

How Americans Lost Their Right To Own Gold And Became Criminals in the Process

By

Henry Mark Holzer

About the Author:

Henry Mark Holzer is a Professor of Law. He teaches constitutional law, administrative law, and other courses. His practice is limited to appeals and constitutional litigation.

Prof. Holzer has lectured widely on a variety of legal and law-related topics, and his articles have appeared in newspapers, popular and professional magazines, and academic journals. His most recent books are *The Gold Clause* (1980) and *Government's Money Monopoly* (1981).

Introduction

For the first time since [James] Bond had known Goldfinger, the big, bland face, always empty of expression, showed a trace of life "Mr. Bond, all my life I have been in love. I have been in love with gold. I love its colour, its brilliance, its divine heaviness I have worked all my life for gold I ask you is there any other substance on earth that so rewards its owner?"¹

For centuries, most people have shared the fictional Mr. Goldfinger's attitude about gold, though not necessarily for the same reasons. While gold has been much sought after, both for ornamental and industrial purposes, modern times—or, more specifically, modern governments—have taught men to value it for one purpose above all others: as a hedge against the debasement of paper money. Monetary economist Charles Rist acknowledged this phenomenon when he wrote: "[I]n the absence of governments capable of maintaining stable money, private individuals seek to assure it for themselves, hoarding a purchasing power [gold] more stable than that of any other merchandise . . . stable money is one of the last arms that remains at the disposal of the individual to direct his own affairs, whether it be an enterprise or a simple household."²

Indeed, during the monetary crisis of the last several years, the price of gold soared in free world markets as more and more individuals around the world acquired gold as a hedge against actual and potential currency devaluations.³ Unfortunately, while others scrambled to protect themselves from the instability of paper money, Americans had to watch from the sidelines. For them, owning gold has long been a

criminal offense, punishable by up to ten years in jail and/or up to a \$10,000 fine; they also risk confiscation of the gold and a penalty of twice its value.⁴

Most Americans are unaware of the existence of these harsh criminal sanctions. Fewer still, including the legal community, are aware of how—and why—Americans lost their right to own gold in the first place. The facts, which should startle layman and lawyer alike, expose the shaky legal foundation on which the gold prohibition rests: an unconstitutional arrogation of congressional power and the improper delegation of that power to the President, leading to what can be called the “endless emergency” rationale.

World War I: The Seeds Are Sown

The existence of a state of war between the United States and Germany in 1917 had prompted the passage of the *Trading with the Enemy Act*,⁵ one purpose of which was to make unlawful all dealings between Americans and the enemies of the United States.⁶ However, an obscure subsection of the Act⁷ authorized the President to regulate, investigate, and *prohibit* “under such rules and regulations as he may prescribe . . . any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency . . . by any person within the United States . . .”⁸ These sweeping new presidential powers had teeth in them: elsewhere the Act provided for severe criminal sanctions of up to ten years in prison and/or up to a \$10,000 fine for violation of any decrees which the President might make under the Act.⁹

The net result of the Act, vis-à-vis transactions in gold, was the arrogation by the Sixty-Fifth Congress of a money power not granted by the Constitution¹⁰—and further: the delegation of that power to the Executive branch of the Government.

The war emergency and the President’s duty to fight the war provided Congress with a convenient rationale for the Act. The fact is, however, that the Constitution nowhere empowers Congress to prohibit dealing in gold—much less authorizes Congress to delegate that power to a coordinate branch of government.

Worst of all, the power which Congress delegated to the President enabled him to make criminals out of honest American citizens whose crime would consist only of trying to protect themselves from official debasement of their money. In more fundamental terms, Americans henceforth would be “under the gun” for exercising a fundamental, inalienable right: the right to deal with their own property as they saw fit. Gold, no matter what its special characteristics, is, after all, just another form of property.

If there were those who feared that Congress had more in mind than merely prohibiting transactions in gold during the World War I emergency, their concern would have been justified. On September 24, 1918, less than a year after its original enactment, and virtually on the eve of the War’s end, the *Trading with the Enemy Act* was amended in two important respects: not only was the wartime Act extended

“[u]ntil the expiration of two years after the date of the termination of the war between the United States and the Imperial German Government. . . ,”¹¹ but the amendment actually *enlarged* the Executive’s power to control private gold. Now, President Woodrow Wilson could also “[i]nvestigate, regulate, or prohibit any *hoarding* . . . of gold . . . by any person within the United States.”¹² Less than two months later, on November 11, 1918, the war ended, and two years later Wilson’s power over private gold expired. Once again, Americans were under no restraints with regard to what they did with their gold. Presumably, the emergency was over.

The New Deal and the New “Emergency”

Franklin D. Roosevelt was inaugurated as President on March 4, 1933. Throughout the country, banks were slamming their doors on depositors clamoring to withdraw their own money, preferably in gold. For people who were seeking to exchange soft paper currency for the more stable metal—as existing law allowed, and as the Government had solemnly pledged—the new President had other ideas. On March 5, 1933, one day after taking office, Roosevelt issued a Proclamation convening Congress in Extra Session at noon on March 9, 1933, a decision allegedly necessitated by what the Chief Executive referred to vaguely as “public interests.”¹³

But March 9 was still four days away, and Roosevelt apparently was impatient to stop bank depositors from withdrawing their paper money or converting it to gold. Accordingly, the next day, March 6, 1933, he took an unprecedented step. For the first time in United States history, an American president closed the nation’s banks.

By Proclamation,¹⁴ he stated the following: the recent gold and currency withdrawals had been “unwarranted” and for the purpose of “hoarding”; speculation abroad had caused “severe drains” on the “Nation’s” gold stocks; the result was to create a national “emergency”; further “hoarding”; and “speculation” must be prevented and “appropriate measures” taken “to protect the interests of our people”; the *Trading with the Enemy Act*, as amended, had given the President certain powers over private gold; and therefore, “to prevent the export, hoarding, or earmarking of gold,” the banks would take a “holiday” from Monday, March 6, 1933, to and including Thursday, March 9, 1933, and that during the holiday no bank would “pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever of any gold . . . or take any other action which might facilitate . . . hoarding.”¹⁵ Roosevelt’s action was devoid of even arguable legal justification. Nowhere in the Constitution is any branch of government, let alone the Executive, given the power to close privately owned banking institutions.

Nor did the Proclamation even purport to invoke constitutional authority. And despite the Proclamation’s passing reference to an alleged “national emergency,” no war conditions were present which could have enabled Roosevelt to argue that, under the Commander-in-Chief’s “war powers,”¹⁶ he had the authority to place in suspended animation a huge, crucially important part of America’s commercial establishment. The Proclamation’s reference to the World War I *Trading with the Enemy Act*, which

had long since expired, was a strained attempt to find some semblance of legal support for Roosevelt's unprecedented assumption of complete control over America's banking system.

It is no wonder that Roosevelt immediately sent to a docile and compliant 73rd Congress, a hastily drawn but comprehensive bill to amend the moribund *Trading with the Enemy Act* and to attempt to secure a legal basis for the unilateral action he had already taken.¹⁷

Retroactive Rubberstamping: The *Emergency Banking Act*

The House of Representatives convened at noon on March 9, 1933. After the customary opening prayer and the disposing of certain routine "housekeeping" matters,¹⁸ a message was received from the President¹⁹ which requested passage of H.R. 1491.

The bill's preamble dramatizes the haste with which the President's minions sought to railroad the bill through both Houses of Congress: "An Act to provide relief in the existing national emergency in banking, and for other purposes. Be it enacted . . . that the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application."²⁰

In the House, Majority Leader Joseph W. Byrns, Democrat of Tennessee, asked for immediate consideration of the bill and that debate be limited to forty minutes, twenty minutes for each party. Mr. Byrns expressed the hope that under the peculiar circumstances and

under the serious circumstances which confront the country, we agree to take this bill up now, pass it, send it to the Senate so it may become a law this evening, and thus enable the President of the United States to open the banks tomorrow.²¹

Next rose House Minority Leader Bertrand H. Snell, Republican of New York. After noting that "it is entirely out of the ordinary to pass legislation in this House that, as far as I know, is not even in print at the time it is offered," Mr. Snell, in a burst of bipartisanship, observed:

The house is burning down, and the President of the United States says this is the way to put out the fire. [Applause.] And to me at this time there is only one answer to this question, and that is to give the President what he demands and says is necessary to meet the situation. I do not know that I am in favor of all the details carried in this bill,²² but whether I am or not, I am going to give the President of the United States today his way. He is the man responsible, and we must at this time follow his lead. I hope no one on this side of the aisle will object to the consideration of the request. [Applause]²³

Someone then produced a copy of the bill, and it was read by the Clerk of the House.²⁴ The bill was passed.²⁵ After a short discussion, the spectacle of what had just transpired in the House in that hour-and-a-half session was best expressed by Congressman Lundeen:

Mr. LUNDEEN. Mr. Speaker, today the Chief Executive sent to this House of Representatives a banking bill for immediate enactment. The author of this bill seems to be unknown. No one has told us who drafted the bill. There appears to be a printed copy at the speakers desk, but no printed copies are available for the House Members. The bill has been driven through the House with cyclonic speed after 40 minutes debate, 20 minutes for the minority and 20 minutes for the majority.

I have demanded a roll call, but have been unable to get the attention of the Chair. Others have done the same, notably Congressman *SINCLAIR* of North Dakota, and Congressman *BILL LEMKE*, of North Dakota, as well as some of our other Farmer Labor Members. Fifteen men were standing, demanding a roll call, but that number is not sufficient; we therefore have the spectacle of the great House of Representatives of the United States of America passing, after a 40-minute debate, a bill its Members never read and never saw, a bill whose author is unknown. The great majority of the Members have been unable to get a minute's time to discuss this bill; we have been refused a roll call; and we have been refused recognition by the Chair. I do not mean to say that the Speaker of the House of Representatives intended to ignore us, but everything was in such a turmoil and there was so much excitement that we simply were not recognized.

I want to put myself on record against procedure of this kind and against the use of such methods in passing legislation affecting millions of lives and billions of dollars. It seems to me that under this bill thousands of small banks will be crushed and wiped out of existence, and that money and credit control will be still further concentrated in the hands of those who now hold the power.

It is safe to say that in normal times, after careful study of a printed copy and after careful debate and consideration, this bill would never have passed this House or any other House. Its passage could be accomplished only by rapid procedure, hurried and hectic debate, and a general rush for voting without roll call.

I believe in the House of Representatives. I believe in the power that was given us by the people. I believe that Congress is the greatest and most powerful body in America, and I believe that the people have vested in Congress their ultimate and final power in every great, vital question, and the Constitution bears me out in that.

I am suspicious of this railroading of bills through our House of Representatives, and I refuse to vote for a measure unseen and unknown.

I want the *RECORD* to show that I was, and am, against this bill and this method of procedure; and I believe no good will come out of it for America. We must not abdicate our power to exercise judgment. We must not allow ourselves to be swept off our feet by hysteria, and we must not let the power of the Executive

paralyze our legislative action. If we do, it would be better for us to resign and go home—and save the people the salary they are paying us.

