WHAT WE HAVE DONE

The United States has not kept up with the procession. To some extent we have taken action similar to that taken by Great Britain. It is in the field of effective organization of our foreign trade and of making foreign trade agreements to correspond with our present needs that we have lagged and fallen behind.

The adoption of the Reciprocal Trade Agreements Act of 1934 empowered this Government to meet our foreign competitors on their own ground with adequate bargaining power. As minor examples of the successful employment of bargaining power by the United States I would point out that in 1933 and early in 1934 when we were giving quotas for the importation of liquor into this country following the repeal of the eighteenth amendment, some rather advantageous trades were made.

For example, Spain agreed to take, during 1934, approximately 17,500,000 pounds of tobacco in exchange for an enlarged wine quota. In previous years, Spanish tobacco purchases had been very irregular and averaged much below these figures.

Italy also contracted for 1,250,000 pounds of tobacco. This bargain was made in spite of the Italian program to reduce to a minimum imports of American tobacco. France took 20,000 tons of apples during the first quarter of 1934—the largest quantity ever sold to that country, even under unrestricted trade, and over four times the quota which we had been allowed for the previous quarter. In addition, larger imports were authorized for the second quarter of 1934 as an indirect result of the original agreement.

In the summer of 1933 the North Pacific Emergency Export Association was formed for the purpose of disposing of some of the surplus wheat in that section. The results of its activities have been the exportation of about 28,000,000 bushels of wheat and flour to more than 40 countries. Although the price of no. 1 white wheat at Portland, Oreg., in July 1933 was 26 cents under Chicago's December futures, since that time, except during the period of the longshoremen's strike on the Pacific coast, the price has rarely been more than 15 cents under Chicago, and for some time was as low as 6 cents under Chicago.

Furthermore, active negotiations have been in progress looking toward the sale of American cotton and other farm commodities to Europe on what amounts to a goods-for-goods basis. I believe these are all steps in the right direction. I cite them as examples of how Government bargaining can assist in the promotion of export and import trade. There are many possibilities in the field. However, to make this bargaining power effective, certain things must be done.

WHAT I THINK WE SHOULD DO

In speeches which I delivered recently in Chicago, New York, and Washington, I advocated a five-point program for our foreign trade policy. It consisted of:

1. Recognition by us that foreign trade has become a definite and direct concern of governments, and that unless our foreign trade interests receive backing and assistance similar to that given by other governments to their traders, we will not be able to compete with them on equal terms.

This recognition has been made in principle. Many agencies of our Government are engaged actively in assisting our citizens in dealing with foreign trade problems. Moreover, the establishment of the Export-Import Banks of Washington has provided a type of Government financing for intermediate and long-term credits which our commercial banking system is not designed to carry. I believe that the export-import banks can play a fundamental part in our foreign trade activities for many years to come and should be organized and continued on a permanent basis. We have also entered, as I have indicated, upon a program of negotiating reciprocal trade agreements. Progress has been slow but valuable advances have been made in the understanding of our foreign trade problems. These trade agreements should be effected wherever we can find a basis of mutual advantage with a foreign nation.

2. In order to develop consistent and effective foreign trade policies, the present 50 or more organizations in our governmental set-up dealing with foreign-trade activities should be tied together and should function under unified direction.

Some progress has been made in this direction, but further steps are necessary. I would favor the establishment of a permanent board of foreign trade, composed of men experienced in the various fields of agriculture, industry, transportation, finance, and government, with powers adequate to deal comprehensively with our foreign commercial and financial transactions, who would devote their full time to this field of our national activity.

3. Accurate and up-to-date records of our commercial and financial relations with each individual country must be kept, as we must know how we stand on our trade and international balances at any given time if we are to steer our course intelligently.

This work already has been started in the Department of Commerce in cooperation with the office of special adviser to the President on foreign trade and is affording a most useful guide, not only in the consideration of our foreign trade problems in themselves but also as they are related to our national economic policy as a whole. In this connection I must emphasize the fact that foreign policy and foreign trade policy must be based upon and conform to the requirements of our domestic situation. Unless it does this it becomes unreal and correspondingly harmful to our actual interests. I cannot state this too forcefully.

