BACKGROUND OF NEW DEAL DECISIONS

V.
THE GOLD CLAUSE DECISION.

By JAMES H. GILBERT.

When the Roosevelt administration came to power in March, 1933, the banking system of the country had broken down, credit was contracted, confidence strained, gold was being hoarded by millions of dollars and the outgo of gold was threatened by the monetary policy of foreign countries, most of which had abandoned the gold standard but were frantically striving to strengthen credit abroad and stabilize international exchanges.

With the resolution and dispatch characteristic of the "New Deal" President, the United States joined the leading commercial nations in the abandonment of the gold standard.

There will always be economists who will question the necessity and expediency of the move. It is not the purpose of this article to pass judgment on this phase of financial policy. Rather it is intended to recite the facts as a background for the momentous decision in the gold clause cases.

The abandonment of gold at the old standard of weight and fineness would of course have been of little consequence if a vast volume of pre-existing contracts to pay gold had been recognized as valid and other contracts of the same kind had been sanctioned and encouraged. Widespread monetary confusion would have resulted, prices and the standard of value would have rested on no certain basis.

To sweep every phase of the old deal monetary policy out of the way and to pave the way for the universal use of the same medium of payment whatever it turned out to be, was the purpose of the Congressional resolution of June 5, 1933.

In this important piece of legislation, contracts for the payment of gold were declared to be "contrary to public policy." Obligations to pay money incurred either before or after the law was passed regardless of provision contained in such contracts, shall be discharged upon payment "in any coin or currency which at the time of payment is legal for public and private debts."

The precise foundation of our currency was somewhat in doubt until the Gold Reserve Act of 1934 (January 30) and the subsequent exercise of the extraordinary power granted to the President.

By proclamation the bullion content of the gold dollar underlying the new currency was reduced from the old standard of 25.8 grains (nine-tenths fine) to 15 5-21 grains. Thus the gold content of our dollar was shoved down forty per cent.

If contracts to "pay gold of the present weight and fineness" were recognized, the devalued dollar, despite the resolution of Congress, would not be legal tender for $100,000,000,000 worth of pre-existing debts and many more that might make their appearance.

Despite the far-reaching importance of the legal issues involved the devaluation of the dollar was of little practical importance. The gold dollar was merely shrunken to correspond with the depreciation of the paper money that had taken place since suspension of the gold standard.

That the devaluation of the dollar was a matter of no serious final consequence is shown by the fact that it resulted in no material change in the price level. The new dollar in purchasing power matched the one in active circulation and left the price level undisturbed.

Since debtors, corporations and individuals were obligated to pay $100,000,000,000 in gold at the old standard of weight and fineness if the abrogation of the gold clause by the Act of June 5, 1933, were held unconstitutional, it would require 69 billions more of current funds to turn the trick.

Moreover, most of these debts had been incurred in the prosperous period of the late twenties and the fall in prices since the panic of 1929 had enormously increased the value of the gold dollar of former weight and fineness and increased immensely the difficulties of laying hands on the old-fashioned dollar.

Several cases involving substantially the same issue came before the Court at the same time.

Typical of these was the tender by debtor corporations of current funds in payment of interest on bonds where both interest and principal expressly called for payment in the pre-devalued dollar.

Creditors had rejected payment and challenged the power of Congress to tamper with private contracts calling for payment in gold of a specified weight and fineness.

The precedents were confusing and conflicting. On the surface at least the opinion, Bronson v. Rodes made such contracts agreements "to deliver a certain weight of standard gold" "not distinguishable from a contract to deliver a certain weight of bullion." Literally such contracts would have to be fulfilled "by assay and the scales" and not "by count."

If, on the other hand, the court followed the Supreme Court in the legal tender cases after it had reversed the decision in Hepburn v. Griswold, these debts might be discharged by anything which the law designates as legal tender at the date of maturity.

Indeed, the language of the Congressional resolution of June 5, 1933, clearly suggests Chase's opinion in the legal tender cases. Debts are to be "discharged upon payment . . . in any coin or currency which at the time of payment is legal tender . . . "

The Court in the gold clause decision disposes of Bronson v. Rodes as a precedent by pointing out that monetary conditions in 1934 were very different from those when the debt owed by Bronson came up for settlement in 1869.

Despite the issue of depreciated paper in the Civil War, the United States mint had not stopped coinage of gold and silver at the old standard of weight and fineness and Congress had not withdrawn the legal tender quality of metallic money. Two forms of currency of unequal value were equally recognized by law and debtor and creditor might lawfully choose to pay and be paid in either.

The resolution of Congress in 1933 and the delegation of the power to devalue had set up but one standard for the payment of debts, namely, (devalued) dollar for dollar which alone is lawful tender for debts maturing after January, 1934. These bonded obligations despite the gold clause contained therein were merely contracts to pay a certain number of dollars.

