A Crisis of Dollars and Sense

The "dollar" bills that we routinely exchange for goods and services are not genuine *constitutional* dollars, but promissory notes substituting for the real thing.

by Edwin Vieira, Jr.

Every day, millions of Americans receive and pay out what they think are "dollars." Yet, in almost every instance, they are deceiving themselves. For the "one-dollar" (picture of George Washington on its face) Federal Reserve Note (FRN) that most everyone uncritically *calls* a "dollar" is *not* a "dollar" at all. No statute of the United States has ever declared that note to be a "dollar." Neither could such a declaration ever be made. For each and every FRN, of whatever denomination, is only a "note" — a private bank's promise to pay the holder a stated number of "dollars." Self-evidently, a promise to pay some thing is not that thing itself.

Even the statute that authorizes the emission of FRNs requires that "They shall be redeemed in lawful money on demand at the Treasury Department … or at any Federal Reserve bank" (12 U.S.C. § 411) — which proves that FRNs are not themselves "lawful money." Another statute does declare FRNs to be "legal tender for all debts, public charges, taxes, and dues" (31 U.S.C. § 5103). But FRNs would not have to be declared "legal tender" if they were actually "dollars." Rather, the statutory designation "legal tender" recognizes that FRNs are not "dollars," but may be used as *substitutes for* "dollars" with respect to any payment covered by the law.

Thus, amazing as it may seem, the present chaotic circumstances plaguing America's financial markets have nothing to do with the *true* "dollar." The markets' derangement has arisen, over the course of decades, from the *absence* of the "dollar" in day-to-day economic transactions — indeed, from having the "dollar" supplanted as the American people's official monetary unit so that hardly anyone anywhere in this country employs the "dollar" as his medium of exchange or standard of value. This has occurred because all too many Americans have simply forgotten, or have never learned, what a *real* "dollar" — a *constitutional* "dollar" — is.

The constitutional "dollar" is a specific silver coin — and nothing else. A "dollar" derives from the Spanish milled dollar, which was proposed as America's monetary unit by Thomas Jefferson, adopted as such by the Continental Congress, and then designated the standard of value in the Constitution (Article I, Section 9, Clause 1) and the Bill of Rights (the Seventh Amendment). Its then-contemporary content — 371.25 grains (troy) of fine silver — was determined as an historical fact, and declared to be the value of America's

The silver certificate was created in response to "Free Silver" agitation by those who were angry about the 1873 Fourth Coinage Act, where the United States accepted the gold standard and de-monetized silver. The silver certificate was equal in value to and redeemable in silver coins.

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Pesos past: After a Spanish currency reform in 1497, the silver coin known as the Spanish Dollar, or peso, was minted in the Spanish Empire. The United States accepted the Spanish currency as legal tender until 1857.

own "dollar," in 1792. (See the sidebar on page 29.)

Because the Founding Fathers knew that *real* "money" consists of valuable commodities, they delegated to Congress the power "To coin Money, regulate the Value thereof, and of foreign Coin" (Article I, Section 8, Clause 5). And to promote national uniformity in official coinage, the Constitution declares that "No State shall … coin Money" (Article I, Section 10, Clause 1). *So, the official "Money" of the United States is to be coin, and coin alone.*

In the same clause, the Constitution also mandates that "No State shall … emit Bills of Credit" (the Founders' term for paper currency) or "make any Thing but gold and silver Coin a Tender in Payment of Debts." Often overlooked, though, is that the original draft of Article I, Section 8, Clause 2 of the Constitution empowered Congress "To borrow Money, and emit bills on the credit of the United States." But, by a vote of nine states to two, the Federal Convention deleted the power to "emit bills" — so that Clause 2 now reads simply "To borrow Money on the credit of the United States." Inasmuch as Congress has no powers other than those the Constitution delegates, this deletion absolutely deprives Congress of any power to "emit bills." And if Congress cannot "emit bills" at all, it cannot emit "bills" with the special character of "legal tender," either. Thus, *the emission of every form of paper currency by the General Government is as utterly unconstitutional as the emission of paper currency by the states.*

The reason for this sweeping prohibition was the Founders' experiences with their own Continental Currency and state "bills of credit" during the War of Independence. The collapse of these "legal-tender" paper currencies disabused the Founders of the notion that a "bill of credit" is as good as the money in which it is denominated. In any particular case, such a promise may be honored, or may not be — but in every instance the conversion of promise into payment remains problematical until actual performance is had. Even less were the Founders subject to the modern delusion that a paper promise to pay (such as a Federal Reserve Note) not only can substitute for real money for a while, but even can supplant it permanently. Moreover, the Founders recognized that "bills of credit," when expanded beyond the issuers' ability or willingness to pay with silver or gold, were instruments capable of unjustly redistributing immense amounts of wealth from society to the issuers — a result at odds with the general welfare.