4. As international trade cannot move on a one-way street and as we must increase imports if we are to be paid for increased exports, we should pursue a policy of selective exports and imports, sending abroad, preferably in manufactured form, those products we can best produce, particularly those agricultural products which are the backbone of our foreign trade and of our domestic prosperity, taking in return those raw materials which we need and such other products the importation of which will do the least violence to our domestic economy.

Much has been said as to the necessity of accepting imports as a matter of national policy. I agree completely with this point of view, but I believe that we should decide for ourselves what imports we will take, and in what quantities and from what countries, in exchange for the goods we choose to send abroad. In my opinion this can best be determined by making individual arrangements with individual nations, country by country, rather than through attempting to apply some blanket formula such as a horizontal reduction of our tariffs, whether that be accomplished through general tariff legislation or through generalizing tariff concessions granted under the Trade Agreements Act. We have been brought up on protection. If we are to abandon any measure of that protection it should be only in exchange for tangible advantages to us.

To pursue this policy of selective exports and imports it will be necessary for us to abandon the unconditional most-favored-nation policy adopted under the Harding administration and to return to the traditional American policy of extending conditional most-favored-nation treatment only, which prevailed from 1789 to 1922. Much is claimed for the point that if the total volume of world trade only can be increased, the foreign trade of the United States automatically will be restored. This does not follow unless as a nation we take active steps to promote our interests. I think that we need not wait upon general world recovery to accomplish our national recovery. If we can stage our own national recovery and build up our own national trade, we shall have done much to restore world recovery and world trade.

5. I indicated the need of Government action to an extent necessary to clear up our foreign exchange problems.

Here again I take my stand on realistic ground.

Perhaps the most potent factor in the congestion of our international trade is that of exchange restrictions imposed by about 35 nations. This means simply that, more or less arbitrarily, these countries have prevented the payment of current and other indebtedness by delaying or forbidding transfer of funds. I shall not discuss the reasons given for such action or the varying degrees of justification. I shall discuss the effect and possible remedies.

The effect is that such countries are using the money due exporters without their consent and against their will, and that payment is being made finally upon the terms of foreign governments, at their discretion, often without interest, and with charges and discounts fixed by them, or at best regulated as a result of reluctant agreement.

Now as to remedies. I said in Chicago some weeks ago, and I repeat, that in the case of countries exercising exchange controls against us the satisfactory solution of the exchange problem should be made a prerequisite to the negotiation of any general trade agreement. I do not regard reasonable business requirements as coercion. When our nationals fill their part of a contract and their foreign customers theirs, and their government intervenes, I think that our nationals have a right to ask our Government to act on their behalf. This is a matter upon which only government can act effectively. No bank or business man, no group of banks or business men can solve this problem themselves without the active help of Government.

I have stated these five recommendations before and shall doubtless do so again. I feel that they represent the starting point for a truly American foreign trade policy, based upon studies of facts which cannot be ignored. Their adoption will enable us to go forward. This would be a new deal in American foreign trade.

ATTORNEY GENERAL CUMMINGS' ARGUMENT OF GOLD-CLAUSE CASES

Mr. BARKLEY. Mr. President, I ask unanimous consent to have printed in the RECORD the oral argument of Attorney General Cummings before the Supreme Court of the United States January 8 and 9, 1935, in the gold-clause cases.

There being no objection, the matter was ordered to be printed in the RECORD, as follows:

In the Supreme Court of the United States. October term, 1934.

I. No. 270. *Norman C. Norman, petitioner, v. The Baltimore & Ohio Railroad Co., respondent.* For the petitioner: Emanuel Redfield, Esq. For the respondent: Frederick H. Wood, Esq.

II. Nos. 471 and 472. *United States of America, Reconstruction Finance Corporation et al., petitioners,* v. *Bankers Trust Co.* and *William H. Bixby, Trustees.* For the petitioners: Hon. Homer Cummings, Attorney General of the United States; Edward J. White, Esq., and Stanley Reed, Esq. For the respondents: James M. McIntosh, Esq., and Edward Bourne, Esq.

