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## **The Federal War on Gold, Part 2**

**by Jacob G. Hornberger**

Presidents Abraham Lincoln and Franklin Roosevelt revolutionized the monetary system of the United States and set the nation on the road of inflationary plunder that has characterized other nations in history. The actions of these two presidents also provide a textbook example for understanding the animosity and antipathy that government officials historically have had toward precious metals (i.e., gold and silver coin) as a medium of exchange.

Through the U.S. Constitution, the American people brought into existence one of the soundest monetary systems in history. It wasn't perfect in that it didn't provide for a free market in money, but, by establishing gold and silver coin as the official money for the United States, it did protect the American people from the inflationary ravages of paper money.

Keep in mind, first, that our American ancestors didn't trust government, for they understood that the greatest threat to the liberty and well-being of a citizenry lay with its own government.

Thus, while the Constitution brought the federal government into existence, it simultaneously limited its powers to those enumerated in the document. If the power wasn't listed, it simply could not be exercised, no matter how important the need, no matter how severe the crisis or emergency. To make certain that government officials got the message, soon after the Constitution was enacted several amendments were added providing guarantees and expressly enumerating fundamental rights that federal officials could not violate.

It bears repeating: The Constitution was born from the severe distrust that our American ancestors had for the federal government. They understood what people throughout history had learned the hard way — that more often than not, people had lost their freedom at the hands of their own government.

One of the ways that our ancestors attempted to protect their freedom and property from federal assault was through the establishment of a monetary system based on precious metals, specifically gold and silver coin.

As students of history, they understood the inflationary horrors that governments all over the world had inflicted on their citizenry through the issuance of paper money. Moreover, they themselves had experienced the ravages of the Continental currency during the Revolutionary War (“It’s not worth a Continental”) and the inflationary damage during the period of the Articles of Confederation, when the states were free to issue paper money.

Thus, it is not surprising that the Framers would establish a monetary system based on gold and silver coin. They wanted to ensure that their own government could not use the printing press to plunder and despoil them through the issuance of paper money.

### **Lincoln’s war loans**

Then, along came Lincoln.

In 1862, Congress granted Lincoln’s request to issue \$150 million in Treasury notes to finance the war effort during the War Between the States. In simple terms, the federal government was borrowing money, and the money it was borrowing was the gold and silver coins that had been established as the legal money under the Constitution.

The situation would be comparable to a person who walked into a bank in 1862 and asked to borrow \$10,000. If the loan were granted, the customer would sign a promissory note promising to pay the bank \$10,000, and the bank in turn would deliver \$10,000 in gold coin to the customer. When the note came due, the customer would be required to pay the bank back \$10,000 in gold coin and he would receive back his promissory note with the notation “Paid” or “Cancelled” on it.

To belabor the obvious, the money was the gold coins. The note was a promise to repay the money, not money itself.

The same principle held true with respect to the Treasury notes authorized to be issued by the Lincoln administration. Everyone understood that the notes didn’t constitute money but rather were a promise to pay back money (i.e., gold coins) it received in exchange for the notes. When the notes came due, the Treasury would have to repay the lender in money — that is, in gold coins.

Given that the power to borrow money was among the powers that the Constitution delegated to Congress, there was obviously nothing unconstitutional about what Congress had done . . . except for one major factor that ultimately formed the basis for one of the most revolutionary transformations in American life: at the same time it authorized the issuance of the Treasury notes, Congress provided that the notes would constitute “legal tender.”

## **Lincoln's legal-tender law**

What did “legal tender” mean? It meant paper money. And it meant that for the first time since the founding of the nation, Americans would be required to accept the federal government's paper money as a medium of exchange.

Why was that important to Abraham Lincoln? Like so many other government officials in history, Lincoln was resorting to the printing press — inflation — to finance his war expenditures.

In 1862, Treasury notes were trading at a deep discount relative to their face value. For example, a note promising to pay \$1,000 might fetch in the marketplace only \$500 because of the doubts that people had regarding the federal government's ability to repay the loans in gold when they ultimately came due.

In the absence of the legal-tender law, even though the government could continue borrowing money, people could still protect themselves from the ravages of inflation by stipulating their contracts in gold coin. The effect of the legal-tender law was to remove that protection by requiring creditors to accept depreciated paper money in lieu of gold and silver coin stipulated in the contract.

That was exactly what happened to Henry Griswold and many other people. Prior to the enactment of the legal-tender law, Griswold had lent \$11,250 to Susan Hepburn. Obviously, both parties understood that when the note came due Hepburn would be required to repay the debt in the medium in which she had received the loan — gold coin.

