**1941-1959: War and Cold War**

Roosevelt's Address to Congress Requesting Declaration of War with Japan, December 8, 1941

"…A date which will live in infamy" Speech following the December 7th attack on Pearl Harbor.

Roosevelt's Message to Congress Requesting War Declarations with Germany and Italy, December 11, 1941

The U.S. response to Germany and Italy.

United States v. Darby, 312 U.S. 100 (1941)

The Court upheld the Fair Labor Standards Act and ruled that Congress can legislate on any aspect of intrastate commerce holding that there was no area exclusively reserved for state regulation.

United States v. Classic, 313 U.S. 299 (1941)

The decision reversed Newberry v. U.S. ruling that the federal government could regulate state political primaries for congressional and presidential candidates.

Edwards v. California, 314 U.S. 160 (1941)

The Court ruled that laws restricting migration by "Okies" from the "dust bowl" to California obstructed interstate commerce and were not constitutional.

Roosevelt's Statement on Temporary Political Arrangements in North Africa, November 17, 1942

FDR clarifies Allied relations with Vichy France in North Africa, affirming that decisions on the future government of France will be left to the French people.

Roosevelt's Remarks on Casablanca Conference in Address to White House Correspondents, February 2, 1943

Details of the President's trip to North Africa with his reports on the Vichy resistance, the U.S. troops, Prime Minister Churchill and the war effort in general.

Hirabayashi v. United States, 320 U.S. 81 (1943)

The Court ruled for national security reasons, that a law allowing for a curfew on persons with Japanese background was constitutional.

West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)

Reversal of the Minersville School Dist. v. Board of Education case ruling that forcing a person to recite the pledge of allegiance is a violation of the First and Fourteenth Amendments.

Roosevelt's Economic Bill of Rights, State of the Union Address, January 11, 1944

FDR's fourth-term report highlighting the gains in the war as well as the domestic state of affairs and the focus of economic policy at home.

Smith v. Allwright, 321 U.S. 649 (1944)

Reversal of Grovey v. Townsend ruling that forbidding blacks from voting in primary elections violates the Fourteenth and Fifteenth Amendments.

Korematsu v. United States, 323 U.S. 214 (1944)

Landmark case upholding the constitutionality of the relocation of Japanese-Americans from the west coast during World War II. Justice Murphy's dissenting opinion was an influence on future Court decisions in civil rights matters.

Democratic Platform of 1944

Democratic outline of the successes of FDR's war leadership in national affairs and with the allied forces.

Republican Platform of 1944

The Republican plan proposed during the candidacy of Thomas E. Dewey.

Yalta Conference, Joint Statement, February 11, 1945

FDR, Churchill and Stalin look to the end of the war, the defeat of Germany and the plan for rebuilding war-torn Europe.

Roosevelt's Undelivered Jefferson Day Address, April 13, 1945

FDR's prepared remarks gone undelivered due to his death on April 12, 1945.

Truman's Statement on Fundamentals of Foreign Policy, October 27, 1945

Truman gives tribute to FDR and sets forth the rationale for a strong military for defense against aggression worldwide. It also foreshadows the creation of the United Nations and stresses the need to control the use and spread of nuclear weapons.

Associated Press v. United States, 326 U.S. 1 (1945)

Ruling finding that the bylaws and procedures that govern the closed nature of distribution of information at the Associated Press constitute a violation of the Sherman Anti-trust Act.

Truman's News Conference on the Joint Declaration on Atomic Energy, November 15, 1945

Agreement with Great Britain and Canada concerning the use and proliferation of nuclear weapons.

United States v. Lovett, 328 U.S. 303 (1946)

The decision affirmed that legislation under the Urgent Deficiency Appropriations Act was unconstitutional because it withheld benefits from specific federal employees. The Court held it was a violation of Article I of the Constitution which forbids the enactment of any bill of attainder or ex post facto law.

Truman's Statement on Signing the Full Employment Act, February 20, 1946

Government's effort to provide for the great increase of veterans entering the workforce and avoid many of the problems that occurred following World War I.

Truman's Address to Opening Session of United Nations, October 23, 1946

Speech on the establishment of the international organization devoted to avoiding another war. Truman is "…resolved that the United States, to the full limit of its strength, shall contribute to the establishment and maintenance of a just and lasting peace among the nations of the world."

Truman's First Annual Report on U.S. Participation in United Nations, February 5, 1947

The President's report to the Congress detailing the activities and actions of the first year of participation in the United Nations.

Truman's Address to Congress detailing "The Truman Doctrine," March 12, 1947

The name given to the anti-communist principle of foreign policy precipitated by conflict between Greece and Turkey. This doctrine remained the basic tenet of American foreign policy during the Cold War.

Everson v. Board of Education, 330 U.S. 1 (1947)

The Court held that allocation of services for public and Catholic schools, this narrow decision stated, "The expenditure of tax raised funds thus authorized was for a public purpose, and did not violate the due process clause of the Fourteenth Amendment."

Truman's Statement to Congress on Civil Rights, February 2, 1948

Urging the creation of a permanent Commission on Civil Rights and advocating home-rule and presidential suffrage for the District of Columbia.

Recognition of Provisional State of Israel, May 14, 1948

Simple recognition of the newly-created, provisional State of Israel.

Republican Party Platform, 1948

The Republicans second attempt with presidential candidate Thomas E. Dewey.

Democratic Party Platform, 1948

The winning platform in Truman's first presidential election. The narrow election victory resulted in the now famous Dewey Defeats Truman headline.

Truman Address in Milwaukee, October 14, 1948

Use of Atomic Energy: "The President cannot…pass the buck."

United Nations Universal Declaration of Rights, December 10, 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.

McCollum v. Board of Education, 333 U.S. 203 (1948)

In a case involving public and religious education, the Court held that the "wall of separation" still stands and that separation of church and state is important to maintain in public education.

Harry S Truman's Inaugural Address, January 20, 1949

Truman expounds on his post-war plans which include strong warnings about the spread of communism and the need for a democracy to have a strong resolve against it..

Recognition of State of Israel, January 31, 1949

Recognizing the elections that took place, the government formally extends full recognition to the State of Israel.

Truman's Point Four Program, June 24, 1949

Truman offers a plan for economic expansion to less-developed countries through technical and industrial expansion to be administered through the United Nations.

Truman's Statement on the Korean War, June 27, 1950

"The attack upon Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war." American response to communist invasion in Korea and the deployment of U.S. troops.

Truman's Veto of Internal Security (McCarran) Act, September 22, 1950

Truman's rationale for his veto of the anti-communist McCarran Act.

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)

In a narrow decision, the Court affirms the power of the government to prosecute anti-government organizations.

Dennis v. United States, 341 U.S. 494 (1951)

The Court affirmed the Smith Act making it a crime to advocate the overthrow of the U.S. government by force.

Truman's Recall of General McArthur, April 11, 1951

"With deep regret I have concluded that General of the Army Douglas McArthur is unable to give his wholehearted support to the policies of the United States Government and of the United Nations."

Democratic Party Platform, 1952

First usage in a platform of the phrase "atomic era" detailing the responsibility that falls on government from that time forward.

Republican Party Platform, 1952

A strong anti-socialist statement with Dwight D. Eisenhower as the candidate.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

Seeing a steel strike as a threat to national security, the President issued an Executive Order which ordered the Secretary of Commerce to take over the striking mills and operate them. The Supreme Court struck down the order citing no Constitutional authority on the part of the President.

Truman's Veto of the McCarran-Walter Immigration Act, June 25, 1952

An important piece of legislation that affected race-based immigration to the United States. It was later passed over the President's veto.

United States v. Rumely, 345 U.S. 41 (1953)

In reversing previous decisions, the Court affirmed the ability of an individual to refuse to answer question on lobbying activities to members of Congress.

Dwight D. Eisenhower, First Inaugural Address, 1953

Eisenhower begins with a brief prayer and is reflective about the direction the world is going. "How far have we come in man's long pilgrimage from darkness toward the light? Are we nearing the light—a day of freedom and of peace for all mankind? Or are the shadows of another night closing in upon us?"

Eisenhower Creation of Department of Health, Education and Welfare, March 12, 1953

Creation of the executive department to oversee the Surgeon General and the Commissioners of Education and Social Security.

Eisenhower's Atoms for Peace Address to United Nations, December 8, 1953

Eisenhower's "I feel impelled to speak today in a language that in a sense is new—one which I, who have spent so much of my life in the military profession, would have preferred never to use. That new language is the language of atomic warfare."

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

Landmark unanimous decision reversing Plessy V. Ferguson finding "separate but equal" schools inherently unequal and contrary to the Fourteenth Amendment guarantees.

Eisenhower Message to Congress on National Highway Program, February 22, 1955

The President outlines the federal commitment to a safe and expanded interstate highway system.

Eisenhower's Open Skies Proposal, Geneva Conference, July 21, 1955

In an effort to avoid surprise attack and promote disarmament and inspection, the U.S. affirms the international goal for open air access to overflights for inspection purposes.

Brown v. Board of Education of Topeka, 349 U.S. 294 (1955)

Additional rulings to clarify the process of desegregation set in motion by the 1954 Brown v. Board of Education decision.

Pennsylvania v. Nelson, 350 U.S. 497 (1956)

This decision further defined the Smith Act in controlling the prosecution of seditious behavior against the United States.

Eisenhower Veto of Amendment to Natural Gas Act, February 17, 1956

Eisenhower vetoed the bill due to a lack of consumer price protection and disincentives to private exploration for natural gas.

Democratic Platform of 1956

Democratic agenda under candidate Adlai E. Stevenson.

Republican Platform of 1956

The platform for Eisenhower's second term.

Eisenhower Middle East Foreign Policy Address, February 20, 1957

Response to the Suez Canal Crisis between Egypt, Israel, Britain and France

Yates v. United States, 354 U.S. 298 (1957)

This ruling put restrictions on the Smith Act and modified the Dennis v. U.S. decision. It more narrowly defined the "subversive acts" under which someone could be prosecuted for advocating overthrow of the government.

Eisenhower Address Regarding Situation in Little Rock, Arkansas, September 24, 1957

"I have today issued an Executive Order directing the use of troops under Federal authority to aid in the execution of Federal law at Little Rock, Arkansas." Eisenhower's response to attempts to resist integration in Little Rock High School.

Eisenhower's News Conference on U.S. Plans for Earth Satellite, October 9, 1957

Response to the USSR's launching of Sputnik and the beginning of the "space race."

Perez v. Brownell, 356 U.S. 44 (1958)

Affirms the ability of Congress to regulate U.S. citizenship by denying citizenship to Mr. Perez, a U.S. citizen, for voting in a foreign election.

Eisenhower Announcement to Congress of Dispatch of Troops to Lebanon, July 15, 1958

In response to border disputes with Egypt and Syria, Lebanon asks for U.S. military to stabilize the volatile situation.

NAACP v. Patterson, 357 U.S. 449 (1958)

The unanimous decision held that an Alabama court order to force the NAACP to turn over its membership lists is a violation of the First Amendment's guarantee to free assembly and speech.

Cooper v. Aaron, 358 U.S. 1 (1958)

A reaffirmation of the case of Brown v. Board of Education of Topeka holding that any state discrimination in schools on the basis of race is contrary to the Fourteenth Amendment.

State of the Union Address, January 9, 1958

Eisenhower's report on America in the middle of the Cold War.

Special Message to Congress on Civil Rights, February 5, 1958

"The United States has a vital stake in striving wisely to achieve the goal of full equality under law for all people." Eisenhower extends his commitment to eliminating civil rights barriers.

Barenblatt v. United States, 360 U.S. 109 (1959)

The Court holds that congressional committees can force unwilling witnesses to answer questions regarding subversive activities against the U.S. government under penalty of law.

Eisenhower Veto of Amendment to Water Pollution Control Act, February 23, 1960

"Because water pollution is a uniquely local blight, primary responsibility for solving the problem lies not with the Federal Government but rather must be assumed and exercised, as it has been, by State and local governments."

Eisenhower Address on Paris Summit with British, French, and Russian Leaders, May 25, 1960

Eisenhower takes responsibility for guiding the events that resulted in the U-2 program and explains the rationale for the intelligence program to the American people.

Franklin D. Roosevelt, Address Requesting Declaration of War with Japan, 8 Dec. 1941

Roosevelt's Address to Congress Requesting a Declaration of War with Japan, 1941

Title: Roosevelt's Address to Congress Requesting a Declaration of War with Japan

Author: Franklin D. Roosevelt

Date: December 8, 1941

Source: Public Papers of the Presidents, F. D. Roosevelt, 1941, Item 138

Public Papers of FDR, 1941, Item 138

Mr. Vice President, and Mr. Speaker, and Members of the Senate and House of Representatives:

Public Papers of FDR, 1941, Item 138

Yesterday, December 7, 1941—a date which will live in infamy—the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan.

Public Papers of FDR, 1941, Item 138

The United States was at peace with that Nation and, at the solicitation of Japan, was still in conversation with its Government and its Emperor looking toward the maintenance of peace in the Pacific. Indeed, one hour after Japanese air squadrons had commenced bombing in the American Island of Oahu, the Japanese Ambassador to the United States and his colleague delivered to our Secretary of State a formal reply to a recent American message. And while this reply stated that it seemed useless to continue the existing diplomatic negotiations, it contained no threat or hint of war or of armed attack.

Public Papers of FDR, 1941, Item 138

It will be recorded that the distance of Hawaii from Japan makes it obvious that the attack was deliberately planned many days or even weeks ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace.

Public Papers of FDR, 1941, Item 138

The attack yesterday on the Hawaiian Islands has caused severe damage to American naval and military forces. I regret to tell you that very many American lives have been lost. In addition American ships have been reported torpedoed on the high seas between San Francisco and Honolulu.

Public Papers of FDR, 1941, Item 138

Yesterday the Japanese Government also launched an attack against Malaya.

Public Papers of FDR, 1941, Item 138

Last night Japanese forces attacked Hong Kong.

Public Papers of FDR, 1941, Item 138

Last night Japanese forces attacked Guam.

Public Papers of FDR, 1941, Item 138

Last night Japanese forces attacked the Philippine Islands.

Public Papers of FDR, 1941, Item 138

Last night the Japanese attacked Wake Island. And this morning the Japanese attacked Midway Island.

Public Papers of FDR, 1941, Item 138

Japan has, therefore, undertaken a surprise offensive extending throughout the Pacific area. The facts of yesterday and today speak for themselves. The people of the United States have already formed their opinions and well understand the implications to the very life and safety of our Nation.

Public Papers of FDR, 1941, Item 138

As Commander in Chief of the Army and Navy I have directed that all measures be taken for our defense.

Public Papers of FDR, 1941, Item 138

But always will our whole Nation remember the character of the onslaught against us.

Public Papers of FDR, 1941, Item 138

No matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to absolute victory. I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make it very certain that this form of treachery shall never again endanger us.

Public Papers of FDR, 1941, Item 138

Hostilities exist. There is no blinking at the fact that our people, our territory, and our interests are in grave danger.

Public Papers of FDR, 1941, Item 138

With confidence in our armed forces—with the unbounding determination of our people—we will gain the inevitable triumph—so help us God.

Public Papers of FDR, 1941, Item 138

I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese Empire.

President Roosevelt's Message to Congress Requesting War Declarations with Germany and Italy, 1941

Title: President Roosevelt's Message to Congress Requesting War Declarations with Germany and Italy

Author: Franklin D. Roosevelt

Date: December 11, 1941

Source: Public Papers of the Presidents, F. D. Roosevelt, 1941, Item 142

Public Papers of FDR, 1941, Item 142

To the Congress:

Public Papers of FDR, 1941, Item 142

On the morning of December eleventh, the Government of Germany, pursuing its course of world conquest, declared war against the United States.

Public Papers of FDR, 1941, Item 142

The long known and the long expected has thus taken place. The forces endeavoring to enslave the entire world now are moving toward this hemisphere.

Public Papers of FDR, 1941, Item 142

Never before has there been a greater challenge to life, liberty, and civilization.

Public Papers of FDR, 1941, Item 142

Delay invites greater danger. Rapid and united effort by all of the peoples of the world who are determined to remain free will insure a world victory of the forces of justice and of righteousness over the forces of savagery and of barbarism.

Public Papers of FDR, 1941, Item 142

Italy also has declared war against the United States.

Public Papers of FDR, 1941, Item 142

I therefore request the Congress to recognize a state of war between the United States and Germany, and between the United States and Italy.

United States v. Darby, 1941

Title: United States v. Darby

Author: U.S. Supreme Court

Date: February 3, 1941

Source: 312 U.S. 100

This case was argued December 19 and 20, 1940, and was decided February 3, 1941.

1941, United States v. Darby, 312 U.S. 100

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

1941, United States v. Darby, 312 U.S. 100

FOR THE SOUTHERN DISTRICT OF GEORGIA

Syllabus

1941, United States v. Darby, 312 U.S. 100

1. The Fair Labor Standards Act of 1938 provides for fixing minimum wages and maximum hours for employees engaged in the production of goods for interstate commerce, with increased compensation for overtime, and forbids, under pain of fine and imprisonment: (1) violation by an employer of such wage and hour provisions; (2) shipment by him in interstate commerce of any goods in the production of which any employee was employed in violation of such provisions, and (3) failure of the employer to keep such records of his employees and of their wages and hours, as shall be prescribed by administrative regulation or order. Held within the commerce power and consistent with the Fifth and Tenth Amendments. P. 111.

1941, United States v. Darby, 312 U.S. 100

2. While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce, and the prohibition of such shipment by Congress is a regulation of interstate commerce. P. 113.

1941, United States v. Darby, 312 U.S. 100

3. Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from it articles whose use in the State for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the State has not sought to regulate their use. P. 114.

1941, United States v. Darby, 312 U.S. 100

4. Such regulation is not a forbidden invasion of state power merely because either its motive or its consequence is to restrict the use of articles of commerce within the States of destination, and is valid unless prohibited by other Constitutional provisions. P. 114.

1941, United States v. Darby, 312 U.S. 100

5. The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the States from and to which it flows. P. 115.

1941, United States v. Darby, 312 U.S. 100

6. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction, and over which the courts are given no control. P. 115. [312 U.S. 101]

1941, United States v. Darby, 312 U.S. 101

7. In prohibiting interstate shipment of goods produced under the forbidden substandard labor conditions, the Act is within the authority of Congress, if no Constitutional provision forbids. P. 115.

1941, United States v. Darby, 312 U.S. 101

8. Hammer v. Dagenhart, 247 U.S. 251, overruled; Carter v. Carter Coal Co., 298 U.S. 238, declared to have been limited. Pp. 115, 123.

1941, United States v. Darby, 312 U.S. 101

9. The "production for interstate commerce" intended by the Act includes, at least, production of goods, which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce. P. 117.

1941, United States v. Darby, 312 U.S. 101

10. The power of Congress over interstate commerce extends to those intrastate activities which so affect interstate commerce or the exercise of the power of Congress over it as to make their regulation an appropriate means to the attainment of a legitimate end—the exercise of the granted power of Congress to regulate interstate commerce. P. 118.

1941, United States v. Darby, 312 U.S. 101

11. Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for that commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. P. 121.

1941, United States v. Darby, 312 U.S. 101

12. Independently of the prohibition of shipment or transportation of the proscribed goods, the provision of the Act for the suppression of their production for interstate commerce is within the commerce power. P. 122.

1941, United States v. Darby, 312 U.S. 101

13. The Tenth Amendment is not a limitation upon the authority of the National Government to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. P. 123.

1941, United States v. Darby, 312 U.S. 101

14. The requirements of the Act as to the keeping of records are valid as incidental to the wage and hour requirements. P. 124.

1941, United States v. Darby, 312 U.S. 101

15. The wage and hour provisions of the Act do not violate the due process clause of the Fifth Amendment. P. 125.

1941, United States v. Darby, 312 U.S. 101

16. In its criminal aspect, the Act is sufficiently definite to meet constitutional demands. P. 125.

1941, United States v. Darby, 312 U.S. 101

32 F.Supp. 734, reversed.

1941, United States v. Darby, 312 U.S. 101

APPEAL, under the Criminal Appeals Act, from a judgment quashing an indictment. [312 U.S. 108]

STONE, J., lead opinion

1941, United States v. Darby, 312 U.S. 108

MR. JUSTICE STONE delivered the opinion of the Court.

1941, United States v. Darby, 312 U.S. 108

The two principal questions raised by the record in this case are, first, whether Congress has constitutional power to prohibit the shipment in interstate commerce of lumber manufactured by employees whose wages are less than a prescribed minimum or whose weekly hours of labor at that wage are greater than a prescribed maximum, and, second, whether it has power to prohibit the employment of workmen in the production of goods "for interstate commerce" at other than prescribed wages and hours. A subsidiary question is whether, in connection with such prohibitions, Congress can require the employer subject to them to keep records showing the hours worked each day and week by each of his employees including those engaged "in the production and manufacture of goods, to-wit, lumber, for `interstate commerce.'"

1941, United States v. Darby, 312 U.S. 108

Appellee demurred to an indictment found in the district court for southern Georgia charging him with violation of § 15(a)(1)(2) and (5) of the Fair Labor Standards Act of 1938; 52 Stat. 1060, 29 U.S.C. § 201, et seq. The district court sustained the demurrer and quashed the indictment, and the case comes here on direct appeal under § 238 of the Judicial Code as amended, 28 [312 U.S. 109] U.S.C. § 345, and § 682, Title 18 U.S.C. 34 Stat. 1246, which authorizes an appeal to this Court when the judgment sustaining the demurrer "is based upon the invalidity or construction of the statute upon which the indictment is founded."

1941, United States v. Darby, 312 U.S. 109

The Fair Labor Standards Act set up a comprehensive legislative scheme for preventing the shipment in interstate commerce of certain products and commodities produced in the United States under labor conditions as respects wages and hours which fail to conform to standards set up by the Act. Its purpose, as we judicially know from the declaration of policy in § 2(a) of the Act, 1 and the reports of Congressional committees proposing the legislation, S.Rept. No. 884, 75th Cong. 1st Sess.; H.Rept. No. 1452, 75th Cong. 1st Sess.; H.Rept. No. 2182, 75th Cong.3d Sess., Conference Report, H.Rept. No. 2738, 75th Cong.3d Sess., is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general wellbeing, and to prevent the use of interstate [312 U.S. 110] commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states. The Act also sets up an administrative procedure whereby those standards may from time to time be modified generally as to industries subject to the Act or within an industry in accordance with specified standards, by an administrator acting in collaboration with "Industry Committees" appointed by him.

1941, United States v. Darby, 312 U.S. 110

Section 15 of the statute prohibits certain specified acts, and § 16(a) punishes willful violation of it by a fine of not more than $10,000, and punishes each conviction after the first by imprisonment of not more than six months or by the specified fine, or both. Section 15(1) makes unlawful the shipment in interstate commerce of any goods "in the production of which any employee was employed in violation of section 6 or section 7," which provide, among other things, that, during the first year of operation of the Act, a minimum wage of 25 cents per hour shall be paid to employees "engaged in [interstate] commerce or the production of goods for [interstate] commerce," § 6, and that the maximum hours of employment for employees "engaged in commerce or the production of goods for commerce" without increased compensation for overtime, shall be forty-four hours a week. § 7.

1941, United States v. Darby, 312 U.S. 110

Section 15(a)(2) makes it unlawful to violate the provisions of §§ 6 and 7, including the minimum wage and maximum hour requirements just mentioned for employees engaged in production of goods for commerce. Section 15(a)(5) makes it unlawful for an employer subject to the Act to violate § 11(c), which requires him to keep such records of the persons employed by him and of their wages and hours of employment as the administrator shall prescribe by regulation or order. [312 U.S. 111]

1941, United States v. Darby, 312 U.S. 111

The indictment charges that appellee is engaged, in the State of Georgia, in the business of acquiring raw materials, which he manufactures into finished lumber with the intent, when manufactured, to ship it in interstate commerce to customers outside the state, and that he does, in fact, so ship a large part of the lumber so produced. There are numerous counts charging appellee with the shipment in interstate commerce from Georgia to points outside the state of lumber in the production of which, for interstate commerce, appellee has employed workmen at less than the prescribed minimum wage or more than the prescribed maximum hours without payment to them of any wage for overtime. Other counts charge the employment by appellee of workmen in the production of lumber for interstate commerce at wages at less than 25 cents an hour or for more than the maximum hours per week without payment to them of the prescribed overtime wage. Still another count charges appellee with failure to keep records showing the hours worked each day a week by each of his employees as required by § 11(c) and the regulation of the administrator, Title 29, Ch. 5, Code of Federal Regulations, Part 516, and also that appellee unlawfully failed to keep such records of employees engaged "in the production and manufacture of goods, to-wit lumber, for interstate commerce."

1941, United States v. Darby, 312 U.S. 111

The demurrer, so far as now relevant to the appeal, challenged the validity of the Fair Labor Standards Act under the Commerce Clause and the Fifth and Tenth Amendments. The district court quashed the indictment in its entirety upon the broad grounds that the Act, which it interpreted as a regulation of manufacture within the states, is unconstitutional. It declared that manufacture is not interstate commerce, and that the regulation by the Fair Labor Standards Act of wages and hours of employment of those engaged in the manufacture [312 U.S. 112] of goods which it is intended at the time of production "may or will be" after production "sold in interstate commerce in part or in whole" is not within the congressional power to regulate interstate commerce.

1941, United States v. Darby, 312 U.S. 112

The effect of the court's decision and judgment is thus to deny the power of Congress to prohibit shipment in interstate commerce of lumber produced for interstate commerce under the proscribed substandard labor conditions of wages and hours, its power to penalize the employer for his failure to conform to the wage and hour provisions in the case of employees engaged in the production of lumber which he intends thereafter to ship in interstate commerce in part or in whole according to the normal course of his business, and its power to compel him to keep records of hours of employment as required by the statute and the regulations of the administrator.

1941, United States v. Darby, 312 U.S. 112

The case comes here on assignments by the Government that the district court erred insofar as it held that Congress was without constitutional power to penalize the acts set forth in the indictment, and appellee seeks to sustain the decision below on the grounds that the prohibition by Congress of those Acts is unauthorized by the Commerce Clause and is prohibited by the Fifth Amendment. The appeal statute limits our jurisdiction on this appeal to a review of the determination of the district court so far only as it is based on the validity or construction of the statute. United States v. Borden Co., 308 U.S. 188, 193-195, and cases cited. Hence, we accept the district court's interpretation of the indictment and confine our decision to the validity and construction of the statute.

1941, United States v. Darby, 312 U.S. 112

The prohibition of shipment of the proscribed goods in interstate commerce. Section 15(a)(1) prohibits, and the indictment charges, the shipment in interstate commerce, of goods produced for interstate commerce by employees whose wages and hours of employment do not [312 U.S. 113] conform to the requirements of the Act. Since this section is not violated unless the commodity shipped has been produced under labor conditions prohibited by § 6 and § 7, the only question arising under the commerce clause with respect to such shipments is whether Congress has the constitutional power to prohibit them.

1941, United States v. Darby, 312 U.S. 113

While manufacture is not, of itself, interstate commerce, the shipment of manufactured goods interstate is such commerce, and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power "to prescribe the rule by which commerce is governed." Gibbons v. Ogden, 9 Wheat. 1, 196. It extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it. Reid v. Colorado, 187 U.S. 137; Lottery Case, 188 U.S. 321; United States v. Delaware & Hudson Co., 213 U.S. 366; Hoke v. United States, 227 U.S. 308; Clark Distilling Co. v. Western Maryland Ry. Co., 242 U.S. 311; United States v. Hill, 248 U.S. 420; McCormick & Co. v. Brown, 286 U.S. 131. It is conceded that the power of Congress to prohibit transportation in interstate commerce includes noxious articles, Lottery Case, supra; Hipolite Egg Co. v. United States, 220 U.S. 45; cf. Hoke v. United States, supra; stolen articles, Brooks v. United States, 267 U.S. 432; kidnapped persons, Gooch v. United States, 297 U.S. 124, and articles, such as intoxicating liquor or convict made goods, traffic in which is forbidden or restricted by the laws of the state of destination. Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U.S. 334.

1941, United States v. Darby, 312 U.S. 113

But it is said that the present prohibition falls within the scope of none of these categories; that, while the prohibition is nominally a regulation of the commerce, its motive or purpose is regulation of wages and hours of persons engaged in manufacture, the control of which has been reserved to the states and upon which Georgia [312 U.S. 114] and some of the states of destination have placed no restriction; that the effect of the present statute is not to exclude the proscribed articles from interstate commerce in aid of state regulation, as in Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra, but instead, under the guise of a regulation of interstate commerce, it undertakes to regulate wages and hours within the state contrary to the policy of the state which has elected to leave them unregulated.

1941, United States v. Darby, 312 U.S. 114

The power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." Gibbons v. Ogden, supra, 196. That power can neither be enlarged nor diminished by the exercise or nonexercise of state power. Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra. Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use. Reid v. Colorado, supra; Lottery Case, supra; Hipolite Egg Co. v. United States, supra; Hoke v. United States, supra.

1941, United States v. Darby, 312 U.S. 114

Such regulation is not a forbidden invasion of state power merely because either its motive or its consequence is to restrict the use of articles of commerce within the states of destination, and is not prohibited unless by other Constitutional provisions. It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. Seven Cases v. United States, 239 U.S. 510, 614; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 156; United States v. Carolene Products Co., 304 U.S. [312 U.S. 115] 144, 147; United States v. Appalachian Electric Power Co., 311 U.S. 377.

1941, United States v. Darby, 312 U.S. 115

The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction, and over which the courts are given no control. McCray v. United States, 195 U.S. 27; Sonzinsky v. United States, 300 U.S. 506, 513, and cases cited. "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power." Veazie Bank v. Fenno, 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause. Subject only to that limitation, presently to be considered, we conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

1941, United States v. Darby, 312 U.S. 115

In the more than a century which has elapsed since the decision of Gibbons v. Ogden, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in Hammer v. Dagenhart, 247 U.S. 251. In that case, it was held by a bare majority of the Court, over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, [312 U.S. 116] that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution.

1941, United States v. Darby, 312 U.S. 116

Hammer v. Dagenhart has not been followed. The distinction on which the decision was rested, that Congressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long since been abandoned. Brooks v. United States, supra; Kentucky Whip & Collar Co. v. Illinois Central R. Co., supra; Electric Bond & Share Co. v. Securities & Exchange Comm'n, 303 U.S. 419; Mulford v. Smith, 307 U.S. 38. The thesis of the opinion—that the motive of the prohibition or its effect to control in some measure the use or production within the states of the article thus excluded from the commerce can operate to deprive the regulation of its constitutional authority—has long since ceased to have force. Reid v. Colorado, supra; Lottery Case, supra; Hipolite Egg Co. v. United States, supra; Seven Cases v. United States, supra, 514; Hamilton v. Kentucky Distilleries & Warehouse Co., supra, 156; United States v. Carolene Products Co., supra, 147. And finally, we have declared

1941, United States v. Darby, 312 U.S. 116

The authority of the federal government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce.

1941, United States v. Darby, 312 U.S. 116

United States v. Rock Royal Cooperative, 307 U.S. 533, 569.

1941, United States v. Darby, 312 U.S. 116

The conclusion is inescapable that Hammer v. Dagenhart was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both [312 U.S. 117] before and since the decision, and that such vitality, as a precedent, as it then had, has long since been exhausted. It should be, and now is, overruled.

1941, United States v. Darby, 312 U.S. 117

Validity of the wage and hour requirements. Section 15(a)(2) and §§ 6 and 7 require employers to conform to the wage and hour provisions with respect to all employees engaged in the production of goods for interstate commerce. As appellee's employees are not alleged to be "engaged in interstate commerce," the validity of the prohibition turns on the question whether the employment, under other than the prescribed labor standards, of employees engaged in the production of goods for interstate commerce is so related to the commerce, and so affects it, as to be within the reach of the power of Congress to regulate it.

1941, United States v. Darby, 312 U.S. 117

To answer this question, we must at the outset determine whether the particular acts charged in the counts which are laid under § 15(a)(2) as they were construed below constitute "production for commerce" within the meaning of the statute. As the Government seeks to apply the statute in the indictment, and as the court below construed the phrase "produced for interstate commerce," it embraces at least the case where an employer engaged, as is appellee, in the manufacture and shipment of goods in filling orders of extrastate customers, manufactures his product with the intent or expectation that, according to the normal course of his business, all or some part of it will be selected for shipment to those customers.

1941, United States v. Darby, 312 U.S. 117

Without attempting to define the precise limits of the phrase, we think the acts alleged in the indictment are within the sweep of the statute. The obvious purpose of the Act was not only to prevent the interstate transportation of the proscribed product, but to stop the initial step toward transportation, production with the purpose of so transporting it. Congress was not unaware that [312 U.S. 118] most manufacturing businesses shipping their product in interstate commerce make it in their shops without reference to its ultimate destination, and then, after manufacture, select some of it for shipment interstate and some intrastate, according to the daily demands of their business, and that it would be practically impossible, without disrupting manufacturing businesses, to restrict the prohibited kind of production to the particular pieces of lumber, cloth, furniture or the like which later move in interstate, rather than intrastate, commerce. Cf. United States v. New York Central R. Co., 272 U.S. 457, 464.

1941, United States v. Darby, 312 U.S. 118

The recognized need of drafting a workable statute and the well known circumstances in which it was to be applied are persuasive of the conclusion, which the legislative history supports, S.Rept. No. 884, 75th Cong. 1st Sess., pp. 7 and 8; H.Rept. No. 2738, 75th Cong.3d Sess., p. 17, that the "production for commerce" intended includes at least production of goods which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce. 2

1941, United States v. Darby, 312 U.S. 118

There remains the question whether such restriction on the production of goods for commerce is a permissible exercise of the commerce power. The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch [312 U.S. 119] v. Maryland, 4 Wheat. 316, 421. Cf. United States v. Ferger, 250 U.S. 199.

1941, United States v. Darby, 312 U.S. 119

While this Court has many times found state regulation of interstate commerce, when uniformity of its regulation is of national concern, to be incompatible with the Commerce Clause even though Congress has not legislated on the subject, the Court has never implied such restraint on state control over matters intrastate not deemed to be regulations of interstate commerce or its instrumentalities even though they affect the commerce. Minnesota Rate Cases, 230 U.S. 352, 398 et seq., and case cited; 410 et seq., and cases cited. In the absence of Congressional legislation on the subject, state laws which are not regulations of the commerce itself or its instrumentalities are not forbidden, even though they affect interstate commerce. Kidd v. Pearson, 128 U.S. l; Bacon v. Illinois, 227 U.S. 504; Heisler v. Thomas Colliery Co., 260 U.S. 245; Oliver Iron Co. v. Lord, 262 U.S. 172.

1941, United States v. Darby, 312 U.S. 119

But it does not follow that Congress may not, by appropriate legislation, regulate intrastate activities where they have a substantial effect on interstate commerce. See Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the Act, tend to disturb or obstruct interstate commerce. See National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 38, 40; National Labor Relations Board v. Fainblatt, 306 U.S. 601, 604, and cases cited. But, long before the adoption of the National Labor Relations Act, this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate [312 U.S. 120] which have a substantial effect on the commerce or the exercise of the Congressional power over it. 3

1941, United States v. Darby, 312 U.S. 120

In such legislation, Congress has sometimes left it to the courts to determine whether the intrastate activities have the prohibited effect on the commerce, as in the Sherman Act. It has sometimes left it to an administrative board or agency to determine whether the activities sought to be regulated or prohibited have such effect, as in the case of the Interstate Commerce Act and the National Labor Relations Act, or whether they come within the statutory definition of the prohibited Act, as in the Federal Trade Commission Act. And sometimes Congress itself has said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliance Act, and the Railway Labor Act. In passing on the validity of legislation of the class last mentioned, the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach [312 U.S. 121] of the federal power. See United States v. Ferger, supra; Virginian Ry. Co. v. Federation, 300 U.S. 515, 553.

1941, United States v. Darby, 312 U.S. 121

Congress having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers other than the commerce power granted to the national government when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government. See Jacob Ruppert, Inc. v. Caffey, 251 U.S. 264; Everard's Breweries v. Day, 265 U.S. 545, 560; Westfall v. United States, 274 U.S. 256, 259. As to state power under the Fourteenth Amendment, compare Otis v. Parker, 187 U.S. 606, 609; St. John v. New York, 201 U.S. 633; Purity Extract & Tonic Co. v. Lynch, 226 U.S. 192, 201-202. A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled. Shreveport Case, 234 U.S. 342; Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 257 U.S. 563; United States v. New York Central R. Co., supra, 464; Currin v. Wallace, 306 U.S. l; Mulford v. Smith, supra. Similarly, Congress may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. Thornton v. United States, 271 U.S. 414. It may prohibit the removal, at destination, of labels required by the Pure Food & Drugs Act to be affixed to articles [312 U.S. 122] transported in interstate commerce. McDermott v. Wisconsin, 228 U.S. 115. And we have recently held that Congress, in the exercise of its power to require inspection and grading of tobacco shipped in interstate commerce, may compel such inspection and grading of all tobacco sold at local auction rooms from which a substantial part, but not all, of the tobacco sold is shipped in interstate commerce. Currin v. Wallace, supra, 11, and see, to the like effect, United States v. Rock Royal Co-op., supra, 568, note 37.

1941, United States v. Darby, 312 U.S. 122

We think also that § 15(a)(2), now under consideration, is sustainable independently of § 15(a)(1), which prohibits shipment or transportation of the proscribed goods. As we have said, the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced with those produced under the prescribed or better labor conditions, and the consequent dislocation of the commerce itself caused by the impairment or destruction of local businesses by competition made effective through interstate commerce. The Act is thus directed at the suppression of a method or kind of competition in interstate commerce which it has, in effect, condemned as "unfair," as the Clayton Act has condemned other "unfair methods of competition" made effective through interstate commerce. See Van Camp & Sons Co. v. American Can Co., 278 U.S. 245; Federal Trade Comm'n v. Keppel & Bro., 291 U.S. 304.

1941, United States v. Darby, 312 U.S. 122

The Sherman Act and the National Labor Relations Act are familiar examples of the exertion of the commerce power to prohibit or control activities wholly intrastate because of their effect on interstate commerce. See, as to the Sherman Act, Northern Securities Co. v. United States, 193 U.S. 197; Swift & Co. v. United States, 196 U.S. 375; United States v. Patten, 226 U.S. 525; United Mine Workers v. Coronado Coal Co., 259 U.S. 344; Local [312 U.S. 123] No. 167 v. United States, 291 U.S. 293; Stevens Co. v. Foster & Kleiser Co., 311 U.S. 255. As to the National Labor Relations Act, see National Labor Relations Board v. Fainblatt, supra, and cases cited.

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The means adopted by § 15(a)(2) for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce, and so affects it, as to be within the reach of the commerce power. See Currin v. Wallace, supra, 11. Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that, in present day industry, competition by a small part may affect the whole, and that the total effect of the competition of many small producers may be great. See H.Rept. No. 2182, 75th Cong. 1st Sess., p. 7. The legislation, aimed at a whole, embraces all its parts. Cf. National Labor Relations Board v. Fainblatt, supra, 606.

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So far as Carter v. Carter Coal Co., 298 U.S. 238, is inconsistent with this conclusion, its doctrine is limited in principle by the decisions under the Sherman Act and the National Labor Relations Act, which we have cited and which we follow. See also Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381; Currin v. Wallace, supra; Mulford v. Smith, supra; United States v. Rock Royal Co-op., supra; Clover Fork Coal Co. v. National Labor Relations Board, 97 F.2d 331; National Labor Relations Board v. Crowe Coal Co., 104 F.2d 633; National Labor Relations Board v. Good Coal Co., 110 F.2d 501.

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Our conclusion is unaffected by the Tenth Amendment. which provides:

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The powers not delegated to the United States by the Constitution, nor prohibited by it to the [312 U.S. 124] States, are reserved to the States respectively, or to the people.

1941, United States v. Darby, 312 U.S. 124

The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment, or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers. See e.g., II Elliot's Debates, 123, 131; III id. 450, 464, 600; IV id. 140, 149; I Annals of Congress, 432, 761, 767-768; Story, Commentaries on the Constitution, §§ 1907-1908.

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From the beginning and for many years, the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. Martin v. Hunter's Lessee, 1 Wheat. 304, 324, 325; McCulloch v. Maryland, supra, 405, 406; Gordon v. United States, 117 U.S. 697, 705; Lottery Case, supra; Northern Securities Co. v. United States, supra, 344-345; Everard's Breweries v. Day, supra, 558; United States v. Sprague, 282 U.S. 716, 733; see United States v. The Brigantine William, 28 Fed.Cas. No. 16,700, p. 622. Whatever doubts may have arisen of the soundness of that conclusion, they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited. See also Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 330-331; Wright v. Union Central Ins. Co., 304 U.S. 502, 516.

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Validity of the requirement of records of wages and hours. § 15(a)(5) and § 11(c). These requirements are incidental to those for the prescribed wages and [312 U.S. 125] hours, and hence validity of the former turns on validity of the latter. Since, as we have held, Congress may require production for interstate commerce to conform to those conditions, it may require the employer, as a means of enforcing the valid law, to keep a record showing whether he has, in fact, complied with it. The requirement for records even of the intrastate transaction is an appropriate means to the legitimate end. See Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n, 221 U.S. 612; Interstate Commerce Comm'n v. Goodrich Transit Co., 224 U.S. 194; Chicago Board of Trade v. Olsen, 262 U.S. 1, 42.

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Validity of the wage and hour provisions under the Fifth Amendment. Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of "not less than one and one-half times the regular rate" at which the worker is employed. Since our decision in West Coast Hotel Co. v. Parrish, 300 U.S. 379, it is no longer open to question that the fixing of a minimum wage is within the legislative power, and that the bare fact of its exercise is not a denial of due process under the Fifth more than under the Fourteenth Amendment. Nor is it any longer open to question that it is within the legislative power to fix maximum hours. Holden v. Hardy, 169 U.S. 366; Muller v. Oregon, 208 U.S. 412; Bunting v. Oregon, 243 U.S. 426; Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n, supra. Similarly, the statute is not objectionable because applied alike to both men and women. Cf. Bunting v. Oregon, 243 U.S. 426.

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The Act is sufficiently definite to meet constitutional demands. One who employs persons, without conforming to the prescribed wage and hour conditions, to work on goods which he ships or expects to ship across state [312 U.S. 126] lines is warned that he may be subject to the criminal penalties of the Act. No more is required. Nash v. United States, 229 U.S. 373, 377.

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We have considered, but find it unnecessary to discuss other contentions.

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Reversed.

Footnotes

STONE, J., lead opinion (Footnotes)

1941, United States v. Darby, 312 U.S. 126

1.

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Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce, and (5) interferes with the orderly and fair marketing of goods in commerce.

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Section 3(b) defines "commerce" as

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trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

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2. Cf. Administrator's Opinion, Interpretative Bulletin No. 5, 1940 Wage and Hour Manual, p. 131 et seq.

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3. It may prohibit wholly intrastate activities which, if permitted, would result in restraint of interstate commerce. Coronado Coal Co. v. United Mine Workers, 268 U.S. 295, 310; Local 167 v. United States, 291 U.S. 293, 297. It may regulate the activities of a local grain exchange shown to have an injurious effect on interstate commerce. Chicago Board of Trade v. Olsen, 262 U.S. 1. It may regulate intrastate rates of interstate carriers where the effect of the rates is to burden interstate commerce. Houston, E. & W. Texas Ry. Co. v. United States, 234 U.S. 342; Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 257 U.S. 563; United States v. Louisiana, 290 U.S. 70, 74; Florida v. United States, 292 U.S. 1. It may compel the adoption of safety appliances on rolling stock moving intrastate because of the relation to and effect of such appliances upon interstate traffic moving over the same railroad. Southern Ry. Co. v. United States, 222 U.S. 20. It may prescribe maximum hours for employees engaged in intrastate activity connected with the movement of any train, such as train dispatchers and telegraphers. Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n, 221 U.S. 612, 619.

