From Constitutional to Fiat Money: The U.S. Experience

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Over the course of more than two centuries, the United States has had two monetary systems. The first was a gold-silver standard that was framed in its essentials by the U.S. Constitution. In practical terms, it said that any legal tender money created by the federal union or the states or the "people" had to be gold or silver coins, or redeemable in gold or silver coins of specified weight and fineness. Since both gold and silver were constitutional media, the country had a bimetallic standard that ultimately became a monometallic gold standard.[1]

During the period in which the gold standard functioned throughout most of the 19th century until 1914 and with some qualifications until 1930, the purchasing power value of the dollar, as measured by any statistically valid price index, was secularly constant. Occasionally, mild inflations or deflations occurred, and from 1862 to 1879 the federal government instituted a paper-money ("greenback") inflation, but the tendency for the dollar to maintain its exchange value was notable. For all practical purposes, the long-term value of the dollar was constant for more than a century.

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[1]People could arrange an exchange of goods and services for any medium that was mutually agreeable. However, only gold and silver could be *legal* tender. In the following discussion, for the sake of simplicity, I refer to "the gold standard" as a surrogate term for the bimetallic standard.

In spite of its enviable record for approximating price level stability without human hands-on controls, the gold standard had its critics. Different factions argued for relief from its discipline. Many businessmen chafed at its restrictive effect on monetary availability for industrial expansion, and debtors complained during the occasional bouts of "dear money." Cheap money, plenty of it, and low interest rates became political slogans, but gold endured the strain. For one thing, a standard based on the naturally limited quantities of a metallic commodity was obviously what the Framers of the Constitution had intended, and, second, nothing else seemed constitutional enough to replace it.

The second monetary institution to appear was the Federal Reserve System in 1913, just as the gold standard system looked enduring and stable. Both a gold standard and a central bank determine an economy's stock of money. However, the original Fed was *not* intended to replace the gold standard in that capacity; it was *not* to be a central bank. It was *not* an expression of the federal government's "complete power over the monetary system." The congressional debates and the Federal Reserve Act's concluding sentences confirmed the preeminence of the gold standard and, by implication, constitutional constraints over the monetary system. The final bill stated: "Nothing in this Act . . . shall be considered to repeal the parity provisions contained in an act [Gold Standard Act] approved March 14, 1900."[2] The Fed was to be nothing more than a group of primarily private, super-commercial banks that would help client "member" banks endure short-term liquidity crises. This low-profile image of the original Fed immediately raises the question: If true, how did the Fed subsequently acquire its monetary omnipotence?

Greenback Inflation and the Legal Tender Cases

It all began with the greenbacks that the federal government authorized and issued during the Civil War. Had the notes been tender only for debts payable to and by the government, they would have been legally equivalent to the Treasury notes issued in limited quantities at various times between 1812 and 1860—tender only for government dues and payments, but for that reason generally

[2]*Congressional Record*, 63rd Cong., 2nd sess., (5100–06.)

acceptable for most private transactions.[3] Greenbacks, however, had to be accepted by *private* creditors in discharge of *private* debts. This unnecessary flourish overdetermined their acceptability. It was also objectionable to postwar creditors and, therefore, came into the courts for adjudication after the war—first into the state courts and finally to the Supreme Court in 1869, 1870–71, and 1884.[4]

The Court in 1869 had eight members. The chief justice was Salmon P. Chase, who had been secretary of the treasury under Lincoln when Congress passed the Greenback Acts. Lincoln nominated him as chief justice in 1864 and the Senate duly approved him.

While Secretary, Chase had sanctioned the original greenback issue in memos to leading congressmen, agreeing that they were "necessary and proper" in accordance with congressional Republicans' principal argument for justifying their constitutionality. However, in the five years between leaving his Treasury post and the decision on the first legal tender case, *Hepburn v. Griswold* (1869), Chase reversed his opinion. He led the Court debate that by a 5–3 majority found the greenbacks unconstitutional for payment of debts contracted before passage of the first Greenback Act in February 1862 (*Hepburn v. Griswold,* 75 U.S. 603).[5]

The *Hepburn* decision did not sit well with the Grant administration. Because of its war expenditures, the federal government had become the country's chief debtor. Influential politicians in the Grant administration did not want to be politically responsible for what they feared might be redemptions in gold for any of the current

[3]The federal government issued Treasury notes several times between 1812 and 1860, in quantities between $3 million and $10 million. Private creditors, of course, could and did accept them. No court case ever tested their constitutionality because they were never *forced* into a private transaction or contract (Timberlake 1993: 71).

