THE GOLD CLAUSE

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To Norman C. Norman
and his compatriots who
nobly fought President Roosevelt's
unconstitutional seizure of their gold

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Introduction

In 1980 I wrote and edited *The Gold Clause: What it is and how to use it profitably.* My book's forward was written by Henry Hazlitt, noted free market journalist who for decades wrote about business and economics for such publications as *The Wall Street Journal, The Nation, The American Mercury, Newsweek, and The New York Times*. Among his books are the classic *Economics in One Lesson* and *What You Should Know About Inflation*. Mr. Hazlitt wrote:

> The factual materials, and his own brilliant legal analyses, which Henry Holzer has brought together here, combine to make this book invaluable—to the corporation attorney, to the monetary economist, and to the interested layman.
>
> Practically every monetary economist now agrees that, appalling as the evils of a runaway inflation may be, they cannot be corrected by deflation. The late Ludwig von Mises used to compare the belief that the damages of inflation could be undone by a corresponding deflation with the belief of a motorist who has just run over a man that to back up over his victim would correct his mistake.
>
> The damage done by an inflation is irreversible. Even trying to bring an inflation to a halt may do additional damage—though it will be less than the evils of allowing the inflation to continue.
>
> So it is with our government's action in 1933 in repudiating not only its own solemn printed pledges to make its currency convertible into gold, but in making it impossible for private citizens to keep their own pledges to redeem their obligations in gold.
>
> Repudiation of the 1933 gold clauses cheated creditors to benefit their debtors. This amounted to a forced transfer of private property. It deeply shook confidence throughout the business world. It shook it not only in past but in future pledges. But if the pre-1933 pledges were today suddenly declared by the Congress and the courts to be valid, all degrees of new forced transfers of private property would take place. Present holders of pre-1933 bonds, who may have acquired them at the merest fraction of their new value, would get unexpected windfalls. Old corporations with such bonds outstanding would be forced into bankruptcy. And if Congress or the courts sought a compromise solution of the old gold-clause pledge that would secure "justice" in every instance, it would find the task impossible.
>
> As an economist, I must confine myself here to calling attention to the admirable way in which Professor Holzer has emphasized the enormous economic damage done by the repudiation of the gold clause, and leave it to others to judge how well he has performed his analysis of the legal consequences of the gold-clause repudiation, and how satisfactory his recommendations are regarding what the future status ought to be.
>
> The aim of the law should surely be to uphold the inviolability of legal contracts in order to maintain and justify faith in those contracts. When the law in any case does the exact opposite—when it not only permits, but practically

> orders the breaking of pledges and the repudiation of contracts—the evil consequences are beyond measurement.
>
> Henry Hazlitt
> December, 1979
> Wilton, Conn.

In her classic novel *Atlas Shrugged*, Ayn Rand observed that:

> Whenever destroyers appear among men, they start by destroying money, for money is men's protection and the base of a moral existence. Destroyers seize gold and leave to its owners a counterfeit pile of paper. This kills all objective standards and delivers men into the arbitrary power of an arbitrary setter of values. Gold was an objective value, an equivalent of wealth produced. Paper is a mortgage on wealth that does not exist, backed by a gun aimed at those who are expected to produce it. Paper is a check drawn by legal looters upon an account which is not theirs; upon the virtue of the victims. Watch for the day when it bounces, marked: "Account overdrawn."

Today, in 2014, the United States is getting close.

By now it has become apparent that for decades the United States government has been hell-bent to drive America into penury with massive infusion of "money" into financial stimulus, indefensible pork, unconscionable entitlements, handouts to crooks, charity to incompetent and connected businessmen, gifts to favored leftwing causes, and more.

It's also apparent that ultimately the principal way trillions of this debt will be repaid is not by default, which is anathema to politicians, but instead by the federal government figuratively running its printing presses until they overheat. By the "creation" of "money," By the deliberate *inflation* of the dollar.

"Inflation" is "*an increase in the supply of currency* . . . relative to the availability of goods and services, resulting in higher prices and a decrease in the purchasing power of money" (*Encarta Dictionary*; my emphasis.) According to *Webster's Dictionary of the American Language*, inflation is "*an increase in the amount of money in circulation,* resulting in a relatively sharp and sudden fall in its value and rise in prices." (My emphasis.)

Of all the consequences that flow from government's manipulation of paper money, rampant inflation (a "silent tax") is the most devastating. In self-defense, some of the government's victims have traditionally fled from currency to find refuge in collectibles, various commodities, the precious metals and, especially now, $1,000+ per ounce gold. (The more astute have invested in silver because one ounce of gold can purchase roughly 60 ounces of silver.)

There is, however, a huge class of inflation's victims who because of the nature of the assets they hold, *debt*, are hostages to legal tender and thus have limited options: long-term *creditors*.

Of everyone harmed by inflation, long-term creditors ("a person or organization owed money by another," Encarta Dictionary) suffer greatly because the money they lend is inevitably repaid in dollars that are worth less because there are more of them in circulation.

One becomes a creditor principally in two ways: by *selling or leasing* goods or services to be paid for later, or, like a bondholder, by *lending* money, to be repaid later.

In many conventional sales transactions, payment is not due or received for at least thirty days. Short term personal loans are rarely less than six months in duration. Residential real estate leases usually run from one to two years, equipment leases to five. Commercial and industrial leases often run for ten years or more. Corporate and municipal bonds have even a longer life. Mortgages are not fully payable for decades. In the nineteenth and early twentieth centuries ninety-nine year leases were not uncommon, as we shall see later.

In each of these cases, the creditor is parting with funds or property of a specific value at the time the transaction is made, for repayment somewhere down the line. To repeat: *Anyone who parts with money or property today against repayment tomorrow is a creditor*, from used car dealers who sell "on time" (i.e., who lend money to borrower/debtor John Doe) to sovereign investment funds which purchase billions in T-Bills (i.e., who lend money to borrower/debtor United States government).

And if a creditor lends $1,000 today, inflation over the course of a decade will shrink the purchasing power of that money substantially. The longer the time frame, the less the repayment will be worth.

Inflation devastates capital.

A little-used anti-inflation antidote

But there is a way creditors can insure themselves against government-created inflation ravaging the value of the debts owed them. No creditor need be at the mercy of the government's manipulation of paper money and the economy, thanks to the availability of a simple contractual provision which can be inserted into any debt instrument. It is called the *gold clause*.