III. No. 531. *F. Eugene Nortz, claimant,* v. *The United States, defendant.* For the claimant: Otto C. Sommerich, Esq., and Raymond T. Heilpern, Esq. For the defendant: Hon. Homer Cummings, Attorney General of the United States, and Hon. Angus D. MacLean, Assistant Solicitor General of the United States.

IV. No. 532. *John M. Perry, claimant,* v. *The United States, defendant.* For the claimant: John M. Perry, Esq. For the defendant: Hon. Homer Cummings, Attorney General of the United States, and Hon. Angus D. MacLean, Assistant Solicitor General of the United States.

STATEMENT

The arguments in the above causes, involving gold obligations, were heard by the Supreme Court of the United States on January 8, 9, 10, and 11, 1935.

The main argument of the Attorney General was made on January 8 and 9, 1935, while the case of *United States* v. *Bankers Trust Co.* was under consideration.

The closing argument, made by the Attorney General in *Perry* v. *United States* on January 11, 1935, was not reported and cannot, therefore, be reproduced.

STENOGRAPHIC REPORT OF THE ORAL ARGUMENT OF HON. HOMER CUMMINGS, ATTORNEY GENERAL OF THE UNITED STATES, ON BEHALF OF THE GOVERNMENT

Attorney General CUMMINGS. If the Court please: These four cases which are now pending before this Court touch every essential aspect of the problems involved in the matter of gold obligations. In each one of these cases the program of the Government is under attack upon the ground that the Congress has exceeded the powers granted by the Constitution.

The first two cases deal with railroad bonds. The third case deals with gold certificates, and the fourth case, in the order stated on the docket, deals with Liberty bonds.

Underlying these four cases are certain fundamental constitutional considerations which I think are determinative of the entire matter. Therefore, with the permission of the Court, it is my purpose to address myself primarily to these basic considerations, leaving to my distinguished colleagues and associates who are to follow me the burden of such differentiation as may be necessary as between the various cases; for instance, as between the Baltimore & Ohio case and the Missouri Pacific case, a difference due to the maturity dates of the bonds and the question of the bankruptcy of the latter company; also the questions of impossibility of performance and "equivalence", and the inquiry as to whether or not, in any event, just compensation has, in fact, been awarded; and also such distinction as there may be between section 1 and section 2 of the joint resolution of June 5, 1933, as it may possibly have some bearing upon the Nortz case and the Perry case.

Nor shall I touch, if I am permitted to make that omission, upon any of the questions involved in the technical authority of the Court of Claims to pass upon constitutional matters.

I cannot forbear, however, from making a passing, and at least semiserious, reference to what seems to me to be a rather peculiar lack of coordination in the briefs filed by those who take a position in opposition to that maintained by the Government. In the Nortz and Perry cases I find a "head-on collision." In the Nortz brief it is clearly pointed out, on pages 39 and 40, that there is no merit in either the Baltimore & Ohio case or in the Missouri Pacific case; and, if one reads attentively the Perry brief, it is made reasonably clear that there is no basis for the contentions made in the Nortz case.

This would appear to dispose of three of the pending cases now before this Court and measurably to lighten our burden with respect to the one which still remains; and even that one, if the full implications of the Nortz brief are carried to their logical conclusion, is in serious peril.

Now, if the Court please, 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, is it more effectively stated than in the Legal Tender cases, in which this Court said:

"A decent respect for a coordinate 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.

Look at the briefs filed in behalf of the Government. Here we have assumed the burden of showing the reasonableness, the propriety, the wisdom, the righteousness, and the justice of the steps taken by the Congress, without waiting for the opposition to show that such steps were improperly, capriciously, or unfairly taken. In other words, we have undertaken to carry a burden, instinctively almost, which of right rests upon the shoulders of the opposition.

Although what I have said is obvious, I want to carry it just a bit further. 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 6th 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 gulden, 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 30 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.

