In that case it would seem to be implicit in our decision that the prohibition, at least in the present situation, is itself a constitutional exercise of the power to regulate the value of money.

I therefore do not join in so much of the opinion as may be taken to suggest that the exercise of the sovereign power to borrow money on credit, which does not override the sovereign immunity from suit, may nevertheless preclude or impede the exercise of another sovereign power, to regulate the value of money; or to suggest that although there is and can be no present cause of action upon the repudiated gold clause, its obligation is nevertheless, in some manner and to some extent, not stated, superior to the power to regulate the currency which we now hold to be superior to the obligation of the bonds.

Mr. Justice McReynolds, Mr. Justice Van Devanter, Mr. Justice Sutherland, and Mr. Justice Butler dissent. See below.

In the four preceding "*Gold Clause Cases,*" viz., *Norman* v. *Baltimore & Ohio R. Co.*, and *United States* v. *Bankers Trust Co., ante,* p. 240; *Nortz* v. *United States, ante,* p. 317; and *Perry* v. *United States, ante*, p. 330, a single dissenting opinion was delivered, immediately after the handing down of the opinion in the *Perry* case. It is as follows:

Mr. Justice McReynolds, dissenting.

Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler and I conclude that, if given effect, the enactments here challenged will bring about confiscation of property rights and repudiation of national obligations. Acquiescence in the decisions just announced is impossible; the circumstances demand statement of our views. "To let oneself slide down the easy slope offered by the course of events and to dull one's mind against the extent of the danger, . . . that is precisely to fail in one's obligation of responsibility."

Just men regard repudiation and spoliation of citizens by their sovereign with abhorrence; but we are asked to affirm that the Constitution has granted power to accomplish both. No definite delegation of such a power exists; and we cannot believe the farseeing framers, who labored with hope of establishing justice and securing the blessings of liberty, intended that the expected government should have authority to annihilate its own obligations and destroy the very rights which they were endeavoring to protect. Not only is there no permission for such actions; they are inhibited. And no plenitude of words can conform them to our charter.

The Federal government is one of delegated and limited powers which derive from the Constitution. "It can exercise only the powers granted to it." Powers claimed must be denied unless granted; and, as with other writings, the whole of the Constitution is for consideration when one seeks to ascertain the meaning of any part.

By the so-called gold clause—promise to pay in "United States gold coin of the present standard of value," or "of or equal to the present standard of weight and fineness"—found in very many private and public obligations, the creditor agrees to accept and the debtor undertakes to return the thing loaned or its equivalent. Thereby each secures protection, one against decrease in value of the currency, the other against an increase.

The clause is not new or obscure or discolored by any sinister purpose. For more than 100 years our citizens have employed a like agreement. During the War between the States, its equivalent "payable in coin" aided in surmounting financial difficulties. From the housetop men proclaimed its merits while bonds for billions were sold to support the World War. The Treaty of Versailles recognized it as appropriate and just. It appears in the obligations which have rendered possible our great undertakings—public-works, railroads, buildings.

Under the interpretation accepted here for many years, this clause expresses a definite enforceable contract. Both by statute and long use the United States have approved it. Over and over again they have enjoyed the added value which it gave to their obligations. So late as May 2, 1933 they issued to the public more than $550,000,000 of their notes each of which carried a solemn promise to pay in standard gold coin. (Before that day this coin had in fact been withdrawn from circulation, but the statutory measure of value remained the gold dollar of 25.8 grains.)

The Permanent Court of International Justice interpreted the clause as this Court had done and upheld it. Cases of Serbian and Brazilian Loans, Publications P. C. I. J., Series A, Nos. 20–21 (1929). It was there declared: " The gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency," and " The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it."

In *Feist* v. *Société Intercommunale Belge d'Electricité,* (1934), A. C. 161, the House of Lords expressed like views.