[4]Some old-style Treasury notes were issued during the war, along with other government-sponsored currencies—national bank notes and silver currency. However, neither of the latter was legal tender for private debts. Yet, all three currencies were equally acceptable throughout the war and postwar periods. The greenbacks never had a market premium relative to national bank notes or silver, thus emphasizing that the *full* legal tender provision was unnecessary.

[5]The complementary question of constitutionality for debts after the initiation of the greenbacks did not arise. Using the maxim that every debt should be paid in whatever money was current at the time the contract was drawn, the greenbacks should have been legitimate for such later debts.

national debt, which was more than $3 billion. Moreover, as Republicans they objected to a judgment that demeaned the administration's war record (Unger 1964: 75–77).

Presidents Lincoln and Grant had already appointed five of the Court's eight members, three of whom formed the minority that argued and voted in *Hepburn* that the greenbacks were constitutional for all debts unless explicitly provided otherwise in the contract. One of the five majority justices resigned shortly after the case was argued, and one vacancy on the Court already existed, which meant that Grant in 1869 could appoint two new justices. Without much searching, Grant's advisers found two state court justices (both Republicans) who had supported the full legal tender provision of the greenbacks in state cases. Grant nominated these two as associate justices of the Supreme Court in 1869, right after the *Hepburn* decision, and the Republican Senate approved them.[6]

Grant's attorney general then petitioned the Court to retry the legal tender issue with two new cases, *Knox v. Lee* and *Parker v. Davis*. The expanded Court, now weighted by Republicans, decided 5–4 in 1870–71 that the greenbacks were legal tender for all debts public and private, and regardless of when the debts were contracted (79 U.S. 457). In 1884, by which time eight out of the nine justices were Republican appointees, the majority decision in a fourth case, *Juilliard v. Greenman*, confirmed the previous decision, and declared by its 8–1 majority that Congress could authorize full legal tender greenback issues in peacetime as well as in war (*Juilliard v. Greenman, 1884*, 110 U.S. 421).

This infamous decision contended that many European governments had the sovereign power of borrowing money by issuing bills or notes for the money borrowed, and that these notes were full legal tender for private debts. Since this power, the majority argued,

> was universally understood to belong to sovereignty at the time of the framing of the Constitution . . . and the power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the Constitution; we are irresistibly

[6]Grant did not "pack" the Court. He had every right to nominate any two justices he wished. The new justices, however, had their highest responsibility to the Constitution, not to the Grant administration.

> impelled to the conclusion that the impressing upon the Treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and therefore within the meaning of that instrument, "necessary and proper" for carrying into execution the powers vested by this Constitution in the government of the United States [110 U.S. 449–51].

This passage makes use of a subjunctive syllogism that sounds impressive but proves nothing. It argues that the Framers—and here is the subjunctive syllogism—*would* have known of their own sovereign powers in 1787, and *could* have written a Constitution that *would* have included "the power to make the notes of the government a legal tender in payment of private debt." The decision did not add that the Framers had not acknowledged any such "sovereignty," nor written such a constitution. Rather, the Court majorities in 1871 and 1884 constructed this argument on the presumption that they *knew* what the Framers were thinking and could have done when they wrote the actual Constitution that the Courts in 1871 and 1884 were supposed to interpret as written.

This latter-day reconstruction of the Constitution, no matter how artificially contrived, authorized Congress's complete control over the monetary system. More importantly, it contradicted what had been a universal understanding and belief that only gold and silver coins could be legal tender. Article I, Section 8 states: "Congress shall have Power . . . To coin [gold and silver] Money, regulate the [dollar] Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures." These clauses allowed Congress to specify common values that everyone needed for carrying out day-to-day activities. Now, a Supreme Court had "found" that Congress had complete control over the monetary system, and could make any paper money full legal tender. Would some future Court also "find" that Congress had the power to make 10 inches a foot, and 14 ounces a pound?—as the lone dissenter, Justice Stephen Field, argued in both the 1871 and 1884 decisions (110 U.S. 460–69).

