MEMORANDUM OF LAW: THE MONEY ISSUE

(Last update: Aug. 29, 2009 (new links added))

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 crownpieces, 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 cooperation 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 MasonDixon 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 illfated 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 welldefined, 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. See also *Thompson v. Butler*, 95 U.S. 694 (1877). 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 1930s

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. For cases explaining the end of HJR 192's application in 1977, and the validity of gold clause contracts today, see *Fay Corp. v. BAT Holdings I, Inc.*, 646 F. Supp. 946 (W.D.Wash. 1986), affirmed at *Fay Corp. v. Frederick & Nelson Seattle, Inc.*, 896 F.2d 1227 (9th Cir. 1990), *Wells Fargo Bank v. Bank of America*, 32 Cal.App.4th 424, 38 Cal.Rptr.2d 521 (1995); *Trostel v. American Life & Casualty Insurance Company*, 133 F.3d 679 (8th Cir. 1998); *Nebel, Inc. v. Mid-City National Bank*, 329 Ill. App.3d 957, 769 N.E.2d 45 (2002); and *216 Jamaica Ave. v. S & R Playhouse Realty Co.*, 540 F.3d 433 (6th Cir. 2008).

Since the monetary changes of the 1930s, 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 1930s, 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 1930s, 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 ownercreditor 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 anticonstitutional. 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 1960s 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.

<>

Writings of Edwin Vieira:

To Regulate The Value Of Money: Analysis Of Power Of Government To Create And Set A Value Of Money

What Is A "Dollar"? An Historical Analysis Of The Fundamental Question In Monetary Policy

Why Does The United States Need Constitutional Money?

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

http://home.hiwaay.net/~becraft/MONEYbrief.html