The measures I refer to may be grouped within the period from March 6, 1933, to the 31st day of January 1934. Of course, the first, and perhaps the most important event, occurred on the 6th day of March 1933, when the President issued a proclamation declaring a national emergency and creating a 3-day bank holiday. On that same day instructions were issued by the Secretary of the Treasury to the Treasurer of the United States and to the Director of the Mint for the purpose of supporting the proclamation that had been issued by the President.

That was the 6th day of March. And within 3 days, with unparalleled celerity, the Congress had acted and passed the Emergency Banking Act, by an overwhelming majority. This act approved and confirmed the previous acts of the President and of the Secretary of the Treasury; amended the existing law; strengthened the hands of the President and of the Secretary of the Treasury; granted additional powers and issued regulations bearing primarily upon the run on the banks, the flight of capital into foreign countries, and foreign currencies; and authorized the Secretary of the Treasury, if he, in his discretion, found that it was necessary to protect the currency system of the United States, to require the turning over of all gold coin, gold bullion, and gold certificates to the Treasurer of the United States. On the same day the President issued another proclamation extending the bank holiday indefinitely. On the 10th day of March, and again on the 13th, I think it was, additional orders were issued.

And then on the 5th of April an Executive order was issued prohibiting the hoarding of gold and requiring all persons to surrender their holdings of gold coin, gold bullion, and gold certificates in amounts in excess of $100.

It also required—and this is important to remember in connection with the Executive order of April 5, because it was followed out later by actual acts by the member banks—the Executive order required member banks of the Federal Reserve System to deliver their gold coin, gold bullion, and gold certificates to the Federal Reserve banks in their respective districts, and to receive, dollar for dollar, credit or payment therefor.

(Thereupon, at 4:30 o'clock p. m., the Court adjourned until Wednesday, Jan. 9, 1935, at 12 o'clock noon.)

WEDNESDAY, *January 9, 1935.*

The above-entitled causes came on for further oral argument before the full Court (Hon. Charles E. Hughes, Chief Justice of the United States, presiding) at 12:05 o'clock p. m.

The CHIEF JUSTICE. We will proceed with the causes under argument, nos. 471 and 472, *The United States of America, Reconstruction Finance Corporation, et al., petitioners,* v. *The Bankers Trust Co. and William H. Bixby, Trustees, respondents.* Mr. Attorney General.

STENOGRAPHIC REPORT OF THE ORAL ARGUMENT OF HON. HOMER CUMMINGS, ATTORNEY GENERAL OF THE UNITED STATES, IN BEHALF OF THE GOVERNMENT—RESUMED

Attorney General CUMMINGS. If the Court please: When the Court adjourned yesterday I was in the process of calling attention to the series of acts, Executive orders, and proclamations which marked the critical period from the 6th of March 1933 to the 31st of January 1934.

My recollection is that I was at that time speaking of an Executive order of April 5, issued by the President, calling for the surrender of gold coin, gold bullion, and gold certificates in excess of $100, and requiring member banks of the Federal Reserve System to turn over to the Federal Reserve banks of their respective districts their holdings of gold coin, gold bullion, and gold certificates. That is significant, because it was at that point that the Government began to draw in and place within its own control the basic substructure of our financial system.

On April 29 there were other regulations, which I need not refer to. We come then to the 12th of May, when the Congress once more acted. This time it was the adoption of the Agricultural Adjustment Act, carrying what is sometimes known as the "Thomas amendment." This provision, as I recall, makes elaborate findings as to the effect of depreciated foreign currencies upon the currency of the United States and upon our financial structure and their effect upon foreign commerce and domestic conditions.

That particular act permitted the reduction of the gold content of the dollar by 50 percent.

On June 5 there came another act of the Congress, which is the one that is under challenge here. It is Joint Resolution 10. The effect of that resolution was to set forth a series of findings that the holding of or dealing in gold affected the public interest; that gold obligations obstruct the power of Congress to regulate the value of money and are inconsistent with the maintenance of parity and the equal power of every dollar in the markets and in the payment of debts.

