Gold Contracts and Currency Regulation

Charles S. Collier

Follow this and additional works at: http://scholarship.law.cornell.edu/clr

Part of the Law Commons

Recommended Citation
Charles S. Collier, Gold Contracts and Currency Regulation, 23 Cornell L. Rev. 520 (1938)
Available at: http://scholarship.law.cornell.edu/clr/vol23/iss4/2

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
GOLD CONTRACTS AND CURRENCY REGULATION

CHARLES S. COLLIER

Is the historic "gold clause" controversy still alive? Can we find in the leading opinions of the Supreme Court a firm foundation for constructive currency policies within the true limits of the constitutional grants of power to the federal government which relate to this subject? Is there perhaps a hitherto undiscovered, but intrinsically acceptable "middle ground" as between the conflicting views that have been maintained on the question of the constitutionality of the gold clause legislation of June 5, 1933, so that the hope may be entertained that eventually a consensus of legal and political opinion on this subject can be established?

The central questions with relation to the gold clause controversy have been brought into focus once more by two arresting decisions of the United States Supreme Court rendered in the course of the year 1937. The first of these is the decision in the case of Holyoke Water Power Company v. American Paper Company, Inc., announced March 1, 1937. In this case the Supreme Court had to deal with the application and effect of a clause in water power leases entered into between 1881 and 1897, which stipulated that the lessee should yield and pay to the lessor as rent "a quantity of gold which shall be equal in amount to $1,500 of the gold coin of the United States, of the standard of weight and fineness of the year 1894, or the equivalent of this commodity in the United States currency." The Supreme Court, in harmony with both lower courts, held that the obligation of the lease was dischargeable by payment in any lawful form of United States currency, dollar for dollar, and that the lessor was not entitled to any damages or extra allowance on this claim because of the alleged excess market value of the gold deliveries stipulated for when estimated in terms of the legal tender currency actually in circulation at the time of the legal determination of the amount due. Four Justices dissented without rendering a separate opinion.

6The specific controversy arose in the course of a bankruptcy proceeding, but there is nothing in any of the opinions rendered that would indicate that any special principle as to equitable apportionment of assets among the creditors of a bankrupt exerted any influence on the decision in the instant case.
GOLD CONTRACTS AND CURRENCY REGULATION

The second important decision rendered by the Supreme Court during the year 1937, which argumentatively at least involves the "gold clause" resolution of June 5, 1933, was that in the group of cases reported under the name of Smyth v. United States, decided on December 13, 1937. These cases concerned claims for interest on certain bonds of the United States which had been "called" for redemption by the publication of official notices. The bonds in question were all gold clause bonds of the first and fourth Liberty Loan series. The "call" was issued on March 14, 1935, and stated that interest on all outstanding bonds subject to the "call" would cease on the redemption date—June 15, 1935. The petitioners in the cases under consideration in each instance abstained from presenting their bonds for redemption, and some months later demanded payment of the interest coupons, on the theory that the "call" for redemption was invalid, and that the bonds were still in force.

The majority of the Supreme Court, speaking through Mr. Justice Cardozo, held that the actions to recover interest could not be maintained because the notice of redemption published by the Secretary of the Treasury was valid under the terms of the bonds, and had not been complied with. The reasoning of the majority opinion proceeds along somewhat technical lines. The cases are disposed of on the ground that the "call" did not commit the government either expressly or by indirection to a forbidden medium of payment, and that there had not been any anticipatory breach of the contract.

The majority opinion does not rely upon the gold clause legislation of 1933, and does not really approach the question as to the ultimate constitutional power of Congress in the premises. In this connection, the majority opinion states:

"No question of constitutional law is involved in the decision of these cases. No question is here as to the correctness of the decision in Perry v. United States or as to the meaning or effect of the opinion there announced. All such inquiries are put aside as unnecessary to the solution of the problem now before us. Irrespective of the validity or invalidity of the whole or any part of the legislation of recent years devaluing the dollar, the maturity of the bonds in suit was accelerated by valid notice. As a consequence of such acceleration, the right to interest has gone."

A separate opinion was rendered by Mr. Justice Stone, in which he concurred in the result in these cases, but placed his concurrence on the ground that the Joint Resolution of June 5, 1933 in effect abrogated the supposed obligation of the Government of the United States to pay in gold coin in accordance with the literal tenor of the recitals in the bonds.

---

There was an able dissenting opinion by Mr. Justice McReynolds, in which Mr. Justice Sutherland and Mr. Justice Butler concurred. The minority group maintained that the petitioners should recover because the "call" of March 14, 1935 was not effective, and the bonds were still in force. The premise of the reasoning of the minority Justices was that the gold clause resolution of 1933 was unconstitutional in a basic sense, as regards the application thereof to the obligations of the United States. For this premise, they were able to quote the authority of the majority of the court, as manifested in the theory of the decision in Perry v. United States.

The dissenting Justices have never been able to acquiesce in the position taken by the majority of the court in the gold clause controversy. The persistence of this dissent is a challenge to those who wish to see the currency powers of the United States placed upon clear and indisputable grounds. Even from a purely practical point of view, the fact that four Justices of the United States Supreme Court have repeatedly dissented in these gold clause cases creates a risk that the policy of Congress in this field may yet be crippled or misapplied.

It seems appropriate, therefore, at this time with the more detached viewpoint that the passage of the years has made possible, to re-examine the central questions at issue in the leading Supreme Court cases on the gold clause controversy, especially Norman v. Baltimore & Ohio R. R. Company, Nortz v. United States, and Perry v. United States, which contain the fullest exposition of the views of both branches of the Supreme Court on this important subject.

Perhaps the major criticism of the opinions rendered in the various stages of the gold clause controversy is that which points to the failure to find a middle ground whereby the power of Congress to control the currency could be satisfactorily reconciled with the general maintenance of private contractual rights.

