XII

The Currency

NOTE

The constitutional interpretation of Congress's power over money and banking has led to some of the most dramatic episodes in United States history. In *McCulloch* v. *Maryland*,[1] upholding the national bank, Chief Justice Marshall gave one of his most significant opinions and introduced the doctrine of resulting and implied powers. In 1862 under the stress of War, Congress, with the reluctant advice of Salmon P. Chase, Secretary of the Treasury, passed the Legal Tender Act authorizing the issuance of treasury notes to be used in payment of public and private debts. The legality of this measure was brought to the Court in 1869 and in *Hepburn* v. *Griswold*[2] was held unconstitutional by a vote of four to three with Chase, now Chief Justice, handing down a decision against the Act which as Secretary of the Treasury he had recommended. Within fifteen months the Hepburn decision was reversed by a five to four vote in the *Legal Tender Cases*.[3]

The background of these cases aroused much popular concern and many heated and hair-splitting debates among lawyers. Discussion centered, in part, upon the accusation that President Grant had 'packed the Court.' In order to restrict the appointing power of President Johnson, Congress in 1866 exercised its control over Supreme Court membership by requiring that no vacancies in the Court be filled until the number had dropped to six. After Grant was elected this law was rescinded and the size of the Court restored to nine. When the latter law took effect in December, 1869, there were eight justices on the Court but Justice Grier, who was failing physically and mentally, was urged by his colleagues to resign. Justice Grier tendered his resignation to take effect on 1 February 1870, thus giving Grant the opportunity to make two appointments. In December the President presented to the Senate the names of Edwin M. Stanton, Secretary of War, and Ebenezer Rockwood Hoar, Attorney General. The Senate confirmed Stanton immediately but he died four days later. The Senate later rejected Mr. Hoar. Consequently when the Hepburn decision was handed down on 7 February 1870, there were still two vacancies on the Court. On the same day of this momentous decision Grant sent to the Senate the names of William Strong, lower court judge from Pennsylvania, who had already handed down a decision favoring the paper money, and Joseph P. Bradley, a 'radical' Republican highly favored by Mr. Hoar, the Attorney General. Shortly after their confirmation by the Senate, Hoar requested and was granted a reconsideration of the Legal

[1] 4 Wheat. 316 (1819). See Note, *ante*, p. 15.
[2] 8 Wall. 603 (1870).
[3] *Knox* v. *Lee* and *Parker* v. *Davis*, 12 Wall. 457 (1871).

Tender Act. In the *Legal Tender Cases* the two new appointees joined the three minority justices of the Hepburn case and by a five to four decision upheld the Legal Tender Act.

Justice Strong in the majority decision of the *Legal Tender Cases* supported the Congressional action on the theory of resulting powers and sovereign rights: 'to levy and collect taxes, to coin money and regulate its value, to raise and support armies, or to provide for and maintain a navy, are instruments for the paramount object, which was to establish a government, sovereign within its sphere, with capability of self-preservation. . .'[4] In addition to establishing the right to issue the greenbacks from this group of powers, Justice Bradley in a concurring opinion went into a more dangerous discussion that Congress holds this power as 'one of those vital and essential powers inhering in every national sovereignty and necessary to its self-preservation.'[5] This power to exercise authority not specifically delegated but merely coming from inherent rights of a sovereign has been used on a few occasions in the field of foreign relations[6] but is rarely if ever used in connection with a domestic issue.

The Court in the *Legal Tender Cases* was, as is often true, in the awkward position of trying to right what may be a legal wrong after it has been in *de facto* existence for a number of years. Chase, in explaining why he favored this measure when he was Secretary of the Treasury, argued that he had done so out of a sense of expediency at a time when constitutional limits of legislative and executive power had given way to war necessity.[7] It is possible that expediency was in the minds of the majority justices also when they considered the political and financial chaos that might result from the repudiation of legal tender that had been the basis of economic transactions for almost a decade. Justice Miller's opinion in this case is a classic presentation of the limits of the Court's authority to declare invalid measures which the legislature has found necessary to the conduct of war.

