

FEATURE: LOCAL CURRENCY: A LEGAL AND POLICY ANALYSIS

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Text

[*59] I. Introduction

The time has come -- indeed, it is long past due -- to recognize that economic and political institutions honored by time must be altered, and substantially so, if the United States is to achieve a more sustainable pattern of economic growth and reduce the dangers of an increasingly centralized economic system. Moreover, these institutions *will* be altered, if only by the force of circumstances, and the question thus becomes whether change can be guided.

It is the belief of humanists that they can remake the world (David Ehrenfeld has coined the term *the arrogance of humanism*), rectifying old wrongs and bringing a measure of justice and equity to all Americans. Whether or not this is possible, however, is not really the question. Only those who are willing to let society drift from crisis to crisis would deny that it is crucial to find solutions to our current social and economic problems. This article is such an effort. It is an inquiry into the extent to which the institutions of our political economy can help in resolving the increasingly complex problems facing our nation.

The questions we face are these: Where do we go from here? How? Can change be managed? It is easy enough to envision an ideal society; many, indeed, have done that. But one must deal with the world as it is, rather than as one would like it to be, and this adds immeasurably to the problem. That social change will come is certain. Rather less certain are the direction and extent that social changes will take.

There is no doubt that the world is undergoing major change, although we cannot be sure that humankind can determine the direction of change. I see no alternative, nonetheless, to acting as if what is being done by people not only makes a difference but also can influence the direction and rate of change. But with any process of change the chance of success is uncertain, and we do not know which values will be retained in the process.

What will shape our future economic and political institutions? A system of local currencies would pave the way for a network of viable regional economies -- one that can be established, given the necessary will and energy. I admit that the notion of a local currency seems quaint. So many take for granted not only our existing system for the issuance of money but also (and even more fundamentally) what life means and where we want to go. Many can only conceive of minor reforms of institutions as they presently exist -- whether our currency system or, more generally, the political economy. Somehow we think that the creation of a national currency (and more broadly, the nation [*60] state) "represents progress and promotes the stability of economic life."¹ In questioning the necessity for or the advantages of the acceptance of a national governmental prerogative in producing money, this article presents a challenge to the prevailing notions of "progress" and our "economic life."

The argument in support of a system of local currencies unfolds as follows in this article. Part II presents a brief overview of the evolution of America's increasingly centralized money and banking system. In a centralized system, people are controlled by and subject to an economic system over which they have little or no control and which they really do not understand. In many ways the foundation of the federal government's power rests on its prerogative to

¹ JANE JACOBS, CITIES AND THE WEALTH OF NATIONS: PRINCIPLES OF THE ECONOMIC LIFE, 158 (1984).

create and manipulate money -- the medium of exchange. As one proponent of local currency notes, "the entire machinery of money and finance has been appropriated to serve the interests of centralized power."²

Part III treats both the values implicit in and the rationale for a local currency approach. The part stresses the importance of scale, specifically the decentralization of economic and political power and the construction of viable units in which people can participate in shaping the economic, political, and social decisions that affect them. We need to overcome our inability to participate effectively in decision-making that affects our lives. The scale of our present political and economic institutions limits effective participation. On a smaller scale these institutions would provide wider, more effective participation.

Building on the need to encourage a greater degree of participation and local self-reliance designed to promote a non-inflationary economy of ecological permanence, human development, and fuller employment, part III shows how a system of local currencies represents one of the key levers to help us get from here to there. Briefly, an alternative currency will stimulate local economies and employment. It will provide incentives to resolve existing economic and social difficulties, thereby enhancing local self-reliance and getting away from vast bureaucratic schemes based on federal governmental intervention. Local currencies will help return power to smaller societal units and encourage ecological sustainability.

Next, parts IV and V discuss two contemporary approaches to issuing a local currency. The first is based on barter -- the exchange of goods and services. The second uses local currency pegged to the U.S. dollar as a means to offer bargain purchases -- discounts for consumers.

Part VI analyzes the legal aspects of the various types of local currency systems: barter, discount mechanism keyed to the U.S. dollar, and community currency not pegged to the U.S. dollar. The part establishes that these three types of local currency can legally be issued under federal and state laws (with the possible exception of Virginia and Arkansas).

As we approach the twenty-first century, we must rethink not only our existing political economy but also our centralized monetary system. Local currencies may become a necessity, perhaps sooner than we think.

II. The Evolution of the U.S. Monetary and Banking System: An Overview

² THOMAS H. GRECO, NEW MONEY FOR HEALTHY COMMUNITIES 3 (1994).

This part begins by providing an introduction to the basics of money and banking, focusing on the benefits and attendant risks of a fractional reserve banking system. The remainder of the part surveys three periods in U.S. monetary and banking history: 1) the pre-Civil War free banking era; 2) the 1863-1913 national banking era; and 3) the modern central banking (Federal Reserve System) era. ³

A. The Basics of Money and Banking

Money and banks are such a basic part of our everyday existence that we do not reflect on the evolution of paper money and the commercial banking system. As this part demonstrates, the contemporary American money and banking system emerged over many decades.

Money came into existence to replace bartering in the buying and selling of goods and services. Money served as a convenient way to exchange goods and services by creating a medium of exchange, establishing a common unit of account, and creating a store of value allowing transactions to be deferred into the future. Money is what people in a community will accept to carry out these basic functions.

Looking back to the early history of the United States, the eighteenth century witnessed the development of paper money. Public warehouses, in Virginia, Maryland, and the Carolinas, began issuing certificates representing that a specified volume and quality of tobacco had been weighed and graded. These certificates, as well other experiments with grain and cattle as reserve commodities, passed in circulation, from hand-to-hand. The certificates promising to pay the bearer in specie gained acceptance as money.

These bearer certificates, an early form of paper money, avoided the need for each owner to sign over a note for the payment of debts. The number of people using certificates as money was not limited by the number of signatures a certificate could accommodate. The commodity backing of the certificates became a reserve currency which did not pass from hand to hand, but could be delivered on demand, if required. The growing acceptance of paper money, as opposed to hard currency or the commodity the paper money represented, provided greater convenience and the opportunity for banks to create money at will. ⁴ In contrast to a pure commodity-based monetary system, a paper money approach economized the use of the reserve commodity.

³ See generally Shann Turnball, *What Everyone Should Know About Banking and Money (Especially Bankers and Economists)*, in BUILDING SUSTAINABLE COMMUNITIES: TOOLS AND CONCEPTS FOR SELF-RELIANT ECONOMIC CHANGE 137 (Ward Morehouse ed., 1989).

⁴ JOHN K. GALBRAITH, MONEY: WHENCE IT CAME, WHERE IT WENT 19-21 (1975).

[*61] With independence from Great Britain, commercial banks began to flourish in the United States. The conceptual origins of commercial banking are quite simple. Individuals with surplus stocks of gold "lent" their commodity to others (banks) who paid interest. The "lending" took the form of individuals depositing their gold in banks. Banks then provided borrowers with a note reserve commodity, namely, hard currency. Two notes -- one held by a depositor and a second held by a borrower -- would circulate claiming ownership to a bar of gold.

Commercial banks created both assets and liabilities on their balance sheets by creating and issuing bearer notes (money) to borrowers who, in turn, issued interest-bearing notes back to the bank in the form of a loan agreement. For a bank, the notes became a liability and the loan agreement an asset. Conversely, for the borrower, the loan agreement represented a liability and the notes, which the borrower exchanged for goods and services, assets. Commercial banks got their notes circulating in the form of hand-to-hand money.

The pyramid grew ever higher as one depositor's deposit of gold was used to back a note issued to a new borrower without the consent (or knowledge) of the depositor. Bank-created credit notes for borrowers were secured by the reserve commodity (for instance gold) as well as alternative assets. Given sufficient time, banks could extend full value to all depositors. However, a bank could not convert all of its outstanding notes into the reserve commodity at the same time.

Despite the attendant risks, the conventional wisdom in the nineteenth century was that banks could prudently create paper money on their physical reserve or hard currency of about five times greater than they actually possessed. Thus, the total amount of money in the system became much larger than the gold used for monetary purposes. The U.S. received its monetary services at a lower cost reflecting the willingness of banks to pay interest (or higher interest) to their depositors.

Also, the increase in demand for money due to economic growth could be satisfied with less gold. However, the system was more sensitive to changes in the non-monetary demand for gold which made up a larger part of the total demand for gold.

Fractional reserve banking thus came to characterize America's commercial banking system. A bank could fulfill its obligations even if its reserves were much less than its total obligations. A fractional reserve system thus means that a bank's reserves equal only a fraction of its obligations.

The money multiplier effect flourished because one bank could borrow gold (or a paper claim on the reserve commodity accumulated in another bank) to cover any excessive demand by the public to convert its own paper

currency. Also, a bank could sell non-reserve assets, such as a loan (or part of its loan portfolio), to obtain hand-to-hand currency or a reserve commodity. A bank might suffer a loss if a purchaser of its non-reserve assets wanted a discounted price. To repay all of its depositors 100 cents on each dollar deposited, a bank needed to possess equity and reserves greater than the discounts suffered in liquidating loans and other assets. Problems arose from having insufficiently liquid assets, assets having a market value measured in money which plummeted in a panic, or having total assets less than its total liabilities.

The economist John Kenneth Galbraith aptly described the magic of money in the context of America's commercial banking system in the following way:

The marvel of banks in relation to money -- the wonder of creating deposits or issuing notes that so served -- was suspended on one silken thread. That was the requirement that the depositors or noteholders come in decently small numbers for the hard currency that the bank was under obligation to pay. If all came at once, the bank could not pay. And when the thought spread that the bank could not pay, then, often in much haste, all came. When that occurred, the depositors notes serving previously as money ceased to be serviceable. The deposits and notes of the firstcomers could be cashed; for the depositors or notes of the latecomers there would be nothing. Theirs were worthless deposits or the worthless paper of what was now a failed bank. As such, it was money no longer. The miracle of the earlier creation of money was now matched by the despair of its sudden erasure from existence. ⁵

B. Free Banking Era

Prior to the Civil War, the United States did not have a central bank after the charter of the Second Bank of the United States, which in some ways functioned as a central bank, expired in 1836. ⁶ Each state had its own banking regulations. Some states outlawed note-issuing banks. Elsewhere, legislative chartering limited the number of banks. State laws preserved reserve requirements and regulated the type of investments and loans banks could (or were required to) make.

By the mid-1830s, legislative chartering, which permitted state governments to extract financial favors from privileged banks, resulted in mounting dissatisfaction with the prevailing "spoils" system. Free banking laws were enacted beginning in Michigan and New York and were later adopted by many other states. Free banking statutes

⁵ *Id.* at 21.

⁶ See G.A. Selgin, *The Case For Free Banking: Then and Now*, CATO INST. POL'Y ANALYSIS, Oct. 21, 1985, at 2-8.

brought banking into the prevailing [*62] arena of general incorporation laws so that a new bank could open without a specific charter from the legislature.

However, many states included bond deposit provisions in laws regulating the issuance of redeemable notes by private banks. The bond deposit regulation required a bank to secure its notes issuance with government bonds, particularly bonds of the state where it was incorporated. Bank funds went into the states' coffers. However, the bond security often depreciated in value or was unsalable. Banks attempting to sell the bond security to pay note holders could only make good a fraction of their debts. Also, the supply of bank-issued notes fluctuated according to the supply of bonds declared "eligible" as security by state governments and the cost to banks of acquiring "eligible" bonds on the open market.

In New England, free banking laws existed without bond deposit requirements. Bank chartering resulted in healthy competition. The Suffolk Bank of Boston established a private, free market-oriented institution, which functioned as a clearing system/central bank for New England (Suffolk Bank System).⁷

A private clearinghouse, such as the Suffolk Bank System, served two functions, namely, generating strong incentives to maintain a sound currency and creating efficient two-way information flows about the quantity of notes the public desired and the quality of notes issued by banks. The clearinghouse ensured the safety and soundness of notes. It created incentives that compelled bank managers to issue only that quantity of notes the public willingly held, given their demand for liquidity and the commodity reserves. The threat of (or the actual) redemption for specie also forced country (non-Boston) banks to curtail note issues and prepared these banks to redeem notes on demand.

Thus, banks joined clearinghouse associations to sustain each others' notes and secure payment from nonmember banks. The Suffolk Bank System provided these services from 1818 to 1866 and redeemed on demand the notes of banks that did not maintain a balance with member banks of the Suffolk Banking System.

In other areas of the United States, apart from New England, the quality of bank-issued notes varied from "fair to miserable."⁸ The lowest ranked bank notes were those issued by the "wildcat" banks in the West and Midwest,

⁷ BRAY HAMMOND, *BANKS AND POLITICS IN AMERICA* 554, 556 (1957); GEORGE TRIVOLI, *THE SUFFOLK BANK: A STUDY OF A FREE-ENTERPRISE CLEARING SYSTEM* (1979); Wilfred S. Lake, *The End of the Suffolk Systems*, 7 J. ECON. HIST. 183 (Nov. 1947).

⁸ Selgin, *supra* note 6, at 4.

encouraged by lax state bond deposit provisions that allowed banks to secure their currency using junk bonds purchased at big discounts from face value. ⁹

By the time of the Civil War, state banking was in disarray and contributed to the turmoil in the nation's financial system. The problem with pre-Civil War nineteenth century banking, a system of free banking, stemmed, in part, from state regulations that hemmed in the system. Free banking, as previously noted, meant a system that eliminated the need to obtain a special charter from a state government to organize a bank. However, to open a bank, the entity generally had to buy state bonds. Free banks basically served as a scheme to sell state debt to banks. Banks were forced to hold state government debt as a share of their assets (and bank note issues) rather than being able to diversify their portfolio. Commentators recently have found that most of the bank failures occurred during periods of declining state government bond prices; when that asset depreciated in value, the banks became insolvent and suspended payments. ¹⁰

C. National Bank Era

The Civil War resulted in a redesign of the monetary and banking system of the United States. The Civil War brought about four pieces of monetary and banking legislation: 1) the 1862 legal tender laws; 2) the 1863 National Banking Act; 3) the 1864 act outlawing private coinage; and 4) the 1865 act imposing a prohibitive 10% tax on state bank note issues. The last three acts placed the entire currency supply under the jurisdiction of the federal government. ¹¹

The legal tender laws authorized the U.S. Treasury to issue greenbacks -- notes printed in green ink -- which put the U.S. on a fiat monetary standard. The issuance of greenbacks, an irredeemable currency not backed by gold, but by the federal government, facilitated the Union's ability to finance the Civil War without resort to direct taxation. From 1862 to 1879, the U.S. used a fiat monetary standard. In 1879, greenbacks were made convertible into gold.

⁹ HAMMOND, *supra* note 7, at 627.

¹⁰ Arthur J. Rolnick & Warren E. Weber, *Free Banking, Wildcat Banking and Shinplasters*, FED. RESERVE BANK OF MINNEAPOLIS Q. REV., Fall 1982, at 6, 10-19; Arthur J. Rolnick & Warren E. Weber, *New Evidence on the Free Banking Era*, 75 AM. ECON. REV. 1080 (1983); Arthur J. Rolnick & Warren E. Weber, *The Causes of Free Banking Failure*, 14 J. MONETARY ECON. 267 (1984). See also Milton Friedman & Anna J. Schwartz, *Has Government Any Role in Money?*, 17 J. MONETARY ECON. 37, 51 (1986); Benjamin Klein, *The Competitive Supply of Money*, 6 J. MONEY, CREDIT AND BANKING 423, 439-440 (1974); Hugh Rockoff, *The Free Banking Era: A Reexamination*, 6 J. MONEY, CREDIT AND BANKING 141 (1974); Hugh Rockoff, *New Evidence on Free Banking in the United States*, 75 AM. ECON. REV. 886 (1985).

¹¹ See generally MILTON FRIEDMAN & ANNA J. SCHWARTZ, *A MONETARY HISTORY OF THE UNITED STATES, 1867-1960* (1963).

The 1863 National Banking Act provided, among other things, for the establishment of federally chartered note-issuing banks. ¹² In essence, the law created privately-issued notes, a feature of free banking, but at the federal level. Notes issued by national banks were uniform in design and accepted at par by all other national banks.

The notes of the new national banks had to be secured by deposits of federal government securities. Thus, for each \$ 90 of notes they issued, the Act mandated that national banks purchase \$ 100 in government bonds to be deposited for safekeeping with the federal Comptroller of the Currency in the Treasury Department. More specifically, the total value of notes issued by a bank could not exceed 90% of the face value or market value, whichever was lower, of the U.S. government securities on deposit. ¹³

This arrangement provided a margin of safety for the note issuance. If a national bank collapsed, the bonds it had deposited could be sold and, under ordinary circumstances, its notes redeemed. Not coincidentally, the bond deposit requirement was designed to create a forced market for federal debt and provide another means to pay for the Union's military activities during the Civil War.

The 1863 Act, as re-enacted by the National Bank Act of 1864, also established federally-mandated requirements for bank reserves. ¹⁴ Each national bank had to hold federal government securities equal to at least one-third of the value of its capital. **[*63]** The 1863 Act had specified reserve requirements with respect to deposits for all banks in the national system -- 25% for bank's in central reserve cities and 15% for other banks (so-called country banks).

The 1865 Act imposing a 10% tax on state chartered bank note issues, effective from July 1, 1866, assured that state chartered banks could no longer deprive the federal government of potential revenues from bond sales to federally chartered banks. Note issues by state chartered banks became a theory of the past after mid-1866. The 10% prohibitory tax on state bank note issues had two other results. First, a temporary flood of rechartering occurred with more banks becoming national banks. Second, institutions that wished to remain state banks used demand deposits to finance loans and investments. ¹⁵

¹² [12 Stat. 665 \(1863\)](#).

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¹³. RICHARD H. TIMBERLAKE, *MONETARY POLICY IN THE UNITED STATES: AN INTELLECTUAL AND INSTITUTIONAL HISTORY* 87 n.7, 433 (1993) [hereinafter *MONETARY POLICY*].

¹⁴ **13 Stat. 99, 108 (1864)**.

¹⁵ [MONETARY POLICY](#), *supra* note 13, at 87.