It is true that the opinion of the majority effects a certain compromise by allowing to the obligations of the United States a theoretical inviolability, so that as a matter of substantive law, the gold clauses in the United States bonds are not to be impaired, while at the same time, it is held that the gold clauses in private obligations may be denied enforceability, and certainly are not wholly untouchable as a matter of substantive principle. But these rulings do not represent a genuine reconciliation of private interests and governmental power. They indicate merely that the Court has awarded

---

58 Sup. Ct. 248, 259; 82 L. ed. 235, 244 (1937).
59 Sup. Ct. 248, 259; 82 L. ed. 235, 244 (1937).
Supra note 10.
a complete victory to governmental power in the field of private obligations, since these are held subject to the retroactive application of the legislation denying validity to gold clauses in contracts, while at the same time a partial, though perhaps illusory victory is awarded to the private interests of the bondholders in the important field of the government's own obligations, since it is held as a matter of substantive principle that these gold clause obligations are inviolable.

In other words, the Court does not reconcile the opposing interests in any genuine synthesis of legal reasoning, but compromises the issues somewhat by awarding distinctive success in different parts of the field of dispute to each of the two great opposing interests. The reconciliation is a mechanical adjustment or balance, and not an organic union or vital fusion of the opposing interests.

Similarly, in the dissenting opinions no effort is made to show what concessions could plausibly have been made to governmental power in this field, while yet the substance and essence of private rights were adequately safeguarded. Mr. Justice McReynolds lays it down in his dissenting opinion in the Perry case that the legislation in question is not a legitimate regulation of the currency, but is actually designed to destroy contracts, as if that were a legitimate end in itself. This conclusion seems to suggest that gold clause obligations are constitutionally untouchable, and his position is an extreme one in favor of the supremacy of contracts, even private contracts, over governmental processes, however important to the welfare of the people.

Yet the existence of a middle ground, whereby the most essential interests of both the government and the creditor class might have been made secure, is clearly enough indicated, and this is true from two distinct points of view.

In the first place, there is certainly a controlling limitation applicable to the power of Congress to pass legislation under the guise of the currency power which is not in substance and effect currency legislation. Obviously, the power of Congress to regulate the value of money could not be used to support and render constitutional any kind of statute which Congress might choose to enact. A federal statute which purported to cancel all contracts for payments above $1,000, on the argumentative ground that they interfered with the monetary system of the nation, could justly be characterized as lacking any genuine relation to the currency problems of the country, and hence as not being in reality a statute passed under the currency powers of Congress. Whatever might be the 'title and declared purpose of such an act and its incidental phraseology, if the real purpose

\[1\text{294 U. S. 330, 361; 55 Sup. Ct. 448, 79 L. ed. 912, 927 (1935).}\]
and substantial effect were not to deal with currency matters, but to deal with something else not committed to the federal government, it cannot be doubted that it would be both the right and the duty of the courts to do what they could to nullify its operation.

Now, from this point of view, the very crux of the problem in the gold clause cases is to determine whether or not the legislation in question was in reality currency legislation designed to effect necessary or desirable adjustments in the monetary affairs of the nation, or whether under the guise of verbal references to the currency situation the statute was really aimed primarily and substantially to accomplish something other than a genuine currency purpose. The question of the true classification of the statute, and the problem as to whether it properly falls within the legal category of currency legislation, is not adequately discussed by either the majority or the minority of the Court, although it is evident that the two groups of Justices take different views on this controlling question. Thus, Mr. Chief Justice Hughes says:

"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."15

It is clear that the Chief Justice bases his reasoning on the assumption that the legislation in question is genuine currency legislation. If the character of the legislation were such that its relation to actual currency needs did not appear to be the dominant consideration, or even an important and weighty consideration, it would be entirely consistent with all the arguments and language of his opinions to hold that such legislative "extravagance" as that supposed would not be sustainable under the currency powers of Congress.

The existence of the middle ground between governmental power and private right is thus indicated. The governmental power is controlling as long as the legislation is genuine currency legislation, with a dominant, or at least very weighty and influential element of currency policy behind it, and with stabilizing or otherwise beneficial effects upon the currency as one of its most substantial and immediate effects. But there is no reason why this line of thought should be carried so far as to say that any slight relevance of the legislation to currency matters could sustain a law whose

primary and direct effect seemed to be the ruin of the creditor class and the repudiation of obligations.

Dealing with this same central issue, Mr. Justice McReynolds, voicing the opposite opinion, says:

"The fundamental problem now presented is whether recent statutes passed by Congress in respect of money and credits were designed to attain a legitimate end, or whether, under the guise of pursuing a monetary policy, Congress really has inaugurated a plan primarily designed to destroy private obligations, repudiate national debts, and drive into the Treasury all gold within the country. . . . Considering all the circumstances, we must conclude they show that the plan disclosed is of the latter description." 16

He gives no argument or proof to explain the mental process by which he arrives at the conclusion that the legislation in question is not currency legislation, but he evidently has in mind in the above passage what may be described as a middle ground, and it is similar to the middle ground whose existence is implicit in the reasoning of the Chief Justice. Yet Mr. Justice McReynolds continues a few paragraphs later in the course of his opinion:

"This Court has not heretofore ruled that Congress may require the holder of an obligation to accept payment in subsequently devalued coins, or permission by the government to pay in such coins. The legislation before us attempts this very thing. If this is permissible, then a gold dollar containing one grain of gold may become the standard, all contract rights fall, and huge profits appear on the Treasury books. . . . We must not forget that if this power exists, Congress may readily destroy other obligations which present obstruction to the desired effect of further depletion. The destruction of all obligations by reducing the standard gold dollar to one grain of gold, or brass, or nickel, or copper, or lead, will become an easy possibility. We think that in the circumstances Congress had no power to destroy the obligations of the gold clauses in private obligations. The attempt to do this was planned usurpation, arbitrary and oppressive."

