Introduction.

“Morality.” The word seems somewhat old fashioned - archaic. At first blush, perhaps not a suitable concept for a conference on innovations in financial law and systems.

Morality is most often treated today as an anachronism. Moral principles seem to have been relegated to history; obsolete. Profits rule. Morality is for suckers. Take time to look at the inscriptions displayed on public buildings across America, specifically courthouses; and on college, university and law school campuses. The inscriptions generally communicate a series of moral principles that America’s founders associated with law; the foundation for American society; a specialized field of study and the grounding of an ancient, distinguished and honored profession. In the center of the gazebo in the center of the quadrangle of the Dedman School of Law at Southern Methodist University in Dallas, my alma mater and where I now teach with Professor Norton, there is a cast bronze plaque that reads as follows:

“History is a voice forever sounding across the centuries and the laws of right and wrong. Opinions alter. Manners change, creeds rise and fall, but the moral law is written on the tablets of eternity. For every false word or unrighteous deed, for cruelty and oppression, for lust or vanity, the price must be paid at last; not always by the chief offenders, but paid by someone. Justice and truth alone endure and live. Injustice and falsehood may be long-lived, but doomsday comes at last to them, in French revolutions and other terrible ways. James Anthony Froude.”

It is no surprise that Froude closes with a reference to the French revolution. America may not have come into existence without the enormous financial aid from the French, given in large part to spite the English, from whom we derive much of our moral and legal foundation. France’s financial profligacy led to a disastrous debasement of French money that lay at the heart of the French revolution. When royal exhortations to led to the oft-repeated response to the French Queen’s remonstrance to those outside the nobility who had no bread, that they should eat cake.

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2 It’s one of the most famous quotes in history. At some point around 1789, when being told that her French subjects had no bread, Marie-Antoinette (bride of France’s King Louis XVI) supposedly sniffed, “Qu’ils mangent de la brioche”—“Let them eat cake.” With that callous remark, the queen became a hated symbol of the decadent monarchy and fueled the revolution that would cause her to (literally) lose her head several years later. But did Marie-Antoinette really say those infuriating words? Not according to historians. Lady Antonia Fraser, author of a biography of the French queen, believes the quote would have been highly uncharacteristic of Marie-Antoinette, an intelligent woman who donated generously to charitable causes and, despite her own undeniably lavish lifestyle, displayed sensitivity towards the poor population of France. History.com Staff, “Did Marie-Antoinette really say ‘Let them eat cake’?” October 24, 2012.
That exhortation is echoed today by the American elite’s advice to the American public to simply quit being poor⁴. These exhortations, not matter their foundation, do lead to violence, bloodshed and ultimately, revolution.

Apart from passing references, today, the explicit connections between morality and the law have largely evaporated. The subject of ethics has been relegated to short required courses on attorneys’ codes of ethics. There are no classes in the subject of money, despite the fact that money provides the social, economic and legal foundation for all businesses and the services lawyers provide to them. Perforce, there is no longer any study or appreciation of the moral and ethical foundation, or even a legal comprehension of the moral and legal nature of money in today’s practical, big data centered world of commerce, credit, structured finance and money creation, accounting and law. We find ourselves in a new era of fintech, blockchain, bitcoin, and other technical innovations in money, banking and finance. These innovations strive to meet the need for transactional honesty and the trust and confidence in the financial world⁵. The first principles of honesty and trust are the moral principles governing the origins and present day technological development of the law of money, banking and finance. The primacy of these moral principles and the law of money based thereon suggest the unexpected relevance and importance of the topic of this conference.

Honesty.

The primary moral principle at stake in the context of this paper is honesty. Honesty as a moral principle lies at the heart of every human social, political, economic, financial and legal relationship. Although honesty is the best policy is incorporated in the moral and legal framework of every society, we now live in a world of alternative facts and communication by oxymoron. Black can be white. Bad can be good.

One can anecdotally conclude that moral principles throughout American culture have diminished in observation and in practice. A growing manifestation of intentional dishonesty in all walks of life has become a new normal. Advertising images, catch phrases, slogans, tweets and memes have become our language. Insistence on honesty in trade, commerce and finance has become just another impediment to profit maximization. Today, money and the power it confers have a greater value than honesty; and dishonest money is now the greatest tool for the amassing of power and wealth. It has become a new perverse social, political, economic, financial and legal foundation for our culture. Greed remains good. And the use of dishonesty to feed greed is even better. Although every generation harks back to the good old days when honesty was indeed the best policy, dishonesty in money matters has been a recurring component of social and economic crises since the invention of money. The current American experience of dishonesty as a virtue, used as a tool to concentrate power, income and wealth in the few while the condition of

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⁵ In September 2014, Fox Business commentator Todd Wilemon told Daily Show correspondent Aasif Mandvi that poor people should “stop being poor” in order to afford healthcare.
the many deteriorate or a best remain stagnant, is not an isolated, singular experience. America’s financial crises suffered since its founding, and specifically during the past forty-five years, have been caused by dishonesty in money and finance, that has now spread, pervades our culture and has spoiled the American dream. The negative moral and ethical impact of rendering the language of money, by which every member of society seeks to provide for himself or herself, family, and our American society generally, inherently dishonest cannot be overstated. Social, civil, philosophical, religious, political, economic and financial aspects of life; all aspects of life in America, have become infused with dishonesty, to the point that dishonesty, whether subliminal or blatant, is held forth by many and a virtue. This is certainly true in Washington and on Wall Street. The stain of institutionally sponsored dishonesty is rotting our collective moral fiber.

Jörg Guido Hülsmann, in his book entitled *The Ethics of Money Production*, (2008) articulates the pervasive effects of monetary dishonesty:

“Money and financial questions come to play an exaggerated role in the life of man. Inflation makes society materialistic. More and more people strive for money income at the expense of other things important for personal happiness.

“Inflation-induced geographical mobility artificially weakens family bonds and patriotic loyalty. Many of those who tend to be greedy, envious, and niggardly anyway fall prey to sin. Even those who are not so inclined by their natures will be exposed to temptations they would not otherwise have felt. And because the vagaries of the financial markets also provide a ready excuse for an excessively parsimonious use of one’s money, donations for charitable institutions decline.

“Then there is the fact that perennial inflation tends to deteriorate product quality. Every seller knows that it is difficult to sell the same physical product at higher prices than in previous years. But increasing money prices are unavoidable when the money supply is subject to relentless growth. So what do sellers do? In many cases the rescue comes through technological innovation, which allows a cheaper production of the product, thus neutralizing or even overcompensating the countervailing influence of inflation. This is for example the case with personal computers and other products made with large inputs of information technology. But in other industries, technological progress plays a much smaller role. Here the sellers confront the above-mentioned problem. They then fabricate an inferior product and sell it under the same name, along with the euphemisms that have become customary in commercial marketing. For example, they might offer their customers “light” coffee and “non-spicy” vegetables—which translates into thin coffee and vegetables that have lost any trace of flavor. Similar product deterioration can be observed in the construction business. Countries plagued by perennial inflation seem to have a greater share of houses and streets that are in constant need of repair than other countries.

“In such an environment, people develop a more than sloppy attitude toward their language. If everything is whatever it is called, then it is difficult to explain the difference
“between truth and lie. Inflation tempts people to lie about their products, and perennial inflation encourages the habit of routine lying. We have already pointed out that routine lying plays a great role in fractional-reserve banking, the basic institution of the fiat money system [including money debasement institutionalized by Washington and Wall Street and presented as monetary policy that produces job and income growth, wealth accumulation and generally prosperity, which is demonstrably false.]. Fiat inflation seems to spread this habit like a cancer over the rest of the economy.”

Honesty and money.

Financial crises and the legal context of those crises over the past forty-five years have persistently raised the question of the relevance of morality and ethics to the rule of law in money, banking and finance. But the connections of principles of morality and ethical practices to the phenomenon of the financialization of the American and global economies have been broken. They have been broken at the most fundamental conceptual level. Innovations in financial law and systems cannot be successful unless they are grounded in the moral and legal imperative of trusted, honest and sound money. The algorithms, coding, computations and communication of financial data cannot be honest, accurate or true, if the underlying data is flawed. Financial data consists almost exclusively of numbers: numbers that represent units of account - monetary units. Money. If the data, in this case, monetary units of account are dishonest, or untrue, the information, knowledge and wisdom derived from the data will be dishonest or untrue and therefore misleading. It cannot then be trusted. The dishonesty of American money is baked into the monetary prepared with the current recipe. Do not be misled by the international status of the dollar as the world’s foremost reserve currency. It is simply the best of a very bad lot produced by an immoral system created by America in the modern era and exported throughout the global economy. Information has become misinformation, disinformation or error. Knowledge has become ignorance; and wisdom, folly. Dishonest data.

Value is generally the degree of utility of a thing in satisfying, directly or indirectly, the needs or desires of human beings, called by economists "value in use;" or its worth consisting in the power of purchasing other things, called "value in exchange," calculated in money.

The concept of money is inseparable from the value it represents. For data representing monetary units to constitute an honest and true representation of the relative values of things, the value of the monetary unit must be regulated by reference to a common standard that is known to and accepted and trusted by the community it serves.

Banking and commercial law and regulation have inexorably, progressively and intentionally weakened, ignored and finally broken the necessary socially and commercially known and accepted regulatory connection of monetary units to defined standards of value, and failed to honor and incorporate the moral principles and ethical practices of honesty, truthfulness and trust

5 Jörg Guido Hülsmann, The Ethics of Money Production, 2008 (“Hülsmann”), pp. 187, 188,
that are the intellectual and moral foundation of the law of money into our economic, banking and financial system. That failure goes to the heart of the otherwise inexplicable failure of accountability for the most recent great financial crises.

Legal accountability for the series of financial crises since the Nixon shock in 1971, domestically and globally, have amply exposed the fact that Washington and Wall Street are riven by moral and ethical failures. These failures have been rationalized by self-serving pronouncements that the identified acts of moral and ethical failures are irresponsible, and wrong, but not illegal. As noted above, the financial crisis of 2008 has caused $10 trillion to $20 trillion of damages to ordinary American households, while government and financial institutions have grown prospered. Damages globally have exceeded $40 trillion. The Financial Inquiry Report chronicles the failures.

Washington and Wall Street have bombarded the American public with a series of false and misleading narratives to the effect that the great debasement of American money culminating in the great recession may have been wrong or immoral, but not illegal. These false and misleading narratives have undermined our economy and put our entire banking and financial system in peril. If we fail to address and rectify these false narratives in accordance with the American rule of law, innovations in financial law and systems cannot succeed in their intended effects.

**False narrative of moral law as separate from the civil and criminal law of money.**

No banking law, regulation or exercise of or failure to exercise informed discretion by regulatory authorities; no financial crisis or existential emergency economic condition; and no failure by Congress to exercise its power and duty to provide honest and therefore safe and sound money, can take away Americans’ legal right to honest, safe and sound sovereign money, the value of which has been regulated by Congress. The people’s right to honest, safe and sound sovereign money is unequivocally grounded in the moral principles of natural law of honesty and truth, as confirmed in the Constitution and as required by both common law and United States federal statutory law. Former Treasury Secretary Geithner has attacked and dismissed as what he describes as irrelevant, the:


“To Geithner, such impulses are the antithesis of his worldview—one that he believes relies on empiricism, pragmatism and reason. His “Old Testament” crowd, by contrast, is

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driven by blind emotion, intuition and animalistic “cravings” for heads on stakes. “You could take [Goldman Sachs CEO] Lloyd Blankfein into a dark alley and slit his throat, and it would satisfy them for about two days,” former President Clinton told Geithner, as he recounts. “Then the bloodlust would rise again.”

At a press conference in 2011, “President Barack Obama was forced to explain why there have been no prosecutions of Wall Street executives for their fraudulent actions during the run-up to the financial crisis. Asked by Jake Tapper to explain this behavior, Obama basically suggested that most of the actions on Wall Street weren’t illegal but just immoral, and that his Administration worked to re-regulate the financial sector with the Dodd-Frank reform legislation.”

President Obama first officially presented the proposition that a financial crisis caused directly by dishonest communication of asset values denominated in debased money was somehow wrong but not necessarily illegal. In his State of the Union Address in 2012, the President stated that:

“In 2008, the house of cards collapsed. We learned that mortgages had been sold to people who couldn’t afford or understand them. Banks had made huge bets and bonuses with other people’s money. Regulators had looked the other way, or didn’t have the authority to stop the bad behavior.

It was wrong. It was irresponsible. And it plunged our economy into a crisis that put millions out of work, saddled us with more debt, and left innocent, hardworking Americans holding the bag.”

Both President Obama and Secretary Geithner, giving voice to the shared views in Washington and on Wall Street, have asserted a distinction between the natural law moral principle of honest and true money, and the over-riding value and importance of apparent loopholes provided by banking law and regulations that could be “legally” exploited by both Washington and Wall Street to freely debase the money they create. The idea that immoral and illegal acts of money creation and emission through our banking system, as presently constituted could somehow be justified legally is a persistent thread in the literature relating to the law of money, banking and finance. This unsupported distinction goes directly to the failure of accountability of Washington and Wall Street for the financial crisis and for damages to American households of an estimated $20 trillion.

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9 David Dayen, "Obama on Bank Prosecutions: They did Nothing Illegal, Only Found Loopholes that We Worked to Close", Shadow Proof, October 6, 2011.
10 President Barack Obama, Office of the Press Secretary, The White House, Press Release Remarks by the President in State of the Union Address, January 24, 2012.
11 See, e.g., Hülsmann, at Chapters 7 – 12, pp. 103-175.
Fortunately for the public, there is a direct identity of the moral principle of honest money with the Constitutional, common law and federal statutory prohibition of fraud through money debasement. The money debasement that caused the financial crisis of 2008 was wrong, immoral and illegal. The intentionally false narratives spun by Washington and Wall Street, however, have been implemented through their failure to observe and enforce existing laws that are exact expressions of the moral principle of honesty and the legal duty of both Washington and Wall Street to refrain from abuse of their powers and through dishonest practices, to place their individual and institutional interests above the American public good. The moral principles expressed in the Old and New Testaments of the Christian Bible, the Ten Commandments, and I dare say, every compendium of moral principles, moral laws if you will, include honesty. Lying, cheating and stealing are prohibited. Money debasement is prohibited. These actions are both immoral and, demonstrably, illegal in the United States\(^\text{13}\).

Somehow, the practice of money debasement, which has historically been a capital crime, punishable by death under the American Currency Act of 1792\(^\text{14}\), and in some countries by the penalty of the offender being half-hung, drawn and quartered, has now, presenting another glib oxymoron, found its central place as the basis for the monetary policy of the Federal Reserve System and of central banking systems, globally.

Immorality has infected our financial and economic system and that immorality is not separate from, but is the essence of its illegality. We will turn to the relationship between morality and law. They may, and have been addressed as sometimes separate by legal commentators. We will see how that separation is not applicable to the case of money debasement and that not only the moral accountability of the perpetrators of the debasement is necessary, but also civil and criminal legal accountability is necessary, before Washington or Wall Street will have any incentive to return to honest money under an honest monetary and economic system. Such a system is not only feasible, but is legally required by the United States Constitution and the relevant decisions of the United States Supreme Court: the law of the land.

It is our collective responsibility to revisit the moral and ethical foundations of commercial, banking and financial law and to provide legal and practical leadership to a renewal of recognition of and adherence to the moral principles and ethical practices upon which the American rule of law, the legal and accounting professions and judicial functions of our society are based.

\[^{13}\text{The illegality of American money debasement is detailed in my forthcoming book, Money Morality and Law, in manuscript, and in the Case Statement appended to the book.}\]

\[^{14}\text{Money Law, The Coinage Act of April 2, 1792 (1 Stat. 246).}\]
Morality essentially means having and living according to a moral code; or principles of right and wrong. Basic morality condemns murder, adultery, lying, cheating and stealing. However, moral principles evolve with the evolution of society, sometimes differing noticeably in different cultures. Time also noticeably affects the idea of morality. Once prevalent moral principles are now considered outdated and irrelevant. Truth, honest and respect of fiduciary obligations and limits on legally delegated powers are neither outdated nor irrelevant.

The philosophy of morality is ethics. Ethics explores the idea of morality and its place in society and addresses practical questions about morality. It is ironic that the volumes of banking law and regulation must, by their nature, be based on accurate information. Honest, truthful and reliable information. Information based on money. And prompt meaningful action based on that information. Yet, the basic language of money and banking has been corrupted; first, temporarily, in the name of existential necessity; then by benign neglect; and finally, by intentional abuse of power and the establishment of a Washington and Wall Street enterprise centered on the unbridled aggrandizement of their greed, power and wealth.

Money debasement is the most fundamental and far-reaching form of lying, cheating and stealing known to history. Money debasement makes each financial representation based on practices of money debasement a lie. When the misrepresentation of the value of money is knowingly institutionalized through practices that so blatantly and openly constitute violations of the natural law, moral principles, and ethical practices as well as constitutional and federal statutory law, it is done intentionally. It is intentional lying cheating and stealing. It is bank fraud.

Connections, identity and inclusiveness of American moral law, constitutional law and civil and criminal tort law relating to honest money.

Connections amongst people, institutions, moral principles and laws have become a conundrum; in America, in particular. We have a tendency, reinforced by the increasing cultural dominance of big data as the primary force driving relationships and decision-making, to view individuals, facts and organizations in isolation, or in delimiting silos or isolated bundles of focus that increasingly ignore the fundamental and increasing interconnectedness of society. Commerce, economics, government and laws are inherently social and interconnected. The fundamental tool of interconnectedness of economics - commerce and government as social relationships - is money. For these social relationships to function successfully they must adhere to the fundamental principles that form the foundation for such relationships. Those principles establish the fundamental interconnectedness communicated through money. Those relationships must be based on the fundamental moral principle of honesty. Honesty observed leads to integrity, trust and confidence in one another. Without honest as a fundamental moral, and legal foundation for our society, civilizations cannot long endure. History is replete with examples of social collapse driven by the institutionalization of dishonesty and its infection of the entire culture.15. The

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15 The literature relating to financial crises is crowded with excellent works tracing and documenting histories of wars and financial crises. What they uniformly fail to address is the legal foundation for public enforcement of government and banking, without the tragedy of social collapse to force a return to honest money, government and bankers.
pervasive discretion resting with bureaucrats is routinely interpreted to sell the outcome of the exercise of their discretion in exchange for admission to the revolving door to riches in the private sector, as opposed to satisfaction derived from devotion of their service to the public interest, fairly compensated. We now follow a policy of sound bites propounded by the powerful, greedy, selfish and lazy – communication at the highest reaches of government, banking and finance – is conducted on the level of sixth grade elementary school students. This development corrupts civilization rather than building and strengthening it. Technological developments based on communication through data selection, manipulation and simplicity in presentation, discourages complex thoughtful consideration, expression and connection to qualitative concepts, such as moral principles and ethical practices. Under these conditions, it is difficult to reconcile today’s amoral, relativistic, data-based society with America’s original, idealized moral foundation. These foundational principles and practices have been displaced by financial model outputs based on algorithms, incorporating and applied to selective data, as modern day substitutes for outdated moral principles, ethical practices and fundamental legal principles.