When the note came due, however, Hepburn delivered to Griswold paper money — that is, U.S. Treasury notes that were the subject of the legal-tender laws. Griswold objected because the notes, while nominally in the sum of \$11,250, were worth significantly less in the marketplace.

In other words, what Hepburn effectively did was go into the marketplace and use, say, \$5,000 in gold coin to purchase \$11,250 in Treasury notes and then handed the notes to Griswold in payment of the debt. He refused to accept the payment and instead demanded gold coin with a face value of \$11,250 plus interest owed.

## **The Supreme Court's ruling**

[\*Hepburn v. Griswold\*](#) reached the U.S. Supreme Court in 1869, five years after the war had ended. The Court ruled in favor of *Griswold*, holding in a 4-3 decision that legal-tender laws violated the U.S. Constitution.

The majority opinion distinguished between money and notes to pay money:

There is a well-known law of currency, that notes or promises to pay, unless made conveniently and promptly convertible into coin at the will of the holder, can never, except under unusual and abnormal conditions, be at par in circulation with coin. It is an equally well-known law, that depreciation of notes must increase with the increase of the quantity put in circulation and the

diminution of confidence in the ability or disposition to redeem. Their appreciation follows the reversal of these conditions. No act making them a legal tender can change materially the operation of these laws.

The Court also explained that the power to coin money, which the Constitution delegates to Congress, did not constitute a power to convert promissory notes into money:

It is not doubted that the power to establish a standard of value by which all other values may be measured, or, in other words, to determine what shall be lawful money and a legal tender, is in its nature, and of necessity, a governmental power. It is in all countries exercised by the government. In the United States, so far as it relates to the precious metals, it is vested in Congress by the grant of the power to coin money. But can a power to impart these qualities to notes, or promises to pay money, when offered in discharge of pre-existing debts, be derived from the coinage power, or from any other power expressly given?

It is certainly not the same power as the power to coin money.

With the holding in *Griswold*, the federal government was left with the power to borrow to finance its operations but without the authority to force people to accept its notes at face value for the payment of debts. Thus, the American people could still protect themselves from a profligate government by expressly providing that notes and contracts could be repaid only in money (i.e., gold coin), not in federal promises to repay money.

### **Overturning *Griswold***

One year later, however, the legal situation changed dramatically. President Ulysses S. Grant, who had commanded Union forces during the war, appointed two new justices to the Supreme Court who promptly joined the minority in *Griswold*. In [\*Knox v. Lee\*](#), decided in 1879, the Supreme Court voted to overturn the decision in *Griswold* and to uphold the constitutionality of Lincoln's legal-tender law.

The new majority reasoned that the power to enact a legal-tender law was an implied power that fell under the president's war powers and the power over monetary affairs that the Constitution had granted to Congress.

But as the dissent pointed out, the implied-powers doctrine cannot be used to create new powers. The war power, for example, entails the power to pay for war expenditures but the means by which to pay for such expenditures were limited to those enumerated in the Constitution, i.e., through taxes and borrowing.

As the dissent also emphasized, the congressional power over monetary affairs was specifically limited to the coinage of money and did not extend to the enactment of laws requiring people to accept federal promissory notes in lieu of such money.

In a separate dissenting opinion, Justice Stephen J. Field pointed out the obvious:

The power “to coin money” is, in my judgment, inconsistent with and repugnant to the existence of a power to make anything but coin a legal tender. To coin money is to mould metallic substances having intrinsic value into certain forms convenient for commerce, and to impress them with the stamp of the government indicating their value. Coins are pieces of metal, of definite weight and value, thus stamped by national authority. Such is the natural import of the terms “to coin money” and “coin;” . . .

... The power to coin money is, therefore, a power to fabricate coins out of metal as money, and thus make them a legal tender for their declared values as indicated by their stamp. If this be the true import and meaning of the language used, it is difficult to see how Congress can make the paper of the government a legal tender.

Field placed the constitutional issue in a historical context:

The statesmen who framed the Constitution understood this principle as well as it is understood in our day. They had seen in the experience of the Revolutionary period the demoralizing tendency, the cruel injustice, and the intolerable oppression of a paper currency not convertible on demand into money, and forced into circulation by legal tender provisions and penal enactments.

Field also pointed out that the Constitution had not delegated to Congress the power to impair private contracts.

With *Knox v. Lee* the seeds were sown for a monetary revolution in American life — a revolution that would bring the inflationary plunder and moral debauchery that have characterized nations throughout history. The revolution began with Lincoln. But it would culminate in one of most massive assaults on private property in U.S. history — President Franklin Roosevelt’s nullification of gold clauses in contracts and his confiscation of gold from the American people.

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