So how, *constitutionally*, is sound money to come into existence? In four ways:

(1) Congress must "coin Money," particularly of silver (the constitutional "dollar") and gold, so as to supply the "gold and silver Coin" which the states are required to "make … a Tender in Payment of Debts." (See *United States v. Marigold*, 50 U.S. (9 Howard) 560, 567 (1850).) Congress may, of course, coin whatever silver and gold the General Government happens to own or acquire. But the greater source of official coins is to be through so-called "free coinage": the requirement that the government mint coin, at the minimum possible (or even no) charge, whatever silver and gold private parties bring to them, the resulting coins then being spent into circulation by those parties. In this manner, *ultimately the free market will determine the amount of official coinage in circulation.*

(2) Congress must also "regulate the Value" of "foreign Coin." This requires assigning to "foreign Coin" the value in "dollars" such coin has in the free market. (Thus, a "foreign Coin" containing 742.50 grains of fine silver would be "regulate[d in] Value" at "two dollars." Or a "foreign Coin" containing 371.25 grains of fine gold, when the market exchange ratio between silver and gold is 20 to one, would be "regulate[d in] Value" at "20 dollars.") *Through this process, Congress could incorporate all of the present gold and silver coin of the entire world into the monetary system of the United States, with the passage of a single statute.*

(3) Although coins minted or "regulate[d in] Value" by Congress are the only *official* "Money" of the United States, Congress may not prohibit any nonfraudulent forms of private coinage — whether of silver, gold, copper, or any other metal or alloy (see Amendments IX and X). Every American may use any of these media of exchange in his private transactions. Un-

fortunately, on the basis of a statute that purports to penalize anyone who "makes or utters or passes … any coins of gold or silver … of original design," the Department of Justice is harassing at least one issuer of private coinage, the so-called "Liberty Dollar" (18 U.S.C. § 486). But, as applied to any honest private coinage, this statute is plainly unconstitutional.

(4) Private banks and other financial institutions may emit notes, and the holders of those notes may use them as media of exchange in private transactions — provided that the issuers: (i) make full disclosure to the general public as to what reserves or assets secure the notes, and how and when the notes may be redeemed; and (ii) suffer severe legal consequences if they fail to abide by their promises with respect to redemption.

Today, though, the monetary system with which Americans deal flouts the Constitution at every turn.

Being a paper currency, the FRN is a "bill of credit." Worse, it is a discredited "bill." For the "one-dollar" FRN does not promise to pay an actual *constitutional* "dollar" containing 371.25 grains of fine silver. A statute does require the FRN to be redeemed "in lawful money" (12 U.S.C. § 411); however, in practice, redemption yields not an actual "dollar," but only base-metallic coinage *containing no silver (or gold) whatsoever*. In addition, the Department of the Treasury will not redeem a "one-dollar" FRN with, or exchange "one dollar" of base-metallic coinage for, a real "dollar," either. Instead, the relevant statute provides that "A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency (other than gold and silver coins) that may be lawfully held" (31 U.S.C. § 5118(b)). And no one may sue the General Government on a claim "for United States coins or currency" or "arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the metallic content of the dollar or in a regulation about the value of money" (31 U.S.C. § 5118(c)(1)). Meaning that, although a "one-dollar" FRN must be redeemed "in lawful money," *the medium of redemption will be whatever Congress — in defiance of its constitutional duty — wants it to be other than gold and silver coins, and notwithstanding that the thing used for redemption is worth far less in the marketplace than a "dollar" containing 371.25 grains of silver*.

Yet, notwithstanding all of this chicanery — exacerbated by the "legal-tender" statute — no one is obliged always and under all circumstances to use FRNs in his private transactions. In addition to the Constitution (particularly Amendments IX and X), a statute entitles any American to use United States or foreign silver and gold coins to the absolute exclusion of FRNs (31 U.S.C. § 5118(d)(2)). Contracts for that purpose are often called "gold-clause contracts" because gold was the preferred medium of exchange when such arrangements originally became popular in the late 1800s. Congress outlawed "gold-clause contracts" in 1933, but permitted them once again in 1978. Since then, however, they have been only infrequently employed because almost all Americans have been unaware both of such contracts' legality and of their usefulness for avoiding losses in monetary purchasing power due to inflation.

Such widespread popular ignorance evidences a shocking failure on the part of America's political leadership, her educational establishment, and the big media because FRNs' chronic loss of

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Not worth the paper it's printed on: After the Revolutionary War began in 1775, a paper currency, known as Continental currency, was issued by the Continental Congress. The phrase "not worth a continental" was later applied to this currency, since it could easily lose value and was highly vulnerable to counterfeiting.