Gregory v. *Morris,* (1878) 96 U. S. 619, 624, 625—last of similar causes—construed and sanctioned this stipulation. In behalf of all, Chief Justice Waite there said:

" The obligation secured by the mortgage or lien under which Morris held was for the payment of gold coin, or, as was said in *Bronson* v. *Rodes,* 7 Wall. [1869] 229, ' 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' and is not distinguishable 'from a contract to deliver an equal weight of bullion of equal fineness.' . . . We think it clear, that, under such circumstances, it was within the power of the Court so far as Gregory was concerned, to treat the contract as one for the delivery of so much gold bullion; and, if Morris was willing to accept a judgment which might be discharged in currency, to have his damages estimated according to the currency value of bullion."

Earlier cases—*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—while important, need not be dissected. *Gregory* v. *Morris* is in harmony with them and the opinion there definitely and finally stated the doctrine which we should apply.

It is true to say that the gold 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 payment of less than that prescribed." Furthermore, they furnish means for computing the sum payable in currency if gold should become unobtainable. The borrower agrees to repay in gold coin containing 25.8 grains to the dollar; and if this cannot be secured the promise is to discharge the obligation by paying for each dollar loaned the currency value of that number of grains. Thus, the purpose of the parties will be carried out. Irrespective of any change in currency, the thing loaned or an equivalent will be returned—nothing more, nothing less. The present currency consists of promises to pay dollars of 15 5/21 grains; the Government procures gold bullion on that basis. The calculation to determine the damages for failure to pay in gold would not be difficult. *Gregory* v. *Morris* points the way.

Under appropriate statutes the United States for many years issued gold certificates, in the following form: " This certifies that there have been deposited in the Treasury of The United States of America One Thousand Dollars in gold coin payable to the bearer on demand. This certificate is a legal tender in the amount thereof in payment of all debts and dues public and private."

The certificates here involved—series 1928—were issued under § 6, Act Mar. 14, 1900, 31 Stat. 47, as amended. See U. S. C. Title 31, § 429.[1]

In view of the statutory direction that gold coin for which certificates are issued shall be held for their payment on demand " and used for no other purpose," it seems idle to argue (as counsel for the United States did) that other use is permissible under the ancient Act of March 3, 1863.

By various orders of the President and the Treasury from April 5 to December 28, 1933, persons holding gold certificates were required to deliver them, and accept "an equivalent amount of any form of coin or currency coined

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[1] In his Annual Report, 1926, 80, 81, the Secretary of the Treasury said: " Gold and silver certificates are in fact mere ' warehouse receipts ' issued by the Government in exchange for gold coin or bullion deposited in the one case, or standard silver dollars deposited in the other case, or against gold or standard silver dollars, respectively, withdrawn from the general fund of the Treasury. . . . Gold certificates, United States notes, Treasury notes of 1890, and Federal reserve notes are directly redeemable in gold." In his letter with the Annual Report, for 1933, 375, he showed that on June 30, 1933, $1,230,717,109 was held in trust against gold certificates and Treasury notes of 1890. The Treasury notes of 1890 then outstanding did not exceed about $1,350,000. Tr. Rep. 1926, 80.

or issued under the laws of the United States designated by the Secretary of the Treasury." Heavy penalties were provided for failure to comply.

That the holder of one of these certificates was owner of an express promise by the United States to deliver gold coin of the weight and fineness established by statute when the certificate issued, or if such demand was not honored to pay the holder the value in the currency then in use, seems clear enough. This was the obvious design of the contract.

The Act of March 14, 1900, 31 Stat., c. 41, 45, 47, as amended, in effect until January 31, 1934, provided: "That the dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine, . . . shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard," and also "The Secretary of the Treasury is authorized and directed to receive deposits of gold coin with the Treasurer . . . in sums of not less than twenty dollars, and to issue gold certificates therefor in denominations of not less than twenty dollars, and the coin so deposited shall be retained in the Treasury and held for the payment of such certificates on demand, and used for no other purpose." See U. S. C., Title 31, §§ 314, 429.

The Act of February 4, 1910, 36 Stat., c. 25, p. 192, directed "that any bonds and certificates of indebtedness of the United States hereafter issued shall be payable, principal and interest, in United States gold coin of the present standard of value."

