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## Gold Confiscation

### Here's how it could happen - and what you can do about it

#### Preface

David L Ganz is a prominent New York City attorney who specializes in precious metals and numismatic law. His wide-ranging biography includes advising several Congressional committees and commissions, including the Annual Assay Commission, life fellowship at the prestigious American Numismatic Society, past president of the American Numismatic Association, listing in *Who's Who of American Law* and the Order of St. Agatha (Commander) awarded by the Republic of San Marino. He has authored over 30 books and remains highly regarded as a consultant, writer and lawyer in the field of coins and precious metals both publicly and among his peers.



David L. Ganz, J.D.

Much has been offered in the way of opinion on the matter of a potential gold confiscation, but too little of it is well-researched, well-informed and grounded in a true understanding of the laws and regulations involved. Below Mr. Ganz applies his considerable expertise and unique perspective to the mysteries surrounding gold confiscation, unravels past legal precedent, and offers some practical suggestions on a course of action for those concerned with the possibility.

Allow me to make a personal observation and then I will send you on your way to Mr. Ganz' important and timely analysis. Too many gold owners labor under the false presumption that high-end, high-premium numismatic gold coins are the only way you can protect your holdings against a potential seizure. Many of our prospective clients are pleasantly surprised when they discover that there is a whole genre of pre-1933 gold coins that can be acquired at modest premiums over the gold content and still meet the criteria for exemption Mr. Ganz outlines. As he points out, "rare and unusual" does not necessarily equate to "pricey" or "expensive." To understand why the words "rare and unusual" are important, we invite you to read on.

Michael J. Kosares

Founder: USAGOLD-Centennial Precious Metals

Author: *The ABCs of Gold Investing: How To Protect and Build Your Wealth With Gold*

**by David L. Ganz, J.D.**

The economy is causing a number of people to query my law office about a number of gold seizure scenarios. The questions that arise from it are

- (a) what they can do to prevent seizures in the first instance,
- (b) in the second instance, what they might be able to do if seizures are authorized, and
- (c) what type of gold coins are likely not to be seized in such an event- and why.

Inquiries are coming from sincere believers - not in conspiracy theories, but rather in the "staying power" of gold in both the short term and the long run. This is not a measure of their sincerity but rather concerns that are expressed are real - these are hard money strategists, not people who go off with half-baked ideas that are politically motivated.

There's a difference. I remember about 30 years ago a well-dressed gentleman made an appointment to see me, sat in my office, and inquired if I "knew" about gamma rays. Fair enough. I assumed it was a discussion about patents, and was prepared to refer the matter to experienced patent counsel. We made small talk for another minute or two when my putative client renewed the question, and then took out a hat made of aluminum foil, put it atop his head, and proclaimed, "because they are aiming them at me, right now!" Patent counsel was not in his immediate future.

I have no great insight to offer as to whether or not gold seizure is in the offing, but there are some interesting reasons cited by many as to why the government of the United States - and maybe the world as well - may need to nationalize gold again, if only for the purpose of making sure that governments, not their citizens, remain in control of the economy.

In talking with many of the people, they question how the government could possibly enforce a gold seizure and go on to tell me that no power on earth could make them give up the gold that they have hoarded - to protect themselves from that dramatic end of days when, as in Eric Maria Remarque's novel *The Last Obelisk*, about post World War I Germany, assets (not money) alone have value.

My rejoinder is that some of the best literature has been written by authors from prison, to which they often sublimely respond that the government lacked the resources to prosecute people - and that even in the old days, that wasn't something that the government did (i.e., prosecute people for declining to turn in their gold).

### **Clearing up misconceptions about government's power to confiscate**

Wake up little Suzy!

This is not the 1957 recording by the Everly Brothers. Americans continue to have an attraction to gold perhaps because there is so little of it around. A frequent example cited by the South African Bureau of Mines is that if all the gold in the world- from the time it was mined by the Lydians (circa 750 B.C.) until today - was melted and poured into a mold the size and shape of the Washington Monument, it would not even go half way to the top.

Add to that an element of some economic uncertainty and it's not hard to figure out just why, for well over two thousand years, Gold has been an asset of choice, and why it remains so popular with collectors, who know that the numismatic value - the additional element of scarcity - only enhances its worth.

Now, let's clear up some misconceptions as to what happened in 1933-1934; what legal authority the president had, and has, to order the seizure of gold (or other precious metal);

what evidence of compulsion was used before (and what could be used now), and just what is so magical about this metal that makes some individuals covet it, and makes governments fear it.

Let's start with the premise that there is simply no element of compulsion that can be employed to make a citizen turn in gold coin or bullion, especially if the coin is legal tender. The premise is absolutely wrong.(1)

In 1933, President Franklin D. Roosevelt (using the "Trading with the Enemy Act of 1917") issued an executive order on April 5, 1933 ([Please see original U.S. post office poster](#)) requiring that less than a month later on or before May 1, 1933, all persons in possession or control of gold coin, gold bullion, and gold certificates (i.e. paper currency redeemable in gold coin of the United States) to turn them in to any federal reserve bank or any "member bank" of the Federal Reserve system.



Photo Credit Franklin D. Roosevelt Presidential Library, Hyde Park, N.Y.