United States v. Classic, 1941

Title: United States v. Classic

Author: U.S. Supreme Court

Date: May 26, 1941

Source: 313 U.S. 299

This case was argued April 7, 1941, and was decided May 26, 1941.

1941, United States v. Classic, 313 U.S. 299

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

1941, United States v. Classic, 313 U.S. 299

FOR THE EASTERN DISTRICT OF LOUISIANA

Syllabus

1941, United States v. Classic, 313 U.S. 299

1. Review under the Criminal Appeals Act of a judgment sustaining a demurrer to an indictment is confined to the questions of statutory construction and validity decided by the District Court. P. 309.

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2. In Louisiana, a primary election to nominate a party candidate for the office of Representative in Congress is conducted at the public expense and regulated by statute. Candidates who may be voted for at general elections are restricted to primary nominees; to persons, not candidates in the primary, who file nomination papers with the requisite number of signatures, and to persons whose names may be lawfully written into the ballots by the electors. The practical effect is to impose serious restrictions upon the choice of candidates by the voters save by voting at the primary election. The primary election is an integral part of the procedure for choosing Representatives, and in this case, as alleged by the indictment, its practical operation, in the particular Congressional District involved, is to secure the election of the primary nominee of a particular political party. Pp. 311 et seq.

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3. The right of the people to choose Representatives in Congress is a right established and guaranteed by Art. I, § 2 of the Constitution, and hence is one secured by it to those citizens and inhabitants of the State who are entitled to exercise the right. P. 314.

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The right to vote for Representatives in Congress is a right "derived from the States," only in the sense that the States are authorized by the Constitution to legislate on the subject, as provided by § 2 of Art. I, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4, and its more general power, under Art. I, § 8, cl. 18, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

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4. Included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at Congressional elections. P. 315.

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Since the constitutional command is without restriction or limitation, this right, unlike those guaranteed by the Fourteenth and Fifteenth [313 U.S. 300] Amendments, is secured against the action of individuals, as well as of States.

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5. Where the state law has made the primary election an integral part of the procedure of choosing Representatives, or where, in fact, the primary effectively controls the choice, the right of the qualified elector to vote and have his ballot counted at the primary, is part of the right to choose Representatives secured by Art. I, § 2. P. 316.

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In determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For, in setting up an enduring framework of government, they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence, we read its words not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.

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6. A primary election, which is a necessary step in the choice of candidates for election as Representatives in Congress, and which, in the circumstances of the case, controls that choice, is an election within the meaning of Art. I, §§ 2 and 4 of the Constitution, and is subject to Congressional regulation as to the manner of holding it. P. 317.

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7. Art. I, § 8, cl. 18 of the Constitution empowers Congress to safeguard by appropriate legislation the right of choice by the people of Representatives in Congress secured by § 2 of Art. I. P. 320.

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8. Section 19 of the Criminal Code, making it a crime to conspire to "injure" or "oppress" any citizen "in the free exercise of any right or privilege secured to him by the Constitution," embraces a conspiracy to prevent qualified voters from exercising their constitutional right of voting, and having their votes counted, in a primary election prerequisite to the choice of party candidates for a Congressional election. P. 321.

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9. Section 20 of the Criminal Code provides that whoever, "under color of any law," willfully subjects any inhabitant of any State to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States

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or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens,

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shall be punished as prescribed.

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Held: [313 U.S. 301]

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(1) The action of election official who conducted a primary election to nominate a party candidate for Representative in Congress in willfully altering and falsely counting and certifying the ballots, were acts under color of state law depriving the voter of constitutional rights within the meaning of the section. P. 325.

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(2) The section authorizes punishment for two different offenses: the offense of willfully subjecting any inhabitant to the deprivation of rights secured by the Constitution, and the offense of willfully subjecting any inhabitant to different punishments on account of his alienage, color or race, than are prescribed for the punishment of citizens. P. 327.

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10. The Court declines to consider the application of § 20 to deprivations of the light to equal protection of the laws guaranteed by the Fourteenth Amendment, a point apparently raised for the first time by the Government's brief in this Court and not assigned as error. Since the indictment, on its face, does not purport to charge a deprivation of equal protection to voters or candidates, the Court is not called upon to construe the indictment in order to raise a question of statutory validity or construction. P. 329.

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35 F.Supp. 66, reversed.

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APPEAL from an order of the District Court sustaining a demurrer to two counts of an indictment. [313 U.S. 307]

STONE, J., lead opinion

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MR. JUSTICE STONE delivered the opinion of the Court.

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Two counts of an indictment found in a federal district court charged that appellees, Commissioners of Elections, conducting a primary election under Louisiana law to nominate a candidate of the Democratic Party for representative in Congress, willfully altered and falsely counted and certified the ballots of voters cast in the primary election. The questions for decision are whether the right of qualified voters to vote in the Louisiana primary and to have their ballots counted is a right "secured by the Constitution" within the meaning of § 19 and 20 of the Criminal Code, and whether the acts of appellees charged in the indictment violate those sections.

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On September 25, 1940, appellees were indicted in the District Court for Eastern Louisiana for violations of §§ 19 and 20 of the Criminal Code, 18 U.S.C. §§ 51, 52. The first count of the indictment alleged that a primary election was held on September 10, 1940, for the purpose of nominating a candidate of the Democratic Party for [313 U.S. 308] the office of Representative in Congress for the Second Congressional District of Louisiana, to be chosen at an election to be held on November 10th; that, in that district, nomination as a candidate of the Democratic Party is and always has been equivalent to an election; that appellees were Commissioners of Election, selected in accordance with the Louisiana law to conduct the primary in the Second Precinct of the Tenth Ward of New Orleans, in which there were five hundred and thirty-seven citizens and qualified voters.

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The charge, based on these allegations, was that the appellees conspired with each other, and with others unknown, to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and Laws of the United States, namely, (1) the right of qualified voters who cast their ballots in the primary election to have their ballots counted as cast for the candidate of their choice, and (2) the right of the candidates to run for the office of Congressman and to have the votes in favor of their nomination counted as cast. The overt acts alleged were that the appellees altered eighty-three ballots cast for one candidate and fourteen cast for another, marking and counting them as votes for a third candidate, and that they falsely certified the number of votes cast for the respective candidates to the chairman of the Second Congressional District Committee.

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The second count, repeating the allegations of fact already detailed, charged that the appellees, as Commissioners of Election, willfully and under color of law subjected registered voters at the primary who were inhabitants of Louisiana to the deprivation of rights, privileges and immunities secured and protected by the Constitution and Laws of the United States, namely their right to cast their votes for the candidates of their choice and to have their votes counted as cast. It further charged [313 U.S. 309] that this deprivation was effected by the willful failure and refusal of defendants to count the votes as cast, by their alteration of the ballots, and by their false certification of the number of votes cast for the respective candidates in the manner already indicated.

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The District Court sustained a demurrer to counts 1 and 2 on the ground that § 19 and 20 of the Criminal Code, under which the indictment was drawn, do not apply to the state of facts disclosed by the indictment, and that, if applied to those facts, §§ 19 and 20 are without constitutional sanction, citing United States v. Gradwell, 243 U.S. 476, 488, 489; Newberry v. United States, 256 U.S. 232. The case comes here on direct appeal from the District Court under the provisions of the Criminal Appeals Act, Judicial Code, § 238, 18 U.S.C. § 682; 28 U.S.C. § 345, which authorize an appeal by the United States from a decision or judgment sustaining a demurrer to an indictment where the decision or judgment is "based upon the invalidity or construction of the statute upon which the indictment is founded."

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Upon such an appeal, our review is confined to the questions of statutory construction and validity decided by the District Court. United States v. Patten, 226 U.S. 525; United States v. Birdsall, 233 U.S. 223, 230; United States v. Borden Co., 308 U.S. 188, 192-193. Hence, we do not pass upon various arguments advanced by appellees as to the sufficiency and construction of the indictment.

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Section 19 of the Criminal Code condemns as a criminal offense any conspiracy to injure a citizen in the exercise "of any right or privilege secured to him by the Constitution or laws of the United States." Section 20 makes it a penal offense for anyone who, acting "under color of any law,"

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willfully subjects, or causes to be subjected, any inhabitant of any State…to the deprivation of any rights, privileges, and immunities secured and [313 U.S. 310] protected by the Constitution and laws of the United States.

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The Government argues that the right of a qualified voter in a Louisiana congressional primary election to have his vote counted and cast is a right secured by Article I, §§ 2 and 4 of the Constitution, and that a conspiracy to deprive the citizen of that right is a violation of § 19, and also that the willful action of appellees as state officials, in falsely counting the ballots at the primary election and in falsely certifying the count, deprived qualified voters of that right and of the equal protection of the laws guaranteed by the Fourteenth Amendment, all in violation of § 20 of the Criminal Code.

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Article I, § 2 of the Constitution, commands that

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The House of Representatives shall be composed of members chosen every second Year by the People of the several States and the Electors in each State shall have the qualifications requisite for electors of the most numerous Branch of the State Legislature.

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By § 4 of the same article,

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The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

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Such right as is secured by the Constitution to qualified voters to choose members of the House of Representatives is thus to be exercised in conformity to the requirements of state law subject to the restrictions prescribed by § 2 and to the authority conferred on Congress by § 4, to regulate the times, places and manner of holding elections for representatives.

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We look then to the statutes of Louisiana here involved to ascertain the nature of the right which under the constitutional mandate they define and confer on the voter, and the effect upon its exercise of the acts with which appellees are charged, all with the view to determining, [313 U.S. 311] first, whether the right or privilege is one secured by the Constitution of the United States, second, whether the effect under the state statute of appellees' alleged acts is such that they operate to injure or oppress citizens in the exercise of that right within the meaning of § 19 and to deprive inhabitants of the state of that right within the meaning of § 20, and finally, whether §§ 19 and 20, respectively, are in other respects applicable to the alleged acts of appellees.

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Pursuant to the authority given by § 2 of Article I of the Constitution, and subject to the legislative power of Congress under § 4 of Article I, and other pertinent provisions of the Constitution, the states are given, and in fact exercise, a wide discretion in the formulation of a system for the choice by the people of representatives in Congress. In common with many other states, Louisiana has exercised that discretion by setting up machinery for the effective choice of party candidates for representative in Congress by primary elections, and, by its laws, it eliminates or seriously restricts the candidacy at the general election of all those who are defeated at the primary. All political parties, which are defined as those that have cast at least 5 percent of the total vote at specified preceding elections, are required to nominate their candidates for representative by direct primary elections. Louisiana Act No. 46, Regular Session, 1940, §§ 1 and 3.

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The primary is conducted by the state at public expense. Act No. 46, supra, § 35. The primary, as is the general election, is subject to numerous statutory regulations as to the time, place and manner of conducting the election, including provisions to insure that the ballots cast at the primary are correctly counted, and the results of the count correctly recorded and certified to the Secretary of State, whose duty it is to place the names of the successful candidates of each party on the official [313 U.S. 312] ballot. 1 The Secretary of State is prohibited from placing on the official ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of the Act. Act 46, § 1.

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One whose name does not appear on the primary ballot, if otherwise eligible to become a candidate at the general election, may do so in either of two ways: by filing nomination papers with the requisite number of signatures or by having his name "written in" on the ballot on the final election. Louisiana Act No. 24, Regular Session 1940, §§ 50, 73. Section 87 of Act No. 46 provides:

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No one who participates in the primary election of any political party shall have the right to participate in a primary election of any other political party, with the view of nominating opposing candidates, nor shall he be permitted to sign any nomination for any opposing candidate or candidates; nor shall he be permitted to be himself a candidate in opposition to anyone nominated at or through a primary election in which he took part.

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Section 15 of Article VIII of the Constitution of Louisiana, as amended by Act 80 of 1934, provides that

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no person whose name is not authorized to be printed on the official ballot, as the nominee of a political party or as [313 U.S. 313] an independent candidate, shall be considered a candidate

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unless he shall file in the appropriate office at least ten days before the general election a statement containing the correct name under which he is to be voted for, and containing the further statement that he is willing and consents to be voted for for that office. The article also provides that

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no commissioners of election shall count a ballot as cast for any person whose name is not printed on the ballot or who does not become a candidate in the foregoing manner.

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Applying these provisions, the Louisiana Court of Appeals for the Parish of Orleans has held, in Serpas v. Trebucq, decided April 7, 1941, 1 So.2d 346, rehearing denied with opinion April 21, 1941, 1 So.2d 705, that an unsuccessful candidate at the primary may not offer himself as a candidate at a general election, and that votes for him may not lawfully be written into the ballot or counted at such an election.

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The right to vote for a representative in Congress at the general election is, as a matter of law, thus restricted to the successful party candidate at the primary, to those not candidates at the primary who file nomination papers, and those whose names may be lawfully written into the ballot by the electors. Even if, as appellees argue, contrary to the decision in Serpas v. Trebucq, supra, voters may lawfully write into their ballots, cast at the general election, the name of a candidate rejected at the primary and have their ballots counted, the practical operation of the primary law in otherwise excluding from the ballot on the general election the names of candidates rejected at the primary is such as to impose serious restrictions upon the choice of candidates by the voters save by voting at the primary election. In fact, as alleged in the indictment, the practical operation of the primary in Louisiana is, and has been since the primary election was established in 1900, to secure the election of the Democratic primary [313 U.S. 314] nominee for the Second Congressional District of Louisiana. 2

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Interference with the right to vote in the Congressional primary in the Second Congressional District for the choice of Democratic candidate for Congress is thus, as a matter of law and in fact, an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance, since it is at the only stage when such interference could have any practical effect on the ultimate result, the choice of the Congressman to represent the district. The primary in Louisiana is an integral part of the procedure for the popular choice of Congressman. The right of qualified voters to vote at the Congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice.

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We come then to the question whether that right is one secured by the Constitution. Section 2 of Article I commands that Congressmen shall be chosen by the people of the several states by electors, the qualifications of which it prescribes. The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by state action in conformity to the Constitution, is a right established and guaranteed by the Constitution, and hence is one secured by it to those citizens and inhabitants of the state entitled to exercise the right. Ex parte Yarbrough, 110 U.S. 651; United States v. Mosley, 238 U.S. 383. And see Hague v. CIO, 307 U.S. 496, 508, 513, 526, 527, 529, giving the same interpretation to the like phrase "rights" "secured by the [313 U.S. 315] Constitution" appearing in § 1 of the Civil Rights Act of 1871, 17 Stat. 13. While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, see Minor v. Happersett, 21 Wall. 162, 170; United States v. Reese, 92 U.S. 214, 217-218; McPherson v. Blacker, 146 U.S. 1, 339; Breedlove v. Suttles, 302 U.S. 277, 283, this statement is true only in the sense that the states are authorized by the Constitution, to legislate on the subject as provided by § 2 of Art. I, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4 and its more general power under Article I, § 8, clause 18 of the Constitution "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." See Ex parte Siebold, 100 U.S. 371; Ex parte Yarbrough, supra, 663, 664; Swafford v. Templeton, 185 U.S. 487; Wiley v. Sinkler, 179 U.S. 58, 64.

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Obviously included within the right to choose, secured by the Constitution is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections. This Court has consistently held that this is a right secured by the Constitution. Ex parte Yarbrough, supra; Wiley v.Sinkler, supra; Swasord v. Templeton, supra; United States v. Mosley, supra; see Ex parte Siebold, supra; In re Coy, 127 U.S. 731; Logan v. United States, 144 U.S. 263. And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals, as well as of states. Ex parte Yarbrough, supra; Loan v. United States, supra.

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But we are now concerned with the question whether the right to choose at a primary election, a candidate for election as representative, is embraced in the right to choose representatives secured by Article I, § 2. We may [313 U.S. 316] assume that the framers of the Constitution, in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But, in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For, in setting up an enduring framework of government, they undertook to carry out for the indefinite future, and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence, we read its words not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government. Cf. Davidson v. New Orleans, 96 U.S. 97; Brown v. Walker, 161 U.S. 591, 595; Robertson v. Baldwin, 165 U.S. 275, 281, 282. If we remember that "it is a Constitution we are expounding," we cannot rightly prefer, of the possible meanings of its words, that which will defeat, rather than effectuate, the constitutional purpose.

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That the free choice by the people of representatives in Congress, subject only to the restrictions to be found in §§ 2 and 4 of Article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted. We cannot regard it as any the less the constitutional purpose, or its words as any the less guarantying the integrity of that choice, when a state, exercising its privilege in the absence of Congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates [313 U.S. 317] from whom, as a second step, the representative in Congress is to be chosen at the election.

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Nor can we say that that choice which the Constitution protects is restricted to the second step because § 4 of Article I, as a means of securing a free choice of representatives by the people, has authorized Congress to regulate the manner of elections, without making any mention of primary elections. For we think that the authority of Congress, given by § 4, includes the authority to regulate primary elections when, as in this case, they are a step in the exercise by the people of their choice of representatives in Congress. The point whether the power conferred by § 4 includes in any circumstances the power to regulate primary elections was reserved in United States v. Gradwell, supra, 487. In Newberry v. United States, supra, four Justices of this Court were of opinion that the term "elections" in § 4 of Article I did not embrace a primary election, since that procedure was unknown to the framers. A fifth Justice, who with them pronounced the judgment of the Court, was of opinion that a primary, held under a law enacted before the adoption of the Seventeenth Amendment, for the nomination of candidates for Senator, was not an election within the meaning of § 4 of Article I of the Constitution, presumably because the choice of the primary imposed no legal restrictions on the election of Senators by the state legislatures to which their election had been committed by Article I, § 3. The remaining four Justices were of the opinion that a primary election for the choice of candidates for Senator or Representative were elections subject to regulation by Congress within the meaning of § 4 of Article I. The question then has not been prejudged by any decision of this Court.

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To decide it, we turn to the words of the Constitution read in their historical setting as revealing the purpose of its framers, and search for admissible meanings of its [313 U.S. 318] words which, in the circumstances of their application, will effectuate those purposes. As we have said, a dominant purpose of § 2, so far as the selection of representatives in Congress is concerned, was to secure to the people the right to choose representatives by the designated electors, that is to say, by some form of election. Cf. the Seventeenth Amendment as to popular "election" of Senators. From time immemorial, an election to public office has been, in point of substance, no more and no less than the expression by qualified electors of their choice of candidates.

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Long before the adoption of the Constitution, the form and mode of that expression had changed from time to time. There is no historical warrant for supposing that the framers were under the illusion that the method of effecting the choice of the electors would never change, or that, if it did, the change was, for that reason, to be permitted to defeat the right of the people to choose representatives for Congress which the Constitution had guaranteed. The right to participate in the choice of representatives for Congress includes, as we have said, the right to cast a ballot and to have it counted at the general election, whether for the successful candidate or not. Where the state law has made the primary an integral part of the procedure of choice, or where, in fact, the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2. And this right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes, or never determines the ultimate choice of the representative. Here, even apart from the circumstance that the Louisiana primary is made by law an [313 U.S. 319] integral part of the procedure of choice, the right to choose a representative is, in fact, controlled by the primary because, as is alleged in the indictment, the choice of candidates at the Democratic primary determines the choice of the elected representative. Moreover, we cannot close our eyes to the fact, already mentioned, that the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election, even though there is no effective legal prohibition upon the rejection at the election of the choice made at the primary, and may thus operate to deprive the voter of his constitutional right of choice. This was noted and extensively commented upon by the concurring Justices in Newberry v. United States, supra, 263-269, 285, 287.

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Unless the constitutional protection of the integrity of "elections" extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of representatives is stripped of its constitutional protection save only as Congress, by taking over the control of state elections, may exclude from them the influence of the state primaries. 3 Such an expedient would end that state autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom [313 U.S. 320] and integrity of the choice. Words, especially those of a constitution, are not to be read with such stultifying narrowness. The words of §§ 2 and 4 of Article I, read in the sense which is plainly permissible and in the light of the constitutional purpose, require us to hold that a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which, in the circumstances of this case, controls that choice, is an election within the meaning of the constitutional provision, and is subject to congressional regulation as to the manner of holding it.

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Not only does § 4 of Article I authorize Congress to regulate the manner of holding elections, but, by Article I, § 8, Clause 18, Congress is given authority

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to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

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This provision leaves to the Congress the choice of means by which its constitutional powers are to be carried into execution.

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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.

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McCulloch v. Maryland, 4 Wheat. 316, 421. That principle has been consistently adhered to and liberally applied, and extends to the congressional power by appropriate legislation to safeguard the right of choice by the people of representatives in Congress, secured by § 2 of Article I. Ex parte Yarbrough, supra, 657, 658; cf. Second Employers Liability Cases, 223 U.S. 1, 49; Houston & Texas Ry. Co. v. United States, 234 U.S. 342, 350, 355; Wilson v. New, 243 U.S. 332, 346, 347; First National Bank v. Union Trust Co., 244 U.S. 416, 419; Selective Draft Law Cases, 245 U.S. 366, 381; United States v. Ferger, 250 U.S. 199, 205; Hamilton v. [313 U.S. 321] Kentucky Distilleries Co., 251 U.S. 146, 155, 163; Jacob Ruppert v. Caffey, 251 U.S. 264; Smith v. Kansas City Title & Trust Co., 255 U.S. 180; United States v. Darby, 312 U.S. 100, and cases cited.

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There remains the question whether §§ 19 and 20 are an exercise of the congressional authority applicable to the acts with which appellees are charged in the indictment. Section 19 makes it a crime to conspire to "injure" or "oppress" any citizen "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution." 4 In Ex parte Yarbrough, supra, and in United States v. Mosley, supra, as we have seen, it was held that the right to vote in a congressional election is a right secured by the Constitution, and that a conspiracy to prevent the citizen from voting, or to prevent the official count of his ballot when cast, is a conspiracy to injure and oppress the citizen in the free exercise of a right secured by the Constitution within the meaning of § 19. In reaching this conclusion, the Court found no uncertainty or ambiguity in the statutory language, obviously devised to protect the citizen "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution," and concerned itself with the question whether the right to participate in choosing a representative [313 U.S. 322] is 90 secured. 5 Such is our function here. Conspiracy to prevent the official count of a citizen's ballot, held in United States v. Mosley, supra, to be a violation of § 19 in the case of a congressional election, is equally a conspiracy to injure and oppress the citizen when the ballots are cast in a primary election prerequisite to the choice of party candidates for a congressional election. In both cases, the right infringed is one secured by the Constitution. The injury suffered by the citizen in the exercise of the right is an injury which the statute describes and to which it applies in the one case as in the other.

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The suggestion that § 19, concededly applicable to conspiracies to deprive electors of their votes at congressional elections, is not sufficiently specific to be deemed applicable to primary elections, will hardly bear examination. Section 19 speaks neither of elections nor of primaries. In unambiguous language, it protects "any right or privilege secured by the Constitution," a phrase which, as we have seen, extends to the right of the voter to have his vote counted in both the general election and in the primary election, where the latter is a part of the election machinery, as well as to numerous other constitutional rights which are wholly unrelated to the choice of a representative in Congress. United States v. Waddell, 112 U.S. 76; Logan v. United States, 144 U.S. 263; In re Quarles, 158 U.S. 532; Motes v. United States, 178 U.S. 458; Guinn v. United States, 238 U.S. 347.

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In the face of the broad language of the statute, we are pointed to no principle of statutory construction [313 U.S. 323] and to no significant legislative history which could be thought to sanction our saying that the statute applies any the less to primaries than to elections, where, in one as in the other, it is the same constitutional right which is infringed. It does not avail to attempt to distinguish the protection afforded by § 1 of the Civil Rights Act of 1871, 6 to the right to participate in primary, as well as general, elections secured to all citizens by the Constitution, see Guinn v. United States, 238 U.S. 347; Nixon v. Herndon, 273 U.S. 536; Nixon v. Condon, 286 U.S. 73; Lane v. Wilson, 307 U.S. 268, on the ground that, in those cases, the injured citizens were Negroes whose rights were clearly protected by the Fourteenth Amendment. At least since Ex parte Yarbrough, supra, and no member of the Court seems ever to have questioned it, the right to participate in the choice of representatives in Congress has been recognized as a right protected by Art. I, §§ 2 and 4 of the Constitution. 7 Differences of opinion have arisen as to the effect of the primary in particular cases on the choice of representatives. But we are troubled by no such doubt here. Hence, the right to participate through the primary in the choice of representatives in Congress—a right clearly secured by the Constitution—is within the words and [313 U.S. 324] purpose of § 19 in the same manner and to the same extent as the right to vote at the general election. United States v. Mosley, supra. It is no extension of the criminal statute, as it was not of the civil statute in Nixon v. Herndon, supra, to find a violation of it in a new method of interference with the right which its words protect. For it is the constitutional right, regardless of the method of interference, which is the subject of the statute and which in precise terms it protects from injury and oppression.

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It is hardly the performance of the judicial function to construe a statute which, in terms, protects a right secured by the Constitution, here the right to choose a representative in Congress, as applying to an election whose only function is to ratify a choice already made at the primary, but as having no application to the primary which is the only effective means of choice. To withdraw from the scope of the statute an effective interference with the constitutional right of choice because other wholly different situations not now before us may not be found to involve such an interference, cf. United States v. Bathgate, 246 U.S. 220; United States v. Gradwell, 243 U.S. 476, is to say that acts plainly within the statute should be deemed to be without it because other hypothetical cases may later be found not to infringe the constitutional right with which alone the statute is concerned.

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If a right secured by the Constitution may be infringed by the corrupt failure to include the vote at a primary in the official count, it is not significant that the primary, like the voting machine, was unknown when § 19 was adopted. 8 Abuse of either may infringe the right and [313 U.S. 325] therefore violate § 19. See United States v. Pleva, 66 F.2d 529, 530; cf. Browder v. United States, 312 U.S. 335. Nor does the fact that, in circumstances not here present, there may be difficulty in determining whether the primary so affects the right of the choice as to bring it within the constitutional protection afford any ground for doubting the construction and application of the statute once the constitutional question is resolved. That difficulty is inherent in the judicial administration of every federal criminal statute, for none, whatever its terms, can be applied beyond the reach of the congressional power which the Constitution confers. Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20; Hoke v. United States, 227 U.S. 308; Nash v. United States, 229 U.S. 373; United States v. Freeman, 239 U.S. 117; United States v. Darby, 312 U.S. 100.

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The right of the voters at the primary to have their votes counted is, as we have stated, a right or privilege secured by the Constitution, and to this § 20 also gives protection. 9 The alleged acts of appellees were committed in the course of their performance of duties under the Louisiana statute requiring them to count the [313 U.S. 326] ballots, to record the result of the count, and to certify the result of the election. Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law. Ex parte Virginia, 100 U.S. 339, 346; Home Telephone & Telegraph Co. v. Los Angeles, 227 U.S. 278, 287, et seq.; Hague v. CIO, 307 U.S. 496, 507, 519; cf. 101 F.2d 774, 790. Here, the acts of appellees infringed the constitutional right and deprived the voters of the benefit of it within the meaning of § 20, unless, by its terms, its application is restricted to deprivations "on account of such inhabitant being an alien or by reason of his color, or race."

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The last clause of § 20 protects inhabitants of a state from being subjected to different punishments, pains or penalties, by reason of alienage, color or race, than are prescribed for the punishment of citizens. That the qualification with respect to alienage, color, and race refers only to differences in punishment, and not to deprivations of any rights or privileges secured by the Constitution, is evidenced by the structure of the section and the necessities of the practical application of its provisions. The qualification as to alienage, color, and race is a parenthetical phrase in the clause penalizing different punishments "than are prescribed for citizens," and, in the common use of language, could refer only to the subject matter of the clause, and not to that of the earlier one relating to the deprivation of rights, to which it makes no reference in terms.

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Moreover, the prohibited differences of punishment on account of alienage, color. or race are those referable to prescribed punishments which are to be compared with those prescribed for citizens. A standard is thus set up applicable to differences in prescribed punishments on account of alienage, color or race, which it would be difficult, [313 U.S. 327] if not impossible, to apply to the willful deprivations of constitutional rights or privileges in order to determine whether they are on account of alienage, color, or race. We think that § 20 authorizes the punishment of two different offenses. The one is willfully subjecting any inhabitant to the deprivation of rights secured by the Constitution; the other is willfully subjecting any inhabitant to different punishments on account of his alienage, color, or race than are prescribed for the punishment of citizens. The meager legislative history of the section supports this conclusion. 10 [313 U.S. 328]

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So interpreted, § 20 applies to deprivation of the constitutional rights of qualified voters to choose representatives in Congress. The generality of the section, made applicable as it is to deprivations of any constitutional right, does not obscure its meaning or impair its force within [313 U.S. 329] the scope of its application, which is restricted, by its terms, to deprivations which are willfully inflicted by those acting under color of any law, statute and the like.

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We do not discuss the application of § 20 to deprivations of the right to equal protection of the laws guaranteed by the Fourteenth Amendment, a point apparently raised and discussed for the first time in the Government's brief in this Court. The point was not specially considered or decided by the court below, and has not been assigned as error by the Government. Since the indictment, on its face, does not purport to charge a deprivation of equal protection to voters or candidates, we are not called upon to construe the indictment in order to raise a question of statutory validity or construction which we are alone authorized to review upon this appeal.

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Reversed.

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The CHIEF JUSTICE took no part in the consideration or decision of this case.

DOUGLAS, J., dissenting

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MR. JUSTICE DOUGLAS, dissenting.

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Free and honest elections are the very foundation of our republican form of government. Hence, any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. As stated by Mr. Justice Miller in Ex parte Yarbrough, 110 U.S. 651, 666, "the temptations to control these elections by violence and corruption" have been a constant source of danger in the history of all republics. The acts here charged, if proven, are of a kind which carries that threat, and are highly offensive. Since they corrupt the process of Congressional elections, they transcend mere local concern and extend a contaminating influence into the national domain.

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I think Congress has ample power to deal with them. That is to say, I disagree with Newberry v. United States, 256 U.S. 232, to the extent that it holds that Congress [313 U.S. 330] has no power to control primary elections. Art. I, § 2 of the Constitution provides that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States." Art. I, § 4 provides that

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The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

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And Art. I, § 8, clause 18 gives Congress the power

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To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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Those sections are an arsenal of power ample to protect Congressional elections from any and all forms of pollution. The fact that a particular form of pollution has only an indirect effect on the final election is immaterial. The fact that it occurs in a primary election or nominating convention is likewise irrelevant. The important consideration is that the Constitution should be interpreted broadly, so as to give to the representatives of a free people abundant power to deal with all the exigencies of the electoral process. It means that the Constitution should be read so as to give Congress an expansive implied power to place beyond the pale acts which, in their direct or indirect effect, impair the integrity of Congressional elections. For when corruption enters, the election is no longer free, the choice of the people is affected. To hold that Congress is powerless to control these primaries would indeed be a narrow construction of the Constitution, inconsistent with the view that that instrument of government was designed not only for contemporary needs, but for the vicissitudes of time.

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So I agree with most of the views expressed in the opinion of the Court. And it is with diffidence that I dissent from the result there reached. [313 U.S. 331]

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The disagreement centers on the meaning of § 19 of the Criminal Code, which protects every right secured by the Constitution. The right to vote at a final Congressional election and the right to have one's vote counted in such an election have been held to be protected by § 19. Ex parte Yarbrough, supra; United States v. Mosley, 238 U.S. 383. Yet I do not think that the principles of those cases should be, or properly can be, extended to primary elections. To sustain this indictment, we must so extend them. But when we do, we enter perilous territory.

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We enter perilous territory because, as stated in United States v. Gradwell, 243 U.S. 476, 485, there is no common law offense against the United States;

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the legislative authority of the Union must make an act a crime, affix a punishment to it, and declare the Court that shall have jurisdiction of the offence.

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United States v. Hudson, 7 Cranch. 32, 34. If a person is to be convicted of a crime, the offense must be clearly and plainly embraced within the statute. As stated by Chief Justice Marshall in United States v. Wiltberger, 5 Wheat. 76, 105, "probability is not a guide which a court, in construing a penal statute, can safely take." It is one thing to allow wide and generous scope to the express and implied powers of Congress; it is distinctly another to read into the vague and general language of an act of Congress specifications of crimes. We should ever be mindful that, "before a man can be punished, his case must be plainly and unmistakably within the statute." United States v. Lacher, 134 U.S. 624, 628. That admonition is reemphasized here by the fact that § 19 imposes not only a fine of $5,000 and ten years in prison, but also makes him who is convicted "ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States." It is not enough for us to find in the vague penumbra of a statute some offense about which Congress could have legislated, and then to particularize it as a crime because it is highly [313 U.S. 332] offensive. Cf. James v. Bowman, 190 U.S. 127. Civil liberties are too dear to permit conviction for crimes which are only implied, and which can be spelled out only by adding inference to inference.

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Sec. 19 does not purport to be an exercise by Congress of its power to regulate primaries. It merely penalizes conspiracies

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to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.

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Thus, it does no more than refer us to the Constitution 1 for the purpose of determining whether or not the right to vote in a primary is there secured. Hence, we must do more than find in the Constitution the power of Congress to afford that protection. We must find that protection on the face of the Constitution itself. That is to say, we must in view of the wording of § 19 read the relevant provisions of the Constitution for the purposes of this case through the window of a criminal statute.

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There can be put to one side cases where state election officials deprive negro citizens of their right to vote at a general election (Guinn v. United States, 238 U.S. 347), or at a primary. Nixon v. Herndon, 273 U.S. 536; Nixon v. Condon, 286 U.S. 73. Discrimination on the basis of race or color is plainly outlawed by the Fourteenth Amendment. Since the constitutional mandate is plain, there is no reason why § 19 or § 20 should not be applicable. But the situation here is quite different. When we turn to the constitutional provisions relevant to this case, we find no such unambiguous mandate.

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Art. I, § 4 specifies the machinery whereby the times, places and manner of holding elections shall be established and controlled. Art I, § 2 provides that representatives shall be "chosen" by the people. But, for purposes of the [313 U.S. 333] criminal law, as contrasted to the interpretation of the Constitution as the source of the implied power of Congress, I do not think that those provisions, in absence of specific legislation by Congress, protect the primary election or the nominating convention. While they protect the right to vote, and the right to have one's vote counted, at the final election, as held in the Yarbrough and Mosley cases, they certainly do not per se extend to all acts which in their indirect or incidental effect restrain, restrict, or interfere with that choice. Bribery of voters at a general election certainly is an interference with that freedom of choice. It is a corruptive influence which, for its impact on the election process, is as intimate and direct as the acts charged in this indictment. And Congress has ample power to deal with it. But this Court in United States v. Bathgate, 246 U.S. 220, by a unanimous vote, held that conspiracies to bribe voters at a general election were not covered by § 19. While the conclusion in that case may be reconciled with the results in the Yarbrough and Mosley cases on the ground that the right to vote at a general election is personal, while the bribery of voters only indirectly affects that personal right, that distinction is not of aid here. For the failure to count votes cast at a primary has, by the same token, only an indirect effect on the voting at the general election. In terms of causal effect, tampering with the primary vote may be as important on the outcome of the general election as bribery of voters at the general election itself. Certainly, from the viewpoint of the individual voter, there is as much a dilution of his vote in the one case as in the other. So, in light of the Mosley and Bathgate cases, the test under § 19 is not whether the acts in question constitute an interference with the effective choice of the voters. It is whether the voters are deprived of their votes in the general election. Such a test comports with the standards for construction of a criminal law, since it restricts § 19 to protection of [313 U.S. 334] the rights plainly and directly guaranteed by the Constitution. Any other test entails an inquiry into the indirect or incidental effect on the general election of the acts done. But, in view of the generality of the words employed, such a test would be incompatible with the criteria appropriate for a criminal case.

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The Mosley case, in my view, went to the verge when it held that § 19 and the relevant constitutional provisions made it a crime to fail to count votes cast at a general election. That Congress intended § 19 to have that effect was none too clear. The dissenting opinion of Mr. Justice Lamar in that case points out that § 19 was originally part of the Enforcement Act of May 31, 1870, c. 114, § 6, 16 Stat. 140. Under another section of that act (§ 4), which was repealed by the Act of February 8, 1894 (28 Stat. 36), the crime charged in the Mosley case would have been punishable by a fine of not less than $500 and imprisonment for 12 months. 2 Under § 19, it carried, as it still does, a penalty of $5000 and ten years in prison. The Committee Report (H.Rep. No. 18, 53d Cong., 1st Sess.), which recommended the repeal of other sections, clearly indicated an intent to remove the hand of the Federal Government from such elections and to restore their conduct and policing to the states. [313 U.S. 335] As the Report stated (p. 7):

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Let every trace of the reconstruction measures be wiped from the statute books; let the States of this great Union understand that the elections are in their own hands, and if there be fraud, coercion, or force used, they will be the first to feel it. Responding to a universal sentiment throughout the country for greater purity in elections, many of our States have enacted laws to protect the voter and to purify the ballot. These, under the guidance of State officers, have worked efficiently, satisfactorily, and beneficently, and if these Federal statutes are repealed, that sentiment will receive an impetus which, if the cause still exists, will carry such enactments in every State in the Union.

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In view of this broad, comprehensive program of repeal, it is not easy to conclude that the general language of § 19, which was not repealed, not only continued in effect much which had been repealed, but also upped the penalties for certain offenses which had been explicitly covered by one of the repealed sections. Mr. Justice Holmes, writing for the majority in the Mosley case, found in the legislative and historical setting of § 19 and in its revised form a Congressional interpretation which, if § 19 were taken at its face value, was thought to afford voters in final Congressional elections general protection. And that view is a tenable one, since § 19 originally was part of an Act regulating general elections, and since the acts charged had a direct, rather than an indirect, effect on the right to vote at a general election.

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But, as stated by a unanimous court in United States v. Gradwell, supra, p. 486, the Mosley case "falls far short" of making § 19 "applicable to the conduct of a state nominating primary." Indeed, Mr. Justice Holmes, the author of the Mosley opinion, joined with Mr. Justice McReynolds in the Newberry case in his view that Congress had no authority under Art. I, § 4 of the Constitution to legislate on primaries. When § 19 [313 U.S. 336] was part of the Act of May 31, 1870, it certainly would never have been contended that it embraced primaries, for they were hardly known at that time. 3 It is true that "even a criminal statute embraces everything which subsequently falls within its scope." Browder v. United States, 312 U.S. 335, 340. Yet the attempt to bring under § 19 offenses "committed in the conduct of primary elections or nominating caucuses or conventions" was rejected in the Gradwell case, where this Court said that, in absence of legislation by Congress on the subject of primaries, it is not for the courts

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to attempt to supply it by stretching old statutes to new uses to which they are not adapted and for which they were not intended…. [T]he section of the Criminal Code relied upon, originally enacted for the protection of the civil rights of the then lately enfranchised negro, cannot be extended so as to make it an agency for enforcing a state primary law.

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243 U.S. pp. 488-489. The fact that primaries were hardly known when § 19 was enacted, the fact that it was part of a legislative program governing general elections, not primary elections, the fact that it has been in nowise implemented by legislation directed at primaries, give credence to the unanimous view in the Gradwell case that § 19 has not, by the mere passage of time, taken on a new and broadened meaning. At least it seems plain that the difficulties of applying the historical reason adduced by Mr. Justice Holmes in the Mosley case to bring general elections within § 19 are so great in case of primaries that we have left the safety zone of interpretation of criminal statutes when we sustain this indictment. It is one thing to say, as in the Mosley case, that Congress was legislating as respects general elections when it passed § 19. That was the fact. It is quite [313 U.S. 337] another thing to say that Congress, by leaving § 19 unmolested for some seventy years, has legislated unwittingly on primaries. Sec. 19 was never part of an act of Congress directed towards primaries. That was not its original frame of reference. Therefore, unlike the Mosley case, it cannot be said here that § 19 still covers primaries because it was once an integral part of primary legislation.

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Furthermore, the fact that Congress has legislated only sparingly and at infrequent intervals even on the subject of general elections (United States v. Gradwell, supra) should make us hesitate to conclude that, by mere inaction, Congress has taken the greater step, entered the field of primaries, and gone further than any announced legislative program has indicated. The acts here charged constitute crimes under the Louisiana statute. La.Act No. 46, Reg.Sess. 1940, § 89. In absence of specific Congressional action, we should assume that Congress has left the control of primaries and nominating conventions to the states—an assumption plainly in line with the Committee Report, quoted above, recommending the repeal of portions of the Enforcement Act of May 31, 1870, so as to place the details of elections in state hands. There is no ground for inference in subsequent legislative history that Congress has departed from that policy by superimposing its own primary penal law on the primary penal laws of the states. Rather, Congress has been fairly consistent in recognizing state autonomy in the field of elections. To be sure, it has occasionally legislated on primaries. 4 But even when dealing specifically with the nominating process, it has never made acts of the kind here in question a crime. In this connection, it should be noted that the bill which became the Hatch Act (53 Stat. 1147; 18 U.S.C. § 61) [313 U.S. 338] contained a section which made it unlawful

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for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the nomination of any party as its candidate

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for various federal offices, including representatives, "at any primary or nominating convention held solely or in part" for that purpose. This was stricken in the Senate. 84 Cong.Rec. pt. 4, 76th Cong., 1st Sess., p. 4191. That section would have extended the same protection to the primary and nominating convention as § 1 of the Hatch Act 5 extends to the general election. The Senate, however, refused to do so. Yet this Court now holds that § 19 has protected the primary vote all along, and that it covers conspiracies to do the precise thing on which Congress refused to legislate in 1939. The hesitation on the part of Congress through the years to enter the primary field, its refusal to do so 6 in 1939, and the restricted scope of such primary laws as it has passed, should be ample evidence [313 U.S. 339] that this Court is legislating when it takes the initiative in extending § 19 to primaries.

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We should adhere to the strict construction given to § 19 by a unanimous court in United States v. Bathgate, 246 U.S. 220, 226, where it was said:

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Section 19, Criminal Code, of course, now has the same meaning as when first enacted…, and, considering the policy of Congress not to interfere with elections within a State except by clear and specific provisions, together with the rule respecting construction of criminal statutes, we cannot think it was intended to apply to conspiracies to bribe voters.

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That leads to the conclusion that § 19 and the relevant constitutional provisions should be read so as to exclude all acts which do not have the direct effect of depriving voters of their right to vote at general elections. That view has received tacit recognition by Congress. For the history of legislation governing Federal elections shows that the occasional Acts of Congress 7 on the subject have been primarily directed towards supplying detailed regulations designed to protect the individual's constitutional right to vote against pollution and corruption. Those laws, the latest of which is § 1 of the Hatch Act, are ample recognition by Congress itself that specific legislation is necessary in order to protect the electoral process against the wide variety of acts which, in their indirect or incidental effect, interfere with the voter's freedom of choice and corrupt the electoral process. They are evidence that detailed regulations are essential in order to reach acts which do not directly interfere with the voting privilege. They are inconsistent with the notions in the opinion of the [313 U.S. 340] Court that the Constitution, unaided by definite supplementary legislation, protects the methods by which party candidates are nominated.

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That § 19 lacks the requisite specificity necessary for inclusion of acts which interfere with the nomination of party candidates is reemphasized by the test here employed. The opinion of the Court stresses, as does the indictment, that the winner of the Democratic primary in Louisiana invariably carries the general election. It is also emphasized that a candidate defeated in the Louisiana primaries cannot be a candidate at the general election. Hence, it is argued that interference with the right to vote in such a primary is,

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as a matter of law and in fact, an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance,

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and that the "primary in Louisiana is an integral part of the procedure for the popular choice" of representatives. By that means, the Gradwell case is apparently distinguished. But I do not think it is a valid distinction for the purposes of this case.