By Executive Orders, April 5, and April 20, 1933, the President undertook to require owners of gold coin, gold bullion, and gold certificates, to deliver them on or before May 1st to a Federal Reserve Bank, and to prohibit the exportation of gold coin, gold bullion or gold certificates. As a consequence the United States were off the gold standard and their paper money began a rapid decline in the markets of the world. Gold coin, gold certificates and gold bullion were no longer obtainable. "Gold is not now paid nor is it available for payment upon public or private debts" was declared in Treasury statement of May 27, 1933; and this is still true. All gold coins have been melted into bars.

The Agricultural Adjustment Act of May 12, 1933, 48 Stat., c. 25, pp. 31, 52, 53—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," by § 43 provides that "Such notes [United States notes] and all other coins and currencies heretofore or hereafter coined or issued by or under the authority of the United States shall be legal tender for all debts public and private." Also, that the President by proclamation may "fix the weight of the gold dollar . . . 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 further, "such gold dollar, the weight of which is so fixed, shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity with this standard and it shall be the duty of the Secretary of the Treasury to maintain such parity, but 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."

The Gold Reserve Act of January 30, 1934, 48 Stat., c. 6, p. 337, 342, undertook to ratify preceding Presidential orders and proclamations requiring surrender of gold but prohibited him from establishing the weight of the gold dollar "at more than 60 per centum of its present weight." By proclamation, January 31, 1934, he directed that thereafter the standard should contain 15 5/21 grains of gold, nine-tenths fine. (The weight had been 25.8 grains since 1837.) No such dollar has been coined at any time.

On June 5, 1933, Congress passed a "Joint Resolution to assure uniform value to the coins and currencies of the United States." 48 Stat., c. 48, p. 112. This recited that holding and dealing in gold affect the public interest and are therefore subject to regulation; that the provisions of obligations which purport to give the obligee the right to require payment in gold coin or in any amount of money of the United States measured thereby obstruct the power of Congress to regulate the value of money and are inconsistent with the policy to maintain the equal value of every dollar coined or issued. It then declared that every provision in any obligation purporting to give the obligee a right to require payment in gold is against public policy, and directed 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."

Four causes are here for decision. Two of them arise out of corporate obligations containing gold clauses—railroad bonds. One is based on a United States Fourth Liberty Loan bond of 1918, called for payment April 15, 1934, containing a promise to pay "in United States gold coin of the present standard of value" with interest in like gold coin. Another involves gold certificates, series 1928, amounting to $106,300.

As to the corporate bonds the defense is that the gold clause was destroyed by the Resolution of June 5, 1933; and this view is sustained by the majority of the Court.

It is insisted that the agreement in the Liberty Bond, to pay in gold, also was destroyed by the Act of June 5, 1933. This view is rejected by the majority; but they seem to conclude that because of the action of Congress in declaring the holding of gold unlawful, no appreciable damage resulted when payment therein or the equivalent was denied.

Concerning the gold certificates it is ruled that if upon presentation for redemption gold coin had been paid to the holder, as promised, he would have been required to return this to the Treasury. He could not have exported it or dealt with it. Consequently he sustained no actual damage.

There is no challenge here of the power of Congress to adopt such proper "Monetary Policy" as it may deem necessary in order to provide for national obligations and furnish an adequate medium of exchange for public use. The plan under review in the *Legal Tender Cases* was declared within the limits of the Constitution, but not without a strong dissent. The conclusions there announced are not now questioned; and any abstract discussion of Congressional power over money would only tend to befog the real issue.

The fundamental problem now presented is whether recent statutes passed by Congress in respect of money and credits, were designed to attain a legitimate end. Or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily designed to destroy private obligations, repudiate national debts and drive into the Treasury all gold within the country, in exchange for inconvertible promises to pay, of much less value.

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Considering all the circumstances, we must conclude they show that the plan disclosed is of the latter description and its enforcement would deprive the parties before us of their rights under the Constitution. Consequently the Court should do what it can to afford adequate relief.