Simply stated, for the moment, a contractual gold clause requires repayment of a debt based on its *value* when the credit was *extended*, not based on when the debt was *repaid*. Thus, ironically, the gold clause protects creditors not against debtor *default*, but against his *payment* of the indebtedness—payment by the debtor of today's loan with tomorrow's inflated/depreciated money. I'll explain later how gold clauses work in practice.

If the federal government's monopoly over the "creation" of "money"—*Government's Money Monopoly* is the title of one of my books, is unrestrained, and if the exercise of that monopoly has created, is now creating, and will in the future create, serious inflation, and if creditors can protect themselves through use of the contractual gold clause, the question is why before 1933 and after 1977 it has infrequently been used.

A major reason is because too little is known about the gold clause.

The gold clause's historical roots

As early in America's history as the Constitutional Convention of 1787, the fear of paper money and the government's control over it was widespread. Indeed, the Convention's keynote speaker, Edmund Randolph, railed against "the havoc of paper money" when he attacked the moribund Articles of Confederation.

Legal tender paper money didn't circulate with official sanction in the United States until nearly a century later. Then, America stood at the top of the slippery fiscal slope whose bottom has now nearly been reached with the advent of recent presidencies.

In order to finance the Civil War, the United States government suspended gold convertibility, enacted the Legal Tender Laws, and issued an avalanche of paper money backed by an unreliable commodity: promises.

By law, the "greenbacks"—essentially ink-stained paper, colored green on the back side—were made "legal tender for all debts, public and private." Previously useful blank paper (currency), now ruined by having been marred with government splattered ink, had to be accepted by creditors in payment of the debts owed them, regardless of whether the creditor wanted the paper and regardless of how much it was then worth.

Although repayment of loan contracts (e.g., bonds, notes, mortgages) had been agreed to by creditors and debtors in terms of *gold and/or silver coin*, via the Legal Tender Act the government had rewritten those private agreements, forcing paper money of dubious value on creditors while greatly advantaging their debtors.

However, as all politicians will eventually learn, reality intervened, as it always does. The more ink-stained paper the government printed, the less the existing supply was worth. Simple arithmetic illustrates the point: If on Day One the government printed and put into circulation $1,000,000 of ink-stained paper, it was worth whatever it was worth at that time, let's say X. If a week later the government printed and put into circulation another $1,000,000 of ink-stained paper, the total $2,000,000 would be worth half of the week-earlier value (1/2 X) because there was twice as much of it. And so on, until as we saw in modern day Zimbabwe paper money became virtually worthless, the paper itself being worth more than the currency.

Naturally, the new legal tender Civil War "greenbacks" opened at a discount, steadily dropped in value, and in 1862 launched an inflation rate of twenty-four percent. (Think Jimmy Carter, and perhaps soon Barack Obama.)

Within two years, the American dollar had sunk to a third of its value *against gold*.

Creditors soon learned the meaning of "legal tender for all debts, public and private": *take the paper or kiss your debt goodbye*. If paper was offered, it had to be accepted, otherwise the debt was extinguished.

This harsh illustration of Economics 101 in action was not lost on creditors, who had loaned full-value dollars but were now forced by law to accept depreciated ink-stained paper in payment of bonds, notes and mortgages instead of gold or silver.

But there was a fly in the government's ointment: Some of the debt instruments that debtors sought to pay off with depreciated greenbacks were protected, or so creditors thought, with gold clauses. (For a thorough examination of the gold clause, see my *The Gold Clause: What It Is and How To Use It Profitably*.

Enter the Supreme Court of the United States.

The *Legal Tender Cases*

The first *Legal Tender Case*, *Hepburn* v. *Griswold* in 1870, involved a promissory note given in 1860, payable in 1862. At both times, the only lawful money in the United States was gold and silver coin. Five days after the note's maturity in February 1862, the Legal Tender Act had become law.

Two years later, the creditor of the still-unpaid note sued to collect it. The debtor tried to pay in greenbacks. Why? *Because by then war-time inflation had caused the paper money to depreciate to roughly half its face value*. A good deal for the debtor, but a very bad deal for the creditor who in good faith had loaned coin at a then-fixed value.

The narrow legal question for the Court was whether the creditor had to accept the greenbacks as "legal tender for all debts, public and private" as Congress had ordained, or, implicitly, whether the debt was protected by a gold clause. The underlying question, of course, was whether the Legal Tender Act forcing ink-stained greenback paper on creditors was constitutional.

A narrowly divided Court dodged the constitutional question, ruling only that the Legal Tender Act could not be applied to the debt contract which had been made *prior* to its enactment. A small victory for creditors.

As to the Act's constitutionality—which, though discussed, was not expressly ruled on by the Court— the majority believed the legal tender law to be unconstitutional; the minority thought otherwise.

Significantly, however, the justices' disagreement was only on the *facts*. Each side agreed that Chief Justice John Marshall's 1819 decision in *M'Culloch* v. *Maryland* established the constitutional test to be applied: *Was the Legal Tender Act "necessary* *and proper"?* The justices' only disagreement concerned how "necessary" legal tender was to the war effort.

Unfortunately, but predictably, there was no concern over whether, in constitutional terms, the Act was "proper."

The ink was hardly dry on the *Hepburn* opinion when, slightly more than a year later, in 1871, the Supreme Court took another look at the Legal Tender Act. This time, in *Knox* v. *Lee*, two of the *Hepburn* justices had been replaced by two new members of the Court. They teamed up with the three *Hepburn* dissenters and reversed the Court's earlier decision. The Legal Tender Act, the new majority held, *did* apply to contracts made prior to its passage, as well as to those made afterwards. In other words, *the Legal Tender Act was constitutional.*

Basically, the new majority asserted and the new minority denied that the Legal Tender Act was indeed "necessary" for fighting the war, and thus violated no one's rights. This obvious *non sequitur* apparently did not disturb the majority.

In addition, the majority drew on the notion that since every other nation in the then so-called civilized world had the power to create legal tender, so must the United States—especially, the majority found, since the American Constitution *did not prohibit the power*. If Justice Strong's elaboration for the Court's majority of this "not prohibited" constitutional test sounded familiar, no one should have been surprised because that indefensible construction of the Constitution's "Necessary and Proper Clause" had been launched decades earlier by Chief Justice John Marshall in the 1819 *M'Culloch* v. *Maryland* case.

