NORMAN *v.* BALTIMORE & OHIO RAILROAD CO.*

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

UNITED STATES ET AL. *v.* BANKERS TRUST CO. ET AL., TRUSTEES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Nos. 270, 471 and 472. Argued January 8, 9, 10, 1935.—Decided February 18, 1935.

1. A bond for the future payment of a stated number of dollars in gold coin of the United States " of or equivalent to the standard of weight and fineness existing " on the date of the bond, or for payment in gold coin of the United States " of the standard of weight and fineness prevailing " on the date of the bond, is not a contract for payment in gold coin as a commodity, or in bullion (cf. *Bronson* v. *Rodes,* 7 Wall. at p. 250), but is a contract for payment in money. Pp. 298–302.
2. Such " gold clauses " are intended to afford a definite standard or measure of value, and thus to protect against depreciation of the currency and discharge of the obligations by payment of a lesser value than that prescribed. P. 302.
3. In determining whether the Joint Resolution of June 5, 1933, exceeded the power of Congress by undertaking to nullify such " gold clause " stipulations in preëxisting money contract obligations, and by providing that such obligations shall be discharged, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts, the Resolution must be considered in its legislative setting, with other measures *in pari materia* (p. 297), and in the light of the following principles, which have heretofore been laid down by this Court, viz:

   (a) The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the ag-

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* No. 270, *Norman* v. *Baltimore & Ohio R. Co.;* Nos. 471 and 472, *United States* v. *Bankers Trust Co.;* No. 531, *Nortz* v. *United States, post,* p. 317; and No. 532, *Perry* v. *United States, post,* p. 330, popularly called the " Gold Clause Cases," were disposed of in three opinions (*post,* pp. 291, 323, and 346). Mr. Justice Stone filed a concurring opinion in the *Perry* case, *post,* p. 358. The dissenting opinion, *post,* p. 361, applies to all of the cases.

gregate 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. P. 303.

(b) The Constitution means to provide the same currency of uniform value in all the States; and therefore the power to regulate the value of money was withdrawn from the States and vested in Congress, exclusively. P. 302.

(c) Congress has power to enact that paper currency shall be equal in value to the representative of value determined by the coinage acts, and impress upon it such qualities as currency for purchases and for payment of debts as accord with the usage of sovereign governments. P. 304.

(d) The authority to impose requirements of uniformity and parity is an essential feature of the control of the currency; and Congress is authorized to provide a sound and uniform currency for the country and secure the benefit of it to the people by appropriate legislation. P. 304.

(e) The ownership of gold and silver coin is subject to those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. Hence, the power to coin money includes the power to forbid mutilation, melting and exportation of gold and silver coin. P. 304.

(f) Private contracts must be understood as having been made subject to the possible exercise of the rightful authority of the Government; and their impairment, resulting from such exercise, is not a taking of private property for public use without compensation, or a deprivation of it without due process of law. Pp. 304–305.

4. In the exercise of the constitutional authority of Congress to regulate the currency and establish the monetary system of the country, existing contracts of private parties, States or municipalities, previously made, and valid when made, but which interfere with the policy constitutionally adopted by Congress, may be set aside, not only through the indirect effect of the legislation, but directly, by express provision. Pp. 306–309.

5. Whether the gold clauses of the contracts here in question may be deemed to interfere with the monetary policy of Congress, depends upon an appraisement of economic conditions and upon determi-

nations of questions of fact, as to which Congress is entitled to use its own judgment. P. 311.

6. The Court may inquire whether the action of Congress, invalidating such clauses, was arbitrary or capricious; but if that action has reasonable relation, as an appropriate means, to a legitimate end, the decision of Congress as to the degree of necessity for its adoption is final. P. 311.

7. Congress was entitled to consider the great volume of obligations with gold clauses, because of its obvious bearing upon the question whether their existence constituted a substantial obstruction to the congressional policy. P. 313.

8. Taken literally, as calling for actual payment in gold coin, these promises were calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of gold coin, in direct opposition to the policy of Congress. P. 313.

9. Congress has power, in its control of the monetary system, to endeavor to conserve the gold resources of the Treasury, to insure its command of gold in order to protect and increase its reserves, and to prohibit the exportation of gold coin or its use for any purpose inconsistent with the needs of the Treasury. P. 313.

10. Treated as "gold value" clauses, such stipulations are still hostile to the policy of Congress, and subject to prohibition, for the following reasons:

(a) Although, at the date of the Joint Resolution, the dollar had not yet been devalued, devaluation (reduction of the weight of the gold dollar as the standard of value, which occurred later) was then in prospect and a uniform currency was intended. P. 314.

(b) Congress could constitutionally act upon the gold clauses in anticipation of this devaluation, if the clauses interfered with its policy. P. 315.

(c) It may be judicially noticed that the bonds issued by States, municipalities, railroads, other public utilities and many industrial corporations contain such gold clauses. P. 315.

(d) If States, municipalities, railroads, public utilities, industrial corporations, etc., receiving all their income in the devalued currency were obliged to pay their gold clause obligations in amounts of currency determined on the basis of the former gold standard, it is easy to see that this disparity of conditions would cause a dislocation of the domestic economy. P. 315.

265 N. Y. 37; 191 N. E. 726, affirmed.

Dist. Ct. U. S. (unreported), affirmed.

WRITS OF CERTIORARI were granted (293 U. S. 546, 548) to review two decisions sustaining the power of Congress to invalidate "gold clauses" in private money contracts.

In the first case, an action on a coupon from a railroad bond, the Court of Appeals of New York sustained the trial court in limiting the recovery to the face of the coupon, dollar for dollar, in currency.

In the second case, a proceeding under § 77 of the Bankruptcy Act, a federal District Court made a like ruling with respect to certain other railroad bonds. In this case two appeals were taken to the Circuit Court of Appeals, one allowed by that court and the other by the District Judge. While they were pending, this Court granted writs of certiorari on the petition of the United States and the Reconstruction Finance Corporation, which had both intervened in the District Court.

Mr. Emanuel Redfield for Norman, petitioner. *Mr. Dalton Dwyer* was with him on the brief, from which the following summary is extracted:

The gold clause implies payment in equivalent of gold if payment in gold becomes impossible. Its purpose is to guard against a depreciated currency.

Congress has power to coin money and regulate the value thereof. To coin money is to give the impression a governmental authority. "To regulate the value thereof" would mean to state the character of that coin in terms of its exchange value and to give it a content of a nominal amount. To regulate the value of money does not imply that every obligation payable in money is susceptible of regulation by Congress. In *Fox* v. *Ohio,* 5 How. 410, the Court indicated this difference and denied that the money powers of Congress included the right to control private transactions within the States.

There is no power in Congress directly to enlarge or diminish an obligation. Such powers belong to the States, if they exist at all. Congress desiring to tamper with the content of the gold unit, finds the outstanding gold-clause obligations inconvenient, because they are so many. Therefore, to suit its convenience, they are abolished. If only one million dollars of such obligations had existed, the inconvenience would not have been deemed substantial, and they would have been allowed to exist.

These gold obligations were no part of the monetary system. They were economic transactions in a price system. The money unit and medium were mere incidents of the transaction.

The proposition that contracts payable in gold or its equivalent would control the value of the currency, i. e., prevent a raising or lowering of the content, is refuted by the fact that the object of the parties is to fix a more accurate measure of the value of their exchange.

The use of any standard as the measure of the intent of the parties does not, by "prophetic discernment," hinder the monetary functions of the Government. Surely, if the value of wheat were used as the standard, the power to regulate money would not be affected. If parties receive an equivalent of any measure in paper money or credits, whether that measure be gold or wheat, the currency is not affected. The bargain is merely performed according to their intent.

The *Legal Tender Cases* are distinguishable. This Court there held that the paper had the characteristics of money and that acceptance of it could be compelled as payment of an obligation. The compulsion was directed at the mode of payment, not the extent of the obligation.

The obligation of the gold clause is not the nominal face amount, but the equivalent of the gold coin in legal tender. Thus understood, the integrity of the obligation and the power of legal tender to discharge it in dollars, are preserved. See *Trebilcock* v. *Wilson,* 12 Wall. 687; *Gregory* v. *Morris,* 96 U. S. 619. The *Legal Tender Cases* did not decide that the power to compel acceptance of paper currency in discharge of an obligation implied a power to diminish an obligation that was measured in a special way. This Court repeatedly implied the contrary.

This Court has before passed upon legislation masquerading as an aid to an express constitutional power. *Mugler* v. *Kansas,* 123 U. S. 623, 661; *McCullough* v. *Maryland,* 4 Wheat. 316, 423; *Hammer* v. *Dagenhart,* 245 U. S. 251; *Kidd* v. *Pearson,* 128 U. S. 1; *United States* v. *Chicago, M., St. P. & P. R. Co.,* 282 U. S. 311; *First Employers' Liability Cases,* 207 U. S. 463; *United States* v. *DeWitt,* 9 Wall. 41; *Paul* v. *Virginia,* 8 Wall. 168; *Ducat* v. *Chicago,* 10 Wall. 410; *Hill* v. *Wallace,* 259 U. S. 44; *Blumenstock Bros.* v. *Curtis,* 252 U. S. 436; *Trade Mark Cases,* 100 U. S. 82; *United States* v. *Fox,* 95 U. S. 670; Kent's Commentaries, 12th ed., vol. 1, p. 254, Mr. Justice Holmes; Field, J. dissent, *Legal Tender Cases,* 12 Wall. 651; *Bailey* v. *Drexel Furniture Co.,* 259 U. S. 20; *McCray* v. *United States,* 195 U. S. 27, 63, 64; McReynolds, J., dissent, *Rupert* v. *Caffey,* 251 U. S. 264, 304; *Lambert* v. *Yellowley,* 272 U. S. 581, 597.

The use of gold as a measure of value is not an evil. Any object could be used as such a measure. Yet no one can insist that a contract calling for a payment measured by the value of any commodity is subject to action by Congress. This, we submit, is of greater moment when one considers that under the "Gold Reserve Act of 1934," the coining of gold has been withdrawn and gold as a circulating medium of exchange has been abolished. Now, it is only a base for values. It is now the same as the standard weights and measures kept in seclusion in Washington. Could any one assert that Congress could pass a law under its power to regulate weights and measures, stating that a contract for the delivery of a bushel of wheat could be discharged by the delivery of only half a bushel?

Bankruptcy laws are express laws that impair the obligations of contracts. That power is specific for that purpose, and includes the power to regulate the relation of debtor and creditor by the process of composition. If this specific power exists for those purposes, it can hardly be said that the power over money includes an implied power to compose and regulate the obligations between creditor and debtor.

Assuming an emergency exists, an emergency cannot grant a power. *Home Bldg. & Loan Assn.* v. *Blaisdell,* 290 U. S. 398.

If this legislation purports to be based upon an emergency, it is defective because there is no time limit set in the law as the duration of the emergency. *Chastleton Corp.* v. *Sinclair,* 264 U. S. 543; *Worthen* v. *Thomas,* 292 U. S. 426.

Should it be argued that the power is derived from the power of Congress to borrow money, petitioner submits in reply the very arguments set forth above regarding the alleged money power. Furthermore, repudiation can not be an aid to borrowing credit. *Lynch* v. *United States,* 292 U. S. 571, 580.

Should it be held that the gold clause legislation is sustained by the money powers of Congress, a new field of unlimited centralized control will be opened. The same power might apply to any form of financial transactions,— to wages of child labor, suspension of mortgage payments, etc. This would wipe out the dual form of our indestructible union consisting of indestructible States. *Texas* v. *White,* 7 Wall. 700.

The Joint Resolution deprives petitioner of his property without due process of law and without just compensation. The Fifth Amendment is a limitation upon the powers of Congress. *McCray* v. *United States,* 195 U. S. 27; *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 154; *Adair* v. *United States,* 208 U. S. 161, 172; *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 336; *Adkins* v.

Children's Hospital, 261 U. S. 525, 545, 546, 561; *Fairbanks* v. *United States,* 181 U. S. 283, 289; Day, J., dissent, *Wilson* v. *New,* 243 U. S. 332, 366; *United States* v. *Chicago, M., St. P. & P. R. Co.,* 282 U. S. 311, 327; *Milliken* v. *United States,* 283 U. S. 15; *Heiner* v. *Donnan,* 285 U. S. 312, 326; *Nichols* v. *Coolidge,* 274 U. S. 531; *Untermyer* v. *Anderson,* 276 U. S. 440; *Sturges* v. *Crowninshield,* 4 Wheat. 122.

The Federal Government is one of enumerated delegated powers. If no power to impair contracts is granted, it is difficult to see how the power can be derived. The only power specifically mentioned in the Constitution to impair contracts, is the provision for bankruptcy laws. This fact alone indicates that if the power to impair contracts were intended for the Federal Government, specific mention would have been made of it. The prohibition against state action, however, was specifically made because the omission in the Constitution to prohibit the States might have been deemed a permission for such legislation under the sovereign powers of the States which are inherent. See *Calder* v. *Bull,* 3 Dall. 386, 388; The Federalist, No. 44; Cooley, Story on the Constitution, 4th ed., vol. 2, § 1399, p. 261.

The due process clause covers Acts of Congress impairing the obligation of contracts. *Sinking Fund Cases,* 99 U. S. 700, 718. See also *United States* v. *Northern Pacific Co.,* 256 U. S. 51, 64; *Choate* v. *Trapp,* 224 U. S. 665, 674.

Impairment of contracts, incident to the exercise of a power of Congress, may be unobjectionable, if the exercise be found reasonable. *Marcus Brown Co.* v. *Feldman,* 256 U. S. 170; *Home Bldg. & Loan Assn.* v. *Blaisdell,* 290 U. S. 398; *New York* v. *United States,* 257 U. S. 591, 601. Aliter, if unreasonable: *Blodgett* v. *Holden,* 275 U. S. 142, 147. Distinguishing: *Louisville & N. R. Co.* v. *Mottley,* 219 U. S. 467; *Philadelphia, B. & W. R. Co.* v. *Schubert,* 224 U. S. 603. Cf. *New York Central R. Co.* v. *Gray,* 239 U. S. 583.