What has been already said will suffice to indicate the nature of these causes and something of our general views concerning the intricate problems presented. A detailed consideration of them would require much time and elaboration; would greatly extend this opinion. Considering also the importance of the result to legitimate commerce, it seems desirable that the Court's decision should be announced at this time. Accordingly, we will only undertake in what follows to outline with brevity our replies to the conclusions reached by the majority and to suggest some of the reasons which lend support to our position.

The authority exercised by the President and the Treasury in demanding all gold coin, bullion and certificates is not now challenged; neither is the right of the former to prescribe weight for the standard dollar. These things we have not considered. Plainly, however, to coin money and regulate the value thereof calls for legislative action.

Intelligent discussion respecting dollars requires recognition of the fact that the word may refer to very different things. Formerly the standard gold dollar weighed 25.8 grains; the weight now prescribed is 15 5/21 grains. Evidently, promises to pay one or the other of these differ greatly in value, and this must be kept in mind.

From 1792 to 1873 both the gold and silver dollar were standard and legal tender, coinage was free and unlimited. Persistent efforts were made to keep both in circulation. Because the prescribed relation between them got out of harmony with exchange values, the gold coin disappeared and did not in fact freely circulate in this country for 30 years prior to 1834. During that time business transactions were based on silver. In 1834, desiring to restore parity and bring gold back into circulation, Congress reduced somewhat (6%) the weight of the gold coin and thus equalized the coinage and the exchange values. The silver dollar was not changed. The purpose was to restore the use of gold as currency—not to force up prices or destroy obligations. There was no apparent profit for the books of the Treasury. No injury was done to creditors; none was intended. The legislation is without special significance here. See Hepburn on Currency.

The moneys under consideration in the *Legal Tender Cases,* decided May 1, 1871, 12 Wall. 457, and March 3, 1884, 110 U. S. 421, were promises to pay dollars, "bills of credit." They were "a pledge of the national credit," promises "by the Government to pay dollars," "the standard of value is not changed." The expectation, ultimately realized, was that in due time they would be redeemed in standard coin. The Court was careful to show that they were issued to meet a great emergency in time of war, when the overthrow of the Government was threatened and specie payments had been suspended. Both the end in view and the means employed, the Court held were lawful. The thing actually done was the issuance of bills endowed with the quality of legal tender in order to carry on until the United States could find it possible to meet their obligations in standard coin. This they accomplished in 1879. The purpose was to meet honorable obligations—not to repudiate them.

The opinion there rendered declares—"The legal tender acts do not attempt to make paper a standard of value. We do not rest their validity upon the assertion that their emission is coinage, or any regulation of the value of money; nor do we assert that Congress may make any-thing which has no value money. What we do assert is, that Congress has power to enact that the government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts or to multiples thereof." What was said in those causes, of course, must be read in the light of all the circumstances. The opinion gives no support to what has been attempted here.

This Court has not heretofore ruled that Congress may require the holder of an obligation to accept payment in subsequently devalued coins, or promises by the Government to pay in such coins. The legislation before us attempts this very thing. If this is permissible, then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits appear on the Treasury books. Instead of $2,800,000,000 as recently reported, perhaps $20,000,000,000, maybe enough to cancel the public debt, maybe more!

The power to issue bills and "regulate values" of coin cannot be so enlarged as to authorize arbitrary action, whose immediate purpose and necessary effect is destruction of individual rights.[2] As this Court has said, a "power to regulate is not a power to destroy." 154 U. S. 362, 398. The Fifth Amendment limits all governmental powers. We are dealing here with a debased standard, adopted with the definite purpose to destroy obligations. Such arbitrary and oppressive action is not within any congressional power heretofore recognized.

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[2] "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed where are they to be found if the property of an individual fairly and honestly acquired may be seized without compensation." Chief Justice Marshall in *Fletcher* v. *Peck,* 6 Cranch 87, 135.

The authority of Congress to create legal tender obligations in times of peace is derived from the power to borrow money; this cannot be extended to embrace the destruction of all credits.

There was no coin—specie—in general circulation in the United States between 1862 and 1879. Both gold and silver were treated in business as commodities. The Legal Tender Cases arose during that period.

