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Gold and Monetary Freedom

When adopted in 1787, the Constitution of the United States gave recognition to a new relationship between the people and its government: namely, the people had sovereign power and the government's authority was restricted to that specifically delegated to it by the people in the Constitution. In the sphere of monetary matters – as in nearly all economic matters – government soon began to usurp the sovereign power of the people. By the mid-1930's, with the prohibition of domestic gold ownership, the U.S. Government gained control of virtually every aspect of monetary affairs. If the gold standard is to be re-adopted, it will require a new commitment to monetary freedom for individuals. This is the message Professor Henry Mark Holzer delivered to the U.S. Gold Commission on November 12, 1981. This article is his testimony to the Commission and is published here with Professor Holzer's permission. A review of Professor Holzer's latest book follows this article.

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.

At First, Limited Power

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 it 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 of 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.

Back to the Old World in Money Matters

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 *Ling 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 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, Ling 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.

Gold and Freedom, Or Not

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

BOOK REVIEW

Government's Money Monopoly, by Henry Mark Holzer, published by Books In Focus, 160 East 38th Street, New York, N.Y. 10016, 1981, 227 pages, $19.95 (hardbound).

In *Government's Money Monopoly*, Professor Holzer draws on his considerable background as a Constitutional scholar to document this country's slide from relative freedom to the present Federal dictatorship in monetary matters. Holzer maintains, properly in our view, that there is an inverse relationship between a government's control of the monetary system and freedom.

Beginning with the debasement of coinage in ancient Greece and Rome, Holzer reviews the history of the State's interference in private monetary affairs, usually to finance a war or to aid debtors, among whom the state

was typically the largest. He offers convincing evidence that government's monopoly on money is rooted in the theory of the divine right of kings – an anathema to the Founding Fathers.

Our Government, of course, was established on quite different principles. The Constitutional Convention of 1787 sought to severely limit the Federal Government's monetary authority, responding in part to the disastrous colonial and revolutionary experiences with fiat currency ("not worth a continental"). Holzer quotes extensively from the Convention's debates to demonstrate this point. The United States Constitution, as finally enacted, limits the Government's power in this area to borrowing, coining money, and regulating the value thereof.

Yet almost from the outset, the proponents of a strong centralized government went to work to expand the monetary powers of the Federal Government. Professor Holzer discusses the fascinating legal-political history of the development of the money monopoly. He examines the milestones on the road to monetary autocracy: the controversy surrounding the establishment of the first Bank of the United States (during Washington's administration), the landmark Supreme Court case of *M'Culloch* v. *Maryland* – wherein Chief Justice Marshall set forth the doctrine that the Government's monetary powers weren't limited by the Constitution but were those of the "sovereign," the Civil War *Legal Tender Cases* and, lastly, the *Gold Clause Cases* of the New Deal era.

Step by step the Government's money monopoly grew until today the state has both exclusive control of money and pervasive influence over this nation's financial institutions. The result, as Holzer contends, is decades of inflating, soaring interest rates, and dramatic increases in consumer prices, among other current monetary problems.

In the final chapter, Professor Holzer suggests a solution to our monetary quagmire – the de-nationalization of money, in other words the restoration of monetary freedom. He proposes a Constitutional amendment which would abolish legal tender laws, prohibit the Government from issuing currency or any other medium of exchange and end any form of Government regulation of the banking industry. And when might monetary freedom be secured? Professor Holzer tells us in the final words of his book:

"Not until our political system rests on the ethical base of inalienable individual rights, will any of our freedoms be secure. Therefore, those who would keep government out of monetary affairs must fight for the wider principle, for the recognition of inalienable individual rights. Only when that battle is won – not in the legislatures and courts, but more important, in the schools and in the work of America's intellectuals – will Americans have no more to fear from their government in monetary affairs or in any other aspect of their lives."