(The "Trading with the Enemy Act" is still around; it was last amended by Congress a couple of years ago and the general consensus in the legal community is that a confiscation could happen again in the near future. Want proof? Read Professor Hank Holzer's article in the 1973 Brooklyn Law Review: "How Americans lost their right to own gold and became criminals in the process.")

Let's take a look at Title 12 of the United States Code, Sec 95:

**Sec 95. Emergency limitations and restrictions on business of members of Federal reserve system; designation of legal holiday.**

(a) In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of

the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(b)(1) In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affected and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

FDR's actions in 1933 - which effectively seized the gold bullion and coin that was not "rare and unusual" - was not the end of it. In 1947, 13 years later, President Harry S. Truman trumped the earlier proclamations:

**Proclamation  
No. 2725 (2)  
Exemption of Member Banks of Federal Reserve System**

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended [section 5(b) of Appendix to Title 50], and section 4 of 2Apr. 7, 1947, 12 F.R. 2343, 61 Stat. 1062 Page 3 of 18 the act of March 9, 1933, 48 Stat. 2 [this section], and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933, and Executive order of March 10, 1933, as amended, are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System; Provided, however, that no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

But there's more. Another section of the United States Code, 12 U.S.C.A. Sec 95a, provides that

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise

(a) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or

silver coin or bullion, currency or securities...

The Act of October 6, 1917 is the source of that authority, but there are provisions of Sec 95a that are very modern:

"(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds."(3)

So just 16 or 17 years ago, Congress was still amending the section, and it is highly probable that in an emergent situation, this would be revisited by the government to assure its economic and statehood survival.

Okay, that begs the fair question, can the government grab all of the gold?

Probably not, at least not without paying just compensation - which is a small solace. But what happened in 1933 is that gold (then valued at \$20.67 an ounce) was turned in and paid at face value - a double eagle or \$20 gold piece received 20 bucks from Uncle Sam in paper, or coin - but not gold bullion or gold coin.

### **Greater implications of government-owned gold**

When all of the gold that was going to be got was turned in, FDR devalued the dollar 59% he raised the price of gold from \$20.67 an ounce to \$35 an ounce. (In 1971, President Nixon raised the price of gold to \$38 an ounce, and in 1973, it was raised to \$42.22 an ounce.)

Let's look at that statistic for a minute. In 2011, the price of gold per troy ounce jumped at one point above \$1,900, yet the entire American gold reserve of 8,133.5 tonnes - 261 million troy ounces - is officially valued at \$42.22 an ounce. That makes the American official gold reserves of gold about \$11.019 billion - clearly an artificially low figure (i.e., if Fort Knox were emptied with other storage sites, the government would really have a lot more value- anywhere from 35 to 45 times the figures quoted today as being part of the official reserve.)

The Financial Management Service is a bureau of the United States Department of the Treasury. It issues a daily Treasury Statement, and a monthly as well, but the most interesting thing that they compile from our standpoint is the Strategy Report of U.S.- Owned Gold. Just what does that show?

### **Overview**

- \* The Status Report of U.S. Treasury-Owned Gold (Gold Report):
- \* Reflects gold bullion and gold coins owned by the federal government
- \* Summarizes the fine troy ounces and the book value of gold held by various facilities
- \* Identifies the value of gold coins and bullion on display at Federal Reserve banks; coins and bullion in reserve at the Federal Reserve Bank of New York; and gold held by U.S. Mint facilities
- \* The book value of gold is currently \$42.2222 per troy ounce. The informa-

tion used to compile this reporting is received from the U.S. Mint, Federal Reserve banks, and FMS.

Department of the Treasury  
Financial Management Service  
STATUS REPORT OF U.S. TREASURY-OWNED GOLD  
August 31, 2011

Summary	Fine Troy	Ounces Book Value
Gold Bullion	258,641,851.485	\$10,920,427,976.14
Gold Coins, Blanks, Miscellaneous	2,857,047.831	120,630,844.95
<b>Total</b>	<b>261,498,899.316</b>	<b>11,041,058,821.09</b>
<b>Mint-Held Gold - Deep Storage</b>		
Denver, CO	43,853,707.279	1,851,599,995.61
Fort Knox, KY	147,341,858.382	6,221,097,412.78
West Point, NY	54,067,331.379	2,282,841,677.17
Subtotal - Deep Storage Gold	245,262,897.040	10,355,539,085.76
<b>Mint-Held Treasury Gold - Working Stock</b>		
All locations - Coins, blanks, miscellaneous	2,783,218.656	117,513,614.74
Subtotal - Working Stock Gold	2,783,218.656	117,513,614.74
<b>Grand Total - Mint-Held Gold</b>	<b>248,046,115.696</b>	<b>10,473,052,700.50</b>
<b>Federal Reserve Bank-Held Gold</b>		
<b>Gold Bullion:</b>		
Federal Reserve Banks - NY Vault	13,376,961.126	564,804,727.98
Federal Reserve Banks - display	1,993.319	84,162.40
Subtotal - Gold Bullion	13,378,954.445	564,888,890.38
<b>Gold Coins:</b>		
Federal Reserve Banks - NY Vault	73,808.979	3,116,377.47
Federal Reserve Banks - display	20.196	852.74
Subtotal - Gold Coins	73,829.175	3,117,230.21
<b>Total - Federal Reserve Bank-Held Gold</b>	<b>13,452,783.620</b>	<b>568,006,120.59</b>
<b>Total - Treasury-Owned Gold</b>	<b>261,498,899.316</b>	<b>\$11,041,058,821.09</b>

