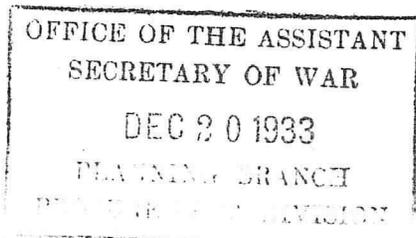


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LEGAL ASPECTS OF BUSINESS

by

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Gentlemen:

Let us look into the popular assumption that the Government in business should in general be governed by the ordinary laws of business -- an innocent-looking assumption that hides a long history, a complicated series of problems and some questions of policy of vital importance, particularly to the Army.

The assumption that when the Government buys or sells, employs or gives service, it is a "person" not very unlike a natural person or a corporation in the eyes of the law has not always been made. It is not universally made today. There are reasons for and against it. At least there are some limitations on its applicability that warrant our reexamination of the whole assumption.

Let us consider first the reasons for dealing with the Government as if it were an ordinary individual buying or selling, employing or being employed. In the first place, there is the advantage of simplicity. The warp and woof of modern society is based on the law of contract. We are accustomed to doing big things and little things by means of this device - a sort of universal machine for all kinds of business transactions. It is not the only legal machine, or frame, or tool, or whatever you want to call it, that we have for business transactions, but it is the most important.

I want to emphasize how important it is before I go into the question whether the Government should be asked to work with this machine precisely as the individual does. I have frequently, in meeting classes when I had more time than one session to summarize the whole three year law course, put some such problem as this to them. I ask the students to name some contract they have recently made. It makes very little difference whether or not they can define contract. Many of them could give a better definition than I could and recite it as beautifully as if it were a poem. Many of them could tell me the elements - whether there are five or six or twenty. I don't know how many the various authors say there are, but they could tell me. Then when I ask them to describe some contract they come back with an excuse that they have not made any. Or better yet, they fish around in their memories and tell of something they have done in connection with buying a house a few years ago and insist that that was the last contract they could recall making. Usually I approach these people with just a touch of good humor and ask them such embarrassing questions as whether they have ever paid for their own lunches, whether they have ever bought or sold anything, have ever taken a train or bus

or taxicab, whether they have bought so much as a newspaper, or used a telephone, or sent a telegram, or bought a postage stamp, because every one of these small acts constitutes the making of a contract. In other words a more reasonable demand would have been: "Name a dozen contracts you made this morning."

We are completely surrounded by and immersed in an atmosphere of contracts. Hiring is a contract; renting is a contract; buying is a contract; all kinds of relationships which we enter into have contracts at their foundation. A contract is not a piece of paper, legal cap or foolscap, with a great deal of writing on it, red lines across it and a seal at the end. That may be evidence of a very important type of contract, and it may be evidence required by law, but the contract itself is the most formless and easiest of human relations and it should be. Why? If it were not, life would become exceedingly burdensome. If every time you went into a shop to buy something it was necessary for the clerk to draw up a legal document or a questionnaire such as you are familiar with in the Government service, just think how business would be complicated. For the sake of speed, and we live in an age in which time is of the essence of our lives, we must have simplified procedure in our contracts.

In order to have simplified procedure a great deal of preliminary work must be done by the business man, the lawyer and legislator. To illustrate what preliminary work has been done in order that you may rush into a store and buy what you need and rush out again, let me call your attention to one standard contract called the Sales Act which has been adopted in almost all the states and which represents the common law of the other states in practically all important matters. What is this Act? In about forty pages of ordinary book size it gives you the standardized contract of the average man making the average purchase of the ordinary type of goods. You probably make that contract unconsciously as you make others unconsciously. You do not realize that in walking into the store and buying a tie you are signing your name to the forty pages of the Sales Act. You are. Of course that Act says that these are the stipulations you make if there is no understanding to the contrary. You can make your own understanding to the contrary if both parties are willing. But we have not time for that nor, ordinarily, the knowledge or ability or bargaining power to make extraordinary stipulations; so for all intents and purposes that is the contract made by all of us.