The increasing role of high-technology and data as instruments of social and economic connection can only be effective if based on the moral principle of honesty instead of what has evolved as a complex, institutionally embedded methodology of lying, cheating and stealing. There is no morality inherent in data. No trust; no confidence. Assumptions and effects obscured by distance and structure offer limited opportunity for one to question or test data, develop knowledge or acquire wisdom that may support thoughtful decision making. Evaluation of data is progressively limited and manipulated. Therefore diminishing useful information, knowledge or wisdom. Data itself provides no connection to real human efforts, goods or services. Data by itself, is sterile. Its origins, obscure. Its effects, profound. More data moving ever faster and through more relational complexity leaves the human mind, wisdom, discernment and judgment that define our social, economic, financial, legal, accounting and political compact behind. Its form in complex financial models, statistics, reports and public records supports and facilitates deep and widespread misrepresentation and misunderstanding. Crunching the numbers is a popular euphemism. It does not necessarily provide true information, much less knowledge or wisdom as a foundation for decision-make conforming to moral principles. Massive pro-forma disclosure of words and numbers do not provide a moral and responsible decision-making. Honesty is the casualty. The triumph of big-data is the death knell of moral integrity. The end game of data justifies all means. The disembodiment of morality. Social, political and economic principles are cast aside in the process. Lawyers and Accountants are so tied to processes that they do not question data, its source or meaning. We no longer provide an over-all moral framework for decision-making or action. Big money equals big data for its own sake. Its manipulation to produce predictable effects quickly dispenses with the discernment of truth, accurate information, knowledge and wisdom in a moral context. Thoughtful consideration and assessment in social, political, economic and legal relationships have been stripped of the defining principles that support those relationships. Corruption and dishonesty are enshrined in big data.
The common, even defining trait of American society and culture originated as a loosely arrayed group of rugged individuals competing in a free market society where material success goes to the strong by virtue of the free exercise of their natural, God-given talents and hard work. The weaker and less materially successful members of American society therefore have only themselves to blame. It is only natural that in their individual drive for success, the strong and the successful exploit the weak and less successful. It’s every man for himself.

Alexis de Tocqueville made the classic equation of the free condition sought by American immigrants with an aggregation of isolated autonomous individuals wresting their existence from the wilds of nature. In fact, at the time Tocqueville made this definitional equation of American society he was largely correct. Based upon his observations, Tocqueville correctly anticipated developing social difficulties in America, including an increased tyranny of the ill-informed majority over thoughtful and informed minority, a preoccupation with material goods, and an unfounded appearance of the triumph of isolated individuals over the mass of society. He predicted the violence of party spirit now readily apparent in America political processes, and the judgment of the wise subordinated to the triumphant prejudices of the ignorant. These dangerous strains of thought are dominant in American society and politics today. They successfully serve the interests of America’s corporate, banking and government power elite.

Much of today's thinking by American leaders is revealed in fragmented, segmented phrases - memes - expressed in clashing, jingoistic diatribes. Twitter feed. Not useful building blocks for informed policy or decision making. Not productive. Not instructive. This abbreviated simplistic mode of communication won't stop until our social survival requires it. American leadership fears the use of too many words to express policy alternatives as well as the communication of conflicting thoughts and priorities. Apparently this mode of discourse is perhaps “less politically correct.” So here we are. Too many words. A constitution that our leaders have never read. Laws and regulations that are disconnected, fragmented and impede rather than contribute to our national understanding of law and regulation in the context or our shared moral foundation. Numbers can be made to say anything, everything or nothing. Quants and computers rule.

It has been my experience that if one looks at the title and body of a federal government law, rule or regulation, one will inevitably discover that the body of the document serves the opposite ends from those expressed in the title. This manipulative practice intentionally serves to create, not clarity, but insider designed complexity and "loopholes" that support fertile ground for discretionary interpretation. Political, social and economic division. These practices facilitate avoidance rather than compliance with or adherence to underlying foundational moral principles that ostensibly serve the public interest. The best and brightest – and highest paid - attorneys,

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accountants, bankers and politicians are dedicated to the successful frustration of public policy, law and regulation based on fundamental moral principles. As Winston Churchill famously observed that "[i]f you have ten thousand regulations you destroy all respect for the law." We certainly have exceeded the ten thousand regulation quota. And we are none the wiser.

It is no mere coincidence that with the abandonment of the last vestiges of the regulation of American money that began with the institution of fractional reserve banking, reached its denouement under the fractured protection of the Bretton Woods Accord and culminated with the Nixon Shock in 1971; the development of banking law and regulation has exploded in quantity and complexity and constricted in moral and legal effect. The laws, regulations and practices are riven with provision for unbridled regulatory discretion, often simply not exercised at all, that have been fully exploited – not in the public interest but in service of Washington’s and Wall Street’s interests. This explosion of banking law and regulation has oscillated between reactionary attempts at deregulation and reregulation that have unquestionably failed to supplant the simple, but now abandoned regulatory relationship between measured units of quality and quantity of goods or services, quantity and quantity of specie and an enumerated, regulating the value of monetary equivalent units. The nature of the fundamental regulatory relationship is based on the moral imperative of honesty in the communication of value through money. The battle for honest money has concentrated on the periphery of the subject in recent times, leaving the moral principles and laws originally intended to effect those principles aside, as if somehow they have been rendered obsolete and irrelevant.

Despite the current apparent distinction made by the executive, legislative and central banking authorities between morality and the law relating to the honesty of money, and therefore banking; since banks are now charged by the Federal Reserve system, under the auspices of the United States Congress, to “loan money into existence” that acquires value from individuals and business productivity; the natural moral principle of honesty corresponds directly with but fails to meet the Constitutional mandate for congressional regulation of the value of money and the statutory prohibition of abuse of power by banks. The monopoly process of money creation by banks with the tolerance, indeed encouragement and facilitation by government, has been employed to perpetrate a scheme of lies and artifices intentionally designed to debase and misrepresent economic value; and through that scheme of lies and artifices, to cheat unsuspecting participants in the system and steal the value of their capital and labors through the crime and tort of money debasement. The monopoly has now also slipped out of control of government into the shadow banking system. Washington and Wall Street: intentionally, deliberately, have failed to establish any standard or mechanism for regulation of the value of American sovereign money – the United States Dollar. Debasement is the inevitable consequence of failure to regulate the value of sovereign money and to subject credit money and money substitutes to the discipline of

17 The Federal Reserve System Chart, Money Creation in the U.S. Federal Reserve System.
repayment in units of sovereign money, the value of which is properly regulated by reference to an external commonly accepted standard of value by which that money can be redeemed on demand, as well as by reference to and enforcement of historical principles of commercial law that attached accountability for repayment to credit money in an open, direct, honest and transparent manner.

This corruption is played out in Washington and on Wall Street. Their success, wealth and power have set modern standards. The Washington Wall Street model and standard of conduct given by example not only permits but encourages and sanctions all Americans’ exploitation of economic relationships through corruption. Lying, cheating and stealing have become a norm. Only those perceived as weak, losers and simple minded remain committed to the moral framework of honesty and integrity embodied in the American rule of law. They are not among the “players” in the big game of amassing wealth and power. Under the present iteration of America’s legal and business upper crust, morality is treated as an outmoded relic, a hindrance to success, to growth, to the ability to meet the drumbeat of piling-up of data, numbers, and ultimately money and power. Morality does not reside in Washington or on Wall Street. Greed there remains good. Power for its own sake remains good. The limits of public delegation of power to governments in the constitution, and the handmaidens of government, Wall Street through the national bank and Federal Reserve System in their great work of money creation and debasement, have been worn away. Pursuit of wealth and power through lying, cheating and stealing is now a hallmark of success; publicly and unapologetically shouted from the rooftops; or at the least on twitter and other social and public media.

Without the grounding of all social, political, economic and legal relationships in sound and honest money, the tool that binds us together on the basis of the moral virtue of economic honesty, the moral and legal mandate for economic honesty has now been abandoned to the realm of the archaic. Confidence in government and financial institutions; and their moral and legal accountability and integrity, will continue to erode, infecting every human relationship. Social, economic and political dysfunction and collapse will surely follow. History bears out the repetition of this sordid tale and the entirely predictable consequences. We are foolish and irresponsible to ignore, disparage and abandon the foundation of morality, ethics and laws upon which our great nation is grounded and upon which our individual and collective liberty, prosperity, health and happiness, and property rights are dependent.

All is not lost however. As Tocqueville made his observations about the American democratic political framework and the society it defined, society continued to develop in America and in Europe to reflect increased population and increased urban concentrations of society and the harkening back to the social thinkers of ancient Greece and Rome by political and intellectual leaders on both continents.

Debasement is an explicit betrayal and violation of deeply entrenched American principles of natural law and morality grounded in honesty in economic relationships and transactions as the
primary foundation for our democratic social compact. Washington’s and Wall Street’s collaborative efforts to simply roll over practical ethical rules to effect moral principles have in fact, demonstrably violated the American rule of law - formal rules enacted by government and subject to adjudication and enforcement, in the public interest and for the common good that relate to money – the primary social and economic connection establishing a society, its survival and civilization and the pre-conditional foundation of government.

The American citizenry have expressed the fundamental natural law; the moral principles underlying American values, its social and economic compact and the principles governing American civilization and the role and integrity of money in the Constitution: the law of the land.

The American public exercises and enforces its social, economic and political compact of civil society based on the rule of law enforced through the mechanism and medium of money, through government, and its agents and partners, the Wall Street banks. American money and money globally, by extension and influence of American power and example, and has been near fatally corrupted by the American government and the Wall Street banks through persistent money debasement.

If we are to return to the American dream of economic opportunity for every American, the individuals and institutions in Washington and on Wall Street that have colluded to debase our money must be held accountable for their breach of the fundamental moral principal of honesty in the medium of exchange, under the rule of law in accordance with natural law and the moral principles and ethical practices that form the foundation for the American rule of law of money.

American and global financial crises can be neither mitigated nor avoided without a return to and re-grounding according to the natural law, moral imperative, ethical practices, enforcement of the American rule of law including specifically the law of money, and thereby the re-establishment of the primacy of public sovereignty over government and its handmaidens in the corruption of American money – the Wall Street banks. Have we managed to evolve to the point where personal and institutional lying, cheating and stealing by Washington and Wall Street has become a moral, ethical and legally countenanced policy and action? Those individuals amongst us who control Washington and Wall Street are apparently convinced that we have. Is honesty therefore obsolete - anachronistic? Has it become so only for Washington and Wall Street? Has the day where the “goodness” in America – the “best” in America - is defined by the most powerful, the most ruthless, dishonest, lying, and cheating and stealing members of our society finally arrived? Should the rest of us adopt the same set of moral, ethical and legal principles? Why not?

Tort of fraud versus fraud as breach of contract.
The record of the United States Supreme Court pronouncement on the subject of the law of money have been couched, not in terms of the legal attributes of money debasement, but on the effect of interpretation of the law of money as incorporated in specific contracts.\(^\text{18}\)

Moral and legal accountability of Washington and Wall Street for their course of intentional misrepresentation of the liquidity and value of the money they create and emit, both in the supposedly regulated banking system or in the almost entirely unregulated shadow banking system is not to be found in contract law.

The American tale of money debasement differs from brutal physical repression through assault and battery only in that that the injuries to America’s working households as a result of the great financial crisis of 2008 are primarily economic. “Physical assault, abuse and robbery” more commonly referred to and understood as torts has been inflicted by Washington and Wall Street on the American public by a brutal tort of pervasive intentional financial fraud; by lying, cheating and stealing through the tort of intentional money debasement, rather than by the more starkly visible harm caused by the torts of physical assault, battery and robbery.

The torts of intentional fraud, abuse of power and money debasement were conducted by Washington and Wall Street against the households of ordinary American people and has left in its wake unprecedented financial devastation as well as personal and physical trauma. The wounds of the people are no less visible or varied in the typicality of hurt and damage than the brutal torts of assault and battery. Victims of physical assault and battery might seek justice. So must the victims of the economic beating of the financial crisis. The conduct that led to the crisis continues unabated. The few defendants in this case numbering in mere hundreds, have inflicted their economic assault on a group of ordinary people numbering in the hundreds of thousands – million – who so far have found no succor in those in representative government entrusted with their protection.

Ordinary people in America and around the world, the damage by the economic assault led by Washington and Wall Street left un-redressed, have taken to Main Street and to the political arena, hoarding and wielding weapons, venting their fear and frustration in unfocused acts of violence. It is in this context that the case of the damaged people against the economic brutality inflicted by the few upon the many must be heard and remediated under America’s social and economic compact as enshrined in the American rule of law.

**Honesty.**

The depth and breadth of the strictures supporting the vital role of honesty as a foundation for civilized conduct and the rule of law is best described by the range of wrongs based in the tort of dishonesty.

**Lying.**

\(^{18}\) See *infra*, regarding the false narratives drawn from the *Legal Tender Cases* and the *Gold Contract Cases*. 
Money created through the American financial system, both the “official” banking system and the “unofficial” very real and enormous shadow banking system that dwarfs the official system in size and complexity, intentionally created by Washington and Wall Street, and reflected as units of account of value, media of exchange, stores of value and methods of deferred payment of value over the past 40 years have consistently and pervasively misrepresented the information denominated in dollars contained in every account, financial statement and report conveying information denominated in U.S. Dollars, overstating the value of asset in each case in the face of ever declining correlation between the unit of measurement and any regulated standard of value – and resulting in the massive debasement of the value of American money.

Cheating and stealing.

Washington and Wall Street have used this well-known and historically reviled process of money debasement to cheat the American public by the forced exchange of money having ever diminishing value for the fruits of their labor, sacrifice and savings. The stolen value, commandeered by Washington and Wall Street, has been squandered though years of political and financial payoffs for political and financial favors amongst politicians and bureaucrats; as well as Wall Street profits and bonuses, and in exchange for creating money debasement to fund their own prosperity as well as government profligacy; the government has provided the illusion of a protection blanket for their partners in crime in the form of federal regulatory insulation from prosecution, losses and liabilities for their role in the Washington/Wall Street greedy and illegal conspiracy to loot the American public.

Common law torts of deceit, misrepresentation and fraud.

“Lies.” According to Black’s Law Dictionary: A “lie is an untruth deliberately told; the uttering or acting of that which is false for the purpose of deceiving; intentional mis[s]tatement (sic).” … “Thou shalt not lie” (the Ninth commandment of the Bible, Exodus 20:16 common phrasing of “Thou shalt not bear false witness against thy neighbor”).

Black’s Law Dictionary goes on to define the ancient common law wrong of “deceit” as: “a subtle trick or device, whereunto may be referred all manner of craft and collusion used to defraud another by any means whatsoever, which hath no other or more proper name than deceit to distinguish the offense. A ‘deceit’ is either (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; (3) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or (4) a promise, made without any intention of performing it. To constitute a deceit, the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that the plaintiff act thereon or in a manner apparently fitted to induce him to act thereon, and the plaintiff must act on the statement in the manner contemplated, or
manifestly probable, to his injury. The essential elements of ‘deceit’ are representation, falsity, scienter (intent), deception and injury.”

Black’s defines “misrepresentation” as: “Any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.” It is “An untrue statement of fact. An incorrect or false representation. That which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists. Colloquially, it is understood to mean a statement made to mislead or deceive.”

The same source defines “fraud” as: “An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation as a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.” Also, it is a generic term, “embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get an advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning or dissembling, and any unfair way by which another is cheated.” Fraud is either actual or constructive. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception or artifice used to circumvent or cheat another; it is something said, done or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which, if generally permitted, would be prejudicial to the public welfare, and yet may be unconnected with any selfish or evil design. Or according to Story, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud.”

Cheating is defined as: “[t]o [intentionally] deceive and defraud; … contrary to the plain rules of common honesty”

Stealing is the: “[c]ommission of theft, that is the felonious taking and carrying away of the personal property of another… without right and without leave or consent of the owner.”

Also according to Black’s, a “crime” is “A positive or negative act in violation of penal law; an offense against the State.” Black’s goes on to clarify that “The distinction between a crime and a tort or civil injury is that the former is a breach and violation of the public right and of duties due to the whole community considered as such, and in its social and aggregate capacity; whereas the latter is an infringement or privation of the civil rights of individuals merely.” As opposed to
ancient common law crimes, which no longer exist in the United States, crimes are created by statute.

In the context of financial crises, the crimes have been primarily Federal crimes, although the same facts and circumstances may also constitute crimes or give rise to enforcement actions by state attorneys general under state law.

The definitions provided above establish a framework to follow development of the moral and legal principles set forth in the Constitution and in state and federal statutory laws enacted to prevent and to punish bank fraud, securities fraud and consumer fraud and abuse of power through violations of trust [antitrust law, including bank anti-tying law], whether initiated through private rights of action or governmental civil or criminal enforcement actions.

An examination of the overall context of the relatively recent great financial crisis in America and globally, one can discover a progression of laws and policies in derogation of from the constitutional imperative that congress create, emit and regulate the value of American sovereign. Despite the clear language of the United States Constitution and the active history of Congress’ active management of the regulation of the value of the dollar, beginning with the Constitution, the Currency Act of 1792 and continuing with greater a lesser measure of success through the time of the Nixon shock in 1971, Congress did in fact consistently grapple with their Constitutionally mandated power and duty. The Executive action and subsequent federal legislation essentially ended any semblance of Congress’ recognition or fulfillment of its Constitutional power and duty with respect to the “money question.” Washington, Wall Street, the legal and accounting professions and those amongst us who are in the position to exploit Congressional failure in their self-interest have done so; on the largest scale in history.

A complete detailed analysis of the erosion of the moral and legal protections of American households from the financial and physical ruin caused by Washington’s and Wall Street’s enterprise of lying, cheating and stealing through ancient tort and crime of money debasement is beyond the scope of this short paper. The complete story, or narrative of how moral and legal safeguards of the public interest in the integrity of their money have been finally, tragically abandoned, is also beyond the scope of this paper.

Winston Churchill once observed that, “In wartime, truth is so precious that she should always be attended by a bodyguard of lies.” Churchill’s observation has be followed by Washington and Wall Street to entirely perverse ends. The existential threat of war is almost exclusively the predicate for abandonment of moral law, perversion of the law of money, their exploitation by government, bankers and corporate profiteers. Throughout American history proponents of the practice of lying, cheating and stealing from the public money debasement as a toll of war finance have found secure footing.

The justification being that if we (read government and its financiers) are not permitted to lie, cheat and steal to finance war, we might lose and have no country at all. By honoring the existential war
exception to the natural law, and later constitutional, statutory and common law proscription of dishonest – lying cheating and stealing – through money debasement, Pandora’s famous box is opened. The argument supporting the existential war exception ignores the alternative rights, powers and duties granted to government in the Constitution to conduct war if necessary and to finance it through open and transparent borrowing and taxation. Debasement is not a necessity of war; it is an a policy expediency to be extended and exploited to enable the social elite of income, wealth and power to aggrandize their positions; concentrating income, wealth and power; and asserting their interests ahead of the interest of the ordinary public; who have placed their trust in government and their partners in the money business, Wall Street banks.

Through time, the so-called existential war exception to honest money has, segued into an exception of political expediency and self-interested policies that serve only to protect the aggrandizement of wealth and power by Washington and their partners and financiers on Wall Street. The immoral, dishonest and illegal transformation, perversion and, finally, abandonment of the constitutional requirement of honest money has flourished under a progression of false narratives regarding money, morality and law; intentionally false narratives produced through political spin by the privileged sectors of our society, our experts on money and law, that are beholden to the public to act in an open, honest, transparent and manner that respects our natural law foundation of moral principle and law as expressed in our founding documents, statutes, regulations and common law tradition. I have identified a number of false narrative, the adoption of which have been put forth by Washington and Wall Street to justify a course of conduct that has damaged our country far beyond economics. These narratives and the financial crises that occurred attendant to them have riven asunder our philosophical, social, political and legal compact.

Detailed exposition of all of the false narratives employed by Washington and Wall Street as a part of their enterprise to loot the American public is not possible here. I give you a listing of the most fundamental and damaging false narratives propounded by Washington’s and Wall Street’s enterprise of economic tyranny, and provide comment with respect to a few of the false narratives that drive to heart of the phantom narrative barrier that this enterprise has constructed to avoid legal accountability for the damages the financial crises it has spawned and wrought upon the American public.