Deep Storage: Deep-Storage gold is the portion of the U.S. government-owned Gold Bullion Reserve that the U.S. Mint secures in sealed vaults, which are examined annually by the Department of Treasury's Office of the Inspector General. Deep-Storage gold comprises the vast majority of the Reserve and consists primarily of gold bars. This portion was formerly called "Bullion Reserve" or "Custodial Gold Bullion Reserve." - Courtesy of U.S. Treasury Department (8-31-2011)

Here's the reality of it. The 261 million troy ounces have a current official value of \$42.22 (or around \$11 billion). Boost that fair market value of \$1,600 an ounce (or informally [say] 35 times larger, a total value of around \$400 billion.

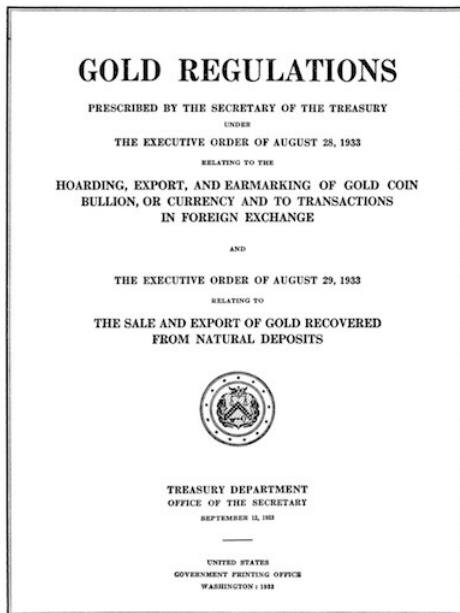
That means over \$400 billion in gold is presently in government hands - and billions more find themselves in the hands of the people, which would move to the government. Once in hand per se the dollar could be revalued or left on its own. Either way, though, the average citizen now, as then, would lose out.

## Draconian criminal penalties for those who ignored law

Those who did not want to turn in their gold (the current argument is that the government lacks the resources to make it mandatory): the executive order provided for severe, Draconian criminal penalties for non-compliance: a \$10,000 fine or 10 years imprisonment, or both. You have to be really unafraid or believe that the government would not prosecute.(4)

Some said that the government only tried to capture a single 1933 \$20 gold piece. Not true. They went after the 1933 double eagles - they sued or were sued by collectors who sought to retain the rarity. James A. Stack (no relation to the New York dealer, Stack's Rare Coins) was involved in law suits in federal and state court; L. G. Barnard, in Tennessee, was, too. Both lost, even though they had paid a lot for the coin which was both rare and unusual.

The 1933 double eagle wasn't considered that special. What the Mint viewed it as, however, was a coin that got away - and the Mint faced some pernicious people. But each individual owner was subjected to U.S. Secret Service weapons and other searches. It never was about just the 1933 \$20.



There were other cases, too. A sampling going back to the Civil War, when the Act of July 13th, 1861 allowed Treasury Regulation, No. 22, forbidding all transportation of coin or bullion to any State or section declared by the President's proclamation to be in insurrection (a Supreme Court case affirmed that right); in 1969, an airman was sentenced to 7 years at hard labor for possession and hoarding of gold coin and bullion (U.S. v. Whitfield, 1969 WL 6253), all invited by the changeover. (AFCMR, 1969).

In another case, "An indictment against Gus Farber, a diamond and jewelry merchant of San Francisco, charged... that on or about February 21, 1939, he willfully, unlawfully, and knowingly acquired thirteen genuine \$20 gold coins of the United States without a license in accordance with the President's Order No. 6260, as amended, 12 U.S.C.A. 95 note", (Farber v. U.S.,

114 F.2d 5 , C.A.9, 1940). He was convicted.

In another instance, a 206 troy ounce gold rooster was forfeited to the United States: "Richard L. Graves... was the owner of certain properties in Sparks, Nevada. Included in these properties was the 'Dick Graves Nugget Casino'. As part of the operation of that establishment, Graves ran a dining room in which the specialty was fried chicken. This room was known as the 'Golden Rooster Room'. For various reasons, including, among others, the advancement of the interests of his business establishment, Graves developed the idea of acquiring, and showing, a solid gold rooster as a main object of attraction in this room." (U. S. v. One Solid Gold Object in Form of a Rooster, 208 F.Supp. 99, D.C.Nev. 1962.)

In sum, there's ample authority - and many cases- allowing for seizure of gold coins and bullion.

What then of the exemptions (and how does that figure in the equation)?

When the government nationalized gold coin and bullion nearly 80 years ago, it gave less than month for Americans to turn in their hoard, allowing an exemption of up to \$100 in gold

coin per person, and also permitting collectors of "rare and unusual" coin to maintain their collections. (More on this exemption below.)

On March 9, 1933, the statute was amended to declare (as it remains today) that "during time of war or during any other period of national emergency declared by the President," the President may regulate or prohibit (under such Rules and regulations as the President may prescribe) the hoarding of gold bullion. (Emphasis added). This included gold coinage.