What are some of the things in it? There is a section on implied warranties - promises as to the nature of the goods you are buying. If you buy a book and you find that sixteen pages are missing or there are some blank pages, or some torn ones, you can take it back to the book store and say "I want a perfect book." They have warranted that the book is complete, perfect. They have not said so,

but the Sales Act says they have implied as much. If you buy canned goods and when you open the can you find that the goods are not wholesome or fit for food, presumably the seller has broken his contract and you can take the goods back. The right to take an article back is what we call technically a "condition" attached to the sale of goods. The warranty involves a "condition" and something more, namely, a promise on the part of the seller that the condition will not be violated. Then if the condition is not fulfilled he owes you not only an obligation to take the goods back but also to pay damages or make your loss good in some other way. Thus, if a woman goes into the five and ten cent store and buys hair tonic which makes her hair fall out, it is not enough for them to say "We will give you another bottle," or even to give the money back. They may have to pay damages as a result of the breach of warranty. To state fully just what the promises to the customer are would take a great deal of time in each case. It takes no time now, because of the preliminary work done by the draftsmen of the Sales Act, which applies to every one of these ordinary sales.

With slight modifications the same thing is true of every contract we enter into. We live in an age of standardized contracts. For example, you get a check and take it to a bank for deposit. All you do is write your name on the back. Perhaps you make out a deposit slip on the bottom of which is some fine print stipulating special matters that particular bank finds it advisable to put on the slip. Above your name on the back of that check I could write quite a long contract or, rather, a series of contracts. You sign a half dozen or a dozen documents when you indorse that check. In the first place, it is a receipt; second, a transfer of your interest; third, a series of warranties as to the genuineness of your own signature; also some guaranties. Warranties have to do with genuineness; guaranties have to do with responsibility for other people. If the man who promised to pay fails to do so, and if certain steps are taken by the holder, you must pay. Your doing so in turn may give you some rights against others.

There are other documents for which we shall not take time but which would make quite a big heavy contract, perhaps a book. You buy a railroad ticket. Sometimes you have a rather lengthy document handed you but that does not begin to be your contract. If you get on the train and get off again in good health you forget all about it. If anything goes wrong you delve into that agreement with reference to baggage - what is baggage and what is not - with reference to safety of aisles, safety of platforms, time tables, anything and everything that may have led to the misfortune. You have a contract. Possibly if that contract had been written out you would have been given a fairly good textbook on the laws of carriers. In this age we enter into complicated contracts by this method of standardization.

Furthermore, in this age we reduce many things to contract form in our everyday life - things which fifty or a hundred years ago were not looked upon as contract questions at all. There has been a growth of the contract idea. Let me illustrate. You come to me and tell me you are renting a house and the roof leaks. You think the landlord ought to repair it and he thinks you ought to. You ask me what is the law. A hundred years ago, if we had been here, I could have answered. I could have turned to Blackstone, to the statement of the duties of landlords or, I could have answered a question as to the duties of employers, or the relations between husband and wife as to property matters, duty to support, etc. I could have looked it up in the law books of those days and stated their obligations. Today we cannot answer them so easily. If you ask me "Must I repair the roof?" I have to come back with the question "What is there in your contract of lease on the subject?" Of course if you have no written lease you say so, but you still have an oral one. What stipulation is expressed or implied there? What is in the contract is a question of fact, not a question of law. It is the understanding that the landlord will do certain things or you will do them, and no books can tell me. You have to tell me. You say "I don't know." We have to dig deeper into the facts in the case. It comes down to <sup>not</sup> what did you say but to what you would have said if you had said anything. Then perhaps you are living in an apartment house, and I ask "What do the other tenants do?" If you are living in an apartment the roof has no peculiar relation to you that it has not to some other people. Or perhaps there have been past dealings between you and the landlord the last time the roof was leaking. There is a practical interpretation by you or some other tenant. All of them will throw light on the intention of the parties. You have to probe into the actual facts of the contract made. Formerly, it depended upon status. The status of being a landlord or tenant carried certain rights and certain duties not easily changed. Today we start out with the question "What was the agreement?" If we look at the general practice of landlords and go back as far as the customs of Blackstone's day, we do so only to throw some light on what you probably intended if there is not any evidence to show what you actually intended. We live in an age of contracts - an age in which we assume right off the reel that relations are what people intended them to be - that the status of a man is not the basis of his rights and duties, but that his contract is. That has affected our attitude toward a great many relationships in life, including our relationship with the Government.