**Washington’s and Wall Street’s false narratives.**

The following summary statements represent the ongoing series of false narratives that, when aggregated, have formed and distorted the present American frame of reference for assessing the honesty and integrity of our banking and monetary system as well clouding the established moral and legal basis for Washington and Wall Street accountability for their wrongdoing. Each step in America’s abandonment of honest money has been justified by successive determinations by Washington and Wall Street that each departure from honesty in money represents a case of the ends justifying the means. But what ends? What means? The following descriptions of false narratives proffered by our experts in money and banking, Washington and Wall Street, suggest
that the means and ends represented to the public by Washington and Wall Street are not honest. The means of money debasement is dishonest by its nature. The ends of aggrandizement of wealth and power by Washington and Wall Street has been accomplished by intentional misrepresentation of the systemic liquidity and asset values underlying and supporting our economy; by dishonesty. Consider the following intentionally false narratives:

- The existential necessity of victory in the Civil War justified a permanent state of American money debasement to pay for successive wars.
- The Legal Tender Cases sanctioned use of fiat paper money.
- The Federal Reserve System was established to preserve and safeguard America’s monetary system under the Civil War era national banking system.
- The Gold Contract Cases sanctioned the abandonment of any standards to regulate the value of money.
- The Great Depression necessitated the abandonment of any standards for regulation of the value of money.
- World War II and the Bretton Woods Accord sustained the Constitutional imperative of sound money.
- Economic consequences of undeclared war in Viet Nam and domestic policies of guns and butter sanctioned the actions of political expedience constituting the Nixon shock and validated pure fiat money, without any pretense of congressional regulation of its value.
- Congress has delegated its money powers and duties to the Federal Reserve System, the Bretton Woods institutions or to the Wall Street banks.
- Contract law is the sole basis for liability for money debasement as opposed to the law of tort; without examining the tort of intentional misrepresentation of asset liquidity and values measured in money conducted by Washington and Wall Street through intentional manipulation of the value of money.
- Wall Street may lawfully engage in unrestrained monopoly abuse of power – without application of anti-trust and anti-tying laws.
- Exceptions to the congressional constitutional power and duty to regulate the power of money due to existential crises – initially war, and now as political expediency, is fully embodied in Federal Reserve System monetary powers.
- The existential mandate of war may lawfully segue into an “existential mandate” of American global economic superiority.
- Demise of Glass-Steagall and ascendency of the moral and legal confusion of Graham-Leach-Bliley compounded by Dodd-Frank serves the public interest in lieu of congressional Constitutional regulation of the value of money.
- The legal structure of monetizing asset values and liquidity through securitization, ratings, derivatives, repos provides an essential and morally and legally sustainable process for private sector monetization of illiquid assets; the value of which are not marked to market to reflect the illiquidity, leading directly to asset values and liquidity are supported only by complex structures and meaningless disclosures that are
intentionally represented [but in actuality fail] to meet the moral and legal requirements for a sovereign money under natural law or the American Constitution.

- The substitution of a bureaucratically and administratively created body of financial regulation for Congress’s constitutional power and duty to regulate the value of money fulfills the requirements for moral and legal accountability for the exercise of the constitutionally delegated power of Congress to regulate the value of our sovereign money.

- Unbridled governmental and bankers’ discretion trump civil and criminal legal liability for abuse of power, intentional fraud; lying cheating and stealing, because individually and collectively they are immune from enforcement action as too big to fail or jail.

Let us consider the most egregious of the Washington and Wall Street false narrative as they developed from seeds of our national formation.

**American Revolutionary War. Our first experience with the perils of existential finance.**

“In the history of the North American colonies of the British Empire, the essential features of the European monetary experience can be found as well. But there are two particularities: the American *champions* of paper money had a more direct approach than their European cousins; and the American *opponents* of paper money triumphed, at least for a while, more thoroughly than any of their European friends ever would. In the seventeenth and eighteenth centuries, the governments of the British colonies more often than not pushed straight for the issue of legal-tender paper notes rather than choosing the more indirect route of promoting privileged fractional-reserve banks. As early as 1690, the colony of Massachusetts issued paper treasury bills that were endowed with legal-tender status. This practice was replicated in five other colonies before 1711, and eventually spread to all British colonies. Among its victims were the creditors of American trade and industry, usually merchants from metropolitan Britain, who were forced to accept the often rapidly depreciating paper notes. They brought their case before Parliament which reacted vigorously starting in the 1720s. It first ordered all New England colonies to seek authorization from Britain before issuing any more legal-tender notes. In 1751, it prohibited the issue of any such notes in New England, and in 1764 prohibited the issue of any legal-tender paper in *all* colonies… This must have been a heavy blow to the political establishment in the British colonies of North America. It is certainly not farfetched here to see one of the roots of the American Revolution.

However, the Revolution did not bring a legal confirmation of the monetary experiments of the colonial period. Quite to the contrary, the American Constitution is, in the modern history of the West, the most radical legal break with a country’s inflationary past. The fathers of the new republic did all in their power to prevent legal-tender paper issues of the colonies (now the states) ever to be repeated again. They moreover strove to create a monetary order based on the precious metals. These objectives were deemed so important
that they were addressed head-on in the very first article of the Constitution. Section 8 of Article I granted the authority to “coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures” to the federal government, not to the states. And Section 10 of Article I specifically prohibited that the states “emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts.\(^{19}\)

At the time of the Revolution, America did not yet exist and the rebellious colonies had no resources with which to establish a proper currency. As such, the cobbled together currency, the “continental\(^{20}\)” collapsed in value. Predictable, those in Washington (actually New York at that time) and on Wall Street (wealthy politicians and financiers) took full advantage of the crippled currency and desperation of soldiers and the families. They purchased the near worthless money at deep discounts from the soldiers and ordinary souls who had sacrificed so much in the Revolutionary War effort, and promptly agreed amongst themselves to redeem the worthless certificates in gold, and thereby compounded their fortunes. The experience of the evil of money debasement during the revolutionary and immediate post-revolutionary period, experienced in the aftermath of the periodic disastrous debasements of money in the European countries, provided the context in which the moral and legal imperative for sound United States money arose and emerged as vital Constitutional protect of the American people as their own collective sovereign.

War historically, has provided the justification for those in power, politically and financially, to resort to the hidden finance of money debasement as oppose to, or in conjunction with transparent finance through taxation or borrowing supported by the power to tax to repay the borrowing.

The so-called existential imperative of war as a justification for money debasement to support the costs of war has existed from time immemorial. The imperative was met almost exclusively by sovereigns, monarchs and their retinues of the wealthy and titled nobility. The justification was imposed and met by sovereign monarch who were the source of law and power, claimed often as the divine right of kings and queens or other assorted monarchs.

In following sections of this paper we will examine the contrasting jurisprudential theories: legal positivism which appears to hold that law is separate from morality and consists of law imposed by sovereign; and the natural law theory, which holds that law is formal embodiment of natural laws based on moral principles. The leading proponent of legal positivism has been H.L.A. Hart. The leading proponent of the natural law theory has been Ronald Dworkin.

We will see that the distinctions between legal positivism and natural law theory are not as profoundly opposed as some academics might assert. The jurisprudential sympathy is apparent from examination of these two thought leaders works as well by putting this discussion in an

\(^{19}\) Hülsmann, pp. 203, 204.

\(^{20}\) After the American Revolutionary War began in 1775, the Continental Congress began issuing paper money known as Continental currency, or Continentals.
historical context. Hart, a British philosopher and professor of Jurisprudence at Oxford, considered the source of to be “what the Queen in Parliament enacts is law,” while in America we might well view the ultimate source of our law to be “what the Constitution says as interpreted by a majority of the members of the Supreme Court.” Both of these characterizations are overly simplistic. Natural law theory supporting our constitution is based upon truths and moral principles which the founding fathers and the American citizens considered self-evident.

The Declaration of Independence confirms the American foundational precepts that to assure the people's future security, the American people must “assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them; … and that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, …” One might say with confidence that this declaration constitutes a clear reliance on natural law as the source of our system of government and governance.

Although we Americans have a clearly established natural law foundation for our polity, as expressed in our Constitution, as amended, and as interpreted by the United States Supreme Court, Hart’s theory of legal positivism derives through the divine right of the British sovereign acting through parliament. The divine right of kings and similar sovereigns, however, is grounded on the same natural law claimed in America through the consent of the sovereign people to a government established under a constitution that is based on and composed of expressions of natural law – moral law. We will examine the concepts of natural law and legal positivism, for which Hart has served as the most high-profile proponent, after we take a look at the false narratives that have sundered developed over time and threaten to sever the American law from its foundation of natural law and the moral principles embodied there.

**War of 1812 and money debasement.**

The War of 1812 was the first challenge to our political integrity; embarked on before our legal system had yet fully formed.

“The War of 1812 was senseless and unpopular with the public. There were several reasons for this war with Britain. Here are some of the primary reasons: for Britain’s ongoing war with France; against Britain for forcing American merchant sailors into the Royal Navy (although that stopped before the war); and for Britain’s support of American Indian tribes against American Expansion. To finance the war the government encouraged wildcat banks to purchase its war bonds and convert them to bank notes. The government used the money to purchase war supplies. Within two years the money supply had tripled and so had prices. The US population lost about 66% of the money they held during that period.”

“Let's review some economic history regarding the printing of paper money and the banking system. During the war of 1812, the Washington D.C. banks and the Mid-Atlantic banks (the ones close to Washington) were lending out money for the war effort.
They were effectively financing the war. The New England states were against the war and their banks managed their loan portfolios totally differently... very conservatively. Even though the United States was on a gold standard, individual banks could still lend out more money (at that time they were called bank notes) than they had gold in their vaults. As long as everybody didn't show up at the bank with their bank notes to exchange the notes for gold, the banks were fine and they could make more money by lending out more bank notes and receiving interest on them. This is how banks leverage their assets. This is still practiced today. Because the D.C. banks were financing the war, they were issuing a lot of bank notes. These bank notes were used as money along with U.S. dollars. Because of this the ‘money supply’ in the Mid-Atlantic region was increasing while the money supply in the New England area wasn't. Therefore, consumer prices in New England were very steady but prices in the D.C. area started to rise because of the increase in the region's money supply. As people realized that they could buy cheaper goods from New England, they started to do so. As goods were imported into the Washington area, many times D.C. bank notes were sent to the merchants in New England for payment. These notes would then be deposited in New England banks. The New England banks, not familiar with the regional banks in Washington, returned the bank notes requesting gold. Since there were a lot of extra bank notes floating around, the D.C. banks were going to have to ship more gold to New England to honor their bank notes than they actually had in their vaults. The more gold that left the D.C. banks, the less base they had for other loans and they eventually had to suspend gold payments to cover their notes. In other words, default on the value backing the notes. When this started to happen, the bank notes lost their value since they could not be exchanged for gold and they started selling at a discount. Basically, they were being devalued. When you hear about the devaluation of a country's currency, it is the same mechanism. It devalues against another currency because a similar situation has occurred. One country has issued (or printed) too many bank notes or currency with nothing backing it. A good modern example is Argentina in the last 10 years. It is interesting to note that once the D.C. banks ran out of money and their paper seemed to be worthless, the U.S. government was faced with the dilemma of not being able to finance the war. The D.C. banks suspended payments of gold in December of 1814 and in January of 1815, a month later, peace was declared. They couldn't fight the war without money so they had no choice but to negotiate a peace. This is why gold is also a force for peace. To finance a war, you either tax the people or print the money. Under a gold standard, you can't print the money and when you tax people to fight a war, they usually get upset and force a diplomatic solution saving a lot of money and lives. The same phenomena occurred in the 1920s but this time, instead of regional banks in the United States, it happened with Central Banks all over the world. Some of them expanded their bank notes (money supply) too much and eventually had runs on the banks to exchange the paper for gold. As this happened, the basic asset behind their money was not there, and it created mayhem and devaluations in the 1930s. This created bank defaults and stock market crashes and the Great Depression and the wipe out of a lot of financial assets. The United States at this time, since the 1930s, has made tremendous progress and advancements in
all areas ...science, technology, medicine, arts, etc., but the truth of the matter is that in
the field of economics, the opposite has occurred. An incredible regression has
developed. Economic policies today are much, much worse than in 1929. The five
economic evils are all alive and well in modern America: big wasteful government, high
taxes, paper money, government debt and budget deficits. But the worst practice is the
creation of money out of thin air, which always brings on inflation, higher interest rates
and disrupts the normal free market economy. 21

E.G. Spaulding 22: Civil War existential demand for war exception to permit debasement.

During the Civil War the money supply increased by 138% to pay for the war. The purchasing
power of the Greenbacks fell by 65%. Wages were cut in half while prices doubled. For the
south it was even worse. Almost all of the Civil War was funded by printing fiat money.
Confederate notes increased in volume by 214% per year. The volume of all the money including
bank notes and checkbook money increased by over 300% per year. All of the confederate states
also printed their own fiat money as well. Within four years the prices hyper-inflated by 9,100%.
Confederate bonds and notes were worthless. Once more the hidden tax of inflation was paid
dearly by the public on both sides of the war.

The civil war period of American history of money is a cauldron of turmoil. The country had
run into financial difficulty as a result of the war of 1812 and had been forced to borrow to pay
the war costs. The civil war presented a far more challenging prospect. Not only was the U.S.
government forced to borrow to pay the costs of the civil war but the cost exceeded the total
amount of currency in circulation in the United States.

The issues became not only the issues of authorization of borrowing and terms of borrowing as
contemplated by the Constitution, but also the issue of how the country could provide sufficient
currency to fund the borrowing through coining money, the value of which was regulated by
Congress, as required by the Constitution. Since borrowing money is the current monetization of
commodities and profits measured in commodities and profits in the future, the government was
forced, literally as a matter of maintaining its existence to substitute a paper promise of future
commoditization of coined money to eventually redeem the current promises to the lenders -
largely the American public. In this way the government created the money through instruments
of credit, bearing interest, some of which was payable in specie, and which being ultimately
redeemable at maturity in specie. The rights of holders of existing American paper money to
redemption in specie on demand was suspended for the duration of the war, and until such time
as the country could regenerate sufficient specie to commence the gradual process of
redemption.

   with special acknowledgement to Mr. Howard Katz (undated).
22 Elbridge Gerry Spaulding, History of the Legal Tender Money, including as an Appendix, Mr. Spaulding’s Speech on the National Currency
   Bank Bill, February 19, 1863.
The fact that paper money was created to pay current expenses based on an uncertain future creation of value was not lost on the government or the public. Commodity money; specie, is a representation of current liquid value not future value. The purposes for which the new paper legal tender money was created did not represent concurrent exchanges of value or profit creating activities but rather represented, essentially a destruction of existing value and future profit, through immediate consumption in the destructive activity of war instead of the productive activity of commerce. The focus of the government and the public then was upon the necessary sacrifice of both current and future value and productive capacity, to pay the current costs of preserving the country of the United States. The government and all levels of American society were aware of the necessary sacrifices and the purpose of those sacrifices. The common desire was to spread the burden of sacrifice as evenly and equitably as possible without destruction of the economy and the public’s future ability to repay the massive war debt, while maintaining the value and integrity of the legal tender paper currency through its ultimate redemption at full value in specie.

The establishment of legal tender and the temporary suspension of convertibility of that legal tender into and redeem-ability in gold under then then current Currency Act, in response to the existential emergency of the Civil War, inadvertently cracked the door open to exploitation and abuse by the new nations’ banks to arbitrage their newly granted monopoly power over money creation to work subsequent concentrations of wealth and power in those bankers and their political partners and sponsors, in direct contradiction to the requirements of the Constitution.

Congressman E. G. Spaulding, who introduced the National Banking Act and Legal Tender Acts in Congress, commented contemporaneously regarding the danger of shifting standards of value necessary to the regulation of value of the money, when created outside the needs of commerce. Spaulding clearly articulated the necessary considerations in regulation of the value of money that Washington and Wall Street have now so cavalierly cast aside, ignored and in so doing exploited the opportunity for debasement of state money; an evil that has occurred periodically throughout history with unavoidably disastrous results.

Excerpts from Spaulding’s articulation of the necessity for legal tender and its regulation of value through legal reference to legislatively established standards of value demonstrate clearly that the adoption of the use of legal tender money during a time of emergency did not in any way do away with, dismiss, alter, affect impair or impugn the constitutional requirement of government created money, the value of which is regulated by reference to a clearly articulated standard of value. At one time during the Civil War period Congress established a standard for regulation of the value of greenbacks provision for their redemption in government interest bearing bonds at market value:

“This was not the issue of an irredeemable paper currency. There was a fixed standard and measure of value for the redemption of all these legal tender notes as they should be issued and re-issued from time to time. This was the standard of value fixed by the legal tender note bill. It was in effect a forced loan from the people to the government, but at a fair rate of interest for both the lender and the borrower.” …
“All the bonds and greenback promises to pay dollars, now outstanding, do not represent tangible property or means owned by the Government, but property in the possession of the people under its jurisdiction, and from which all this waste must be reproduced again, and the value restored, in order to bring us to the specie standard and enable us to pay the debt. In short, the debt must be paid from the earnings and income of the people, in some form of taxation to be enforced by the Government.”

“This was a radical change in the standard or measure of value within the United States, but it was a fixed standard established by law, and every business man could act upon it, and shape all his contracts and business transactions accordingly.”

“All became pecuniarily intrusted (sic) in its success, and they furnished the means to carry it on. The crushing of the rebellion was the people’s triumph; and the people will in due time pay the debt, and thereby preserve the honor and good faith of the nation.”

‘To illustrate more fully. When individuals in commercial transactions give their notes, bonds or other promises to pay money, they usually receive in exchange either real or personal property, or labor, which is made valuable in some form to pay the obligation given for it. Not so with the war debt; the property received and services performed for the United States notes and obligations, outstanding, has not, in a financial sense, been employed in such a useful way as to furnish present value to pay them with, but on the contrary, it was consumed by the war. Hence the difference between a debt created for commercial purposes and a war debt. The one is generally for property or labor made useful, and productive, while the other is for unproductive labor or property consumed, wasted or destroyed not for any pecuniarily (sic) useful purpose.”

Congressman E. G. Spaulding provided an excellent written record of the debates, correspondence and considerations surrounding the struggle to achieve fair and rational methods of financing the costs of the war through combinations of borrowing and money creation. The success of each aspect of the financing was to be determined by the support and willingness of both the government and the public to undertake payment of the current costs as well as the obligation for future deferred repayment of the debt through redemption of specie gained through future work and enterprise, without permanent debasement of the currency.

“The value of the Union and the Government preserved in full vigor under the Constitution, cannot be estimated in dollars and cents. It is above all price. A vast continent, embracing territory and people, is now held under the control of a mighty central and consolidated Government, based upon the will of an enterprising, intelligent and powerful people. The mind of man is incapable of estimating the future progress and destiny of the American people under such a Government wisely administered. But in a

23 Id. (Emphasis added in italics)
financial and economical aspect, these vast sums expended present an entirely different view. Viewed simply as an economical question, the immense war debt represents only lives and property consumed. All the unproductive labor, vast material of war, provisions and supplies of all kinds are used up, wasted and blotted out of existence. This immense debt rolled up during four years of bloody war, stands out in bold demand upon the nation for liquidation from the future earnings and income of the people. Future labor and economy must furnish the means for its payment. This debt is the price of the Union and Constitutional Government, but their value cannot be estimated in dollars. The Government value is intangible and not present as a means of payment, but the war debt is already tangible; the bills are footed up, and the total amount is over $2,500,000,000.

“This sum must be paid, principal and interest, not by the issue of new promises to pay it, but by the production of actual value, measured by gold and silver, the world’s commercial standard, as well as the standard regulated by law.

“To illustrate more fully. When individuals in commercial transactions give their notes, bonds or other promises to pay money, they usually receive in exchange either real or personal property, or labor, which is made valuable in some form to pay the obligation given for it. Not so with the war debt; the property received and services performed for the United States notes and obligations, outstanding, has not, in a financial sense, been employed in such a useful way as to furnish present value to pay them with, but on the contrary, it was consumed by the war. Hence the difference between a debt created for commercial purposes and a war debt. The one is generally for property or labor made useful, and productive, while the other is for unproductive labor or property consumed, wasted or destroyed not for any pecuniarily (sic) useful purpose.