The following day, on March 10, 1933, acting pursuant to the newly emboldened statute, the President prohibited the removal from the United States of "any gold coin, gold bullion, or gold certificates" except in accordance with regulations. (Executive Order No. 6073, 31 C.F.R. Sec 120.3)

Presidential Proclamation No. 2038 (48 Stat. 1689 (1933)) sets the stage for all this:

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

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

Whereas these conditions have created a national emergency; [Author's Note: and a banking holiday would be in the national interest]

### **Proclamation**

Now, THEREFORE, I, Franklin D. Roosevelt, President of the United States of America, in view of such national emergency and by virtue of the authority vested in me by said Act and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the 6th day of March, to Thursday, the 9th day of March, 1933, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended."

### **"Rare and unusual" coins exempted from 1933 seizure**

There is no precise definition of what constitutes a "rare coin." Executive Order 6260 (issued by FDR on August 28, 1933) recalled all gold coins then in circulation, except "rare and unusual" coins, which were subsequently interpreted to mean as any U.S. gold coin minted prior to 1933. In *Coin World Almanac* (6th ed. 1990), it is noted that "[T]here are many factors which can make a particular issue coin rare. These include total mintage, the normal attrition of circulation, official and private meltings, and the level of collector interest at the time of issue." One could argue that subsequent collector interest is also a factor.

As to why "rare and unusual coin" was exempted, it probably didn't hurt that William H. Woodin was FDR's Secretary of the Treasury, and that the elfin man just happened to be a serious coin collector. He allowed everyday people to keep \$100 in gold coin (it was the Depression, after all) and also allowed retention of "rare and unusual coins" having a "recognized special value to collectors". (As you will read below, it was actually acting secretary Dean Acheson who did the dirty deed).

Born in May, 1868, Woodin was general superintendent of Jackson & Woodin Mfg. Co.,



manufacturers of railroad cars; he later became president of American Car and Foundry Co.

A song writer in his spare time (Johnny Mercer was an early collaborator), the Songwriter Hall of Fame lists a winner in that effort: "SPRING IS IN MY HEART AGAIN, Writer: Johnny Mercer, William Woodin; Publisher: EMI Miller Catalog Inc./Johnny Mercer Foundation". Another song: the "Franklin Delano Roosevelt Victory March," which was played at the inauguration.

A lifelong Republican, Woodin met FDR as a fellow trustee of the Warm Springs Foundation; they became friends, and Woodin moved to the inner circle before the 1932 presidential campaign. He was quickly confirmed as Treasury secretary, taking office a day after FDR took the presidential oath, March 5, 1933. Woodin's collection of pattern coins became the model for the Adams-Woodin numbering system (used for two generations before Judd superseded it), and he was instrumental in obtaining the collector's exemption.

As mentioned earlier, authority to issue these enactments was derived from the Trading with the Enemy Act of 1917 and the Emergency Banking Act, found in title 12 of the U.S. Code in section 95. Even after 1977 amendments to the trading legislation, these other provisions remain in effect.

However, the Emergency Banking Act states what powers the President may invoke during a national emergency with respect to banks which are members of the Federal Reserve System - it does not give the President authority to declare a national emergency for purely domestic reasons.

Originally, the Treasury secretary had the right to issue regulations governing private gold ownership (including coins). That in substance was that "Gold coin of recognized special value to collectors of rare and unusual coin may be acquired and held, transported within the United States, or imported without the necessity of holding a license therefor. Such coin may be exported, however, only in accordance with the provisions of Sec. 54.25 of title 31 of the Code of Federal Regulations.

There were initial provisos as well (which changed over time):

"(b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made subsequent to April 5, 1933, is presumed not to be of recognized special value to collectors of rare and unusual coin."

Later changes included these:

"The current licensing policy will be retained for coins minted after January 1, 1934. Gold coins may still be detained at Customs stations for examination as to their authenticity. Counterfeit coins may not be imported and are subject to seizure. Restrikes, that is modern reproductions of gold coins bearing a much earlier date, will also not qualify for importation. Therefore, travelers and coin collectors should be especially careful that the coins they purchase abroad are genuine." (Please see original Treasury Department notice.)

Management of these gold coins was undertaken by the Office of Domestic Gold and Silver Operations of the Treasury Department. Dr. Leland Howard was the first director; Thomas Wolfe was the last to hold the title as the activities of the department were phased out in

the early 1980's. Product of gold confiscation was gold melting; the coins were melted into bricks that ultimately found their way to Fort Knox. Although the Mint had a program from the mid-1860's until about 1950 to melt or re-coin copper, silver and gold coinage, the ma-

