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Legal Tender: A Tale of Two President Roosevelts and the 1933 Gold Double Eagle

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The bidding would start at $2.5 million. A standing-room only crowd of more than 500 gathered on the huge seventh-floor trading room at Sotheby's offices on New York's Upper East Side. It was a single-lot auction, which meant that just one object was up for bid. The object of all this attention was on display at the Sotheby's auction in a small illuminated case, zealously guarded by blue-uniformed federal law enforcement officers. Two screens on either side of the auctioneer's podium displayed huge images of the object. The object itself was tiny. In diameter, it measured slightly over 1-1/3 inches and was 2mm thick. It weighed exactly 33.4 grams, not much more than an ounce. The glittering object was 90 percent gold, which made its melt value at the time of the auction—July 30, 2002—$300.

At precisely 6:00pm, legendary auctioneer David Redden began the sale. At the $4.6 million mark, only two bidders remained. Back and forth it went, until at $6.6 million, Redden exclaimed "fair warning" and then banged his gavel down. Sold. Adding in a 15 percent sales commission and another $20—miniscule in monetary value but enormous in legal significance—the total sales price was $7,590,020. It was the most that had ever been paid for a coin at public auction. The male buyer was anonymous. From start to finish, the auction lasted 6 minutes, 21 seconds.

The buyer had purchased a "Double Eagle" coin that had been struck at the U.S. Mint in Philadelphia in 1933. Crucially, it bore the auspicious date of its year of mintage. With the coin came two legal documents signed by the U.S. Mint director: an engraved Transfer of Sale and a Certificate of Monetization. The latter document meant that the U.S. Mint certified that the coin was "legal tender" for the monetary value inscribed on it, $20. If he had wished, the buyer could have walked into any American supermarket and spent his coin on $20 worth of groceries. Why was it necessary in 2002 to monetize a coin that had been minted in 1933 by the U.S. government? What did this action contribute to its value? Why exactly was it so valuable? Who sold it, and why?

To answer these questions, we need to understand the backstory of this coin, how it came to be *and* how it came to survive. It is an intriguing story, integrating history, economics, and law. Two President Roosevelts are essential actors. More than a history lesson, the story of the 1933 Double Eagle is still unfolding, as it makes its way through the U.S. courts in civil litigation that a federal judge has recently characterized as a "Rubik's cube of a case."[1]

U.S. Mint and the First Coinage Act

The law enforcement personnel guarding the Double Eagle at the 2002 auction were officers of the U.S. Mint, which had been founded in 1792, the year Congress passed the first Coinage Act. Under Article I, Section 8 of the Constitution, "The Congress shall have power ... to coin money." This first Coinage Act established a framework for the institution of the mint and American coinage. It stipulated that a "mint for the purpose of national coinage" be located in the nation's capital, which, in 1792, was Philadelphia. It also specified precise quantities of gold, silver, and copper that each authorized coin had to lawfully contain. The basic unit was to be the dollar, but the first denomination cited in the statute was the Eagle, which was to have a "value of ten dollars or units" and was to "contain" 247-½ grains (about ½ troy ounce) of pure gold. Alexander Hamilton, the first secretary of the treasury, named the Eagle coin. The Act also set parameters for the design of the coins, with the obverse ("heads") having "an impression emblematic of liberty" and the reverse ("tails") "the figure or representation of an eagle."

Birth and Redesign

The Double Eagle coin—so-named because it would have twice the monetary value of an Eagle—was born of the California gold rush. It was first minted in 1849 and surpassed the Eagle as the highest denomination American coin. President Theodore Roosevelt would be the impetus for a twentieth-century redesign of the Double Eagle. He felt

source: National Numismatic Collection, National Museum of American History

The obverse and reverse of this 1908 Double Eagle depict the same design by Augustus Saint-Gaudens as found on the rare 1933s.

American coins should be suitable for an emerging world power and the aesthetic equal of the beautiful specimens of ancient Greece and Rome. To this end, he recruited America's greatest sculptor, Augustus Saint-Gaudens, to redesign U.S. coins, beginning with the Double Eagle. Among Saint-Gaudens many famous sculptures is the Robert Gould Shaw and Massachusetts Fifty-Fourth Regiment Memorial across from the State House in Boston. It depicts the African American regiment highlighted in the 1989 movie *Glory*. Saint-Gaudens designed what many numismatists (coin collectors) regard as the most beautiful American coin ever produced. Consistent with the design requirements established by the 1792 Coinage Act, the obverse features a striking female image of Liberty, striding forward, with wind-swept hair. On the lower right is the coin's year of mintage, beginning with those issued in 1907. On the reverse side is an eagle in flight. The Saint-Gaudens Double Eagle is exquisite sculpture in miniature.