“ Immediately, after the war began we commenced our departure from the gold standard, for the reason that every dollar expended for the waste of war was expended for a pecuniarily (sic) unproductive purpose. Every dollar expended took out of existence a dollar of value for which the Government gave its promise to pay. Every dollar of property thus destroyed led us farther and farther away from the specie standard, and has to be produced again by labor before the value is restored.

“All the bonds and greenback promises to pay dollars, now outstanding, do not represent tangible property or means owned by the Government, but property in the possession of the people under its jurisdiction, and from which all this waste must be reproduced again, and the value restored, in order to bring us to the specie standard and enable us to pay the debt. In short, the debt must be paid from the earnings and income of the people, in some form of taxation to be enforced by the Government.24"

Very importantly, at this time the American government had no mechanism in place to effect the borrowing and redeemable currency issuance necessary to prosecute the War. The Legal Tender

24 Id.
Acts and the National Banking Acts were adopted to accomplish the vital, existential objectives of winning the war and reunification of the country. These were emergency acts, adopted based on expedience as a matter of survival. They did provide for the combination of government and banking then necessary for success in the war, thus setting the stage for a dramatically expanding special relationship of the government with banks as a matter of necessity. What began as an arrangement to temporary convenience and expedience for survival, a purely temporary arrangement, has subsequently been exploited by the banking industry and traded off of by politicians and bureaucrats through the years in a manner that belies temporary and expedient foundation of the relationship, misrepresented the relationship and the policy the policy upon which it was based and corrupted the values and public rights that had been protected so judiciously during the civil war period.

The special relationship between Washington and Wall Street so necessary to the victory of the Union has now evolved into and resulted in policies and actions completely at odds with those embodied in common law, the United States Constitution and followed to the extent possible during the Civil War period. The clear and unequivocal understanding of and acknowledgment by Washington and the American public was that failure to return to the sound pre-war policies as soon as possible after the war would lead to the crime and corruption of currency debasement and subsequent financial crises.

Each financial crisis subsequent to the Civil War has resulted in further deterioration of the rights of the American public wrought by the government in Washington and ever more powerful special partners on Wall Street.

Each financial crisis following the American civil war has been followed by putative banking and financial reforms, but contrary to the stated purposes of the reforms, have instead resulted in further and ever more dramatic departures from the duties of Washington and Wall Streets as partners in the special relationship that now controls the creation, emission and value of the American dollar that defines the monetary and property rights and interests of American public. The perversion and corruption wrought based upon the “false precedent” of the temporary expedient policies following the Civil War have been used fraudulently by the Washington and Wall Street monetary cabal to justify each subsequent weakening of the publics’ natural, moral and legal right to honest money in connection with subsequent financial crises. As we follow the development of American fiscal, monetary and economic policy through its journey from the common law and constitutional mandate for sound money to the current policies firmly grounded in a policy of fraudulent misrepresentation of asset values through abuse of power and currency debasement, we will look back to the twisted departures from the foundation for the American Dream preserved during the Civil War through terrible struggle and sacrifice but subsequently, by stages, spurned and abandoned by Washington and Wall Street through their enduring propensity to concentrate wealth and power in the hands of a narrowing group - the 1% - at the expense of the society, if not checked by the American public’s enforcement of the accountability of Washington and Wall Street under the American rule law.

Legal Tender Acts, Washington and Wall Street.
The National Currency Acts of 1863 and 1864 (the Legal Tender Acts) had four primary purposes:

- “To create a partnership between the national government and its creatures, the so-called ‘National Banks’, for the emission of paper currency and deposits payable on demand”.
- “To inflate the supply paper money and bank credit in a coordinated manner throughout the country”.
- “To float government bonds by making them the compulsory ‘backing’ for the National Bank’s paper currency…”

“And, ultimately, to coerce, curtail, and co-opt the existing decentralized system of state banks, and perhaps even superseded it entirely with a nationwide cartel of congressionally chartered banks directed from a few major financial centers, and all closely tied to the Treasury in the most comprehensive structure of political banking ever seen in American history.25” …

“… Congress was seeking an alliance, not just with any ‘capitalists’ – who, after all, could simply invest in government bonds with no further ado – but with a certain privileged subset of ‘capitalists’: to wit, bankers, who would employ the bonds in their peculiar business of expanding currency and credit ex nihilo. The specific legislative goal, then, was to create a new scheme of unabashedly political banking.

“That is, whereas the Independent Treasury had separated bank and state (or more descriptively) bankers and politicians, the National Currency Act [1863] integrated bankers and politicians, “identifying [bankers] with the government in the supply of currency to the nation.26”

Legal Tender Cases and paper money.

The U.S. Supreme Court has held that the legal tender acts do not attempt to make paper a standard of value. In fact, a close reading of the Legal Tender Cases27 reveals that the legal issue of the ability of Washington and Wall Street to prosper through lying to, cheating and stealing from the American public through the age old device of money debasement was expressly reserved by the Court, not settled or decided in the Legal Tender Cases. The Court stated:

“…The legal tender acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their emission is coinage, or any regulation of the value of money; nor do we assert that Congress may make anything which has no value

26 Id., p. 693.
27 Legal Tender Cases, 110 U.S. 421 (1884).
money. What we do assert is, that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof.

“The questions involved are constitutional questions of the most vital importance to the government and to the public at large. We have been in the habit of treating cases involving a consideration of constitutional power differently from those which concern merely private right. We are not accustomed to hear them in the absence of a full court, if it can be avoided. Even in cases involving only private rights, if convinced we had made a mistake, we would hear another argument and correct our error. And it is no unprecedented thing in courts of last resort, both in this country and in England, to overrule decisions previously made. We agree this should not be done inconsiderately, but in a case of such far-reaching consequences as the present, thoroughly convinced as we are that Congress has not transgressed its powers, we regard it as our duty so to decide and to affirm both these judgments.28

This power is entirely distinct from that of coining money and regulating the value thereof. It is not only embraced in the power to make all necessary auxiliary laws, but it is incidental to the power of borrowing money. It is often a necessary means of anticipating and realizing promptly the national resources, when, perhaps, promptness is necessary to the national existence. It is not an attempt to coin money out of a valueless material, like the coinage of leather or ivory or kowrie shells. It is a pledge of the national credit. It is a promise by the government to pay dollars; it is not an attempt to make dollars. The standard of value is not changed29.

A case for Washington and Wall Street accountability for the financial crisis is not barred by the ultimate decision in the Legal Tender Cases. In fact, the Legal Tender Cases provide a substantial foundation for such a case. The Court’s holding in the Legal Tender Cases has never been reversed. The government has the power and ability to borrow for its needs. The government does not have the Constitutional power to debase American money, the dollar, for any reason, notwithstanding, the Court’s claim that it may do so “when necessary to the national existence to promptly anticipate and realize the national resources.” Congress may, however, devalue the currency through appropriate legislation that changes the constitutionally established standard of value as a part of its constitutional mandate to coin and regulate the value of money. It may use paper money as legal tender, as its value is regulated by Congress in accordance with the Constitution, Article I, § 8, Clause 5. At least from the time of the Nixon shock in 1971 to today, the government has not declared that it must debase the dollar as necessary to the national existence. This is not a case for technical posturing or hairsplitting. It is a case of fundamental first principles.

28 Legal Tender Cases, 79 U.S. 457 (1870) (Legal Tender Cases), p. 553.
29 Id., p. 560 (J. Bradley, concurring).
“The Civil War, in short, ended the separation of the federal government from banking and brought the two institutions together in an increasingly close and permanent symbiosis. In that way, the Republican Party, which inherited the Whig admiration for paper money and government control and sponsorship of inflationary banking, was able to implant the soft-money tradition permanently in the American System.30"

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The conclusive Supreme Court Legal Tender Cases confirmed the constitutionality of legal tender money, for the time being, only as an existential necessity, and only on the condition that it represents and is redeemable in Constitutional coined money, the value of which is regulated by Congress.

The Legal Tender Cases, however, have been wrongly construed to have established the constitutionality of the use of legal tender for the payment of all debts public and private, without the necessary attributes:

- Redeemability in Constitutional coined money, the value of which has been regulated by Congress.
- When created through bank credit, the credit must be adequately supported by sources of repayment, based upon a reasonable and prudent banker’s determination that, considering the risk and uncertainty of the continued quality of credit, collateral and other sources of repayment over time until maturity, the credit, when repaid at maturity as originally stated, or earlier in the event maturity of the is lawfully accelerated, to provide liquidity

30 R Christopher Whalen, Inflated: How Money and Debt Built the American Dream, (Whalen), 2011, p. 34.
31 Id.
to the holder who will then be repaid in money that is redeemable in sovereign U.S. money, the value of which has been regulated in accordance with a Congressional Constitutional mandated honest standard of value.

- The money must provide the central features of uniformity and parity as an essential feature of Congressional control of the currency; and providing a sound and uniform currency for the country; securing the benefit of it to the people.

These considerations properly observed are, and have always created the attributes of honest money that causes the money to serve its public purpose, thereby justifying the trust and confidence in the honest money created and controlled by Congress; and by Congress’ partners in the process, The Federal Reserve system, the other federal financial regulatory authorities and the Wall Street bankers; all in a safe and sound manner.

The financial crisis of 1907 and the Fed.

Robert F. Bruner, dean of the University of Virginia's Darden Graduate School of Business Administration and Sean D. Carr, the Director of Corporate Innovation Programs at the Darden Schools' Batten Institute, published "The Panic of 1907: Lessons Learned From the Market's Perfect Storm," detailing a historic financial crisis eerily similar to the great financial crisis. They provide a pithy summary of the Panic of 1907:

“The Panic of 1907 was a six-week stretch of runs on banks in New York City and other American cities in October and early November of 1907. It was triggered by a failed speculation that caused the bankruptcy of two brokerage firms. But the shock that set in motion the events to create the Panic was the earthquake in San Francisco in 1906. The devastation of that city drew gold out of the world's major money centers. This created a liquidity crunch that created a recession starting in June of 1907.³²”

Largely in response to the Panic of 1907, the preamble to Federal Reserve Act addressed the practical problems facing the country's banking system:

“An Act to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.”

The Federal Reserve Act did not provide for and Congress has never lawfully delegated to the Fed Congress’ power and duty to create, emit and regulate the value of money³³.

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³² Abigail Tucker, Smithsonian.com, October 9, 2009. Quoting Bruner and Carr, and noting the relevance of the panic of 1907 to the financial crisis of 2008, Ms. Tucker points up the parallels and notes that the great financial crisis differ only in presenting a crisis of “higher complexity, faster speed and greater scale.” See also, Jon R. Moen and Ellis W. Tallman, “The Panic of 1907,” Federal Reserve History, (December 4, 2015)
³³ According to the official statement of the Fed Board of Governors, “[t]he entire system is subject to oversight by the U.S. Congress because the Constitution gives to Congress the power to coin money and set its value – a power that, in the 1913 Act, Congress itself delegated to the Federal Reserve”. (Vieira p 749, at note 2977 and 2978, Board of Governors of the Federal Reserve System: Purposes and Functions of The Federal Reserve System (8th Ed. 1994, at pp. 3 and 5) See also, Government Performance and Results Act Biennial Performance Plan 2008–2009, at p. 2)
The false delegation narrative.

The usual rhetoric employed by Washington and Wall Street intimates that the Fed is responsible for all matters involving American money; ostensibly based upon a Congressional delegation of unbridled discretionary monetary powers. This false narrative is uniformly expressed in such a generality\(^3^4\). What does this narrative mean? It is, of course a story contrived and disseminated by Washington and Wall Street, from the creation of the Fed in the *Federal Reserve Act*, but largely over the past 45 years following the Nixon shock\(^3^5\). Edwin Vieira, the nation’s foremost legal authority on the monetary powers and disabilities of the United States Constitution is of the opinion that “it is enough to grasp the fundamental principle that delegations of public powers to private parties are, in almost all conceivable cases, unlawful.”\(^3^6\)

Has Congress’ establishment of the Federal Reserve system somehow attempted to effect a delegation of Congress’ power and duty, as delegated to it in the first instance specifically by the American people in the United States Constitution, to create and regulate the value of American sovereign money? Has the Federal Reserve system somehow attempted to effect a re-delegation, or sub-delegation of Congress’ power and duty to the Wall Street banks to create and regulate the value of American sovereign money? However improbable; actually demonstrably false and legally ineffective this daisy chain of abandonment of power and duty, and with it accountability, may have been, This fairy tale of a “Ponzi scheme” of supposed delegation of Congressional power and duty has become and remains the dominant narrative of how the value of the dollar is regulated today – the false delegation narrative.

The Fed has intimated, from time to time that that Constitutional Congressional power and duty have been delegated to it by Congress. The Fed has turned to Wall Street under the Greenspan doctrine of Wall Street “self-regulation”, protesting that it is not capable of regulating these enormous and powerful institutions. What has become of duty and accountability attributable to such power? Is any such delegation too vague to be enforced by the judicial system?


(Curiously, the 9th edition of this document no longer includes the quoted assertion of delegation). “But one can search that act until his eyes fall out without finding a delegation of the ‘power to coin money’”. (Id.) The delegation, if it can be said to have any legal basis or effect, is *de facto*: a ceding or relinquishment to or abandonment of power, however undefined, by Congress to the Fed; that the Fed has exploited to the fullest, for itself, Wall Street and through the entire national and global banking community.

\(^3^4\) See Vieira, pp.1430, *et. seq* and pp. 1461, *et.seq*.

\(^3^5\) On August 15, 1971, Nixon unilaterally imposed 90-day wage and price controls, a 10% import surcharge, and most importantly “closed the gold window,” making the dollar inconvertible to gold directly, except on the open market. This was the “Nixon shock.” Unusually, this decision was made without consulting members of Congress, the international monetary system or even his own State Department. As the crisis generated by the Nixon shock progressed, President Nixon met with Treasury Secretary Connally and Office of Management and Budget Director George Shultz on August 2 to map out next steps. Tapes of their conversations on August 2 reveal Connally as the primary architect of the essential elements in the New Economic Policy (NEP) the President would announce on August 15. The State Department and the National Security Council were not represented at Camp David where, according to Kissinger, “a decision of major foreign policy importance had been taken about which neither the Secretary of State nor the national security adviser had been consulted.” At no time was Congress or the Fed involved, nor did either respond directly to this policy statement that drove directly to the heart of Congress’ Constitutional responsibility to “to coin money” and “regulate the value thereof”.

\(^3^6\) Vieira, p. 1461.
maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."

Arguments have been made that the Fed’s official regulations are the lawful product of its powers and duties created by The Federal Reserve Act, as amended, and are reasonable in a regulatory context, but far too vague and nebulous to be used outside the regulatory context for which it was intended. These arguments, covered by the false delegation narrative, now surround the fundamental, clear and understandable Constitutional imperative of honest and transparent regulation of the value of money by Congress, with vague and nebulous rhetoric that, so far has hidden the largest crime of bank fraud in the history of money and banking.

The vague and nebulous argument does apply to the Fed’s general statutory objectives. "The Federal Reserve exercises unprecedented breadth and depth of power over money despite the fact that its official mission is quite limited: The Federal Reserve Act provides that the Board of Governors and the Federal Reserve Open Market Committee seek: 'to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.'" “Indeed courts have held that the speculative nature of the issues involved precludes litigation over whether the FOMC’s policies are actually responsible for the country’s economic conditions – that is, the FRS’s effects on the economy are not provable according to the laws of evidence.” (Vieira, p. 1427, Citing Reuss v. Balles, 584 F. 2d 461, 468-69 (D.C. Cir. 1978) and Committee for Monetary Reform v. Board of Governors of the Federal Reserve System, 766F. 2d 538, 542-43 (D.C.Cir. 1985):

“In our view, "the links in the chain of causation between the [alleged constitutional violations] and the asserted injury [general inflation resulting from Fed exercise of monetary power] are far too weak for the chain as a whole to sustain [the appellants'] standing." It is entirely speculative whether the influence of the Reserve Bank members is responsible for the FOMC's alleged pursuit of restrictive or erratic monetary policies. Moreover, in light of the complexity of the modern economy, it is also highly uncertain whether and to what extent such policies were responsible for the adverse economic conditions that allegedly resulted in harm to the appellants. Similarly, the appellants have given no indication as to how they can succeed in establishing that an overly broad delegation of power to the Federal Reserve System has had the consequence of undermining economic certainty and thereby increasing interest rates. Such general assertions are clearly inadequate to meet the constitutional requirement that parties allege specific facts sufficient to establish that their injuries are fairly traceable to the alleged violations. We think that courts lack both the competence and the authority to determine such abstract issues, which are better addressed through political and economic debate over the role of monetary policy in the national economy.” 766 F.2d at 542.

Contrary to the holdings of the D.C. Court:
• Action to assure honest money in which the public may reposit their trust and confidence may, but does not necessarily have as its primary purpose to remedy “restrictive or erratic” Fed monetary policies.

• Insistence on the proper re-establishment of honest money, the value of which is regulated by Congress, is not asserted to essentially deal with a “broad, remedial social legislation” that is exercised and enforced by Congress over regulatory agencies. To the extent the this re-establishment involves Constitutional questions raised by existing legislation and regulatory structure, however, it nonetheless presents not just legislative or regulatory issues, but rather, in the first instance a proper constitutional question that must properly be addressed in the American judicial system.

• Congress, the Fed and other federal financial regulatory authorities can and must establish in detail the duties and responsibilities of the parties whose mandate turns on honest money, based upon specific official papers, records and government reports over a protracted period of specific action.

• Existing official government reports, together with expert testimony by nationally recognized experts, many of whom have been relied on by the Washington and Wall Street for their own purposes, provide specific facts sufficient to establish that the damages suffered by the American public caused by intentional representation of the liquidity and value of instruments actually constituting our money supply are “fairly traceable to the alleged violations” by Washington and Wall Street of the United States Constitution, federal and state statutory law and common law going back to the Magna Charta.

• The call for re-establishment of honest money does not constitute an assertion of an abstract principle of political or economic debate, but it is rather the assertion of the specific, well-defined and well-supported claims that can be made by the American public for enforcement by the Judicial Branch of the of United States government in accordance with the United States Constitution, and the well-established American rule of law. The fact that enforcement of the law by the judicial system, dedicated to enforcement of the American rule of law, may subsequently lead to political controversy and debate over economic and monetary policies made by Congress, the Executive branch of government, including the federal financial regulators, and the Federal Reserve system, including quasi-government entities as well as the Wall Street Bank banks, is entirely reasonable and to be expected and is one objective of such action. Politics and the making and conduct of social, political, financial, economic and monetary policies must however, be made subject to constitutional challenge under our judicial system, upon petition, in accordance with and subject to the American rule of law. American social, political, financial, economic and monetary policy activities are not exempt from the requirements of the United States Constitution or of applicable existing state and federal statutory law and common law.
• Edmund Vieria pertinently observes that “if these matters are actually beyond rational investigation in a court of law, then the benchmarks the statutes set out cannot be classified as legal standards capable of controlling the actions of government agencies.\textsuperscript{37}"

The “too vague and nebulous” characterization perfectly describes the existing presumption (the false delegation narrative) that the power and duty to regulate the value of money as delegated by citizens to Congress; has then somehow been purportedly delegated by Congress to the Fed at some indeterminate time and in some indeterminate manner; and that then such powers and duties have been, further, purportedly delegated by the Fed to the Wall Street banks at some purportedly indeterminate time and in some indeterminate manner. This vague and nebulous narrative cannot justify the takeover by the Fed and the Wall Street banks of total power over the nation’s money, Congress does not have the power to effect such a narrative. Regulation of the value of money and credit is central to the concept of safety and soundness that lies at the heart of our banking, financial and monetary system. That concept lies at the heart of all federal bank regulation and the duties of all parties in that chain of duty, to honestly protect the public interest in the integrity of the American monetary, banking, financial and economic system that support our trust and confidence. The false, dishonest Washington and Wall Street narrative of a daisy chain of uncontrolled delegation of Congressional powers, duties or standards to the Washington and Wall Street enterprise of financial speculation does not, and cannot serve the public interest. It is an abomination.

