

# WAR AND EMERGENCY POWERS

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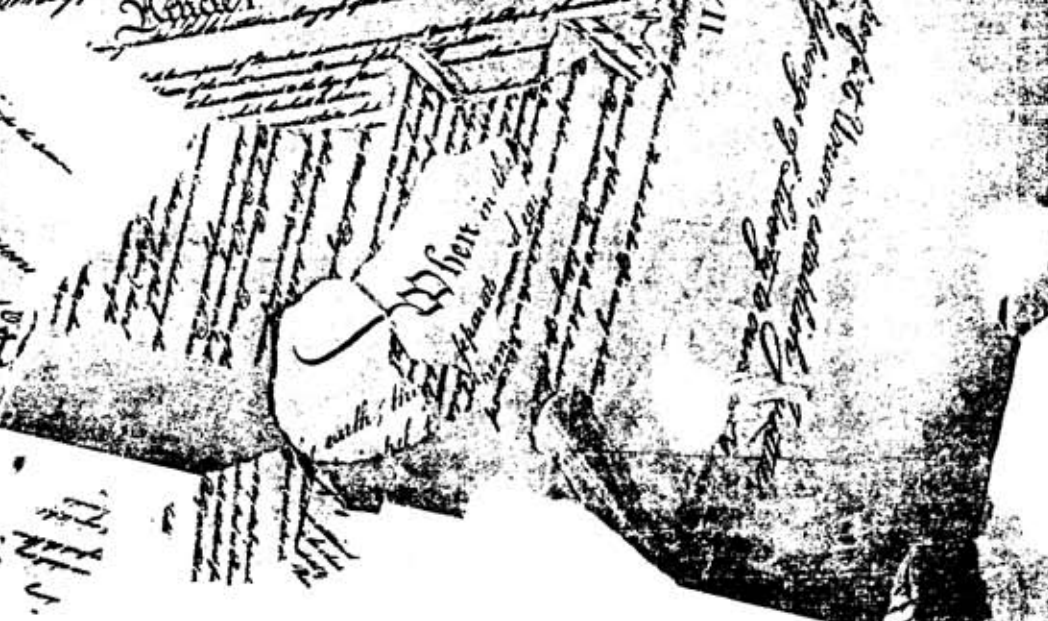
## We the People

of the United States

we domestic Tranquility, provide for the common Defense, promote the general  
Welfare, and ordain and establish this Constitution for the United States

with another, and  
rank and require the  
are endowed with their  
long Men, giving  
to it, and  
appreciate  
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a lot

of the American people  
will be a landmark  
Joseph P. Kamp



July 11

When in the presence of  
the people of the United States  
I have signed this document  
in witness whereof I have hereunto  
set my hand and seal at  
Washington, D.C. this 11th day of  
July 1951

A SPECIAL REPORT  
ON THE NATIONAL EMERGENCY  
IN THE UNITED STATES OF AMERICA  
BY TED L. GUNDERSON



It is true  
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It is true that there has been a great deal of discussion of the National Emergency powers in the United States and it is the purpose of this report to present a summary of the present situation and to suggest some ways in which the powers may be more effectively used.

**THIS REPORT IS DEDICATED  
TO ALL THE MEN AND WOMEN  
WHO HAVE FOUGHT TO PRESERVE  
OUR AMERICAN RIGHTS AND FREEDOMS**

**AND TO THOSE WHO CONTINUE THE FIGHT TODAY**

# WAR AND EMERGENCY POWERS

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"Study the Constitution. Let it be preached from the pulpit, proclaimed in legislatures, and enforced in courts of justice."

- Abraham Lincoln

You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; right derived from the Great Legislator of the Universe"

- John Adams

"I believe there are more instances of abridgement of freedom of the people by gradual and silent encroachments of those in power than by violent an sudden usurpations..."

- James Madison

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### A word from the Editor:

We must give a special thanks to the men who have spent years of their lives bringing this information to the public; and we must not forget the women who are not always in the foreground but without whose undying support and endurance this effort would be impossible. These men and women are true Patriots; they not only need your support but deserve it. Let us remember that the word Patriot as defined by Webster's Dictionary as "*fellow countryman; a person who loves and loyally or zealously supports his own country*". Not everyone can afford to give the long hours of those on the front lines; many others fear their government. Isn't it an outrage that the actions of our own government leaders causes many to not trust them? Where have we gone? How much is your freedom worth? If you can not give your time, please give your support. The *American Agriculture Movement* and many other organizations need your help to continue their efforts to bring about the Restoration of this Nation. A few dollars a month, in the form of purchasing information to pass on to others, is not too much to ask. Wouldn't it be a tragedy to lose their efforts, from which we will all gain so much, because they were twenty dollars short, and we failed to do our part? Please, become involved; this movement is too important not to do so. We need this Report in the hands of all Americans, so we are not going to copyright it; therefore, permission is hereby granted to reproduce this Report in its entirety. We do ask, however, that you lend your support, if possible, by purchasing an original Report to make copies from so that the quality will be maintained. Thank you.

- Paul Bailey

# INTRODUCTION

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To be able to call oneself "American" has long been a source of pride for those fortunate enough to live in this great land. The word "America" has always been synonymous with strength in the defense of our highest ideals of liberty, justice and opportunity, not only for ourselves, but for those throughout the world less fortunate than we.

America's greatest strength has always been her people, individuals laying their differences aside to work in partnership to achieve common goals. In our greatest moments, it has been our willingness to join together and work as long and as hard as it takes to get the job done, regardless of the cost, that has been the lifeblood of our great land.

From America's inception, we have been a nation of innovators unfettered by hidebound convention, a safe harbor for captains unafraid to boldly chart a new course through untried waters. This courage to dare greatly to achieve great things has made our nation strong and proud, a leader of men and of nations from the very first days of her birth. And since the days of her birth, millions of men and

women whose hearts yearn for freedom and the opportunity to make a better life for themselves and their families have journeyed, often enduring terrible hardship, to our shores to add their skills and their dreams to the great storehouse of hope known as America.

The Pilgrims, the Founding Fathers, the Pioneers - the brave men and women who have fought and endured to the end in wars both civil and international - this history of heroism and dedication in defense of ideals both personal and national has long been a treasured legacy of bravery and determination against all odds which we have handed down like family heirlooms from generation to generation.

For we are like family, we Americans, often quarrelling among ourselves but banding together in times of adversity to support one another and fight side by side against a common foe threatening our way of life. This bold and brash, brave young land has long given its best and brightest to lead our country to its lofty position in the world as a bastion of freedom and a beacon of hope for all the peoples of the Earth.

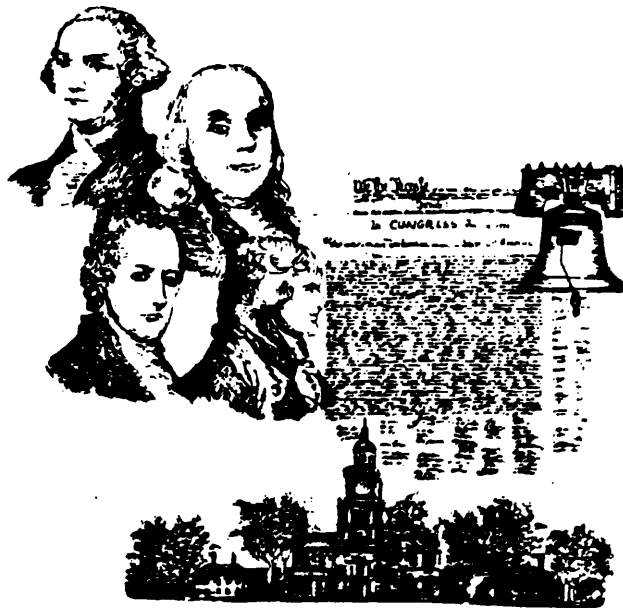
away in the flood to come?

What you are about to see is the result of years of painstaking and meticulous research on the part of dedicated Americans gravely concerned for this nation's future. Please listen closely and give your undivided attention to this presentation, for our future as individuals and free citizens of this mighty land depends upon it.

We are not here to showcase personalities - the speakers could be any one of you here today. We are, first and last, concerned Americans much like yourselves, taking our stand in defense of the nation we love. Much effort has been expended, and great hardships endured, by the American Agricultural Movement and many other organizations and individuals to bring this information to the public forum.

There is a wealth of information about many of the problems we face as a nation today, written from a variety of viewpoints. But as with a deadly illness, there is usually a point of origin, from which the threat first was given life. So it is with the threat we as Americans face today - an illness which could prove fatal if we do not act quickly and in concert to cure the body politic before it dies from the disease within.

Almost all the problems we are facing today can be traced back to a single point of origin, in a time of national trouble and despair. It was at this point, when our nation struggled for its survival, that the Constitution of the the United States of America was effectively cancelled. We are in a State of Emergency!



The cause and effect of the doctrine of emergency is the subject of this Report.

In 1973, in Senate Report 93-549 (Exhibit 10), the first sentence reads,

"Since March the 9th, 1933, the United States has been in a state of declared national emergency."

Let's go back to Exhibit 9 just before this. What did that say? It says that if a national emergency is declared, there is no Constitution. Now, let us return to Exhibit 10. Since March the 9th of 1933, the United States has been, in fact, in a state of declared national emergency.

Referring to the middle of this exhibit:

"This vast range of powers, taken together, confer enough authority to rule the country without reference to normal constitutional processes. Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens"

and this situation has continued uninterrupted since March the 9th of 1933.

In the introduction to Senate Report 93-549 (Exhibit 11):

"A majority of the people of the United States have lived all their lives under emergency rule."

Remember, this report was produced in 1973. The introduction goes on to say:

"For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency."

The introduction continues:

"And, in the United States, actions taken by the government in times of great crisis have - from, at least, the Civil War - in important ways shaped the present phenomenon of a permanent state of national emergency."

How many people were taught that in school? How could it possibly be that something which could suspend our Constitution would not be taught in school? Amazing, isn't it?

Where does this (Exhibit 12) come from? Is it possible that, in our Constitution, there could be some section which could contemplate what these previous documents are referring to? In Article 1, Section 9 of the Constitution of the United States of America, we find the following words:

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion, the public Safety may require it."

called the State of Siege. In Great Britain, it's called the Defense of the Realm Acts. In Germany, in which Hitler became a dictator, it was simply called Article 48. In the United States, it is called the War Powers.

If that was, in fact, the case, and we are under a war emergency in this country, then there should be evidence of that war emergency in the current law that exists today. That means we should be able to go to the federal code known as the USC or United States Code, and find that statute, that law, in existence. And if we went to the library today and picked up a copy of 12 USC and went to Section 95 (b) (Exhibit 15), we will find a law which states:

"The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March the 4th, 1933, pursuant to the authority conferred by Subsection (b) of Section 5 of the Act of October 6th, 1917, as amended [12 USCS Sec. 95a], are hereby approved and confirmed. (Mar. 9, 1933, c. 1, Title I, Sec. 1, 48 Stat. 1.)".

Now, what does this mean? It means that everything the President or the Secretary of the Treasury has done since March the 4th of 1933, or anything that the President or the Secretary of the Treasury is hereafter going to do, is automatically approved and confirmed. Referring back to Exhibit 10, let us remember that, according to the Congressional Record of 1973, the United States has been in a state of national emergency since 1933. Then we realize that 12 USC, Section 95 (b) is current law. This is the law that exists over this United States right this moment, today 1994.

If that be the case, let us see if we can understand what is being said here. As every action, rule or law put into effect by the President or the Secretary of the Treasury since March the 4th of 1933 has or will be confirmed and approved, let us determine the significance of that date in history. What happened on March the 4th of 1933?

On March the 4th of 1933, Franklin Delano Roosevelt was inaugurated as President of the United States. Referring to his inaugural address, which was given at a time when the country was in the throes of the Great Depression, we read (Exhibit 16) :

"I am prepared under my constitutional duty to recommend the measures that a stricken nation in the midst of a stricken world may require. These measures, or such other measures as the Congress may build out of its experience and wisdom, I shall seek, within my constitutional authority, to bring to speedy adoption. But in the event that the Congress shall fail to take one of these two courses, and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis - broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe."

On March the 4th, 1933, at his inaugural, President Roosevelt was saying that he was going to ask Congress for the extraordinary authority available to him under the War

of the Act of October 6, 1917, as amended. What was the authority which was used to declare and enact the emergency in this Act? If we look at the Act of October 6, 1917 (Exhibit 18), we see that at the top right-hand part of the page, it states that this was:

"An Act To define, regulate, and punish trading with the enemy, and for other purposes."

By the year 1917, the United States was involved in World War I; at that point, it was recognized that there were probably enemies of the United States, or allies of enemies of the United States, living within the continental borders of our nation in a time of war.

Therefore, Congress passed this Act which identified who could be declared enemies of the United States, and, in this Act, we gave the government total authority over those enemies to do with as it saw fit. We also see, however, in Section 2, Subdivision (c) in the middle, and again at the bottom of the page:

"other than citizens of the United States."

The Act specifically excluded citizens of the United States, because we realized in 1917 that the citizens of the United States were not enemies. Thus, we were excluded from the war powers over enemies in this Act.

Section 5 (b) of the same Act (Exhibit 19), states:

"That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States)".

Again, we see here that citizens, and the transactions of citizens made wholly within the United States, were specifically excluded from the war powers of this Act. We, the People, were not enemies of our country; therefore, the government did not have total authority over us as they were given over our enemies.

It is important to draw attention again to the fact that citizens of the United States in October, 1917, were not called enemies. Consequently the government, under the war powers of this Act, did not have authority over us; we were still protected by the Constitution. Granted, over enemies of this nation, the government was empowered to do anything it deemed necessary, but not over us. The distinction made between enemies of the United States and citizens of the United States will become crucial later on.

In Section 2 of the Act of March 9, 1933 (Exhibit 17),

"Subdivision (b) of Section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows;"

So we see that they are now going to amend Section 5 (b). Now let's see how it reads after



and, in effect, all business transactions, We, the People became the same as the enemy, and were treated no differently. There was no longer any distinction.

It is important here to note that, in the Acts of October 6, 1917 and March 9, 1933, it states: "during times of war or during any other national emergency declared by the President..". So we now see that the war powers not only included a period of war, but also a period of "national emergency" as defined by the President of the United States. When either of these two situations occur, the President may, (Exhibit 17)

"through any agency that he may designate, or otherwise, investigate, regulate or prohibit under such rules and regulations as he may prescribe by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President and export, hoarding, melting or earmarking of gold or silver coin or bullion or currency by any person within the United States or anyplace subject to the jurisdiction thereof."

What can the President do now to the We, the People, under this Section? He can do anything he wants to do. It's purely at his discretion, and he can use any agency or any license that he desires to control it. This is called a constitutional dictatorship.

In Senate Document 93-549 (Exhibit 20), Congress declared that a serious emergency exists, at:

"48 Stat. 1. The exclusion of domestic transactions, formerly found in the Act, was deleted from Sect. 5 (b) at this time."

Our Congress wrote that in the year 1973.

Now let's find out about the Trading with the Enemy Act of October 6, 1917. Quoting from a Supreme Court decision (Exhibit 21), *Stoehr v. Wallace*, 1921:

"The Trading With the Enemy Act, originally and as amended, is strictly a war measure, and finds its sanction in the provision empowering Congress "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water" Const. Art. I, Sect. 8, cl. 11. P. 241".

Remember your Constitution? "Congress shall have the power to declare war, grant letters of marque and reprisal and make all rules concerning the captures on the land and the water of the enemies," all rules.

If that be the case, let us look at the memorandum of law that now covers trading with the enemy, the "Memorandum of American Cases and Recent English Cases on The Law of Trading With the Enemy" (Exhibit 22), remembering that we are now the same as the enemy. In this memorandum, we read:

*"Every species of intercourse with the enemy is illegal. This prohibition is not limited to mere commercial intercourse."*

This is the case of *The Rapid* (1814).

It says no trade can be conducted or no intercourse can be conducted without a license, because, by mere definition of the enemy, and under the prize law, all intercourse is illegal.

That was the first case we looked at, Exhibit 22, wasn't it? So once we were declared enemies, all intercourse became illegal for us. The only way we could now do business or any type of legal intercourse was to obtain permission from our government by means of a license. We are certainly required to have a Social Security Card, which is a license to work, and a Drivers License, which gives the government the ability to restrict travel; all business in which we engage ourselves requires us to have a license, does it not?

Returning once again to the Memorandum of Law: (Exhibit 27)

"But it is necessary always to bear in mind that a war cannot be carried on without hurting somebody, even, at times, our own citizens. The public good, however, must prevail over private gain. As we said in *Bishop v. Jones* (28 Texas, 294), there cannot be "a war for arms and a peace for commerce". One of the most important features of the bill is that which provides for the temporary taking over of the enemy property."

This point of law is important to keep in mind, for it authorizes the *temporary* take-over of enemy property. The question is: Once the war terminates, the property must be returned - mustn't it?

The property that is confiscated, and the belligerent right of the government during the period of war, must be returned when the war terminates. Let us take the case of a ship in harbor; war breaks out, and the Admiral says, "I'm seizing your ship." Can you stop him? No. But when the war is over, the Admiral must return your ship to you. This point is important to bear in mind, for we will return to, and expand upon, it later in the report.

Reading from (Exhibit 28) Senate Document No. 43, "Contracts Payable in Gold" written in 1933:

"The ultimate ownership of all property is in the State; individual so-called "ownership" is only by virtue of government, i. e., law, amounting to mere user; and use must be in accordance with law and subordinate to the necessities of the State."

Who owns all the property? Who owns the property you call "yours"? Who has the authority to mortgage property? Let us continue with a Supreme Court decision, (Exhibit 29) *United States v. Russell*:

"Private property, the Constitution provides, shall not be taken for public use without just compensation . . . ."

That is the peacetime clause, isn't it? Further (emphasis is ours),

In other words, President Roosevelt was urged to close down the banking system and make it unavailable for a short period of time. What was to happen during that period of time?

Reading again from the Federal Reserve Board resolution (Exhibit 31) , we find a proposal for an executive order, to be worded as follows:

"Whereas, it is provided in Section 5 (b) of the Act of October 6, 1917, as amended, that "the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency, \* \* \* "

Now, in any normal usage of the American language, the standard accepted meaning of a series of three asterisks after a quotation means that what follows also must be quoted exactly, doesn't it? If it's not, that's a fraudulent use of the American language. At that point where that, \* \* \* " began, what did the original Act of October 6, 1917, say?

Referring back to Exhibit 19, we find that the remainder of Section 5 (b) of the Act of October 6, 1917 says:

"(other than credits relating solely to transactions to be executed wholly within the United States)."

This portion of Section 5 (b) specifically prohibited the government from taking control of We, the People's money and transactions, didn't it?

However, let us now read the remainder of Section 5 (b) of the Act of October 6, 1917, as amended on March 9, 1933 (Exhibit 17):

"by any person within the United States or any place subject to the jurisdiction thereof."

Comparing the original with the amended version of Section 5 (b), we can see the full significance of the amended version, wherein the exclusion of domestic transactions from the powers of the Act was deleted, and "any person" became subject to the extraordinary powers conferred by the Act. Further, we can now see that the usage of \* \* \* " was, in all likelihood, meant to be deliberately misleading, if not fraudulent in nature.

Further, in the next section of the Federal Reserve Board's proposal, we find that anyone violating any provision of this Act will be fined not more than \$10,000.00, or imprisoned for not more than ten years, or both. A severe enough penalty at any time, but one made all the more harsh by the economic conditions in which most Americans found themselves at the time. And where were these alterations and amendments to be found? Not from the government itself, initially; no, they are first to be found in a proposal from the Federal Reserve Board of New York, a banking institution.

