pervasively intervene in economic and social affairs through monetary, fiscal, and regulatory measures without imposing significant undesirable costs on society as a whole. Of course, exactly the opposite is true.

To be sure, taxpayers are not helpless against the ravages of redistributive statism. If taxpayers learn that they are subsidizing the huge system of governmental "transfer payments", how much this system costs them, and how little real benefit it confers on them, then they can support tax-limitation referenda or constitutional amendments, elect legislators who actually work for tax-reductions, or even engage in massive tax-evasion and resistance.[12]

Modern popular statism, however, has developed a new apology for prodigal governmental

spending that deceives the vast majority of taxpayers in this regard: Keynesianism. Redistributive interventionism—the system of "tax and tax spend and spend elect and elect"—is no political novelty in this country. But in the past the "orthodox" belief that governmental deficits were a symptom of financial irresponsibility in the conduct of public affairs tended to militate against the natural political-economic incentives for increased governmental spending. Keynes and his epigones provided a theoretical rationalization for governmental irresponsibility in the claim that a balanced budget reflects "old-fashioned" thinking and need no longer be a goal of fiscal policy. Thus, whereas in the "old order" increases in highly visible and generally unpopular taxation usually accompanied increases in public expenditure, the advent of Keynesian inflationism stripped away political restraints from the limitless growth of the public sector. Under Keynesianism, politicians can indulge in politically popular spending without recourse to politically unpopular taxes to finance it and with the explicit approval of the academic establishment. (13)

Keynes thus made redistributive statism politically convenient. The monetization of public debt to pay for governmental deficits with fiat currency and limitless central-bank credit-expansion operates as a tax on nominal assets, but a tax:

> (i) that requires no formal legislative procedure for enactment;
> (ii) that those who ultimately pay it almost never perceive as a "tax";and
> (iii) that the government's propagandists can blame on such scapegoats as Arab sheiks, multinational corporations, the "gnomes of Zurich", and so on. (14)

Moreover, the Keynesian era brought a revolution not only in political economics, but also in constitutional law. For, with the earlier help of the Supreme Court in Knox, Juilliard, and the Gold Clause Cases, Keynesian theory enabled Congress to establish a system of taxation without representation, and government without the informed consent of the governed, thereby effectively repealing the Constitution in perhaps its most important particulars.

PART II

Absent the restoration of a sound monetary system, the United States will soon degenerate into a totalitarian corporativistic state.

The nation's political-economic system is out of control. Next to no one considers the supreme law of the land a restraint on the formulation or implementation of governmental policy in the monetary and fiscal fields. Congress exercises its purportedly unlimited powers in these fields heedless of the teachings of economic science. And the incentives inherent in totalitarian democracy foster ever-increasing instability in the country's political economic, and social arrangements.

Assumedly, a fragile political consensus exists for a vague policy of "limiting the growth of governmental spending". But no significant agreement has yet emerged on the set of specific governmental expenditures to limit or on exactly how much to limit them. Moreover, those who concur in the need for public austerity generally eschew significant deflation of the existing supply of fiat currency and bank credit and never even suggest reintroduction of silver and gold coin, limitations on or abolition of fractional-reserve banking, or any of the other requisites of a sound monetary system. In short the conventional wisdom advocates "stabilizing" America's—and indeed the whole world's—economy at the very apex of the most prolonged and intense inflationary "boom" in history! And it proposes to achieve such "stabilization" through the selfsame mechanisms of “fine-tuning of the economy” that caused the present disaster.

Furthermore, as economic chaos lingers or intensifies, political pressure to "do something” will certainly encourage, and likely serve as an excuse for (if not actually force), the national government to expand its intervention until in cooperation with the Federal Reserve System it assumes totalitarian control over the economy as a whole. Increasingly weighty evidence indicates that the "new economic order already in the planning-stage will be decidedly corporativistic in character.

This need not be the case however, as the States have it perfectly within their sovereign powers to force the reverse result by themselves using only constitutionally-appropriate coinage within their respective jurisdictional boundaries, and thereby to restore national and even world-wide faith in the “dollar.”

PART III

Under present political-economic conditions only affirmative action by the States can restore a sound monetary system to America's citizens.

Today's domestic and international monetary crises are the expectable results of the advent of totalitarian democracy in this country, emphasizing the delusiveness of the Supreme Court's notion that the only way individuals can protect their economic rights "in a complex society" is by participation in the electoral process. (15) Nearly one hundred years ago, wiser jurists realized that

> *The results of a turbulent restless temporary impulse on the part of the people or majorities ... may be reflected in ... legislation. In such cases the people*

need protection from their own hasty acts. - [C]onstitutions are designed to serve as a check thereon. If they do not do this they are but a delusion and a snare.[16]

And almost two centuries ago, the Founding Fathers of this country provided a set of precisely defined tightly integrated constitutional restraints on the monetary powers of government that are anything but "a delusion and a snare."

Indisputably, the Constitution established provisions for a national system of money. The standard of value in this system is the "dollar", containing 371.25 grains of fine silver, as Congress memorialized in the Coinage Act of l792. (The Founders did not need explicitly to address the dollar as the national "Money-Unit" or to define the word in the Constitution, because the Continental Congress had already performed that task). The legally declared value of all non-subsidiary silver coins must relate proportionately to the weight of fine silver they contain in comparison to the dollar. The legally declared value of all non-subsidiary gold coins must relate proportionately to the weight of fine gold they contain in comparison to the dollar, at the prevailing free-market exchange-ratio between silver and gold. And neither the national nor the state governments may emit any form or species of paper currency. [17] The Constitution also contains a provision absolutely prohibiting any State from “mak[ing] any Thing but gold and silver Coin a Tender in Payment of Debts.”

Taken together, these constitutional requirements define a monetary system that relies on market principles as much as any governmentally-based system could. First, the Constitution adopted the type of money the world market historically favored: commodity money. Second, the Constitution adopted as money the very commodities the quality of which the international market historically recognized as preeminent silver and gold. Third, the Constitution adopted the specific unit of money the American market found most convenient during the 1700's: the "dollar" of 371.25 grains fine silver. Finally, through the system of "free coinage", the Constitution left the ultimate supply of money to the market too. In short, to the extent compatible with the existence of any government at all, the Constitution "degovernmentalized" money in its most important particulars.

Since ratification of the Constitution however, the country has suffered a radical re-politicization of money. The unfortunate series of events in the declension of the national monetary system from one informed by market principles to one manipulated by political expediency has transpired despite, not perforce of, the Constitution. For example, in the teeth of Article 1 Section 8, Clauses 2 and 5 of the Constitution, Congress began the emission of legal tender paper currency in 1862. Next, notwithstanding the irrelevance of debates over the "gold standard" and "free silver" in the context of the Constitution's command in Article I Section 8, Clause 5 that Congress must "regulate the Value" of all "Money" (be it composed of gold or silver) according to the national unit of account the silver dollar, Congress agonized itself and agitated the country over these spurious issues from 1870 to 1900. Then, in defiance of the Constitution's delegation to the national legislature alone in Article 1 Section 8, Clause 5 of the power "To coin Money [and] regulate the Value thereof," in 1913 Congress created the corporative-state banking-cartel disingenuously named the Federal Reserve System. Finally, in derogation of every constitutional monetary power and disability, Congress declared Federal Reserve Notes legal tender for all debts (1933), outlawed the redemption of those notes (or any governmental obligations) in gold coin (1933), seized the American people's supply of gold (1933), "demonetized" gold (1934), and at last outlawed the redemption of Federal Reserve Notes and paper currencies of the national government in silver, too (1968)—thus substituting the fiat paper currency of a private banking-consortium and the government's own base-metallic token coinage for the constitutional regime of gold and silver.

This history proves that office-holders concerned more with pleasing their economically powerful political constituents than with performing their legal duties can ignore and flout the Constitution—because they have in fact done so. It does not prove, however, that the constitutional powers and disabilities regarding money have been "set aside", have been "amended" by practice, or have “evolved" to comport with the contemporary economic theories of the "welfare state." The Constitution means and commands today precisely what it meant and commanded in the late 1700s; for no amount of usurpation and tyranny can dispense with or change its provisions—by proclamation or by practice—in the slightest degree. This fundamental rule of constitutional law, moreover, is not of simply academic interest. Admittedly, the fashion these days is to ignore constitutional restraints on the government’s so-called "economic" powers as mere hortatory rhetoric unsuited to the modern era of radical interventionism. As Justice Peter Daniel well said:

> *"It is indeed a sad symptom of the downward progress of political morals when any appeal to the Constitution shall fail... to suggest the necessity for solemn reflection. Still more fearful is the prevalence of the disposition either in or out of office to meet the honest or scrupulous devotion to its commands by that newborn wisdom which measures the Constitution only by its own superior and infallible standard of policy and convenience. By the disciples of this new*

> *morality it seems to be thought that the mandates or axiom of the Constitution when found obstructing the way to power, and when they cannot be overstepped by truth or logic, may be conveniently turned and shunned under the denomination of abstractions... ; and the loyal supporters of those mandates may be born down under the reproach of a narrow prejudice or fanaticism ... wholly beyond the sagacity and requirements of the age."* [18]

Contemporary political fashions and "the downward progress of political morals" to the contrary notwithstanding, the Constitution remains, by its own terms, "the supreme Law of the Land." [19] The important issue is not whether the Constitution is relevant to monetary policy, but whether it is enforceable against the Federal Reserve System and its partisans.

Contrary to the popular misuse of legal terminology, the federal government of the United States consists of five parts: Congress,[20] the President [21] the judiciary, [22] the States, [23] and the people. [24] Each of these branches of government has the legal right and power, and the duty, to support and defend the Constitution—Congress, the President, the courts, and officials of the States, because the Constitution requires them to take an "Oath or Affirmation" to that effect; [25] and the people, because they are responsible for "ordain[ing] and establish[ing]" the Constitution in the first place. [26]

The Founding Fathers believed that every man invested with power is likely to abuse it.[27] For that reason they sought protection against tyranny and usurpation not only in a democratic "dependence on the people," [28] but also in an elaborate interlocking system of constitutional checks and balances,[29] and in the doctrine of judicial review. [30] As experience has demonstrated however, the Founders did not sufficiently appreciate that judges with life-tenure [31] are not less covetous of power than ephemeral legislators, and that every judicial decision extending the authority of the legislative and executive branches of government also enhances the authority and importance of the judges who interpret and apply the laws.

Consequently, the existence of a set of dangerously ambiguous precedents on monetary law weighs heavily against any action by the Supreme Court in favor of sound money. Correctly interpreted neither Knox v. Lee, [32] nor Juilliard v. Greenman, [33] nor any of the Gold Clause Cases [34] provides the least rational support for the claim that Congress may constitutionally emit legal-tender currency irredeemable in silver or gold coin or delegate such a power to the corporative-state Federal Reserve System. [35] Rather, the decisions support the contrary positions. [36] They contain, however, much loose language about the seemingly unlimited power of Congress "to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes" [37]—upon which language the partisans of fiat currency have understandably (albeit disingenuously) seized in support of their position.

Now, only two alternatives exist: The Supreme Court must interpret these precedents either to support the constitutionality of fiat currency, or to deny its lawfulness. To do the second however, the Court must take upon itself the responsibility of suddenly invalidating the monetary rules upon the authority of which the market has structured an infinity of complex economic relationships and interactions.

Doubtlessly, a Court with the moral courage of its convictions—and a decent concern for its oath of office—could enunciate a rule mitigating or obviating any truly unjust economic dislocations that rigorous enforcement of the Constitution might occasion. [38] But a Court lacking such courage would likely view its intervention as "too late", and therefore politically and economically unwise, no matter how legally proper. [39] Such, of course, was the view of the late Justice Jackson, who described as

> *utterly beyond judicial reach ... the money, taxing, and spending power which is the power of inflation. The improvident use of these powers can destroy the conditions for the existence of liberty, because [they] can set up great currents of strife within the population which might carry constitutional forms and limitations before them.*

Yet, wrote Jackson, "*[n]o protection against these catastrophic courses can be expected from the judiciary. The people must guard against these dangers at the polls*." [40] Under the political-economic incentives of totalitarian democracy, though, the people cannot "guard against these dangers at the polls", because it is precisely the operation of special interest-group electoral politics that causes "these catastrophic courses" in the first place. Only strict enforcement of the Constitution can protect the country from the "improvident use" of alleged powers that Congress does not have. But paradoxically, the greater the economic and social harm a violation of the Constitution's monetary provisions has already caused, the greater the willingness of such as Jackson—and in all likelihood the present Court as well—to disregard or pervert the Constitution in order to sanction that violation. Or, the more totalitarian democracy employs fiat currency to destroy the fabric of American society, the more the Supreme Court will encourage and aid it to do so!

For a glaring example, the Supreme Court refused to hear an appeal in the case Solyom v. Maryland National Capital Park & Planning Commission on the ground that the appeal did not present a "substantial" federal question. [41] Solyom

however, presented numerous issues of monetary law, including:

> (1) whether a State may pay a debt it owes to a private citizen with irredeemable Federal Reserve Notes, notwithstanding the command of Article 1, Section 10, Clause I of the Constitution that" (n)o State shall... make any Thing but gold and silver Coin a Tender in Payment of Debts;"
> (2) whether the purported payment of irredeemable Federal Reserve Notes for land seized through exercise of the power of eminent domain constitutes "just compensation" under the Due Process and Just Compensation Clauses of the Fifth and Fourteenth Amendments to the Constitution;
> (3) whether Congress has the authority to emit irredeemable paper currency of any kind; and
> (4) whether Congress may license a cartel of private banks to emit irredeemable paper currency with legal tender character. [42]

On their face, these issues are anything but "insubstantial." A Constitutional claim is "insubstantial" only if "its unsoundness so clearly results from the previous decisions of (the Supreme Court) as to foreclose the subject and leave no room for the interference that the questio(n) ... can be the subject of controversy." [43] The Supreme Court has never ruled on any of these issues one way or the other!