As is typical of Professor Holzer's work, *Government's Money Monopoly* is scholarly without being pedantic. The author skillfully leads the reader through the maze of the legal history of money in the United States without making it a chore. All serious students of monetary economics will want the benefit of having read *Government's Money Monopoly.*

AGE OLD PROBLEMS ABOUT RETIREMENT

In August of this year a Department of Labor report on Abolishing Mandatory Retirement was released by Rep. Claude Pepper (D.-Fla.), Chairman of the House Committee on Aging. The report, required under the 1978 Age Discrimination in Employment Act (ADEA), examines the consequences of the Act and projects the effects of other policy options regarding mandatory retirement. The report suggests that simply cutting retirement benefits will not encourage increased work force participation by older workers. Instead, the study concludes that a more useful approach would be to eliminate mandatory retirement ages and remove financial disincentives that are now discouraging older workers from remaining in the work force. As we view the situation, what is needed is for Government to do nothing. The "problem" of older workers can be "cured" by the free market.

Under 81-year old Chairman Pepper, the House Committee on Aging held hearings in September on the problems of older workers and their position in the work force. In the past 25 years, the labor force participation of older men has decreased substantially, as the accompanying table reveals. For men 65 and over, the participation rate recently reached a new low of less than 19 percent. Labor force participation for men in the 55-64 and 45-54 age brackets also has decreased. (Participation by women in these age brackets also is low, but it is stable.) These declines have been attributed primarily to the early availability of retirement benefits under Social Security and private pension plans and to mandatory retirement ages. The availability of retirement benefits at early ages is a disincentive to the person who would like to work longer. Such benefits are a punishment because they reduce the income differential between persons working and those retiring.

The Labor Department found that ADEA had little impact on employee retirement plans. Only 1.1 percent of eligible persons increased their retirement age due to the amendment. (This is attributed, in part at least, to the probability that most retirees had already made plans prior to the enactment of the law.) From the perspective of persons desiring to retire, happily the study found few employers would discontinue pension accruals (that is, stop accumulating pension benefits) for workers deciding to work past age 65. Instead, employers indicated they would continue to encourage employees to retire by "liberalizing already existing benefits, adding types of benefits, and shifting costs more toward the company."

In spite of such financial inducements to retire, the Labor Department projects that only 24 percent of 59-year old men faced with a retirement policy of age 70 or above would elect retirement ages of 66 or higher. The majority of those would choose 68 as their retirement

MALE POPULATION AND LABOR FORCE FOR INDIVIDUALS 65 AND OVER
(In Thousands)

Year	*Population**	*Labor Force*	*LFP†*
1950	5,358	2,454	45.8
1955	6,379	2,526	39.6
1960	6,909	2,287	33.1
1965	7,638	2,131	27.9
1970	8,075	2,164	26.8
1975	8,783	1,906	21.7
1980	9,839	1,877	19.1
1981**	10,000	1,847	18.5

* Population figures are derived from data on the size of the labor force and labor force participation rate for each year.
† Labor force participation rate is given in percent.
** 1981 data are averages for first 3 quarters.

age, according to projections. Employers had a different opinion. When asked whether they expected the average retirement age to increase, 64 percent responded that they expected no change, and only 7 percent predicted the average age of retirement would exceed 65.

In summarizing their findings, the Labor Department said the ADEA Amendment would have little effect. The major contributing factors to increased retirement ages in its view would be other factors: "The total long-term impact of the Amendment on employee behavior and employer policies will likely be determined largely by changes in other Federal retirement policies and future economic performance." With that we heartily agree.

*Options and Work Force Projections**

As part of its examination of long-term effects of mandatory retirement policy options, the Labor Department projected the long-range changes in labor force participation of men ages 60 to 70 under the following assumptions: (1) a mandatory retirement age of 70 (1978 ADEA Amendments); (2) eliminating mandatory retirement altogether; and (3) changing retirement benefits. The projections were for three separate years, 1985, 1990, and 2000.

For increasing the mandatory retirement age to 70 (the ADEA Amendments), the projected greatest increase in participation was for men 65 and over. In all 3 years (1985, 1990, 1995), men 65-67 were estimated to increase their participation from 33 percent to about 40 percent. This translates into approximately 217,000 more older men in the work force in the year 2000.