	\$1 gold	\$2.50 Gold	\$3 Gold	\$5 gold	\$10 gold	\$20 gold
Total Minted	19.8748	20.4268	0.5398	78.9119	57.6835	174.1056
Tot Melted	0.0319	3.2049	0.0583	26.5723	27.1974	67.9063
Remaining	19.8429	17.2220	0.4815	52.3395	30.4861	106.1994
Melted% of Minted	0.16%	15.69%	10.80%	33.67%	47.15%	39.00%
%Remaining	99.84%	84.31%	89.20%	66.33%	52.85%	61.00%
<b>BY YEAR:</b>						
1933	3,128	1,585,851	284	6,945,392	7,772,007	39,245,317
1934	4,423	737,468	1,272	8,770,390	7,526,849	23,638,308
1935	455	8,687	41	161,414	2,200,892	3,355,580
1936	717	13,500	69	31,856	19,721	71,394
1937	464	11,090	52	21,144	11,741	25,175
1938	533	13,900	62	30,974	18,239	32,804
1939	323	29	751	17,711	10,998	14,866
TOTAL 1933-39	10,043	2,370,524	2,531	15,978,881	17,560,446	66,383,444
TOTAL 1933-39	31,862	3,204,854	58,304	26,572,327	27,197,378	67,906,256
Recall% of all total	31.52%	73.97%	4.34%	60.13%	64.57%	97.76%

majority of gold coins were taken in and destroyed in a Seven year period (1922-1939): The accompanying chart that I prepared, based on original research, shows for example that about 174 million double eagles were minted between 1849 and 1933. Of these, 67 million (or 39%) were melted by the Mint. The overwhelming majority of those were during the seven year period 1933-1939 (97.7 percent, in fact).

The other denominations are self-explanatory; data is derived from the annual reports of the director of the mint, a Treasury Department document. All told, over 124 million coins were melted through the years (102 million gold coins were melted as a result of government assistance from 1933- 1939).

These coins are scarce, but the surviving coins (pre-1933) have another factor that militates in their favor as a collectible and potentially exempt from a future seizure, the government found that they were "rare and unusual", and hence were worth well beyond their face value. Most believe that if the government were to favor gold or silver confiscation again, the "horseshoe" brigade would want to quickly get it right.

That the Treasury Secretary would exempt "rare and unusual" coin from seizure asks more questions than it answers. What precisely is a "rare" coin? There is no precise definition of what constitutes a "rare coin."

Citizens once had the right to deposit silver or gold bullion with the mint and receive, in return, a full measure of precious metal coinage, less the cost of coining(5). The government and the population could thus control currency supplies. The right to deposit these metals was called "free coinage", though this was hardly so since there was a modest charge by the Mint for the service. Free coinage of silver ended with passage of the Coinage Act of

1873; general circulation gold coinage itself was halted in 1933, and created the first modern government regulatory function: controlling those numismatic coins which were exempted from an otherwise nation-wide recall of gold coins.(7)

With the 1933 gold recall, all but rare and unusual coins were required by law to be turned in to the government in exchange for paper currency.(8) Executive Order 6260 provided in pertinent part that "no return...[is required of](b) gold coins having a recognized special value to collectors of rare and unusual coin..." There were other limitations. Because more than \$1.5 billion in coins were melted, calculated at their face value, millions of coins were forever destroyed.(9)

### **Collector exemption leads to rewards for astute period gold owners**

Collectors knew, of course, that by virtue of their status as a collector, they were able to continue to hold gold coins, even Quarter Eagles (though no more than four of each date and mint mark) while other citizens were forced to surrender their coins. Each of these pieces had been produced at a time when gold was valued at \$20.67, and a \$20 gold piece contained \$19.99 worth of gold. So, while it was illegal for most Americans to own gold, that didn't stop entrepreneurs like Louis Eliasberg of Baltimore or Harold Bareford, a New York attorney who represented Warner Brothers Pictures, from holding gold. It also didn't stop John Jay Pittman, then a salaried chemical engineer from Rochester, New York, who worked as an employee of the Eastman Kodak Company.



John Jay Pittman, David L. Ganz, Rep. Wright Patman  
(Chairman, House Banking Subcommittee) and Rep.  
Leonor Sullivan / 1973

They each exploited a loophole that permitted coin collectors - actually those who acquired "rare and unusual coin" - to keep up to five specimens of each date and mintmark without being in violation of the Executive Orders that otherwise recalled gold coinage to the melting cauldrons of the 1930's. (Bullion ownership itself - bars, wafers and similar items - were prohibited in all but a few instances)

When Stack's sold the Harold S. Bareford collection of United States gold coins at public auction on Dec. 1,

1978, the year Bareford died, it completed a transaction that had begun 45 years earlier when Bareford, the former general counsel to Warner Brothers, used his knowledge of the law to buy gold at a time that it was illegal to do so - unless the coins were "rare and usual" and the person was a collector of "rare and unusual coin".

Between 1941 and 1954, Bareford bought gold bullion in the form of coins. Some were true rarities, but most coins were worth not much over their devalued dollar's gold worth. (FDR devalued the dollar by about 59%, raising the price of gold from \$20.67 an ounce to \$35; in the process, a \$20 gold piece containing .9675 troy ounces pure gold suddenly had \$33.86 worth of gold in it).

Many of Bareford's coins were modestly priced over their gold cost. An 1836 \$5 gold piece (in brilliant uncirculated condition) was bought by Bareford for a little more than double face value (\$10.20).

To go to the end of the story, Bareford's gold coin collection (he also collected English coins and non-gold U.S. coins) was sold in a 242 lot offering that cost the lawyer \$13,832.15 over a period of about 15 years. The 1978 resale price was an incredible \$1,207.215. (10)

The story is well worn, and many times told, but nearly all of my prior focus has been on the dramatic results and the major rarities and high quality gold coins that Bareford bought - and how these highly rated coins jumped in value.

