

CAN AMERICANS SOLVE THEIR MONETARY AND BANKING PROBLEMS BY THEMSELVES?

By

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My earlier commentary, AMERICANS CANNOT DEPEND UPON WASHINGTON, D.C., TO PROTECT THEM FROM MONETARY AND BANKING CRISES, explained why this country cannot expect, let alone rely on, the General Government to solve the monetary and banking problems the General Government has caused. The practical difficulties are too many, the window of opportunity too narrow. Politics, however, is not the only "art of the possible" to which Americans can resort. Economics, too, may offer possible solutions. If Americans cannot take effective and timely action collectively in the political process to reassert control over the General Government, can they nonetheless promote reform of money and banking individually in what remains of the free market? Paradoxically, the answer is both "Yes" and "No": In a sufficiently long run, almost certainly "Yes"; but in the actual short term facing them, most probably "No".

1. As a matter of constitutional law, all Americans have the right to possess gold and silver, to employ those metals as their personal media of exchange, and to demand that the General Government and the States use gold and silver as their sole official currencies for all public purposes. In monetary and banking matters, however, since the Civil War public officials have increasingly refused to follow the Constitution, until today they disregard it entirely.

Nonetheless, through the floods of unconstitutional legislation and judicial decisions pouring from the General Government's sluices since 1862, Americans have always enjoyed the right to possess silver as currency. Although from 1933 most of them were denied the right to possess gold at all, that right was restored in 1974.[1] Also, although from 1933 Americans were denied the right to make contracts payable in gold or a particular kind of coin or currency (so-called "gold-clause contracts"), that right was restored in 1977-1978.[2] Furthermore, a gold-clause contract is not subject to the statute that declares Federal Reserve Notes and base-metallic coinage to be "legal tender".[3] So, if they were to become sufficiently widespread in use, gold-clause contracts would serve every ordinary American's interest in monetary reform in two ways. First, by reintroducing gold and silver as media of exchange in common transactions, such contracts would create economic competition between specie and fiat currency. Second, practical proof of the superiority of gold and silver to fiat currency in such competition would soon effectively demonetize Federal Reserve Notes and base-metallic coinage, and return the American people in the free market to a real specie standard as a matter of economic fact, even if the General Government and the States clung to a fiat paper standard as a matter of their own unconstitutional statutes.

Whether the General Government and the States could afford to remain on a fiat paper standard for long, though, would be highly questionable. If enough Americans used gold and silver as their exclusive media of exchange, they could reduce Federal Reserve Notes to little more than coupons that individuals acquired only when necessary to pay their taxes, and otherwise shunned. We the People would enjoy the gold and silver standard of 100% free-market value, while the General Government, the States, and the fractional-reserve bankers in the Federal Reserve System found themselves relegated to the fiat paper standard of near 0% real value. To continue to take in sufficient real value in taxes to pay public creditors, then, the politicians and bankers would face only two options: (i) to abandon fiat currency altogether, and adopt gold and silver as their media of exchange; or (ii) to attempt to suppress by main force the

use of gold and silver by tens and tens of millions of Americans--which would shift the conflict to quite a different battlefield. Whether the political class would rather fight than switch, and whether it would prevail or be utterly destroyed, remain to be seen.

Yet, although the strategy of self-help through the use of gold-clause contracts is one that every patriotic American should adopt--and, no doubt, that many will--it probably cannot result in sufficiently widespread reform in sufficiently little time to save the country.

2. Economics is an "art of the possible" in which costs determine possibilities. And the costs incurred in using gold-clause contracts probably preclude reliance on merely individual efforts to bring about extensive and rapid reform of America's monetary and banking systems.

Since 1978, contracts specifying payments in gold and silver to the exclusion of Federal Reserve Notes and base-metallic coins have been legal and enforceable in the courts. Since then as well, fiat rag and slug currencies have significantly depreciated in purchasing power as against gold and silver; and instability in the Federal Reserve's Ponzi pyramid has worsened. Nonetheless, today gold-clause contracts remain almost nonexistent in commerce in the free market everywhere in the United States. This must be because the particular costs that such contracts add to the ordinary costs of doing business render noneconomical their use by most individuals.