In these latter sentences, Mr. Justice McReynolds seems to lose sight of the fact that under his own assumptions, and under the assumptions of the majority also, the changes in question must be genuine currency regulations in order to be valid. Is it not clear that an attempt of Congress to provide a monetary standard of the value of one grain of copper or lead as a gold dollar would not at the present time be a legitimate currency measure? It would obviously not be intended to improve the currency situation as its controlling purpose, but would be aimed to alter radically the economic significance of debtor-creditor relations as its primary and dominant objective. Such a step would wholly destroy confidence in the circulating

medium and produce disastrous inflation of prices, whereby the monetary values of commodities would be carried to unprecedented heights. A step that would destroy the functional efficiency of the circulating medium could hardly be regarded as designed for genuine currency purposes. Not merely the literal purport of the words of the statute, but also its evident and controlling purposes and its dominant or more characteristic effects would have to be regarded in determining its classification, as falling within or without the category of currency legislation.\(^7\)

No such evil consequences have followed from the actual legislation now under discussion. Essential confidence in the government's money has not disappeared, nor has there been any real inflation of prices, though during several short periods since June, 1933, when other inflationary factors have been at work, there have been important advances in prices. Even yet, price increases that have occurred have been too slight to bring about anything more than a partial restoration of the average price levels maintained through a long series of previous years.\(^8\)

The truth is, of course, that Mr. Justice McReynolds thinks that the line between legitimate currency measures and measures of arbitrary power, masquerading under the guise of currency legislation, has already been transgressed by Congress, but he does not give any definition or test that would enable us to see when legislation that has the formal character and announced purpose of currency legislation ceases to be such. His apparent assumption—that any legislation that has a limiting effect of any sort on existing contractual obligations is illegitimate as currency legislation\(^9\)—cannot possibly be accepted. Many currency laws, universally admitted to be valid, have had precisely that effect, and have involved this principle as truly as the "gold clause" legislation did.\(^20\) When Mr. Justice McReynolds says, "The gold clause in no substantial way interfered with the power of coining money or regulating its value or providing a uniform currency,"\(^21\) he is simply refusing to examine the facts, or to take cognizance of the mass of material presented in the briefs and arguments of counsel, which established beyond a doubt that the gold clauses did have some substantial effect on the currency situation.


\(^{22}\) Legal Tender Cases, 12 Wall. 457, 20 L. ed. 287 (1871); Juilliard v. Greenman, 110 U. S. 421, 4 Sup. Ct. 122, 28 L. ed. 204 (1884); Ling Su Fan v. United States, 218 U. S. 302 (1910); 4 STAT. 699 (Act of June 28, 1834, establishing a new regulation of the weight and value of gold coin, whereby six per cent was taken from the weight of each dollar).

\(^{294}\) U. S. 330, at 376 (1935).
The real significance of the gold clause decisions of the Supreme Court, in a long historical perspective, would be to show that the legislation in question, in the opinion of the majority of the Court, did not go beyond the proper field of currency legislation. But the problem before the critics and commentators is to ascertain more accurately the true scope and reach of the currency power of Congress in the light of these decisions. Because the present legislation has been held to be within the true currency power of Congress, it does not follow that that power has no limits, or that judicial protection is no longer effectual to restrain the usurpation of legislative power aimed at results directly destructive of property and contractual rights. Such results cannot be comprised within the classification of legally incidental effects upon private rights, flowing from the authorized exercise of governmental power.

Naturally, the analysis of the whole problem presented in the gold clause cases depends upon formulating with some definiteness of outline the essential concepts or principles which are to govern the discussion. Before we can decide whether the Constitution has been violated, we must agree as to what is the meaning of the expression "the value of money", what is "regulation", what is "property". We must distinguish between the economic substance of contracts and the literal form of contract claims. We must ask ourselves whether persons have been deprived of property in a constitutional sense, when they have sustained no damage in a practical business sense. We must inquire whether the concept of "property" may permissibly be defined independently of the social exigencies and economic changes under which a given problem as to the description and definition of property rights arises.

If these tasks of definition of fundamental concepts and dominant legal factors are honestly accepted, we shall have the basis for determining whether or not the legislation lately under litigation satisfies the constitutional criteria. But unless this task of definition is grappled with, there is hopeless uncertainty or confusion of thought as to what are the limits, if any, of congressional power in this field, and the jurist seems to be confronted with the unpleasant alternative of yielding everything to the governmental power, reserving no vestige of property or contract right under the shadow of effective constitutional guarantees, or in the alternative, erecting such a rigid barrier against governmental political action as would cripple to a disastrous extent the discretionary powers of the government.

---

What does the power expressly granted to Congress "to regulate the value" of money comprise?24 "Value" in ordinary parlance means value in exchange. The exchange value of money is its general purchasing power.25 No other clear conception of "value", as used in the language of the Constitution, can be formed. If the term "value" referred merely to metallic content, or the intrinsic worth of coin, the phrase "to regulate the value of money" would be equivalent to the phrase "to coin money", for if money is to be coined, the exertion of this power implies the fixation of the quantity of the various metals to be included in a given unit of the coined currency and the denomination or choice of the nominal accounting value to be attributed to such coin.26 The phrase "to regulate the value thereof" obviously means something more. It can only mean to regulate the purchasing power of money; that is, its exchange value in terms of other commodities.

If Congress thus has the right to regulate the purchasing power of money, it seems clear that one reasonable form in which this power might be exerted would be in the direction of price stabilization. One of the most serious and pervasive aspects of the present or "recent" depression has been the collapse of commodity prices, followed by the decline in the valuations of all sorts of financial securities. To give to the coined money of the United States and its substitutes a continuously stable and reliable purchasing power in terms of commodities would certainly seem to be one of the reasonable objectives for the exercise of the formal monetary powers of Congress. If the power to regulate the value of money were carried into other fields, so that the objective was not stabilization of prices, but the continuous diminution thereof, an entirely different constitutional question would be presented. It might appear that in such a case the formal power to regulate the purchasing power of money was being used to destroy rights of contract and property as if that were a legitimate objective in itself, and the situation would at least come within the scope of Mr. Justice McReynolds' somewhat inarticulate major premise.27 But the present legislation, which is aimed at reflation, and which has, in the result, only accomplished a moderate restoration of the price levels normal throughout a long average of years prior to the present depression, can certainly not be regarded as beyond the reasonable sphere of the exercise of the currency powers.

Price levels are capable of statistical formulation. To apply the test of

---

24United States Constitution, Article I, Section 8, clause 5.
approximate reflation of prices as a criterion for the proper exercise of currency powers, and for the fixation of a legitimate objective for currency legislation, is therefore to apply a reasonably definite test which keeps us wholly inside the marginal limitations of the power of Congress and satisfies such standards of reasonableness as have been relied upon by the Congress and by the courts in the past in relation to other legislative situations, dissimilar indeed in many respects, but still offering sufficient analogy to the present problem to enable us to formulate a confident judgment.