Following an initial decline after the Civil War, state chartered banks boomed, fueled by the increasing popularity in deposit and checking accounts. Less stringent chartering, reserve, and capital requirements, in contrast to the more onerous requirements imposed on national banks, contributed to the popularity of state banks which swelled in number from 325 in 1870 to 17,376 by 1910.¹⁶ State chartered banks, in providing funds for a borrower, put a deposit instead of a bank note at its disposal. But this substitution had unintended consequences. A historian of Appalachia noted:

Before 1865 just as afterwards, the relatively rich (or at least enterprising) received most of the loans made [by state chartered banks]. But loans made in cash directly benefitted nonborrowers (the general population) because cash changed hands not only in large transactions, like checks, but changed hands at all levels of economic exchange. The beauty of plentiful cash had been that some of it had trickled down to everyone in its vicinity. Checks changed hands only between the relatively rich, whereas cash had changed hands between virtually everyone.¹⁷

By 1866, the U.S. currency supply consisted of greenbacks issued by the U.S. government and notes issued by national banks and secured by U.S. government bonds purchased on the open market. The amount of greenbacks was fixed by statute as initially were the national bank notes. In 1875, Congress abolished the government-imposed limit on the aggregate amount of national bank notes issued.¹⁸ This step followed the enactment of legislation in 1874 which eliminated the requirement that national banks maintain on hand reserves for their circulating notes, but retained the reserve requirement on deposits.¹⁹ Instead of the on hand reserve requirement for notes in circulation, the 1874 legislation required each national bank to keep a redemption fund with the Treasury of 5% of its notes outstanding to redeem its own notes. The redemption fund also served as part of the required reserves against deposits.

In large measure, the post-Civil War supply of national bank notes followed the supply of U.S. bonds as collateral. In other words, the supply of U.S. bonds collateral determined the absolute limits on the issuance of notes by and their profitability for national banks.

¹⁶ 1 ALFRED M. POLLARD ET AL., *BANKING LAW IN THE UNITED STATES* 2-19 (2d ed. 1993).

¹⁷ PAUL SALSTROM, *APPALACHIA'S PATH TO ECONOMIC HISTORY 1730-1940* 30 (1994).

¹⁸ Resumption Act of 1875, ch. 15, § 3, **18 Stat. 296**.

¹⁹ Act of June 20, 1874, ch. 343, § 2, **18 Stat. 123**.

From 1866 to 1871, the expanding federal debt ensured an adequate supply of currency issued by national banks. A long period of contraction in the amount of the outstanding U.S. government debt began in 1871. The U.S. Treasury, which consistently ran a surplus, bought up and retired government bonds. As the supply of federal government debt instruments declined, their market value increased. National bank note issuance became prohibitively costly as a result of the low rate of interest on U.S. government bonds and the significant premium (i.e., the difference between market price and face value) enjoyed by U.S. bonds available in the open market. The national banks found it increasingly difficult and expensive to acquire collateral needed for new note issues.

Especially after 1882, national banks were hampered in issuing notes by the growing scarcity of U.S. government securities, required by the 1863 National Banking Act as collateral for note issues. These circumstances precluded the secular growth of currency supply and prevented cyclical increases in demand from being met. This was the setting for the financial crises of 1884, 1893, and 1907. Each of these crises coincided with the heightened currency demands to finance the movement of crops. In 1893 and 1907, the seasonal credit stringency degenerated into full-scale financial panics.

Partly in response to the loss of reserves during seasonal credit crunches, banks curtailed credit extensions. Banks also restricted payments, which meant that deposit holders were unable to convert their balances into currency. As a result, the public hoarded outstanding currency even when the supply of money in circulation might have exceeded normal trade and business requirements. Deposit holders learned to anticipate currency [*64] shortages. The slightest indications of a currency stringency set off large scale bank runs and currency hoarding panics.

To deal with the money panics and the accompanying drains of critical reserves, the marketplace demonstrated great ingenuity. In northern tier states, Canadian bank notes appeared in circulation. But the most creative developments occurred in private clearinghouses.²⁰

Clearinghouse associations arose in the nineteenth century as a market response to the need for reliable information and a method for coping with uncertainties in the timing of interbank payments. In a clearinghouse association, member banks debit items that were cleared against their credit items. After the balance was struck, debtor banks paid creditor banks the amounts owed on the clearinghouse accounts. Beginning before the Civil War, the New York City Clearinghouse Association in 1857 permitted irredeemable notes of country (nonmember) banks

²⁰ Richard H. Timberlake, Jr., *The Central Banking Role of Clearinghouse Associations*, 16 J. MONEY, CREDIT AND BANKING 1-15 (1984); [MONETARY POLICY](#), *supra* note 13, at 200-02.

to be included in the clearinghouse settlement accounts. The New York City Clearinghouse Association also issued clearinghouse loan certificates against these redeemable notes.

From 1857 to 1913 private clearinghouse associations issued temporary clearinghouse loan certificates as well as clearinghouse certificates. Clearinghouse loan certificates -- demand obligations -- were held by banks. These certificates functioned as supplements to gold in the settlement of clearinghouse balances among member banks and as emergency reserves so that suspensions of the conversion of bank deposits into currency could be avoided. Market factors, like interest rate charges and the requirement of acceptable collateral, constrained the issuance of loan certificates.

Banks issued clearinghouse notes in small denominations thereby satisfying the general public's currency needs. The clearinghouse notes were issued in a multitude of localities throughout the United States on the perceptions of numerous bankers.

In many communities, checks of well-known individuals and firms were also issued in small, round denominations and passed from hand-to-hand until they were filled with endorsements. Banks issued cashiers' checks and negotiable certificates of deposit in small, round denominations. As a result of the use of clearinghouse loan certificates, clearinghouse certificates, and checks issued by individuals, firms, and banks, the extent of the potential for economic destruction that occurred during the various panics "was greatly reduced."²¹

D. The Modern Central Banking Era

In 1913, proposals for governmental reform of the nation's monetary and banking system culminated in the enactment of the Federal Reserve Act.²² This Act was designed to create a special, centralized public sector reserve agency that would provide the nation and its banks with emergency currency reserves by acting as a lender of last resort to forestall panics and illiquidity in the banking system. With the creation of the Federal Reserve System ("the Fed") the federal government also came to assert control over the alleged excesses of banks and the frequencies of their failures, especially after 1932. Banks were forced to rely on deposits at the Fed for their stability and liquidity. Economist Richard H. Timberlake succinctly summarized the eighty year evolution of the Federal Reserve System as follows:

²¹ Selgin, *supra* note 6, at 7. See also A. Piatt Andrew, *Substitutions for Cash in the Panic of 1907*, 22 Q.J. ECON. 477-516 (1908); Steven Horowitz, *Competitive Currencies, Legal Restrictions, and the Origins of the Fed: Some Evidence From the Panic of 1907*, 56 S. ECON. J. 6-39 (1990).

²² **38 Stat. 251 (1913)**

In the beginning (1913) Congress designed the Federal Reserve System to be a system of supercommercial privately owned banks. But the Banking Act of 1935 and the Monetary Control Act of 1980 formally changed the Fed from a system in which the Federal Reserve Banks were autonomous and the Federal Reserve Board a refereeing committee, to one in which the Board in Washington is all-powerful and the Federal Reserve banks not much more than administrative units; from an occasional discounter of real bills [i.e. notes, drafts, and bills of exchange arising out of actual commercial transactions] at the initiative of member banks, to a constant and momentous monetizer of governmental securities at the initiative of the Federal Reserve Open Market Committee; from an institution specifically subordinated to the gold standard, to one that has a monopoly with no vestige of a gold standard remaining; from a lender of last resort for banks, to a perpetual motion machine of money creation; from an institution with an avowed interest in providing liquidity in support of sound banks, to a cloak-and-dagger operation that has often bred uncertainty in financial markets. ²³

The issuance of paper currency soon became a monopoly of the federal government. The last of the post-Civil War national bank notes were retired from circulation in 1935. The currency supply has basically remained a monopoly of the Federal Reserve System ever since.

The U.S. dollar is no longer tied to any commodity, such as gold. In 1933, the U.S. Congress passed the Joint Resolution of June 5, 1933 that abolished all gold clauses in all public and private contracts. ²⁴ This meant that contracts could not require payment in gold. The Gold Reserve Act of 1934 went further, withdrawing all gold coin from circulation to be formed into gold bars. ²⁵ Even the Treasury could not hold gold coin unless it was in the form of gold bullion. ²⁶ The Gold Reserve Act was intended to "abolish[] gold coin as a component of our monetary system." ²⁷ Gold was thereafter not money, but rather a commodity. The public could not get gold in the United States. Coin collectors were able to hold gold coins but only those of numismatic value. ²⁸

²³ [MONETARY POLICY](#), *supra* note 13, at 416.

²⁴ Ch. 48, § 1, **48 Stat. 112, 113 (1933)** (codified at 31 U.S.C. § 463 (1976)), *repealed by* Act of Oct. 28, 1977, Pub. L. No. 95-147, § 4(c), [91 Stat. 1229](#) (with respect to obligations incurred after Oct. 27, 1977) (codified at [31 U.S.C. § 5118\(d\)\(2\)](#) (1988)). See 123 CONG. REC. 33,219-33,220 (1977).

²⁵ **48 Stat. 337** § 5 (1934).

²⁶ *Id.* § 6.

²⁷ Franklin D. Roosevelt, Presidential Statement *in* 3 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 75 (1938).

²⁸ *Provisional Regulations Issued Under the Gold Reserve Act of 1934*, § 20, 20 FED. RESERVE BULL. 82, 85 (1934).

[*65] Gold remained in circulation for international transactions involving the federal government until 1971 when the U.S. government ceased supplying gold to foreign central banks. In short, hard currency no longer exists in the U.S. monetary system except in the form of coinage. The U.S. government systematically, from 1933 to 1971, obliterated any notion of a value standard by refusing to permit the conversion of its paper money into gold and forcing the acceptance of its inferior paper currency. By putting an end to redeemability, policymakers eliminated an effective means for imposing discipline on government-issued money. The way was opened to abuse on a grand scale.

The Federal Reserve System now possesses virtually unlimited capacity to meet the public's currency demands. The United States has two types of currency: 1) basic cash, hand-to-hand money (so-called outside money, i.e., issued outside the banking industry) in the form of Federal Reserve notes, and 2) bank liabilities -- deposits (or deposits created by bank loans) which are transferable by check or electronically. Deposits represent privately produced currency (so-called inside money). Their value derives from their redeemability in the hand-to-hand currency. About 31% of the U.S. money supply takes the form of circulating paper currency or coins. ²⁹ However, part of the money supply which appears as paper currency began as bank credit.

We have a system of fiat money, not backed by any commodity. Dollar bills are just printed pieces of paper. Deposits are nothing more than accounting numbers. Coins have some intrinsic value as metal, but it is considerably less than their value as money. The scarcity of money, relative to its demand, fixes its value. The supply of money is determined largely by the Fed's monetary policy. Congress has mandated that the basic objectives of the Fed's monetary policy are "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." ³⁰

To achieve these goals, the Fed has three principal means of controlling the money stock: 1) establishing reserve requirements for depository institutions; 2) engaging in open market operations; and 3) setting the discount rate. ³¹ The reserve requirement requires depository institutions to maintain reserves against the demand deposits of their customers. Reserves are composed of currency held by the bank and deposits of a bank with the Fed. Increasing

²⁹ FEDERAL RESERVE BANK OF CHICAGO, MODERN MONEY MECHANICS 3 (1992).

³⁰ [12 U.S.C. § 225a](#) (1988).

³¹ See generally ALFRED BROADDUS, A PRIMER ON THE FED 25-45 (1988).

or decreasing reserve requirements will reduce or enlarge the money multiplier effect and cause banks to extend fewer or greater loans.

Open market operations, the most important tool the Fed uses to control the money stock, involve the buying and selling of United States securities in the open market. Sellers of U.S. securities receive checks drawn on a Federal Reserve Bank. When checks are deposited in banks, those banks acquire a credit with the Fed. Because deposits with the Fed, as well as currency on hand, count as reserves, banks can now extend more loans. Moreover, the Fed increases the money stock directly by simply creating the money to pay for the U.S. securities.

The discount rate is the interest rate at which the Fed will loan funds to commercial banks and other depository institutions. Banking institutions borrow from the Fed primarily to meet temporary shortages of reserves. An increase in the discount rate will discourage borrowing, causing banks to build up their reserves and extend fewer loans. Decreasing the discount rate will have the opposite effect.

For instance, if the Fed adopts an expansionary monetary policy -- rapid rate of growth of the money supply -- it might reduce reserve requirements, purchase additional U.S. securities, and lower the discount rate. Reducing reserve requirements would free excess reserves and induce banks to extend additional loans. Purchasing additional U.S. securities would not only expand the money stock directly but also increase the reserves of banks which can then extend more loans. Finally, lowering the discount rate would encourage banks to borrow more from the Fed and to lower their reserves (because of the lower cost of borrowing from the Fed if their reserves run low).

The Fed is distinct in purpose and function from the U.S. Treasury. ³² Whereas the Fed is concerned primarily with the availability of money and credit for the entire economy, the U.S. Treasury is responsible for the revenues and expenditures of the national government. If there is a budgetary deficit -- where government expenditures are in excess of tax revenues -- the U.S. Treasury will issue interest-bearing bonds as a method of financing the deficit. When the Fed purchases U.S. securities, it purchases part of the national debt, and it has the power to write a check upon itself without having its own deposits, gold, or anything else to back up the check. ³³ The Fed simply

³² See generally COMM. ON BANKING AND CURRENCY, 88TH CONG., 2D SESS., A PRIMER ON MONEY (Comm. Print 1964).

³³ *Id.*

creates money by writing a check, and if the recipient of the check wants cash, the Fed can simply print Federal Reserve notes. ³⁴ Thus, in effect, the Fed can monetize the national debt by purchasing U.S. securities. ³⁵

Thus, the federal government can more-or-less freely print large amounts of money to cover its deficits or for other purposes, [*66] e.g., to redistribute income and wealth between creditors and debtors or as a means to reduce unemployment. Subject to what the public will tolerate in terms of domestic inflation and the depreciation of the value of the U.S. dollar vis-a-vis foreign currencies, virtually no limit exists with respect to what the U.S. government can do with the nation's money supply.

E. Conclusion

The U.S. government's monopoly position with respect to the issuance of money means we must use a product (here, currency) even if it is unsatisfactory. Its monopoly prevents the discovery of better methods of satisfying a need. Periodic inflation and general economic instability may result, in large measure, from the government's monopoly over money which also assisted in general growth of federal governmental power. Looking back over the twentieth century, the federal government expanded greatly, assisted by the possibility of covering deficits by issuing money. Government power over money facilitated ever-mounting centralization.

The Nobel economics laureate Friedrich Hayek sought to introduce competition into the production of money. ³⁶ Competition would discipline producers to supply the best products at the lowest cost. An alternative currency would help in effectively preserving not only the integrity of local economy but also promoting ecological sustainability.

III. The Current Context and Objectives of Local Currency Issuance

This part develops the values implicit in and the rationale for a system of local currency issuance. It emphasizes the importance of scale and the decentralization of economic and political power. It explains how a local currency approach will build on the need to encourage a greater degree of participation and local self-reliance to help us

³⁴ *Id.*

³⁵ See J. WHITNEY HANKS & ROLAND STUCKI, MONEY, BANKING, AND NATIONAL INCOME 11-14 (1956). Private domestic investors, not the Fed, comprise the largest purchasers of U.S. securities. Nevertheless, U.S. securities purchased by anyone can be transformed into deposits and currency with minimal effort. To the extent this transformation takes place, the national debt is monetized. *Id.*

³⁶ F.A. HAYEK, DENATIONALISATION OF MONEY: AN ANALYSIS OF THE THEORY AND PRACTICE OF CONCURRENT CURRENCIES (1976) [hereinafter HAYEK, AN ANALYSIS]

achieve a non-inflationary economy characterized by ecological sustainability, human development, and fuller employment.

A. The Current Context

We depend on a "good" (i.e., growing) economy to get us an interesting job commensurate with our educational attainments after graduation from high school, college, or graduate school. We continue to worship economic growth as a means of providing high paying jobs throughout our work lives. A series of jobs ensures our financial survival, provides for our immediate consumption of goods and services, and, if we are lucky, enables us to build a college education fund for our children as well as a retirement fund for our old age.

We calculate our standard of living in material terms. Our lives are oriented to our material possessions, our house, and our cars. ³⁷ We long for more possessions; we expect that things will bring us prestige and respect from our families and friends.

In the 1980s, many went along with the cornucopia of consumer goods and services. They found it difficult to imagine any limits to economic growth and consumption. In America's shopping malls, young and old were enslaved by material progress. They literally shopped 'til they dropped. We came to associate consumption with happiness.

A malaise now characterizes the 1990s. The roots of our present unease are at least three fold: 1) the economic realities of the 1990s; 2) a growing awareness of our ecological dilemma; and 3) a heightened perception of the impermanence of the material aspects of life.

1. The Economic Realities of the 1990s

Our quest for a new political economy stems, in part, from the realities of the economic stagnation which characterizes the 1990s, following upon the economic boom years of the 1980s. The harsh economic realities serve as a wake up call to those caught up in the overly "high" levels of consumption evidenced in the 1980s. Easy money no longer flows to many professionals and business executives. Businesses engage in relentless downsizing. Middle managers and white collar workers are being displaced, and not as many attorneys, engineers, and architects, among other professionals, are needed. Finding a "good" entry-level job is far more difficult for recent high school and college graduates. ³⁸ Also, crushing personal debt burdens, home mortgage, car

³⁷ See generally PAUL WACHTEL, THE POVERTY OF AFFLUENCE: A PSYCHOLOGICAL PORTRAIT OF THE AMERICAN WAY OF LIFE (1983).

payments, and credit card debts, as well as physical and mental hazards, stress and lack of enough time to meet the myriad demands we face, surround our current quest for material success. ³⁹

Looking to the twenty-first century, the United States faces the prospect that individuals will be far less tied to the production and distribution of goods and services. The collapse of work as we have known it over the past two hundred years will flow from three factors.