Gold and the Banking Crisis of 1933

Our story continues when Theodore's fifth cousin, Franklin Delano Roosevelt, took the oath of office as president on March 4, 1933. A deepening banking crisis threatened the very foundations of the nation's monetary system. Thousands of banks had failed in the final years of the Hoover administration. On the eve of FDR's inauguration, governors across the country had issued what were euphemistically called "bank holidays"—statewide shut downs that suspended all deposits and withdrawals. FDR issued Presidential Proclamation 2039 just 36 hours after taking office. It declared a short-term national bank holiday. Of special concern was the "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding." Asserting emergency executive powers, the president based his authority on the World War I-era Trading with the Enemy Act. Violations, such as hoarding of gold, could be punished by up to 10 years in prison or $10,000 in fines.

Roosevelt called Congress into special session on March 9 to consider an Emergency Banking Act. In just seven hours, the bill was debated, passed both Houses, and signed into law by the president. The Act gave retroactive congressional sanction to the provisions of Proclamation 2039. Moreover, it gave the Federal Reserve the "flexibility to issue emergency currency ... backed by any assets of a commercial bank." In this vital provision, the Federal Reserve was no longer constrained by the provisions of its original 1913 legislation, which had stipulated that outstanding Federal Reserve notes be backed by 40 percent gold reserves.

The *New York Times* proclaimed the Emergency Banking Act "Dictatorship Over Gold." Heeding the president's call to stop hoarding gold, however, 4,000 people queued in front of the Federal Reserve Bank of New York the day after passage of the Emergency Banking Act. They deposited $20 million in gold, half in coins. Similar deposits, motivated in part by a sense of patriotism and support for the government, were made across the country as banks began to reopen. On March 12, FDR delivered the first national radio address of what would later be called his Fireside Chats. The subject was the banking crisis. Roosevelt explained what had led to the crisis and what steps his administration was taking to address it. His remarks are an exemplar of political communication. As humorist Will Rogers quipped, "He made everyone understand it, even the bankers." Evoking the now-famous words of his recent inaugural address, he emphasized the need to lay to rest the "phantom of fear" and to allay the "hysterical demands of hoarders." He appealed to Americans: "There is an element in the readjustment of our financial system more important than currency, more important than gold, and that is the confidence of the people themselves.... Let us unite in banishing fear."

What constituted hoarding of gold? As the Roosevelt administration began to establish new monetary gold policies in March 1933, Americans were uncertain. On April 5, FDR issued Executive Order 6102, clarifying what gold Americans could, and could not, own. The restrictions were limited to monetary gold, not jewelry. Americans could continue to own $100 in gold coin, as well as those "gold coins having recognized special value to collectors of rare and unusual coins." Other than these exceptions, "all persons" were required to deliver their monetary gold, including coins, to Federal Reserve Banks, in exchange for $20.67 in currency per ounce. In January 1934, Congress passed the Gold Reserve Act, which prohibited the U.S. Treasury from redeeming dollars for gold. Rather, other than the exceptions in Executive Order 6102, Americans were required to exchange gold for dollars. Significantly, gold coins were prohibited. No longer would such coins be issued. If needed, gold would be used in bars. The Gold Reserve Act also revalued gold from $20.67 per ounce to $35, a momentous action that countered the deflation of the Great Depression.

The executive and legislative actions that comprised the Roosevelt administration's monetary gold policies were the beginning of a new monetary order. Never again would U.S. currency be convertible domestically to gold on demand. In this sense, the United States was no longer on a gold standard, joining Great Britain, which had taken a similar step in September 1931. FDR's policies resulted in a substantial increase in the U.S. Treasury's gold reserves, leading directly to the building of the U.S. Bullion Depository at Fort Knox, completed in December 1936.