If Congress exercised the power to cancel the obligation of gold clauses, because it deemed it necessary for a better regulation of the monetary system, the property of petitioner was taken for a public use, and adequate and just provision should have been made to compensate him for his loss in being required to take, dollar for dollar, in depreciated currency. *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312; *Ochoa* v. *Hernandez,* 230 U. S. 139.

Merely to state that a thing obstructs the exercise of a power does not take it out of the class of cases where compensation must be paid. Here actually is no obstruction. There was merely a condition of inconvenience that rendered dollar devaluation inopportune. Therefore, the nullification of the obligation was not a regulation but an out and out taking for an alleged public need. See *Osborn* v. *Nicholson,* 13 Wall. 654.

Petitioner was deprived of the equal protection of the laws. The purpose and effect were to transfer property from the class called creditors to those termed debtors.

Mr. Frederick H. Wood for the Baltimore & Ohio R. Co. From the brief:

The gold clause is a "gold coin," not a "gold value" clause, but is equally within the Resolution whether interpreted as the one or the other.

An instrument so framed or interpreted is not one for the payment of a sum certain, but one for the payment of an indeterminate sum ascertainable only at date of payment, and is not negotiable. Negotiable Instruments Law of New York, Art. 3, § 20 (2); Laws of Maryland, 1898, c. 119, § 20 (2); Uniform Negotiable Instruments Law, Art. I, § 1 (2). It is dischargeable only in the coin specified and not in that amount of other money which at the time of payment will buy such coin. *Bronson* v. *Rodes,* 7 Wall. 229; *Trebilcock* v. *Wilson,* 12 Wall. 687; *The Emily Souder,* 17 Wall. 666; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379. Distinguishing: *Gregory* v. *Morris,* 96 U. S. 619; *Feist* v. *Société Intercommunale Belge d'Electricité,* L. R. (1934) A. C. 161; *The Brazilian Loans,* P. C. I. J., Series A, No. 20.

The Congress has an authority with respect to the national monetary system and the currency not confined by the limitations of any one specific grant in the Constitution. The exertion of this authority may be supported by the "resulting" or "composite" powers arising through the combination or aggregation of any or all of the specific grants of power. *The Legal Tender Cases,* 12 Wall. 457; *Juilliard* v. *Greenman,* 110 U. S. 421; *McCulloch* v. *Maryland,* 4 Wheat. 316, 407–12. See *Fong Yue Ting* v. *United States,* 149 U. S. 698, 711–712; *The Insular Cases,* 182 U. S. 244, 288, 300; 195 U. S. 138, 140, 143, 149; 258 U. S. 298, 305; *United States* v. *Gettysburg Electric Ry.,* 160 U. S. 668; *Mackenzie* v. *Hare,* 239 U. S. 299, 311; *Selective Draft Cases,* 245 U. S. 366, 377; *McGrain* v. *Daugherty,* 273 U. S. 135, 161.

The sovereign character of the National Government must be given weight in determining the scope of the powers granted to it over the monetary system and the currency. In construing the great clauses of the Constitution the Court has frequently been guided by the fact that the primary purpose was to create a sovereign nation as distinguished from a mere federation of States.

Congress is empowered to provide the people with a national monetary system and a national currency suitable to their needs, and to secure to them the full and unimpaired benefits thereof through the adoption of any measures appropriate either to the accomplishment of such purpose or for the removal of obstructions thereto.

Congress is empowered to declare of what the currency shall consist, to give to every unit and description thereof the character and qualities of money having a legally defined value, to regulate the value of such money and to make every unit legal tender at its face value for the discharge of all money obligations, whether previously existing or subsequently incurred.

An unqualified grant of power " to regulate the value " of money necessarily comprehends the regulation of its value when used for the performance of any of its functions as money, and hence includes the power to control the use of money as a standard of value. The word " regulate " means " to control " or " to govern." *Second Employers' Liability Cases,* 223 U. S. 1, 47, 48. The word "value" connotes equivalency according to a standard.

The express power to regulate the value of foreign coin is obviously a power to regulate its use in this country as a standard of value.

The power includes the power to determine and regulate the value of the several units of the currency in terms of each other and to prohibit the attempted use of one kind of money as a commodity for the purpose of realizing in another kind of money a value greater than the stated value of the first. Cf. *Ling Su Fan* v. *United States,* 218 U. S. 302.

The comprehensiveness of this power is evidenced by the previous decisions of this Court arising under the power of Congress over the monetary system and currency; also by the decisions of this Court in respect of the related power to create national banks; also by the decisions arising under the commerce clause, one of the clauses upon which the power of Congress over the monetary system and currency is based.

Private individuals may not " by prophetic discernment," through contracts previously entered into, any more than by contracts subsequently made, withdraw from the control of Congress any part of its legislative field or limit or obstruct the exercise of its powers therein.

Gold clause obligations, at all times a latent threat to the stability of the monetary system and currency, had, at the time of the adoption of the Resolution, become a plain obstacle to the maintenance of a stable monetary system and currency, which it was within the power of the Congress to remove both to meet the then existing emergency and to prevent its recurrence.

Gold clause obligations constituted an obstruction to the adjustment of the value of the dollar in the interest of our foreign commerce.

In the last analysis, those who challenge the validity of the Resolution would deny to Congress the choice of means by which to effect such change in the monetary system as was believed by it to be required by the needs of the people and their commerce, both foreign and domestic.

As related to the subsequent devaluation of the dollar, the Resolution was a valid exercise of all of the powers of the Congress over the monetary system and the currency.

Attorney General Cummings, orally, on behalf of the United States in these and the two following cases: * . . .

Underlying these four cases are certain fundamental constitutional considerations which I think are determinative of the entire matter. . . .

Although it may seem trite to do so, I draw attention to what, for want of a better term, may be called the "presumption of constitutionality."

This doctrine has been laid down in innumerable cases, some of which are cited in our briefs, but nowhere, I think,

* Mr. Cummings' address, stenographically reported, has been printed in full by the Government Printing Office. Omissions from the present report are marked by dots. He also closed the argument in all of the cases.

is it more effectively stated than in the *Legal Tender Cases,* in which this Court said:

"A decent respect for a coördinate branch of the Government demands that the judiciary should presume, until the contrary is clearly shown, that there has been no transgression of power by Congress, all the members of which act under the obligation of an oath of fidelity to the Constitution. Such has always been the rule."

But this doctrine, I apprehend, goes still further, and carries with it the proposition that this Court will accord great weight to the findings and reasons set forth by the Congress for enacting the legislation which it has passed.

The next cardinal principle is that, in selecting the means to carry out the purpose of the Congress, the Congress has wide discretion. Unless it is shown that the exercise of that discretion has been clearly arbitrary or capricious or unreasonable, this Court will not interfere with it.

I have adverted to these considerations not because they are not recognized, but because they are so well recognized that they are taken as a matter of course. We are inclined, I fear, to pay them a sort of lip service and then pass on to the consideration of matters of a more controversial character. Therefore, we are apt to find ourselves in the position of ignoring certain fundamental matters which are so obvious that they are, at times, forgotten or overlooked. These doctrines to which I have referred are not only necessary and vital doctrines, essential to our form of Government, but they surcharge the whole atmosphere of constitutional discussion. . . . In these pending cases we have before us not only the resolutions of the Congress and its declarations and findings, but we have also the instructions, the declarations, and the findings of the President of the United States, as well as his public statements, his message to the Economic Conference of July 3, 1933, and, in addition to that, we have the findings, declarations, and instructions of the Secretary of the Treasury.

The matters to which I have referred, it seems to me, under the peculiar circumstances which are presented here, carry an authority and a persuasiveness which our friends upon the other side have nowhere successfully met. I think their briefs may be searched in vain for any well-considered and sustained argument showing that the course pursued was unreasonable or arbitrary, or that adequately meets the allegations, findings, and declarations to which I have just referred.

Therefore, I think that it is fair to assert that these considerations assume, in the pending cases, an unusual and an almost unprecedented importance.

Now, of course, if the Court please, the conditions which existed on the sixth day of March, 1933, are so fresh in our memories and have been so completely covered in the elaborate briefs which have been presented, that it seems quite unnecessary to refer to them again or at length.

The fact remains, however, and it is enough to say, that an emergency of the highest importance confronted the Nation. Banks, sound and unsound, were failing or closing upon every hand; gold coin, gold certificates, and, indeed, all other forms of currency, were being hoarded by millions of dollars, and, perhaps, by millions of people. Gold was taking flight either into foreign currencies or into foreign lands; and foreign trade had been brought to a standstill. International finance was completely disorganized. The whole situation was one of extreme peril. Price levels were falling. Industries were closing. Millions of people were out of work. Failures and bankruptcies were reaching enormous and, indeed, unparalleled proportions; and, with constant acceleration, our people, confessedly, were slipping toward a lower level of civilization. I undertake to say that no man of imagination could have witnessed that distressing spectacle of painful retrogression without acute apprehension and profound sorrow.

Now, in addition to that, we had the experiences of other nations; we had their example. There was not a nation on the face of the earth that was not in distress.

At that time—and the time I refer to was the 6th day of March 1933—the Swiss franc, the Dutch guilder, and the United States dollar were the only coins that had not been devalued or depreciated. Country after country was going off the gold standard, and thirty countries had passed drastic legislation with regard to finance, foreign commerce, and the regulation of money. Embargoes, trade restrictions, and quotas were characteristic of the day and of the time.

So, as I say, we were confronted by an industrial and monetary and financial crisis of the most terrifying character. Amongst the various measures which were adopted to meet the situation were those which are in the group within which falls the Joint Resolution of the 5th of June 1933, which is so seriously under attack here today.

At the risk of being a little bit wearisome, permit me briefly to refer to these measures. [Here the Attorney General explained the various Acts of Congress enacted and Executive Orders and Orders of the Secretary of the Treasury promulgated between March 6, 1933, and January 31, 1934.] . . .

Thus, it is apparent that the Congress acted in this matter four times during the period to which I have referred—on March 9, 1933, the Emergency Banking Act; May 12, the Agricultural Adjustment Act; June 5, the Joint Resolution; and January 30, 1934, the Gold Reserve Act.

During this period the President of the United States acted upon five important occasions (and upon sundry other occasions of not such major significance); on March

6, the bank holiday; on March 9, the extension of the bank holiday; on April 5, the gold hoarding order; on August 28, additional gold hoarding orders; and on the 31st of January, the devaluation of the dollar.

Thus, in a hectic period of eleven months, a sweeping change was effected in the financial and monetary structure of our country. Our system was completely reorganized. Gold and gold bullion were swept into the Treasury of the United States; gold certificates were placed where they were readily within the control of the Government of the United States; foreign exchange was regulated; banks were being reopened; gold hoarding was brought under control; parity was maintained; and a complete transition was effected from the old gold-coin standard to the gold-bullion standard, with the weight of the dollar fixed at an endurable amount.

Now, I undertake to suggest that no one can consider this series of acts without sensing their continuity and realizing their consistent purpose.

Moreover, these measures must be read as a whole, and read against the background of utter national need. I think they tell the story of a nation finding its way out of financial chaos into a safer and sounder position.

Moreover, it must be remembered that in these matters two great branches of our Government, the legislative and the executive, were acting in perfect harmony and for a common end. It was a sweeping change, adopted by an overwhelming majority of the Congress, and promptly approved by the President of the United States; and appealing to both as essential to the happiness and prosperity and welfare of our country.

I contend, and later shall undertake to show, that to admit the validity of the claims of those who are appearing here in behalf of the holders of gold certificates, and in behalf of the gold-bond obligations, would mean the break-down and the wreckage of the structure thus carefully erected.

Moreover, it would create a preferred class who, because of a contract of a special character, are able to take themselves outside, as it were, of the financial structure of their own country.

To admit such claims to the extent of $100,000,000,000, an unthinkable sum, would be to write up the public debts and the private debts of our country by $69,000,000,000 and, overnight, reduce the balance of the Treasury of the United States by more than $2,500,000,000. It would add $10,000,000,000 to the public debt. The increased interest charges alone would amount to over $2,500,000,000 per annum, and that sum is twice the value of the combined wheat and the cotton crops of this country in the year 1930. The stupendous catastrophe envisaged by this conservative statement is such as to stagger the imagination It would not be a case of "back to the Constitution." It would be a case of "back to chaos." . . .

The primary difficulty, as I see it, with the argument in behalf of the gold obligations, and one which vitiates it entirely, is that the question is approached without reference to this background, and is based merely upon the supposed sanctity and inviolability of contractual obligations. That our Government is endowed with the power of self-preservation I make no doubt, and that a written understanding must yield to the public welfare has been so often reiterated that it is not necessary to dwell upon it any further.

There were some priceless words used by Mr. Justice Butler in *Highland* v. *Russell Car & Snow Plow Co.,* 279 U. S. 253, 261, when he said:

"It is also well established by the decisions of this Court that such liberty [meaning liberty of contract] is not absolute or universal, and that Congress may regulate the making and performance of such contracts whenever reasonably necessary to effect any of the great purposes for which the national Government was created."

But that is not exactly the case here. Those who insist upon the strict letter of the bond are insisting upon it in a matter dealing with gold, and gold lies at the basis of our financial structure. Gold is the subject of national legislation. Gold is the subject of international concern. Gold is not an ordinary commodity. It is a thing apart, and upon it rests, under our form of civilization, the whole structure of our finance and the welfare of our people. Gold is affected with a public interest. These gold contracts, therefore, deal with the very essence of sovereignty, for they require that the Government must surrender a portion of that sovereignty. To put it another way, these gold contracts have invaded the federal field. It is not a case of federal activity reaching out into a private area. So obsessed are our opponents by the idea of the sanctity of contracts that they are even prepared to assert their validity when they preëmpt the federal field. To me this seems a monstrous doctrine. These claimants are upon federal territory. They are squatters in the public domain, and when the Government needs the territory they must move on.