In England they look upon office as a kind of property. That idea has its roots in the past when they looked upon everything as property that they could. In America we have a tendency to look upon public office as a matter of contract, not of property - a contract with the Government. More and more do we look upon the Government as a person or corporation who can make ordinary contracts

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in ordinary terms and be held to them in the ordinary way. Until recently this thought made little progress, because if the Government made a contract it could not be sued. Recently efforts have been made to make it possible and practical to sue the Government on its contract but that we have not gone the whole way is shown by the ease with which Governments can dodge their obligations. For instance, if they will not pay in gold as they have promised there is nothing you can do about it. But in the ordinary contracts in which A agrees to sell to the Government and the Government agrees to pay there are courts in which you can get a judgment and when you get it it looks just like any other judgment. There is a difference, however, If I have a judgment against the United States I can't pick out one of the public buildings and have it sold. I can simply beseech someone in Congress to get them to appropriate the money - they have appropriations to take care of judgments against contracts. We have come very near to the idea that the Government in contracting is just another person, with all the advantages of simplicity connected with that idea.

On the other hand, it has certain disadvantages, certain limitations, and we have put something in the law to meet those limitations. In the first place, the Government is in a position of advantage in that it can stop competition when it wants to. The Government runs the Post Office. It does not run the Post Office on the basis of ordinary business. It does not have to. It can say "Nobody can compete with us." It has a monopoly by just saying so. In the second place, it can run the Post Office if it sees fit, not so as to give each man what he pays for but so as to give to the people at large and in the long run, the most advantageous national service. It can say "We will charge as much to send a letter to California as we do to send it to the next town." Suppose the railroad said "We will take you wherever you want for the same amount - San Francisco, New York, or Baltimore." That would be an entirely different story. So the Government is not limited by the idea of competition or discrimination or the idea of any particular kind of fair dealing. The fact that it is not limited puts its contracts on a curious basis. Furthermore, it can dictate its end of the contract and you sign on the dotted line. Presumably it will be fair.

There is another element that distinguishes Government contracts from those of the private individual. Some of the old books express it very curiously by saying that the Government never came of age. It was always a minor. That is a roundabout way of putting it. It means that just as the law deals with a child in a curious way so as to protect it against fraud, just as the law allows a child to repudiate its contract, so does the Government allow itself a second advantage of checking up on its promises, or extra protection against over-reaching and unfair dealing. In modern times that extra protection takes the form of a ritual.

Take the city government. If the city wants to buy anything from a lead pencil to a new city hall the contract must follow certain steps which are laid down by its charter or state statute. There must be, generally, a notice passed around asking for bidders to get the thing on a competitive basis. There must be a certain amount of publicity in connection with the expense and other limitations; bonds may have to be put out and the contract voted on by a certain kind of meeting; it has to be in writing, etc., etc. The details differ but the idea is the same throughout the country. In other words, if you rush in and build a bridge for a county or an asphalt street for a city or do whatever else there is in the way of furnishing materials or service without going through these formalities you may find that you cannot collect. And if you are an officer of the city these rules become the law by which your everyday life is governed. All this is true in civil government.

Let us turn now to military affairs. Here, too, the Government has largely adopted the position of a corporation for buying what it needs, for employing and being employed. Is the contract framework of business society today fitted to the needs of the Government in time of war? You can answer that better than I. We try, of course, to fit abnormal activities into the normal picture. We try to deal with the needs of the Government on a matter-of-fact basis, but it is getting to be increasingly difficult. In the last war we dealt with the human side of the service one way and the contracting for needs in another way, and we came through the war with the realization on the part of many that perhaps that was the wrong plan. Perhaps the drafting of industry was quite as essential and, after all, a smaller encroachment of personal rights than the drafting of the individual conceded to be necessary in time of war. That has been emphasized because of changes in the underlying fact. It is true today as it has never been before that mobilization for war is mobilization not merely of men at the front but the mobilization of the whole nation and its resources, and the more we realize that the more we realize that the contractual phase of the Government's dealing with the question may be inadequate and may call for extreme modification. Shall we begin with the notion that the ordinary laws of contract apply to Government contracts as far as practicable? We come to the necessity of studying the essential modifications of the contract principle for Government, first in civil matters, and then in military, and then in the intensified situation found in time of war when we have a complete disruption of the economic picture. Prices rise. Certain commodities, and the most necessary, become limited on the market. Merely to have the Government go out under these conditions and begin bargaining at market rates is, first of all, a sign of unpreparedness of the worst kind. If you say "We will make up for that lack and get what we need," it is still a needless limiting of the efficiency of the Government to apply the ordinary contract principle of everyday life to such a

situation. So I come back again to the question I raised at the beginning: to what extent is the ordinary law of everyday life which is reflected best in the contract system, to what extent is that in need of modification to the particular kind of business matters in which you as a body are interested? To raise the question is not to solve it, but to raise it may be the first step - at least to do away with the assumption that this is the only way in which anything can be done, that the Government is just an ordinary person and that it must fit in with the law of contracts as developed for the business of ordinary persons.