Back in 1978, when I covered the auction sale as a newspaper writer and columnist for a weekly numismatic periodical, Bill Bareford, Harold's son, gave me something unique: a listing of the actual cost of each of the gold coins in his father's collection in addition to its pedigree (or source or provenance).

Similarly, many of Eliasberg's coins had a provenance written into the catalogue description. Pitman's was the best documented, and when each of the three is looked at in tandem, it's clear that they initially invested in gold coins that did not cost much more than their bullion value. This offered an excellent return on investment over time.

Pittman's acquisitions were well known because many were displayed at a "show and tell" at the Rochester Coin Club, Others were bought at public auction, and each told a story. Pittman's collection was sold in 1997-1999 in a series of sales by David W. Akers for over \$40 million. Nice story, but the bullion or near-bullion prices paid by Pittman at acquisition compared with their still phenomenal results.

Here are some gold half eagles (\$5 gold pieces) from the Pittman collection, all of the 1850's, and each purchased on bullion or near-bullion conditions. Note that the rate of return on each (compounded) is substantial for the bullion, bullion-like and non-bullion coin (which is offered just as a point of contrast). John Jay Pittman - selected bullion and near-bullion coins (sold October, 1997).

LOT	Date	Description	Gold Weight	Purchase Price	Purchase Date	Effective Price per troy ounce*	1997 Selling price	Compounded Net gain
997	1851-O	F-VF x- Stacks Baldenhofer	0.24185	\$25.00	1955	\$103.36	\$468	7.22%
999	1852	unc x-Michael Higgy- Kosoff	0.24185	\$15.00	1943	\$62.02	\$6,600	11.93%
1000	1852-c	vf Kosoff	0.24185	\$27.50	1957	\$113.71	\$1,540	10.59%
1002	1853	au Elser, Higgy (Kosoff)	0.24185	\$15.00	1949	\$62.02	\$1,045	9.24%
1006	1854-d	xf Ben Douglas	0.24185	\$28.50	1957	\$117.84	\$4,400	13.43%
1007	1854-o	vf New Netherlands 50th	0.24185	\$19.00	1957	\$78.56	\$1,430	11.41%
1008	1855-c	vf KRIESBERG SCHULMAN	0.24185	\$51.00	1959	\$210.87	\$1,210	8.69%
120	1858-D	vf x-Stacks Balderhofer	0.24185	\$25.00	1959	\$103.37	\$1,210	10.75%
1093	1908	Ch. AU Lib. head x-George Bauer	0.24185	\$10.50	1946	\$43.42	\$467.50	7.73%

John Jay Pittman (1913-1996) had an eye for coins and collected them seriously. He bought coins at coin shows, coin club meetings, at auction and from the stock of well known dealers. In this chart, which shows some of his \$5 Gold pieces, look at "Effective Price Per troy ounce\*" which is sort of like buying bologna by the pound. Pittman is shown as paying anywhere between \$43.42 and \$117 an ounce for these coins. David W. Akers auctioned the collection, and the unit cost of Pittman's profit is shown.

Simultaneous with the FDR gold recall came a devaluation of the dollar,(11) which meant that the price of gold was raised from \$20.67 and ounce to \$35.00. Since each \$20 gold piece now contained \$33.86 worth of gold, a significant advantage was attained by those collectors who retained their coins.

## **Government clarifies the definition for "rare and unusual coins"**

By September, 1933, the Treasury Department had prepared and issued a compilation of regulations in booklet form. Prepared under the signature of Dean Acheson, then Acting Secretary of the Treasury, the document is entitled "Gold Regulations Prescribed by the Secretary of the Treasury under the Executive Order of August 28, 1933 Relating to the Hoarding, Export, and Earmarking of Gold Coin Bullion, or Currency and to Transactions in Foreign Exchange and the Executive Order of August 29, 1933 Relating to the Sale and Export of Gold Recovered from Natural Deposits," a document consisting of more than 13,000 words. (Acheson, who later became Truman's Secretary of State, was forced to resign because of his opposition to FDR's inflate-the-currency with gold policies).

Many collectors subsequently sought to acquire post-1933 coinage, which they claimed was rare and unusual, and eventually, the Treasury Department set up an Office of Domestic Gold & Silver Operations (ODGS) to deal with the many claims. Into the 1970's, the ODGSO was still opining which gold coins were legal to own, and which were not.

In May of 1969, the Treasury clarified (by issuing a list) of those coins that were eligible for importation as "rare and unusual"; more than 200 gold coins made this list. By 1971, Mexican gold coins came off because the country was issuing restrikes. Then, starting in 1972, intense pressure began to mount in Congress to repeal the gold ownership prohibitions; this would become a keen political issue in conjunction with the debate concerning America's bicentennial coin program.(12) But it was in December, 1973 that the ODGSO issued a famous memo that every collector of gold coins issued prior to 1960 should remember even today:

The GOLD COIN STATEMENT was specific in stating that

"All foreign gold coins minted 1934 through 1959, if genuine and of legal issue, are now considered to be of such recognized special value to collectors of rare and unusual coins as to warrant the issuance of a general license for their importation into the United States under section 54.20(e) of the gold regulations for numismatic purposes."