And so say the authorities. In dealing with currency and its metallic basis, the Government is exercising a prerogative of sovereignty and is dealing with a subject matter affected with a public interest. . . .

The contention that the Joint Resolution constitutes a taking of property without just compensation is clearly without foundation. The provision of the Fifth Amendment which bears upon that proposition relates to the taking of private property by the Government for a public use; and the Resolution, as applied to gold clauses in private contracts, is not a taking of property in a constitutional sense, but merely frustrates a purpose contained in a private obligation found to be incompatible with the exercise of national power.

Frustration, it is said in one of the leading decisons, if I recall correctly—" frustration and appropriation are essentially different things."

Now, this doctrine is supported by so many authorities that it is a work of supererogation to refer to them—The *Legal Tender Cases, Louisville & Nashville R. Co.* v. *Mottley* [219 U. S. 467], and hosts of others, which appear in our various briefs.

This leaves for consideration only the question whether that portion of the Fifth Amendment is affected or is involved in this controversy which deals with the deprivation of property without due process of law.

I think it is clear, and I think I shall make it even more apparent as I proceed, that the Joint Resolution was enacted pursuant to the exercise of functions derived from the Constitution. Now, it has been held that under certain circumstances the United States may—I am now using the language of the books—consistently with the Fifth Amendment, impose restrictions upon private property for all permitted purposes which result in a depreciation of its value. That language, I think, is found in *Calhoun* v. *Massie,* 253 U. S. 170.

Again, it is said that this may be done for a legitimate governmental purpose, *Sinking Fund Cases* (99 U. S. 700), since preëxisting contracts do not limit the sovereign right of the Government. *Calhoun* v. *Massie; Louisville & Nashville R.* v. *Mottley; Union Dry Goods Co.* v. *Georgia Public Service Corp.,* 248 U. S. 372.

This principle has been expressed in varying language. I think that it is absolutely accurate to say that the sound conclusion is that private contracts may not fetter governmental action within the powers entrusted to it by the Constitution. That is the doctrine of the *Schubert* case, 224 U. S. 603, *Sproles* v. *Binford*, 286 U. S. 374, *Veazie Bank* v. *Fenno*, and many others. It is in the first two of these cases that there appears that happy and suggestive phrase, "prophetic discernment."

The guarantee of due process in the Fifth Amendment demands no more than that the means selected by the Congress, as this Court has said, be for the attainment of ends within its power, and have a real and substantial relation to the attainment of such ends. And so, as seems inevitable in so many constitutional arguments, we go back to the case of *McCulloch* v. *Maryland*. And later we come to the *Ling Su Fan* case; and, if we want a more recent authority, we turn our hopeful eyes toward the decision in the *Nebbia* case, 291 U. S. 502.

The Joint Resolution was a bona fide exercise of constitutional power. It was not a mere arbitrary interference with private rights or with contract rights under the cloak of the currency power.

Now, that being true, any supposed collateral purposes or motives of the Congress, to which reference was made in argument here, and repeatedly in the briefs, are, to use the language of the Court, " matters beyond the scope of judicial inquiry." I think the quotation is from the *Magnano* case. See also the statements made in the *McCray* case, 195 U. S. 27, and also in the *Kentucky Distilleries* case, in an opinion written, I believe, by Mr. Justice Brandeis.

In view of the foregoing, it is not necessary to discuss the irrelevant and unsubstantial allegation that the purpose of the legislation was to transfer wealth from one class of our citizens to another. . . .

Now, of course, the primary power upon which the Joint Resolution rests is that portion of article I, § 8, of the Constitution, which grants to the Congress the power " to coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures."

The power also rests upon the constitutional authority "to regulate commerce with foreign nations and among the several States," and "to borrow money on the credit of the United States," and upon that "composite power" which has been referred to in that language, or in similar language, in many of our cases. . . .

I have never been impressed, and I am not now impressed, by the significance of *Bronson* v. *Rodes,* 7 Wall. 229, in connection with this controversy. And yet, by some peculiar form of common consent, it seems to stand at the threshold of the monetary discussion. It did not pass upon any constitutional question whatsoever. It explicitly, in its own language, set forth that it did not pass upon any constitutional question. It recognized the existence of the dual monetary system. It recognized the fact that greenbacks were not payable for all forms of public obligations. It recognized that these two forms of currency were circulating simultaneously and fluctuating violently, as measured in terms of each other. And, therefore, the Court found that the debts referred to in the Legal Tender act did not apply to the kinds of debts specified in the case of *Bronson* v. *Rodes.*

Then came, of course, one year later, in 1869, I believe, the well-known case of *Hepburn* v. *Griswold,* 8 Wall. 603. I think *Hepburn* v. *Griswold* is far more interesting than *Bronson* v. *Rodes,* because *Hepburn* v. *Griswold* did deal with questions that are pertinent here, and dealt with them in such a fashion that the Court later set aside that decision in the *Legal Tender Cases,* 12 Wall. 457.

Following *Bronson* v. *Rodes,* are a group of cases—*Butler* v. *Horwitz, Dewing* v. *Sears, The Emily Souder, Gregory* v. *Morris,* and *Trebilcock* v. *Wilson*—all aside, as I see it, from the essentials involved here. . . .

But in the *Legal Tender Cases,* following the *Hepburn v. Griswold* case, there are some observations which are exceedingly interesting. There is a wealth of learning to be found not only in the opinions, but in the elaborate briefs of counsel who appeared in those historic cases.

Now, in the *Legal Tender Cases* if there is anything clear it is that the Court passed on two questions: first, whether the Congress had power to make paper money a legal tender for any debt; and, second, if it had this power, was such power limited to debts created after the passage of the Legal Tender statute? . . .

Here, then, was a decision making it perfectly apparent that, in exercising its Constitutional power in the matter of making paper money legal tender, the Congress had as much power to deal with existing debts as it had to deal with debts created after the passage of the act. This, as I see it, if the Court please, is the most important contribution made to our present-day discussion by any of the cases of that era.

Now, let me pursue that matter just a bit further. In reaching its conclusion, the majority opinion contends that the only obligation was to pay money which the law recognizes as money when payment is made. But Mr. Justice Strong, who wrote the opinion of the Court, disposed of many of the arguments made in the present case. Where an attempt is made to identify money contracts with other types of contracts the Court speaks of these comparisons as " a false analogy "; and, on page 549, says:

" There is a wide distinction between a tender of quantities or of specific articles and a tender of legal values. Contracts for the delivery of specific articles belong exclusively to the domain of state legislation, while contracts for the payment of money are subject to the authority of Congress, at least so far as relates to the means of payment. They are engagements to pay with lawful money of the United States, and Congress is empowered to regulate that money. It cannot, therefore, be maintained that the Legal Tender acts impaired the obligation of contracts."

Moreover, in considering the argument that the contract to pay simply in dollars was a contract to pay in the sort of dollars that had been established by law at the time the contract was made, the Court disposed of that suggestion on pages 549 and 550, saying:

"Nor can it be truly asserted that Congress may not by its action indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless or partially fruitless." . . .

Now, of course, the next important case is *Juilliard* v. *Greenman,* 110 U. S. 421, where the power of the Congress was more fully developed and confirmed with reference to the matter of currency, and where it was declared that this power existed in time of peace as well as in time of war.

And then we have the *Ling Su Fan* case, to which I have referred before, which is of controlling significance.

I think it is clear that when the Supreme Court, in the *Legal Tender Cases,* extended the power over contracts to those which existed prior to the passage of the Legal Tender Acts as well as those that arose subsequently, it established a principle which, carried to its logical conclusion, sustains the power of the Congress as exercised in the Joint Resolution of June 5, 1933.

In fact, we seriously urge upon this Court the suggestion that to sustain the contention of those who appear here in opposition to the validity of the Joint Resolution would constitute an unfortunate recurrence to the mistaken principles of *Hepburn* v. *Griswold.* It would turn back the pages of history more than sixty years.

In the *Mottley case,* decided in 1911, this Court took strong ground on the fundamental proposition of the right to brush aside interference with the exercise of a constitutional power.

In the *Blaisdell case* [290 U. S. 398], the Chief Justice said:

"Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order."

I stand upon that language, and upon the language laid down in the other cases to which I have referred. I stand not only upon these cases and upon the *Nebbia* case, but upon the fundamental proposition that the Congress has plenary power, in a whole range of subjects, no matter what private parties may endeavor to do, and no matter how completely they may attempt to thwart the exercise of constitutional authority.

We have found it entirely possible to prohibit lotteries, no matter what contractual obligations may have been set up with reference to them.

The cases which deal with intoxicating liquors reached the same result. The same observation may be made with reference to zoning laws; the maintenance of nuisances; and the regulation of the rates and services of utilities—all along the line there is a recognition of this essential power of the Government.

So I contend, both upon authority and upon reason, that the Joint Resolution of June 5, 1933, was a valid exercise of constitutional power, not limited by the Fifth Amendment or by any other clause of restriction in the Constitution. . . .

It is my belief that the word "regulate" as used in the Constitution has never been completely and carefully analyzed in all of its implications. How far does the term "regulate" carry us? Manifestly it reaches to the regulation of value, and value, itself, is a relative thing. Value appears only in relation to the value of other things.

And, moreover, the word "regulate" implies a continuing power, and is the same term that is used with reference to commerce, and connotes the power of adjustment. It implies the power of making the condition accord more fully with reality and with justice.

But when you come to the power "to fix the standard of weights and measures," the Constitution abandons the word "regulate" and uses the word "fix."

All these things, philosophically or semiphilosophically considered, have some relationship to these sudden and violent fluctuations in commodity prices which so completely disarrange important equities; and to the proposition that, as a matter of essential justice, the dollar we borrow should be, in purchasing power, substantially the dollar we are expected to repay. What that relationship is I do not assume to suggest, what the future may develop with regard to this aspect of the constitutional question I do not know. These things will follow in due course.

But I am moved to mention these matters, because on the 14th page of the appendix to the plaintiff's brief in the *Perry* case, there is a chart, which is designed to show the terrible losses suffered by the claimant in that case. So far as I recall, that is the only proof he has submitted to indicate that he has suffered any loss whatsoever.

This table is made up in peculiar fashion. It is constructed by charting commodity prices in the United States of America; and then the price of the gold dollar is calculated in the discount thereof in terms of foreign coinage—in terms of the gold coinage of France, Belgium, Holland, and Switzerland. Having found the rate of discount at which the gold dollar is depressed below these standards, the results are reduced to percentages, and these percentages are then subtracted from the range of commodity prices in this country in order to show the loss sustained.

In other words, it is a synthetic chart, having no relation to any known problem whatsoever. It attempts to trace the history of a dollar that has ceased to exist. . . .

The gold clause attempts to override the legal tender and parity provisions established by law. If valid, it further would have the effect of making certain that, whatever may be the policy of the Congress, the coins and currency of the United States shall *not* have equal value in the discharge of all classes of debts.

The gold clause is a serious obstacle to the maintenance of parity. The conventional method of maintaining parity is by the redemption of currency in gold coin.

The startling withdrawals of gold coin for hoarding and the flight into foreign currencies and into foreign countries which took place in February and during the first few days of March 1933 made it impossible to continue such redemption. The Government's stock was being rapidly depleted. During the period to which I have just referred $476,100,000 in gold had been withdrawn from the Federal Reserve banks and the United States Treasury, of which $311,000,000 was for export, or to be earmarked for foreign accounts. Simultaneously there was a great demand for money of all kinds for domestic hoarding.

At that time the outstanding gold obligations amounted to $100,000,000,000, and the available gold supply of this country was only $4,000,000,000, and in the entire world only $11,000,000,000.

Moreover, there were conditions of equity that had to be borne in mind. To have permitted, after the 9th of March, the conversion of gold certificates and United States notes into gold would have been to prefer the demand claims of the gold creditors, foreign and domestic, so long as the supply should last.

And to have prohibited the conversion of such demand obligations and yet to have continued the conversion of time obligations—calling for gold in each instance—would have been to prefer time obligations, both public and private. Either alternative would have been to deny equal treatment to creditors with equal claims to consideration.

All of the foregoing suggestions bear on the question of maintaining parity after the suspension of gold redemption. Why, parity could not have been maintained under the previously existing system, if outstanding gold certificates and United States notes had been redeemed in anything except gold coin. To have redeemed them in currency at the higher rate demanded by these claimants would have immediately brought back the double standard of currency which had wrought such havoc in times gone by.

It is, therefore, apparent that to maintain parity under the existing conditions, gold certificates and United States notes had to be treated upon an absolute equality with other forms of currency, and by that same token it was necessary to abrogate the gold clause in gold obligations.

There is another reason why the gold clause is an obstruction to the power to regulate the value of money. One method of regulating the value of money is by lessening the gold content of the dollar. I do not understand that any responsible person seriously disputes the right upon the part of the Government to lessen the gold content of the dollar. Nevertheless, that power could not have been actually used if it had entailed the redemption or payment of $100,000,000,000 of obligations at the rate of $169,000,000,000. . . .

Let me pause for a moment to emphasize the proposition that the only alternative open to the Congress was a reduction in the gold content of the dollar, accompanied by a denunciation of gold clauses. In choosing this alternative, the Government acted in the public interest, and it cannot fairly be contended that it acted arbitrarily, capriciously, or unfairly or unjustly, or for any improper purpose.

There can be no doubt that the gold clause was a hindrance to the borrowing power. Such obligations, if permitted to exist, would have preëmpted or, at least, measurably restricted, the sources from which borrowed money is obtained. There is no doubt that the gold clause likewise interfered with international obligations and negotiations; and with foreign exchange and foreign commerce. If it had been impossible to break the prewar tie to the gold dollar we would have been denied the privilege, open to all other civilized governments, of dealing effectively with our own currency.