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One of the indictments in the Gradwell case charged that the defendants conspired to procure one thousand unqualified persons to vote in a West Virginia primary for the nomination of a United States Senator. This Court, by a unanimous vote, affirmed the judgment which sustained a demurrer to that indictment. The Court specifically reserved the question as to whether a "primary should be treated as an election within the meaning of the Constitution." But it went on to say that, even assuming it were, certain "strikingly unusual features" of the particular primary precluded such a holding in that case. It noted that candidates of certain parties were excluded from the primary, and that even candidates who were defeated at the primary could, on certain conditions, be nominated for the general election. It therefore concluded that whatever power Congress might have to control such primaries, it had not done so by § 19. [313 U.S. 341]

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If the Gradwell case is to survive, as I think it should, we have therefore this rather curious situation. Primaries in states where the winner invariably carries the general election are protected by § 19 and the Constitution, even though such primaries are not, by law, an integral part of the election process. Primaries in states where the successful candidate never wins, seldom wins, or may not win in the general election are not so protected, unless perchance state law makes such primaries an integral part of the election process. Congress, having a broad control over primaries, might conceivably draw such distinctions in a penal code. But for us to draw them under § 19 is quite another matter. For we must go outside the statute, examine local law and local customs, and then, on the basis of the legal or practical importance of a particular primary, interpret the vague language of § 19 in the light of the significance of the acts done. The result is to make refined and nice distinctions which Congress certainly has not made, to create unevenness in the application of § 19 among the various states, and to make the existence of a crime depend not on the plain meaning of words employed interpreted in light of the legislative history of the statute, but on the result of research into local law or local practices. Unless Congress has explicitly made a crime dependent on such facts, we should not undertake to do so. Such procedure does not comport with the strict standards essential for the interpretation of a criminal law. The necessity of resorting to such a circuitous route is sufficient evidence to me that we are performing a legislative function in finding here a definition of a crime which will sustain this indictment. A crime, no matter how offensive, should not be spelled out from such vague inferences.

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MR. JUSTICE BLACK and MR. JUSTICE MURPHY join in this dissent.

Footnotes

STONE, J., lead opinion (Footnotes)

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1. The ballots are printed at public expense, § 35 of Act No. 46, Regular Session, 1940, are furnished by the Secretary of State, § 36 in a form prescribed by statute, § 37. Close supervision of the delivery of the ballots to the election commissioners is prescribed, §§ 446. The polling places are required to be equipped to secure secrecy, §§ 48 50; §§ 54-57. The selection of election commissioners is prescribed, § 61, and their duties detailed. The commissioners must swear to conduct the election impartially, § 64, and are subject to punishment for deliberately falsifying the returns or destroying the lists and ballots, §§ 98, 99. They must identify by certificate the ballot boxes used, § 67, keep a triplicate list of voters, § 68, publicly canvass the return, § 74, and certify the same to the Secretary of State, § 75.

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2. For a discussion of the practical effect of the primary in controlling or restricting election of candidates at general elections, see Hasbrouck, Party Government in the House of Representatives (1927) 172, 176 177; Merriam and Overacker, Primary Elections (1928) 267-269; Stoney, Suffrage in the South; 29 Survey Graphic, 163, 164.

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3. Congress has recognized the effect of primaries on the free exercise of the right to choose the representatives, for it has inquired into frauds at primaries, as well as at the general elections, in judging the "Elections Returns and Qualifications of its Own Members," Art. I, § 5. See Grace v. Whaley, H.Rept. No. 158, 63d Cong., 2d Sess.; Peddy v. Mayfield, S.Rept. No. 973, 68th Cong., 2d Sess.; Wilson v. Vare, S.Rept. No. 1858, 70th Cong., 2d Sess., S.Rept. No. 47, 71st Cong., 2d Sess., and S.Res. 111, 71st Cong., 2d Sess.

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See also Investigation of Campaign Expenditures in the 1940 Campaign, S.Rept. No. 47, 77th Cong., 1st Sess., p. 48 et seq.

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4. Section 19 of the Criminal Code (U.S.C. Title 18, § 51):

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If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

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(R.S. § 5508; Mar. 4, 1909, c. 321, § 19, 35 Stat. 1092.)

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5. In United States v. Mosley, 238 U.S. 383, 386, the Court thought that "Manifestly the words are broad enough to cover the case," it canvassed at length the objections that § 19 was never intended to apply to crimes against the franchise, and the other contention, which it also rejected, that § 19 had been repealed or so restricted as not to apply to offenses of that class. It is unnecessary to repeat that discussion here.

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6. Section 1 now reads, 8 U.S.C. § 43:

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Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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7. See e.g., Guinn v. United States, 238 U.S. 347; United States v. O'Toole, 236 F. 993, aff'd, United States v. Gradwell, 243 U.S. 476; Aczel v. United States, 232 F. 652; Felix v. United States, 186 F. 685; Karem v. United States, 121 F. 250; Walker v. United States, 93 F.2d 383; Luteran v. United States, 93 F.2d 395.

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8. No conclusion is to be drawn from the failure of the Hatch Act, 53 Stat. 1147, 18 U.S.C. § 61, to enlarge § 19 by provisions specifically applicable to primaries. Its failure to deal with the subject seems to be attributable to constitutional doubts, stimulated by Newberry v. United States, 256 U.S. 232, which are here resolved. See 84 Cong.Rec. 76th Cong., 1st Sess., p. 4191; cf. Investigation of Campaign Expenditures in the 1940 Campaign, S.Rept. No. 47, 77th Cong., 1st Sess., p. 48.

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9. Section 20 of the Criminal Code (U.S.C. Title 18 § 52):

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Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

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(R.S. § 5510; Mar. 4, 1909, c. 321, § 20, 35 Stat. 1092.)

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10. The precursor of § 20 was § 2 of the Civil Rights Act of April 9, 1866, 14 Stat. 27, which reads:

1941, United States v. Classic, 313 U.S. 341

That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction shall be punished by fine….

1941, United States v. Classic, 313 U.S. 341

This section, so far as now material, was in substance the same as § 20 except that the qualifying reference to differences in punishment made no mention of alienage, the reference being to "different punishment…on account of such person having at any time been held in a condition of slavery or involuntary servitude."

1941, United States v. Classic, 313 U.S. 341

Senator Trumbull, the putative author of S. 61, 39th Cong., 1st Sess., the Civil Rights Bill of 1866, and Chairman of the Senate Judiciary Committee, which reported the bill, in explaining it, stated that the bill was "to protect all persons in the United States in their civil rights, and furnish the means of their vindication…. " Cong.Globe, 39th Cong., 1st Sess., p. 211. He also declared, "The bill applies to white men, as well as black men." Cong.Globe, 39th Cong., 1st Sess., p. 599. Opponents of the bill agreed with this construction of the first clause of the section, declaring that it referred to the deprivation of constitutional rights of all inhabitants of the states of every race and color. Pp. 598, 601.

1941, United States v. Classic, 313 U.S. 341

On February 24, 1870, Senator Stewart of Nevada, introduced S. 365, 41st Cong., 2d Sess., § 2 of which read:

1941, United States v. Classic, 313 U.S. 341

That any person who, under color of any law, statute, ordinance, regulation, or custom shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor….

1941, United States v. Classic, 313 U.S. 341

In explaining the bill he declared, Cong.Globe, 41st Cong., 2d Sess., p. 1536, that the purpose of the bill was to extend its benefits to aliens, saying,

1941, United States v. Classic, 313 U.S. 341

It extends the operation of the Civil Rights Bill, which is well known in the Senate and to the country, to all persons within the jurisdiction of the United States.

1941, United States v. Classic, 313 U.S. 341

The Committee reported out a substitute bill to H.R. 1293, to which S. 365 was added as an amendment. As so amended, the bill, when adopted, became the present § 20 of the Criminal Code, which read exactly as did § 2 of the Civil Rights Act, except that the word "aliens" was added and the word "citizens" was substituted for the phrase "white persons."

1941, United States v. Classic, 313 U.S. 341

While the legislative history indicates that the immediate occasion for the adoption of § 20, like the Fourteenth Amendment itself, was the more adequate protection of the colored race and their civil rights, it shows that neither was restricted to the purpose, and that the first clause of § 20 was intended to protect the constitutional rights of all inhabitants of the states. H.R. 1293, 41st Cong., 2d Sess., which was later amended in the Senate to include § 2 of S. 365 as § 17 of the bill as it passed, now § 20 of the Criminal Code, was originally entitled

1941, United States v. Classic, 313 U.S. 341

A bill to enforce the right of citizens of the United States to vote in the several States of this Union, who have hitherto been denied that right on account of race, color, or previous condition of servitude.

1941, United States v. Classic, 313 U.S. 341

When the bill came to the Senate, its title was amended and adopted to read, "A bill to enforce the right of citizens of the United States to vote in the several State of this Union and for other purposes."

DOUGLAS, J., dissenting (Footnotes)

1941, United States v. Classic, 313 U.S. 341

1. While § 19 also refers to "laws of the United States," § 19 and § 20 are the only statutes directly in point.

1941, United States v. Classic, 313 U.S. 341

2. Sec. 5506, Rev.Stat.:

1941, United States v. Classic, 313 U.S. 341

Every person who, by any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting at any election…shall be fined not less than five hundred dollars, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment.

1941, United States v. Classic, 313 U.S. 341

Sec. 5511 provided:

1941, United States v. Classic, 313 U.S. 341

If, at any election for Representative or Delegate in Congress, any person…knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote…, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both….

1941, United States v. Classic, 313 U.S. 341

3. Merriam & Overacker, Primary Elections (1928) chs. I-III, V; Sait, American Parties & Elections (1927) ch. X; Brooks, Political Parties & Electoral Problems (1933) ch. X.

1941, United States v. Classic, 313 U.S. 341

4. Act of June 25, 1910, c. 392, 36 Stat. 822, as amended by the Act of August 19, 1911, c. 33, 37 Stat. 25; Act of October 16, 1918, C. 187, 41 Stat. 1013.

1941, United States v. Classic, 313 U.S. 341

5.

1941, United States v. Classic, 313 U.S. 341

That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

1941, United States v. Classic, 313 U.S. 341

6. Sec. 2 of the Hatch Act, however, does make unlawful certain acts of administrative employees even in connection with the nominations for certain federal offices. And see 54 Stat. 767, No. 753, ch. 640, 76th Cong., 3d Sess. As to the power of Congress over employees or officers of the government, see United States v. Wurzbach, 280 U.S. 396.

1941, United States v. Classic, 313 U.S. 341

7. See for example, Act of May 31, 1870, 16 Stat. 140; Act of July 14, 1870, 16 Stat. 254, 255-256; Act of Feb. 28, 1871, 16 Stat. 433; Act of June 25, 1910, 36 Stat. 822; Act of August 19, 1911, 37 Stat. 25; Act of August 23, 1912, 37 Stat. 360; Act of October 16, 1918, 40 Stat. 1013; Federal Corrupt Practice Act, 1925, 43 Stat. 1070; Hatch Act, August 2, 1939, 53 Stat. 1147.

Edwards v. California, 1941

Title: Edwards v. California

Author: U.S. Supreme Court

Date: November 24, 1941

Source: 314 U.S. 160

This case was argued April 28 and 29, 1941, and was reargued October 21, 1941. The case was decided November 24, 1941.

1941, Edwards v. California, 314 U.S. 160

APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA

1941, Edwards v. California, 314 U.S. 160

IN AND FOR THE COUNTY OF YUBA

Syllabus

1941, Edwards v. California, 314 U.S. 160

1. Transportation of persons from one State into another is interstate commerce. P. 172.

1941, Edwards v. California, 314 U.S. 160

2. A statute of California making it a misdemeanor for anyone knowingly to bring or assist in bringing into the State a nonresident "indigent person" held invalid as an unconstitutional burden on interstate commerce. P. 174.

1941, Edwards v. California, 314 U.S. 160

For the purposes of this case, it is assumed that the term "indigent person," though not confined to the physically or mentally incapacitated, includes only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. P. 172.

1941, Edwards v. California, 314 U.S. 160

How far the regulatory power of Congress extends over such transportation, and whether the attempted state regulation is also prohibited by other provisions of the Constitution, are questions not decided in this case and upon which the majority of the Court expresses no opinion. Pp. 176, 177. [314 U.S. 161]

1941, Edwards v. California, 314 U.S. 161

3. Remarks in New York v. Miln, 11 Pet. 102, and other cases concerning the power of a State to exclude "paupers" and considered, and the meaning of that term discussed. P. 176.

1941, Edwards v. California, 314 U.S. 161

Reversed.

1941, Edwards v. California, 314 U.S. 161

APPEAL from a judgment of the Superior Court of California, which affirmed the conviction of Edwards under a California statute declaring it to be a misdemeanor for any person to bring, or assist in bringing, into the State any nonresident of the State, knowing him to be an indigent person. The court below was the highest court to which an appeal could be taken under the laws of California. The case was argued here, and reargument was ordered, at the 1940 Term, 313 U.S. 545. [314 U.S. 170]

BYRNES, J., lead opinion

1941, Edwards v. California, 314 U.S. 170

MR. JUSTICE BYRNES delivered the opinion of the Court.

1941, Edwards v. California, 314 U.S. 170

The facts of this case are simple, and are not disputed. Appellant is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas. [314 U.S. 171] When he arrived in Texas, appellant learned that Duncan had last been employed by the Works Progress Administration. Appellant thus became aware of the fact that Duncan was an indigent person, and he continued to be aware of it throughout the period involved in this case. The two men agreed that appellant should transport Duncan from Texas to Marysville in appellant's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with appellant for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten-day interval, he had no employment.

1941, Edwards v. California, 314 U.S. 171

In Justice Court a complaint was filed against appellant under § 2615 of the Welfare and Institutions Code of California, which provides:

1941, Edwards v. California, 314 U.S. 171

Every person, firm or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor.

1941, Edwards v. California, 314 U.S. 171

On demurrer to the complaint, appellant urged that the Section violated several provisions of the Federal Constitution. The demurrer was overruled, the cause was tried, appellant was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

1941, Edwards v. California, 314 U.S. 171

On appeal to the Superior Court of Yuba County, the facts as stated above were stipulated. The Superior Court, although regarding as "close" the question of the validity of the Section, felt "constrained to uphold the statute as a valid exercise of the police power of the State of California." Consequently, the conviction was affirmed. No appeal to a higher state court was open to appellant. We noted probable jurisdiction early last [314 U.S. 172] term, and later ordered reargument (313 U.S. 545), which has been held.

1941, Edwards v. California, 314 U.S. 172

At the threshold of our inquiry, a question arises with respect to the interpretation of § 2615. On reargument, the Attorney General of California has submitted an exposition of the history of the Section, which reveals that statutes similar, though not identical, to it have been in effect in California since 1860. (See Cal.Stat. (1860) 213; Cal.Stat. (1901) 636; Cal.Stat. (1933) 2005). Neither under these forerunners nor under § 2615 itself does the term "indigent person" seem to have been accorded an authoritative interpretation by the California courts. The appellee claims for the Section a very limited scope. It urges that the term "indigent person" must be taken to include only persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them. It is conceded, however, that the term is not confined to those who are physically or mentally incapacitated. While the generality of the language of the Section contains no hint of these limitations, we are content to assign to the term this narrow meaning.

1941, Edwards v. California, 314 U.S. 172

Article I, 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce" within the meaning of that provision. 1 It is nevertheless true, that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate [314 U.S. 173] commerce. California v. Thompson, 313 U.S. 10, 113. The issue presented in this case, therefore, is whether the prohibition embodied in § 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

1941, Edwards v. California, 314 U.S. 173

The grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. Both the brief of the Attorney General of California and that of the Chairman of the Select Committee of the House of Representatives of the United States, as amicus curiae, have sharpened this appreciation. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. See Olsen v. Nebraska, 313 U.S. 236, 246.

1941, Edwards v. California, 314 U.S. 173

But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo:

1941, Edwards v. California, 314 U.S. 173

The Constitution was [314 U.S. 174] framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that, in the long run, prosperity and salvation are in union, and not division.

1941, Edwards v. California, 314 U.S. 174

Baldwin v. Seelig, 294 U.S. 511, 523.

1941, Edwards v. California, 314 U.S. 174

It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent nonresidents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177, 185, n. 2. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

1941, Edwards v. California, 314 U.S. 174

It is urged, however, that the concept which underlies § 2615 enjoys a firm basis in English and American history. 2 This is the notion that each community should care for its own indigent, that relief is solely the responsibility of local government. Of this it must first be said that we are not now called upon to determine anything other than the propriety of an attempt by a State to prohibit the transportation of indigent nonresidents into its territory. The nature and extent of its obligation to afford relief to newcomers is not here involved. We do, however, suggest that the theory of the Elizabethan poor laws no longer fits the facts. Recent years, and particularly the past decade, have been marked by a growing recognition that, in an industrial society, the task of providing [314 U.S. 175] assistance to the needy has ceased to be local in character. The duty to share the burden, if not wholly to assume it, has been recognized not only by State governments, but by the Federal government, as well. The changed attitude is reflected in the Social Security laws under which the Federal and State governments cooperate for the care of the aged, the blind and dependent children. U.S.C. Title 42, §§ 301-1307, esp. §§ 301, 501, 601, 701, 721, 801, 1201. It is reflected in the works programs under which work is furnished the unemployed, with the States supplying approximately 25% and the Federal government approximately 75% of the cost. See, e.g., Joint Resolution of June 26, 1940, c. 432, § 1(d), 54 Stat. 611, 613. It is further reflected in the Farm Security laws, under which the entire cost of the relief provisions is borne by the Federal government. Id. at §§ 2(a), 2(b), 2(d).

1941, Edwards v. California, 314 U.S. 175

Indeed, the record in this very case illustrates the inadequate basis in fact for the theory that relief is presently a local matter. Before leaving Texas, Duncan had received assistance from the Works Progress Administration. After arriving in California, he was aided by the Farm Security Administration, which, as we have said, is wholly financed by the Federal government. This is not to say that our judgment would be different if Duncan had received relief from local agencies in Texas and California. Nor is it to suggest that the financial burden of assistance to indigent persons does not continue to fall heavily upon local and State governments. It is only to illustrate that, in not inconsiderable measure, the relief of the needy has become the common responsibility and concern of the whole nation.

1941, Edwards v. California, 314 U.S. 175

What has been said with respect to financing relief is not without its bearing upon the regulation of the transportation of indigent persons. For the social phenomenon of large-scale interstate migration is as certainly a matter of national concern as the provision of assistance to those who have found a permanent or temporary abode. [314 U.S. 176] Moreover, and unlike the relief problem, this phenomenon does not admit of diverse treatment by the several States. The prohibition against transporting indigent nonresidents into one State is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative. Moreover, it would be a virtual impossibility for migrants and those who transport them to acquaint themselves with the peculiar rules of admission of many States.

1941, Edwards v. California, 314 U.S. 176

This Court has repeatedly declared that the grant [the commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority.

1941, Edwards v. California, 314 U.S. 176

Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346, 351. We are of the opinion that the transportation of indigent persons from State to State clearly falls within this class of subjects. The scope of Congressional power to deal with this problem we are not now called upon to decide.

1941, Edwards v. California, 314 U.S. 176

There remains to be noticed only the contention that the limitation upon State power to interfere with the interstate transportation of persons is subject to an exception in the case of "paupers." It is true that support for this contention may be found in early decisions of this Court. In City of New York v. Miln, 11 Pet. 102, at 143, it was said that it is

1941, Edwards v. California, 314 U.S. 176

as competent and as necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported,…

1941, Edwards v. California, 314 U.S. 176

This language has been casually repeated in numerous later cases up to the turn of the century. See, e.g., Passenger Cases, 7 How. 283, 426 and 466-467; Railway Company v. Husen, 95 U.S. 465, 471; Plumley v. Massachusetts, 155 U.S. 461, 478; Missouri, K. & T. Ry. [314 U.S. 177] Co. v. Haber, 169 U.S. 613, 629. In none of these cases, however, was the power of a State to exclude "paupers" actually involved.

1941, Edwards v. California, 314 U.S. 177

Whether an able-bodied but unemployed person like Duncan is a "pauper" within the historical meaning of the term is open to considerable doubt. See 53 Harvard L.Rev. 1031, 1032. But assuming that the term is applicable to him and to persons similarly situated, we do not consider ourselves bound by the language referred to. City of New York v. Miln was decided in 1837. Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that, because a person is without employment and without funds, he constitutes a "moral pestilence." Poverty and immorality are not synonymous.

1941, Edwards v. California, 314 U.S. 177

We are of the opinion that § 2615 is not a valid exercise of the police power of California, that it imposes an unconstitutional burden upon interstate commerce, and that the conviction under it cannot be sustained. In the view we have taken, it is unnecessary to decide whether the Section is repugnant to other provisions of the Constitution.

1941, Edwards v. California, 314 U.S. 177

Reversed.

DOUGLAS, J., concurring

1941, Edwards v. California, 314 U.S. 177

MR. JUSTICE DOUGLAS, concurring:

1941, Edwards v. California, 314 U.S. 177

I express no view on whether or not the statute here in question runs afoul of Art. I, § 8 of the Constitution granting to Congress the power "to regulate Commerce with foreign Nations, and among the several States." But I am of the opinion that the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines. While the opinion of the Court expresses no view on that issue, the right involved is so fundamental that I deem it appropriate to indicate the reach of the constitutional question which is present. [314 U.S. 178]

1941, Edwards v. California, 314 U.S. 178

The right to move freely from State to State is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Mr. Justice Moody, in Twining v. New Jersey, 211 U.S. 78, 97, stated,

1941, Edwards v. California, 314 U.S. 178

Privileges and immunities of citizens of the United States…are only such as arise out of the nature and essential character of the National Government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States.

1941, Edwards v. California, 314 U.S. 178

And he went on to state that one of those rights of national citizenship was "the right to pass freely from State to State." Id., p. 97. Now it is apparent that this right is not specifically granted by the Constitution. Yet, before the Fourteenth Amendment, it was recognized as a right fundamental to the national character of our Federal government. It was so decided in 1867 by Crandall v. Nevada, 6 Wall. 35. In that case, this Court struck down a Nevada tax "upon every person leaving the State" by common carrier. Mr. Justice Miller, writing for the Court, held that the right to move freely throughout the nation was a right of national citizenship. That the right was implied did not make it any the less "guaranteed" by the Constitution. Id., p. 47. To be sure, he emphasized that the Nevada statute would obstruct the right of a citizen to travel to the seat of his national government or its offices throughout the country. And see United States v. Wheeler, 254 U.S. 281, 299. But there is not a shred of evidence in the record of the Crandall case that the persons there involved were en route on any such mission any more than it appears in this case that Duncan entered California to interview some federal agency. The point which Mr. Justice Miller made was merely in illustration of the damage and havoc which would ensue if the States had the power to prevent the free movement of citizens from one State to another. [314 U.S. 179] This is emphasized by his quotation from Chief Justice Taney's dissenting opinion in the Passenger Cases, 7 How. 283, 492:

1941, Edwards v. California, 314 U.S. 179

We are all citizens of the United States, and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

1941, Edwards v. California, 314 U.S. 179

Hence, the dictum in United States v. Wheeler, supra, p. 299, which attempts to limit the Crandall case to a holding that the statute in question directly burdened "the performance by the United States of its governmental functions" and limited the "rights of the citizens growing out of such functions," does not bear analysis.

1941, Edwards v. California, 314 U.S. 179

So, when the Fourteenth Amendment was adopted in 1868, it had been squarely and authoritatively settled that the right to move freely from State to State was a right of national citizenship. As such, it was protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Slaughter House Cases, 16 Wall. 36, 74, 79. In the latter case, Mr. Justice Miller recognized that it was so "protected by implied guarantees" of the Constitution. Id., p. 79. That was also acknowledged in Twining v. New Jersey, supra. And Chief Justice Fuller, in Williams v. Fears, 179 U.S. 270, 274, stated:

1941, Edwards v. California, 314 U.S. 179

Undoubtedly, the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution.

1941, Edwards v. California, 314 U.S. 179

In the face of this history, I cannot accede to the suggestion (Helson & Randolph v. Kentucky, 279 U.S. 245, 251; Colgate v. Harvey, 296 U.S. 404, 444) that the commerce clause is the appropriate explanation of Crandall v. Nevada, supra. Two of the Justices in that case expressly [314 U.S. 180] put the decision on the commerce clause; the others put it on the broader ground of rights of national citizenship, Mr. Justice Miller stating that "we do not concede that the question before us is to be determined" by the commerce clause. Id., p. 43. On that broader ground, it should continue to rest.

1941, Edwards v. California, 314 U.S. 180

To be sure, there are expressions in the cases that this right of free movement of persons is an incident of state citizenship protected against discriminatory state action by Art. IV, § 2 of the Constitution. Corfield v. Coryell, 4 Wash. C.C. 371, 381; Paul v. Virginia, 8 Wall. 168, 180; Ward v. Maryland, 12 Wall. 418, 430; United States v. Wheeler, supra, pp. 298-299. Under the dicta of those cases, the statute in the instant case would not survive, since California is curtailing only the free movement of indigents who are nonresidents of that State. But the thrust of the Crandall case is deeper. Mr. Justice Miller adverted to Corfield v. Coryell, Paul v. Virginia, and Ward v. Maryland when he stated in the Slaughter House Cases that the right protected by the Crandall case was a right of national citizenship arising from the "implied guarantees" of the Constitution. 16 Wall. at pp. 75-79. But his failure to classify that right as one of state citizenship protected solely by Art. IV, § 2, underscores his view that the free movement of persons throughout this nation was a right of national citizenship. It likewise emphasizes that Art. IV, § 2, whatever its reach, is primarily concerned with the incidents of residence (the matter involved in United States v. Wheeler, supra) and the exercise of rights within a State, so that a citizen of one State is not in a "condition of alienage when he is within or when he removes to another State." Blake v. McClung, 172 U.S. 239, 256. Furthermore, Art. IV, § 2, cannot explain the Crandall decision. The statute in that case applied to citizens of Nevada as well as to citizens of [314 U.S. 181] other States. That is to say, Nevada was not "discriminating against citizens of other States in favor of its own." Hague v. Committee for Industrial Organization, 307 U.S. 496, 511, and cases cited. Thus, it is plain that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by state citizenship.

1941, Edwards v. California, 314 U.S. 181

The conclusion that the right of free movement is a right of national citizenship stands on firm historical ground. If a state tax on that movement, as in the Crandall case, is invalid, a fortiori a state statute which obstructs or in substance prevents that movement must fall. That result necessarily follows unless perchance a State can curtail the right of free movement of those who are poor or destitute. But to allow such an exception to be engrafted on the rights of national citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. It would permit those who were stigmatized by a State as indigents, paupers, or vagabonds to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of national citizenship, a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the Fourteenth Amendment.

1941, Edwards v. California, 314 U.S. 181

MR. JUSTICE BLACK and MR. JUSTICE MURPHY join in this opinion.

JACKSON, J., concurring

1941, Edwards v. California, 314 U.S. 181

MR. JUSTICE JACKSON, concurring:

1941, Edwards v. California, 314 U.S. 181

I concur in the result reached by the Court, and I agree that the grounds of its decision are permissible ones under [314 U.S. 182] applicable authorities. But the migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce. To hold that the measure of his rights is the commerce clause is likely to result eventually either in distorting the commercial law or in denaturing human rights. I turn, therefore, away from principles by which commerce is regulated to that clause of the Constitution by virtue of which Duncan is a citizen of the United States and which forbids any State to abridge his privileges or immunities as such.

1941, Edwards v. California, 314 U.S. 182

This clause was adopted to make United States citizenship the dominant and paramount allegiance among us. The return which the law had long associated with allegiance was protection. The power of citizenship as a shield against oppression was widely known from the example of Paul's Roman citizenship, which sent the centurion scurrying to his higher-ups with the message: "Take heed what thou doest: for this man is a Roman." I suppose none of us doubts that the hope of imparting to American citizenship some of this vitality was the purpose of declaring in the Fourteenth Amendment:

1941, Edwards v. California, 314 U.S. 182

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States….

1941, Edwards v. California, 314 U.S. 182

But the hope proclaimed in such generality soon shriveled in the process of judicial interpretation. For nearly three-quarters of a century, this Court rejected every plea to the privileges and immunities clause. The judicial history of this clause and the very real difficulties in the way of its practical application to specific cases have been too well and recently reviewed to warrant repetition.\* [314 U.S. 183]

1941, Edwards v. California, 314 U.S. 183

While instances of valid "privileges or immunities" must be but few, I am convinced that this is one. I do not ignore or belittle the difficulties of what has been characterized by this Court as an "almost forgotten" clause. But the difficulty of the task does not excuse us from giving these general and abstract words whatever of specific content and concreteness they will bear as we mark out their application, case by case. That is the method of the common law, and it has been the method of this Court with other no less general statements in our fundamental law. This Court has not been timorous about giving concrete meaning to such obscure and vagrant phrases as "due process," "general welfare," "equal protection," or even "commerce among the several States." But it has always hesitated to give any real meaning to the privileges and immunities clause, lest it improvidently give too much.

1941, Edwards v. California, 314 U.S. 183

This Court should, however, hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing.

1941, Edwards v. California, 314 U.S. 183

The language of the Fourteenth Amendment declaring two kinds of citizenship is discriminating. It is:

1941, Edwards v. California, 314 U.S. 183

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

1941, Edwards v. California, 314 U.S. 183

While it thus establishes national citizenship from the mere circumstance of birth within the territory and jurisdiction of the United States, birth within a state does not establish citizenship thereof. State citizenship is ephemeral. It results only from residence, and is gained or lost therewith. That choice of residence was subject to local approval is contrary to the inescapable implications of the westward movement of our civilization. [314 U.S. 184]

1941, Edwards v. California, 314 U.S. 184

Even as to an alien who had "been admitted to the United States under the Federal law," this Court, through Mr. Justice Hughes, declared that

1941, Edwards v. California, 314 U.S. 184

He was thus admitted with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union.

1941, Edwards v. California, 314 U.S. 184

Truax v. Raich, 239 U.S. 33, 39. Why we should hesitate to hold that federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes my understanding. The world is even more upside down than I had supposed it to be if California must accept aliens in deference to their federal privileges, but is free to turn back citizens of the United States unless we treat them as subjects of commerce.

1941, Edwards v. California, 314 U.S. 184

The right of the citizen to migrate from state to state which, I agree with MR. JUSTICE DOUGLAS, is shown by our precedents to be one of national citizenship, is not, however, an unlimited one. In addition to being subject to all constitutional limitations imposed by the federal government, such citizen is subject to some control by state governments. He may not, if a fugitive from justice, claim freedom to migrate unmolested, nor may he endanger others by carrying contagion about. These causes, and perhaps others that do not occur to me now, warrant any public authority in stopping a man where it finds him and arresting his progress across a state line quite as much as from place to place within the state.

1941, Edwards v. California, 314 U.S. 184

It is here that we meet the real crux of this case. Does "indigence," as defined by the application of the California statute, constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. "Indigence", in itself, is neither a source of rights nor a basis for denying them. The mere [314 U.S. 185] state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled.

1941, Edwards v. California, 314 U.S. 185

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Where those rights are derived from national citizenship, no state may impose such a test, and whether the Congress could do so we are not called upon to inquire.

1941, Edwards v. California, 314 U.S. 185

I think California had no right to make the condition of Duncan's purse, with no evidence of violation by him of any law or social policy which caused it, the basis of excluding him or of punishing one who extended him aid.

1941, Edwards v. California, 314 U.S. 185

If I doubted whether his federal citizenship alone were enough to open the gates of California to Duncan, my doubt would disappear on consideration of the obligations of such citizenship. Duncan owes a duty to render military service, and this Court has said that this duty is the result of his citizenship. Mr. Chief Justice White declared in the Selective Draft Law Cases, 245 U.S. 366, 378:

1941, Edwards v. California, 314 U.S. 185

It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need and the right to compel it.

1941, Edwards v. California, 314 U.S. 185

A contention that a citizen's duty to render military service is suspended by "indigence" would meet with little favor. Rich or penniless, Duncan's citizenship under the Constitution [314 U.S. 186] pledges his strength to the defense of California as a part of the United States, and his right to migrate to any part of the land he must defend is something she must respect under the same instrument. Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.

Footnotes

BYRNES, J., lead opinion (Footnotes)

1941, Edwards v. California, 314 U.S. 186

1. Gloucester Ferry Co. v. Pennsylvania, 114 U.S. 196, 203; Leisy v. Hardin, 135 U.S. 100, 112; Covington Bridge Co. v. Kentucky, 154 U.S. 204, 218; Hoke v. United States, 227 U.S. 308, 320; Caminetti v. United States, 242 U.S. 470, 491; United States v. Hill, 248 U.S. 420, 423; Mitchell v. United States, 313 U.S. 80. Cf. The Federal Kidnaping Act of 1932, U.S.C. Title 18, §§ 408a-408c. It is immaterial whether or not the transportation is commercial in character. See Caminetti v. United States, supra.

1941, Edwards v. California, 314 U.S. 186

2. See Hirch, H. M., Our Settlement Laws (N.Y.Dept. of Social Welfare, 1933), passim.

JACKSON, J., concurring (Footnotes)

1941, Edwards v. California, 314 U.S. 186

\* See dissenting opinion of Mr. Justice Stone in Colgate v. Harvey, 296 U.S. 404, 436, et seq.

President Roosevelt's Statement on Temporary Political Arrangements in Africa, 1942

Title: President Roosevelt's Statement on Temporary Political Arrangements in Africa

Author: Franklin D. Roosevelt

Date: November 17, 1942

Source: Public Papers of the Presidents, F. D. Roosevelt, 1942, Item 130

Public Papers of FDR, 1942, Item 130

I have accepted General Eisenhower's political arrangements made for the time being in North Africa and Western Africa.

Public Papers of FDR, 1942, Item 130

I thoroughly understand and approve the feeling in the United States and Great Britain, and among all the other United Nations, that in view of the history of the past two years no permanent arrangement should be made with Admiral Darlan. People in the United Nations likewise would never understand the recognition of a reconstituting of the Vichy Government in France, or in any French territory.

Public Papers of FDR, 1942, Item 130

We are opposed to Frenchmen who support Hitler and the Axis. No one in our Army has any authority to discuss the future government of France or the French Empire.

Public Papers of FDR, 1942, Item 130

The future French Government will be established not by any individual in metropolitan France or overseas, but by the French people themselves, after they have been set free by the victory of the United Nations.

Public Papers of FDR, 1942, Item 130

The present temporary arrangement in North and West Africa is only a temporary expedient, justified solely by the stress of battle.

Public Papers of FDR, 1942, Item 130

The present temporary arrangement has accomplished two military objectives. The first was to save American and British lives on the one hand, and French lives on the other.

Public Papers of FDR, 1942, Item 130

The second was the vital factor of time. The temporary arrangement has made it possible to avoid a mopping up period in Algiers and Morocco, which might have taken a month or two to consummate. Such a period would have delayed the concentration' for the attack from the West on Tunis, and we hope on Tripoli.

Public Papers of FDR, 1942, Item 130

Every day of delay in the current operations would have enabled the Germans and Italians to build up a strong resistance, to dig in, and make a huge operation on our part essential before we could win. Here again many more lives will be saved under the present speedy offensive than if we had to delay it for a month or more.

Public Papers of FDR, 1942, Item 130

It will also be noted that French troops under the command of General Giraud have already been in action against the enemy in Tunisia, fighting by the side of American and British soldiers for the liberation of their country.

Public Papers of FDR, 1942, Item 130

Admiral Darlan's proclamation assisted in making a mopping up period unnecessary. Temporary arrangements made with Admiral Darlan apply without exception to the current local situation only.

Public Papers of FDR, 1942, Item 130

I have requested the liberation of all persons in North Africa who have been imprisoned because they opposed the efforts of the Nazis to dominate the world; and I have asked for the abrogation of all laws and decrees inspired by Nazi Governments or Nazi ideologists. Reports indicate the French of North Africa are subordinating all political questions to the formation of a common front against the common enemy.

President Roosevelt's Press Conference Remarks on the Casablanca Conference, 1942

Title: President Roosevelt's Press Conference Remarks on the Casablanca Conference

Author: Franklin D. Roosevelt

Date: February 2, 1943

Source: Public Papers of the Presidents, F. D. Roosevelt, 1943, Item 10

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: I thought today that the first thing I want to do before we get down to warlike things, is to thank the press and the radio of the United States for living up so very faithfully to the requests of the Offices of Censorship and Information, in regard to keeping the movements of the Commander in Chief and the other high-ranking officers secret [referring to the President's trip to Casablanca from which he returned on January 31, 1943]. It was beautifully done, and I am very appreciative of it; and I think you all ought to know that I do appreciate how well it was covered.

Public Papers of FDR, 1943, Item 10

Incidentally, on the whole trip—the 22 days—we were literally in constant touch, even when in the air, with Washington. I got various dispatches and things which were answered immediately, such as, for example, the coal strike, which as you know took only a few hours between the time that I was told of the conditions before the reply came back from me somewhere in Africa—the appeal to the miners to go back to work.

Public Papers of FDR, 1943, Item 10

The conference, in fact the whole trip, was essentially a military conference—military, naval, and air. And everything else had to be thought of in that particular light. In other words, it was a conference to win the war, to make plans for the winning of the war, as far as one can plan ahead, which in this particular case was the calendar year 1943.

Public Papers of FDR, 1943, Item 10

I want to emphasize what I said in the Annual Message to Congress—just a short paragraph:

Public Papers of FDR, 1943, Item 10

(Reading): "I cannot prophesy. I cannot tell you when or where the United Nations are going to strike next in Europe. But we are going to strike—and strike hard. I cannot tell you whether we are going to hit them in Norway, or through the Low Countries, or in France, or through Sardinia or Sicily, or through the Balkans, or through Poland—or at several points simultaneously. But I can tell you that no matter where and when we strike by land, we and the British and the Russians will hit them from the air heavily and relentlessly. Day in and day out we shall heap tons upon tons of high explosives on their war factories and utilities and seaports."

Public Papers of FDR, 1943, Item 10

And it was in fulfillment of that statement that we have worked with the other Combined Staffs, and have reached a unanimous agreement.

Public Papers of FDR, 1943, Item 10

And, of course, we are in complete touch with Mr. [Joseph] Stalin, and the Generalissimo [Chiang Kai-shek]. I understand, although I didn't discover it until I got back, that there were certain people that thought we could very easily have Mr. Stalin and the Generalissimo in the same conference, forgetting, of course, the fact—which most people caught on to afterwards—that Russia is not at war with Japan, and that China, while officially at war with Germany is so located geographically that China can do nothing in the way of an offensive against Germany. However, a little thought on the part of anybody thinking it through will obviate mistakes—happy thought—perhaps in the future.

Public Papers of FDR, 1943, Item 10

And then just a few—what do you call them?—human interest touches. I had a birthday party in a plane, 8,000 feet above Haiti, including a cake with six candies around it, and one in the middle. (Laughter) And a lot of very nice presents which my companions had discovered in Trinidad.

Public Papers of FDR, 1943, Item 10

Now I have been trying to think up some other things that happened. When we were in Casablanca, quite a lot of people, including General Patton, were very much worried over air attacks, the general theory being that we ought to move from place to place about every 48 hours. But we were so comfortable in Casablanca, the accommodations were so delightful, that we decided to risk it and stay right there. And while we were there, we only had two "yellow" alerts, which was doing pretty well. And, needless to say, there were no German planes that actually arrived.

Public Papers of FDR, 1943, Item 10

All kinds of rumors—oh, Washington wasn't a patch to Casablanca, and that's saying an awful lot—(laughter) rumors that we were having an important conference with General Franco of Spain. And then there was a rumor that was generally believed, that King Victor Emmanuel of Italy had come over to arrange a surrender. Then there was another story that the Emperor Haile Selassie had arrived in Casablanca to confer with us.

Public Papers of FDR, 1943, Item 10

Then, we were very well taken care of. We had an entire regiment of infantry, with barbed wire and all the accessories that surrounded the place where we were.

Public Papers of FDR, 1943, Item 10

The Secret Service was extremely efficient, and devised some new gadgets for our protection. They felt that the Moorish population, which of course is about 90 percent of all Morocco, represented a very slim risk; but that some of the French "brethren"—(laughter) might have got so excited about their own political affairs—a little like Washington(more laughter) while I was traveling around by automobile to review the troops.

Public Papers of FDR, 1943, Item 10

So I had in the jeep in front of me a couple of Secret Servicemen, and whenever they saw a European along the roadside ahead of me, just as they got to the European they both, "Oh, look! Look—look!"—(laughter, as the President demonstrated the action by raising his eyes and pointing with his arm to the ceiling) with their hands pointing up, evidently at an airplane. Whereupon, the suspects (more laughter) on the road said, "Ah! What is it?"

Public Papers of FDR, 1943, Item 10

And then another stunt that they worked out in the jeep. One of them, when they came to a little group of people that they thought might be suspicious, would pretend to fall out of the jeep, getting halfway out, and his companion would grab him and haul him back, thereby diverting attention from the fellow in the next car. (Laughter)

Public Papers of FDR, 1943, Item 10

On the last day, I suppose, frankly, largely because we wanted to see it—there wasn't any particular official reason—we went down to Marrakech, which is one of the most amazing cities that I have ever been in. We went down there because Winston Churchill had been there about ten years before, on a little pleasure trip. He said it was a most amazing place. Well, they have this old tower that was built, I think, to celebrate the capture of Spain by the Moors. Well, whatever the date is, I don't know; but it is somewhere between 1100 and 1300. Here is this city, which is in what might be called an enlarged oasis—which, by the way, I suppose the best definition of an oasis is that it isn't dry—(laughter) and you can look out and see this whole chain of the Atlas Mountains—snow-covered. I think it's one of the most beautiful sights I have ever seen.

Public Papers of FDR, 1943, Item 10

And the Prime Minister doesn't collect stamps, but he paints. And he had brought his painting tools—I don't know what you call them—with him. We got there around sunset, and I think he started some sketches of this wonderful scene. I left him at five o'clock the next morning. His whole outfit was ready, and he was going to spend the day in Marrakech painting, and hop off that night for what was then, of course, undisclosed, for Cairo, and thence up to Syria for a meeting. I don't know where the meeting was actually held. I think it was just across the border, in Adana, Turkey. He is going there to talk with President Inonu and his Prime Minister, in regard to a closer relationship with Turkey in the prosecution of the war. Well, you have had that story already.

Public Papers of FDR, 1943, Item 10

Oh, yes, I must tell you about the WAACs. We found five WAACs—I think the only ones in Africa. And there they were, doing the telephone work, and the stenographic work for the staff meeting. And I had them in to dine—all five—I had a nice little party for them. They had had a perfectly amazing experience. They had all been on the same ship in December, and the ship was torpedoed. And two of them were taken off in boats. The other three couldn't get into the boats, and they were taken in tow by a British destroyer, I think. And finally all five of them were safely landed in Africa without any clothes whatsoever. They had nothing except what they had on their backs! And their names were Louise Anderson, Ruth Briggs, Mattie Pinette, Martha Rogers, and Aileen Drezmal.

Public Papers of FDR, 1943, Item 10

We had a grand visit from the Sultan of Morocco, his Grand Vizier, his Chief of Protocol, and the Crown Prince. I told him I hoped he would come to Washington and see us all; and he said he would, he was going to try to do it just as soon as the war was over.

Public Papers of FDR, 1943, Item 10

I don't think there is anything else that I can think of that hasn't already—

Public Papers of FDR, 1943, Item 10

Q. (interposing) Mr. President, could you tell us a little more about the Brazil phase of the trip?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: Well, I think you all got the highlights of that.

Public Papers of FDR, 1943, Item 10

In the first place, at Casablanca, as a part of the military agreements, we formally reemphasized what we had all been talking about before, and that is we don't think there should be any kind of a negotiated armistice, for obvious reasons. There ought to be an unconditional surrender. Well, you all got that.