\textbf{Legal requirements for the delegation of Congressional Constitutional power and the inseparability of Constitutional power from Constitutional duty.}

As noted repeated in this work, the American people delegated to Congress the power and duty to create sovereign money and regulate its value in The United States Constitution Article I, Section 8, Paragraph (5) that provides that “The Congress shall have power to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures”.

Thomas Hart Benton\textsuperscript{38}, stated that:

“No legislative body, every person in vested with power of any kind, is morally bound to use only those means which are necessary and proper for the correct execution of the powers delegated to them.

“In the selection of means to carry any of your constitutional powers into effect, you must exercise a sound discretion; acting under its influence, you will discover that what is proper at one time may be extremely unfit and improper at another. The original powers granted to the Government by the constitution can never change with the varying circumstances of the country, but the means by which those powers are to be carried into

\textsuperscript{37}Id.

\textsuperscript{38}Thomas Hart Benton was the author of a 16-volume Abridgement of the Debates of Congress through 1850, and served as a United States Senator from Missouri for 30 years.
effect must necessarily vary with the varying state and circumstances of the nation. We are, when acting to-day, not to inquire what means were necessary and proper twenty years ago, not what were necessary and proper at the organization of the Government, but our inquiry must be, what means are necessary and proper this day. The constitution, in relation to the means by which its powers are to be executed, is one eternal now. The state of things now, the precise point of time when we are called upon to act, must determine our choice in the selection of means to execute the delegated powers.  

George Rothwell Brown, in his book *Leadership of Congress*, stated that:

“The delegated powers granted to Congress under Section VIII are not merely power conferred, but they are obligations laid upon Congress, the designation of acts which must be performed. Obviously, if Congress declined to exercise the power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States," the government would cease to function; it could not exist. These delegated powers, therefore are not merely privileges, which Congress may exercise if it wishes, or decline to exercise if it so desires, but are sacred duties imposed upon Congress.

“It is clear, first that the wording of the clause which states that each House "may" determine the rules of its procedure is such as to give to the word "may" the meaning of "shall"; and second that the powers and duties of Congress are inseparable; that the obligation to raise money and pay the debts of the nation could not be avoided, and that, therefore, no Congress could justify itself before the people for in ability to function which had rendered itself incapable of functioning through failure to avail itself of the constitutional authority to provide for its orderly management such rules as might be necessary to the full discharge of its duties.  

Subsequent, courts and commentators have addressed the issues implicit in the powerful language of Benton and Brown. David Schoenbrod, Professor, New York Law School, in his “Delegation and Democracy: A Reply to My Critics,” nicely summarizes the public policy debate, his views on and critique if the modern political trend and legal apathy supporting the delegation of Constitutional powers and duties.

Schoenbrod begins with the observation that “[h]igh officials tell us that we can be proud to live in a democracy because we have elected them. That tale does not altogether convince voters today. Large majorities tell pollsters that government has somehow eluded their control. … Although the Constitution established congressional responsibility as the main engine of our indirect democracy, members of Congress have evaded responsibility by delegating legislative

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powers to the executive branch. The result, as I [Schoenbrod] have argued, is that democracy suffers.41"

Schoenbrod counters other commentators who have asserted “that delegation does no harm to democracy”42”; “democracy is a meaningless concept”43”; and that “delegation is a policy choice that Congress is entitled to make.”44” He responds to each of these contentions “after placing the question of delegation’s impact on democracy in historical context.45”

According to Schoenbrod, “[t]he effort to square delegation with democracy is pervasively futile because the drive for delegation, from the beginning of the twentieth century, stemmed from a desire to reduce government’s accountability to ordinary voters.46” He explains:

“That democracy was undercut at the beginning of the twentieth century, according to Professor Wiebe [historian Robert H. Wiebe], by the rise of what he calls “the national class.” The national class are the leaders and budding leaders of the institutions with clout on the national scene: the nationally oriented corporations and unions, the nationally oriented quarters of the professions and media, the nationally prestigious universities, and of course the federal government itself.

“The national class thought that ordinary people should not have the power to hold government accountable. That power should come not from what ordinary people pride themselves on — self-support — but rather from what the national class had to offer — specialized knowledge. Members of the national class thought, and many still feel, that experts armed with science and insulated from politics were better equipped to govern than elected officials accountable to ordinary people.47"

The shirt of control has been effected first, by “discouraging voting by the lower classes,”48”, a familiar theme in political rhetoric, and second and most importantly for purposes of this work:

“[t]he national class sought to insulate the government from accountability at the polls. It campaigned to transfer governmental power from institutions that were most accountable to ordinary voters to institutions more in the control of the national class. It succeeded; power was transferred from the states to the national government and, within the national government, from Congress to the executive and the judiciary. From its inception, the core purpose of delegation was to undercut democratic accountability.”49"

42 Id., p. 732 at note 7
43 Id., at note 8
44 Id., at note 9
45 Id., p. 732
46 Id.
47 Id., p.733
48 Id.
49 Id., p.734
In spite of the generally populist rhetoric of the New Deal, according to “Thurman Arnold’s Folklore of American Capitalism (1937), often cited as the New Deal’s most significant commentary on government, derisively dismissed the very thought of popular rule. ... Policy itself fragmented into a multitude of exclusive dialogues among administrative officials, congressional committees, and powerful citizens. By the 1940s it was quite common for the same cluster of officials and citizens to write a law in private, then execute it in private, with just a quick public peek into the process as it was enacted. Few laws were designed for more than a tiny minority to comprehend." Schenbrod and Arnold’s observations resonate in the background to consideration of accountability for financial crises today.

According to Schoenbrod, through the pervasive delegation of power by Congress, America has devolved to the point that by reason of such widespread delegation, “[w]e now have war, regulation, and taxation without representation.... For well over a century after the adoption of the Constitution, the Supreme Court held that the Constitution prohibits members of Congress from bestowing upon others their personal responsibility for enacting laws. When national class legislation began to delegate lawmaking authority to federal agencies at the turn of the century, there had to be a rationale to square the delegation with the Constitution.

The first rationale was that Congress did not actually delegate; power to make laws but only the power to enforce laws made by Congress. Schoenbrod notes, however that “[t]he supposed laws were, from [his] perspective, not laws at all because they provided no discernible rule of conduct. Nonetheless, this first rationale was more naive than disingenuous. The national class had the conceit that its expertise could pour meaning into these empty congressional formulations, and so doing was more akin to fact finding than lawmaking. Thus, the national class could think there was clear meaning in statutory standards that, to a modern mind, were hopelessly vague. To the extent then that Congress and the Fed might like to think that the Congressional power and duty to create money and regulate its value could be discharged by Congress implicitly, and nowhere in law and by no means actually, delegation of that power and duty to the Fed or the Wall Street banks.

The second rationale, the “Intelligible Principle Test” advanced in support of Congressional delegation of its Constitutional powers and duties to non-elected agency bureaucrats was addressed: by the Supreme Court in 1928:

“In J.W. Hampton & Co. v. United States, decided in 1928, the Supreme Court held that Congress could delegate the power to make the law if it provided “an intelligible principle” to guide the agency lawmakers. The Court did not, however, explicitly admit that Congress could delegate the power to make law. That did not come until five years later, when it said that the statute in Hampton delegated legislative power in a “permissible” — that is, a minor — way. But the implication was clear in 1928. Even

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50 Id., p. 734, at note 19.
51 Id.
52 Id., p. 736.
53 Id., p. 737.
such a fervent believer in government by expert as President-elect Herbert Hoover reacted angrily at the departure from constitutional tradition: ‘There is only one commission to which delegation of that authority can be made. That is the great commission of [the voters’] own choosing, the Congress of [the voters’] own choosing, the Congress of the United States and the President. It is the only commission which can be held responsible to the electorate.’\textsuperscript{54}

The third rational was based upon the proposition that subsequent to delegation, Congress could always remediate agency lawmaking through remedial Congressional legislation and thereby avoid any real harm to democracy, because, as the Supreme Court observed:

‘[B]ecause Congress retains the power to enact a statute, repealing whatever agency-made laws that it does not approve. This rationale reverses the burden that the Constitution places on those who want to expand the powers of government by imposing a new law. Under the Constitution, the proponents of the new law must bear the burden of getting it approved by the House, the Senate, and the President. Under the last rationale, inaction by either House is sufficient for the agency-made law to stay in effect. There are, of course, many ways to prevent a controversial bill from coming to the floor for a vote, and legislators are only too willing to avoid controversial votes. As a result, laws are sustained without any legislative accountability.

‘The Supreme Court understands perfectly well that legislators bear little responsibility for inaction, and so it refuses to rely upon legislative inaction in interpreting statutes. It is utterly unprincipled to claim that legislative inaction, somehow squares delegation with Article I of the Constitution. Indeed, the Supreme Court has come close to recognizing this much. In \textit{INS v. Chadha}, it stated, ‘[t]o allow Congress to evade the strictures of the Constitution and in effect enact Executive proposals into law by mere silence cannot be squared with Art. I.’\textsuperscript{55}

With the blessing of the Supreme Court then, Congress has purported to transform ‘its responsibility for the laws from a right of the voters to an option of the legislators.’\textsuperscript{56} The result of this apparent transformation is that:

‘Delegation has allowed legislators to rewrite the ground rules of democracy to help entrench themselves in office. They can pretend to deliver the best of everything to everyone by commanding agencies to promulgate laws to achieve popular statutorily prescribed goals. The statutes are framed so that legislators can skirt the hard choices. This permits legislators to claim much of the credit for the benefits of the laws but shift to the unelected agency officials much of the blame for the inevitable costs and disappointments when the agency fails to deliver all the benefits promised.'

\textsuperscript{54} Id.
\textsuperscript{55} Id., p. 739, at note 49.
\textsuperscript{56} Id., p. 740.
“Delegation thus allows members of Congress to function as ministers, who express popular aspirations (through enacting lofty statutory goals) and tend to their flocks (by doing casework), rather than lawmakers who must make hard choices in passing laws. In a book that argues that delegation has enhanced legislators’ chances of reelection, Morris Fiorina writes:

“So long as ... congressmen ... function principally as national policy makers ... reasonably close congressional elections will naturally result. For every voter a congressmen pleases by a policy stand he will displease someone else. The consequence is a marginal district. But if we have incumbents who deemphasize controversial policy positions and instead place heavy emphasis on nonpartisan, nonprogrammatic constituency service ... the resulting blurring of political friends and enemies is sufficient to shift the district out of the marginal camp.

“With delegation, legislators can escape being ejected from office except upon grounds that would oust a minister from the pulpit — scandal. In those exceptional cases when incumbents do lose an election, their defeat is far more likely to be caused by some escapade or chicanery than by how they shaped the law. Entrenched encumbency is a marker for what is a profound problem — that legislators have rewritten the ground rules of government to evade responsibility.57”

The upshot of the growing tendency to, and in many cases a completely unfounded assumption of delegation of Congress’ Article I powers and duties to government agencies and bureaucrats, according to Schoenbron, and with respect to which I agree, is that, even if it might somehow be correct to assert that delegation does not impair voters ability to vote for legislators with similar ideologies, it is wrong to conclude that there is no loss of democratic accountability caused by wholesale delegation by Congress of its Constitutional powers and duties:

“Even though legislators may personally share our ideological preferences, political incentives lead them to delegate in ways that do not produce laws that coincide with our views. For example, because they escape much of the blame for the inevitable costs of creating new federal lawmaking programs and also much of the blame for the inevitable failure of these programs to produce the benefits promised, legislators are skewed towards creating and enlarging an agency’s lawmaking jurisdiction, making its goals more ambitious, its methods more intrusive, and its procedures more complicated. The upshot is that, in lawmaking, the national government, particularly the executive branch, increasingly takes jurisdiction over matters that might otherwise be left to the political branches of state or local government, the common law, or private ordering.58”

“While the problem is often too much regulation, sometimes it is too little regulation. Because legislators also escape blame for the resulting disappointments when agencies fail to deliver on statutory

57 Id., p. 741.
58 Id., p. 747.
promises, Congress is insensitive to the delay and uncertainty that frequently results when the agency lacks the political muscle needed to make, expeditiously, the hard choices that Congress ducked. 59

… “The early proponents of delegation were correct; it is a way to insulate the ‘experts’ from the pressures of elective politics. Once the 1970s arrived with their emphasis on participatory democracy and talk of ‘power to the people,’ the rationale in favor of delegation has been repackaged to make it sound less elitist. While the talk is different, the walk still has all the swagger of ‘power to the insiders.’”

The transfer of power by the people, through Congress to “insiders” through unrestrained delegation of power, the purported transfers leave accountability for the exercise of that power in the dust. Delegation gives the electoral advantage to those who duck the difficult choices. It does not reflect much of a distinction between the political left or right so much as a distinction between insiders and outsiders in the power structure.

Schoenbrod addresses the assertion that delegation does not subvert democracy because the President, and elected official responsible for the executive agencies is accountable for enforcement of the laws. The practical effect of broad Congressional delegation of its Constitutional powers and duties is that “[s]o long as the agency does not profoundly anger large numbers of voters, and instead only slightly irritates large numbers of voters or badly harms only smaller numbers, it need not fear that Congress will take away its power.”

Is the delegation by Congress of its Constitutional powers and duties a political question, unfit for judicial consideration of the enforcement of duties that follow the powers? Schoenbrod replies and I concur that “delegation is one of those policy choices that is controlled by the Constitution. Were all issues with policy implications off limits to the courts, they would largely be out of the business of constitutional review. The Constitution is a series of policy choices, often about how government should make policy. The Constitution is written precisely so that politicians cannot change these meta-policy choices.” … “Delegation is the reason, however, that it is only at the agency level that legislators or anyone else have any understanding of what is at stake. With delegation, legislation is mainly concerned with promising the best of everything to everyone, yet it is only when laws are passed that rights are actually linked to duties. Were Congress to make the law, the stakes would become apparent to legislators (and their constituents) at the legislative level, which is precisely why legislators avoid accountability and delegate.” Schoenbrod goes on to clarify that:

“Delegation is the reason, however, that it is only at the agency level that legislators or anyone else have any understanding of what is at stake. With delegation, legislation is mainly concerned with promising the best of everything to everyone, yet it is only when laws are passed that rights are actually linked to duties. Were Congress to make the law,
the stakes would become apparent to legislators (and their constituents) at the legislative level, which is precisely why legislators avoid accountability and delegate.\textsuperscript{62}\textsuperscript{63}

The effects of the pernicious evolution of avoidance of Congressional accountability through the device of delegation is that “[t]he unorganized interests are the ones most prone to be harmed by delegation[,] and its corollary, [t]he broadest and most important public interests have little if any representation” Accordingly, “[h]erent in delegation is a bias towards more regulation, more centralized and complicated regulation, because lawmakers escape most of the blame for launching sweeping regulations that promise more than can be delivered and impose costs for which legislators would not take responsibility if they had to make the hard choice. In other words, society is deprived of the most direct means to decide how much it wants to be controlled by government. Rather, that decision is ceded, in substantial measure, to a government run by legislators who want to entrench themselves in office, agency officials who want to enlarge their budgets, and interest group leaders whose livelihoods and power grow in our thriving administrative state.\textsuperscript{63}\textsuperscript{63}

Schoenbrod’s analysis illustrates the evolution in American of the dangerous ever-growing phenomenon of government exercise of power for “insider” interest without accountability for the duties associated with and an un-severable part of the exercise of Congressional Constitutional powers that have been simply ignored. Certainly accountability for Congressional, federal agency and Wall Street “insider” accountability for the financial crisis has simply been left behind.

As we have learned so far, although Washington and Wall Street would have the American public believe the Congress has effectively and legally delegated the powers and implicit accompanying duties to create and regulate the value of American money to the Federal Reserve system and that the Federal Reserve system has effectively and legally delegated the powers and implicit accompanying duties to create and regulate the value of American money to Wall Street under the oxymoron of bank and bank regulatory agency “self-regulation; there is, and there has been no legal delegations of such powers and duties.

If Congress had actually, legally made such a delegation to the Federal Reserve system in the first instance, and if the Fed actually somehow had the legal authority to abandon the powers and duties of creation and regulation of the value of American money to Wall street through the absolutely wrong and irresponsible mechanism of self-regulation, what legal requirements would apply to such a fantastic daisy chain, the sole purpose of which has not been to serve the public interest, but rather to benefit insiders without public accountability?

\textbf{Legal requirements for the delegation of legislative power and duty.}

\textsuperscript{62}Id., p. 761.
\textsuperscript{63}Id., p. 764.
Emblematic of the tension and polarization of interests encompassed by the concept of delegation of legislative power, the judicial treatment of the issue reflects the same unfortunate characteristics. The framers of our Constitution certainly did not contemplate further delegation of powers and duties specifically delegated to Congress in that founding document; and certainly not on the scale on which Congress has at least purported to delegate almost all of its powers and duties; leaving it to preside over a spoils system concentrated exclusively of the benefits to be secured under that system for both Washington and Wall Street.

_Justia US Law_ has reproduced online a useful examination of the requirements for delegation of legislative power. http://law.justia.com/constitution/us/article-1/03-delegation-of-legislative-power.html:

“The Supreme Court has sometimes declared categorically that “the legislative power of Congress cannot be delegated,” and on other occasions has recognized more forthrightly, as Chief Justice Marshall did in 1825, that, although Congress may not delegate powers that “are strictly and exclusively legislative,” it may delegate “powers which [it] may rightfully exercise itself.” The categorical statement has never been literally true, the Court having upheld the delegation at issue in the very case in which the statement was made. The Court has long recognized that administration of the law requires exercise of discretion, and that “in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives.” The real issue is where to draw the line. Chief Justice Marshall recognized “that there is some difficulty in discerning the exact limits,” and that “the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily.” Accordingly, the Court’s solution has been to reject delegation challenges in all but the most extreme cases, and to accept delegations of vast powers to the President or to administrative agencies.

The modern doctrine may be traced to the 1928 case _J. W. Hampton, Jr. & Co. v. United States_, 276 U.S. 394 (1928), where the Court emphasized “that in seeking the cooperation of another branch Congress was restrained only according to “common sense and the inherent necessities” of the situation. This vague statement was elaborated somewhat in the statement that the Court would sustain delegations whenever Congress provided an “intelligible principle” to which the President or an agency must conform.” (276 U.S. at 409) The “intelligible principle” test of _Hampton_ is the same as the “legislative standards” test of _A. L. A. Schechter Poultry Corp. v. United States_, 295 U.S. 495, 530 (1935), and _Panama Refining Co. v. Ryan_, 293 U.S. 388, 421 (1935). “As characterized by the Court, the delegations struck down in 1935 in the _Panama Refining_ and _Schechter_ cases were not only broad but unprecedented.”

65 Id.
66 Id.
The problem was that the Act [National Industrial Recovery Act] provided no guidance to the President in determining whether or when to exercise this authority, and required no finding by the President as a condition of exercise of the authority. Congress “declared no policy . . . established no standard, [and] laid down no rule,” but rather “left the matter to the President without standard or rule, to be dealt with as he pleased.” At issue in Schechter was a delegation to the President of authority to promulgate codes of fair competition that could be drawn up by industry groups or prescribed by the President on his own initiative. The codes were required to implement the policies of the Act, but those policies were so general as to be nothing more than an endorsement of whatever might be thought to promote the recovery and expansion of the particular trade or industry. The President’s authority to approve, condition, or adopt codes on his own initiative was similarly devoid of meaningful standards, and “virtually unfettered.” This broad delegation was “without precedent.” The Act supplied “no standards” for any trade or industry group, and, unlike other broad delegations that had been upheld, did not set policies that could be implemented by an administrative agency required to follow “appropriate administrative procedure.” “Instead of prescribing rules of conduct, [the Act] authorize[d] the making of codes to prescribe them.”