Flight of the 1933 Double Eagle

Even while the Roosevelt administration was developing its dramatic new policies regarding monetary gold, the business of the U.S. Mint proceeded, for a while, more or less as usual. In particular, Double Eagle coins continued to be struck in 1933. In all, exactly 445,500 1933-dated Double Eagles were manufactured. Not a single one, however, was ever "issued" in 1933—that is to say, monetized and made legal tender for circulation. Then, directives were at last issued to stop production and, later, to melt the entire inventory. Transmuted into utilitarian gold bars weighing nearly 36,000 pounds, they were shipped in 1937 to Fort Knox. The 1933 Double Eagles had been sacrificed on the altar of the New Deal's solution to the banking crisis, in which gold's special role in the American economic order was forever transformed.

If this were the end of this story, you would not be reading this article. Somehow, a small number of the 1933 Double Eagles escaped fiery extinction and covertly made their way out of the U.S. Mint in Philadelphia. Suspicion points first to a Mint employee named George McCann, who as cashier handled the 1933s. Suspicion also points to a canny Philadelphia gold dealer named Israel Switt, who acquired 1933 Double Eagles, selling nine of them in the 1930s.

In the insular world of American coin collecting, the sale of these coins initially failed to attract the interest of the federal government. That abruptly changed in 1944, however, when the Secret Service learned about a planned public sale of one of the coins. Apart from guarding American presidents, the Secret Service, since its inception in 1865, has been charged, as an agency under the U.S. Treasury, with protecting the nation's coin and currency from fraud and counterfeiting. Contending that the coins must have been stolen from the Mint since they had never been issued, the Secret Service conducted a painstaking investigation and succeeded in recovering eight of the nine coins, all of which were melted down. When agents questioned Switt, he revealed little of how he had acquired the coins or how they might have left the Mint. Just weeks before its investigation began, however, the U.S. government had also issued an export license in 1944 to King Farouk of Egypt, whose agent had recently purchased one of the 1933 gold coins. This particular Double Eagle, it seemed, had flown the coop.

Reappearance and Rarity

King Farouk was deposed in 1952. His Double Eagle would mysteriously vanish. It would reappear in London in 1995, when it was purchased by a British coin dealer named Stephen Fenton for some $200,000. Fenton had acquired an extraordinarily rare coin with a "magical date." Modern coins are mass produced. A 1933 Double Eagle may look just like a 1908—a year when nearly 9 million such coins were minted—except for its little date mark. It is that date, however, that makes all the difference. Numismatists understand that a particular coin's value is dependent on condition, aesthetics, provenance—and, especially, rarity.

On February 8, 1996, Stephen Fenton was in Room 22K of the Waldorf-Astoria Hotel in New York. He thought he was selling the Double Eagle to an American dealer for a handsome profit. Instead, he found himself the target of a sting operation by the U.S. Secret Service. Conducting video and audio surveillance from an adjacent hotel room, agents burst into the hotel room to make the bust once they thought the suspects had sufficiently incriminated themselves. Handcuffed, Fenton was arrested, interrogated, and spent a night in jail. He was charged with being knowingly involved in the sale of stolen U.S. government property.

Litigated in the Federal Courts

Fenton's lawyer, Barry Berke, however, quickly succeeded in persuading the government to drop the criminal charges. Still, the government insisted that the coin belonged to the United States, since it had never been issued and must have been stolen from the Mint. A stumbling block for the government's case was the granting of the export license for King Farouk, which the government acknowledged was "mistakenly issued." After six years of civil litigation, Berke and the U.S. Attorney's Office for the Southern District of New York reached a hard-fought legal settlement. Neither party would get to keep the Double Eagle. It would be sold and Fenton and the U.S. Mint would split the proceeds equally. In a remarkable turn of events, Fenton and the U.S. government that had once arrested him had become the unlikeliest of business partners. This is how the 2002 Sotheby's auction came about. Before its sale, the parties agreed that the government would monetize the coin. It would be unique, the only 1933 Double Eagle to survive, among 445,500 originally struck, to be made legal tender by the United States—almost 70 years after its date of issue.

Is this the end of our story? Far from it. In 2004, the surviving daughter and grandchildren of Israel Switt revealed that they had found ten 1933 Double Eagles in their possession. They acknowledged that they were motivated to search for the coins by the Sotheby's sale, but insisted that they had had no prior knowledge that the coins had existed. The family, known as the Langbords, were also represented by Barry Berke. The Langbords voluntarily informed the government of the coins' existence and asked the U.S. Mint to authenticate them, reserving all rights of ownership. The Mint indeed authenticated the coins, but then decided not to return them to the Langbords, asserting that the U.S. government has always retained title to these coins, which could have only left the Mint illicitly.