I look forward to that day when we shall read the bill we are considering, and see the author of the bill stand before the House and explain it, and then, after calm deliberation and sober judgment—after full and free debate—I hope to see sane and sensible legislation passed which will lift America out of this panic and disaster into which we were plunged by the World War.²⁶

Neither “calm deliberation and sober judgment, nor “full and free debate” characterized what took place next in the Senate,²⁷ where H.R. 1491—which affected “millions of lives and billions of dollars”—spent the afternoon with at least eighty United States Senators. Seventy-three of them voted “yea”²⁸ and the bill, which had originated in the House at noon, passed the Senate by 7:30 P.M. Later that same night, Roosevelt approved it and H.R. 1491 became the *Emergency Banking Act*.²⁹

Fundamentally, the Act accomplished three things. First, it retroactively approved the President’s illegal action of March 6, 1933.³⁰ (If Roosevelt had thought himself to be on solid legal ground when he closed the banks, one could ask why he thought it necessary to go to Congress in the first place. This legislative “rubber stamp” approach to past and future executive action would be used more than once in the months ahead.)

Second, it amended section 5(b) of the *Trading with the Enemy Act*, to provide that:

During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and exporting, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule of regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both, and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.³¹

Finally, it added a new subsection (n) to the *Federal Reserve Act*, giving the Secretary of the Treasury virtually unfettered discretion to compel holders of gold coin, gold bullion, and gold certificates to surrender them to the Treasurer of the United States, and to accept paper money instead.³²

Ironically, while the Act ostensibly reflected Congress' alleged concern with gold withdrawals, Congress *itself took* no action at all. Instead, consonant with the remarks on the floor of each House, Congress gave the *President* sole authority to regulate all banks and financial transactions in general, and everything concerning gold in particular (with the Secretary of the Treasury acting as his "Requisitioner-in-Waiting"). And more: Roosevelt's new powers far surpassed those granted President Wilson by the World War I *Trading with the Enemy Act*; Roosevelt's authority extended beyond "time of war" to "any other period of national emergency declared by the President." Needless to say, just as the Act contained no elaboration as to what the current "emergency" was, neither did it establish any criteria by which the President was to ascertain the existence of any emergency—an omission which was to prove crucially important to future presidents—and to future owners of gold.

Cashing In on the "Emergency": Confiscation

Passage of the *Emergency Banking Act* on March 9, 1933 did not end that day's hectic activities. Still later that night, under the authority given him only several hours earlier, Roosevelt issued a new Proclamation. This one continued, in full force and effect, "until further proclamation by the President," the provisions of his March 6, 1933 bank holiday Proclamation³³ and the regulations and orders which had been issued thereunder.³⁴ However, a last loophole remained to be plugged: many individuals still had gold in their possession and no requisition had yet been made by the Government. Something had to be done to keep the gold where the Government could get at it when the time came.

Accordingly, the next day, March 10, under the authority of the *Emergency Banking Act* and "all other authority vested in me," Roosevelt issued Executive Order No. 6073.³¹ In addition to authorizing the Secretary of the Treasury to decide which of the nation's banks could open, the order prohibited owners of gold from exporting or otherwise removing it "from the United States or any place subject to the jurisdiction thereof. . . except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury."³⁶

Given this frozen state of financial affairs, the President could now turn his attention to what earlier he had deprecatingly referred to as "hoarding"—i.e., the holding of gold by the people who owned it. It took Roosevelt a month. Acting under the authority he thought had been given him by the *Emergency Banking Act*, the President, on April 5, 1933, issued Executive Order No. 6102.³⁷ Its title clearly discloses how Roosevelt intended to deal with "hoarding": "Executive Order Forbidding the Hoarding of Gold Coin, Gold Bullion, and Gold Certificates."

There were exceptions to this general prohibition: every American could retain a maximum of one hundred dollars in gold coin and gold certificates, rare coins were excepted altogether, and reasonable amounts of gold could be retained for use in industry and the arts. Banks, however, were required to turn over gold coin, gold bullion, and gold certificates "owned or received by them," to the Federal Reserve

Bank. This included not only gold owned by the banks, but also gold owned by their depositors. In short, on or before May 1, 1933, all privately owned gold in the United States (subject to a few minor exceptions) was to be confiscated by the Government. As compensation, the owners were to receive paper money, whether they liked it or not.³⁸ Willful failure to submit to the confiscation was punishable by up to ten years in jail and/or up to a \$10,000 fine.³⁹

During the next two months, additional steps were taken to implement the government's confiscatory policy. On April 19, the Secretary of the Treasury advised that, until further notice, no further licenses would be granted to export gold for the purpose of supporting the dollar in foreign exchange.⁴⁰ On April 20, the President went one giant step further: he issued an Executive Order prohibiting the earmarking for foreign account, and the export, of gold coin, gold bullion, or gold certificates, while, at the same time, authorizing the Secretary of the Treasury to issue licenses permitting such export under certain conditions.⁴¹ On April 29, the Secretary of the Treasury issued supplementary regulations relating to the Executive Orders of April 5 and 20, with respect to gold hoarding and the gold export embargo.⁴² Article 5, section 1, of those regulations provided that:

any person showing the need for gold coin or gold bullion for a proper transaction not involving hoarding, or for gold coin or gold bullion for purposes specified in the Executive Order of April 5 1933, and not covered by the foregoing Articles of these regulations may make application to the Secretary of the Treasury for a license to purchase, or if such coin or bullion is already in his possession to retain such coin or bullion.⁴³

However, just the day before, on April 28, Acting Secretary of the Treasury Ballantine had established a precondition for all applicants: first, the gold had to be turned in. This precondition was, of course, couched in more legalistic terminology:

Until further notice the Secretary of the Treasury will grant no licenses for the acquisition of gold, gold coin, or bullion by persons making application for the same under the Executive order of April 5, 1933, for the purpose of meeting maturing obligations calling for payment in gold coin or bullion, within the United States or elsewhere, except where such applicants have surrendered gold coin, gold bullion, or gold certificates in obedience to the Executive order of April 5, 1933.⁴⁴

How to Impair the Obligation of Contracts and Get Away With It

The “proper transactions” and “maturing obligations calling for payment in gold” which the Treasury Department was coyly alluding to, involved what was known as “gold clause contracts.” These were agreements, quite common at the time, pursuant to which payment was to be made in gold. Needless to say, there were payments coming due in gold under these contracts every day all over America. Now that the government controlled the ownership of gold, how were these contracts to be performed?

Were the contract obligors to be the “applicants” in question? In theory, perhaps, but not in practice. Under the regulations of April 29, it seemed that one might obtain a license from the Treasury and thus legally possess gold required for the contract performance. But no matter what the regulations implied, Acting Secretary Ballantine had announced that no one would receive a license until he had first surrendered his gold.⁴⁵ Moreover, how could the Treasury grant licenses even to persons who did surrender their gold, in the face of official policy which sought to establish a virtual government monopoly on all the gold in America?

Accordingly, to solve this particular problem, the administration promptly prevailed on Congress to wipe out all obligations to pay in gold. The Joint Resolution of June 5, 1933 speaks for itself:

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in payment of debts.

Now, therefore, be it resolved that (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency or an amount in dollars of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.⁴⁶

In short, because of the alleged but unspecified “emergency,” all voluntary, private agreements to pay and to be paid in gold—past, present, and future—were declared against “public policy,” and gold was no longer a medium of exchange between private individuals.

An Embarrassing Slip-Up

Roosevelt’s next Executive Order on the subject of gold was necessitated by a critical error he had made in an earlier Order (the Executive Order of April 5, 1933),⁴⁷ which had been promulgated under the authority granted him in the *Emergency Banking Act* of March 9. While it was true that the Act had given Roosevelt broad powers, those powers existed *only* “[d]uring time of war or during any other period of national emergency *declared by the President . . .*”⁴⁸ However, despite the Administration’s apparent preoccupation with the alleged, but as yet unspecified,

“emergency,” when Roosevelt had issued his April 5 Executive Order, he forgot to declare that an emergency even existed!

Eventually, however, someone must have noticed the omission, because, on August 28, Roosevelt promulgated a new Executive Order which was, and is, one of the two main props of the gold prohibition:⁴⁹ it resurrected the fiction of a “national emergency,” (although once again the Order failed to mention what that emergency was): it revoked the earlier Executive Orders of April 5 and 20, 1933; and it tied together in one neat package everything that Roosevelt had done up to that time with regard to private ownership of gold. For example: section 3 required information returns to be filed by anyone owning or possessing gold; section 4 authorized the Secretary of the Treasury to grant licenses authorizing the acquisition of gold; section 5 prohibited ownership or possession of gold except under license and provided for the requisition of all privately held gold in America; and section 10 made willful violation of the Order “or of any license, order, rule, or regulation issued or prescribed” under the Order a criminal offense punishable by up to ten years in prison and/or up to a \$10,000 fine.⁵⁰

A Boston University law professor of the day eloquently summed up the dubious “accomplishments” of the New Deal’s gold manipulations:

March 6, 1933, began that complex sequence . . . of correlated proclamations, messages, declarations, resolutions, enactments, authorizations, embargoes, inhibitions, repeals, amendments, executive and departmental orders, regulations and requisitions, through which the President and Congress are dealing with the national emergency. The first great thing to be profoundly changed was the money of the people. Gold has been nationalized, that is, the national treasury has seized as its own all the privately treasured gold coins and bullion it could lay hands on, as well as the circulating certificates of gold deposits. Gold, the king of coinage, is a prisoner, locked up within bars of bullion and carefully guarded. No gold will be paid upon presentation and demand at the Treasury. No more gold coins are to be struck. A new felony has been created, merely having gold money, now termed hoarding and considered dishonest. A new legal tender dollar has been established. The dollar standard of the founders has been revalorized, that is, the actual value has been cut down, but the denominational and legal value for paying old debts remains; further inflation is indicated as quite certain to come: silver coinage and greenback issues are in the works, express provisions of statutes now inhibit the enforcement of otherwise legal obligations to pay in specie dollars or their equivalent in legal tender, the Statute of 1869 pledging the Nation’s faith always to pay national debts in standard gold is repealed and the pledges made under it repudiated: we’re off the gold standard; many think we’re off the ethic standard.⁵¹

As indeed we were. The New Deal had given birth to a new class of felons: individuals with the temerity to deny that the Government had a right to confiscate their gold.

The New Deal Takes a Rebel to Court

The first American who was indicted for the “crime” of owning gold, and who rebelled against the notion that he was a felon for doing so, was a lawyer named Frederick Barber Campbell. If the President thought that all of the various regulations, Executive and Congressional, were on solid legal ground, the *Campbell case*⁵² would soon prove him wrong.

In October of 1932 and January of 1933 Campbell had deposited twenty-seven bars of gold bullion with Chase National Bank for safekeeping. Chase had agreed in writing to act as bailee, for a fee, and return the bars to Campbell on demand. Then came the *Emergency Banking Act* of March 9, 1933 and the various decrees discussed above.

On September 13, 1933, Chase’s assistant cashier informed Campbell that, pursuant to regulations of the Secretary of the Treasury, the bank was obliged to file, in connection with Campbell’s gold, a return with the Government no later than September 18, and that Campbell himself was required to file such a return. The bank also called Campbell’s attention “to Section No.5 of the President’s Order, reciting that after thirty days from the date of the Order we shall be required to surrender [to the Government] any gold in our possession not covered by a license, as set forth in that Section.”⁵³

On September 16, two days before the final day to file returns, Campbell, in writing, demanded that Chase deliver the gold bars to him. On September 18, the bank declined, stating its belief that under the April 5, April 20, and August 28, 1933 Executive Orders it was prohibited from doing so. Less than two weeks later, on September 26, Campbell filed an equity complaint against Chase in the Southern District of New York for specific performance of the contract of bailment, and seeking an injunction *pendente lite* against delivery of his gold to anyone but him.