Solyom thus demonstrates the multiple bankruptcy of today's Supreme Court:

> (i) its intellectual bankruptcy, if it could not deduce from previous decisions (or, indeed from the absence of previous decisions) that the issues raised in Solyom were substantial;
> (ii) its political bankruptcy, if it could not realize that the present system of "spend and spend inflate and inflate, elect and elect' is out of control and will inexorably drive the country to disaster absent the intervention of legal controls on totalitarian democracy;
> (iii) its moral bankruptcy, if it could not fulfill its duty honestly to decide constitutional issues presented to it; and
> (iv) its personal bankruptcy, if it could not muster a single Justice of sufficient integrity and grit to acknowledge how callously and with what cowardice the Court as a whole was surreptitiously disposing of the most important Constitutional question of modem times.

Unlike Congress and the Supreme Court, several States have, over the years, taken direct action against the continuation of the Federal Reserve System's regime of fiat currency. For example, the State of Alabama memorialized Congress "immediately (to) enact such legislation as is necessary to repeal the Federal Reserve Act." [44] And the State of Washington enacted a resolution declaring its intent to "fil(e) in the original jurisdiction of the Supreme Court... (a)n action challenging the Constitutionality of the delegation of power to create money to the Federal Reserve System." [45] Unfortunately, as insightful and laudable as these initiatives may be, they are misdirected. Their success depends on cooperation from either Congress or the Supreme Court—the two branches of the national government least likely to contribute anything to the restoration of monetary stability in the United States.

The States, however, do enjoy a Constitutional power of self help in this regard. Article I, Section 10, Clause 1 of the Constitution provides that" (n)o State shall... make any Thing but gold and silver Coin a Tender in Payment of Debts", clearly implying that the States retain the power to make such Coin "a Tender." Moreover, the Tenth Amendment to the Constitution provides that "(t)he powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people", adding further support to the States' retained authority to " make" specie "a Tender in Payment of Debts."

The necessary statute would not be difficult to draft (some models are included in this essay) and perhaps to pass in States such as Alabama and Washington. [46] Once enacted in one or more States, such a law would immediately have important economic, political and legal consequences:

> (i) It would effectively demonetize the Federal Reserve Note, substituting therefor constitutional commodity money of silver and gold.
> (ii) It would intensify the popular debate on monetary policy throughout the nation illustrating a practical legislative approach to the problem of restoring sound money, in direct contradiction of the arguments of spokesmen for the establishment that "no realistic alternative" to fiat currency exists. And,
> (iii) It would provoke Congress to challenge the States' reserved legal tender power, through legislation or litigation—in either event bringing the Constitutional issues into the open instead of continuing the pretense that they do not exist or have already been settled with legal and intellectual rigor in favor of irredeemable paper money.

On the other hand, the political effectiveness of such a state legal-tender law would depend in large measure on how many and which particular States acted in unison. The fewer, more localized, or less important the States, the easier for the mass-media to

dismiss the movement as narrowly "ideological" or "sectional" in nature. In addition, the fewer, smaller, or less powerful the States involved the easier for Congress or the inferior national courts to suppress the movement early on through punitive legislation or judicial decrees, without meaningful review by the Supreme Court, under some perverse interpretation of the Supremacy Clause of the Constitution. (47)

The most important congressional actions with respect to money involve:

> (i) the practical demonetization of the (silver) dollar, the constitutional standard of value, and of gold coin properly regulated in value as against the dollar
> (ii) the creation of the corporative-state Federal Reserve System and the delegation to it of a license to emit Federal Reserve Notes that purportedly constitute obligations of the United States;
> (iii) the extension of legal-tender character to Federal Reserve Notes, supposedly for all debts, public and private; and
> (iv) the effective repudiation of Federal Reserve Notes, by refusing to redeem them at any exchange-ratio, for silver or gold coin or bullion.
>
> Each of these actions is unlawful.

To restore their place in the structure of federalism, States should do more than simply "memorialize Congress" with respect to implementing these needed federal actions. Instead, they should admonish their United States Senators to do exactly those things, as "fast track" or "priority" legislation, *by order of the General Assembly of the State of* _____. As no State can be denied its suffrage in the Senate, and United States Senators are the voices of that suffrage, it is beyond ridiculous that state legislators do not take advantage of this unique and unquestionable power that they have to obtain a voice in the federal legislature. It is apparent, however, that many of them are not conversant with this power. Some think that anything deemed a "federal matter" must simply be left to federal legislators to discern and deal with on their own. Such a notion is not true, based on the clear and simple language of the Constitution itself. States can intervene decisively in the federal system, at any time they want. Based on the current economic crisis sweeping this country and the world it is high time they do so.

Moreover, the States cannot supinely wait for the judiciary to act. The popular misconception holds that the courts are arbiters of the law in general and of the Constitution in particular, as against the other branches of the national government and the States. But, the truth is that the Founding Fathers "did not make the judiciary the overseer of our government." (48) They gave the national courts, including the Supreme Court, no license to "invade the province of the other [departments of government]", or to "control direct or restrain the[ir] action[s]." (49) Because the"[Supreme] Court may fall into error as may other branches of the Government", neither Congress nor the President, nor the States should feel any embarrassment let alone fear any legal disability, in acting contrary to judicial pronouncement they consider incorrect. (50) Certainly the President has no duty whatsoever to concern himself with "faithfully execut[ing]" judicial decisions—for these decisions are not "Laws", strictly speaking, but rather merely evidence of what the courts think the "Laws" are (and often quite unsatisfactory evidence, at that). (51) Neither need he "faithfully execut[e]" the "laws" (including the Constitution) only after and as the Supreme Court has interpreted them. (52)

Ultimately, too, the States are answerable—not to Congress, the Supreme Court or the President —but only to the fifth branch of the federal government: the people. If the people see courageous state legislators protecting the pensions of state employees, inducing real wealth to flow toward their states, and taking other actions to unlock the bonds of fiat-money slavery on their behalf, the public will respond favorably. Without question, economic upheaval as we are now seeing is driving more and more people to seek out havens for their stored wealth—they are buying gold and silver on their own—and to such a degree that both gold and silver are becoming difficult to find. States should simply follow the lead of their people, and transfer paper into tangible commodity money. Gold and silver have been historic stores for wealth for thousands of years of human history, and will be such long after the current heads of the fiat empire are dead and gone. On the other hand, if the people do not agree with the actions of their legislators, the latter will be removed from office, one way or another. In either case, the responsibility for events will be the people's, as it always must be in a system of representative government.

CONCLUSION

The present-day crisis of international banking should alert this country to how near the collapse of its own monetary system has come. Time is short. The leader capable of using what little time remains to the best advantage of sound money has yet to appear on the national political stage. Perhaps he never will. But our States can act independently of both Congress and the Presidency to prevent economic collapse. It can be done from "the bottom up"—or "the top down"—depending where you place the people and their state governments in your vision of the hierarchy of federalism. If it is not done, and soon, we all shall have only ourselves to blame for what happens to us.

ENDNOTES

1. See E Vieira, Jr., Pieces of Eight - The Monetary Powers and Disabilities of the United States Constitution: A Study in Constitutional Law (1983), at 345-58, 333-45.
2. Work is already beginning on these thorny problems - but not needless to emphasize, within governmental departments. See, e.g., A. Fekete, "Taming the Debt and Stabilizing the Exchanges: A Blueprint" (Monograph No. 38, Committee for Monetary Research & Education Inc, 1983).
3. 79 US. (12 Wall.) 457 (1871).
4. 110 U.S. 421 (1883).
5. Norman v. Baltimore & O.R.R., 294 U.S. 240 (1935); Nortz v. United States, 294 U.S. 317 (1935); Perry v. United States, 294 U.S. 330 (1935).
6. E.g., Chermack v. Bjornsori, 223 N.W. 2d 659 (Minn.), cert. denied, 421 U.S. 915 (1974); United States v. Daly, 481 F. 2d 28 (8th Cir.), cert denied 414 U.S. 1064 (1973); United States v. Schmitz, 542 F. 2d 782 (9th Cir. 1976), cert denied, 429 U.S. 1105 (1977); United States v. Wangruct 533 F. 2d 495 (9th Cir.), cert denied, 429 U.S. 818 (1976); United States v. Whiteset 543 F. 2d 1176 (6th Cir. 1976), cert denied 431 US. 967 (1977).
7. This result is "for all practical purposes" because the government regularly misrepresents these decisions to the credulous public as sustaining the broadest conceivable congressional power over money and banking. See, e.g., Letter of R.L. Munk Assistant General Counsel, United States Department of the Treasury, to E Huysman (18 May 1981), in the private collection of the author. See generally E. Vieira, Jr., Monetary Powers and Disabilities ante note 1, at 194-237, 251-83.
8. 297 US. 1, 64-67 (1936).
9. 262 US. 447,482-86 (1923)
10. 262 US. 447,486-88 (1923).
11. These decisions, too, have as little value as Knox, Juilliard, and the Gold Clause Cases because of their manifest errors. E.g., contrast Frothingham v. Mellori, 262 U.S. 447,486-88 (1923), with Flast v. Cohen 392 US. 83, 102-05 (1968).
12. Apparently, tax-evasion and resistance have already reached epidemic proportions at the national level. See the misnamed Tax Equity and Fiscal Responsibility Act of 1982, Act of 3 September 1982, Pub. L 97-248, §§ 320-31, 96 Stat 324, 611-20 (provisions for penalizing "abusive tax shelters", "substantial underpayments", "false documents", and "frivolous returns').
13. On the self-interest of collectivistic intellectuals in Keynesianism and other apologies for "central planning", see Vieira, "The Syndicalism of the Intellectuals: A Commentary on the Role and Purpose of the American Intelligentsia in Promoting Socialism in the United States", 6J. of Social, Political and Economic Studies 269 (1981).
14. Infrequently, though does the government advert to the cause and effect relationship between the economic and political aspirations of powerful labor unions and monetary debasement See, e.g., Petro, "Unemployment, Unions and Inflation: Of Causation and Necessity", 26 The Freeman 387 (1976).
15. New Motor Vehicle Bd. of California v. Orrin W. Fox Co., 439 US. 96, 108 (1978).
16. Dennis v. Moses, 18 Wash 537, 576, 52 Pac. 333, 340 (1898).
17. See E Vieira, Jr., Monetary Powers and Disabilities, ante note 1, at 2-91.
18. Marshall v. Baltimore & O.R.R., 57 US. (16 How.) 314, 345-46 (1853) (dissenting opinion).
19. U.S. Const. Art. VI, cl. 2.
20. U.S. Constitution Art I, § 1 ("[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.")
21. U.S. Constitution Art II, § 1, cl. 1 (" [t]he executive Power shall be vested in a President of the United States of America).
22. U. S. Constitution Art III, § 1, ("[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.")
23. U.S. Constitution amend. X ("[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.")
24. U.S. Constitution amend. IX ("the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people"). See also U.S. Constitution amend. X.
25. U.S. Constitution Art. VI, cl. 2 ("[t]he Senators and Representatives [in Congress], and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution); Art II, § 1, cl. 7 ("[t]he President shall take the following Oath or Affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.")
26. U.S. Constitution preamble.
27. See, e.g., Vieira, "Rights and the United States Constitution: The Declension From Natural Law to Legal Positivism", 13 Georgia Law Review 1447, 1448-53 (1979).
28. The Federalist No. 51.
29. See, e.g., id. Nos. 47-83.
30. See, e.g., id. No. 78.
31. U.S. Constitution Art III, § 1 ("[j]udges... shall hold their Offices during good Behaviour").
32. 79 U.S. (12 Wall.) 457 (1871).
33. 110 U.S. 421 (1883).
34. Norman v. Baltimore & O.R.R., 294 U.S. 240 (1935); Nortz v. United States, 294 U.S. 317 (1935); Perry v. United States, 294 US. 330 (1935).
35. See E. Vieira, Jr., Monetary Powers and Disabilities, ante note 1, at 194-237, 251-83.
36. See id at 345-58, 333-45.
37. Juilliard v. Greenman 110 U.S. 421, 448 (1883).
38. See e.g., the cases dealing with post-Civil War revaluation of contracts originally made in Confederate money. Thorington v. Smith 75 US. (8 Wall.) 1, 11-14 (1868); Confederate Note Case, 86 U.S. (19 Wall.) 548, 555-58 (1873). Application to debts denominated in Federal Reserve Notes of the rule of re-valuation of contractual performance adopted in the Confederate-money cases may amount to too scrupulous a regard for economic fairness, however. After all the law presumes that every person who contracts for a deferred payment in Federal Reserve Notes understands the true economic nature and legal position of that currency. Every such person, that is, constructively knows: (i) that Federal Reserve Notes are an irredeemable fiat currency; (ii) that fiat currencies generally tend seriously to depreciate in real exchange-value over time, often becoming entirely worthless except as curiosities; (iii) that the Federal Reserve System neither owns, nor has legally enforceable claims to, amounts of silver or gold coin or bullion sufficient to redeem outstanding Federal Reserve Notes (and bank accounts denominated therein) "dollar for dollar"; (iv) that Congress has already repudiated any colorable obligation of the United States to redeem those notes in specie, and (v) that any implied congressional promise to treat the irredeemable notes of a private banking-cartel as" obligations" of the national government is unconstitutional and unenforceable on its face. People who contract for deferred payments in Federal Reserve Notes, them constitute a species of incautious speculators, who hope to profit on their contracts before those notes suffer the historically proven fate of other fiat currencies. If their speculations prove improvident however, they have only themselves to blame for any losses they suffer—and certainly can advance no rational claim in "justice" that their debtors (or, worse yet society as a whole) should act as" insurers" of what they wrongly anticipated as the real values of their contracts.
39. See, e.g., Knox v. Lee, 79 U.S. (12 Wall.) 457, 529-30 (1871).
40. R.H. Jackson "The Supreme Court in the American System of Government" (1955), at 59-61.
41. No. 82-2016, appeal dismissed, 3 October 1983.
42. See E Vieira, Jr., Monetary Powers and Disabilities, ante note 1, at 312-23.
43. Goosby v. Osser, 409 US. 512, 518 (1973).
44. FL Concurrent Memorial No. 2002, 85th Legis., 2d Regular Sess. (21 January 1982).