The key to the solution of the constitutional problem presented in the gold clause cases depends upon the frank recognition of the fact that the power given to Congress to regulate the value of coined money means the legislative authority to regulate the purchasing power of all money. If this point is once perceived, the whole field of discussion is immensely simplified. The power to regulate the value of money necessarily includes a power to adjust the volume of money, whether coin or credit currency, so as to maintain stability of prices or stability of the economic relationships of the people. If it be suggested that such an interpretation of the power to regulate the value of the money would give Congress unlimited control over the economic substance of the creditor class, and would authorize an effective form of legal confiscation of property, the answer is that so long as this regulatory power is directed toward the stabilization of prices and the restoration of normal price levels, its exercise can never result in the confiscation of the real economic substance of the creditor class, nor of any other class. If then the regulatory power is defined in a constitutional sense, in such terms as will express this limitation on its directional thrust upon economic situations, nothing can result that a philosopher, as distinguished from a literally-minded lawyer, would ever call confiscation. The power to regulate the currency thus limited is, in legislation like that of June 5, 1933, simply directed toward a restoration of normal accounting units, so adjusted as to maintain the true and typical economic balance as between creditors and debtors, and as between different industries and different sections of the country.

The existence of a middle ground is also indicated from a second and essentially distinct point of view. All governmental power under our system has been regarded as circumscribed by certain fundamental principles of justice and right, which are believed to be enshrined in particular clauses of the Constitution, such as the due process and just compensation clauses of the Fifth Amendment, the due process and equal protection clauses of the Fourteenth Amendment, the impairment of contract clause of Article

---

*Supra note 2.*
I, Section 10, and the equal privileges and immunities clause of Article IV, Section 2. These provisions derive their vitality and meaning from a wide juristic background, and the constitutional doctrines which have been related to particular constitutional clauses might perhaps have been invoked in any event by the judiciary as principles of restraint upon the arbitrary action of legislative and executive power, even if these particular clauses had not been included in the constitutional text. But at any rate, these principles are established as a matter of legal and constitutional right, and are recognized as being enforceable by the judiciary within the proper scope of their application.

The view that certain fundamental principles of justice, which may be regarded as embodied in the due process clauses of the Fifth and Fourteenth Amendments, apply as restrictions on the legislative as well as the executive activity of both the state and federal governments, and that these restrictions are judicially enforceable, received a classical formulation in the course of the opinion of Mr. Justice Matthews in the well-known case of *Hurtado v. California*, in the following language:

"But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. . . . Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch, or of an impersonal multitude, and the limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities."

What reason is there for supposing that these principles do not apply in relation to the currency powers of Congress, as well as in relation to its

---


32110 U. S. 516, at 535, 536 (1884).
powers to regulate commerce, to establish uniform bankruptcy laws, to prescribe rules of procedure in the federal courts, or to provide for the governing of the District of Columbia. Why should the currency power, in contrast to other powers of Congress, present the aspect of an irresistible or unlimited power, as to which no juristic controls or restraints can be authoritatively prescribed? The due process clause and the vast body of principles suggested by that term have been held applicable to the tax power, which is as imperative and vigorous a power as any possessed by the federal government. What ground is there for supposing that the wholesome restraints in question cannot similarly be applied in the field of currency legislation?

No controlling reason suggests itself that would lead to the anomalous conclusion that these restrictive principles comprised within the blanket term "due process of law" cannot be brought into application with relation to currency legislation, for such legislation, like other types of legislation, may be regarded as upsetting the proper balance which must be judicially maintained between governmental power and private interests. In other words, legislation under the heading of the currency powers of Congress which too seriously antagonizes existing rights of contract and property, without the justification derived from the direct relevance of the criticized legislation to genuine currency needs, might well be ruled judicially to be unreasonable or arbitrary, and hence condemned as being a mere act of power, and not a law of genuine and binding application in accordance with constitutional principles.

If it be argued that the judiciary could not undertake to review the question of the reasonableness of currency legislation because of the lack of any criterion for distinguishing between what would be reasonable and what would not be reasonable, we may again turn to the same controlling consideration that aided us toward defining the limits of the true currency

---


powers of Congress. Under the conditions that existed in 1933 when this legislation was adopted, the serviceability of the legislation, in purpose and effect, to the objective of approximate reflation of prices would furnish an obvious and fairly definite test of the reasonableness of the legislation, and hence of its conformity to the requirements of the due process clause. Currency legislation that was conducive to price reflation or to the stabilization of existing prices would be reasonable, while currency legislation designed to produce marked inflation of prices above the usual statistical levels, could well be held unreasonable, as it would seem to be aimed not to correct the functional deficiencies of the currency, but to alter the substantial economic status of debtors and creditors as an end in itself. The mere relief of debtors as an end in itself is not a proper objective for currency legislation. Nor would a statute of the character supposed be sustainable as an exercise of the power of Congress to make uniform rules on the subject of bankruptcies.40 It would exceed the true sphere of federal action, and its undiscriminating character and the unjustifiable harm done thereby to the creditor class would stamp it as “unreasonable”.41

While the Constitution declares that Congress may not deprive any person of property without due process of law, those words cannot be understood to impose any rigid barrier to the normal exercise of great governmental powers.42 If this were so, we should have the unjustifiable result that a somewhat incidental phrase in the Fifth Amendment would have the effect of striking out important powers granted in the original Constitution. No such radical effect was attached to the Fifth Amendment by those who framed and ratified it.43 The principle of the due process clause is a tempering principle which makes necessary some mitigation of the harshness and rigor which might otherwise attach to extreme exercises of governmental power. But the clause should not be interpreted as meaning that there has been, so to speak, a sort of “geographical” cession, whereby legislative territory handed over to Congress in the first instance by the original adoption of the Constitution has been ceded back to the states, or to the people, and that important substantive powers theretofore existing in the federal government have been lost.