Now, this resolution, if I recall correctly, in section 1 thereof, abrogated gold clauses absolutely, declared them to be against public policy, and further imposed a provision that every obligation, public and private, whether it contains a provision of that character or not, shall be dischargeable by the payment of currency dollar for dollar. It further provided, in the same section, that the word "obligation" should cover all the obligations of the Government of the United States except currency.

In section 2 of the act currency is dealt with, for it is there provided that "all coins and currencies heretofore or hereafter coined or issued shall be legal tender for all debts, public or private."

By this resolution gold obligations or contracts were abrogated and all forms of money were retained upon a parity and made interchangeable with all other forms of money.

On August 28 there was a further order with regard to the acquisition and holding of gold.

Then, on the 29th of August and the 12th of September, and again on October 25, there were elaborate instructions issued with regard to the matters of licensing, holding, and hoarding gold.

On December 28 the Secretary of the Treasury, acting under section 3 of the Emergency Banking Act, which, it will be recalled, was passed on the 9th of March, issued an order requiring all persons to surrender to the Treasurer of the United States their gold coin, gold bullion, and gold certificates, and to receive payment therefor in the equivalent, dollar for dollar, of other forms of money.

On December 30 the President issued a proclamation which modified the proclamations of March 6 and March 9 by permitting the banking authorities in the various States of our country to resume their normal functions.

On the 15th of January there were issued a series of orders strengthening the order of December 28 and placing a deadline upon the delivery of gold as of midnight, I believe, of January 17. And on January 17 there were issued detailed instructions by the Secretary of the Treasury to the Treasurer of the United States, and to other proper officials of the Government, indicating how they should proceed.

Then came the 30th of January 1934, when the Congress acted again. On that day it passed the Gold Reserve Act of 1934, and it was approved by the President of the United States on the same day.

This act, of course, as it will easily be recalled, transferred and vested in the United States all right, title, and interest of the Federal Reserve Board and of every Federal Reserve bank and every Federal Reserve agent in and to all gold coin and gold bullion in their possession, and paid or exchanged gold certificates therefor.

This act made various other regulations, specifically providing, for instance, that no gold shall hereafter be coined and no gold coin shall hereafter be paid out or delivered by the United States. It also provided that all gold coin of the United States be withdrawn from circulation and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary may direct.

It also provided, in section 6, that no currency of the United States shall be redeemed in gold, except under certain very limited circumstances which are not important here.

It also provided, in section 8, for the purchase by the Secretary of the Treasury, with the approval of the President, of gold in any amounts at home or abroad.

It also provided, in section 10, for a stabilization fund of $2,000,000,000.

It also provided, in section 12, that the President, in the event of lessening the weight of the gold dollar, should not fix the change at a point higher than 60 percent of its then existing weight.

On January 30 and 31 clarifying regulations were issued. And then, on January 31, 1934, a proclamation was issued by the President, citing the findings of the Congress, and making elaborate findings of his own, to the effect that the foreign commerce of the United States—to use the exact language—" is adversely affected and that an economic emergency requires an expansion of credit ", and finding further that " in order to stabilize domestic prices and to protect the foreign commerce * * * it is necessary " to reduce the weight of the gold dollar and, thereupon, fixing the same at the present weight and fineness.

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 11 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."

I have stated these things in very general terms, but I think the more they are pondered the more it will be seen that they defy adverse analysis.

Moreover, I contend and shall show that the Congress and the President acted reasonably, in a period of very great difficulty, and that the results cannot be said to be the product of caprice or arbitrary fiat.

If this be so, there is but on inquiry left. Are these acts within the constitutional power accorded to the Congress and to the President? To ask this question is to answer it.

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) 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 rest, 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 preempt 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. That language is found in the Ling Su Fan case, so admirably discussed here yesterday by my able associate and friend, Mr. Wood.

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 decisions, 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 Railroad Co.* v. *Motley*, 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 preexisting contracts do not limit the sovereign right of the Government (*Calhoun* v. *Massie;* and *Louisville & Nashville Railroad* v. *Mottley*); and, for that matter, also the case of *Union Dry Goods Co.* v. *Georgia Public Service Corporation* (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 intrusted 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 guaranty 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 against 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.