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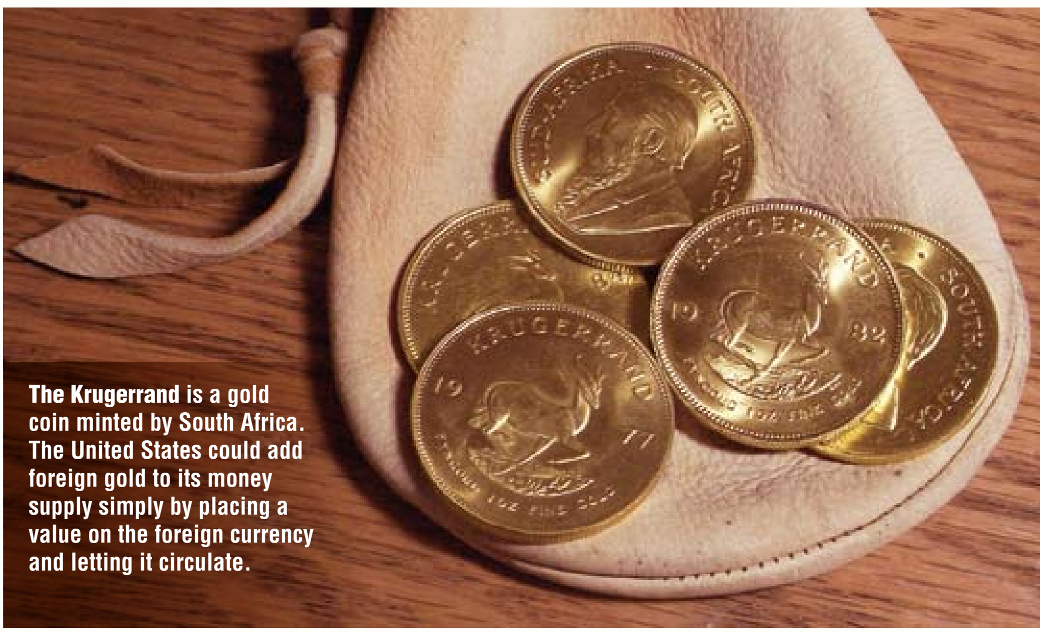
purchasing power — amounting to more than 90 percent since World War II — should hardly be unexpected, and the way to correct it hardly uncertain. FRNs are not backed "dollar"-for-"dollar" by silver or gold, but instead are issued on the supposed security of public and private debts. Each FRN is the product of an essentially magical process by which debt (a liability) is somehow monetized via the creation of money (an asset) out of thin air.

As if that were not enough, FRNs are the currency of a private banking cartel, the Federal Reserve System (FRS), which operates on the basis of so-called "fractional reserves." Using "fractional reserves," the Fed can expand the amount of currency and credit many times beyond the amount of public and private debts on which that currency and credit rests. The result is an inverted pyramid in which at the bottom a relatively small amount of debts, the real values of which are themselves uncertain, attempts to support at the top a much larger mass of currency and credit, the values of which depend upon the values of the debts. As long as this pyramid continues to expand, all appears well, because one "dollar's" worth of debt at the bottom seems to prop up many "dollars'" worth of currency and credit at the top. Economic activity in society accelerates. But should enough of the debts prove bad, serious trouble follows — because each "dollar's" worth of debt that must be written off at the bottom requires many "dollars'" worth of currency and credit to be extinguished at the top. Then the economy rapidly stagnates and sinks into recession, or even depression.

This "boom and bust" cycle inevitably and unavoidably occurs because bankers maximize their profits by transforming debts into currency and credit to the greatest extent possible. Thus, they have an incentive to make loans that are excessive in amount and only questionably secure. At some point a disjunction must occur between the speculations of the financial system and the physical realities of the productive system, bringing about an economic crisis.

To make matters worse, the Federal Reserve System is not a purely private banking cartel, but instead a cartel in which private banks are interlocked with the Treasury of the United States. Indeed, a statute designates the Treasury as the surety for redemption of FRNs "in lawful money" should the banks fail (12 U.S.C. § 411). This political-economic integration of bank and State renders the General Government, and through it the American people as a whole, hostages to the vicissitudes of fractional-reserve banking and allied speculative ventures in the world of high finance. This is why the present crisis in the financial markets threatens not only the solvency of the banks and their clients, but also the solvency of the Treasury, the credit of the United States, and ultimately the economic stability, if not the survival, of the whole country.