First, assuming more people express a preference for less consumption and evidence a greater degree of environmental sensitivity (discussed later in this part), a dramatic drop in consumption of goods and services will likely occur. The future needs of society will be met with only a small fraction of the workforce. Estimates indicate that perhaps as little as 7 to 10% of the American economy is concerned with the production and distribution of "basic" goods and services. ⁴⁰

Second, the competitive pressures from cheaper imported goods and the shift of production to foreign (lower wage) sites will take their toll on U.S. jobs. South China may set the wage rate for the rest of the world. The increased economic integration into global networks will likely be a recipe for net job losses in the United States.

[*67] Third, automation and labor-saving technology will increase productivity and reduce the demand for labor. The revolution in technology, spurred by computers and microelectronics, makes possible the widespread displacement of humans by machines. ⁴¹

The combination of these three factors will make full employment (or anything resembling full employment) an impossibility. The new economy will not generate sufficient new jobs, let alone "good" jobs paying high wages and offering generous fringe benefits, for an expanding workforce. The service sector will not grow fast enough to provide sufficient jobs; in any event, many service jobs will be low paying, part time, nonfulfilling, dead end positions.

³⁸ See, e.g., Richard J. Barnet, *The End of Jobs*, HARPER'S WEEKLY, Sept. 1993, at 47; Peter T. Kilborn, *Working Is Harder, Not Working Harder Still*, N.Y. TIMES, Sept. 5, 1993, § 4, at [1](#), [4](#); Louis S. Richman, *When Will The Layoffs End?*, FORTUNE, Sept. 20, 1993, at 54; Louis Uchitelee, *Strong Companies Are Joining Trend To Eliminate Jobs*, N.Y. TIMES, July 26, 1993, at A1.

³⁹ See generally JULIET SCHOR, *THE OVERWORKED AMERICAN* (1992). See also, Elinor J. Brecher, *Toll and Trouble: Crisis on the American Workplace*, MIAMI HERALD, Mar. 21, 1993, at J1.

⁴⁰ PAUL & PERCIVAL GOODMAN, *COMMUNITAS: MEANS OF LIVELIHOOD AND WAYS OF LIFE* 191, 202-03 (1960).

⁴¹ See Lewis D. Solomon, *The Microenterprise Revolution, Job Displacement, and the Future of Work: A Policy Commentary*, [63 CHI.-KENT L. REV. 65, 71-82 \(1987\)](#); G. Pascal Zachary & Bob Ortega, *Age of Angst: Workplace Revolution Boosts Productivity At Cost of Job Security*, WALL ST. J., Mar. 10, 1993, at A1.

The roots of our job dilemma are based in a production-focused society. In the past it seemed to make sense to think of economic production as the de facto goal of society; to think of an ever-increasing fraction of overall human activity being treated as commodities in the mainstream, formal economy; to assume that the individual's primary relationship to society is through a job; to have social thinking dominated by the concept of scarcity, competition, and money exchange. However, this will not be the case in the future when one of our main problems is our capacity to overproduce.

Furthermore, those of us fortunate enough to have a job increasingly perceive the magnitude of the social alienation and powerlessness which manifest themselves in many ways. We see the people who hate their dead-end jobs and their meaningless work, as well as those who resent the authority imposed on their work and over their lives generally. We search for and find it difficult to locate a calling to do something meaningful and significant.

Many seek a "right livelihood" which will enable them, fully using their capacities, to make a genuine contribution to not only their personal development but also to the well-being of humanity. As E.F. Schumacher observed, the Buddhist concept of a "right livelihood" has universal relevance because it places spiritual health as a goal along with material well-being. ⁴² As Schumacher maintained: "It is not a question of choosing between 'modern growth' and 'traditional stagnation.' It is a question of finding the right path of development, the middle way between materialist heedlessness and traditional immobility, in short, of finding 'Right Livelihood.'" ⁴³

2. *Our Ecological Dilemma*

We are increasingly reevaluating the impact of our consumption-oriented lifestyle on the ecosystem. The quest for economic growth leads to resource depletion, ecosystem damage, and congestion. We devote additional resources to spurring consumption by creating dissatisfaction with our existing possessions. Rapid obsolescence and replacement with new goods has characterized the twentieth century's throwaway economy. Our wasteful pattern of consumption, which is unrelated to maintaining life or well-being, ties back to economic growth as synonymous with the good life. A society based on manipulative consumption has much broader social and ecological consequences.

Our century-long pursuit of economic growth now faces and will increasingly encounter the limits nature imposes. The planet is nearing its capacity to handle the impact of our economic growth policies and our channeling of the earth's resources into wasteful production resulting in social and ecological degradation.

⁴² E.F. SCHUMACHER, SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED 53 (1973).

⁴³ *Id.* at 62.

Six factors set the ecological limits to a political economy based on economic growth. ⁴⁴ First, the world is a gigantic machine for burning fossil fuels. Modern economies live on nonrenewable resources, such as petroleum and natural gas. Growth has been based on cheap oil, which is becoming ever scarcer. Second, tropical forests are disappearing at an alarming rate. Whatever the cause, the loss of tropical forests results in massive soil erosion, the conversion of forests into low-grade farm land, and the spoilage of local water supplies. Third, acid rain, which originates in sulfur and nitrogen oxides that emanate from smokestacks and vehicle exhaust pipes, destroys forests and lakes (and thus is harmful to aquatic life) and damages a nation's artistic and architectural heritage. Fourth, we face the depletion of the ozone layer in the upper atmosphere, which shields people from ultraviolet radiation. The catalyst for this change was the release into the atmosphere of chlorofluorocarbons. As a result, incidences of skin cancers will rise and the ocean's food chain also will be disrupted. Fifth, desertification results from the destruction of vegetation by woodcutting, burning, and overgrazing, erosion induced by water, and salinization of irrigated fields. Over two hundred million people, mostly in developing nations, are directly and deleteriously affected by desertification. Sixth, the world faces its greatest environmental threat from the much discussed "greenhouse effect," a phenomenon caused when increased amounts of carbon dioxide, in combination with the release of other gases, trap the radiant heat emitted from the earth's surface. The net result of the greenhouse effect is an increase in global temperatures that may cause serious environmental damage as soon as the early years of the twenty-first century. The alterations **[*68]** of climatic patterns caused by rising temperatures will likely throw agricultural systems out of balance. Yet, while the probability of global warming is high, its exact consequences and timeline remain uncertain.

These environmental threats build up so slowly that our minds cannot perceive the danger to human and planetary existence. Yet, increasingly in the 1990s, we are concerned with and evidence a greater degree of stewardship for the earth and all its inhabitants -- human and non-human. We are taking steps to recycle more materials. In future

⁴⁴ For helpful overviews, see COUNCIL ON ENVIRONMENTAL QUALITY AND DEPARTMENT OF STATE, GLOBAL 2000 REPORT TO THE PRESIDENT: ENTERING THE TWENTY-FIRST CENTURY (1980); PAUL R. EHRLICH & ANNE H. EHRLICH, THE POPULATION EXPLOSION 110-35 (1990); THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE (1987) [hereinafter OUR COMMON FUTURE]. See generally Lewis D. Solomon & Bradley S. Freedberg, *The Greenhouse Effect: A Legal and Policy Analysis*, [20 ENVTL. L. 83 \(1990\)](#). The Bruntland Report highlights five environmental crises: acid rain, global warming, ozone depletion, widespread desertification, and species loss. *Id.* However, some scientists believe that the industrial pollution blamed for the "greenhouse effect" may also spawn clouds that reflect heat and lower world temperatures. *Industrial Gases May Have Global Cooling Effect, Scientist Says*, CHRISTIAN SCI. MONITOR, Aug. 27, 1990, at 7; see also SHERWOOD IDSO, CARBON DIOXIDE AND GLOBAL CHANGES: EARTH IN TRANSITION (1989); William K. Stevens, *Scientists Confront Renewed Backlash on Global Warning*, N.Y. TIMES, Sept. 14, 1993, at C1.

decades, we face the need to switch from fossil fuels and to move to the solar age. Agricultural practices, especially the use of life-destroying chemicals which are economically self-defeating in the long-run, may also be revamped.

These changes may culminate in an individual ethic and a political economy based on the notion of a sustainable society which serves the ends of human development in an ecologically sound manner. Again, we should strive to find a balance, a middle way which emphasizes the formulation and implementation of policies keyed to ecological and social viability. We should formulate an ecologically sound -- popularly known as a sustainable -- way of living with and relating to the earth and all other living creatures in the context of using resources to meet human needs and promote human development. Each generation should strive to meet its needs without compromising the ability of future generations to meet theirs. Human development should take place in a framework which avoids irreparable harm to the environment. In addition to nurturing the environment, sustainable development should be based on renewable energy resources and energy conservation. We should formulate a strategy based on and cognizant of the impact of the political economy on the ecosystems on which humans depend for their livelihood and for their existence.

3. The Impermanence of the "Material Aspects of Life"

We also see about us a heightened focus on the impermanence of the material aspects of life. This impermanence ranges from our possessions to our physical body. Despite the technological advances of modern medicine, someday as much as we try to deny it, we will all die. For all the empirical studies which search to find cause and effect not only in our bodies but also in our lives, meaningfulness in this material world and beyond remains a mystery.

Consumerism has not provided Americans with a sense of fulfillment. Opinion surveys repeatedly show that the proportion of Americans reporting that they are "very happy" with their lives has remained at about one-third of U.S. population since 1957 even though personal consumption has doubled.⁴⁵ We realize our identity transcends our level of consumption. Simply put, we cannot purchase happiness through conspicuous consumption and material wealth.

The emerging political economy will, therefore, emphasize the nature and quality of growth (particularly personal development, as opposed to material growth) and the need to operate within the limits of the planet. Moving from

⁴⁵ Alan Thein Durning, . . . *And Too Many Shoppers: What Malls and Materialism Are Doing to The Planet*, WASH. POST, Aug. 23, 1992, at C3. See also Kenneth R. Hey, *Business As Usual? Forget It*, 29 ACROSS THE BOARD 30, 32 (1992).

the premise of ecological sustainability,⁴⁶ the political economy of the twenty-first century may rest not only on a less consumption-oriented lifestyle of individuals and families, but also on a more self-sufficient pattern of local production and consumption based on decentralized economic and political institutions.

B. The Quest for Decentralization

Alienation and loneliness characterize late twentieth century America. More human-sized, less complex places of work and governance may help overcome our unease. Making economic and political institutions smaller and more comprehensible may facilitate their revitalization. Increasingly we may seek to establish a political economy system based on the importance of "human scale."

This section begins with an examination of the concept of scale for economic institutions and then considers the political dimensions of the notion of scale. The scale of our existing economic and political institutions limit effective participation and the benefits derived therefrom. This section discusses the role of local currency in the decentralization of economic and political institutions. A local currency provides a key element in achieving the goals of sustainable development and empowering people.

1. Scale in Economic Institutions

We are all too familiar with stifling economic bureaucracies organized in excessively large units characterized by rule-bound behaviors. Large-scale business organizations have resulted in deleterious human consequences, the destruction of the content and dignity of most forms of work, and a continuous stimulation and reliance on greed, envy, avarice, and the authoritarian character of these entities.⁴⁷ As E.F. Schumacher stated, economic structures employing hundreds or thousands "cannot possibly preserve order without authoritarianism, no matter how great the wish for democracy might be."⁴⁸

⁴⁶ The concept of "sustainable development" popularized by the Brundtland Report (OUR COMMON FUTURE, *supra* note 44) has inspired enthusiasm on both sides of the economy-environment debate. Some see it as an opportunity for humanity to develop a more balanced relationship with the natural world. Others perceive of sustainable development within the traditional mode of economic development. See generally MICHAEL REDCLIFF, SUSTAINABLE DEVELOPMENT: EXPLORING THE CONTRADICTIONS (1987). Some biologists question whether it is possible to predict safe levels of resource exploitation and even if accurate predictions are possible, whether human greed will lead to overexploitation. William K. Starens, *Biologists Fear Sustainable Yield Is Unsustainable Idea*, N.Y. TIMES, Apr. 20, 1993, at C4.

⁴⁷ E.F. SCHUMACHER, GOOD WORK 29 (1979).

⁴⁸ *Id.*

Not only from a human perspective but also on traditional economic efficiency grounds, large institutions, which put a premium on expertise, certitude, and control, suffer from a number of deficiencies. Large hierarchical systems block negative feedback which tells higher-ups in the organization the things they have forgotten or missed. People at the bottom of organizations traditionally have been the least empowered in the control system but they are the closest to the key sources of information. Also, in an era of rapid change, large, bureaucratic organizations are at a disadvantage compared with smaller, more flexible groups of people.

[*69] What will propel the evolution of economic organizations? Seeking to fulfill the notion of a right livelihood -- work which makes a contribution to ourselves and to others, and to human well-being -- people desire a greater degree of meaningfulness in their lives. In addition to searching for work that facilitates human development and is good for an employee, people will seek out and strive to be part of an organization which produces goods and services that promote a more meaningful, ecologically sound world.

People also want to assume a greater degree of control over not only their work, but, more generally, their lives. As a result, they will strive to develop and be part of smaller-scale workplaces of approachable size, graspable scope, and manageable complexity. Human satisfaction, autonomy, and self-development are enhanced by more comprehensible, less complex, and smaller-scale economic institutions. In these smaller institutions, workers, as citizens of the enterprise, meet face-to-face and make decisions face-to-face.

Participation is important in economic units because it: 1) facilitates personal growth and development and serves to make each of us fully human; 2) maintains and facilitates equality of respect, dignity, and status among participants; and 3) protects everyone's interests equally. It also gives more employees a stake in their work, the experience of responsibility, and provides training in collective decision-making. ⁴⁹ In short, work will increasingly be organized into human sized, comprehensible groups in which ownership is not divorced from personal involvement in the institution. Smaller business organizations are more closely connected with meeting human needs. Social, as well as individual, benefits flow from smaller work units.

These smaller economic units will bring technology to the service of workers and the environment. Decentralized, ecologically sensitive technology which will be frugal in energy use may flourish. The decentralized economic organizations may rely more on small-scale energy technologies, such as solar power, rather than energy systems, such as nuclear power, which require large and complex bureaucracies to manage them. Decentralized energy

⁴⁹ JANE J. MANBRIDGE, BEYOND ADVERSARY DEMOCRACY 235-48 (1980).

from renewable sources will promote greater energy self-sufficiency, thereby reducing energy dependency and enabling businesses to meet their energy needs in a more ecologically sound manner.

These smaller business organizations may also evidence a greater sensitivity to conserving resources and protecting the environment. The smaller, energy-efficient units may be nonpolluting and facilitate the recycling of wastes.

A trend to economic decentralization is already apparent. In the boom years of the 1980s, employees and executives jumped off the corporate ladder and into self-employment and consulting arrangements. They also formed small firms. During this period, small businesses provided most of the jobs added in the U.S. economy as well as most of the innovation.⁵⁰

In the wave of corporate downsizing during the 1990s, those pushed out of corporations have turned to being independent contractors, reinvigorating family businesses, or heading startups.⁵¹ Symbiotic relationships flourish. Huge firms are becoming more dependent on a vast subculture of small, high-powered, flexible suppliers -- many family-run -- which can make quick decisions, take daring entrepreneurial risks, and evidence high motivation.⁵²

The coming decades will witness a continued blossoming of small-scale, more localized economic activity. We will see growth of an economy of small firms, owned and operated by the employees -- a kind of cooperative, collective capitalism.⁵³ Business cooperatives will use the market-mechanism to gather information about preferences and allocate resources and income in accordance with these preferences. Goods and services may be produced very simply on a small scale with non-capital intensive (capital saving) technology. Smaller scale economic units, using capital saving technologies, would make worker ownership more practical by reducing capital needs which traditionally have retarded the development of business cooperatives.⁵⁴ A cooperative working environment will

⁵⁰ See Alvin Toffler, *Powershift*, NEWSWEEK, Oct. 15, 1990, at 86, 88 [hereinafter *Powershift*].

⁵¹ Jerry Flint, *Keep a Resume on the Floppy, But Don't Panic*, FORBES, Apr. 26, 1993, at 65, 68-69; Bruce Nussbaum, *Corporate Refugees: After the Pain, Some Find Smooth Sailing*, BUS. WK., Apr. 12, 1993, at 58, 58.

⁵² *Powershift*, *supra* note 50, at 88.

⁵³ See generally FRANK T. ADAMS & GARY B. HANSEN, PUTTING DEMOCRACY TO WORK: A PRACTICAL GUIDE FOR STARTING AND MANAGING WORKER-OWNED BUSINESSES (rev. ed. 1992); See Gar Alperovitz, *Ameristroyka Is the Answer*, WASH. POST, Dec. 13, 1992, at C3.

⁵⁴ See, e.g., Len Krimerman & Frank Lindenfeld, *Changing Worklife: Grassroots Activism Takes a New Turn*, in WHEN WORKERS DECIDE: WORKPLACE DEMOCRACY TAKES ROOT IN NORTH AMERICA 1, 3-5 (Len Krimerman & Frank Lindenfeld eds., 1992); Henry Hansman, *When Does Worker Ownership Work? ESOPs, Law Firms, Codetermination, and Economic Democracy*, [99 YALE L.J. 1749, 1761 \(1990\)](#).

also facilitate a greater degree of worker participation in the management of an enterprise which in turn will evidence more responsiveness to meeting human needs.

Because members feel they have a greater stake in the venture, they are also more motivated to make the business succeed. As a result of increased concern for the health of the business, less employee monitoring is necessary. Workers are less likely to slack off on the job; they will not tolerate such behaviors from others. With less monitoring required, the need for middle managers decreases.

These collectively-owned (or perhaps community-owned) organizations may focus on meeting basic human requirements -- food, shelter, clothing, education, and preventive health care -- in an ecologically sound, resource-conserving manner. Cooperatives may also permit the development of various types of services, such as child care, care of the aged, and transportation, more effectively, with more flexibility, and at lower cost.

[*70] Finally, more personalized exchange may characterize a growing informal economy. The bartering of goods and services will surge. The home will flourish as a key production unit. Individuals, characterized as prosumers by futurist Alvin Toffler, may produce and consume their own goods and services, thereby lessening their dependence on the traditional market economy.⁵⁵ In addition to the coming decentralization of economic institutions, the notion of scale has a political dimension.