Let us recall the chronology of events: Herbert Hoover, in his last days as President of the

If we return to 48 Statute 1 (Exhibit 17), Title 1, Section 1, we find that the amended Section 5 (b) with its added phrase:

"by any person within the United States or any place subject to the jurisdiction thereof".

Is this becoming clearer as to exactly what happened? On March 5, 1933, President Roosevelt called for an extra session of Congress, and on March 6, 1933, issued Proclamation 2039 (Exhibits 32-33). On March 9th, Roosevelt issued Proclamation 2040. We looked at Proclamation 2039 on Exhibits 32 and 33, and now, on Exhibit 33 (a), let's see what Roosevelt is talking about in Proclamation 2040:

"Whereas, on March 6, 1933, I, Franklin D. Roosevelt, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday . . ."

We see that Roosevelt declared a national emergency and a bank holiday. Let's read on:

"Whereas, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority conferred by section 5 (b) of the Act of October 6, 1917, as amended, are approved and confirmed;"

This section of the Proclamation clearly states that all proclamations heretofore or hereafter issued by the President are approved and confirmed, citing the authority of section 5 (b). The key words here being "all" and "approved". Further:

"Whereas, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes"

We again clearly see that there is more to come, evidenced by the phrase, "further measures extending beyond March 9, 1933 . . ." Could this be the beginning of a new deal? Possibly a one-sided deal. How long can this type of action continue? Let's find out.

"Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. L. 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President."

We now understand that the Proclamation 2039, of March 6, 1933 and Proclamation 2040 of March 9, 1933, will continue until such time as another proclamation is made by "the President". Note that the term "the President" is not specific to President Roosevelt; it is a generic term which can equally apply to any President from Roosevelt to the present, and beyond.

So here we have President Roosevelt declaring a national emergency (we are now beginning to realize the full significance of those words) and closing the national banks for two days, by Executive Order. Further, he states that the Proclamations bringing

given by government officials and various local agencies to the advisability of issuing clearing-house certificates or some similar form of local emergency currency. On March 7, 1933, the Secretary of the Treasury issued a regulation authorizing clearing houses to issue demand certificates against sound assets of the banking institutions, but this authority was not to become effective until March 10th. In many cities, the printing of these certificates was actually begun, but after the passage of the Emergency Banking Act of March 9, 1933 (48 Stat. 1), it became evident that they would not be needed, because the Act made possible the issue of the necessary amount of emergency currency in the form of Federal Reserve bank-notes which could be based on any sound assets owned by banks."

Roosevelt could now issue emergency currency under the Act of March 9, 1933 and this currency was to be called Federal Reserve bank notes. From Title 4 of the Act of March 9, 1933 (Exhibit 37) :

"Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this Act, any Federal reserve bank making such deposit in the manner prescribed by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the currency circulating notes in blank, duly registered and countersigned."

What is this saying? It says (emphasis is ours) : "Upon the deposit with the **Treasurer** of the United States, (a) of any direct obligation of the United States . . ." What is a direct obligation of the United States? It's a treasury note, which is an obligation upon whom? Upon We, the People, to perform. It's a taxpayer obligation, isn't it?

Title 4 goes on: "or (b) of any notes, drafts, bills of exchange or bankers' acceptances . . ." What's a note? If you go to the bank and sign a note on your home, that's a note, isn't it? A note is a private obligation upon We, the People. And if the Federal Reserve Bank deposits either (a) public and/or (b) private obligation of We, the People, with the Treasury, the Comptroller of the currency will issue this circulating note endorsed in blank, duly registered and countersigned, an emergency currency based on the (a) public and/or (b) private obligations of the people of the United States.

In the Congressional Record of March 9, 1933 (Exhibit 38) , we find evidence that our congressmen didn't even have individual copies of the bill to read, on which they were about to vote. A copy of the bill was passed around for approximately 40 minutes.

Congressman McFadden made the comment,

"Mr. Speaker, I regret that the membership of the House has had no opportunity to consider or even read this bill. The first opportunity I had to know what this legislation is, was when it was read from the clerk's desk. It is an important banking bill. It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States . . . It is difficult under the circumstances to discuss this bill. The first section of the bill, as I grasped it, is practically the war powers that were given back in 1917."

**"The money will be worth 100 cents on the dollar because it is backed by the credit of the Nation. It will represent a mortgage on all the homes and other property of all the people in the Nation."**

**It now is no wonder that credit became so available after the Depression. It was needed to back our monetary system. Our debts, our obligations, our homes, our jobs - we were now slaves for the system.**

**From Statutes at Large, in the Congressional Record (Exhibit 41) :**

**"When required to do so by the Secretary of the Treasury, each Federal Reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the currency, or both, for the performance of any functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph."**

**The Federal Reserve was taken over by the Treasury. The Treasury holds the assets. We are the collateral - ourselves and our property.**

**To summarize briefly: On March 9, 1933 the American people in all their domestic, daily, and commercial transactions became the same as the enemy. The President of the United States, through licenses or any other form, was given the power to regulate and control the actions of enemies. He made We, the People, chattel property; he seized our gold, our property and our rights; and he suspended the Constitution. And we know that current law, to this day, says that all proclamations issued heretofore or hereafter by the President or the Secretary of the Treasury are approved and confirmed by Congress. Pretty broad, sweeping approval to be automatic, wouldn't you agree?**

**On March 11, 1933, President Roosevelt, in his first radio "Fireside Chat" (Exhibit 42), makes the following statement:**

**"The Secretary of the Treasury will issue licenses to banks which are members of the Federal Reserve system, whether national bank or state, located in each of the 12 Federal Reserve bank cities, to open Monday morning."**

**It was by this action that the Treasury took over the banking system.**

**Black's Law Dictionary defines the Bank Holiday of 1933 (Exhibit 42a) in the following words:**

**"Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratifying act (12 U. S. C. A. Sect. 95b). Anthony v. Bank of Wiggins, 183 Miss. 883, 184 So. 626. The present law forbids member banks of the Federal Reserve System to transact banking business, except under regulations of the Secretary of the Treasury, during an emergency proclaimed by the President. 12 U. S. C. A. Sect. 95"**

What was the "broad powers"? That was the **War Powers**, wasn't it? And now we see the farm leaders asking President Roosevelt to use the same War Powers to take control of the agricultural industry. Well, needless to say, he did. We should wonder about all that took place at this conference, for it to result in the eventual acquiescence of farm leadership to the governmental take-over of their livelihoods.

Reading from the Agricultural Adjustment Act, May the 12th, Declaration of Emergency (Exhibit 46) :

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agriculture and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities and rendered imperative the immediate enactment of Title 1 of this Act."

Now here we see that he is saying that the agricultural assets support the national credit structure. Did he take the titles of all the land? Remember Contracts Payable in Gold? President Roosevelt needed the support, and agriculture was critical, because of all the millions of acres of farmland at that time, and the value of that farmland. The mortgage on that farmland was what supported the emergency credit. So President Roosevelt had to do something to stabilize the price of land and Federal Reserve Bank notes to create money, didn't he? So he impressed agriculture into the public interest. The farming industry was nationalized.

Continuing with the Agricultural Adjustment Act, Declaration of Emergency (Exhibit 47):

"It is hereby declared to be the public policy of Congress . . ."

Referring now back to Prize Cases (1862) (2 Black, 674) (Exhibit 24) :

"But in defining the meaning of the term 'enemies' property,' we will be led into error if we refer to Fleta or Lord Coke for their definition of the word, 'enemy'. It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law."

Once the emergency is declared, the common law is abolished, the Constitution is abolished and we fall under the absolute will of Government, public policy.

All the government needs to continue is to have public opinion on their side. If public opinion can be kept, in sufficient degree, on the side of the government, statutes, laws and bills can continue to be passed. The Constitution has no meaning. The Constitution is suspended. It has been for 60 years. We're not under law. Law has been abolished.

the old order." That quote takes on a different meaning in light of what we have seen so far.

In Exhibit 51, Senate Report 93-549, we find a quote from Senator Church:

"If the President can create crimes by fiat and without congressional approval, our system is not much different from that of the Communists, which allegedly threatens our existence."

We see on this same document, at the bottom right-hand side of the page, as a Title, the words,

"Enormous Scope of Powers. . . A Time Bomb".

Remember, this is Congress' own document, from the year 1973.

Most people might not look to agriculture to provide them with this type of information. But let us look at Title III of the Agricultural Adjustment Act, which is also called the Emergency Farm Mortgage Act of 1933 (Exhibit 52):

"Title III - Financing - And Exercising Power Conferred by Section 8 of Article I of the Constitution: To Coin Money And To Regulate the Value Thereof."

From Section 43 of Exhibit 52:

"Whenever the President finds upon investigation that the foreign commerce of the United States is adversely affected . . . and an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion . . . To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks . . ."

Remember that in the Constitution it states that Congress has the authority to coin all money and regulate the value thereof. How can it be then that the Executive branch is issuing an emergency currency, and quoting the Constitution as its authority to do so?

Under Section 1 of the same Act (Exhibit 53) we find the following:

"To direct the Secretary of the Treasury to cause to be issued in such amount or amounts as he may from time to time order, United States notes, as provided in the Act entitled "An Act to authorize the issue of United States notes and for the redemption of funding thereof and for funding the floating debt of the United States, approved February 25, 1862, and Acts supplementary thereto and amendatory thereof"

What is the Act of February 25, 1862? It is the Greenback Act of President Abraham Lincoln. Let us remember that, when Abraham Lincoln was elected and inaugurated, he didn't even have a Congress for the first six weeks. He did not, however, call an extra session of Congress. He issued money, he declared war, he suspended habeas corpus, it



Church:

"These powers, if exercised, would confer upon the President total authority to do anything he pleased."

Elsewhere in Senate Report 93-549, Senator Church makes the remarkable statement (Exhibit 57):

"Like a loaded gun laying around the house, the plethora of delegated authority and institutions to meet almost every kind of conceivable crisis stand ready for use for purposes other than their original intention . . . Machiavelli, in his "Discourses of Livy," acknowledged that great power may have to be given to the Executive if the State is to survive, but warned of great dangers in doing so. He cautioned: Nor is it sufficient if this power be conferred upon good men; for men are frail, and easily corrupted, and then in a short time, he that is absolute may easily corrupt the people."

Now, a quote from an exclusive reply (Exhibit 58) written May 21, 1973, by the Attorney General of the United States regarding studies undertaken by the Justice Department on the question of the termination of the standing national emergency:

"As a consequence, a "national emergency" is now a practical necessity in order to carry out what has become the regular and normal method of governmental actions. What were intended by Congress as delegations of power to be used only in the most extreme situations, and for the most limited durations, have become everyday powers, and a state of "emergency" has become a permanent condition."

From *United States v. Butler* (Supreme Court, 1935) (Exhibit 59):

"A tax, in the general understanding and in the strict Constitutional sense, is an exaction for the support of government; the term does not connote the expropriation of money from one group to be expended for another, as a necessary means in a plan of regulation, such as the plan for regulating agricultural production set up in the Agricultural Adjustment Act."

What is being said here is that a tax can only be an exaction for the support of government, not for an expropriation from one group for the use of another. That would be socialism, wouldn't it?

Quoting further from *United States v. Butler* (Exhibit 60) :

"The regulation of farmer's activities under the statute, though in form subject to his own will, is in fact coercion through economic pressure; his right of choice is illusory. Even if a farmer's consent were purely voluntary, the Act would stand no better. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the states."

Speaking of contracts, those contracts are coercion contracts. They are adhesion contracts made by a superior over an inferior. They are under the belligerent capacity of government over enemies. They are not valid contracts.

again to hamstring the efforts of the government to deal resolutely with a serious national emergency."

So much for our Constitutional system of checks and balances. And from that same Senate Report, in the section entitled, "Emergency Administration", a continuation of Exhibit 64:

"Organizationally, in dealing with the depression, it was Roosevelt's general policy to assign new, emergency functions to newly created agencies, rather than to already existing departments."

Thus, thousands of "temporary" emergency agencies are now sitting out there with emergency functions to rule us in all cases whatsoever.

Finally, let us look briefly at the courts, specifically with regard to the question of "booty". The following definition of the term, "prize" is to be found in Bouvier's Law Dictionary (Exhibit 65) :

"Goods taken on land from a public enemy are called booty; and the distinction between a prize and booty consists in this, that the former is taken at sea and the latter on land."

This significance of the distinction between these two terms is critical, a fact which will become quite clear shortly.

Let us now remember that "Congress shall have the power to make rules on all captures on the land and the water." To reiterate, captures on the land are booty, and captures on the water are prize.

Now, the Constitution says that Congress shall have the power to provide and maintain a navy, even during peacetime. It also says that Congress shall have the power to raise and support an army, but no appropriations of money for that purpose shall be for greater than two years. Here we can see that an army is not a permanent standing body, because, in times of peace, armies were held by the sovereign states as militia. So the United States had a navy during peacetime, but no standing army; we had instead the individual state militias.

Consequently, the federal government had a standing prize court, due to the fact that it had a standing navy, whether in times of peace or war. But in times of peace, there could be no federal police power over the continental United States, because there was to be no army.

From the report "The Law of Civil Government in Territory Subject to Military Occupation by Military Forces of the United States", published by order of the Secretary of War in 1902, under the heading entitled The Confiscation of Private Property of Enemies in War (Exhibit 66), comes the following quote:

Act, known as the Federal Rules of Civil Procedures Act, was not to come into effect until 6 months after the letter of transmittal from the Supreme Court to Congress. The Supreme Court refused transmittal and the transmittal did not occur until Franklin D. Roosevelt stacked the Supreme Court in 1938 (Exhibits 67(a) and (b)).

But on March the 9th of 1933, the American people were declared to be the public enemy under the amended version of the Trading With the Enemy Act. What jurisdiction were We, the People, then placed under? We were now the booty jurisdiction given to the district courts by Congress. It was no longer necessary, or of any value at all, to bring the Constitution of the United States with us upon entering a courtroom, for that court was no longer a court of common law, but a tribunal under wartime booty jurisdiction. Take a look at the American flag in most American courtrooms. The gold fringe around our flag designates Admiralty jurisdiction.

Executive Order No. 11677 issued by President Richard M. Nixon August 1, 1972 (Exhibit 68) states:

"Continuing the Regulation of Exports; By virtue of the authority vested in the President by the Constitution and statutes of the United States, including Section 5 (b) of the Act of October 6, 1917, as amended (12 U. S. C. 95a), and in view of the continued existence of the national emergencies . . ."

Later, in the same Executive Order (Exhibit 69), we find the following:

" . . . under the authority vested in me as President of the United States by Section 5 (b) of the Act of October 6, 1917, as amended (12 U. S. C. 95a) . . ."

Section 5 (b) certainly seems to be an oft-cited support for Presidential authority, doesn't it? Surely the reason for this can be found by referring back to Exhibit 49, the words of Mr. Katzenbach in Senate Report 93-549:

"My recollection is that almost every executive order ever issued straddles on several grounds, but it almost always includes the Trading With the Enemy Act because the language of that act is so broad, it would justify almost anything."

The question here, and it should be a question of grave concern to every American, is what type of acts can "almost anything" cover? What has been, and is being, done, by our government under the cloak of authority conferred by Section 5 (b)? By now, I think we are beginning to know.

Has the termination of the national emergency ever been considered? In Public Law 94-412, September 14, 1976 (Exhibit 70), we find that Congress had finally finished their exhaustive study on the national emergencies, and the words of their findings were that they would terminate the existing national emergencies. We should be able to heave a sigh of relief at this decision, for with the termination of the national emergencies will come the corresponding termination of extraordinary Presidential power, won't it? But yet we have learned two difficult lessons: that we are still in the national emergency, and

## CONCLUSION

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As you have just witnessed, the United States of America continues to exist in a governmentally ordained state of national emergency. Under such a state of emergency, our Constitution has been set aside, ostensibly for the public good, until the emergency is cancelled.

But, as experience painfully shows, it has not been to the public's good that our government has used its unrestricted power, unhampered by the Constitution's restraining force. The governmental edicts and actions over the past six decades have led us to the desperate state in which we find ourselves today. Besieged on every side, corroding from within, frightened and in despair, we as a nation are being torn asunder.

There IS a national emergency today - one of life and death proportions - but it is NOT the emergency used by our government to continue its abuse of power. It IS this very abuse, this unbridled rape of the American spirit, that is the crux of the emergency we are in today. But this true emergency cannot be cured by setting aside the Constitution; no, it can only be controlled by returning to the laws of God and Country which have been stolen from us by those in whom we placed our trust to protect the national interest.

We are a nation whose government is based upon those immortal words, "a government of the people, by the people, for the people". One has only to walk down the highways and byways of this great

land to know all too well that this is not a government of the people or for the people. Actions speak louder than words, and the actions taken over the past decades have resulted in an unparalleled decline of American economic and political power, and a weakening of American values and spirit.

This is NOT a crisis in which the taking up of arms is the answer. No, this is a situation in which we firmly believe that the pen will be mightier than the sword. That a state of emergency exists cannot be disputed. That the emergency is one which should concern every American alive cannot be denied. That we must stand together, laying aside our individual differences, to fight the common foe, is of vital importance, for the time to act is now. But this is not a battle of swords, but of knowledge, for only when the deception is exposed to the light of day can the healing process begin.

Truth stands tall in the light of day, and it is the truth we bring to you today. Let it be known and understood that it is our intention to make this information available to every concerned American who desires to know the true State of the Union. This is an undertaking of immense proportions, but we have dedicated ourselves to bringing this information to the light of day, and with the help of "We, the People", we will be successful in our efforts.

Every American who is thankful for the

will tolerate this great lie no longer, and we must put them on notice that we expect them to resign if they have not the courage and the resolve to help this nation in its hour of need.

We have been fools long enough. **Beginning April 1st, 1994**, no matter how long after that date you see this report, start each and every week without fail to give a copy of this information to at least one person you know. We also ask you to write a letter to Congress telling them to "Let our People go", or you can use the form letter you will find enclosed in the report.

We must let our elected officials know that we expect them as servants of the people to help us re-establish law and order and restore our national pride. They must repeal Proclamation 2039, 2040, and Title 12 USC 95(a) and 95(b), thereby cancelling the National Emergency, and re-establish the Constitution of this nation.

Now is the time for excellence of action. We demand it and will accept nothing less. This is our country, to protect and defend, no matter the cost. To do nothing out of fear or apathy is exactly what those in power are hoping for, for it is ignorance and apathy that the darkness likes best. We must not be a party to the darkness enveloping our nation any longer. We must come into the light, and give our every drop of blood, sweat and tears to bring our nation back with us.

We must acknowledge that if we do nothing, if we are not willing to act now and act boldly, without fear but with faith and a firm resolve, our freedom to act at all

may soon be taken away altogether. New bills, new laws are being presented daily which will effectively serve to tighten the chains of bondage already encircling this nation.

My friends, we are not going into slavery - we are already there. Make no mistake - those in power are already tightening the chains, but they are doing so slowly, quietly and with great caution, for fear of awakening the slumbering lion which is the voice of the American people. There is yet still time for us to slip loose the chains which bind us, and for us to bring about the restoration of this nation.

If we act, if we make our concerns known and shout out our refusal to accept the future which has been planned for us by those who hold no allegiance to this great land of ours, we can yet demand and see come to pass the day when the state of emergency is cancelled and the Constitution is restored to her rightful place as the watchdog of those for whom absolute power corrupts absolutely. If we repent of our ignorance and our apathy, and return to the God-given laws on which this nation was founded, we may yet be free.

We will continue to hold meetings and offer this information until everyone in America has had an opportunity to hear it and we have set our nation free. We will not tolerate less. We are Americans and that means far more than most of us realize.