At the time, the legal tender decisions did not have the drama or political significance that was due them. Congress had restored the operational gold standard to serve as the institutional executor of the monetary system; and while the U.S. Treasury had outstanding fiat currencies to manage, the revived gold standard was shepherding the monetary system in its customary fashion. Congress had no reason at this time, and showed no inclination, to implement its newly bestowed power. In fact, it ignored the role the Court decisions had ceded it and emphasized the gold standard's supremacy by passing "The [Gold] Currency Act of 1900" on March 14th of that year.

Passage of the Federal Reserve Act

With little reference to the gold standard or its workings except to re-affirm again its primacy, Congress passed the Federal Reserve Act in 1913. The legal tender decisions were not even mentioned in the congressional debates on the Federal Reserve bill. The new Fed was to be a strictly limited, part-time institution operating within the framework of the gold standard, and a lender of last resort (LOLR) for the commercial banking system (Timberlake 1993: 214–31.)

This model of Federal Reserve operations never happened. Following World War I and the sharp recession of 1920–22, the New York Fed under the guidance of Governor Benjamin Strong initiated a policy of price level stabilization that swept in all the other Federal Reserve banks. Strong excused this policy as temporary. He acknowledged that it was probably unconstitutional, but would only be current until the excess gold in Fed banks had returned to European banks, so that a global reformation of the gold standard could occur (Burgess 1930: 173–97, 317–31; Chandler 1958: 194–206).

The economic data of the time reflect Strong's policy. The more volatile Wholesale Price Index (1926=100), which was at 97 in 1922 when Strong initiated the policy, increased to a high of 104 in 1925, then declined to 95 by the end of 1929. The Consumer Price Index (1935–39=100) increased from 71.6 to 73.3 between 1922 and 1929, an "increase" of 1.7 percent over seven years, or one-quarter of 1 percent per year—not as much as the inflationary bias in the Index. Business and industry boomed during the 1920s. If any of it was malinvestment, Joseph Schumpeter's "creative destruction" took care of that. Measures of the stock of money for this period correlate with the stability of the price level. According to Friedman and Schwartz (1963: 710–13), the M2 money stock (which includes all commercial bank checking accounts, plus currency outside banks, plus time deposits in commercial banks) increased over this seven-year period by 38 percent, or 5.5 percent per year. The prosperity was solid American production in the presence of a stable price level.

Meanwhile, the Fed banks' total earning assets (securities, loans, discounts, and advances to commercial member banks—the items over which the Fed banks have direct control) declined from their inflationary level of $3.13 billion in 1920 to $1.20 billion in 1922. From then until mid-1929, these assets increased by only $0.19 billion, that is, to $1.39 billion. Thus, the net contribution of Fed policy to the monetary expansion of the period was $190 million, or only about $27 million per year, far less than would have occurred if the Fed had allowed the gold standard to function freely without the Fed's accumulation of gold (Timberlake: 1993: 254–73).

Despite the practical success of the New York Fed's stable price level policy, in early 1929 some members of the Fed's Board of Governors repudiated the policy, and, bowing to the passions of the times, embarked on a general anti-speculation crusade to discipline the financial system. This initiative had popular approval because "speculators" and their "greed" are always grist for the moralists' mill.

The new policy, labeled "direct pressure" by its sponsors on the Fed Board, reviewed all commercial bank loan applications for credit from Fed banks to determine whether an applying bank had any taint of stock market dealings. If it did, the bank did not get any credit from "its" Fed bank no matter how much eligible paper it held (Warburton: 1966: 339–40). As needy banks were denied credit assistance, bank failures began in 1930 and continued into 1931 and through 1933, taking out both "speculative" banks and many sound money banks (Friedman and Schwartz: 1963: 299–357). The direct pressure program was an unmitigated disaster. By the time the carnage ended in March 1933, more than 9,000 banks had failed, the banking system was in shambles, and the economy was paralyzed (Timberlake 2007: 325–54).