These suggestions, therefore, if the Court please, eliminate the fifth amendment from further consideration as bearing on any constitutional aspect of this question.

Now, of course, the primary power upon which the joint resolution rests is that portion of article I, section 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.

The conventional approach to the discussion of money, in a constitutional sense, is, first, through the line of cases beginning with *Bronson* v. *Rodes*, and later through the line of cases beginning with the Legal Tender decisions.

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*. I think *Hepburn* v. *Griswold* (8 Wall. 603) 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*, of course, 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? On page 530, in the majority opinion, the Court made a pronouncement which casts, I think, a great flood of light upon the present controversy. The Court said:

"And there is no well-founded distinction to be made between the constitutional validity of an act of Congress declaring Treasury notes a legal tender for the payment of debts contracted after its passage, and that of an act making them a legal tender for the discharge of all debts, as well those incurred before as those made after its enactment."

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, said:

"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."

And again:

"If, then, 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. But, as already intimated"—

This is a continuation of the quotation—

"the objection misapprehends the nature and extent of the contract obligations spoken of in the Constitution. As in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract can extend to the defeat of legitimate Government authority."

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 60 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 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.

I had intended to pause to discuss for a moment the significant language in the coinage provision of the article of the Constitution to which I have referred. But time is slipping away, and I fear I shall not have the opportunity to explore that aspect of the matter as fully as I should like to.

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. It is the illegitimate child of a mathematical debauch, having no kinship with any known problem of reality. It is post mortem in every respect.

If it has any validity whatsoever, which I would not be prepared to admit or deny, it is to show that, if something had not been done, beginning in March 1933, the downward trend of domestic prices would have continued at such an alarming rate that the only speculation left would be as to the extent of the national disaster.

This matter of coinage has so many ramifications that one is tempted into the bypaths occasionally. For instance, this illustration comes to my mind: If a man had $100,000 in Liberty bonds, he could easily go to a bank and borrow $69,000 thereon. If the contentions made by the protagonists of the gold obligations are correct, the Government would have to pay $169,000 to redeem these bonds. With the $169,000 thus received the owner of the bonds could take $69,000 of it, pay off his obligation, and still have $100,000 left. The results are so fantastic and so unreal that they stagger the imagination.

But I must hasten as rapidly as I can. Let us consider for a moment—not so fully as I should like—some of the outstanding reasons which made it desirable and proper to abrogate the gold clause in outstanding contracts.

First, if valid, such a clause would nullify or, at least, impair the power of the Congress to make any and all coins and currency legal tender for the payment of debts. 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.

Second, 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 $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.

In the face of these circumstances—it was not so much the heavy withdrawals of gold but the constant acceleration of the tendency toward the withdrawal that is significant—the Government had to act. And it is preposterous to say that it did not act reasonably and promptly and vigorously. And it had to act by the suspension of the redemption in gold.

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.

Moreover, it would have made impossible the employment of such agencies of relief as were set in motion—the emergency farm-mortgage organization, the Home Owners' Loan Corporation, and others. All these agencies were calculated to afford needed relief. But the Government could not have afforded that relief if all these gold debts had been written up 69 percent. In other words, we would have found ourselves in the perfectly preposterous situation of having a constitutional power, but being unable to exert it because of the private contracts which individuals had made.

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 preempted 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 pre-war 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 preempted 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?

I would not have adverted to these things except for the fact that I was examining last night the brief in the pending case, and was somewhat surprised to read what was said on pages 54 and 55 thereof. Oh, our friends on the other side use harsh words with regard to the action of their Government. No one denies to these claimants the right to come to this great Court, to receive here an adjudication of their cause; and no matter how heavy that responsibility may be upon this Court, it will be discharged in a manner that carries with it the confidence of all of the American people.

But I find that these claimants use unusually bitter language with regard to the conduct of their own Government. Perhaps from their standpoint it is necessary that they should use harsh words. But we have come to a strange period of American history when it is possible for a great Government, in pursuing its monetary policy for the public welfare, to be charged with pursuing a course of dishonor.