Two days later it was the Government’s turn. On September 28, the grand jury for the Southern District returned a one-count indictment against Campbell, charging him with failure to file the return due on or before September 18, 1933. The defendant demurred, alleging that the *Emergency Banking Act* was unconstitutional insofar as it purported to affect the private ownership of gold, and that Roosevelt’s executive action taken thereunder was thus without authority and invalid.

In response, on October 5 the grand jury filed a superseding indictment, this time containing two counts. The first, for failure to file, the second, for owning, without license, on September 28, 1933, and up to the time of the indictment, \$200,000.00 worth of gold bullion. Campbell again demurred on the same grounds, and, undeterred, on October 17 he sued the United States Attorney for the Southern District of New York in a civil action. In this action, Campbell sought an injunction to prevent his prosecution on the superseding indictment or any other indictment brought under the *Emergency Banking Act* and the regulations issued thereunder.

All of this litigation came before Judge Woolsey, who rendered his decision on November 16. First, he turned to the equity cases, because, he said, “their inherent infirmities enable them to be disposed of on grounds not involving the constitutional question raised herein.”⁵⁴ As to the bailment action against Chase, the court held there was no federal subject matter jurisdiction and dismissed Campbell’s complaint. As to Campbell’s action to enjoin the United States Attorney from prosecuting, Judge Woolsey dismissed it for lack of equity. Among his other reasons, he observed that “Campbell has raised the constitutional question here involved in the criminal case by his demurrers, and that question can be decided as well there”⁵⁵

Once these two issues were out of the way, the court turned to the constitutional question. Woolsey recognized that Campbell’s demurrer to the superseding indictment raised the following questions:

1. Did Congress have power under the *Constitution* to pass title I of the Act of March 9, 1933? [*i.e.*, the arrogation of power issue]
2. If Congress did have that power, did it exercise it in the proper manner by declaring a policy and delegating to the President, in section 2, and to the Secretary of the Treasury, in section 3, respectively, the power of making regulations under the said sections? [*i.e.*, the delegation issue, which led to formulation of the “emergency” rationale]
3. If the manner in which Congress exercised its power was constitutional, were the executive orders made by the President and the regulations pursuant thereto of the Secretary of the Treasury on which the prosecution of the defendant is founded, within the authority granted to the President by Congress in Section 2 of title I of the Act of March 9, 1933?
4. If the executive orders were within the authority given by Congress to the President, was that authority exercised in such a manner as not to violate any of the defendant’s constitutional rights?⁵⁶

Judge Woolsey answered the first question affirmatively. Because gold was a “commodity affected with a public interest as a potential source of currency or credit,” Congress could, “when it considers that the national exigency demands control of gold . . . control gold in such a manner and to such extent as it deems to be advisable, provided always that it does not violate the personal constitutional privileges of citizens.”⁵⁷ Thus, Congress was held to have the power to pass section 2 of the Act of March 9, 1933. As to section 3, authorizing the Secretary of the Treasury to requisition gold, the court, (after a lengthy discussion of eminent domain) held this to be “a valid exercise by Congress of a power necessarily incidental to its currency power.”⁵⁸

Campbell had argued that Congress, in the Act, did not itself legislate, but instead had improperly delegated to Roosevelt the power to legislate. Judge Woolsey disagreed because: “[T]his act meets all the requirements ‘of legislation by Congress on the subject matter involved, for it stated a policy, to be contingently followed, and also provided the plasticity necessary in the enforcement of that policy by the delegation of regulating power in the held covered by the policy.’”⁵⁹ Thus, the court upheld the Act’s delegation, to the President and Secretary of the Treasury, under sections 2 and 3, of Congressional regulatory and requisitioning powers over gold:

I, therefore, hold that the method by which Congress, both in section 2 and section 3 of title of the Act of March 9, 1933 chose to exercise the aspect of its currency power here under consideration was a proper legislative exercise of that power accompanied by a proper delegation to the executive as to the time and manner of the exercise thereof.⁶⁰

In considering Campbell's contention that Roosevelt's executive orders were not authorized by section 2 of the Act, the court first summarized the Act's rationale this way:

Congress has constituted two mandatories whose mandates are complementary, but mutually exclusive.

In section 2, the President is given the authority to require returns from hoarders of gold bullion, and to investigate, regulate, or prohibit the hoarding thereof.

In section 3, the Secretary of the Treasury has authority to requisition gold bullion owned by any person or corporation, and, on surrender thereof to the Treasury, to pay there for in a prescribed fashion.

Thus, if I may so express it, the President's mandate is to act in personam as to those who own, possess, or deal in gold bullion, and the Secretary of the Treasury is authorized to act in rem on the gold itself.⁶¹

As to the President's authority under section 2 of the Act to require the filing of returns (pursuant to section 3 of his August 28 Executive Order) Judge Woolsey found Roosevelt's authority "unimpeachable. The statute *is* explicit, and the executive order does not go outside the mandate of the statute."⁶²

A Resounding—But Incomplete—Victory for the Government

However, notwithstanding how much he had already validated, Judge Woolsey felt quite differently about the regulation made by section 5 of Roosevelt's August 28 Executive Order, which prohibited ownership or possession of gold after thirty days from the date of the Order.

I think it is clear that the persons who drafted that executive order for the President's signature went outside the Congressional mandate of section 2 of title I of the Act of March 9, 1933, which gave the President authority to investigate, regulate, or prohibit—under such rules and regulations as he might prescribe by means of licenses or otherwise—*inter alia* the hoarding of gold bullion.⁶³

The court thus recognized that authority to regulate or prohibit *hoarding* was not tantamount to authority to require, per section 5, that owners of gold yield up their interest therein and title thereto. "That requirement is neither a regulation nor a prohibition, but a requisition."⁶⁴ Despite this conclusion, Judge Woolsey was not striking a blow for the freedom of private gold ownership. On the contrary, he was reasoning in a manner entirely consistent with his basic premise that the government did indeed possess the power to prohibit private ownership of gold. For his objection

was not to the *principle* of confiscation, but to who was to do the confiscating and whether some compensation would be available to the victims.

It must always be remembered that the power to requisition gold bullion delegated by Congress was lodged only in the Secretary of the Treasury under section 3 of title I of the Act of March 9, 1933, and not in the President under section 2 thereof, and that the Secretary of the Treasury has not acted yet under the powers so given to him which I have above found to have been inherent in the currency power of Congress.⁶⁵

In other words, private gold could be confiscated, but by the Secretary of the Treasury, not by the President.

What also bothered Judge Woolsey was the quandary a gold owner was placed in if he surrendered his gold pursuant to section 5 at the behest of the President rather than the Secretary of the Treasury. Since the President was not authorized by Congress to requisition gold, presumably the Government would thus not have made any implied promise to pay compensation for it. On the other hand, if the owner refused to surrender his gold to the President, he faced up to ten years in jail and/or up to a \$10,000 fine. Judge Woolsey did not think it fair for a gold owner “[t]o lose his gold [without payment] if he complies and to be imprisoned and fined if he does not”⁶⁶ He concluded, therefore, that section 5 of the Executive Order of August 28, 1933 was confiscatory—not because the gold was taken, but because it was taken by one who was under no duty to give even paper money in return. The court concluded

that, by section 5 of the Executive Order of August 28, 1933, the President stepped outside of the zone of the mandate given to him by Congress in section 2 of the Act of March 9, 1933, to investigate, regulate, or prohibit the hoarding of gold bullion, and into the zone of his fellow mandatory, the Secretary of the Treasury, because he provided by section 5 of his said executive order for what is, in effect, the requisition of gold bullion either as incidental to a prohibition against the hoarding thereof or as a means of insuring the enforcement of such prohibition. Section 5 of the Executive Orders of August 28, 1933, is, therefore, invalid.⁶⁷

Campbell’s demurrer to the second count of the indictment was sustained and that count dismissed.

That left count one: Campbell’s failure to file the return. After deciding that the word “hoarding” was sufficiently definite for purposes of the indictment, and that Campbell’s right not to incriminate himself was not violated by his having to file a return, the court overruled the demurrer as to the first count.

The net result of *Campbell*, therefore, was to validate passage of the Act of March 9, 1933, by which Congress had arrogated a constitutionally nonexistent money power; to validate the congressional delegation of power to the President (which, in turn, led to Roosevelt’s “emergency rationale”); and to validate section 3 of his Order of August 28, 1933, requiring the filing of returns. Roosevelt’s requisition of gold

under the August 28, 1933 order, which, the court held, should have been made by the Secretary of the Treasury, was invalidated.⁶⁸

Acting to turn Judge Woolsey's decision into a total victory, on December 28, a month after the *Campbell* decision, Treasury Secretary Henry Morgenthau, Jr., issued an order requisitioning most private gold in America.⁶⁹ This requisition order was the final step in the government's ten-month effort to terminate private gold ownership in America.

The Gold Reserve Act: More Confiscation and Some Reassurance Regarding Past Actions

In his January 15, 1934 message to Congress, Roosevelt requested the enactment of additional gold legislation. Because, he said, "there remains . . . a very large weight in gold bullion and coins which is still in the possession or control of the Federal Reserve Banks," the President asked that "Congress by specific enactment . . . vest in the United States Government title to all supplies of American owned monetary gold."⁷⁰

Once again, as had happened with the *Emergency Banking Act* of March 9, 1933, the *Gold Reserve Act*⁷¹ was railroaded through Congress,⁷² though not without opposition:

Mr. McGUGIN. You, my Democratic friends who now are so anxious to rush this bill through, will sit here and vote blindly to ratify something you know nothing about. You may do so if you wish, but if you do, it is a confession on the part of Congress of its own inability to legislate intelligently. In the next place, ratifying all these orders is an utterly useless thing to do. The last one of these orders was issued pursuant to legislation in which we gave the President or Secretary of the Treasury wide authority in these matters.

If they exceeded their authority, full ratification at this time would not better the situation any. If they issued orders contrary to the *Constitution*, such ratification as we might make at this time would serve no purpose. All in the world there is to this section is that it is an effort to force Congress to pass a resolution, so to speak, blindly approving whatever the President and Secretary of the Treasury have done.

I voted last spring to give power to the Executive to meet the then emergency, but now, when Congress is called upon to ratify regulations when Congress does not know what regulations have been made, I refuse to go along. I insist that such procedure is not in keeping with parliamentary government.⁷³

However, despite such fears about Roosevelt and Morgenthau having exceeded their authority and perhaps having issued orders contrary to the *Constitution*, the *Gold Reserve Act* was approved on January 30, 1934. Three sections of the Act are of particular interest.

Section 2 summarily accomplished the take-over of the Federal Reserve gold:

[A]ll right, title, and interest and every claim of the Board of Governors of the Federal Reserve System, of every Federal Reserve Bank, and of every Federal Reserve Agent, in and to any and all gold coin and gold bullion shall pass to and be vested in the United States.⁷⁴

Section 4 provided for the forfeiture of any gold dealt with in a manner violative of the Act, and for a civil penalty of twice the value of the gold involved in the violation.