More than any other modern case, *Knox* v. *Lee* is the linchpin of the federal government's contemporary monetary powers. After *M'Culloch* v. *Maryland*, *Knox* is the most important monetary powers case in Supreme Court history. It is also one of the worst examples of government power running roughshod over individual rights, in this case those of the creditors who had loaned money in good faith only to repaid with depreciated paper currency.

Associate Justice Stephen Johnson Field had fought bravely against legal tender in both *Hepburn* and *Knox*, and his battle against it did not end with his comprehensive and eloquent dissent in *Knox*. Thirteen years later, in the 1884 case of *Julliard* v. *Greenman*, Justice Field was back at the barricades, all alone this time, in his continuing but futile dissent against legal tender.

In 1878 a statute had been enacted which, in effect, amounted to a *peacetime* issuance of legal tender. A creditor sued, and the question eventually to be decided by the Supreme Court was ". . . whether notes of the United States, issued in time of war, under acts of Congress declaring them to be a legal tender in payment of private debts, and afterwards in time of peace redeemed and paid in gold coin at the treasury, and then reissued under the act of 1878, can, under the Constitution of the United, States, be a legal tender in payment of such debts."

Although the answer to this question was a foregone conclusion given the makeup of the Supreme Court, how it reached that conclusion and what it was based on was somewhat surprising.

A strong emphasis of the Court in *Hepburn* was the emergency nature of the legal tender issuance. The war, the Court stressed, made the legal tender "necessary." In *Knox* v. *Lee,* certainly the war had not been far from the minds of the majority justices. Indeed, conceding the principle of legal tender in *Juilliard* the plaintiff himself agreed that during time of war Congress could create legal tender currency. Having thus conceded the principle that Congress did, after all, possess the legal tender power, the plaintiff was very nearly inviting the Court to apply that principle to peacetime, thereby erasing the always tenuous war-peace distinction. The Court accepted the invitation, and did so with ease.

With the Supreme Court's decision in the Juilliard *case*, *legal tender had become a permanent feature of the American monetary system. The Court had effectively rewritten the constitutional monetary powers of Congress, and forever altered creditor-debtor contracts.*

It would be a half-century later during Franklin Delano Roosevelt's "New Deal" that the Supreme Court would expressly erase the gold clause.

A bad deal for the gold clause, and the creditors who relied on it

Even though the gold clause was left standing after the *Legal Tender Cases* (see *Bronson* v. *Rodes*, an 1868 Supreme Court decision), it occupied shaky ground.

In the real world of the depression-ridden 1930s, the gold clause exception to FDR's seizure of gold which seemed to survive *Hepburn*, *Julliard* and *Knox* was unlikely to withstand the financial and economic earthquake brought about by Franklin Delano Roosevelt's "New Deal."

Almost immediately after his inauguration on March 4, 1933, Roosevelt unleashed his attack on gold generally and the gold clause in particular.

On March 6, 1933, the new president unilaterally declared a national "bank holiday," a euphemism for simply locking the doors of every financial institution in the United States, thus preventing withdrawal of currency and, especially, gold.

On March 9, 1933 Congress enacted the Emergency Banking Act [sound familiar?], granting Roosevelt absolute power over gold. Executive orders, presidential proclamations, rules, regulations, and decrees followed swiftly.

By mid-May 1933 steps had been taken to devalue the dollar against gold, and to confiscate virtually all privately owned gold belonging to United States citizens: gold bullion, gold certificates, and some gold coin. (For a thorough historical discussion of the New Deal's machinations, see my 1973 Brooklyn Law Review article "How Americans Lost the Right to Own Gold, and Became Criminals in the Process".

What had not yet occurred, however, was any overt political or legal move against the gold clause, which still existed in many long-term debt obligations.

The gold bonds of that era provided that payment of interest and principal would be made "in gold coin of the United States of America of the present standard of weight and fineness . . . at the option of the holder thereof"—for example, the "Forty Year, $100.00, 5%, First Mortgage Gold Bond of The Aurora, Elgin & Chicago Railway Company."

With that kind of a creditor-friendly guarantee aimed at immunizing against soft money, it did not take a clairvoyant to foresee that the gold clause's days were numbered. The creditor-protection device was wholly antithetical to the New Deal's gold policies, and speculation about its fate was intense in financial circles.

Interestingly, the principal question was not whether the Roosevelt Administration would attempt to illegalize the gold clause. That was assumed.

The real question was whether Congress possessed the power (or, more precisely, whether the Supreme Court would rule that Congress possessed the power) to abrogate the gold clause.

The New Deal's frontal assault on the gold clause, and thus on the countless millions in debt it sought to protect from depreciated currency, began with a Joint Resolution of Congress on June 5, 1933. It unequivocally revealed the Administration's attitude toward the gold clause, condemning it as being "against public policy" and simply expunging it from all existing contracts by announcing that gold "affect[s] the public interest, and that gold clauses "obstruct" Congress's power to "regulate the value of the money of the United States."

While not widely known even then, the New Deal's attack on the gold clause was rooted in large part in an explicit congressional intent to engineer a transfer of wealth [sound familiar?]. Indeed, the floor debates reveal that one purpose of the legislation was to redistribute some $200,000,000,000, a lot of money in those days, from creditors to debtors.

Even less known is the plan FDR had concocted should the Supreme Court—where the gold clause question was headed—went against him. The President was prepared to defy the Court, if that's what it took to destroy the gold clause and American's ownership of gold.

While the *Gold Clause Cases* were pending in the Supreme Court, Roosevelt had prepared the following statement—just in case:

> I do not seek to enter into any controversy with the distinguished members of the Supreme Court of the United States who have participated in this . . . decision.

> They have decided these cases in accordance with the letter of the law as they read it . . . . It is the duty of the Congress and the President to protect the people of the United States to the best of their ability. It is necessary to protect them from the unintended construction of voluntary acts, as well as from intolerable burdens involuntarily imposed. To stand idly by and to permit the decision of the Supreme Court to be carried through to its logical, inescapable conclusion would so imperil the economic and political security of this nation that the legislative and executive officers of the Government must look beyond the narrow letter of contractual obligations, so that they may sustain the substance of the promise originally made in accord with the actual intention of the parties . . . . I shall immediately take such steps as may be necessary, by proclamation and by message to the Congress of the United States. [Sound familiar?]

Unfortunately, Roosevelt never had to make public his intention to destroy gold by attempting to nullify the Constitution of the United States of America. The Supreme Court did it for him, in *The Gold Clause Cases*.