That was a wrap, for it meant that importation of coins made prior to 1960 were "rare and unusual" and thus exempt under the 1933 and 1934 Executive Orders. It would be highly unlikely that the government would put somebody to his or her detriment after giving it an "okay", which is why, even today in 2011 and beyond, such importance is placed in these coins.

To summarize the feelings of some knowledgeable observers, the government's position in declaring the coins "rare and unusual" was something that would be hard to refute; in other words, the clock could not be un-rung - and this list of coins prior to 1960 was virtually immutable.

## **The modern era in gold ownership**

By December 31, 1974, private gold ownership was legal in every form, and new marketplaces began to open up. Collectors were able to buy bullion coins - pieces made primarily for the metallic content.

Legal tender coins like the South African Krugerrand proved so successful that millions were sold each year in the American market,(13) until ultimately in late 1986, the U.S. Government itself became a competitor of the by-then-banned Krugerrand(14) Congress authorized an American Eagle bullion coin in both gold and silver.(15) Amid much fanfare, the gold bullion coins were introduced in September, 1986, and, by year's end, its silver coun-

terpart was minted. Complete sell-outs of proof versions of both of these popular 1986-dated pieces occurred, with uncirculated sales of millions of pieces being far beyond the projections of the mint, or its private industry distributors. Tens of millions of the silver coins had been issued by 1991; gold coin sales, while less, were still considerable.

So that brings us to the second decade of the 21st century. See what this economic scenario sounds like. The U.S. Mint's bullion program has had more than \$2.8 billion in bullion sales in 2010. Gold coins that once had virtually the same value as stamped on their face or reverse - the double eagle or \$20 gold piece contains \$19.99 worth of gold - now have a worth that is substantially more; way more. The double eagle's worth on one day this year was over \$1,800 in gold content, or more than 90 times face value.

A British sovereign, once the equivalent of one pound sterling or \$4.86 when gold was valued at \$20.67 an ounce) now is worth over \$350 a coin. The ubiquitous 20 Franc coin (used in many countries under a different name: 20 Lire in Italy, the Vrenelli (20 Fr. Switzerland), and so forth, once \$3.73 when gold was priced at \$20.67 an ounce (1837-1933, more or less), today is valued in the range of \$300 a coin, or more.

And that doesn't count numismatic value.

Let's look at this scenario:

It was a dark and stormy economy. Unemployment (including the discouraged workers) exceeded 18 percent. The stock market, in the midst of a trading session, suddenly lost steam and the Dow Jones Industrial Average went into a steep decline that made some wonder if it would - or could - ever come back. Gold was positively volatile.

The first three sentences sound a lot like a precursor to the Great Depression - and indeed, read like a pot boiler of the early 1930's. And all this may sound a lot like something that you'd read in the newspapers of the late 1920's, after the Crash that saw the Dow decline by 25%; but it turns out that it also could be that day in May, 2010 when the Dow plummeted by nearly 1,000 points at mid-day. Or that recent day in September, 2011 when gold dropped over \$100 an ounce and silver plummeted from \$49 to \$30.

Actually, all the rest of the economic implications is contemporary, 21st century - and 1933 - wrapped into one.

In either case, the result could be the same because the "Trading with the Enemy Act of 1917" is still good law, and could still be used by the President of the United States, as FDR used it in 1933 to nationalize domestic gold and silver coin and bullion and JFK used it during his administration to require Americans owning gold coin and bullion abroad to turn it all in.

Noone can say for sure what the future will bring. For all the precedent that argues against it - with surviving morsels of gold, the siren call of seizure could be stirring even as this is being written. We've managed to annoy every segment of the government that would be likely to support, and enforce, that type of order.

Ultimately, like the 1930's litigation that pursued a dozen 1933 double eagles in as many lawsuits and courts, the "near seizure" of all of these gold coins is predicated on how the government views the threat; how big or expansive it is, and whether or not a chink in the mint's armour translates to an in-place abolition of the position - is it the gold, what it represents, or that the holders found a way around a loophole. (Either way the judgement will need to be determined).

## Recommendation

Here's what I conclude:

FDR's presidential seizure of gold specifically exempted "rare and unusual coin". That didn't mean "expensive", and it was not a synonym for "pricey".

Some of the coins that collectors like John Jay Pittman, Louis Eliasberg, and Harold Bareford bought for their collection were remarkably inexpensive. Pittman bought a 1908 \$5 gold piece in about uncirculated condition for just \$10 - but it was still a "rare coin".

In my book, *Planning Your Rare Coin Retirement* (1998), had three portfolios. The first portfolio included a gold coin in it, and I suspected that I was going to be challenged on that, so I put together a portfolio of 100 gold coins that were then available for around \$100 or less. Because a number of collectors and investors who acquire gold coins also go for platinum coins, several of them are included. ([Please see full table: World Gold Coin Portfolio](#))

What they all have in common is that even though they mostly have modest mintages, they all



Pre-33 world gold coins

are slavish to the precious metals market. In other words, their value is determined primarily by movement in the underlying precious metals value. When it goes up, so do they.

The average coin in the 1997 gold and platinum portfolio cost \$86. (The prices for these coins were not done from catalogues but from real advertisements in numismatic periodicals that included *World Coin News*, *Numismatic News*, *Coins Magazine* and other periodicals that included magazines and newspapers). The individual gold and platinum pieces had a portfolio value of about \$9000.