There is no provision in the Constitution which prohibits Congress from impairing the obligation of contracts, although there is such limitation on the power of the state governments.[8] In *Bronson* v. *Rodes*,[9] however, it was decided that the Legal Tender Act did not apply to private contracts which specified payment in gold. Private contracts after this decision more frequently included the gold clause

[4] *Legal Tender Cases*, 12 Wall. 457, 532-3.

[5] Ibid. 564. Justice Strong also said: 'They tend plainly to show that, in the judgment of those who adopted the Constitution, there were powers created by it, neither expressly specified nor deducible from any one specific power, or ancillary to it alone, but which grew out of the aggregate of powers conferred upon the government, or out of the sovereignty instituted.' Ibid. 535.

[6] In *Fong Yue Ting* v. *United States*, 149 U.S. 698 (1893), the Court upheld the power of Congress to exclude foreigners as essential to the rights of any sovereign nation.

[7] Warren, Charles, *The Supreme Court in United States History*, Boston, 1922, III, p. 234. It should be noted that 'it is constitutional heresy to claim that an Act unconstitutional in normal times becomes constitutional because Congress deems that an emergency exists. The reverse of this doctrine has been firmly established ever since the Civil War.' *Perry* v. *United States*, 294 U.S. 330, 335 (1935), citing among others *Ex parte Milligan*, 4 Wall. 2 (1866).

[8] *Constitution of the United States*, Art. I, § 10.

[9] 7 Wall. 229 (1869).

provision. In *Juilliard* v. *Greenman* [10] the Court held that this power to issue paper money could be used in peace time as well as war time.

Norman v. *Baltimore and Ohio Railroad Company* is one of three Gold Clause decisions handed down on 18 February 1935 concerning the legality of the money and banking legislation passed during the early days of the New Deal. A series of dramatic events after President Roosevelt's inauguration on 4 March 1933 culminated in a Congressional Joint Resolution forbidding the holding or dealing in gold by private individuals, thus giving the government a monopoly of the gold supply. The Resolution then repudiated all contracts, public or private, that called for payment in gold. Through its power to regulate currency the government depreciated the gold content of the legal tender. The contestants in the three cases sought, therefore, to get full gold value payment for their contracts which specified gold. Two of the cases involved public obligations—one a gold certificate issued by the Treasury [11] and the other a Fourth Liberty Loan bond.[12]

NORMAN v. BALTIMORE & OHIO RAILROAD CO.

294 U.S. 240 (1934)

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

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

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

In No. 270, the suit was brought upon a coupon of a bond made by the Baltimore and Ohio Railroad Company under date of February 1, 1930, for the payment of $1,000 on February 1, 1960, and interest from date at the rate of 4½ per cent per-annum, payable semi-annually. The bond provided that the payment of principal and interest 'will be made . . . in gold coin of the United States of America of or equal to the standard of weight and fineness existing on February 1, 1930.' The coupon in suit, for $22.50 was payable on February 1, 1934. The complaint alleged that on February 1, 1930, the standard weight and fineness of a gold dollar of the United States as a unit of value 'was fixed to consist of twenty-five and eight-tenths grains of gold, nine-tenths fine,' pursuant to the Act of Congress of March 14, 1900 (31 Stat. 45); and that by the Act of Congress known as the 'Gold Reserve Act of 1934' (January 30, 1934, 48 Stat. 337), and by the order of the President under that Act, the standard unit of value of a gold dollar of the United States 'was fixed to consist of fifteen and five-twenty-firsts grains of gold, nine-

[10] 110 U.S. 421 (1884).

[11] *Nortz* v. *United States,* 294 U.S. 317 (1935).

[12] *Perry* v. *United States,* 294 U.S. 330 (1935).

tenths fine,' from and after January 31, 1934. On presentation of the coupon, defendant refused to pay the amount in gold, or the equivalent of gold in legal tender of the United States which was alleged to be, on February 1, 1934, according to the standard of weight and fineness existing on February 1, 1930, the sum of $38.10, and plaintiff demanded judgment for that amount.