The *Gold Clause Cases*

Chapter Five of my book *The Gold Clause* is entitled "The Gold Clause In F.D.R.'s Supreme Court." The chapter's preface—written nearly three decades ago, long before the "compassionate conservatism" of George W. Bush and the socialist pragmatism of Barack Obama—says this:

> Although it took legislation by Congress to launch the New Deal's war on the gold clause, it would be in the Supreme Court of the United States that the major battle would be fought.
>
> In our system of government, the United States Constitution is the supreme law of the land, and the Supreme Court is the ultimate interpreter of the Constitution. During its nearly two hundred years of existence, the Court has decided thousands of cases, many of them interpreting the Constitution, and of those, many of great importance. However, only a few mark crucial turning points in America's constitutional history.
>
> The Gold Clause Cases are among them.
>
> The Cases are of obvious importance because of the crucial role they play in Roosevelt's entire anti-gold program. They constitute the linchpin of his anti-gold clause campaign. But the wider significance of the Gold Clause Cases transcends both the New Deal's war on gold, and the fate of the gold clauses themselves. The majority decision in the Cases provides a rarely seen example of rank judicial pragmatism at work in one of the areas of congressional power most dangerous to individual liberties: money and monetary affairs. Many of the financial and economic problems which have beset this nation for the past forty years [1940-1980] have been engendered by the premises which made possible the decisions in the Gold Clause Cases. Much that will happen to money and monetary affairs in the future will come from the same premises. Accordingly, an understanding of the Gold Clause Cases is essential not only for anyone who contemplates using

> the gold clause today, but with anyone concerned with the kind of monetary problem that the gold clause is designed to solve."

Norman C. Norman (who contacted me when my first articles on gold and the gold clause began to appear in the 1970s) was an investor. Understandably concerned about depreciation of the dollars he had available to lend, he purchased a railroad bond containing coupons payable in gold coin "of or equal to the standard weight and fineness existing on February 1, 1930." Ownership of the bond made Mr. Norman a creditor of the railroad.

The coupon's face amount was $22.50. It was payable on February 1, 1934, but because President Roosevelt had devalued the dollar forty-percent against gold Mr. Norman calculated the coupon's then-value against gold to be $38.10.

Not surprisingly, when Mr. Norman presented the coupon for payment the railroad refused to pay the amount due either in gold or in legal tender measured by the then value of gold.

Exactly what Norman C. Norman had tried to protect himself against as a creditor of the railroad had occurred. Fearing currency depreciation, he had bought a gold clause bond. The dollar depreciated forty-percent. Norman invoked his gold clause. The debtor railroad refused to honor it.

In the Supreme Court of the United States, the majority ruled that government's power over financial affairs was extensive enough to justify the Joint Resolution's abrogation of the gold clause, to trump Mr. Norman's contractual rights, and to legalize the theft of forty-percent of his money.

The *Gold Clause Cases* fill 140 pages in the official reports of Supreme Court opinions. Predictably, many of those pages reek with the same collectivist/statist bromides that permeate other Supreme Court opinions, exalting government power at the expense of contract, property, and other individual rights.

Nowhere is there a more cogent denunciation of the majority opinions in the *Gold Clause Cases* than the dissent of Associate Justice McReynolds (reprinted in full in Chapter Five of *The Gold Clause*).

McReynolds excoriated the majority for its "confiscation of private rights and repudiation of national obligations," adverted to the Founders, and lamented that "[t]he Constitution as many of us have understood it, the instrument that has meant so much to us, is gone."

Then McReynolds delved into history:

> Congress in 1900 enacted a statute declaring that money value should depend upon the Gold Dollar—25.8 grains of gold. Later, that all Government bonds should contain a contract to pay in gold. Billions went out with that solemn

obligation in every one of them.

During the World War men stood on the streets and proclaimed the advantage of such bonds. “We are offering you the finest investment known, the solemn promise of the United States to pay you in Gold Dollars. Our country is in danger, freedom is at stake, your assistance is needed; buy that we may survive.” Billions were bought on such assurances. On May 2, 1933, after the Government has commandeered all gold, it nevertheless sold five hundred millions of bonds, containing this solemn promise!

In 1900 the Government began to receive on deposit Gold Dollars and issue certificates therefor. The Treasury accepted the gold coin. Certificates acknowledged the receipt of gold and promised to return coin upon demand. Millions of such certificates went out; every one bore that assurance.

In April 1933, under threat of heavy penalties, Congress declared all gold within the United States must be brought to the Treasury and directed the Treasurer to issue for this some form of currency. Millions came in. We left the Gold Standard and refused to recognize obligations. Our currency was depreciated, for all gold bullion received, only paper was offered.

That was not enough. Notwithstanding the five hundred million gold bonds sold on May 2, Congress on the 12th declared its duty to raise the price of commodities and lower the value of securities. Also, that every dollar obligation, whatever the form, should be equal to every other one. And it gave the President power to depreciate the gold content of the dollar to fifty cents.

If in that state of affairs the President had reduced the dollar to fifty cents, the holders of gold securities might have been entitled, under their contracts, to the value of the thing contracted for. But that would not have produced the end desired; so another act undertook to destroy all contracts for payment in gold.

* * *

After this effort to destroy the gold clause, the dollar is depreciated to sixty cents. Prices are to be estimated in deflated dollars. Mortgages, bank deposits, insurance funds, everything that thrifty men have accumulated, is subjected to this depreciation! And we are told there is no remedy!

* * *

It is said that the National Government has made by these transactions $2,800,000,000 and that all gold hypothecated to the Treasury may now be used to discharge public obligations! If the dollar be depreciated to five cents or possibly one, then, through fraud, all Government obligations could be discharged quite simply.

Shame and humiliation are upon us now. Moral and financial chaos may confidentially be expected.

Justice McReynolds's mourning of the gold clause’s demise speaks volumes about what I predict will happen once the President’s and Congress’s spending spree translates into substantial inflation, which will enable our debtor-government to pay off its debt with depreciated paper.

But there's still a way out for many creditors, because the gold clause has been reborn.

Re-legalization of private gold ownership

For forty years the owners of pre-New Deal gold clause debt obligations didn't receive what they had bargained for: payment in gold coin, gold bullion, or currency measured by the current value of gold.

Instead, for those forty years, they received payment in a fixed amount of ever-depreciating paper currency.

For forty years, they waited for something to happen which would check the relentless depreciation of their debt instruments.

Some of us, however, weren't waiting.