2. *Scale in Political Institutions*

The devolution of economic power will have profound ramifications and lead to more autonomy, diversity, and the decentralization of political and social institutions, more specifically, to placing more decisions as close to individuals as possible. The emerging political economy may consist of a multiplicity of diverse political units with a more significant role played by smaller scale institutions thereby facilitating local decision-making. As Alvin Toffler reminds us:

In any system, democratic or not, there needs to be some congruence between the way a people make wealth and the way they govern themselves. If the political and economic systems are wildly dissimilar, one will eventually destroy the other. And if it is true that a system for wealth creation is superseding smokestack production, then we should expect a historic struggle to remake our political institutions, bringing them into congruence with the requirements of a revolutionary post-mass-production economy.⁵⁶

⁵⁵ ALVIN TOFFLER, *THE THIRD WAVE*, 282-305 (1980). See also GOODMAN & GOODMAN, *supra* note 40.

⁵⁶ *Powershift*, *supra* note 50, at 90.

We see a transformation from the concentration of economic power at the nation-state level, based on mass-production technology and organizations. New technologies, such as computers, make local production competitive again. The combination of a changing technological base together with the emerging fight against bureaucratic, centralized economic institutions will likely give rise to a movement away from an ever larger scale of government and toward a greater decentralization of political power and political institutions. Citizens may opt for local communities, a sort of grassroots, direct democracy, to decide more issues of significance.

In considering participatory political institutions, the questions of scale once again assumes paramount importance. As with economic institutions, participation in the political process connotes people taking more control over their lives, taking charge and organizing for themselves. Direct democracy -- participation -- is based on the premise that no one has the right to make political decisions affecting an individual without that person taking part in the decision-making process. Involvement in decision-making also serves as a means of promoting human development. The return to human scale in the structuring of political institutions will enable each person to see the need for an active role in society where each person's actions have meaning and impact. Smaller political units are more comprehensible and less complex. More face-to-face contact in the political process facilitates not only social cohesion, but also a more developed sense of community. Smaller-scale institutions also reduce social alienation through identification with the well-being of the community.

Participation involves a shift from national representative democracies and centralized bureaucratic structures to facilitating direct democracy in smaller political units. As well could be imagined, limits exist on an effective, democratic participation in decision-making as a result of number of persons involved.⁵⁷ The greater number of citizens in a political unit, the greater the number of decisions that will have to be delegated to officials or made by means of representative democracy, for example, a legislative body. Conversely, in smaller political units, people are more politically active, can understand the issues and personalities far more clearly, participate more in all aspects of government, and regard themselves as having more effective control over decisions impacting on their lives.

Looking back over the wreckage of the past 150 years, the benefits of the devolution of political power to smaller units may become apparent. More powerful, smaller political units offer several key advantages. While recognizing that smaller units can unite in mutual defense or seek a larger nation-state as a protector, the heightened power

⁵⁷ See generally ROBERT DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* (1973). See also ROBERT DAHL, *AFTER THE REVOLUTION?* 143 (1970).

advantages possessed by nation states has increased the duration and severity of warfare. Smaller nations, while certainly not passive, may tend to engage in less fighting and with less violent, certainly fewer universal, consequences. Furthermore, large nation states have been unable, despite vigorous efforts, to provide the hoped for economic stability and employment possibilities. ⁵⁸

C. The Contours of a Self-Sufficient, Community-Based Political Economy

As more people opt for (or are forced out of) lifestyles apart from the conventional patterns of employment and consumption, many will rethink (or be forced to reassess) the traditional notions of living and working. In addition to the emerging economic institutions, business cooperatives and prosumers, a community-based political economy, characterized by a significant degree of local and regional self-sufficiency, may flourish. In such a system, basic goods and services would be produced by small-scale economic units clustered in smaller communities.

Self-reliance provides communities and regions with the ability to satisfy all their needs within their own means; it **[*71]** removes, or at least lessens, energy and resource vulnerability. Greater dependence on renewable energy sources, such as solar energy, should also enhance ecological sustainability.

A reconfiguration of our patterns of living and working marked by a trend to self-reliant communities may be triggered, in large part, by the inability of many to secure gainful employment. A social transformation of this magnitude may, however, involve much more than a general unease with the prevailing economic realities.

In modern industrial societies, excessively "large" cities are destructive of human relations and generate a dehumanized anonymity, loneliness, and isolation. Although certainly existing in smaller cities, suburbs and rural areas, deviance, criminality, social stress, alienation, selfishness, alcoholism, mental illness, and drug abuse characterize "huge" cities. Furthermore, a vast number of urban residents is not needed for a center of creativity and innovation and to support a range of cultural amenities.

According to Kirkpatrick Sale, a leading proponent of decentralization, small cities (in the range of 50,000-100,000) typically outperform larger ones in a number of social variables, including crime, health, mental illness, recreation, education, and higher participation in cultural matters. ⁵⁹ A "human scale" city, which combines all economic services and productive capabilities, might, therefore, have an optimal size of some 50,000 people. ⁶⁰

⁵⁸ KIRKPATRICK SALE, HUMAN SCALE 471-72 (1980).

⁵⁹ *Id.* at 196-98.

⁶⁰ *Id.* at 203.

Building on the premise that our material needs are much simpler than many realize, we may witness a new political economy consisting of small scale, self-sufficient, decentralized urban and rural communities which will integrate work, life, and the environment. These communities will have as their principal economic function the production of their basic needs for food, clothing, shelter, education, and health. Some of the characteristics of these communities include a cooperative division of labor with a heavy emphasis on face-to-face personal relationships, a more egalitarian sharing of material goods, and widespread participation in the economic, political and social decisions that affect the community. ⁶¹

The notion that smaller communities will emerge as a key institution in the future political economy rests on the premise that local communities can assert a large measure of control over their economic lives. Enhanced local economic and political self-reliance is based on smaller-scale communities using local resources to meet local needs.

From a more decentralist-oriented perspective, an optimal political society may consist of some 7,000 to 12,000 people. ⁶² Such a size could offer regular associations between people, easy access to public officers, mutual aid among neighbors, and open and trusting social relations; while preserving values of the community including intimacy, trust, honesty, mutuality, cooperation, democracy, and congeniality. ⁶³

D. The Role of Local Currency in the Emerging Political Economy

The development of neighborhoods and communities as centers of the emerging political economy may turn on the creation and use of a local currency. A local currency system would strengthen both urban and rural communities and promote decentralization and local self-reliance by linking consumers with producers in a mutual effort to build a local economy. It would also foster a shared pride and commitment to the culture and habitat of a region or a city.

This section analyzes the following benefits of a local currency system: 1) overcoming the ecological dilemma; 2) revitalizing local economies; 3) providing a feedback mechanism; 4) promoting employment opportunities; 5) facilitating a non-inflationary monetary system.

1. Overcoming the Ecological Dilemma

⁶¹ See, e.g., RUDOLF BAHRO, BUILDING THE GREEN MOVEMENT 17-19, 86-91 (1986).

⁶² SALE, *supra* note 58, at 188.

⁶³ *Id.* at 189.

The prevailing money and banking systems are linked to our environmental dilemma. ⁶⁴ The centralization of money and banking severely distorts the environmental fabric resulting in ecological degradation.

Today, we are increasingly dependent on impersonal political and economic entities. We rely on remote sources of supply for the basic necessities of life. As part of the trend away from self-reliance, a national currency often leaves local banks and gravitates to financial centers to finance giant projects. ⁶⁵ A centralized system siphons off local wealth and value into a central and increasingly global financial vortex.

Money deposited in local banks in small towns, rural areas, and inner cities quickly moves to larger urban financial centers to finance "less risky" loans to large corporations and governmental ventures. Small banks move deposits in the direction of less risk and higher interest rates.

Money center banks favor loans for large projects. The cost of processing a loan for a large project is generally similar to the [*72] costs of processing a loan for a small one. ⁶⁶ Growth-driven economies create a demand for large projects and reinforce the dependency on fossil fuels as an energy source. A tendency exists for the financial system to fund large, environmentally destructive infrastructure projects, such as airports, roads, high-rise buildings, and nuclear and coal-fuelled power plants. Large projects often omit their full costs. These costs are, however, internalized on people and the environments in other places and in the future.

National currencies discount the future by externalizing economic and environmental bills to future generations. A national currency approach discourages diversified local production and distribution while channeling capital to productive facilities into fewer areas that are highly dependent on environmentally degrading mass distribution systems.

In contrast, a local currency system will revitalize local economies. These smaller political economy units will promote a greater degree of self-reliance, increase agricultural self-reliance, and more generally, promote ecological sustainability.

2. Revitalizing Local Economies

⁶⁴ See generally David J. Weston, *Money, Banking and the Environment*, 4 NEW EUR. 35 (1991).

⁶⁵ See generally Robert Swann, *The Need for Local Currencies* (October 1988) (unpublished manuscript, on file with the *E.F. Schumacher Society*, Great Barrington, Mass.).

⁶⁶ NEW YORK STATE, OFFICE OF RURAL AFFAIRS, ACCESS TO FINANCIAL SERVICES IN RURAL NEW YORK 1, 11 (1990).

To help feed the voracious appetite of America's economic center, money center banks, as noted, collect funds from all regions in the United States and lend these funds to those investing in more profitable, booming regions. A national currency results in the overdevelopment of certain regions and communities. Conversely, the migration of money deprives rural and inner city markets of their buying power. Rural and inner city areas become dependencies of the central financial system as well as large corporations and governments.

Money slowly flows back into rural areas and inner cities in the form of externally-controlled capital. As a result of the reimportation of capital, "poorer" regions and communities lose control over their economy, their political decision-making, and their environment.

In contrast with the prevailing national currency approach, a local currency system will help local economies. An alternative currency will liberate communities and regions from the economic costs and political influence of external credit institutions thereby enhancing self-reliance and facilitating a greater emphasis on the quality of life.

Scrip will tend to stay in a local area. As scrip gets further from the region of issuance, it encounters uncertainty about its origins, and the confidence in it lessens. Scrip will remain within the local economy and stimulate community self-reliance and development.

A local currency encourages individuals and businesses to patronize each other rather than buying from outside the community. People will spend an alternative currency locally, for local goods and services and at local merchants and producers, thereby stimulating the local economy. A local currency will promote a greater degree of self-reliance by helping to stimulate more local production of items not currently produced locally. Businesses will use local producers and suppliers, saving transportation costs and reducing the adverse environmental consequences of transportation.

A need exists to provide small businesses with a means to obtain credit without competing with large businesses and to counteract the overcentralization of wealth in large metropolitan areas. A local currency system would help meet the credit needs of small business. Local currency would enhance the amount of economic interchange within a community. More wealth generated in a region/city would remain there. The retention of more funds in a community would likely facilitate the financing of small scale economic activities.

A system of local currencies will help create credit on a decentralized basis for small, locally owned and controlled businesses and cooperatives. These ventures will enhance small communities, local towns, and inner cities. A sound regional or local economy rests on many interrelated small businesses.

The creation of numerous small businesses that produce goods and furnish services in the region of their consumption would facilitate a more diversified job base that would, in turn, foster greater flexibility in times of economic crises and promote a more viable regional economy. Small, diversified businesses help promote a more stable economic climate. If an area is more dependent on a large employer, when it folds or relocates, the region faces a severe problem. Smaller, more flexible firms can more easily adapt to changing economic conditions.

A local currency will also assist inner cities and rural regions to overcome their stunted economic status relative to more prosperous central cities and suburbs. Over the past 125 years, the centralized monetary system in the United States has victimized rural areas by preventing the creation of adequate funds for local development or distributing funds among regions in disproportionate amounts. In the twentieth century, federal government has met the poverty gap by subsidizing the peripheral regions and inner cities using social welfare subsidies, special economic grants, and agricultural subsidies (e.g., agricultural price supports). Only recently have we realized that traditional policy tools render dependent economies ever more dependent. We are also more cognizant of the plight of inner cities characterized by increasing drug use and crime, a break down in families and the public school system, and rat-infested housing.

Human reconstruction rests on three principles. First, policies should be based on old-fashioned but often neglected values, such as responsibility for one's self and one's community, pride, hope for the future, and a work ethic. Second, society must discard or modify institutions and legal rules and regulations that restrict individual initiative. Third, self-help and the development of communities from within rests on involving people in altering the [*73] scale of institutions in the emerging political economy. Cities and regions should, therefore, respond with creativity and innovation -- the inputs of human insight.

3. Providing a Feedback Mechanism

Policymakers have focused considerable attention in the twentieth century on promoting economic stability -- avoiding serious depressions or runaway inflation. But, their quest for nationally appropriate solutions is flawed. A national government makes decisions centrally, often at the expense of regions and communities.

Jane Jacobs presents the case for local currencies which would float against a national currency. ⁶⁷ Currencies act as economic feedback controls. National currencies often provide faulty and destructive feedback to regional

⁶⁷ See generally JANE JACOBS, *CITIES AND THE WEALTH OF NATIONS: PRINCIPLES OF THE ECONOMIC LIFE* (1984).

and urban economies leading to economic and environmental flaws. We increasingly observe the problem of permanently stunted regions and cities and stagnation evidenced by such cities and regions.

According to Jacobs, a central system of money cannot create the correct amount of credit or money for local regions. A centralized system establishes a general level of funds which may be excessive for a region experiencing a boom economy but inadequate for a region undergoing economic stagnation or a depression.

In reality, nation states are economic grab bags, with a variety of different economies. Each region or city has a distinctive character that makes it different from other regions or other cities. Each region or city has its own natural and human resources; each region or city has its own productive capacity.

Local currencies would serve as a feedback mechanism because they would trigger appropriate corrections in response to specific stimuli. ⁶⁸ Other factors are, of course, important in the economic vitality of a city or a region, but currency fluctuations represent a potent form of feedback control. U.S. cities and regions currently suffer from lack of discipline imposed by currency fluctuations or opportunities presented by currency fluctuations. As Jacobs notes:

Ideally, at a time when a city's exports are doing well, it needs to receive as wide a range and as great a volume of earned imports as it can, especially from other cities, because those funds of earned imports are the grist the city must have for its vital process of import-replacing. Conversely, at a time when its exports are in decline, imports should ideally become expensive because to escape decline from diminishing export work a city desperately needs to replace wide ranges of its imports with local production. It also needs maximum stimulation for tentative new types of export work it may soon be capable of casting up. . . . With falling exports a city needs a declining currency working like an automatic tariff and an automatic export subsidy -- but only for as long as they are necessary. Once its exports are doing well, it needs a rising currency to earn the maximum variety and quantity of imports it can. ⁶⁹

Thus, a local currency system will increase the ability of a region or a community to regulate its economy. The use of a locally issued and controlled currency will help insulate local economies from the distorting effects of national and global economic trends. It will provide a buffer allowing a community or a region to set its own standards and maintain the desired quality of living.

⁶⁸ *Id.* at 180.

⁶⁹ *Id.* at 162-63.

4. Promoting Employment Opportunities

As noted earlier in this part, communities and regions currently (and will in the future) encounter an insufficiency of "good" jobs. Unemployment and underemployment represent an endemic, structural problem. Official unemployment statistics mask the extent of joblessness. Discouraged workers -- persons who have given up looking for a job in the formal economy because they cannot find work -- are no longer considered part of the labor force and are not counted as unemployed.

Mainstream economists assume that increased government spending (or substantial tax reductions) will encourage people to spend more. Increased spending will then stimulate the economy. However, untrammled economic growth runs smack into the planet's limits.

A local currency can reduce unemployment and underemployment in a region, a city, or a community by promoting local job creation. People will work and monetize their labor for a alternative currency they deem trustworthy especially where there are not enough U.S. dollars circulating in a local economy.

An alternative currency would encourage a greater percentage of local income to circulate locally so as to generate more viable economic activity and local employment. It could assist in tapping a labor force that society deems useless and burdensome -- young who cruise the streets, welfare recipients who yearn to be productive, families who vegetate in front of the TV. It offers opportunity for people to be useful, thereby restoring self-esteem.

[*74] Thus, a local currency system would expand the employment of local people on a permanent, long-term basis by helping local individuals establish their own small businesses and by creating local markets for locally-produced goods and services. Employment would be promoted without the need for government intervention.

5. Facilitating a Non-Inflationary Monetary System

Many long for a currency having a non-inflationary, constant purchasing power. A key goal of a monetary system should focus on enabling people and organizations to make plans and contracts with a high degree of confidence that the currency they use will not change its value over time.

Today, fiat issued money (irredeemable in any commodity) leaves us nowhere to turn while the U.S. dollar's purchasing power is diluted. We see an inflationary trend which represents an increase in the general level of prices expressed in terms of U.S. dollars. With nearly a century of experience behind us, we see that central government-sponsored currency generates inflation and economic instability. The value of the U.S. dollar has depreciated by

about 93% from 1913 to 1993 so that one dollar in 1993 is currently worth about seven cents.⁷⁰ Inflation represents a market mechanism for devaluing the U.S. dollar in terms of goods and services. Sellers of goods and services protect themselves by raising prices. Lenders increase interest rates, raising the cost and risk of doing business, thereby inhibiting the start-up or expansion of new business activities. Businesses that survive are less profitable.

The integrity of the U.S. currency depends on whatever modicum of integrity the federal government possesses. We cannot assume that monetary authorities (the Federal Reserve Board) will be able and can be trusted to act in the public interest on a long-term basis. A need thus exists for competition between alternative money-creating institutions which will provide a sound (non-inflationary) currency.

Competition from alternative currencies provides a safeguard against chronic inflation of the U.S. dollar. With competition, consumers will seek out a currency which best maintains its value over time. A currency, such as the U.S. dollar, which loses its value, will be passed over in favor of a more stable currency. In a rough sense, prices depend on the supply of money in relation to the quantity of goods and services being sold. A stable currency depends, therefore, on keeping the volume of money and credit in a community in step with the volume of goods and services traded in the community.

6. Conclusion

A local currency which matches the needs of the region or community's economy system will not only keep down (or hopefully virtually eliminate) inflation, it will also help promote a greater degree of local self-help reliance and reduce unemployment and underemployment. Decentralization also prevents large-scale, systemic failure. The failure of one part of a decentralized system would not bring down the entire structure. The healthy parts would take over.