As the Great Contraction reached its nadir in 1933, Franklin Roosevelt was sworn in as president of the United States. Misunderstanding the real cause of the disaster (the Fed Board and its overzealous anti-speculators), FDR and his administration, along with the Democrats' majority in Congress, began a series of policies designed to end the constraint of the gold standard on Fed-Treasury control of money. By a series of Resolutions and an Act of Congress, the administration through its Treasury Department and congressional majorities called all of the country's monetary gold into

Washington, paying for it the traditional price of $20.67 per ounce. Congress then passed the Gold Reserve Act of 1934, which raised the mint price of gold more than 59 percent. The Treasury then had all the gold melted into 27-pound ingots, stored it three floors deep in the ground, and declared that gold was illegal for use as money—thus violating people's property rights. Previously, a joint resolution of Congress, "Abrogation of the Gold Clauses," passed June 5, 1933, had voided the gold clauses in all private and public bonds, mortgages, and contracts (White 1935: 712).

The story did not end there, however. Many creditors held debts due them from both private debtors and the U.S. government that contained the now-voided gold clauses, stipulating that the creditor could collect what was due him either in dollars or in a specified quantity of gold. Since the Gold Reserve Act raised the value of gold from $20.67 per ounce to $35 per ounce, the gold value of debts with gold clauses became 69 percent greater. Furthermore, prices had been falling since 1929 and were in almost all cases well below what they had been when the contracts were signed. Therefore, the real gold value of a debt-contract payable in gold had risen because of both declines in prices and the increase in the legal price of gold.

Given these incentives, creditors with gold clauses in their contracts tried to exact payment in gold, or its equivalent in dollars, for debts due them from both private debtors and the government. The U.S. Treasury had sold such obligations during and after World War I, and private creditors had used gold clauses ever since then to protect themselves from price level appreciations that would erode the real values of their contracts. Upon refusal of some private corporations, such as the Baltimore and Ohio Railroad, and the U.S. Treasury Department to pay such gold values for their outstanding debts, the creditors brought the cases to the courts. The issue quickly reached the Supreme Court in 1934 and gave rise to an important and controversial set of decisions known as the *Gold Clause Cases* (see Holzer 1980). These cases posed an irresolvable dilemma for the Court. If it decided that Congress's Abrogation of the Gold Clauses in 1933 violated the Constitution's sanctity of contracts and required payment of gold clause debts in gold, it would allow already well-to-do creditors to realize an unanticipated "undeserved enrichment" from the gold-appreciated dollars. If it upheld the Abrogation of the Gold Clauses to prevent creditors from getting unanticipated real gains, it would violate the Fifth Amendment's contracts protection.

A third option would have been to rule that such a "devaluation" far exceeded Congress's power "to coin money and regulate the value thereof," and require Congress to repeal or amend the Gold Reserve Act that had devalued the dollar. This third option, while properly constitutional, was politically impossible, given the mind-set of the administration and Congress.

The opinion of the Court's 5–4 majority stated that the primary and all-important issue " is the power of Congress to establish a monetary system and the necessary implications of that power," and " to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority" (294 U.S. 302). Chief Justice Charles Evans Hughes, who read the opinion, reviewed the *Legal Tender Cases* that had allowed Congress the power to make U.S. notes (greenbacks) unqualified legal tender and granted it complete control over the monetary system.

Hughes emphasized Congress's power "To coin money and regulate the value thereof." He held that "the Court in the legal tender cases did not derive from that express grant [of power] alone the full authority of the Congress in relation to the currency. . . [but] in all the related powers conferred upon the Congress [that were] appropriate to achieve 'the great objects for which the government was framed—a national government with sovereign powers'" (294 U.S. 303). Hughes here quoted and used without apology the argument of the infamous 1884 decision discussed above: "The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to Congress." The Congress is empowered, he quoted further from the *Juilliard* opinion, "'to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the payment of merchandise and the payment of debts, as accord with the usage of sovereign governments'" (294 U.S. 304).

Nothing in the Constitution implies any such power, nor does any statement suggest a possible inference leading to such a conclusion. The majority opinion in 1935 simply treated these gross distortions of congressional power over money from the *Legal Tender Cases* as if they were quoted from the Constitution itself, and without reexamining the validity of the arguments.