Because I had written the seminal modern article about President Roosevelt's anti-gold machinations—see my 1973 Brooklyn Law Review article "How Americans Lost the Right to Own Gold, and Became Criminals in the Process"—I was asked to join the vanguard of those seeking to restore the right of private gold ownership. Ultimately, I had a hand in drafting the private gold ownership re-legalization legislation.

We finally succeeded in the mid-1970s. Effective December 31, 1974 Americans could once again own gold.

The private gold ownership re-legalization statute provided simply that "[n]o provision of any law—and no rule, regulation or order—may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold in the United States or abroad."

Because of our tactical considerations surrounding introduction, sponsorship, enactment and executive approval of private gold ownership re-legalization, the statute was silent on whether the gold clause had been resurrected. The legislative history on re-legalization is silent on the subject of the gold clause.

Not surprisingly, on December 9, 1974 the Treasury Department issued a statement which concluded that the New Deal Joint Resolution outlawing the gold clause remained good law, and that existing gold clauses remained unenforceable (see Chapter Six of *The Gold Clause* for the Treasury's complete statement).

A vigorous debate then began about whether re-legalization had resurrected the gold clauses which Roosevelt had killed forty years earlier.

On March 17, 1975 I wrote a lengthy article for *The Wall Street Journal* entitled "Can We Restore the Gold Clause?" It garnered national, indeed international, attention and brought to the fore the multi-billion dollar question of whether gold clauses in pre-New Deal debt instruments had been revived. Indeed, my article engendered several well-reasoned letters-to-the-editor, one from a man who described himself "[a]s a minor foot soldier for the Treasury Department in what I have come to regard as the 'holy war of the gold clauses' which took place in the 1930s."

The debate raged (see Chapter Six of *The Gold Clause*).

As a result, I was asked by then-Congressman Phil Crane to draft legislation expressly re-legalizing the gold clause, "[t]o declare the public policy of the United States and to remove all legal obstacles to the use of gold clauses."

My language for H.R. 8324 was brief, and to the point: "Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the joint resolution of June 5, 1933, entitled 'Joint resolution to assure uniform value to coins and currencies of the United States' (31 U.S.C. 463) [this was boiler plate language from the House's legislative drafting service; my language follows] *is hereby repealed, and nothing shall prohibit any contractual provision which gives the oblige [creditor] the right to require payment by the obligor[debtor] in gold, in gold coin, or in an amount of currency measured by the value of gold or gold coins."* (My emphasis.)

Referred to the House Committee on Banking, Currency and Housing, the Crane/Holzer bill languished there.

About nine months later, through the efforts of Howard Segermark, a staff aide to Jesse Helms, the Senator queried Treasury Secretary William E. Simon and Fed Chairman Arthur F. Burns about their official positions concerning re-legalization of the gold clause.

Surprise!

Simon was hostile to re-legalization because the government was trying "to eliminate gold from the U.S. monetary system."[!] Burns, reminding Helms that the Fed Chairman had opposed private gold ownership re-legalization in 1974, contended that while he might be in favor of gold clause re-legalization, the Federal Reserve Board was split "on the advisability of such action."

That didn't stop Jesse Helms.

On June 14, 1976 the Senator introduced S.3563, accompanied by a lengthy statement in support of gold clause re-legalization. (See Chapter Seven of *The Gold Clause* for Helms's statement and the text of S.3563.)

In late August 1976, Helms introduced an amendment to his bill, prefaced with this statement: "My amendment, if approved, would make enforceable gold clause contracts *entered into after the enactment of the amendment*. It is intended to stand *neutral* with regard to the enforceability of gold clause obligations issued in the *past*." (My emphasis.)

Helms's clear intention, which he stated expressly in his remarks, was to leave the retroactivity question to the courts.

But at least as of October 28, 1977 *newly created* gold clause obligations would be enforceable.

That left open the multi-billion dollar question of gold clause *retroactivity*, and what the courts would do about those that antedated the New Deal.

Limited retroactivity of the gold clause

The gold clause has traveled a long and hard road through the American monetary system. Designed to protect creditors from the debtor-coddling government money monopoly and against the scourge of inflated paper money, the contractual provision served well from the Civil War until gold inconveniently stood in the way of the New Deal's stranglehold on America's monetary system.

Then, along with gold itself, the gold clause had to go.

Re-legalization of private gold ownership fueled the hope that the gold clause had, at least by implication, been retroactively resuscitated, but state and federal courts ruled otherwise. (See Chapter Eight of *The Gold Clause*, entitled "Is the Gold Clause Really Legal?" for one of the more prominent state cases, *Aztec Properties, Inc*. v. *Union Planters National Bank*, ruling that the payment of indexed principal runs afoul of anti-usury laws.)

Then the gold clause rose again, with its re-legalization beginning in late 1977.

But what about retroactively?

Maybe.

To explain this tantalizing comment, first I have to explain the legal meaning of the word "novation."

According to *Black's Law Dictionary*, a novation is the "[s]ubstitution of a new contract, debt, or obligation for an existing one, between the same or different parties. The substitution by mutual agreement of one debtor for another or of one creditor for another, whereby the old debt is extinguished. The requisites of a novation are a previous valid obligation, *an agreement of all the parties to a new contract*, the extinguishment of the old obligation, and the validity of the new one." (My emphasis.)

In less legal terms, then, a novation is fundamentally the old contract reborn with a new twist or two.

It is through the novation device that *only a few* pre-New Deal gold clauses have been given effect.

The best explanation of how and why is found in the case of *216 Jamaica Avenue, LLC* v. *S&R Playhouse Realty Co.*(540 F.3d 433), a decision of the United States Court of Appeals for the Sixth Circuit rendered in August 2008. (My annotations within the court's opinion, which appears below in courier font, are bracketed and in bold face. Asterisks (* * *) signify the omission of at least one entire sentence; ellipses (. . .) signify the omission of part of a sentence.)

SUTTON, Circuit Judge

I.

In 1912, Salmon and Samuel Halle leased a parcel of land in downtown Cleveland from its owner, Realty Investment Corporation. The term of the lease was 99 years (through March 31, 2011), and the Halle brothers and their successors in interest retained the option of renewing the lease for another 25, 50 or 99 years (through as late as March 31, 2110).

The lease agreement fixed the annual rent at $10,000 for the first two years, then increased the rent in periodic intervals until it reached $35,000 in the eleventh year, where it remained until the end of the lease.