Since 1935, the Court has not struck down a delegation to an administrative agency. Rather, the Court has approved, “without deviation, Congress’ ability to delegate power under broad standards.”

With respect to any purported delegation by Congress to the Fed of its power and duty to create and regulate its value, as we have seen earlier in this work, there exists and extensive, even exhaustive history and record of the nature of money and standards applicable to the regulation of its value, that takes into account the role of sovereign money such as that provided for in Article I, Section 8 clause 5 of the Constitution as well as the role of sovereign money in discipline through redemption requirements of the value of credit money denominated in units of sovereign money and created in the market in the form of negotiable bills and notes, with attached common law requirements governing their use in an historically developed and commercially acceptable legal manner designed to protect the public interest in the economic and monetary system and thereby protecting the integrity of government and the constitutional legal civil compact amongst the governed that created that government.

For Congress to delegate its power and duty to create and regulate the value of sovereign money and through the exercise of that power and duty, in conjunction with common law and enabling legislation for such a purpose, regulation of the value of credit circulating as money in the economic and financial markets, would require sufficient specificity to enable the delegate to meet its duty – a constitutional duty - to the public, through the exercise of the power so delegated and for which it must then be subjected to legal accountability.

Congress has not officially or implicitly delegated to the Fed the power and duty to regulate the value of America’s sovereign money. Because the Fed does not have the Constitutional power

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67 Id.
68 Id.
and duty to create and regulate the value of American sovereign money, it cannot further
delegate such power and duty to its constituent banks and their partners and constituents in the
credit markets.

Neither the Federal Reserve Act nor any other legislation officially and explicitly evidences any
such delegation. Delegation cannot be somehow implicit in the Federal Reserve Act or any other
legislation, because the requirement of sovereign money, created by Congress, the value of
which has been regulated by Congress in accordance with a necessary standard, is \textit{a priori}, a
condition precedent to the Fed’s lawful exercise of its expressed powers and duties in accordance
with its creation and enabling legislation.

The Fed, however, by its organizing and enabling legislation is empowered to create money in
the form of credit and to establish, in conjunction with other federal financial regulators,
standards for the extension, transferability and collection of credit. The Feds ability to create
credit and denominate it in sovereign United States Dollar units, whether as electronic data entry
or other methods convertible to Federal Reserve Notes, i.e., Legal Tender. Legal Tender in the
form of Federal Reserve notes does not constitute Constitutional sovereign money, the value of
which is regulated by Congress. The Feds powers to create credit money and direct America’s
monetary system have been created by federal legislation, \textit{The Federal Reserve Act}, as amended.
Expressed primary purpose of the Federal Reserve Act is to “maintain long run growth of the
monetary and credit aggregates commensurate with the economy's long run potential to increase
production, so as to promote effectively the goals of maximum employment, stable prices, and
moderate long-term interest rates.”

That is, said another way, to manipulate credit, credit money and money markets to achieve
specific social and political public policy objective, albeit with an extraordinary degree of
discretion and with little accountability. That purpose in no way incorporated a delegation of
Congressional Constitutional power and duty to create the units of sovereign money, the value of
which has been regulated by reference to an historical suitable standard of value, the historical
purpose of which is to limit the ability of the state and the banking system to manipulate, first the
value of sovereign money, and second to enable the market, through the common law and
statutory to regulate the use and value of credit money in accordance with the long established
law of contract, bills and notes and negotiable instruments, that meet the ancient disciplines on
creation of credit money detailed by Felix Martin\textsuperscript{69}.

Martin correctly observes that today “currency is ephemeral and cosmetic: it is the underlying
mechanism of credit accounts and clearing that is the essence of money.”\textsuperscript{70} This social
technological concept is laid on the foundation of:

- An abstract unit of value in which money is denominated (in America, sovereign money,
  the U.S. Dollar, created, and the value of which is regulated by Congress);
- A system of accounts which keeps track of the individuals’ or institutions’ credit or debt
  balances as they engage in trade with one another; and

\textsuperscript{69} Felix Martin, \textit{Money - The Unauthorized Biography} (2013) (Martin).
\textsuperscript{70} Martin, p. 26.
• The possibility that the original creditor in a relationship can transfer their debtor’s obligation to a third party in settlement of some unrelated debt.

• A bilateral credit relationship is simply a loan. “It is credit but it is not money.” It is when that credit – loan – can be passed on to a third party through “negotiation” and “endorsement” that the credit becomes money. Money is not just credit, but rather readily transferable credit. Quoting nineteenth-century economist and lawyer Henry Dunning Macleod, Martin observes that: “If we were asked – Who made the discovery which has most deeply affected the fortunes of the human race? We think, after full consideration, we might safely answer – the man who first discovered that a Debt is a Saleable Commodity.”

• For a seller to accept a buyer’s credit instrument in payment, however, the seller must be convinced that:
  o The debtor whose payment obligation they are about to accept will, if it comes to it, be able to satisfy their claim – that the money’s issuer is creditworthy; AND
  o The seller must also trust that third parties will be willing to accept the debtor’s credit obligation in payment as well – that it is and remain indefinitely, transferable – that the market for it is liquid (Herein lies the rub. The credit money must be not only transferability but must be transferable readily on a liquid basis, at a valuation denominated in terms of liquid sovereign monetary units).

According to Martin, then, “[d]epending on how powerful are the reasons to believe these two things, it will be easier or harder for an issuer’s [debt] to circulate as money.” Martin refers to the process of negotiation and endorsement of a credit instrument through the system of processes of accounting and clearing a “financial jargon.”

These two words represent more than jargon. The concept of “negotiation” describes the process of the seller and buyer reaching mutual agreement with respect to the value of the credit evidence to be transferred as money at the time of transfer. The negotiation and mutual determination of the value of the credit item at the time of transfer, through “endorsement” requires that the buyer have both trust and confidence in the ability of the underlying issuer to repay his debt, and creditable independent evidence supporting that establishment of trust and confidence in the market value of the credit item.

In the absence of any other factors, that necessary evidence is found by the buyer in an examination and confirmation of the issuer’s assets and liabilities and the issuer’s ability to readily liquidate its assets in amounts and at values sufficient to repay his debt in accordance with its terms. Because that present determination must take into account the future risks and uncertainties that may adversely affect the issuer’s future ability to so perform. The buyer must take into account the perceived risk and uncertainty of future performance by the issuer in

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71 Id., p. 27 at note 41
72 Martin, p.27.
determining the present value at which he will accept the transfer of the credit item through endorsement.

The negotiated value of the item presented is generally less that the face amount of the item, due to the corresponding assessment by the buyer of the present value of the item adjusted to reflect his assessment of the degree to which the items current liquidity is affected by future risk and uncertainty of payment off the item in full at maturity in accordance with its terms. The assessment and negotiation of present liquid value of the item is a precondition to its transfer to the buyer and his evaluation of his ability to transfer it on to unrelated third parties through the systems and process that constitute the socially acceptable monetary scheme at the time.

The challenge of conducting such transfer through negotiation and endorsement of credit items as money through the prevailing systems of valuation, accounting and decentralized transferability – that is repeated transferability of the item to successive, unknown third parties in an expeditious and efficient manner requires that the socially acceptable monetary system establish some governing concept or principle of confirmation of trust and confidence in a transferable credit item’s present liquid value without the necessity of continued repetitive revaluation of the item at the time of each transfer of each item. The more confidence and trustworthy value and its homogeneity, the greater will be the efficiency, utility and reliability of the monetary system comprise of such credit items.

The Fed cannot legitimately or effectively exercise its powers and meet its duties centered on the manipulation of credit and credit money to achieve social and political objectives without the separate existence of sovereign, constitutional money, in terms of which the Fed’s policies and actions can be understood and effected honestly and transparently and for which it can be held accountable.

The exercise by the Fed of its powers and duties, without (i) the discipline imposed by the common denominator of redemption at a price/value level measured in terms of Constitutional sovereign money; and without (ii) the enforcement of the ancient and well established laws regarding bills, notes and negotiability and thereby transferability at a liquid value confirmed and measured by reference to liquid transferable sovereign money, the value of which is regulated by Congress and which becomes the base tool for comparison and valuation of credit money, in terms of liquidity, and therefore also of liquid value and price that have evolved to discipline the creation of credit money.

It is indisputable that while Congress has failed to exercise its powers and meet its duties under Article I, Section 8, Clause 5 of the Constitution. And not having such power and duty, cannot simply somehow turn it over to Wall Street under the meaningless rubric of “self-regulation”.

Return now to the circumstances under which Congressional powers and duties may lawfully be delegated:
“Again and again, the Court has distinguished the two cases [mentioned above], sometimes by finding adequate standards in the challenged statute, sometimes by contrasting the vast scope of the power delegated by the National Industrial Recovery Act, and sometimes by pointing to required administrative findings and procedures that were absent in the NIRA. The Court has also relied on the constitutional doubt principle of statutory construction to narrow interpretations of statutes that, interpreted broadly, might have presented delegation issues. ... (See, e.g., Fahey v. Mallonee, 332 U.S. 245, 250 (1947) (contrasting the delegation to deal with “unprecedented economic problems of varied industries” with the delegation of authority to deal with problems of the banking industry, where there was “accumulated experience” derived from long regulation and close supervision)73

We must note, however, that despite this judicial finding, legal commentary and official papers and reports, from the Federalist Papers, E.G. Sauldings’ treatise on Legal Tender Laws and the Civil War, the Pujo Report in 1913, the Pecora Report in 1934, the FDIC Report in 1997 to the 2011 Financial Crisis Inquiry Report; from the founding of America, and from the Civil War to the present day, have concluded and documented the fact that regulatory “accumulated experience” derived from “long regulation and close supervision” have failed to protect the banking industry and the American public from financial crises driven by Congressional failure to create and regulate the value of American sovereign constitutional money that is one of America’s most important founding first principles and a fundamental prerequisite to the safety and soundness of the banking industry, the stability and integrity of our economic and monetary system and to the ability of the American public to hold their government accountable for policy and action.

The broad delegation of “authority to deal with problems of the banking industry, where there was ‘accumulated experience’ derived from long regulation and close supervision” cannot overcome the massive fraud perpetrated upon the American public by the banking industry through Congressional and regulatory abandonment – not the delegation - of Congressional power and duty under Article I, Section 8, Clause 5 of the Constitution.

Article I, Section 8, Clause 5 is the law of the land, a first principle of democratic government and integral to an honest system of free enterprise. Enforcement of this important Constitutional principle through the trail of its violation; holding all those in the chain of violation, exploitation and abuse accountable for the fraud they have effected in the absence of the proper recognition and performance of this vital Constitutional power and duty is one of the most important challenges to American society today. Our vast Washington governmental, political, bureaucratic regulatory and administrative complex and the Wall Street banking and financial system that now holds the American public hostage to its wealth, power and privilege can be rendered accountable only based upon enforcement of the American rule of law that has followed the breach our constitutional protection and the massive fraud on the American public perpetrated by Wall Street unleashed by the breach.

73 Justia, at note 74.
“Concerns in the scholarly literature with respect to the scope of the delegation doctrine have been reflected in the opinions of some of the Justices. Nonetheless, the Court’s decisions continue to approve very broad delegations, and the practice will likely remain settled.

“The fact that the Court has gone so long without holding a statute to be an invalid delegation does not mean that the nondelegation doctrine is a dead letter. The long list of rejected challenges does suggest, however, that the doctrine applies only to standardless delegations of the most sweeping nature."

Congress has not officially or implicitly delegated to the Fed the power and duty to regulate the value of America’s sovereign money. Because the Fed does not have the Constitutional power and duty to create and regulate the value of American sovereign money, it cannot further delegate such power and duty to its constituent banks and their partners and constituents in the credit markets. Finally then, we must recognize that not only has there been no legal sequence of delegation of the Congressional power and duty to create and regulate the value of sovereign money, subsequent to the creation of the Fed, Congress did in fact continue to create and regulate the value of money until 1933. Thereafter, the _Bretton Woods Accords_ provided a weak substitute for the proper and legitimate performance by congress of its power and duty under Article I, Section 8, Clause 5, the Nixon shock put an end to any semblance of regulation of the value of money in a Constitutional manner.

**The Great Depression and World War II.**

The final unleashing of the process of money debasement leading inexorably to the subversion and ultimate destruction of honest money began during the Civil War as a matter of the financing of the winning of the war and to assure the continued existence of the country; and became progressively more unhinged through each subsequent financial crisis brought on by continued chronic currency debasement, exploitation of the people by Washington and the newly created national banking system; then overwhelmingly, with the establishment of the Federal Reserve system in 1913 that firmly entrenched fractional reserve banking and an ongoing iniquitous partnership between Washington and Wall Street that culminated domestically when first, President Franklin Roosevelt, followed by a compliant Congress tagging along to do anything to avoid accountability for the Great Depression; a Congress that “just passed the bill” without reading, debating or deliberating over it or its likely effects; thereby severed the existing connection between American money and a standard of value; and provided the rationale, however unconstitutional, for thereafter ignoring any attempt to congressionally, constitutionally, create money through the Federal Reserve and national banking systems, or for ignoring the Constitutional imperative for Congress to regulate the value of money in accordance with a standard of value.

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74 _Id._
The Banking Act of 1935\textsuperscript{75} completed the transition of the Fed from an institution that at least nominally paid homage to the gold standard and an asset-based currency, to one that was entirely devoted to a fiat currency that was not convertible into anything. Whalen, quoting Jane D’Arista in \textit{The Evolution of U.S. Finance: Federal Reserve Monetary Policy, 1915-1935}, “Currently the American monetary system is composed of a series of procedures based on statutes and statutes based on procedures, which reflect no integral concept of money but, rather a series of residual concepts. Since at no point is any concept of money firmly repudiated, the system may be said to accommodate a process among alternatives. It preserves the procedural framework of an asset currency system but in reality is closer to fiat money.” D’Arista writes that like \textit{The Federal Reserve Act} in 1913, \textit{The Banking Act of 1935} is silent on monetary policy and gives no guidance as to what metrics the Fed will use to judge the effect of its policy actions.\textsuperscript{76}

This remains true today, when we cannot determine the amount of money in the financial system or regulate its value by reference to any stable external control, any representation by the Fed of the effects of its policies is inherently and intentionally dishonest, an intentional misrepresentation – a fraud on the American public - since there are no metrics for regulation of the value of the money used to measure the effects of its policies\textsuperscript{77}. Today’s consensus, outside of Washington and Wall Street, is that the Fed has failed in its statutory mission, as is has failed in its corollary to maintain the safety and soundness of the monetary system\textsuperscript{78}. A safe and sound monetary system can only be successful based upon a foundation of honest money, the value of which has been constitutionally regulated by Congress by reference to a transparent, honest, effective, external standard of value.

In a 1937 book by Bernard J. Reis and John Flyn, \textit{False Security: The Betrayal of the American Investor}, the authors chronicle a financial zoological tour of structured financial instruments that could have come out of Wall Street in the late 2000s, but in fact were being sold in the period after WW I, a decade and more before the 1929 Wall Street Crash. Under the heading of investments the public believed to be ‘guilt edged’, Reis and Flynn take the reader through a dizzying collection of guaranteed mortgages, foreign bonds, investment trusts and real estate bonds. All manner of debt was in use during the 1920s and much of the apparent prosperity during the period resulted from the issuance of the debt. As had been the case during WW I, borrowing was employed by many Americans to enable all sorts of activity, from consumption to speculation, and the nations of Europe likewise continued to borrow in the United States to fund exports. The authors conveyed the bitterness and anger felt by many Americans in the 1930s in a comment at the end of their book:

\textsuperscript{75} Banking Act of 1935, 12 U.S.C. 228

\textsuperscript{76} Whalen, pp. 229, 230

\textsuperscript{77} Id.

“Simply stated, honesty plays little part in American business. Our morality, on the contrary, in a game of cards or in sports is irrepachable. And so it is that we are gentlemen of honor when engaged in life’s pastimes, but devoid of it when engaged in serious pursuits. The public has a subconscious awareness of this state of immorality, but for some reason remains apathetic to it, and even condones it. True, a simple criminal act is condemned (and when simple it is invariably of small dimensions) but where large profits have accrued or an enormous institution erected on no matter how fraudulent a foundation we give it respect and applause. 79"

The authors found that of the $10 billion or so of mortgage-backed securities issued during the period, some $8 billion or original face amount were in default by the early 1930s when Congress launched various inquiries into the practices of Wall Street. 80"

The important point to take away from this period is that the very same type of mortgage-backed securities that caused the financial crisis of 2008 were actually first conceived and sold to the public a century earlier – and by many of the same banks and financial institutions – and to the same ultimate effect – financial crisis.

Following a series of adjustments by Congress of the value of constitutional coined money following the Civil War, reflecting the continued explosion in creation of public and private credit and its increasing distance from (1) trusted, known and creditable sources of repayment; and (2) mitigation of risk and uncertainty in prospects for liquidity through repayment when due, even under difficult and exigent economic times; thereby supporting trust and confidence in its transferability; this new money compounded credit excess, money debasement and concentration of wealth and power in Washington and Wall Street, to the ultimate damage to and distress of the American public. In the face of the “emergency” presented by the Great Depression, and irrespective of the failures of the Federal Reserve, Wall Street and national banking system to act in any meaningful way to regulate the value of money in accordance with an effective standard of value, Congress simply abandoned any semblance of the legal, constitutional exercise of its power and fulfilling its duty to coin money and regulate its value in the Emergency Banking Act of 1933, by completely and abruptly severing the ties and discipline of value of money through required redeemability of legal tender by constitutionally coined money, the value of which was regulated by Congress. There is no excuse for this abandonment. Its reason is unconstrained greed, avarice and lust for power, topped off by political expedience, and protected by perverse and unjustified political doctrines of too big to fail and too big to jail.

**The Gold Clause Cases.**

79 Id.; as quoted by Whalen.
80 Whalen, pp. 161, 162 and 163.
The *Legal Tender Cases* and the *Gold Clause Cases*\(^1\) were all cases in contract, which only secondarily and sloppily touched on Congress’ Constitutional power and duty to regulate the value of money. They are generally referred to together as standing for the proposition that Congress has unlimited power over matters of money. The holdings of the *Legal Tender Cases* and the *Gold Clause Cases* invalidated existing contract provisions that interfered with Congress exercise of its power to regulate the value of money. Citing *Veazie*\(^2\) the Court in the Norman Case confirmed that “[t]he authority to impose requirements of uniformity and parity is an essential feature of this control of the currency. The Congress is authorized to provide "a sound and uniform currency for the country," and to "secure the benefit of it to the people by appropriate legislation."\(^3\)” In other words, *Legal Tender Cases* and the *Gold Clause Cases* confirm Congress’ constitutional powers and duties with respect to maintaining honest money. The Court concluded that “[w]e think that it is clearly shown that these clauses interfere with the exertion of the power granted to the Congress, and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed.”\(^4\)

Professor Richard Timberlake, Professor (*Emeritus*) of economics and finance at the University of Georgia, quoting specifically from the Norman Case, expressed his take on the Gold Clause Cases, has commented as follows:

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

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

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\(^2\) *Veazie Bank v. Fenno*, 8 Wall. 533, 75 U. S. 549.


\(^4\) *Id.*, at p. 316.
form, and to impress upon them such qualities as currency for the payment of merchandise and the payment of debts, as accord with the usage of sovereign governments” (294 U.S. 304). Nothing in the Constitution implies any such power, nor does any statement suggest a possible inference leading to such a conclusion.

The majority opinion in 1935 simply treated these gross distortions of congressional power over money from the Legal Tender Cases as if they were quoted from the Constitution itself, and without reexamining the validity of the arguments. The majority opinion concluded: “We think that it is clearly shown that these [gold] clauses interfere with the exertion of the [monetary] power granted to the Congress”—that is, “monetary powers” nowhere visible in the Constitution but conjured into existence by the Court decisions of 1871 and 1884 (294 U.S. 315–16).