To solve the question we must get over a number of hurdles. In the first place, there is the constitutional hurdle. The Government cannot confiscate property without due process of law. There is the power of eminent domain, i.e., power to go out and buy at the market rate what it needs even from an unwilling man. Can the Government do more than that? Can the Government acquire that which it needs without going through the formality and details of the private contract? These are the constitutional hurdles. Some of them have been overcome. Under the police power of the state it is possible to destroy property without making compensation for it. That is considered due process of law under extreme conditions. For example, in the Baltimore fire of some years ago in order to stop the fire it became necessary to destroy some buildings in its path. They probably would have been destroyed anyway but in order to save the city it became necessary to destroy the private property of citizens. They could not wait for the process of law and eminent domain. Eminent domain did not apply anyway. It has been held that the Government has no obligation to the individual whose property is taken that way. Generally governments will make compensation. You can go as an humble petitioner to the Government and state the conditions under which the property was taken for the general good and on some basis or another a voluntary compensation is generally made by the Government after the emergency is over.

There are situations in life in which something similar to what is done in maritime law on shipboard might be appropriate - where something is sacrificed for the general good and the general public is made to bear, on the basis of an average, its share, and the individual whose property is destroyed is made to bear only his just share. That has been so in old times - in order to save a ship and the people on it the managers of the ship could throw off anything on it but if they tossed out my cargo I was entitled to compensation so I would only bear my just share of the loss. I am not saying that the Government has to do this. If the Government is fighting the hoof and mouth disease and it kills my cattle for the general welfare I am not entitled to any compensation, and so in such a conflagration or

calamity as war the ordinary principles of peacetime negotiation do not literally apply; so while we have a constitutional hurdle to overcome in our feelings as to what Government dealings should be, we have at least intimations as to how these hurdles might be gotten over.

I want to say just one word before I close and throw the meeting open for discussion about some recent tendencies in connection with the contract principle not only in Government matters but in general affairs. I pointed out that there was a general tendency from status to contract, i.e., from the condition in which you try to answer questions about a man's duties as dependent on his status, down to a condition where we try to find out what he bargained for. We frequently get the same answer, but there is a different point of view and I have suggested that today the point of view is to ask "what is the contract" instead of "what is the status?" We have recently been swinging back to status; we have been getting away from contract. It shows itself in many ways. We are calling more things public utilities, and then directing them what to charge, what service to give, and so on. The Gas Company cannot make a contract with me that is different from the one made with you. Now we hear arguments to extend the principle to include dealers in gasoline and fuel, in ice and necessities of life in general.

We find in trying to get out of the depression there has come a tendency to tell us we cannot make contracts this or that way - the Securities Act, telling under what conditions you can sell, what representations you must make, limitations, etc. There are limitations of freedom of contract; the Minimum Wage Act, Hours of Labor Act, etc., all of these statutes that are passed and which are getting more common, in which it is stated "this is your bargain, anything to the contrary notwithstanding," all of these are getting us away from the freedom of contract idea and back to the status idea.

So we must bear in mind that perhaps the freedom of contract that was rampant in the middle of the nineteenth century will not be in the twentieth century. It is a question of tendency. Since I mentioned the Securities Act I will take that Act as my illustration. Fifty years ago it would have been possible to ask a lawyer what your rights were as a stockholder in a company, and he could have told you without knowing anything about the stock. He could have said "If you hold so many shares of stock in such and such a company you have such and such rights." If you go to a lawyer today and ask that question the answer is "I do not know anything about it." You ask "Can I vote?" The answer is "I don't know. Let me see your share of stock and what is printed on it." Then after he reads that, he does not know. He would have to see the charter of the company and perhaps have to go back to the minutes of the company and see the statement made when this share of stock was issued, perhaps read some kind of document which secures the stock and which may be 150 pages long and rather hard to get at.

In other words, it has become a matter of individual contract, this question of what are the rights of the stockholder, and already we are feeling the reaction against the results of the point of view. People are complaining about the obscurity of the thing. It really means that if you want to buy a share of stock you need the advice of an investment man to find out what is ahead of you in the way of claims. You would have to get a lawyer and he would have to probe into things not easily accessible.