(a) One added expense is what economists call "information costs". Before they can weigh the merits of actually employing gold-clause contracts, individuals must educate themselves about the economic advantages of adopting silver and gold as their media of exchange, as well as the dangers from continuing to accept irredeemable Federal Reserve Notes and base-metallic coinage. In addition, they must enlighten themselves as to their legal rights to employ the precious metals in preference to, and even to the exclusion of, fiat currency. This entails not only a careful study of monetary economics and law, but also the discrimination to see through and disregard the massive amounts of misinformation and disinformation from politicians, bankers, the media, and educational institutions that pass as "informed opinion" on these subjects.

Furthermore, having decided to use gold-clause contracts, individuals must learn how to negotiate and administer them--preferably through clauses providing for mandatory private arbitration, so as to minimize reliance on, or intervention by, the General and State Governments' kangaroo courts.

(b) Another added expense incurred in using gold-clause contracts consists of "search costs" for discovery and initiation. Every business deal requires at least two economically complementary parties. For such a transaction to occur on the basis of a gold-clause contract, both parties also must recognize the mutual advantage in employing silver and gold as their media of exchange, must understand how to do it, and must be able to convince their partners, attorneys, accountants, and other advisors of the necessity and propriety of such a course. This means, however, that in many instances one party will be forced to educate the other, thereby incurring not only his own information costs but also the other's as well.

(c) A further added expense consists of "opportunity costs". While an individual is searching out (and possibly having to educate) a complementary partner to consummate some business deal on the basis of a gold-clause contract, he may lose the benefits of another deal that can be struck right away with someone else on the basis of payment in fiat currency. Obviously, the higher are the information and search costs of arranging a particular business transaction on the basis of a gold-clause contract, the more likely will opportunity costs preclude the use of silver and gold.

(d) Perhaps even more significant than the foregoing extra expenses are the "transaction costs" associated with use of gold and silver as media of exchange. Payments specified in a gold-clause contract must actually be made in specie. Even if the value of a transaction has been

stipulated in exact numbers of particular coins or commercially available bars of bullion, the specie must be obtained, transferred with necessary safeguards, held in safe storage, and throughout the process properly accounted for. The established banking system, however, does not provide these services on any widespread or convenient basis (and never will, until the free market forces the issue). Moreover, individuals sufficiently attuned to the dangers of fractional-reserve banking will require that any financial institution offering such services provide a strict bailment, not a traditional debt, account for all transactions involving gold and silver. Yet, such individuals will also want the flexibility of being able, when necessary, quickly and inexpensively to convert their holdings of gold and silver into fiat currency (for example, in order to pay taxes). So, individuals who desire to employ gold and silver as their media of exchange in business will be forced either to function as their own specie deposit-banks, or to search for competent third parties who can perform that function at acceptable cost.

(e) As if all these extra expenses were not enough, the use of gold-clause contracts will also entail "regulatory costs", primarily in maintaining proper accounts of transactions for tax purposes.

The basic problem arises because of the incoherence of the present monetary system, in terms of free-market values versus statutory denominations of various kinds of currency.

For example, a United States "\$50" American Eagle coin contains one ounce of pure gold. But, in the free market, fifty "\$1" Federal Reserve Notes (or base-metallic coins) do not exchange for one "\$50" American Eagle coin or for one ounce of uncoined gold.

So, for purposes of taxation, how should a businessman value, say, a sale of some commodity for an American Eagle coin stamped "\$50", or for one ounce of gold with no "dollar" denomination at all? Is the sales price "\$50", because Congress has affixed that denomination to the coin (and therefore to that amount of gold)? Or is it the much higher free-market value of the coin (or of an ounce of uncoined gold) stated in Federal Reserve Notes (or base-metallic coins)? Similarly, if a businessman obtains a "\$50" American Eagle coin when the exchange rate in the free market is, say, "\$450" in Federal Reserve Notes for each Eagle, and later exchanges the Eagle for "\$460" in notes, does he gain "\$10" for purposes of income tax; or does he gain nothing in real terms, because when each of the exchanges occurs the purchasing powers of the coin and the notes are exactly the same?

Whatever the answers to these and kindred conundrums--and one can be sure that the tax bureaucrats and judges will stumble over, bumble about, and ultimately fumble them, again and again--prudent businessmen will have to keep scrupulous records of the weights of gold (coined or not) paid in and out, the statutory "dollar" values of coined gold involved in those transactions, the exchange rates of gold (coined or not) with Federal Reserve Notes at the times of the transactions, the amounts of Federal Reserve Notes exchanged for particular weights and forms of gold, and so on.