No adequate reason has been advanced why the holders of interest-bearing time obligations should be preferred over holders of demand obligations, as, clearly, these forms of understandings are of equal solemnity. The holders of $20,000,000,000 of federal gold obligations, with an annual interest charge of $700,000,000, could, in a relatively short time, have drained all of the available gold out of the Treasury. This would have been tantamount—and I say it deliberately—to delivering the destiny of our gold reserves into private hands, and by that same token delivering the destiny of America into private hands.

Oh, I have found in the briefs of learned counsel upon the other side many suggestions indicative of the proposition that our Government acted hastily, and even in bad faith. But The Hague Court, in the opinion in the *Royal Dutch Shell* case, rendered on the 15th day of February 1934, had no such misgivings as seem to afflict counsel in this case. In that court it was said:

" There cannot be any question about violation of public order, as the measure " (that is the Joint Resolution they are talking about) " according to its purpose set forth in the preamble has been enacted as required by urgent necessity and public interest " (meaning American public interest) " and not at all in order to injure the creditor."

Apparently the contentions of our opponents in this matter deal with questions of ethics and economics and morals and good faith. But who shall say that all of these considerations plead for the claimants? I hesitate to venture upon the high ground of ethics and morality so completely occupied by those who argue for the sanctity of the written word, and who assert that it should be maintained at all hazards. That field has been pretty thoroughly occupied by counsel for the bondholders. Such arguments make me feel a stranger in this preëmpted territory.

But, after all, is the morality all on one side? Are there not certain essentials of justice which the written word may defeat and which it is the higher purpose of the law to preserve? . . .

Should the claims of the owners of these gold obligations be approved, it would create a privileged class which, in character, in immunity, and in power, has hitherto been unparalleled in the history of the human race. I feel the walls of this courtroom expand; I see, waiting upon this decision, the hopes, the fears, and the welfare of millions of our fellow citizens.

These measures which are under attack were thoroughly considered and carefully worked out. They represent the overwhelming sentiment of the Congress. They represent the considered judgment of the President. What is attacked here is the joint work of the legislative branch of the Government and the executive branch of the Government, operating in complete and wholesome accord. Those who contest the wisdom of these results, their propriety, their legality, their necessity, or their essential justice have a heavy burden to carry.

The validity of our contention in this case rests, however, upon wider and even more compelling considerations. The authority to coin money and regulate the value thereof is an attribute of sovereignty which cannot be restrained by private contract nor subordinated to the tenor of individual obligations.

That the United States of America is a sovereign nation and possesses the essentials of sovereignty has been repeatedly declared by this Court. This of necessity must be so. When the Constitution, by § 8 of Article I, confided the power over the currency to the Congress, it did so in representative terms, similar to those used in the same article setting forth the other essential attributes of sovereignty.

I like that old expression which will be found in the Legal Essays of Thayer, on page 75 in the edition of 1908. There is meat in this rather homely expression:

"The Constitution, in giving to Congress the power to coin money, is not, just then, concerned with the technicalities of law or political economy; it is disposing of one of the '*jura majestatis*' in brief and general terms, in phrases which are the language of statesmen."

In the case of *Juilliard* v. *Greenman* the Court speaks of this power as one which accords "with the usage of sovereign governments."

Any lingering doubt upon this subject is dispelled by reading § 10 of Article I of the Constitution, which takes from the States all power over the currency. The state governments were emptied of such power. All the scattered sovereignties of the different States went over *en bloc* to the Government of the United States, and they were not lost in transit.

I think it may safely be said—at least, it may reasonably be argued—that the state governments succeeded to the powers of the Crown, the King, and Parliament in the control over currency, and exercised this power sometimes wisely and sometimes recklessly. Those who framed the Constitution of the United States realized this situation, and, knowing what had happened in the colonies, took pains to see that this power, just like the power of the sword, this great attribute of sovereignty, should reside in one single authority. Hence the Constitution not only affirmatively grants this power to the Congress of the United States, but forbids its exercise by the various States.

In sweeping terms the Federal Government was given the power to collect taxes to provide for the common defense and the general welfare; to coin money; to declare war; to maintain armies; to provide a Navy; and, in general, to deal in these sovereign matters on an equality with the other members of the family of nations.

These enumerated grants in § 8 of Article I of the Constitution are set forth in representative terms, which, taken together, imply all the essentials of a comprehensive federal power over the whole subject of the medium of exchange, standards of measure and value, coinage of money, and the control of credit.

Of course, I am not arguing here for any inherent sovereign power. But I am maintaining that, in certain matters, in which currency is included, the Government of the United States has the same type of sovereign power which was accorded to the Crown in the *Mixed Money Case,* and which has not, so far as I am aware, been successfully controverted in any court in any country since that time.

The history of money is fascinating. It has been tied up with the progress of the human race. There has never been an important era in which the destinies of men were at hazard, where the problem of currency was not involved. Every drama in the international field involves some aspect of the money question.

In the earliest days, of course, the currency was crude in form. It developed as civilization went on. Finally we come to the period referred to in the *Mixed Money Case,* where its characteristics were beginning to be understood. We then come to the early colonial days, with their chaos and their disorder, and their conflict in matters of currency. And, following this, these sovereign powers of the States, which had in so many instances been unwisely used, were turned over to the Federal Government, and, for the first time on this continent, the control of currency was confided to a central authority.

It was then a little-understood subject—and, I must say, it is a little-understood subject now. We have passed through many vicissitudes—the Greenback Era; the period of the *Legal Tender Cases*; the experience with the double currency standard; until we reached a more or less settled status, which many people fatuously believed was the final status. The gold standard, as it was then known, survived the panic of the Cleveland administration, but it did not survive the vicissitudes of the World War. The problem moved out into international areas. Governments began to send representatives to conferences to discuss this mutually vexing problem of gold.

It would be idle to deny that things are still in a formative stage. Indeed, great things are afoot. The London Economic Conference of 1933 did not achieve its objective, but it had for one of its purposes the problem of the stabilization of the currencies of the world.

On the third of July, 1933, the President of the United States cabled to the Economic Conference dealing with this subject and, in the course of his message, confirmed the proposition that our broad purpose is permanent stabilization of every national currency.

Oh, we have not seen the last of international economic and monetary conferences. Already these events may be dimly seen on the horizon. I do not know when it will be. That is written in the inscrutable bosom of time. But the day will come when the United States of America will be conferring with the other nations of the earth, with a view to the stabilization of currencies, the fixing of standards, and making those arrangements which are essential amongst civilized nations if we are to dwell together in any reasonable degree of harmony and prosperity.

Let nothing be said here that makes our Nation enter such a conference on crutches, a cripple amongst the nations of the earth.

Mr. Justice Holmes once very wisely said—I think it was in the *Holland* case—

"It is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found."

If the Court please, other nations, impelled by the requirements of necessity and acting for the public welfare, have devalued their currencies, abandoned the gold standard, and abrogated gold contracts by specific laws enacted for that purpose. Without challenge and without question they have done precisely what the Congress of the United States has done. Belgium, France, Germany, Rumania, Mexico, Norway, and Sweden have enacted such laws. It is an essential attribute of sovereignty.

I ask this Court to lay down in unequivocal language the proposition that, in matters of currency, the courses of action open to other governments are not denied to this country, and that, in employing these sovereign powers, we act upon an equality with all the other nations of the earth.

Mr. Stanley Reed made the oral arguments for the Reconstruction Finance Corporation.

Summary of the brief for the United States and the Reconstruction Finance Corporation, on which were the *Attorney General, Mr. Stanley Reed, Solicitor General Biggs,* and *Assistant Solicitor General MacLean:*

An act of the legislature is presumed to be constitutional. [Citing many cases.]

In choosing the means to carry out its powers the Congress has an extremely wide discretion and its judgment will not be overturned unless clearly arbitrary and capricious. *McCulloch* v. *Maryland,* 4 Wheat. 316, 418; *United States* v. *Fisher,* 2 Cranch 358; *Legal Tender Cases,* 12 Wall. 457; *Farmers' and Mechanics' National Bank* v.

Dearing, 91 U. S. 29, 33; *Juilliard* v. *Greenman,* 110 U. S. 421; *Ex parte Curtis,* 106 U. S. 371; *Northern Securities Co. v. United States,* 193 U. S. 197; *Ling Su Fan* v. *United States,* 218 U. S. 302; and *Board of Trustees of University of Illinois* v. *United States,* 289 U. S. 48.

The importance of the gold clause is due to the overwhelming amount of obligations calling for payment in gold coin issued and outstanding on June 5, 1933, the best estimates placing the amount at approximately $100,000,000,000.

Congress was justified in declaring that gold clauses are contrary to public policy and inconsistent with our present monetary system. The gold clause had its origin in a period when there was in existence a dual monetary system;—that is, two kinds of money, United States coins and circulating notes, were permitted to circulate, fluctuating in value one against the other. *Bronson* v. *Rodes,* 7 Wall. 229, was decided during this period. The dual monetary system went out of existence after the resumption of specie payments in 1879.

The recent monetary and financial crisis called for the exercise of Congressional power over coinage and currency. In 1933 the dollar, the Swiss franc and the Dutch guilder were the only monetary units of commercially important countries which were not devalued or depreciated substantially below prewar parities. A number of countries have placed restrictions upon the export of gold and suspended the redemption of currency in gold coin. Between 1929 and 1933 the wholesale commodity price index of the United States Department of Labor declined by nearly 40% and our national income had shrunk about 50%. During February and until March 6, 1933, when the banking holiday was proclaimed, $476,100,000 in gold was withdrawn from the Federal Reserve Banks and the Treasury.

Monetary legislation enacted by Congress in this situation included the Emergency Banking Act of 1933, authorizing the regulation and prohibition of the withdrawal, export, and hoarding of gold; the Act of May 12, 1933, making all forms of money legal tender for all debts and authorizing a reduction in the gold content of the dollar; and the Gold Reserve Act of 1934, amending the Act of May 12, 1933, directing the Secretary of the Treasury to melt down all gold coins, and authorizing redemption of currency only in gold bullion and only for the settlement of international balances and the maintenance of the parity of all forms of money. The President and the Secretary of the Treasury issued Orders pursuant to the Emergency Banking Act of 1933; and on January 31, 1934, the President issued a Proclamation reducing the gold content of the dollar to 15 5/21 grains nine-tenths fine.

Gold clauses, if enforceable, would have obstructed the exercise of the monetary and other powers of the Federal Government, whether such clauses are construed to call for payment in gold coin itself or in an asserted equivalent in currency. The gold clause would nullify the power of the Congress to make all forms of coins and currency of the United States legal tender for all payments. It is an obstruction to the power of the Congress to regulate the value of money by changing the gold content of the dollar. The effect of the clause, if interpreted to call for an asserted equivalent in currency, is to increase gold-clause debts in direct and invariable proportion to the change in the statutory value of gold. In the present situation the increase would be 69.32%. The increase in interest payments on outstanding private gold-clause obligations would be about $2,600,000,000 annually. This potential increase in the debt burden is particularly significant in the light of the already existing burden of long term debt service, which had grown from 9.2% of the national income in 1929 to 21.1% in 1932. In the case of carriers, utilities and industries whose income is and must be in dollars, the added burden of an enforceable gold clause would bring widespread bankruptcy. Non-enforcement of gold clauses results in no real loss to creditors. Because of the drastic decline in the price level, a coupon holder who now received $16.93 on a $10 coupon could purchase twice as much as could have been purchased with the $10 during 1921–1929.

The gold clause, construed as calling for payment in gold coin, is incompatible with legislation to protect the currency reserves and to provide for more effective use of gold. The gold reserves of this country have been subject to sudden, violent and unpredictable withdrawals. Such withdrawals, coupled with increased demands for currency for hoarding and export, caused the reserve ratio of the Federal Reserve System to fall from 65.6% on February 1, 1933, to 45.1% on March 4, 1933. The Gold Reserve Act of 1934, providing for withdrawal and melting down of gold coin, conformed to the postwar practice of foreign countries and the recommendations of economists and bankers.

Gold clauses are an obstruction to the power of Congress to borrow money; for pending a change in the gold content of the dollar, bonds would be issued which might incur for the taxpayers a debt greatly in excess of the amount received for the bonds. It would be impractical to eliminate the gold clause from future issues only, since investors would prefer the old issues, public or private, to such an extent as to require prohibitive rates on the new.

Gold clauses, by interfering with a change in the gold content of the dollar, obstruct the power of Congress to regulate foreign exchange and foreign commerce.

The Joint Resolution is within the delegated powers of Congress. The power over the currency includes the power to reduce the gold content of the dollar, as was done in 1834, and so to subject creditors to a corresponding loss. *Legal Tender Cases,* 12 Wall. 457, 551–2. Congress may require creditors to accept irredeemable paper money in discharge of debts contracted when only gold and silver coin were legal tender. *Legal Tender Cases, supra; Juilliard* v. *Greenman,* 110 U. S. 421. Congress may legislate to assure uniformity in the value of all forms of money. *Veazie Bank* v. *Fenno,* 8 Wall. 533; *National Bank* v. *United States,* 101 U. S. 1; *Ling Su Fan* v. *United States,* 218 U. S. 302. The power to borrow money affords broad scope for legislation. *McCulloch* v. *Maryland,* 4 Wheat. 316; *Smith* v. *Kansas City Title & Trust Co.,* 255 U. S. 180; *Weston* v. *Charleston,* 2 Pet. 449; *Missouri Insurance Co.* v. *Gehner,* 281 U. S. 313; *United States* v. *Fisher,* 2 Cranch 358. Congress may protect our foreign trade against the adverse effect of depreciated foreign currencies. *Hampton & Co.* v. *United States,* 276 U. S. 394. In its international relations the Federal Government possesses the full attributes of sovereignty. *Burnet* v. *Brooks,* 288 U. S. 378, 396; *Legal Tender Cases, supra,* p. 555; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 711.