Corporate Bonds—

The gold clauses in these bonds were valid and in entire harmony with public policy when executed. They are property—*Lynch* v. *United States,* 292 U. S. 571, 579. To destroy a validly acquired right is the taking of property—*Osborn* v. *Nicholson,* 13 Wall. 654, 662. They established a measure of value and supply a basis for recovery if broken. Their policy and purpose were stamped with affirmative approval by the Government when inserted in its bonds.

The clear intent of the parties was that in case the standard of 1900 should be withdrawn, and a new and less valuable one set up, the debtor could be required to pay the value of the contents of the old standard in terms of the new currency, whether coin or paper. If gold measured by prevailing currency had declined, the debtor would have received the benefit. The Agricultural Adjustment Act of May 12th discloses a fixed purpose to raise the nominal value of farm products by depleting the standard dollar. It authorized the President to reduce the gold in the standard, and further provided that all forms of currency should be legal tender. The result expected to follow was increase in nominal values of commodities and depreciation of contractual obligations. The purpose of § 43, incorporated by the Senate as an amendment to the House Bill, was clearly stated by the

Senator who presented it.[3] It was the destruction of lawfully acquired rights.

In the circumstances existing just after the Act of May 12th, depreciation of the standard dollar by the Presidential proclamation would not have decreased the amount required to meet obligations containing gold clauses. As to them the depreciation of the standard would have caused an increase in the number of dollars of depreciated currency. General reduction of all debts could only be secured by first destroying the contracts evidenced by the gold clauses; and this the Resolution of June 5th undertook to accomplish. It was aimed directly at those contracts, and had no definite relation to the power to issue bills or to coin or regulate the value of money.

To carry out the plan indicated as above shown in the Senate, the Gold Reserve Act followed—January 30, 1934. This inhibited the President from fixing the weight of the standard gold dollar above 60% of its then existing weight. (Authority had been given for 50% reduction by the Act of May 12th.) On January 31st he directed that the standard should contain 15 5/21 grains of gold. If this reduction of 40% of all debts was within the power of Congress and if, as a necessary means to accomplish that end, Congress had power by resolution to destroy the

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[3] He said—" This amendment has for its purpose the bringing down or cheapening of the dollar, that being necessary in order to raise agricultural and commodity prices. . . . The first part of the amendment has to do with conditions precedent to action being taken later.

" It will be my task to show that if the amendment shall prevail it has potentialities as follows: It may transfer from one class to another class in these United States value to the extent of almost $200,000,-000,000. This value will be transferred, first, from those who own the bank deposits. Secondly, this value will be transferred from those who own bonds and fixed investments." Cong. Record, April 1933, pp. 2004, 2216, 2217, 2219.

gold clauses, the holders of these corporate bonds are without remedy. But we must not forget that if this power exists, Congress may readily destroy other obligations which present obstruction to the desired effect of further depletion. The destruction of all obligations by reducing the standard gold dollar to one grain of gold, or brass or nickel or copper or lead, will become an easy possibility. Thus we reach the fundamental question which must control the result of the controversy in respect of corporate bonds. Apparently in the opinion of the majority the gold clause in the Liberty bond withstood the June 5th Resolution notwithstanding the definite purpose to destroy them. We think that in the circumstances Congress had no power to destroy the obligations of the gold clauses in private obligations. The attempt to do this was plain usurpation, arbitrary and oppressive.

The oft repeated rule by which the validity of statutes must be tested is this—" Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional."

The end or objective of the Joint Resolution was not " legitimate." The real purpose was not " to assure uniform value to the coins and currencies of the United States," but to destroy certain valuable contract rights. The recitals do not harmonize with circumstances then existing. The Act of 1900 which prescribed a standard dollar of 25.8 grains remained in force; but its command that " all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard " was not being obeyed. Our currency was passing at a material discount; all gold had been sequestrated; none was attainable. The Resolution made no provision for restoring parity with the old standard; it established no new one.