If at first it seems you are working alone, do not give up, for as this information spreads across the land to the great cities and small towns, you will find yourself in

# LETTERS

**Please hand write or type a copy of this letter, or one like it,  
to both of your State Congressional Representatives  
each week and mail to the address given.**

Date: \_\_\_\_\_

Your Name  
Address  
City, State, Zip

**EXAMPLE  
LETTER  
ONLY**

The Honorable \_\_\_\_\_  
United States House of Representatives  
2449 Rayburn Building  
Washington, D.C. 20510

Dear Sir (or Madam) :

I am taking advantage of my American freedom, while I still have it, to urge you to stand up for the American people, and make it your position that the declared state of national emergency which has operated in this great nation for over sixty years be cancelled immediately.

I have been apprised of the amendment to Section 5 (b) of the Trading with the Enemy Act of October 6, 1917, and understand the extraordinary powers it has conferred upon the Executive branch of our government. These excessive powers have been used to sell our nation into slavery, by effectively nationalizing our vital industries and separating the American citizen from their rights under common law.

I know that the Constitution of this United States has been set aside under this "national emergency". I urge you now, as a servant of the American people, to commit yourself to working for its immediate return to its rightful owners - We, the People. If you are unwilling or unable to take this stand in defense of your country, I request that you tender your resignation so that another may take your place who is willing and/or able to do what you are not.

The Supreme Court once said, "It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep our government from falling into error". As such, I hereby charge you to repeal Proclamations 2039 and 2040, and 12 USC 95 (a) and (b), re-establish the Constitution of the United States to its rightful position in our government, and Let My People Go.

Sincerely,

# **EXHIBITS**



# NATIONAL EMERGENCY

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HEARINGS  
BEFORE THE  
SPECIAL COMMITTEE ON THE  
TERMINATION OF THE NATIONAL EMERGENCY  
OF THE  
UNITED STATES SENATE  
NINETY-THIRD CONGRESS  
FIRST SESSION

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PART 2—VIEWS OF FORMER ATTORNEYS GENERAL

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WASHINGTON, D.C., JULY 24, 1973



Printed for the use of the Special Committee on the  
Termination of the National Emergency

U.S. GOVERNMENT PRINTING OFFICE

25-773

WASHINGTON : 1973

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For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402 — Price: \$1.75

**NATIONAL EMERGENCY**

**HEARINGS**

REPORTS THE

**SPECIAL COMMITTEE ON THE  
TERMINATION OF THE NATIONAL EMERGENCY**

OF THE

**UNITED STATES SENATE**

**NINETY-THIRD CONGRESS**

**FIRST SESSION**

**PART 3—CONSTITUTIONAL QUESTIONS  
CONCERNING EMERGENCY POWERS**

**WASHINGTON, D.C., NOVEMBER 22, 1973**



**EXHIBIT 4**

SESSION LAWS  

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STATUTES  
OF  
THE UNITED STATES  
OF AMERICA

PASSED AT THE FIRST SESSION OF THE  
SEVENTY-THIRD CONGRESS

1933  
AND EASTERN NEW MEXICO  
JUNIOR COLLEGE

CONCURRENT RESOLUTIONS  
RECENT TREATIES, EXECUTIVE PROCLAMATIONS  
AND AGREEMENTS

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EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS  
UNDER THE DIRECTION OF THE SECRETARY OF STATE



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1933

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For sale by the Superintendent of Documents, Washington, D.C. . . . . Price 60 cents

**EXHIBIT 6**

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## INTRODUCTION

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→ "WE MAY WELL WONDER in view of the precedents now established," said Charles E. Hughes in 1920, "whether constitutional government as heretofore maintained in this Republic could survive another great war even victoriously waged."<sup>1</sup> The conflict known as the World War had ended as far as military hostilities were concerned, but was not yet officially terminated. Most of the war statutes were still in effect, many of the emergency organizations were still in operation, and the pent-up emotions of the American people, now denied their normal military outlet against the enemy, were turned against so-called radicals, nonconformists, and other unpopular groups in the United States. The war had brought invasion of the rights of property and regimentation of individual lives to a degree never previously experienced by American citizens. Much of the regimentation of property soon came to an end, and gradually, in spite of the fears of Mr. Hughes and others, the traditional safeguards of civil liberty became effective once more. The country experienced a nominal "return to normalcy." Beneath the surface, however, apart from the war and in spite of professions of Presidents Harding, Coolidge, and Hoover in favor of more business in government and less government in business, the decade of the nineteen-twenties witnessed a renewed and less spectacular extension of peacetime regulatory power over the rights of property. The business collapse of 1929 outlived protestations that the economic order was fundamentally sound and belied the prophecy that prosperity was "just around the corner." The crisis, characterized by a member of the Supreme Court as "more serious than war," culminated in the program called the New Deal. That program included regulation of property in some respects more

<sup>1</sup> *New York Times*, June 22, 1920.

## EXHIBIT 8

## FOREWORD

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→ Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidentially proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the national emergency proclaimed by President Truman on December 16, 1950, during the Korean conflict, and the states of national emergency declared by President Nixon on March 23, 1970, and August 15, 1971.

These proclamations give force to 470 provisions of Federal law. These hundreds of statutes delegate to the President extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing manners. This vast range of powers, taken together, confer enough authority to rule the country without reference to normal constitutional processes. ←

Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of all American citizens.

With the melting of the cold war—the developing détente with the Soviet Union and China, the stable truce of over 20 years duration between North and South Korea, and the end of U.S. involvement in the war in Indochina—there is no present need for the United States Government to continue to function under emergency conditions.

The Special Committee on the Termination of the National Emergency was created<sup>1</sup> to examine the consequences of terminating the declared states of national emergency that now prevail; to recommend what steps the Congress should take to ensure that the termination can be accomplished without adverse effect upon the necessary tasks of governing; and, also, to recommend ways in which the United States can meet future emergency situations with speed and effectiveness but without relinquishment of congressional oversight and control.

In accordance with this mandate, the Special Committee—in conjunction with the Executive branch, expert constitutional authorities, as well as former high officials of this Government—is now engaged

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<sup>1</sup> S. Res. 9, 93d Cong., 1st Sess.

→ **The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.**

**No Bill of Attainder or ex post facto Law shall be passed.**

**No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.\***

**No Tax or Duty shall be laid on Articles exported from any State.**

**No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.**

**No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.**

**No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.**

**Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.**

**No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State**

## CONSTITUTION CONTAINS UNALIENABLE RIGHTS

Mr. CLARK. I will start out, as the younger, with the more recent era of the Supreme Court. I won't be intimidated by what others say. I don't think that you will be able to find case law that will answer your question. It doesn't exist. You can find as to certain powers, the power to suspend written habeas corpus, some of the oldest law cases, Bill of Rights, and things like that.

They are quite careful and restrictive on the power, but the power to suspend is specifically contemplated by the Constitution in writ of habeas corpus. When you come to the Bill of Rights, in my philosophy, there is no capacity in Government that these are inalienable rights. They are reposed in the people, and the Government, whatever the emergency, cannot transgress them.

Senator CHURCH. Any other opinion entered here?

Mr. KATZENBACH. Yes. I agree with that, with what Mr. Clark has said. I think there are some rights in the Constitution which clearly can't be totally suspended under the Constitution. I think there are factual circumstances which require a balancing of various rights from time to time and which may, in some circumstances, justify more restrictions that would otherwise. Even with respect to the first amendment, there are probably some rights which you can assert, absent crisis; but, given really intense crisis, the Court might condone some circumstantial conscription. Philosophically, the rights where I agree with Mr. Justice Black is pretty black-and-white on the first amendment—however, the Court never went along entirely with his philosophy on that. I am sure, as a practical matter, that you could have the kind of crisis where rather extraordinary power can be taken on to people.

I will give you one example—it is one that always bothered me—I found the rationalization for it, but it may not be a good reason.

I was down in old Mississippi and the riot was going on. There were a great many cars with an unusual number of people, for that hour of night, going hunting. Now, as the cars flowed into Oxford, Miss., they set up some roadblocks. What the military did—and I knew about it and did not stop them from doing it—was to remove firearms. They tagged them with the name of the owners and said the firearms would be returned.

Now, there was no intention of using that search for the prosecution of any person. The intention was to try to stop the shooting that was going on. I am not at all sure—by condoning or authorizing that action—I was not acting in violation of the Constitution. My rationalization was, I was not doing it for any purposes but—

Senator CHURCH. Maintain the peace?

Mr. KATZENBACH. Yes, maintaining peace at that particular moment. I offer that as an example of a problem I thought was very difficult. Senator CHURCH. Isn't it true that many times in the course of our history, in conditions like that which you phrased, or where a condition of war existed or martial law was declared, that the practical effect of that is really to suspend all constitutional powers? For instance, during martial law little recognition is given to civil and constitutional rights.

Mr. KATZENBACH. But after the fact, it may be found the action that was taken by the enforcement authority was withdrawn. Enforcement authorities are likely to do that, given that kind of pressure, and preserve the constitutional principle by afterward saying they shouldn't.

Justice CLARK. Of course, there is the theory where you have martial law and courts-martial, somehow those courts are not bound by the Bill of Rights. I held just contrary to that about 6 months ago when I sat here on the Court of Appeals for the District of Columbia. We struck out one of the sections of the Uniform Code of Military Justice that was too vague, we said, on constitutional principles.

But I think Mr. Katzenbach is right. Rather, my theory is—although Justice Black did not adhere to this—that there must be a balancing. Justice Harlan and myself went very strong on the balancing test. Justice Black was to the contrary, but we thought where you had a problem of this type that you balanced, or attempted to balance, the necessities of the State with the involved rights of the individual. If the necessities of the State are compelling, the rights of the individual must give way, lest the Bill of Rights—under which the individual claim is—itsself, be destroyed.

## CIVIL COURTS BOUND BY BILL OF RIGHTS

I submit that is what we usually try to do on the Court. Now where you have martial law and the civil court is permitted to continue to sit, you may have a different problem. In the civil courts, certainly you would be bound by the Bill of Rights.

So I rather think, in the long run, you would be able to work it out. I think that we must remember that unless the Government is able to exert sufficient power to prevent the destruction of the Constitution—under which the claimed rights exist—we have a pretty weak reed to depend upon. I grant you that is a hard answer that you have to make in circumstances of that type; but, I think that the Court in the past has thought in those terms.

Senator CHURCH. I want to pause for just a minute to welcome a distinguished Senator, John Sherman Cooper, now retired, who has come into the room. He is a great friend of mine. I invite you Senator Cooper, to come up and join us if you would. Senator Mathias and I would be privileged to have you.

Senator COOPER. Thank you. I will sit and listen.

Senator CHURCH. As you please.

Senator COOPER. I would like to thank you for the privilege.

Senator CHURCH. Mr. Katzenbach mentioned in his testimony, as did Ramsey Clark, the Trading With the Enemy Act of 1917 and the importance of certain provisions, especially section 5(b), together with the fact that the use of these particular powers rests upon the existence, the continuing existence, of a national emergency. President Roosevelt invoked section 5(b) in proclaiming an emergency in 1933. That declaration of national emergency has continued in effect from 1938 to the present day. A series of Presidents have used these powers; the process appears endless—the states of emergency, unless this Special Committee lives up to its Senate mandate, will never end.

*Inaugural Address*

Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form. That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced. It has met every stress of vast expansion of territory, of foreign wars, of bitter internal strife, of world relations.

It is to be hoped that the normal balance of Executive and legislative authority may be wholly adequate to meet the unprecedented task before us. But it may be that an unprecedented demand and need for undelayed action may call for temporary departure from that normal balance of public procedure.

→ I am prepared under my constitutional duty to recommend the measures that a stricken Nation in the midst of a stricken world may require. These measures, or such other measures as the Congress may build out of its experience and wisdom, I shall seek, within my constitutional authority, to bring to speedy adoption.

But in the event that the Congress shall fail to take one of these two courses, and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.

For the trust reposed in me I will return the courage and the devotion that befit the time. I can do no less.

We face the arduous days that lie before us in the warm courage of national unity; with the clear consciousness of seeking old and precious moral values; with the clean satisfaction that comes from the stern performance of duty by old and young alike. We aim at the assurance of a rounded and permanent national life.

We do not distrust the future of essential democracy. The people of the United States have not failed. In their need they have registered a mandate that they want direct, vigorous action. They have asked for discipline and direction under leadership.



ized as authorized by existing law: *Provided*, That the pay of the grades of general and lieutenant general shall be \$10,000 and \$9,000 a year, respectively, with allowances appropriate to said grades as determined by the Secretary of War: *And provided*, That brigadier generals of the Army shall hereafter rank relatively with rear admirals of the lower half of the grade. And, hereafter, the chief of any existing staff corps, department, or bureau, except as is otherwise provided for the Chief of Staff, shall have the rank, pay, and allowances of major general.

*Proviso.*  
Pay and allowances.

Brigadier generals to rank with rear admirals.

Chiefs of bureaus, etc., made major general.

Approved, October 6, 1917.

→ CHAP. 106.—An Act To define, regulate, and punish trading with the enemy, and for other purposes.

October 6, 1917.  
[H. R. 6960.]

[Public, No. 81.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act shall be known as the "Trading with the enemy Act."

Trading with the Enemy Act.

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

Terms defined.  
"Enemy."

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

Persons residing in enemy country or trading therein.

Foreign corporations included.

(b) The government of any national with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

Government, officials, etc.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

Other designated persons.

The words "ally of enemy," as used herein, shall be deemed to mean—

"Ally of enemy."

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

Persons residing, or trading, in country thereof.

Corporations.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

Government, officials, etc.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

Other designated persons.

Emergency Banking Act or Bank Conservation Act. 48 Stat. 1, That Act provided that the actions and proclamations "heretofore or hereafter taken . . . or issued by the President of the United States . . . since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed." (48 Stat. 1; 12 U.S.C. 95b (1970)). Congress thus "spread its protective approval over executive acts the legality of which was uncertain." Ellingwood, *op. cit. supra* at 27 N.W. L.J. Rev. 929 (1933). Congress also amended Section 5(b) to provide, among other things, that "[d]uring time of war or during any other period of national emergency declared by the President, the President may . . . regulate, under such rules and regulations as he may prescribe . . . transfers of credit between or payments by banking institutions as defined by the President. . . ." 48 Stat. 1. In the enactment clause Congress declared "that a serious emergency exists." 48 Stat. 1. The exclusion of domestic transactions, formerly found in the Act, was deleted from § 5(b) at this time.

The legislative history of the Emergency Banking Act is short; only eight hours elapsed from the time the bill was introduced until it was signed into law. There were no committee reports. Indeed, the bill was not even in print at the time it was passed. 77 Cong. Rec. 76, 80 (1938); Schlesinger, *The Coming of the New Deal* 8.

The abbreviated history shows Congress recognized that the powers conferred on the President by the Act were great. In the debate preceding the bill's passage these supporting it made such remarks as:

" . . . in time of storm there can only be one pilot. In my judgment, the House of Representatives realize that the pilot in this case must be the President of the United States, and they will steer their course by him (Rep. Goldberg, 77 Cong. Rec. 81).

It is a dictatorship over finance in the United States. It is complete control over the banking system in the United States. (Rep. McFadden, 77 Cong. Rec. 80).

I realize that in time of peace we have perhaps never been called upon to vest such transcendent powers in the Executive as are provided for in this bill. . . . It is an emergency which can be adequately dealt with only by the strong arm of Executive power, and therefore I expect to vote for the bill, though it contains grants of powers which I never before thought I would approve in time of peace. (Sen. Connally, 77 Cong. Rec. 65).

The courts later upheld the validity of the bank holiday under the Act as amended. *E.g., Smith v. Withers*, 102 F. 2d 638, 641 (3d Cir. 1936); *Hudice v. Washington Loan & Trust Co.*, 91 F. 2d 311 (D.C. Cir. 1940). Because of the prompt action taken by Congress in ratifying the March 6 proclamation, no judicial decisions were rendered on the question of whether the President's action, if taken alone, would have been lawful.

[Citations supplied.]

Subsequently in 1933-34, acting under § 5(b), President Roosevelt issued a series of orders which prohibited the hoarding of gold and directed that all gold bullion certificates be deposited with the Federal Reserve Banks and which regulated transactions in foreign exchange:

(1) Executive Order 6078 of March 10, 1933, prohibited the export or removal of gold from the United States, except as authorized by the Secretary of the Treasury, and banks were prohibited from making transfers of foreign exchange except in connection with certain described transactions. This order did not specifically refer to a national emergency.

(2) Executive Order 6102 of April 5, 1933, generally required holders of gold coin, gold bullion, and gold certificates to surrender their holdings to Federal Reserve Banks. This Order stated "By virtue of the authority vested in me by Section 5(b) . . . as amended by Section 2 of the Act of March 9, 1933, . . . in which amendatory Act Congress declared that a serious emergency exists, I . . . do declare that said national emergency still continues to exist."

(3) Executive Order 6111 of April 20, 1933, authorized the Secretary of the Treasury to regulate transactions in foreign exchange and the export or withdrawal of currency from the United States. The emergency basis for E.O. 6111 was stated in the same language as the language of E.O. 6102, quoted immediately above.

(4) Executive Order 6260 of August 28, 1933, was issued to supplant Executive Orders 6102 and 6111. This order prohibited the holding or export of gold, except under license issued by the Secretary of the Treasury, and authorized the Secretary to regulate or prohibit transactions in foreign exchange. In E.O. 6260 the President stated "I . . . do declare that a period of national emergency exists." Executive Order 6260 was confirmed and amended by Presidents Eisenhower and Kennedy. 31 CFR Part 41. See 42 (p. A.G.N.n. 35, p. 9).

(5) Executive Order 6560 of January 15, 1934, authorized the Secretary of the Treasury to regulate transactions in foreign exchange, transfers of credit from American to foreign banks and export of currency or silver coin. This order is still on the books today. See 31 CFR Parts 127-128. In this Order, the President declared that "a period of national emergency continues to exist."

In January 1934 Congress ratified all acts which had been performed under the Emergency Banking Act. 48 Stat. 343 (1934); 12 U.S.C. 213 (1970).

### III.

#### WORLD WAR II ALLEN PROBERTY FREEZE

Following the invasion of Norway and Denmark by Germany in April 1940 President Roosevelt acted to protect funds of residents of these countries in the United States from withdrawal under duress

## APPENDIX B.

## MEMORANDUM OF AMERICAN CASES AND RECENT ENGLISH CASES ON THE LAW OF TRADING WITH THE ENEMY.

By CHARLES WARREN, Assistant Attorney General of the United States.

## I.

## AMERICAN CASES.

→ (1) *Every species of intercourse with the enemy is illegal. The prohibition is not limited to mere commercial intercourse.*

Johnson, J., in *The Rapid* (1814) (8 Cranch, 155, 162, 163):

"Whether this was a trading in the eye of the prize law such as will subject the property to capture.

"The force of the argument on this point depends upon the terms made use of. If by *trading* in prize law was meant that signification of the term which consists in negotiation or contract, this case would certainly not come under the penalties of the rule. But the object, policy, and spirit of the rule is to cut off all communication or actual locomotive intercourse between individuals of the belligerent States. Negotiation or contract has therefore no necessary connection with the offense. *Intercourse* inconsistent with actual *hostility* is the offense against which the operation of the rule is directed, and by substituting this definition for that of *trading with an enemy* an answer is given to this argument."

And see especially Story, J., in *The Julia* (1814) (8 Cranch, 181, 193, 194, 195):

"Nor is there any difference between direct intercourse between the enemy countries and an intercourse through the medium of a neutral port. The latter is as strictly prohibited as the former."