IV. Barter: Evolution into a Modern Economic Tool

A. Introduction

Bartering has a long history that saw its decline with the advent of paper currency. The process of finding an individual who was willing to make a direct exchange for the goods and services that another offered was inefficient at best. However, today, with the creation of modern systems, indirect exchanges can be made. A person no longer

⁷⁰ BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, PUB. NO. 2340, HANDBOOK OF LABOR STATISTICS 475, 481 (1989); U.S. CENSUS BUREAU, STATISTICAL ABSTRACT 481 (1993).

needs to find someone who is willing to make a direct exchange of goods or services of equivalent value. With modern systems, a person only needs to find someone who is willing to exchange goods or services for barter units or a local currency. These exchanges can boost not only the local economy but also the income of the participants.

A program developed in 1991 by Paul Glover, known as Ithaca HOURS, represents a step in the evolutionary process of bartering. The Ithaca HOURS program eliminates some of the problems inherent in other bartering systems and has achieved considerable success since its inception. This part describes this program.

B. Ithaca HOURS

Ithaca HOURS, founded by Paul Glover in late 1991, represents a flexible system of bartering.⁷¹ The system achieves the greater degree of flexibility by using a paper currency called an Ithaca HOUR, which on one side states: "In Ithaca We Trust." The alternative currency supplements the conventional monetary system and draws on underemployed resources, such as human labor, as needed by the community.

Unlike a bartering system which requires a direct swap of goods or services between two people, an Ithaca HOUR can be exchanged by one person desiring the goods or services provided by another. The seller can then turn around and use the Ithaca HOURS he or she earns to buy goods or services from others. There is no need for two individuals to find a direct match for the goods or services they desire. Ithaca HOURS streamlines recordkeeping. There is no requirement that transactions be entered into a central computer. Individuals and businesses, in the United States at least, may also prefer a hand-to-hand paper currency, such as an Ithaca HOUR.

One Ithaca HOUR represents the equivalent of ten dollars which is the average hourly wage, excluding fringe benefits, for workers in Tompkins County in upstate New York.⁷² By basing the system on the country's average hourly wage, the program moves from the premise that one person's time is worth just as [*75] much as another's. In other words, each hour of labor has the same dignity. The system represents a leveling force, raising the minimum wage level and permitting people, especially low wage earners, to buy goods and services previously beyond their reach.

⁷¹ See generally *An Alternative to Cash, Beyond Banks or Barter*, N.Y. TIMES, May 31, 1993, at 28 [hereinafter *An Alternative*]; Franklin Crawford, *Got an Ithaca HOUR? Swap It*, ITHACA J., Jan. 31, 1992, at 12C; Donnell Meadows, *Ithaca Creates Its Own Money*, BERKSHIRE EAGLE, May 23, 1994, at A7; Michelle Silver, *The Ultimate Barter*, MOTHER EARTH NEWS, Aug./Sept. 1993, at 32; Carl Vogel, *Money Makers: Turning Community Talent Into Local Currency*, NEIGHBORHOOD WORKS, Aug./Sept. 1993, at 14.

⁷² Crawford, *supra* note 71, at 12C, Silver, *supra* note 71, at 32.

However, the system provides for flexibility, recognizing that unique skills require the payment of more than one HOURS for one hour of services. For instance, a dentist may collect several HOURS for each work hour because the dentist, receptionist and assistant work together, using equipment and materials that must be paid for in U.S. dollars. Also, the HOURS may be accepted in combination with U.S. dollars in payment for goods or services. All of this flexibility has spawned great interest in community participation in the program.

To participate in an Ithaca HOURS program, an individual or business must be willing to offer goods or services in exchange for Ithaca HOURS. The participant pays a one dollar registration fee and receives four HOURS in return.

⁷³ The goods or services that participants offer or request are published as classified ads in a bi-monthly newspaper, *Ithaca Money*. Persons participating in the program use the publication to find other individuals or entities offering the goods or services they seek.

Ithaca Money contains a wide range of goods and services, including food items, construction work, professional services, health care, and handicrafts. The variety of goods and services available in exchange for an Ithaca HOUR gives value to the alternative currency. An HOUR is backed by real skills and real people. As more individuals and businesses accept an HOUR, its value increases further. Members can even spend HOURS with others who have not signed up as participants, provided they will accept them.

In addition to the four HOURS that a participant receives when registering in the program, an individual or a business owner can increase his or her supply of HOURS in several other ways. First, a participant can sell goods or services to others in exchange for HOURS they hold. Second, a member earns two additional HOURS every eight months just for continued participation in the program. To receive the extra HOURS, a participant sends in a coupon stating that his or her phone number is current. This helps to increase the supply of the local currency, provides an incentive to remain in the program, and keeps member listing current.

Third, HOURS are disbursed by the organizers at public meetings called barter potlucks. ⁷⁴ Barter potlucks are regular community dinners, referred to as the "Municipal Reserve Board," where participants gather to conduct business and manage the system, particularly how much currency to print and issue, which denominations to print, and how many HOURS to pay to new members and for renewals. Individuals who renew their membership at a barter potluck receive an additional HOUR.

⁷³ *An Alternative*, *supra* note 71, at 28.

⁷⁴ Silver, *supra* note 71, at 34.

More significantly, attendees make HOUR grants which are limited to under 10% of the aggregate amount of currency outstanding. All participants attending a barter potluck meeting can vote on whether to give HOURS to a local individual, entity, or community organization. If the participants feel a cause is worthy they can vote to give a grant or interest-free loan to an applicant. The grant or loan usually is for twenty HOURS. The recipient can then hire individuals who provide goods and services in exchange for the HOURS.

Ithaca HOURS has experienced great success in the community. When the program began in November, 1991, 80 people signed up and 384 HOURS were issued. ⁷⁵ As of early 1994, over 800 individuals and 200 businesses participated in the system. ⁷⁶ About 4,800 HOURS have been issued which is equivalent to \$ 48,000, thereby increasing local transactions by several hundred thousand dollars. ⁷⁷ Overall, the program brought increased jobs and prosperity to the community. Similar programs have started or are planned in Boulder, Colorado, Kansas City, Missouri, Atlanta, Georgia, Santa Fe, New Mexico, and Portland, Oregon. ⁷⁸

The program provides a number of benefits for individuals, businesses and a community. An Ithaca HOURS system helps to expand a local economy by empowering underemployed and unemployed persons, the housebound, seniors, and part-time employees. Persons with excess time can participate in the program to obtain value for their special skills that would otherwise go uncompensated because of a shortage of U.S. dollars in a community. A person who performs services in exchange for the alternative currency earns HOURS which can be exchanged for goods and services provided by other individuals or entities in the locality.

Employment opportunities also increase the sense of community by having participants learn more about and work with their neighbors. Also, consumers are encouraged to shop locally and employ each other because the currency can only be used in the particular area, namely, within a twenty mile radius of Ithaca, New York. ⁷⁹ Limiting currency use keeps the money in a locality, reinforces trading among people who live relatively close together, promotes the hiring of and trust among participants, and helps improve the overall wealth of a specific community and its residents.

⁷⁵ Crawford, *supra* note 71, at 12C.

⁷⁶ *Regional Scrip: A Tool for Local Job Generation*, NEWSLETTER (E. F. Schumacher Society, Great Barrington, Mass.), Spring 1994, at 1.

⁷⁷ Telephone Interview with Paul Glover, Founder of Ithaca HOURS (July 19, 1994).

⁷⁸ Margaret Stafford, *Alternative Currency Use Is Gaining New Popularity*, BOSTON GLOBE, Jan. 17, 1994, at 3.

⁷⁹ *Welcome to the Ithaca Time Zone*, ITHACA MONEY, Feb./Mar. 1994, at 1.

[*76] The system may also attract a new clientele to an established business and help get started those who want to develop a part-time or full-time business doing what they like to do. By accepting HOURS, an existing or a new business taps a market of people who previously lacked spending power. HOURS earned by participants result in extra income to the recipients. The holders of HOURS seek out member businesses where they can spend their alternative currency. Spending HOURS at participating businesses results in increased sales. These businesses can then use the HOURS to receive value in exchange for the local currency, thereby saving U.S. dollars. In sum, the alternative scrip promotes locally-owned small firms. A business benefits by attracting new clientele who pay with the alternative currency. Consumers benefit by gaining the ability to spend the alternative currency.

The community benefits because the local currency stimulates the local economy. It places a value on skills that might not otherwise receive compensation and teaches people the worth of their skills. Participants also earn additional income in the form of HOURS which they can use to buy local goods and services. Because consumers are encouraged to shop locally and try new products and services, the alternative currency keeps wealth within the local economy.

The system may also help shield a local economy from national economic difficulties. Implementation of an Ithaca HOURS-type program helps a local economy become more self-sufficient, thereby protecting a community from nationwide inflationary pressures, economic downturns, or periods of economic stagnation.

The major limitation of an Ithaca HOURS system centers on the possibility that an entity or an individual may accumulate more HOURS than it, he, or she can spend. To meet this problem, an individual or a business should only accept a limited amount of HOURS in exchange for goods and services. A business participant might begin by accepting HOURS geared to a maximum per purchase or as a percentage of an item's price. By determining beforehand how many HOURS an individual or a business can spend, self-regulation sets limits on acceptance of the alternative currency, thereby avoiding the accumulation problem. For instance, Ithaca HOURS actively recruits other businesses and people with special skills where an individual or a firm could spend the accumulated HOURS. Ithaca HOURS also creates, on request, customized shopping lists for those with regular HOURS income. This has converted many people from cautious acceptors to active pursuers of HOURS.

Also, the system could establish a trading center (as Ithaca HOURS has done), with its own physical space, where businesses and individuals could trade HOURS for goods on display or services. A trading center can help to alleviate any problems that may arise from an excess accumulation of HOURS. In addition, the center will facilitate a local import-replacement program based on creating ecologically sustainable jobs.

The system must also deal with the problem of the potential overissuance of currency and the accompanying specter of inflation. Inflationary pressures can be avoided by limiting the issuance of the alternative currency, thereby keeping the demand high and the supply low. Because the alternative currency is presently tied to the U.S. dollar, any inflation at the national level will result in a depreciation in the value of an Ithaca HOUR. By developing a system of HOUR prices, which may take the form of a catalog, the group facilitates allowing the HOUR to float independently of the value of the U.S. dollar. ⁸⁰

C. Conclusion

Starting a bartering system in any community can improve a local economy. Modern bartering programs offer the potential to utilize a community's latent resources. Using these resources will increase the spending power of all participants. With hard work and dedication, interested individuals can start a program that will begin to solve the economic problems in localities across the nation.

V. Discount Scrip: Creating a Local Currency Pegged to the U.S. Dollar

A. Introduction

We usually think of bargain purchase or discount coupons as a method for an individual business to attract new customers. Today, with the innovations sponsored by two non-profit organizations, Self-Help Association for a Regional Economy (SHARE) and the E. F. Schumacher Society, discount coupons have taken on a whole new form, thereby creating a local currency, albeit pegged to the U.S. dollar. Imagine a business in need of cash selling discount coupons redeemable in the future for the store's merchandise. This new method of financing presents an excellent opportunity for businesses around the nation to build upon and tap into the good will of their customers to obtain needed cash on favorable terms. ⁸¹

Innovative techniques for boosting local businesses did not end with individual firms issuing discount scrip. In the Berk-Shares program, local businesses joined forces with staff of the Schumacher Society to encourage residents

⁸⁰ Silver, *supra* note 71, at 35.

⁸¹ See generally *Deli Dollars, Trash Cash and Local Loans: An Interview with Susan Witt*, in GREEN BUSINESS: HOPE OR HOAX? 95, 95-104 (Christopher Plant & Judith Plant eds., 1991); Philip Crawford, *Homemade Money Means Another Day, Another Deli Dollar*, INT'L HERALD TRIB., Oct. 12-13, 1991, at 17; Tim Fitzmaurice, *Local Currency Is Helping Businesses During Recession*, LAKEVILLE J., Aug. 15, 1991, at A2; Mark J. McGuire, *Making Money the Old-Fashioned Way*, ALBANY TIMES UNION, Aug. 30, 1992, at A1; M.A.J. McKenna, *Short on Cash? This Guy Prints His Own*, BOSTON HERALD, June 30, 1991, at 1; Thelma O'Brien, *Scrip Becoming Popular Alternative to Loans*, BERKSHIRE RECORD, Apr. 26, 1991, at B1; Michael Specter, *Capitalizing on Yankee Ingenuity*, WASH. POST, May 20, 1991, at A1.

to support their community and shop locally. A discount coupon called a Berk-Share, a local currency pegged to the U.S. dollar, facilitates the promotion of the local economy. With a successful track record, the Berk-Shares program has entered its third year of operation. A Berk-Shares-type program can be used in any community to stimulate the local economy and promote local businesses. While a Berk-Shares promotion only occurs for a specified number of weeks during the year, plans are underway to implement, in conjunction with a local chamber of commerce, an expanded, year-round program. [*77]

This part describes each of these innovations and analyzes their benefits and limitations.

B. Bargain Purchase Notes Issued by One or Several Businesses

Several firms in Great Barrington, Massachusetts, have taken the lead in using bargain purchase/discount notes to raise capital on favorable terms. These note issues originated in the second half of 1989.

In the fall of 1989, when his lease expired and his landlord sought to double his rent, Frank Tortoriello, the proprietor of a delicatessen, faced the dilemma of coming up with cash to move his business to a new location or close up shop. When banks rejected his loan application, he turned to a local non-profit organization, SHARE (Self-Help Association for a Regional Economy). Susan Witt, administrator of SHARE, suggested to Tortoriello that he issue his own currency and the idea for Deli Dollars was born. ⁸²

Instead of borrowing money from a bank, Tortoriello sold discount notes to customers redeemable after six months for sandwiches and other deli delights. He issued the burgundy-on-cream-colored ten dollar notes for eight dollars -- giving purchasers a two dollar discount. The six month redemption moratorium enabled Tortoriello to relocate his restaurant and generate a sufficient cash flow to repay his notes in kind. To ensure that all the Deli Dollars did not come in immediately after the expiration of the six month period, the notes were dated over a ten month period, thereby staggering the redemption.

The Deli Dollars concept provided Tortoriello with a number of immediate, specific benefits. His customers were so eager to help that he raised the \$ 5,000 he needed in only one month. ⁸³ Even some bankers who rejected the loan request invested their own money in Deli Dollars. Thus, the arrangement gave Tortoriello the cash he needed

⁸² See generally *'Deli Dollars' Gain Currency as a Capitalist Experiment*, BERKSHIRE EAGLE, Nov. 12, 1989, at A8; *Deli Dollars the Talk of the Town*, SYRACUSE HERALD-J., Nov. 23, 1989, at BB2; Judith Gaines, *Food-Backed Financing: Great Barrington to Begin Trade in Deli Dollars*, BOSTON GLOBE, Oct. 29, 1989, at 75; Michelle Locke, *Restaurant Issues Its Own Deli Dollars*, L.A. TIMES, Nov. 19, 1989, at 23; McGuire, *supra* note 81.

⁸³ Fitzmaurice, *supra* note 81, at A12.

to relocate his business, let him redeem the notes at a rate his business could absorb, spread the risk of the "loan" across a wide group, and gave his customers an excellent (25%) rate of return.⁸⁴

Tortoriello currently enjoys his new, larger location. In addition to using scrip to help support his business through the relocation process, Tortoriello subsequently sold an additional \$ 2,500 in Deli Dollars to raise funds to build a deck onto the restaurant. He plans to offer more Deli Dollars to finance future expansion plans. The idea proved so successful that other businesses in the Great Barrington area turned to similar bargain purchase techniques.

Later in 1989, two farmers, who operate produce stands in the Great Barrington area, Taft Farms and the Corn Crib, learned of Tortoriello's success with Deli Dollars. They decided to offer, in the winter of 1989-1990, a discount scrip called Berkshire Farm Preserve Notes.⁸⁵ The green-colored notes are adorned with the head of a cabbage instead of the head of a president and the motto, "In Farms We Trust" instead of "In God We Trust." The farmers sell the notes for nine dollars each in the winter when cash is short. The notes are redeemable for ten dollars in produce during the peak spring and summer months. By using this bargain purchase mechanism, both farmers are able to tide their operations over the winter months when they face high oil bills to keep their greenhouses going. The farmers repay their customers in produce in May to October. In essence, the customers pay in advance for the following summer's vegetables and fruit.

One key point differentiates Berkshire Farm Preserve Notes from Deli Dollars.⁸⁶ The proprietor of a local restaurant issued the Deli Dollars. In contrast, SHARE issues a limited number of notes to the two farmers who are obligated to return the same number of redeemed notes back to SHARE. The two farm stands sell the common scrip, issued by SHARE, which is redeemable at either market. Because the notes can be spent at either of two farm stands, SHARE assumes responsibility for any bookkeeping problems associated with the redemption program. As noted, each farm stand must annually return at the end of the season (November 15th to be exact) the same number of notes it receives from SHARE. In the event of any imbalance between notes a farm stand issues and what it redeems, SHARE serves as a clearinghouse to equalize the redemptions. Thus, if a farm stand has an

⁸⁴ McKenna, *supra* note 81, at 1, 8.

⁸⁵ See generally Stephen Fax, *South County Farms Issue Their Own Money*, BERKSHIRE EAGLE, Dec. 20, 1989, at B1; Judith Gaines, *'Greenbacks' Tide Farmers Over Winter*, BOSTON SUNDAY GLOBE, Jan. 28, 1990, at 61; Michelle Locke, *Produce Stands Put Their Trade in Stock*, PHILADELPHIA INQUIRER, Jan. 7, 1990, at B11; Steve Moore, *Farm Notes Being Used at 2 Farms*, BERKSHIRE EAGLE, July 23, 1990, at B1; Steve Moore, *South County Farm 'Money' Goes On Sale*, BERKSHIRE EAGLE, Dec. 22, 1989, at B1.

⁸⁶ *2nd Issue of Berkshire Farm Notes*, E.F. SCHUMACHER SOCIETY, at 2, Winter 1990-91; Interview with Susan Witt, Administrator, SHARE, in Great Barrington, Mass. (June 8, 1994). If the notes are distributed to several participating businesses in varying percentages, the parties would, of course, be responsible to the issuer for their specific proportion of the notes.

excess of notes because it redeemed more than it sold, SHARE would purchase the excess at nine dollars per note. Conversely, SHARE requires the farm stand that redeems less than it issued to contribute nine dollar per note to SHARE. This sum would be returned to the other farmer thereby equalizing the expenditures.