45. S. Concurrent Resolution No. 127, 47th Legis., 2d Extraordinary Sess.
46. See Appendix hereto.
47. U.S. Constitution Art VI, cl 2 provides that "[t]his Constitution and the Laws of the United States which shall be made in Pursuance thereof ..., shall be the supreme Law of the Land .... any Thing in the Constitution or Laws of any State to the contrary notwithstanding." A state legal-tender law enacted in pursuance of Article I, § 10, cl 1 of "this Constitution", however, could not be "to the contrary" of the Constitution by legal hypothesis. Apologists for fiat currency, no doubt would argue that the national statutes purporting to authorize the emission of such currency by the Federal Reserve System were "Laws of the United States", and that a state legal-tender law for silver and gold coin was "to the Contrary." This position however, would depend upon whether. (i) such authorization of Federal Reserve Notes was itself "made in Pursuance [of the Constitution]", or was actually repugnant thereto; and (ii) such a statutory authorization could override the explicit constitutional reservation of the States' legal-tender power. In so far as mere statutes of Congress can never dispense with any provision of the Constitution, the Supremacy-Clause argument would necessarily fail.
48. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 594 (1952) (Frankfurter, J., concurring).
49. See Frothingham v. Mellon, 262 U.S. 447, 448-49 (1923).
50. Helvering v. Griffiths, 318 U.S. 371, 400-01 (1943).
51. Cf. Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 866 (1824).
52. See Katzenbach v. Morgan, 384 U.S. 641, 648-49 (1966). The President takes an "Oath or Affirmation" explicitly to "preserve, protect and defend the Constitution", and implicitly to "take Care that the Laws be faithfully executed" —not to defend judicial opinions, or to see that they are faithfully executed if he believes they violate the Constitution and "Laws." Otherwise, his "Oath or Affirmation" would amount to a promise slavishly to defer to the courts, making them superior, not simply co-equal to the executive branch.

Model State Legislation Relating to Sound Money

NON-PARTICIPATION IN FEDERAL GRANTS

Author: Aaron Bolinger (NVCCA Legislative Director)
Applicability: State – to cut off the flow of federal funds coming with “strings attached” (i.e. “Unfunded Mandates” which are more often than not situations where Congress lacks constitutional authority to legislate.)

WHEREAS, the United States Constitution created the federal government to be one of limited powers and scope; and
WHEREAS, the Congress of the United States has, over the years, attempted to expand its duties beyond the limited framework of the Constitution of the United States, and further delegated some of its reserved powers to others in violation of these limits; and
WHEREAS, the Congress has created a myriad of special programs that purport to be beneficial to the states, but which are in reality detrimental to the states – as the said programs place restrictions on the states in violation of the United States Constitution, and/or compel the states to use the grants in ways specified by the federal government; and
WHEREAS, the constitutional formula for distribution of surplus federal monies (when such surplus exists) is being circumvented by the grant-making process and thereby violates the “apportionment” formula of the said Constitution; and
WHEREAS the said Constitution also forbids the states from making any thing other than silver and gold coin a tender in payment of debts (Art. I § 10), and these grants are being borrowed and sent in other currency forms in violation of this constitutional stricture.
BE IT THEREFORE ENACTED BY THE LEGISLATURE OF THE STATE OF (???) , that effective immediately, the State of (???) hereby rejects the receipt of any federal monies, or participation in any federal programs, that are not both in conformity to the correct formula for the distribution of surplus monies, and that the media of exchange be constitutionally proper for our state’s use; and be it further
ENACTED that the Congress of the United States is hereby served notice by the State of (???) that we shall cease the sending of any and all taxes collected from or within the State of (???) until such time as Congress coins constitutionally-proper money for circulation in this and our Sister States; and be it further
ENACTED, that any federal revenue agent purporting to collect monies from citizens of the State of (???) in violation of the provisions of the Constitution of the United States relating to the powers of direct taxation found at Article I, Section 9, Clause 4 of said Constitution of the United States shall be guilty of a felony, and on conviction thereof shall be fined not less than $25,000, nor more than $100,000, or imprisoned in the state penitentiary not less than 1 year, nor more than 5 years, or both fined and imprisoned in the discretion of the court; and be it further
ENACTED, that copies of this bill be forwarded to the two United States Senators representing the State of (???) in the Congress Assembled, and further the said Senators are hereby admonished by this Assembly to introduce legislation in the United States Senate to coin silver and gold coin for our people.

BINDING RESOLUTION FOR AN AUDIT OF THE FEDERAL RESERVE SYSTEM

Author: Unknown
Applicability: State, to call on that state's United States Senators to address the problems created by the Federal Reserve System of banks.

WHEREAS, the Federal Reserve system was established by law in 1913, yet since its establishment the said corporation has never been financially audited, despite its assumption of a critical public power reserved to Congress; and
WHEREAS, at the time the Federal Reserve system was created, constitutionally-prescribed (gold and silver) money was in full circulation, yet since then the Federal Reserve system has substituted a paper medium of exchange for the prescribed money of these United States, to the extreme financial detriment of this and our Sister States; and
WHEREAS, the United States Senate consists of two persons sent by each state included within this Union, and the Senate performs all the duties that are essential to a harmonious relationship in commerce, treaties, and otherwise of our states with the great community of nations in the world, and between the states themselves; and
WHEREAS, the framers of the Constitution established a federal system of government among and between our several states, and positioned the United States Senate as that body directly representing the states of our Union in the federal legislature; and WHEREAS, it is the duty of our state legislatures to direct the actions of the United States Senators for the protection of our states' mutual interests; and
WHEREAS, our money system and financial health is of the utmost importance to the security of our individual states, and our collective security as a nation, and
WHEREAS, the current financial crisis is a direct result of the debasement of the money of account for our United States, and the actions of the Federal Reserve system with respect thereto, and
WHEREAS, our states are duty-bound by the said Constitution to correct such problems; and
WHEREAS, the United States Senate is the proper body by which this (state/commonwealth) may exert its influence within the federal government.
BE IT THEREFORE RESOLVED by the (General Assembly/Legislature) of the (State/Commonwealth) of (name of state) that the two United States Senators of this (state/commonwealth) are hereby directed and instructed to represent the will of this (legislature/assembly) on federal economic subjects by virtue of their office in this manner; to wit:
That the two United States Senators sent by the people of the State of (name of state) are hereby directed to introduce and/or sponsor a bill in the Congress of the United States that will immediately cause to be conducted, and the results made fully public, a full and complete audit of Federal Reserve system, including but not limited to the Federal Reserve Board, federal reserve member banks, Federal Open Market Committee, Federal Deposit Insurance Corporation, & the Office of Thrift Supervisors, and including but not limited to all books and records pertaining to their roles in the monetary policy & economic systems of these United States, transactions with foreign central banks, non-private international financing organizations, and governments of various nations; a full and complete cataloging of the assets, liabilities, reserves, stocks, bonds, securities credit, interest on deposits, and debentures of the governing and member banks thereof, a full and complete accounting of the weights of precious metals, bullion, coin and money, regardless of the nation of the world from which derived, that is in their possession or under their control, as well as a full and complete accounting for the locations of all such assets; a full and complete accounting of the assets & liabilities of all corporate directors & first and second class shareholders, their salaries, holdings, benefits, dividends and other emoluments for the past seven years; and
BE IT FURTHER RESOLVED that being duty-bound by oath of office to support the Constitution, and to function in their proper role on behalf of this state in the federal legislature, that if either United States Senator from the (state/commonwealth) of (name of state) neglect or refuse to act according to the will of the (assembly/legislature) of this (state/commonwealth) on this subject, that this omission or refusal will constitute nonfeasance in their respective office(s), and subject them to removal from their position according to the laws of this (state/commonwealth); and
BE IT FURTHER RESOLVED that upon passage by this (assembly/legislature), that copies of this BINDING RESOLUTION be immediately transmitted to the Honorable (name) and the Honorable (name), United States Senators for the (state/commonwealth) of (name of state).

★

An Act Relating To Legal Tender

Author: Ed Vieira, Jr. L.L.D., J.D
Submitted by: Committee for Monetary Research & Education; 10004 Greenwood Court; Charlotte, NC 28215
Applicability: (State) To require the use of lawful coin in the transaction of business with the state.

AN ACT relating to legal tender.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF (?)

Section 1. The Legislature of the State of (?) finds and declares that the State is experiencing an economic crisis of severe magnitude caused in large part by the unconstitutional substitution of Federal Reserve Notes for silver and gold coin as legal tender in this State. The Legislature also finds and declares that immediate exercise of the power of the State of (?) reserved under Article I Section 10, Clause 1 of the United States Constitution and by the Tenth Amendment thereto, is necessary to protect the safety, health and welfare of the people of this State, by guaranteeing to them a constitutional and economically sound monetary system.

Section 2. For the purposes of this Act

(a) the term "State" shall include the State of _____ and all executive and administrative departments and agencies, courts, instrumentalities, and political subdivisions thereof and all elected and appointed officials, employees, and agents thereof acting in their official capacities; and

(b) the term "silver and gold coin" shall include

(1) the silver and gold coins of the United States coined or minted, or such silver and gold coins of any foreign nation adopted as money of the United States, by authority of Congress pursuant to Article I Section 8, Clause 5 of the United States Constitution; and

(2) all new certificates of the United States issued by authority of Congress pursuant to Article I Section 8, Clause 5 of the United States Constitution which certificates are in law and in fact redeemable on demand in silver and gold coin at their face values; but

(3) in no case whatsoever any note, obligation security, bill of credit, or other form or species of paper currency or other instrument or document intended to circulate as money emitted or issued

(A) by the United States or any department, agency, or officer thereof or

(B) by the Federal Reserve System or any board, committee, member bank instrumentality, official or agent thereof.

Section 3. On and after the effective date of this Act this State shall not recognize, employ, or compel any person or entity to recognize or employ any thing other than silver and gold coin as a legal tender in payment of any debt arising out of

(a) taxation by the State, where the applicable authority for the tax shall mandate the calculation and payment thereof in silver and gold coin

(b) expropriation of private property pursuant to exercise of the power of eminent domain by the State or by any entity privileged by the laws thereof to exercise such power

(c) judgments, decrees, or orders of any court or administrative agency of this State in civil or criminal actions or proceedings, except where and only to the extent that the court or agency granting such award shall find, on the basis of clear and convincing evidence, that payment of silver and gold coin shall not constitute just compensation for the damages suffered by the prevailing party, and therefore shall mandate

(1) specific performance of a contract or agreement by other than the payment of money,

(2) specific restitution of identifiable property other than money, or

(3) other like relief, and

(4) contracts or agreements for the payment of wages, salaries, fees, or other monetary compensation to any person, corporation or other entity who or which shall provide goods or services to the State in aid of performance of its governmental functions.

Section 4. The unit and measure for determining what shall constitute legal tender in payment of any debt specified in Section 3 hereof shall be the standard silver dollar, containing 371.25 grains (troy) fine silver, as coined or minted by authority of Congress from time to time pursuant to Article I Section 8, Clause 5 of the United States Constitution.

Section 5. The value of any silver and gold coin as a legal tender in payment of any debt specified in Section 3 hereof shall be denominated in "dollars" ($), such denomination to be calculated as follows:

(a) the value of any silver coin shall be calculated by dividing the weight of fine silver in grains (troy) that the said coin shall contain by 371.25 grains, and expressing the quotient in "dollars";

(b) the value of any gold coin shall be calculated by multiplying the weight of fine gold in grains (troy) that the said coin shall contain by the proportion by weight between silver and gold as determined by the Treasurer of the State of _____ as provided herein dividing the product of such multiplication by 371.25 grains, and expressing the quotient in "dollars"; and

(c) at the beginning of each business day, the Treasurer of the State of (?) shall determine the average proportion by weight by which gold exchanges against silver in the major precious metals market or markets in the State of (?), and

(1) shall immediately make available such determination to any person upon request without charge; and

(2) shall permanently certify and record such determination.

Section 6. On and after the effective date of this Act the State shall denominate all public accounts, and record, the value of all public assets and liabilities, in standard silver dollars.
Section 7. If any provision of this act or its application to any person or circumstance is held invalid the remaining provisions of the Act or their applications to other persons or circumstances shall not be affected.

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MODEL STATE ACT FOR THE MONETIZATION OF SILVER AND GOLD COIN WITH RESPECT TO ESSENTIAL SOVEREIGN FUNCTIONS

Author: Ed Vieira, Jr. L.L.D., J.D
Submitted by: Committee for Monetary Research & Education; 10004 Greenwood Court; Charlotte, NC 28215

AN ACT relating to the designation and use of silver and gold coin as media of exchange and legal tender with respect to essential sovereign functions in the State of _____. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

SECTION 1. The Legislature of the State of _____ finds and declares that—

(a) The substitution of Federal Reserve Notes and coinage composed of base metals for silver and gold coin as the media of exchange and legal tender between this State and its citizens, in the exercise of the State's essential sovereign functions, powers, privileges, and duties, abridges, infringes on, and interferes with the sovereignty and independence of this State and its citizens, and their rights, powers, privileges, immunities, and prerogatives as a political community, as well as exposing them to serious economic problems.

(b) In order to preserve the sovereignty and independence of this State and its citizens, and their rights, powers, privileges, immunities, and prerogatives as a political community, as well as to protect and promote the people's safety, health, welfare, and economic prosperity, it is imperatively necessary and proper for the Legislature to guarantee to this State and its citizens constitutional and economically sound media of exchange and legal tender by exercising

(1) this State's power, privilege, and duty to "make * * * gold and silver Coin a Tender in Payment of Debts", as reserved to and required of each State under Article I, Section 10, Clause 1 of the Constitution of the United States, and confirmed by the Tenth Amendment thereto, and

(2) other powers, reserved to this and every State by the Tenth Amendment, which relate to this State's choice of media of exchange and legal tender for the fulfillment of its essential sovereign functions.

SECTION 2. For the purposes of this Act—

(a) The term "State" shall include the State of _____, and all legislative, executive, judicial, and administrative branches, departments, tribunals, and agencies, political subdivisions, and instrumentalities thereof, and all elected and appointed officials, employees, agents, and independent contractors thereof acting in their official capacities or under color of law or contract.