See also Story, J., in *The Julia* (1813) (1 Gallison, 594, 602, 603):

→ "\* \* \* It would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations. By the war every subject is placed in hostility to the adverse party. He is bound by every effort of his own to assist his own government and to counteract the measures of its enemy. Every aid, therefore, by personal communication or by other intercourse which shall take off the pressure of the war or foster the resources or increase the comforts of the public enemy, is strictly inhibited. No contract is considered as valid between enemies, at least so far as to give them a remedy in the courts of either government, and they have, in the language of the civil law, no ability to sustain a *persona standi in judicio*. The ground upon which a trading with the enemy is prohibited is not the criminal intentions of the parties engaged in it or in the direct and immediate injury to the State. The principle is extracted for a more enlarged policy, which looks to the general interests of the Nation, which may be sacrificed under the temptation of unlimited intercourse or sold by the cupidity of corrupted avarice."

See also *The St. Lawrence* (1814) (8 Cranch, 434); *The Alexander* (1814) (8 Cranch, 169); *The Ruger* (1816) (1 Wheaton, 62); *United States v. Barber* (1815) (9 Cranch, 243); *United States v. Sholdon* (1817) (2 Wheaton, 119).

"This liability of the property of a citizen to condemnation as prize of war may be likewise accounted for under other considerations. Everything that issues from a hostile country is, *prima facie*, the property of the enemy, and it is incumbent upon the claimant to support the negative of the proposition. But if the claimant be a citizen or an ally at the same time that he makes out his interest, he confesses the commission of an offense which, under a well-known rule of the civil law, deprives him of his right to prosecute his claim. \* \* \*

"Whether, on the breaking out of a war, the citizen has a right to remove to his own country with his property is a question which we conceive does not arise in this case. This claimant certainly has not a right to leave the United States for the purpose of bringing home his property from an enemy country; much less could he claim it as a right to bring into this country goods the importation of which was expressly prohibited."

See also *The Diana* (1814) (2 Gallison, 93; 97); *Jecker v. Montgomery* (1855) (18 How., 110, 114); *The Adula* (1899) (176 U. S., 361, 379), and cases cited.

*The Benito Estenger* (1900) (176 U. S., 568, 571):

"By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences."

See also *The Carlos F. Roses* (1900) (177 U. S., 655).

Betts, J., in *The Crenshaw* (1861), *Blatchford's Prize Cases*, 27:

"Not only is property taken trading with the enemy liable to forfeiture, but it is subject to forfeiture as a prize of war."

Nelson, J., in Charge to Grand Jury (1861) (5 *Blatchf.*, 549; *Fed. Cases No. 18271*):

"Trade with the enemy \* \* \* according to the law of nations is forbidden and the property engaged in it is liable to forfeiture."

Betts, J., in *The Shark* (1862) (*Blatchford's Prize Cases*, p. 218).

(3) *All persons doing business with the enemy, whether citizens of the United States or citizens of the other belligerent nation or neutrals, are as to their property to be deemed enemies.*

*Prize Cases* (1862) (2 *Black*, 674):

→ "But in defining the meaning of the term 'enemies' property, we will be led into error if we refer to *Fleta* and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law.

"Whether property be liable to capture as 'enemies' property' does not in any manner depend on the personal allegiance of the owner. 'It is the illegal traffic that stamps it "as enemies' property." It is of no consequence whether it belongs to an ally or a citizen. (8 *Cr.*, 384.) The owner, *pro hac vice*, is an enemy.' (3 *Wash. C. C. R.*, 183.)

→ "The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicile of the owner, and much more so if he reside and trade within the territory."

resources are more likely to determine the result of the present conflict than armies and navies. Therefore, everything reasonably possible should be done to prevent our enemy from reaping the advantages of commercial transactions with the people of the United States. To summarize the purpose of the bill is not to create new international rules or practices, but to define and mitigate them.

1. The first modification is found in the definition of the word "enemy" (sec. 2, subsec. (a), p. 1); whereby the enemy with whom or with trade which is interdicted is not so much determined by the nationality or allegiance of the individual, association, or corporation as by his or its commercial domicile or residence in enemy territory. The enemy domiciled or residing in the United States is not included in the direct operation of the act itself, but may be reached by subsequent proclamation of the President, as authorized by the act. One leading purpose of the bill is to prevent the least practicable restriction upon trade carried on in the United States, and therefore law-abiding persons, whether Germans or neutrals, residing within the United States are not affected by the direct operation of the act, unless the conduct of such persons is of a character so hostile that they should be brought within the terms of the act by the proclamation of the President.

→ 2. The trade or commerce regulated or prohibited is defined in subsections (a), (b), (c), (d), and (e), page 4. This trade covers almost every imaginable transaction, and is forbidden and made unlawful except when allowed under the form of licenses issued by the Secretary of Commerce (p. 4, sec. 3, line 18). This authorization of trading under licenses constitutes the principal modification of the rule of international law forbidding trade between the citizens of belligerents, for the power to grant such licenses, and therefore exemption from the operation of the law, is given by the bill. It should also be added that the prohibitions and limitations applicable to the enemy are in the main also applicable to an ally of the enemy.

3. The forbidden intercourse or commerce extends to the transportation of an enemy or ally of an enemy, and also to the transmission, or attempted transmission, out of the United States of any letter, document, writing, message, picture, diagram, map, device, or other form of communication addressed to an enemy or the ally of an enemy. The necessity of this particular prohibition is too obvious to require explanation.

## II.

1. In the order found in the bill the power of the Government to deal with enemy property is next reached (p. 7, sec. 6). It is manifest that the United States should as far as practicable conserve and utilize enemy property found within its jurisdiction. To this end such property must be brought under the control of the Government, to be impounded or used, and to await such disposition at the close of the war as Congress may determine. Therefore, enemy property is required by its owner or its agents to be disclosed, and paid over, conveyed, transferred, or delivered to an agent of the Government known as the "alien-property custodian" who is to be appointed by the Secretary of Commerce, with the approval of the

added of making all laws which shall be necessary and proper for carrying the enumerated powers into execution, and all other powers vested by the Constitution in the Government, and all other States, or in any department or officer thereof. (United States Constitution, art. 1, sec. 8, cl. 18.) The "sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." (*McCulloch v. State of Maryland* (1819) 4 Wheat. 316, 4 L. Ed. 579.)

So Congress has the implied power to issue currency and to provide for uniformity in description and value of its currency, as well as the express power to coin money and regulate the value thereof; but do those powers include the power to make the coined money, the value of which it can regulate, the exact equivalent of its currency for the uniformity in description and value of which it can "provide"? Is this third power implied as "necessary" within the doctrine of *McCulloch v. Maryland*?

The regulation of the value of coined money consists in fixing the classes of coins that shall be issued and a standard of measurement of specie. Similarly, it is possible to classify bills or notes issued or to be issued and to declare the Government's promises as to their redemption and their receivability by itself in governmental transactions or in the payment of debts. For some 70 years of the Government's existence Congress acted under only one of these powers—that of coining money and regulating its value. Then it acted upon the other power—that relating to currency. The exercise of these different powers resulted in two kinds of national "money": (*See Bronson v. Rodes*, supra). But they did not produce two kinds of money of equal value—equal acceptability equal purchasing power. Between 1802 and 1866 the premium on gold rose and fell from 30 to 160 percent. (*See Shollenberger v. Brinton* (1866), 52 Pa. St. 9, 33.) If "money" is the medium for effecting exchanges and is a measure of value, when the law made both specie and currency legal tender, without actual equal purchasing power, gold became a mere commodity or article of commerce (*see Bank of Commonwealth v. Van Velsdyck* supra) since it had inherent value as a metal, while currency had no inherent value, only conceptional value as ideal money. But as a uniform medium of exchange is essential to the commerce and prosperity of every civilized and commercial people. Money as such is of value, or is in demand, not because it is more valuable than the quantity of property it will purchase, but because it readily can be exchanged for any article. (*See Brown v. Welch*, supra.) The existence of two kinds of money, lacking uniformity of exchangeability, created an impossible situation, or, at least, a situation which tended to nullify the purpose of the legal tender laws. Obviously some law was necessary to integrate the currency and legal tender laws.

The enumerated power from which the power to pass such a law as the parity act may be thought to be implied is, of course, the power

to coin money and regulate its value. The end sought to be accomplished is to maintain as "money" that which Congress expressly is empowered to coin, for that power is to "coin money" and not merely to stamp coins. The parity act became necessary in order to maintain the circulation of specie as money and in order effectively to regulate the value of coined money. The end sought to be accomplished by the parity act, therefore, is legitimate and within the scope of the Constitution. The parity act is an appropriate means plainly adapted to the end in view, i. e., to standardize money for use as a national medium of exchange. It is only by virtue of law that gold coins are money or legal tender; it is only by virtue of law that paper notes are money or paper has a declared value; and only by virtue of law that a coin and paper be maintained at a parity in order to afford a proper medium of exchange. A parity law therefore is a necessary complement to the currency laws.

The ultimate ownership of all property is in the State; individual so-called "ownership" is only by virtue of Government, i. e., law, amounting to mere user; and use must be in accordance with law and subordinate to the necessities of the State. The fact that citizens, at a given time, may prefer specie to currency, or vice versa, can not prevent Congress from enacting those laws which it deems necessary to the maintenance of a proper monetary system. If the law makes specie and currency equivalent for purposes of payment, a failure to pay a given sum in specie, according to contract, cannot possibly beget an obligation to pay a greater sum in legal-tender notes, whatever premium men may choose to give for gold, when forced to obtain it for a specific purpose, or when impelled by a spirit of speculation, or by distrust of Government. (*Brown v. Welch*, supra.)

While the courts cannot control our citizens' preferences for one kind of money over another kind, or prevent them from giving a premium for the one or the other kind of money, when the fiscal affairs of the Government necessitate the adoption of a certain policy, expressed in constitutional legislative enactment, such as the maintenance of a monetary system consisting of specie and currency, to be acceptable interchangeably as to the value of the dollar, the courts should not give effect to a stipulation impugning the power of the legislature to make such laws, and should not apply those laws to the destruction of contracts in such a way as to defeat the legitimate purposes of those laws, upon the enforcement of which the very existence of the Government may depend or, at least, the aggregate well-being of the whole people is contemplated.

As it is not strictly correct to say that a contract is "invalid" merely because the courts will not enforce it, since enforcement may be withheld from valid promises because some provision of law prohibits enforcement, such, for example, as the statute of limitations, or the want of a legal consideration, valid contracts may be made and carried out between parties, without regard to legal limitations, so long as the jurisdiction of courts is not invoked to enforce the agreement. But when judicial enforcement is sought, the courts must find all pertinent constitutional laws tacitly written into every contract they construe.

So a contract to pay dollars tacitly includes the laws of the United States defining "dollar" and regulating the value thereof and pre-

*Supplement 1*

Meyer had been the origin of the whole movement with Woodin and was anxious to loom large in the new administration; that he, Mills, had objected all along to the letter.

At 10 o'clock I wrote to Meyer my opinion of what he had done.

[Eugene Meyer's letter with enclosures, dated March 3, 1933, follows.]

*Dear Mr. Presidents:*

The Federal Reserve Board has been in session again this evening reviewing the latest reports of developments. The situation as reported from Chicago has reached the point of extreme tension, with prospects that by the end of banking hours tomorrow the gold reserves of the Federal Reserve Bank of Chicago will be dangerously depleted. Representative bankers are assembled there tonight and have requested that a national holiday be proclaimed as the only method they know of dealing with the immediate exigency with which they are confronted.

There is enclosed a copy of a resolution adopted by the Board of Directors of the Federal Reserve Bank of New York, now in session. This resolution speaks for itself as to the New York situation.

Similar conditions are developing rapidly in other Federal reserve districts.

The Federal Reserve Board has considered two methods of dealing with this emergency, one by executive order and the other by joint resolution of Congress. The Senate having adjourned for the day, the issuance of an executive order seems to be the only alternative to meet the immediate situation. A form of executive order is enclosed for your consideration.

The Federal Reserve Board feels that it cannot too strongly urge that the situation has reached a point where immediate action is necessary to prevent a banking collapse.

Respectfully,  
EUGENE MEYER  
*Governor*

P.S. Since this letter was dictated, there has been communicated to us, by telephone, a resolution adopted by the Executive Committee of the Federal Reserve Bank of Chicago, now in session. A copy of this resolution also is enclosed.

Enclosures.

[The President, The White House]

→ **RESOLUTION ADOPTED BY THE FEDERAL RESERVE BOARD OF NEW YORK**

WHEREAS, In the opinion of the Board of Directors of the Federal Reserve Bank of New York, the continued and increasing withdrawal of currency and gold from the banks of the country has now created a national emergency, and

1085

**EXHIBIT 30**

# PROCLAMATIONS

[CONVENING THE CONGRESS IN EXTRA SESSION]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

March 8, 1933.

→ WHEREAS public interests require that the Congress of the United States should be convened in extra session at twelve o'clock, noon, on the Ninth day of March, 1933, to receive such communication as may be made by the Executive;

Preamble.

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the Ninth day of March, 1933, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

Convening extra session of Congress, March 8, 1933.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the great seal of the United States.

Done at the City of Washington this Fifth day of March, in the year of our Lord One Thousand Nine Hundred and Thirty-three, and [SEAL] of the Independence of the United States the One Hundred and Fifty-seventh.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State.

[No. 2038]

[BANK HOLIDAY, MARCH 6-9, 1933, INCLUSIVE]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

March 6, 1933.

→ WHEREAS there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

Bank holiday.  
Preamble.

WHEREAS continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

WHEREAS these conditions have created a national emergency; and

WHEREAS it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

1659



IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this 6th day of March—1 A.M. in the year of our Lord One Thousand Nine Hundred and [SEAL] Thirty-three, and of the Independence of the United States the One Hundred and Fifty-seventh.

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
*Secretary of State.*

[No. 2039]

[CONTINUING IN FORCE THE BANK HOLIDAY PROCLAMATION OF MARCH 6, 1933]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

March 9, 1933.

→ WHEREAS, on March 6, 1933, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday extending from Monday the 6th day of March to Thursday the 9th day of March, 1933, both dates inclusive, in order to prevent the export, hoarding or earmarking of gold or silver coin, or bullion or currency, or speculation in foreign exchange; and

Bank holiday.  
Proclamation  
40 Stat. p. 1888.

→ WHEREAS, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority conferred by section 5(b) of the Act of October 6, 1917, as amended, are approved and confirmed; and

Statutory approval  
and authority.  
Act, p. 1.  
Vol. 46, p. 411.

→ WHEREAS, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes:

Further measures  
necessary under present  
emergency.

→ NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. L. 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

Bank holiday ex-  
tended beyond March  
9, 1933.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the District of Columbia, this 9th day of March, in the Year of our Lord One Thousand Nine Hundred and Thirty- [SEAL] three, and of the Independence of the United States the One Hundredth and Fifty-seventh.

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
*Secretary of State.*

[No. 2040]

for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation."

"Person" construed.  
Federal Reserve Act amended.  
Vol. 32, p. 752.  
Emergency impounding of gold.  
Authority of Secretary of Treasury.

SEC. 3. Section 11 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

"(n) Whenever in the judgment of the Secretary of the Treasury such action is necessary to protect the currency system of the United States, the Secretary of the Treasury, in his discretion, may require any or all individuals, partnerships, associations and corporations to pay and deliver to the Treasurer of the United States any or all gold coin, gold bullion, and gold certificates owned by such individuals, partnerships, associations and corporations. Upon receipt of such gold coin, gold bullion or gold certificates, the Secretary of the Treasury shall pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States. The Secretary of the Treasury shall pay all costs of the transportation of such gold bullion, gold certificates, coin, or currency, including the cost of insurance, protection, and such other incidental costs as may be reasonably necessary. Any individual, partnership, association, or corporation failing to comply with any requirement of the Secretary of the Treasury made under this subsection shall be subject to a penalty equal to twice the value of the gold or gold certificates in respect of which such failure occurred, and such penalty may be collected by the Secretary of the Treasury by suit or otherwise."

Exchange for any other form of currency, etc.  
Reimbursing transportation costs.  
Hearings, etc., deemed an offense.  
Penalty.

Operations of the National Banking and Federal Reserve Systems.  
Emergency suspension, etc., provided for.

SEC. 4. In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

Proclamations.  
Penalty for violation.  
Each day a separate offense.

TITLE II

"Bank Conservation Act."  
Citation of title.  
Terms construed.  
Fed., p. 72.

SEC. 201. This title may be cited as the "Bank Conservation Act."

SEC. 202. As used in this title, the term "bank" means (1) any national banking association, and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency; and the term "State" means any State, Territory, or possession of the United States, and the Canal Zone.

Conservators.

SEC. 203. Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other

"Capital stock" the amount of preferred stock outstanding and unimpaired; and the term "capital stock", as used in section 12 of the Act of March 11, 1900, shall mean only the amount of common stock outstanding.

Reconstruction Finance Corporation. Subscription for preferred stock. Part, p. 21. SEC. 304. If in the opinion of the Secretary of the Treasury any national banking association or any State bank or trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association, State bank or trust company or otherwise, he may, with the approval of the President, request the Reconstruction Finance Corporation to subscribe for preferred stock in such association, State bank or trust company, or to make loans secured by such stock as collateral, and the Reconstruction Finance Corporation may comply with such request. The Reconstruction Finance Corporation may, with the approval of the Secretary of the Treasury, and under such rules and regulations as he may prescribe, sell in the open market or otherwise the whole or any part of the preferred stock of any national banking association, State bank or trust company acquired by the Corporation pursuant to this section. The amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized and empowered to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this section.

Sale of permitted.

Increase of outstanding obligations authorized.

TITLE IV

Federal Reserve Act, amendments. Vol. 24, p. 233, amended. U.S.C., p. 283. Delivery of circulating notes on deposit of U.S. bonds, etc. Part, p. 21. SEC. 401. The sixth paragraph of Section 18 of the Federal Reserve Act is amended to read as follows:

" Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this Act, any Federal reserve bank making such deposit in the manner prescribed by the Secretary of the Treasury shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, duly registered and countersigned. When such circulating notes are issued against the security of obligations of the United States, the amount of such circulating notes shall be equal to the face value of the direct obligations of the United States so deposited as security; and, when issued against the security of notes, drafts, bills of exchange and bankers' acceptances acquired under the provisions of this Act, the amount thereof shall be equal to not more than 90 per cent of the estimated value of such notes, drafts, bills of exchange and bankers' acceptances so deposited as security. Such notes shall be the obligations of the Federal reserve bank procuring the same, shall be in form prescribed by the Secretary of the Treasury, shall be receivable at par in all parts of the United States for the same purposes as are national bank notes, and shall be redeemable in lawful money of the United States on presentation at the United States Treasury or at the bank of issue. The Secretary of the Treasury is authorized and empowered to prescribe regulations governing the issuance, redemption, replacement, retirement and destruction of such circulating notes and the release and substitution of security therefor. Such circulating notes shall be subject to the same tax as is provided by law for the circulating notes of national banks secured by 2 per cent bonds of the United States. No such circulating notes shall be issued under this paragraph after the President has declared by proclamation that the

Amount of issue.

Value, use, etc.

Redemption.

Regulations.

Tax.

Issue to issue when emergency terminates, expiration.

Mr. STEAGALL. To be frank with the gentleman, I should not like to be bound in my answer by estimates outlined in newspaper reports. The issue might greatly exceed the amount suggested.

Mr. McFADDEN. Will the gentleman say how much it is possible to be issued or is contemplated to be issued?

Mr. STEAGALL. No one knows. It is not an arbitrary expansion. The purpose is to provide an elastic expansion to meet the exigencies and development of banking and business conditions.

Mr. McFADDEN. I think it is fairly clear from the colloquy that has just taken place that the increased Federal Reserve circulation is to be in the form of Federal Reserve bank notes and not the present Federal Reserve notes that are in circulation to the extent of approximately \$4,000,000,000, which are secured by 60 percent of eligible paper or Government bonds and 40 percent of gold. This is a new issue which is authorized under the Federal Reserve Act, which has not to any great extent been resorted to heretofore.