Public Papers of FDR, 1943, Item 10

We got down to Brazil, and the highlights of that were two things. The first was the very greatly increased effort of Brazil in combating the submarine danger in the South Atlantic. And the other was what had been started before, but never before formalized, and that was eliminating in the peace any future threat from the African coast against the portion of this hemisphere that lies closest to the African coast, which is a distance of only 1,650 miles—something like that—it's awfully close.

Public Papers of FDR, 1943, Item 10

And I think that it is just as well to have that clearly understood by people, not only in this hemisphere but also the people who have territories of various kinds on the African coast. We don't want to have to go through this again. We want to eliminate military, naval, and air threats from one hemisphere against the other hemisphere….

Public Papers of FDR, 1943, Item 10

Q. Mr, President, did you enjoy the meals that the Army served you while you were over there?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: I ate it all! (Laughter) I had a real appetite….

Public Papers of FDR, 1943, Item 10

Q. Mr. President, I believe in your communique after the Casablanca Conference you said that Premier Stalin had been informed of your decisions. Have you heard from him since?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: Oh, yes. Oh my, yes.

Public Papers of FDR, 1943, Item 10

Q. Is he in agreement with your decisions which you and the Prime Minister reached?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: I don't think we can talk about agreement or disagreement on any of those things. Of course they are highly confidential—part of the war effort; and things are going extremely well. When I say that, please don't infer from my unwillingness to read you the telegrams between Mr. Stalin and myself (laughter) that anything is going wrong. It is going extremely well.

Public Papers of FDR, 1943, Item 10

Q. Mr. President, do you hope to meet with Mr. Stalin at some later time?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: Hope springs eternal! (laughter)…

Public Papers of FDR, 1943, Item 10

Q. Mr. President, what did you get out of seeing those American troops there? What was your reaction to them individually? How did they look to you?

Public Papers of FDR, 1943, Item 10

THE PRESIDENT: Oh, they were magnificent. I don't know—I had a sort of a feeling up there—these two divisions and combat teams and everything—I felt closer to having tears in my eyes than at any other time, because they were headed up for the front fairly soon, and nearly all of those troops that I reviewed had had actual combat experience in the landing back in November.

Public Papers of FDR, 1943, Item 10

There was this port— Fort Mehdia—I think it's just at the mouth of the river, at Port Lyautey. And it was an amazing illustration of the fact that you can't win a war just with artillery. It's an old, old Moorish fort, that is hundreds of years old. It's made of sun-baked brick—a great tower, and very high, thick walls.

Public Papers of FDR, 1943, Item 10

Well, this is not derogatory to the American Navy, but it's an illustration: part of the American Navy stood offshore eight or ten thousand yards—and hammered the living lights out of it—firing, firing, firing. They knocked off a corner of the tower. They knocked off the top of a wall, and they dropped shells all afternoon all over this old, sun-baked brick fort.

Public Papers of FDR, 1943, Item 10

And there were about-as I remember it-about 400 French troops in it, who the night before had been told—the night of November 7 —by their commanding officer that the Americans were about to land. And they all cheered. They were just thrilled by the fact that the United States was going to use North Africa as a striking point against the Germans.

Public Papers of FDR, 1943, Item 10

About two hours later, the commanding officer, who had assumed that there would be no opposition to our landing, gets orders from his general—definite orders—that the American landing was to be opposed.

Public Papers of FDR, 1943, Item 10

And he went out and told his men in the fort about the orders he had gotten, and he said, "We have to obey orders. We are soldiers." They immediately resisted, as soon as our boats started to land, and gave us some pretty heavy casualties in the landing.

Public Papers of FDR, 1943, Item 10

And the next day, the Navy shelled the place very heavily, killing a large number of them. And it wasn't until, as I remember it, the third day that the Army got some artillery ashore and fired at this same fort at point-blank range. And it wasn't—this sounds like old-fashioned warfare of two hundred, three hundred years ago—until our artillery had made a definite breach in the inner wall—the land side of the wall of this fort—that the final action took place. And part of our infantry surrounding the fort dashed in through this breach, and actually took the fort by assault.

Public Papers of FDR, 1943, Item 10

And as I remember the figures very roughly, we lost 94 men killed, and the French, out of a garrison of 400, lost about 200.

Public Papers of FDR, 1943, Item 10

Well, most of those—all of our boys, and a good many of the French, are buried in two cemeteries which are side by side—one with the French Tricolor flying over it, and the other with the Stars and Stripes flying over it.

Public Papers of FDR, 1943, Item 10

But the interesting thing about it was that those Frenchmen who had fought with extraordinary bravery—and that was true all over—it was true of Casablanca, where our casualties were very heavy—several thousand killed—but when the order "cease fire" took place, there was a complete fraternizing of both forces. In other words, the Frenchmen had carried out their duty. They had obeyed their orders. They didn't want to fight us. From that time on, even the families of the men that were killed came to our people and said, "Yes, I suppose it had to happen, because we had to obey orders." It was a very interesting example of the complete loyalty of the French to their own command, and an understanding of it by their families. And today there is, on the whole, a very good feeling between the French troops and the French Navy with our people….

Hirabayashi v. United States, 1943

Title: Hirabayashi v. United States

Author: U.S. Supreme Court

Date: June 21,1943

Source: 320 U.S. 81

This case was argued May 10 and 11, 1943, and was decided June 21,1943.

1943, Hirabayashi v. United States, 320 U.S. 81

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS

1943, Hirabayashi v. United States, 320 U.S. 81

FOR THE NINTH CIRCUIT

Syllabus

1943, Hirabayashi v. United States, 320 U.S. 81

1. Where a defendant is convicted on two counts of an indictment and the sentences are ordered to run concurrently, it is unnecessary on review to consider the validity of the sentence on both of the counts if the sentence on one of them is sustainable. P. 85.

1943, Hirabayashi v. United States, 320 U.S. 81

2. Pursuant to Executive Order No. 9066, promulgated by the President on February 19, 1942, while the United States was at war with Japan, the military commander of the Western Defense Command promulgated an order requiring, inter alia, that all persons of Japanese ancestry within a designated military area "be within their place of residence between the hours of 8 p. m. and 6 a. m." Appellant, a United States citizen of Japanese ancestry, was convicted in the federal District Court for violation of this curfew order.

1943, Hirabayashi v. United States, 320 U.S. 81

Held:

1943, Hirabayashi v. United States, 320 U.S. 81

(1) By the Act of March 21, 1942, Congress ratified and confirmed Executive Order No. 9066, and thereby authorized and implemented such curfew orders as the military commander should promulgate pursuant to that Executive Order. P. 91.

1943, Hirabayashi v. United States, 320 U.S. 81

(2) It was within the constitutional authority of Congress and the Executive, acting together, to prescribe this curfew order as an emergency war measure. P. 92.

1943, Hirabayashi v. United States, 320 U.S. 81

In the light of all the facts and circumstances, there was substantial basis for the conclusion, in which Congress and the military commander united, that the curfew as applied was a protective measure necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion. P. 95.

1943, Hirabayashi v. United States, 320 U.S. 81

(3) The curfew order did not unconstitutionally discriminate against citizens of Japanese ancestry. P. 101.

1943, Hirabayashi v. United States, 320 U.S. 81

(a) The Fifth Amendment contains no equal protection clause, and it restrains only such discriminatory legislation by Congress as amounts to a denial of due process. P. 100.

1943, Hirabayashi v. United States, 320 U.S. 81

(b) The curfew order as applied, and at the time it was applied, was within the boundaries of the war power. P. 102. [320 U.S. 82]

1943, Hirabayashi v. United States, 320 U.S. 82

(c) The adoption by the Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of fact and circumstances which indicate that a group of one national extraction my menace that safety more than others, is not to be condemned as unconstitutional merely because, in other and in most circumstances, racial distinctions are irrelevant. P. 101.

1943, Hirabayashi v. United States, 320 U.S. 82

(d) An appropriate exercise of the war power is not rendered invalid by the fact that it restricts the liberty of citizens. P. 99.

1943, Hirabayashi v. United States, 320 U.S. 82

(4) The promulgation of the curfew order by the military commander was based on no unconstitutional delegation of legislative power. P. 102.

1943, Hirabayashi v. United States, 320 U.S. 82

The essentials of the legislative function are preserved when Congress provide that a statutory command shall become operative upon ascertainment of a basic conclusion of fact by a designated representative of the Government. The Act of March 21, 1942, which authorized that curfew orders be made pursuant to Executive Order No. 9066 for the protection of war resources from espionage and sabotage, satisfies those requirements. P. 104.

1943, Hirabayashi v. United States, 320 U.S. 82

Affirmed.

1943, Hirabayashi v. United States, 320 U.S. 82

Response to questions certified by the Circuit Court of Appeals upon an appeal to that court from a conviction in the District Court upon two counts of an indictment charging violations of orders promulgated by the military commander of the Western Defense Command. This Court directed that the entire record be certified, so that the case could be determined as if brought here by appeal. See 46 F. Supp. 657. [320 U.S. 83]

STONE, J., lead opinion

1943, Hirabayashi v. United States, 320 U.S. 83

MR. CHIEF STONE delivered the opinion of the Court.

1943, Hirabayashi v. United States, 320 U.S. 83

Appellant, an American citizen of Japanese ancestry, was convicted in the district court of violating the Act of Congress of March 21, 1942, 56 Stat. 173, 18 U.S.C. § 97a, which makes it a misdemeanor knowingly to disregard restrictions made applicable by a military commander to persons in a military area prescribed by him as such, all as authorized by an Executive Order of the President.

1943, Hirabayashi v. United States, 320 U.S. 83

The questions for our decision are whether the particular restriction violated, namely, that all persons of Japanese ancestry residing in such an area be within their place of residence daily between the hours of 8:00 p.m. and 6:00 a.m., was adopted by the military commander in the exercise of an unconstitutional delegation by Congress of its legislative power, and whether the restriction unconstitutionally discriminated between citizens of Japanese ancestry and those of other ancestries in violation of the Fifth Amendment.

1943, Hirabayashi v. United States, 320 U.S. 83

The indictment is in two counts. The second charges that appellant, being a person of Japanese ancestry, had on a specified date, contrary to a restriction promulgated by the military commander of the Western Defense Command, Fourth Army, failed to remain in his place of residence [320 U.S. 84] in the designated military area between the hours of 8:00 o'clock p.m. and 6:00 a.m. The first count charges that appellant, on May 11 and 12, 1942, had, contrary to a Civilian Exclusion Order issued by the military commander, failed to report to the Civil Control Station within the designated area, it appearing that appellant's required presence there was a preliminary step to the exclusion from that area of persons of Japanese ancestry.

1943, Hirabayashi v. United States, 320 U.S. 84

By demurrer and plea in abatement, which the court overruled (46 F.Supp. 657), appellant asserted that the indictment should be dismissed because he was an American citizen who had never been a subject of and had never borne allegiance to the Empire of Japan, and also because the Act of March 21, 1942, was an unconstitutional delegation of Congressional power. On the trial to a jury, it appeared that appellant was born in Seattle in 1918, of Japanese parents who had come from Japan to the United States, and who had never afterward returned to Japan; that he was educated in the Washington public schools, and, at the time of his arrest was a senior in the University of Washington; that he had never been in Japan or had any association with Japanese residing there.

1943, Hirabayashi v. United States, 320 U.S. 84

The evidence showed that appellant had failed to report to the Civil Control Station on May 11 or May 12, 1942, as directed, to register for evacuation from the military area. He admitted failure to do so, and stated it had at all times been his belief that he would be waiving his rights as an American citizen by so doing. The evidence also showed that, for like reason, he was away from his place of residence after 8:00 p.m. on May 9, 1942. The jury returned a verdict of guilty on both counts, and appellant was sentenced to imprisonment for a term of three months on each, the sentences to run concurrently.

1943, Hirabayashi v. United States, 320 U.S. 84

On appeal, the Court of Appeals for the Ninth Circuit certified to us questions of law upon which it desired instructions [320 U.S. 85] for the decision of the case. See § 239 of the Judicial Code as amended, 28 U.S.C. § 346. Acting under the authority conferred upon us by that section, we ordered that the entire record be certified to this Court so that we might proceed to a decision of the matter in controversy in the same manner as if it had been brought here by appeal. Since the sentences of three months each imposed by the district court on the two counts were ordered to run concurrently, it will be unnecessary to consider questions raised with respect to the first count if we find that the conviction on the second count, for violation of the curfew order, must be sustained. Brooks v. United States, 267 U.S. 432, 441; Gorin v. United States, 312 U.S. 19, 33.

1943, Hirabayashi v. United States, 320 U.S. 85

The curfew order which appellant violated, and to which the sanction prescribed by the Act of Congress has been deemed to attach, purported to be issued pursuant to an Executive Order of the President. In passing upon the authority of the military commander to make and execute the order, it becomes necessary to consider in some detail the official action which preceded or accompanied the order and from which it derives its purported authority.

1943, Hirabayashi v. United States, 320 U.S. 85

On December 8, 1941, one day after the bombing of Pearl Harbor by a Japanese air force, Congress declared war against Japan. 55 Stat. 795. On February 19, 1942, the President promulgated Executive Order No. 9066. 7 Federal Register 1407. The Order recited that

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the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655.

1943, Hirabayashi v. United States, 320 U.S. 85

By virtue of the authority vested [320 U.S. 86] in him as President and as Commander in Chief of the Army and Navy, the President purported to

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authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.

1943, Hirabayashi v. United States, 320 U.S. 86

On February 20, 1942, the Secretary of War designated Lt. General J. L. DeWitt as Military Commander of the Western Defense Command, comprising the Pacific Coast states and some others, to carry out there the duties prescribed by Executive Order No. 9066. On March 2, 1942, General DeWitt promulgated Public Proclamation No. 1. 7 Federal Register 2320. The proclamation recited that the entire Pacific Coast,

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by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations.

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It stated that

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the present situation requires as matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof;

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it specified and designated as military areas certain areas within the Western Defense Command; and it declared that "such persons or classes of persons as the situation may require" would, by subsequent proclamation, be excluded from certain of these [320 U.S. 87] areas, but might be permitted to enter or remain in certain others, under regulations and restrictions to be later prescribed. Among the military areas so designated by Public Proclamation No. 1 was Military Area No. 1, which embraced, besides the southern part of Arizona, all the coastal region of the three Pacific Coast states, including the City of Seattle, Washington, where appellant resided. Military Area No. 2. designated by the same proclamation, included those parts of the coastal states and of Arizona not placed within Military Area No. 1.

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Public Proclamation No. 2 of March 16, 1942, issued by General DeWitt, made like recitals and designated further military areas and zones. It contained like provisions concerning the exclusion, by subsequent proclamation, of certain persons or classes of persons from these areas, and the future promulgation of regulations and restrictions applicable to persons remaining within them. 7 Federal Register 2405.

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An Executive Order of the President, No. 9102, of March 18, 1942, established the War Relocation Authority, in the Office for Emergency Management of the Executive Office of the President; it authorized the Director of War Relocation Authority to formulate and effectuate a program for the removal, relocation, maintenance and supervision of persons designated under Executive Order No. 9066, already referred to; and it conferred on the Director authority to prescribe regulations necessary or desirable to promote the effective execution of the program. 7 Federal Register 2165.

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Congress, by the Act of March 21, 1942, 18 U.S.C. § 97a, provided:

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That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary [320 U.S. 88] to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable

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to fine or imprisonment, or both.

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Three days later, on March 24, 1942, General DeWitt issued Public Proclamation No. 3. 7 Federal Register 2543. After referring to the previous designation of military areas by Public Proclamations No. 1 and 2, it recited that

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…the present situation within these Military Areas and Zones requires as a matter or military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones….

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It accordingly declared and established that from and after March 27, 1942,

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all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1…shall be within their place of residence between the hours of 8:00 P.M. and 6:00 A.M., which period is hereinafter referred to as the hours of curfew.

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It also imposed certain other restrictions on persons of Japanese ancestry, and provided that any person violating the regulations would be subject to the criminal penalties provided by the Act of Congress of March 21, 1942.

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Beginning on March 24, 1942, the military commander issued a series of Civilian Exclusion Orders pursuant to the provisions of Public Proclamation No. 1. Each such order related to a specified area within the territory of his command. The order applicable to appellant was Civilian Exclusion Order No. 57 of May 10, 1942. 7 Federal Register 3725. It directed that, from and after 12:00 noon, May 16, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from a specified portion of Military Area No. 1 in Seattle, including appellant's place of residence, [320 U.S. 89] and it required a member of each family, and each individual living alone, affected by the order to report on May 11 or May 12 to a designated Civil Control Station in Seattle. Meanwhile, the military commander had issued Public Proclamation No. 4 of March 27, 1942, which recited the necessity of providing for the orderly evacuation and resettlement of Japanese within the area and prohibited all alien Japanese and all persons of Japanese ancestry from leaving the military area until future orders should permit. 7 Federal Register 2601.

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Appellant does not deny that he knowingly failed to obey the curfew order as charged in the second count of the indictment, or that the order was authorized by the terms of Executive Order No. 9066, or that the challenged Act of Congress purports to punish with criminal penalties disobedience of such an order. His contentions are only that Congress unconstitutionally delegated its legislative power to the military commander by authorizing him to impose the challenged regulation, and that, even if the regulation were in other respects lawfully authorized, the Fifth Amendment prohibits the discrimination made between citizens of Japanese descent and those of other ancestry.

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It will be evident from the legislative history that the Act of March 21, 1942, contemplated and authorized the curfew order which we have before us. The bill which became the Act of March 21, 1942, was introduced in the Senate on March 9th and in the House on March 10th at the request of the Secretary of War who, in letters to the Chairman of the Senate Committee on Military Affairs and to the Speaker of the House, stated explicitly that its purpose was to provide means for the enforcement of orders issued under Executive Order No. 9066. This appears in the committee reports on the bill, which set out in full the Executive Order and the Secretary's letter. 88 Cong.Rec. 2722, 2725; H.R. Rep. No. 1906, 77th Cong.. [320 U.S. 90] 2d Sess.; S. Rep. No. 1171, 77th Cong., 2d Sess. And each of the committee reports expressly mentions curfew orders as one of the types of restrictions which it was deemed desirable to enforce by criminal sanctions.

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When the bill was under consideration, General DeWitt had published his Proclamation No. 1 of March 2, 1942, establishing Military Areas Nos. 1 and 2, and that Proclamation was before Congress. S.Rep. No. 1171, 77th Cong., 2d Sess., p. 2; see also 88 Cong.Rec. 2724. A letter of the Secretary to the Chairman of the House Military Affairs Committee, of March 14, 1942, informed Congress that

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General DeWitt is strongly of the opinion that the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones;

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and that General DeWitt had

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indicated that he was prepared to enforce certain restrictions at once for the purpose of protecting certain vital national defense interests, but did not desire to proceed until enforcement machinery had been set up.

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H.R. Rep. No. 1906, 77th Cong., 2d Sess., p. 3. See also letter of the Acting Secretary of War to the Chairman of the Senate Military Affairs Committee, March 13, 1942, 88 Cong.Rec. 2725.

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The Chairman of the Senate Military Affairs Committee explained on the floor of the Senate that the purpose of the proposed legislation was to provide means of enforcement of curfew orders and other military orders made pursuant to Executive Order No. 9066. He read General DeWitt's Public Proclamation No. 1, and statements from newspaper reports that "evacuation of the first Japanese aliens and American-born Japanese" was about to begin. He also stated to the Senate that "reasons for suspected widespread fifth-column activity among Japanese" were to be found in the system of dual citizenship which Japan deemed applicable to American-born [320 U.S. 91] Japanese, and in the propaganda disseminated by Japanese consuls, Buddhist priests and other leaders, among American-born children of Japanese. Such was stated to be the explanation of the contemplated evacuation from the Pacific Coast area of persons of Japanese ancestry, citizens as well as aliens. 88 Cong.Rec. 2722-2726; see also pp. 2729, 2730. Congress also had before it the Preliminary Report of a House Committee investigating national defense migration, of March 19, 1942, which approved the provisions of Executive Order No. 9066, and which recommended the evacuation, from military areas established under the Order, of all persons of Japanese ancestry, including citizens. H.R. Rep. No. 1911, 77th Cong., 2d Sess. The proposed legislation provided criminal sanctions for violation of orders, in terms broad enough to include the curfew order now before us, and the legislative history demonstrates that Congress was advised that curfew orders were among those intended, and was advised also that regulation of citizen and alien Japanese alike was contemplated.

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The conclusion is inescapable that Congress, by the Act of March 21, 1942, ratified and confirmed Executive Order No. 9066. Prize Cases, 2 Black. 635, 671; Hamilton v. Dillin, 21 Wall, 73, 96-97; United States v. Heinszen & Co., 206 U.S. 370, 382-384; Tiaco v. Forbes, 228 U.S. 549, 556; Isbrandtsen-Moller Co. v. United States, 300 U.S. 139, 146-148; Swayne & Hoyt, Ltd. v. United States, 300 U.S. 297, 300-303; Mason Co. v. Tax Comm'n, 302 U.S. 186, 208. And so far as it lawfully could, Congress authorized and implemented such curfew orders as the commanding officer should promulgate pursuant to the Executive Order of the President. The question then is not one of Congressional power to delegate to the President the promulgation of the Executive Order, but whether, acting in cooperation, Congress and the Executive have constitutional authority to impose the curfew [320 U.S. 92] restriction here complained of. We must consider also whether, acting together, Congress and the Executive could leave it to the designated military commander to appraise the relevant conditions and on the basis of that appraisal to say whether, under the circumstances, the time and place were appropriate for the promulgation of the curfew order and whether the order itself was an appropriate means of carrying out the Executive Order for the "protection against espionage and against sabotage" to national defense materials, premises and utilities. For reasons presently to be stated, we conclude that it was within the constitutional power of Congress and the executive arm of the Government to prescribe this curfew order for the period under consideration and that its promulgation by the military commander involved no unlawful delegation of legislative power.

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Executive Order No. 9066, promulgated in time of war for the declared purpose of prosecuting the war by protecting national defense resources from sabotage and espionage, and the Act of March 21, 1942, ratifying and confirming the Executive Order, were each an exercise of the power to wage war conferred on the Congress and on the President, as Commander in Chief of the armed forces, by Articles I and II of the Constitution. See Ex parte Quirin, 317 U.S. 1, 25-26. We have no occasion to consider whether the President, acting alone, could lawfully have made the curfew order in question, or have authorized others to make it. For the President's action has the support of the Act of Congress, and we are immediately concerned with the question whether it is within the constitutional power of the national government, through the joint action of Congress and the Executive, to impose this restriction as an emergency war measure. The exercise of that power here involves no question of martial law or trial by military tribunal. Cf. Ex parte Milligan, 4 Wall. 2; Ex parte Quirin, supra. Appellant has been [320 U.S. 93] tried and convicted in the civil courts, and has been subjected to penalties prescribed by Congress for the acts committed.

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The war power of the national government is "the power to wage war successfully." See Charles Evans Hughes, War Powers Under the Constitution, 42 A.B.A.Rep. 232, 238. It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war. Prize Cases, supra; Miller v. United States, 11 Wall. 268, 303, 314; Stewart v. Kahn, 11 Wall. 493, 506-507; Selective Draft Law Cases, 245 U.S. 366; McKinley v. United States, 249 U.S. 397; United States v. Macintosh, 283 U.S. 605, 622-623. Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. Ex parte Quirin, supra, 28-29; cf. Prize Cases, supra, 670; Martin v. Mott, 12 Wheat. 19, 29. Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of warmaking, it is not for any court to sit in review of the wisdom of their action or substitute it judgment for theirs.

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The actions taken must be appraised in the light of the conditions with which the President and Congress were confronted in the early months of 1942, many of which [320 U.S. 94] since disclosed, were then peculiarly within the knowledge of the military authorities. On December 7, 1941, the Japanese air forces had attacked the United States Naval Base at Pearl Harbor without warning, at the very hour when Japanese diplomatic representatives were conducting negotiations with our State Department ostensibly for the peaceful settlement of differences between the two countries. Simultaneously or nearly so, the Japanese attacked Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. On the following day, their army invaded Thailand. Shortly afterwards, they sank two British battleships. On December 13th, Guam was taken. On December 24th and 25th, they captured Wake Island and occupied Hong Kong. On January 2, 1942, Manila fell, and on February 10th, Singapore, Britain's great naval base in the East, was taken. On February 27th, the battle for the Java Sea resulted in a disastrous naval defeat to the United Nations. By the 9th of March, Japanese forces had established control over the Netherlands East Indies; Rangoon and Burma were occupied; Bataan and Corregidor were under attack.

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Although the results of the attack on Pearl Harbor were not fully disclosed until much later, it was known that the damage was extensive, and that the Japanese, by their successes, had gained a naval superiority over our forces in the Pacific which might enable them to seize Pearl Harbor, our largest naval base and the last stronghold of defense lying between Japan and the west coast. That reasonably prudent men charged with the responsibility of our national defense had ample ground for concluding that they must face the danger of invasion, take measures against it, and, in making the choice of measures, consider our internal situation, cannot be doubted.

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The challenged orders were defense measures for the avowed purpose of safeguarding the military area in question, at a time of threatened air raids and invasion [320 U.S. 95] by the Japanese forces, from the danger of sabotage and espionage. As the curfew was made applicable to citizens residing in the area only if they were of Japanese ancestry, our inquiry must be whether, in the light of all the facts and circumstances, there was any substantial basis for the conclusion, in which Congress and the military commander united, that the curfew as applied was a protective measure necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion. The alternative, which appellant insists must be accepted, is for the military authorities to impose the curfew on all citizens within the military area, or on none. In a case of threatened danger requiring prompt action, it is a choice between inflicting obviously needless hardship on the many or sitting passive and unresisting in the presence of the threat. We think that constitutional government, in time of war, is not so powerless and does not compel so hard a choice if those charged with the responsibility of our national defense have reasonable ground for believing that the threat is real.

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When the orders were promulgated, there was a vast concentration, within Military Areas No. 1 and 2, of installations and facilities for the production of military equipment, especially ships and airplanes. Important Army and Navy bases were located in California and Washington. Approximately one-fourth of the total value of the major aircraft contracts then let by Government procurement officers were to be performed in the State of California. California ranked second, and Washington fifth, of all the states of the Union with respect to the value of shipbuilding contracts to be performed. 1 [320 U.S. 96]

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In the critical days of March, 1942, the danger to our war production by sabotage and espionage in this area seems obvious. The German invasion of the Western European countries had given ample warning to the world of the menace of the "fifth column." Espionage by persons in sympathy with the Japanese Government had been found to have been particularly effective in the surprise attack on Pearl Harbor. 2 At a time of threatened Japanese attack upon this country, the nature of our inhabitants' attachments to the Japanese enemy was consequently a matter of grave concern. Of the 126,000 persons of Japanese descent in the United States, citizens and non-citizens, approximately 112,000 resided in California, Oregon and Washington at the time of the adoption of the military regulations. Of these, approximately two-thirds are citizens because born in the United States. Not only did the great majority of such persons reside within the Pacific Coast states, but they were concentrated in or near three of the large cities, Seattle, Portland and Los Angeles, all in Military Area No. 1. 3

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There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population. 4 In addition, large numbers of children of Japanese parentage [320 U.S. 97] are sent to Japanese language schools outside the regular hours of public schools in the locality. Some of these schools are generally believed to be sources of Japanese nationalistic propaganda, cultivating allegiance to Japan. 5 Considerable numbers, estimated to be approximately 10,000, of American-born children of Japanese parentage have been sent to Japan for all or a part of their education. 6

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Congress and the Executive, including the military commander, could have attributed special significance, in its bearing on the loyalties of persons of Japanese descent, to the maintenance by Japan of its system of dual citizenship. Children born in the United States of Japanese alien parents, and especially those children born before December 1, 1924, are, under many circumstances, deemed, by Japanese law, to be citizens of Japan. 7 No [320 U.S. 98] official census of those whom Japan regards as having thus retained Japanese citizenship is available, but there is ground for the belief that the number is large. 8

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The large number of resident alien Japanese, approximately one-third of all Japanese inhabitants of the country, are of mature years and occupy positions of influence in Japanese communities. The association of influential Japanese residents with Japanese Consulates has been deemed a ready means for the dissemination of propaganda and for the maintenance of the influence of the Japanese Government with the Japanese population in this country. 9

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As a result of all these conditions affecting the life of the Japanese, both aliens and citizens, in the Pacific Coast area, there has been relatively little social intercourse between them and the white population. The restrictions, both practical and legal, affecting the privileges and opportunities afforded to persons of Japanese extraction residing in the United States have been sources of irritation, and may well have tended to increase their isolation, and in many instances their attachments to Japan and its institutions.

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Viewing these data in all their aspects, Congress and the Executive could reasonably have concluded that these conditions have encouraged the continued attachment of members of this group to Japan and Japanese institutions. [320 U.S. 99] These are only some of the many considerations which those charged with the responsibility for the national defense could take into account in determining the nature and extent of the danger of espionage and sabotage in the event of invasion or air raid attack. The extent of that danger could be definitely known only after the event, and after it was too late to meet it. Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it.

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Appellant does not deny that, given the danger, a curfew was an appropriate measure against sabotage. It is an obvious protection against the perpetration of sabotage most readily committed during the hours of darkness. If it was an appropriate exercise of the war power, its validity is not impaired because it has restricted the citizen's liberty. Like every military control of the population of a dangerous zone in war time, it necessarily involves some infringement of individual liberty, just as does the police establishment of fire lines during a fire, or the confinement of people to their houses during an air raid alarm—neither of which could be thought to be an infringement of constitutional right. Like them, the validity of the restraints of the curfew order depends on all the conditions which obtain at the time the curfew is imposed and which support the order imposing it. [320 U.S. 100]

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But appellant insists that the exercise of the power is inappropriate and unconstitutional because it discriminates against citizens of Japanese ancestry, in violation of the Fifth Amendment. The Fifth Amendment contains no equal protection clause, and it restrains only such discriminatory legislation by Congress as amounts to a denial of due process. Detroit Bank v. United States, 317 U.S. 329, 337-338, and cases cited. Congress may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent. Keokee Consol. Coke Co. v. Taylor, 234 U.S. 224, 227.

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Distinctions between citizens solely because of their ancestry are, by their very, nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection. Yick Wo v. Hopkins, 118 U.S. 356; Yu Cong Eng v. Trinidad, 271 U.S. 500; Hill v. Texas, 316 U.S. 400. We may assume that these considerations would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas. Because racial discriminations are in most circumstances irrelevant, and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may, in fact, place citizens of one ancestry in a different category from others. "We must never forget that it is a constitution we are expounding," "a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human [320 U.S. 101] affairs." McCulloch v. Maryland, 4 Wheat. 316, 407, 415. The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution, and is not to be condemned merely because, in other and in most circumstances, racial distinctions are irrelevant. Cf. Clarke v. Deckebach, 274 U.S. 392, and cases cited.

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Here, the aim of Congress and the Executive was the protection against sabotage of war materials and utilities in areas thought to be in danger of Japanese invasion and air attack. We have stated in detail facts and circumstances with respect to the American citizens of Japanese ancestry residing on the Pacific Coast which support the judgment of the war-waging branches of the Government that some restrictive measure was urgent. We cannot say that these facts and circumstances, considered in the particular war setting, could afford no ground for differentiating citizens of Japanese ancestry from other groups in the United States. The fact alone that attack on our shores was threatened by Japan, rather than another enemy power, set these citizens apart from others who have no particular associations with Japan.

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Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew. We cannot close our eyes to the fact, demonstrated by experience, that, in time of war, residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry. Nor can we deny that Congress, and the military authorities acting with its [320 U.S. 102] authorization, have constitutional power to appraise the danger in the light of facts of public notoriety. We need not now attempt to define the ultimate boundaries of the war power. We decide only the issue as we have defined it—we decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power. In this case, it is enough that circumstances within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decision which they made. Whether we would have made it is irrelevant.

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What we have said also disposes of the contention that the curfew order involved an unlawful delegation by Congress of its legislative power. The mandate of the Constitution, Art. 1, § 1, that all legislative power granted "shall be vested in a Congress" has never been thought, even in the administration of civil affairs, to preclude Congress from resorting to the aid of executive or administrative officers in determining by findings whether the facts are such as to call for the application of previously adopted legislative standards or definitions of Congressional policy.

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The purpose of Executive Order No. 9066, and the standard which the President approved for the orders authorized to be promulgated by the military commander—as disclosed by the preamble of the Executive Order—was the protection of our war resources against espionage and sabotage. Public Proclamations No. 1 and 2, by General DeWitt, contain findings that the military areas created and the measures to be prescribed for them were required to establish safeguards against espionage and sabotage. Both the Executive Order and the Proclamations were before Congress when the Act of March 21, 1942, was under consideration. To the extent that the Executive Order authorized orders to be promulgated by the military commander to accomplish the declared purpose of the [320 U.S. 103] Order, and to the extent that the findings in the Proclamations establish that such was their purpose, both have been approved by Congress.

1943, Hirabayashi v. United States, 320 U.S. 103

It is true that the Act does not, in terms, establish a particular standard to which orders of the military commander are to conform, or require findings to be made as a prerequisite to any order. But the Executive Order, the Proclamations, and the statute are not to be read in isolation from each other. They were parts of a single program, and must be judged as such. The Act of March 21, 1942, was an adoption by Congress of the Executive Order and of the Proclamations. The Proclamations themselves followed a standard authorized by the Executive Order—the necessity of protecting military resources in the designated areas against espionage and sabotage. And, by the Act, Congress gave its approval to that standard. We have no need to consider now the validity of action if taken by the military commander without conforming to this standard approved by Congress, or the validity of orders made without the support of findings showing that they do so conform. Here, the findings of danger from espionage and sabotage, and of the necessity of the curfew order to protect against them, have been duly made. General DeWitt's Public Proclamation No. 3, which established the curfew, merely prescribed regulations of the type and in the manner which Public Proclamations No. 1 and 2 had announced would be prescribed at a future date, and was thus founded on the findings of Proclamations No. 1 and 2.

1943, Hirabayashi v. United States, 320 U.S. 103

The military commander's appraisal of facts in the light of the authorized standard, and the inferences which he drew from those facts, involved the exercise of his informed judgment. But, as we have seen, those facts, and the inferences which could be rationally drawn from them, support the judgment of the military commander, that [320 U.S. 104] the danger of espionage and sabotage to our military resources was imminent, and that the curfew order was an appropriate measure to meet it.

1943, Hirabayashi v. United States, 320 U.S. 104

Where, as in the present case, the standard set up for the guidance of the military commander, and the action taken and the reasons for it, are in fact recorded in the military orders, so that Congress, the courts and the public are assured that the orders, in the judgment of the commander, conform to the standards approved by the President and Congress, there is no failure in the performance of the legislative function. Opp Cotton Mills v. Administrator, 312 U.S. 126, 142-146, and cases cited. The essentials of that function are the determination by Congress of the legislative policy and its approval of a rule of conduct to carry that policy into execution. The very necessities which attend the conduct of military operations in time of war, in this instance as in many others, preclude Congress from holding committee meetings to determine whether there is danger, before it enacts legislation to combat the danger.

1943, Hirabayashi v. United States, 320 U.S. 104

The Constitution, as a continuously operating charter of government, does not demand the impossible or the impractical. The essentials of the legislative function are preserved when Congress authorizes a statutory command to become operative upon ascertainment of a basic conclusion of fact by a designated representative of the Government. Cf. The Aurora, 7 Cranch 382; United States v. Chemical Foundation, 272 U.S. 1, 12. The present statute, which authorized curfew orders to be made pursuant to Executive Order No. 9066 for the protection of war resources from espionage and sabotage, satisfies those requirements. Under the Executive Order, the basic facts, determined by the military commander in the light of knowledge then available, were whether that danger existed and whether a curfew order was an appropriate means of minimizing the danger. Since his findings to [320 U.S. 105] that effect were, as we have said, not without adequate support, the legislative function was performed and the sanction of the statute attached to violations of the curfew order. It is unnecessary to consider whether or to what extent such findings would support orders differing from the curfew order.

1943, Hirabayashi v. United States, 320 U.S. 105

The conviction under the second count is without constitutional infirmity. Hence, we have no occasion to review the conviction on the first count since, as already stated, the sentences on the two counts are to run concurrently, and conviction on the second is sufficient to sustain the sentence. For this reason also, it is unnecessary to consider the Government's argument that compliance with the order to report at the Civilian Control Station did not necessarily entail confinement in a relocation center.

1943, Hirabayashi v. United States, 320 U.S. 105

Affirmed.

DOUGLAS, J., concurring

1943, Hirabayashi v. United States, 320 U.S. 105

MR. JUSTICE DOUGLAS concurring.

1943, Hirabayashi v. United States, 320 U.S. 105

While I concur in the result and agree substantially with the opinion of the Court, I wish to add a few words to indicate what, for me, is the narrow ground of decision.

1943, Hirabayashi v. United States, 320 U.S. 105

After the disastrous bombing of Pearl Harbor, the military had a grave problem on its hands. The threat of Japanese invasion of the west coast was not fanciful, but real. The presence of many thousands of aliens and citizens of Japanese ancestry in or near to the key points along that coastline aroused special concern in those charged with the defense of the country. They believed that not only among aliens, but also among citizens of Japanese ancestry, there were those who would give aid and comfort to the Japanese invader and act as a fifth column before and during an invasion. 1 If the military [320 U.S. 106] were right in their belief that, among citizens of Japanese ancestry, there was an actual or incipient fifth column, we were indeed faced with the imminent threat of a dire emergency. We must credit the military with as much good faith in that belief as we would any other public official acting pursuant to his duties. We cannot possibly know all the facts which lay behind that decision. Some of them may have been as intangible and as imponderable as the factors which influence personal or business decisions in daily life. The point is that we cannot sit in judgment on the military requirements of that hour. Where the orders under the present Act have some relation to "protection against espionage and against sabotage," our task is at an end.

1943, Hirabayashi v. United States, 320 U.S. 106

Much of the argument assumes that as a matter of policy it might have been wiser for the military to have dealt with these people on an individual basis, and through the process of investigation and hearings separated those who were loyal from those who were not. But the wisdom or expediency of the decision which was made is not for us to review. Nor are we warranted, where national survival is at stake, in insisting that those orders should not have been applied to anyone without some evidence of his disloyalty. The orders as applied to the petitioner are not to be tested by the substantial evidence rule. Peacetime procedures do not necessarily fit wartime needs. It is said that, if citizens of Japanese ancestry were generally disloyal, treatment on a group basis might be justified. But there is no difference in power when the number [320 U.S. 107] of those who are finally shown to be disloyal or suspect is reduced to a small percent. The sorting process might indeed be as time-consuming whether those who were disloyal or suspect constituted nine or ninety-nine percent. And the pinch of the order on the loyal citizens would be as great in any case. But where the peril is great and the time is short, temporary treatment on a group basis may be the only practicable expedient whatever the ultimate percentage of those who are detained for cause. Nor should the military be required to wait until espionage or sabotage becomes effective before it moves.

1943, Hirabayashi v. United States, 320 U.S. 107

It is true that we might now say that there was ample time to handle the problem on the individual, rather than the group, basis. But military decisions must be made without the benefit of hindsight. The orders must be judged as of the date when the decision to issue them was made. To say that the military in such cases should take the time to weed out the loyal from the others would be to assume that the nation could afford to have them take the time to do it. But, as the opinion of the Court makes clear, speed and dispatch may be of the essence. Certainly we cannot say that those charged with the defense of the nation should have procrastinated until investigations and hearings were completed. At that time, further delay might indeed have seemed to be wholly incompatible with military responsibilities.

1943, Hirabayashi v. United States, 320 U.S. 107

Since we cannot override the military judgment which lay behind these orders, it seems to me necessary to concede that the army had the power to deal temporarily with these people on a group basis. Petitioner therefore was not justified in disobeying the orders.

1943, Hirabayashi v. United States, 320 U.S. 107

But I think it important to emphasize that we are dealing here with a problem of loyalty, not assimilation. Loyalty is a matter of mind and of heart, not of race. That indeed is the history of America. Moreover, guilt is personal [320 U.S. 108] under our constitutional system. Detention for reasonable cause is one thing. Detention on account of ancestry is another.

1943, Hirabayashi v. United States, 320 U.S. 108

In this case, the petitioner tendered by a plea in abatement the question of his loyalty to the United States. I think that plea was properly stricken; military measures of defense might be paralyzed if it were necessary to try out that issue preliminarily. But a denial of that opportunity in this case does not necessarily mean that petitioner could not have had a hearing on that issue in some appropriate proceeding. Obedience to the military orders is one thing. Whether an individual member of a group must be afforded at some stage an opportunity to show that, being loyal, he should be reclassified is a wholly different question.

1943, Hirabayashi v. United States, 320 U.S. 108

There are other instances in the law where one must obey an order before he can attack as erroneous the classification in which he has been placed. Thus, it is commonly held that one who is a conscientious objector has no privilege to defy the Selective Service Act and to refuse or fail to be inducted. He must submit to the law. But that line of authority holds that, after induction, he may obtain through habeas corpus a hearing on the legality of his classification by the draft board. 2 Whether, in the present situation, that remedy would be available is one [320 U.S. 109] of the large and important issues reserved by the present decision. It has been suggested that an administrative procedure has been established to relieve against unwarranted applications of these orders. Whether, in that event, the administrative remedy would be the only one available or would have to be first exhausted is also reserved. The scope of any relief which might be afforded—whether the liberties of an applicant could be restored only outside the areas in question—is likewise a distinct issue. But if it were plain that no machinery was available whereby the individual could demonstrate his loyalty as a citizen in order to be reclassified, questions of a more serious character would be presented. The United States, however, takes no such position. We need go no further here than to deny the individual the right to defy the law. It is sufficient to say that he cannot test in that way the validity of the orders as applied to him.

MURPHY, J., concurring

1943, Hirabayashi v. United States, 320 U.S. 109

MR. JUSTICE MURPHY, concurring.

1943, Hirabayashi v. United States, 320 U.S. 109

It is not to be doubted that the action taken by the military commander in pursuance of the authority conferred upon him was taken in complete good faith and in the firm conviction that it was required by considerations of public safety and military security. Neither is it doubted that the Congress and the Executive, working together, may generally employ such measures as are necessary and appropriate to provide for the common defense and to wage war "with all the force necessary to make it effective." United States v. Macintosh, 283 U.S. 605, 622. This includes authority to exercise measures of control over persons and property which would not in all cases be permissible in normal times. 1 [320 U.S. 110]

1943, Hirabayashi v. United States, 320 U.S. 110

It does not follow, however, that the broad guaranties of the Bill of Rights and other provisions of the Constitution protecting essential liberties are suspended by the mere existence of a state of war. It has been frequently stated and recognized by this Court that the war power, like the other great substantive powers of government, is subject to the limitations of the Constitution. See Ex parte Milligan, 4 Wall. 2; Hamilton v. Kentucky Distilleries Co., 251 U.S. 146, 156; Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 426. We give great deference to the judgment of the Congress and of the military authorities as to what is necessary in the effective prosecution of the war, but we can never forget that there are constitutional boundaries which it is our duty to uphold. It would not be supposed, for instance, that public elections could be suspended or that the prerogatives of the courts could be set aside, or that persons not charged with offenses against the law of war (see Ex parte Quirin, 317 U.S. 1) could be deprived of due process of law and the benefits of trial by jury, in the absence of a valid declaration of martial law. Cf. Ex parte Milligan, supra.

1943, Hirabayashi v. United States, 320 U.S. 110

Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that, for centuries, the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups. There was one law for one and a different law for another. Nothing is written more firmly into our law than the compact of the Plymouth voyagers to have just [320 U.S. 111] and equal laws. To say that any group cannot be assimilated is to admit that the great American experiment has failed, that our way of life has failed when confronted with the normal attachment of certain groups to the lands of their forefathers. As a nation, we embrace many groups, some of them among the oldest settlements in our midst, which have isolated themselves for religious and cultural reasons.