Section 13 brought out the old rubber stamp again, in a transparent attempt to put the congressional seal of approval on all of Roosevelt's past machinations:

All actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury, under the Act of March 9, 1933, or under section 43 or section 45 of title III of the Act of May 12, 1933⁷⁵ are hereby approved, ratified, and confirmed.⁷⁶

The *Gold Reserve Act* made the Government's gold monopoly complete. It also supplied Roosevelt with the sanction he thought he needed to legitimize his "emergency." But a question-unstated, yet lurking beneath the surface of the morass of gold regulations and prohibitions—was left unanswered. What would happen to the rights (and liabilities) of gold-starved Americans when the Roosevelt administration came to an end—and with it, the Roosevelt-declared emergency of 1933?

The Endless Emergency: New Hands at Old Tricks

It was during the administration of Roosevelt's former Vice President, Harry S. Truman, that North Korea attacked South Korea. The day was June 25, 1950; the event, presumably a military one, having nothing to do with such economic issues as banking, foreign exchange, or transactions in gold. The Korean hostilities did, however, prompt President Truman to issue, on December 16, 1950 a Proclamation declaring the existence of a "national emergency" because: "[R]ecent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict" ⁷⁷ That Truman was addressing himself to a *military* emergency could not have been clearer.

Presidents Eisenhower⁷⁸ and Kennedy⁷⁹ each confirmed the continued existence of the Truman-declared national emergency—an emergency prompted, they readily admitted, by the threat of international Communism.

An American named Harold G. Bauer not unreasonably came to the conclusion that the military emergencies of the Truman and Eisenhower administrations could not be equated with the alleged 1933 economic emergency of the Roosevelt administration. Bauer, therefore, felt free to acquire some gold bullion—an action which promptly got

him indicted. Convicted of the “crime” of possessing gold bullion, Bauer appealed to the United States Court of Appeals for the Ninth Circuit.⁸⁰

The court framed the issue succinctly: “[Bauer’s] acts were criminal if Executive Order No.6260 [of August 28,1933], as amended, was still in effect on . . . [February 12, 1954, the date of the alleged commission of the offense].”⁸¹

It was Bauer’s contention that since neither a war nor an economic emergency existed, Roosevelt’s Executive Order had long since died a natural death. The Government did not choose to meet this argument, contending, instead, that the court lacked the power to take judicial notice of whether Roosevelt’s economic emergency- or any other-had ceased to exist.⁸²

The circuit court was clearly sympathetic to Bauer’s argument:

It seems vital as a matter of national policy that emergency regulations and almost dictatorial powers granted or conceded in the turmoil of war, cold war, economic revolution, and the struggle to preserve a balanced democratic way of life, should be discarded upon return to normal conditions, lest we grow used to them as the fittings of ordinary existence. Executive regulations drafted and confirmed for an emergency should expire with the emergency. There will be time enough to revivify these if another emergency require and Congress be willing. Of course, if it seems essential to continue the subject matter of these criminal regulations now. Congress can so declare. But the power lies in Congress.⁸³

Nevertheless, because it was unwilling to conclude, as a matter of law, that no emergency existed which could justify the continued validity of the criminal sanctions of Executive Order No. 6260, and because, as an appellate court, it possessed “no jurisdiction or facilities for taking evidence,”⁸⁴ the court remanded to the trial court below, “with directions to consider the matters here presented, with power to vacate the judgment, grant a new trial and take evidence or any other action in the light of this opinion.”⁸⁵

Bauer raised the question of whether the Government, in its zeal to retain its gold monopoly, would continue to attack gold ownership on the grounds that the Roosevelt emergency had not expired. The question was answered in *United States v. Bridgell and Mitchell*.⁸⁶ The Government, which had indicted the defendants for possessing gold bullion, *this* time argued in the alternative: either the 1933 emergency still existed, or “new” and sufficient emergencies had been created by Presidents Truman, Eisenhower, and Kennedy—by virtue of such diverse developments as the Korean war, Communist imperialism, and/or a balance of payments deficit. In other words, owning gold would always be taboo, because the Government would never run out of pretexts for declaring the existence of some emergency or other—endlessly and ad infinitum.

The trial court in *Bridgell and Mitchell* did what the appellate court in *Bauer* had declined to do: it took judicial notice of the fact “that the 1933 economic emergency

ended long before 1962,”⁸⁷ and it noted, in passing, that Roosevelt’s order “has not even the color of legal validity stemming from Congressional delegation of war powers.”⁸⁸

Taking into account the Government’s endless emergency rationale, Judge Mathes observed:

The Government urges, however, that it should be given an opportunity to present evidence that a “national emergency”, sufficient to sustain the validity of Executive Order No. 6260, now exists by virtue of our present balance-of payments abroad deficit. This would be a futile procedure, since the President admittedly has not made the declaration which the statute requires.

Finally, the Government argues that a “national emergency” has been declared, both by President Eisenhower and by President Kennedy, which will sustain the validity of Executive Order No. 6260, and so the penal provisions of the statute. It is so pointed out that on December 1, 1960, President Eisenhower issued Executive Order No. 10896 [25 Fed. Reg. 12281 (1960)] proclaiming that, in light of the continued existence of the emergency declared in Proclamation No. 2914 [15 Fed. Reg. 9092 (1950)], Executive Order No. 6260 and the gold regulations issued thereunder “are hereby approved, ratified and affirmed and shall continue in full force and effect . . .”; also that on January 17, 1961, President Kennedy issued a similar Order (Executive Order No. 10905, 26 Fed. Reg. 321(1961)) which also made reference to Proclamation No. 2914.

It may well be, as the Government contends, that each of these Executive Orders, and more especially the latter, was directed primarily against the recent outflow of gold. But rather than declaring the existence of an economic emergency necessitating Executive Order No. 6260, each is based upon Proclamation No. 2914, which was President Truman’s declaration of a national emergency due to the Korean war and Communist imperialism.⁸⁹

Unable to restrain himself from pointing out the obvious, Judge Mathes noted:

The Korean hostilities have long since ended. And while Communist imperialism continues to pose a threat to the nation, the existence of that struggle—that “national emergency” [12 U.S.C. § 95a]—cannot serve to prolong until almost 30 years later “The Great Depression” of 1933.⁹⁰

Finally, Judge Mathes, exercising in magnificent fashion, his proper function as judicial guardian of the Constitution, held:

To hold that the existence of Communist imperialism authorizes the criminal provisions here in issue would be to condone the methods of the enemy. For if the President of the United States be permitted to create crimes by fiat and ukase without Constitutional authority or Congressional mandate, there is little to choose between their system and ours.

The years since the 1933 enactment of 12 U.S.C. § 95a have seen wholesale abdication of power by the Congress to the President. It is not the function of the

Judicial Department to sit in judgment upon the wisdom of that trend, but it is both the function and duty of the courts to hold the exercise of delegated Congressional powers strictly within the confines prescribed by the Congress. *A multo fortiori* so, where the Congress delegates to the Executive the power to make criminal what was theretofore lawful.⁹¹

The judicial tables had been turned on the Government. Its “endless emergency” rationale had been repudiated, its indictments dismissed, and,⁹² in the Southern District of California, for the moment at least, “The Great Depression of 1933” had officially ended.

If at First You Don’t Succeed

But the Government, undaunted, continued to ride herd on gold owners. After all, the *Bridle and Afitchell* decision was limited to a district court, and it was one judge’s opinion. There were other judges, other courts, other jurisdictions—and other rationales besides the “endless emergency.” In *United States v. One Solid Gold Object in Form of a Rooster*,⁹³ for example, the Government tried [albeit unsuccessfully] to confiscate a 206 troy ounce, eighteen karat gold rooster—the symbol of a Nevada casino’s “Golden Rooster Room”—on the ground that possession of it violated the *Gold Reserve Act*.

And in *Pike and Brouwer V. United States*,⁹⁴ the Government, finding itself once more in the Southern District of California (but not before Judge Mathes), once again trotted out the “endless emergency” rationale and succeeded in getting a conviction. On appeal, the Ninth Circuit (the same appellate court which had remanded the *Bauer* case), composed of judges different from those who had sat in *Bauer* eight years earlier, was unsympathetic to the plight of the convicted gold owners whose appeal it was considering. While the court (and, incidentally, the Government) conceded that Roosevelt’s 1933 “emergency” was indeed over, it nevertheless held that “[T]he power conferred upon the President by . . . [the *Emergency Banking Act*] was not confined to the 1933 banking crisis, but extends to *any* national emergency proclaimed by the President.”⁹⁵

Since Presidents Truman, Eisenhower, and Kennedy had proclaimed a continuing emergency because of the threat of international Communism, Executive Order No. 6260 was still viable and, accordingly, the convictions were affirmed.

It is interesting to note that while in *Pike and Brouwer* the Ninth Circuit expressly disavowed the holding in *Bridle and Mitchell*, (a district court under its jurisdiction), it lacked the courage expressly to disavow its own dictum in *Bauer*, wherein it had stated:

Executive regulations drafted and confirmed for an emergency should expire with the emergency. There will be time enough to revivify these if another emergency require and Congress be willing. Of course, if it seems essential to continue the

subject matter of these criminal regulations now, Congress can so declare. But the power lies in Congress.⁹⁶

The Law Today

The precedent established in *Pike and Brouwer* remains the law of the land—at least in the Ninth Circuit—at the present time. No other court of comparable jurisdiction has ruled otherwise on the validity of the criminal sanctions against Americans who own gold. As things stand now, an American who owns gold is courting a felony conviction. Moreover, under the *Gold Reserve Act*, all the gold he owns is subject to forfeit while he, himself, is subject to a penalty double in amount to the value of the gold.

The Supreme Court of the United States has yet to rule on the twin issues of congressional arrogation of a money power, as it relates to the regulation of gold, and congressional delegation of that power to the President.⁹⁷ In other words, the Supreme Court has never ruled on whether Americans can be prohibited from owning gold.

If and when the High Court is given an opportunity to do so, it is to be hoped that the Court will recognize (as most lower courts have not) the danger of permitting the Government (Congress or the President) to prohibit Americans from owning gold. In the words of monetary economist Charles Rist: “It is certain that *nothing so facilitates the seizure of all activities by the government as its liberty of action in monetary matters.*”⁹⁸

And if the Court were to wonder why the government has struggled, so long and so deviously, to establish and hold onto its gold monopoly, economist Rist has revealed the Government’s real motive. Referring to those “partisans of paper money [who] have disorganized the entire price system by deprecating paper” and then proclaimed “the capacity of governments to direct money and insure its stability,” Rist observes that

In reality, those theoreticians dislike monetary stability, because they dislike the fact that by means of money the individual may escape the arbitrariness of the government If the partisans of paper money really desire[d] monetary stability, they would not oppose so vehemently the reintroduction of the only system that has ever insured it, which is *the system of the gold standard.*⁹⁹

Appendix I

Executive Order

RELATING TO THE HOARDING, EXPORT, AND EARMARKING OF GOLD COIN, BULLION, OR CURRENCY AND TO TRANSACTIONS IN FOREIGN EXCHANGE

By virtue of the authority vested in me by section 5(b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933, entitled “An act to provide relief in the existing national emergency in banking and for other purposes”, I, FRANKLIN D. ROOSEVELT, PRESIDENT

of the UNITED STATES OF AMERICA, do declare that a period of national emergency exists, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following provisions for the investigation and regulation of the hoarding, earmarking, and export of gold coin, gold bullion, and gold certificates by any person within the United States or any place subject to the jurisdiction thereof, and for the investigation and regulation of transactions in foreign exchange and transfers of credit and the export or withdrawal of currency from the United States or any place subject to the jurisdiction thereof by any person within the United States or any place subject to the jurisdiction thereof.