In the gold clause decision we find the broadest assertion of the power of Congress not only to coin money but to "establish a monetary system" and to invalidate the provisions of existing contracts that may interfere with the exercise of this power.

The Court, held, in keeping with Julliard v. Greenman, that the power to set up this monetary system does not reside wholly in the coinage clause of the Constitution but resides also in the sovereign powers that belong to the national government.

The full exercise of this power to set up a monetary system can not brook the existence of contracts calling for the payment of some other medium than that specified by Congressional act.

Despite the sacredness of contracts in the realm of law, the power to enter into contracts can not remove the transaction from the scope of Congressional authority. Such contracts can not interfere with the power of Congress to regulate commerce, coin money, establish postoffices, etc., and by the exercise of sovereign power the national legislature may sweep them aside if they do.

The prevalence of the gold clause in bonds and other contracts to the extent of billions of dollars render ineffective the clearly defined power of the government to "create a currency and determine the value thereof."

These gold clause contracts if allowed to exist with the sanction of the Court would increase the demand for gold as a means of payment, enhance its value, stimulate hoarding and export and make unworkable any attempt to regulate the value of the dollar in the channels of commerce.

Despite contractual obligations and obstacles the Court concluded that Congress had the right to reject a dual system of currency and to establish a uniform system by abrogating the gold clause and making all payments in one medium.

In the light of the emergency and the far-reaching consequences of an opposite stand, the Court was wise in the selection of its precedents.

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V.
PROPOSALS FOR LIMITING POWERS OF THE SUPREME COURT.

By WAYNE L. MORSE

Although there is probably some truth in the comments of critics of the United States supreme court to the effect that the personal philosophies of the members influence their decisions, still we should not overlook the fact that there has been a marked consistency in the constitutional decisions of the court.

True it is that the flexible clauses of the constitution have been stretched so that they now cover many situations which were not contemplated when the court first started to give meaning to them. But for the most part the constitutional law decisions, as pronounced by the court from time to time, show a clear resemblance to parent constitutional law precedent and also a sensitivity to new conditions and changed social needs.

The position, training, and experience of the court, the powerful tradition which surrounds it, have undoubtedly made it the greatest stabilizer in our national life.

I believe that its power to exercise judicial review has exerted an even greater influence on orderly change than its exercise of judicial review. The number of unconstitutional proposals and schemes which have not been approved in legislative halls because of this known power of judicial review must be legion.

Nevertheless, it is sometimes proposed that no act of congress should be declared unconstitutional by the court except by a unanimous vote, or by some ratio other than the majority vote rule.

Critics of the majority vote rule contend that an issue so important as the constitutionality of an act should not be determined by a bare majority vote because this practice places too much power in the hands of one man. The vote of one man may, and often does, decide the fate of important legislation in other branches of the government.

The proposal to require a six-to-three or seven-to-two vote, or a unanimous vote, likewise places a great emphasis upon the vote of one man because under such a plan a very small minority of the court, by holding out, can prevent a two-thirds vote, or a unanimous vote, and thus succeed in having declared constitutional an act which a clear majority of the court believe to be unconstitutional. Thus is seems that such proposals place a false emphasis on the mechanisms of judicial review.

It should be remembered that proposals to change the votes necessary to declare an act unconstitutional would affect only a small part of the problem. After all, the five-to-four decisions on constitutional questions are few in number when compared with the total number of constitutional law cases.

It is true that many of the five-to-four decisions were rendered in cases involving vital social and economic problems, such as the income tax, child labor, and interstate commerce decisions, but in many more instances the court has not been divided even though the issues involved have been just as significant.

Thus, the vote ratio proposals would seem to exaggerate the importance of split decisions and ignore the real problem of adjusting legislative needs to constitutional safeguards.

Another proposal is that congress should be empowered to overrule a decision of the United States supreme court on a constitutional question by a two-thirds vote of both houses of congress.

This plan strikes at the very vitals of the doctrine of judicial review and would inaugurate a government of legislative supremacy rather than of judicial supremacy.

Its proponents contend that the constitution reserves legislative powers to the legislative branch of the government and that the court often functions as a superlegislature when by way of judicial legislation, it declares acts of congress unconstitutional.

Of course it is true that the court also legislates when it sustains acts of congress as contitutional by interpreting phrases of flexible meaning in a light favorable to the legislation. Judicial legislation in this sense is unavoidable and under our present form of government can be checked by the amendment process.

However, it is contended that the amending process is too slow and cumbersome and the history of the income tax and child labor cases is cited in support of the argument.

Although it cannot be said that such a plan would destroy our constitution, neither does it follow that such a plan would assure us that the constitution would be more readily adjusted to social needs and ends, at least not until we have a better trained class of political servants.

After all, the doctrine of judicial review has met with a great deal of favor in this country because we have come to distrust waves of hysteria and populism which often control legislative power and popular assembly.

We have learned also that minority rights are easily overridden by popular opinion and are best protected by the judiciary. Furthermore we must recognize that private property and the rights of the property class are likely to be victimized by an unthinking public.