Therefore, Congress’s Abrogation of the Gold Clauses stood. The creditors could be paid in any U.S. currency that was legal tender, but they had no right to be paid in gold—gold clauses notwithstanding.

I must emphasize that a finding that Congress had complete control over the monetary system and could make any paper money full legal tender, does not relieve Congress of its constitutional duty to regulate the value of money so that, in the Court’s own words, Congress thereby provides "a sound and uniform currency for the country," and … "secure[s] the benefit of it to the people by appropriate legislation." A currency so established by Congress, the value of which is regulated by reference to an appropriate and effective external standard would in fact constitute honest money. That is Congress’ Constitutional duty. That duty is, in fact, confirmed by the Legal Tender Cases and the Gold Clause Cases. Since the Nixon shock in 1971 Congress has failed in its duty. That failure has been assiduously exploited with Washington Wall Street enterprise in their interest, lying to cheating and stealing from ordinary Americans.

The American Rule of Law.

The focus on the natural law principle and moral virtue of honesty pervades the American legal system. It can be found as the driver in many areas of law that have developed in relatively recent history, including regulation of weights and measures, consumer protection law, including truth in lending, deceptive trade practices law, and specifically securities law. Honest lies at the heart of property law, contract law, employment law, commercial law, tort law, antitrust law and criminal law. In the context of the law of money, two specific areas are relevant. Honest money is dependent on trust and confident. The powers and duties of those empowered to create and

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86 See supra, Note 33
87 The following references to the American rule of law affecting the tort of money debasement are dealt with in more detail Money, Morality and Law, including the Case Statement attached as an Annex.
emit money to do honestly together the associated limitation on those who exercise such power and duty to do so in the public interest, and not to abuse those powers and duties for their own interests in derogation of the public interest.

**Monopoly abuse of power.** The Great Depression and the Washington and Wall Street abuses of power chronicled in the *Pecora Report* of 1934 led to the *Glass–Steagall Banking Act of 1933*, the *Securities Act of 1933*, and the *Securities Exchange Act of 1934*, also led to the *Robinson Patman Act of 1936*, building on the *Clayton Antitrust Act* and the *Federal Trade Commission Acts, both of 1914*, and the *Sherman Antitrust Act of 1890*. These laws form the bulk of federal laws and are, generally speaking, designed to protect the numerous and weak of economic society from domination by the concentrated monopoly power of the few. Banks, specifically the Wall Street banks, have been largely ignored in the application of anti-trust, anti-monopoly laws. To the extent applied their focus has been on mergers and acquisition of bank holding companies and have been viewed through the perspective of Federal bank regulatory authorities. According to a paper by the Federal Reserve Bank of Kansas City, “[t]he *Federal Deposit Insurance Act* ("FDIA"), the *Bank Holding Company Act* ("BHCA"), and the *Change in Bank Control Act* ("CIBCA") provide for the antitrust review of bank and bank holding company transactions and change in control notifications. The wording of the antitrust sections in these acts is similar and incorporates the standards set out in the *Sherman Antitrust Act* and the *Clayton Act.***

Despite the overarching objective of the antitrust-antimonopoly laws to protect our marketplace from abuse of power derived from enterprise size and market dominance, the too big to jail and too big to fail rhetoric emanating from Washington currently has managed by bypass any semblance of accountability of Washington or Wall street for the collective abuse by these elites of the power, trust and confidence reposed in them by ordinary Americans. Notwithstanding the web of legislation potentially, or theoretically applicable to the imposition of accountability for these governmental and, primarily financial institutions, for the financial crisis, abuse of power has simply been accepted as business as usual. Once again a false narrative of the immunity of Washington and Wall Street for the predations they inflict on ordinary Americans is assumed to be a fact. Rising political figure and law professor at Duke University has speculated publicly, but not definitively on the potential application of the “antitrust framework” to the too big to fail banks. The application of legal restrictions on institutional abuse of power however, could find no more fertile ground than application to Washington and Wall Street to curb the abuse of their power as a monopoly cartel for the exploitation of honest American money through institutional, systemic money debasement.

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88 Federal Reserve Bank of Kansas City, “Understanding Antitrust Considerations in Banking Proposals” (undated).
89 Bob Moon, *Marketplace*, “Can antitrust laws break up big banks?” Interview with Professor Zephyr Teachout, Duke University Law School (podcast transcript, undated)
Fortunately, the issue of Washington and Wall Street abuse of monopoly power is not totally subsumed in institutional dissembling. BHCA, 12 U.S.C. §1972 prohibits a bank from extending credit, leasing or selling property, or furnishing any service on the condition or requirement that the customer provide or obtain something else in the process, or refrain from obtaining something else from a competitor of a bank. In short, § 1972 prohibits three types of conditional transactions:

- Traditional tie-in arrangements;
- Reciprocal arrangements whereby the customer agrees to provide the bank with something of value in exchange for the bank’s product or service; and
- Exclusive dealing arrangements.

Not all bank tie-in arrangements are *per se* illegal under this section. Congress provided a limited exemption in Section 1972 for transactions exclusively involving four so-called traditional banking services – specifically, loans, discounts, deposits, or trust services. This exemption only applies, however, where all of the components of a particular transaction fall into one or more of the four enumerated categories. If any of these so-called traditional banking services are tied to another service offered by the bank, the exemption does not apply. Finally, even within the four exempted bank service categories, the bank is still subject to treble damage actions under the antitrust laws. 12 U.S.C. §1972 provides for substantial civil penalties to be enforced and collected in the case of a national bank, by the Comptroller of the Currency; in the case of a State member bank, by the Federal Reserve Board; and in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation.

Private right of civil action against any “Institution Affiliated Parties” to enforce criminal laws under 12 U.S.C. §1972 and recover treble damages. 12 U.S.C. §1975 provides for a private right of action by a bank customer that may recover treble damages and costs including reasonable attorneys’ fees. The law applies to Institution Affiliated Parties, including officers and directors of institutional corporate defendants, making them personally, and individually responsible for the damage they have caused. To establish a tying arrangement generally, a bank must require a customer of the bank to accept from or provide to the bank, the holding company of such bank, or a subsidiary of the bank’s holding company, additional credit, property or service.

In this case:
- Condition 1: The Wall Street banks
- Condition 2: Agreed to handle their customers’ banking relationship – if and only if (“required”)
- Condition 3: The customers and their counterparties throughout the economy agreed to accept and rely on a unit of money which the Wall Street banks knew represented a debasement of the value of the money units in which the transactions were denominated (“accept property from the BHC”).
The Wall Street banks customers and their counterparties throughout the American public have agreed to accept debased units of money notwithstanding and without knowledge of the money’s defect in presentation of an actual debasement, an intentional reduction of its value, thereby “accepting credit or property from and providing credit or property to the bank”.

Washington and the Wall Street banks have all benefited from the proliferation of progressively more debased and defective money to serve their own individual objectives of concentration of wealth, power and control over the economy through their monopoly racketeering cartel while incrementally and continuously redistributing the incomes, savings and wealth of the American public to the combined sphere of power and control of the ever expanding criminal enterprise combination.

**Statutory criminal and civil intentional bank fraud by a racketeering enterprise.** Bank fraud through intentional criminal and civil misrepresentation under (among other defined predicate acts under RICO) 18 USC § 1341 (relating to criminal mail fraud), 18 USC § 1343 (relating to criminal fraud by wire, radio, or television); and 18 USC § 1344 (relating to criminal financial institution fraud).

18 U.S.C. § 1341. Frauds and swindles. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or take or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. §1343. Fraud by wire, radio, or television Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.
18 U.S.C. § 1344. Bank fraud Whoever knowingly executes, or attempts to execute, a scheme or artifice -- (1) to defraud a financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Under RICO, 901(a) of the Organized Crime Control Act of 1970, Chapter 96 of 18 U.S.C. § 1961–1968, a person who is a member of an enterprise that has committed any two of the foregoing crimes (bank fraud included) within a 10-year period can be charged with racketeering.

A RICO criminal claim requires proof of four elements, all of which are proved without doubt by the facts of this case:

- The existence of an enterprise affecting interstate commerce;
- That defendants were employed by or associated with the enterprise;
- That the defendants participated, directly or indirectly, in the conduct or affairs of the enterprise; and
- That the defendants participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts.

Private right of civil action against any “enterprise associated person” to enforce criminal laws under RICO and recover treble damages. Persons injured by reasons of a RICO violation have a civil cause of action under the terms of the act. 18 U.S.C. §§ 1962(c), 1964(c) provides for liability in civil suits brought by any person injured ‘in his business or property’ by a RICO violation, with a compulsory award of treble damages, costs, and attorneys’ fees and makes it unlawful for ‘any person’ who is employed by or associated with ‘any enterprise’ affecting interstate commerce to ‘participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity. Making these parties personally, individually, responsible for the damages they have caused. (Emphasis in bold italics)

Also, under RICO, 18 U.S.C. § 1961 B, "racketeering activity" includes any act which is indictable under 18 U.S.C. §1511 (relating to the obstruction of state or local law enforcement), 18 U.S.C. §1512 (relating to tampering with a witness, victim, or an informant), 18 U.S.C. §1513 (relating to retaliating against a witness, victim, or an informant; relating to possible acts of interference or retaliation by targets of assertion by Washington or Wall Street of the complaints contemplated by this strategy under RICO. See also, 18 U.S.C. § 1505 (relating to obstruction of proceedings before departments, agencies, and committees); 18 U.S.C. § 1510 (relating to obstruction of criminal investigations); and 18 U.S.C. § 2073 (relating to false entries and reports of moneys or securities).

90 See more at: http://rico.uslegal.com/civil-remedies/#sthash.CKJs04hW.dpuf
Origin of the Washington Wall Street RICO enterprise. The racketeering enterprise in this case is an association in fact between and among all of the named defendants. The racketeering activity of the enterprise adversely affects interstate enterprises and this adverse impact proximately caused injury to the plaintiffs’ through the financial and economic crisis. Such racketeering activity includes at least two acts of racketeering within ten years of each other, and that the predicate acts had a common relationship and continuity. When the United States Constitution was ratified, the country had no currency, no central bank and no banking system. The Constitution clearly provided that Congress had the power and duty to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. The clear intention of the authors of the Constitution, in particular James Madison, was that the coin be metallic specie and that use of paper currency be prohibited. Congress followed this intent, sometimes effectively and sometimes less so, until 1971 and the abandonment of the Bretton Woods Accord.

The country developed the use of paper currency backed by specie to facilitate commerce as well as to enable the government to more efficiently finance and implement the system of transfer payments inherent in the function of a central government. The requirement of currency in specie and paper currency backed by specie has been suspended periodically, substituting the use of purely fiat currency, under extraordinary circumstances of war requiring the creation of money to finance war, without the use of which to enable the successful waging of war the country and Constitution would cease to exist. These suspensions were extraordinary and expressly designed to be temporary acts of expediency. In each case, the value of the fiat currency was discounted in the market place to reflect holder and counterparty doubts of value and liquidity of the fiat money through redemption, both essential elements of sovereign money.

As the magnitude and diversification of the country’s economy grew, Congress created a national banking system and later, a so-called central bank, the Fed, to facilitate the distribution and effective utilization of sovereign money. The United States banking system has developed in accordance with the Hamiltonian view that there exists and should exist and “special relationship” between the government whereby banking institutions, in exchange for privileges granted to the banks to create sovereign through leveraging bank deposits and credit money denominated as sovereign money, through loans, and to intermediate that money throughout the country to finance economic growth, control inflation and maximize employment.

Restatement (Second) of Torts § 874A

In addition to the statutory causes of action described above, when a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may, if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord to an

91 Restatement (Second) of Torts § 874A (1979), updated October 2013, Division 11. Miscellaneous Rules, Chapter 43. Rules Applicable to Certain Types of Conduct § 874A Tort Liability for Violation of Legislative (Constitutional) Provision. The comments to § 874A are dealt with in detail in the Annex to Money, Morality and the Law.
injured member of the class a right of action, using a suitable existing tort action or a new cause of action analogous to an existing tort action. The Restatement (Second) of Torts § 874A (1979), updated October 2013, Division 11. Miscellaneous Rules, Chapter 43; Rules Applicable to Certain Types of Conduct § 874A Tort Liability for Violation of Legislative (Constitutional) Provision, and the comments to § 874A detail the connection between the foundation of honesty as principle of natural law and moral law in the Constitution, as well as federal statutory and common law.

Money – moral and legal character of honest United States money.

Money is a unit of account, standard and store of value and as a standard for value in deferred payments of credit. Value is not a property or characteristic of any one thing, in and of itself. The establishment of value is determined by an evaluation of one thing in terms of another thing. The establishment of value is a foundational concept permitting voluntary exchanges of things of value between two or more people. The relationship between people who exchange one thing for another thing is inherently social, on one hand, and economic on the other. The trust, confidence, honesty and integrity of these two kinds of relationships is essential to the establishment and maintenance of a harmonious and prosperous civil society. The fundamental objective and effectiveness of these social and economic relationships is the honest presentation of each thing to be exchanged with honesty so that an agreement with respect to value for exchange can be fairly determined. Honesty is the base for trust, confidence and integrity in economic relationships. Honesty as a moral virtue is the cornerstone of a just society. This is not surprise. Honesty is a virtue commonly understood in terms of commerce, justice and religion. A social and economic exchange is effected with honesty by full disclosure and assessment of the kind, quality and quantity of things in relationship to one another. With it commerce and productivity thrive. Without honesty, uncertainty reluctance and hesitation in commerce often leads to isolation and distrust, and all too often, conflict violence and war. The development and use of money for its defined purposes in a civil society requires honesty in the translation of the value one thing in relationship to units of money, which must in turn be transferable to the value of the thing to be exchanged in terms of money. The moral values of society and its laws relating to commerce require honesty as the essential attribute of a successful medium of exchange, whether the exchange of value is made currently or deferred in whole or part over time. Honesty is central to the well-functional practice of exchanges of things where the relative value of things must be measured based on units grounded upon a common, mutually accepted standard. That is the essence of regulation of the value of money by reference to the best, most trusted of a standard. When commercial exchanges are made, the parties to the exchange must be honest, not only in tendering the kind, quality, and quantity of the item or items to be exchanged, but the medium through which they are exchanged must be honest. The honesty of the medium is determined in relationship to the most commonly trusted and accepted common standard of value in which all of the members of the society have confidence.

It is no accident that the use of standards based on gold and silver has an ancient and historical basis. The justification for the historical preference for gold and silver as the reference point for a
monetary standard of value is well documented. Only within the past fifty years has governments in the U.S. and globally dismissed gold and, and by implication, silver as “barbarous relics,” unsuitable to serve as standards of value for the regulation of money. The critics of specie as standards for regulation of the value of money assert that, “there is not enough gold to support finance and commerce;” … “the gold supply does not grow fast enough to support world growth,” gold caused the Great Depression,” “gold has no yield, and gold has no intrinsic value.92"

James Rickards, among other writers and commentators, has addressed and established the unsupportability of these the identified purported deficiencies of specie as suitable for standards for regulating the value of money and assuring the honesty of money for its social and economic purposes93. In my forthcoming book titled *Money, Morality and Law: The Case for Financial Crisis Accountability*, describes how the use of specie, paper and digital data entries as money developed. The book details how the universe of shadow banking has overwhelmed and literally destroyed the use of any suitable and honest standard for the regulation of the value of money in the U.S., and globally. It describes the effects of stripping any trusted and honest standard of value for the regulation of the value of money from U.S. dollar. The result has been a massive fraud on those who must use sovereign legal tender paper money and credit money denominated in those dollars; even those who voluntarily choose to use one sovereign legal tender paper money as opposed to any other; having made the determination that the money of choice may be the best of the bad available choices. The book establishes the basis for a determination that the intentional and fraudulent debasement of the United States dollar is a matter of fact. Because of the current process of money creation in the United States is conducted primarily by a combination of private market credit money production, i.e., banking system finance and shadow banking finance, by Wall Street in partnership between with the Fed; and public money production, i.e., public finance, by the Treasury Department in Washington in partnership with the Fed, Washington, including the Treasury and the Fed, and Wall Street bankers reap the profits inherent in the U.S. money distribution system.

Jörg Guido Hülslman has produced an excellent work entitled *The Ethics of Money Production*. Hülsman’s work, among things, describes the price and value distortions of fiat money through its production and distribution and absorption by the market.

“[T]he process through which money production tends to increase the price level is spread out in time. It therefore affects the different prices at different points of time—there is no simultaneous increase of all prices. Furthermore, there is no reason why prices should change uniformly or in some fixed proportion to the change of the money supply. Hence, money production entails a tendency for prices to increase, but this increase

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94 Hülslman
occurs step by step in a process spread out through time and affects each price to a different extent.95

In fact, the dominant characteristic in the distribution effect leading up to the great financial crisis was to concentrate money production and price increases in residential and commercial real estate and the chain of service providers participating in that “asset boom,” described as it occurred as a “wealth” effect; confusing price increases with value increases, so that when the asset bubble burst, asset values and prices that were unsustainable by underlying market fundamentals suffered enormous losses for ordinary Americans, while the interests of Washington and Wall Street were and continue to be bailed out by a succession of emergency lending, bailouts, quantitative easing to artificially support values artificially low interest rates and time. Washington and Wall Street were too big to fail or jail. Not so for ordinary Americans.

“In addition to the unequal treatment of the money creators as opposed to ordinary people who must by law utilize this inherently defective monetary tool, [t]here is however another distribution effect of the production of money.

“This effect is far more important than the one we have just described because it does not depend on the market participant’s expectations. It is an effect that the market participants cannot avoid by greater smartness or circumspection. To understand this distribution effect we must consider that exchange and distribution are not disconnected activities. In the market process, they are but one and the same event.

“Brown sells his apple for Green’s pear. After the exchange, the distribution of apples and pears is different from what it otherwise would have been. Every exchange thus entails a modification of the “distribution” of resources that would otherwise have come into being. It follows that any production of additional goods and services is bound to have such an impact on distribution. The new supply of product redirects the distribution of wealth in favor of the producer.

“Consider the case of money production. Here too the additional quantities that leave the production process, when sold, first benefit the first owner: the producer. He can buy more goods and services than he otherwise could have bought, and his spending on these things in turn increases the incomes of his suppliers beyond the level they would otherwise have reached. But the additional money production reduces the purchasing power of money. It follows that it also creates losers, namely, those market participants whose monetary income does not rise at first, but who have to pay right away the higher prices that result when the new money supply spreads step by step into the economy.

95 Id., pp. 44 and 45.
“Money production therefore redistributes real income from later to earlier owners of the new money. As we have pointed out, this redistribution cannot be neutralized through expectations. Even the market participants who are aware of it cannot prevent it from happening. They can merely try to improve their own relative position in it, supplying early owners of the new money, preferably the money producer himself.

“This distribution effect is a key to understanding monetary economies. It is the primary cause of almost all conflicts revolving around the production of money… [I]t is therefore also of central importance for the adequate moral assessment of monetary institutions.96

Ordinary Americans do not understand that the production and distribution of money, the value of which is not regulated by reference to an external standards, will find their savings and income distorted, reduced in relative terms as compared to the growing wealth and income of Washington and Wall Street, who, acting together as a well-oiled enterprise, have monopoly power over money and wealth creation as well as protection from loss or accountability. This distribution effect, is the method by which Washington and Wall Street are able to intentionally misrepresent the effects of their actions, cheat and steal from ordinary American, producing a wealth and income gap of inequality on an unprecedented scale. The tool is dishonest money.

When evaluating the importance of honesty - a moral virtue – in the creation and use of money, the American public has been intentionally misled as to (i) the importance of honest money, the immorality of Washington’s and Wall Street’s failure to use honest money, whether sovereign money such as the U.S. dollar, credit money, or securities based on structured credit money, and (ii) the undisputable fact the creation and emission of that dishonest money constitutes tortious and criminal actionable as a matter of United States Law.