The majority opinion concluded: "We think that it is clearly shown that these [gold] clauses interfere with the exertion of the [monetary] power granted to the Congress"—that is, "monetary powers" nowhere visible in the Constitution but conjured into existence by the Court decisions of 1871 and 1884 (294 U.S. 315–16). Therefore, Congress's Abrogation of the Gold Clauses stood. The creditors could be paid in any U.S. currency that was legal tender, but they had no right to be paid in gold—gold clauses notwithstanding.[7]

The objections of the Court minority, written by Justice McReynolds, began with the flat statement that if the majority's decision were given effect, it would "bring about confiscation of property rights and repudiation of national obligations. . . . [Our] acquiescence in the decisions just announced is impossible; we cannot believe the farseeing framers . . . intended that the expected government should have authority to annihilate its own obligations and destroy the very rights which they were endeavoring to protect. Not only is there no permission for such actions; they are inhibited" (294 U.S. 362).

McReynolds noted that the intention of the gold clause was "to protect against a depreciation of the currency and against the discharge of the obligation by payment of less than that prescribed." He cited the recent gold devaluation of more than 59 percent—the gold dollar went from 25.8 grains to 15.24 grains—and added: "The calculation to determine the damages for failure to pay in gold would not be difficult" (294 U.S. 362–65).[8] Where the majority had openly violated contractual law but maintained economic justice, the minority would uphold contractual law while doing grave economic injustice to the debtor, one of whom, notably, was the U.S. government.

In the minority dissent, McReynolds emphasized:

> There is no challenge here of the power of Congress to adopt such proper "Monetary Policy" as it may deem necessary in order to provide for national obligations and furnish an

[7]The Court amended its decision in the following way: "We conclude that the Joint Resolution of June 5, 1933, in so far as it attempted to override the obligation created by the bond in suit, went beyond the congressional power." If the dispute was between two private parties (e.g., *Norman v. B&O Railroad)*, Congress could nullify the gold clause because it interfered with Congress's monetary powers. However, if the litigation was between a private party and the United States, and because the issue and sale of the bond were integral to U.S. fiscal policy, its terms had to be honored. Therefore, the appellant could collect "damages." However, the Court defined the "damages" in dollar terms, not in gold. Gold already was forbidden as a means of payment.

[8]That is, multiply the dollar value of the debt by 25.8 divided by 15.24, which translates into paying 1.69 times the debt's dollar value.

> adequate medium of exchange for public use. The plan under review in the Legal Tender Cases was declared within the limits of the Constitution, but not without a strong dissent. The conclusions there announced are not now questioned; and any abstract discussion of Congressional power over money would only tend to befog the real issue [294 U.S. 369].

The legal tender currency issued, McReynolds observed further, was a temporary expedient, “until the United States could find it possible to meet their obligations in standard coin. This they accomplished [with Resumption] in 1879.”

But why not question those decisions? Did not the “strong dissent” in the *Legal Tender Cases* and the fact that the legal tender issue had two opposing Supreme Court decisions in 1869 and 1871 suggest that maybe something was amiss that should be reexamined?

The minority dissent, however, did not reargue the earlier cases. It also neglected to explain that, despite resumption of gold payments, the greenbacks had become a permanent legal tender, and that their continuing presence implied that Congress had the complete power over the monetary system that all nine members of the Court now accepted. By glossing over the real crux of the matter—the decisions of 1871 and 1884, McReynolds precluded a proper constitutional conclusion.

However, he recognized the implications for future fiscal policy. “If this [abrogation] is permissible,” McReynolds warned, “then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits appear on Treasury books, maybe enough to cancel the public debt” (294 U.S. 372). McReynolds did not refer to Justice Stephen Field’s dissent in the *Legal Tender Cases* or to George Bancroft’s *Plea for the Constitution* (1886) that had observed the same thing. However, he added, “For the Government to say, we have violated our contract but have escaped the consequences through our own statute, would be monstrous. In matters of contractual obligation, the Government cannot legislate so as to excuse itself” (294 U.S. 379).

Finally, McReynolds discussed the “incalculable financial disaster” that would occur if the U.S. government had to pay for its inflated gold obligations. Although McReynolds held that the estimated cost of paying off government debt at the new gold price “is discredited by manifest exaggeration,” he did not produce any estimates of the costs, either for private debts with gold clauses or for the government bonds with gold clauses still outstanding.