Congress is empowered to declare unenforceable private agreements whose purpose and effect are to usurp, frustrate or obstruct the exercise of its powers. The Fifth Amendment does not forbid such legislation. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 229; *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, 435; *Louisville & Nashville R. Co.* v. *Mottley,* 219 U. S. 467; *Philadelphia, B. & W. R. Co.* v. *Schubert,* 224 U. S. 603; *Calhoun* v. *Massie,* 253 U. S. 170; *New York* v. *United States,* 257 U. S. 591; *Sproles* v. *Binford,* 286 U. S. 374; *Chicago, B. & Q. R. Co.* v. *McGuire,* 219 U. S. 549, 567; *Atlantic Coast Line R. Co.* v. *Riverside Mills,* 219 U. S. 186, 201; *Highland* v. *Russell Car & Snow Plow Co.,* 279 U. S. 253.

The gold hoarding orders, independently of the Joint Resolution of June 5, 1933, require that the claim on the bonds be limited to the face amount thereof. A free domestic gold market did not exist, in consequence of these orders, from the time of the banking holiday in March, 1933, to the present. The gold clause should be interpreted as calling simply for payment in gold coin. *Bronson* v. *Rodes,* 7 Wall. 229; *Trebilcock* v. *Wilson,* 12 Wall. 687; *The Emily Souder,* 17 Wall. 666; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379. The following cases are distinguishable: *The Vaughan and Telegraph,* 14 Wall. 258; *United States* v. *Erie Ry. Co.,* 107 U. S. 1; *Gregory* v. *Morris,* 96 U. S. 619; *Feist* v. *Société Intercommunale Belge d'Electricité,* [1934] A. C. 161; Cases of *Serbian and Brazilian Bonds,* P. C. I. J., Series A, Nos. 20–21. Payment in gold coin is impossible and illegal because of the gold hoarding orders, and should be excused. *The Tornado,* 108 U. S. 342; *Western Hardware & Manufacturing Co.* v. *Bancroft Charnley Steel Co.,* 116 Fed. 176 (C. C. A. 7th); *Browne* v. *United States,* 30 Ct. Cl. 124; *International Paper Co.* v. *Rockefeller,* 161 App. Div. 180. *Moore & Tierney, Inc.* v. *Roxford Knitting Co.,* 250 Fed. 278 (N. D. N. Y.). *Metropolitan Water Board* v. *Dick Kerr & Co.,* [1918] A. C. 119; *Shipton, Anderson & Co.* v. *Harrison,* 3 K. B. 676 (1915). *Manigault* v. *Springs,* 199 U. S. 473; *Louisville & Nashville R. Co.* v. *Mottley,* 219 U. S. 467; *Omnia Commercial Co.* v. *United States,* 261 U. S. 502, 511; *Board of Commissioners* v. *Young,* 59 Fed. 96 (C. C. A. 6th); *Northern Pac. Ry. Co.* v. *St. P. & Tacoma Lumber Co.,* 4 F. (2d) 359 (C. C. A. 9th); *Operators' Oil Co.* v. *Barbre,* 65 F. (2d) 857 (C. C. A. 10th); Restatement of the Law of Contracts, § 458 of c. 14; Williston on Contracts, § 1938. Recovery is properly limited to the face amount of the bonds. Since if gold coin were paid to the creditors it would be worth to them only its face amount, payment of a greater sum would be a windfall, not indemnity for loss. *Wicker* v. *Hoppock,* 6 Wall. 94; *United States* v. *Behan,* 110 U. S. 338.

If the gold clause is interpreted to call for an equivalent in currency, the equivalent is the amount of currency which would purchase the stipulated gold coin. *The Vaughan and Telegraph, supra; Gregory* v. *Morris, supra.* In the existing restricted gold market, equivalence is on a dollar-for-dollar basis. Even if the statutory price of gold, unreflected in a free domestic market, is the proper measure of equivalence, it is inapplicable here, for the bonds matured on May 1, 1933, when the gold dollar was at its old parity. *Hicks* v. *Guinness,* 269 U. S. 71; *Effinger* v. *Kenney,* 115 U. S. 566, 575; *Feist* v. *Société Intercommunale Belge d'Electricité, supra.*

Power over coinage and currency is an attribute of sovereignty. *Cohens* v. *Virginia,* 6 Wheat. 264, 380; *Juilliard* v. *Greenman, supra; Mackenzie* v. *Hare,* 239 U. S. 299, 311; *Burnet* v. *Brooks,* 288 U. S. 378; *Tiaco* v. *Forbes,* 228 U. S. 549, 556; *Georgia* v. *Chattanooga,* 264 U. S. 472, 480; *Ling Su Fan* v. *United States,* 218 U. S. 302, 310; Story on the Constitution (5th ed.), Vol. 2, p. 59; *Mixed Money Case,* Sir John Davies' Report 48, 51, 55; Thayer, Legal Essays, p. 75; *Martin* v. *Hunter,* 1 Wheat. 326. Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated. *Legal Tender Cases, supra.*

Mr. Edward J. White for the Trustees of the Missouri Pacific R. Co., petitioners. Points from brief:

The Joint Resolution was valid under § 8, Art. I, of the Constitution; also under the general welfare clause. *Massachusetts* v. *Mellon,* 262 U. S. 448; Alexander Hamilton, Report on Manufacturers, 1791; Story, Constitution, 5th ed., §§ 975, 978, 992. See *Heisler* v. *Colliery Co.,* 260 U. S. 245.

Emergency is the occasion for the exercise of the power.

Under the general welfare clause, Congress has a large discretion as to the means to be employed in the exercise of any power granted it. *Northern Securities Co.* v. *United States,* 193 U. S. 343; *Fairbank* v. *United States,* 181 U. S. 287; *Logan* v. *United States,* 144 U. S. 282; *Legal Tender Cases,* 12 Wall. 538.

The declared object in the Preamble to " promote the general welfare," and the broad grant of power in Art. I, § 8, should be held to include all means adopted by Congress to attain the ends in view which are not expressly prohibited by the Constitution.

In this bankruptcy proceeding the court possessed the power to impair the existing obligations of contracts.

The inhibition against the impairment of contract obligations applies only to the States and is not a limitation upon the power of Congress.

Whether *malum in se* or *malum prohibitum,* no illegal contract can furnish the basis for a legal remedy.

Messrs. James H. McIntosh and *Edward W. Bourne,* with whom *Messrs. Clifton P. Williamson* and *Thomas W. White* were on the brief, for Bankers Trust Co. et al., respondents. The following summary is from the brief:

By promising to pay a specified sum " in gold coin of the present standard of weight and fineness " the obligor undertakes to pay a specified amount of money in coin having a specified bullion content, or, if that is not available, to pay the equivalent in current money. The opinion of the lower court that the agreement constituted a promise to pay in gold " as a mere commodity " was clearly wrong. *Thompson* v. *Butler,* 95 U. S. 694; *Bronson* v. *Rodes,* 7 Wall. 229, 252. The parties intended to fix a standard or measure of value, if the debt should not be paid in the exact coin agreed upon. They contemplated that, when the time came to pay, there might be gold dollars of a new standard. They must have known that, if such were introduced, " gold coin of the present standard " would pass from circulation. They intended that, in any such contingency, the Railway Company could discharge its debt by paying the equivalent in gold value of the May 1, 1903, dollar—and, correlatively, that it must pay the equivalent so long as the equivalent could be measured in terms of current money. In other words, if the new standard gold dollar of 15 5/21 grains had been coined, a tender of 1,000 new standard gold dollars in coin would not have paid a bond. The new dollars now circulating are the equivalent of a new coin dollar of 15 5/21 grains, both by statute and in market value. How, then, can 1,000 of the new dollars now circulating pay a debt which they could not satisfy if they were in gold coin of the present so-called standard?

The gold clause or its equivalent has been in use time out of mind and has been used not merely in money contracts between private persons, but in money contracts of this Government.

This use has not been confined to this country. Some of the cases next to be cited illustrate its use abroad, and the language of the Treaty of Versailles, Art. 262, is identical with the clause involved in this case, except that the Treaty uses the date and these bonds used the word " present," to fix the time.

This Court has repeatedly enforced gold clause contracts according to their true intent; and other courts of the highest distinction have construed and enforced them as a measure of value. *Gregory* v. *Morris,* 96 U. S. 619; *Serbian Loan Case,* and *Brazilian Loan Case,* Publications de la Cour Permanente de Justice Internationale, Series A, Nos. 20, 21, pp. 5–89, 91–155. The effect of the two decisions last cited was to require each of the two Governments to pay about five times as many French paper francs, or new French gold francs, as they would have been required to pay if the court had not held that the gold clause meant a "gold standard of value." To the like effect, *Feist* v. *Société Intercommunale Belge d'Elec-*

tricité, L. R. (1934) A. C. 161, which involved bonds of a Belgian corporation promising to pay in gold coin of the United Kingdom of or equal to the standard of weight and fineness existing on September 1st, 1928. The conclusions reached by the Permanent Court and by the House of Lords represent the accepted view everywhere except in Germany, whose courts profess to see a difference between a "gold coin" clause and a "gold value" clause. See 44 Yale L. J., pp. 56–57.

The Joint Resolution of June 5, 1933, contains an implied admission that the gold clause prescribes a measure of recovery.

These contracts were lawful when made, and were made for a proper purpose, in terms which this Court for nearly half a century before the issue of these bonds had recognized as legal and repeatedly approved as binding. *Bronson* v. *Rodes,* 7 Wall. 229; *Gregory* v. *Morris,* 96 U. S. 619; *Butler* v. *Horwitz,* 7 Wall. 258; *Bronson* v. *Kimpton,* 8 Wall. 444; *Dewing* v. *Sears,* 11 Wall. 379; *Trebilcock* v. *Wilson,* 12 Wall. 687; *United States* v. *Erie R. Co.,* 106 U. S. 327; 107 U. S. 1; *The Telegraph* v. *Gordon,* 14 Wall. 258; *The Emily B. Souder* v. *Pritchard,* 17 Wall. 666; *Thompson* v. *Butler,* 95 U. S. 694.

In every one of the cases involving a promise to pay in gold coin, this Court insisted upon the entry of judgment either for gold coin or for its equivalent in currency.

The *Legal Tender Cases* did not overrule *Bronson* v. *Rodes* nor weaken its authority on this question, because those cases referred only to contracts payable in money, simply. *Knox* v. *Lee,* 12 Wall. 457, 459; *Juilliard* v. *Greenman,* 110 U. S. 421, 449; *Trebilcock* v. *Wilson,* 12 Wall. 687.

Preliminary to a discussion of the Joint Resolution of June 5, 1933, and its validity, we remind the Court " that a legislative declaration of facts that are material only as to the ground for enacting a rule of law . . . may not be held conclusive by the courts." *Block* v. *Hirsh,* 256 U. S. 135, 154; that provisions of Bills of Right are limitations upon all the powers of Government, *Hurtado* v. *California,* 110 U. S. 516, 531–532; that " It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon," *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 325; that " The good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members." *Adkins* v. *Children's Hospital,* 261 U. S. 525, 561.

The Joint Resolution directly involves two constitutional grants of power,—(1) the power to " coin money, regulate the value thereof," and (2) the power to " borrow money on the credit of the United States "; and one limitation of power, namely, the limitation imposed by the Fifth Amendment. It also directly involves an encroachment by the Federal Government on the sovereign power of the States.

No one constitutional power can be construed to override another. The power to borrow money is as important as the power to coin money and regulate the value thereof. Hence what Congress has done in the exercise of the one power it cannot undo in the exercise of the other power. When, during the war and at other times, Congress borrowed money on the credit of the United States and promised to pay it back in dollars " of the present standard of value," it was exercising a power which the Constitution gave it; therefore how could Congress afterwards say the contracts it then made in the exercise of its power to borrow money are now contrary to public policy?

If it were true that such contracts, so made under the borrowing power, really interfered with the power of Congress to coin money and regulate the value thereof—that the two powers conflicted and that the coinage power limited the borrowing power—this would mean that no Congress ever had, or could have, the power to issue bonds containing a promise to repay the money borrowed in coin or dollars of any agreed standard of value. If this were true, then the Congress of 1863 and 1864 had no power to finance the last campaigns of the Civil War by issuing bonds payable " in gold coin of the present standard of value "; and every Congress which has issued bonds since February 4, 1910, has made a promise it had no power to make (c. 25, 36 Stat. 192; 31 U. S. C., § 768), and neither the present Congress nor any future Congress can ever issue bonds containing a binding obligation to repay the debt measured by the standard of value which prevailed when the debt was contracted.

Thus the wholly unwarranted scope which the Congress gives to the power to " coin money, regulate the value thereof," would, if it were the true scope of that power, make the borrowing power of Congress, which is at least equally important, an ineffective thing.

Similarly, the power to regulate the value of money cannot be used in direct violation of the limitations imposed upon Congress by the Fifth Amendment. If by this Resolution Congress were really exercising the power to regulate the value of money, and the legitimate exercise of that power indirectly or incidentally impaired the obligations of gold clause contracts, a different question would be presented. But the Resolution is not, and does not purport to be, a regulation of the value of money, nor is its effect on these contracts indirect or incidental. On the contrary, its sole purpose and its effect are, not to regulate the value of money, but directly and immediately, not indirectly nor incidentally, to change these contracts by destroying their most valued obligation. Thus the Resolution not only undertakes to restrict the expressed and vastly important power of Congress to borrow money on the credit of the United States, but it directly violates the limitation of power imposed by the Fifth Amendment.

Moreover, by this Resolution the Federal Government directly encroaches upon the sovereign power of the States by interfering with their power to borrow money on whatever terms they choose to make; by changing the terms of the contracts which they have made in borrowing money; by impairing their credit; and by interfering with and hindering their future financing. States, and municipalities under the authority of the States, have made gold clause contracts in vast sums. They have done this in the exercise of their sovereign power to borrow money for state and municipal purposes on whatever terms they chose to make. The Federal Government has no authority to interfere with them in this exercise of their sovereign power. *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 585.

This Resolution is not, and does not purport to be, an emergency measure. Besides, if this were an emergency measure, it would end with the emergency, and then the Railway Company would have to pay these bondholders what it agreed to pay. But it purports to be legislation for all time.