In practice, rather than using SHARE as an intermediary, at the end of each season, the two owners determine who took in more scrip. In 1990, for example, the two farmers settled a seventy-two dollar imbalance for a winter's worth of potatoes.⁸⁷

The Berkshire Farm Preserve Note program has proven quite successful and continues on an on-going basis since the winter of 1989-1990. In the first two winters, for example, the two farm stands raised more than \$ 17,000.⁸⁸ However, the benefits of a [*78] discount coupon --local currency--begun merely to raise cash by means of short-term loans, now far transcend this objective.

Using a bargain purchase scrip allows a business to obtain short-term financing when a bank or other financial institution may be unwilling to do so. Many times a bank will only be interested in making larger, more profitable loans. An alternative currency allows a business to tap into the good will of its customers to obtain short-term loans. The business owner can then repay the loans by redeeming the notes for goods or services instead of cash. The notes thus enable entrepreneurs to obtain more control over the financing of their operations, eliminate costly bank loans as a supply of credit, and enhance the relationship between producer-distributors and consumers.

A firm derives other business-specific benefits from issuing a bargain purchase scrip. The notes represent a form of advertising that may generate considerable publicity and enable a business to build and broaden its customer base. For example, the Berkshire Farm Preserve Notes generate consumer interest in the two markets. Also, customers who purchase the farm preserve notes receive targeted mailings advertising specials on fruits and vegetables.⁸⁹ The notes, thus, represent a clever marketing tool.

As long as a business stays afloat and successfully implements the redemption program, both the business and the consumers win. In sum, a bargain purchase-type, local currency serves as a local economic booster providing a return to the participating business on a very modest investment by any individual customer.

⁸⁷ Michael Specter, *Only the Real Money Is Tight*, INTERNATIONAL HERALD TRIB., May 21, 1991, at 9; [2nd Issue of Berkshire Farm Notes](#), *supra* note 86, at 2.

⁸⁸ Paul Gilkes, *Scrip Novel Solution to Business Slump*, 32 COIN WORLD 1, 12 (July 10, 1991).

⁸⁹ Interview with Susan Witt, *supra* note 86.

Customers and the community also derive benefits from the issuance of bargain purchase scrip. In addition to getting a discount on future purchases of goods or services, customers derive a "psychic" satisfaction in assisting local firms. Customers liked being part of helping Frank Tortoriello move his restaurant and keeping the deli in town. Local consumers voted with their cash for fresh, locally grown produce. The Berkshire Farm Preserve Notes gave purchasers a way to take responsibility for the supply of farm products and for maintaining a dwindling number of family farms.

The notes circulate in the locality, thereby serving as an alternative currency and providing additional benefits for the community. Originally, Deli Dollars were spendable only at Tortoriello's deli. As these notes gained recognition as a trusted instrument, they became acceptable at many area concerns. Deli Dollars began to turn up all over town. Other local merchants accepted them in payment for merchandise they sold to their customers. Contractors found the notes were a great Christmas present for their crew members. Deli Dollars appeared on church collection plates and were, in turn, given to those in need.

A discount-type, local currency is not, however, without its limitations. Successful use of a bargain purchase scrip requires a business to have the trust and confidence of its customers. Scrip works if consumers are comfortable with a business. This means an established business. Discount scrip issues usually do not work for start-ups which lack a solid customer base.

The problem of scale and the accompanying issue of neighborly trust also play a significant role in the viability of a local currency based on discount coupons.⁹⁰ While small town residents may be willing to help local businesses, people living in suburbs and in larger cities are probably less likely to offer the same support. A business owner in these less hospitable areas may encounter difficulty finding customers willing to buy discount coupons redeemable in kind for future goods or services. People in urban areas and their suburbs, who shop in malls or through mail order catalogs, may have little or no incentive to support local firms.

Because the notes sell for relatively small amounts, a business owner or community group may still be able to generate support for their purchase, even in larger communities. The established business owner only risks the rather nominal printing costs; so it may be worth the gamble to attempt to implement the program in any community. In addition, the urban business firm could strive to appeal to neighborhood--not citywide--pride and contacts and a degree of willingness, however attenuated, to help a friend in a time of need. Having said this, business owners and

⁹⁰ *Print Your Own Currency*, 1 THE INNOVATION GROUP 33, 38 (Summer 1991); Mark Kendall Anderson, *Au Currence*, THE VALLEY ADVOCATE, Sept. 13, 1993, at 4.

community groups must face a stark reality -- a discount scrip works best in areas, notably small towns, where there are strong community ties and people look favorably on local firms and using local resources to achieve a degree of self-sufficiency.

Another disadvantage is noteworthy. Customers within a given community may only be willing to invest, in the aggregate, a limited amount of funds. The business owner who needs capital, thus, can obtain only a portion of the required financing through the sale of discount notes. Other sources must supply the remainder of the needed funds. If no other sources are available and the business cannot obtain the requisite cash through the sale of the bargain purchase notes, the firm faces the possibility that it may close its doors. The sale of discount notes provides an opportunity for a business to revive itself in the absence of other, viable alternatives.

C. Berk-Shares

In today's retail market dominated by omnipresent large national chains, malls, and warehouse discount stores, a community needs to work together to promote its local economy. The Berk-Shares program provides such an opportunity and serves as the next step to a truly local currency that will keep money generated in a region circulating in that area.

Building on the successes enjoyed by Deli Dollars and Berkshire Farm Preserve Notes in the late 1980s and early 1990s, the Main Street Action Association, a merchants organization funded through a state economic development grant for the [*79] purpose of revitalizing the downtown district in Great Barrington, in conjunction with staff from the E. F. Schumacher Society, organized the first Berk-Shares program which began in August, 1992. ⁹¹ Now in its third season, the Southern Berkshire Chamber of Commerce has assumed sponsorship for the program.

In a Berk-Shares type program, local businesses band together and give away one Berk-Share, a discount coupon valued at one dollar, for every ten dollars spent in a participating store. Many customers seek out the participating stores to accumulate as many Berk-Shares as possible during a limited give-away period, typically five to seven weeks.

⁹¹ Nancy O'Shaughnessy, *Great Barrington Berk-Shares Shopping Promotion Said to Be Generating Late-Summer Enthusiasm, Sales*, BERKSHIRE REC., Aug. 28, 1992, at A6; Nancy O'Shaughnessy, *Berk-Shares Going Like Hotcakes*, BERKSHIRE REC., Sept. 4, 1992, at A6; Abby Pratt, *Berk-Shares Make Barrington Debut*, BERKSHIRE EAGLE, July 29, 1992, at D 1; *Merchants in Downtown Great Barrington Offering Berk-Shares in Unique Promotion*, BERKSHIRE BUS. J., Sept. 1992, at 8; *It's Berk-Shares Time Again*, BERKSHIRE REC., July 30, 1993, at B8; Susan Witt, *Catching the Berk-Shares Fever*, BERKSHIRE REC., Sept. 17, 1993, at A6.

At the end of the give-away period, a festive redemption period takes place. The redemption period can span one long weekend, one week, or a ten day period encompassing two weekends. A longer redemption period increases transactions in discount coupons as well as accommodating those who might be out of town for one weekend.

Holders of Berk-Shares can use them in any participating store regardless of where customers originally acquired them. In this way, the Berk-Shares are closer to a transferrable local scrip. The businesses separately set their redemption policy and, as the program has evolved, the sponsors require the merchants to accept Berk-Shares for a specified minimum redemption discount, currently 25%, of an item's purchase price. Thus, in a store offering a 25% redemption term, a \$ 100 item can be purchased for seventy-five dollars in U.S. dollars and 25 Berk-Shares. However, the discount offered by any participating firm may be higher than the 25% minimum.

The major benefit of a Berk-Shares program is that it stimulates local businesses. Participating firms send the public message about the importance of supporting local enterprises. To promote local businesses, consumers are encouraged to shop locally instead of at large, national chain stores or at malls. Buying locally keeps wealth within the region, it keeps and creates jobs, and supports an economy of small, diversified, locally-owned firms.

Specifically, the Berk-Shares program achieved a considerable measure of success even in its initial season of operation. In 1992, over 79,000 Berk-Shares were issued, representing \$ 750,000 in Berk-Share trade, and over 25,000 were redeemed. ⁹² This represents a remarkable return for the first year of a discount program.

The 1992 redemption pattern illustrated the strong interconnectedness of businesses on Great Barrington's Main Street. Clothing stores, hardware and gift stores, and flower shops had the best returns. The few participating professional service firms did only a small amount of trade in Berk-Shares. Small restaurants did not have a large return, probably because each purchase was rather modest in amount. ⁹³

A business owner's major incentive for participating in the Berk-Shares program centers on obtaining a low cost means of promotion which results in increased profits during the period the program is in existence. Businesses are given a new, inexpensive way to draw customers and provide shoppers with a somewhat unique way to save money on their purchases. For any one business, printing and distributing discount coupons on its own is likely to be much more expensive than sharing the cost with other firms. The only cost to each business is the participation fee, presently at sixty-five dollars, and the reduced revenue from the sale of discounted goods or services. Firms

⁹² Letter from Susan Witt, Administrator, SHARE, to Lewis D. Solomon, Professor, The George Washington University National Law Center (June 14, 1994).

⁹³ *Id.*

hope that these costs will be made up by the increased sales the discount coupons generate. As long as a business realizes an increase in profits, it benefits from the program.

Also, customers benefit from the program by gaining the opportunity to purchase items they would not normally buy. The Berk-Shares, in essence, increase a consumer's disposable income, thereby serving as an incentive for the public to participate in the program. In short, the Berk-Shares program furthers the existing cooperation between merchants and consumers, thereby promoting the survival of the community. Consumers vote with their purchases to support small businesses.

As potential sponsors in other communities consider implementing a Berk-Shares program, a major limitation of the program, which stems from the reason consumers participate in the first place, is noteworthy. Consumers participate more enthusiastically when stores selling higher-priced items are involved in the program. Many customers buy their lower lowest priced necessities from the participating stores during the give-away period, earn their discount coupons, and then redeem them for non-necessary items.

The stores selling necessities may realize increased sales from customers seeking to make their purchases of lower priced goods or services from participating merchants. However, it is unlikely that customers will buy more necessities than are needed. The discount coupons, perceived as a means of increasing consumers' disposable income, will likely be redeemed for luxury items. Because the consumers know that they will purchase their luxury items for a discount during the redemption period, they are unlikely to purchase these items during the period in which merchants give away the discount coupons.

Thus, the participating businesses selling mostly luxury items may not realize any increase in business, and conversely may experience a decrease, until the redemption period. However, **[*80]** during the redemption period they will sell their goods or services at a substantial discount and may not generate any increased profits. Even though it is vital that businesses selling luxury items participate in the program, these firms may derive only limited gains, if any. Therefore, these businesses may cease participating in the program, thereby reducing the overall incentive for consumers to buy their lower priced necessities from the remaining stores.

However, if a business owner can obtain value for the redeemed discount coupons, then he or she will be much happier to accept them in exchange for merchandise. To build increased satisfaction on the part of local enterprises, organizers of the program should allow merchants to set their own special redemption period at the end of the general redemption period. The extended redemption period would maintain all the current benefits while reducing the program's inherent limitations, particularly for purveyors of higher priced items. The discount coupons

would act much more as a local currency and would increase the likelihood of expanding the local economy. Furthermore, implementing this change in the program would likely create a snowball effect. The merchants would more eagerly accept the bargain purchase program, so that they would develop and implement more liberal discount policies. The more liberal redemption policies would provide further incentives for consumer participation. The program will become more valuable to businesses and consumers, so many more will participate. The program will expand further and the local economy will become even more self-sufficient.

D. Expanded Berk-Shares Program

With the Berk-Shares program enjoying three successful seasons, the Schumacher Society wishes to implement, in conjunction with the Southern Berkshire Chamber of Commerce, an Expanded Berk-Shares Program which would provide for a year-round 10% discount note. ⁹⁴ A merchant-based, cooperative program would provide benefits to participating firms and banks in that they would supplement the U.S. dollars circulating in the community with a local medium of exchange, thereby permitting the public to transact a greater volume of trade. Because anyone could spend the discount notes, everyone in the community would benefit. As participating businesses thrive, other firms will accept the coupons, resulting in more discount notes in circulation, providing the community with greater control over its economic life.

As envisioned, the public could acquire a ten dollar bargain purchase note at a participating bank for nine dollars. Participating merchants would redeem each note, throughout the year, for ten dollars worth of goods or services. The business owner would recirculate the turned-in note by spending it on purchases from any other member or anyone willing to accept it in payment, or sell the note back to a participating bank at a 10% discount. The willingness of one or more local banks to facilitate transactions in the discount notes would give the expanded program a strong, viable base as well as providing instant credibility.

Implementation of an Expanded Berk-Shares program would build on the success of the existing Berk-Shares project. Specific tasks include: 1) consummating arrangements (such as contractual agreements) with local banks and merchants, and setting up the necessary procedures for the issuer as well as the participating banks and merchants; 2) printing the discount notes; 3) compiling and printing a directory of participating businesses; 4) printing signs and decals for store windows; and 5) arranging publicity including meetings with local business groups (such as Rotary or a chamber of commerce) and the media. The issuer must generally be prepared to

⁹⁴ Interview with Susan Witt, *supra* note 86.

answer all requests for information about the program. Involving local business groups, such as a chamber of commerce or Rotary, will give the program further credibility.

The expenses of the year-round bargain purchase program would be met from four sources. First, as with the current Berk-Shares program, each participating business would pay a specified annual fee. Second, the 10% discount paid by each merchant when it sells a note back to a participating bank would cover a part of the financial institution's expenses. Third, the banks and store owners would arrange to share handling expenses incurred in connection with the notes. Fourth, diminishing start-up costs. The program would encounter the extraordinary first year start up expenses, particularly those incurred by the initial demonstration project. These expenses include: 1) dealing with the media and educating the public; 2) preparing materials (handouts) to answer questions from the media and the public; and 3) spending time with bank directors and merchants. Foundation support may be needed to provide the necessary funds for staff members of sponsoring organizations as well as brochures.

As other communities adopt this local currency model, first year start up expenses and time commitment will substantially diminish. For example, other sponsors will be able to call chamber of commerce officers and bank executives connected with the original Expanded Berk-Shares project and "pick their brains."

Once the pilot program gets off the ground, after, say, one year of operation, the project should be firmly based in the business and banking community, thereby ensuring a broad and sustainable commitment to local economic development. The program will provide a model for other urban and rural communities seeking to ensure that wealth generated in a region recirculates in that area.

E. Conclusion

Innovative discount coupon programs provide businesses and communities with new methods for improving local economies. [*81] Instead of using bargain purchase scrip simply as a technique for attracting new customers, businesses and communities can use this type of instrument to support their local economy and locally-owned firms. In practice, these programs have been very successful. Consideration should be given to implementing these programs in communities throughout the United States. Such projects educate consumers about the importance of buying locally and enable them to strengthen their local economy in an easy, practical manner.

VI. Legal Aspects of Local Currency

A basic need of a society is money, the form of which adapts contextually. History, replete with examples, confirms that the evolution (or devolution) of monetary systems hinges upon the varying needs of society. Local currency

systems, prevalent before ratification of the United States Constitution, have existed throughout American history and have reappeared today.⁹⁵ Most of the earlier local currency schemes passed away because they were prohibited by law or were no longer necessary given the circumstances. The question remains whether today's local currency systems are consistent with the law. This part contains a discussion of constitutional, federal, and state law relating to local currency. An analysis of the impact of federal and state securities laws and federal and state income tax aspects of local scrip is beyond the scope of this article.

Local currency programs are governed by the Constitution and federal law prohibits private coinage and counterfeiting. The Constitution, and federal law do not, however, erect barriers to the issuance of local paper currency; they merely proscribe the minting of local coinage.

A. United States Constitution

The U.S. Constitution does not prohibit private issuance of money. The Framers were concerned primarily with restricting the states from influencing monetary policy,⁹⁶ and averting "embarrassments of a perpetually fluctuating and variable currency,"⁹⁷ caused by "the floods of depreciated paper-money, with which most of the States ... were inundated."⁹⁸ The Constitution forbids the states to "coin money,"⁹⁹ to "emit bills of credit,"¹⁰⁰ and to "make any Thing but gold and silver Coin a Tender in Payment of Debts."¹⁰¹ The Constitution also grants to the Congress the power "to borrow Money on the credit of the United States,"¹⁰² "to coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures,"¹⁰³ and "to provide for the Punishment of counterfeiting the Securities and current Coin of the United States."¹⁰⁴

⁹⁵ See *supra* parts IV-V.

⁹⁶ JAMES W. HURST, A LEGAL HISTORY OF MONEY IN THE UNITED STATES, 1774-1970 8-18 (1973).

⁹⁷ 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1118 (5th ed. 1891) *quoted in* EDWIN VIEIRA, JR., PIECES OF EIGHT (1983).

⁹⁸ 2 STORY, *supra* note 97, § 1119. See also VIEIRA, *supra* note 97, at 5-18 (discussing the "hopeless monetary confusion" causing the ill effects of paper currency).

⁹⁹ [U.S. CONST. art. I, § 10, cl. 1.](#)

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* § 8, cl. 2.

¹⁰³ *Id.* § 8, cl. 5.

¹⁰⁴ *Id.* § 8, cl. 6.

Consistent with the hostility felt towards paper money at the time of the Constitutional Convention,¹⁰⁵ the Framers defined "Money" of the United States as coin alone.¹⁰⁶ The authority in the U.S. Constitution "to coin Money,"¹⁰⁷ lifted from the Articles of Confederation,¹⁰⁸ represents the lone constitutional grant of power to create "Money" and limits specifically the means of generation to "coin[ing]." ¹⁰⁹

While the U.S. Constitution prohibits the states from issuing paper currency by barring them from "emit[ting] bills of credit,"¹¹⁰ it is silent on whether the federal government may issue such bills. Distrusting paper money, the Constitutional Convention deliberately struck a provision from the initial draft of the U.S. Constitution empowering the federal government to emit bills of credit.¹¹¹ The U.S. Supreme Court, however, later held that Congress has the authority to emit bills of credit and declare them legal tender for some categories of public and private debts.
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Thus, Congress may supply the nation with adequate coinage under its power to coin money.¹¹³ However, nothing in the Constitution prohibits private parties from issuing gold, silver, or metal-based coins or prohibits the federal government from permitting or assisting private coinage. Moreover, the Constitution is silent on private issuance of paper currency.