Elimination of a mandatory retirement age, according to the report projections, also would increase the participation rate of older men. Compared with projections arising from the age-70 assumption, the report projects an *additional* 195,000 older men in the work force by the year 2000. That would bring the total additional older men in the work force at the beginning of the next century to about 412,000.

With reference to the effects changes in retirement benefits would have on labor supply, three scenarios were studied: (1) a 10 percent across-the-board reduction in Social Security benefits; (2) a 20 percent reduction in Social Security benefits; and (3) an increase in pension benefit accruals for delayed retirement. In summarizing the resulting projections, the Labor Department states that the effects of reducing Social Security benefits would be marginal and inconsistent, while increasing benefit accruals would significantly increase the participation rates of older men.

Don't Just Do Something, Stand There

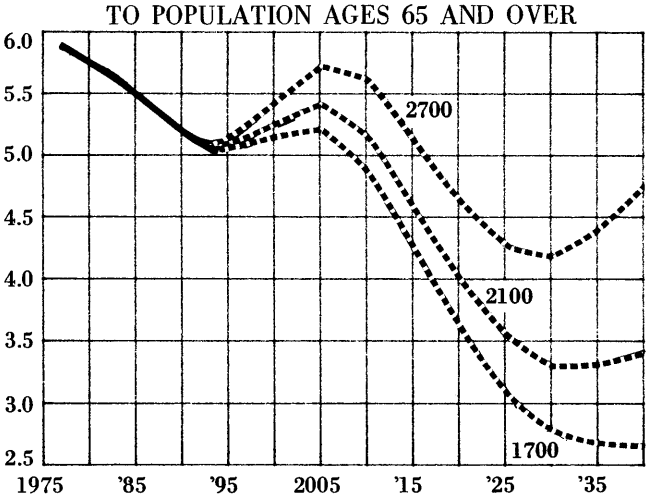
Chairman Pepper implied that the Government should pass laws to force private-sector employers to end mandatory retirement policies, to continue pension benefit accruals beyond 65 years or so, and to do any other things those in Washington deem appropriate for older workers. In our view, this would be another instance of counterproductive Government meddling. Simply because older persons might want to work longer is not adequate economic reason that they should be employed. There is, after all, the matter of the value of their labor in relation to the cost of it. When it becomes in the interest of employers to retain older workers, appropriate changes in policies and incentives will be offered to keep such people working. Until such time, neither the employer nor the Nation as a whole would benefit from forced continued employment.

Now it happens that the same demographic conditions that threaten to overburden Social Security and some private retirement programs imply that the demand for older workers will increase markedly during the coming decades. Shown in the accompanying chart are projections of the ratio of the 16 to 64 population to the 65 and over population to the year 2040. It shows that persons of younger working ages in relation to "retirement age" persons will decline dramatically. That means that employers with a demand for workers may well have to get those workers from the large pool of older people. And there may well be such a demand for labor *if* older folks want to maintain their consumption levels at or near those of their earlier years. Such consumption spending would tend to buoy aggregate demand, output, and thus the need for workers. If, however, older folks prefer more leisure to more consumption, aggregate demand will decrease, the demand for labor will do likewise, and employers will not need to tap the pool of older people.

In short, the market system can "cure" the older worker "problem." Government should attempt to provide neither incentives nor disincentives for older persons to continue working. Of course, disincentives already in place – for example the earnings test for Social Security old age benefits – should be removed. What is not needed is more massive Government meddling.

* All references herein to Labor Department *projections* are to figures generated by a series of four micro-level simulation models developed from responses to a 1973 survey about the factors that retirees indicated they considered important in making the retirement decision. Their accuracy thus is highly doubtful. Such models suffer from the fatal flaw of not incorporating changing behavior as it occurs with changing circumstances.

RATIO OF POPULATION AGES 16-64 TO POPULATION AGES 65 AND OVER



Note: The dashed curves are projections based on assumed eventual stabilization of the total fertility rate at the levels of 2700, 2100, and 1700 per 1000 women.

Source: Bureau of the Census.

PRICE OF GOLD

	1980	*1981*	
	Dec. 29	*Dec. 17*	*Dec. 23*
Final fixing in London	$593.75	$416.25	$400.40

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