This Resolution says these gold clause contracts "obstruct the power of Congress to regulate the value of money." Gold clause contracts have been in common use since before the adoption of the Constitution. During all this time Congress has regulated the value of money.

It is obvious that the act of regulating the value of money is not obstructed by the existence of gold clause contracts. A medium of exchange can be abandoned and a new medium substituted, irrespective of the existence or amount of outstanding gold clause contracts. The substitution of a new medium may change the number of units payable on the contracts, but that is merely one effect of the change in medium, not an obstruction to the change. There has been merely a nominal increase in the units of currency payable,—an increase in the number of units but not an increase in the value to be paid when measured by the standard agreed upon in the bonds. See *Brazilian Loans Case, supra,* p. 117.

When Congress authorized the devaluation of the dollar in 1933, its declared purpose was to increase nominal prices, which was the same thing as reducing the real value of currency and of fixed obligations to pay a fixed number of dollars, simply. The devaluation was expected to increase the nominal prices of wheat, cotton, and other farm products, and, we assume, also of silver, land, and other forms of property. And it was certain to have the automatic effect of increasing the nominal value of gold exactly in proportion to the devaluation.

Congress, proceeding on the theory that a devaluation of the dollar would increase prices correspondingly, saw that the nominal value of gold clause contracts would rise in proportion to the devaluation, thus preserving the real value of those obligations. What Congress wanted to do was to devalue the dollar for the purpose of correspondingly raising prices and reducing the real value of all debts. The gold clause in contracts prevented Congress from reducing the real value of those obligations. The gold clause did not obstruct the power of Congress to devalue the dollar; it merely limited the effect as to contracts which contained the gold clause.

Congress has no power to regulate the nominal, or even the real, effects of an exercise of one of its powers, either before or after. It may consider before it exercises a power what the results of its exercise of power may be, but it cannot change the situation before it acts, in order to prevent results of its action which it considers undesirable. If it could do this, it could change or regulate everything, including both debts and prices.

Nor are gold clause contracts " inconsistent with the declared policy of Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

This policy is the policy of having every dollar which is authorized by law, and is in circulation, on a parity with every other dollar that is authorized by law and is in circulation at the same time. Parity in the payment of debts is established by legal tender laws. Parity in the markets is maintained by redemption, convertibility, and acceptance of the circulating money by the Government in payment of duties and imposts. But parity means equality between dollars circulating at the same time.

Since the establishment of the new gold dollar, Congress has maintained all circulating dollars on a parity with the new gold dollar. Gold clause contracts have not obstructed this in any way. All the dollars now circulating have an equal power to pay gold clause contracts. The same number of new dollars is required to pay a gold bond today, no matter what kind of new dollars may be used. A law which provides for paying a bond with a less number of the new dollars than the bond itself requires, simply impairs the obligation of the bond.

The policy of maintaining the equal power of every dollar in the markets and in the payment of debts does not mean that the policy of Congress is to control the "purchasing power of the dollar"; the policy involves only the relation of circulating dollars to each other. Whatever the dollar, its purchasing power varies, and must vary. If Congress had authority to regulate the purchasing power of money, it could fix all prices and all wages without limit.

The making of agreements to pay in gold coin of the standard established by the United States, or its equivalent in value, could not have been against public policy when these contracts were made; nor was the existence of those contracts against public policy on June 5, 1933, when the Joint Resolution was passed. No change in conditions, no emergency, could make existing contracts, which use the standard of value provided by law as their basis, against public policy.

No conditions could ever arise which would make it public policy for a great nation to deny the binding force of its own obligations, lawfully issued under a paramount power and validly outstanding. Conditions might arise which would compel an honorable nation to admit, after every possible effort to meet its obligations, that it could not do so. But what conditions could justify an announcement by a sovereign nation that its promise to pay back the equivalent of what it had borrowed was a promise it would not keep and that it would not do what it had agreed to do?

Under our dual system of government, no conditions could ever arise which would make it federal public policy to change the contracts, impair the credit and restrict the borrowing power of the States.

Nor can conditions ever arise which will make it a matter of public policy to impair a whole class of valid private money obligations, by whomsoever owed.

All these inconsistencies in the Joint Resolution are due to distorting the scope of the "power to coin money, regulate the value thereof." The true scope of that power is to establish a "suitable medium of exchange" and a "sound and uniform currency," which neither requires nor permits the impairment of a particular class of contracts.

Although Congress does have the power to issue paper money as well and to make it legal tender, it does not derive that authority from the coinage power. *Juilliard* v. *Greenman,* 110 U. S. 421, 448. "Regulate" means to "fix" and change from time to time. "Value" means "monetary value," not purchasing power in a particular transaction or power to discharge a particular class of debts. *Fox* v. *Ohio,* 5 How. 410, 433.

The full scope of the so-called money power was stated in *Veazie Bank* v. *Fenno,* 8 Wall. 533, 549, in which Chief Justice Chase said that the Congress could "satisfy the wants of the community in respect of a circulating medium" and "secure a sound and uniform currency."

The power to issue paper money and to make it legal tender is primarily an incident of the borrowing power. *Knox* v. *Lee,* 12 Wall. 457; *Juilliard* v. *Greenman,* 110 U. S. 421.

The impairment of the real value of money contracts does not have any tendency whatever to provide such a "sound and uniform currency."

The power to "coin money, regulate the value thereof" is a very different thing from a power to regulate money contracts. Money is a medium of exchange, a mere instrument for use in commerce. Money contracts are property created through the use of the medium. The devaluation of the dollar is authorized because Congress has control over the medium itself. One result of a devaluation is that it impairs all outstanding contracts made in a fixed number of dollars, simply. But that does not mean that all contracts must be made in a fixed number of dollars, simply; nor does it mean that Congress has the power to eliminate from money contracts any clause providing a standard of value. The scope of the power is over the medium of exchange, not over contracts made in the medium.

If the Joint Resolution is sustained, it means, and must mean, that no one, neither the Government itself, States, municipalities, nor private persons, can make a money contract according to any fixed standard of value, even if established by law, and lawfully provide therein that the contract shall be performed in the same fixed standard of value in which it was made; it means, and must mean, that Congress has power at all times to impair or destroy at will all money contracts.

This is not only contrary to this Court's decisions in *Bronson* v. *Rodes, supra*, and in the long line of gold clause cases that followed it, but it is inconsistent with the whole idea of any fixed standard at all. It is an appropriate function of government to provide a standard of value as an aid to commerce; for a standard of value is indispensable to business prosperity and to the maintenance of regular and profitable trade and commerce. *United States* v. *Marigold,* 9 How. 559, 566.

Obviously, the object, purpose and effect of this Joint Resolution are not to coin money or regulate the value thereof, nor to do anything which the Constitution authorizes Congress to do. On the contrary, it is a plain, unqualified and direct attempt to violate the obligations of contracts which the Government itself made with authority of Congress in the exercise of its borrowing power; to encroach upon the sovereign power of the States by interfering with their power to borrow money on whatever terms they choose to make, by changing the terms of the contracts which they have made in borrowing money, by impairing their credit, and by interfering with and hindering their future financing; and to take the property of one class of persons and give it to another class without compensation and without due process of law. It is not a case where legislation passed by Congress within its constitutional powers incidentally affects private rights. It is a case where Congress undertakes directly and solely to legislate about contracts, to change their terms and impair their value. See *Osborn* v. *Nicholson,* 13 Wall. 654, 662.

To provide that these bonds can be discharged upon payment of the nominal amount in any kind of dollars, whatever their gold value, is to take the property of one private person and give it to another private person.

The Fifth Amendment protects the integrity of every contract, " whether the obligor be a private individual, a municipality, a State, or the United States." *Lynch* v. *United States,* 292 U. S. 571, 579.

We have said nothing about Congress having no powers except the powers the people expressly gave it in the Constitution and the powers implied from the powers expressly granted. We have said little or nothing about the reluctance of the people, because of their jealousy for their personal liberty and their apprehensions for the security of their private property, to grant to Congress the limited powers they finally did grant, and then only upon conditions which brought about the prompt adoption of the first ten Amendments. These and other kindred facts, such as the Tenth Amendment, which are fundamental and are at the threshold of every discussion relating to constitutional power, are so familiar to this Court that we do not know of anything we could say on any one of them that might help a decision of this case.

The security of private property is one of the chief concerns of the Constitution. No person shall be deprived of his property without due process of law, nor shall private property be taken for public use without just compensation. And yet our opponents here ask the Court to sustain the validity of a Resolution of Congress, the sole object, purpose and direct effect of which is to deprive persons of their property without due process of law and to take private property for private, not public, use without any compensation. Surely this cannot be done if the Government is a government of limited powers and the language of the Constitution means what it so plainly says.

Mr. Edwin S. S. Sunderland filed a brief on behalf of the Guaranty Trust Co. et al., Trustees under the First and Refunding Mortgage of Missouri Pacific R. Co., interveners.

By leave of Court, briefs of *amici curiae* were filed by *Messrs. H. W. O'Melveny, Walter K. Tuller,* and *Louis W. Myers,* and by *Mr. Paul Bakewell, Jr.,* in support of the proposition that the Joint Resolution of June 5, 1933, is unconstitutional and void.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

These cases present the question of the validity of the Joint Resolution of the Congress, of June 5, 1933, with respect to the "gold clauses" of private contracts for the payment of money. 48 Stat. 112.

This Resolution, the text of which is set forth in the margin,[1] declares that "every provision contained in or

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[1] "JOINT RESOLUTION.

"To assure uniform value to the coins and currencies of the United States.

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

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

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby" is "against public policy." Such provisions in obligations thereafter incurred are prohibited. The Resolution provides that "Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

In No. 270, the suit was brought upon a coupon of a bond made by the Baltimore and Ohio Railroad Company under date of February 1, 1930, for the payment of $1,000 on February 1, 1960, and interest from date at the rate

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"(b) As used in this resolution, the term 'obligation' means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

"Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes,' approved May 12, 1933, is amended to read as follows:

"'All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight.'

"Approved, June 5, 1933, 4:40 p. m."

of 4½ per cent. per annum, payable semi-annually. The bond provided that the payment of principal and interest "will be made . . . in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930." The coupon in suit, for $22.50 was payable on February 1, 1934. The complaint alleged that on February 1, 1930, the standard weight and fineness of a gold dollar of the United States as a unit of value "was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine," pursuant to the Act of Congress of March 14, 1900 (31 Stat. 45); and that by the Act of Congress known as the "Gold Reserve Act of 1934" (January 30, 1934, 48 Stat. 337), and by the order of the President under that Act, the standard unit of value of a gold dollar of the United States " was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-tenths fine," from and after January 31, 1934. On presentation of the coupon, defendant refused to pay the amount in gold, or the equivalent of gold in legal tender of the United States which was alleged to be, on February 1, 1934, according to the standard of weight and fineness existing on February 1, 1930, the sum of $38.10, and plaintiff demanded judgment for that amount.

Defendant answered that by Acts of Congress, and, in particular, by the Joint Resolution of June 5, 1933, defendant had been prevented from making payment in gold coin "or otherwise than dollar for dollar, in coin or currency of the United States (other than gold coin and gold certificates)" which at the time of payment constituted legal tender. Plaintiff, challenging the validity of the Joint Resolution under the Fifth and Tenth Amendments, and Article I, § 1, of the Constitution of the United States, moved to strike the defense. The motion was denied. Judgment was entered for plaintiff for $22.50, the face of the coupon, and was affirmed upon appeal. The Court of Appeals of the State considered the federal question and decided that the Joint Resolution was valid. 265 N. Y. 37; 191 N. E. 726. This Court granted a writ of certiorari, October 8, 1934.

In Nos. 471 and 472, the question arose with respect to an issue of bonds, dated May 1, 1903, of the St. Louis, Iron Mountain & Southern Railway Company, payable May 1, 1933. The bonds severally provided for the payment of "One Thousand Dollars gold coin of the United States of the present standard of weight and fineness," with interest from date at the rate of four per cent. per annum, payable "in like gold coin semi-annually." In 1917, Missouri Pacific Railroad Company acquired the property of the obligor subject to the mortgage securing the bonds. In March, 1933, the United States District Court, Eastern District of Missouri, approved a petition filed by the latter company under § 77 of the Bankruptcy Act. In the following December, the trustees under the mortgage asked leave to intervene, seeking to have the income of the property applied against the mortgage debt and alleging that the debt was payable "in gold coin of the United States of the standard of weight and fineness prevailing on May 1, 1903." Later, the Reconstruction Finance Corporation and the United States, as creditors of the debtor, filed a joint petition for leave to intervene, in which they denied the validity of the gold clause contained in the mortgage and bonds. Leave to intervene specially was granted to each applicant on April 5, 1934, and answers were filed. On the hearing, the District Court decided that the Joint Resolution of June 5, 1933, was constitutional and that the trustees were entitled, in payment of the principal of each bond, to $1,000 in money constituting legal tender. Decree was entered accordingly and the trustees (respondents here) took two appeals to the United States Circuit Court of Appeals.[2]

[2] One appeal was allowed by the District Judge and the other by the Circuit Court of Appeals.

While these appeals were pending, this Court granted writs of certiorari, November 5, 1934.

The Joint Resolution of June 5, 1933, was one of a series of measures relating to the currency. These measures disclose not only the purposes of the Congress but also the situations which existed at the time the Joint Resolution was adopted and when the payments under the "gold clauses" were sought. On March 6, 1933, the President, stating that there had been "heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding" and "extensive speculative activity abroad in foreign exchange" which had resulted "in severe drains on the Nation's stocks of gold," and reciting the authority conferred by § 5 (b) of the Act of October 6, 1917 (40 Stat. 411), declared "a bank holiday" until March 9, 1933. On the same date, the Secretary of the Treasury, with the President's approval, issued instructions to the Treasurer of the United States to make payments in gold in any form only under license issued by the Secretary.