SEC. 2. DFFINITION5.-As used in this order the term “person” means an individual, partnership, association, or corporation, and the “term United States” means the United States and any place subject to the jurisdiction thereof.

SEC. 3. RETURNS.-Within 15 days from the date of this order every person in possession of and every person owning gold coin, gold bullion, or gold certificates shall make under oath and file as hereinafter provided a return to the Secretary of the Treasury containing true and complete information relative thereto, including the name and address of the person making the return, the kind and amount of such coin, bullion, or certificates held and the location thereof, if held for another, the capacity in which held and the person for whom held, together with the post-omce address of such person,’ and the nature of the transaction requiring the holding of such coin, bullion, or certificates and a statement explaining why such transaction cannot be carried out by the use of currency other than gold certificates,’ provided that no returns are required to be filed with respect to:

- (a) Gold coin, gold bullion, and gold certificates in an amount not exceeding in the aggregate \$100 belonging to any one person.;
- (b) Gold coin having a recognized special value to collectors of rare and unusual coin;
- (c) Gold coin, gold bullion, and gold certificates acquired or held under a license heretofore granted by or under authority of the Secretary of the Treasury; and,
- (d) Gold coin, gold bullion, and gold certificates owned by Federal Reserve banks.

Such return required to be made by an individual shall be filed with the collector of internal revenue for the collection district in which such individual resides, or, if such individual has no legal residence in the United States, then with the collector of internal revenue at Baltimore, Md. Such return required to be made by a partnership, association, or corporation shall be filed with the collector of internal revenue of the collection district in which is located the principal place of business or principal office or agency of such partnership, association, or corporation, or, if it has no principal place of business or principal office or agency in the United States, then with the collector of internal revenue at Baltimore, Md. Such return required to be made by an individual residing in Alaska shall be filed with the collector of internal revenue at Seattle, Wash. Such return required to be made by a partnership, association, or corporation having its principal place of business or principal office or agency in Alaska shall be filed with the collector of internal revenue at Seattle, Wash.

The Secretary of the Treasury may grant a reasonable extension of time for filing a return, under such rules and regulations as he shall prescribe. No such extension shall be for more than 45 days from the date of this Executive order. An extension granted hereunder shall be deemed a license to hold for a period ending 15 days after the expiration of the extension.

The returns required to be made and filed under this section shall constitute public records; but they shall be open to public inspection only upon order of the President and under rules and regulations prescribed by the Secretary of the Treasury.

A return made and filed in accordance with this section by the owner of the gold coin, gold bullion, and gold certificates described therein, or his duly authorized agent, shall be deemed an application for the issuance under section 5 hereof of a license to hold such coin, bullion, and certificates.

SEC. 4, ACQUISITION OF GOLD COIN AND GOLD BULLION.- No person other than a Federal Reserve bank shall after the date of this order acquire in the United States any gold coin, gold bullion, or gold certificates except under license therefor issued pursuant to this Executive order, provided that member banks of the Federal Reserve System may accept delivery of such coin, bullion, and certificates for surrender promptly to a Federal Reserve bank, and provided further that persons requiring gold for use in the industry, profession, or art in which they are regularly engaged may replenish their stocks of gold up to an aggregate amount of \$100, by acquisitions of gold bullion held under licenses issued under section 5(b), without necessity of obtaining a license for such acquisitions.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the acquisition of:

(a) Gold coin or gold bullion which the Secretary is satisfied is required for a necessary and lawful transaction for which currency other than gold certificates cannot be used, by an applicant who establishes that since March 9, 1933, he has surrendered an equal amount of gold coin, gold bullion, or gold certificates to a banking institution in the continental United States or to the Treasurer of the United States;

(b) Gold coin or gold bullion which the Secretary is satisfied is required by an applicant who holds a license to export such an amount of gold coin or gold bullion issued under subdivisions (c) or (d) of section 6 hereof; and,

(c) Gold bullion which the Secretary, or such agency as he may designate, is satisfied is required for legitimate and customary use in industry, profession, or art by an applicant regularly engaged in such industry, profession, or art, or in the business of furnishing gold therefor.

Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder,

SEC. 5, HOLDING OF GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES,-After 30 days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive order; provided, however, that licenses shall not be required in order to hold in possession or retain an interest in gold coin, gold bullion or gold certificates with respect to which a return need not be filed under section 3 hereof.

The Secretary of the Treasury, subject to such further regulations as he may prescribe, shall issue licenses authorizing the holding of-

(a) Gold coin, gold bullion, and gold certificates, which the Secretary is satisfied are required by the person owning the same for necessary and lawful transactions for which currency, other than gold certificates, cannot be used,'

(b) Gold bullion which the Secretary, or such agency as he may designate is satisfied is required for legitimate and customary use in industry, profession, or art by a person regularly engaged in such industry, profession, or art or in the business of furnishing gold therefor;

(c) Gold coin and gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government or foreign central bank or the Bank for International Settlements', and

(d) Gold coin and gold bullion imported for reexport or held pending action upon application for export licenses,

SEC. 6. EARMARKING AND EXPORT OF GOLD COIN AND GOLD BULLION,-After the date of this order no person shall earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this order.

The Secretary of the Treasury, in his discretion 3rd subject to such regulations as he may prescribe, may issue licenses authorizing-

(a) The export of gold coin or gold bullion earmarked or held in trust since before April 20, 1933, for a recognized foreign government, foreign central bank, or the Bank for International Settlements;

(b) The export of gold, (i) imported for reexport, (ii) refined from gold-bearing materials imported by the applicant under an agreement to export gold, or (iii) in bullion containing not more than 5 ounces of gold per ton,'

(c) The export of gold coin or gold bullion to the extent actually required for the fulfillment of a contract entered into by the applicant prior to April 20, 1933,' but not in excess of the amount of the gold coin, gold bullion, and gold certificates surrendered by the applicant on or after March 9, 1933, to a banking institution in the continental United States or to the Treasurer of the United States,' and

(d) The earmarking for foreign account and/or export of gold coin or gold bullion, with the approval of the President, for transactions which the Secretary of the Treasury may deem necessary to promote the public interest.

SEC. 7, UNITED STATES POSSESSIONS-SHIPMENTS THERETO.-The provisions of sections 3 and 5 of this order shall not apply to gold coin, gold bullion, or gold certificates which is situated in the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States, and is owned by a person not domiciled in the continental United States. The provisions of section 4 shall not apply to acquisitions by persons within the Philippine Islands, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, or the Virgin Islands of the United States of gold coin or gold bullion which has not been taken or sent thereto since April 5, 1933, from the continental United States or any place subject to the jurisdiction thereof,

SEC. 8. Until further order, the Secretary of the Treasury is authorized, through any agency that he may designate, to investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit from any banking institution within the United States to any foreign branch or office of such banking institution or to any foreign bank or banker, and the export or withdrawal of currency from the United States, by any person within the United States; and the Secretary of the Treasury may require any person engaged in any transaction referred to herein to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction is completed.

SEC. 9. The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order. Such regulations may provide for the detention in the United States of any gold coin, gold bullion, or gold certificates sought to be transported beyond the limits of the continental United States, pending an investigation to determine if such coin, bullion, or certificates are held or are to be acquired in violation of the provisions of this Executive order. Licenses and permits granted in accordance with the provisions of this order and the regulations prescribed hereunder, may be issued through such officers or agencies as the Secretary may designate.

SEC. 10. Whoever willfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SEC. 11. The Executive orders of April 5, 1933, forbidding the hoarding of gold coin, gold bullion, and gold certificates, and April 20, 1933, relating to foreign exchange and the earmarking and export of gold coin or bullion or currency, respectively, are hereby revoked. The revocation of such prior Executive orders shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal cause prior to said revocation, but all liabilities under said Executive orders shall continue and may be enforced in the same manner as if said revocation had not been made. This Executive order and any regulations or licenses issued hereunder may be modified or revoked at any time.

Appendix II

Chronology of Major Actions with Respect to Gold Ownership from October 6, 1917 to July 20, 1962.

1. October 6, 1917: Enactment of Trading with the Enemy Act; President receives power to regulate and/or prohibit transactions in gold.
2. September 24, 1918: Amendment of Trading with the Enemy Act: President receives power to prohibit hoarding of gold.
3. March 5, 1933: Presidential Proclamation No. 2038; convenes Congress on March 9, 1933.
4. March 6, 1933: Presidential Proclamation No. 2039; bank holiday declared until March 9, 1933.

5. March 9, 1933: Presidential message to Congress (H.R. Doc. No. I); requests passage of H.R. 1491, emergency banking legislation.
6. March 9, 1933: Enactment of Emergency Banking Act; approves bank holiday; delegates to President power to regulate and/or prohibit transactions in gold in time of war. or during any other national emergency declared by him; delegates to Secretary of the Treasury power to requisition gold.
7. March 9, 1933: Presidential Proclamation No. 2040; continues bank holiday.
8. March 10, 1933: Presidential Executive Order No. 6073; authorizes Secretary of the Treasury to decide which banks can reopen; prohibits export of gold, except as allowed by Secretary of the Treasury.
9. March 18, 1933: Presidential Executive Order No. 6080; authorizes appointment of bank conservators, if necessary to protect bank assets.
10. April 5, 1933: Presidential Executive Order No. 6102; owners of gold required to turn it over to the Government in exchange for paper currency.
11. April 19, 1933: Secretary of the Treasury advises that until further notice no licenses will be granted for export of gold.
12. April 20, 1933: Presidential Executive Order No. 6111; prohibits earmarking for foreign account and the export of gold coin, gold bullion, or gold certificates, but authorizes Secretary of the Treasury to issue licenses permitting such export under certain conditions.
13. April 29, 1933: Secretary of the Treasury issues regulations; persons needing gold for proper transactions not involving hoarding can apply for licenses; day before Acting Secretary of the Treasury announced no such licenses would be granted unless applicant had first surrendered his gold.
14. June 5, 1933: Joint Resolution of Congress declares gold clause contracts violate public policy and thus are void; action later upheld by Supreme Court in *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240 (1935).
15. August 28, 1933: Presidential Executive Order No. 6260; declares national emergency, revokes Executive Orders of April 5 and 20, 1933; requires filing of information returns; with certain minor exceptions, requires delivery of all domestically held private gold to Federal Reserve Banks; authorizes Secretary of the Treasury to license acquisition of gold; imposes stiff criminal penalties for violation of government gold policies.
16. August 29, 1933: Presidential Executive Order No. 6261; forces domestic gold producers to sell their output to Secretary of the Treasury, at price to be set by latter, for resale to those with gold licenses and/or foreign purchasers.
17. September 12, 1933: Secretary of the Treasury issues comprehensive regulations under Executive Orders of August 28 and 29, 1933.