Undoubtedly the day of constitutional interpretation which placed a predominant emphasis upon the rights of private property often at the expense of human rights has passed. Nevertheless, we are a long way, let us hope, from a repudiation of the rights of private property.

The preservation of the doctrine of judicial review would seem to be essential, if we are to preserve and protect the contributions to our social interests and national life which the institution of private property can make.

At the same time, we must not permit political dogma to blind us to the fact that millions of Americans are economically destitute, made so, for the most part by economic and social forces over which they have had no control.

The maintenance of national stability depends in a large measure upon a program of social legislation which will advance, protect, and balance their interests to the maximum degree compatible with the interests and welfare of all groups within the country.

In accomplishing such an end, it is essential that necessary social legislation designed to protect and advance human rights be adjusted quickly to constitutional demands and, incidentally, it is paramount that the constitution be adjusted to changed and changing social realities.

In furtherance of such an ideal, the slogan might well be changed from "Back to the Constitution" to "Forward into an ever-changing future with an expanding Constitution."

Hog Production Low Till 1937, Late Report Shows

Conditions are greatly improved in the meat animal industries compared with a year ago, and the outlook is favorable for some time ahead, according to a report just released by the state college agricultural extension service. Producers with hogs to sell are favored by prices more than twice as high as a year ago, with feed grain considerably lower. The index of the average farm price of hogs in Oregon at mid-July was 84 per cent of the 1926-1930 average.

With industrial activity and consumer purchasing power running ahead of 1934, and even a smaller supply of hogs expected to be available for market until production can be increased, the immediate market outlook for hogs is strong. If conditions are favorable, however, the pig crop of 1936 may be 25 per cent larger than that of 1935 and by 1937 it will be possible for hog production to be back to the 1932-1933 level, the report says.

Although beef cattle prices are materially higher than a year ago, cattle prices are not as high relatively as prices for hogs, and prices for cattle feed have not declined so much as for hog feeds, especially in the west. The Oregon price index is only 67 per cent of the 1926-1930 level. The demand for feeder cattle this fall will be strengthened by the abundance of hay and grain in prospect in the East, while the scarcity of hogs and improved industrial conditions are expected to strengthen market demand for fat cattle during the next several months at least. Market supplies of fat lambs and poultry next fall and winter are also expected to be somewhat smaller than usual, the report points out.

In respect to the long-time outlook, the number of beef cattle and sheep in the country next winter is not expected to be much changed from last winter, but thereafter the trend is expected to be upward for a number of years, if feed conditions are favorable.

The report, which is available from county agricultural agents, also gives outlook information on poultry, dairy and wheat, and data on numerous other farm commodities produced in Oregon.

Pectin for Jellies Can Be Made Easily at Home

Fruit pectin extract for use in making jams and jellies of fruits naturally low in acid and pectin are easily made at home from the white peel of oranges or lemons or from apples. Directions for making the extract, and a number of recipes for using it are contained in a mimeographed circular, HE 767, just issued by the home economics extension staff at Oregon State college.

To make the apple pectin, use firm, tart apples, scrub and cut in thin slices, discarding imperfect spots. Use 4 pounds of apples and 4½ pints of water for the first extraction. Boil, covered, in a large pan, for 20 minutes, and then strain through four thicknesses of cheesecloth. Using the same pulp, add the same amount of water and repeat the process. This will yield about 3 quarts of juice, which is then put in a pan wide enough so that the juice will not be more than 2 inches deep, and boil rapidly until only about ¼ of the juice remains, usually 30 to 40 minutes. This should make about 1½ pints of concentrated apple pectin extract.

Citrus pectin extract can be made from the skins of oranges and lemons ordinarily used. Pare off the yellow rind, which would impart flavor, using a knife that will not discolor the peel. Then remove the white peel underneath and put it through a meat grinder, using the coarse blade. Add 1 tablespoon tartaric acid to 2 quarts of water and stir until dissolved. Put 1 pound of the white peel into a large flat bottomed pan, cover with the acid solution, and allow it to stand for an hour or two.

Measure the depth of the material in the pan and then boil it rapidly, stirring constantly, until it measures less than half the original amount. Strain through four thicknesses of cheesecloth. Then, using the same peel, repeat the process twice, adding 2 quarts of water and 1 tablespoon of tartaric acid each time, except that it is not necessary to let it stand before boiling after the first time. There should be a little less than a pint of liquid from each extraction and the total amount of peel should be about 2½ pints.

If the extract is not to be used at once it should be poured into sterilized jars or bottles and sealed.

Dallas—More squirrel poison has been used in Polk county this year than for the past two or three years according to records in the office of County Agent J. R. Beck, with an increase of 30 per cent this year over 1934.

Wanted, Heppner residence property, preferably on hill, with place for chickens. Will pay cash up to $1000. Inquire this office.