1943, Hirabayashi v. United States, 320 U.S. 111

Today is the first time, so far as I am aware, that we have sustained a substantial restriction of the personal liberty of citizens of the United States based upon the accident of race or ancestry. Under the curfew order here challenged, no less than 70,000 American citizens have been placed under a special ban and deprived of their liberty because of their particular racial inheritance. In this sense, it bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour—to sanction discrimination between groups of United States citizens on the basis of ancestry. In my opinion, this goes to the very brink of constitutional power.

1943, Hirabayashi v. United States, 320 U.S. 111

Except under conditions of great emergency, a regulation of this kind applicable solely to citizens of a particular racial extraction would not be regarded as in accord with the requirement of due process of law contained in the Fifth Amendment. We have consistently held that attempts to apply regulatory action to particular groups solely on the basis of racial distinction or classification is not in accordance with due process of law as prescribed by the Fifth and Fourteenth Amendments. Cf. Yick Wo v. Hopkins, 118 U.S. 356, 369; Yu Con Eng v. Trinidad, 271 U.S. 500, 524-528. See also Boyd v. Frankfort, 117 Ky. 199, 77 S.W. 669; Opinion of the Justices, 207 Mass. [320 U.S. 112] 601, 94 N.E. 558. It is true that the Fifth Amendment, unlike the Fourteenth, contains no guarantee of equal protection of the laws. Cf. Currin v. Wallace, 306 U.S. 1, 14. It is also true that even the guaranty of equal protection of the laws allows a measure of reasonable classification. It by no means follows, however, that there may not be discrimination of such an injurious character in the application of laws as to amount to a denial of due process of law as that term is used in the Fifth Amendment. 2 I think that point is dangerously approached when we have one law for the majority of our citizens and another for those of a particular racial heritage.

1943, Hirabayashi v. United States, 320 U.S. 112

In view, however, of the critical military situation which prevailed on the Pacific Coast area in the spring of 1942, and the urgent necessity of taking prompt and effective action to secure defense installations and military operations against the risk of sabotage and espionage, the military authorities should not be required to conform to standards of regulatory action appropriate to normal times. Because of the damage wrought by the Japanese at Pearl Harbor and the availability of new weapons and new techniques with greater capacity for speed and deception in offensive operations, the immediate possibility of an attempt at invasion somewhere along the Pacific Coast had to be reckoned with. However desirable such a procedure might have been, the military authorities could have reasonably concluded at [320 U.S. 113] the time that determinations as to the loyalty and dependability of individual members of the large and widely scattered group of persons of Japanese extraction on the West Coast could not be made without delay that might have had tragic consequences. Modern war does not always wait for the observance of procedural requirements that are considered essential and appropriate under normal conditions. Accordingly, I think that the military arm, confronted with the peril of imminent enemy attack and acting under the authority conferred by the Congress, made an allowable judgment at the time the curfew restriction was imposed. Whether such a restriction is valid today is another matter.

1943, Hirabayashi v. United States, 320 U.S. 113

In voting for affirmance of the judgment, I do not wish to be understood as intimating that the military authorities in time of war are subject to no restraints whatsoever, or that they are free to impose any restrictions they may choose on the rights and liberties of individual citizens or groups of citizens in those places which may be designated as "military areas." While this Court sits, it has the inescapable duty of seeing that the mandates of the Constitution are obeyed. That duty exists in time of war as well as in time of peace, and, in its performance, we must not forget that few indeed have been the invasions upon essential liberties which have not been accompanied by pleas of urgent necessity advanced in good faith by responsible men. Cf. Mr. Justice Brandeis concurring in Whitney v. California, 274 U.S. 357, 372.

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Nor do I mean to intimate that citizens of a particular racial group whose freedom may be curtailed within an area threatened with attack should be generally prevented from leaving the area and going at large in other areas that are not in danger of attack and where special precautions are not needed. Their status as citizens, though subject to requirements of national security and [320 U.S. 114] military necessity, should at all times be accorded the fullest consideration and respect. When the danger is past, the restrictions imposed on them should be promptly removed and their freedom of action fully restored.

RUTLEDGE, J., concurring

1943, Hirabayashi v. United States, 320 U.S. 114

MR. JUSTICE RUTLEDGE, concurring.

1943, Hirabayashi v. United States, 320 U.S. 114

I concur in the Court's opinion, except for the suggestion, if that is intended (as to which I make no assertion), that the courts have no power to review any action a military officer may "in his discretion" find it necessary to take with respect to civilian citizens in military areas or zones, once it is found that an emergency has created the conditions requiring or justifying the creation of the area or zone and the institution of some degree of military control short of suspending habeas corpus. Given the generating conditions for exercise of military authority and recognizing the wide latitude for particular applications that ordinarily creates, I do not think it is necessary in this case to decide that there is no action a person in the position of General De Witt here may take, and which he may regard as necessary to the region's or the country's safety, which will call judicial power into play. The officer, of course, must have wide discretion and room for its operation. But it does not follow there may not be bounds beyond which he cannot go and, if he oversteps them, that the courts may not have power to protect the civilian citizen. But, in this case, that question need not be faced, and I merely add my reservation without indication of opinion concerning it.

Footnotes

STONE, J., lead opinion (Footnotes)

1943, Hirabayashi v. United States, 320 U.S. 114

1. State Distribution of War Supply and Facility Contracts—June, 1940 through December, 1941 (issued by Office of Production Management, Bureau of Research and Statistics, January 18, 1942); ibid.—Cumulative through February, 1943 (issued by War Production Board, Statistics Division, April 3, 1943).

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2. See "Attack upon Pearl Harbor by Japanese Armed Forces," Report of the Commission Appointed by the President, dated January 23, 1942, S.Doc. No. 159, 77th Cong., 2d Sess., pp. 12, 13.

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3. Sixteenth Census of the United States, for 1940, Population, Second Series, Characteristics of the Population (Dept. of Commerce): California, pp. 10, 61; Oregon, pp. 10, 50; Washington, pp. 10, 52. See also H.R.Rep. No. 2124, 77th Cong., 2d Sess., pp. 91-100.

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4. Federal legislation has denied to the Japanese citizenship by naturalization (R.S. § 2169; 8 U.S.C. § 703; see Ozawa v. United States, 260 U.S. 178), and the Immigration Act of 1924 excluded them from admission into the United States. 43 Stat. 161, 8 U.S.C. § 213. State legislation has denied to alien Japanese the privilege of owning land. 1 California General Laws (Deering, 1931), Act 261; 5 Oregon Comp.Laws Ann. (1940), § 61-102; 11 Washington Rev.Stat.Ann. (Remington, 1933), §§ 10581, 10582. It has also sought to prohibit intermarriage of persons of Japanese race with Caucasians. Montana Rev.Codes 1935, § 5702. Persons of Japanese descent have often been unable to secure professional or skilled employment except in association with others of that descent, and sufficient employment opportunities of this character have not been available. Mears, Resident Orientals on the American Pacific Coast (1927), pp. 188, 198-209, 402, 403; H.R.Rep. No. 2124, 77th Cong., 2d Sess., pp. 101-138.

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5. Hearings before the Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., pp. 11702, 11393-11394, 11348.

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6. H.R.Rep. No. 1911, 77th Cong., 2d Sess., p. 16.

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7. Nationality Law of Japan, Article 1 and Article 20, § 3, and Regulations (Ordinance No. 26) of November 17, 1924—all printed in Flournoy and Hudson, Nationality Laws (1929), pp. 382, 384-387. See also Foreign Relations of the United States, 1924, vol. 2, pp. 411-413.

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8. Statistics released in 1927 by the Consul General of Japan at San Francisco asserted that over 51,000 of the approximately 63,000 American-born persons of Japanese parentage then in the western part of the United States held Japanese citizenship. Mears, Resident Orientals on the American Pacific Coast, pp. 107-08, 429. A census conducted under the auspices of the Japanese government in 1930 asserted that approximately 47% of American-born persons of Japanese parentage in California held dual citizenship. Strong, The Second-Generation Japanese Problem (1934), p. 142.

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9. H.R.Rep. No. 1911, 77th Cong., 2d Sess., p. 17.

DOUGLAS, J., concurring (Footnotes)

1943, Hirabayashi v. United States, 320 U.S. 114

1. Judge Fee stated in United States v. Yasui, 48 F.Supp. 40, 44-45, the companion case to the present one,

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The areas and zones outlined in the proclamations became a theatre of operations, subjected in localities to attack and all threatened during this period with a full scale invasion. The danger at the time this prosecution was instituted was imminent and immediate. The difficulty of controlling members of an alien race, many of whom, although citizens, were disloyal with opportunities of sabotage and espionage, with invasion imminent, presented a problem requiring for solution ability and devotion of the highest order.

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2. See United States v. Powell, 38 F.Supp. 183; Application of Greenberg, 39 F.Supp. 13; United States v. Baird, 39 F.Supp. 392; Micheli v. Paullin, 45 F.Supp. 687; United States v. Embrey, 46 F.Supp. 916; In re Rogers, 47 F.Supp. 265; Ex parte Stewart, 47 F.Supp. 410; United States v. Smith, 48 F.Supp. 842; Ex parte Robert, 49 F.Supp. 131; United States v. Grieme, 128 F.2d 811; Fletcher v. United States, 129 F.2d 262; Drumheller v. Berks County Local Board No. 1, 130 F.2d 610, 612. For cases arising under the Selective Draft Act of 1917, see United States v. Kinkead, 250 F. 692; Ex parte McDonald, 253 F. 99; Ex parte Cohen, 254 F. 711; Arbitman v. Woodside, 258 F. 441; Ex parte Thierit, 268 F. 472, 476. And see 10 Geo.Wash.L.Rev. 827.

MURPHY, J., concurring (Footnotes)

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1. Schenck v. United States, 249 U.S. 47; Debs v. United States, 249 U.S. 211; United States v. Bethlehem Steel Corp., 315 U.S. 289, 305; Northern Pac. Ry. Co. v. North Dakota, 250 U.S. 135; Dakota Cent. Tel. Co. v. South Dakota, 250 U.S. 163; Highland v. Russell Car & Snow-plow Co., 279 U.S. 253; Selective Draft Law Cases, 245 U.S. 366.

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2. For instance, if persons of an accused's race were systematically excluded from a jury in a federal court, any conviction undoubtedly would be considered a violation of the requirement of due process of law, even though the ground commonly stated for setting aside convictions to obtained in state courts is denial of equal protection of the laws. Cf. Glasser v. United States, 315 U.S. 60, with Smith v. Texas, 311 U.S. 128.

West Virginia State Bd. of Educ. v. Barnette, 1943

Title: West Virginia State Board of Education v. Barnette

Author: U.S. Supreme Court

Date: June 14, 1943

Source: 319 U.S. 624

This case was argued March 11, 1943, and was decided June 14, 1943.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

Syllabus

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

1. State action against which the Fourteenth Amendment protects includes action by a state board of education. P. 637.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

2. The action of a State in making it compulsory for children in the public schools to salute the flag and pledge allegiance—by extending the right arm, palm upward, and declaring, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all"—violates the First and Fourteenth Amendments. P. 642.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

So held as applied to children who were expelled for refusal to comply, and whose absence thereby became "unlawful," subjecting them and their parents or guardians to punishment.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

3. That those who refused compliance did so on religious grounds does not control the decision of this question, and it is unnecessary to inquire into the sincerity of their views. P. 634.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 624

4. Under the Federal Constitution, compulsion as here employed is not a permissible means of achieving "national unity." P. 640. [319 U.S. 625]

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

5. Minersville School Dist. v. Gobitis, 310 U.S. 586, overruled; Hamilton v. Regents, 293 U.S. 245, distinguished. Pp. 642, 632.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

47 F.Supp. 251, affirmed.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

APPEAL from a decree of a District Court of three judges enjoining the enforcement of a regulation of the West Virginia State Board of Education requiring children in the public schools to salute the American flag.

JACKSON, J., lead opinion

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

MR. JUSTICE JACKSON delivered the opinion of the Court.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

Following the decision by this Court on June 3, 1940, in Minersville School District v. Gobitis, 310 U.S. 586, the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 625

Appellant [319 U.S. 626] Board of Education was directed, with advice of the State Superintendent of Schools, to "prescribe the courses of study covering these subjects" for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study "similar to those required for the public schools." 1

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 626

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's Gobitis opinion and ordering that the salute to the flag become "a regular part of the program of activities in the public schools," that all teachers and pupils

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 626

shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly. 2 [319 U.S. 627]

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 627

The resolution originally required the "commonly accepted salute to the Flag," which it defined. Objections to the salute as "being too much like Hitler's" were raised by the Parent and Teachers Association, the Boy and Girl [319 U.S. 628] Scouts, the Red Cross, and the Federation of Women's Clubs. 3 Some modification appears to have been made in deference to these objections, but no concession was made to Jehovah's Witnesses. 4 What is now required is the "stiff-arm" salute, the saluter to keep the right hand raised with palm turned up while the following is repeated:

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 628

I pledge allegiance to the Flag of the United States of [319 U.S. 629] America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 629

Failure to conform is "insubordination," dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile, the expelled child is "unlawfully absent," 5 and may be proceeded against as a delinquent. 6 His parents or guardians are liable to prosecution, 7 and, if convicted, are subject to fine not exceeding $50 and Jail term not exceeding thirty days. 8

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 629

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superior to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says:

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Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.

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They consider that the flag is an "image" within this command. For this reason, they refuse to salute it. [319 U.S. 630]

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Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted, and are threatened with prosecutions for causing delinquency.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 630

The Board of Education moved to dismiss the complaint, setting forth these facts and alleging that the law and regulations are an unconstitutional denial of religious freedom, and of freedom of speech, and are invalid under the "due process" and "equal protection" clauses of the Fourteenth Amendment to the Federal Constitution. The cause was submitted on the pleadings to a District Court of three judges. It restrained enforcement as to the plaintiffs and those of that class. The Board of Education brought the case here by direct appeal. 9

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 630

This case calls upon us to reconsider a precedent decision, as the Court, throughout its history, often has been required to do. 10 Before turning to the Gobitis case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.

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The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce [319 U.S. 631] attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 631

As the present CHIEF JUSTICE said in dissent in the Gobitis case, the State may

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require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country.

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310 U.S. at 604. Here, however, we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected 11 route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan.. 12 This issue is not prejudiced by [319 U.S. 632] the Court's previous holding that, where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. It was held that those who take advantage of its opportunities may not, on ground of conscience, refuse compliance with such conditions. Hamilton v. Regents, 293 U.S. 245. In the present case, attendance is not optional. That case is also to be distinguished from the present one, because, independently of college privileges or requirements, the State has power to raise militia and impose the duties of service therein upon its citizens.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 632

There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality is a short-cut from mind to mind. Causes and nations, political parties, lodges, and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical raiment. Symbols of State often convey political ideas, just as religious symbols come to convey theological ones. Associated with many of these symbols are appropriate gestures of acceptance or respect: a salute, a bowed or bared head, a bended knee. A person gets from a [319 U.S. 633] symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 633

Over a decade ago, Chief Justice Hughes led this Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free speech guaranties of the Constitution. Stromberg v. California, 283 U.S. 35. Here, it is the State that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication, when coerced, is an old one, well known to the framers of the Bill of Rights. 13

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 633

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony, or whether it will be acceptable if they simulate assent by words without belief, and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here, the power of compulsion [319 U.S. 634] is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute, we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 634

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations. 14 If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence, validity of the asserted power to force an American citizen publicly to profess any statement of belief, or to engage in any ceremony of assent to one, presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

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Nor does the issue, as we see it, turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views [319 U.S. 635] hold such a compulsory rite to infringe constitutional liberty of the individual. 15 It is not necessary to inquire whether nonconformist beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

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The Gobitis decision, however, assumed, as did the argument in that case and in this, that power exists in the State to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. 16 The question which underlies the [319 U.S. 636] flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine, rather than assume existence of, this power, and, against this broader definition of issues in this case, reexamine specific grounds assigned for the Gobitis decision.

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1. It was said that the flag salute controversy confronted the Court with

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the problem which Lincoln cast in memorable dilemma: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?", and that the answer must be in favor of strength. Minersville School District v. Gobitis, supra, at 596.

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We think these issues may be examined free of pressure or restraint growing out of such considerations.

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It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the State to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favor of those in authority, and would require us to override every liberty thought to weaken or delay execution of their policies.

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Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and, by making us feel safe to live under it, makes for its better support. Without promise of a limiting Bill of Rights, it is [319 U.S. 637] doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

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The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or, failing that, to weaken, the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

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2. It was also considered in the Gobitis case that functions of educational officers in States, counties and school districts were such that to interfere with their authority "would in effect make us the school board for the country." Id. at 598.

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The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

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Such Boards are numerous, and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. [319 U.S. 638] The action of Congress in making flag observance voluntary 17 and respecting the conscience of the objector in a matter so vital as raising the Army 18 contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants, as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

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3. The Gobitis opinion reasoned that this is a field "where courts possess no marked, and certainly no controlling, competence," that it is committed to the legislatures, as well as the courts, to guard cherished liberties, and that it is constitutionally appropriate to

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fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies, rather than to transfer such a contest to the judicial arena,

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since all the "effective means of inducing political changes are left free." Id. at 597-598, 600.

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The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. [319 U.S. 639]

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In weighing arguments of the parties, it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that, while it is the Fourteenth Amendment which bears directly upon the State, it is the more specific limiting principles of the First Amendment that finally govern this case.

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Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls, and only the mildest supervision [319 U.S. 640] over men's affairs. We must transplant these rights to a soil in which the laissez-faire concept or principle of noninterference has withered, at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls. These changed conditions often deprive precedents of reliability, and cast us more than we would choose upon our own judgment. But we act in these matters not by authority of our competence, but by force of our commissions. We cannot, because of modest estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

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4. Lastly, and this is the very heart of the Gobitis opinion, it reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment," and hence reaches the conclusion that such compulsory measures toward "national unity" are constitutional. Id. at 595. Upon the verity of this assumption depends our answer in this case.

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National unity, as an end which officials may foster by persuasion and example, is not in question. The problem is whether, under our Constitution, compulsion as here employed is a permissible means for its achievement.

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Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. Nationalism is a relatively recent phenomenon, but, at other times and places, the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. [319 U.S. 641] As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

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It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

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The case is made difficult not because the principles of its decision are obscure, but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism [319 U.S. 642] and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

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If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. 19

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We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

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The decision of this Court in Minersville School District v. Gobitis, and the holdings of those few per curiam decisions which preceded and foreshadowed it, are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is

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Affirmed.

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MR. JUSTICE ROBERTS and MR. JUSTICE REED adhere to the views expressed by the Court in Minersville School [319 U.S. 643] District v. Gobitis, 310 U.S. 586, and are of the opinion that the judgment below should be reversed.

BLACK, J., concurring

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 643

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring:

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We are substantially in agreement with the opinion just read, but, since we originally joined with the Court in the Gobitis case, it is appropriate that we make a brief statement of reasons for our change of view.

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Reluctance to make the Federal Constitution a rigid bar against state regulation of conduct thought inimical to the public welfare was the controlling influence which moved us to consent to the Gobitis decision. Long reflection convinced us that, although the principle is sound, its application in the particular case was wrong. Jones v. Opelika, 316 U.S. 584, 623. We believe that the statute before us fails to accord full scope to the freedom of religion secured to the appellees by the First and Fourteenth Amendments.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 643

The statute requires the appellees to participate in a ceremony aimed at inculcating respect for the flag and for this country. The Jehovah's Witnesses, without any desire to show disrespect for either the flag or the country, interpret the Bible as commanding, at the risk of God's displeasure, that they not go through the form of a pledge of allegiance to any flag. The devoutness of their belief is evidenced by their willingness to suffer persecution and punishment, rather than make the pledge.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 643

No well ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave [319 U.S. 644] and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity. Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made by this Court. The duty is a solemn one, and, in meeting it, we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

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Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 644

Neither our domestic tranquillity in peace nor our martial effort in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

MURPHY, J., concurring

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MR. JUSTICE MURPHY, concurring:

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I agree with the opinion of the Court and join in it.

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The complaint challenges an order of the State Board of Education which requires teachers and pupils to participate in the prescribed salute to the flag. For refusal to conform with the requirement, the State law prescribes expulsion. [319 U.S. 645] The offender is required by law to be treated as unlawfully absent from school, and the parent or guardian is made liable to prosecution and punishment for such absence. Thus, not only is the privilege of public education conditioned on compliance with the requirement, but noncompliance is virtually made unlawful. In effect, compliance is compulsory, and not optional. It is the claim of appellees that the regulation is invalid as a restriction on religious freedom and freedom of speech, secured to them against State infringement by the First and Fourteenth Amendments to the Constitution of the United States.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 645

A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again—all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that, as a judge, I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

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The right of freedom of thought and of religion, as guaranteed by the Constitution against State action, includes both the right to speak freely and the right to refrain from speaking at all, except insofar as essential operations of government may require it for the preservation of an orderly society—as in the case of compulsion to give evidence in court. Without wishing to disparage the purposes and intentions of those who hope to inculcate sentiments of loyalty and patriotism by requiring a declaration of allegiance as a feature of public education, or unduly belittle the benefits that may accrue therefrom, I am impelled to conclude that such a requirement is not essential to the maintenance of effective government and orderly society. To many, it is deeply distasteful to join in a public chorus of affirmation of private belief. By some, including [319 U.S. 646] the members of this sect, it is apparently regarded as incompatible with a primary religious obligation, and therefore a restriction on religious freedom. Official compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what Jefferson characterized as the "severest contests in which I have ever been engaged."\*

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 646

I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that is entailed or to compensate for a restraint on the freedom of the individual to be vocal or silent according to his conscience or personal inclination. The trenchant words in the preamble to the Virginia Statute for Religious Freedom remain unanswerable:

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…all attempts to influence [the mind] by temporal punishments, or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness,…

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Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.

FRANKFURTER, J., dissenting

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MR. JUSTICE FRANKFURTER, dissenting:

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One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant, I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing, as they do, the thought and [319 U.S. 647] action of a lifetime. But, as judges, we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution, and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. The duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person. It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could, in reason, have enacted such a law. In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review. Most unwillingly, therefore, I must differ from my brethren with regard to legislation like this. I cannot bring my mind to believe that the "liberty" secured by the Due Process Clause gives this Court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end, namely, the promotion of good citizenship, by employment of the means here chosen.

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Not so long ago, we were admonished that

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the only check upon our own exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books, appeal lies not to the courts, but to the ballot and to the processes of democratic government. [319 U.S. 648]

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United States v. Butler, 297 U.S. 1, 79 (dissent). We have been told that generalities do not decide concrete cases. But the intensity with which a general principle is held may determine a particular issue, and whether we put first things first may decide a specific controversy.

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The admonition that judicial self-restraint alone limits arbitrary exercise of our authority is relevant every time we are asked to nullify legislation. The Constitution does not give us greater veto power when dealing with one phase of "liberty" than with another, or when dealing with grade school regulations than with college regulations that offend conscience, as was the case in Hamilton v. Regents, 293 U.S. 245. In neither situation is our function comparable to that of a legislature, or are we free to act as though we were a super-legislature. Judicial self-restraint is equally necessary whenever an exercise of political or legislative power is challenged. There is no warrant in the constitutional basis of this Court's authority for attributing different roles to it depending upon the nature of the challenge to the legislation. Our power does not vary according to the particular provision of the Bill of Rights which is invoked. The right not to have property taken without just compensation has, so far as the scope of judicial power is concerned, the same constitutional dignity as the right to be protected against unreasonable searches and seizures, and the latter has no less claim than freedom of the press or freedom of speech or religious freedom. In no instance is this Court the primary protector of the particular liberty that is invoked. This Court has recognized what hardly could be denied, that all the provisions of the first ten Amendments are "specific" prohibitions, United States v. Carolene Products Co., 304 U.S. 144, 152, n. 4. But each specific Amendment, insofar as embraced within the Fourteenth Amendment, must be equally respected, and the function of this [319 U.S. 649] Court does not differ in passing on the constitutionality of legislation challenged under different Amendments.

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When Mr. Justice Holmes, speaking for this Court, wrote that

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it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts,

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Missouri, K. & T. Ry. Co. v. May, 194 U.S. 267, 270, he went to the very essence of our constitutional system and the democratic conception of our society. He did not mean that for only some phases of civil government this Court was not to supplant legislatures and sit in judgment upon the right or wrong of a challenged measure. He was stating the comprehensive judicial duty and role of this Court in our constitutional scheme whenever legislation is sought to be nullified on any ground, namely, that responsibility for legislation lies with legislatures, answerable as they are directly to the people, and this Court's only and very narrow function is to determine whether, within the broad grant of authority vested in legislatures, they have exercised a judgment for which reasonable justification can be offered.

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The framers of the federal Constitution might have chosen to assign an active share in the process of legislation to this Court. They had before them the well known example of New York's Council of Revision, which had been functioning since 1777. After stating that "laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed," the state constitution made the judges of New York part of the legislative process by providing that "all bills which have passed the senate and assembly shall, before they become laws," be presented to a Council, of which the judges constituted a majority, "for their revisal and consideration." Art. III, New York Constitution of 1777. Judges exercised this legislative function in New York [319 U.S. 650] for nearly fifty years. See Art. I, § 12, New York Constitution of 1821. But the framers of the Constitution denied such legislative powers to the federal judiciary. They chose instead to insulate the judiciary from the legislative function. They did not grant to this Court supervision over legislation.

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The reason why, from the beginning, even the narrow judicial authority to nullify legislation has been viewed with a jealous eye is that it serves to prevent the full play of the democratic process. The fact that it may be an undemocratic aspect of our scheme of government does not call for its rejection or its disuse. But it is the best of reasons, as this Court has frequently recognized, for the greatest caution in its use.

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The precise scope of the question before us defines the limits of the constitutional power that is in issue. The State of West Virginia requires all pupils to share in the salute to the flag as part of school training in citizenship. The present action is one to enjoin the enforcement of this requirement by those in school attendance. We have not before us any attempt by the State to punish disobedient children or visit penal consequences on their parents. All that is in question is the right of the State to compel participation in this exercise by those who choose to attend the public schools.

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We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are, in fact, passing judgment on "the power of the State as a whole." Rippey v. Texas, 193 U.S. 504, 509; Skiriotes v. Florida, 313 U.S. 69, 79. Practically, we are passing upon the political power of each of the forty-eight states. Moreover, since the First Amendment has been read into the Fourteenth, our problem is precisely the same as it would be if we had before us an Act of Congress for the District of Columbia. To suggest that we are here concerned [319 U.S. 651] with the heedless action of some village tyrants is to distort the augustness of the constitutional issue and the reach of the consequences of our decision.

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Under our constitutional system, the legislature is charged solely with civil concerns of society. If the avowed or intrinsic legislative purpose is either to promote or to discourage some religious community or creed, it is clearly within the constitutional restrictions imposed on legislatures, and cannot stand. But it by no means follows that legislative power is wanting whenever a general nondiscriminatory civil regulation, in fact, touches conscientious scruples or religious beliefs of an individual or a group. Regard for such scruples or beliefs undoubtedly presents one of the most reasonable claims for the exertion of legislative accommodation. It is, of course, beyond our power to rewrite the State's requirement by providing exemptions for those who do not wish to participate in the flag salute or by making some other accommodations to meet their scruples. That wisdom might suggest the making of such accommodations, and that school administration would not find it too difficult to make them, and yet maintain the ceremony for those not refusing to conform, is outside our province to suggest. Tact, respect, and generosity toward variant views will always commend themselves to those charged with the duties of legislation so as to achieve a maximum of good will and to require a minimum of unwilling submission to a general law. But the real question is, who is to make such accommodations, the courts or the legislature?

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This is no dry, technical matter. It cuts deep into one's conception of the democratic process—it concerns no less the practical differences between the means for making these accommodations that are open to courts and to legislatures. A court can only strike down. It can only say "This or that law is void." It cannot modify or qualify, it cannot make exceptions to a general requirement. [319 U.S. 652] And it strikes down not merely for a day. At least the finding of unconstitutionality ought not to have ephemeral significance unless the Constitution is to be reduced to the fugitive importance of mere legislation. When we are dealing with the Constitution of the United States, and, more particularly, with the great safeguards of the Bill of Rights, we are dealing with principles of liberty and justice "so rooted in the traditions and conscience of our people as to be ranked as fundamental"—something without which "a fair and enlightened system of justice would be impossible." Palko v. Connecticut, 302 U.S. 319, 325; Hurtado v. California, 110 U.S. 516, 530, 531. If the function of this Court is to be essentially no different from that of a legislature, if the considerations governing constitutional construction are to be substantially those that underlie legislation, then indeed judges should not have life tenure, and they should be made directly responsible to the electorate. There have been many, but unsuccessful, proposals in the last sixty years to amend the Constitution to that end. See Sen.Doc. No. 91, 75th Cong., 1st Sess., pp. 248-251.

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Conscientious scruples, all would admit, cannot stand against every legislative compulsion to do positive acts in conflict with such scruples. We have been told that such compulsions override religious scruples only as to major concerns of the state. But the determination of what is major and what is minor itself raises questions of policy. For the way in which men equally guided by reason appraise importance goes to the very heart of policy. Judges should be very diffident in setting their judgment against that of a state in determining what is, and what is not, a major concern, what means are appropriate to proper ends, and what is the total social cost in striking the balance of imponderables.

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What one can say with assurance is that the history out of which grew constitutional provisions for religious equality [319 U.S. 653] and the writings of the great exponents of religious freedom—Jefferson, Madison, John Adams, Benjamin Franklin—are totally wanting in justification for a claim by dissidents of exceptional immunity from civic measures of general applicability, measures not, in fact, disguised assaults upon such dissident views. The great leaders of the American Revolution were determined to remove political support from every religious establishment. They put on an equality the different religious sects—Episcopalians, Presbyterians, Catholics, Baptists, Methodists, Quakers, Huguenots—which, as dissenters, had been under the heel of the various orthodoxies that prevailed in different colonies. So far as the state was concerned, there was to be neither orthodoxy nor heterodoxy. And so Jefferson and those who followed him wrote guaranties of religious freedom into our constitutions. Religious minorities, as well as religious majorities, were to be equal in the eyes of the political state. But Jefferson and the others also knew that minorities may disrupt society. It never would have occurred to them to write into the Constitution the subordination of the general civil authority of the state to sectarian scruples.

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The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the state, not the state may not exercise that which, except by leave of religious loyalties, is within the domain of temporal power. Otherwise, each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws.

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The prohibition against any religious establishment by the government placed denominations on an equal footing [319 U.S. 654] —it assured freedom from support by the government to any mode of worship and the freedom of individuals to support any mode of worship. Any person may therefore believe or disbelieve what he pleases. He may practice what he will in his own house of worship or publicly within the limits of public order. But the lawmaking authority is not circumscribed by the variety of religious beliefs—otherwise, the constitutional guaranty would be not a protection of the free exercise of religion, but a denial of the exercise of legislation.

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The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men. But it is not enough to strike down a nondiscriminatory law that it may hurt or offend some dissident view. It would be too easy to cite numerous prohibitions and injunctions to which laws run counter if the variant interpretations of the Bible were made the tests of obedience to law. The validity of secular laws cannot be measured by their conformity to religious doctrines. It is only in a theocratic state that ecclesiastical doctrines measure legal right or wrong.

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An act compelling profession of allegiance to a religion, no matter how subtly or tenuously promoted, is bad. But an act promoting good citizenship and national allegiance is within the domain of governmental authority, and is therefore to be judged by the same considerations of power and of constitutionality as those involved in the many [319 U.S. 655] claims of immunity from civil obedience because of religious scruples.

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That claims are pressed on behalf of sincere religious convictions does not, of itself, establish their constitutional validity. Nor does waving the banner of religious freedom relieve us from examining into the power we are asked to deny the states. Otherwise, the doctrine of separation of church and state, so cardinal in the history of this nation and for the liberty of our people, would mean not the disestablishment of a state church, but the establishment of all churches, and of all religious groups.

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The subjection of dissidents to the general requirement of saluting the flag, as a measure conducive to the training of children in good citizenship, is very far from being the first instance of exacting obedience to general laws that have offended deep religious scruples. Compulsory vaccination, see Jacobson v. Massachusetts, 197 U.S. 11, food inspection regulations, see Shapiro v. Lyle, 30 F.2d 971, the obligation to bear arms, see Hamilton v. Regents, 293 U.S. 245, 267, testimonial duties, see Stansbury v. Marks, 2 Dall. 213, compulsory medical treatment, see People v. Vogelesang, 221 N.Y. 290, 116 N.E. 977—these are but illustrations of conduct that has often been compelled in the enforcement of legislation of general applicability even though the religious consciences of particular individuals rebelled at the exaction.

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Law is concerned with external behavior, and not with the inner life of man. It rests in large measure upon compulsion. Socrates lives in history partly because he gave his life for the conviction that duty of obedience to secular law does not presuppose consent to its enactment or belief in its virtue. The consent upon which free government rests is the consent that comes from sharing in the process of making and unmaking laws. The state is not shut out from a domain because the individual conscience may deny the state's claim. The individual conscience [319 U.S. 656] may profess what faith it chooses. It may affirm and promote that faith—in the language of the Constitution, it may "exercise" it freely—but it cannot thereby restrict community action through political organs in matters of community concern, so long as the action is not asserted in a discriminatory way, either openly or by stealth. One may have the right to practice one's religion and at the same time owe the duty of formal obedience to laws that run counter to one's belief. Compelling belief implies denial of opportunity to combat it and to assert dissident views. Such compulsion is one thing. Quite another matter is submission to conformity of action while denying its wisdom or virtue, and with ample opportunity for seeking its change or abrogation.

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In Hamilton v. Regents, 293 U.S. 245, this Court unanimously held that one attending a state-maintained university cannot refuse attendance on courses that offend his religious scruples. That decision is not overruled today, but is distinguished on the ground that attendance at the institution for higher education was voluntary, and therefore a student could not refuse compliance with its conditions, and yet take advantage of its opportunities. But West Virginia does not compel the attendance at its public schools of the children here concerned. West Virginia does not so compel, for it cannot. This Court denied the right of a state to require its children to attend public schools. Pierce v. Society of Sisters, 268 U.S. 510. As to its public schools, West Virginia imposes conditions which it deems necessary in the development of future citizens precisely as California deemed necessary the requirements that offended the student's conscience in the Hamilton case. The need for higher education and the duty of the state to provide it as part of a public educational system, are part of the democratic faith of most of our states. The right to secure such education in institutions not maintained by public funds is unquestioned. [319 U.S. 657] But the practical opportunities for obtaining what is becoming in increasing measure the conventional equipment of American youth may be no less burdensome than that which parents are increasingly called upon to bear in sending their children to parochial schools because the education provided by public schools, though supported by their taxes, does not satisfy their ethical and educational necessities. I find it impossible, so far as constitutional power is concerned, to differentiate what was sanctioned in the Hamilton case from what is nullified in this case. And, for me, it still remains to be explained why the grounds of Mr. Justice Cardozo's opinion in Hamilton v. Regents, supra, are not sufficient to sustain the flag salute requirement. Such a requirement, like the requirement in the Hamilton case,

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is not an interference by the state with the free exercise of religion when the liberties of the constitution are read in the light of a century and a half of history during days of peace and war.

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293 U.S. 245, 266. The religious worshiper,

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if his liberties were to be thus extended, might refuse to contribute taxes…in furtherance of any other end condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government.

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Id. at 268.

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Parents have the privilege of choosing which schools they wish their children to attend. And the question here is whether the state may make certain requirements that seem to it desirable or important for the proper education of those future citizens who go to schools maintained by the states, or whether the pupils in those schools may be relieved from those requirements if they run counter to the consciences of their parents. Not only have parents the right to send children to schools of their own choosing, but the state has no right to bring such schools "under a strict governmental control" or give

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affirmative direction [319 U.S. 658] concerning the intimate and essential details of such schools, entrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum, and textbooks.

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Farrington v. Tokushige, 273 U.S. 284, 298. Why should not the state likewise have constitutional power to make reasonable provisions for the proper instruction of children in schools maintained by it?

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 658

When dealing with religious scruples, we are dealing with an almost numberless variety of doctrines and beliefs entertained with equal sincerity by the particular groups for which they satisfy man's needs in his relation to the mysteries of the universe. There are, in the United States, more than 250 distinctive established religious denominations. In the State of Pennsylvania, there are 120 of these, and, in West Virginia, as many as 65. But if religious scruples afford immunity from civic obedience to laws, they may be invoked by the religious beliefs of any individual even though he holds no membership in any sect or organized denomination. Certainly this Court cannot be called upon to determine what claims of conscience should be recognized, and what should be rejected as satisfying the "religion" which the Constitution protects. That would, indeed, resurrect the very discriminatory treatment of religion which the Constitution sought forever to forbid. And so, when confronted with the task of considering the claims of immunity from obedience to a law dealing with civil affairs because of religious scruples, we cannot conceive religion more narrowly than in the terms in which Judge Augustus N. Hand recently characterized it:

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It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race, and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason [319 U.S. 659] as a means of relating the individual to his fellow men and to his universe…. [It] may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is, for many persons at the present time, the equivalent of what has always been thought a religious impulse.

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United States v. Kauten, 133 F.2d 703, 708.

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Consider the controversial issue of compulsory Bible reading in public schools. The educational policies of the states are in great conflict over this, and the state courts are divided in their decisions on the issue whether the requirement of Bible reading offends constitutional provisions dealing with religious freedom. The requirement of Bible reading has been justified by various state courts as an appropriate means of inculcating ethical precepts and familiarizing pupils with the most lasting expression of great English literature. Is this Court to overthrow such variant state educational policies by denying states the right to entertain such convictions in regard to their school systems because of a belief that the King James version is, in fact, a sectarian text to which parents of the Catholic and Jewish faiths and of some Protestant persuasions may rightly object to having their children exposed? On the other hand, the religious consciences of some parents may rebel at the absence of any Bible reading in the schools. See Washington ex rel. Clithero v. Showalter, 284 U.S. 573. Or is this Court to enter the old controversy between science and religion by unduly defining the limits within which a state may experiment with its school curricula? The religious consciences of some parents may be offended by subjecting their children to the Biblical account of creation, while another state may offend parents by prohibiting a teaching of biology that contradicts such Biblical account. Compare Scopes v. State, 154 Tenn. 105, 289 S.W. 363. What of conscientious [319 U.S. 660] objections to what is devoutly felt by parents to be the poisoning of impressionable minds of children by chauvinistic teaching of history? This is very far from a fanciful suggestion, for, in the belief of many thoughtful people, nationalism is the seed-bed of war.

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There are other issues in the offing which admonish us of the difficulties and complexities that confront states in the duty of administering their local school systems. All citizens are taxed for the support of public schools, although this Court has denied the right of a state to compel all children to go to such schools, and has recognized the right of parents to send children to privately maintained schools. Parents who are dissatisfied with the public schools thus carry a double educational burden. Children who go to public school enjoy in many states derivative advantages, such as free textbooks, free lunch, and free transportation in going to and from school. What of the claims for equality of treatment of those parents who, because of religious scruples, cannot send their children to public schools? What of the claim that, if the right to send children to privately maintained schools is partly an exercise of religious conviction, to render effective this right, it should be accompanied by equality of treatment by the state in supplying free textbooks, free lunch, and free transportation to children who go to private schools? What of the claim that such grants are offensive to the cardinal constitutional doctrine of separation of church and state?

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These questions assume increasing importance in view of the steady growth of parochial schools, both in number and in population. I am not borrowing trouble by adumbrating these issues, nor am I parading horrible examples of the consequences of today's decision. I am aware that we must decide the case before us, and not some other case. But that does not mean that a case is dissociated from the past, and unrelated to the future. We must decide this [319 U.S. 661] case with due regard for what went before and no less regard for what may come after. Is it really a fair construction of such a fundamental concept as the right freely to exercise one's religion that a state cannot choose to require all children who attend public school to make the same gesture of allegiance to the symbol of our national life because it may offend the conscience of some children, but that it may compel all children to attend public school to listen to the King James version although it may offend the consciences of their parents? And what of the larger issue of claiming immunity from obedience to a general civil regulation that has a reasonable relation to a public purpose within the general competence of the state? See Pierce v. Society of Sisters, 268 U.S. 510, 535. Another member of the sect now before us insisted that, in forbidding her two little girls, aged nine and twelve, to distribute pamphlets, Oregon infringed her and their freedom of religion in that the children were engaged in "preaching the gospel of God's Kingdom." A procedural technicality led to the dismissal of the case, but the problem remains. McSparran v. Portland, 318 U.S. 768.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 661

These questions are not lightly stirred. They touch the most delicate issues, and their solution challenges the best wisdom of political and religious statesmen. But it presents awful possibilities to try to encase the solution of these problems within the rigid prohibitions of unconstitutionality.

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We are told that a flag salute is a doubtful substitute for adequate understanding of our institutions. The states that require such a school exercise do not have to justify it as the only means for promoting good citizenship in children, but merely as one of diverse means for accomplishing a worthy end. We may deem it a foolish measure, but the point is that this Court is not the organ of government to resolve doubts as to whether it will fulfill its purpose. Only if there be no doubt that any reasonable [319 U.S. 662] mind could entertain can we deny to the states the right to resolve doubts their way, and not ours.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 662

That which to the majority may seem essential for the welfare of the state may offend the consciences of a minority. But, so long as no inroads are made upon the actual exercise of religion by the minority, to deny the political power of the majority to enact laws concerned with civil matters, simply because they may offend the consciences of a minority, really means that the conscience of a minority are more sacred and more enshrined in the Constitution than the consciences of a majority.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 662

We are told that symbolism is a dramatic but primitive way of communicating ideas. Symbolism is inescapable. Even the most sophisticated live by symbols. But it is not for this Court to make psychological judgments as to the effectiveness of a particular symbol in inculcating concededly indispensable feelings, particularly if the state happens to see fit to utilize the symbol that represents our heritage and our hopes. And surely only flippancy could be responsible for the suggestion that constitutional validity of a requirement to salute our flag implies equal validity of a requirement to salute a dictator. The significance of a symbol lies in what it represents. To reject the swastika does not imply rejection of the Cross. And so it bears repetition to say that it mocks reason and denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of sanction for obeisance to a leader. To deny the power to employ educational symbols is to say that the state's educational system may not stimulate the imagination because this may lead to unwise stimulation.

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The right of West Virginia to utilize the flag salute as part of its educational process is denied because, so it is argued, it cannot be justified as a means of meeting a "clear and present danger" to national unity. In passing, it deserves to be noted that the four cases which unanimously [319 U.S. 663] sustained the power of states to utilize such an educational measure arose and were all decided before the present World War. But to measure the state's power to make such regulations as are here resisted by the imminence of national danger is wholly to misconceive the origin and purpose of the concept of "clear and present danger." To apply such a test is for the Court to assume, however unwittingly, a legislative responsibility that does not belong to it. To talk about "clear and present danger" as the touchstone of allowable educational policy by the states whenever school curricula may impinge upon the boundaries of individual conscience is to take a felicitous phrase out of the context of the particular situation where it arose and for which it was adapted. Mr. Justice Holmes used the phrase "clear and present danger" in a case involving mere speech as a means by which alone to accomplish sedition in time of war. By that phrase, he meant merely to indicate that, in view of the protection given to utterance by the First Amendment, in order that mere utterance may not be proscribed,

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the words used are used in such circumstances, and are of such a nature, as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

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Schenck v. United States, 249 U.S. 47, 52. The "substantive evils" about which he was speaking were inducement of insubordination in the military and naval forces of the United States and obstruction of enlistment while the country was at war. He was not enunciating a formal rule that there can be no restriction upon speech, and, still less, no compulsion where conscience balks, unless imminent danger would thereby be wrought "to our institutions or our government."