The lease also contained a "gold clause," which provided that "[a]ll of said rents shall be paid in gold coin of the United States of the present standard of weight and fineness."

At that time and up through the Depression, such clauses commonly appeared in long-term leases "as a sort of price-indexing mechanism to protect a lessor **[landlord]** from the effects of inflation." **[Citing a predecessor case in the United States Court of Appeals for the Eighth Circuit and the Supreme Court of the United States.]**

In the early 1930s, as part of a series of measures designed to implement the Roosevelt Administration's overhaul **[note the euphemism; "keelhaul" would be a more accurate word]** of American monetary policy, Congress withdrew gold from circulation and banned nearly all private ownership of it. * * *

And in 1933, Congress passed a Joint Resolution that declared gold clauses to be "against public policy," barred their inclusion in any future contract and suspended the operation of existing gold clauses by allowing all contract obligations to be paid in paper currency instead. See Joint Resolution of June 5, 1933 . . . (providing that no gold clause "shall be contained in or made with respect to any obligation hereafter incurred" and that "[e]very obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts").

Four decades later, Congress changed course. It repealed the ban on private ownership of gold in 1975.

And in 1977, it amended the 1933 Joint Resolution, providing that the resolution "shall not apply to obligations issued on or after" the amendment's date of enactment. * * * Although the amendment made clear that parties could include gold clauses in contracts formed *after* 1977, Congress's choice of words (authorizing "obligations issued ... after" the amendment) generated a small stream of litigation regarding the amendment's effect on gold clauses contained in contracts made *prior* to 1977 but transferred *after* that date. **[My emphasis. This is important. The litigation to which Judge Sutton referred was over gold clause contracts made before re-legalization that were renegotiated after that 1977 event. In other words, contracts where there may have been a "novation."]**

* * *

In an effort to clarify the matter **[and the limbo status of pre-1977 gold clause contracts renegotiated after 1977],** Congress passed a law in 1996 providing that owners could enforce pre-1977 gold clauses only if the parties to a new obligation issued after 1977 "specifically agree[d] to include a gold clause" in their new agreement. **[My emphasis]** * * *

Just over a year later, however, Congress repealed the 1996 statute.

* * *

So far as the record **[in this case]** is concerned, the gold clause in this contract never attracted anyone's attention or at least never generated any disputes during the first 90 years of its existence.

Since 1982, when the current lessee **[tenant]**, S&R Playhouse Realty, assumed the lease, it has paid annual rent of $35,000 in American currency. And there is no indication in the record that either the original lessees **[tenants]**, the Halle brothers or the other lessees **[tenants]** prior to S&R paid more than $35,000 in the preceding 70 years. Nor is there any indication that the previous owners ever demanded more than $35,000.

That changed in 2006, when the current owner, 216 Jamaica Avenue, purchased the land for $845,000, then sought to enforce the gold clause, *demanding rent equivalent to the value of 35,000 1912 gold dollar coins*. **[My emphasis.]**

The current lessee, S&R, balked at the prospect of paying several multiples of what it had been paying, prompting 216 Jamaica Avenue to file this breach-of-contract action in federal court . . . .

[T]he **[trial]** district court ruled for the lessee **[tenants]**, refusing to enforce the [gold] clause.

II.

The parties share considerable common ground about how to resolve this dispute.

They agree that the question at hand is whether the gold clause constitutes an "obligation issued ... after" October 1977. * * *

And they agree that an assignment combined with a novation, which substitutes a new agreement for a prior one and releases the obligations of the prior lessee, would suffice to satisfy the obligation-issued-after requirement. *What the case boils down to, then, is whether the 1982 transfer of the lessee's interest to S&R amounted to a novation*. **[My emphasis.]**

[Judge Sutton's concise and thorough recitation of the facts of the case clearly framed the issue to be decided: Congress had OKd gold clauses subject to an "obligation-issued-after" requirement, an assignment/novation could satisfy that requirement—-so was that what happened when S&R took the lease as a new tenant?]

[There followed in the court's opinion a lengthy discussion of what constituted a contract of novation under Ohio law. Essentially, it is as defined above.]

[The parties agreed that the 1982 assignment was a valid new contract, but disagreed about] whether the owner at that time agreed to release the prior lessee (Halle Bros. Co.) from its obligations under the lease and to substitute the new lessee (S&R) in its place.

[Because under Ohio law consent to a novation need not be express, but could be implicit from circumstances or conduct, the court found there *had* been consent]. * * *

The terms of the 1982 assignment agreement answer another objection raised by S&R: How could the assignment resuscitate the 1912 gold clause, which no party to the lease had been able to enforce since 1933?

In accordance with the express terms of the 1982 assignment agreement, S&R "assume[d] and agree[d] to perform each and all of the covenants, obligations, and engagements of the Assignor and lessee under said Lease and all other terms and provisions thereof on the part of lessee to be observed and performed after the date hereof."

The agreement also clarifies that the assignment was made "subject ... to the payment of the rents and the observance of all and singular the covenants, conditions, terms and agreements in said Lease contained."

The assignment agreement, in short, says it all: *It explicitly incorporates all of the terms of the 1912 lease, including the gold clause.* **[My emphasis.]** * * *

[T]he 1933 federal statute did not purport to, and did not in effect, delete the gold clause permanently from the lease agreement. The law, sure enough, made existing clauses unenforceable by providing obligors an alternative route for satisfying gold-denominated obligations, by declaring them to be against public policy and by forbidding their inclusion in future contracts. * * * But it stopped short of voiding or invalidating existing gold clauses, and *it did nothing to prevent parties from reviving those clauses after the 1977 amendment.* As the Eighth Circuit correctly explained **[in an earlier case]**, "[t]he 1933 act did not magically erase the gold clause from the **[pre-1933]** lease." **[My emphasis.]**

As a final matter, it is worth addressing the parties' respective efforts to cast themselves as victims in this nearly century-long saga.

As S&R sees things, it took on a lease obligation of $35,000 a year and now is being asked to pay several multiples of that. As 216 Jamaica sees things, S&R had every reason to know this risk. The 1977 legislation permitted gold clauses to be enforced; the 1912 agreement contained a gold clause; the 1982 assignment required S&R to accept each of these obligations; and S&R chose not to condition acceptance of the assignment on removing the gold clause.