The severity of this crisis at the constitutional level can be gauged by observing that the Federal Reserve System is a cartel established by Congress for the purpose of self-regulation by its member banks, all of which are private parties, not governmental entities. When in 1933 Congress attempted to set up similar self-regulating cartel arrangements throughout private industry under the National Industrial Recovery Act, the Supreme Court held that "Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress." The illegal delegation involved allowing the industries themselves to set quotas on production and to fix prices for goods and services, with the force of law behind their actions, so that dissenting businessmen could be criminally charged for bucking the system. It was pure and simple "fascism" (in the economic sense of that term). (*A.L.A. Schechter Poultry*



The Krugerrand is a gold coin minted by South Africa. The United States could add foreign gold to its money supply simply by placing a value on the foreign currency and letting it circulate.

Kevin Landers, a real-estate broker, wonders if his collection of $5,000 in privately minted, silver Liberty Dollars will be deemed worthless by the U.S. government.

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Corporation v. United States, 295 U.S. 495, 537 (1935).) The FRS escaped condemnation in the *Schechter* case because its purported authority arose, not from the National Industrial Recovery Act, but instead from the Federal Reserve Act of 1913, the unconstitutionality of which has evaded adjudication since its inception.

Self-evidently, the economic and legal chaos that has arisen throughout America's economy by structuring this country's monetary and banking systems on "a delegation of legislative power [that] is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress" dwarfs by many orders of magnitude the harm that such an illegal "delegation of legislative power" in the poultry (or any other) industry could cause. And it will become increasingly severe until the contradiction between what the Constitution mandates and what politicians and the banks have done in defiance of it is finally resolved in the Constitution's favor.

How might that occur? The constitutionally correct course would be to return America to money that is sound because it is honest, and honest because it is the silver and gold "Coin" the Constitution commands the General Government and the states to employ in all of their financial transactions. This will require at least:

• First, reinstatement of the "dollar," containing 371.25 grains of fine silver, as this country's monetary unit, along with United States gold coins valued in "dollars" according to the free market's exchange rate between the two metals, and foreign coins regulated in "dollar"-values according to their contents in silver and gold.

• Second, reestablishment of "free coinage" as the primary means for creating official coinage, along with complete allowance of all forms of nonfraudulent private coinage.

• Third, elimination of all "legal-tender" laws that license the

What's a Dollar?

Although the word "dollars" appears in the Constitution and the Bill of Rights, it is not defined there. Nonetheless, it must have referred specifically to something then in existence. But no "dollar" had been created by the Continental Congress prior to ratification of the Constitution. No "dollar" was created by the constitutional Congress coincident with ratification because that Congress had not yet been elected. And no "dollar" had been created by the constitutional Congress before the Bill of Rights was ratified.

The only possible referent of the word "dollars" was the silver "Spanish milled dollar," which was actually being used as the money of account throughout the independent states at that time, and had been the standard for regulating the "value" — the metallic content — of foreign silver coins in the colonies since the early 1700s. To determine the value of this "dollar," and thereby define the constitutional "dollar" as an historical fact, a representative sample of Spanish milled dollars then in circulation was subjected to chemical analysis. The Mint Act of 1792 incorporated the result in its definition of America's "Dollars or Units" as "of the value of a Spanish milled dollar as the same is now current" — that is, the metallic content of a Spanish milled dollar accepted in the free market as containing a "dollar's" worth of silver — which was determined to be 371.25 grains of that metal. (Act of 2 April 1792, ch. 16, § 9, 1 Stat. 246, 248.) ■

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unjust substitution of some unsound currency for sound money in the payment of any debt, tax, or other monetary obligation.

• Fourth, prohibition of all forms of paper currency ("bills of credit") emitted, directly or indirectly, by the United States or any state — whether such currency is redeemable in silver and gold or not.

• Fifth, absolute separation of bank and state, such that no private bank can claim to exercise any delegated governmental power, or other abusive special privilege, with respect to money. And,

• Sixth, stringent regulation of all fractional-reserve and kindred financial practices in the private sector, so as to eliminate fraudulent expansion of debts and excessive speculation.

Bankers and their pet politicians, however, do not intend to allow America to follow the course her supreme law requires. When, in the near future, the FRS finally melts down in monetary chaos as the inevitable result of its own inherent instability, they will use its collapse as their excuse to introduce a new North American hemispheric paper currency — already being touted as the "Amero"; or perhaps even a new global paper currency — for which the name "Phoenix" has been predicted. But, to obtain the promised "stability" of this new currency, financially desperate Americans will be obliged to accept the transfer of their country's sovereignty, in whole or significant part, to a North American Union or some new global political entity.

Thus, the present financial crisis goes beyond even a constitutional crisis. In addition, it is a crisis that strikes at the heart of the Declaration of Independence — a crisis of America's national identity, national independence, national sovereignty, and even national survival. If Americans do not wake up and demand enforcement of constitutional money and banking — in particular, the reinstatement of the constitutional "dollar" as the monetary standard — America herself will be irretrievably doomed. ■