When *Planning Your Rare Coin Retirement* was written in 1997, the world was a different place. September 11 had not yet happened; the 1993 World Trade Center attack was already a distant memory. Precious metal was at an awkward stage; gold was \$335 an ounce, silver weighed in at \$4.54, and platinum was \$388 an ounce. The coin prices reflected this reality.

A few more stats: The Dow Jones Industrial Average was 7750, Standard and Poors was 970, and Farmland in Iowa averaged \$1,835 an acre. The Consumer Price Index stood at

around 160, and Treasury bills maturing in less than a month had a rate of 5.26%.

The value in October, 2011 of this same portfolio was valued at nearly \$27,800 - a gain of over threefold over the intervening dozen years - with results of simple interest of about 16 percent annually and a compounded rate of return of about 9.37%, not bad by any stretch of the imagination in the 1998 to 2011 time period.

## **Conclusion**

Here's the bottom line point. There are powerful interests that don't want you to plan for your gold coin retirement. They want your investments in a different media. The same is true if you want to buy gold bullion or gold coins. It may be that gold seizure (or the fear of it) is how they move your investment choice, or it could simply be what naturally occurs in a Darwinian selection of investment vehicles (survival of the fittest).

Regardless, what's clear to me is that if you are serious about using gold coins as an investment vehicle - whether they are French Roosters, Swiss Vrenelli, British Sovereigns or an American quarter eagle (or even double eagle) - you need to consider where gold bullion versus "rare and unusual" gold coin fits into your financial strategy.

Editor's Note: As a caveat, it needs to be stated that USAGOLD-Centennial Precious does not in any way intend this to be a formal, individualized legal opinion, but rather an overview to help you form your own opinion on whether or not pre-1933 gold coins should be included in your hedging plan. Furthermore, we are not stating categorically that pre-1933 gold coins would survive confiscation, nor are we stating that another confiscation is likely or imminent.

## **Related reading**

[Investing in Pre-1933 Gold Coins for Asset Preservation and Profit Potential](#)

by Michael J. Kosares

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Notes to text (Ganz)

1. I am indebted to Professor Henry Mark Holzer, author of "How Americans Lost the Right to Own Gold and Became Criminals in the Process", 39 Brooklyn L. Rev. 517 (1973) for



many of the ideas expressed by me since reading his remarkable article nearly 40 years ago.

2. Apr. 7, 1947, 12 F.R. 2343, 61 Stat. 1062

3. 1994 Amendments. Par. (4). Pub.L. 103-236, Sec. 525(b)(1) added this section.

4. The law books are littered with cases of individual protestors who frequently go to jail for a substantial period of time so that the government can make its point.

5. See, e.g., Mint Act of April 2, 1792, ch. 16, 1 Stat. 246, sections 14-15; Coinage Act of 1837, ch. 3, 5 Stat. 136, sections 14-20.

6. Ganz, "Coinage Act of 1873 and the Demonetization of Silver," 86 *The Numismatist* 2003 - 2009 (1973).

7. Executive Order 6260 of Aug. 28, 1933 recalled all gold coins, but exempted "rare and unusual gold coins." What was rare, or unusual, constituted a regulatory function of the Treasury Department in succeeding years. Millions of coins were melted, Ganz, "The Age of Gold", 86 *The Numismatist* 1177, 1179 (1973). Gold commemorative coinage resumed in 1984, and bullion coinage was produced starting in 1986, see, 31 U.S.C. Sec 5112(a)(7) - (10).

8. See, e.g., *Stack v. Strang*, 94 F. Supp. 54 (SDNY 1950), rev'd on other grounds 191 F.2d 106 (2d Cir. 1951), later history 112 N.Y.S.2d 197 (Sup.Ct. N.Y. 1952).

9. Ganz, "The Age of Gold", 86 *The Numismatist* 1177, 1179 (1973).

10. Bareford also held onto other U.S. coins, including an 1804 silver dollar. Yes, he did well with his gold bought at nearly bullion, but didn't do badly with a nova, high powered rarity. Bareford bought the 1804 dollar out of the Charles Williams Sale (1950) for \$10,000. After his death, it sold (in 1981) for \$280,000 at a Stack's auction, where Ed Milas of RAR-COA was purchaser. The rate of return: 11.3% compounded annually.

11. 1934 Proc. No. 2072, Jan. 31, 1934, 48 Stat. 1730 revalued the dollar to \$35 an ounce (15-5/21 grains of .900 fine gold).

12. Ganz, "Tribute to 200 Years of Freedom: The Story of How the United States Got Its Bicentennial Coinage," 88 *The Numismatist* 499, 1013-1015 at notes 385-389 and accompanying text (1975), subsequently reprinted in revised form as 14 Bits.

13. See, e.g., *Modern Gold Coinage* 1983 at 24 (Gold Institute publication).

14. See, Executive Order 12535 (Oct 1, 1985), and 31 CFR Sec. 545.101 et seq., conveniently reprinted in "Numismatics and the Law", *Coin World Almanac*, 6th ed., at 60 (1990).

15. Pub. L. 99-61, Title II 1 section 202, 99 Stat. 115 (July 9, 1985); Pub. L. 99-185 (Dec. 17, 1985), 99 Stat. 1177, 31 USC Sec. 5112 (a)(7)-(10) and (e).

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