

Constitution Gone, Says McReynolds

February 19, 1935 from the *New York Times*

Justice Extemporaneously
Voices Sharp Dissent of the
Minority on Gold.

REPUDIATION HE ASSERTS

Referring to Nero, He Says
New Deal Congress Strips Us
of 'the Very Fundamentals.'

WASHINGTON, February 18, 1935. -- In an extemporaneous speech bristling with scorn and indignation, Justice McReynolds, delivering the opinion of the minority in the gold clause cases, startled spectators in the Supreme Court chamber today with a blistering attack on New Deal currency policies.

There were gasps as the 73-year old Tennessean, scarcely glancing at his manuscript, declared that Nero undertook to use a debased currency, asserted that the Constitution had "gone" and expressed the "shame and humiliation" of the minority consisting of himself and Justices Vandevanter, Sutherland and Butler.

At the very outset he said that to share the view of the majority would mean a "repudiation of national obligations," and that "these things are abhorrent" to himself and the three other associate justices.

His striking utterance came as a complete surprise, even though it had been believed that the court would split on the celebrated issue. The audience was spellbound, listening for every word; as he went on in his Southern voice, government attorneys and others in the crowded benches leaned forward intently.

Allusions to the Majority Seen.

What seemed to be stinging allusions to the majority came from Justice McReynolds' lips. Once he said that he and his fellows refused to use "mere generalities or a multitude of words" to distract the public mind from the basic issues.

He scoffed at the idea that the framers of the Constitution would for a moment sanction repudiation of the "solemn pledges" of the gold clauses, which Congress had "swept away with a word." He remarked that "millions of dollars" had been invested with these "solemn pledges" as an assurance to investors.

Chief Justice Hughes and Justices Brandeis, Stone, Roberts and Cardozo of the majority, sat silent while the former Attorney General in the Wilson Cabinet proceeded with his onslaught.

One or two of the justices glanced slightly toward Justice McReynolds as he declared that he did not want to talk about the present situation in the government, but that a Supreme Court Justice had a responsibility "to reveal in all its nakedness just what has been done."

Not an inkling of his attitude had come from Mr. McReynolds while Chief Justice Hughes was reading the majority decisions, nor even while Justice Stone reviewed his criticism of the finding in the Perry issue. Leaning backward in his big leather chair, he rested his head on its cushion and for the most part looked with half closed eyes at the ceiling.

Emphasizes Effects of Decision.

As Justice Stone finished, however, Justice McReynolds rested his arms on the bench and calmly announced that he and the three other justices could not agree with the majority. Almost immediately this calmness was replaced by emphasis. He raised his voice frequently to drive his points home.

Sarcasm and irony were behind sentence after sentence as he went along. He spoke for twenty minutes, and as he took this method of expressing the written views of the minority, no transcript was made of his remarks. Newspaper men caught many, but not all, of his rapid words and phrases. No official record was made for the court.

He stated early that the minority had written a 1,000-word opinion, available to those who wished to read it, but that it might be just as well to "rehearse" the conclusions of the minority "to see exactly what it means and just, what the situation is."

"It is a plain, simple tale," he went on.

Pausing, he added slowly but very distinctly:

"It seems impossible to overestimate the result of what has been done here today."

Here he spoke of the Constitution, adding that it did not seem "too much to say that it is gone."

Says Guarantees Are swept Away.

"The guarantees to which men and women heretofore have looked to protect their interests have been swept away," Justice McReynolds continued. "The powers of Congress have been enlarged, and we stand as a people today stripped of the very fundamentals."

He declared that the picture was not overdrawn, and that in the days to come when "the panorama was unfolded" the truth would be seen.

"The people expected these gold clauses to protect them against a debased currency," he exclaimed. "A debased currency is nothing new. Nero undertook to exercise that power. Six centuries ago in France it was regarded as a prerogative of the sovereign."

"On the strength of these obligations, hundreds of millions of dollars were loaned to the great corporations of the country. Bonds were sold to men, women and children throughout the world."

But Congress, Justice McReynolds said, "may sweep away" the gold clauses "with a word, and in the face of the facts, declare it against public policy."

Solemn Promise of Congress Seen.

Discussing Liberty Bonds, he said that Congress "executed a solemn bond" to pay in gold.

Billions and billions of dollars of these bonds were issued by this government with that solemn contract," he continued. "During the World War men stood on the street corners and said these bonds were the finest in the world, with the solemn promise of the government back of them. They told the people their country was in danger."

But in April 1933, it had been decreed that all gold should come into the Treasury, and that there should be issued for that gold "any kind of money."

"For every dollar of gold, we issued a depreciated currency," the justice declared.

He remarked that Congress had given to the President the right to depreciate the gold content of the dollar up to 50 percent. Congress, he continued, saw necessary to pass a law "to destroy every one of these contracts for the payment of obligations in gold."

Relating the steps taken in the currency program he said:

"That's the state to which our government has come."

"This is not a thing I like to talk about," he remarked later. "God knows I wish I didn't have to. But there are some responsibilities attaching to a man on this bench to reveal to the bar, in all its nakedness, just what has been done."

"In one breath it is said that Congress has no power to repudiate a government obligation. In the next breath, it is said, it is true you have but 60 cents and you were promised a dollar, but Congress has made it unlawful for you to accept what you contracted for. Since it is unlawful for you to accept what you contracted for, you have not been damaged."

"The Treasury says, 'Here is the depreciated dollar. You must accept it for your contract.' The Treasury of a great nation says, 'Take this depreciated dollar. Congress made it unlawful, for you to accept what is due you. And since it is unlawful there is no damage.'"

Justice McReynolds remarked that he and the minority refused to use "mere generalities or a multitude of words to distract the mind" from the issues involved.

"No one denies that Congress had the right to adopt a monetary system, but it does not follow that it can adopt any monetary system," he continued.

“It was not intended to give Congress power, under the law, to repudiate the obligations in question,” he held.

Almost a Wicked System.

"Here we have a monetary system--the extent, I almost said the wickedness—of which is almost beyond comprehension," the justice continued. "First, we give the President power to depreciate the dollar to 50 cents. Next, we destroy all these private obligations by statute. Not only private obligations but government obligations as well."

"And so, having put out \$500,000,000 of gold clause bonds in May, Congress in July says all these contracts or promises to pay in gold are contrary to public policy. Having undertaken to destroy these gold clauses, the dollar is depreciated to 60 cents. Prices of commodities can now be estimated in the deflated dollar, and now instead of a dollar we have 60 cents."

"All mortgages of the railroads and the great corporations, all bank deposits, all insurance funds, everything the thrift of man has accumulated toward his old age is subject to this depreciation."

No Such Power Granted, He Says.

"No such power was ever granted by the framers of the Constitution. It was not there then. It was not there yesterday. It is not there today. We are confronted with a condition in which the dollar may be reduced to 50 cents today, 30 cents tomorrow, 10 cents the next day and 1 cent the day after.

"We are told that the government has made out of this transaction the royal sum of \$2,800,000,000, which now reposes in the Treasury."

On that basis, Mr. McReynolds said, "you could depreciate the dollar to 10 cents or 5 cents and that would give you abundant capital to pay off the public debt and discharge the private obligations as well."

“That never was the law and it ought never to be the law," he declared.

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