On March 9, 1933, the Congress passed the Emergency Banking Act. 48 Stat. 1. All orders issued by the President or the Secretary of the Treasury since March 4, 1933, under the authority conferred by § 5 (b) of the Act of October 6, 1917, were confirmed. That section was amended so as to provide that during any period of national emergency declared by the President, he might "investigate, regulate or prohibit," by means of licenses or otherwise, "any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof." The Act also amended § 11 of the Federal Reserve Act (39 Stat. 752) so as to authorize the Secretary of the Treasury to require all persons to deliver to the Treasurer of the United States " any or all gold coin, gold bullion, and gold certificates " owned by them, and that the Secretary should pay therefor " an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States." By Executive Order of March 10, 1933, the President authorized banks to be reopened, as stated, but prohibited the removal from the United States, or any place subject to its jurisdiction, of " any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury." By further Executive Order of April 5, 1933, forbidding hoarding, all persons were required to deliver, on or before May 1, 1933, to stated banks " all gold coin, gold bullion and gold certificates," with certain exceptions, the holder to receive " an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States." Another Order of April 20, 1933, contained further requirements with respect to the acquisition and export of gold and to transactions in foreign exchange.

By § 43 of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 51), it was provided that the President should have authority, upon the making of prescribed findings and in the circumstances stated, "to fix the weight of the gold dollar in grains nine tenths fine and also to fix the weight of the silver dollar in grains nine tenths fine at a definite fixed ratio in relation to the gold dollar at such amounts as he finds necessary from his investigation to stabilize domestic prices or to protect the foreign commerce against the adverse effect of depreciated foreign currencies," and it was further provided that the "gold dollar, the weight of which is so fixed, shall be the standard unit of value," and that "all forms of money shall be maintained at a parity with this standard," but that "in no event shall the weight of the gold dollar be fixed so as to reduce its present weight by more than 50 per centum."

Then followed the Joint Resolution of June 5, 1933. There were further Executive Orders of August 28 and 29, 1933, October 25, 1933, and January 12 and 15, 1934, relating to the hoarding and export of gold coin, gold bullion and gold certificates, to the sale and export of gold recovered from natural deposits, and to transactions in foreign exchange, and orders of the Secretary of the Treasury, approved by the President, on December 28, 1933, and January 15, 1934, for the delivery of gold coin, gold bullion and gold certificates to the United States Treasury.

On January 30, 1934, the Congress passed the "Gold Reserve Act of 1934" (48 Stat. 337) which, by § 13, ratified and confirmed all the actions, regulations and orders taken or made by the President and the Secretary of the Treasury under the Act of March 9, 1933, or under § 43 of the Act of May 12, 1933, and, by § 12, with respect to the authority of the President to fix the weight of the gold dollar, provided that it should not be fixed "in any event at more than 60 per centum of its present weight." On January 31, 1934, the President issued his proclamation declaring that he fixed " the weight of the gold dollar to be 15 5/21 grains nine tenths fine," from and after that date.

We have not attempted to summarize all the provisions of these measures. We are not concerned with their wisdom. The question before the Court is one of power, not of policy. And that question touches the validity of these measures at but a single point, that is, in relation to the Joint Resolution denying effect to "gold clauses" in existing contracts. The Resolution must, however, be considered in its legislative setting and in the light of other measures *in pari materia.*

First. The interpretation of the gold clauses in suit. In the case of the *Baltimore and Ohio Railroad Company,* the obligor considers the obligation to be one " for the payment of money and not for the delivery of a specified number of grains or ounces of gold"; that it is an obligation payable in money of the United States and not less so because payment is to be made " in a particular kind of money "; that it is not a " commodity contract " which could be discharged by " tender of bullion." At the same time, the obligor contends that, while the Joint Resolution is constitutional in either event, the clause is a " gold coin " and not a " gold value " clause; that is, it does not imply " a payment in the 'equivalent' of gold in case performance by payment in gold coin is impossible." The parties, runs the argument, intended that the instrument should be negotiable and hence it should not be regarded as one " for the payment of an indeterminate sum ascertainable only at date of payment." And in the reference to the standard of weight and fineness, the words " equal to " are said to be synonymous with " of."

In the case of the bonds of the *St. Louis, Iron Mountain & Southern Railway Company,* the Government urges that by providing for payment in gold coin the parties showed an intention " to protect against depreciation of one kind of money as compared with another, as for example, paper money compared with gold, or silver compared with gold "; and, by providing that the gold coin should be of a particular standard, they attempted " to assure against payment in coin of lesser gold content." The clause, it is said, " does not reveal an intention to protect against a situation where gold coin no longer circulates and all forms of money are maintained in the United States at a parity with each other"; apparently, " the parties did not anticipate the existence of conditions making it impossible and illegal to procure gold coin with which to meet the obligations." In view of that impossibility, asserted to exist both in fact and in law, the

Government contends that "the present debtor would be excused, in an action on the bonds, from the obligation to pay in gold coin," but, "as only one term of the promise in the gold clause is impossible to perform and illegal," the remainder of the obligation should stand and thus the obligation "becomes one to pay the stated number of dollars."

The bondholder in the first case, and the trustees of the mortgage in the second case, oppose such an interpretation of the gold clauses as inadequate and unreasonable. Against the contention that the agreement was to pay in gold coin if that were possible, and not otherwise, they insist that it is beyond dispute that the gold clauses were used for the very purpose of guarding against a depreciated currency. It is pointed out that the words "gold coin of the *present* standard" show that the parties contemplated that when the time came to pay there might be gold dollars of a new standard, and, if so, that "gold coin of the present standard" would pass from circulation; and it is taken to be admitted, by the Government's argument, that if gold coins of a lesser standard were tendered, they would not have to be accepted unless they were tendered in sufficient amount to make up the "gold value" for which, it is said, the contract called. It is insisted that the words of the gold clause clearly show an intent "to establish a measure or standard of value of the money to be paid if the particular kind of money specified in the clause should not be in circulation at the time of payment." To deny the right of the bondholders to the equivalent of the gold coin promised is said to be not a construction of the gold clause but its nullification.[3]

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[3] As illustrating the use of such clauses as affording a standard or measure of value, counsel refer to Article 262 of the Treaty of Versailles with respect to the monetary obligations of Germany, which were made payable in gold coins of several countries, with the stated

The decisions of this Court relating to clauses for payment in gold did not deal with situations corresponding to those now presented. *Bronson* v. *Rodes,* 7 Wall. 229; *Butler* v. *Horwitz,* 7 Wall. 258; *Dewing* v. *Sears,* 11 Wall. 379; *Trebilcock* v. *Wilson,* 12 Wall. 687; *Thompson* v. *Butler,* 95 U. S. 694; *Gregory* v. *Morris,* 96 U. S. 619. See, also, *The Vaughan and Telegraph,* 14 Wall. 258; *The Emily Souder,* 17 Wall. 666. The rulings, upholding gold clauses and determining their effect, were made when gold was still in circulation and no act of the Congress prohibiting the enforcement of such clauses had been passed. In *Bronson* v. *Rodes, supra,* p. 251, the Court held that the legal tender acts of 1862 and 1863, apart from any question of their constitutionality, had not repealed or modified the laws for the coinage of gold and silver or the statutory provisions which made those coins a legal tender in all payments. It followed, said the Court, that "there were two descriptions of money in use at the time the tender under consideration was made, both authorized by law, and both made legal tender in payments. The statute denomination of both descriptions was dollars; but they were essentially unlike in nature." Accordingly, the contract of the parties for payment in one sort of dollars, which was still in lawful circulation, was sustained. The case of *Trebilcock* v. *Wilson, supra,* was decided shortly after the legal tender acts had been held valid. The Court again concluded (pp. 695, 696) that those acts applied only to debts which were payable

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purpose that the gold coins mentioned "shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914." Reference is also made to the construction of the gold clause in the bonds before the House of Lords in *Feist, appellant, and Société Intercommunale Belge d'Electricité, respondents,* L. R. (1934) A. C. 161, 173, and to the decisions of the Permanent Court of International Justice in the cases of the Serbian and Brazilian loans (Publications of the Permanent Court of International Justice, Series A, Nos. 20/21) where the bonds provided for payment in gold francs.

in money generally, and that there were "according to that decision, two kinds of money, essentially different in their nature, but equally lawful." In that view, said the Court, "contracts payable in either, or for the possession of either, must be equally lawful, and, if lawful, must be equally capable of enforcement."

With respect to the interpretation of the clauses then under consideration, the Court observed, in *Bronson* v. *Rodes, supra,* p. 250, that a contract to pay a certain number of dollars in gold or silver coins was, in legal import, nothing else than an agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight." The Court thought that it was not distinguishable, in principle, "from a contract to deliver an equal weight of bullion of equal fineness." That observation was not necessary to the final conclusion. The decision went upon the assumption "that engagements to pay coined dollars may be regarded as ordinary contracts to pay money rather than as contracts to deliver certain weights of standard gold." *Id.* p. 251.

In *Trebilcock* v. *Wilson, supra,* where a note was payable "*in specie,*" the Court said (pp. 694, 695) that the provision did not "assimilate the note to an instrument in which the amount stated is payable in chattels; as, for example, to a contract to pay a specified sum in lumber, or in fruit, or grain"; that the words "*in specie*" were "merely descriptive of the kind of dollars in which the note is payable, there being different kinds in circulation, recognized by law"; that they meant "that the designated number of dollars in the note shall be paid in so many gold or silver dollars of the coinage of the United States." And in *Thompson* v. *Butler, supra,* pp. 696, 697, the Court adverted to the statement made in *Bronson* v. *Rodes,* and concluded that "notwithstanding this, it is a contract to pay money, and none the less so because it designates for payment one of the two kinds of money which the law has made a legal tender in discharge of money obligations." Compare *Gregory* v. *Morris, supra.*

We are of the opinion that the gold clauses now before us were not contracts for payment in gold coin as a commodity, or in bullion, but were contracts for the payment of money. The bonds were severally for the payment of one thousand dollars. We also think that, fairly construed, these clauses were intended to afford a definite standard or measure of value, and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed. When these contracts were made they were not repugnant to any action of the Congress. In order to determine whether effect may now be given to the intention of the parties in the face of the action taken by the Congress, or the contracts may be satisfied by the payment dollar for dollar, in legal tender, as the Congress has now prescribed, it is necessary to consider (1) the power of the Congress to establish a monetary system and the necessary implications of that power; (2) the power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority; and (3) whether the clauses in question do constitute such an interference as to bring them within the range of that power.

Second. The power of the Congress to establish a monetary system. It is unnecessary to review the historic controversy as to the extent of this power, or again to go over the ground traversed by the Court in reaching the conclusion that the Congress may make treasury notes legal tender in payment of debts previously contracted, as well as of those subsequently contracted, whether that authority be exercised in course of war or in time of peace. *Knox* v. *Lee,* 12 Wall. 457; *Juilliard* v. *Greenman,* 110 U. S. 421. We need only consider certain postulates upon which that conclusion rested.

The Constitution grants to the Congress power "To coin money, regulate the value thereof, and of foreign coin." Art. I, § 8, par. 5. But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve "the great objects for which the government was framed,"—"a national government, with sovereign powers." *McCulloch* v. *Maryland,* 4 Wheat. 316, 404–407; *Knox* v. *Lee, supra,* pp. 532, 536; *Juilliard* v. *Greenman, supra,* p. 438. The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived 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. *Juilliard* v. *Greenman, supra,* pp. 439, 440.

The Constitution "was designed to provide the same currency, having a uniform legal value in all the States." It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress. *Knox* v. *Lee, supra,* p. 545. Another postulate of the decision in that case is that the Congress has power "to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof." *Id.*, p. 553. Or, as was stated in the *Juilliard* case, *supra*, p. 447, the Congress is empowered "to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments." The authority to impose requirements of uniformity and parity is an essential feature of this control of the currency. The Congress is authorized to provide "a sound and uniform currency for the country," and to "secure the benefit of it to the people by appropriate legislation." *Veazie Bank* v. *Fenno*, 8 Wall. 533, 549.

Moreover, by virtue of this national power, there attach to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. *Ling Su Fan* v. *United States*, 218 U. S. 302, 310. Those limitations arise from the fact that the law "gives to such coinage a value which does not attach as a mere consequence of intrinsic value." Their quality as legal tender is attributed by the law, aside from their bullion value. Hence the power to coin money includes the power to forbid mutilation, melting and exportation of gold and silver coin,—"to prevent its outflow from the country of its origin." *Id.*, p. 311.

Dealing with the specific question as to the effect of the legal tender acts upon contracts made before their passage, that is, those for the payment of money generally, the Court, in the legal tender cases, recognized the possible consequences of such enactments in frustrating the expected performance of contracts,—in rendering them "fruitless or partially fruitless." The Court pointed out that the exercise of the powers of Congress may affect "apparent obligations" of contracts in many ways. The Congress may pass bankruptcy acts. The Congress may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo, which may operate seriously upon existing contracts. And the Court reasoned that if the legal tender acts "were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law." The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the Government, and that no obligation of a contract "can extend to the defeat" of that authority. *Knox* v. *Lee, supra,* pp. 549–551.

On similar grounds, the Court dismissed the contention under the Fifth Amendment forbidding the taking of private property for public use without just compensation or the deprivation of it without due process of law. That provision, said the Court, referred only to a direct appropriation. A new tariff, an embargo, or a war, might bring upon individuals great losses; might, indeed, render valuable property almost valueless,—might destroy the worth of contracts. "But whoever supposed" asked the Court, "that, because of this, a tariff could not be changed or a non-intercourse act, or embargo be enacted, or a war be declared." The Court referred to the Act of June 28, 1834, by which a new regulation of the weight and value of gold coin was adopted, and about six per cent. was taken from the weight of each dollar. The effect of the measure was that all creditors were subjected to a corresponding loss, as the debts then due "became solvable with six per cent. less gold than was required to pay them before." But it had never been imagined that there was a taking of private property without compensation or without due process of law. The harshness of such legislation, or the hardship it may cause, afforded no reason for considering it to be unconstitutional. *Id.*, pp. 551, 552.

The question of the validity of the Joint Resolution of June 5, 1933, must be determined in the light of these settled principles.