Mr. BRITTEN. Will the gentleman yield for a question?

Mr. McFADDEN. I will.

Mr. BRITTEN. From my observation of the bill as it was read to the House, it would appear that the amount of bank notes that might be issued by the Federal Reserve System is not limited. That will depend entirely upon the amount of collateral that is presented from time to time for exchange for bank notes. Is that not correct?

Mr. McFADDEN. Yes. I think that is correct.

Mr. BRITTEN. So that it might run to \$20,000,000,000?

Mr. McFADDEN. In the discretion of the President and the Secretary of the Treasury. These notes are to be secured by assets that are approved, that are turned over by financial institutions to the Treasury of the United States. [Applause.]

Mr. STEAGALL. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. GOLDSBOROUGH].

Mr. GOLDSBOROUGH. Mr. Speaker, in time of storm there can only be one pilot. In my judgment, the House of Representatives realize that the pilot in this case must be the President of the United States, and they will steer their course by him. [Applause.]

Mr. Speaker, in my deliberate judgment, under the leadership of the President of the United States, there will shortly be brought from the Committee on Banking and Currency carefully considered legislation insuring the depositors in all banks [applause] and carefully considered legislation which will reflate and stabilize the currency of this country. [Applause.] Mr. Speaker, those two measures, if enacted into law, will speedily give the people of this country such prosperity as we have never had before in all of its history. [Applause on the Democratic side.]

Mr. STEAGALL. Mr. Speaker, I yield the remainder of my time to the gentleman from Mississippi [Mr. BUSBY].

Mr. BUSBY. Mr. Speaker, in order for business to carry on, it is necessary to have a medium of exchange. In this country our medium of exchange is based on currency and on bank credits. For several months some of us have seen the bank-credit situation breaking down and going out of use. The condition in which we find ourselves today is absolutely no surprise to me, and it is no surprise to some of the other gentlemen who have studied the question. The house had to fall upon us to get some of the gentlemen who are responsible for our condition to understand our predicament.

I have hoped, and others have hoped, for a restoration of the currency and of the mediums of exchange in this country—to no avail. We have come to the point where we are willing to endorse in a formal way an Executive fiat on this question; and I want to follow on, because I want the people of this country to have currency and mediums of exchange with which to do business. [Applause.]

Mr. STEAGALL. Mr. Speaker, I move the previous question on the passage of the bill.

The SPEAKER. Under the unanimous-consent agreement the previous question is considered as ordered.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. STEAGALL, a motion to reconsider the vote by which the bill was passed was laid on the table.

#### EXTENSION OF REMARKS—H. R. 21

Mr. BYRNS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to extend their own remarks upon this bill.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

#### CURRENCY EXPANSION—PRESIDENT'S MOVE DRAMATIC AND INSPIRING

Mr. RANKIN. Mr. Speaker, for 3 years I have been pleading for a controlled expansion of the currency to raise commodity prices and restore the purchasing power of the American people. Other Members of the House and Senate have joined me in the fight, but up to this day our efforts have been in vain.

Those influences and individuals most responsible for the direful conditions through which we are now passing have resisted us at every point. We have been ridiculed and abused by the very money changers whose misconduct produced this terrible panic, with all its misery, its poverty, its hunger, its human suffering and human distress. "Who sows man soweth, that shall he also reap." The very ones who sowed the seeds of this panic are now reaping the fruit of their own misconduct as they see their monetary Tower of Babel crash amid a confusion of tongues.

We are in the bottom of the pit. Every direction is uphill. The gentleman from Illinois [Mr. BARTEN] intimated a while ago that this bill might result in unlimited expansion or inflation. My answer to that statement is that conditions cannot be made worse, from an economic standpoint, than they are today.

Besides, this bill does not provide for an unlimited expansion. It provides for a controlled expansion. Every dollar of this new money will be worth 100 cents; and if issued in a sufficient amount, the result will be an immediate advance in the prices of wheat, cotton, corn, land, and other commodities.

It is the beginning of a new day—a turning point in the economic affairs of the American people, if not of the entire world. This bill will be followed by one providing permanent legislation on this subject; and if we will incorporate in that permanent legislation the provision laid down in the bill which I have been advocating and which I have reintroduced today—to expand the currency until the general commodity-price index as worked out by the United States Department of Labor reaches 100, and then providing for a retrenchment in case the commodity index rises above 103, and also for reexpansion in case the commodity index sinks below 97—if these provisions are written into the permanent legislation, this expansion will raise the commodity prices back to what they were in 1926, stabilize them there, and prevent those violent fluctuations in prices that have always proved disastrous to the farmers, the home owners, the small investors, and the masses of our people generally.

The American people are looking today to our new President to lead us out of the economic chaos in which we find ourselves. This is the most dramatic and inspiring move ever taken by a President of the United States in times of peace. If it is followed up by permanent legislation that will give us a controlled expansion of the currency, and an assurance of the safety of bank deposits, our country will immediately awake, as it were, from its nightmare of agony and leap forward into a glorious era of happiness and prosperity.

#### H. R. 21, A BILL TO REDUCE THE GOLD CONTENT OF THE GOLD DOLLAR

Mr. MCGUGIN. Mr. Speaker, I have introduced H. R. 21. I wish to make a brief statement pertaining to this bill. In doing so I shall use the statement I gave to the press

emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national bank currency are hereby made available for the production of the circulating notes of Federal reserve banks herein provided; but the United States shall be reimbursed by the Federal reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement and destruction."

SEC. 402. Section 10(b) of the Federal Reserve Act, as amended, is further amended to read as follows:

"SEC. 10(b). In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this Act other than that provided by section 10 (a), any Federal reserve bank, under rules and regulations prescribed by the Federal Reserve Board, may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal reserve bank. Each such note shall bear interest at a rate not less than 1 per centum per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."

SEC. 403. Section 13 of the Federal Reserve Act, as amended, is amended by adding at the end thereof the following new paragraph:

"Subject to such limitations, restrictions and regulations as the Federal Reserve Board may prescribe, any Federal reserve bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Federal Reserve Board."

TITLE V

SEC. 501. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$2,000,000, which shall be available for expenditure, under the direction of the President and in his discretion, for any purpose in connection with the carrying out of this Act.

SEC. 502. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved, March 9, 1933, 8.30 p. m.

Agent of Treasurer.

Sum available for expenses.

Reimbursement.

Vol. 47, p. 86, amended. U.S.C., Supp. VI, p. 132. Advances to member banks when acceptable assets not available for rediscount. Part, p. 21.

Security.

Interest.

Expiration.

Advances to individuals, etc.

Security, Interest, etc.

Part, p. 25.

Appropriation.

Amendment, etc.

Saving provision.

**Bankable paper.** Notes, checks, bank bills, drafts and other securities for money, received as cash by banks.

**Bank bill.** *See* Bank (Bank note).

**Bank clearings.** *See* Clearinghouse.

**Banker.** In general sense, person that engages in business of banking. In narrower meaning, a private person who keeps a bank; one who is engaged in the business of banking without being incorporated. One who carries on the business of banking by receiving money on deposit with or without interest, by buying and selling bills of exchange, promissory notes, bonds or stock, or other securities, and by loaning money without being incorporated.

Under some statutes, an individual banker, as distinguished from a "private banker" (*q.v.*), is a person who, having complied with the statutory requirements, has received authority from the state to engage in the business of banking, while a private banker is a person engaged in banking without having any special privileges or authority from the state.

*See also* Investment banker.

Person who holds stake in gambling game or wager.

**Bankerout.** Eng. Bankrupt; insolvent; indebted beyond the means of payment.

**Banker's acceptance.** A draft accepted by a bank usually for the purpose of financing a sale of goods to or by the bank's customer. A bill of exchange draft payable at maturity that is drawn by a creditor against his or her debtor. Banker's acceptances are short-term credit instruments most commonly used by persons or firms engaged in international trade. They are comparable to short-term government securities (for example, Treasury Bills) and may be sold on the open market at a discount.

**Banker's lien.** A lien which a banker has by virtue of which he can appropriate any money or property in his possession belonging to a customer to the extinguishment of any matured debt of such customer to the bank, provided such property or money has not been charged, with the knowledge of the bank, with the subreversion of a special burden or purpose, or does not constitute a trust fund of which the banker has notice.

**Banker's note.** A commercial instrument resembling a bank note in every particular except that it is given by a private banker or unincorporated banking institution.

**Bank holding company.** Any company which has control over any bank or over any company that is or becomes a bank holding company. A company is considered to have control if it directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the bank or company; the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or, it is determined that the company directly or indirectly exercises a controlling influence over the management or

policies of the bank or company. 12 U.S.C.A. §§ 1841-1850.

**Bank Holding Company Act.** Federal law which governs any company which directly or indirectly owns or controls, with power to vote, more than 25% of voting shares of each of two or more banks. *See* 12 U.S.C.A. § 184 et seq.

**Bank holiday of 1933.** Presidential Proclamations No. 2039, issued March 6, 1933, and No. 2040, issued March 9, 1933, temporarily suspended banking transactions by member banks of the Federal Reserve System. Normal banking functions were resumed on March 13, subject to certain restrictions. The first proclamation, it was held, had no authority in law until the passage on March 9, 1933, of a ratifying act (12 U.S.C.A. § 95b). The present law forbids member banks of the Federal Reserve System to transact banking business, except under regulations of the Secretary of the Treasury, during an emergency proclaimed by the President. 12 U.S.C.A. § 95.

**Banking.** The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. *Mercantile Bank v. New York*, 121 U.S. 138, 156, 7 S.Ct. 826, 30 L.Ed. 895; *In re Prudence Co.*, D.C.N.Y., 10 F.Supp. 33, 36.

**Investment banking.** Business of underwriting or distributing bond, stock or other securities issues.

**Banking Act of 1933.** *See* Glass-Steagall Act.

**Banking a deal.** Means making to one who wishes to consummate a deal a loan of money on collateral for a consideration which may consist of interest, a fee, or a part of the securities or property involved in the deal. *Cray, McFawn & Co. v. Hegarty, Conroy & Co.*, D.C.N.Y., 27 F.Supp. 93, 99.

**Banking commission.** State regulatory body charged with supervision of banking institutions. *See also* Federal Reserve Board of Governors with respect to regulation of national banks.

**Banking day.** That part of any day on which a bank is open to the public for carrying on substantially all of its banking functions. U.C.C. § 4-104(c).

**Banking game.** Gambling game at which money is bet or hazarded.

**Banking hours.** A term which, in addition to the regular hours, includes time to allow presentment, after closing, to the bank returning a check, if such presentment is necessary in fact. *Columbia-Knickerbocker Trust Co. v. Miller*, 156 A.D. 810, 142 N.Y.S. 440, 445.

**Bank night.** A device by which a theater provides a registration book which any person over eighteen years of age, whether a patron of the theater or not, may sign.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

Clause in obligations requiring gold, etc., payment is declared contrary to public policy.

No future obligation to be so expressed.

Payments to be made in legal tender.

Conflicting provisions repealed. U.S.C. p. 100. Other provisions not invalidated.

Term "obligation" defined.

"Coin or currency."

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

National Economic Emergency Act, amended. Act, p. 52.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Coins and currencies as legal tender.

Abrased gold coins according to weight.

Approved, June 5, 1933, 4.40 p.m.

[CHAPTER 49.]

AN ACT

To provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes.

June 6, 1933. [S. 810.] [Public, No. 30.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) in order to promote the establishment and maintenance of a national system of public employment offices there is hereby created in the Department of Labor a bureau to be known as the United States Employment Service, at the head of which shall be a director. The director shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary at the rate of \$8,500 per annum.

National cooperative employment service. United States Employment Service created in Department of Labor.

Appointment, etc., of Director.

(b) Upon the expiration of three months after the enactment of this Act the employment service now existing in the Department of Labor shall be abolished; and all records, files, and property (including office equipment) of the existing employment service

Existing service to be abolished; personal and property transferred.

certain judgment for \$9,277,666.17 entered in the office of the clerk of the District Court of the United States for the Southern District of California at Los Angeles on January 14, 1933, against the Pan American Petroleum Company, a corporation, to release from claim or lien under said judgment such part or portions of the property and assets of the said Pan American Petroleum Company and the Richfield Oil Company of California, in such manner and with such reservations as shall seem to him proper and advisable, in consideration of payments to the United States to apply upon said judgment, of not less than the sum of \$5,000,000, and in connection therewith to release any claims of the United States against purchasers of oil and petroleum products from the leases commonly known as "E", "I", and "G" leases, or also known as Visalia 010042, 010043, and 010097 leases in naval petroleum reserve numbered 1, Kern County, California, and to consent, in the premises, to the assignment of other oil and gas leases in said naval petroleum reserve numbered 1, now part of the unmortgaged assets of Pan American Petroleum Company, with the concurrence of the Secretary of the Navy and to the assignment of other oil and gas leases, also part of the unmortgaged assets of Pan American Petroleum Company, of the United States outside the said naval petroleum reserve numbered 1, with the consent of the Secretary of the Interior, said assignments to be authorized only to assignees otherwise duly qualified under existing laws: *Provided*, That the authority herein granted is permissive only, and shall not be construed as a declaration of approval by Congress of the compromise herein authorized to be made, and that said authority shall not be exercised by the Attorney General unless in his judgment said compromise shall appear to him to be for the best interests of the United States.

Previous Approval not implied.

Exercise of authority optional.

Approved, May 3, 1933.

[CHAPTER 25.]

AN ACT

To relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

May 12, 1933.  
[H. R. 3335]  
[Public No. 10.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Agricultural Adjust-  
ment Act.  
Pub. p. 199.

TITLE I—AGRICULTURAL ADJUSTMENT

AGRICULTURAL AD-  
JUSTMENT.

DECLARATION OF EMERGENCY

→ That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

Declaration of emer-  
gency.



by the Executive but could only be granted as a parliamentary measure. And it did not, as in Germany, result in a suspension or abrogation of law but was a legal institution governed by special legal rules and terminable by parliamentary authority.

Great Britain also has fought both World Wars under a sort of temporary dictatorship created by legislation. As Parliament is not bound by written constitutional limitations, it established a crisis government simply by delegation to its Ministers of a larger measure than usual of its own unlimited power, which is exercised under its supervision by Ministers whom it may dismiss. This has been called the "high-water mark in the voluntary surrender of liberty," but, as Churchill put it, "Parliament stands custodian of these surrendered liberties, and its most sacred duty will be to restore them in their fullness when victory has crowned our exertions and our perseverance." Thus, parliamentary controls made emergency powers compatible with freedom.

This contemporary foreign experience may be inconclusive as to the wisdom of lodging emergency powers somewhere in a modern government. But it suggests that emergency powers are consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them. That is the safeguard that would be nullified by our adoption of the "inherent powers" formula. Nothing in my experience convinces me that such risks are warranted by any real necessity, although such powers would, of course, be an executive convenience.

In the practical working of our Government we already have evolved a technique within the framework of the Constitution by which normal executive powers may be considerably expanded to meet an emergency. Congress may and has granted extraordinary authorities which lie dormant in normal times but may be called into play by the Executive in war or upon proclamation of a national emergency. In 1939, upon congressional request, the Attorney General listed ninety-nine such separate statutory grants by Congress of emergency or wartime executive powers. They were invoked from time to time as need appeared. Under this procedure we retain Government by law—special, temporary law, perhaps, but law nonetheless. The public may know the extent and limitations of the powers that can be asserted, and persons affected may be informed from the statute of their rights and duties.

In view of the ease, expedition and safety with which Congress can grant and has granted large emergency powers, certainly ample to embrace this crisis, I am quite unimpressed with the argument that we should affirm possession of them without statute. Such power either has no beginning or it has no end. If it exists, it need submit to no legal restraint. I am not alarmed that it would plunge us straightway into dictatorship, but it is at least a step in that wrong direction.

Having transmitted his first message to Congress the day before and received virtually instant action,<sup>11</sup> the President sent a second request to Capitol Hill asking for the authority to cut \$400 million from veterans payments and another \$100 million from the Federal civilian personnel payroll.<sup>12</sup> After a brief delay, during which opposition within the House Democratic caucus was beaten back,<sup>13</sup> the legislation was enacted.<sup>14</sup> In its final title, however, the President was required to submit all of his executive orders on the subject matter of the statute to Congress for review. In addition, the orders were not to become effective until 60 days after such transmission unless Congress provided an earlier effective date.<sup>15</sup>

Next, the President fulfilled an old plank in the Democratic Party platform and he asked Congress to modify the Volstead Act (41 Stat. 305).<sup>16</sup>

Roosevelt's message touched off a raucous, rollicking debate. The dregs, who had succeeded in killing a beer bill only a few weeks before, rehearsed the arguments that had been so convincing for more than a decade, but to no avail. Representative Bob Boylan of New York protested that this was "the same old sob story you have been telling us for the last 12 years. Why, I almost know your words verbatim—the distressed mother, the wayward son, the unruly daughter, the roadhouse, and so forth, and so forth. . . . Impatient congressmen chanted: "Vote—vote—we want beer," within a week both houses had passed the beer bill, and added wine for good measure, although congressmen protested that 3.2 wine was not "interesting." On March 22, Roosevelt signed the bill.<sup>17</sup>

Giving the Nation beer was hardly an emergency action. However, feeding the citizenry was and, with his message of March 16, Roosevelt set the wheels in motion for the subsidizing of farm staples.<sup>18</sup> In a very brief message and a very controversial bill the President called for a "new means to rescue agriculture." The House passed the bill very quickly but a multitude of farm commodity processing lobbyists stalled the measure in the Senate. Due largely to incidents of violence in the Corn Belt and a threatened national farmer's strike by the Farmer's Holiday Association, the legislation was enacted on May 12.<sup>19</sup> Dubbed the *Agricultural Adjustment Act*, a portion of the statute contained a declaration of emergency.<sup>20</sup>

[Emphasis supplied.]

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of

<sup>11</sup> *Ibid.*, pp. 45-46.  
<sup>12</sup> *Ibid.*, pp. 49-51.  
<sup>13</sup> See Leuchtenburg, *op. cit.*, p. 45.  
<sup>14</sup> 48 Stat. 8.  
<sup>15</sup> 48 Stat. 16.  
<sup>16</sup> Roosevelt papers (Vol. II), pp. 66-67.  
<sup>17</sup> Leuchtenburg, *op. cit.*, p. 46; 48 Stat. 16.  
<sup>18</sup> Roosevelt Papers (Vol. II), pp. 74-79.  
<sup>19</sup> 48 Stat. 31.

farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act.

Arthur Schlesinger, Jr., interprets this farm move:

The broad design was clear: to help correct the imbalance between industry and agriculture by raising farm prices; and to raise farm prices through the curtailment of production, the regulation of marketing, and a variety of other devices. And there was general agreement on the mechanism: the establishment of a new agency within the Department of Agriculture, to be called the Agricultural Adjustment Administration. But the immense discretion conferred on the Executive under the AAA law left many crucial decisions for the future. Much would therefore depend on the men summoned to conduct what Mordecai Ezekiel pronounced "the greatest single experiment in economic planning under capitalist conditions ever attempted by a democracy in times of peace."<sup>21</sup>

The interesting aspect of the legislation lies in the fact that it treated a permanent agency designed to eradicate an emergency condition in the sphere of agriculture. The reasoning, apparently, was that the permanent governmental unit would not only eliminate the emergency situation but, in the aftermath, would control those conditions producing the crisis and forestall any such exigency from occurring again. The legislation also empowered the President, for purposes of meeting the financing provisions of the statute, to engage in broad monetary expansion and, by proclamation, to fix the weights of gold and silver dollars.<sup>22</sup> The United States had abandoned the gold standard on April 19.<sup>23</sup>

[Emphasis supplied.]