There is a clamor for standardization precisely as there was in insurance law thirty years ago. At that time, no insurance buyer knew what he was getting! He did know that in case of an accident the company could point out reasons why they were not liable. Of course, you could hardly have thought of these things in advance. Unfair and one-sided agreements were made. The result was that statutes were passed stating that when you buy insurance this is what you are getting and certain things shall not be stipulated. We probably are in for that sort of regulation on stocks and bonds. Everything has pulled over to the side of the issuer of stock. The public does not know what it is getting. Perhaps the kind of laws we will have will be standardization laws going back to the situation we had fifty years ago. In other words, we are going through pendulum movements back and forth, between more and less standardizing.

If that is true in private contracts how much more ~~may~~ it be true in public relations?

Now that we have discussed the general nature of legal business relations, particularly the contractual aspect, knowing that the Government must do business as a great buyer and to some extent a great seller, must employ and be employed, I leave with you the question I raised at the beginning: To what extent is the analogy between the Government and the private contractor perfect and to what extent should we depart therefrom in handling the Government's business in the future?

I shall be glad to hear any suggestions and shall attempt to answer any questions.

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Q. You have covered very fully the change in fundamentals, freedom of contract, etc.; can you make any comment as to other changes, as for instance, in competition due to our understanding of competition today; and perhaps what the permanent change may be as the result of the NRA activity?

A. Competition has long been considered the life of trade. It is the thing by which governments would try to keep the market places safe for the buyer. It has been a theory of economics rather than law but the law has taken it up and we insist upon reasonably free competition. It goes back to the early days when it was to prevent people from standing on the main road and buying goods the farmers brought in and holding them for resale at monopoly prices. The law has objected to that right along. The Sherman Anti-trust Act of 1890 goes on the theory that to keep business alive we must have competition. That does not mean that all competition is good; it does not mean that the law has not frowned on unfair competition. It has. The Federal Trade Commission Act appointed a commission to study and prevent unfair methods of competition - competition which destroys competition. For example, where a trust goes into a part of the country where it has competition and undersells, and drives out the competitor, and then raises prices to whatever it wants. The law has always counted on competition. Now we have reached the stage where the man on the street is not so sure of his remedies as he was in 1890. Then everything was blamed on the trust. We were getting into a jam of one kind or another in the late eighties and the climax was reached in 1893. In 1890 people thought that if you got rid of the trusts and restored competition everything would be lovely again. Today the man on the street thinks we have had too much regulation of big business. We have kept the door open for competition and the time has come to look for another remedy. The Anti-trust laws are suspended for two years and dealers are encouraged to get together under Government watchfulness and cut out competition in some respects. It is an experiment. I do not believe it goes so far as to give up the whole principle of free competition. It will not lead to so drastic a change. It may lead to a series of rules and regulations for prevention of certain aspects of competition and for promotion of certain kinds of companies, but I do not think we are ready to do away with the whole principle of trying to keep the market in condition by a certain amount of unrestricted competition in certain fields. We still have that ahead of us as long as we have private capital.

Q. We hear a good deal about unfair practices. By what test are we to find the standard as to what is fair and what unfair?

A. I think that is a business question rather than a legal one and it changes as business practice changes. Something fair ten years ago may be unfair today. I will give you an example of that. If you will look into old law books you will find a definition of fraud which says - "Fraud consists of misrepresentation of fact knowingly made or with reckless disregard of truth or falsity, tending to mislead, and actually misleading a victim so as to inflict damages." That is the definition of fraud. They repeat that today just as well as they did a hundred years ago but when you come to the question

"What is meant by 'mislead'" things change rapidly. You can all remember when advertising carried with it the presumption that it was an over-statement and in some parts of the country it still does so. When I was a youngster people used to say "That is what the advertisement says" very skeptically and today you are more likely to say that if the advertisement says it, it must be so. There is still a doubt but it is quite different. Presumably the advertisers would not dare to say things that were not true. What has changed? The law? No, The standard of practice has changed. A man might say to you "I believed it - I saw it in the advertisement." If a man says that today a jury is likely to believe him. Why? There is a difference in practice, based largely on the attitude of publishers - based, too, on some other things. There has been a rise in standards of advertising which the law recognizes. Take the different industries. You have been swapping horses and the man has told you some pretty tall ones. Tell a jury you believed them and the jury will not believe you believed them, at least in some parts of the country. On the other hand, if you go into a jewelry store on Fifth Avenue and the clerk tells you a diamond weighs so much to the tenth of a carat a jury will probably believe you believed it. The law of fraud is flexible enough to take cognizance of business changes. The fact that twenty years ago it was considered fair to mix certain things in certain ways may not mean that it is fair today with definitions made a little more accurate by Government bureaus of standards. On the other hand, it may be that the thing works the other way. That which was unfair twenty years ago is today fair.