The Justices, to repeat, had an impossible puzzle to resolve. If their decision followed the arguments of the dissenting minority, both the government and private debtors would have had to pay off gold clause obligations at $1.69 on the dollar. Bondholders (creditors) would have received a windfall that was completely unexpected and that had nothing to do with their decisions to buy the bonds. At the same time, this payment would have been exactly what the bonds promised—payment in a certain quantity of gold, now worth 69 percent more in dollars. To add fuel to the fire, these same gold clause profiteers were already realizing substantial premiums of various amounts, due to the ongoing decline in the price level that enhanced the buying power of any dollars owed them.[9]

The majority knew that the gold clauses were perfectly legitimate and binding, but they had to find a constitutional path to justify the abrogation law. Since it was agreed that Congress had absolute power over the monetary system, even contracts, the most sacred of constitutional objects, could be nullified when they conflicted with Congress's absolute monetary powers that the earlier Courts had contrived. However, the majority's opinion for government debts with gold clauses denied that the government's "sovereignty" over the monetary system could justify abrogation, because the bonds in dispute had financed critical government fiscal operations. The opinion then made a separate case for "damages" done to owners of gold clause bonds. They found that because of the fall in the price level, gold clause creditors had not suffered any losses, but had experienced "unjustified enrichment." Therefore, Congress's Abrogation of Gold Clauses only required recompense if the creditor could show "damages." Virtually no bond or contract owner suffered any real loss, or could have. It was a time of creditor "heaven" when the real values of all debts appreciated due to the falling price level.

Given the unconstitutional reasoning on both sides of the Court decision, what judgment on the *Gold Clause Cases* might have preserved constitutional integrity and prevented unwarranted

[9]Prices had stayed constant from 1922 to 1929, and fallen 25.5 percent from 1929 to 1933 (CPI, 1947–49=100).

"enrichment" of creditors? How could the Court have solved the dilemma? Where should it have started?

Constitutional Money

Both the minority and majority opinions referred many times to the *Legal Tender Cases*—*Knox v. Lee* and *Parker v. Davis* in 1871, and *Juilliard v. Greenman* in 1884—to support their common agreement of Congress's total power over money. These decisions, they claimed, were written in stone and sealed by the "divine right of sovereignty." They conveniently ignored the *Hepburn v. Griswold* decision in 1869 that had denied debtors the right to pay off their debts in depreciated greenbacks for debts contracted before greenbacks were authorized. Had the Court dutifully observed that the *Hepburn* case had been reargued and the decision reversed the next year, they would have had both a model for further argument in the *Gold Clause Cases* and a decision that did not rest on the horns of a dilemma. Perhaps Congress did not have the "total power of money creation," so willingly granted to it by the Justices on both sides of the *Gold Clause Cases*. Maybe the Chase Court of 1869 had the right answer on legal tender.

The Supreme Court is the ultimate judicial authority for the determination of disputes over constitutional issues. However, the justices are mortal men and women, subject to the push-and-pull of political pressures and earthly rewards. Being human, they are also imperfect. Given this mundane observation, how might the Court manage itself in order to provide for imperfect decisions? If a Court decision is obviously unconstitutional, regardless of the reason, are the judicial, economic, and political systems destined to live forever under its resulting misjudgment?

The reversal of *Hepburn v. Griswold* by *Knox v. Lee* and *Parker v. Davis* in 1871, and *Juilliard v. Greenman* in 1884 provides the answer. All three decisions on the *Legal Tender Cases* were controversial, and the last two, especially, reflected overt political pressures. Sixty years after the 1871 and 1884 decisions, the Hughes Court in 1934–35 could (and should) have reargued them. By this time the earlier majorities' manifest misinterpretations would have been obvious to anyone and everyone. The Hughes Court could then have struck down the gold devaluation and charged Congress to find other solutions for economic recovery. Such a decision might have provoked a tumultuous political reaction. Nevertheless, in the name of proper constitutional law it should have been done.

Shortly after the *Gold Clause Cases*, Congress passed the Banking Act of 1935, which effectively confirmed Congress's unconstitutional control over the monetary system. During the recent crisis, 2008–12, the Fed has significantly extended the scope of its financial policies. It has no resemblance to the LOLR that Congress approved in 1913. There is no constitutional basis for the form in which it now exists. Since abolishing the Fed seems politically impossible, the next-best remedy would be a congressional mandate—perfectly reasonable since the Fed is a creature of Congress—voiding its monetary discretion, and requiring it to keep the general price level constant at all times and without exception. This rule is not the only one possible. However, the public understands its plausibility, and it is the only practical goal any central bank can achieve.

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