(b) The term "domestic silver and gold coin" shall include the silver and gold coins of the United States whenever coined or minted, and such silver and gold coins of any foreign nation that, at the time of any use pursuant to this Act, shall have been adopted as "Money" of the United States, by authority of Congress pursuant to Article I, Section 8, Clause 5 of the Constitution of the United States.

(c) The term "foreign silver and gold coin" shall include the following coins:

(1) gold coin — Austrian 100 coronas, 20 coronas, 4 ducats, 1 ducat; British sovereign; Canadian 1, 1/2, 1/4, 1/10 maple leaf; French 20 francs; Swiss 20 francs; Mexican 50, 20, 10, 5, 2-1/2, 2 peso; South African 2, 1, 1/2, 1/4, 1/10 Krugerrand;

(2) silver coin — Canadian 1 maple leaf. Provided, however, that this Act shall not apply to any domestic or foreign silver or gold coin the numismatic or collectors' character of which renders its economic value (expressed in "dollars") in the market for numismatic or collectors' coins greater by at least _(x)__ per centum than the "value" calculated simply on the basis of the coin's content of silver or gold, pursuant to SECTIONS 3 and 4 of this Act.

SECTION 3. For all purposes of this Act, the unit and measure of "value" shall be the constitutional, or standard, silver "dollar" of the United States of America, containing 371.25 grains (troy) fine silver, as originally adopted in Article I, Section 9, Clause 1 of the Constitution of the United States, and the Seventh Amendment thereto; historically determined in Section 9 of the Coinage Act of 2 April 1792, chapter 16, 1 Statutes at Large 246, 248; and coined or minted in the aforesaid weight of silver by authority of Congress from time to time pursuant to Article I, Section 8, Clause 5 of the Constitution of the United States.

SECTION 4. For all purposes of this Act, the "value" of any silver and gold coin shall be denominated in "dollars" ($), such denomination to be calculated as follows:

(a) the value of any silver coin shall be determined by dividing the weight in grains (troy) of fine silver that the said coin shall contain by 371.25 grains, and expressing the quotient in “dollars”; and

(b) the value of any gold coin shall be determined by multiplying the weight in grains (troy) of fine gold that the said coin contains by the proportion by weight by which silver exchanges against gold in the markets for precious metals, as determined by the Treasurer of this State as provided in SECTION 5 of this Act, dividing the product of such multiplication by 371.25 grains, and expressing the quotient in “dollars”.

Provided, however, that if in the market for numismatic or collectors’ coins any domestic or foreign silver or gold coin shall have a value (expressed in “dollars”) greater by at least _(x)__ per centum than its “value” calculated simply on the basis of that coin’s content of silver or gold, pursuant to SECTION 3 and SUBSECTIONS (a) and (b) of this SECTION of this Act, then the “value” for such coin shall be its numismatic or collectors’ value (expressed in “dollars”).

SECTION 5. At the beginning, midpoint, and end of each business day, the Treasurer of this State shall determine both (i) the average proportion by weight by which silver exchanges against gold in the major markets for precious metals, and (ii) the “value” in silver “dollars” of each coin identified in SECTION 2 of this Act, pursuant to the formulae set out in SUBSECTIONS (a) and (b) of SECTION 4 of this Act, and

(a) shall immediately publish such determinations in such media, including but not necessarily limited to the Internet, as shall make the said determinations readily available on a timely basis to all interested persons;

(b) if the Treasurer shall find it technically feasible, shall make and publish the determinations required in this SECTION of this Act at intervals more frequent than heretofore mandated;

(c) shall certify, record, and archive all such determinations in the Treasury; and

(d) shall make available any and all archived determinations to any person upon request therefor, without charge.

SECTION 6. Any certified determination made under SECTION 5 of this Act shall be conclusive evidence in all the courts, administrative agencies, and other tribunals of this State as between any and all private persons or parties, as well as between this State and any and all other parties, the rights, powers, privileges, immunities, or other legal or equitable interests of which such determination shall or may affect. Provided, however, that any person aggrieved by a false certification may bring an action in the (?) Courts of this State against the Treasurer for any and all forms of appropriate relief.

SECTION 7. On and after the effective date of this Act, this State shall neither itself, nor compel or require any person or entity to, recognize, receive, pay out, deliver, promise to pay, or otherwise use or employ any thing but domestic or foreign silver and gold coin as media of exchange and legal tender with respect to

(a) the calculation and payment of any tax or other involuntary contribution, public due, charge, or fee, or fine or other monetary penalty imposed by the State, unless the authority imposing the same shall, for lawful reason, mandate calculation and payment in something other than domestic or foreign silver and gold coin;

(b) the principal and interest of any loans (howsoever denominated or evidenced) made to and on the credit of the State;

(c) any monetary award or agreement in respect of expropriation of private property pursuant to the exercise of the power of eminent domain by the State or by any entity or person authorized by the laws thereof to exercise such power;

(d) any judgment, decree, or order of any court, administrative agency, or other tribunal of the State, except where and only to the extent that the court, agency, or tribunal shall find, on the basis of clear and convincing evidence, that payment of such silver and gold coin shall not constitute just compensation for the damages or harm suffered by the prevailing party, and therefore shall mandate

(1) specific performance of a contract by other than the payment of money; or

(2) specific restitution of property other than money; or

(3) payment of some medium of exchange other than silver or gold coin, pursuant to a requirement for such payment in a contract or other agreement then sub judice; or

(4) other like relief; and

(e) contracts, agreements, or other arrangements for the payment of wages, salaries, fees, or other monetary compensation to any person, corporation, partnership, or other entity who or which shall have provided or shall provide goods or services to, or otherwise be entitled to payment from, the State, either as officers, employees, agents, or contractors of the State or in any other capacity.

Provided, however, that with respect to any tax, loan, award in eminent domain, judgment, or contract that was imposed, was made, or became payable in, or that designated explicitly or implicitly a specific medium of payment other than silver or gold coin before the effective date of this Act, the medium of exchange for the payment or other satisfaction thereof and legal tender therefor shall be the medium designated, required, specified, or contemplated at the time the tax was imposed, the loan or contract was made or became payable, or the award or judgment was handed down.

SECTION 8. On and after the effective date of this Act, this State shall denominate all public accounts, and record the value of all public assets and liabilities, in constitutional (standard) silver dollars of 371.25 grains (troy) fine silver.

Provided, however, that with respect to any tax, loan, award in eminent domain, judgment, or contract that was imposed, was made, or became payable in, or that designated explicitly or implicitly a specific medium of payment other than silver or gold coin before the effective date of this Act, the State may also denominate all relevant public accounts, and record the value of all relevant public assets and liabilities, in the medium of exchange designated, required, or contemplated at the time the tax was imposed, the loan or contract was made or became payable, or the award or judgment was handed down.

SECTION 9. Except as may be consistent with SECTION 7 of this Act, this State hereby withdraws any and all consent, whether explicit or implicit, which it may have given for the assertion against it

(a) in the State's own name or in the name of any of the State's officers, agents, agencies, instrumentalities, employees, or contractors,

(b) in any proceeding, whether by way of suit, countersuit, set-off, recoupment, or other affirmative action or defense, at law or in equity, brought after the effective date of this Act,

(c) of any right, privilege, power, immunity, or other interest of any kind whatsoever, whether legal or equitable, with respect to the payment to or receipt from the State by any claimant (whether a party to the proceeding or not) of Federal Reserve Notes or coinage composed of base metals, in lieu of the domestic or foreign silver and gold coin specified in this Act.

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(The following was prepared specifically for the State of New Hampshire, so therefore must be modified accordingly to conform to other state code construction, and related considerations.)

New Chapter; Gold and Silver Coin and Electronic Currency.
Amend RSA by inserting after Chapter 6-C the following new Chapter:
CHAPTER 6-D GOLD AND SILVER COIN AND ELECTRONIC CURRENCY

6-D:1 Findings.

The General Court of New Hampshire finds and declares that:

I. The absence of gold and silver coin (in that form or in the form of an Electronic Gold Currency defined as and absolutely payable in a specified weight of that metal, and convertible on demand into gold and silver coin) as media of exchange between the State of New Hampshire and her citizens, inhabitants, and businesses, in the exercise of the State's essential sovereign prerogatives, functions, rights, powers, privileges, and duties:

(a) Abridges, infringes on, and interferes with the sovereignty and independence of this State and her citizens, inhabitants, and businesses, and their rights, powers, privileges, immunities, and prerogatives as a political community, recognized and guaranteed to them by Part First, Article 7, of the Constitution of New Hampshire;

(b) Exposes this State and her citizens, inhabitants, and businesses to chronic problems and potentially serious crises that may arise from the economic and political instability of the present domestic and international systems of coinage, currency, banking, and credit in which gold and silver have no effective role;

(c) Exposes this State and her citizens, inhabitants, and businesses to the chronic depreciation of media of exchange other than gold and silver, which losses in purchasing power amount to the incremental confiscation of their property without just compensation, in violation of Article I, Section 10, Clause 1 of the Constitution of the United States, and the Due Process Clause of the Fifth Amendment thereto; and

(d) Restricts the ability of this State and her citizens, inhabitants, and businesses to fulfill and enjoy the mandates and guarantees of Part First, Articles 1, 2, 3, 12, and 28, of the Constitution of New Hampshire, to secure a sound economy, and to maintain a firm fiscal foundation for a policy and program of maintaining security within this State's boundaries and participating effectively in a national program of "homeland security".

II. In order to preserve the sovereignty and independence of this State and her citizens, inhabitants, and businesses, and their rights, powers, privileges, immunities, and prerogatives as a political community, as well as to protect, provide for, and promote the people's safety, health, welfare, security, and economic prosperity, it is imperatively necessary and proper for the General Court to guarantee to and provide for this State constitutional and economically sound media of exchange by exercising:

(a) This State's power, privilege, and duty to "make * * * gold and silver Coin a Tender in Payment of Debts", as reserved to and required of each State under Article I, Section 10, Clause 1 of the

Constitution of the United States, and confirmed by the Tenth Amendment thereto and by Part First, Article 7, of the Constitution of New Hampshire; and

(b) Other powers, reserved to this and every State by the Tenth Amendment, and to this State by Part First, Article 7, of the Constitution of New Hampshire, which relate to this State's choice of media of exchange for the fulfillment of her essential sovereign functions.

6-D:2 Definitions and Exclusions.

For the purposes of this Chapter:

I. "Check" means checks, drafts, bills of exchange, wire transfers, and other like instruments.

II. "Electronic Gold Currency" means a specifically defined amount of gold, measured in an Electronic Gold Currency Unit, that an Electronic Gold Currency Payment Provider makes available to its customers as a medium of exchange.

III. "Electronic Gold Currency Account" means an account with an Electronic Gold Currency Payment Provider, in which such Provider receives and maintains, and from which such Provider transfers, Electronic Gold Currency Units on behalf of a customer.

IV. "Electronic Gold Currency Payment Provider" means a person who or which:

(a) Deals in an Electronic Gold Currency; and

(b) Provides all the services, performs all the functions, and meets all the standards set out in this Chapter.

V. "Electronic Gold Currency Unit" means a unit of monetary account that represents a customer's claim of title and ownership to a specifically defined, fixed weight of gold, which claim may be transferred among customers' accounts maintained by an Electronic Gold Currency Payment Provider.

VI. "Financial institution" means any bank, trust company, credit union, depositary institution, and other like business and enterprise. A financial institution may function as an Electronic Gold Currency Payment Provider, an Independent Specie Vault, or a Specie Exchange, if it meets all the requirements therefore.

VII. "First operational day of this Chapter" means the date upon which the Treasurer shall certify to the General Court and to the Governor that the Treasury is ready to operate in conformity with this Chapter, and shall begin such operations, but in any event no later than (x) days after the enactment of this Chapter into law.

VIII. "Fiscal officer" means the Treasurer of the State of New Hampshire, and any official or employee of any county, municipality, or township, incorporated or unincorporated, who exercises functionally equivalent authority in any such jurisdiction.

IX. "Gold and silver coin" means:

(a) Gold coins:

(1) United States "American Eagle" coins, of all denominations, minted pursuant to the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177;

(2) Austrian 100 and 20 corona, and 4 and 1 ducat;

(3) British sovereign;

(4) Canadian 1 and 1/10 maple leaf;

(5) French 20 franc;

(6) Mexican 50, 20, 10, 5, and 2.5 peso;

(7) South African 1, 1/2, 1/4, and 1/10 krugerrand; and

(8) Swiss 20 franc;

(b) Silver coins:

(1) United States dollars, so denominated and whenever minted, that were or are required by the statutes authorizing their coinage to contain 371.25 grains (Troy) of fine silver per dollar, thereby being examples of the "dollars" to which the Constitution of the United States refers in Article I, Section 9, Clause 1 and the Seventh Amendment, the "value" of which was determined in the Act of 2 April 1792, ch. 16, § 9, 1 Statutes at Large 246, 248;

(2) United States half dollars, quarter dollars, and dimes, so denominated, whenever minted, that were or are required by the statutes authorizing their coinage to contain fine silver in amounts proportionate to the constitutional silver dollar of 371.25 grains (Troy) of fine silver per dollar;

(3) United States "American Eagle" or "Liberty" coins minted pursuant to the Act of 9 July 1985, Public Law 99-61, Title II, 99 Statutes at Large 113, 115; and

(4) Canadian maple leaf;

(c) In this Chapter, "gold and silver coin" shall include gold or silver coin, or any combination of gold and silver coin, or of gold coin alone, or of silver coin alone, as the context may require, indicate, or allow.

X. "Independent Specie Vault" means a corporation, partnership, trust, trust company, or other legal entity that is not affiliated with an Electronic Gold Currency Payment Provider by common ownership, control, or operation, but which pursuant to a contractual arrangement performs for such Provider the functions described in Section 6-D:5 of this Chapter. For all the purposes of this Chapter, an Independent Specie Vault may also provide the services of a Specie Exchange, if it meets all of the requirements for each operation set out in this Chapter.