3. In all of this, there is both good news and a bad residue.

(a) The good news is that, with the development of private electronic gold currency units, transferrable over the Internet, most of the "transaction costs" associated with the use of gold-clause contracts have been reduced to quite acceptable levels. To be sure, the standards and safeguards for a purely private monetary system must be very exacting. But an electronic gold currency provider that meets them is GoldMoney, to be found at www.goldmoney.com. (By the way, the author of this commentary receives NO remuneration or other consideration for recommending GoldMoney here.)

Rather than a particular coin or coins, GoldMoney uses a single fixed weight of pure gold (the "goldgram") as its unit. This allows for transfers of very small amounts of gold, because the "goldgram" is electronically divisible into as little as one mil (0.001 part)--eliminating the problem inherent in traditional systems of coinage, that exact prices for many goods and services

cannot be paid without the use of "token coins" or other makeshifts as "small change". In addition, through an affiliate GoldMoney enables its customers to convert their gold and silver coins and bars into "goldgrams" (and vice versa), thereby creating the potential for mobilizing in electronic form all the monetary gold and silver in the world that now sits idly in investment "heards". Similarly, GoldMoney enables its customers to convert their holdings of Federal Reserve Notes into "goldgrams" (and vice versa) by simple electronic transfers between their GoldMoney and regular bank accounts. So, by patronizing GoldMoney, any individual can maintain most or even all of his monetary holdings securely in gold, outside of the Ponzified banking system, yet ready expeditiously to be converted into whatever amount of Federal Reserve Notes may be necessary to pay debts solvable in fiat currency as they accrue.

Most importantly, although it interfaces with the established banking system, GoldMoney supplies a completely nonpolitical currency, and operates on the sound principle of bailment, not as a Ponzi scheme of debt accounts or fractional reserves. GoldMoney's vaults contain 100% of the gold hypothecated to each customer's account, all of which is actually owned by, not simply owed to, the customers themselves, is fully insured against loss, and is subject to scrupulous oversight. Moreover, GoldMoney is run by James Turk, who not only has extensive experience in both the gold market and traditional banking, but also is a seminal monetary thinker and a man of great personal integrity.

(b) The bad residue is that, even with the advent of private electronic gold currency, the "regulatory costs" of gold-clause contracts still remain.

Politicians, bureaucrats, and bankers know that all Americans have the constitutional and statutory rights to use gold and silver as their media of exchange, to the exclusion of supposedly "legal-tender" fiat Federal Reserve Notes or base-metallic coinage. Obviously, though, they do not want average Americans to exercise--or even to become aware of--those rights. But were the General Government to attempt, directly and openly, to suppress the use of gold and silver as currency, thereby bringing the fundamental issues of money and banking to the fore, it would perhaps awaken, educate, and antagonize millions of Americans, drive the use of specie "off budget" and "underground", and thereby complicate regulation, if not provoke a subterranean monetary revolution. So instead the General Government will try to deter most Americans from exercising their monetary liberty, by charging some of them who use gold-clause contracts with specious violations of other laws.

Of all other laws, the tax laws are best suited for such political harassment because, largely arbitrary and confusing in any event, their misapplications to gold-clause transactions are the easiest for the kangaroo courts to cover with a thin whitewash of "legality". And nothing is more potent as political defamation among the booboisie than to label someone a "tax cheat".

In addition, tax bureaucrats can count on misguided and misinformed individuals--and, more likely than not, their own agents provocateurs as well--to advocate the use of gold-clause contracts for the purpose of avoiding or evading taxes, and even to market purportedly "fool-proof" programs that promise to minimize or eliminate taxes through such use. The more of this that goes on, the more the General Government and its shills in the media can vilify the employment of gold and silver currency in business transactions as "an abusive tax shelter", or some species of outright fraud.

The hotheads and airheads who broadcast this nonsense will probably not be prosecuted, either, for two reasons. First, because they are doing the General Government's dirty work, even if only inadvertently. Second, because the First Amendment protects abstract advocacy even of criminal activity:

The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. * * *

* * * The government may not prohibit speech because it increases the chance an unlawful act will be committed “at some indefinite future time.” * * * The government may suppress speech for advocating * * * a violation of law only if “such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”[4]

But the poor fools who swallow such bilge will end up with the stomach aches of protracted and unwinnable litigation. For no gold-clause contract by itself can defeat an otherwise valid tax claim on the underlying transaction.