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The flag salute exercise has no kinship whatever to the oath tests so odious in history. For the oath test was one of the instruments for suppressing heretical beliefs. [319 U.S. 664] Saluting the flag suppresses no belief, nor curbs it. Children and their parents may believe what they please, avow their belief and practice it. It is not even remotely suggested that the requirement for saluting the flag involves the slightest restriction against the fullest opportunity on the part both of the children and of their parents to disavow, as publicly as they choose to do so, the meaning that others attach to the gesture of salute. All channels of affirmative free expression are open to both children and parents. Had we before us any act of the state putting the slightest curbs upon such free expression, I should not lag behind any member of this Court in striking down such an invasion of the right to freedom of thought and freedom of speech protected by the Constitution.

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I am fortified in my view of this case by the history of the flag salute controversy in this Court. Five times has the precise question now before us been adjudicated. Four times the Court unanimously found that the requirement of such a school exercise was not beyond the powers of the states. Indeed, in the first three cases to come before the Court, the constitutional claim now sustained was deemed so clearly unmeritorious that this Court dismissed the appeals for want of a substantial federal question. Leoles v. Landers, 302 U.S. 656; Hearing v. State Board of Education, 303 U.S. 624; Gabrielli v. Knickerbocker, 306 U.S. 621. In the fourth case, the judgment of the district court upholding the state law was summarily affirmed on the authority of the earlier cases. Johnson v. Deerfield, 306 U.S. 621. The fifth case, Minersville District v. Gobitis, 310 U.S. 586, was brought here because the decision of the Circuit Court of Appeals for the Third Circuit ran counter to our rulings. They were reaffirmed after full consideration, with one Justice dissenting.

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What may be even more significant than this uniform recognition of state authority is the fact that every Justice [319 U.S. 665] —thirteen in all—who has hitherto participated in judging this matter has at one or more times found no constitutional infirmity in what is now condemned. Only the two Justices sitting for the first time on this matter have not heretofore found this legislation inoffensive to the "liberty" guaranteed by the Constitution. And among the Justices who sustained this measure were outstanding judicial leaders in the zealous enforcement of constitutional safeguards of civil liberties—men like Chief Justice Hughes, Mr. Justice Brandeis, and Mr. Justice Cardozo, to mention only those no longer on the Court.

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One's conception of the Constitution cannot be severed from one's conception of a judge's function in applying it. The Court has no reason for existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediacy and from the deflections of worldly ambition, will become able to take a view of longer range than the period of responsibility entrusted to Congress and legislatures. We are dealing with matters as to which legislators and voters have conflicting views. Are we as judges to impose our strong convictions on where wisdom lies? That which three years ago had seemed to five successive Courts to lie within permissible areas of legislation is now outlawed by the deciding shift of opinion of two Justices. What reason is there to believe that they or their successors may not have another view a few years hence? Is that which was deemed to be of so fundamental a nature as to be written into the Constitution to endure for all times to be the sport of shifting winds of doctrine? Of course, judicial opinions, even as to questions of constitutionality, are not immutable. As has been true in the past, the Court will from time to time reverse its position. But I believe that never before these Jehovah's Witnesses [319 U.S. 666] cases (except for minor deviations subsequently retraced) has this Court overruled decisions so as to restrict the powers of democratic government. Always heretofore it has withdrawn narrow views of legislative authority so as to authorize what formerly it had denied.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 666

In view of this history, it must be plain that what thirteen Justices found to be within the constitutional authority of a state, legislators cannot be deemed unreasonable in enacting. Therefore, in denying to the states what heretofore has received such impressive judicial sanction, some other tests of unconstitutionality must surely be guiding the Court than the absence of a rational justification for the legislation. But I know of no other test which this Court is authorized to apply in nullifying legislation.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 666

In the past, this Court has from time to time set its views of policy against that embodied in legislation by finding laws in conflict with what was called the "spirit of the Constitution." Such undefined destructive power was not conferred on this Court by the Constitution. Before a duly enacted law can be judicially nullified, it must be forbidden by some explicit restriction upon political authority in the Constitution. Equally inadmissible is the claim to strike down legislation because, to us as individuals, it seems opposed to the "plan and purpose" of the Constitution. That is too tempting a basis for finding in one's personal views the purposes of the Founders.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 666

The uncontrollable power wielded by this Court brings it very close to the most sensitive areas of public affairs. As appeal from legislation to adjudication becomes more frequent, and its consequences more far-reaching, judicial self-restraint becomes more, and not less, important, lest we unwarrantably enter social and political domains wholly outside our concern. I think I appreciate fully the objections to the law before us. But to deny that it presents a question upon which men might reasonably [319 U.S. 667] differ appears to me to be intolerance. And since men may so reasonably differ, I deem it beyond my constitutional power to assert my view of the wisdom of this law against the view of the State of West Virginia.

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Jefferson's opposition to judicial review has not been accepted by history, but it still serves as an admonition against confusion between judicial and political functions. As a rule of judicial self-restraint, it is still as valid as Lincoln's admonition. For those who pass laws not only are under duty to pass laws. They are also under duty to observe the Constitution. And even though legislation relates to civil liberties, our duty of deference to those who have the responsibility for making the laws is no less relevant or less exacting. And this is so especially when we consider the accidental contingencies by which one man may determine constitutionality and thereby confine the political power of the Congress of the United States and the legislatures of forty-eight states. The attitude of judicial humility which these considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits. Moreover, it is to be borne in mind that, in a question like this, we are not passing on the proper distribution of political power as between the states and the central government. We are not discharging the basic function of this Court as the mediator of powers within the federal system. To strike down a law like this is to deny a power to all government.

1943, West Virginia State Board of Education v. Barnette, 319 U.S. 667

The whole Court is conscious that this case reaches ultimate questions of judicial power and its relation to our scheme of government. It is appropriate, therefore, to recall an utterance as wise as any that I know in analyzing what is really involved when the theory of this Court's function is put to the test of practice. The analysis is that of James Bradley Thayer:

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…there has developed a vast and growing increase of judicial interference with legislation. This is a very different [319 U.S. 668] state of things from what our fathers contemplated, a century and more ago, in framing the new system. Seldom, indeed, as they imagined, under our system, would this great, novel, tremendous power of the courts be exerted—would this sacred ark of the covenant be taken from within the veil. Marshall himself expressed truly one aspect of the matter, when he said in one of the later years of his life:

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No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of legislative acts. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other grounds, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed.

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And again, a little earlier than this, he laid down the one true rule of duty for the courts. When he went to Philadelphia at the end of September, in 1831, on that painful errand of which I have spoken, in answering a cordial tribute from the bar of that city, he remarked that, if he might be permitted to claim for himself and his associates any part of the kind things they had said, it would be this, that they had "never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required."

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That is the safe two-fold rule; nor is the first part of it any whit less important than the second; nay, more; today, it is the part which most requires to be emphasized. For just here comes in a consideration of very great weight. Great and, indeed, inestimable as are the advantages in a popular government of this conservative influence—the power of the judiciary to disregard unconstitutional legislation—it should be remembered that the exercise of it, even when unavoidable, is always attended with a serious evil, namely that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that come from fighting the question out in the ordinary way, and correcting their own errors. If the decision in Munn v. Illinois and the "Granger Cases," twenty-five years ago, and in the "Legal Tender Cases" nearly thirty years [319 U.S. 669] ago, had been different, and the legislation there in question, thought by many to be unconstitutional and by many more to be ill-advised, had been set aside, we should have been saved some trouble and some harm. But I venture to think that the good which came to the country and its people from the vigorous thinking that had to be done in the political debates that followed, from the infiltration through every part of the population of sound ideas and sentiments, from the rousing into activity of opposite elements, the enlargement of ideas, the strengthening of moral fibre, and the growth of political experience that came out of it all—that all this far more than outweighed any evil which ever flowed from the refusal of the court to interfere with the work of the legislature.

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The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people and to deaden its sense of moral responsibility. It is no light thing to do that.

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What can be done? It is the courts that can do most to cure the evil, and the opportunity is a very great one. Let them resolutely adhere to first principles. Let them consider how narrow is the function which the constitutions have conferred on them—the office merely of deciding litigated cases; how large, therefore, is the duty intrusted to others, and above all to the legislature. It is that body which is charged, primarily, with the duty of judging of the constitutionality of its work. The constitutions generally give them no authority to call upon a court for advice; they must decide for themselves, and the courts may never be able to say a word. Such a body, charged, in every State, with almost all the legislative power of the people, is entitled to the most entire and real respect; is entitled, as among all rationally permissible opinions as to what the constitution allows, to its own choice. Courts, as has often been said, are not to think of the legislators, but of the legislature—the great, continuous body itself, abstracted from all the transitory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a coordinate department of the government, [319 U.S. 670] charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.

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To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the court remains untouched; it cannot rightly attempt to protect the people by undertaking a function not its own. On the other hand, by adhering rigidly to its own duty, the court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation. The judiciary, today, in dealing with the acts of their coordinate legislators, owe to the country no greater or clearer duty than that of keeping their hands off these acts wherever it is possible to do it. For that course—the true course of judicial duty always—will powerfully help to bring the people and their representatives to a sense of their own responsibility. There will still remain to the judiciary an ample field for the determinations of this remarkable jurisdiction, of which our American law has so much reason to be proud; a jurisdiction which has had some of its chief illustrations and its greatest triumphs, as in Marshall's time, so in ours, while the courts were refusing to exercise it.

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J. B. Thayer, John Marshall, (1901) 104-110.

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Of course, patriotism cannot be enforced by the flag salute. But neither can the liberal spirit be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation, rather than with its wisdom, tends to preoccupation of the American mind with a false value. The tendency of focussing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. Particularly in legislation affecting freedom of thought and freedom of speech, much which should offend a free-spirited society is constitutional. Reliance [319 U.S. 671] for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law. Only a persistent positive translation of the faith of a free society into the convictions and habits and action of a community is the ultimate reliance against unabated temptations to fetter the human spirit.

Footnotes

JACKSON, J., lead opinion (Footnotes)

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1. § 134, West Virginia Code (1941 Supp.):

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In all public, private, parochial and denominational schools located within this state there shall be given regular courses of instruction in history of the United States, in civics, and in the constitutions of the United States and of the State of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government of the United States and of the state of West Virginia. The state board of education shall, with the advice of the state superintendent of schools, prescribe the courses of study covering these subjects for the public elementary and grammar schools, public high schools and state normal schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.

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2. The text is as follows:

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WHEREAS, The West Virginia State Board of Education holds in highest regard those rights and privileges guaranteed by the Bill of Rights in the Constitution of the United States of America and in the Constitution of West Virginia, specifically, the first amendment to the Constitution of the United States as restated in the fourteenth amendment to the same document and in the guarantee of religious freedom in Article III of the Constitution of this State, and

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WHEREAS, The West Virginia State Board of Education honors the broad principle that one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law; that the propagation of belief is protected, whether in church or chapel, mosque or synagogue, tabernacle or meeting house; that the Constitutions of the United States and of the State of West Virginia assure generous immunity to the individual from imposition of penalty for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in the government, but

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WHEREAS, The West Virginia State Board of Education recognizes that the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow man; that conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to the general law not aimed at the promotion or restriction of the religious beliefs; that the mere possession of convictions which contradict the relevant concerns of political society does not relieve the citizen from the discharge of political responsibility, and

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WHEREAS, The West Virginia State Board of Education holds that national unity is the basis of national security; that the flag of our Nation is the symbol of our National Unity transcending all internal differences, however large, within the framework of the Constitution; that the Flag is the symbol of the Nation's power; that emblem of freedom in its truest, best sense; that it signifies government resting on the consent of the governed, liberty regulated by law, protection of the weak against the strong, security against the exercise of arbitrary power, and absolute safety for free institutions against foreign aggression, and

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WHEREAS, The West Virginia State Board of Education maintains that the public schools, established by the legislature of the State of West Virginia under the authority of the Constitution of the State of West Virginia and supported by taxes imposed by legally constituted measures, are dealing with the formative period in the development in citizenship that the Flag is an allowable portion of the program of schools thus publicly supported.

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Therefore, be it RESOLVED, That the West Virginia Board of Education does hereby recognize and order that the commonly accepted salute to the Flag of the United States—the right hand is placed upon the breast, and the following pledge repeated in unison: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all"—now becomes a regular part of the program of activities in the public schools, supported in whole or in part by public funds, and that all teachers as defined by law in West Virginia and pupils in such schools shall be required to participate in the salute, honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.

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3. The National Headquarters of the United States Flag Association takes the position that the extension of the right arm in this salute to the flag is not the Nazi-Fascist salute,

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although quite similar to it. In the Pledge to the Flag, the right arm is extended and raised, palm UPWARD, whereas the Nazis extend the arm practically straight to the front (the finger tips being about even with the eyes), palm DOWNWARD, and the Fascists do the same, except they raise the arm slightly higher.

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James A. Moss, The Flag of the United States: Its History and Symbolism (1914) 108.

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4. They have offered, in lieu of participating in the flag salute ceremony "periodically and publicly," to give the following pledge:

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I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to His Kingdom, for which Jesus commands all Christians to pray.

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I respect the flag of the United States, and acknowledge it as a symbol of freedom and justice to all.

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I pledge allegiance and obedience to all the laws of the United States that are consistent with God's law, as set forth in the Bible.

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5. § 1851(1), West Virginia Code (1941 Supp.):

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If a child be dismissed, suspended, or expelled from school because of refusal of such child to meet the legal and lawful requirements of the school and the established regulations of the county and/or state board of education, further admission of the child to school shall be refused until such requirements and regulations be complied with. Any such child shall be treated as being unlawfully absent from school during the time he refuses to comply with such requirements and regulations, and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school.

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6. § 4904(4), West Virginia Code (1941 Supp.).

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7. See Note 5, supra.

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8. §§ 1847, 1851, West Virginia Code (1941 Supp.).

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9. § 266 of the Judicial Code, 28 U.S.C. § 380.

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10. See authorities cited in Helvering v. Griffiths, 318 U.S. 371, 401, note 52.

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11. See the nationwide survey of the study of American history conducted by the New York Times, the results of which are published in the issue of June 21, 1942, and are there summarized on p. 1, col. 1, as follows:

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82 percent of the institutions of higher learning in the United States do not require the study of United States history for the undergraduate degree. Eighteen percent of the colleges and universities require such history courses before a degree is awarded. It was found that many students complete their four years in college without taking any history courses dealing with this country.

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Seventy-two percent of the colleges and universities do not require United States history for admission, while 28 percent require it. As a result, the survey revealed, many students go through high school, college and then to the professional or graduate institution without having explored courses in the history of their country.

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Less than 10 percent of the total undergraduate body was enrolled in United States history classes during the Spring semester just ended. Only 8 percent of the freshman class took courses in United States history, although 30 percent was enrolled in European or world history courses.

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12. The Resolution of the Board of Education did not adopt the flag salute because it was claimed to have educational value. It seems to have been concerned with promotion of national unity (see footnote 2), which justification is considered later in this opinion. No information as to its educational aspect is called to our attention except Olander, Children's Knowledge of the Flag Salute, 35 Journal of Educational Research 300, 305, which sets forth a study of the ability of a large and representative number of children to remember and state the meaning of the flag salute which they recited each day in school. His conclusion was that it revealed "a rather pathetic picture of our attempts to teach children not only the words, but the meaning, of our Flag Salute."

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13. Early Christians were frequently persecuted for their refusal to participate in ceremonies before the statue of the emperor or other symbol of imperial authority. The story of William Tell's sentence to shoot an apple off his son's head for refusal to salute a bailiff's hat is an ancient one. 21 Encyclopedia Britannica (14th ed.) 911-912. The Quakers, William Penn included, suffered punishment, rather than uncover their heads in deference to any civil authority. Braithwaite, The Beginnings of Quakerism (1912) 200, 229-230, 232-233, 447, 451; Fox, Quakers Courageous (1941) 113.

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14. For example: use of "Republic," if rendered to distinguish our government from a "democracy," or the words "one Nation," if intended to distinguish it from a "federation," open up old and bitter controversies in our political history; "liberty and justice for all," if it must be accepted as descriptive of the present order, rather than an ideal, might to some seem an overstatement.

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15. Cushman, Constitutional Law in 1939-1940, 35 American Political Science Review 250, 271, observes:

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All of the eloquence by which the majority extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public.

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For further criticism of the opinion in the Gobitis case by persons who do not share the faith of the Witnesses, see: Powell, Conscience and the Constitution, in Democracy and National Unity (University of Chicago Press, 1941) 1; Wilkinson, Some Aspects of the Constitutional Guarantees of Civil Liberty, 11 Fordham Law Review 50; Fennell, The "Reconstructed Court" and Religious Freedom: The Gobitis Case in Retrospect, 19 New York University Law Quarterly Review 31; Green, Liberty under the Fourteenth Amendment, 27 Washington University Law Quarterly 497; 9 International Juridical Association Bulletin 1; 39 Michigan Law Review 149; 15 St. John's Law Review 95.

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16. The opinion says

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That the flag salute is an allowable portion of a school program for those who do not invoke conscientious scruples is surely not debatable. But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise.

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(Italics ours.) 310 U.S. at 599-600. And, elsewhere, the question under consideration was stated,

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When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good?

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(Italics ours.) Id. at 593. And again,

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…whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion….

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(Italics our.) Id. at 595.

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17. Section 7 of House Joint Resolution 359, approved December 22, 1942, 56 Stat. 1074, 36 U.S.C. (1942 Supp.) § 172, prescribes no penalties for nonconformity, but provides:

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That the pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all," be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress….

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18. § 5(a) of the Selective Training and Service Act of 1940, 50 U.S.C. (App.) § 307(g).

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19. The Nation may raise armies and compel citizens to give military service. Selective Draft Law Cases, 245 U.S. 366. It follows, of course, that those subject to military discipline are under many duties, and may not claim many freedoms that we hold inviolable as to those in civilian life.

MURPHY, J., concurring (Footnotes)

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\* See Jefferson, Autobiography, vol. 1, pp. 53-59.

Franklin D. Roosevelt, Economic Bill of Rights, State of the Union Address, 11 Jan. 1944

President Roosevelt's State of the Union Address, 1944

Title: President Roosevelt's State of the Union Address

Author: Franklin D. Roosevelt

Date: January 11, 1944

Source: Public Papers of the Presidents, F. D. Roosevelt, 1944, Item 4

Public Papers of FDR, 1944, Item 4

To the Congress:

Public Papers of FDR, 1944, Item 4

This Nation in the past two years has become an active partner in the world's greatest war against human slavery.

Public Papers of FDR, 1944, Item 4

We have joined with like-minded people in order to defend ourselves in a world that has been gravely threatened with gangster rule.

Public Papers of FDR, 1944, Item 4

But I do not think that any of us Americans can be content with mere survival. Sacrifices that we and our allies are making impose upon us all a sacred obligation to see to it that out of this war we and our children will gain something better than mere survival.

Public Papers of FDR, 1944, Item 4

We are united in determination that this war shall not be followed by another interim which leads to new disaster—that we shall not repeat the tragic errors of ostrich isolationism—that we shall not repeat the excesses of the wild twenties when this Nation went for a joy ride on a roller coaster which ended in a tragic crash.

Public Papers of FDR, 1944, Item 4

When Mr. Hull went to Moscow in October, and when I went to Cairo and Teheran in November, we knew that we were in agreement with our allies in our common determination to fight and win this war. But there were many vital questions concerning the future peace, and they were discussed in an atmosphere of complete candor and harmony.

Public Papers of FDR, 1944, Item 4

In the last war such discussions, such meetings, did not even begin until the shooting had stopped and the delegates began to assemble at the peace table. There had been no previous opportunities for man-to-man discussions which lead to meetings of minds. The result was a peace which was not a peace.

Public Papers of FDR, 1944, Item 4

That was a mistake which we are not repeating in this war.

Public Papers of FDR, 1944, Item 4

And right here I want to address a word or two to some suspicious souls who are fearful that Mr. Hull or I have made "commitments" for the future which might pledge this Nation to secret treaties, or to enacting the role of Santa Claus.

Public Papers of FDR, 1944, Item 4

To such suspicious souls—using a polite terminology—I wish to say that Mr. Churchill, and Marshal Stalin, and Generalissimo Chiang Kai-shek are all thoroughly conversant with the provisions of our Constitution. And so is Mr. Hull. And so am I.

Public Papers of FDR, 1944, Item 4

Of course we made some commitments. We most certainly committed ourselves to very large and very specific military plans which require the use of all Allied forces to bring about the defeat of our enemies at the earliest possible time.

Public Papers of FDR, 1944, Item 4

But there were no secret treaties or political or financial commitments.

Public Papers of FDR, 1944, Item 4

The one supreme objective for the future, which we discussed for each Nation individually, and for all the United Nations, can be summed up in one word: Security.

Public Papers of FDR, 1944, Item 4

And that means not only physical security which provides safety from attacks by aggressors. It means also economic security, social security, moral security—in a family of Nations.

Public Papers of FDR, 1944, Item 4

In the plain down-to-earth talks that I had with the Generalissimo and Marshal Stalin and Prime Minister Churchill, it was abundantly clear that they are all most deeply interested in the resumption of peaceful progress by their own peoples—progress toward a better life. All our allies want freedom to develop their lands and resources, to build up industry, to increase education and individual opportunity, and to raise standards of living.

Public Papers of FDR, 1944, Item 4

All our allies have learned by bitter experience that real development will not be possible if they are to be diverted from their purpose by repeated wars—or even threats of war.

Public Papers of FDR, 1944, Item 4

China and Russia are truly united with Britain and America in recognition of this essential fact:

Public Papers of FDR, 1944, Item 4

The best interests of each Nation, large and small, demand that all freedom-loving Nations shall join together in a just and durable system of peace. In the present world situation, evidenced by the actions of Germany, Italy, and Japan, unquestioned military control over disturbers of the peace is as necessary among Nations as it is among citizens in a community. And an equally basic essential to peace is a decent standard of living for all individual men and women and children in all Nations. Freedom from fear is eternally linked with freedom from want.

Public Papers of FDR, 1944, Item 4

There are people who burrow through our Nation like unseeing moles, and attempt to spread the suspicion that if other Nations are encouraged to raise their standards of living, our own American standard of living must of necessity be depressed.

Public Papers of FDR, 1944, Item 4

The fact is the very contrary. It has been shown time and again that if the standard of living of any country goes up, so does its purchasing power—and that such a rise encourages a better standard of living in neighboring countries with whom it trades. That is just plain common sense—and it is the kind of plain common sense that provided the basis for our discussions at Moscow, Cairo, and Teheran.

Public Papers of FDR, 1944, Item 4

Returning from my journeyings, I must confess to a sense of "let-down" when I found many evidences of faulty perspective here in Washington. The faulty perspective consists in overemphasizing lesser problems and thereby underemphasizing the first and greatest problem.

Public Papers of FDR, 1944, Item 4

The overwhelming majority of our people have met the demands of this war with magnificent courage and understanding. They have accepted inconveniences; they have accepted hardships; they have accepted tragic sacrifices. And they are ready and eager to make whatever further contributions are needed to win the war as quickly as possible—if only they are given the chance to know what is required of them.

Public Papers of FDR, 1944, Item 4

However, while the majority goes on about its great work without complaint, a noisy minority maintains an uproar of demands for special favors for special groups. There are pests who swarm through the lobbies of the Congress and the cocktail bars of Washington, representing these special groups as opposed to the basic interests of the Nation as a whole. They have come to look upon the war primarily as a chance to make profits for themselves at the expense of their neighbors—profits in money or in terms of political or social preferment.

Public Papers of FDR, 1944, Item 4

Such selfish agitation can be highly dangerous in wartime. It creates confusion. It damages morale. It hampers our national effort. It muddies the waters and therefore prolongs the war.

Public Papers of FDR, 1944, Item 4

If we analyze American history impartially, we cannot escape the fact that in our past we have not always forgotten individual and selfish and partisan interests in time of war—we have not always been united in purpose and direction. We cannot overlook the serious dissensions and the lack of unity in our war of the Revolution, in our War of 1812, or in our War Between the States, when the survival of the Union itself was at stake.

Public Papers of FDR, 1944, Item 4

In the first World War we came closer to national unity than in any previous war. But that war lasted only a year and a half, and increasing signs of disunity began to appear during the final months of the conflict.

Public Papers of FDR, 1944, Item 4

In this war, we have been compelled to learn how interdependent upon each other are all groups and sections of the population of America.

Public Papers of FDR, 1944, Item 4

Increased food costs, for example, will bring new demands for wage increases from all war workers, which will in turn raise all prices of all things including those things which the farmers themselves have to buy. Increased wages or prices will each in turn produce the same results. They all have a particularly disastrous result on all fixed income groups.

Public Papers of FDR, 1944, Item 4

And I hope you will remember that all of us in this Government represent the fixed income group just as much as we represent business owners, workers, and farmers. This group of fixed income people includes: teachers, clergy, policemen, firemen, widows and minors on fixed incomes, wives and dependents of our soldiers and sailors, and old-age pensioners. They and their families add up to one-quarter of our one hundred and thirty million people. They have few or no high pressure representatives at the Capitol. In a period of gross inflation they would be the worst sufferers.

Public Papers of FDR, 1944, Item 4

If ever there was a time to subordinate individual or group selfishness to the national good, that time is now. Disunity at home—bickerings, self-seeking partisanship, stoppages of work, inflation, business as usual, politics as usual, luxury as usual these are the influences which can undermine the morale of the brave men ready to die at the front for us here.

Public Papers of FDR, 1944, Item 4

Those who are doing most of the complaining are not deliberately striving to sabotage the national war effort. They are laboring under the delusion that the time is past when we must make prodigious sacrifices—that the war is already won and we can begin to slacken off. But the dangerous folly of that point of view can be measured by the distance that separates our troops from their ultimate objectives in Berlin and Tokyo—and by the sum of all the perils that lie along the way.

Public Papers of FDR, 1944, Item 4

Overconfidence and complacency are among our deadliest enemies. Last spring—after notable victories at Stalingrad and in Tunisia and against the U-boats on the high seas—overconfidence became so pronounced that war production fell off. In two months, June and July, 1943, more than a thousand airplanes that could have been made and should have been made were not made. Those who failed to make them were not on strike. They were merely saying, "The war's in the bag—so let's relax."

Public Papers of FDR, 1944, Item 4

That attitude on the part of anyone—Government or management or labor—can lengthen this war. It can kill American boys.

Public Papers of FDR, 1944, Item 4

Let us remember the lessons of 1918. In the summer of that year the tide turned in favor of the allies. But this Government did not relax. In fact, our national effort was stepped up. In August, 1918, the draft age limits were broadened from 21-31 to 18-45. The President called for "force to the utmost," and his call was heeded. And in November, only three months later, Germany surrendered.

Public Papers of FDR, 1944, Item 4

That is the way to fight and win a war—all out—and not with half-an-eye on the battlefronts abroad and the other eye-and-a-half on personal, selfish, or political interests here at home.

Public Papers of FDR, 1944, Item 4

Therefore, in order to concentrate all our energies and resources on winning the war, and to maintain a fair and stable economy at home, I recommend that the Congress adopt:

Public Papers of FDR, 1944, Item 4

(1) A realistic tax law—which will tax all unreasonable profits, both individual and corporate, and reduce the ultimate cost of the war to our sons and daughters. The tax bill now under consideration by the Congress does not begin to meet this test.

Public Papers of FDR, 1944, Item 4

(2) A continuation of the law for the renegotiation of war contracts—which will prevent exorbitant profits and assure fair prices to the Government. For two long years I have pleaded with the Congress to take undue profits out of war.

Public Papers of FDR, 1944, Item 4

(3) A cost of food law—which will enable the Government (a) to place a reasonable floor under the prices the farmer may expect for his production; and (b) to place a ceiling on the prices a consumer will have to pay for the food he buys. This should apply to necessities only; and will require public funds to carry out. It will cost in appropriations about one percent of the present annual cost of the war.

Public Papers of FDR, 1944, Item 4

(4) Early reenactment of. the stabilization statute of October, 1942. This expires June 30, 1944, and if it is not extended well in advance, the country might just as well expect price chaos by summer.

Public Papers of FDR, 1944, Item 4

We cannot have stabilization by wishful thinking. We must take positive action to maintain the integrity of the American dollar.

Public Papers of FDR, 1944, Item 4

(5) A national service law—which, for the duration of the war, will prevent strikes, and, with certain appropriate exceptions, will make available for war production or for any other essential services every able-bodied adult in this Nation.

Public Papers of FDR, 1944, Item 4

These five measures together form a just and equitable whole. I would not recommend a national service law unless the other laws were passed to keep down the cost of living, to share equitably the burdens of taxation, to hold the stabilization line, and to prevent undue profits.

Public Papers of FDR, 1944, Item 4

The Federal Government already has the basic power to draft capital and property of all kinds for war purposes on a basis of just compensation.

Public Papers of FDR, 1944, Item 4

As you know, I have for three years hesitated to recommend a national service act. Today, however, I am convinced of its necessity. Although I believe that we and our allies can win the war without such a measure, I am certain that nothing less than total mobilization of all our resources of manpower and capital will guarantee an earlier victory, and reduce the toll of suffering and sorrow and blood.

Public Papers of FDR, 1944, Item 4

I have received a joint recommendation for this law from the heads of the War Department, the Navy Department, and the Maritime Commission. These are the men who bear responsibility for the procurement of the necessary arms and equipment, and for the successful prosecution of the war in the field. They say:

Public Papers of FDR, 1944, Item 4

"When the very life of the Nation is in peril the responsibility for service is common to all men and women. In such a time there can be no discrimination between the men and women who are assigned by the Government to its defense at the battlefront and the men and women assigned to producing the vital materials essential to successful military operations. A prompt enactment of a National Service Law would be merely an expression of the universality of this responsibility."

Public Papers of FDR, 1944, Item 4

I believe the country will agree that those statements are the solemn truth.

Public Papers of FDR, 1944, Item 4

National service is the most democratic way to wage a war. Like selective service for the armed forces, it rests on the obligation of each citizen to serve his Nation to his utmost where he is best qualified.

Public Papers of FDR, 1944, Item 4

It does not mean reduction in wages. It does not mean loss of retirement and seniority rights and benefits. It does not mean that any substantial numbers of war workers will be disturbed in their present jobs. Let these facts be wholly clear.

Public Papers of FDR, 1944, Item 4

Experience in other democratic Nations at war—Britain, Canada, Australia, and New Zealand—has shown that the very existence of national service makes unnecessary the widespread use of compulsory power. National service has proven to be a unifying moral force based on an equal and comprehensive legal obligation of all people in a Nation at war.

Public Papers of FDR, 1944, Item 4

There are millions of American men and women who are not in this war at all. It is not because they do not want to be in it. But they want to know where they can best do their share. National service provides that direction. It will be a means by which every man and woman can find that inner satisfaction which comes from making the fullest possible contribution to victory.

Public Papers of FDR, 1944, Item 4

I know that all civilian war workers will be glad to be able to say many years hence to their grandchildren: "Yes, I, too, was in service in the great war. I was on duty in an airplane factory, and I helped make hundreds of fighting planes. The Government told me that in doing that I was performing my most useful work in the service of my country."

Public Papers of FDR, 1944, Item 4

It is argued that we have passed the stage in the war where national service is necessary. But our soldiers and sailors know that this is not true. We are going forward on a long, rough road—and, in all journeys, the last miles are the hardest. And it is for that final effort—for the total defeat of our enemies-that we must mobilize our total resources. The national war program calls for the employment of more people in 1944 than in 1943.

Public Papers of FDR, 1944, Item 4

It is my conviction that the American people will welcome this win-the-war measure which is based on the eternally just principle of "fair for one, fair for all."

Public Papers of FDR, 1944, Item 4

It will give our people at home the assurance that they are standing four-square behind our soldiers and sailors. And it will give our enemies demoralizing assurance that we mean business—that we, 130,000,000 Americans, are on the march to Rome, Berlin, and Tokyo.

Public Papers of FDR, 1944, Item 4

I hope that the Congress will recognize that, although this is a political year, national service is an issue which transcends politics. Great power must be used for great purposes.

Public Papers of FDR, 1944, Item 4

As to the machinery for this measure, the Congress itself should determine its nature—but it should be wholly nonpartisan in its make-up.

Public Papers of FDR, 1944, Item 4

Our armed forces are valiantly fulfilling their responsibilities to our country and our people. Now the Congress faces the responsibility for taking those measures which are essential to national security in this the most decisive phase of the Nation's greatest war.

Public Papers of FDR, 1944, Item 4

Several alleged reasons have prevented the enactment of legislation which would preserve for our soldiers and sailors and marines the fundamental prerogative of citizenship—the right to vote. No amount of legalistic argument can becloud this issue in the eyes of these ten million American citizens. Surely the signers of the Constitution did not intend a document which, even in wartime, would be construed to take away the franchise of any of those who are fighting to preserve the Constitution itself.

Public Papers of FDR, 1944, Item 4

Our soldiers and sailors and marines know that the overwhelming majority of them will be deprived of the opportunity to vote, if the voting machinery is left exclusively to the States under existing State laws—and that there is no likelihood of these laws being changed in time to enable them to vote at the next election. The Army and Navy have reported that it will be impossible effectively to administer forty-eight different soldier voting laws. It is the duty of the Congress to remove this unjustifiable discrimination against the men and women in our armed forces—and to do it as quickly as possible.

Public Papers of FDR, 1944, Item 4

It is our duty now to begin to lay the plans and determine the strategy for the winning of a lasting peace and the establishment of an American standard of living higher than ever before known. We cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill housed, and insecure.

Public Papers of FDR, 1944, Item 4

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

Public Papers of FDR, 1944, Item 4

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

Public Papers of FDR, 1944, Item 4

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

Public Papers of FDR, 1944, Item 4

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.

Public Papers of FDR, 1944, Item 4

Among these are:

Public Papers of FDR, 1944, Item 4

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

Public Papers of FDR, 1944, Item 4

The right to earn enough to provide adequate food and clothing and recreation;

Public Papers of FDR, 1944, Item 4

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

Public Papers of FDR, 1944, Item 4

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

Public Papers of FDR, 1944, Item 4

The right of every family to a decent home;

Public Papers of FDR, 1944, Item 4

The right to adequate medical care and the opportunity to achieve and enjoy good health;

Public Papers of FDR, 1944, Item 4

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

Public Papers of FDR, 1944, Item 4

The right to a good education.

Public Papers of FDR, 1944, Item 4

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

Public Papers of FDR, 1944, Item 4

America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world.

Public Papers of FDR, 1944, Item 4

One of the great American industrialists of our day—a man who has rendered yeoman service to his country in this crisis-recently emphasized the grave dangers of "rightist reaction" in this Nation. All clear-thinking businessmen share his concern. Indeed, if such reaction should develop—if history were to repeat itself and we were to return to the so-called "normalcy" of the 1920's—then it is certain that even though we shall have conquered our enemies on the battlefields abroad, we shall have yielded to the spirit of Fascism here at home.

Public Papers of FDR, 1944, Item 4

I ask the Congress to explore the means for implementing this economic bill of rights—for it is definitely the responsibility of the Congress so to do. Many of these problems are already before committees of the Congress in the form of proposed legislation. I shall from time to time communicate with the Congress with respect to these and further proposals. In the event that no adequate program of progress is evolved, I am certain that the Nation will be conscious of the fact.

Public Papers of FDR, 1944, Item 4

Our fighting men abroad—and their families at home—expect such a program and have the right to insist upon it. It is to their demands that this Government should pay heed rather than to the whining demands of selfish pressure groups who seek to feather their nests while young Americans are dying.

Public Papers of FDR, 1944, Item 4

The foreign policy that we have been following—the policy that guided us at Moscow, Cairo, and Teheran—is based on the common sense principle which was best expressed by Benjamin Franklin on July 4, 1776: "We must all hang together, or assuredly we shall all hang separately."

Public Papers of FDR, 1944, Item 4

I have often said that there are no two fronts for America in this war. There is only one front. There is one line of unity which extends from the hearts of the people at home to the men of our attacking forces in our farthest outposts. When we speak of our total effort, we speak of the factory and the field, and the mine as well as of the battleground—we speak of the soldier and the civilian, the citizen and his Government.

Public Papers of FDR, 1944, Item 4

Each and every one of us has a solemn obligation under God to serve this Nation in its most critical hour—to keep this Nation great— to make this Nation greater in a better world.

Smith v. Allwright, 1944

Title: Smith v. Allwright

Author: U.S. Supreme Court

Date: April 3, 1944

Source: 321 U.S. 649

This case was argued November 10 and 12, 1943, and was reargued January 12, 1944. The case was decided April 3, 1944.

1944, Smith v. Allwright, 321 U.S. 649

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

1944, Smith v. Allwright, 321 U.S. 649

FOR THE FIFTH CIRCUIT

Syllabus

1944, Smith v. Allwright, 321 U.S. 649

1. The right of a citizen of the United States to vote for the nomination of candidates for the United States Senate and House of Representatives in a primary which is an integral part of the elective process is a right secured by the Federal Constitution, and this right of the citizen may not be abridged by the State on account of his race or color. P. 661.

1944, Smith v. Allwright, 321 U.S. 649

2. Whether the exclusion of citizens from voting on account of their race or color has been effected by action of the State—rather than of individuals or of a political party—is a question upon which the decision of the courts of the State is not binding on the federal courts, but which the latter must determine for themselves. P. 662.

1944, Smith v. Allwright, 321 U.S. 649

3. Upon examination of the statutes of Texas regulating primaries, held: that the exclusion of Negroes from voting in a Democratic primary to select nominees for a general election—although, by resolution of a state convention of the party, its membership was limited to white citizens—was State action in violation of the Fifteenth Amendment. Grove v. Townsend, 295 U.S. 45, overruled. Pp. 663, 666.

1944, Smith v. Allwright, 321 U.S. 649

When, as here, primaries become a part of the machinery for choosing officials, state and federal, the same tests to determine [321 U.S. 650] the character of discrimination or abridgment should be applied to the primary as are applied to the general election. P. 664.

1944, Smith v. Allwright, 321 U.S. 650

4. While not unmindful of the desirability of its adhering to former decisions of constitutional questions, this Court is not constrained to follow a previous decision which, upon reexamination, is believed erroneous, particularly one which involves the application of a constitutional principle, rather than an interpretation of the Constitution to evolve the principle itself. P. 665.

1944, Smith v. Allwright, 321 U.S. 650

131 F. 2d 593, reversed.

1944, Smith v. Allwright, 321 U.S. 650

Certiorari, 319 U.S. 738, to review the affirmance of a judgment for the defendants in a suit for damages under 8 U.S.C. § 43.

REED, J., lead opinion

1944, Smith v. Allwright, 321 U.S. 650

MR. JUSTICE REED delivered the opinion of the Court.

1944, Smith v. Allwright, 321 U.S. 650

This writ of certiorari brings here for review a claim for damages in the sum of $5,000 on the part of petitioner, a Negro citizen of the 48th precinct of Harris County, Texas, [321 U.S. 651] for the refusal of respondents, election and associate election judges, respectively, of that precinct, to give petitioner a ballot or to permit him to cast a ballot in the primary election of July 27, 1940, for the nomination of Democratic candidates for the United States Senate and House of Representatives, and Governor and other state officers. The refusal is alleged to have been solely because of the race and color of the proposed voter.

1944, Smith v. Allwright, 321 U.S. 651

The actions of respondents are said to violate §§ 31 and 43 of Title 8 1 of the United States Code, 8 U.S.C. §§ 31 and 43, in that petitioner was deprived of rights secured by §§ 2 and 4 of Article I 2 and the Fourteenth, Fifteenth and Seventeenth Amendments [321 U.S. 652] to the United States Constitution. 3 The suit was filed in the District Court of the United States for the Southern District of Texas, which had jurisdiction under Judicial Code § 24, subsection 14. 4

1944, Smith v. Allwright, 321 U.S. 652

The District Court denied the relief sought, and the Circuit Court of Appeals quite properly affirmed its action on the authority of Grovey v. Townsend, 295 U.S. 45. 5 We granted the petition for certiorari to resolve a claimed inconsistency between the decision in the Grovey case and that of United States v. Classic, 313 U.S. 299. 319 U.S. 738.

1944, Smith v. Allwright, 321 U.S. 652

The State of Texas by its Constitution and statutes provides that every person, if certain other requirements are met which are not here in issue, qualified by residence [321 U.S. 653] in the district or county "shall be deemed a qualified elector." Constitution of Texas, Article VI, § 2; Vernon's Civil Statutes (1939 ed.), Article 2955. Primary elections for United States Senators, Congressmen and state officers are provided for by Chapters Twelve and Thirteen of the statutes. Under these chapters, the Democratic Party was required to hold the primary which was the occasion of the alleged wrong to petitioner. A summary of the state statutes regulating primaries appears in the footnote. 6 These nominations are to be made by the qualified voters of the party. Art. 3101. [321 U.S. 654]

1944, Smith v. Allwright, 321 U.S. 654

The Democratic Party of Texas is held by the Supreme Court of that state to be a "voluntary association," Bell v. Hill, 123 Tex. 531, 534, protected by § 27 of the Bill of Rights, Art. 1, Constitution of Texas, from interference by the state except that:

1944, Smith v. Allwright, 321 U.S. 654

In the interest of fair methods and a fair expression by their members of their preferences in the selection of their [321 U.S. 655] nominees, the State may regulate such elections by proper laws.

1944, Smith v. Allwright, 321 U.S. 655

P. 545. That court stated further:

1944, Smith v. Allwright, 321 U.S. 655

Since the right to organize and maintain a political party is one guaranteed by the Bill of Rights of this state, it necessarily follows that every privilege essential or reasonably appropriate to the exercise of that right is likewise [321 U.S. 656] guaranteed, including, of course, the privilege of determining the policies of the party and its membership. Without the privilege of determining the policy of a political association and its membership, the right to organize such an association would be a mere mockery. We think these rights, that is, the right to determine the membership of a political party and to determine its policies, of necessity are to be exercised by the State Convention of such party, and cannot, under any circumstances, be conferred upon a state or governmental agency.

1944, Smith v. Allwright, 321 U.S. 656

P. 546. Cf. Waples v. Marrast, 108 Tex. 5, 184 S.W. 180.

1944, Smith v. Allwright, 321 U.S. 656

The Democratic party, on May 24, 1932, in a state convention adopted the following resolution, which has not since been "amended, abrogated, annulled or avoided":

1944, Smith v. Allwright, 321 U.S. 656

Be it resolved that all white citizens of the State of Texas who are qualified to vote under the Constitution and laws of the State shall be eligible to membership in the [321 U.S. 657] Democratic party and, as such, entitled to participate in its deliberations.

1944, Smith v. Allwright, 321 U.S. 657

It was by virtue of this resolution that the respondents refused to permit the petitioner to vote.

1944, Smith v. Allwright, 321 U.S. 657

Texas is free to conduct her elections and limit her electorate as she may deem wise, save only as her action may be affected by the prohibitions of the United States Constitution or in conflict with powers delegated to and exercised by the National Government. 7 The Fourteenth Amendment forbids a state from making or enforcing any law which abridges the privileges or immunities of citizens of the United States and the Fifteenth Amendment specifically interdicts any denial or abridgement by a state of the right of citizens to vote on account of color. Respondents appeared in the District Court and the Circuit Court of Appeals and defended on the ground that the Democratic party of Texas is a voluntary organization, with members banded together for the purpose of selecting individuals of the group representing the common political beliefs as candidates in the general election. As such a voluntary organization, it was claimed, the Democratic party is free to select its own membership and limit to whites participation in the party primary. Such action, the answer asserted, does not violate the Fourteenth, Fifteenth or Seventeenth Amendment, as officers of government cannot be chosen at primaries, and the Amendments are applicable only to general elections, where governmental officers are actually elected. Primaries, it is said, are political party affairs, handled by party, not governmental, officers. No appearance for respondents is made in this Court. Arguments presented here by the Attorney General of Texas and the Chairman of the State Democratic Executive Committee of Texas, as amici [321 U.S. 658] curiae, urged substantially the same grounds as those advanced by the respondents.