XI. "Legal tender of the United States" means:

(a) All coins of the United States, whenever minted, that were or are required by the statutes authorizing their issuance to be composed of fine silver or fine gold to the extent of less than eighty-five percent or more, by weight;

(b) All coins of the United States, whenever minted, that were or are required by the statutes authorizing their issuance to be composed solely of base metals; and

(c) All paper currencies emitted by the United States, or by any individual, person, corporation, or other legally recognized entity acting under color of the laws of the United States, whenever issued, that are not in law guaranteed redeemable and in fact being redeemed, "dollar for dollar", in silver and gold coin of the United States that were or are required by the statutes authorizing their issuance to be composed of fine silver or fine gold to the extent of eighty-five percent or more, by weight; but

(d) Shall not include any "silver and gold coin" defined in Subsection XV of this Section, notwithstanding that any such coins may have been or are designated "legal tender" under the laws of the United States.

XII. "Person" includes all individuals, joint ventures, partnerships, corporations, firms, businesses, trusts, trust companies, fiduciaries, labor unions, and other legally recognized entities and associations, howsoever organized or formed.

XIII. "Specie Exchange" means any person who or which conducts the business of exchanging, in any combination, gold and silver coin, legal tender of the United States, and the Electronic Gold Currency of an Electronic Gold Currency Payment Provider for persons within the State of New Hampshire, irrespective of where such Exchange may be legally organized, domiciled, or maintain its principal place of business. For all the purposes of this Chapter, the same person may provide the services of both an Electronic Gold Currency Payment Provider and a Specie Exchange, if that person meets all of the requirements for each operation set out in this Chapter.

XIV. In reference to the State of New Hampshire, "State" means the State of New Hampshire and all counties, municipalities, and townships, whether incorporated or unincorporated, including all of their political subdivisions, and all legislative, executive, judicial, and administrative branches, departments, tribunals, offices, agencies, and instrumentalities, and all elected and appointed officials, employees, agents, and independent contractors thereof, acting in their official capacities or under color of law or public contract.

XV. This Chapter shall not apply to any gold and silver coin, or to any legal tender of the United States, that has a recognized numismatic or collectors' character and value above its face or nominal value.

6-D:3 Duties of the Treasurer and Other Fiscal Officers Under This Chapter.

I. Duties of the Treasurer. In addition to other powers and duties granted and imposed by law, the Treasurer shall:

(a) Designate as the State of New Hampshire's Electronic Gold Currency Payment Providers one or more Electronic Gold Currency Payment Providers, as may be deemed necessary and proper for implementation of this Chapter. No fiscal officer shall employ any Electronic Gold Currency Payment Provider not so designated;

(b) Maintain one or more Electronic Gold Currency Accounts with such designated Electronic Gold Currency Payment Providers, as may be deemed necessary and proper for implementation of this Chapter;

(c) Conduct all monetary transactions of this State involving gold and silver in any form by the agency of such designated Electronic Gold Currency Payment Providers, and through such Electronic Gold Currency Accounts;

(d) Require all persons who deal with the State in monetary transactions involving gold and silver in any form to maintain at least one account with a designated Electronic Gold Currency Payment Providers:

(e) Promulgate such rules and regulations as may be necessary and proper to implement this Chapter;

(f) Prepare and distribute all necessary and appropriate forms, instructions, and other informational materials to educate persons as to their rights, duties, and options, and to enable them to pay to and receive from this State gold and silver in any form, as required or allowed under this Chapter;

(g) Report quarterly, or more often if required, to the General Court and the Governor with respect to receipts, deposits, disbursements, and other relevant information pertaining to monetary transactions involving gold and silver in any form;

(h) Propose to the General Court such regulations, other than and in addition to those provided in this Chapter, as the Treasurer may deem necessary and proper for implementation of this Chapter, and otherwise in conformity to law; and

(i) Advise fiscal officers for counties, municipalities, and townships within the State of New Hampshire who request information or assistance with respect to their implementation of this Chapter within such jurisdictions, and in particular Subsections II, III, and IV of this Section.

II. Duties of Other Fiscal Officers. In addition to other powers and duties granted and imposed by law, fiscal officers of counties, municipalities, and townships within the State of New Hampshire shall:

(a) Maintain one or more Electronic Gold Currency Accounts with designated Electronic Gold Currency Payment Providers as may be deemed necessary and proper for implementation of this Chapter;

(b) Conduct all monetary transactions within their jurisdictions involving gold and silver in any form by the agency of such designated Electronic Gold Currency Payment Providers, and through such Electronic Gold Currency Accounts;

(c) Require all persons who deal with such counties, municipalities, and townships in monetary transactions involving gold and silver in any form to maintain at least one account with a designated Electronic Gold Currency Payment Provider;

(d) Prepare and distribute all necessary and appropriate forms, instructions, and other informational materials to educate persons as to their rights, duties, and options, and to enable them to pay to and receive from such counties, municipalities, and townships gold and silver in any form, as required or allowed under this Chapter; and

(e) Consult with the Treasurer on the most effective and efficient manner of implementing this Chapter within their jurisdictions.

6-D:4 Electronic Gold Currency Payment Providers; Qualifications.

In order to qualify for designation by the Treasurer under Section 6-D:3(I)(a) of this Chapter, an Electronic Gold Currency Payment Provider must:

I. Employ an Electronic Gold Currency Unit that constitutes a monetary unit of account, and represents a claim of title to and ownership of a specifically defined, fixed weight of gold held in allocated storage for customers in and by an Independent Specie Vault.

II. Designate receipts and holdings of gold in, and transfer gold among, such Provider's customers' accounts only in such Provider's Electronic Gold Currency Unit.

III. Provide, accessible through the Internet, separate accounts for each customer, each with the capability to add Electronic Gold Currency Units thereto and to transfer such Units among other customers' accounts, or to Specie Exchanges or financial institutions that associate or maintain accounts with such Provider, as customers may direct.

IV. Maintain a secure electronic database that records and makes available foreach customer's review each and every activity in such customer's account upon the completion thereof, and the number of Electronic Gold Currency Units credited to and available for such customer's use in such account following such activity; such database to be managed by a person who or which is not affiliated by
common ownership, control, or operation with such Provider, but which pursuant to a contractual arrangement performs for such Provider data-processing services, included among which must be a report, delivered no less frequently than at the end of each calendar quarter, specifying the number of Electronic Gold Currency Units in each customer's account, and the total number of Units in all customers' accounts.

V. Act as agent on behalf of such Provider's customers to arrange and maintain safekeeping of the gold, represented by the Electronic Gold Currency Units recorded in such customers' accounts, in specifically allocated storage in and by an Independent Specie Vault, on principles of bailment, such that the Provider's customers always retain title to and ownership of all such gold as may be recorded and maintained in their accounts, subject only to claims that the Electronic Gold Currency Payment Provider, the Independent Specie Vault, or both may bring against customers for fees owed but not paid.

VI. Have a mutual, explicit, and contractually enforceable policy and agreement with the Independent Specie Vault with which such Provider associates:

(a) reserving to such Provider a right, through such auditors, accountants, or others as it may designate, at any reasonable time, with or without prior notice, to inspect such Vault in order to verify that the Vault in fact maintains in its possession and subject to its control all of the gold represented by the Electronic Gold Currency Units recorded in all of the accounts of such Provider's customers; and

(b) requiring return by the Vault, should such Provider for any reason cease operations, of the full free-market value of all the gold of such Provider's customers, in bars of good-delivery gold of designated weights, in legal tender of the United States where the weight of gold to be delivered does not reach such designated amount, or in both, as the case may be.

VII. Associate with, or itself provide the services of, a Specie Exchange, so that such Provider's customers may, on demand, convert gold and silver coin into Electronic Gold Currency Units, and such Units into gold and silver coin; gold and silver coin into legal tender of the United States, and legal tender of the United States into such coin; and legal tender of the United States into Electronic Gold Currency Units, and such Units into legal tender of the United States.

VIII. Annually subject all of such Producer's policies, systems, and operations to an independent third-party systems audit, or equivalent review, providing a certified copy of the report thereof to the Treasurer.

IX. Certify to the Treasurer that none of such Provider's directors, officers, partners, trustees, or chief executive and operating personnel have ever been convicted of a felony or crime of moral turpitude, have ever been subject to a civil judgment for fraud or deceit, or have ever taken personal bankruptcy; the employment of such an individual in any such capacity, or a materially false representation in any of the said particulars, being grounds for automatic disqualification of such Provider as one of the State of New Hampshire's Electronic Gold Currency Payment Providers.

6-D:5 Independent Specie Vaults; Qualifications.

In order to qualify to perform safekeeping services for an Electronic Gold Currency Payment Provider designed by the Treasurer under Section 6-D:3(I) of this Chapter, an Independent Specie Vault must:

I. Hold all gold for each customer of such Provider in specifically allocated storage in a vault or other secure facility.

II. Be adequately insured.

III. Not be affiliated through common ownership, control, or operation with any Provider for which it performs the function of safekeeping and storing gold for such Provider's customers.

IV. For the purpose of increasing or decreasing the amounts of physical gold held in and by such Vault, pursuant to transfers made to or on behalf of customers of such Providers for which such Vault performs the function of safekeeping and storing gold, associate with a Specie Exchange or other corporation, partnership, trust company, or other legal entity that:

(a) regularly deals in the physical transfer of gold among private businesses or governmental agencies;

(b) is itself suitably insured; and

(c) is not affiliated through common ownership, control, or operation with such Vault or any Provider for which such Vault performs the function of safekeeping and storing gold for such Provider's customers.

V. Report at least quarterly to each Provider for which such Vault performs the function of safekeeping and storing gold for such Provider's customers, certifying:

(a) the weights of gold, and numbers of Electronic Gold Currency Units, held in and by such Vault on behalf of each customer of each such Provider; and

(b) that the total weight of gold held in and by such Vault on behalf of all the customers of each such Provider is at least equal to the total weight of gold represented by each such Provider's Electronic Gold Currency Units in circulation as media of exchange in all such customer's accounts at the time the report is prepared.

VI. Have a mutual, explicit, and contractually enforceable policy and agreement with each Provider for which such Vault performs the function of safekeeping and storing gold in bailment on behalf of such Provider's customers, for return of the full free-market value of such customers' gold held in and by such Vault, in bars of good-delivery gold of designated weights, in legal tender of the United States where the weight of gold to be delivered does not reach such designated amount, or in both, as the case may be, should the customers' Provider for any reason cease operations.

6-D:6 Specie Exchanges; Qualifications.

In order to enable an Electronic Gold Currency Payment Provider to qualify for designation by the Treasurer under Section 6-D:3(I) of this Chapter, a Specie Exchange with which such Provider associates must conduct the business of exchanging, in any combination, and for fees mutually agreed upon by such Exchange and its customers, gold and silver coin, legal tender of the United States, and the Electronic Gold Currency of an Electronic Gold Currency Payment Provider, such that any person who chooses to deal in gold and silver with the State of New Hampshire pursuant to this Chapter may, at such person's option, begin the process by bringing gold and silver coin to such Exchange, for the purpose of obtaining the free-market value thereof in an Electronic Gold Currency, and may terminate the process by bringing Electronic Gold Currency to such Exchange, for the purpose of obtaining the free-

market value thereof in gold and silver coin, as well as performing such transactions in legal tender of the United States.

6-D:7 Use of Gold and Silver; in General.

Except as otherwise provided in this Chapter, on and after the first operational day of this Chapter the State of New Hampshire shall neither compel nor require any person to recognize, receive, pay out, deliver, promise to pay, or otherwise use or employ any thing but gold and silver coin (in that form or in the form of a designated Electronic Gold Currency defined as and absolutely payable in a specified weight of that metal, and convertible on demand into gold and silver coin through a Specie Exchange) as media of exchange with respect to

I. The calculation and payment of any tax or other involuntary contribution, public due, charge, assessment, or fee, or fine or other monetary penalty, imposed by this
State.

II. The principal and interest of any loan, howsoever denominated or evidenced, made to and on the credit of this State.

III. The purchase or sale by this State of any lands, real estate, buildings, tangible personal property, or any other assets, property, or things of value, or of any legal or equitable rights, easements, or other interests, of whatsoever types or descriptions.

IV. Any monetary award or agreement in respect of expropriation of private property pursuant to the exercise of the power of eminent domain by this State or by any person authorized by the laws thereof to exercise such power

V. Any judgment, decree, or order of any court, administrative agency, or other tribunal of this State, except where and only to the extent that the same shall find, on the basis of clear and convincing evidence, that payment of gold and silver coin (in that form or in the form of Electronic Gold Currency absolutely payable in that metal and redeemable in gold and silver coin) shall not constitute just compensation for the damages or harm suffered by the prevailing party, and therefore shall mandate

(a) specific performance of a contract or other agreement then sub judice by other than the payment of money; or

(b) specific restitution of property other than money; or

(c) payment of some medium of exchange other than gold and silver coin, pursuant to a requirement for such payment in a contract or other agreement then sub judice; or

(d) other like relief.

VI. Contracts, agreements, or other arrangements for the payment of wages, salaries, fees, or other monetary compensation to any person who or which shall have provided or shall provide goods or services to, or otherwise be entitled to payment from, this State, either as officers, employees, agents, or contractors of this State or in any other capacity.

VII. Provided, however, that with respect to any tax, loan, sale or purchase, award in eminent domain, judgment, or contract or other agreement that was imposed, was made, or became payable in, or that designated explicitly or implicitly a specific medium of payment other than, gold and silver coin (in that form or in the form of Electronic Gold Currency absolutely payable in that metal and redeemable in gold and silver coin) before the first operational day of this Chapter, the medium of exchange for the payment or other satisfaction thereof shall be the medium designated, required, specified, or reasonably contemplated at the time the tax was imposed, the loan or contract or other agreement was made or became payable, the sale or purchase occurred, or the award or judgment was handed down.

6-D:8 Use of Gold and Silver; Taxes and Other Public Charges.