I do not know that these claimants have caught the significance of their own allegations. But I should like to say that this problem is greater, far more important, and larger than the claims of any groups of individuals.

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 section 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 section 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 section 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 day, 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 3d 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.

SUPREME COURT OPINION IN MACCRACKEN CASE

Mr. HAYDEN. Mr. President, I ask unanimous consent to have printed in the RECORD the decision of the Supreme Court of the United States in the case of Chesley W. Jurney against William P. MacCracken, Jr.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

Supreme Court of the United States—October term, 1934

No. 339. *Chesley W. Jurney, petitioner,* v. *William P. MacCracken, Jr.* On certiorari to the United States Court of Appeals for the District of Columbia.

[Feb. 4, 1935]

Mr. Justice Brandeis delivered the opinion of the Court.

This petition for a writ of habeas corpus was brought in the Supreme Court of the District of Columbia by William P. MacCracken, Jr., against Chesley W. Jurney, the Sergeant-at-Arms of the Senate of the United States. The writ issued; the body of the petitioner was produced before that court; and the case was then heard on demurrer to the petition. The trial court discharged the writ and dismissed the petition. The Court of Appeals, two justices dissenting, reversed that judgment and remanded the case to the Supreme Court of the District with directions to discharge the prisoner from custody (72 F. (2d) 560). This Court granted certiorari because of the importance of the question presented (293 U. S. —).

The petition alleges that MacCracken was, on February 12, 1934, arrested, and is held, under a warrant issued on February 9, 1934, after MacCracken had respectfully declined to appear before the bar of the Senate in response to a citation served upon him pursuant to Resolution 172, adopted by the Senate on February 5, 1934. The resolution provides:

"*Resolved,* That the President of the Senate issue a citation directing William P. MacCracken, Jr., L. H. Brittin, Gilbert Givvin, and Harris M. Hanshue to show cause why they should not be punished for contempt of the Senate, on account of the destruction and removal of certain papers, files, and memorandums from the files of William P. MacCracken, Jr., after a subpena had been served upon William P. MacCracken, Jr., as shown by the report of the Special Senate Committee Investigating Ocean and Air Mail Contracts."

It is conceded that the Senate was engaged in an inquiry which it had the constitutional power to make; that the committee[1] had authority to require the production of papers as a necessary incident of the power of legislation; and that the Senate had the power to coerce their production by means of arrest. *McGrain* v. *Daugherty* (273 U. S. 135). No question is raised as to the propriety of the scope of the subpena duces tecum or as to the regularity of any of the proceedings which preceded the arrest. The claim of privilege hereinafter referred to is no longer an issue. MacCracken's sole contention is that the Senate was without power to arrest him with a view to punishing him, because the act complained of—the alleged destruction and removal of the papers after service of the subpena—was "the past commission of a completed act which prior to the arrest and the proceedings to punish had reached such a stage of finality that it could not longer affect the proceedings of the Senate or any committee thereof, and which, and the effects of which, had been undone long before the arrest."

The petition occupies, with exhibits, 100 pages of the printed record in this Court; but the only additional averments essential to the decision of the question presented are, in substance, these: The Senate had appointed the special committee to make "a full, complete and detailed inquiry into all existing contracts entered into by the Postmaster General for the carriage of air mail and ocean mail." MacCracken had been served, on January 31, 1934, with a subpena duces tecum to appear "instanter" before the committee and to bring all books of account and papers "relating to air mail and ocean mail contracts." The witness appeared on that day; stated that he is a lawyer, member of the firm of MacCracken & Lee, with offices in the District; that he was ready to produce all papers which he lawfully could; but that many of those in his possession were privileged communications between himself and corporations or individuals for whom he had acted as attorney; that he could not lawfully produce such papers without the client first having waived the privilege; and that, unless he secured such a waiver, he must exercise his own judgment as to what papers were within the privilege. He gave, however, to the committee the names of these clients; stated the character of services rendered for each; and, at the suggestion of the committee, telegraphed to each asking whether consent to disclose confidential communications would be given. From some of the clients he secured immediately unconditional consent; and on February 1, produced all the papers relating to the business of the clients who had so consented.