And, what is more, S&R wishes to pay $35,000 per year for space that is worth multiples of that and wants that option not just through 2011 but presumably for 99 more years-through 2110. The record does not say how much comparable space rents for in Cleveland, but one can certainly assume that it is more valuable than it was in 1912 without having to accept the truth of 216 Jamaica's assertion that it is worth more than 75 times what S&R currently pays for it. As a matter of sheer economics, it is hard to say which party has the sharper elbows.

Either way, in light of this ruling, the parties now know one of the effects of the 1982 assignment. * * *

We can speculate about whether one of the parties and their lawyers were simply brilliant when negotiating the 1982 assignment of the lease, or just lucky—-and whether their adversaries dropped the ball concerning the until-then gold clause. (I had consulted in gold clause cases, but not this one.)

But either way, in *216 Jamaica Avenue LLC* v. *S &R Playhouse Realty Co*. an old gold clause lived again, albeit under very specific factual circumstances.

Since the Court of Appeals decision in that case, there have been only 13 more, two state and eleven federal. Of them, only one (decided in 2013) contains a substantive reference to the gold clause. Because there had been nothing that could be construed as a novation, the court simply applied the Joint Resolution to the pre-1933 gold clause and held that it had been illegalized and not resuscitated.

Regrettably, the Supreme Court of the United States has not weighed in on the question of resuscitation of gold clauses, and as time goes by it has less reason to do so because pre-legalization debt instruments containing gold clauses are fading into history.

But that doesn't mean that new gold clauses should not, or cannot, be used as an integral part of any significant debt instrument today—especially with massive inflation just below the horizon.[1]

Conclusion

With the executive and congressional branches of the United States government acting in recent years like drunken socialists on shore leave, spending everything they can beg, borrow and steal and plunging America into massive debt, the gold clause has come full circle.

Historically, it's clear that the gold clause creditor-protective provision in debt instruments was designed to protect against the massive inflation Bush "compassionate conservatism" and Obamaite progressivism has been inviting with every collectivist/statist scheme they've concocted: bailouts, stimulae, deficits, subsidies, pork, entitlements, nationalization, tax increases, and more.

The background noise you hear is the sound of government presses relentlessly printing money, figuratively if not literally (this is, after all, the digital age).

Remember, well over a century ago the gold clause was developed to protect the purchasing power of currency.

Today, as this Monograph amply shows, legitimate creditors who wish to protect their debt from depreciation of currency and currency-denominated assets are well advised to employ the gold clause in debt instruments they lend against.

But this advice is by no means the end of my story about gold and the gold clause. There is a more fundamental point to be made here: *behind every currency-depreciating event in American history stood the puppet-master government, pulling the strings which caused the problems: for example, legal tender, creation of the Federal Reserve system, illegalization of private gold ownership, nullification of the gold clause*. (See my Monograph entitled *Government's Money Monopoly*.)

The treatment and fate of gold clauses reveals a much deeper problem: *the role of government in our nation's monetary affairs*. If we are to free ourselves from the outrageous grip of government control over money, it is necessary for the citizens of the United States to rethink the government's role in those affairs—and to understand the rationale for government's animus toward gold.

I have been making this point for some fifty years!

[1] At least two cases (both decided in 1975) held that state usury laws (Pennsylvania and Tennessee) barred use of gold clauses. See pages 146-162 of *The Gold Clause*.

On November 12, 1981, well after re-legalization of private gold ownership and of the gold clause, I testified in Washington, D.C. at the invitation of the United States Gold Commission, one of whose members was then-Representative Ron Paul.

That testimony is a fitting conclusion to this Monograph.

Good morning Dr. Schwartz and members of the Commission. As you know, I am not an economist but rather a Professor of Law at Brooklyn Law School in New York City. My field is constitutional law, and I have lectured and written extensively on the legal aspects of gold and the nature and scope of government monetary power. For example, two of my books are entitled, respectively, *The Gold Clause* and *Government's Money Monopoly*.

I must confess to a certain ambivalence this morning because, while I appreciate having been invited to testify before this Commission, at the same time I feel like the lawyer who must tell a court that it lacks jurisdiction.

I have come here to say that despite this Commission's good faith, it cannot discharge its Congressionally delegated task to ". . . make recommendations with regard to the policy of the United States Government concerning the role of gold in domestic and international monetary systems . . . ." without first understanding, and then admitting, some hard truths about our Nation. Let me explain.

Dr. Allan Greenspan has written ". . . that the gold standard is an instrument of laissez-faire and that each implies and requires the other." ("Gold and Economic Freedom," *The Objectivist*, Vol 5. No. 7, July 1966, p.1). Of course, he is correct: economic freedom—more specifically, for our purposes, monetary freedom—is an indispensable prerequisite to any meaningful financial use of gold.

However—and this is the core of the Commission's problem—today there is little economic freedom in America. And almost from our first day as a Nation, there was little monetary freedom; now, there is none.

As to economic freedom, tax laws have redistributed wealth on the basis of need and otherwise removed from productive use capital necessary for reinvestment, diverting it to countless ends disapproved by those from whom the money was taken.

Antitrust and fair trade laws have, contradictorily and impotently, attempted to compel competition and protect consumers from themselves. Instead, such laws have caused business decisions to be predicated, not on marketplace considerations, but on guesswork as to how bureaucrats and judges would interpret unintelligible laws.

Labor laws have created compulsory unionization, with its many attendant problems for unwilling employees and employers—and contributed greatly to America's steady decline as the world's preeminent industrial power.

Wage and hour laws have required private employers to establish pay scales and working conditions mandated, not by the free market and mutual agreement, but by government fiat.

Restraints on the use of private property are commonplace—in the name of zoning and so-called civil rights.

Liberty of contract is substantially restricted—in the name of equalizing bargaining power and the so-called public interest.

To understand our lack of monetary freedom, it is necessary to go back into history.

With the birth of our Nation at the Constitutional Convention of 1787, our Founding Fathers created a new government which possessed expressly delegated powers. Congress was the recipient of legislative power, and in the monetary realm it was authorized only to borrow money, to coin money and regulate its value, and to punish counterfeiting.

The Constitution also expressly barred the states from coining money, emitting bills of credit, and making anything but gold and silver a tender in payment of debts.

Clearly, when the work was finished in that hot Philadelphia summer of 1787, as to monetary affairs at least the delegates had substantially resisted the siren song coming from the unfree and semi-free statist European political systems.

But the resolve of America's leaders soon began to ebb. Less than four years after the Convention, the scope of our government's monetary power divided our Nation's leaders at the highest level.