It must also be noted that the currency clauses of the Constitution, when confronted with the clauses protecting property from confiscation, present a

---

40Louisville Joint Stock Land Bank v. Radford, supra note 34; Kuehner v. Irving Trust Co., supra note 34.
peculiar, if not unique, problem in constitutional construction. In relation to most legal situations, property, and the value of property in terms of money, may be taken as practically synonymous. If a man has been by governmental action deprived of tangible property which originally belonged to him, he may well be entitled to compensation in money at current valuations for such property. But it will not ordinarily be true, as a matter of ultimate constitutional right, that the government will be obligated to make specific restitution of the property taken. He has not been deprived of his “property” in a constitutional sense if he gets the fair valuation of that “property” in terms of money as compensation. But in relation to the powers of Congress over the currency, it cannot be assumed without serious discussion that the conception of “property” protected by the Constitution in a contract or chose in action is simply the market value at the time of the governmental action complained of, measured in any currency declared to be legal tender by governmental authority, irrespective of the extent of the variation between such valuation and the valuation in terms of the units of currency existing when the contract was made. The “property” to be constitutionally protected may be argued to be the comparative economic value of the rights of ownership in the piece of property under discussion; that is, its value in comparison with the values of other commodities and economic interests considered as average ratios throughout a long period of time. Or it is even possible to maintain that the “property” to be constitutionally protected is the same as the conception of the


Of course there may be cases where the government attempts to take property not for a public use, or attempts regulatory action adversely affecting values, which does not fall within the true sphere of legislative power. Varner v. Martin, 21 W. Va. 534 (1883); Brown v. Gerald, 113 U. 9, 5 Sup. Ct. 441, 28 L. ed. 889 (1923); Block v. Hirsh, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. ed 865 (1921).


1 FAIRCHILD, FURNISH, BUCK, ELEMENTARY ECONOMICS, (Rev. ed. 1930) 531; Dawson, The Gold Clause Decisions, supra note 1; Hart, The Gold Clause in United States Bonds, supra note 1; Nussbaum, Multiple Currency and Index Clauses, supra note 1.
valuation of that property in terms of the authorized units of coined money
and under the conditions of currency and credit existing when the contract
was made.\textsuperscript{48} In short, the definition of property values that are entitled to
constitutional protection in relation to the currency powers of the United
States presents a legal problem whose solution is exceedingly difficult be-
cause of the variability in the meaning of the central terms that are em-
ployed in stating the problem.

It is evident that to regulate the value of money—that is, to regulate the
purchasing power of money—means necessarily to change somewhat the
value of property in the sense that the money equivalent that may be de-
manded for the property will be somewhat different after the monetary
regulation was put in force, as compared with what it was before that
time. But this does not mean that anyone has been deprived of property
in the sense of the constitutional prohibition. Each owner has the same
economic substance that he had before, although it may be described for
purposes of accounting or exchange as having a different valuation or price
in terms of money current thereafter. This is obviously true as to tangible
property. It is also true as to intangible property, including choses in action,
at least where price changes are merely \textit{reflationary}, although this is not so
obvious.

The owner of land which is condemned for governmental purposes cannot
complain that the valuation fixed for such a parcel, in relation to current
values of adjacent property, is lower than what would have been indicated
by the price levels and valuations that were current three or four years
before. It would be recognized in this field of eminent domain that valua-
tion for purposes of governmental appropriation was the same as valuation
for purposes of private exchange, fixed as of the time of the appropriation,
and that both the condemnation price and the current private competitive
price would naturally and legally be affected by the state of the currency,
as determined by lawful action of Congress. No one would contend that if
a man had bought land at a high price in 1865, he would have been de-
prived of property without due process of law if his land had been taken
by the government at a much lower price after the restoration of specie
payments in 1879, so long as the condemnation value corresponded with
current land values in 1879. In the reverse case, a man who bought land
cheaply in 1914 would be entitled to a much higher price for the same
property, if condemned for governmental purposes when a higher valuation
level in terms of money had been reached, as it was in the years 1917
and 1918.

\textsuperscript{48}This position is really the one taken by the dissenting Justices in the leading gold
clause cases. \textit{Vide} opinions of McReynolds, J., 294 U. S. 330, 361, 79 L. ed. 912,
923 (1935); and 58 Sup. Ct. 248, 257, 82 L. ed. 235, 244 (1937).
In other words, it would readily be recognized that with regard to tangible property the essence of property rights is the valuation in standard currency at the time, and not some fixed monetary amount, not a certain number of units of value used for accounting purposes.\(^4\) "Property" constitutionally protected in such cases would certainly be the economic substance of the tangible land or things to which the property rights related, and this would be expressed by changing the monetary valuations to correspond with current market quotations in terms of the contemporary legal currency. A man would not be deprived unconstitutionally of his tangible property without due process of law as long as he received proper allowances for the appropriation thereof, or for injuries inflicted thereon through governmental action, such compensation being fixed in terms of valuations then current.

Is not this analogy very important in considering the nature of the essential rights of property that are constitutionally protected by the Fifth Amendment as against confiscatory governmental action in the field of choses in action and intangible property rights?

It is true that a chose in action for a fixed amount of money, apart from the question of legislative modification, will remain fixed, independent of variations in the general price level. That is, the law will enforce the claim according to its monetary amount, and not according to the economic weight and relative significance of this chose in action as compared with other investments or interests in property at the time when the chose in action was acquired.\(^5\) But in judging the position of such a chose in action with reference to the constitutional power of Congress over the currency, the essential rights of property in such chose that are to be constitutionally protected, even as against legislative action, are the same as in the case of tangible property.\(^6\) The element in the chose in action that is constitutionally untouchable is the economic substance involved in the property right, and its relational position with reference to other property rights and other economic interests. Legislation pursuant to an acknowledged power of Congress, that not only leaves untouched the essential economic substance of existing choses in action, but attempts to restore them to a normal and proper valuation by means of currency adjustments, cannot properly be regarded as confiscatory. Stabilization of valuations is not


\(^{5}\)Bromson v. Rodes, supra note 46; Trebilcock v. Wilson, supra note 46; Gregory v. Morris, 96 U. S. 619 (1878).

confiscation of property. Valuations are the result of currency conditions, and currency conditions may be regulated by Congress under its express powers. We are again brought to the principle that so long as Congress is endeavoring to stabilize prices over a period of years, or is endeavoring to produce an approximate reflation of depressed commodity and real estate prices to levels normal for an average of years, it cannot be said that Congress is so perverting its function in regulating the value of money as to come within the condemnation of any of the clauses in the Constitution safe-guarding private rights.