On February 2, before the committee had decided whether the production of all the papers should be compelled despite the claims of privilege, MacCracken again appeared and testified as follows: On February 1, he personally permitted Givven, a representative of Western Air Express, to examine, without supervision, the files containing papers concerning that company; and authorized him to take therefrom papers which did not relate to air mail contracts. Givven, in fact, took some papers which did relate to air mail contracts. On the same day, Brittin, vice president of Northwest Airways, Inc., without MacCracken's knowledge, requested, and received from, his partner Lee permission to examine the files relating to that company's business and to remove therefrom some papers stated by Brittin to have been dictated by him in Lee's office and to be wholly personal and unrelated to matters under investigation by the committee. Brittin removed from the files some papers; took them to his office; and, with a view to destroying them, tore them into pieces and threw the pieces into a waste-paper basket.

Upon the conclusion of MacCracken's testimony on February 2, the committee decided that none of the papers in his possession could be withheld under the claim of privilege.[2] Later that day MacCracken received from the rest of his clients waivers of their privilege; and thereupon promptly made available to the committee all the papers then remaining in the files. On February 3 (after a request therefor by MacCracken), Givven restored to the files what he stated were all the papers taken by him. The petition does not allege that any of the papers taken by Brittin were later produced.[3] It avers that, prior to the adoption of the citation for contempt under Resolution 172, MacCracken had produced and delivered to the Senate of the United States "to the best of his ability, knowledge, and belief, every paper of every kind and description in his possession or under his control, relating in any way to air mail and ocean mail contracts; [and that] on February 5, 1934 * * * all of said papers were turned over and delivered to said Senate committee and since that date they have been, and they now are, in the possession of said committee."

First. The main contention of MacCracken is that the so-called "power" to punish for contempt may never be exerted, in the case of a private citizen, solely qua punishment. The argument is that the power may be used by the legislative body merely as a means of removing an existing obstruction to the performance of its duties; that the power to punish ceases as soon as the obstruction has been removed, or its removal has become impossible; and hence that there is no power to punish a witness who, having been requested to produce papers, destroys them after service of the subpena. The contention rests upon a misconception of the limitations upon the power of the Houses of Congress to punish for contempt. It is true that the scope of the power is narrow. No act is so punishable unless it is of a nature to obstruct the performance of the duties of the legislature. There may be lack of power, because, as in *Kilbourn* v. *Thompson* (103 U. S. 168), there was no legislative duty to be performed; or because, as in *Marshall*

[1] Pursuant to Senate Resolution 349 (72d Cong., 2d sess.)

[2] Upon the conclusion of the hearing on Feb. 2, the committee made to the Senate a report (No. 254) setting forth the facts elicited. Thereupon the Senate, by Resolution No. 169, directed a warrant to issue, commanding the Sergeant at Arms to take MacCracken into custody before the bar of the Senate; "to bring with him the correspondence * * * referred to and then and there to answer such questions pertinent to the matter under inquiry * * * as the Senate may propound. * * *" The warrant was served on Feb. 2, 1934; MacCracken was paroled in the custody of his counsel to appear at the bar of the Senate at noon, Feb. 5, 1934. On that day (in view of Res. No. 172) he was released from custody under Resolution No. 169; and the proceedings under Resolution No. 169 are not here involved.

[3] But the brief for MacCracken, the respondent, states: "By Feb. 6 every recoverable paper involved in the Brittin incident had been recovered and delivered to the Senate." The reference in the brief is to the fact (to which attention was called by counsel for Jurney) that, after MacCracken and Brittin had testified, post office inspectors, acting for the committee, searched the sacks of waste papers taken from Brittin's office; and succeeded in collecting most of the pieces of the papers which Brittin destroyed. By pasting these pieces together they were able to restore for the committee most of the papers removed from the Northwest Airways, Inc., files (S. Doc. No. 162, 73d Cong., 2d sess., pp. 106–116).