I. Required Payments; Tobacco Tax. On and after the first operational day of this Chapter, all payments to the State required under RSA Chapter 78 shall be made in Electronic Gold Currency Units at the free-market rate of exchange, as of the time of payment, between such units and the amounts of legal tender of the United States, designated as $___, specified in such Chapter, including:

(a) License fees, under § 78:2;

(b) Cigarette taxes, under § 78:7;

(c) Taxes on other tobacco products, under § 78:7-c;

(d) Payments for stamps, under §§ 78:9 and 78:13;

(e) Prepayments or bonds for metering machines, under §§ 78:11 and 78:13;

(f) Payments for unstamped tobacco products, under § 78:12(II);

(g) Fines with respect to vending machines, under § 78:12-d(VII)

(h) Additions to taxes, under § 78:18-a;

(i) Fines for violations of federal requirements, under § 78:34(VII);

(j) Whatever other fees, charges, and fines are or may hereafter be mandated or allowed by any provision of Chapter 78;

(k) Provided, that redemptions of stamps or refunds, pursuant to § 78:10, shall be made only in Electronic Gold Currency Units, if necessary pursuant to Subsection 6-D:15(V)(a)(2) of this Chapter; and

(l) Provided further, that all receipts collected pursuant to § 78:32 for deposit in the educational trust fund shall be held in Electronic Currency Units until used for the purposes of such fund.

II. Voluntary Payments; Other Taxes and Public Charges. With respect to any other tax or involuntary contribution, public due, charge, assessment, or fee, or any fine or other monetary penalty (other than those addressed elsewhere in this Chapter), imposed by this State on and after the first operational day of this Chapter:

(a) The monetary amount thereof shall be calculated by the State or by the person liable, as the applicable law provides, in legal tender of the United States.

(b) The person liable for payment of such amount may deliver to this State, and the State shall receive therefrom, in payment either:

(1) legal tender of the United States, to such amount; or

(2) Electronic Gold Currency with, at the time of payment, an aggregate value in legal tender equal to the amount determined in Subsection II(a) of this Section.

(c) For each fiscal year, the Treasurer and other fiscal officers shall maintain lists of all persons who make and the amounts of their payments under Subsection II(b)(2) of this Section, for the purpose of allotting preferences pursuant to Subsection 6-D:15(III) of this Chapter.

6-D:9 Use of Gold and Silver; Loans, Bonds, and Notes.

With respect to all loans (whether denominated bonds, notes, or otherwise, and howsoever evidenced) made to and on the credit of this State on and after the first operational day of this Chapter:

I. The State shall determine and certify the amount to be borrowed in both:

(a) Legal tender of the United States; and

(b) The equivalent value in Electronic Gold Currency; as well as

(c) In each such instance, the particular rate or amount of interest to be paid, the premium or discount (if any), and the maturity date of the loan, any or all of which may differ dn whatever other manner or form the transaction may be effected, the lender shall have the option to deliver to the State the certified amount of either legal tender of the United States or Electronic Gold Currency; and such delivery shall designate and fix the medium of payment of principal and interest, the rate or amount of interest, and the maturity date, on such loan.

III. The designation of the medium of payment of principal and interest, and of the rate or amount of interest and maturity date (and premium or discount, if any) shall be deemed a pledge of the full faith and credit of this State, shall bind the State as a contract the obligation of which shall be protected by Article I, Section 10, Clause 1 of the Constitution of the United States against any impairment, and shall require upon the loan's maturity the delivery of the full amount of payment of principal and interest of such loan in the medium specified, and that medium only, to the lender. To wit, loans made in legal tender of the United States shall be repaid therein, and loans made in Electronic Gold Currency shall be repaid therein. A loan may be made redeemable before maturity, as otherwise authorized in law, provided that the terms and conditions for such early redemption shall specify payment in legal tender of the United States or Electronic Gold Currency, according to the original tenor of, and subject to the same legal guarantee as, the loan itself.

IV. The requirements and procedures set out in this Section shall be employed with respect to refunding of bonds, as otherwise authorized by law.

V. The requirements and procedures set out in this Section shall be employed with respect to issuance of revenue bonds, as otherwise authorized by law. Provided, however, that:

(a) No revenue bond payable in Electronic Gold Currency shall be issued unless:

(1) The revenues derived from the facilities to be funded thereby are to be paid in Electronic Gold Currency; or

(2) The revenue bond refunds an outstanding bond the principal of which was used for facilities the revenues from which are paid in Electronic Gold Currency; and

(b) Every revenue bond issued pursuant to this Subsection shall pledge the faith and credit of the State with respect to the medium of payment and other terms, as required in Subsection III of this Section.

6-D:10 Use of Gold and Silver; Purchase and Sale of Property by the State.

With respect to the purchase or sale by this State of lands, real estate, buildings, tangible personal property, or any other assets, property, or things of value, or of any legal or equitable rights, easements, or other interests, of whatsoever type or description on and after the first operational day of this Chapter:

I. At the time of sale or purchase, the State shall determine and certify the price

of the thing to be sold, or shall agree to and certify the price of the thing to be purchased, in both legal tender of the United States and Electronic Gold Currency.

II. The purchaser of the thing to be sold by the State may deliver thereto, and the State shall receive therefrom, or the seller of the thing to be purchased by the State may receive therefrom, and the State shall deliver thereto, in payment, either legal tender of the United States, or Electronic Gold Currency.

III. For each fiscal year, the Treasurer or other fiscal offers shall maintain lists of all persons who make and the amounts of their payments to the State in Electronic Gold Currency under Subsection II of this Section, for the purpose of allotting preferences pursuant to Subsection 6-D:15(III) of this Chapter.

6-D:11 Use of Gold and Silver; Expropriated Property.

With respect to any monetary award or agreement arising out of expropriation of private property pursuant to the exercise of the power of eminent domain by this State, or by any person or entity authorized by the laws thereof to exercise such power, on and after the first operational day of this Chapter:

I. The State shall determine and certify the amount of any award or agreement in both legal tender of the United States and Electronic Gold Currency.

II. The person whose property has been or will be expropriated shall have the option to accept in payment for such property either legal tender of the United States or Electronic Gold Currency.

6-D:12 Use of Gold and Silver; Damages, Fines, and Penalties.

Except as otherwise provided in this Chapter, with respect to any judgment, decree, or order of any court, administrative agency, or other tribunal of this State, whether arising in a civil action or proceeding or in a criminal prosecution, which specifies, imposes, enforces, or otherwise involves monetary damages, award, or payment, or a fine, penalty, or other monetary forfeiture on and after the first operational day of this Chapter, the State shall determine and certify the amount of such award or penalty in both legal tender of the United States and Electronic Gold Currency as follows:

I. In civil cases, the person in the position of judgment-creditor may stipulate with the person in the position of judgment-debtor to receive and to pay, respectively, the amount of any award (including any award of attorneys' fees) in either legal tender of the United States or Electronic Gold Currency; and such stipulation shall be specifically enforced by the State as a contract the obligation of which shall be protected by Article I, Section 10, Clause 1 of the Constitution of the United States against any impairment; but in the absence of such stipulation, the State shall require the person in the position of judgment-debtor to pay to the person in the position of judgment-creditor the latter's choice of medium of exchange.

II. In criminal cases, cases involving contempts of court or violations of court rules, and all other cases in which this State shall be legally entitled to receive a payment for its own account, the person against whom shall be assessed a monetary fine, penalty, charge, or forfeiture shall pay the amount thereof solely in Electronic Gold Currency.

6-D:13 Use of Gold and Silver; Contracts, Wages, and Fees.

With respect to any contract, agreement, or other arrangement for the payment of wages, salaries, fees, or other monetary compensation to any person who or which shall provide goods or services to, or otherwise be entitled to payment from, this State, either as officers, employees, agents, or contractors of the State or in any other like capacity on and after the first operational day of this Chapter:

I. This State shall determine and certify the amount of such monetary compensation in both legal tender of the United States and Electronic Gold Currency.

II. If from any monetary compensation this State shall pay pursuant to this Section the State is required to withhold and pay over to the United States, to the State, or to any agencies or instrumentalities of either any percentage, portion, or other aliquot of such compensation by way of taxes or other public dues or charges, such amounts shall be paid over in legal tender of the United States prior to the election of the person entitled to such payment pursuant to Subsection III of this Section.

III. The person entitled to receive such monetary compensation shall have the option to stipulate for and receive in either legal tender of the United States or Electronic Gold Currency the net amount remaining after any deductions made pursuant to Subsection II of this Section; and this State shall specifically enforce such stipulation as a contract the obligation of which shall be protected by Article I, Section 10, Clause 1 of the Constitution of the United States against any impairment.

IV. In the case of monetary compensation to be paid on a regular schedule (such as salaries, wages, or portions of contractual prices), or on any other continuous, routine, or frequent basis, a person entitled to such compensation may stipulate to receive either legal tender of the United States or a designated Electronic Gold Currency for all future payments until that person shall alter such stipulation.

6-D:14 Notification of Choice of Medium of Payment.

With respect to any transaction effected pursuant to Sections 6-D:8 through 6-D:13 of this Chapter, each person shall notify the State, in a manner deemed timely according to rules and by use of forms or other means promulgated by the Treasurer, of that person's election to receive or to pay a designated Electronic Gold Currency in lieu of legal tender of

the United States. Absent such timely notification, the medium of exchange for any such transaction shall be legal tender of the United States.

6-D:15 Limitations on Payments of Gold and Silver by the State; Preferences for Payments; Fiscal Officers' Discretion to Interconvert Media of Exchange.

I. Except with respect to loans, bonds, or notes the payment of which is designated in gold, pursuant to Section 6-D:9 of this Chapter, no person shall pay or promise to pay out on behalf of the State of New Hampshire any gold in excess of the gold held in the State's accounts with Electronic Gold Currency Payment Providers at the time of payment.

II. In the absence of sufficient gold held in the State's accounts with Electronic Gold Currency Payment Providers for the State to make any payment allowable under this Chapter, such payment, upon demand therefor, shall be made in legal tender of the United States. No payment requested by any person to be made in gold, where the gold necessary for full payment is unavailable at the time of such demand, shall be deferred or rescheduled to any future date at which sufficient gold may be available.

III. In the absence of sufficient gold held in the State's accounts with Electronic Gold Currency Payment Providers for the Treasurer or other fiscal officers to make payments allowable under this Chapter to two or more persons demanding payment in gold, but where sufficient gold is held to pay one or more payees, payees shall be preferred on the following bases:

(a) Persons who have paid gold to the State during the then-current fiscal year, under Subsections 6-D:8(II), 6-D:10(II), or both, shall be paid in preference to persons who have made no such payments;

(b) Among persons who have so paid gold, those who have paid larger amounts of gold shall be paid in preference to those who have paid smaller amounts; and

(c) Among persons who have so paid gold in equal amounts, preference shall be had according to the temporal sequence of such payments.

IV. With respect to loans, bonds, or notes the payment of which is designated in gold, pursuant to Section 6-D:9 of this Chapter, in the absence of sufficient gold held in the State's accounts with Electronic Gold Currency Payment Providers to pay any such indebtedness as it accrues, the fiscal officer responsible for payment thereof may convert any other monetary assets available to him into the required amounts of Electronic Gold Currency.

V. Notwithstanding any other provision of law, in their discretion the Treasurer and other fiscal officers responsible for payment of any public indebtedness in the State in New Hampshire:

(a) May convert any other monetary assets available to him into Electronic Gold Currency,

(1) To be held as such for reserve or investment purposes;

(2) To redeem or refund the purchase price of tobacco tax stamps required to be paid in gold, pursuant to Section 6-D:8(I) of this Chapter; or

(3) To meet any or all other demands from persons for payment in gold, pursuant to this Chapter, as such demands arise, where such demands exceed the amounts of Electronic Gold Currency theretofore paid in to and held by the State; and

(b) May convert Electronic Gold Currency into legal tender of the United States, to be used for any lawful purpose, but at all times maintaining the ability immediately to reacquire such amounts of Electronic Gold Currency to meet demands for payments in gold, pursuant to this Chapter, as such demands arise and to the extent of such amounts of Electronic Gold Currency.

6-D:16 Judicial Enforcement; Inaccurate Determination of Exchange Rates Between Legal Tender of the United States and Electronic Gold Currency.

With respect to any inaccurate determination of exchange rates between legal tender of the United States and a designated Electronic Gold Currency which affects any right, power, privilege, or immunity secured under this Chapter:

I. Any person aggrieved by such inaccurate determination may bring a civil action in the Superior Court against each and every person or persons responsible therefore, in both his, her, or their official and individual capacities, for any and all appropriate forms of relief, including monetary damages; and in such an action no defense of official immunity shall be allowed;

II. In any case, civil or criminal, in which any person aggrieved by any such inaccurate determination is made a defendant, such inaccurate determination may be raised, where relevant, by way of defense, counterclaim, set-off, or other pleading;

III. Where the issue of any such inaccurate determination is dismissed with prejudice, decided by summary judgment, heard and decided on the merits, or decided on appeal, reasonable attorneys' fees shall be awarded to the prevailing party for litigation of that question; and

IV. Any individual who shall knowingly and intentionally make any such inaccurate determination, or who shall advise or participate in, or concert or conspire or aid and abet with respect to, or attempt to conceal by the withholding, destruction, or falsification of records, by false statement (whether made under penalty of perjury

or not), or by any other device, artifice, or means, any such inaccurate determination shall be imprisoned for six months, and fined the value in a designated Electronic Gold Currency of one thousand (1,000) dollars in silver coin of the constitutional standard of 371.25 grains (Troy) fine silver per dollar.

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[Federalist Economics #402]

[NOTE: In the larger picture, one critical element is reigning in the United States Senate (i.e. making them "accountable" to the state that sends them to Washington). Indeed, no discussion of "federalism" can possibly ignore this problem, if the study is to be given any credibility whatsoever. The manner in which United States Senators have ceased being the "suffrage" (voting voice) of the states from which they originate is a situation that simply must be fixed. And the sooner, the better. To date, no one other than the NVCCA has broached this subject in any serious manner at all, other than to possibly propose repealing the 17th Amendment. A reading of the following brief will show the error (however well intentioned) of that logic. But those who introduce a "sound money" bill absolutely must also give due consideration to introducing a companion United States Senate Accountability Act. These two are almost a "matched set" in that providing for sound money generally in your State will eventually require the United States Congress to take some specific actions. Only when the United States Senate is marching in lock-step with the wishes of the states can we expect this to be achieved. When these Senators are the true voice of their state , then serious reforms of the national banking system can be undertaken.]