18. October 25, 1933: Presidential Executive Order No, 6359: amends (in minor way) and revokes, respectively, Executive orders of August 28 and 29, 1933: Treasury Department, to conform amends its regulations of September 12, 1933 accordingly.
19. November 16, 1933: United States District Court in New York upholds passage of Emergency Banking Act of March 9, 1933, its delegation of power to the President, and Section 3 of his Executive Order of August 28, 1933 requiring returns to be filed: invalidated is Roosevelt's requisition of gold under the August 28, 1933 Executive Order, which the court holds should have been made by the Secretary of the Treasury. *Campbell v. Chase Nat'l Bank*, 5 F. Supp. 156 (S.D.N.Y. 1933).
20. December 28, 1933: Secretary of the Treasury promulgates order requisitioning gold, setting deadline of midnight on January 1, 1934.
21. January 11, 1934: Secretary of the Treasury amends in minor respect a rare coin exception made in his December 28, 1933 order.
22. January 12, 1934: Presidential Executive Order No, 6556: amends in minor respect the Executive Order of August 28, 1933.
23. January 15, 1934: Presidential Executive Order No. 6560: makes minor changes regarding transactions in foreign exchange, transfers of credit, and the export of coins and currency.
24. January 15, 1934: Secretary of the Treasury directs mints and assay offices to receive gold newly mined in the United States on consignment for the Federal Reserve Bank of New York: also supplements his order of December 28, 1933 by extending until midnight on January 17, 1934, the deadline for the surrender of gold in compliance with his order of December 28, 1933.
25. January 15, 1934: Presidential message to Congress: requests passage of additional gold legislation, vesting in the Government possession and title to all monetary gold in America.
26. January 17, 1934: Secretary of the Treasury instructs the Treasurer, mints, assay offices, and fiscal agents of the United States regarding gold not delivered to the Government before the midnight deadline.
27. January 17, 1934: Senate Banking and Currency Committee makes public the opinion of Attorney General Homer Cummings to the effect that the proposed new gold legislation is constitutional.
28. January 30, 1934: *Gold Reserve Act* approved: transfers to Government all gold of Federal Reserve System: gold coin ordered withdrawn from circulation and formed into bars: gold in any form to be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account only to the extent allowed by Treasury regulations issued under Act: Secretary of the Treasury issues provisional regulations.
29. January 31, 1934: Provisional Treasury regulations amended with regard to purchase and sale of gold by United States mints: also in regard to collectors of rare coins.
30. July 20, 1962: by Executive Order No. 11037, President John F. Kennedy prohibits Americans from owning gold outside the continental limits of the United States.

Footnotes

* Assistant Professor of Law, Brooklyn Law School; B.A., J.D., New York University.

The author wishes to thank Erika Holzer, of the New York Bar, for her exceptional contribution to this article.

The author also wishes to thank Harriet N. Cohen and William T. Schiffman, members of the Brooklyn Law Review, whose research assistance was invaluable in the article's preparation.

1 I. FLEMING. GOLDFINGER (1960).

2 Rist, *The Price of Gold in the United States*, L'OPINION, Feb. 15, 1951, at 138, reprinted as C. RIST, *THE TRIUMPH OF GOLD* (1961).

3 *Barron's*, May 31, 1971, at 9 reported that the value of certain gold coins had increased substantially over the prior three years. For example, in May, 1968, the U.S. "Double Eagle" had been selling at a premium of about 45% over the actual gold content of the coin, the official rate then being \$35.00 per ounce. In May, 1971, the premium was 69%. In May, 1968, the German Mark piece had been selling at a 75% premium; in May, 1971, the premium was 175%. As to gold bullion, *U.S. News & World Report*, Sept. 25, 1972, at 68 stated that although the official government price of gold was pegged at \$38 per ounce, the "free-market price in Europe recently has been nearer \$65 or \$70."

4 See notes 49 and 71 *infra*. In addition, according to Thomas W. Wolfe, Director of the Office of Domestic Gold and Silver Operations, the Treasury Department has "determined that the purchase of a gold futures contract is the same as a purchase of gold itself.... It would certainly be an illegal activity for the 99.9% of us who have no Government authorization to deal in gold." *TIME*, Sept. 18, 1972, at 90.

5 Act of Oct. 6, 1917, ch. 106, § 3, 40 Stat. 411, 413.

6 *Id.* Another purpose of the Act was to authorize seizure of alien property in the United States.

7 *Id.* § 5(b), 40 Stat. 411, 415. Section 5(a), in effect, gave the President absolute discretion to apply, or not to apply, the Act, as he saw fit. Section 5(b) provided:

That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including

the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

8 *Id*

9 *Id.* § 16,40 Stat. 411,425.

10 The only “money powers possessed by Congress are “[t]o borrow money on the credit of the United States” and “[t]o coin money [and] regulate the value thereof.” U.S. CONST. art. I, § 8.

11 Act of Sept. 24,1918, ch. 176, § 5, 40 Stat. 965, 966.

12 *Id.* (emphasis added).

There was no domestic gold problem during the war and regulations were directed solely to its use in foreign trade. By proclamation, 40 Stat. 1694(1917), and executive order of September 7, 1917, President Wilson transferred to the Federal Reserve Board, subject to the approval of the Secretary of the Treasury, the administration of certain regulations prescribed in the proclamation under the Espionage Act regarding the exportation of coin, bullion, and currency. These functions were exercised by a committee of three, known as the Gold Export Committee. Under § 5(b) of the Trading With the Enemy Act by executive order of October 12, 1917, the authority given was delegated to the Secretary of the Treasury who issued an order on November 23 [19 1 7] prescribing certain administrative procedure and designating the Federal Reserve Board as the agent to carry out its administration. An executive order of the President followed on January 26, 1918, giving the regulations in more detail. The proceedings under the Act dealt solely with foreign exchange and the transfer of funds abroad. The executive order of January 26 [1918] refers almost exclusively to exports with the exception of the following provision: “No gold or silver coin or bullion, or currency shall be set aside and earmarked for safekeeping for any person without the written approval of the Federal Reserve Board.”

The Presidential proclamation revoking all restrictions except as to Russia is dated June 26, 1919, and appears in 41 Stat. 1760.

All relevant data on these operations appear in REP. SECY OF TREASURY 39AO (1918); *id.* (1919)15; 3 FED. RES. BULL. 860(1917); 4 *id.* at 81(1918); 4 REP. FED.RES. BD.21, 183(1917); 5 *id.* at 35,260(1918); 6 *id.* at 50(1919).

Hanna, *Currency Control and Private Property*, 33 COLUM. L. REv. 617, 619 n.3 (1933).

13 Proclamation No.2038, 48 Stat. 1689 (1933).

Whereas public interests require that the Congress of the United States should be convened in extra session at twelve o'clock, noon, on the Ninth day of March, 1933, to receive such communication as may be made by the Executive.

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United Sates to convene in extra session at the Capitol in the

City of Washington on the Ninth day of March, 1933, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

14 *Id.*

15 *Id.* The Proclamation provided:

Whereas there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

Whereas continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

Whereas these conditions have created a national emergency; and

Whereas it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

Whereas it is provided in Section 5(b) of the Act of October 6, 1917, (40 Stat. L.41 I) as amended, "That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency ***"; and

Whereas it is provided in Section 16 of the said Act "that whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; * **"

Now, THEREFORE, I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the sixth day of March, to Thursday, the ninth day of March, Nineteen Hundred and Thirty Three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.

As used in this order the term "banking institutions" shall include all Federal Reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

By separate orders of March 6, 1933, signed by the President and the Secretary of the Treasury, the Treasurer of the United States and the Director of the Mint were instructed to make payments in gold in any form during the continuance of the bank holiday only under licenses issued by the Secretary of the Treasury. Annual Report of the Secretary of the Treasury on the State of the Finances for the Fiscal Year ended June 30, 1934, Treasury Department Document No. 3065 at 201 (1935) [hereinafter cited as Annual Report].

16 Article II, section 2, clause 1 of the Constitution mandates that "the President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States . . . Roosevelt's conception of his powers as Commander in Chief in wartime, particularly in matters touching the nation's economic structure, was spelled out nearly a decade after the bank holiday, in his message to Congress of September 7, 1942, in which he demanded that the legislature forthwith repeal certain provisions of the Emergency Price Control Act of January 30, 1942, ch. 26, § I, 56 Stat. 23:

I ask the Congress to take this action by the first of October. Inaction on your part by that date will leave me with an inescapable responsibility to the people of this country to see to it that the war effort is no longer imperiled by threat of economic chaos.

In the event that the Congress should fail to act, and act adequately, I shall accept the responsibility, and I will act.

At the same time that farm prices are stabilized, wages can and will be stabilized also. This I will do.

The President has the powers, under the Constitution and under Congressional acts, to take measures necessary to avert a disaster which would interfere with the winning of the war.

I have given the most thoughtful consideration to meeting this issue without further reference to the Congress. I have determined, however, on this vital matter to consult with the Congress.

.....

The American people can be sure that I will use my powers with a full sense of my responsibility to the Constitution and to my country. The American people can also be sure that I shall not hesitate to use every power vested in me to accomplish the defeat of our enemies in any part of the world where our own safety demands such defeat.

When the war is won, the powers under which I act automatically revert to the people-to whom they belong.

88 CONG. REC. 7042, 7044 (1942).

Surely, if this was Roosevelt's conception of his war powers, he could have adverted to those powers in his March 6, 1933 Proclamation. Perhaps it never occurred to him, or perhaps he found the concept of an 'emergency' more convenient for his purposes.

17 Later designated as H.R. 1491. The bill's destiny was preordained. The night before, Roosevelt had assembled at the White House

the leading representatives of both political parties in both Houses of Congress. With one voice they all agreed, almost if not quite without qualification, in saying that they would unite to enact this legislation before midnight [on March 9, 1933] and that if there might be discovered in it any defects, they should be remedied later.

77 CONG. REC. 58 (1933) (remarks of Senator Glass).

18 77 CONG. REC. 67-75 (1933).

19 *Id.* at 75, which reads as follows:

To the Senate and House of Representatives:

On March 3 banking operations in the United States ceased. To review at this time the causes of this failure of our banking system is unnecessary. Suffice it to say that the Government has been compelled to step in for the protection of depositors and the business of the Nation.

Our first task is to reopen all sound banks. This is an essential preliminary to subsequent legislation directed against speculation with the funds of depositors and other violations of positions of trust.

In order that the first objective-the opening of banks for the resumption of business-may be accomplished, I ask of the Congress the immediate enactment of legislation giving to the executive branch of the Government control over banks for the protection of depositors; authority forthwith to open such banks as have already been ascertained to be in sound condition, and other such banks, as rapidly as possible; and authority to reorganize and reopen such banks as may be found to require reorganization to put them on a sound basis.

I ask amendments to the Federal Reserve Act to provide for such additional currency, adequately secured, as it may become necessary to issue to meet all demands for currency and at the same time to achieve this end without increasing the unsecured indebtedness of the Government of the United States.

I cannot too strongly urge upon the Congress the clear necessity for immediate action. A continuation of the strangulation of banking facilities is unthinkable. The passage of the proposed legislation will end this condition and, I trust, within a short space of time will result in a resumption of business activities.

In addition, it is my belief that this legislation will not only lift immediately all unwarranted doubts and suspicions in regard to banks which are 100 percent sound but will also mark the beginning of a new relationship between the banks and the people of this country.