The principle of the action of Congress in the gold clause legislation is really the same as that expressed in the ancient maxim: Suum cuique tribuere. That is, Congress is seeking to stabilize the existing economic relationships and prevent the acquisition by certain classes of choses in action of an abnormal economic weight and significance.

The importance of establishing a more definite criterion with reference to the restrictive effect of the due process clause of the Fifth Amendment is forcibly illustrated by the opinion and reasoning of the majority of the Court in the case of Perry v. United States,52 which related to the enforceability of the gold clause in the bonds of the United States. This case, like the Nortz case,53 which involved the effect of the gold clause in a circulating gold certificate, was actually disposed of on the ground that whatever might be the substantive merits of the claims of the holders of these government obligations, there could be no adequate showing of concrete damage, such as would be requisite to sustain their suits in the Court of Claims, in view of the fact that the prohibition upon the transportation, marketing, and hoarding of gold was regarded as a valid currency regulation. On the assumption of the validity and binding effect of the restrictions on the market for gold, these claimants could have derived no actual benefit or use from the gold which they claimed the Treasury was obligated to pay them. As soon as the gold coin could be paid over to the claimants, the coin would be subject to sequestration, and the parties would be required to accept legal tender paper currency of a corresponding nominal amount in lieu of their momentarily possessed gold pieces.

Whatever may be the merits of this reasoning, it seems to apply equally in the Perry case, involving United States bond, and in the Nortz case, involving the circulating gold certificates. Yet the Nortz case was disposed of on this ground exclusively, without any specific ruling as to the substantive validity of the action of Congress in denying enforceability to the gold clause in the circulating gold certificates (among other obligations

52 Supra note 10.
53 Supra note 12.
of the United States). But in the *Perry* case, while relying on this same argument as to the absence of damages for the purpose of controlling the ultimate practical outcome of the case, the majority of the court nevertheless enunciated the doctrine that the gold clause in the bonds of the United States was inviolable as a matter of substantive principle. Although the bonds of private obligors had just been held subject to the paramount legislative power of Congress dealing with currency problems, even with reference to provisions displacing the gold clauses in such private contracts, yet the government's own obligations were immediately treated as standing in a different category. The government's borrowing power was held to be complete in itself, and to involve the power to make binding agreements which are unchangeable by the legislative power of Congress, acting pursuant to other branches of the federal legislative authority. The Court said:

"In authorizing Congress to borrow money, the Constitution empowers the Congress to fix the amount to be borrowed and the terms of payment. . . . To say that the Congress may withdraw or ignore that pledge is to assume that the Constitution contemplates a vain promise and pledge having no other sanction than the pleasure and convenience of the pledgor. This court has given no sanction to such a conception of the obligations of our Government. . . . When the United States with constitutional authority makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference . . . except that the United States cannot be sued without its consent. . . . The powers conferred upon the Congress are harmonious. . . . The binding quality of a promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists, and despite infirmities of procedure, remains binding upon the conscience of the sovereign."

The reason why the *Perry* case was treated differently from the *Nortz* case in this respect probably was that the Liberty Loan bonds dealt with in the *Perry* case represented beyond doubt an exercise of the borrowing power of the United States, and apparently were not to any extent the expression of the power of Congress to regulate the value of money. They were regarded by Mr. Chief Justice Hughes as not presenting any currency question, or any question that could properly be disposed of by subsequent legislation by Congress under the guise of its currency powers.

On the other hand, the gold certificate dealt with in the *Nortz* case is

---

representative of one of the principal kinds of currency theretofore in circulation. The gold certificate is capable of being viewed as an object of intrinsic value, a functional unit forming part of the currency, like a coin. It is not merely a promise to pay money, but is itself a kind of money, since it is the legal equivalent of coin, and would, both before and after the gold clause legislation, be recognized as representing the currency powers of Congress, rather than the borrowing power of the United States.

Hence, in the Liberty Bond case, the argument works out neatly that the bond is an expression of a separate power of Congress, and belongs to a separate legal category, entirely distinct from the currency, and not within the retroactive control of currency legislation by Congress. But in the gold certificate case, this argument does not work out at all. It does not appear to be true that the gold certificate is wholly or chiefly an expression of the borrowing power of Congress, or that it belongs to a special category separate from the rest of the coinage and currency of the country. Hence, it would appear that the gold certificates and the gold clause obligation recited therein do fall within the reach of the currency powers of Congress, although the Court does not expressly say so.

For this reason, the Nortz case is disposed of entirely on the expressed ground that no damage is shown. No statement is made, in the opinion of Mr. Chief Justice Hughes in that case, to demonstrate that the gold clause obligation in the gold certificate is inviolable as a matter of substantive principle.

In view of the fact that both cases are actually disposed of on the ground of lack of damage, it would seem that the statements in the Perry case as to the inviolability of the Liberty Loan bonds as a matter of substantive principle are unnecessary to the actual decision, and could properly have been eliminated. For this reason, Mr. Justice Stone, in his brief, but most valuable concurring opinion in the Perry case, questioned the propriety of the rulings laid down in the opinion of the Chief Justice on the points of substantive principle as to the unchangeability of the bonded obligations of the United States. But in view of the fact that the dissenting minority of four Justices would undoubtedly have agreed with the Chief Justice rather than Mr. Justice Stone on this particular point, since the dissenters were in favor of validating the gold clauses all along the line, it seems that the views expressed by the Chief Justice as to the substantive inviolability of the gold clauses in bonds of the United States must be accepted as setting forth a doctrine of paramount importance entertained by a large majority of the Supreme Court Justices, which may find concrete application in possible future cases where the element of actual, or legal damage can in some way be shown.

Since the doctrine is an integral part of an unbroken argument, it cannot be regarded as mere *obiter dictum* in the ordinary sense of that term, but is an essential part of the analysis and settlement of the gold clause controversy, viewed in its entirety. The question immediately occurs to one: what sound and sufficient basis is there for this doctrine of the substantive inviolability of gold clauses in bonds of the United States? The problem presented, reduced to its lowest terms, is whether the United States, in the exercise of one of its sovereign powers, namely, the borrowing power, can create obligations and legal situations which are beyond the reach of another of its sovereign powers, namely, the power to regulate the currency.