B. Federal Law

¹⁰⁵ See VIEIRA, *supra* note 97.

¹⁰⁶ See *id.* at 39-40.

¹⁰⁷ [U.S. CONST. art. I, § 8, cl. 5.](#)

¹⁰⁸ ARTS. OF CONFEDERATION, art. IX: "The United States in Congress assembled shall . . . have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States."

¹⁰⁹ The anti-counterfeiting provision, [U.S. CONST. art I, § 8, cl. 5](#), reinforces the Framers' intent to limit "Money" to coin. By distinguishing between "the Securities and current Coin of the United States," the Constitution authorizes the United States Congress to punish counterfeiting "Money" of the United States, composed of "regulate[d]" domestic and foreign "Coin," and "Securities" which are promises to pay "borrow[ed] Money." See VIEIRA, *supra* note 97, at 87.

¹¹⁰ [U.S. CONST. art. I, § 10, cl. 1.](#)

¹¹¹ 2 RECORDS OF THE FEDERAL CONVENTION OF 1787 182 (M. Farrand ed. 1966), *cited with approval in* VIEIRA, *supra* note 97, at 71. See also VIEIRA, *supra* note 97, at 72-75 (discussing the debate over the Convention's deletion).

¹¹² See [The Legal Tender Cases, 79 U.S. \(12 Wall.\) 457 \(1870\)](#). See also [Julliard v. Greenman, 110 U.S. 421 \(1884\)](#) (holding constitutional the reissue of redeemed greenbacks, authorized by Congress and carried out by the Treasury); VIEIRA, *supra* note 97, at 150-57; ARTHUR NUSSBAUM, MONEY IN THE LAW 586-92 (1950).

¹¹³ [U.S. CONST. art. I, § 8, cl. 5.](#)

1. Recognition of Private Issue

By passing the Coinage Act of 1792,¹¹⁴ "Establishing a Mint and Regulating the Coins of the United States," and subsequent coinage acts, Congress developed the foundations for a national monetary system. The coinage acts codified many of the principles set forth in Secretary of the Treasury Alexander Hamilton's Report on the Subject of a Mint¹¹⁵ which focused primarily on establishing the unit of the system and bimetallism -- where the ideal unit is defined in terms of both gold and silver on the basis of fixed gold-silver ratio.¹¹⁶ Like the Constitution, the coinage acts did not speak to private coinage or currency.

Parallel currencies -- two unrelated currencies circulating within the same territory -- continued to exist. Money issued privately proceeded to enter circulation, especially under emergency circumstances.¹¹⁷ Under the societal theory of money -- acceptance of money that is current and in circulation in a community at the time it is received -- or simply to protect bona fide payments made with private issue, the courts upheld the [*82] validity of payments made in otherwise illegal currency. For instance, in *Thorington v. Smith*,¹¹⁸ private parties residing in the same city within Confederate territory during the Civil War entered into a contract where part of the debt was to be paid in Confederate notes.¹¹⁹ The Supreme Court held that the contract was enforceable in a court of the United States, despite the fact that the Confederate government had no authority to issue such notes because, at the time of the transaction, Confederate notes had become "almost exclusively the currency of the insurgent states" and they "were used as money in nearly all the business transaction of many millions of people."¹²⁰ Consistent with the societal theory of money, private coins, current in California in the 1850s, were not recognized as money in Massachusetts where they were not current.¹²¹

¹¹⁴ Act of Apr. 2, 1792, ch. 16, **1 Stat. 246**.

¹¹⁵ 2 ANNALS OF CONGRESS 2112 (1789-91).

¹¹⁶ See VIEIRA, *supra* note 97, at 95-98.

¹¹⁷ See Roland P. Faulkner, *The Private Issue of Token Coins*, 16 POL. SCI. Q. 303, 316-324 (1901); ALBERT E. FEAVEARYEAR, *THE POUND STERLING*, 157, 192, 296 (1932); [19 Op. Att'y Gen. 98 \(1888\)](#).

¹¹⁸ [75 U.S. \(8 Wall.\) 1 \(1869\)](#).

¹¹⁹ [Id. at 7](#).

¹²⁰ [Id. at 11](#). See also [Orchard v. Hughes, 68 U.S. \(1 Wall.\) 73 \(1863\)](#) and [Rogers v. Leftwich, 49 Tenn. 480 \(1870\)](#), upholding the validity of payments made in notes issued by an illegally chartered bank and for fraudulent purposes as the notes circulated as money.

¹²¹ [Chapman v. Cole, 78 Mass. 141 \(1858\)](#).

With the maturation of the national monetary system and the concomitant growth of private currency, Congress passed legislation barring or restricting private issue. Recognizing that Congress intended primarily to prevent competition with the national currency, the Supreme Court, in *United States v. Van Auken*¹²² and *Hollister v. Mercantile Institution*,¹²³ validated private notes issued in 1874 and 1876, respectively, and payable in merchandise at a business, under the principle that such notes would not circulate beyond a limited neighborhood. In *Van Auken*, where the defendant was charged with violating a statute seeking to provide a monopoly to an experimental national "postage currency,"¹²⁴ the Court stated:

Small notes payable in any specific articles, if issued, could have only a neighborhood circulation, and but a limited one there. It could be but little in the way of the stamps or small notes issued for the purposes of circulating change by the United States. Congress could, therefore, have had little or no motive to interfere with respect to the former.¹²⁵

The *Hollister* Court cited *Van Auken* and the same principle.¹²⁶

2. Prohibition of Private Coinage

As noted, the Constitution specifically prohibits the states from coining money. This prohibition extends to every branch, agency, and instrumentality of state government.¹²⁷ The private issuance of money did not become a concern of the federal government until 1860. Between 1830 and 1860, prompted by the "Gold Rush," private manufacturers of gold coins flourished.¹²⁸ These coins did not imitate the designs of United States coins.¹²⁹

¹²² [96 U.S. 366 \(1877\).](#)

¹²³ [111 U.S. 62 \(1884\).](#)

¹²⁴ See Faulkner, *supra* note 117 (discussing "postage currency" and its failure). The relevant statute declared that: "no private corporation, banking association, firm, or individual shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation, for less sum than one dollar, intended to circulate as money, or to be received or used in lieu of lawful money of the United States." Act of July 17, 1862, § 2, **12 Stat. 592**.

¹²⁵ [Van Auken, 96 U.S. at 368.](#)

¹²⁶ [Hollister, 111 U.S. at 65.](#)

¹²⁷ VIEIRA, *supra* note 97, at 28 n.142. See also [Valley v. Rapides Parish Sch. Bd., 434 F.2d 144, 158 \(5th Cir. 1970\)](#) (acknowledging that a school board cannot print or coin money).

¹²⁸ HORACE WHITE, MONEY AND BANKING 34 (1935).

¹²⁹ *Id.*

Rather they bore the names and places of the manufacturer.¹³⁰ In Georgia, North Carolina, California, Oregon, Utah, and Colorado, the private coins varied in weight and fineness.¹³¹

By the Act of June 8, 1864, Congress prohibited private coinage, regardless of whether the coins were similar in appearance to coins of the United States.¹³² Congress reaffirmed the prohibition on issuance of private coinage in 1873,¹³³ 1909,¹³⁴ and 1948.¹³⁵ No substantive changes in the original act have been made.¹³⁶ The current statute provides:

Whoever, except as authorized by law, makes or utters or passes, or attempts to utter or pass, any coins of gold or silver or other metal, or alloys of metals, intended for use as current money, whether in the resemblance of coins of the United States or of foreign countries, or of original design, shall be fined no more than \$ 3,000 or imprisoned not more than five years, or both.¹³⁷

Modern local paper currency is not prohibited by this statute. First, the statute prohibiting private coinage does not address paper money. In other words, the prohibition on the issuance of private coinage does not bar a modern local paper currency. However, fractional paper currency with a value of less than one dollar is permissible subject to criminal sanctions.¹³⁸

Secondly, the statute requires that the illegal coins be "for use as current money." Interpreting the predecessor statute to the present provision, the court in *United States v. Gellman* held that tokens with inscriptions: "No Cash Value" and "For Amusement Purposes Only" were not used as money because there was "no promise to pay

¹³⁰ *Id.*

¹³¹ *Id.* Five-dollar pieces ranged in value from \$ 4.36 to \$ 5. *Id.*

¹³² **13 Stat. 120 (1864)**. The act was reported in Congress as a bill "to punish and prevent the counterfeiting of coin of the United States." CONG. GLOBE, 38th Cong., 1st Sess. 2707 (1864).

¹³³ Rev. Stat. U.S. § 5461.

¹³⁴ Act of March 4, 1909, Pub. L. No. 350, ch. 321, § 167, [35 Stat. 1120](#).

¹³⁵ Act of June 25, 1948, Pub. L. No. 772, ch. 645, § 486, [62 Stat. 709](#).

¹³⁶ S. REP. NO. 10, 60th Cong., 1st Sess. (1908); H.R. REF. NO. 304, 80th Cong., 1st Sess. (1947); S. REP. NO. 1620, 80th Cong. 2d Sess. (1948).

¹³⁷ [18 U.S.C. § 486](#) (1994).

¹³⁸ [18 U.S.C. § 491](#) (1994).

money or anything of value, either impliedly or by reason of any express inscription on the coin." ¹³⁹ The *Gellman* court relied on the following language from *United States v. Roussopolous*:

It does not purport to be money, or an obligation to pay money, and the obligation expressed is in terms solvable in merchandise. It cannot, therefore, have been intended to circulate as money, or to be received and used in lieu of lawful money. ¹⁴⁰

The term "current money" was also defined in *State v. Quackenbush* as:

Whatever is lawfully and actually current in buying and selling, of the value and as the equivalent of coin. (citations omitted) 'Current money; means money which passes from hand to hand and from person to person and circulates through the community. (citation omitted) Whatever is intended to, and does actually, circulate as money. (citation omitted). 'Current money,' that which is generally used as a medium of exchange. (citation omitted). ¹⁴¹

In *Anchorage Centennial Dev. Co. v. Van Wormer & Rodriguez, Inc.*, the Supreme Court of Alaska, citing *Quackenbush*, held that [*83] there was no intention to use the coins in question as "current money" where the coins were to bear the proposed inscription, "Good for One Dollar in Trade at Any Cooperating Business Redeemable at Face Value at the Anchorage Centennial Exposition Site Until December 31, 1967" and actually read, "Redeemable at Face Value at Anchorage the Air Crossroads of the World." ¹⁴²

Moreover, the *Gellman* court concluded that the 1864 Act was "primarily adopted to prevent the coining of money in competition with the United States." ¹⁴³ In *United States v. Falvey*, the First Circuit reached the same conclusion. ¹⁴⁴

¹³⁹ [44 F. Supp. 360, 364 \(1942\).](#)

¹⁴⁰ [95 F. 977, 978 \(1899\).](#)

¹⁴¹ [108 N.W. 953, 955 \(Minn. 1906\).](#)

¹⁴² [443 P.2d 596, 598 \(Alaska 1968\).](#) But see [United States v. Hatcher, 423 F.2d 1086 \(5th Cir. 1970\)](#) (affirming a § 486 conviction where the defendant attempted to pawn counterfeit rare pennies, nickels, and dimes to coin dealers).

¹⁴³ [Gellman, 44 F. Supp. at 364.](#)

¹⁴⁴ [676 F.2d 871 \(1st Cir. 1982\).](#) The court stated that "the primary concern of Congress [in enacting the 1864 act] seems to have been with the prohibition of private systems of coinage created for use in competition with the official United States coinage." [Id. at 876.](#)

Therefore, a local issuer may issue coins so long it does not intend for the coins to circulate as money of the United States. For example, a private individual or entity may issue coins or tokens that may be used to redeem merchandise at particular businesses in a community. The local issuer, however, may not issue coins with the intention that the coins will be used in lieu of lawful money to purchase goods or to pay debts on a wide scale where the coins would be competing with lawful money.

3. Anti-Counterfeiting Legislation

Modern federal legislation prohibiting private counterfeiting similarly does not bar local currency schemes as described in parts IV and V. ¹⁴⁵ The modern statutory provision with the catchline "Tokens or paper used as money," ¹⁴⁶ generally, prohibits anyone from making or using anything, including paper currency, that is similar to lawful currency or legal tender issued by the federal government in the United States as lawful currency or legal tender. ¹⁴⁷

The anti-counterfeiting provision dealing with paper currency requires that the tokens or paper be "similar in size and shape to any of the lawful coins or other currency of the United States" or to be "receive[d] . . . [as] lawful coins of other currency of the United States." ¹⁴⁸ In other words, the tokens or paper in question must be used as lawful or "current money." Even though the term "current money" -- the same term used in the statute prohibiting private coinage described above -- is not used in the anti-counterfeiting statute addressing counterfeit paper currency, the

¹⁴⁵ [18 U.S.C. §§ 471-509](#) (1988).

¹⁴⁶ a) Whoever, being 18 years of age or over, not lawfully authorized, makes, issues, or passes any coin, card, token, or device in metal, or its compounds, intended to be used as money, or whoever, being 18 years of age or over, with intent to defraud, makes, utters, inserts, or uses any card, token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States or any coin or other currency not legal tender in the United States, to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise, vending machine, postage-stamp machine, turnstiles, fare box, coinbox telephone, parking meter or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States, shall be fined not more than \$ 1,000, or imprisoned not more than one year, or both.

(b) Whoever manufactures, sells, offers, or advertises for sale, or exposes or keeps with intent to furnish or sell any token, slug, disk, device, paper, or other thing similar in size and shape to any of the lawful coins or other currency of the United States, or any token, disk, paper, or other device issued or authorized in connection with rationing or food, and fiber distributed by any agency of the United States, with knowledge or reason to believe that such tokens, slugs, disks, devices, papers, or other things are intended to be used unlawfully or fraudulently to procure anything of value, or the use or enjoyment of any property or service from any automatic merchandise vending machine, or other lawful receptacle, depository, or contrivance designed to receive or to be operated by lawful coins or other currency of the United States shall be fined not more than \$ 1,000 or imprisoned not more than one year, or both. *Id.* at § 491.

¹⁴⁷ *See id.*

¹⁴⁸ *Id.*

courts have required that the tokens or paper in question be used as "current money" to violate the statute. The same definition of "current money" stated above was used in both *Gellman*,¹⁴⁹ interpreting the predecessor to the modern anti-counterfeiting statute dealing with paper currency,¹⁵⁰ and *Van Warmer*, interpreting the anti-counterfeiting statute itself.¹⁵¹

Other federal anti-counterfeiting statutes also do not proscribe local currency systems. In *United States v. Smith*,¹⁵² the [Fourth](#) Circuit held that two slips of paper, each the size of a federal reserve note and each bearing a crude backwards facsimile of one, were not "counterfeit" under a statutory provision which prohibits the uttering of counterfeit obligations or securities.¹⁵³ The slips of paper must have been an imitation or similitude;" otherwise, there is no counterfeit in fact.¹⁵⁴ Moreover, unless the pieces of paper purported to fool an "honest, sensible and unsuspecting person of ordinary observation and care," there is no counterfeit in law.¹⁵⁵

In a case involving a provision criminalizing the control, custody, or possession of certain plates, stones, or anything else used to print counterfeit obligations and securities of the United States, the court cited and followed *Smith's* definition of "counterfeit."¹⁵⁶ Local issuers using tools and other equipment to print their currency would, therefore, not be violating any anti-counterfeiting statutes unless their equipment imitated and simulated the plates, stones, or other things used by the Secretary of the Treasurer to print obligations or securities of the United States. Finally, the *Federal Jury Practice and Instructions*, used by federal district court judges in civil and criminal cases, also uses the *Smith* definition.¹⁵⁷

4. State Issuance of Bills of Credit

¹⁴⁹ [Gellman, supra](#) note 143, at 364.

¹⁵⁰ [18 U.S.C. § 282](#) (1988).

¹⁵¹ *Van Warmer*, at 597-98.

¹⁵² [318 F.2d 94 \(4th Cir. 1963\)](#).

¹⁵³ [18 U.S.C. § 472](#) (1988).

¹⁵⁴ [Smith, 318 F.2d at 95](#).

¹⁵⁵ [Id. at 95](#), quoting [United States v. Lustig, 159 F.2d 798, 802 \(3d Cir. 1947\)](#).

¹⁵⁶ [Wholesale Vendors of Texas, Inc. v. United States, 361 F. Supp. 1045, 1047 \(N.D. Tex. 1973\)](#).

¹⁵⁷ An item is 'counterfeit' if it bears such likeness or a resemblance to a genuine obligation or security issued under the authority of the United States as is calculated to deceive an honest, sensible and unsuspecting person of ordinary observation and care dealing with a person supposed to be honest and upright." DEVITT, BLACKMAR WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS: CIVIL AND CRIMINAL § 52.10 (3rd. ed. 1987).