In any event, Americans cannot prevail in the big fight on the monetary and banking front by individual gyokusai charges against the tax bureaucracy. Unconstitutional or not, the individual income tax (or any other tax, for that matter) will not by itself drive this country's economy to collapse tomorrow, next month, or next year. But the monetary and banking systems will--if not tomorrow, surely someday soon. And the resulting chaos will offer the occasion and excuse for the General Government to impose a police-state tyranny beside which the worst excesses of today's tax Gestapo will resemble Jeffersonian libertarianism.

Furthermore, people preoccupied with tilting against the windmills of taxation will not learn how to use gold-clause contracts effectively and legally themselves, and will not educate, encourage, and empower others to do the same. So that, when the monetary and banking systems do crash, there will be no alternatives at all in place and functioning, no protections for the people in large numbers or small, and no way to start rebuilding America's economy except by hat-in-hand, shuffling reliance on the Establishment and the General Government.

So foresightful Americans should recognize that careful compliance with the tax codes (even, for now, the arguably illegal ones) where gold-clause contracts are concerned is a necessary and acceptable "regulatory cost", not only to thwart the tax bureaucracy's interference with the spread of these contracts throughout the economy, but also ultimately to disarm the Establishment as a whole. (Here, the analogy might be to a "sacrifice fly" in baseball.)

Remember that in 1775 Americans did not solve the problem of "taxation without representation" in any of King George's kangaroo courts. Their repeated arguments and entreaties that such taxation was unconstitutional under British law had brought them only the occupation of Boston by the British Army. At that point, Patriots realized that, to save themselves and their country, they had to seize at least one of the two great powers of government: the power of the purse or the power of the sword. With those powers in hand, "taxation without representation" would disappear. They chose the sword by force of circumstances, when Colonel Smith and Major Pitcairn marched their Redcoats to Lexington and Concord--not to collect taxes, but to seize the Colonists' stores of arms and ammunition. Americans today are more fortunate. They need not fight with lead and steel--yet. Instead, Americans can seize the power of the purse by employing gold and silver as their media of exchange.

4. Therefore, is self-help a good way for Americans to attempt to solve this country's monetary and banking problems? Yes. Everyone should employ gold-clause contracts to the maximum extent practicable, as soon as possible. Yet, is it the best way? No. Because what everyone should do, not everyone can or will do. Especially in time.

To be sure, some farsighted individuals, aware that the costs of gold-clause contracts will decrease and the benefits they offer will increase in proportion to the number of people who use them, may choose to absorb these costs in order to promote monetary reform for patriotic reasons. Many individuals, though, for whom the costs of gold-clause contracts remain large and immediate and their benefits small or remote, will wait for others' efforts to bring about a favorable balance between costs and benefits before they employ such contracts in their own business ventures. Self-evidently, a plan aimed at bringout about monetary reform in a short period of time is handicapped from the start if it depends upon the efforts of a small core of self-

selected, self-directed, self-sacrificing altruists, with everyone else operating as a classic “free rider” who hopes eventually to reap benefits without ever sharing a commensurate burden of costs.[5] Such a plan is not only economically impractical but also politically imprudent: America cannot wait for patriots to absorb these costs, one by one or in small groups, on their own, until at last they constitute a critical mass for monetary reform—because surely a monetary and banking crisis will break out long before then.

America needs a plan to accelerate the transition from fiat currency to competing systems of fiat currency on one side, and private electronic gold currency on the other. A plan that relies on neither the General Government nor purely individual action.

Footnotes:

- 1, Act of 14 August 1974, Pub. L. 93-373, § 2(b, c), 88 Stat. 445, 445.
- 2, Act of 28 October 1977, Pub. L. 95-147, § 4(c), 91 Stat. 1227, 1229, now codified in 31 U.S.C. § 5118(d)(2).
- 3, Compare 31 U.S.C. §§ 5103 and 5118(d)(2) with *Bronson v. Rodes*, 74 U.S. (7 Wall.) 229 (1869), and *Butler v. Horowitz*, 74 U.S. (7 Wall.) 258 (1869).
- 4, *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002), quoting from *Hess v. Indiana*, 414 U.S. 105, 108 (1973), and *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Compare also *Noto v. United States*, 367 U.S. 290 (1961), with *Scales v. United States*, 367 U.S. 203 (1961).
- 5, See, e.g., Mancur Olsen, *The Logic of Collective Action: Public Goods and the Theory of Groups* (rev. ed. 1971).

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