The government has refused to consider a settlement deal, similar to Fenton's, contending that the Langbords are "the family of a thief."[2] Since 2004, there has been ongoing civil litigation in the federal courts involving this case, *Langbord v. United States*. It has taken stunning twists and turns. A federal trial judge and jury has ruled in the government's favor, requiring the Langbords to return the coins. In April 2015, however, a split three-judge panel of the U.S. Court of Appeals for the Third Circuit in Philadelphia vacated the prior decisions and determined that the U.S. government must return the coins to the Langbords, as it had violated a crucial deadline in matters of the forfeiture of civil assets. The government then petitioned the Third Circuit to review the

For Further Discussion

1. How does the rarity of the 1933 Double Eagle contribute to its value? How does the revelation that 10 more Double Eagles exist affect its value? To what extent are the coins' values contingent on what the federal courts decide? Does the value of the 1933 Double Eagle depend on whether more than one might ever be deemed legal tender?
2. Ask students to follow *Langbord v. United States*. What have the federal courts decided?
3. Have students research the U.S. Mint and its history. Does it produce gold coins today? Are they legal tender?
4. Can Americans privately own gold today? If so, since when and what can they own?
5. Ask students to research the life and works of Augustus Saint-Gaudens. What was his role in redesigning the Double Eagle? What are his other famous works of art?
6. Assign students to first read, and then listen to, FDR's Fireside Chat of March 12, 1933, on the banking crisis. Do they think it explains what the crisis was about and why the president was communicating with the American people? Did listening to it change their initial understanding formed from reading his remarks? If so, how?
7. Ask students to research the Fireside Chats and their role in the Roosevelt administration and the history of presidential communication.
8. Have students learn more about the Bullion Depository at Fort Knox. How much gold does it hold? What famous objects has it safeguarded? How is its valuable content protected?
9. Assign students to research the gold clause cases of 1935, including *Perry v. United States*. What was at issue in these cases? What did the Court decide? What might have happened if the Court had decided differently?
10. Assign students to research the banking crisis of 1933 and the financial crisis of 2008. How are they similar? Different? What was the role of government in each crisis? Banks?

case "en banc"—by all of its judges. The court agreed to do so, vacating the panel's ruling, and hearing oral arguments on October 14, 2015. A decision is expected in 2016. At issue on appeal is whether the federal statute regulating civil asset forfeiture, known by the acronym "CAFRA," governs the case and, if so, what it requires. The court may also reconsider matters of hearsay and evidentiary standards, as crucial facts of the case go all the way back to the 1930s and 1940s. Judges reviewing the case have described it both as "hotly disputed" and "very complicated." Whatever the courts ultimately decide, there will be a clear winner and loser in terms of the property. Who will wind up with the coins? What will happen to them? How valuable are they?

While awaiting their judicial fate, the 10 Switt/Langbord Double Eagles have been safely kept by the U.S. government at Fort Knox. Ironically, for now, they reside where the former "siblings" from their original mintage, melted into charmless gold bars, were shipped in 1937. The sole legal tender 1933 Double Eagle is still owned privately by the anonymous Sotheby's auction winner. He has made it available for public viewing at the New York Historical Society on the Upper West Side.

Gold and the Concept of Value

The case of the 1933 Double Eagle presents a fascinating study in history, economics, and law for the social studies classroom. Behind this tiny material object is a pedagogically rich and remarkably dramatic story. In exploring it with your students, you can help them learn about such matters as the banking crisis of 1933, the Great Depression, the American presidency, the gold standard and the role of gold in monetary systems, the history of and law regulating American coinage, and basic legal principles involving property and title. In so doing, you may also enable your students to reflect on the fundamental, but elusive, concept of value. You might begin with this seemingly simple question: Why is gold valuable?

Notes

1. Remarks of Theodore McKee, Chief Judge, U.S. Court of Appeals for the Third Circuit, En Banc Oral Argument for *Langbord v. United States* (Case No. 12-4574), October 14, 2015, www2.ca3.uscourts.gov/oralargument/audio/12-4574Langbordv.USDeptTreasury_EnBanc.mp3.
2. Petition for Rehearing En Banc of Appellee United States of America In the United States Court of Appeals for the Third Circuit, Case No. 12-4574 *Langbord v. United States of America*, July 1, 2015, http://online.wsj.com/public/resources/documents/2015_0702_langbord.pdf.

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