1944, Smith v. Allwright, 321 U.S. 658

The right of a Negro to vote in the Texas primary has been considered heretofore by this Court. The first case was Nixon v. Herndon, 273 U.S. 536. At that time, 1924, the Texas statute, Art. 3093a, afterwards numbered Art. 3107 (Rev.Stat.1925) declared "in no event shall a Negro be eligible to participate in a Democratic party primary election…in the State of Texas." Nixon was refused the right to vote in a Democratic primary, and brought a suit for damages against the election officers under R.S. § 1979 and 2004, the present §§ 43 and 31 of Title 8, U.S.C., respectively. It was urged to this Court that the denial of the franchise the Nixon violated his Constitutional rights under the Fourteenth and Fifteenth Amendments. Without consideration of the Fifteenth, this Court held that the action of Texas in denying the ballot to Negroes by statute was in violation of the equal protection clause of the Fourteenth Amendment, and reversed the dismissal of the suit.

1944, Smith v. Allwright, 321 U.S. 658

The legislature of Texas reenacted the article, but gave the State Executive Committee of a party the power to prescribe the qualifications of its members for voting or other participation. This article remains in the statutes. The State Executive Committee of the Democratic party adopted a resolution that white Democrats and none other might participate in the primaries of that party. Nixon was refused again the privilege of voting in a primary, and again brought suit for damages by virtue of § 31, Title 8 U.S.C. This Court again reversed the dismissal of the suit for the reason that the Committee action was deemed to be State action, and invalid as discriminatory under the Fourteenth Amendment. The test was said to be whether the Committee operated as representative of the State in the discharge of the State's authority. Nixon v. Condon, 286 U.S. 73. The question of the inherent power [321 U.S. 659] of a political party in Texas "without restraint by any law to determine its own membership" was lift open. Id., 84-85.

1944, Smith v. Allwright, 321 U.S. 659

In Grovey v. Townsend, 295 U.S. 45, this Court had before it another suit for damages for the refusal in a primary of a county clerk, a Texas officer with only public functions to perform, to furnish petitioner, a Negro, an absentee ballot. The refusal was solely on the ground of race. This case differed from Nixon v. Condon, supra, in that a state convention of the Democratic party had passed the resolution of May 24, 1932, hereinbefore quoted. It was decided that the determination by the state convention of the membership of the Democratic party made a significant change from a determination by the Executive Committee. The former was party action, voluntary in character. The latter, as had been held in the Condon case, was action by authority of the State. The managers of the primary election were therefore declared not to be state officials in such sense that their action was state action. A state convention of a party was said not to be an organ of the state. This Court went on to announce that to deny a vote in a primary was a mere refusal of party membership, with which "the state need have no concern," loc.cit. 55, while for a state to deny a vote in a general election on the ground of race or color violated the Constitution. Consequently, there was found no ground for holding that the county clerk's refusal of a ballot because of racial ineligibility for party membership denied the petitioner any right under the Fourteenth or Fifteenth Amendments.

1944, Smith v. Allwright, 321 U.S. 659

Since Grovey v. Townsend and prior to the present suit, no case from Texas involving primary elections has been before this Court. We did decide, however, United States v. Classic, 313 U.S. 299. We there held that § 4 of Article I of the Constitution authorized Congress to regulate primary, as well as general, elections, 313 U.S. at 316, 317, [321 U.S. 660] "where the primary is by law made an integral part of the election machinery." 313 U.S. at 318. Consequently, in the Classic case, we upheld the applicability to frauds in a Louisiana primary of §§ 19 and 20 of the Criminal Code. Thereby, corrupt acts of election officers were subjected to Congressional sanctions because that body had power to protect rights of Federal suffrage secured by the Constitution in primary as in general elections. 313 U.S. at 323. This decision depended, too, on the determination that, under the Louisiana statutes, the primary was a part of the procedure for choice of Federal officials. By this decision, the doubt as to whether or not such primaries were a part of "elections" subject to Federal control, which had remained unanswered since Newberry v. United States, 256 U.S. 232, was erased. The Nixon cases were decided under the equal protection clause of the Fourteenth Amendment without a determination of the status of the primary as a part of the electoral process. The exclusion of Negroes from the primaries by action of the State was held invalid under that Amendment. The fusing by the Classic case of the primary and general elections into a single instrumentality for choice of officers has a definite bearing on the permissibility under the Constitution of excluding Negroes from primaries. This is not to say that the Classic case cuts directly into the rationale of Grovey v. Townsend. This latter case was not mentioned in the opinion. Classic bears upon Grovey v. Townsend not because exclusion of Negroes from primaries is any more or less state action by reason of the unitary character of the electoral process, but because the recognition of the place of the primary in the electoral scheme makes clear that state delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the state. When Grovey v. Townsend was written, the Court looked upon the denial of a vote in a primary as a [321 U.S. 661] mere refusal by a party of party membership. 295 U.S. at 55. As the Louisiana statutes for holding primaries are similar to those of Texas, our ruling in Classic as to the unitary character of the electoral process calls for a reexamination as to whether or not the exclusion of Negroes from a Texas party primary was state action.

1944, Smith v. Allwright, 321 U.S. 661

The statutes of Texas relating to primaries and the resolution of the Democratic party of Texas extending the privileges of membership to white citizens only are the same in substance and effect today as they were when Grovey v. Townsend was decided by a unanimous Court. The question as to whether the exclusionary action of the party was the action of the State persists as the determinative factor. In again entering upon consideration of the inference to be drawn as to state action from a substantially similar factual situation, it should be noted that Grovey v. Townsend upheld exclusion of Negroes from primaries through the denial of party membership by a party convention. A few years before, this Court refused approval of exclusion by the State Executive Committee of the party. A different result was reached on the theory that the Committee action was state authorized, and the Convention action was unfettered by statutory control. Such a variation in the result from so slight a change in form influences us to consider anew the legal validity of the distinction which has resulted in barring Negroes from participating in the nominations of candidates of the Democratic party in Texas. Other precedents of this Court forbid the abridgement of the right to vote. United States v. Reese, 92 U.S. 214, 217; Neal v. Delaware, 103 U.S. 370, 388; Guinn v. United States, 238 U.S. 347, 361; Myers v. Anderson, 238 U.S. 368, 379; Lane v. Wilson, 307 U.S. 268.

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It may now be taken as a postulate that the right to vote in such a primary for the nomination of candidates without discrimination by the State, like the right to vote [321 U.S. 662] in a general election, is a right secured by the Constitution. United States v. Classic, 313 U.S. at 314; Myers v. Anderson, 238 U.S. 368; Ex parte Yarbrough, 110 U.S. 651, 663 et seq. By the terms of the Fifteenth Amendment, that right may not be abridged by any state on account of race. Under our Constitution, the great privilege of the ballot may not be denied a man by the State because of his color.

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We are thus brought to an examination of the qualifications for Democratic primary electors in Texas, to determine whether state action or private action has excluded Negroes from participation. Despite Texas' decision that the exclusion is produced by private or party action, Bell v. Hill, supra, Federal courts must for themselves appraise the facts leading to that conclusion. It is only by the performance of this obligation that a final and uniform interpretation can be given to the Constitution, the "supreme Law of the Land." Nixon v. Condon, 286 U.S. 73, 88; Standard Oil Co. v. Johnson, 316 U.S. 481, 483; Bridges v. California, 314 U.S. 252; Lisenba v. California, 314 U.S. 219, 238; Union Pacific R. Co. v. United States, 313 U.S. 450, 467; Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, 294; Chambers v. Florida, 309 U.S. 227, 228. Texas requires electors in a primary to pay a poll tax. Every person who does so pay and who has the qualifications of age and residence is an acceptable voter for the primary. Art. 2955. As appears above in the summary of the statutory provisions set out in note 6, Texas requires by the law the election of the county officers of a party. These compose the county executive committee. The county chairmen so selected are members of the district executive committee and choose the chairman for the district. Precinct primary election officers are named by the county executive committee. Statutes provide for the election by the voters of precinct [321 U.S. 663] delegates to the county convention of a party and the selection of delegates to the district and state conventions by the county convention. The state convention selects the state executive committee. No convention may place in platform or resolution any demand for specific legislation without endorsement of such legislation by the voters in a primary. Texas thus directs the selection of all party officers.

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Primary elections are conducted by the party under state statutory authority. The county executive committee selects precinct election officials and the county, district or state executive committees, respectively, canvass the returns. These party committees or the state convention certify the party's candidates to the appropriate officers for inclusion on the official ballot for the general election. No name which has not been so certified may appear upon the ballot for the general election as a candidate of a political party. No other name may be printed on the ballot which has not been placed in nomination by qualified voters who must take oath that they did not participate in a primary for the selection of a candidate for the office for which the nomination is made.

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The state courts are given exclusive original jurisdiction of contested elections and of mandamus proceedings to compel party officers to perform their statutory duties.

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We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party. The plan of the Texas primary follows substantially that of Louisiana, with the exception that, in [321 U.S. 664] Louisiana, the state pays the cost of the primary, while Texas assesses the cost against candidates. In numerous instances, the Texas statutes fix or limit the fees to be charged. Whether paid directly by the state or through state requirements, it is state action which compels. When primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election. If the state requires a certain electoral procedure, prescribes a general election ballot made up of party nominees so chosen and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names appear on such a ballot, it endorses, adopts and enforces the discrimination against Negroes, practiced by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment. Guinn v. United States, 238 U.S. 347, 362.

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The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any state because of race. This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied. Lane v. Wilson, 307 U.S. 268, 275.

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The privilege of membership in a party may be, as this Court said in Grovey v. Townsend, 295 U.S. 45, 55, no concern of a state. But when, as here, that privilege is also the essential qualification for voting in a primary to select nominees for a general election, the state makes the action [321 U.S. 665] of the party the action of the state. In reaching this conclusion, we are not unmindful of the desirability of continuity of decision in constitutional questions. 8 However, when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, 9 and this practice has continued to this day. 10 This is particularly true when the decision believed erroneous is the application of a constitutional principle, rather [321 U.S. 666] than an interpretation of the Constitution to extract the principle itself. 11 Here, we are applying, contrary to the recent decision in Grovey v. Townsend, the well established principle of the Fifteenth Amendment, forbidding the abridgement by a state of a citizen's right to vote. Grovey v. Townsend is overruled.

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Judgment reversed.

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MR. JUSTICE FRANKFURTER concurs in the result.

ROBERTS, J., separate opinion

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MR. JUSTICE ROBERTS.

1944, Smith v. Allwright, 321 U.S. 666

In Mahnich v. Southern Steamship Co., 321 U.S. 96, I have expressed my views with respect to the present policy of the court freely to disregard and to overrule considered decisions and the rules of law announced in them. This tendency, it seems to me, indicates an intolerance for what those who have composed this court in the past have conscientiously and deliberately concluded, and involves an assumption that knowledge and wisdom reside in us which was denied to our predecessors. I shall not repeat what I there said, for I consider it fully applicable to the instant decision, which but points the moral anew.

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A word should be said with respect to the judicial history forming the background of Grovey v. Townsend, 295 U.S. 45, which is now overruled.

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In 1923, Texas adopted a statute which declared that no negro should be eligible to participate in a Democratic Primary election in that State. A negro, a citizen of the United States and of Texas, qualified to vote, except for the provisions of the statute, was denied the opportunity to vote in a primary election at which candidates were to be chosen for the offices of senator and representative in the Congress of the United States. He brought action against the judges of election in a United States court for [321 U.S. 667] damages for their refusal to accept his ballot. This court unanimously reversed a judgment dismissing the complaint and held that the judges acted pursuant to State law and that the State of Texas, by its statute, had denied the voter the equal protection secured by the Fourteenth Amendment. Nixon v. Herndon, 273 U.S. 536 (1927).

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In 1927, the legislature of Texas repealed the provision condemned by this court and enacted that every political party in the State might, through its Executive Committee, prescribe the qualifications of its own members and determine in its own way who should be qualified to vote or participate in the party, except that no denial of participation could be decreed by reason of former political or other affiliation. Thereupon, the State Executive Committee of the Democratic Party in Texas adopted a resolution that white Democrats, and no other, should be allowed to participate in the party's primaries.

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A negro whose primary ballot was rejected pursuant to the resolution sought to recover damages from the judges who had rejected it. The United States District Court dismissed his action and the Circuit Court of Appeals affirmed, but this court reversed the judgment and sustained the right of action by a vote of 5 to 4. Nixon v. Condon, 286 U.S. 73 (1932).

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The opinion was written with care. The court refused to decide whether a political party in Texas had inherent power to determine its membership. The court said, however: "Whatever inherent power a state political party has to determine the content of its membership resides in the state convention," and referred to the statutes of Texas to demonstrate that the State had left the Convention free to formulate the party faith. Attention was directed to the fact that the statute under attack did not leave to the party convention the definition of party membership, but placed it in the party's State Executive Committee, which could not, by any stretch of reasoning, be [321 U.S. 668] held to constitute the party. The court held, therefore, that the State Executive Committee acted solely by virtue of the statutory mandate and as delegate of State power, and again struck down the discrimination against negro voters as deriving force and virtue from State action—that is, from statute.

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In 1932, the Democratic Convention of Texas adopted a resolution that

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all white citizens of the State of Texas who are qualified to vote under the Constitution and laws of the state shall be eligible to membership in the Democratic party, and, as such, entitled to participate in its deliberations.

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A negro voter qualified to vote in a primary election, except for the exclusion worked by the resolution, demanded an absentee ballot which he was entitled to mail to the judges at a primary election except for the resolution. The county clerk refused to furnish him a ballot. He brought an action for damages against the clerk in a state court. That court, which was the tribunal having final jurisdiction under the laws of Texas, dismissed his complaint, and he brought the case to this court for review. After the fullest consideration by the whole court,\* an opinion was written representing its unanimous views and affirming the judgment. Grovey v. Townsend, 295 U.S. 45 (1935).

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I believe it will not be gainsaid the case received the attention and consideration which the questions involved demanded, and the opinion represented the views of all the justices. It appears that those views do not now commend themselves to the court. I shall not restate them. They are exposed in the opinion, and must stand or fall on their merits. Their soundness, however, is not a matter which presently concerns me. [321 U.S. 669]

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The reason for my concern is that the instant decision, overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only. I have no assurance, in view of current decisions, that the opinion announced today may not shortly be repudiated and overruled by justices who deem they have new light on the subject. In the present term, the court has overruled three cases.

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In the present case, as in Mahnich v. Southern S.S. Co., the court below relied, as it was bound to, upon our previous decision. As that court points out, the statutes of Texas have not been altered since Grovey v. Townsend was decided. The same resolution is involved as was drawn in question in Grovey v. Townsend. Not a fact differentiates that case from this except the names of the parties.

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It is suggested that Grovey v. Townsend was overruled sub silentio in United States v. Classic, 313 U.S. 299. If so, the situation is even worse than that exhibited by the outright repudiation of an earlier decision, for it is the fact that, in the Classic case, Grovey v. Townsend was distinguished in brief and argument by the Government without suggestion that it was wrongly decided, and was relied on by the appellees not as a controlling decision, but by way of analogy. The case is not mentioned in either of the opinions in the Classic case. Again and again, it is said in the opinion of the court in that case that the voter who was denied the right to vote was a fully qualified voter. In other words, there was no question of his being a person entitled under state law to vote in the primary. The offense charged was the fraudulent denial of his conceded right by an election officer because of his race. Here, the question is altogether different. It is whether, in a Democratic primary, he who tendered his vote was a member of the Democratic Party. [321 U.S. 670]

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I do not stop to call attention to the material differences between the primary election laws of Louisiana under consideration in the Classic case and those of Texas which are here drawn in question. These differences were spelled out in detail in the Government's brief in the Classic case and emphasized in its oral argument. It is enough to say that the Louisiana statutes required the primary to be conducted by State officials and made it a State election, whereas, under the Texas statute, the primary is a party election conducted at the expense of members of the party and by officials chosen by the party. If this court's opinion in the Classic case discloses its method of overruling earlier decisions, I can only protest that, in fairness, it should rather have adopted the open and frank way of saying what it was doing than, after the event, characterize its past action as overruling Grovey v. Townsend though those less sapient never realized the fact.

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It is regrettable that, in an era marked by doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this court, which has been looked to as exhibiting consistency in adjudication and a steadiness which would hold the balance even in the face of temporary ebbs and flows of opinion, should now itself become the breeder of fresh doubt and confusion in the public mind as to the stability of our institutions.

Footnotes

REED, J., lead opinion (Footnotes)

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1. 8 U.S.C. § 31:

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All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

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§ 43:

1944, Smith v. Allwright, 321 U.S. 670

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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2. Constitution, Art. I:

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Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

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Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

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3. Constitution:

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Article XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Article XV. Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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Section 2. The Congress shall have power to enforce this article by appropriate legislation.

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Article XVII. The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

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4. A declaratory judgment also was sought as to the constitutionality of the denial of the ballot. The judgment entered declared the denial was constitutional. This phase of the case is not considered further, as the decision on the merits determines the legality of the action of the respondents.

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5. Smith v. Allwright, 131 F.2d 593.

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6. The extent to which the state controls the primary election machinery appears from the Texas statutes, as follows: Art. 3118, Vernon's Texas Statutes, provides for the election of a county chairman for each party holding a primary by the "qualified voters of the whole county," and of one member of the party's county executive committee by the "qualified voters of their respective election precincts." These officers have direct charge of the primary. There is, in addition, statutory provision for a party convention: the voters in each precinct choose delegates to a county convention, and the latter chooses delegates to a state convention. Art. 3134. The state convention has authority to choose the state executive committee and its chairman. Art. 3139, 1939 Supp. Candidates for offices to be filled by election are required to be nominated at a primary election if the nominating party cast over 100,000 votes at the preceding general election. Art. 3101. The date of the primary is fixed at the fourth Saturday in July; a majority is required for nomination, and if no candidate receives a majority, a run-off primary between the two highest standing candidates is held on the fourth Saturday in August. Art. 3102. Polling places may not be within a hundred yards of those used by the opposite party. Art. 3103. Each precinct primary is to be conducted by a presiding judge and the assistants he names. These officials are selected by the county executive committee. Art. 3104. Absentee voting machinery provided by the state for general elections is also used in primaries. Art. 2956. The presiding judges are given legal authority similar to that of judges at general elections. Compare Art. 3105 with Art. 3002. The county executive committee may decide whether county officers are to be nominated by majority or plurality vote. Art. 3106. The state executive committee is given power to fix qualifications of party membership, Art. 3107; Art. 2955, 1942 Supp., requires payment of a poll tax by voters in primary elections, and Art. 3093(3) deals with political qualifications of candidates for nomination for United States Senator. But cf. Bell v. Hill, 123 Tex. 531, 74 S.W.2d 113. Art. 3108 empowers the county committee to prepare a budget covering the cost of the primary and to require each candidate to pay a fair share. The form of the ballot is prescribed by Art. 3109. Art. 3101 provides that the nominations be made by the qualified voters of the party. Cf. Art. 3091. Art. 3110 prescribes a test for voters who take part in the primary. It reads as follows:

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No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows:

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I am a…(inserting name of political party or organization of which the voter is a member) and pledge myself to support the nominee of this primary;

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and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted.

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This appears, however, to be a morally, rather than a legally, enforceable pledge. See Love v. Wilcox, 119 Tex. 256, 28 S.W.2d 515, 70 A.L.R. 1484.

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Arts. 3092 and 3111 to 3114 deal with the mechanics of procuring a place on the primary ballot for federal, state, district, or county office. The request for a place on the ballot may be made to the state, district, or county party chairman, either by the person desiring nomination or by twenty-five qualified voters. The ballot is prepared by a subcommittee of the county executive committee. Art. 3115. A candidate must pay his share of the expenses of the election before his name is placed on the ballot. Art. 3116. Art. 3116, however, limits the sum that may be charged candidates for certain posts, such as the offices of district judge, judge of the Court of Civil Appeals, and senator and representative in the state and federal legislatures, and for some counties fees are fixed by Arts. 3116a-3116d, 1939 Supp., and 3116e, 3116f, 1942 Supp. Supplies for the election are distributed by the county committee, Art. 3119, and Art. 3120 authorizes the use of voting booths, ballot boxes and guard rails, prepared for the general election,

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for the organized political party nominating by primary election that cast over one hundred thousand votes at the preceding general election.

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The county tax collector must supply lists of qualified voters by precincts; and these lists must be used at the primary. Art. 3121. The same precautions as to secrecy and the care of the ballots must be observed in primary as in general elections. Art. 3122. Arts. 3123-3125 cover the making of returns to the county and state chairmen and canvass of the result by the county committee. By Art. 3127, a statewide canvass is required of the state executive committee for state and district officers and a similar canvass by the state convention, with respect to state officers, is provided by Art. 3138. The nominations for district offices are certified to the county clerks, and for state officers to the Secretary of State. Arts. 3127, 3137, 3138. Ballot boxes and ballots are to be returned to the county clerk, Art. 3128, 1942 Supp., and, upon certification by the county committee, the county clerk must publish the result. Art. 3129, 1942 Supp. If no objection is made within five days, the name of the nominee is then to be placed on the official ballot by the county clerk. Art. 3131, 1942 Supp. Cf. Arts. 2978, 2984, 2992, 2996. Arts. 3146-3153, 1942 Supp., provide for election contests. The state district courts have exclusive original jurisdiction, and the Court of Civil Appeals has appellate jurisdiction. The state courts are also authorized to issue writs of mandamus to require executive committees, committeemen, and primary officers to discharge the duties imposed by the statute. Art. 3142; cf. Art. 3124.

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The official ballot is required to contain parallel columns for the nominees of the respective parties, a column for independent candidates, and a blank column for such names as the voters care to write in. Arts. 2978, 2980. The names of nominees of a party casting more than 100,000 votes at the last preceding general election may not be printed on the ballot unless they were chosen at a primary election. Art. 2978. Candidates who are not party nominees may have their names printed on the ballot by complying with Arts. 3159-62. These sections require applications to be filed with the Secretary of State, county judge, or mayor, for state and district, county, and city offices, respectively. The applications must be signed by qualified voters to the number of from one to five percent of the ballots cast at the preceding election, depending on the office. Each signer must take an oath to the effect that he did not participate in a primary at which a candidate for the office in question was nominated. While this requirement has been held to preclude one who has voted in the party primary from appearing on the ballot as an independent, Westerman v. Mims, 111 Tex. 29, 227 S.W. 178; see Cunningham v. McDermett, (Civ.App.), one who lost at the primary may still be elected at the general election by a write-in vote. Cunningham v. McDermett, supra.

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The operations of the party are restricted by the state in one other important respect. By Act. 3139, 1939 Supp., the state convention can announce a platform of principles, but its submission at the primary is a prerequisite to party advocacy of specific legislation. Art. 3133.

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7. Cf. Parker v. Brown, 317 U.S. 341, 359-360.

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8. Cf. Pollock v. Farmers Loan & Trust Co., 157 U.S. 429, 652.

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9. See cases collected in the dissenting opinion in Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 410.

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10. See e.g., United States v. Darby, 312 U.S. 100, overruling Hammer v. Dagenhart, 247 U.S. 251; California v. Thompson, 313 U.S. 109, overruling Di Santo v. Pennsylvania, 273 U.S. 34; West Coast Hotel Co. v. Parrish, 300 U.S. 379, overruling Adkins v. Children's Hospital, 261 U.S. 525; Helvering v. Mountain Producers Corp., 303 U.S. 376, overruling Gillespie v. Oklahoma, 257 U.S. 501, and Burnet v. Coronado Oil & Gas Co., 285 U.S. 393; Erie R. Co. v. Tompkins, 304 U.S. 64, overruling Swift v. Tyson, 16 Pet. 1; Graves v. New York ex rel. O'Keefe, 306 U.S. 466, overruling Collector v. Day and New York ex rel. Rogers v. Graves, 299 U.S. 401; O'Malley v. Woodrough, 307 U.S. 277, overruling Miles v. Graham, 268 U.S. 501; Madden v. Kentucky, 309 U.S. 83, overruling Colgate v. Harvey, 296 U.S. 404; Helvering v. Hallock, 309 U.S. 106, overruling Helvering v. St. Louis Union Trust Co., 296 U.S. 39, and Becker v. St. Louis Union Trust Co., 296 U.S. 48; Nye v. United States, 313 U.S. 33, overruling Toledo Newspaper Co. v. United States, 247 U.S. 402; Alabama v. King & Boozer, 314 U.S. 1, overruling Panhandle Oil Co. v. Knox, 277 U.S. 218, and Graves v. Texas Co., 298 U.S. 393; Williams v. North Carolina, 317 U.S. 287, overruling Haddock v. Haddock, 201 U.S. 562; State Tax Commission v. Aldrich, 316 U.S. 174, overruling First National Bank v. Maine, 284 U.S. 312; West Virginia State Board of Education v. Barnette, 319 U.S. 624, overruling Minersville School District v. Gobitis, 310 U.S. 586.

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11. Cf. dissent in Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 at 410.

ROBERTS, J., separate opinion (Footnotes)

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\* The court was composed of Hughes, C.J., Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts and Cardozo, JJ.

Korematsu v. United States, 1944

Title: Korematsu v. United States

Author: U.S. Supreme Court

Date: December 18, 1944

Source: 323 U.S. 214

This case was argued October 11 and 12, 1944, and was decided December 18, 1944.

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

1944, Korematsu v. United States, 323 U.S. 214

FOR THE NINTH CIRCUIT

Syllabus

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1. Civilian Exclusion Order No. 34 which, during a state of war with Japan and as a protection against espionage and sabotage, was promulgated by the Commanding General of the Western Defense Command under authority of Executive Order No. 9066 and the Act of March 21, 1942, and which directed the exclusion after May 9, 1942, from a described West Coast military area of all persons of Japanese ancestry, held constitutional as of the time it was made and when the petitioner—an American citizen of Japanese descent whose home was in the described area—violated it. P. 219.

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2. The provisions of other orders requiring persons of Japanese ancestry to report to assembly centers and providing for the detention of such persons in assembly and relocation centers were separate, and their validity is not in issue in this proceeding. P. 222. [323 U.S. 215]

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3. Even though evacuation and detention in the assembly center were inseparable, the order under which the petitioner was convicted was nevertheless valid. P. 223.

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140 F.2d 289, affirmed.

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CERTIORARI, 321 U.S. 760, to review the affirmance of a judgment of conviction.

BLACK, J., lead opinion

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MR. JUSTICE BLACK delivered the opinion of the Court.

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The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General [323 U.S. 216] of the Western Command, U.S. Army, which directed that, after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed, 1 and the importance of the constitutional question involved caused us to grant certiorari.

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It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

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In the instant case, prosecution of the petitioner was begun by information charging violation of an Act of Congress, of March 21, 1942, 56 Stat. 173, which provides that

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…whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense.

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Exclusion Order No. 34, which the petitioner knowingly and admittedly violated, was one of a number of military orders and proclamations, all of which were substantially [323 U.S. 217] based upon Executive Order No. 9066, 7 Fed.Reg. 1407. That order, issued after we were at war with Japan, declared that

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the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities….

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One of the series of orders and proclamations, a curfew order, which, like the exclusion order here, was promulgated pursuant to Executive Order 9066, subjected all persons of Japanese ancestry in prescribed West Coast military areas to remain in their residences from 8 p.m. to 6 a.m. As is the case with the exclusion order here, that prior curfew order was designed as a "protection against espionage and against sabotage." In Hirabayashi v. United States, 320 U.S. 81, we sustained a conviction obtained for violation of the curfew order. The Hirabayashi conviction and this one thus rest on the same 1942 Congressional Act and the same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage.

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The 1942 Act was attacked in the Hirabayashi case as an unconstitutional delegation of power; it was contended that the curfew order and other orders on which it rested were beyond the war powers of the Congress, the military authorities, and of the President, as Commander in Chief of the Army, and, finally, that to apply the curfew order against none but citizens of Japanese ancestry amounted to a constitutionally prohibited discrimination solely on account of race. To these questions, we gave the serious consideration which their importance justified. We upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.

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In the light of the principles we announced in the Hirabayashi case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude [323 U.S. 218] those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion. They did so, as pointed out in our Hirabayashi opinion, in accordance with Congressional authority to the military to say who should, and who should not, remain in the threatened areas.

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In this case, the petitioner challenges the assumptions upon which we rested our conclusions in the Hirabayashi case. He also urges that, by May, 1942, when Order No. 34 was promulgated, all danger of Japanese invasion of the West Coast had disappeared. After careful consideration of these contentions, we are compelled to reject them.

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Here, as in the Hirabayashi case, supra, at p. 99,

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…we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that, in a critical hour, such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety which demanded that prompt and adequate measures be taken to guard against it.

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Like curfew, exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of [323 U.S. 219] whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. In the instant case, temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was, for the same reason, a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin. That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan. 2

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We uphold the exclusion order as of the time it was made and when the petitioner violated it. Cf. Chastleton Corporation v. Sinclair, 264 U.S. 543, 547; Block v. Hirsh, 256 U.S. 135, 155. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. Cf. Ex parte Kawato, 317 U.S. 69, 73. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities, as well as its privileges, and, in time of war, the burden is always heavier. Compulsory [323 U.S. 220] exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.

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It is argued that, on May 30, 1942, the date the petitioner was charged with remaining in the prohibited area, there were conflicting orders outstanding, forbidding him both to leave the area and to remain there. Of course, a person cannot be convicted for doing the very thing which it is a crime to fail to do. But the outstanding orders here contained no such contradictory commands.

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There was an order issued March 27, 1942, which prohibited petitioner and others of Japanese ancestry from leaving the area, but its effect was specifically limited in time "until and to the extent that a future proclamation or order should so permit or direct." 7 Fed.Reg. 2601. That "future order," the one for violation of which petitioner was convicted, was issued May 3, 1942, and it did "direct" exclusion from the area of all persons of Japanese ancestry before 12 o'clock noon, May 9; furthermore, it contained a warning that all such persons found in the prohibited area would be liable to punishment under the March 21, 1942, Act of Congress. Consequently, the only order in effect touching the petitioner's being in the area on May 30, 1942, the date specified in the information against him, was the May 3 order which prohibited his remaining there, and it was that same order which he stipulated in his trial that he had violated, knowing of its existence. There is therefore no basis for the argument that, on May 30, 1942, he was subject to punishment, under the March 27 and May 3 orders, whether he remained in or left the area.

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It does appear, however, that, on May 9, the effective date of the exclusion order, the military authorities had [323 U.S. 221] already determined that the evacuation should be effected by assembling together and placing under guard all those of Japanese ancestry at central points, designated as "assembly centers," in order

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to insure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, to restrict and regulate such migration.

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Public Proclamation No. 4, 7 Fed.Reg. 2601. And on May 19, 1942, eleven days before the time petitioner was charged with unlawfully remaining in the area, Civilian Restrictive Order No. 1, 8 Fed.Reg. 982, provided for detention of those of Japanese ancestry in assembly or relocation centers. It is now argued that the validity of the exclusion order cannot be considered apart from the orders requiring him, after departure from the area, to report and to remain in an assembly or relocation center. The contention is that we must treat these separate orders as one and inseparable; that, for this reason, if detention in the assembly or relocation center would have illegally deprived the petitioner of his liberty, the exclusion order and his conviction under it cannot stand.

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We are thus being asked to pass at this time upon the whole subsequent detention program in both assembly and relocation centers, although the only issues framed at the trial related to petitioner's remaining in the prohibited area in violation of the exclusion order. Had petitioner here left the prohibited area and gone to an assembly center, we cannot say, either as a matter of fact or law, that his presence in that center would have resulted in his detention in a relocation center. Some who did report to the assembly center were not sent to relocation centers, but were released upon condition that they remain outside the prohibited zone until the military orders were modified or lifted. This illustrates that they pose different problems, and may be governed by different principles. T he lawfulness of one does not necessarily determine the lawfulness of the others. This is made clear [323 U.S. 222] when we analyze the requirements of the separate provisions of the separate orders. These separate requirements were that those of Japanese ancestry (1) depart from the area; (2) report to and temporarily remain in an assembly center; (3) go under military control to a relocation center, there to remain for an indeterminate period until released conditionally or unconditionally by the military authorities. Each of these requirements, it will be noted, imposed distinct duties in connection with the separate steps in a complete evacuation program. Had Congress directly incorporated into one Act the language of these separate orders, and provided sanctions for their violations, disobedience of any one would have constituted a separate offense. Cf. Blockburger v. United States, 284 U.S. 299, 304. There is no reason why violations of these orders, insofar as they were promulgated pursuant to Congressional enactment, should not be treated as separate offenses.

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The Endo case, post, p. 283, graphically illustrates the difference between the validity of an order to exclude and the validity of a detention order after exclusion has been effected.

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Since the petitioner has not been convicted of failing to report or to remain in an assembly or relocation center, we cannot in this case determine the validity of those separate provisions of the order. It is sufficient here for us to pass upon the order which petitioner violated. To do more would be to go beyond the issues raised, and to decide momentous questions not contained within the framework of the pleadings or the evidence in this case. It will be time enough to decide the serious constitutional issues which petitioner seeks to raise when an assembly or relocation order is applied or is certain to be applied to him, and we have its terms before us.

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Some of the members of the Court are of the view that evacuation and detention in an Assembly Center were inseparable. After May 3, 1942, the date of Exclusion [323 U.S. 223] Order No. 34, Korematsu was under compulsion to leave the area not as he would choose, but via an Assembly Center. The Assembly Center was conceived as a part of the machinery for group evacuation. The power to exclude includes the power to do it by force if necessary. And any forcible measure must necessarily entail some degree of detention or restraint, whatever method of removal is selected. But whichever view is taken, it results in holding that the order under which petitioner was convicted was valid.

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It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers—and we deem it unjustifiable to call them concentration camps, with all the ugly connotations that term implies—we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and, finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this. There was evidence of disloyalty on the part of some, the military authorities considered that the need for [323 U.S. 224] action was great, and time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that, at that time, these actions were unjustified.

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Affirmed.

FRANKFURTER, J., concurring

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MR. JUSTICE FRANKFURTER, concurring.

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According to my reading of Civilian Exclusion Order No. 34, it was an offense for Korematsu to be found in Military Area No. 1, the territory wherein he was previously living, except within the bounds of the established Assembly Center of that area. Even though the various orders issued by General DeWitt be deemed a comprehensive code of instructions, their tenor is clear, and not contradictory. They put upon Korematsu the obligation to leave Military Area No. 1, but only by the method prescribed in the instructions, i.e., by reporting to the Assembly Center. I am unable to see how the legal considerations that led to the decision in Hirabayashi v. United States, 320 U.S. 81, fail to sustain the military order which made the conduct now in controversy a crime. And so I join in the opinion of the Court, but should like to add a few words of my own.

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The provisions of the Constitution which confer on the Congress and the President powers to enable this country to wage war are as much part of the Constitution as provisions looking to a nation at peace. And we have had recent occasion to quote approvingly the statement of former Chief Justice Hughes that the war power of the Government is "the power to wage war successfully." Hirabayashi v. United States, supra, at 93, and see Home Bldg. & L. Assn. v. Blaisdell, 290 U.S. 398, 426. Therefore, the validity of action under the war power must be judged wholly in the context of war. That action is not to be stigmatized as lawless because like action in times of peace would be lawless. To talk about a military order that expresses an allowable judgment of war needs by those entrusted with the duty of conducting war as "an [323 U.S. 225] unconstitutional order" is to suffuse a part of the Constitution with an atmosphere of unconstitutionality. The respective spheres of action of military authorities and of judges are, of course, very different. But, within their sphere, military authorities are no more outside the bounds of obedience to the Constitution than are judges within theirs. "The war power of the United States, like its other powers…is subject to applicable constitutional limitations," Hamilton v. Kentucky Distilleries Co., 251 U.S. 146, 156. To recognize that military orders are "reasonably expedient military precautions" in time of war, and yet to deny them constitutional legitimacy, makes of the Constitution an instrument for dialectic subtleties not reasonably to be attributed to the hard-headed Framers, of whom a majority had had actual participation in war. If a military order such as that under review does not transcend the means appropriate for conducting war, such action by the military is as constitutional as would be any authorized action by the Interstate Commerce Commission within the limits of the constitutional power to regulate commerce. And, being an exercise of the war power explicitly granted by the Constitution for safeguarding the national life by prosecuting war effectively, I find nothing in the Constitution which denies to Congress the power to enforce such a valid military order by making its violation an offense triable in the civil courts. Compare Interstate Commerce Commission v. Brimson, 154 U.S. 447; 155 U.S. 3, and Monongahela Bridge Co. v. United States, 216 U.S. 177. To find that the Constitution does not forbid the military measures now complained of does not carry with it approval of that which Congress and the Executive did. That is their business, not ours.

ROBERTS, J., dissenting

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MR. JUSTICE ROBERTS.

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I dissent, because I think the indisputable facts exhibit a clear violation of Constitutional rights.

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This is not a case of keeping people off the streets at night, as was Hirabayashi v. United States, 320 U.S. 81, [323 U.S. 226] nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community, nor a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or to his fellows. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. If this be a correct statement of the facts disclosed by this record, and facts of which we take judicial notice, I need hardly labor the conclusion that Constitutional rights have been violated.

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The Government's argument, and the opinion of the court, in my judgment, erroneously divide that which is single and indivisible, and thus make the case appear as if the petitioner violated a Military Order, sanctioned by Act of Congress, which excluded him from his home by refusing voluntarily to leave, and so knowingly and intentionally defying the order and the Act of Congress.

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The petitioner, a resident of San Leandro, Alameda County, California, is a native of the United States of Japanese ancestry who, according to the uncontradicted evidence, is a loyal citizen of the nation.

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A chronological recitation of events will make it plain that the petitioner's supposed offense did not, in truth, consist in his refusal voluntarily to leave the area which included his home in obedience to the order excluding him therefrom. Critical attention must be given to the dates and sequence of events.

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December 8, 1941, the United States declared war on Japan.

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February 19, 1942, the President issued Executive Order No. 9066, 1 which, after stating the reason for issuing the [323 U.S. 227] order as "protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities," provided that certain Military Commanders might, in their discretion, "prescribe military areas" and define their extent,

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from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions

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the "Military Commander may impose in his discretion."

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February 20, 1942, Lieutenant General DeWitt was designated Military Commander of the Western Defense Command embracing the westernmost states of the Union—about one-fourth of the total area of the nation.

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March 2, 192, General DeWitt promulgated Public Proclamation No. 1, 2 which recites that the entire Pacific Coast is "particularly subject to attack, to attempted invasion…, and, in connection therewith, is subject to espionage and acts of sabotage." It states that, "as a matter of military necessity," certain military areas and zones are established known as Military Areas Nos. 1 and 2. It adds that "[s]uch persons or classes of persons as the situation may require" will, by subsequent orders, "be excluded from all of Military Area No. 1" and from certain zones in Military Area No. 2. Subsequent proclamations were made which, together with Proclamation No. 1, included in such areas and zones all of California, Washington, Oregon, Idaho, Montana, Nevada and Utah, and the southern portion of Arizona. The orders required that, if any person of Japanese, German or Italian ancestry residing in Area No. 1 desired to change his habitual residence, he must execute and deliver to the authorities a Change of Residence Notice.

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San Leandro, the city of petitioner's residence, lies in Military Area No. 1. [323 U.S. 228]

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On March 2, 1942, the petitioner, therefore, had notice that, by Executive Order, the President, to prevent espionage and sabotage, had authorized the Military to exclude him from certain areas and to prevent his entering or leaving certain areas without permission. He was on notice that his home city had been included, by Military Order, in Area No. 1, and he was on notice further that, at sometime in the future, the Military Commander would make an order for the exclusion of certain persons, not described or classified, from various zones including that, in which he lived.

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March 21, 1942, Congress enacted 3 that anyone who knowingly

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shall enter, remain in, leave, or commit any act in any military area or military zone prescribed…by any military commander…contrary to the restrictions applicable to any such area or zone or contrary to the order of…any such military commander

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shall be guilty of a misdemeanor. This is the Act under which the petitioner was charged.

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March 24, 1942, General DeWitt instituted the curfew for certain areas within his command, by an order the validity of which was sustained in Hirabayashi v. United States, supra.

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March 24, 1942, General DeWitt began to issue a series of exclusion orders relating to specified areas.

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March 27, 1942, by Proclamation No. 4, 4 the General recited that

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it is necessary, in order to provide for the welfare and to insure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, to restrict and regulate such migration, and ordered that, as of March 29, 1942,

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all alien Japanese and persons of Japanese ancestry who are within the limits of Military Area No. 1, be and they are hereby [323 U.S. 229] prohibited from leaving that area for any purpose until and to the extent that a future proclamation or order of this headquarters shall so permit or direct. 5

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No order had been made excluding the petitioner from the area in which he lived. By Proclamation No. 4, he was, after March 29, 1942, confined to the limits of Area No. 1. If the Executive Order No. 9066 and the Act of Congress meant what they said, to leave that area, in the face of Proclamation No. 4, would be to commit a misdemeanor.

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May 3, 1942, General DeWitt issued Civilian Exclusion Order No. 34 6 providing that, after 12 o'clock May 8, 1942, all persons of Japanese ancestry, both alien and nonalien, were to be excluded from a described portion of Military Area No. 1, which included the County of Alameda, California. The order required a responsible member of each family and each individual living alone to report, at a time set, at a Civil Control Station for instructions to go to an Assembly Center, and added that any person failing to comply with the provisions of the order who was found in the described area after the date set would be liable to prosecution under the Act of March 21, 1942, supra. It is important to note that the order, by its express terms, had no application to persons within the bounds "of an established Assembly Center pursuant to instructions from this Headquarters…" The obvious purpose of the orders made, taken together, was to drive all citizens of Japanese ancestry into Assembly Centers within the zones of their residence, under pain of criminal prosecution. [323 U.S. 230]

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The predicament in which the petitioner thus found himself was this: he was forbidden, by Military Order, to leave the zone in which he lived; he was forbidden, by Military Order, after a date fixed, to be found within that zone unless he were in an Assembly Center located in that zone. General DeWitt's report to the Secretary of War concerning the programme of evacuation and relocation of Japanese makes it entirely clear, if it were necessary to refer to that document—and, in the light of the above recitation, I think it is not,—that an Assembly Center was a euphemism for a prison. No person within such a center was permitted to leave except by Military Order.

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In the dilemma that he dare not remain in his home, or voluntarily leave the area, without incurring criminal penalties, and that the only way he could avoid punishment was to go to an Assembly Center and submit himself to military imprisonment, the petitioner did nothing.

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June 12, 1942, an Information was filed in the District Court for Northern California charging a violation of the Act of March 21, 1942, in that petitioner had knowingly remained within the area covered by Exclusion Order No. 34. A demurrer to the information having been overruled, the petitioner was tried under a plea of not guilty, and convicted. Sentence was suspended, and he was placed on probation for five years. We know, however, in the light of the foregoing recitation, that he was at once taken into military custody and lodged in an Assembly Center. We further know that, on March 18, 1942, the President had promulgated Executive Order No. 9102, 7 establishing the War Relocation Authority under which so-called Relocation Centers, a euphemism for concentration camps, were established pursuant to cooperation between the military authorities of the Western Defense Command and the Relocation Authority, and that the petitioner has [323 U.S. 231] been confined either in an Assembly Center within the zone in which he had lived or has been removed to a Relocation Center where, as the facts disclosed in Ex parte Endo (post, p. 283) demonstrate, he was illegally held in custody.