The Members of the new Congress will realize, I am confident, the grave responsibility which lies upon me and upon them.

In the short space of 5 days it is impossible for us to formulate completed measures to prevent the recurrence of the evils of the past. This does not and should not, however, justify any delay in accomplishing this first step.

At an early moment I shall request of the Congress two other measures which I regard as of immediate urgency. With action taken thereon we can proceed to the consideration of a rounded program of national restoration.

FRANKLIN D. ROOSEVELT.

THE WHITE ROUSE, *March 9, 1933.*

20 77 CONG. REC. 76 (1933).

21 *Id.*

22 The record does not indicate whether or not Congressman Snell had seen a copy of the proposed bill.

23 77 CONG. REC. 76 (1933).

24 *Id.*

25 *Id.* at 81. The following are some of the typical comments made on the House floor in support of the bill:

Mr. STEAGALL.

My friends, if you ask me if this is going to cure the situation in the United States, I do not say that it will cure all of our ills. If you ask me if this is what I would do in the existing emergency, I answer you that it is not all I would do. It is not all that is going to be done. [Applause.]

This is simply one step. We are building upon wreck and ruin. It has taken 50 years to develop the great financial system of the United States which is now prostrate and in ruins. We cannot rebuild it in a day, we cannot rebuild it in 3 days. We cannot rebuild it tomorrow or next week, We can only do it step by step.

Heaven is not reached at a single bound;

But we build the ladder by which we rise

From the lowly earth to the vaulted skies

And we mount to its summit round by round.

The step we take leads upward toward the light. We shall take this step today; we shall take another step tomorrow and then another and another.

The people have summoned to their service a leader whose face is lifted toward the skies. [Applause.] We follow that leadership today, and we shall follow that leadership until we stand again in the glorious sunlight of prosperity and happiness in this Republic [Applause.]

77 CONG. REC. 79 (1933).

Mr. LUCE. It is, of course, out of the question, Mr. Speaker, that any man can grasp the full meaning of that bill by listening to its reading, having had no intimation whatever beforehand of what it contains.

I, too, desire to help the administration meet this crisis. Whenever it may be necessary I will waive all opportunities of discussion.

Perhaps it was necessary in this instance to keep us on the minority side who have some acquaintance with this subject in the dark until the bill was produced. I will not intimate that there was intentional refraining from consultation with Members of this House who now for many years have lived with these questions and who ought to know something about them. The majority leaders have brought us a bill on which I myself am unable to advise my colleagues, except to say that this is a case where judgment must be waived, where argument must be silenced, where we should take matters without criticism lest we may do harm by delay.
[Applause.]

77 CONG. REC. 79 (1933).

Mr. McFADDEN. Mr. Speaker, I regret that the membership of the House has had no opportunity to consider or even read this bill. The first opportunity I had to know what this legislation is was when it was read from the Clerk's desk. It is an important banking bill. It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States.

77 CONG. REC. 80 (1933).

Mr. SMITH of Washington. Mr. Speaker, ladies and gentlemen of the House, I shall vote for this measure, although I should like to have had an opportunity to study and consider its provisions. It has not been possible to do this owing to the fact that the bill has merely been read to us by the Clerk this afternoon on the opening day of this special session, without our being furnished copies thereof, and the bill not being subject to amendment and only 40 minutes allowed for debate. This is a most extraordinary situation.

However, we are advised by President Roosevelt in his message which has just been read that the immediate passage of this legislation is absolutely necessary in order to reopen the banks in the Nation and provide them with additional and adequate currency. We are further informed by our distinguished majority leader [M R. BYRNS] that the Senate is now awaiting the action of the House on this particular bill, and that in order to reopen the banks of the country on tomorrow it must be enacted into law today. I shall, therefore, vote for the bill, Mr. Speaker, because of these assurances of our great President and our able leaders in this body.

77 CONG. REC. 82 (1933).

26 77 CONG. REC. 83 (1933) (emphasis added).

27 *Id.* at 50-67. What debate there was, centered around the meaning of the proposed enactment.

28 77 CONG. REC. 67 (1933).

29 The Emergency Banking Act of March 9, 1933, ch. I, § 1, 48 Stat. 1.

The Federal Reserve Board on March 8 [had] directed the Federal Reserve banks to forward as soon as possible after March 13 lists of all those who had withdrawn gold since February 1 and had not redeposited it before March 13. On March 9, this direction was extended to cover gold certificates. The dates for these final lists were moved forward first to March 17 [1933] and then to March 27 [1933].

Hanna, *Currency Control and Private Property*, 33 *COLLM.L. REV.* 617, 619 (1933).

30 Section 106 of the Act “approved and confirmed” the bank holiday. The Emergency Banking Act of March 9, 1933, ch. 1, § 1, 48 Stat. 1.

31 *Id.* § 2, 48 Stat. I (emphasis added).

32 *Id.* § 1, 48 Stat. I, now Federal Reserve Act, 12 U.S.C. § 221 *et seq.* (1970).

(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall

pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise.

33 *See* note 15 *supra*.

34 Proclamation No.2040, 48 Stat. 1691(1933).

35 Exec. Order No.6073(1933), codified in31 C.F.R. § 120.3(1972), provides in part as follows:

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding, nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

Every Federal Reserve Bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

On March 18, 1933, the President issued Executive Order No.6080 providing for the appointment of a conservator for the assets of any unopened bank if such appointment was necessary to preserve the bank's assets. Annual Report at 197.

36 Exec. Order No.6073 (1933), codified in 31 C.F.R. § 120.3(1972).

37 Exec. Order No.6102 (1933).

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to provide relief in the existing national emergency in banking, and for other purposes", in which amendatory Act Congress declared that a serious emergency exists, I, Franklin D. Roosevelt, President of the United States of America, do declare that said national emergency still continues to exist and pursuant to said section do hereby prohibit the hoarding of gold coin, gold bullion, and gold certificates within the continental United States by individuals, partnerships, associations and corporations and hereby prescribe the following regulations for carrying out the purposes of this order:

Section 1. For the purposes of this regulation, the term “hoarding” means the withdrawal and withholding of gold coin, gold bullion or gold certificates from the recognized and customary channels of trade. The term “person” means any individual, partnership, association or corporation.

Section 2. All persons are hereby required to deliver on or before May 1, 1933, to a Federal reserve bank or a branch or agency therefor to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before April 28, 1933, except the following:

(a) Such amount of gold as may be required for legitimate and customary use in industry, profession or art within a reasonable time, including gold prior to refining and stocks of gold in reasonable amounts for the usual trade requirements of owners mining and refining such gold.

(b) Gold coin and gold certificates in an amount not exceeding in the aggregate \$100.00 belonging to any one person; and gold coins having a recognized special value to collectors of rare and unusual coins.

(c) Gold coin and bullion earmarked or held in trust for a recognized foreign government or foreign central bank or the Bank for International Settlements.

(d) Gold coin and bullion licensed for other proper transactions (not involving hoarding) including gold coin and bullion imported for reexport or held pending action on applications for export licenses.

Section 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after April 28, 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2; unless such gold coin, gold bullion or gold certificates are held for any of the purposes specified in paragraphs (a), (b) or (c) of Section 2; or unless such gold coin or gold bullion is held for purposes specified in paragraph (d) of Section 2 and the person holding it is, with respect to such gold coin or bullion, a licensee or applicant for license pending action thereon.

Section 4. Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal reserve bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.

Section 5. Member banks shall deliver all gold coin, gold bullion and gold certificates owned or received by them (other than as exempted under the provisions of Section 2) to the Federal reserve banks of their respective districts and receive credit or payment therefor.

Section 6. The Secretary of the Treasury, out of the sum made available to the President by Section 501 of the Act of March 9, 1933, will in all proper cases pay the reasonable costs of transportation of gold coin, gold bullion or gold certificates delivered to a member bank or Federal reserve bank in

accordance with Sections 2, 3, or 5 hereof, including the cost of insurance, protection, and such other incidental costs as may be necessary, upon production of satisfactory evidence of such costs. Voucher forms for this purpose may be procured from Federal reserve banks.

Section 7. In cases where the delivery of gold coin, gold bullion or gold certificates by the owners thereof within the time set forth above will involve extraordinary hardship or difficulty, the Secretary of the Treasury may, in his discretion, extend the time within which such delivery must be made. Applications for such extensions must be made in writing under oath, addressed to the Secretary of the Treasury and filed with a Federal reserve bank. Each application must state the date to which the extension is desired, the amount and location of the gold coin, gold bullion and gold certificates in respect of which such application is made and the facts showing extension to be necessary to avoid extraordinary hardship or difficulty.

Section 8. The Secretary of the Treasury is hereby authorized and empowered to issue such further regulations as he may deem necessary to carry out the purposes of this order and to issue licenses thereunder, through such officers or agencies as he may designate, including licenses permitting the Federal reserve banks and member banks of the Federal Reserve System, in return for an equivalent amount of other coin, currency or credit, to deliver, earmark or hold in trust gold coin and bullion to or for persons showing the need for the same for any of the purposes specified in paragraphs (a), (c) and (d) of Section 2 of these regulations.

Section 9. Whoever willfully violates any provision of this Executive Order or of these regulations or of any rule, regulation or license issued thereunder may be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in any such violation may be punished by a like fine, imprisonment, or both.

38 *Id.* § 4.

39 *Id.* § 9.

40 Annual Report at 202.

41 Exec. Order No. 6111(1933).

42 Annual Report at 202.

43 DEPARTMENT OF THE TREASURY, GOLD REGULATIONS (April 29, 1933).

44 Annual Report at 202.

45 In fact, no such licenses to acquire gold or gold coin to meet maturing gold clause obligations in the United States were ever issued because none of the applicants had surrendered their gold, gold coin or gold certificates, *Id.*

46 Joint Resolution of June 5, 1933, 48 Stat. 112-13, ch. 48, § 1,31 U.S.C. §§ 462, 463 (1970). The Joint Resolution was later upheld by a sharply divided Supreme Court in *Norman v. Baltimore & O. R.R.*, 294 U.S. 240(1935). At the time, it was estimated that the dollar value of outstanding gold clause contracts was at least 124 billion dollars. Hanna, *Currency Control and Private Property*, 33 COLUM. L. REv. at 633.

47 *See* note 37 *supra*

48 Emergency Banking Act of March 9, 1933, ch. I, § 2,48 Stat. 1 (1933) (emphasis added).

49 Exec. Order No.6260(1933). See Appendix I. This Executive Order was later amended, in a minor respect, by Exec. Order No.6556 (1934).

50 On August 29, 1933, the President issued Executive Order No.6261, which forced American gold producers to sell their output to the Secretary of the Treasury at whatever price the Secretary chose to pay for resale to those holding treasury department gold licenses and/ or foreign purchasers. On September 12, 1933, the Secretary of the Treasury issued comprehensive regulations under the Executive Orders of August 28 and 29, 1933. *See Gold Regulations Prescribed by the Secretary of the Treasury Under the Executive Order of August 28, 1933 Relating to the Hoarding, Export, and Earmarking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange and the Executive Order of August 29, 1933 Relating to the Sale and Export of Gold Recovered from Natural Deposits*, Treasury Department, Office of the Secretary, September 12, 1933.