The obstructive effect of the gold clauses in private bonds upon the free flow and normal functioning of the currency was supposed to have been demonstrated by the Chief Justice in *Norman v. United States*, the first of the series decided. As a mere matter of relationship, do not the gold clauses in United States bonds have *pro tanto* a similar obstructive effect upon the normal functioning of the currency as do those in private bonds, and if so, do they not come similarly within the control of the currency powers of Congress?

At this point, it may be objected that Congress may not in a constitutional sense deprive parties of their vested rights under contracts with the United States. But the answer to this objection is that both in private bonds and in public bonds the holders have no vested rights with respect to the decisive point, namely, the complete immunity of the gold clauses in either set of bonds from control by Congress, acting under its currency powers.

It is true that the borrowing power of the United States may be regarded as distinct from its currency powers, but this argument hardly seems to show more than that the borrowing power results in contracts to which the United States is obligated *in the same way as private parties are obligated by similar contracts on their part*. In the *Sinking Fund* cases, in a passage quoted by Mr. Chief Justice Hughes in the *Perry* case, the Court said:

"The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a state or a municipality or a citizen."

It may be quite true that the United States are *as much bound by their contracts as are individuals*, but under the prevailing doctrine in gold clause cases, the United States are *much more firmly bound by their contracts than individuals are*. Individual obligations may be altered in effect through the currency powers of Congress, but obligations of the United States, although

---

799 U. S. 700, at 718 (1878).
having a similar practical position in the financial markets of the country, may not be so altered.

From the standpoint of currency standards and the policy of maintaining the functional efficiency of the currency, this ruling of the Supreme Court tends to preserve in the large and important sphere of the obligations of the government the very conditions of abnormal economic weighting of contracts that prompted the gold clause legislation in the first place. In other words, from a currency point of view, the reasons for denying effect to the gold clauses are the same in relation to contracts of the United States that they are with relation to the contracts of private parties. The exercise of the currency powers of Congress has an equally legitimate bearing upon both the private and the governmental obligations. The ruling of the Supreme Court tends to preserve to a large extent the double standard of valuations which is condemned by Mr. Chief Justice Hughes in the Norman case.

The real basis of the opinion of the Chief Justice as to the inviolability of the United States bonds is a simple, ethical postulate that the United States, like individuals, should conform to the literal tenor of its promises. But it should at once be recognized that such an ethical postulate cannot be regarded as the equivalent of a direct constitutional guarantee, enforceable in the judicial courts. The choice as to the moral issue rests with the political branches of the government, and not with the courts. For the judiciary to deny effect to legislation of Congress, there must be a plain legal reason, founded on express or implied constitutional guarantees. The mere grandeur of an assumed moral principle will not suffice.

When the attempt is made to find a definite legal guarantee in the language or the implications of the Constitution, it at once becomes apparent that there is a fundamental and genuine conflict between the ruling as to the substantive inviolability of the bonds of the United States and the ruling that there is no recoverable damage.

How can it be that a party is deprived of property without due process of law when he has not been so damaged by the deprivation as to enable him to maintain an action for compensation in a case where it is assumed that no procedural immunity has been conferred upon the party defendant—the United States?


\[\text{"It requires no acute analysis or profound economic inquiry to disclose the dislocation of the domestic economy that would be caused by such a disparity of conditions, in which it is insisted these debtors under gold clauses should be required to pay $1.69 in currency, while respectively receiving their taxes, rates, charges, and price on the basis of $1.00 of that currency." Per Hughes, C. J., 294 U. S. 240, 315, 55 Sup. Ct. 407, 419, 79 L. ed. 885, 906 (1935).}\]

\[\text{United States v. Chandler-Dunbar Water Power Company, 229 U. S. 53, 33 Sup.}\]
taken for public use without just compensation when it is found in a judicial investigation that no compensation is due? In other words, is it not true that the due process and just compensation clauses of the Constitution merely protect the inner substance and genuine economic value of interests which the law undertakes to secure under the form of property rights, and that these clauses and other like clauses in the Constitution do not, as a matter of ultimate constitutional principle, protect the form or externals of property rights from change by proper legislative authority? If it is admitted that the currency power extends to the prohibition on the use of gold at a time when gold has an abnormally high market valuation (as is held both in the Perry and Nortz cases), is it not clear that the constitutionally protected substance of property rights in contracts of this nature has not been taken away by such legislation; that the parties have not been deprived of their "property" without due process? And if they have not been deprived of property in a practical sense—for this is the reason that they cannot recover any compensation for the alleged loss—how can it be correct to say that they have been deprived of property in an abstract constitutional sense in violation of fundamental constitutional guarantees?

There is yet another and broader objection to the reasoning of Mr. Chief Justice Hughes on this point, namely, that he assumes that the constitutionally protected property right involved in the claims of holders of bonds of the United States is the same as the original form of their contracts, viewed in the light of rights of enforcement that existed at the time the contracts were made. Constitutionally protected property rights are regarded by him as coterminous with property rights existing at common law or under earlier statutes. But this implies an excessive rigidity in the constitutional protection of property rights that would be inconsistent with any real freedom for the legislative power. If the courts undertake to protect property from the effects of legislative action, this cannot be a rigid and complete protection, so that the property rights remain forever unchanged and rigidly resistant. Then too, the constitutional protection should not lay particular stress on the form and the contractual language in which obligations are dressed. If the stress is thrown on the idea that property


Hanna, Currency Control and Private Property, supra note 18.


Wright v. Mountain Trust Bank, supra note 34; Home Building and Loan Association v. Blaisdell, supra note 64; W. B. Worthen Company v. Kavanaugh, 295 U. S. 56, 55 Sup. Ct. 555, 79 L. Ed. 1298 (1935); West Coast Hotel v. Parrish, 300 U. S. 379,
rights are relative and that property holders, including bondholders, have only the right that the substantial economic weight of their claims shall be preserved with proportionate security under economic conditions where valuations are rapidly changing, it is plain that this analysis applies equally well to both public and private bonds. It is true in both cases that the constitutionally protected rights of bondholders are relational and proportionate, not absolute and unchanging.