While the U.S. Constitution explicitly prohibits the states from emitting bills of credit, and therefore from directly issuing their own currency, a question remains as to whether this prohibition extends to other public bodies (e.g., municipalities or counties) or the private sector. The United States Supreme Court, in *Craig v. State of Missouri*,¹⁵⁸ defined bills of credit in the following way: "Bills of credit signify a paper medium intended to circulate between individuals, and between the government and individuals, for the ordinary purposes of society."¹⁵⁹ The *Craig* Court further stated:

The word 'emit' is never employed in describing those contracts by which a State binds itself to pay money at a future day for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated 'bill of credit.' To 'emit bill of credit,' conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary purposes, as money, which paper is redeemable at a future day.¹⁶⁰

[*84] In *Briscoe v. Bank of Kentucky*, the Court clarified its definition of a "bill of credit": "The definition, then, which does include all classes of bills of credit emitted by the colonies or states; is, a paper issued by the sovereign power, containing a pledge of its faith and designed to circulate as money." Later, restating *Briscoe*, it explained:

To constitute a bill of credit within the Constitution, it must be issued by a State, on the faith of the State, and be designed to circulate as money. It must be a paper which circulates on the credit of the State; and is so received and used in the ordinary business of life.¹⁶¹

The Court has permitted states to issue monetary-like instruments that are not intended to circulate as money, holding they are not within the definition of bills of credit. In *Poindexter v. Greenhow*, the Court permitted a state to issue coupons receivable for taxes even though the state issued the coupons, the coupons were promises to pay money, and their payment and redemption were based on the credit of the state because:

they were not emitted by the State . . . as a substitute for money. And there is nothing on the face of the instruments, nor in their form or nature, nor in the circumstances of their creation or use . . . that these coupons

¹⁵⁸ [29 U.S. \(4 Pet.\) 410 \(1830\)](#).

¹⁵⁹ [Id. at 432](#).

¹⁶⁰ *Id.*

¹⁶¹ [36 U.S. \(11 Pet.\) 257, 314 \(1837\)](#); [Darrington v. The Bank of Alabama, 54 U.S. \(11 How.\) 12, 16](#), (1851) (relying on the same definition).

were designed to circulate, in the common transactions of business, as money, nor that in fact they were so used. ¹⁶²

The U.S. Supreme Court has also ruled that states may: (1) execute instruments binding themselves to pay money to individuals at a future day for services rendered or money borrowed, ¹⁶³ and (2) charter banks which issue notes, ¹⁶⁴ regardless of whether the state is the sole stockholder of the bank, ¹⁶⁵ the officers of the bank were elected by the state legislature, ¹⁶⁶ or that the capital of the bank was raised by the sale of state bonds, without running afoul of the Constitution. ¹⁶⁷

The constitutional bar to emitting bills of credit appears to extend to other public bodies as well. The U.S. Supreme Court has held that "trustees or representative officers of a parish, county, or other local jurisdiction" have no authority, implied or otherwise, to issue negotiable securities or coupons, "payable in the future" and "of such a character as to be unimpeachable in the hands of bona fide holders." ¹⁶⁸ Moreover, the Court has held that a municipal corporation, "a subordinate branch of the domestic government of a State" and with no "purposes of private gain" has no power to issue "paper clothed with all the attributes of negotiability." ¹⁶⁹

Because bills of credit must be issued by the state or by an individual or committee that has the power to bind the state acting as agents thereof without imparting, as individuals, any credit to the paper, ¹⁷⁰ nongovernmental entities, acting alone, are not subject to the constitutional prohibition on states issuing bills of credit. In his famous dissent in the *Briscoe* decision, Justice Story clarified the applicability of the constitutional prohibition:

¹⁶² [114 U.S. 270, 284 \(1885\).](#)

¹⁶³ [Houston & Texas Cent. R.R. v. Texas, 177 U.S. 66 \(1900\).](#)

¹⁶⁴ [Briscoe v. Bank of Kentucky, 36 U.S. 257 \(1837\).](#)

¹⁶⁵ [Darrington, supra](#) note 161, at 15; [Curran v. Arkansas, 56 U.S. \(15 How.\) 304, 317 \(1854\).](#)

¹⁶⁶ [Briscoe, 36 U.S., at 413.](#)

¹⁶⁷ [Woodruff v. Trapnall, 51 U.S. \(10 How.\) 190, 205 \(1851\).](#)

¹⁶⁸ [Police Jury v. Britton, 82 U.S. \(15 Wall.\) 566, 570-73 \(1872\).](#)

¹⁶⁹ [The Mayor v. Ray, 86 U.S. \(19 Wall.\) 468, 474-75 \(1873\).](#) See also [Hitchcock v. Galveston, 96 U.S. \(6 Otto\) 341, 350 \(1877\)](#) (holding that even though a city illegally issued bonds to pay for sidewalk construction, the city must still honor the contract).

¹⁷⁰ [Briscoe, 36 U.S. at 257.](#)

The Constitution does not prohibit the emission of all bills of credit, but only the emission of bills of credit by a state: and when I say, by a state, I mean by or in behalf of a state, in whatever form issued. It does not prohibit private persons, or private partnerships, or private corporations . . . from issuing bills of credit. No evils; or, at least, no permanent evils, have ever flowed from such a source The mischief was not there It was the issue of bills of credit, as a currency; authorized by the state on its own funds, and for its own purposes; which constituted the real evil to be provided against. ¹⁷¹

5. *Prior Tax on Notes Not Issued by National Banks*

Another method Congress utilized to limit the circulation of notes other than those of federally chartered national banks was to impose a tax on their circulation. As noted in part II, the U.S. Congress authorized the federal government to issue "notes for circulation" -- popularly known as "greenbacks" -- through the National Banking Act of 1863. ¹⁷²

In 1863, Congress also passed a statute which required all banks, associations, corporations, and individuals issuing notes or bills for circulation as currency to pay a duty of 1% each half year on the average amount of their circulation over a certain sum, and a tax of 5% on all notes or bills issued in sums representing any fractional part of a dollar. ¹⁷³ This statute was followed in 1864 by another statute imposing a tax upon the average amount of circulation issued by any bank, association, corporation, company, or person "including as circulation all certified checks, and all notes and other obligations calculated or intended to circulate, or to be used as money." ¹⁷⁴

In 1865, however, Congress implemented another tax designed to crush the decentralized issuance of paper currency and to further a federal government monopoly with respect to paper money. Congress imposed the "death tax" of 10% on every state bank or banking association. The tax was imposed on the amount of notes issued by these institutions. ¹⁷⁵ This duty was extended in 1866 to include persons. ¹⁷⁶ Stating that Congress is authorized to provide "a sound and uniform currency for the country," and to "secure the benefit of it to the people by

¹⁷¹ [Id. at 348](#) (Story, J., dissenting).

¹⁷² Act of Feb. 25, 1863, [12 Stat. 665](#).

¹⁷³ Act of Mar. 3, 1863, **12 Stat. 709**.

¹⁷⁴ Act of June 30, 1864, [13 Stat. 277, 278](#).

¹⁷⁵ Act of Mar. 3, 1865, [13 Stat. 469, 484](#).

¹⁷⁶ Act of July 13, 1866, [14 Stat. 146](#).

appropriate legislation," the U.S. Supreme Court in *Veazie Bank v. Fenno*¹⁷⁷ upheld the 1865 and 1866 acts.¹⁷⁸ In the following year, the 10% tax included notes issued by any town, city, or municipal corporation.¹⁷⁹ In 1875, Congress combined the 1865, 1866, and 1867 acts, effectively extending the 1867 act to all persons, firms, associations, and corporations.¹⁸⁰

[*85] The "death tax" effectively outlawed notes except those issued by national banks. Banks under state charters were induced to convert into national banks and the circulation of state bank notes disappeared entirely. Foreign banks¹⁸¹ and notes issued by municipalities¹⁸² fell equally prey.

Congress's aim to eliminate state banks altogether almost succeeded. In 1863, 66 national banks and 1,466 state banks existed. In 1864, there were 467 national banks and 1,089 state banks. By 1866, there were 1,634 national banks and only 297 state banks. State banks survived and later actually became more numerous by becoming banks of deposit rather than banks of issue, aided by the change to checking deposits instead of bank notes as money.

In *Hollister v. Mercantile Inst.*, the U.S. Supreme Court defined what "notes" would be subject to the punitive tax scheme:

["Notes" include] only such notes as are in law negotiable, so as to carry title in their circulation from hand to hand, are the subjects of taxation under the statute. It was, no doubt, the purpose of Congress, in imposing this tax, to provide against competition with the established national currency for circulation as money, but as it was not likely that obligations payable in anything else than money would pass beyond a limited neighborhood, no attention was given to such issues as affecting the volume of the currency, or its circulating value.¹⁸³

¹⁷⁷ [75 U.S. \(8 Wall.\) 533 \(1868\).](#)

¹⁷⁸ [Id. at 549.](#)

¹⁷⁹ Act of Mar. 26, 1867, **15 Stat. 6.**

¹⁸⁰ Act of Feb. 8, 1875, § 19, [18 Stat. 307, 311.](#)

¹⁸¹ [20 Op. Att'y Gen. 534 \(1893\).](#)

¹⁸² [Nat'l Bank v. United States, 101 U.S. 1 \(1879\).](#)

¹⁸³ [111 U.S. 62, 65 \(1884\).](#)

The Court went on to hold that a note stating, "Pay David O. Calder or bearer five dollars in merchandise at retail" was not a note under the 1875 act.¹⁸⁴ Thus, unsigned "clearing-house certificates" issued by state banks were held not be "notes" under the 1875 tax because the 10% tax applied only to promissory notes and not to other negotiable or quasi-negotiable paper, and the bearer could not sue the issuer and recover money damages with the paper alone.¹⁸⁵ Neither were all negotiable promissory notes taxable under the punitive tax.¹⁸⁶ The issuer must intend that his or her notes be used as currency in competition with national currency.¹⁸⁷

Under the Tax Reform Act of 1976,¹⁸⁸ the 10% "death tax" was repealed¹⁸⁹ as obsolete. According to the Comptroller of the Currency, any issuance of notes under the punitive 10% tax "is also illegal under other provisions of Federal law."¹⁹⁰ Regardless of the enigmatical reference to other provisions, the local currency described in parts IV and V would not be considered "notes" under the previous statute.

6. *The Gold Clause, its Repeal, and Reinstatement*

Generally, a gold clause is a promise to pay a debt in gold. Promises to pay debts in gold coin are called "gold-coin clauses" while promises to pay the value of gold coin are "gold-value clauses." In 1879, the United States resumed payments of specie (i.e., gold coin) in redemption of its paper currency.¹⁹¹ In the Gold Standard Act of 1900, Congress eliminated the remnants of silver's role as a monetary standard.¹⁹² With the collapse of the gold standard, Congress in 1933 banned gold clauses from public and private contracts.¹⁹³ The Gold Reserve Act of

¹⁸⁴ *Id.*

¹⁸⁵ [20 Op. Att'y Gen. 681 \(1893\).](#)

¹⁸⁶ [19 Op. Att'y Gen. 98 \(1888\).](#)

¹⁸⁷ *Id.*

¹⁸⁸ [90 Stat. 1814](#), Pub. L. No. 94-455.

¹⁸⁹ Title XIX, § 1904(a)(18), [90 Stat. 1814, 1841](#).

¹⁹⁰ S. Rep. No. 94-938, 84th Cong., 2d Sess. (1976); H.R. Rep. No. 94-658, 94th Cong., 2d Sess. (1976); H.R. Doc. No. 10612 (1976).

¹⁹¹ See ARTHUR NUSSBAUM, A HISTORY OF THE DOLLAR 130-31 (1957).

¹⁹² Act of Mar. 14, 1900, ch. 41, § 1, **31 Stat. 45**.

¹⁹³ Act of June 5, 1933, ch. 48, § 1, **48 Stat. 112, 113**.

1934 went further, withdrawing all gold from circulation. ¹⁹⁴ As President Franklin D. Roosevelt stated, the Act "abolished gold coin as a component of our monetary system." ¹⁹⁵

The constitutionality of the ban was evaluated by the U.S. Supreme Court in the *Gold Clause Cases*.¹⁹⁶ The Court upheld the abrogation of gold clauses involving private obligations ¹⁹⁷ and obligations involving the federal government. ¹⁹⁸ Congress's power, the Court reasoned, came not only from the coinage power, but also from:

the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power "to make all laws which shall be necessary and proper for carrying into execution" the other enumerated powers. ¹⁹⁹

In 1977, the abrogation of gold clauses was repealed. ²⁰⁰ American citizens may now buy and sell gold freely, ²⁰¹ and courts can enforce gold clauses. ²⁰² Thus, today contracts can provide for the payment in U.S. dollars, scrip pegged to the U.S. dollar, or an alternative currency.

C. State Laws Pertaining to Local Currency

State codes may affect the circulation and use of alternative currencies. At least thirteen jurisdictions either prohibit paying employees in scrip or require employers to pay their workers in U.S. currency. ²⁰³ Two states, Florida and

¹⁹⁴ Ch. 6, § 5, **48 Stat. 337, 340.**

¹⁹⁵ Presidential Statement, *supra* note 27.

¹⁹⁶ [Perry v. United States, 294 U.S. 330 \(1935\)](#); [Nortz v. United States, 294 U.S. 317 \(1935\)](#); [Norman v. Baltimore & O.R.R., 294 U.S. 240 \(1935\)](#) (consolidated for review with *United States v. Bankers Trust Co.*).

¹⁹⁷ [Norman v. Baltimore O.R.R., 294 U.S. 330 \(1935\)](#) (consolidated for review with *United States v. Bankers Trust Co.*).

¹⁹⁸ [Nortz, 294 U.S. at 317](#); [Perry, 294 U.S. at 330.](#)

¹⁹⁹ *Id.* at 303.

²⁰⁰ Act of Oct. 28, 1977, Pub. L. No. 95-147, § 4(c), [91 Stat. 1227, 1229.](#)

²⁰¹ Par Value Modification Act Amendments, Pub. L. No. 93-110, § 3(b)-(c), **87 Stat. 352, 352 (1973).**

²⁰² Act of Oct. 28, 1977, Pub. L. No. 95-145, § 4(c), [91 Stat. 1227, 1229.](#)

²⁰³ See [ARK. CODE ANN. § 11-4-403](#) (Michie 1993); [CAL. LAB. CODE § 212](#) (West 1993); [COLO. REV. STAT. § 8-4-102](#) (1994); [D.C. CODE ANN. § 36-102](#) (1994); [IND. CODE ANN. § 22-2-4-2](#) (Burns 1994); KY. REV. STAT. ANN. § 244 (Baldwin 1994); [NEV. REV. STAT. ANN. § 608.120](#) (Michie 1993); OKLA. STAT. § 165.2 (1994); [TENN. CODE ANN. § 50-2-102](#) (1994); TEX. REV. CIV. STAT. ANN. § 5159b (1994); VT. STAT. ANN. § 343 (1994); [VA. CODE ANN. § 40.1-29](#) (Michie 1994).

Massachusetts, have their own anti-counterfeiting statute. ²⁰⁴ The Florida statute prohibits the issuance or circulation of scrip "as a substitute in any respect for currency recognized by law" ²⁰⁵

[*86] Most troublesome are the Virginia and Arkansas statutes. The Virginia statute prohibits any "individual or entity unless authorized by law" from (a) issuing, "with intent that the same be circulated as currency, any note, bill, scrip, or other paper or thing," or (b) otherwise dealing, trading or carrying on "business as a bank of circulation." ²⁰⁶ The Virginia statute appears to permit issuance of discount notes redeemable for goods or services as well as an Ithaca HOURS barter-type exchange mechanism. These arrangements arguably are not issued with the intent to circulate as "currency." A barter-type exchange mechanism may face a bar in Arkansas which restricts instruments to be used as a medium of trade in lieu of money. ²⁰⁷ Despite the sweep of these two state statutes, planning opportunities exist. The Arkansas statute only applies to persons, not entities. The Virginia statute defines an entity to include "any association, corporation, partnership, firm, [or] company" ²⁰⁸ Thus, the term "association" would encompass a cooperative association. It appears that a charitable organization would not, however, fall under any of the more specific definitions of the general term "entity." Therefore, the bar of the Virginia statute would not apply to any type of local currency issued by a non-profit corporation.

Only Vermont specifically authorizes the formation of a corporation for the sole purpose of issuing scrip. ²⁰⁹ In addition, Vermont prohibits the counterfeiting of such scrip. ²¹⁰

VII. Conclusion

An alternative system of local currencies represents a powerful lever for significant institutional change. It provides the means to democratize the creation of money -- the medium of exchange -- and thus the exchange process, thereby providing the possibility for human empowerment in an ecologically sustainable manner.

²⁰⁴ MASS GEN. L. ch. 267 §§ 21-22.

²⁰⁵ [FLA. STAT. ANN. § 831.26](#) (West 1994).

²⁰⁶ VA. CODE ANN. § 6.1-330.52 (Michie 1994).

²⁰⁷ [ARK. CODE ANN. § 4-17-102](#).

²⁰⁸ VA. CODE ANN. § 6.1-330.49 (Michie 1994).

²⁰⁹ VT. STAT. ANN. tit. 11, §§ 921-38 (1993). See also § 42(1)(A)(iv) (allowing a private corporation to form for the specific purpose of issuing scrip).

²¹⁰ [VT. STAT. ANN. tit. 13, § 1805](#) (1993).

The current systems of credit and money issuance are centralized and tightly controlled, tending to depersonalize access to money and favoring large corporate borrowers or those with well-established credit references and collateral. These institutions, by their very size and nature, discriminate not only against small businesses but also individuals without capital -- the poor, minorities, young families, and single women. The prevailing wisdom is that nothing can be done to counter this bias in favor of the large and the well-established, that it is impossible for locally-based, democratically-organized groups to issue their own money and control their own credit system. This assumption is not true. It *is* possible to break free of the invisible bonds which restrict local control of what is perhaps the most vital of all existing institutions.

But how will change occur? Is the discussion and analysis of our current plight sufficient? Or, as Milton Friedman concludes, will a time of crisis bring about major changes in monetary and other institutions of our political economy:

On the one hand, we are observers of the forces shaping society; on the other, we are participants and want ourselves to shape society. If there is a resolution to this paradox, it occurs at times of crisis then and only then are major changes in monetary and other institutions likely or even possible. What changes thus occur depend on the alternatives that are recognized as available. ²¹¹

We do not know what the reaction will be if urban and rural communities throughout the United States adopt their own local currency. Continuing education about the values of self-sufficient economies and the growing number of initiatives in small-scale local currency issue will set the stage for a major breakthrough. The present re-emergence of local currencies points to the end of centralized economies as they exist today. In their wake will come the building of local communities as people discover the empowerment provided by community control of currency, enhanced self-reliance and ecological sustainability, and the growth of economic stability. This is the challenge for the twenty-first century.

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²¹¹ Milton Friedman and Anna J. Schwartz, *Has Government Any Role In Money?* 17 J. OF MONITARY ECONOMICS, 37 (1986).