On March 21 the President called upon Congress to establish programs for unemployment relief.<sup>24</sup> "The first in the enrollment of workers by the Federal Government for such public employment as can be quickly started and will not interfere with the demand for or the proper standards of normal employment." This was realized in the passage of an act of March 31.<sup>25</sup> Acting upon this statutory authority, the President issued E.O. 6101 on April 5, establishing the Civilian Conservation Corps.<sup>26</sup>

A second element in the President's unemployment relief message was "grants to States for relief work." This was realized in legislation

<sup>21</sup> Schlesinger, *op. cit.*, pp. 45-46.  
<sup>22</sup> 48 Stat. 52-54.  
<sup>23</sup> This was casually announced at a presidential press conference; see Roosevelt papers (Vol. II), pp. 137-141.  
<sup>24</sup> *Ibid.*, pp. 80-81.  
<sup>25</sup> 48 Stat. 22-23.  
<sup>26</sup> Roosevelt papers (Vol. II), pp. 107-108.

cised by him subject to all the terms and conditions in any such Executive order the same as if such functions, powers, authority, and duties were specifically named in such Executive order or orders.

#### PART 7—MISCELLANEOUS

Miscellaneous.

##### PERFECTING ORGANIZATION FARM CREDIT ADMINISTRATION

Farm Credit Administration.

SEC. 40. The Governor of the Farm Credit Administration is authorized, in carrying out the powers and duties now or hereafter vested in him or the Farm Credit Administration by law or under any Executive order made under title IV of part II of the Legislative Appropriation Act of 1933, as amended, to establish, and to fix the powers and duties of, such divisions, agencies, corporations, and instrumentalities as he may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties so vested in the Governor and the Farm Credit Administration. This section shall not be construed to restrict the authority of the President under title IV of such Act, as amended: *Provided*, That no salary or compensation shall be paid to any officer, agent, or other person employed under this section in excess of \$10,000 per annum.

Authority of Governor et. to perfect organization, etc.

No restriction on authority of President.

Proviso. Salary limitation.

##### LOANS TO FRUIT GROWERS

Loans to fruit growers.

SEC. 41. That in making loans to owners of groves and orchards, including citrus-fruit groves and other fruit groves and orchards, the Federal land banks, the farm land banks, and all Government agencies making loans upon such character of property may, in appraising the property offered as security, give a reasonable and fair valuation to the fruit trees located and growing upon said property and constituting a substantial part of its value.

Appraising security at fair value.

#### PART 8—SHORT TITLE

SEC. 42. This title may be cited as the "Emergency Farm Mortgage Act of 1933."

Emergency Farm Mortgage Act of 1933.

#### → TITLE III—FINANCING—AND EXERCISING POWER CONFERRED BY SECTION 8 OF ARTICLE I OF THE CONSTITUTION: TO COIN MONEY AND TO REGULATE THE VALUE THEREOF

Financing. Coinage money, etc.

→ SEC. 43. Whenever the President finds, upon investigation, that (1) the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currency of any other government or governments in relation to the present standard value of gold, or (2) action under this section is necessary in order to regulate and maintain the parity of currency issues of the United States, or (3) an economic emergency requires an expansion of credit, or (4) an expansion of credit is necessary to secure by international agreement a stabilization at proper levels of the currencies of various governments, the President is authorized, in his discretion—

Discretionary authority of the President. When U. S. commerce adversely affected by foreign currency depreciation.

Fixing parity of currency issues. Economic emergency requires credit expansion. Stabilization by international agreement.

(a) To direct the Secretary of the Treasury to enter into agreements with the several Federal Reserve banks and with the Federal Reserve Board whereby the Federal Reserve Board will, and it is hereby authorized to, notwithstanding any provisions of law or rules and regulations to the contrary, permit such reserve banks to agree that they will, (1) conduct, pursuant to existing law, throughout specified periods, open market operations in obligations of the United States Government or corporations in which the

Conduct through Federal Reserve Board, open market operations in U.S. obligations, etc. Part, p. 163.

## TERMINATION OF ACT

Termination of Act.

→ SEC. 13. This title shall cease to be in effect whenever the President finds and proclaims that the national economic emergency in relation to agriculture has been ended; and pending such time the President shall by proclamation terminate with respect to any basic agricultural commodity such provisions of this title as he finds are not requisite to carrying out the declared policy with respect to such commodity. The Secretary of Agriculture shall make such investigations and reports thereon to the President as may be necessary to aid him in executing this section.

Investigations, etc., by Secretary of Agriculture.

## SEPARABILITY OF PROVISIONS

Separability clause.

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

## SUPPLEMENTARY REVENUE PROVISIONS

Supplementary revenue provisions.

## EXEMPTIONS AND COMPENSATING TAXES

SEC. 15. (a) If the Secretary of Agriculture finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that any class of products of any commodity is of such low value compared with the quantity of the commodity used for their manufacture that the imposition of the processing tax would prevent in whole or in large part the use of the commodity in the manufacture of such products and thereby substantially reduce consumption and increase the surplus of the commodity, then the Secretary of Agriculture shall so certify to the Secretary of the Treasury, and the Secretary of the Treasury shall abate or refund any processing tax assessed or paid after the date of such certification with respect to such amount of the commodity as is used in the manufacture of such products.

Exempting commodities of low value from processing tax.

(b) No tax shall be required to be paid on the processing of any commodity by or for the producer thereof for consumption by his own family, employees, or household; and the Secretary of Agriculture is authorized, by regulations, to exempt from the payment of the processing tax the processing of commodities by or for the producer thereof for sale by him where, in the judgment of the Secretary, the imposition of a processing tax with respect thereto is unnecessary to effectuate the declared policy.

No tax on processing by producers for home consumption.

(c) Any person delivering any product to any organization for charitable distribution or use shall, if such product or the commodity from which processed, is under this title subject to tax, be entitled to a refund of the amount of any tax paid under this title with respect to such product so delivered.

Tax refund on products for charitable distribution.

(d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such commodities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such

Secretary to ascertain and proclaim where tax causes disadvantages in competition.

Competing commodity and compensating tax rate to be specified.

have occurred except for the hysteria then engulfing, particularly, the west coast. President Roosevelt would not have asked for the power; or, if he had, Congress would have denied it. The public hysteria required it.

But to his credit, I would say—I am not looking for any excuses for my action—we did come to the Congress. We did get an act which authorized the issuance of Executive orders and Executive Order 6099<sup>1</sup> was issued. That became the basis for the whole operation which later, by statute, became the War Relocation Authority—which was headed by Milton Eisenhower.

So I rather think, that under the concepts of Nuremberg, the answer to your question is: That the one who is called upon to enforce the orders of the President would look to the Constitution and be guided by it. Otherwise, he would suffer the penalties of Nuremberg. Senator CHURCH. In other words, if an Attorney General is directed by the President to perform certain acts that he, the Attorney General, regards as unconstitutional, in your view, under his oath he is obliged to make this clear to the President. If the President persists, then to resign?

Justice CLARK. Right. I was not Attorney General then, I was down in the Department. However, I took my orders from the Attorney General. I never talked to the President about it.

Mr. KATZENBACH. May I add a word on that?

Senator CHURCH. Yes.

Mr. KATZENBACH. I think the question, when put broadly like that, becomes rather difficult to answer because it can encompass a number of situations.

If the President were to say to anyone: "I know I have no constitutional authority to do it, and I know it is in violation of the Constitution; but you go ahead and do it." I then think no one in the Government should obey that order.

However, the situation rarely comes up in that context. It usually comes up in the context of disagreement about what the Constitution does or does not permit. I think, perhaps, the Attorney General has particular responsibilities if his judgment is strongly different with that of the President. But, I would remind you, if I were to put this in another context and ask what the responsibilities of the Attorney General are to enforce clearly unconstitutional laws passed by the Congress—I don't know whether I would get the same answer.

I think that most of the Members of the Congress would say that he has a responsibility to test that law in the courts, irrespective of his own opinion. But you get differences of viewpoint on that.

My general point is, it rarely comes up the way Senator Mathias asked the question because, usually, it is done under the color of constitutionality. I would suppose most members of the executive branch would be unwilling to question the President's assertion that what he was about to do was constitutional.

#### CANNOT ACT IF UNCONSTITUTIONAL

Mr. CLARK. Perhaps the important thing is that the Attorney General ask that question. Instead of the more usual habit or practice,

<sup>1</sup> See Appendix, p. 633.

which is to carry out an order without adequately analyzing it. But my view has clearly been: Where it is your strongly held view that an act the President or the Congress requests through statutes that is unconstitutional, you cannot act. You might have to resign but you cannot act.

Senator CHURCH. In the present state of the law, it would be hard to conceive of any action the President might want to take that couldn't be found in one emergency power or another.

In other words, I could hardly conceive of a situation—where the Attorney General when faced with a request to justify some action the President intended to take—couldn't find it in the present state of the law. That, of course, is the reason why this Special Committee has been formed.

I would hope that some time this morning you gentlemen might help us find our way out of the present thicket. We have a compendium now of 470 significant, separate provisions of law delegating to the President emergency powers. We have selected the 470 out of several thousand provisions of law as the most significant delegation of authority. Taken all together, if the President were to choose to exercise all of these powers, they would seem to me to be plenary. These powers, if exercised, would confer upon the President total authority to do anything he pleased.

Senator MATTHIAS. Let me pursue that just for a second by going back to Mr. Katzenbach's statement that you seldom have pure questions of constitutionality arise.

Now, the 22d of May, the President issued a statement describing a long course of modern history—specifically talking about the events of the summer of 1970. He described the creation of a special task force which was to be given authority for surreptitious entering—and that for 4 or 5 days in July 1970 this force was actually in being. It was authorized by the President, and other high officials of the Government, to make surreptitious entry—in conflict with the clear language of the fourth amendment.

Wouldn't that kind of situation exactly create the clear question we are discussing?

Mr. KATZENBACH. I should certainly think that it would—with anybody having any kind of legal training or background whatsoever—yes. I don't see how the Attorney General would concur in that. Or, indeed, how any law enforcement officer—with knowledge and experience of the laws—would concur in that.

Senator MATTHIAS. Apparently, that is what happened with Mr. Hoover—he did raise such questions. At least we presume he did because it is stated, on his objection, the order of surreptitious entry was rescinded after 4 or 5 days.

Looking to your own experience during the early 1960's in the South, when you led the U.S. marshals. Did you consider the use of military force at that time?

Mr. KATZENBACH. Yes. The use of military force was considered on every occasion where the circumstances would justify it. There was quite a careful following of what—it seemed to me—the laws provided; and there was certainly a good deal of pressure—some of it came from this part of the world—to use the troops much more often.

Roosevelt relied on Section 5(b) again in 1939 when he restricted all transfers of currency and credit between the United States and German-occupied Denmark and Norway. Executive Order 8380. This action was subsequently approved and the President's exact powers clarified by Congress, resolving whatever questions may have remained about Congressional intentions to restrict the application of 48 Stat. 179. This set the legal stage, then, to invoke presidential powers under the Trading with the Enemy Act in wartime or pursuant to any declaration of national peacetime emergency.

The next time these powers were involved was during World War II (with a slight Congressional modification—see 55 Stat. 838). A major expansion of Presidential authority was effected with the imposition of consumer credit controls (Executive Order 8843) by interpreting "banking institutions" as used in Sec. 5(b) to include any person engaged in the business of making extensions of credit. Subsequent Congressional action has reaffirmed this power, too, in times of war or national emergency. 12 U.S.C. 249.

Another declaration of national emergency was made in Proclamation 2914 of December 16, 1950, during the Korean war. Trading with the Enemy Act powers were exercised pursuant to this proclamation throughout the war. Because the state of emergency so declared has never been terminated, however, this proclamation has continued to serve as the basis for invocation of powers under the Act. Most notably, President Johnson used Sec. 5(b) as authority for Executive Order 11837 of January 1, 1968, imposing controls over transfers of private capital to foreign countries. (On the validity of this action, see *Opinion of the Attorney General*, February 3, 1968).

On August 15, 1971, President Nixon, in Proclamation 4074, declared an emergency concerning America's declining worldwide economic position. He imposed an import surcharge and devalued the dollar, among other things. One year later, when the Export Control Act lapsed for a month, he invoked Sec. 5(b) to regulate exports, basing his authority to do so both on his Proclamation 4074 and on President Truman's proclamation of 1950.

The current law, which has thus accreted over a period of 50 years, gives the President a wide range of powers, but only in time of war or declared national emergency. Although the Korean war has ended, these powers are being exercised solely on the basis of the 1950 emergency; or, on the basis of the President's unilaterally designating as "emergencies" situations which have only the most tenuous relationship to the serious national crises for which the Trading with the Enemy Act was originally intended. The President, with the approval of Congress, has thus used as authority for extraordinary

(Emphasis supplied.)

actions laws which have no real relationship whatsoever to existing circumstances. As a consequence, a "national emergency" is now a practical necessity in order to carry out what has become the regular and normal method of governmental action. What were intended by Congress as delegations of power to be used only in the most extreme situations and for the most limited durations have become everyday powers; and a state of "emergency" has become a permanent condition.

### —NOTE—

DEPARTMENT OF JUSTICE,  
May 21, 1973.

#### MEMORANDUM FOR THE SPECIAL COMMITTEE ON THE TERMINATION OF THE NATIONAL EMERGENCY

RE: EMERGENCY POWER UNDER § 5(b) OF THE TRADING WITH THE  
ENEMY ACT

During the course of hearings held by the Committee frequent mention has been made of the Trading with the Enemy Act ("Act"). Section 5(b) of the Act has been the statutory foundation for control of domestic as well as international financial transactions and is not restricted to "trading with the enemy." Its use over the years provides an interesting study in the evolution of a statute as a result of continuing interplay between the Executive and Congress. Of the emergency statutes under study by the Committee, it has the most complex and varied history. This paper does not make any recommendations or draw any conclusions but presents a short legal chronology of § 5(b) to assist the Committee in understanding its background and present status.

### I.

#### ORIGINAL EXACTIMENTS—World War I

The Act was passed in 1917 to "define, regulate, and punish trade with the enemy." 40 Stat. 415. Section 5(b) gave the President power to regulate transactions in foreign exchange, the export or hoarding of gold or silver coin or bullion or currency and transfers of credit in any form "between the United States and any foreign country, whether enemy, ally of enemy, or otherwise." 40 Stat. 415 (1917) as amended by 40 Stat. 960 (1918). Section 5(b), at that time, exempted "transactions to be executed wholly within the United States," thus appearing to limit its use as a basis for domestic controls. It did not include a provision permitting use of the Act during periods of national emergency nor was its use restricted by its terms to the duration of the First World War or any specified term after the end of the War. Law passed in 1921 terminating certain war powers specifically exempted the Act from termination because of the large amount of property held under the Act by the Alien Property Custodian at that time. See Ellingwood, *The Legality of the National Bank Note*, 27 Nw. U.L. Rev. 923, 925-26 (1933).

(Emphasis supplied.)

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## Syllabus.

16. The Court is not required in this case to ascertain the scope of the phrase "general welfare of the United States," or to determine whether an appropriation in aid of agriculture falls within it. P. 68.
17. The plan of the Agricultural Adjustment Act is to increase the prices of certain farm products for the farmer by decreasing the quantities produced; the decrease is to be attained by making payments of money to farmers who, under agreements with the Secretary of Agriculture, reduce their acreage and crops; and the money for this purpose is exacted, as a tax, from those who first process the commodities. *Held:*
- (1) The Act invades the reserved powers of the States. P. 68.
  - (2) Regulation and control of agricultural production are beyond the powers delegated to the Federal Government. P. 68.
  - (3) The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan—the means to an unconstitutional end. P. 68.
  - (4) The power of taxation, which is expressly granted to Congress, may be adopted as a means to carry into operation another power also expressly granted; but not to effectuate an end which is not within the scope of the Constitution. P. 69.
  - (5) The regulation of the farmer's activities under the statute, though in form subject to his own will, is in fact coercion through economic pressure; his right of choice is illusory. P. 70.
  - (6) Even if the farmer's consent were purely voluntary, the Act would stand no better. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the States. P. 72.
  - (7) The right to appropriate and spend money under contracts for proper governmental purposes cannot justify contracts that are not within federal power. P. 72.
  - (8) Congress cannot invade state jurisdiction by purchasing the action of individuals any more than by compelling it. P. 73.
  - (9) There is an obvious difference between a statute stating the conditions upon which moneys shall be expended and one effective only upon the assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced. P. 73.
  - (10) Owing to the supremacy of the United States, if the contracts with farmers contemplated by the Agricultural Adjustment Act were within the federal power to make, the States could not declare them void or prevent compliance with their terms. P. 74.
  - (11) Existence of a situation of national concern resulting from similar and widespread local conditions cannot enable Con-

In *U. S. v. Smith* (5 Wheaton, at page 157), the court said:

To define piracy, in the sense of the Constitution, is merely to enumerate the crimes which shall constitute piracy; and this may be done either by a reference to crimes having a technical name and determinate extent, or by enumerating the acts in detail upon which the punishment is inflicted.

When an act of Congress, making it an offense to endeavor to make a revolt on the high seas, does not define the offense, it is competent for the court to give a judicial definition of it.

*U. S. v. Kelly*, 11 Wheaton, 417.

Murder or robbery committed on the high seas may be an offense cognizable by the courts of the United States, although it was committed on board of a vessel not belonging to citizens of the United States, as if the vessel had no national character, but was possessed and held by pirates, or persons not lawfully sailing under the flag of any foreign nation.

*U. S. v. Holmes*, 5 Wheaton, 417.

Robbery committed on a ship belonging to subjects of a foreign State by one not a citizen of the United States, is a crime only against such foreign State, and not punishable in the courts of the United States.

*U. S. v. Palmer*, 3 Wheaton, 610; *U. S. v. Kemler*, Baldwin, 15, 22.

Murder committed at sea on board a foreign vessel is not punishable by the laws of the United States if committed by a foreigner upon a foreigner, but otherwise as to piracy, for that is a crime within the acknowledged reach of the punishing power of Congress. In *U. S. v. Bowers* (5 Wheaton, 198), the court said:

Not is it any objection to this opinion, that the law declares murder to be piracy. There are things essentially different in their nature, that not even the omnipotence of legislative power can confound or identify them. Had Congress, in this instance, declared piracy to be murder, the absurdity would have been felt and acknowledged; yet with a view to the exercise of jurisdiction, it would have been more defensible than the reverse, for in one case it would restrict the acknowledged scope of its legitimate powers, in the other extend it. If, by calling murder piracy, it might assert a jurisdiction over that offense committed by a foreigner in a foreign vessel, what offense might not be brought within their power by the same device? The most offensive interference with the government of other nations might be defended on the precedent. Upon the whole, I am satisfied that Congress neither intended to punish murder in cases with which they had no right to interfere, nor leave unpunished the crime of piracy in any case in which they might punish it.

By high seas are meant all tidewaters below low-water mark.

*U. S. v. Pirater*, 5 Wheaton, 184; *U. S. v. Wittberger*, 5 Wheaton, 76, 94.

Where an American citizen has discovered an unoccupied guano island, which the President under authority of Congress has recognized as part of the United States, Congress may ordain that crimes committed there shall be considered as though committed on a domestic vessel on the high seas.

*Jones v. U. S.*, 137 U. S., 202.

The law of nations requires every national government to use "due diligence" to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof; and because of this the obligation of one nation to

punish those who, within its own jurisdiction, counterfeit the money of another nation has long been recognized.

*U. S. v. Arizona*, 120 U. S., 464.

And this applies with equal force to counterfeiting the securities of a foreign nation.

*U. S. v. White*, 27 Fed. Rep., 201.