To use a mathematical term, the property rights of both public and private bondholders and note holders should be treated as functions of other property rights for the purpose of constitutional protection and classification. If the property rights represented in choses in action for fixed sums of money or for fixed amounts of specified gold coins are allowed to retain the same relative economic weight and significance in a changing economic order, they have received all the protection as against legislative policy and taxation that the courts are justified in giving them on the basis of the vague suggestions of the due process and just compensation clauses of the Fifth Amendment. These clauses can never properly be regarded as definite, declaratory mandates, setting forth the explicit duty of the judiciary with unmistakable precision, but only as guiding stars to lead them along lines of moderate and tolerant corrective action in relation to the legislative choices of Congress.

If now we return to the Holyoke Water Power case, after our long excursion through the crucial earlier cases, it seems clear that the principles accepted and acted on by the majority of the Supreme Court in those earlier cases made necessary the result actually reached by the majority of the Court in this case, namely, that the obligation of the lessee should be dischargeable by payment in lawful currency of the United States, of whatever type, in the same amount as that specified in terms of gold in the language of the leases, to wit: $1,500 annually. The terms of the leases obviously call for payments; that is, for the use of the currency—the circulating medium. This circulating medium must be the one authorized by Congress.


Note 3.

The parties in the Holyoke Water Power case were obviously not stipulating for the transfer of gold as a commodity. This is shown by two important pieces of evidence. First, neither of the parties was in the business of handling gold as a commodity, nor was there any purpose disclosed to use the gold referred to in the contract as a metal or as a commodity desired for its intrinsic usefulness. The purpose was not to get gold as such, but to get the payment in terms that were thought to have special stability. The proposed transfer was, therefore, as a currency matter, and comes within the scope of the regulatory power of Congress over the currency.

The second piece of evidence is that the lease provided that the lessee might pay the
Congress, in the exercise of its currency powers, has prohibited the literal enforcement of the contracts which purport to give the obligee the right to require payment in gold, or a particular kind of coin or currency. The dominant purpose and characteristic effect of this enactment of Congress is not to affect the substance or relative economic value of the chose in action held by the creditor, who has stipulated for payment in gold, as if an alteration of the debtor-creditor relation was a desirable end in itself. But the controlling purpose and the paramount effect of the statute is to promote the functional efficiency of the authorized currency of the United States, regarded as an entire body or single agency devoted to the function of satisfying the needs of the American people for a medium of exchange.

It is true that the contract under consideration in the Holyoke Water Power case evidently contemplates that gold may have a superior value in terms of other types of authorized currency of the United States, and that its market exchange value may be greater than the nominal accounting value attributed to gold coins under the currency laws of the United States. But this possibility is exactly the possibility which Congress is entitled to attempt to forestall by regulatory measures. For if gold coins may acquire a disproportionate value in relation to other units of the currency, we shall no longer have a uniform or reliable currency by which the valuation of other commodities and securities may be accurately measured and determined. We shall have a multi-colored circulating medium which is itself the object of speculation and of unbearable economic pressures, so that it can no longer function as an adequate medium for the measurement of external values. A currency which is undergoing violent internal conflict, and whose components are at war with one another, cannot function properly as a sound and stable circulating medium. Congress, in its power to insure the safety of the currency, had the authority to take all necessary and proper measures to prevent such a derangement of the true currency function.

The decision in Smyth v. United States, the latest in date of the series of "gold clause" cases, would have been very much easier to sustain if the error in Perry v. United States had been avoided. It becomes more and more clear, as authoritative decisions on this subject are gradually worked out, that the true doctrine on the entire matter is that laid down in the con-

equivalent of the gold "in United States currency." It is a familiar principle of the law of contracts that where methods of performance are stated in the alternative, the debtor, or obligor, has the option as to which method to pursue. The only method of performance that would be legally enforceable would therefore be the alternative of payment in United States currency of the equivalent of the quantity of gold stipulated for. In short, the ultimate fact is that the contract calls for a payment in terms of the United States currency. The transaction is, therefore, a currency transaction.

\textsuperscript{57} \textit{Supra} note 5.

\textsuperscript{58} \textit{Supra} note 10.
curring opinions of Mr. Justice Stone. In both the Perry case and the Smyth case, the majority opinion of the Court lays down a principle or theory as to the inviolability of the gold promises in United States bonds which it is unwilling or unable to carry out in practice. In order to avoid enforcing the obligation to which it has accorded theoretical invulnerability, the majority of the Court resorts to somewhat technical and artificial methods of reasoning to show either that no damage to United States bondholders has been proved, as in the Perry case, or that the notice of redemption debars any effective claim for actual gold payments, as in the Smyth case. The belief is thus encouraged that somehow, in some other state of facts, a holder of United States bonds which contain the gold clause may be able to sue thereon and recover the full equivalent of the special gold value.

But a realistic view of the matter indicates that this belief will prove illusory. The majority of the Supreme Court has shown a constant unwillingness to permit an actual recovery of the market valuation of the gold promises in the United States bonds or in the interest coupons attached thereto. True, the court has the power "to raise a standard to which the wise and honest may repair," even though it cannot in practical effect enforce loyal adherence to this standard. But the Court's hesitancy in the present instance has an intellectual as well as a practical background. As is consistently maintained in the concurring opinions of Mr. Justice Stone, the merits of the constitutional argument as to the impregnability of the gold clause in United States bonds are essentially the same as they are with respect to the effect of that clause in private bonds. The controlling question in both fields of litigation is whether the legislation under debate is a frontal attack on the debtor-creditor relationship, an effort to forfeit the values held by the creditor class as an end in itself, or whether the effect on the economic weight and significance of debts is genuinely incidental to a legitimate currency policy. If Congress has really been legislating to regulate the value of money, in order that the currency of the nation may properly fulfill its essential functions, its legislation cannot be invalidated because of its secondary effects, whether these effects be found in the field of the economic weight of private obligations, or in the field of the economic weight of the obligations of the United States itself.

*Supra* note 55; *supra* note 58.