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

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

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

and gold certificates,' with certain exceptions, the holder to receive 'an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States.' Another Order of April 20, 1933, contained further requirements with respect to the acquisition and export of gold and to transactions in foreign exchange.

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

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

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

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

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

tainable only at date of payment.' And in the reference to the standard of weight and fineness, the words 'equal to' are said to be synonymous with 'of'. . .

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

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

The Constitution grants to the Congress power 'To coin money, regulate the value thereof, and of foreign coin.' Art. 1, § 8, par. 5. But the Court in the legal tender cases did not derive from that express grant alone the full authority of the Congress in relation to the currency. The Court found the source of that authority in all the related powers conferred upon the Congress and appropriate to achieve 'the great objects for which the government was framed,'—'a national government, with sovereign powers.' . . . The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations, and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers. *Juilliard* v. *Greenman, supra,* pp. 439, 440.

The Constitution 'was designed to provide the same currency, having a uniform legal value in all the States.' It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress. *Knox* v. *Lee, supra,* p. 545. . .

Moreover, by virtue of this national power, there attach to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. *Ling Su Fan* v.

United States, 218 U.S. 302, 310. Those limitations arise from the fact that the law 'gives to such coinage a value which does not attach as a mere consequence of intrinsic value.' Their quality as legal tender is attributed by the law, aside from their bullion value. Hence the power to coin money includes the power to forbid mutilation, melting and exportation of gold and silver coin,—'to prevent its outflow from the country of its origin.' *Id.,* p. 311.

Dealing with the specific question as to the effect of the legal tender acts upon contracts made before their passage, that is, those for the payment of money generally, the Court, in the legal tender cases, recognized the possible consequences of such enactments in frustrating the expected performance of contracts,—in rendering them 'fruitless or partially fruitless.' The Court pointed out that the exercise of the powers of Congress may affect 'apparent obligations' of contracts in many ways. The Congress may pass bankruptcy acts. The Congress may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo, which may operate seriously upon existing contracts. And the Court reasoned that if the legal tender acts 'were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden, unless a different rule is to be applied to them from that which has hitherto prevailed in the construction of other powers granted by the fundamental law.' The conclusion was that contracts must be understood as having been made in reference to the possible exercise of the rightful authority of the Government, and that no obligation of a contract 'can extend to the defeat' of that authority. *Knox* v. *Lee, supra,* pp. 549-51.

On similar ground, the Court dismissed the contention under the Fifth Amendment forbidding the taking of private property for public use without just compensation or the deprivation of it without due process of law. . .

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

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

The contention is that the power of Congress, broadly sustained by the decisions we have cited in relation to private contracts for the payment of money generally, does not extend to the striking down of express contracts for gold payments. The acts before the Court in the legal tender cases, as we have seen, were not deemed to go so far. Those acts left in circulation two kinds of money, both lawful and available, and contracts for payments in gold, one of these kinds, were not disturbed. The Court did not decide that the Congress did not have the constitutional power to invalidate existing contracts of that sort, if they stood in the way of the execution of the policy of the Congress in relation to the currency. . .

Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship or loss. Creditors who have not stipulated for gold payments may suffer equal hardship or loss with creditors who have so stipulated. The former, admittedly, have no constitutional grievance. And, while the latter may not suffer more, the point is pressed that their express stipulations for gold payments constitute property, and that creditors who have not such stipulations

are without that property right. And the contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See *Hudson Water Co.* v. *McCarter,* 209 U.S. 349, 357.

This principle has familiar illustration in the exercise of the power to regulate commerce. If shippers and carriers stipulate for specified rates, although the rates may be lawful when the contracts are made, if Congress through the Interstate Commerce Commission exercises its authority and prescribes different rates, the latter control and override inconsistent stipulations in contracts previously made. . .

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

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

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

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

the medium upon which the entire credit and currency structure rests.'

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

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

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

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

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

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

MR. JUSTICE MCREYNOLDS, MR. JUSTICE VAN DEVANTER, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER dissent. . .