And to counterfeiting notes of a foreign bank or corporation, or having in possession the plates from which may be printed counterfeits of the notes of foreign banks or corporations, whether such securities are national, municipal, or corporate.

*U. S. v. Arizona*, 120 U. S., 483.

The power of the United States to pass and enforce a statute protecting rights secured by the law of nations does not prevent a State from providing punishment for the same thing.

*U. S. v. Arizona*, 120 U. S., 487.  
*People v. McDonnell*, 80 Cal., 285.

CLAUZE II.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

War is "that state in which a nation prosecutes its right by force."

*The Prize Cases*, 2 Black, 635, 664.

It may exist without being declared, through the hostile acts of a foreign power or through armed insurrection, and may then be recognized and repelled by the President as Commander in Chief of the Army and Navy.

*The Prize Cases*, 2 Black, 635, 664.

The rule that in the enforcement of provisions guaranteeing civil rights, Congress is limited to the enactment of legislation corrective of any wrong committed by the States and not by the individuals, does not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such powers to the States, as in the regulation of commerce, the coining of money, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail and the conduct and transactions of individuals in respect thereof.

*Civil Rights Cases*, 109 U. S., 18.

The existence of war and the restoration of peace are to be determined by the political department of the Government, and such determination is binding and conclusive upon the courts, and deprives the courts of the power of hearing proof and determining as a question of fact either that war exists or has ceased to exist.

*Fertins v. Rogers*, 35 Ind., 167.

In this case the court said:

The war-making power is, by the Constitution, vested in Congress, and the President has no power to declare war or conclude peace, except as he may be empowered by Congress.



more after the passage of these statutes, they were still in operation at the time; thus the decisions did work a sizable if belated check on the government's crisis activity. Just how effective a limitation on crisis action this makes of the Court is hard to say. In light of the recent war, the Court today would seem to be a fairly harmless observer of the emergency activities of the President and Congress. It is highly unlikely that the separation of powers and the Tenth Amendment will be called upon again to hamstring the efforts of the government to deal resolutely with a serious national emergency.<sup>65</sup>

[Emphasis supplied.]

#### EMERGENCY ADMINISTRATION

Having established a number of new programs, either through statutory authorizations or by grants of discretionary power, the President was faced with the task of purposefully administering and coordinating these mandates. "Organizationally, in dealing with the depression, it was Roosevelt's general policy to assign new, emergency functions to newly created agencies, rather than to already existing departments."<sup>66</sup> The President had a variety of reasons for pursuing this course: he thought the departments were burdened with duties which preoccupied them in meeting the current crisis; he believed a new agency with a single task in attacking an exigency would be dedicated and persistent in its mission; he felt that such new agencies with emergency duties as might be created to deal with the depression could, when the crisis passed, be easily eradicated without disturbing the regular Executive branch departments; he thought talented expert personnel might be attracted to the specialized new emergency units; and there was also a desire on the part of the President to avoid the established Civil Service channels in staffing for the emergency period and to utilize political appointees.<sup>67</sup>

As a first step toward establishing a coordinating instrument, Roosevelt, acting under the authority of the Federal Emergency Relief Act (48 Stat. 22) and the National Industrial Recovery Act (48 Stat. 195), issued E.O. 6202A on July 11, 1933, establishing a temporary Executive Council.<sup>68</sup> As an explanation for the creation of this panel the following statement was offered in a chronology of the unit's activities:

The wide diffusion of emergency activities undertaken by the Federal Government immediately following the first inauguration of Franklin D. Roosevelt as President, coupled with the imperative requirement for quick action, coupled the forming of a compact group of administrative officials of both permanent and temporary units who could advise the Chief Executive with respect to various courses

<sup>65</sup> Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, Princeton: Princeton University Press, 1948, p. 264.

<sup>66</sup> Wann, *op. cit.*, p. 26; also see Robert V. Sherwood, *Roosevelt and Hopkins*, New York: Harper and Brothers, 1948, pp. 31-32.

<sup>67</sup> Wann, *op. cit.*, pp. 26-27.

<sup>68</sup> Roosevelt papers (Vol. II, pp. 279-280).

of procedure, and, at the same time, be in a position to follow them through with a minimum of delay or confusion.<sup>69</sup> Composed of twenty-four members and meeting every Tuesday afternoon with Roosevelt presiding, the Council soon "proved too cumbersome for effective discussion."<sup>70</sup>

Actually, the Executive Council functioned more or less as an enlarged Cabinet, with Roosevelt conducting the Council meetings in much the same way as he did those of the regular Cabinet. Although he may have originally intended that the Executive Council would serve as a broad coordinating agency, it did not function effectively in that way. The Council was not provided with a staff, nor did it have any formal power to coordinate the work of the departments and agencies other than that exercised by Roosevelt himself. The only coordinating function served by the Council was that of enabling the heads of the regular departments to meet once a week with the heads of the new emergency agencies and the President to exchange ideas and information on problems that were interdepartmental in scope.

In itself, this was undoubtedly of considerable value in the early days of the New Deal, but neither the Council nor the Executive Secretary served in an important way to make decisions of a coordinative nature for the President. Such decisions were made by Roosevelt himself, with the Executive Council serving only as a source of information and advice. [Frank C.] Walker's most valuable role continued to be that of an informal "trouble shooter" who served the President behind-the-scenes in trying to iron out difficulties and smooth ruffled feelings, rather than in his formal role as Executive Secretary of the Executive Council. Except insofar as it may have been valuable as a device for exchanging information and for enabling the heads of the departments and agencies to get to know each other better, the Council did not serve as an effective mechanism for coordination.<sup>71</sup>

Recognizing the deficiencies of the Executive Council, the President established another coordinating organization with a more limited membership. Relying upon the same statutory authority utilized for creating the Executive Council, together with the provisions of the Agricultural Adjustment Act (48 Stat. 31), Roosevelt issued E.O. 6411A on November 17, 1933 setting up the National Emergency Council.<sup>72</sup>

In establishing the National Emergency Council Roosevelt had some significant political motives as well. The creation

<sup>69</sup> The U.S. National Emergency Council. The National Emergency Council: A Chronological Review of Its Activities from November 17, 1933 Through December 31, 1937. Washington: The U.S. National Emergency Council, 1938, p. 1. (C. Roosevelt, *op. cit.*, p. 141.)

<sup>70</sup> Lester G. Seligman and Elmer E. Cornwell, Jr., eds. *New Deal Memoirs: Roosevelt Confers with His National Emergency Council, 1933-1936*. Eugene: University of Oregon Press, 1965, p. xv.

<sup>71</sup> Wann, *op. cit.*, p. 51.

<sup>72</sup> Roosevelt papers (Vol. II), pp. 487-489.

- ➔ 4. Should the President desire to utilize the services of the Federal courts of the United States in promoting this purpose or military undertaking, since these courts derive their jurisdiction from Congress and do not constitute a part of the military establishment, he must secure from Congress the necessary action to confer such jurisdiction upon said courts.
- ➔ 5. The laws and usages of war make a distinction between enemies' property captured on the sea and property captured on land. The jurisdiction of the courts of the United States over property captured at sea is held not to attach to property captured on land in the absence of Congressional action.
- 6. If it be necessary for Congress to confer authority before enemies' private property on land can be confiscated, such authority exists by virtue of the provisions of sections 5308 and 5309, Revised Statutes of the United States, and may be exercised against the insurgents in the Philippines, *provided* the insurrection therein is against "the Government of the United States."
- 7. If confiscation of private property is intended as a punishment for offenses of a criminal character against the Federal Government of the United States it is necessary for the legislative branch to define the crime, prescribe the penalty, and confer the jurisdiction to inflict such penalty.
- 8. If such confiscation is intended as a punishment for offenses against the military government of the Philippines, the legislative branch of that government may provide the necessary legislation.

SIR: I have the honor to acknowledge the receipt of your request for a report on the above-entitled matter, and in response thereto I have the further honor to submit the following:

- ➔ The right of confiscation is a sovereign right. In time of peace the exercise of this right is limited and controlled by the domestic constitution and institutions of the Government. In time of war, when the right is exercised against enemies' property as a war measure, such right becomes a belligerent right, and as such is not subject to the restrictions imposed by domestic institutions, but is regulated and controlled by the laws and usages of war.

Under our form of government Congress may provide the ways and means of exercising this right, as it does an army and navy to prosecute a war, but the use and application of said ways and means devolve upon the Executive and those charged with the conduct of military operations.

All property within the enemy's territory is enemy's property and subject to capture and confiscation. (*Young v. United States*, 97 U. S., 39.)

The same rules, relative to capture and confiscation of property apply to civil wars as to wars between nations, for a like necessity exists for injuring and weakening the hostile force. (*Miller v. United States*, 11 Wall., 308, 313; *The confiscation cases*, 20 Wall., 92; *Gay's Gold*, 13 Wall. 351; *The Army Warwick*, 2 Black (U. S.), 636.)

Confiscation of private property is more easily justified in civil wars than in foreign wars, for the insurgents in levying war against the government to which they owe allegiance not only subject their property to the hazard of that war, but also are guilty of treason.

[CHAPTER 651.]

AN ACT

June 19, 1934.  
(S. 3040)  
[Public, No. 416.]

To give the Supreme Court of the United States authority to make and publish rules in actions at law.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

Supreme Court of United States. Power to prescribe rules in civil actions at law.

Rights of litigant. Effective date.

Rules in equity and law may be united.

Prorog. Right of trial by jury.

Effective date of united rules.

SEC. 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided,* however, That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session.

Approved, June 19, 1934.

[CHAPTER 652.]

AN ACT

June 19, 1934.  
(S. 3285)  
[Public, No. 416.]

To provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

TITLE I—GENERAL PROVISIONS

Communications Act of 1934.

Purposes of Act.

PURPOSES OF ACT; CREATION OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Federal Communications Commission created.

Application of Act.

APPLICATION OF ACT

To interstate and foreign communications: transmission of energy by radio.

Persons to whom applicable.

SEC. 2. (a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all

Intelligence System. The Director shall also call upon State and local agencies to provide him with such information.

(c) The Director shall be authorized to provide narcotics intelligence to any Federal, State, or local official that the Director determines has a legitimate official need to have access to such intelligence. These functions shall be performed under the general supervision and direction of the Attorney General, and the Attorney General shall delegate to the Director such authority as may be necessary to carry out the purposes of this order.

Sec. 2. The Director shall cooperate with the Director of the Office of Drug Abuse Law Enforcement in order to assist him in ensuring that all steps permitted by law are being taken by Federal, State, and local governments and, to the extent feasible, by private persons and organizations, to prevent drug abuse in the United States.

Sec. 3. Section 1 of Executive Order No. 11248 of October 10, 1965, as amended, is further amended by deleting "(13) Chairman, Price Commission." and by inserting in lieu thereof "(13) Director, Office of National Narcotics Intelligence."

Sec. 4. Each department and agency of the Federal Government shall, upon request and to the extent permitted by law, assist the Director of the Office of National Narcotics Intelligence in the performance of functions assigned to him by or pursuant to this order, and the Director may, in carrying out those functions, utilize the services of any other agencies, Federal and State, as may be available and appropriate.

RICHARD NIXON

THE WHITE HOUSE,  
July 27, 1972.

Executive Order 11677

August 1, 1972

→ Continuing the Regulation of Exports

By virtue of the authority vested in the President by the Constitution and statutes of the United States, including Section 5(b) of the act of October 6, 1917, as amended (12 U.S.C. 95a), and in view of the continued existence of the national emergencies declared by Proclamation No. 2914 of December 16, 1950, and Proclamation No. 4074 of August 15, 1971, and the importance of continuing (a) to exercise the

→ Public Law 94-412  
94th Congress

An Act

To terminate certain authorities with respect to national emergencies still in effect, and to provide for orderly implementation and termination of future national emergencies.

Sept. 14, 1976  
[H.R. 3884]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Emergencies Act".

National  
Emergencies Act.  
50 USC 1601  
note.

TITLE I—TERMINATING EXISTING DECLARED  
EMERGENCIES

Sec. 101. (a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

50 USC 1601.

- (1) any action taken or proceeding pending not finally concluded or determined on such date;
- (2) any action or proceeding based on any act committed prior to such date; or
- (3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

"Any national  
emergency in  
effect."

TITLE II—DECLARATIONS OF FUTURE NATIONAL  
EMERGENCIES

Sec. 201. (a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

50 USC 1621.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

Presidential  
proclamation,  
transmittal to  
Congress;  
publication in  
Federal Register.

Sec. 202. (a) Any national emergency declared by the President in accordance with this title shall terminate if—

Termination.  
50 USC 1622.

- (1) Congress terminates the emergency by concurrent resolution; or
- (2) the President issues a proclamation terminating the emergency.

# Declaration of Rights \*

In Congress, at Philadelphia, October 14, 1774

→ Whereas, since the close of the last war, the British Parliament, claiming a power of right to bind the people of America, by statute, in all cases whatsoever, hath in some acts expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county:

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the Crown alone for their salaries, and standing armies kept in times of peace:

And whereas, it has lately been resolved in Parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned.

And whereas, in the last session of Parliament, three statutes were made: one, entitled "An act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading, or shipping of goods, wares and merchandise, at the town, and within the harbor of Boston, in the province of Massachusetts Bay, in North America"; another, entitled "An act for the better regulating the government of the province of the Massachusetts Bay in New England"; and another, entitled "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts Bay, in New England." And another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc." All which statutes are impolitic, unjust and cruel, as well as unconstitutional, and most dangerous and destructive of American rights.

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances: and their dutiful, humble, loyal, and reasonable petitions to the Crown for redress, have been repeatedly treated with contempt by His Majesty's ministers of state:

\* Printed by the Government Printing Office, Washington, D.C., 1944.

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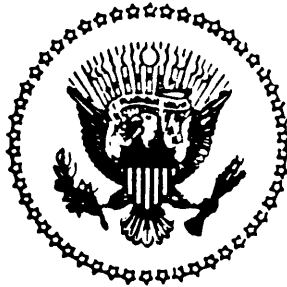
OF THE UNITED STATES

## Herbert Hoover

*Containing the Public Messages, Speeches, and  
Statements of the President*

JANUARY 1, 1932 TO MARCH 4, 1933

1932-33



UNITED STATES GOVERNMENT PRINTING OFFICE

WASHINGTON : 1977

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*Virginia Smith*  
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*Supplement I*

as amended, for the purpose of limiting the use of coin and currency to necessary purposes. I shall be glad to have the advice of the Board. If it is the view of the Board that these powers should be exerted I would be glad to have your recommendation accompanied by a form of proclamation, as it would seem to me it should be issued by me before banking hours tomorrow morning.

I also take this occasion to acknowledge the receipt of your letter of February 28th. I am familiar with the inherent dangers in any form of federal guarantee of banking deposits, but I am wondering whether or not the situation has reached the time when the Board should give further consideration to this possibility. I am enclosing herewith a rough outline of a method upon which I should like to have the Board advise me.

Yours faithfully,  
**HERBERT HOOVER**

[To the Governor and Directors of the Federal Reserve Board, Washington, D.C.]

Plan submitted to Secretary Mills and rejected by him

(Plan sent to Federal Reserve Board March 2.)

1. All member banks shall be eligible. All non-member banks shall be eligible upon appraisal by the Federal Reserve Banks or by the Comptroller or such agencies as he may designate that the net assets of such bank exceeds 50% of the depositors. Joining of the plan to be voluntary with the banks.
2. For purposes of the plan, deposits in the joining banks are to be divided into two categories, that is "active deposits" and "inactive deposits".
3. The government to guarantee 100% of the "active deposits".
4. The "active deposits" to be
  - a. New deposits made in the banks.
  - b. 50% of the existing deposits of all depositors except secured or guaranteed depositors.
5. The "active deposits" to be a first charge of all assets of the bank including stockholders' liabilities. "Inactive deposits" to be subordinated entirely to the "active deposits" and not be available to depositors so long as the guarantee is outstanding.
6. The percentage of credit to the individual "active depositor" may be increased beyond 50% if on examination of the assets of the bank such assets prove to be more than 50%, but no such increase to exceed more than 75% of the value of existing assets. (This plan could be extended to banks whose assets are below 50% by guaranteeing an active account at some proportion of whatever the assets are, say 75%—if the assets show 40% of deposits, the "active accounts" could be opened for 30% and be made subject to federal guarantee).

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*Supplement I*

Meyer had been the origin of the whole movement with Woodin and was anxious to loom large in the new administration; that he, Mills, had objected all along to the letter.

At 10 o'clock I wrote to Meyer my opinion of what he had done.

[Eugene Meyer's letter with enclosures, dated March 3, 1933, follows.]

*Dear Mr. President:*

The Federal Reserve Board has been in session again this evening reviewing the latest reports of developments. The situation as reported from Chicago has reached the point of extreme tension, with prospects that by the end of banking hours tomorrow the gold reserves of the Federal Reserve Bank of Chicago will be dangerously depleted. Representative bankers are assembled there tonight and have requested that a national holiday be proclaimed as the only method they know of dealing with the immediate exigency with which they are confronted.

There is enclosed a copy of a resolution adopted by the Board of Directors of the Federal Reserve Bank of New York, now in session. This resolution speaks for itself as to the New York situation.

Similar conditions are developing rapidly in other Federal reserve districts.

The Federal Reserve Board has considered two methods of dealing with this emergency, one by executive order and the other by joint resolution of Congress. The Senate having adjourned for the day, the issuance of an executive order seems to be the only alternative to meet the immediate situation. A form of executive order is enclosed for your consideration.

The Federal Reserve Board feels that it cannot too strongly urge that the situation has reached a point where immediate action is necessary to prevent a banking collapse.

Respectfully,  
EUGENE MEYER  
Governor

P.S. Since this letter was dictated, there has been communicated to us, by telephone, a resolution adopted by the Executive Committee of the Federal Reserve Bank of Chicago, now in session. A copy of this resolution also is enclosed.

Enclosures.

[The President, The White House]

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RESOLUTION ADOPTED BY THE FEDERAL RESERVE BOARD OF NEW YORK

WHEREAS, In the opinion of the Board of Directors of the Federal Reserve Bank of New York, the continued and increasing withdrawal of currency and gold from the banks of the country has now created a national emergency, and

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*Supplement 1*

any device whatsoever of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution pay out deposits, make loans or discounts, deal in foreign exchange, or transact any other banking business whatsoever.

3. Upon the expiration of said holiday and until otherwise ordered by the President of the United States, such banking institutions may pay out, export, earmark or permit the withdrawal or transfer of gold or silver coin or bullion or currency, or deal in foreign exchange to such extent as may be permitted by license or otherwise under regulations issued by the Secretary of the Treasury with the approval of the President.

4. The Secretary of the Treasury, with the approval of the President, is authorized and empowered to prescribe such regulations as he may find necessary to carry out the purposes of this order.

5. The term "banking institution" as herein used shall include all Federal reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.

The White House  
March, 1933.

---

RESOLUTION ADOPTED BY THE FEDERAL RESERVE BOARD OF CHICAGO

WHEREAS, The Executive Committee of the Board of Directors of the Federal Reserve Bank of Chicago believes that the continuation of the withdrawal of currency and gold from the banks of the country has created a national emergency which requires immediate action, and

WHEREAS, it appears that adequate measures cannot be enacted to remedy this situation unless governmental authorities act tonight,

NOW, THEREFORE, be it resolved that because of this emergency it is the sense of this Committee that the Federal Reserve Board should urge upon the President of the United States that he immediately declare a bank holiday for Saturday, March 4, and Monday, March 6, in order to give the banks and the governmental authorities sufficient time and an opportunity to provide the necessary measures for the protection of the public interests and so that adequate banking and credit facilities may be provided as promptly as possible for the entire Nation.