"If It Is a 'Federal' Matter, It Is ALSO a STATE Matter"

Repairing the broken link between the States and Congress:
Specifically restoring state "suffrage" back into the United States Senate.
By Aaron Bolinger & the NVCCA

INTRODUCTION

This brief introduction was designed to give state legislators an understanding of the "big picture" of federalism, and specifically how their state fits into it. The issues that can be addressed are left to the intellect of the members. Knowing how to appropriately use your influence is the core of this monograph.

There is a general rule that three classes of people need constant supervision. Children, the feeble among the elderly, and politicians. State legislators are the duly-constituted supervisors of their United States Senators – with an obligation to over-see federal politicians with the title "Senator."

Article V of the United States Constitution reads, in part:

> "*... that ... no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate*."

This component of our federal legislature is woefully misunderstood – both in its proper historical context and in its application in the modern political arena. The United States Senate is (supposed to be) the "voice of the states" in the federal government. Since the states created the federal government to be a mechanical linkage between and among them, in forming this "union" they sought to forever preserve their place in the decision-making that this federal government would undertake.

Perhaps the most important operative (but overlooked) word in that constitutional phrase is "suffrage," because it is upon the principle of voting – and doing so in harmony on matters of mutual importance – that the United States Senate was created in the first place. This is not some elite club of "representatives at large" (the way they are currently functioning), but the very "suffrage" of the independent states of the union who must act in agreement on those elements of federal and international governance where their interests meet. The provision requiring the United States Senate to overwhelmingly – by a 2/3 majority – agree on certain subjects (as defined in the Constitution), verify this pretext – that the states reserved for themselves control over the *actions,* the votes, of their United States Senators.

Suffrage, according to every dictionary and historic definition of the term in practice and legal usage, is simply that – voting. And these United States Senators do, and must, vote to concur with their sister body – the House of Representatives, on all matters involving federal legislation. In this manner, the people AND the states, have voices in the federal system. Yet the Senate is a special body of its own, that can make certain federal decisions independent of the House of Representatives – such as confirming treaties (which bind our states into international agreements),

executive branch principals (department heads – which individuals act as *agents* for the states in sundry roles) and court justices (who make important decisions where the states are involved in legal actions at the federal level), etc.

CONTEMPORARY PROBLEMS REQUIRE HISTORIC SOLUTIONS

State legislators are in a wonderful position to actually influence federal policy on economics, treaties, Supreme Court appointments, and much more – when they regain control over the VOTES (suffrage) of their United States Senators. Indeed it is the DUTY of state law makers to be well versed in "federal matters" so that their Senators appropriately represent the interests of their respective states in Washington.

History has proven that an unrestrained Congress is a worse national enemy than any terrorist cell could ever be. No foreign state has ever destroyed our money system, nor can any of them legislatively inflict injury on the liberties of our people. The only threat of tyranny from law arises from Congress – who would think to pass bills eroding the liberties of Americans on one hand, or bind us into ill-conceived international treaties (that can subject Americans to international "courts", erode or destroy our commerce, etc.) on the other. At this point, only the states can restore the American dollar to its previous envy-of-the-world status, and rid our people of the insidious legislation that brings our people into bondage.

Fortunately, that responsibility is not as daunting as it might seem.

The Constitution installed this "state branch" within the federal legislature, and the wording of the 17th Amendment did not change the *role* of the states in this picture of governance. Senators, acting according to the will of the legislature of the state from which they hail, can impose the will of their state back into the federal system. Furthermore, the states can, by their proxy Senators, address a wide range of "federal" subjects, including:

- "Unfunded mandates,"
- Direct affirmative or negative votes upon supreme Court & executive department nominees,
- Direct corrective legislation appropriate for various circumstances,
- Direct on such subjects as economics,
- Direct votes on treaties, and/or call for their repeal,
- Address a more "sane" and appropriate course of participation in the United Nations organization, NATO, the WTO, and related international bodies that impact upon our military, funding, international trade, and other subjects,
- And many more

By properly instructing U.S. Senators, using tools such as "sense of the legislature" resolutions directed to the United States Senators from their respective state, the states can regain leverage over a federal government run amok.

All that is needed are state legislators courageous enough to exercise the powers they inherently possess via the articles of the Constitution. U.S. Senators can, and should, be held to account to their state for how they vote in Washington – while wearing the suffrage hat of their state within the federal government. Though the 17th Amendment changed the *mode of selection* of these officers, their job descriptions have not changed one iota. They still represent their state, voting on its behalf, on all legislation proposed by the Congress Assembled; and they still perform the other Senate-specific duties as articulated in the Federal Constitution on subject matter of common interest to the states of our union.

Each state has two United State's senators. Constitutionally, they were (and still are), the voice of the states in the five-tiered federalism picture (Executive, Judiciary, Congress, States, and the people themselves). As a point of departure for further research and understanding this State-Senatorial interaction, considerable detail may be found in Federalist Papers # 39, 45, 59 60, 62, 63, 64 & 68.

By contrast, the U.S. House of Representatives is comprised of those elected to represent the people. The "people" have their voice in the House, and the States are positioned in the Senate – at least that is how it is SUPPOSED to be. Common practice notwithstanding, problems can be fixed by looking at this history for the answer.

The US Senate is elected by the people (following the 17th Amendment), but is still quite capable of functioning as the STATE voice in the federal system. Not even the Senator's length of service was changed by the 17th – it is still 6 years, and rotated so that only 1/3 of the total can be changed in any single election cycle. (This provides stability in the general government.)

The selection process had to change however, because even though "no state may be deprived of its equal suffrage" according to Art. V of the Constitution, prior to the 17th (when state legislatures actually had to choose who to send to Washington) it was such a huge political perk to get that slot that sometimes states *denied themselves* suffrage when they couldn't agree on who to send. It is easy to see why this was the case. The two-party system made it inevitable.

Imagine a state where Republicans control the state Senate in their assembly, and the Democrats control the House. No Republican would get the nod from House, and no Democrat could get Senate approval. Log-jams of this nature were frequent, and often a 2-year election cycle made no progress, as the leadership of the respective bodies could flip in the opposite direction. States could go absent one or both

Senators for a very long time. Even in states where compromises enabled senators to be selected, wheeling and dealing corrupted the process to the degree that public confidence became significantly eroded in the state legislature and Senator both.

To prevent a lack of Senators in Washington, the decision on who to send to was taken away from party politics and given to the normal election process of the people. It was a simple solution to a common (and annoying) problem.

So despite common misconceptions about the 17th Amendment, the United States Senate still has the exact same duties and obligations under the Constitution. They still: confirm the appointment of Presidentially-nominated ambassadors, court justices & executive branch officials, and confirm treaties (per Art. 2 § 2, cl. 2). They also try cases of impeachment (Art 1 § 3, cl. 6). These duties are reserved to the Senate simply because these situations and government officials in strong leadership roles *impact on the states*, binding them into potentially long-term affairs potentially deleterious to their general welfare. It requires 2/3 of the Senate to execute these confirmations & agreements to certify the overwhelming support of the states to be bound by these people and agreements.

As shown, the states can be involved in the selection of the Supreme Court (Treasury department heads, etc.) via the Senate. When a President proposes a candidate for the bench or other official duty, states can independently investigate the candidate via their own committee structures, and make a "thumbs up" or "thumbs down" recommendation to their United States Senators on the confirmation. In all places where "consent of the Senate" is stipulated in the Constitution, functioning state legislatures are plugged into the federal process, as the Constitution intended. It gives the states a bit of extra work, but on behalf of the welfare of their state it is their duty to see to it.

The Constitution presumed that the states would *instruct their representatives to the federal Senate on their wishes.* History proves that so long as the states did supervise and instruct (and hold accountable) their Senators, these Senators very well and faithfully represented the will of the state legislature in Congress. This is nothing new at all. The only thing missing in the present day is using the proper tools already at the states' disposal to once again hold them accountable.

Common contemporary mis-belief is that "federal matters" are entirely the job of the federal legislature, and most state assembly persons simply advise members of the public to "contact Washington" for such discussion. This can only be either evidence of misunderstanding state-federal relations, or a cop-out. Many would infer that state legislators who give a "that's a federal matter" response to valid localized questions or comments are doing so either 1) because they do not know the real power over Washington that they have, 2) or they are hoping to "pass the buck" on a political problem to avoid addressing it.

The only other answer is patent laziness, and experience is that most state officials are anything but lazy. It is quite frustrating to the constituent, however, and totally unproductive (and demeaning) to the state legislator who takes that position. One can only hope the reason they do so is #1 above, as any lack of information can quickly be corrected.

It remains, however, a distinct duty of the state legislatures to contact and instruct United States Senators when *any* federal matter is involved that has impact on their state's welfare, security or long-term health. This is clearly seen by the special legislative powers of the US Senate provided in the Constitution. The public is certainly at liberty (and should) contact members of the House of Representatives for many or even most "federal matters." But where the states are being bound into treaties, are being bankrupted by "unfunded congressional mandates," or impacted by such things as a *fraudulent medium of exchange*, then it is not only the *right* of the states to communicate specific instructions to their United States Senators on how to handle it – it is their *obligation*! Ipso facto, the Senators are duty-bound to obey lawful directives by the sovereign authority of their state assemblies. Otherwise, the states are not sovereign at all, but mere tentacles of the federal system – a "tail wagging the dog" situation.

A common practice in many states today is to send an endless string of "resolutions" to Washington, addressed to the President & the members of their congressional delegation (both House and Senate). These are found on all sorts of interesting subject matter, and represent sincere attempts to notify Washington of the will of the legislature(s) of the state(s). Such courtesy copies to the President and House – although certainly meritorious – are notoriously ignored. (Quite frequently, the US Senators ignore these state pleadings as well.)

To restore their place in the federalism structure, states should do more than simply "memorialize Congress" with respect to implementing needed federal actions. The proper protocol is to admonish their United States Senators in a "binding" manner, "by order of the General Assembly of the State of (x)". As no state can be denied its suffrage in the Senate, and United States Senators are the voices of that suffrage, it is beyond ridiculous that state legislators do not take advantage of this unique and unquestionable power that they have to reclaim their voice in the federal legislature.

Based on meetings with numerous state elected officials, it is apparent that many of them are not conversant with this power (unless they are denying it out of fear of using it, but that hardly seems the case). Some truly believe that anything deemed a "federal matter" must be left to federal legislators to

discern and deal with on their own. Such notion is purely untrue, based on the language of the Constitution itself. States can impose themselves back into the federal system at any time they so desire. Based on this current economic dilemma, and with numerous other situations presenting themselves as problematic for the states, it is high time they do so.

Perhaps a better application of this power would play out in practice by enacting a short state law (model following) that compels the attendance of the two United States Senators before a joint session of the state legislature once or twice in each year. All "sense of the state" matters of federal significance (at the time) would be communicated via this mechanism, and only to the Senators. Any subsequently discovered situations would be dealt with via *binding resolution* communicated to their Senators in Washington as warranted. In this manner, the State would make its wishes known on all important federal subject matter, and at all times the Senators would be aware of exactly how they should be voting in the interest of their State.

On a side note, part of this might encourage state legislators to involve themselves much more in the selection process of these United States Senators. This is a rather simple thing to do as well – and carrying with it many benefits. This is not to say there is any need to suggest repealing the 17th – as that would renew the problems it solved. But each state legislator does represent a large number of citizens in their state capitol. As such, it would be quite easy to use available media (mail, press conferences near election time, e-mail, etc.) to alert the voters as to how their Senators are doing with respect to representing the common interest of the state as a whole. Certainly the ability to *influence* the voters about who to send to Washington is a tactic that has also been ignored entirely too long. Meanwhile Washington continues to borrow - spend - tax - repeat into infinitely higher levels of debt burdens on future generations, and for dramatically unproductive and unpopular expeditions of assorted flavors (mating habits of fruit flies to aggressive foreign wars – pick a favorite).

When flexing this available muscle in these two small activities, state legislators would immediately find U.S. Senators catering to them (as they rightly should). Senators would terribly fear acting in favor of special (corporate or foreign) interests over that of their state, as doing so is sure to incur the wrath of irritated state legislators who can tell significant voting blocks of the general public to remove them from office at the next election.

In our modern age of rapid and targeted communication, this power is perhaps more potent now than ever. Moreover, it is a power already possessed by every state legislator in America. It requires no Constitutional Amendment or change to implement. It is available immediately if one sees a U.S. Senator who is behaving badly. Reigning in official Washington is about as easy as understanding the tools at your disposal, and then making the courageous decision to do so.

Without question, economic upheaval as we are now seeing is driving more and more people to seek out answers as to why Washington would pursue such idiotic borrowing policies – the same as those which created our dilemma. When the people see their state officials taking an *active* role in reigning in these policies, the "free market" will again take over with investments of their own.

As you begin to understand the federalism picture of our nation's economy, bear in mind the simple changes to our state thinking that will preface other reforms. First, our states must come to understand the Constitutional scope of their powers and duties. Only then can other changes be undertaken. A model "US Senate Accountability Act" follows that can be easily tailored or customized for the particular needs of your state. It would implement the basic ideas contained in this introductory monograph.

Is it essential? Certainly not. Simply using your influence over the voters COULD begin reigning in your state's 4% of the US Senate. Even the INTRODUCTION of such a bill (with sufficiently powerful co-sponsorship to give it credibility) might result in a call from the Senators wanting to make regular (albeit non-compulsory) visits to the State House. (They would probably rather "volunteer" to come, than to be compelled by law to do so.) But with this situation as it is, a bit of extra muscle flexing may get the message through loud and clear, and much faster. It would also give the state a "fail safe" mechanism in case any Senator decides to back-slide into previous modes of behavior after the pressure abates. The corrupting influence of special interests on the U.S. Senate is not something they will seek to remove on their own, at least not for any protracted time period. That is where the state legislators come in – take it out of their purview, and they will act accordingly.