This Resolution was not appropriate for carrying into effect any power entrusted to Congress. The gold clauses in no substantial way interfered with the power of coining money or regulating its value or providing an uniform currency. Their existence, as with many other circumstances, might have circumscribed the effect of the intended depreciation and disclosed the unwisdom of it. But they did not prevent the exercise of any granted power. They were not inconsistent with any policy theretofore declared. To assert the contrary is not enough. The Court must be able to see the appropriateness of the thing done before it can be permitted to destroy lawful agreements. The purpose of a statute is not determined by mere recitals—certainly they are not conclusive evidence of the facts stated.

Again, if effective, the direct, primary and intended result of the Resolution will be the destruction of valid rights lawfully acquired. There is no question here of the indirect effect of lawful exercise of power. And citations of opinions which upheld such indirect effects are beside the mark. This statute does not "work harm and loss to individuals indirectly," it destroys directly. Such interference violates the Fifth Amendment; there is no provision for compensation. If the destruction is said to be for the public benefit, proper compensation is essential; if for private benefit, the due process clause bars the way.

Congress has power to coin money but this cannot be exercised without the possession of metal. Can Congress authorize appropriation, without compensation, of the necessary gold? Congress has power to regulate commerce, to establish post roads, &c. Some approved plan may involve the use or destruction of A's land or a private way. May Congress authorize the appropriation or destruction of these things without adequate payment? Of course not. The limitations prescribed by the Constitution restrict the exercise of all power.

Ling Su Fan v. *United States,* 218 U. S. 302, supports the power of the legislature to prevent exportation of coins without compensation. But this is far from saying that the legislature might have ordered destruction of the coins without compensating the owners or that they could have been required to deliver them up and accept whatever was offered. In *United States* v. *Lynah,* 188 U. S. 445, 471, this Court said—" If any one proposition can be considered as settled by the decisions of this court it is that although in the discharge of its duties the Government may appropriate property, it cannot do so without being liable to the obligation cast by the fifth amendment of paying just compensation."

GOVERNMENT BONDS—

Congress may coin money; also it may borrow money. Neither power may be exercised so as to destroy the other; the two clauses must be so construed as to give effect to each. Valid contracts to repay money borrowed cannot be destroyed by exercising power under the coinage provision. The majority seem to hold that the Resolution of June 5th did not affect the gold clauses in bonds of the United States. Nevertheless we are told that no damage resulted to the holder now before us through the refusal to pay one of them in gold coin of the kind designated or its equivalent. This amounts to a declaration that the Government may give with one hand and take away with the other. Default is thus made both easy and safe!

Congress brought about the conditions in respect of gold which existed when the obligation matured. Having made payment in this metal impossible, the Government cannot defend by saying that if the obligation had been met the creditor could not have retained the gold; consequently he suffered no damage because of the nondelivery. Obligations cannot be legally avoided by prohibiting the creditor from receiving the thing promised. The promise was to pay in gold, standard of 1900, otherwise to discharge the debt by paying the value of the thing promised in currency. One of these things was not prohibited. The Government may not escape the obligation of making good the loss incident to repudiation by prohibiting the holding of gold. Payment by fiat of any kind is beyond its recognized power. There would be no serious difficulty in estimating the value of 25.8 grains of gold in the currency now in circulation.

These bonds are held by men and women in many parts of the world; they have relied upon our honor. Thousands of our own citizens of every degree, not doubting the good faith of their sovereign, have purchased them. It would not be easy for this multitude to appraise the form of words which establishes that they have suffered no appreciable damage; but perhaps no more difficult for them than for us. And their difficulty will not be assuaged when they reflect that ready calculation of the exact loss suffered by the Philippine government moved Congress to satisfy it by appropriating, in June 1934, $23,862,750.78 to be paid out of the Treasury of the United States.[4] And see Act May 30, 1934, 48 Stat. 817, appro-

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[4]An Act relating to Philippine currency reserves on deposit in the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed, when the funds therefor are made available, to establish on the books of the Treasury a credit in favor of the Treasury of the Philippine Islands for $23,862,750.78, being an amount equal to the increase in value (resulting from the reduction of the weight of the gold dollar) of the gold equivalent at the opening of business on January 31, 1934, of the balances maintained at that time in banks in the continental United States by the priating $7,438,000 to meet losses sustained by officers and employees in foreign countries due to appreciation of foreign currencies in their relation to the American dollar.