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THE  
STATUTES AT LARGE

OF THE  
UNITED STATES OF AMERICA

FROM

MARCH 1933 to JUNE 1934

CONCURRENT RESOLUTIONS  
RECENT TREATIES AND CONVENTIONS, EXECUTIVE PROCLAMATIONS  
AND AGREEMENTS, TWENTY-FIRST AMENDMENT  
TO THE CONSTITUTION

EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS  
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOL. XLVIII  
IN TWO PARTS

PART 1—Public Acts and Resolutions.

PART 2—Private Acts and Resolutions, Concurrent Resolutions  
Treaties and Conventions, Executive Proclamations  
and Agreements, Twenty-first Amendment to the  
Constitution.

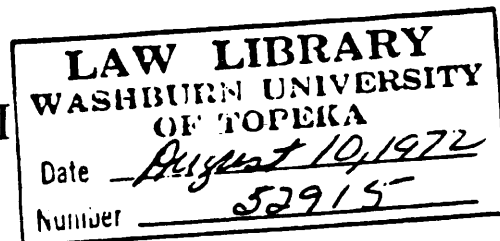
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# PUBLIC LAWS OF THE SEVENTY-THIRD CONGRESS

OF THE

## UNITED STATES OF AMERICA

*Passed at the first session, which was begun and held at the city of Washington, in the District of Columbia, on Thursday, the ninth day of March, 1933, and was adjourned without day on Friday, the sixteenth day of June, 1933.*

FRANKLIN D. ROOSEVELT, President; JOHN N. GARNER, Vice President; KEY PITTMAN, President of the Senate *pro tempore*; HENRY T. RAINEY, Speaker of the House of Representatives.

[CHAPTER 1.]

### AN ACT

To provide relief in the existing national emergency in banking, and for other purposes.

March 9, 1933.  
[E. R. 1461.]  
[Public No. 1.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that a serious emergency exists and that it is imperatively necessary speedily to put into effect remedies of uniform national application.*

National banking system.  
Emergency declared existing.

### TITLE I

SECTION 1. The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

Proclamations, orders, etc., issued since March 4, 1933; approval.

Part, p. 343.  
Trading with the Enemy Act, amended. Vol. 40, pp. 418, 906, amended.

SEC. 2. Subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. L. 411), as amended, is hereby amended to read as follows:

Foreign exchange, export or hoarding of gold, bullion, etc.  
Regulatory powers of President during national emergency.

"(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned

Compulsory testimony, etc.

Punishment for violation.

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Signed

Virginia Smith  
Washburn Law School Librarian

creditors thereof, the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller of the Currency deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Act or otherwise. The conservator shall receive as salary an amount no greater than that paid to employees of the Federal Government for similar services.

SEC. 204. The Comptroller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.

SEC. 205. If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.

SEC. 206. While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal reserve bank. The Federal reserve banks are hereby authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.

SEC. 207. In any reorganization of any national banking association under a plan of a kind which, under existing law, requires the consent, as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Comptroller of the Currency shall be satisfied that the plan of reorganization is fair and equitable as to all depositors, other cred-

Appointment.  
Bond, etc., required.  
To take over all  
books, assets, etc.

Powers and obligations of.

Rights under.

Expenses of conservatorship.

Salary.

Bank examination; reports.

Termination of conservatorship and resumption of bank business.

Sums for depositors' withdrawals or payments for creditors set aside by conservator.

Receipt of deposits.

Certain limitations not applicable to.

Segregation; restriction on use, etc.

To be kept on hand in cash.

Separate accounts to be kept.

Bank reorganization. Post. p. 72. Requirements, etc.

Approval of Comptroller.

I hereby certify that this Page 3 of the UNITED STATES STATUTES AT LARGE, Volume XLVIII, Part 1, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 1-6-34 signed Lucius Smith  
Washburn Law School Librarian 132

SEC. 209. Conservators appointed pursuant to the provisions of this title shall be subject to the provisions of and to the penalties prescribed by section 5209 of the Revised Statutes (U. S. C., Title 12, sec. 592); and sections 112, 113, 114, 115, 116 and 117 of the Criminal Code of the United States (U. S. C., Title 18, secs. 202, 203, 204, 205, 206 and 207), in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this title.

Provisions governing conservators.  
H. R. sec. 6209, p. 1007;  
U. S. C. pp. 291, 476.  
Vol. 35, p. 1108.  
Vol. 40, p. 972.

SEC. 210. Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Federal Reserve Board.

Powers of President, etc., not impaired.

SEC. 211. The Comptroller of the Currency is hereby authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this title. Whoever violates any rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

Rules to be prescribed.

### TITLE III

SEC. 301. Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and by vote of shareholders owning a majority of the stock of such association, upon not less than five days' notice, given by registered mail pursuant to action taken by its board of directors, issue preferred stock in such amount and with such par value as shall be approved by said Comptroller, and make such amendments to its articles of association as may be necessary for this purpose; but, in the case of any newly organized national banking association which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in.

National banks.  
Preferred stock.  
Post, p. 147.  
Issue of, by vote of shareholders.

SEC. 302. (a) The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum, but shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

Amount, par value, etc.

Payment

Dividends  
Post, p. 148.

Liability of shareholders

Voting rights.

Retirement provisions.

Priority.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

SEC. 303. The term "common stock" as used in this title means stock of national banking associations other than preferred stock issued under the provisions of this title. The term "capital" as used in provisions of law relating to the capital of national banking associations shall mean the amount of unimpaired common stock plus

Definitions.  
"Common stock."

"Capital."

I hereby certify that this Page 5 of the UNITED STATES STATUTES AT LARGE, Volume XLVIII, Part 1, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 1-6-94 Signed C. E. Smith  
Washburn Law School Librarian

emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national bank currency are hereby made available for the production of the circulating notes of Federal reserve banks herein provided; but the United States shall be reimbursed by the Federal reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement and destruction."

Agent of Treasurer or Comptroller of the Currency.

Sum available for expenses.

Reimbursement.

SEC. 402. Section 10(b) of the Federal Reserve Act, as amended, is further amended to read as follows:

Vol. 47, p. 66, amended. U.S.C., Supp. VI, p. 136. Advances to member banks when acceptable assets not available for rediscount. Post, p. 21.

"SEC. 10(b). In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this Act other than that provided by section 10 (a), any Federal reserve bank, under rules and regulations prescribed by the Federal Reserve Board, may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal reserve bank. Each such note shall bear interest at a rate not less than 1 per centum per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."

Security.

Interest.

Expiration.

SEC. 403. Section 13 of the Federal Reserve Act, as amended, is amended by adding at the end thereof the following new paragraph:

"Subject to such limitations, restrictions and regulations as the Federal Reserve Board may prescribe, any Federal reserve bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Federal Reserve Board."

Advances to individuals, etc.

Security, interest, etc.

Post, p. 20.

TITLE V

SEC. 501. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$2,000,000, which shall be available for expenditure, under the direction of the President and in his discretion, for any purpose in connection with the carrying out of this Act.

Appropriation.

SEC. 502. The right to alter, amend, or repeal this Act is hereby expressly reserved. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Amendment, etc.

Saving provision.

Approved, March 9, 1933, 8.30 p. m.

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Dated 1-6-94 signed W. Smith  
Washburn Law School Librarian

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Dated 1-6-94 Signed Virgie Smith  
Washburn Law School Librarian



# PROCLAMATIONS

[CONVENING THE CONGRESS IN EXTRA SESSION]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

March 1, 1933.

WHEREAS public interests require that the Congress of the United States should be convened in extra session at twelve o'clock, noon, on the Ninth day of March, 1933, to receive such communication as may be made by the Executive;

Proclaim.

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the Ninth day of March, 1933, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are hereby required to take notice.

Convening extra session of Congress, March 9, 1933.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the great seal of the United States.

Done at the City of Washington this Fifth day of March, in the year of our Lord One Thousand Nine Hundred and Thirty-three, and [SEAL] of the Independence of the United States the One Hundred and Fifty-seventh.

FRANKLIN D. ROOSEVELT

By the President:  
CORDELL HULL  
Secretary of State.

[No. 2038]

[BANK HOLIDAY, MARCH 6-9, 1933, INCLUSIVE]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

March 6, 1933.

WHEREAS there have been heavy and unwarranted withdrawals of gold and currency from our banking institutions for the purpose of hoarding; and

Bank Holiday.  
Proclaim.

WHEREAS continuous and increasingly extensive speculative activity abroad in foreign exchange has resulted in severe drains on the Nation's stocks of gold; and

WHEREAS these conditions have created a national emergency; and

WHEREAS it is in the best interests of all bank depositors that a period of respite be provided with a view to preventing further hoarding of coin, bullion or currency or speculation in foreign exchange and permitting the application of appropriate measures to protect the interests of our people; and

1689

I hereby certify that this Page 1689 of the UNITED STATES STATUTES AT LARGE, Volume XLVIII, Part 2, is an accurate reproduction of the copy held on microfiche in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated

1-6-94

Signed

Virgie Smith  
Washburn Law School Librarian

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washington this 6th day of March—1 A.M. in the year of our Lord One Thousand Nine Hundred and [SEAL] Thirty-three, and of the Independence of the United States the One Hundred and Fifty-seventh.

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
*Secretary of State.*

[No. 2039]

[CONTINUING IN FORCE THE BANK HOLIDAY PROCLAMATION OF MARCH 6, 1933]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

March 9, 1933.

WHEREAS, on March 6, 1933, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by Proclamation declared the existence of a national emergency and proclaimed a bank holiday extending from Monday the 6th day of March to Thursday the 9th day of March, 1933, both dates inclusive, in order to prevent the export, hoarding or earmarking of gold or silver coin, or bullion or currency, or speculation in foreign exchange; and

Bank holiday.  
Preamble.  
Act, p. 1689.

WHEREAS, under the Act of March 9, 1933, all Proclamations heretofore or hereafter issued by the President pursuant to the authority conferred by section 5(b) of the Act of October 6, 1917, as amended, are approved and confirmed; and

Statutory approval and authority.  
Act, p. 1.  
Vol. 60, p. 416.

WHEREAS, said national emergency still continues, and it is necessary to take further measures extending beyond March 9, 1933, in order to accomplish such purposes:

Further measures necessary under present emergency.

Now, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, in view of such continuing national emergency and by virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, do hereby proclaim, order, direct and declare that all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

Bank holiday extended beyond March 9, 1933.

IN WITNESS WHEREOF I have hereunto set my hand and have caused the seal of the United States to be affixed.

Done in the District of Columbia, this 9th day of March, in the Year of our Lord One Thousand Nine Hundred and Thirty-three, and of the Independence of the United States the One Hundredth and Fifty-seventh.

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
*Secretary of State.*

[No. 2040]

I hereby certify that this Page 1691 of the UNITED STATES STATUTES AT LARGE, Volume XLVIII, Part 2, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 1-6-34 Signed Virginia Smith  
Washburn Law School Librarian

facture of knit or felt boots or heavy fulled lumbermen's socks, there shall be permitted a further period during which proof that such wool or hair has been so used may be furnished; and I therefore hereby authorize the Secretary of the Treasury, until further notice, to extend the period during which proof of such use may be furnished for not more than one year from and after the expiration of the three-year period prescribed in said paragraph 1101: *Provided*, however, that in each and every case the Secretary of the Treasury shall require that the principal on the bond, in order to obtain the benefits under the extension granted, shall either furnish to the Collector of Customs for the district in which the bond was given, the agreement of the sureties on such bond to remain bound under the terms and provisions of the bond to the same extent as if no extension were granted, or furnish an additional bond with acceptable sureties to cover the period of extension.

Proviso.  
Terms.

And I do further proclaim that it is necessary and proper, because of the emergency, that as to articles manufactured or produced in the United States with the use of imported or substituted merchandise for drawback purposes a further period for exportation (or shipment to the Philippine Islands) of the completed articles be permitted in those cases in which the merchandise involved was imported during the calendar year 1931; and I therefore hereby authorize the Secretary of the Treasury to extend the period for exportation (or shipment to the Philippine Islands) of the completed articles in such cases for not more than one year from and after the expiration of the three-year period prescribed in section 313 (h) of the Tariff Act of 1930.

Drawback.

Time extended on  
merchandise for ship-  
ment to Philippine  
Islands.  
Vol. 44, p. 604.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 30<sup>th</sup> day of December, in the year of our Lord nineteen hundred and thirty-three, and of [SEAL] the Independence of the United States of America the one hundred and fifty-eighth.

FRANKLIN D ROOSEVELT

By the President:

WILLIAM PHILLIPS  
*Acting Secretary of State.*

[No. 2069]

(AMENDING PROCLAMATIONS OF MARCH 6 AND MARCH 9, 1933, AND THE EXECUTIVE ORDER OF MARCH 10, 1933 AND ALL ORDERS AND REGULATIONS PURSUANT THERETO)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

December 30, 1933.

A PROCLAMATION

WHEREAS, on March 6, 1933, I, Franklin D. Roosevelt, President of the United States of America, by virtue of authority vested in me by the Act of October 6, 1917 (40 Stat. L. 411), as amended, issued a Proclamation declaring that an emergency existed and that a National banking holiday be observed;

Banking operations.  
Preamble.  
Act, p. 1899.  
Vol. 40, p. 418; Act,  
p. 1.

WHEREAS, on March 9, 1933, I issued a Proclamation continuing the terms and conditions of said Proclamation of March 6, 1933, in full force and effect until further proclamation by the President;

Act, p. 1891.

80637°—34—PT 2—29

I hereby certify that this Page 1727 of the UNITED STATE STATUTES AT LARGE, Volume XLVIII, Part 2, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 1-6-94 Signed Urrie Smith  
Washburn Law School Librarian

Appointing Henry  
Morgenthau, Jr., as  
agent.

which has been duly accepted, effective upon the qualification of his successor;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by said act, do hereby designate and appoint, effective the seventh day of February, 1934, Henry Morgenthau, Jr., Director General of Railroads, as the agent provided for in said section 206 of the Transportation Act, 1920.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 7<sup>th</sup> day of February, in the year of our Lord nineteen hundred and thirty-four, and of [SEAL] the Independence of the United States of America the one hundred and fifty-eighth.

FRANKLIN D ROOSEVELT

By the President:  
CORDELL HULL  
Secretary of State.

[No. 2075]

EXTENDING FOR 1 YEAR THE PERIOD WITHIN WHICH ADVANCES  
MAY BE MADE UNDER SECTION 10(B) OF THE FEDERAL RESERVE  
ACT AS AMENDED

February 16, 1934.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Federal Reserve  
Banks.  
Vol. 47, pp. 86, 794;  
Amend. p. 7; U.S.C.,  
Supp. VII, p. 172.

Advances authorized  
to member banks when  
acceptable assets not  
available for rediscount.

Security.

Interest.

Duration.

Continuation deem-  
ed advisable.

Provisions extended  
one year.

WHEREAS section 10(b) of the Federal Reserve Act as amended by the act of February 27, 1932 (ch. 58, 47 Stat. 56), by the act of February 3, 1933 (ch. 34, 47 Stat. 794), and by the act of March 9, 1933 (Public, No. 1, 73d Cong.), reads as follows:

"SEC. 10(b). In exceptional and exigent circumstances, and when any member bank has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this Act other than that provided by section 10(a), any Federal reserve bank, under rules and regulations prescribed by the Federal Reserve Board, may make advances to such member bank on its time or demand notes secured to the satisfaction of such Federal reserve bank. Each such note shall bear interest at a rate not less than 1 per centum per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note. No advance shall be made under this section after March 3, 1934, or after the expiration of such additional period not exceeding one year as the President may prescribe."; and

WHEREAS I, FRANKLIN D. ROOSEVELT, President of the United States of America, deem it advisable that the authority of the Federal reserve banks to make advances under the provisions of said section 10(b) of the Federal Reserve Act be continued for an additional period after March 3, 1934;

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority conferred upon me by said section 10(b) of the Federal Reserve Act, do hereby proclaim, declare, and prescribe an additional period of 1 year after March 3, 1934, during which advances may be

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Dated 1-6-34 Signed [Signature]  
Washburn Law School Librarian 146

# UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS  
ENACTED DURING THE SECOND SESSION OF THE  
NINETY-FOURTH CONGRESS  
OF THE UNITED STATES OF AMERICA

1976

AND

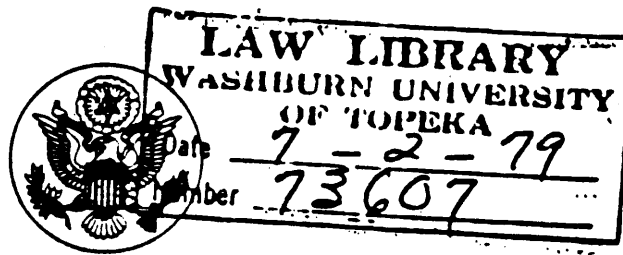
PROCLAMATIONS

VOLUME 90

IN TWO PARTS

PART 1

PUBLIC LAWS 94-206 THROUGH 94-454



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1976

I hereby certify that this Title Page of the UNITED STATES STATUTES AT LARGE, Volume 90, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 12/22/73 Signed Man R  
Washburn Law School Librarian 148

Termination date. Any national emergency declared by the President shall be terminated on the date specified in any concurrent resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a concurrent resolution to determine whether that emergency shall be terminated.

(c) (1) A concurrent resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a concurrent resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

Concurrent resolution, referral to congressional committees.

Conference committee, filing of report.

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Dated 12/22/93 Signed Mar R

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**TITLE V—REPEAL AND CONTINUATION OF CERTAIN  
EMERGENCY POWER AND OTHER STATUTES**

- Loss of nationality.**      **Sec. 501. (a)** Section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)) is amended—
- (1) at the end of paragraph (9), by striking out “; or” and inserting in lieu thereof a period; and
- (2) by striking out paragraph (10).
- Leases, non-excess property.**      **(b)** Section 2667(b) of title 10 of the United States Code is amended—
- (1) by inserting “and” at the end of paragraph (3);
- (2) by striking out paragraph (4); and
- (3) by redesignating paragraph (5) as (4).
- Repeal.**      **(c)** The joint resolution entitled “Joint resolution to authorize the temporary continuation of regulation of consumer credit”, approved August 8, 1947 (12 U.S.C. 249), is repealed.
- Repeal.**      **(d)** Section 5(m) of the Tennessee Valley Authority Act of 1933 as amended (16 U.S.C. 831d(m)) is repealed.
- Repeal.**      **(e)** Section 1383 of title 18, United States Code, is repealed.
- (f)** Section 6 of the Act entitled “An Act to amend the Public Health Service Act in regard to certain matters of personnel and administration, and for other purposes”, approved February 28, 1948, is amended by striking out subsections (b), (c), (d), (e), and (f) (42 U.S.C. 211b).
- Repeal.**      **(g)** Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742) is repealed.
- Savings provision.**      **(h)** This section shall not affect—
- 50 USC 1601 note.      (1) any action taken or proceeding pending not finally concluded or determined at the time of repeal;
- (2) any action or proceeding based on any act committed prior to repeal; or
- (3) any rights or duties that matured or penalties that were incurred prior to repeal.
- 50 USC 1651.**      **Sec. 502. (a)** The provisions of this Act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:
- (1) Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));
- (2) Act of April 28, 1942 (40 U.S.C. 278b);
- (3) Act of June 30, 1949 (41 U.S.C. 252);
- (4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);
- (5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);
- (6) Public Law 85-804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431-1435);
- (7) Section 2304(a) (1) of title 10, United States Code;
- (8) Sections 3313, 6386(c), and 8313 of title 10, United States Code.

I hereby certify that this page 1258 of the UNITED STATES STATUTES AT LARGE, Volume 90, is an accurate reproduction of the copy held in this Washburn Law School Library and that I am the Librarian herein as dated and signed.

Dated 12/22/73 Signed \_\_\_\_\_

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