Congress wanted to charter the first Bank of the United States. The question was whether the legislature possessed the power, and President Washington sought opinions from his Treasury

Secretary, Alexander Hamilton, and his Secretary of State, Thomas Jefferson. It is popularly believed that the two disagreed. Actually, on the issue of government power, they were in complete agreement—in principle.

Hamilton held that Congress's few delegated monetary powers were sufficiently broad to encompass chartering the bank, especially if those powers were "loosely" interpreted, and that Congress even possessed extra-constitutional powers beyond those which had been specifically delegated.

Although Jefferson denied to Congress the bank-chartering power, he would have granted it to the states—thus sharing Hamilton's statist premise about the power of government over monetary affairs.

When the Bank Controversy was over, Hamilton's view prevailed. Washington signed the bank bill, and for nearly thirty years afterward few people noticed that the monetary power of Congress had grown considerably.

Congressional power expanded nearly thirty years later, when Hamilton's views about its extra-constitutionality became part of the bedrock of American constitutional law. In 1819 John Marshall's opinion for the Supreme Court in *M'Culloch* v. *Maryland* expressly held that in monetary affairs, the government of the United States was, like the monarchs of Europe, "sovereign."

That sovereignty was never more apparent than throughout the Civil War's "greenback" episode, a story too well known to the members of this Commission to recount here.

Suffice to say that in order to fight the war, the northern government of President Lincoln created legal tender and simply forced individuals to accept greenbacks, no matter what they thought the paper was worth.

As usual, the Supreme Court of the United States was a willing accomplice to Congress's usurping non-delegated, extra-constitutional monetary power.

In the first important legal tender case to reach the Court, *Hepburn* v. *Griswold*, while a bare majority held that the act could not be applied to a debt contracted before legal tender became law, every one of the justices (majority and dissent) nevertheless agreed on the underlying principle: that Congress possessed a broad monetary power whose outer boundaries were far from clear. Less than eighteen months later, *Hepburn* was overruled by *Knox* v. *Lee*, and legal tender was expressly held to be constitutional.

By the time of the last legal tender case some years later, nearly three centuries had passed since the 1604 English Case of *Mixed Money* had approved Queen Elizabeth's sovereign power to debase her coinage.

Yet despite the fact that in America we had created a different kind of political system, despite a written Constitution that narrowly circumscribed the power of our government, the foreign sovereign who had been repudiated by the colonists seemed to have been replaced by a domestic one—at least in monetary affairs.

The idea that monetary power belongs to the sovereign was conceived in Europe. If, despite the United States Constitution, that idea was born in America in John Marshall's *M'Culloch* decision (midwifed by Hamilton's opinion to Washington in the Bank Controversy) and reached its majority in the *Legal Tender Cases*, then its maturity came in three twentieth century cases.

In *Linq Su Fan* v. *United States*, the Supreme Court concluded that attached to one's ownership of silver coins were "limitations which public policy may require," and that the coins themselves "bear, therefore, the impress of sovereign power."

Two months later the Court went even further, at least in dicta. *Noble State Bank* v. *Haskell* held that a state bank could be forced to help insure its competitors' depositors against insolvency. In the course of his opinion for a unanimous Supreme Court, Justice Oliver Wendell Holmes actually went so far as to admit that government monetary power was indeed omnipotent: "We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the State in taking the whole business of banking under its control."

Holmes' dictum very nearly became a reality in the early days of the "New Deal," when, in a statist orgy of rules, regulations, proclamations, executive orders, resolutions, decrees and manifestos, America's banks were ordered closed, her dollar was devalued, her gold standard abandoned, private ownership of gold was illegalized, and gold clauses were nullified.

Although only the gold clause issue reached the Supreme Court, when nullification of the clauses was upheld, it was crystal clear that the Court had de facto approved of all the New Deal's statist exercises of raw government power—based on a chain of precedents running back inexorably to *Noble State Bank*, *Linq Su Fan*, The *Legal Tender Cases*, *M'Culloch*, the Bank Controversy, and thence to the Elizabethan *Case of Mixed Money*.

Ironically, but not surprisingly, in little more than three hundred years, a round trip had been completed: from an English monarch's unlimited monetary power, to the reposing of identical power in the hands of a supposedly free representative democracy. When the smoke of the *Gold Clause Cases* had cleared—to the profound detriment of individual rights—the government of the United States unquestionably controlled every aspect of this Nation's monetary affairs: money, credit, banking, gold, the securities business, and more.
In the nearly fifty years since then, that control has both deepened and become considerably more sophisticated (as in the Bank Secrecy Act), emulating other contemporary societies which we rightly disparage for their lack of freedom.

Dr. Schwartz and members of the Commission, I have come to Washington today to say that the United States—its government and its people—cannot have it both ways. Either we have monetary freedom and a gold standard, or no monetary freedom and no gold standard. Though mine may be a lonely voice crying in a wilderness of omnipotent government, I emphasize that there is no middle ground.

If this Commission wishes to recommend a gold standard, it must first understand the nature and scope of our Nation's lack of economic and monetary freedom, and then communicate that understanding to the American people. Only then, and in that context, can a gold standard recommendation from this Commission have any real meaning.

Indeed, should this Commission recommend that a gold standard be instituted, and should Congress and the President take the unlikely follow-up step of introducing one, even then, a gold standard resurrected under today's economic and monetary controls would not be worth the paper it was proclaimed on.

Until the government of the United States once and for all pulls out of the economic and monetary affairs of its citizens—whether there be a gold standard or not—we cannot have economic, or monetary, freedom.

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Without it, what we have instead, as uncomfortable as this may
be to admit, are revocable privileges—which are the antithesis
of individual rights.

Thank you.
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Sadly, my testimony (and that of others) to the Gold Commission in 1981 fell on deaf ears. After eight months of "study," the Commission, chaired by Anna Schwartz, long-time associate of Nobel Prize winner economist Milton Friedman, rejected a gold-based monetary system.

They did so, essentially, for one reason: Just as the gold clause holds debtors' feet to the full-value-repayment fire, a gold standard restrains government from creating fiat (i.e., depreciated) currency, with its inevitable consequence: an invisible, but very real, tax which falls on savers and other productive citizens.

By the time enough Americans awake from their government-induced lethargy and realize that inflation will rob them, and their children and their children's children, of incalculable value through the depreciation of paper money, it may be too late.

Then they and many others may finally understand that government's money monopoly is antithetical to monetary, economic and personal freedom—and that the price paid for allowing it is more than we can afford to pay.