For many reasons it is high time the US Senate was reigned in by the states. It is also apropos that our states quit being treated as the "red-headed stepchild" of the federal government. After all, the states created the federal government in the first place, and the proper role for the feds is that of "agent" in the "principle vs. agent" relationship we fondly call "American Federalism." That "principle/agent" legal concept is crucial to developing positive plans of action against everything from "unfunded mandates" to wealth-transfer "bailouts." For now, the important thing is knowing that we are sovereign states, united via a federal government who is required to perform certain *limited* functions to the benefit of our united sovereigns. Plugging the states back into this system is essential if we are to straighten out our contemporary problems. The federal tail can only wag our sovereign state dogs so long as we allow it.

OBJECTIONS & REBUTTALS

Certainly there will be ruffled feathers over the prospects of demanding accountability in Washington. Below are a few likely objections, followed by some (perhaps witty) rebuttals to help you make the case to your colleagues.

Have any states done this before?

There are two types of hunters: those who tread only on public lands using well-traveled roads, and those who use a compass and hike across the ridges. The one taking the higher road brings back more game than the path-finder. The Constitution is our compass. Since the states are represented in Congress by our US Senators, it only stands to reason that we MUST provide information to our Senators if we expect them to represent us. Previous to recent times, it was taken for granted that the Senators would respect their sending state, and they did so quite admirably. Only because we have lost our way in the woods do we now need to resort to the compass to find our way back. This great constitutional experiment is still a work in progress. We might be trail-blazing in that respect.

The 17th Amendment corrected a political problem (bickering among parties over who to send) that often left states without Senators in Washington. We now need to correct the vacuum of Senator-to-state accountability that the 17th Amendment seemed to have caused, albeit unintentionally. The 10th Amendment says the states remain sovereign, so we can do whatever we want – so long as we do not do something the Constitutional-compass specifically forbids. Holding our Senators accountable to our Assembly is perfectly reasonable, and absolutely within the scope of the rule book, including its original intent & practice until very recently. If other states don't do something like this, that is their problem, not ours. Maybe we will be blazing the path others will follow. That is bad, why?

Didn't the 17th Amendment change the role of the states?

No. The 17th Amendment did not alter Article V, nor did it change any of the duties of the Senate based on their obligation to the state that sends them to Washington. The debates of the Constitutional Convention of 1787, the state ratification debates, Federalist Papers, and much more comprise the documents of Constitutional History and these explain the intent of the framers of the Constitution concerning "federalism." This material comprises a considerable volume of information on the state-federal relationship, and is the source of well entrenched and well accepted principles of constitutional application. The manner of selecting Senators did not alter their role as suffrage in Congress for the states. They are to be our voice in the federal legislature. It is high time they started speaking for us as states, and this proposal moves the Senate back towards their proper and well-accepted role.

What if Congress retaliates against us by cutting off funding?

The thought that the entire Congress would vote to disconnect a state from their desire to spend generally is laughable. If they did, it would only prove further the point that they are totally out of control, and need to be supervised better. Again, that is the job of the states via their US Senators, and this proposal would do just that – at least from our state's perspective. What others do is entirely their business.

Model United States Senate Accountability Act

WHEREAS, the Constitution for the United States of America, at Amendment Seventeen, specifies that United States Senators are "elected by the People" (Clause 1). Said Constitution, in Article V, further states that "no State, without its Consent, shall be deprived of its equal suffrage in the Senate;" and

WHEREAS, Nothing has altered the constitutional responsibility of the United States Senate to be the voice of the states in the federal government. Even though popularly elected following the enactment of the 17th Amendment, United States Senators are, in fact Representatives of the State Legislature of the State from which they are elected, and as such, accountable to the same for their conduct. The will of this General Assembly is to be expressed in the federal government by and through the two United States Senators elected by the People thereof.

BE IT THEREFORE ENACTED by the General Assembly of the State of (X) that the two United States Senators from the State of (X) are forever hereafter summoned to appear before a joint session of this General Assembly each year on the (insert date and time); and be it further

ENACTED, that the purpose of this joint session is to exchange information by and between the State of (X) and the United States Congress through its duly elected United States Senators; and be it further

ENACTED, that a joint standing committee is hereby established consisting of 10 members of the House of Representatives and 6 members of the State Senate, and the presiding officer of each House. Such committee shall be styled the "Joint Standing Committee Pertaining to the United States Senate." Upon convening, the members of the said Committee shall appoint two co-chairs, one from each House of this General Assembly; and be it further

ENACTED, that not later than thirty calendar days prior to this annual meeting the United States Senators shall provide to this Committee certified copies of their most recent calendar year voting record on all bills and resolutions on which they voted while serving in the United States Senate, certified copies of the said bills and resolutions, and copies of each bill and resolution known to be under consideration in the Congress of the United States in the immediate upcoming calendar year; and be it further

ENACTED, that each United States Senator shall be eligible to speak to the Assembly to discuss the actions of the Congress of the United States as they pertain to the relationship of the several States to the Federal system, to discuss pending legislation of the United States Congress as it pertains to the same, to justify their actions and voting record as they pertain to the State of (X) and the General Assembly and citizens thereof, and to discuss other matters the Senators wish to convey to the General Assembly; and be it further

ENACTED, that the Presiding Officers of both Houses of this State's General Assembly shall convey to the United States Senators copies of any and all resolutions passed by this General Assembly expressing the ideas, senses or desires of this General Assembly for introduction into the Congress of the United States. The presiding officers of both Houses of the General Assembly shall direct said United States Senators to introduce and support any such measures to benefit the General Assembly and People of the State of (X); and be it further

ENACTED, that the first occasion of this annual meeting will occur not more than 90 days following the passage of this act (said date to be provided for by a subsequent resolution), and will then occur on the date and time herein provided for each year forever hereafter; and be it further

ENACTED, that forever hereafter the Senior United States Senator shall maintain routine contact with the co-chairs of the Special Joint Committee Pertaining to the United States Senate for the purpose of ascertaining the sense of this General Assembly as it relates to legislation pending before the Congress Assembled, and treaties and appointments before the United States Senate. To the end that the General Assembly's wishes be represented in the United States Senate, the Special Joint Committee shall, from time to time, poll the members of this General Assembly to ascertain their position on pending considerations before the United States Senate, and convey the results of such polls to the Senior United States Senator from the State of (X) ; and be it further

ENACTED, that failure to comply with the directives of this Act by any United States Senator shall constitute nonfeasance of office by the offending United States Senator, and upon conviction thereof in the Circuit Court located in the State Capitol of (X), said United States Senator shall immediately vacate his/her said office in the United States Senate, and such position shall be filled according to the terms and conditions of Clause 2 of the 17th Amendment to the Constitution for the United States of America; and be it further

ENACTED, that the Joint State Standing Committee Pertaining to the United States Senate be directed to review the performance of each member of the United States Senate from the State of (X) , and to evaluate such performance and voting records to ascertain the member's compliance to his or her Oath of Office and to the terms and conditions of the Constitution for the United States of America. When the record indicates a member has introduced or voted in favor of a bill or bills determined by the committee not in conformity to the Constitution for the United States of America, the Committee shall issue a report to the General Assembly of this State signifying the same. Upon a concurrence of a majority of the members of both Houses of this State's General Assembly, the presiding officers of the (X) House and Senate shall direct the Attorney General for the State of (X) to bring quo warranto proceedings against said United States Senator. In the absence of a valid response to quo warranto, the Senator shall vacate his seat in the United States Senate, and the Attorney General shall bring criminal charges of Violation of Oath (or “perjury”) as provided for in the _____ Annotated Code, Article __, Section ____Any position created by removal from office shall be filled according to the terms and conditions of Clause 2 of the 17th Amendment to the Constitution for the United States of America.

Burn Your House, Boost the Economy

By: Larry Parks, Ph.D.

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As recently as 50 years ago, classical economists regarded the vitality of the economy as its ability to produce things that people wanted (and presumably would pay for). Today, the economy has been redefined into something called Gross Domestic Product, or GDP. Some are beginning to question the efficacy of the GDP measurement, considering how important it has become for fiscal and social policy. What better way to highlight its failures than to suggest some outlandish ways that help increase the GDP?

- Things Kids Can Do: Have kids themselves. Sickly ones who require constant medical attention would be best. Medical expenditures have become almost 14 percent of GDP; we need to stay on the growth curve. And when those kids become teenagers, encourage them to become juvenile delinquents. If they get arrested for some really heinous crime and go to jail for a long time, the economy gets a jolt.
- Things You Can Do By Yourself: Get a divorce. Legal costs, two houses, and all the things that go with houses: furniture, kitchen supplies, appliances, are all important components of GDP. Divorces stimulate consumer demand.
- Break something around the house, e.g., a window, a dish, the television. Replacing these things helps increase the GDP and creates jobs.
- Smash up the car. It will have to be fixed or replaced. The automobile industry employs directly and indirectly one out of every seven workers in the United States and they need the overtime. But, for really great results, burn down the house! Don't worry, insurance will pay for it, and the rebuilding will keep a lot of people busy for at least a while.
- Quit your job as a scientist and become a taxicab driver. Research and development is not included in the GDP, but money spent on taxicabs is.
- Don't exercise, don't brush your teeth. Overeat, do drugs, smoke, drink, and make yourself terribly sick. See if you can get your family members to do the same. The more you spend on medical care, the higher the GDP.
- Hire help to take care of the kids and force your wife to get a job. This gives the economy a double boost because: (1) if your wife takes care of kids and does housework, it is not counted in the GDP because she's not paid, but help hired to do that work is counted in the GDP; and (2) if your wife goes to work outside the home, that counts toward the GDP, too!
- Hire a lawyer and sue somebody. (Lawyers' fees are directly added to GDP.)
- Things You Can Do with Your Neighbors: Riot and burn the neighborhood. Rebuilding puts people to work and is very beneficial to the GDP.
- Form a gang. Commit crimes with a view to getting caught. The more people in jail, especially folks who would not otherwise have jobs, the better off the economy. Today, building and managing jails has become one of the hot "growth" industries, to say nothing of the security business.
- Things Businesses Can Do: Pollute the environment—a giant oil spill would be great! Superfund sites are very desirable for expanding the GDP. Leverage up and build excess real estate, e.g., see-through buildings. They add to the GDP when they go up, but the waste is not subtracted when they are demolished or stand vacant. Similarly, companies can build excess plant capacity (as IBM did in the mid-to-late 1980s to the tune of $30 billion). All of this counts toward GDP. Again, when companies are "downsized," nothing is subtracted from the GDP. It's similar in concept to the "roach motel": GDP counts these things going up, but not going down.
- For Best Results, Organize and Get the Government Involved: Lobby your elected representatives to raise taxes and spend more money. Government spending on goods and services adds to the GDP and "creates" jobs.
- Start a war. Preferably one far away where no Americans get killed. B-2 bombers, tanks, bullets . . . all count in the GDP. Also, send Stinger missiles to liberation armies in countries around the world, such as Afghanistan. Maybe some of those missiles will be used to knock down airliners. Replacing them helps the economy, and if lawyers get involved, there's a GDP bonus.
- Target savers! People who save actually hurt the economy because they don't spend. (Economists call this "The Paradox of Thrift," as if they never heard that contradictions don't exist.) If people spend their savings, then those purchases are added to the GDP. When they don't spend, the economy suffers. What can be done to discourage saving? First, tax the return on savings: a higher capital gains tax would be very helpful. Second, and best, debase the currency! By printing up more and more money, we can dilute the value of people's savings

(especially their long-term savings, such as their pension funds) surreptitiously stealing their money for politicians to spend and thereby increase the GDP.

- Get Mother Nature on Your Side: Hope for a natural disaster: a hurricane, an earthquake, a big fire, a flood. Disasters give the GDP a tremendous lift because of all the rebuilding that must take place.

HR 4248 IH

111th CONGRESS

1st Session

H. R. 4248

To repeal the legal tender laws, to prohibit taxation on certain coins and bullion, and to repeal superfluous sections related to coinage.

IN THE HOUSE OF REPRESENTATIVES

December 9, 2009

Mr. PAUL introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Ways and Means and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To repeal the legal tender laws, to prohibit taxation on certain coins and bullion, and to repeal superfluous sections related to coinage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Free Competition in Currency Act of 2009’.

SEC. 2. REPEAL OF LEGAL TENDER LAWS.

(a) In General- Section 5103 of title 31, United States Code (relating to legal tender), is hereby repealed.

(b) Clerical Amendment- The table of sections for subchapter I of chapter 51 of title 31, United States Code, is amended by striking the item relating to section 5103 and inserting the following new item:

‘5103. [Repealed]’.

SEC. 3. NO TAX ON CERTAIN COINS AND BULLION.

(a) In General- Notwithstanding any other provision of law--

(1) no tax may be imposed on (or with respect to the sale, exchange, or other disposition of) any coin, medal, token, or gold, silver, platinum, palladium, or rhodium bullion, whether issued by a State, the United States, a foreign government, or any other person; and

(2) no State may assess any tax or fee on any currency, or any other monetary instrument, which is used in the transaction of interstate commerce or commerce with a foreign country, and which is subject to the enjoyment of legal tender status under article I, section 10 of the United States Constitution.

(b) Effective Date- This section shall take effect on December 31, 2009, but shall not apply to taxes or fees imposed before such date.

SEC. 4. REPEAL OF SUPERFLUOUS SECTIONS.

(a) In General- Title 18, United States Code, is amended by striking sections 486 (relating to uttering coins of gold, silver, or other metal) and 489 (making or possessing likeness of coins).

(b) Conforming Amendment to Table of Sections- The table of sections at the beginning of chapter 25 of title 18, United States Code, is amended by striking the items relating to the sections stricken by subsection (a).

(c) Special Rule Concerning Retroactive Effect- Any prosecution under the sections stricken by subsection (a) shall abate upon the taking effect of this section. Any previous conviction under those sections shall be null and void.