Gold Certificates—

These were contracts to return gold left on deposit; otherwise to pay its value in the currency. Here the gold was not returned; there arose the obligation of the Government to pay its value. The Court of Claims has jurisdiction over such contracts. Congress made it impossible for the holder to receive and retain the gold promised him; the statute prohibited delivery to him. The contract being broken the obligation was to pay in currency the value of 25.8 grains of gold for each dollar called for by the certificate. For the Government to say, we have violated our contract but have escaped the consequences through our own statute, would be monstrous. In matters of contractual obligation the Government can not legislate so as to excuse itself.

These words of Alexander Hamilton ought not to be forgotten—

"When a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority, and exchanges the character of legislator for that of a moral agent, with the same rights and obligations as an individual. Its promises may be

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Government of the Philippine Islands for its gold standard fund and its Treasury certificate fund less the interest received by it on such balances.

Sec. 2. There is hereby authorized to be appropriated, out of the receipts covered into the Treasury under section 7 of the Gold Reserve Act of 1934, by virtue of the reduction of the weight of the gold dollar by the proclamation of the President on January 31, 1934, the amount necessary to establish the credit provided for in section 1 of this Act. Approved, June 19, 1934.

justly considered as excepted out of its power to legislate, unless in aid of them. It is in theory impossible to reconcile the idea of a promise which obliges, with a power to make a law which can vary the effect of it." 3 Hamilton's Works, 518, 519.

These views have not heretofore been questioned here. In the *Sinking-Fund Cases,* 99 U. S. 700, 719, Chief Justice Waite speaking for the majority declared: "The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable."

And in the same cause, (731, 732) Mr. Justice Strong, speaking for himself, affirmed: "It is as much beyond the power of a legislature, under any pretence, to alter a contract into which the government has entered with a private individual, as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing with private contractors."

Can the Government, obliged as though a private person to observe the terms of its contracts, destroy them by legislative changes in the currency and by statutes forbidding one to hold the thing which it has agreed to deliver? If an individual should undertake to annul or lessen his obligation by secreting or manipulating his assets with the intent to place them beyond the reach of creditors, the attempt would be denounced as fraudulent, wholly ineffective.

Counsel for the Government and railway companies asserted with emphasis that incalculable financial disaster would follow refusal to uphold, as authorized by the Constitution, impairment and repudiation of private obligations and public debts. Their forecast is discredited by manifest exaggeration. But, whatever may be the situation now confronting us, it is the outcome of attempts to destroy lawful undertakings by legislative action; and this we think the Court should disapprove in no uncertain terms.

Under the challenged statutes it is said the United States have realized profits amounting to $2,800,000,000.[5] But this assumes that gain may be generated by legislative fiat. To such counterfeit profits there would be no limit; with each new debasement of the dollar they would expand. Two billions might be ballooned indefinitely— to twenty, thirty, or what you will.

Loss of reputation for honorable dealing will bring us unending humiliation; the impending legal and moral chaos is appalling.

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[5] In a radio address concerning the plans of the Treasury, August 28, 1934, the Secretary of the Treasury, as reported by the Commercial and Financial Chronicle of September 1, 1934, stated:

"But we have another cash drawer in the Treasury, in addition to the drawer which carries our working balance. This second drawer I will call the 'gold' drawer. In it is the very large sum of $2,800,000,000, representing 'profit' resulting from the change in the gold content of the dollar. Practically all of this 'profit' the Treasury holds in the form of gold and silver. The rest is in other assets.

"I do not propose here to subtract this $2,800,000,000 from the net increase of $4,400,000,000 in the national debt—thereby reducing the figure to $1,600,000,000. And the reason why I do not subtract it is this: for the present this $2,800,000,000 is under lock and key. Most of it, by authority of Congress, is segregated in the so-called stabilization fund, and for the present we propose to keep it there. But I call your attention to the fact that ultimately we expect this 'profit' to flow back into the stream of our other revenues and thereby reduce the national debt."