Natural law, moral law and ethics as a jurisprudential foundation for the American rule of law of money.

The idea that morality is separate from the law has a history. The torts of intentional abuse of power and fraud are at one with fundamental moral principles of honesty, equal protection and due process. Attempts to treat the legal and moral principles as separate; morality being applicable to the conduct causing the financial crisis; but neither criminal nor civil law being applicable is simply wrong. It is false. It is another of the many false narratives spun by Washington and Wall Street to avoid legal accountability for the financial crisis.

Legal positivism versus natural law.

One school of thought, most often attributed to H.L.A. Hart, a British philosopher who was professor of jurisprudence at the University of Oxford. His most important writings

96 Id., pp. 48 and 49.
“The Concept of Law (1961) is an analysis of the relation between law, coercion, and morality, and it is an attempt to clarify the question of whether all laws may be properly conceptualized as coercive orders or as moral commands. Hart says that there is no logically necessary connection between law and coercion or between law and morality. He explains that to classify all laws as coercive orders or as moral commands is to oversimplify the relation between law, coercion, and morality. He also explains that to conceptualize all laws as coercive orders or as moral commands is to impose a misleading appearance of uniformity on different kinds of laws and on different kinds of social functions which laws may perform. He argues that to describe all laws as coercive orders is to mischaracterize the purpose and function of some laws and is to misunderstand their content, mode of origin, and range of application.97"

Hart’s approach, generally referred to as legal positivism, is generally thought to be the source of a division; a separation of principles of morality from principles or provisions of law. “According to Hart, there is no necessary logical connection between the content of law and morality, and that the existence of legal rights and duties may be devoid of any moral justification. Thus, his interpretation of the relation between law and morality appears to differ from that of Ronald Dworkin, who in Law’s Empire suggests that every legal action has a moral dimension. Dworkin rejects the concept of law as acceptance of conventional patterns of recognition, and describes law not merely as a descriptive concept but as an interpretive concept which combines jurisprudence and adjudication.

“Hart defines legal positivism as the theory that there is no logically necessary connection between law and morality. However, he describes his own viewpoint as a "soft positivism," because he admits that rules of recognition may consider the compatibility or incompatibility of a rule with moral values as a criterion of the rule’s legal validity.

“Legal positivism may disagree with theories of natural law, which assert that civil laws must be based on moral laws in order for society to be properly governed. Theories of natural law may also assert that there are moral laws which are universal and which are discoverable by reason.98"

Legal positivism generally holds that laws must derived from a sovereign authority and be enforceable by coercion. Although an extensive original analysis of the works of Hart and Dworkin is beyond the scope of this work, it is important to clarify here that are do not present an irreconcilable conflict as is often suggested in the voluminous body of scholarly work on the subject.

According to William C. Starr, a professor at Marquette University:

98 Id., pp. 2,3.
“It is a mistake to make generalizations about two opposing theories of law: natural law and legal positivism.’ Both theories level charges against the other. Some are perceptive; others are unfounded. What is less well known, but equally true, is that historically both the natural law defenders and the proponents of legal positivism have disagreed as much among themselves as with their opponents. If progress is to be made in legal philosophy by studying the works of important legal philosophers, it will be made by carefully examining the theories developed, rather than by attaching a label to the philosopher and then assuming certain things about that legal philosopher because the label has been attached.99

Speaking generally, with legal positivism, “natural law finds that there is a necessary, not a contingent, relationship between law and morality. According to natural law theory, when there is a conflict between natural law and human law, natural law must take precedence. In this regard, natural law dictates that all human-made laws must be in accordance with fundamental natural law principles, such as Aquinas’ notions of doing good, avoiding evil and promoting the common good. The natural law proponent believes that all law must be morally justified if it is to be legitimately called ‘law’ at all. Thus, any morally acceptable legal order must acknowledge natural law and incorporate its fundamental tenets.100

The idea that honesty (one of the most fundamental of all moral principles applicable to social and economic conduct) in the expression of relative value of goods and services denominated in terms of sovereign money, as clearly provided for in Article I, § 8, clauses 5 and 6 of the Constitution can be simply abandoned by laws and regulations disconnected from the natural law moral requirement of honest money is simply wrong and unsupportable. Alex Scott clarifies in Hart’s words an elaboration of the apparent source of conflict between the concepts of legal positivism and natural law:

‘Laws that impose duties or obligations on individuals are described by Hart as ‘primary rules of obligation.’ In order for a system of primary rules to function effectively, ‘secondary rules’ may also be necessary in order to provide an authoritative statement of all the primary rules. Secondary rules may be necessary in order to allow legislators to make changes in the primary rules if the primary rules are found to be defective or inadequate. Secondary rules may also be necessary in order to enable courts to resolve disputes over the interpretation and application of the primary rules. The secondary rules of a legal system may thus include 1) rules of recognition, 2) rules of change, and 3) rules of adjudication.

“In order for the primary rules of a legal system to function effectively, the rules must be sufficiently clear and intelligible to be understood by those individuals to whom they apply. If the primary rules are not sufficiently clear or intelligible, then there may be uncertainty about the obligations which have been imposed on individuals. Vagueness or ambiguity in the secondary

100 Id., pp. 673, 674.
rules of a legal system may also cause uncertainty as to whether powers have been conferred on individuals in accordance with statutory requirements or may cause uncertainty as to whether legislators have the authority to change laws. Vagueness or ambiguity in the secondary rules of a legal system may also cause uncertainty as to whether courts have jurisdiction over disputes concerning the interpretation and application of laws.

“Primary rules of obligation are not in themselves sufficient to establish a system of laws that can be formally recognized, changed, or adjudicated, says Hart. Primary rules must be combined with secondary rules in order to advance from the pre-legal to the legal stage of determination. A legal system may thus be established by a union of primary and secondary rules (although Hart does not claim that this union is the only valid criterion of a legal system or that a legal system must be described in these terms in order to be properly defined).

“Hart distinguishes between the ‘external’ and ‘internal’ points of view with respect to how the rules of a legal system may be described or evaluated. The external point of view is that of an observer who does not necessarily have to accept the rules of the legal system. The external observer may be able to evaluate the extent to which the rules of the legal system produce a regular pattern of conduct on the part of individuals to whom the rules apply. The internal point of view, on the other hand, is that of individuals who are governed by the rules of the legal system and who accept these rules as standards of conduct.

“The ‘external’ aspect of rules may be evident in the regular pattern of conduct which may occur among a group of individuals. The "internal" aspect of rules distinguishes rules from habits, in that habits may be viewed as regular patterns of conduct but are not usually viewed as standards of conduct. The external aspect of rules may in some cases enable us to predict the conduct of individuals, but we may have to consider the ‘internal’ aspect of rules in order to interpret or explain the conduct of individuals.

“Hart argues that the foundations of a legal system do not consist, as Austin claims, of habits of obedience to a legally unlimited sovereign, but instead consist of adherence to, or acceptance of, an ultimate rule of recognition by which the validity of any primary or secondary rule may be evaluated.1 If a primary or secondary rule satisfies the criteria which are provided by the ultimate rule of recognition, then that rule is legally valid.

“There are two minimum requirements which must be satisfied in order for a legal system to exist: 1) private citizens must generally obey the primary rules of obligation, and 2) public officials must accept the secondary rules of recognition, change, and adjudication as standards of official conduct. If both of these requirements are not satisfied, then primary rules may only be sufficient to establish a pre-legal form of government.

“Moral and legal rules may overlap, because moral and legal obligation may be similar in some situations. However, moral and legal obligation may also differ in some situations. Moral and legal rules may apply to similar aspects of conduct, such as the obligation to be honest and
truthful or the obligation to respect the rights of other individuals. However, moral rules cannot always be changed in the same way that legal rules can be changed.\textsuperscript{101}

There may be, however, laws that do not necessarily incorporate moral principles. The deliberate confusion of the bases for the distinction made under the applicable theories of jurisprudence articulated as natural law or legal positivism, must be addressed; not merely skipped over and ignored by Washington and Wall Street. An examination of the relevant distinctions between the legal positivism of Hart and the natural law theories of Dworkin as applied to the creation, emittance and maintenance of honest sovereign money through abuse of power does not lead to a conclusion that money debasement may be immoral but not illegal. According to Hart “[i]n any legal system, there may be cases in which existing laws are vague or indeterminate and that judicial discretion may be necessary in order to clarify existing laws in these cases. Hart also argues that by clarifying vague or indeterminate laws, judges may actually make new laws. He explains that this argument is rejected by Ronald Dworkin, who contends that judicial discretion is not an exercise in making new laws but is a means of determining which legal principles are most consistent with existing laws and which legal principles provide the best justification for existing laws.\textsuperscript{102}”

On the other hand, Alex Scott, in his article on \textit{H.L.A. Hart’s The Concept of Law} provides a useful complementary statement of Hart’s legal positivism and Dworkin, natural law theory. “A complete legal theory does not merely identify the rules of a legal system, but also interprets and evaluates them. A complete legal theory must consider not only the relation between law and coercion (i.e. the "force" of law), but the relation between law and rightfulness or justifiability (i.e. the "grounds" of law). Thus, Dworkin argues that a complete legal theory must address not only the question of whether the rules of a legal system are justified but the question of whether there are sufficient grounds for coercing individuals to comply with the rules of the system.\textsuperscript{103}”

The distinction that Scott draws in his brief paper highlights the source of the idea that although the grounds of the laws that prohibit the intentional abuse of power and fraud that govern the wrong and the crime of money debasement through abuse of delegated powers may apply, but that for some reason, compliance with the laws may not be coerced. The reasons most often most often advanced for Washington and Wall Street’s exemption form the coercive power of those laws is that but for the violations of law – of the moral “rightfulness or justifiability” of those laws, are superseded by the existential necessity of action by Washington and by Wall Street to preserve our country and its economic and financial system. The determination of that existential necessity however has been made, since the time of the American Civil War, by Washington and Wall Street, at the time of each succeeding financial crisis. The determination in each case has been justified by the opinions of financial, economic experts in Washington and on Wall Street. Americans have been exhorted to defer to the opinions and actions of those experts as being in

\textsuperscript{101} Scott, pp. 1, 2.
\textsuperscript{102} \textit{id.}, p.4.
\textsuperscript{103} \textit{id.}
the public interest – the experts know best. History informs us however that the economic and financial system preserved by these experts has been limited to a closed-system that benefits Washington and Wall Street primarily, suffers the American public to bear the damages and losses inherent in that self-serving closed system and demonstrably, is not in the best interest of the American public.\(^{104}\)

Money used in our modern society consists primarily of sovereign money; in the United States, the Dollar. By far the largest component of our monetary system consists of money created through our fractional reserve banking system. Recently, the money supply has been greatly expanded by an explosion of negotiable credit money. Historically, the supply of credit money negotiated in the market was limited to a relatively small circle of merchants, brokers and central banks; all familiar with and possessed of knowledge of and trust and confidence reposed amongst the parties involved, issuer and endorser personal liability for payment of the bills and notes negotiated, protections afforded by commercial law and the relative short term nature of the outstanding bills and notes cycle of maturity. The current explosion in the use of securitized debt; asset backed securities and derivative instruments all together providing a mass of liquid credit instruments posing as securities, without the historic protections of and limitations on the use of credit money.

The failure of Congress to exercise its power and duty to regulate the value of money as mandated by the United States Constitution has given rise to the ability of the Federal Reserve banking system to create credit denominated to sovereign money, leveraged through relaxation of banking laws and regulations relating to credit creation, leading to credit concentrations distorting asset values by virtue of the volume of credit directed to specific asset classes where credit concentrations have been incentivized. Formally, under our system of sovereign money, where the value of the dollar was regulated by Congress, the requirement of redemption of the sovereign money in terms of the values dictated by reference to the official external standard of value. Obviously, where paper dollars and assets whose values are denominated in dollars, unconstrained by regulated value, credit creation would, and has led to a steady progressive debasement of the value of the dollar. The process of securitization of credit and creation of derivative contracts based on the securities and traders overnight repurchase financing arrangements, all denominated in dollars and created an ever increasing amount of assets denominated in dollars that has and continues to outstrip the values of the assets from which the credit instruments are derived. Thus, the abuse of power by those who create this mass of credit money results in a systematic debasement of the value actually represented by both the credit money itself, as well as the sovereign money in terms of which the credit money is denominated.

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\(^{104}\) The history of American financial crises and the progressive, systematic perversion of banking laws and regulations to falsely represent conformity to moral and natural law principles expressed in moral philosophy as well as in the Constitution, common law and federal statutory law, is detailed my forthcoming book, currently in manuscript, entitled *Money, Morality and Law; The Case for Financial Crisis Accountability*. 

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Accordingly, the dollar value that the public attributes to goods and services in the real economy, and values represented on the books and records of financial institutions and all other institutions denominated in dollars are consistently and progressively overstated.

This systematic overstatement of values directly caused by the intentional debased of the value of the dollar by Washington and Wall Street, in their own self-interest, has led inevitably to recurring financial crises. Washington can lay claim to dollar denominated economic growth and Wall Street can profit through its creation and emission of enormous values of liquidity that overburden the associated asset base. When the value and liquidity supposedly represented by the financial assets collapses, Wall Street has consistently been protected from losses by Washington - with public bearing the cost of the realized threat of moral hazard incurred by their intentional conduct. The revolving door between Washington and Wall Street has created an identity of symbiotic interest amongst those institutions and the individuals who control them. This mechanism has enable Washington and Wall Street to lie about asset values, cheat the public by keeping the profits generated by their closed financial system and steal from the public by debasing the value of their income and assets through money debasement and enforcement of losses on the participant’s in the nations real economy.

Natural law, common law, constitutional law and statutory law as well as ancient standards morality and ethics supply the legal framework to effect the social compact through the tool and medium of money. Washington and Wall Street have destroyed that compact.

The dissociation of Washington’s and Wall Street’s conduct from the moral and legal requirements that bind them, under cover of a false flag of their superiority and the unrestricted discretion they claim under power of wealth and political position, has enabled Washington and Wall Street to over-run the established moral and legal restriction on their conduct in derogation of the rights and interest of the American people as sovereign.

H.L.A. Hart’s conception of the law is a combination of primary rules and secondary rules overarched by what he calls the ultimate rule of recognition under English law, which is that “what the Queen in parliament enacts is law.105” This conceptualization of legal positivism is alluded to by Washington and Wall Street as a basis for their exercise of unbridled discretion over the creation and emission of money whose value is not regulated through banking laws and regulation as well as congressional, regulatory and institutional discretion, exercised in their self-interest, politically and financially, without consideration of the differing overarching supreme law of recognition in the United States. In American, the overarching supreme law of recognition is the United States Constitution, as implemented through lawmaking consistent with the limitations on their powers by that document, all as interpreted by a majority of members of the United States Supreme Court106. A fundamental purpose of the Constitution is to protect and

105 Scott, p. 679.
106 Id.
preserve the rights and interest of the sovereign people, through the exercise by Washington of limited powers that when undertaken, serve those interests.

Despite the seeming contrast between Hart’s positivistic authoritarian supreme law of recognition residing in the English Parliament with the American natural supreme law of recognition residing in the people as sovereign as delegated to Washington’s institutions on a limited basis in the Constitution, as interpreted by the United States Supreme Court, Hart does believe that law and morality have a very close relationship.\(^\text{107}\)

**Concluding observations.**

America has an enduring history of alignment of natural law, moral law with its Constitutional, statutory and common law traditions. There can be no doubt that honesty, as principle of natural law and one of the greatest moral laws, and that honesty in economic and financial matters is central to integrity, trust and confidence that lie at the heart of each and every successful socio-economic system. America has taken great pride it its tradition of openness, honesty and transparency. Our money historically has inspired trust and confidence world-wide. Honest money was a founding principle for the American political, economic, financial and legal system. Our entire system depends for its success in breaking down concentrations of wealth and power in politics and in business and in banking. The progressive tendency of government and banking to attack and erode the natural, moral and legal protects embodied in the American rule of law is profoundly un-American. The American public will have its heritage one way or the other. It will be respected in accordance with the application of the American rule of law through our judicial system, affording every American due process and equal protection of the law, or the public will have its heritage through the wrenching process of revolution. Such an unfortunate outcome is not laughable. The money question lay at the heart of the strife leading to the *Magna Charta*, the American Revolution and the French Revolution. The quotation from James Anthony Froude on the first page of this paper could not be more apt.

Consistent with the concerns and objectives expressed in the *Report of the Monetary Commission of the Indianapolis Convention*, Congress passed the *Gold Standard Act of 1900*. In the preamble to this legislation, the document provided that the Act was “to define and fix the standard of value, to maintain parity of all forms of money issued or coined by the United States, to refund the public debt and for other purposes. “The Act again imposed a gold standard as “the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Treasury to maintain such parity.”

The *Gold Standard Act of 1900* clearly provided a “common denominator as necessary for the comparison of the value of commodities.” “Fiat money provides not such common denominator. The absence of such a common denominator also makes possible the creation of money

\(^{107}\) Id., p. 683.
substitutes such as have flooded the market in geyser of liquidity in the shadow banking system in the form of securitized assets with the most tenuous ties to asset values, accompanied by a pyramid of derivative money substitutes piled on those securitized instruments, having no meaningful tie to underlying real assets in the real economy, whatsoever; being in themselves purely financial assets, functioning as money substitutes on the balance sheets banks and other financial institutions, including money market funds.108"

The intentional misrepresentation of the value of a societies’ money by the state and its bankers works a fraud on the holders of the money who find that the money cannot be exchanged for the value promised. Societies have long attempted to protect themselves from the fraud of money debasement. By the time the society discovers the extent of the intentional misrepresentations in money and accounts expressed in books and records, made by governments and banks to further their private interest rather than honor the trust reposed in them by the public, and the public apprehends the fraudulent debasement of its money, compounded by the secret theft and transfer of its value to the state and its bankers, and the extent of the fraud and theft becomes intolerable, the only remedy available to the citizens has most often civil disobedience, mob violence and war.

Money now consists overwhelmingly of credit, as has largely been the case throughout history. Early in American history, demand for credit to pay the costs of Civil War prompted Congress to establish the national banking system, greenbacks and fractional reserve banking to facilitate the creation of state credit. The value of that credit was assured by the requirement of the credit by interest bearing bonds and their ultimate redemption in gold, both principal and interest, under specific standards of congressionally constitutionally established standards of values.

Since that point in time Congress’ commitment to meet its constitutional mandate to regulate the value of American credit money has literally, progressively, evaporated. The combination of Washington and Wall Street and the concentration of wealth and power in that combination has subverted the public interest, trust and confidence in and reliance on the government and bank monopoly over money and all its characteristics. As the value of American money has literally plummeted. Washington and Wall Street continue to misrepresent their interest in the benefits money debasement secretly confers on them and the great injury it does to the people, American households and the American economy.

According to Washington and Wall Street, they are the experts in charge; we must trust them; they have Americans’ best interests at heart; and without their self-serving ministrations the American public would surely be even worse off than we are now.

The important point to take away from this period is that the very same type of mortgage-backed securities that caused the financial crisis of 2007 were actually first conceived and sold to the

108 Whalen, p. 83.
public a century earlier – and by many of the same banks and financial institutions – and to the same ultimate effect – financial crises.

In 1913, then, the American banking system finally received a central bank on the European model. The U.S. was the last great nation to introduce central banking. The original interpretation of the Constitution had prevented a quicker procedure for more than a century, but the written word was unable to stem the tide of concentrated financial interests and their pro-inflation public relations campaigns.

America must enforce its social compact today as required by natural law, moral principles, ethical practices and the rule of law. The Federal Reserve System and its mandate must be aligned with the public interest and common good of American society in accordance with principles of natural law, morality, ethical practices and the American rule of law as the foundation for honest money.