Take Hudson seal coats. Twenty years ago they began talking about Hudson seal coats. Everybody knows it is muskrat. The lie has been told so often it is just a formula. It does not fool anybody. What is fair means what is the best practice current in a particular line of business. I do not believe the law can go very far in listing unfair practice. If we were to define fraud very accurately saying "This can be prosecuted by law and this cannot" we would put a premium on those things most likely to be practiced by tricksters. The definition is an invitation to go just outside of it. I have not done a great deal toward defining unfairness. The definition should be left flexible and changeable rather than made into a proposition of law. If there is one unfair practice which stands out like a sore thumb and you want a remedy it is all right to pass a statute if you make it clear you are not excluding anything else. You may clarify without limiting.

Q. The question I want to bring up is one pertinent to all of us. When we are out on active procurement for the War Department in the field, in procurement planning, we cannot be given eight cents a mile for each trip, so they supply us with automobiles. They can

carry six or seven men. We are not supplied with drivers so we have to drive them ourselves. We go on definite, specific orders and many times we are required to wear a uniform. If we have an accident The Adjutant General will not do anything about it. The blame is on us. Have we no way out of that? Is our money subject to confiscation?

A. You are perfectly right. The Government is not an individual and it cannot be made into one. The Government cannot be held responsible without its consent. If I send a man out to buy for me I am subject to certain competitive charges to which the Government is not subject. What ought to be done in this case is a very interesting question. We have had it thought out in cities. We have worked out a most illogical but practical result. We say that the city is two persons. On its business side it is like a business man and is responsible for the acts of its servants. On its Government side it inherits from the Crown of England the idea that "The King can do no wrong." It cannot be sued. If you are in the City Hall to pay your water bill and while you are there the ceiling falls on you, you can sue the City Government. The Water Department is contractual. If, however, you were in the office of the Tax Collector, you cannot sue. The Tax Collector is on the Governmental side. If you are run over by a patrol wagon, you have no comeback. If, however, the garbage collection truck strikes you, you can sue. It simply means that you have to be careful about what strikes you. You see, it grows out of the heritage of the past - the Government cannot be sued on its governmental side. We cannot do away with it entirely and the hardship falls sometimes on the member of the public and sometimes on the individual in the service. The actual state of the law you mentioned is absolutely correct. The Judge Advocate General will not defend you personally if the claim is brought against you. Of course, there is one thing to remember. Your position is the same whether you are driving my laundry wagon or the Government's automobile. You could be sued when driving my laundry wagon but you probably would not be because it is easier to sue the proprietor. In practice it means that you would not be sued and if you were I would protect you to protect myself and I would probably have insurance to protect me in advance. The Government will not do that.

I have not solved your problem but we agree there is one.

Q. Would you care to give an opinion as to the constitutionality of the recent repudiation implied or actual of the gold clause.

A. I think it is perfectly constitutional. On strictly constitutional grounds I think it will stand because it can be so closely related to the extremely full power of Congress over coinage. Gold from time immemorial has been the substance for coinage and

and Congress can do whatever it wants with gold. They could have saved a lot of time if they had not repealed the eighteenth amendment but substituted gold for liquor. Then we would have a closed market on gold and an open market on something else. Actually the resolution means to remove the market for gold. Now the President has announced a new market for gold. They made a compromise and created a market for gold, but up to that time we merely had prohibition in dealing with gold - prohibition about making contracts for demands in gold - and so on. Congress has power over banking and over raising of revenue as well as over coinage. There again, remember that Congress is not limited as the states are in the matter of interfering with the obligation of contracts. A state cannot pass a law saying my contract is not good. Congress can do so. Congress can pass an act making it illegal to go on with a contract. It should not do that. If it does it in certain ways it may run into other difficulties - taking property without due process of law. If it feels it is wisdom to do that the Supreme Court has nothing to do with it. I think it is constitutional.