On October 25, Executive Order No.6359 revoked the August 29 Executive Order and amended in a minor respect the August 28 Executive Order. On January 15, 1934, Executive Order No.6560, codified in 31 C.F.R. 127.0-127.7 and 127.14(1972), would make other minor changes regarding transactions in foreign exchange, transfers of credit, and the export of coin and currency. Annual Report at 2034)4.

51 Hannigan, *The Monetary and Legal Tender Acts of 1933-34 and the Law*, 14 B.U.L. REv. 485(1934).

52 *Campbell v. Chase Natl Bank*, 5 F. Supp. 156 (S.D.N.Y. 1933). Actually, there were three cases: *Campbell v. Chase Nat'l Bank*, 5 F. Supp. 156 (S. D.N.Y. 1933); *United States v. Campbell*, 5 F. Supp. 156 (S.D.N.Y. 1933), *aff'd*, 71 F.2d 699 (2d Cir. 1934); and *Campbell v. Mesalie*, 5 F. Supp. 156, *aff'd*, 71 F.2d 671 (2d Cir.), *cert. denied*, 293 U.S. 592 (1934).

53 5 F. Supp. at 163.

54 *Id.* at 165.

55 *Id.* at 167.

56 *Id.*

57 *Id.* at 169.

58 *Id.* at 172.

59 *Id.* at 173.

60 *Id.* at 174.

61 *Id.* at 175.

62 *Id.*

63 *Id.*

64 *Id.*

65 *Id.*

66 *Id.*

67 *Id.* at 177.

68 Judge Woolsey's reasoning was followed in the later case of *United States v. Driscoll* 9 F. Supp. 454 (D. Mass. 1935). There, two-count indictments were returned charging each of two defendants with failure to file returns under section 3 of the August 28, 1933 Order (Count 1), and with ownership or possession of gold coin under section 5 and the regulations promulgated thereunder (Count 2). The defendants demurred. The District Judge, following *Campbell*, held that Congress did not intend in section 2 to confer on the President authority to requisition gold, because Congress had expressly given that power to the Secretary of the Treasury in section 3 of the same act of March, 1933. Thus, the defendants' demurrer to count 2 was sustained. It was overruled as to count I, also in accordance with *Campbell*.

69 The order also set a deadline of January 1, 1934, later extended to January 17 (Annual Report at 204), and provided that all gold turned in after the deadline would be seized and its value applied to a "possible maximum penalty of twice the amount of the gold N.Y. Times, Jan. 18, 1934, at 1, col. 2. On January 17, the Secretary of the Treasury sent instructions to the Treasurer of the United States, the United States Mints and assay offices. and the fiscal agents of the United States, concerning how to deal with gold surrendered after the deadline. Annual Report at 204.

70 N.Y. Times, Jan.16, 1934, at 3, col. 2. In fact, hundreds of millions of dollars in gold were involved. N.Y. Times, Jan.18, 1934, at I, col. 1.

Although Roosevelt had asserted in his message that "under existing law there is authority, by Executive Act, to take title to the gold in the possession or control of the Reserve Banks . . .," N.Y. Times, Jan. 16, 1934, at 3, col. 2, on December 29, 1933, Governor E.R. Black of the Federal Reserve Board had written to the President noting "a serious difficulty presented to the Secretary [of the Treasury] in the question of his right to requisition gold of the Reserve System under the statute authorizing requisition of gold in protection of the currency system of the country." N.Y. Times, Jan.17, 1934, at 14, col. 2.

Not surprisingly, on January 17, 1934, the Senate Banking and Currency Committee made public an opinion of Roosevelt's Attorney General, Homer Cummings, that the proposed legislation was constitutional. N.Y. Times, Jan. 18, 1934, at 14, col. 2.

71 Act of Jan.30, 1934, 48 Stat. 337, 31 U.S.C. §§ 315b, 405b, 408a, 408b, 440-46, 752, 754a, 754b, 767, 821, 822a, 822b, 824; 12 U.S.C. §§ 213, 411-15, 417, 467. The Act did not make the

President's previous actions regarding gold part of statutory criminal law. *Bauer v. United States*, 344 F.2d 794, 796 (9th Cir. 1957).

72 The remarks of Congressman Beedy indicate what transpired:

Mr. Chairman, I took the floor for a few moments when general debate on the bill was in progress and said that I should not vote for the bill because I had not had an opportunity, as one Member of this House, to be properly informed as to its provisions.

I made some protest against the fact that there had been no hearings, and that there were not available for the Members of the House printed hearings on this bill. I referred, as have many other Members, to the vast importance of this bill and its far-reaching provisions. I stated then, and I now repeat, that I do not think there are 10 members in this House who can go back to their constituents and intelligently explain the provisions of the bill. Whereupon the gentleman from California took some exception and said he did not appreciate that kind of a compliment.

I now submit that in the face of what has transpired in the Committee this afternoon what I said was fully justified. Clearly there is no comprehensive understanding of the bill as frequently evidenced this afternoon. Inability to explain the bill by those having it in charge is a sufficient justification, I submit, for a refusal to support it.

I have some pride in the proceedings of this House. But this afternoon's performance is not calculated to swell that pride. A casual observer of these proceedings, involving as they do the consideration of an important legislative proposal, must have experienced conflicting emotions. If he can return to his home and say that he has confidence in representative government, he certainly must have an elastic conscience. [Laughter and applause]

78 CONG. REC. 1012(1933). The vote in the House was 360 to 40.78 CONG. REC. 1013 (1933).

73 78 CONG. REC. 1010-11(1933).

74 In payment, credits in amounts equal to the value of the gold were established in the Treasury Department. As to any gold which had not previously been delivered to the government, and was still in private hands, it was to be held for the government's account and then delivered on the orders of the Secretary of the Treasury. All gold coins were to be withdrawn from circulation, and no more were to be minted. All United States gold was to be formed into bars. Section 3 authorized the Secretary to make regulations to prescribe the conditions under which, and only under which, gold could "be acquired and held, transported, melted or treated, imported, exported or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with [the other provisions of the Act]." On January 31, 1934, the Secretary issued regulations which in Section 20, provided that gold coins "of recognized special value to collectors of rare and unusual coins. . . may be acquired and held without the necessity of holding a license therefor."

75 This act had dealt primarily with agricultural purchasing power and farm indebtedness, and title III thereof involved certain currency and monetary matters.

76 Gold Reserve Act § 13, ch. 6, 48 Stat. 343, *as amended*, 31 U.S.C. §824(1970).

77 Proclamation No.2914, Dec. 6, 1950, 3 C. F.R. (1949-53 Compilation) 99, 16 Fed. Reg. 9029, provides in part:

WHEREAS recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and

WHEREAS world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and

WHEREAS, if the goal of communist imperialism were to be achieved, the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally chose, the freedom of reading and listening to what they choose, the right of free speech including the right to criticize their Government, the right to choose those who conduct their Government, the right to engage freely in collective bargaining, the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and

WHEREAS the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace.

I summon all citizens to make a united effort for the security and well-being of our beloved country and to place its needs foremost in thought and action that the full moral and material strength of the nation may be readied for the dangers which threaten us.

78 Exec. Order No.10896, November29, 1960,25 Fed. Reg. 12281 (1960); Exec. Order No.10905, January 14, 1961, 26 Fed. Reg. 321(1961).

79 Exec. Order No.11037, July20, 1962, 27 Fed. Reg. 6967 (1962). This order prohibited Americans, for the first time, from owning gold outside the continental limits of the United States.

80 Bauer v. United States, 244 F.2d 794 (9th Cir. 1957).

81 *Id.* at 795.

82 *Id.* at 796, 797.

83 *Id.* at 797.

84 *Id.*

85 *Id.* There is no record of what became of *Bauer* on remand. Nor did the case ever reach the Ninth Circuit again.

86 212 F. Supp. 584 (S.D. Cal. 1962).

87 *Id.* at 589.

88 *Id.* at 588.

89 *Id.* at 589-90.

90 *Id.*

91 *Id.*

92 On September 14, 1962, the government filed a notice of appeal to the Supreme Court of the United States, pursuant to 18 U.S.C. § 3731. However, on November 14, 1962, the parties stipulated, pursuant to Supreme Court Rule 14, that the government's appeal be dismissed. *See United States v. Lane and Valle*, 218 F. Supp. 459, 460 (S.D.N.Y. 1963).

93 208 F. Supp. 99 (D. Nev. 1962).

94 340 F.2d 487 (9th Cir. 1965).

95 *Id.* at 487.

96 244 F.2d at 797.

97 In this regard, a recent dissent by Justice Douglas, from the Court's denial of certiorari, is of considerable interest. Petitioner was convicted of attempting to destroy certain war property "when the United States is at war, or in times of national emergency as declared by the President 18 U.S.C. § 2153(a). Justice Douglas stated:

A criminal statute which fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden, is constitutionally infirm. Predicating criminal liability on conduct engaged in under special circumstances or at certain times is not constitutionally infirm, as long as men of common intelligence are not forced to guess as to a statute's meaning or differ as to its application. Under the terms of the above statute, the defendant is prohibited from doing specific acts "at times of national emergency as declared by the President. "The declared national emergency under which petitioner was held to have acted is the 1950 declaration of President Truman issued in response to the Korean conflict; the resolution by its terms contemplates termination of the emergency only by act of the President or by concurrent resolution of Congress, neither of which has yet been done.

I doubt that many lawyers let alone laymen of ordinary intelligence are aware of the continuing effect of the 1950 national emergency declaration. Under these circumstances, it is questionable whether proper notice of possible criminal liability has been afforded to any individual prosecuted under 18 U.S.C. § 2153 (a). The viability of criminal responsibility predicated upon evaluations of current political temperament or outdated presidential proclamations is an important issue worthy of our consideration on the merits.

Achtenberg v. United States, 409 U.S. 932 (1972).

98 Rist, *supra* note 2, at 139 (emphasis added).

99 *Id.* (emphasis added). Every few years there has been a semi-official hint that the right of Americans to own gold may be restored. For example, on May 22, 1968, the *Wall Street Journal* reported from the American Bankers Association annual meeting that [s]ome U.S. Government officials are starting to consider the possibility of making gold freely available for hoarding and trading by American citizens. The Treasury Department denied the report. In the last presidential election, the Republican platform of 1972 contained a plank that recommended the legalization of the ownership of gold, saying:

Since the 1930's, it has been illegal for United States citizens to own gold. We believe it is time to reconsider that policy. The right of American citizens to buy, hold, or sell gold should be reestablished as soon as this is feasible. Review of the present policy should, of course, take account of our basic objective of achieving a strengthened world monetary system.

1972 CONG. Q. WEEKLY REP. 2151, 2157. At about the same time, a unanimous subcommittee of the Congressional Joint Economic Committee, headed by Representative Henry S. Reuss (D. Wis.), recommended that “[o]nce monetary reform is agreed upon, American citizens should again be allowed to buy, sell and hold gold.” *N.Y. Times*, Nov. 20, 1972, at 59, col. 8. Despite these occasional signs of a thaw in the government's anti-private gold position, there is, at best, only a slim chance that Americans will ever be able to own gold so long as the Government continues to be deeply involved in the nation's monetary affairs.

CONTACT INFORMATION Larry Parks, Executive Director FAME, 501(c)(3) Box 625, FDR Station New York, NY 10150-0625	Phone: 212-818-1206 Fax: 212-818-1197 E-mail: Lparks@Fame.Org Website: http://www.fame.org
---	--