Third. The power of the Congress to invalidate the provisions of existing contracts which interfere with the exercise of its constitutional authority. The instant cases involve contracts between private parties, but the question necessarily relates as well to the contracts or obligations of States and municipalities, or of their political subdivisions, that is, to such engagements as are within the reach of the applicable national power. The Government's own contracts—the obligations of the United States—are in a distinct category and demand separate consideration. See *Perry* v. *United States*, decided this day, *post*, p. 330.

The contention is that the power of the Congress, broadly sustained by the decisions we have cited in relation to private contracts for the payment of money generally, does not extend to the striking down of express contracts for gold payments. The acts before the Court in the legal tender cases, as we have seen, were not deemed to go so far. Those acts left in circulation two kinds of money, both lawful and available, and contracts for payments in gold, one of these kinds, were not disturbed. The Court did not decide that the Congress did not have the constitutional power to invalidate existing contracts of that sort, if they stood in the way of the execution of the policy of the Congress in relation to the currency. Mr. Justice Bradley, in his concurring opinion, expressed the view that the Congress had that power and had exercised it. *Knox* v. *Lee, supra*, pp. 566, 567. And, upon that ground, he dissented from the opinion of the Court in *Trebilcock* v. *Wilson, supra*, p. 699, as to the validity of contracts for payment "*in specie.*"[4] It is significant that Mr. Justice Bradley, referring to this difference of opinion in the legal tender cases, remarked (in his concurring opinion) that "of course" the difference arose "from the different construction given to the legal tender acts." "I do not understand," he said, "the majority of the court to decide that an act so drawn as to embrace, in terms, contracts payable in specie, would not be constitutional. Such a decision would completely nullify the power claimed for the government. For it would be very easy, by the use of one or two additional words, to make all contracts payable in specie."

Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship or loss. Creditors who have not stipulated for gold payments may suffer equal hardship or loss with creditors who have so stipulated. The former, admittedly, have no constitutional grievance. And, while the latter may not suffer more, the point is pressed that their express stipulations for gold payments constitute property, and that creditors who have not such stipulations are without that property right. And the contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Con-

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[4] Mr. Justice Miller also dissented in *Trebilcock* v. *Wilson*, 12 Wall., pp. 699, 700, upon the ground "that a contract for gold dollars, in terms, was in no respect different, in legal effect, from a contract for dollars without the qualifying words, specie, or gold, and that the legal tender statutes had, therefore, the same effect in both cases."

gress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See *Hudson Water Co.* v. *McCarter,* 209 U. S. 349, 357.

This principle has familiar illustration in the exercise of the power to regulate commerce. If shippers and carriers stipulate for specified rates, although the rates may be lawful when the contracts are made, if Congress through the Interstate Commerce Commission exercises its authority and prescribes different rates, the latter control and override inconsistent stipulations in contracts previously made. This is so, even if the contract be a charter granted by a State and limiting rates, or a contract between municipalities and carriers. *New York* v. *United States,* 257 U. S. 591, 600, 601; *United States* v. *Village of Hubbard,* 266 U. S. 474, 477, *note.* See, also, *Armour Packing Co.* v. *United States,* 209 U. S. 56, 80–82; *Union Dry Goods Co.* v. *Georgia Public Service Corp.,* 248 U. S. 372, 375.

In *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 229, 230, the Court raised the pertinent question,— if certain kinds of private contracts directly limit or restrain, and hence regulate, interstate commerce, why should not the power of Congress reach such contracts equally with legislation of a State to the same effect? "What sound reason," said the Court, "can be given why Congress should have the power to interfere in the case of the State, and yet have none in the case of the individual? Commerce is the important subject of consideration, and anything which directly obstructs and thus regulates that commerce which is carried on among the States, whether it is state legislation or private contracts between individuals or corporations, should be subject to the power of Congress in the regulation of that commerce."

Applying that principle, the Court held that a contract, valid when made (in 1871) for the giving of a free pass by an interstate carrier, in consideration of a release of a claim for damages, could not be enforced after the Congress had passed the Act of June 29, 1906, 34 Stat. 584. *Louisville & Nashville R. Co.* v. *Mottley,* 219 U. S. 467.[5] Quoting the statement of the general principle in the legal tender cases, the Court decided that the agreement must necessarily be regarded as having been made subject to the possibility that, at some future time, the Congress "might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value." The Court considered it inconceivable that the exercise of such power "may be hampered or restricted to any extent by contracts previously made between individuals or corporations." "The framers of the Constitution never intended any such state of things to exist." *Id.,* p. 482. Accordingly, it has been "authoritatively settled" by decisions of this Court that no previous contracts or combinations can prevent the application of the Anti-Trust Acts to compel the discontinuance of combinations declared to be illegal. *Addyston Pipe & Steel Co.* v. *United States, supra; United States* v. *Southern Pacific Co.,* 259 U. S. 214, 234, 235. See, also, *Calhoun* v. *Massie,* 253 U. S. 170, 176; *Omnia Commercial Co.* v. *United States,* 261 U. S. 502, 509; *Stephenson* v. *Binford,* 287 U. S. 251, 276.

The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made,

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[5] Compare *New York Central & Hudson R. R. Co.* v. *Gray,* 239 U. S. 583; *Calhoun* v. *Massie,* 253 U. S. 170, 176.

when they interfere with the carrying out of the policy it is free to adopt. The exercise of this power is illustrated by the provision of § 5 of the Employers' Liability Act of 1908 (35 Stat. 65, 66) relating to any contract the purpose of which was to enable a common carrier to exempt itself from the liability which the Act created. Such a stipulation the Act explicitly declared to be void. In the *Second Employers' Liability Cases,* 223 U. S. 1, 52, the Court decided that as the Congress possessed the power to impose the liability, it also possessed the power "to insure its efficacy by prohibiting any contract, rule, regulation or device in evasion of it." And this prohibition the Court has held to be applicable to contracts made before the Act was passed. *Philadelphia, B. & W. R. Co.* v. *Schubert,* 224 U. S. 603. In that case, the employee, suing under the Act, was a member of the "Relief Fund" of the railroad company under a contract of membership, made in 1905, for the purpose of securing certain benefits. The contract provided that an acceptance of those benefits should operate as a release of claims, and the company pleaded that acceptance as a bar to the action. The Court held that the Employers' Liability Act supplied the governing rule and that the defense could not be sustained. The power of the Congress in regulating interstate commerce was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. The reason is manifest. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place to this extent the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of the Congress so much of the field as they might choose by "prophetic discernment" to bring within the range of their agreements. The Constitution recognizes no such limitation. *Id.,* pp. 613, 614. See, also, *United States* v. *Southern Pacific Co., supra; Sproles* v. *Binford,* 286 U. S. 374, 390, 391; *Radio Commission* v. *Nelson Brothers Co.* 289 U. S. 266, 282.

The same reasoning applies to the constitutional authority of the Congress to regulate the currency and to establish the monetary system of the country. If the gold clauses now before us interfere with the policy of the Congress in the exercise of that authority they cannot stand.

Fourth. The effect of the gold clauses in suit in relation to the monetary policy adopted by the Congress. Despite the wide range of the discussion at the bar and the earnestness with which the arguments against the validity of the Joint Resolution have been pressed, these contentions necessarily are brought, under the dominant principles to which we have referred, to a single and narrow point. That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. With respect to those conditions and determinations, the Congress is entitled to its own judgment. We may inquire whether its action is arbitrary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decisions of the Congress as to the degree of the necessity for the adoption of that means, is final. *McCulloch* v. *Maryland, supra,* pp. 421, 423; *Juilliard* v. *Greenman, supra,* p. 450; *Stafford* v. *Wallace,* 258 U. S. 495, 521; *Everard's Breweries* v. *Day,* 265 U. S. 545, 559, 562.

The Committee on Banking and Currency of the House of Representatives stated in its report recommending favorable action upon the Joint Resolution (H. R. Rep. No. 169, 73d Cong., 1st Sess.):

"The occasion for the declaration in the resolution that the gold clauses are contrary to public policy arises out of the experiences of the present emergency. These gold clauses render ineffective the power of the Government to create a currency and determine the value thereof. If the gold clause applied to a very limited number of contracts and security issues, it would be a matter of no particular consequence, but in this country virtually all obligations, almost as a matter of routine, contain the gold clause. In the light of this situation two phenomena which have developed during the present emergency make the enforcement of the gold clauses incompatible with the public interest. The first is the tendency which has developed internally to hoard gold; the second is the tendency for capital to leave the country. Under these circumstances no currency system, whether based upon gold or upon any other foundation, can meet the requirements of a situation in which many billions of dollars of securities are expressed in a particular form of the circulating medium, particularly when it is the medium upon which the entire credit and currency structure rests."

And the Joint Resolution itself recites the determination of the Congress in these words: [6]

"Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the

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[6] See Note 1.

declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts."

Can we say that this determination is so destitute of basis that the interdiction of the gold clauses must be deemed to be without any reasonable relation to the monetary policy adopted by the Congress?

The Congress in the exercise of its discretion was entitled to consider the volume of obligations with gold clauses, as that fact, as the report of the House Committee observed, obviously had a bearing upon the question whether their existence constituted a substantial obstruction to the congressional policy. The estimates submitted at the bar indicate that when the Joint Resolution was adopted there were outstanding seventy-five billion dollars or more of such obligations, the annual interest charges on which probably amounted to between three and four billion dollars. It is apparent that if these promises were to be taken literally, as calling for actual payment in gold coin, they would be directly opposed to the policy of Congress, as they would be calculated to increase the demand for gold, to encourage hoarding, and to stimulate attempts at exportation of gold coin. If there were no outstanding obligations with gold clauses, we suppose that no one would question the power of the Congress, in its control of the monetary system, to endeavor to conserve the gold resources of the Treasury, to insure its command of gold in order to protect and increase its reserves, and to prohibit the exportation of gold coin or its use for any purpose inconsistent with the needs of the Treasury. See *Ling Su Fan* v. *United States, supra.* And if the Congress would have that power in the absence of gold clauses, principles beyond dispute compel the conclusion that private parties, or States or municipalities, by making such contracts could not prevent or embarrass its exercise. In that view of the import of the gold clauses, their obstructive character is clear.

But, if the clauses are treated as "gold value" clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress and hence subject to prohibition. It is true that when the Joint Resolution was adopted on June 5, 1933, while gold coin had largely been withdrawn from circulation and the Treasury had declared that "gold is not now paid, nor is it available for payment, upon public or private debts," [7] the dollar had not yet been devalued. But devaluation was in prospect and a uniform currency was intended.[8] Section 43 of the Act of May 12, 1933 (48 Stat. 51), provided that the President should have authority, on certain conditions, to fix the weight of the gold dollar as stated, and that its weight as so fixed should be "the standard unit of value" with which all forms of money should be maintained "at a parity." The weight of the gold dollar was not to be reduced by more than 50 per centum. The Gold Reserve Act of 1934 (January 30, 1934, 48 Stat. 337), provided that the President should not fix the weight of

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[7] Treasury Statement of May 26, 1933.

[8] The Senate Committee on Banking and Currency, in its Report of May 27, 1933, stated: "By the Emergency Banking Act and the existing Executive Orders gold is not now paid, or obtainable for payment, on obligations public or private. By the Thomas amendment currency was intended to be made legal tender for all debts. However, due to the language used doubt has arisen whether it has been made legal tender for payments on gold clause obligations, public and private. This doubt should be removed. These gold clauses interfere with the power of Congress to regulate the value of the money of the United States and the enforcement of them would be inconsistent with existing legislative policy." Sen. Rep. No. 99, 73d Cong., 1st sess.

the gold dollar at more than 60 per cent. of its present weight. The order of the President of January 31, 1934, fixed the weight of the gold dollar at 15 5/21 grains nine-tenths fine as against the former standard of 25 8/10 grains nine-tenths fine. If the gold clauses interfered with the congressional policy and hence could be invalidated, there appears to be no constitutional objection to that action by the Congress in anticipation of the determination of the value of the currency. And the questions now before us must be determined in the light of that action.

The devaluation of the dollar placed the domestic economy upon a new basis. In the currency as thus provided, States and municipalities must receive their taxes; railroads, their rates and fares; public utilities, their charges for services. The income out of which they must meet their obligations is determined by the new standard. Yet, according to the contentions before us, while that income is thus controlled by law, their indebtedness on their "gold bonds" must be met by an amount of currency determined by the former gold standard. Their receipts, in this view, would be fixed on one basis; their interest charges, and the principal of their obligations, on another. It is common knowledge that the bonds issued by these obligors have generally contained gold clauses, and presumably they account for a large part of the outstanding obligations of that sort. It is also common knowledge that a similar situation exists with respect to numerous industrial corporations that have issued their "gold bonds" and must now receive payments for their products in the existing currency. It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy which would be caused by such a disparity of conditions in which, it is insisted, those debtors under gold clauses should be required to pay one dollar and sixty-nine cents in currency while respectively receiving their taxes, rates, charges and prices on the basis of one dollar of that currency.

We are not concerned with consequences, in the sense that consequences, however serious, may excuse an invasion of constitutional right. We are concerned with the constitutional power of the Congress over the monetary system of the country and its attempted frustration. Exercising that power, the Congress has undertaken to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts. In the light of abundant experience, the Congress was entitled to choose such a uniform monetary system, and to reject a dual system, with respect to all obligations within the range of the exercise of its constitutional authority. The contention that these gold clauses are valid contracts and cannot be struck down proceeds upon the assumption that private parties, and States and municipalities, may make and enforce contracts which may limit that authority. Dismissing that untenable assumption, the facts must be faced. We think that it is clearly shown that these clauses interefere with the exertion of the power granted to the Congress and certainly it is not established that the Congress arbitrarily or capriciously decided that such an interference existed.

The judgment and decree, severally under review, are affirmed.

No. 270. Judgment affirmed.
Nos. 471 and 472. Decree affirmed.

MR. JUSTICE MCREYNOLDS, MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER dissent. See *post*, p. 361.