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The Government has argued this case as if the only order outstanding at the time the petitioner was arrested and informed against was Exclusion Order No. 34, ordering him to leave the area in which he resided, which was the basis of the information against him. That argument has evidently been effective. The opinion refers to the Hirabayashi case, supra, to show that this court has sustained the validity of a curfew order in an emergency. The argument, then, is that exclusion from a given area of danger, while somewhat more sweeping than a curfew regulation, is of the same nature—a temporary expedient made necessary by a sudden emergency. This, I think, is a substitution of an hypothetical case for the case actually before the court. I might agree with the court's disposition of the hypothetical case. 8 The liberty of every American citizen freely to come and to go must frequently, in the face of sudden danger, be temporarily limited or suspended. The civil authorities must often resort to the expedient of excluding citizens temporarily from a locality. The drawing of fire lines in the case of a conflagration, the removal of persons from the area where a pestilence has broken out, are familiar examples. If the exclusion worked by Exclusion Order No. 34 were of that nature, the Hirabayashi case would be authority for sustaining it. [323 U.S. 232] But the facts above recited, and those set forth in Ex parte Endo, supra, show that the exclusion was but a part of an over-all plan for forceable detention. This case cannot, therefore, be decided on any such narrow ground as the possible validity of a Temporary Exclusion Order under which the residents of an area are given an opportunity to leave and go elsewhere in their native land outside the boundaries of a military area. To make the case turn on any such assumption is to shut our eyes to reality.

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As I have said above, the petitioner, prior to his arrest, was faced with two diametrically contradictory orders given sanction by the Act of Congress of March 21, 1942. The earlier of those orders made him a criminal if he left the zone in which he resided; the later made him a criminal if he did not leave.

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I had supposed that, if a citizen was constrained by two laws, or two orders having the force of law, and obedience to one would violate the other, to punish him for violation of either would deny him due process of law. And I had supposed that, under these circumstances, a conviction for violating one of the orders could not stand.

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We cannot shut our eyes to the fact that, had the petitioner attempted to violate Proclamation No. 4 and leave the military area in which he lived, he would have been arrested and tried and convicted for violation of Proclamation No. 4. The two conflicting orders, one which commanded him to stay and the other which commanded him to go, were nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp. The only course by which the petitioner could avoid arrest and prosecution was to go to that camp according to instructions to be given him when he reported at a Civil Control Center. We know that is the fact. Why should we set up a figmentary and artificial situation, instead of addressing ourselves to the actualities of the case? [323 U.S. 233]

1944, Korematsu v. United States, 323 U.S. 233

These stark realities are met by the suggestion that it is lawful to compel an American citizen to submit to illegal imprisonment on the assumption that he might, after going to the Assembly Center, apply for his discharge by suing out a writ of habeas corpus, as was done in the Endo case, supra. The answer, of course, is that, where he was subject to two conflicting laws, he was not bound, in order to escape violation of one or the other, to surrender his liberty for any period. Nor will it do to say that the detention was a necessary part of the process of evacuation, and so we are here concerned only with the validity of the latter.

1944, Korematsu v. United States, 323 U.S. 233

Again, it is a new doctrine of constitutional law that one indicted for disobedience to an unconstitutional statute may not defend on the ground of the invalidity of the statute, but must obey it though he knows it is no law, and, after he has suffered the disgrace of conviction and lost his liberty by sentence, then, and not before, seek, from within prison walls, to test the validity of the law.

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Moreover, it is beside the point to rest decision in part on the fact that the petitioner, for his own reasons, wished to remain in his home. If, as is the fact, he was constrained so to do, it is indeed a narrow application of constitutional rights to ignore the order which constrained him in order to sustain his conviction for violation of another contradictory order.

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I would reverse the judgment of conviction.

MURPHY, J., dissenting

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MR. JUSTICE MURPHY, dissenting.

1944, Korematsu v. United States, 323 U.S. 233

This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over "the very brink of constitutional power," and falls into the ugly abyss of racism.

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In dealing with matters relating to the prosecution and progress of a war, we must accord great respect and consideration [323 U.S. 234] to the judgments of the military authorities who are on the scene and who have full knowledge of the military facts. The scope of their discretion must, as a matter of necessity and common sense, be wide. And their judgments ought not to be overruled lightly by those whose training and duties ill-equip them to deal intelligently with matters so vital to the physical security of the nation.

1944, Korematsu v. United States, 323 U.S. 234

At the same time, however, it is essential that there be definite limits to military discretion, especially where martial law has not been declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support. Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled.

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What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.

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Sterling v. Constantin, 287 U.S. 378, 401.

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The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so "immediate, imminent, and impending" as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. United States v. Russell, 13 Wall. 623, 627-628; Mitchell v. Harmony, 13 How. 115, 134-135; Raymond v. Thomas, 91 U.S. 712, 716. Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast "all persons of Japanese ancestry, both alien and non-alien," clearly does not meet that test. Being an obvious racial discrimination, the [323 U.S. 235] order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an "immediate, imminent, and impending" public danger is evident to support this racial restriction, which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law.

1944, Korematsu v. United States, 323 U.S. 235

It must be conceded that the military and naval situation in the spring of 1942 was such as to generate a very real fear of invasion of the Pacific Coast, accompanied by fears of sabotage and espionage in that area. The military command was therefore justified in adopting all reasonable means necessary to combat these dangers. In adjudging the military action taken in light of the then apparent dangers, we must not erect too high or too meticulous standards; it is necessary only that the action have some reasonable relation to the removal of the dangers of invasion, sabotage and espionage. But the exclusion, either temporarily or permanently, of all persons with Japanese blood in their veins has no such reasonable relation. And that relation is lacking because the exclusion order necessarily must rely for its reasonableness upon the assumption that all persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage and to aid our Japanese enemy in other ways. It is difficult to believe that reason, logic, or experience could be marshalled in support of such an assumption.

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That this forced exclusion was the result in good measure of this erroneous assumption of racial guilt, rather than [323 U.S. 236] bona fide military necessity is evidenced by the Commanding General's Final Report on the evacuation from the Pacific Coast area. 1 In it, he refers to all individuals of Japanese descent as "subversive," as belonging to "an enemy race" whose "racial strains are undiluted," and as constituting "over 112,000 potential enemies…at large today" along the Pacific Coast. 2 In support of this blanket condemnation of all persons of Japanese descent, however, no reliable evidence is cited to show that such individuals were generally disloyal, 3 or had generally so conducted themselves in this area as to constitute a special menace to defense installations or war industries, or had otherwise, by their behavior, furnished reasonable ground for their exclusion as a group.

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Justification for the exclusion is sought, instead, mainly upon questionable racial and sociological grounds not [323 U.S. 237] ordinarily within the realm of expert military judgment, supplemented by certain semi-military conclusions drawn from an unwarranted use of circumstantial evidence. Individuals of Japanese ancestry are condemned because they are said to be "a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion." 4 They are claimed to be given to "emperor worshipping ceremonies," 5 and to "dual citizenship." 6 Japanese language schools and allegedly pro-Japanese organizations are cited as evidence of possible group disloyalty, 7 together with facts as to [323 U.S. 238] certain persons being educated and residing at length in Japan. 8 It is intimated that many of these individuals deliberately resided "adjacent to strategic points," thus enabling them

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to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so. 9

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The need for protective custody is also asserted. The report refers, without identity, to "numerous incidents of violence," as well as to other admittedly unverified or cumulative incidents. From this, plus certain other events not shown to have been connected with the Japanese Americans, it is concluded that the "situation was fraught with danger to the Japanese population itself," and that the general public "was ready to take matters into its own hands." 10 Finally, it is intimated, though not directly [323 U.S. 239] charged or proved, that persons of Japanese ancestry were responsible for three minor isolated shellings and bombings of the Pacific Coast area, 11 as well as for unidentified radio transmissions and night signaling.

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The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristics of Japanese Americans and the dangers of invasion, sabotage and espionage. The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices—the same people who have been among the foremost advocates of the evacuation. 12 A military judgment [323 U.S. 240] based upon such racial and sociological considerations is not entitled to the great weight ordinarily given the judgments based upon strictly military considerations. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters. 13

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The military necessity which is essential to the validity of the evacuation order thus resolves itself into a few intimations that certain individuals actively aided the enemy, from which it is inferred that the entire group of Japanese Americans could not be trusted to be or remain loyal to the United States. No one denies, of course, that there were some disloyal persons of Japanese descent on the Pacific Coast who did all in their power to aid their ancestral land. Similar disloyal activities have been engaged in by many persons of German, Italian and even more pioneer stock in our country. But to infer that examples of individual disloyalty prove group disloyalty and justify discriminatory action against the entire group is to deny that, under our system of law, individual guilt is the sole basis for deprivation of rights. Moreover, this inference, which is at the very heart of the evacuation orders, has been used in support of the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. To give constitutional sanction to that inference in this case, however well intentioned may have been the military command on the Pacific Coast, is to adopt one of the cruelest of the rationales used by our enemies to destroy the dignity of the individual and to encourage and open the door to discriminatory actions against other minority groups in the passions of tomorrow. [323 U.S. 241]

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No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. See House Report No. 2124 (77th Cong., 2d Sess.) 247-52. It is asserted merely that the loyalties of this group "were unknown and time was of the essence." 14 Yet nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued, and the last of these "subversive" persons was not actually removed until almost eleven months had elapsed. Leisure and deliberation seem to have been more of the essence than speed. And the fact that conditions were not such as to warrant a declaration of martial law adds strength to the belief that the factors of time and military necessity were not as urgent as they have been represented to be.

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Moreover, there was no adequate proof that the Federal Bureau of Investigation and the military and naval intelligence services did not have the espionage and sabotage situation well in hand during this long period. Nor is there any denial of the fact that not one person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free, 15 a fact which is some evidence of the loyalty of the vast majority of these individuals and of the effectiveness of the established methods of combatting these evils. It [323 U.S. 242] seems incredible that, under these circumstances, it would have been impossible to hold loyalty hearings for the mere 112,000 persons involved—or at least for the 70,000 American citizens—especially when a large part of this number represented children and elderly men and women. 16 Any inconvenience that may have accompanied an attempt to conform to procedural due process cannot be said to justify violations of constitutional rights of individuals.

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I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution.

JACKSON, J., dissenting

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MR. JUSTICE JACKSON, dissenting.

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Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity, and a citizen of California by [323 U.S. 243] residence. No claim is made that he is not loyal to this country. There is no suggestion that, apart from the matter involved here, he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

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Even more unusual is the series of military orders which made this conduct a crime. They forbid such a one to remain, and they also forbid him to leave. They were so drawn that the only way Korematsu could avoid violation was to give himself up to the military authority. This meant submission to custody, examination, and transportation out of the territory, to be followed by indeterminate confinement in detention camps.

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A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had Korematsu been one of four—the others being, say, a German alien enemy, an Italian alien enemy, and a citizen of American-born ancestors, convicted of treason but out on parole—only Korematsu's presence would have violated the order. The difference between their innocence and his crime would result, not from anything he did, said, or thought, different than they, but only in that he was born of different racial stock.

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Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him, for it provides that "no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted." But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign. If Congress, in peacetime legislation, should [323 U.S. 244] enact such a criminal law, I should suppose this Court would refuse to enforce it.

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But the "law" which this prisoner is convicted of disregarding is not found in an act of Congress, but in a military order. Neither the Act of Congress nor the Executive Order of the President, nor both together, would afford a basis for this conviction. It rests on the orders of General DeWitt. And it is said that, if the military commander had reasonable military grounds for promulgating the orders, they are constitutional, and become law, and the Court is required to enforce them. There are several reasons why I cannot subscribe to this doctrine.

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It would be impracticable and dangerous idealism to expect or insist that each specific military command in an area of probable operations will conform to conventional tests of constitutionality. When an area is so beset that it must be put under military control at all, the paramount consideration is that its measures be successful, rather than legal. The armed services must protect a society, not merely its Constitution. The very essence of the military job is to marshal physical force, to remove every obstacle to its effectiveness, to give it every strategic advantage. Defense measures will not, and often should not, be held within the limits that bind civil authority in peace. No court can require such a commander in such circumstances to act as a reasonable man; he may be unreasonably cautious and exacting. Perhaps he should be. But a commander, in temporarily focusing the life of a community on defense, is carrying out a military program; he is not making law in the sense the courts know the term. He issues orders, and they may have a certain authority as military commands, although they may be very bad as constitutional law.

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But if we cannot confine military expedients by the Constitution, neither would I distort the Constitution to approve all that the military may deem expedient. That is [323 U.S. 245] what the Court appears to be doing, whether consciously or not. I cannot say, from any evidence before me, that the orders of General DeWitt were not reasonably expedient military precautions, nor could I say that they were. But even if they were permissible military procedures, I deny that it follows that they are constitutional. If, as the Court holds, it does follow, then we may as well say that any military order will be constitutional, and have done with it.

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The limitation under which courts always will labor in examining the necessity for a military order are illustrated by this case. How does the Court know that these orders have a reasonable basis in necessity? No evidence whatever on that subject has been taken by this or any other court. There is sharp controversy as to the credibility of the DeWitt report. So the Court, having no real evidence before it, has no choice but to accept General DeWitt's own unsworn, self-serving statement, untested by any cross-examination, that what he did was reasonable. And thus it will always be when courts try to look into the reasonableness of a military order.

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In the very nature of things, military decisions are not susceptible of intelligent judicial appraisal. They do not pretend to rest on evidence, but are made on information that often would not be admissible and on assumptions that could not be proved. Information in support of an order could not be disclosed to courts without danger that it would reach the enemy. Neither can courts act on communications made in confidence. Hence, courts can never have any real alternative to accepting the mere declaration of the authority that issued the order that it was reasonably necessary from a military viewpoint.

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Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more [323 U.S. 246] subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period, a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardozo described as "the tendency of a principle to expand itself to the limit of its logic."\* A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court's opinion in this case.

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It argues that we are bound to uphold the conviction of Korematsu because we upheld one in Hirabayashi v. United States, 320 U.S. 81, when we sustained these orders insofar as they applied a curfew requirement to a citizen of Japanese ancestry. I think we should learn something from that experience.

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In that case, we were urged to consider only the curfew feature, that being all that technically was involved, because it was the only count necessary to sustain Hirabayashi's conviction and sentence. We yielded, and the Chief Justice guarded the opinion as carefully as language [323 U.S. 247] will do. He said:

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Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulgation, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew.

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320 U.S. at 101.

1944, Korematsu v. United States, 323 U.S. 247

We decide only the issue as we have defined it—we decide only that the curfew order, as applied, and at the time it was applied, was within the boundaries of the war power.

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320 U.S. at 102. And again: "It is unnecessary to consider whether or to what extent such findings would support orders differing from the curfew order." 320 U.S. at 105. (Italics supplied.) However, in spite of our limiting words, we did validate a discrimination on the basis of ancestry for mild and temporary deprivation of liberty. Now the principle of racial discrimination is pushed from support of mild measures to very harsh ones, and from temporary deprivations to indeterminate ones. And the precedent which it is said requires us to do so is Hirabayashi. The Court is now saying that, in Hirabayashi, we did decide the very things we there said we were not deciding. Because we said that these citizens could be made to stay in their homes during the hours of dark, it is said we must require them to leave home entirely, and if that, we are told they may also be taken into custody for deportation, and, if that, it is argued, they may also be held for some undetermined time in detention camps. How far the principle of this case would be extended before plausible reasons would play out, I do not know.

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I should hold that a civil court cannot be made to enforce an order which violates constitutional limitations even if it is a reasonable exercise of military authority. The courts can exercise only the judicial power, can apply only law, and must abide by the Constitution, or they cease to be civil courts and become instruments of military policy. [323 U.S. 248]

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Of course, the existence of a military power resting on force, so vagrant, so centralized, so necessarily heedless of the individual, is an inherent threat to liberty. But I would not lead people to rely on this Court for a review that seems to me wholly delusive. The military reasonableness of these orders can only be determined by military superiors. If the people ever let command of the war power fall into irresponsible and unscrupulous hands, the courts wield no power equal to its restraint. The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history.

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My duties as a justice, as I see them, do not require me to make a military judgment as to whether General DeWitt's evacuation and detention program was a reasonable military necessity. I do not suggest that the courts should have attempted to interfere with the Army in carrying out its task. But I do not think they may be asked to execute a military expedient that has no place in law under the Constitution. I would reverse the judgment and discharge the prisoner.

Footnotes

BLACK, J., lead opinion (Footnotes)

1944, Korematsu v. United States, 323 U.S. 248

1. 140 F.2d 289.

1944, Korematsu v. United States, 323 U.S. 248

2. Hearings before the Subcommittee on the National War Agencies Appropriation Bill for 1945, Part II, 608-726; Final Report, Japanese Evacuation from the West Coast, 1942, 309-327; Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701 and other bills to expatriate certain nationals of the United States, pp. 37-42, 49-58.

ROBERTS, J., dissenting (Footnotes)

1944, Korematsu v. United States, 323 U.S. 248

1. 17 Fed.Reg. 1407.

1944, Korematsu v. United States, 323 U.S. 248

2. 7 Fed.Reg. 2320

1944, Korematsu v. United States, 323 U.S. 248

3. 56 Stat. 173.

1944, Korematsu v. United States, 323 U.S. 248

4. 7 Fed.Reg. 2601.

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5. The italics in the quotation are mine. The use of the word "voluntarily" exhibits a grim irony probably not lost on petitioner and others in like case. Either so or its use was a disingenuous attempt to camouflage the compulsion which was to be applied.

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6. 7 Fed.Reg. 3967.

1944, Korematsu v. United States, 323 U.S. 248

7. 7 Fed.Reg. 2165.

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8. My agreement would depend on the definition and application of the terms "temporary" and "emergency." No pronouncement of the commanding officer can, in my view, preclude judicial inquiry and determination whether an emergency ever existed and whether, if so, it remained at the date of the restraint out of which the litigation arose. Cf. Chastleton Corp. v. Sinclair, 264 U.S. 543.

MURPHY, J., dissenting (Footnotes)

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1. Final Report, Japanese Evacuation from the West Coast, 1942, by Lt.Gen. J. L. DeWitt. This report is dated June 5, 1943, but was not made public until January, 1944.

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2. Further evidence of the Commanding General's attitude toward individuals of Japanese ancestry is revealed in his voluntary testimony on April 13, 1943, in San Francisco before the House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, pp. 739 40 (78th Cong., 1st Sess.):

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I don't want any of them [persons of Japanese ancestry] here. They are a dangerous element. There is no way to determine their loyalty. The west coast contains too many vital installations essential to the defense of the country to allow any Japanese on this coast…. The danger of the Japanese was, and is now—if they are permitted to come back—espionage and sabotage. It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty…. But we must worry about the Japanese all the time until he is wiped off the map. Sabotage and espionage will make problems as long as he is allowed in this area….

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3. The Final Report, p. 9, casts a cloud of suspicion over the entire group by saying that, "while it was believed that some were loyal, it was known that many were not." (Italics added.)

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4. Final Report, p. vii; see also pp. 9, 17. To the extent that assimilation is a problem, it is largely the result of certain social customs and laws of the American general public. Studies demonstrate that persons of Japanese descent are readily susceptible to integration in our society if given the opportunity. Strong, The Second-Generation Japanese Problem (1934); Smith, Americans in Process (1937); Mears, Resident Orientals on the American Pacific Coast (1928); Millis, The Japanese Problem in the United States (1942). The failure to accomplish an ideal status of assimilation, therefore, cannot be charged to the refusal of these persons to become Americanized, or to their loyalty to Japan. And the retention by some persons of certain customs and religious practices of their ancestors is no criterion of their loyalty to the United States.

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5. Final Report, pp. 10-11. No sinister correlation between the emperor worshipping activities and disloyalty to America was shown.

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6. Final Report, p. 22. The charge of "dual citizenship" springs from a misunderstanding of the simple fact that Japan, in the past, used the doctrine of jus sanguinis, as she had a right to do under international law, and claimed as her citizens all persons born of Japanese nationals wherever located. Japan has greatly modified this doctrine, however, by allowing all Japanese born in the United States to renounce any claim of dual citizenship and by releasing her claim as to all born in the United States after 1925. See Freeman, "Genesis, Exodus, and Leviticus: Genealogy, Evacuation, and Law," 28 Cornell L.Q. 414, 447-8, and authorities there cited; McWilliams, Prejudice, 123-4 (1944).

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7. Final Report, pp. 12-13. We have had various foreign language schools in this country for generations without considering their existence as ground for racial discrimination. No subversive activities or teachings have been shown in connection with the Japanese schools. McWilliams, Prejudice, 121-3 (1944).

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8. Final Report, pp. 13-15. Such persons constitute a very small part of the entire group, and most of them belong to the Kibei movement—the actions and membership of which are well known to our Government agents.

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9. Final Report, p. 10; see also pp. vii, 9, 15-17. This insinuation, based purely upon speculation and circumstantial evidence, completely overlooks the fact that the main geographic pattern of Japanese population was fixed many years ago with reference to economic, social and soil conditions. Limited occupational outlets and social pressures encouraged their concentration near their initial points of entry on the Pacific Coast. That these points may now be near certain strategic military and industrial areas is no proof of a diabolical purpose on the part of Japanese Americans. See McWilliams, Prejudice, 119-121 (1944); House Report No. 2124 (77th Cong., 2d Sess.), 59-93.

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10. Final Report, pp. 8-9. This dangerous doctrine of protective custody, as proved by recent European history, should have absolutely no standing as an excuse for the deprivation of the rights of minority groups. See House Report No.1911 (77th Cong., 2d Sess.) 1-2. Cf. House Report No. 2124 (77th Cong., & Sess.) 145-7. In this instance, moreover, there are only two minor instances of violence on record involving persons of Japanese ancestry. McWilliams, What About Our Japanese-Americans? Public Affairs Pamphlets, No. 91, p. 8 (1944).

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11. Final Report, p. 18. One of these incidents (the reputed dropping of incendiary bombs on an Oregon forest) occurred on Sept. 9, 1942—a considerable time after the Japanese Americans had been evacuated from their homes and placed in Assembly Centers. See New York Times, Sept. 15, 1942, p. 1, col. 3.

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12. Special interest groups were extremely active in applying pressure for mass evacuation. See House Report No. 2124 (77th Cong., 2d Sess.) 154-6; McWilliams, Prejudice, 128 (1944). Mr. Austin E. Anson, managing secretary of the Salinas Vegetable Grower-Shipper Association, has frankly admitted that

1944, Korematsu v. United States, 323 U.S. 248

We're charged with wanting to get rid of the Japs for selfish reasons…. We do. It's a question of whether the white man lives on the Pacific Coast or the brown men. They came into this valley to work, and they stayed to take over…. They undersell the white man in the markets…. They work their women and children while the white farmer has to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.

1944, Korematsu v. United States, 323 U.S. 248

Quoted by Taylor in his article "The People Nobody Wants," 214 Sat.Eve.Post 24, 66 (May 9, 1942).

1944, Korematsu v. United States, 323 U.S. 248

13. See notes 4-12, supra.

1944, Korematsu v. United States, 323 U.S. 248

14. Final Report, p. vii; see also p. 18.

1944, Korematsu v. United States, 323 U.S. 248

15. The Final Report, p. 34, makes the amazing statement that, as of February 14, 1942, "The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken." Apparently, in the minds of the military leaders, there was no way that the Japanese Americans could escape the suspicion of sabotage.

1944, Korematsu v. United States, 323 U.S. 248

16. During a period of six months, the 112 alien tribunals or hearing boards set up by the British Government shortly after the outbreak of the present war summoned and examined approximately 74,000 German and Austrian aliens. These tribunals determined whether each individual enemy alien was a real enemy of the Allies or only a "friendly enemy." About 64,000 were freed from internment and from any special restrictions, and only 2,000 were interned. Kempner, "The Enemy Alien Problem in the Present War," 34 Amer.Journ. of Int.Law 443, 414-416; House Report No. 2124 (77th Cong., 2d Sess.), 280-281.

JACKSON, J., dissenting (Footnotes)

1944, Korematsu v. United States, 323 U.S. 248

\* Nature of the Judicial Process, p. 51.

Democratic Platform of 1944

Title: Democratic Platform of 1944

Author: Democratic Party

Date: 1944

Source: National Party Platforms, pp.402-404

National Party Platforms, Democratic Platform of 1944, p.402

The Democratic Party stands on its record in peace and in war.

National Party Platforms, Democratic Platform of 1944, p.402

To speed victory, establish and maintain peace, guarantee full employment and provide prosperity—this is its platform.

National Party Platforms, Democratic Platform of 1944, p.402

We do not here detail scores of planks. We cite action.

National Party Platforms, Democratic Platform of 1944, p.402

Beginning March, 1933, the Democratic Administration took a series of actions which saved our system of free enterprise.

National Party Platforms, Democratic Platform of 1944, p.402

It brought that system out of collapse and thereafter eliminated abuses which had imperiled it.

National Party Platforms, Democratic Platform of 1944, p.402

It used the powers of government to provide employment in industry and to save agriculture.

National Party Platforms, Democratic Platform of 1944, p.402

It wrote a new Magna Carta for labor.

National Party Platforms, Democratic Platform of 1944, p.402

It provided social security, including old age pensions, unemployment insurance, security for crippled and dependent children and the blind. It established employment offices. It provided federal bank deposit insurance, flood prevention, soil conservation, and prevented abuses in the security markets. It saved farms and homes from foreclosure, and secured profitable prices for farm products.

National Party Platforms, Democratic Platform of 1944, p.402

It adopted an effective program of reclamation, hydro-electric power, and mineral development.

National Party Platforms, Democratic Platform of 1944, p.402

It found the road to prosperity through production and employment.

National Party Platforms, Democratic Platform of 1944, p.402

We pledge the continuance and improvement of these programs.

National Party Platforms, Democratic Platform of 1944, p.402

Before war came, the Democratic Administration awakened the Nation, in time, to the dangers that threatened its very existence.

National Party Platforms, Democratic Platform of 1944, p.402

It succeeded in building, in time, the best-trained and equipped army in the world, the most powerful navy in the world, the greatest air force in the world, and the largest merchant marine in the world.

National Party Platforms, Democratic Platform of 1944, p.402

It gained for our country, and it saved for our country, powerful allies.

National Party Platforms, Democratic Platform of 1944, p.402

When war came, it succeeded in working out with those allies an effective grand strategy against the enemy.

National Party Platforms, Democratic Platform of 1944, p.402

It set that strategy in motion, and the tide of battle was turned.

National Party Platforms, Democratic Platform of 1944, p.402

It held the line against wartime inflation.

National Party Platforms, Democratic Platform of 1944, p.402

It ensured a fair share-and-share-alike distribution of food and other essentials.

National Party Platforms, Democratic Platform of 1944, p.402

It is leading our country to certain victory.

National Party Platforms, Democratic Platform of 1944, p.402

The primary and imperative duty of the United States is to wage the war with every resource available to final triumph over our enemies, and we pledge that we will continue to fight side by side with the United Nations until this supreme objective shall have been attained and [p.403] thereafter to secure a just and lasting peace.

National Party Platforms, Democratic Platform of 1944, p.403

That the world may not again be drenched in blood by international outlaws and criminals, we pledge:

National Party Platforms, Democratic Platform of 1944, p.403

To join with the other United Nations in the establishment of an international organization based on the principle of the sovereign equality of all peace-loving states, open to membership by all such states, large and small, for the prevention of aggression and the maintenance of international peace and security.

National Party Platforms, Democratic Platform of 1944, p.403

To make all necessary and effective agreements and arrangements through which the nations would maintain adequate forces to meet the needs of preventing war and of making impossible the preparation for war and which would have such forces available for joint action when necessary.

National Party Platforms, Democratic Platform of 1944, p.403

Such organization must be endowed with power to employ armed forces when necessary to prevent aggression and preserve peace.

National Party Platforms, Democratic Platform of 1944, p.403

We favor the maintenance of an international court of justice of which the United States shall be a member and the employment of diplomacy, conciliation, arbitration and other like methods where appropriate in the settlement of international disputes.

National Party Platforms, Democratic Platform of 1944, p.403

World peace is of transcendent importance. Our gallant sons are dying on land, on sea, and in the air. They do not die as Republicans. They do not die as Democrats. They die as Americans. We pledge that their blood shall not have been shed in vain. America has the opportunity to lead the world in this great service to mankind. The United States must meet the challenge. Under Divine Providence, she must move forward to her high destiny.

National Party Platforms, Democratic Platform of 1944, p.403

We pledge our support to the Atlantic Charter and the Four Freedoms and the application of the principles enunciated therein to the United Nations and other peace-loving nations, large and small.

National Party Platforms, Democratic Platform of 1944, p.403

We shall uphold the good-neighbor policy, and extend the trade policies initiated by the present administration.

National Party Platforms, Democratic Platform of 1944, p.403

We favor the opening of Palestine to unrestricted Jewish immigration and colonization, and such a policy as to result in the establishment there of a free and democratic Jewish commonwealth.

National Party Platforms, Democratic Platform of 1944, p.403

We favor legislation assuring equal pay for equal work, regardless of sex.

National Party Platforms, Democratic Platform of 1944, p.403

We recommend to Congress the submission of a Constitutional amendment on equal rights for women.

National Party Platforms, Democratic Platform of 1944, p.403

We favor Federal aid to education administered by the states without interference by the Federal Government.

National Party Platforms, Democratic Platform of 1944, p.403

We favor Federal legislation to assure stability of products, employment, distribution and prices in the bituminous coal industry, to create a proper balance between consumer, producer and mine worker.

National Party Platforms, Democratic Platform of 1944, p.403

We endorse the President's statement recognizing the importance of the use of water in arid land states for domestic and irrigation purposes.

National Party Platforms, Democratic Platform of 1944, p.403

We favor non-discriminatory transportation charges and declare for the early correction of inequalities in such charges.

National Party Platforms, Democratic Platform of 1944, p.403

We favor enactment of legislation granting the fullest measure of self-government for Alaska, Hawaii and Puerto Rico, and eventual statehood for Alaska and Hawaii.

National Party Platforms, Democratic Platform of 1944, p.403

We favor the extension of the right of suffrage to the people of the District of Columbia. We offer these postwar programs:

National Party Platforms, Democratic Platform of 1944, p.403

A continuation of our policy of full benefits for ex-servicemen and women with special consideration for the disabled. We make it our first duty to assure employment and economic security to all who have served in the defense of our country.

National Party Platforms, Democratic Platform of 1944, p.403

Price guarantees and crop insurance to farmers with all practical steps:

National Party Platforms, Democratic Platform of 1944, p.403

To keep agriculture on a parity with industry and labor.

National Party Platforms, Democratic Platform of 1944, p.403

To foster the success of the small independent farmer.

National Party Platforms, Democratic Platform of 1944, p.403

To aid the home ownership of family-sized farms.

National Party Platforms, Democratic Platform of 1944, p.403

To extend rural electrification and develop broader domestic and foreign markets for agricultural products.

National Party Platforms, Democratic Platform of 1944, p.403

Adequate compensation for workers during demobilization.

National Party Platforms, Democratic Platform of 1944, p.403

The enactment of such additional humanitarian, labor, social and farm legislation as time and experience may require, including the amendment or repeal of any law enacted in recent years which has failed to accomplish its purpose.

National Party Platforms, Democratic Platform of 1944, p.403

Promotion of the success of small business. Earliest possible release of wartime controls.

National Party Platforms, Democratic Platform of 1944, p.403

Adaptation of tax laws to an expanding peacetime economy, with simplified structure and war—[p.404] time taxes reduced or repealed as soon as possible.

National Party Platforms, Democratic Platform of 1944, p.404

Encouragement of risk capital, new enterprise, development of natural resources in the West and other parts of the country, and the immediate reopening of the gold and silver mines of the West as soon as manpower is available.

National Party Platforms, Democratic Platform of 1944, p.404

We reassert our faith in competitive private enterprise, free from control by monopolies, cartels, or any arbitrary private or public authority.

National Party Platforms, Democratic Platform of 1944, p.404

We assert that mankind believes in the Four Freedoms.

National Party Platforms, Democratic Platform of 1944, p.404

We believe that the country which has the greatest measure of social justice is capable of the greatest achievements.

National Party Platforms, Democratic Platform of 1944, p.404

We believe that racial and religious minorities have the right to live, develop and vote equally with all citizens and share the rights that are guaranteed by our Constitution. Congress should exert its full constitutional powers to protect those rights.

National Party Platforms, Democratic Platform of 1944, p.404

We believe that without loss of sovereignty, world development and lasting peace are within humanity's grasp. They will come with the greater enjoyment of those freedoms by the peoples of the world, and with the freer flow among them of ideas and goods.

National Party Platforms, Democratic Platform of 1944, p.404

We believe in the world right of all men to write, send and publish news at uniform communication rates and without interference by governmental or private monopoly and that right should be protected by treaty.

National Party Platforms, Democratic Platform of 1944, p.404

To these beliefs the Democratic Party subscribes.

National Party Platforms, Democratic Platform of 1944, p.404

These principles the Democratic Party pledges itself in solemn sincerity to maintain.

National Party Platforms, Democratic Platform of 1944, p.404

Finally, this Convention sends its affectionate greetings to our beloved and matchless leader and President, Franklin Delano Roosevelt.

National Party Platforms, Democratic Platform of 1944, p.404

He stands before the nation and the world, the champion of human liberty and dignity. He has rescued our people from the ravages of economic disaster. His rare foresight and magnificent courage have saved our nation from the assault of international brigands and dictators. Fulfilling the ardent hope of his life, he has already laid the foundation of enduring peace for a troubled world and the well being of our nation. All mankind is his debtor. His life and services have been a great blessing to humanity.

National Party Platforms, Democratic Platform of 1944, p.404

That God may keep him strong in body and in spirit to carry on his yet unfinished work is our hope and our prayer.

Republican Platform of 1944

Title: Republican Platform of 1944

Author: Republican Party

Date: 1944

Source: National Party Platforms, pp.407-413

Introduction

National Party Platforms, Republican Platform of 1944, p.407

The tragedy of the war is upon our country as we meet to consider the problems of government and our people. We take this opportunity to render homage and enduring gratitude to those brave members of our armed forces who have already made the supreme sacrifice, and to those who stand ready to make the same sacrifice that the American course of life may be secure.

National Party Platforms, Republican Platform of 1944, p.407

Mindful of this solemn hour and humbly conscious of our heavy responsibilities, the Republican Party in convention assembled presents herewith its principles and makes these covenants with the people of our Nation.

The War and the Peace

National Party Platforms, Republican Platform of 1944, p.407

We pledge prosecution of the war to total victory against our enemies in full cooperation with the United Nations and all-out support of our Armies and the maintenance of our Navy under the competent and trained direction of our General Staff and Office of Naval Operations without civilian interference and with every civilian resource. At the earliest possible time after the cessation of hostilities we will bring home all members of our armed forces who do not have unexpired enlistments and who do not volunteer for further overseas duty.

National Party Platforms, Republican Platform of 1944, p.407

We declare our relentless aim to win the war against all our enemies: (1) for our own American security and welfare; (2) to make and keep the Axis powers impotent to renew tyranny and attack; (3) for the attainment of peace and freedom based on justice and security.

National Party Platforms, Republican Platform of 1944, p.407

We shall seek to achieve such aims through organized international cooperation and not by joining a World State.

National Party Platforms, Republican Platform of 1944, p.407

We favor responsible participation by the United States in post-war co-operative organization among sovereign nations to prevent military aggression and to attain permanent peace with organized justice in a free world.

National Party Platforms, Republican Platform of 1944, p.407

Such organization should develop effective co-operative means to direct peace forces to prevent or repel military aggression. Pending this, we pledge continuing collaboration with the United Nations to assure these ultimate objectives.

National Party Platforms, Republican Platform of 1944, p.407

We believe, however, that peace and security do not depend upon the sanction of force alone, but should prevail by virtue of reciprocal interests [p.408] and spiritual values recognized in these security agreements. The treaties of peace should be just; the nations which are the victims of aggression should be restored to sovereignty and self-government; and the organized cooperation of the nations should concern itself with basic causes of world disorder. It should promote a world opinion to influence the nations to right conduct, develop international law and maintain an international tribunal to deal with justiciable disputes.

National Party Platforms, Republican Platform of 1944, p.408

We shall seek, in our relations with other nations, conditions calculated to promote world-wide economic stability, not only for the sake of the world, but also to the end that our own people may enjoy a high level of employment in an increasingly prosperous world.

National Party Platforms, Republican Platform of 1944, p.408

We shall keep the American people informed concerning all agreements with foreign nations. In all of these undertakings we favor the widest consultation of the gallant men and women in our armed forces who have a special right to speak with authority in behalf of the security and liberty for which they fight. We shall sustain the Constitution of the United States in the attainment of our international aims; and pursuant to the Constitution of the United States any treaty or agreement to attain such aims made on behalf of the United States with any other nation or any association of nations, shall be made only by and with the advice and consent of the Senate of the United States provided two-thirds of the Senators present concur.

National Party Platforms, Republican Platform of 1944, p.408

We shall at all times protect the essential interests and resources of the United States.

Western Hemisphere Relations

National Party Platforms, Republican Platform of 1944, p.408

We shall develop Pan-American solidarity. The citizens of our neighboring nations in the Western Hemisphere are, like ourselves, Americans. Cooperation with them shall be achieved through mutual agreement and without interference in the internal affairs of any nation. Our policy should be a genuine Good Neighbor policy, commanding their respect, and not one based on the reckless squandering of American funds by overlapping agencies.

Postwar Preparedness

National Party Platforms, Republican Platform of 1944, p.408

We favor the maintenance of postwar military forces and establishments of ample strength for the successful defense and the safety of the United States, its possessions and outposts, for the maintenance of the Monroe Doctrine, and for meeting any military commitments determined by Congress. We favor the peacetime maintenance and strengthening of the National Guards under State control with the Federal training and equipment as now provided in the National Defense Act.

Domestic Policy

National Party Platforms, Republican Platform of 1944, p.408

We shall devote ourselves to re-establishing liberty at home.

National Party Platforms, Republican Platform of 1944, p.408

We shall adopt a program to put men to work in peace industry as promptly as possible and with special attention to those who have made sacrifice by serving in the armed forces. We shall take government out of competition with private industry and terminate rationing, price fixing and all other emergency powers. We shall promote the fullest stable employment through private enterprise.

National Party Platforms, Republican Platform of 1944, p.408

The measures we propose shall avoid federalization of government activities, to the end that our States, schools and cities shall be freed; shall avoid delegation of legislative and judicial power to administrative agencies, to the end that the people's representatives in Congress shall be independent and in full control of legislative policy; and shall avoid, subject to war necessities, detailed regulation of farmers, workers, businessmen and consumers, to the end that the individual shall be free. The remedies we propose shall be based on intelligent cooperation between the Federal Government, the States and local government and the initiative of civic groups—not on the panacea of Federal cash.

National Party Platforms, Republican Platform of 1944, p.408

Four more years of New Deal policy would centralize all power in the President, and would daily subject every act of every citizen to regulation by his henchmen; and this country could remain a Republic only in name. No problem exists which cannot be solved by American methods. We have no need of either the communistic or the fascist technique.

Security

National Party Platforms, Republican Platform of 1944, p.408

Our goal is to prevent hardship and poverty in America. That goal is attainable by reason of the productive ability of free American labor, industry and agriculture, if supplemented by a system of social security on sound principles.

National Party Platforms, Republican Platform of 1944, p.408

We pledge our support of the following:

National Party Platforms, Republican Platform of 1944, p.409

[p.409] 1. Extension of the existing old-age insurance and unemployment insurance systems to all employees not already covered.

National Party Platforms, Republican Platform of 1944, p.409

2. The return of the public employment-office system to the States at the earliest possible time, financed as before Pearl Harbor.

National Party Platforms, Republican Platform of 1944, p.409

3. A careful study of Federal-State programs for maternal and child health, dependent children, and assistance to the blind, with a view to strengthening these programs.

National Party Platforms, Republican Platform of 1944, p.409

4. The continuation of these and other programs relating to health, and the stimulation by Federal aid of State plans to make medical and hospital service available to those in need without disturbing doctor-patient relationships or socializing medicine.

National Party Platforms, Republican Platform of 1944, p.409

5. The stimulation of State and local plans to provide decent low-cost housing properly financed by the Federal Housing Administration, or otherwise, when such housing cannot be supplied or financed by private sources.

Labor

National Party Platforms, Republican Platform of 1944, p.409

The Republican Party is the historical champion of free labor. Under Republican administrations American manufacturing developed, and American workers attained the most progressive standards of living of any workers in the world. Now the Nation owes those workers a debt of gratitude for their magnificent productive effort in support of the war.

National Party Platforms, Republican Platform of 1944, p.409

Regardless of the professed friendship of the New Deal for the workingman, the fact remains that under the New Deal American economic life is being destroyed.

National Party Platforms, Republican Platform of 1944, p.409

The New Deal has usurped selfish and partisan control over the functions of Government agencies where labor relationships are concerned. The continued perversion of the Wagner Act by the New Deal menaces the purposes of the law and threatens to destroy collective bargaining completely and permanently.

National Party Platforms, Republican Platform of 1944, p.409

The long series of Executive orders and bureaucratic decrees reveal a deliberate purpose to substitute for contractual agreements of employers and employees the political edicts of a New Deal bureaucracy. Labor would thus remain organized only for the convenience of the New Deal in enforcing its orders and inflicting its whims upon labor and industry.

National Party Platforms, Republican Platform of 1944, p.409

We condemn the conversion of administrative boards, ostensibly set up to settle industrial disputes, into instruments for putting into effect the financial and economic theories of the New Deal.

National Party Platforms, Republican Platform of 1944, p.409

We condemn the freezing of wage rates at arbitrary levels and the binding of men to their jobs as destructive to the advancement of a free people. We condemn the repeal by Executive order of the laws secured by the Republican party to abolish "contract labor" and peonage. We condemn the gradual but effective creation of a Labor Front as but one of the New Deal's steps toward a totalitarian state.

National Party Platforms, Republican Platform of 1944, p.409

We pledge an end to political trickery in the administration of labor laws and the handling of labor disputes; and equal benefits on the basis of equality to all labor in the administration of labor controls and laws, regardless of political affiliation.

National Party Platforms, Republican Platform of 1944, p.409

The Department of Labor has been emasculated by the New Deal. Labor bureaus, agencies and committees are scattered far and wide, in Washington and throughout the country, and have no semblance of systematic or responsible organization. All governmental labor activities must be placed under the direct authority and responsibility of the Secretary of Labor. Such labor bureaus as are not performing a substantial and definite service in the interest of labor must be abolished.

National Party Platforms, Republican Platform of 1944, p.409

The Secretary of Labor should be a representative of labor. The office of the Secretary of Labor was created under a Republican President, William Howard Taft. It was intended that a representative of labor should occupy this Cabinet office. The present administration is the first to disregard this intention.

National Party Platforms, Republican Platform of 1944, p.409

The Republican Party accepts the purposes of the National Labor Relations Act, the Wage and Hour Act, the Social Security Act and all other Federal statutes designed to promote and protect the welfare of American working men and women, and we promise a fair and just administration of these laws.

National Party Platforms, Republican Platform of 1944, p.409

American well-being is indivisible. Any national program which injures the national economy inevitably injures the wage-earner. The American labor movement and the Republican Party, while continuously striving for the betterment of labor's status, reject the communistic and New Deal concept that a single group can benefit while the general economy suffers.[p.410]

Agriculture

National Party Platforms, Republican Platform of 1944, p.410

We commend the American farmers, their wives and families for their magnificent job of wartime production and their contribution to the war effort, without which victory could not be assured. They have accomplished this in spite of labor shortages, a bungled and inexcusable machinery program and confused, unreliable, impractical price and production administration.

National Party Platforms, Republican Platform of 1944, p.410

Abundant production is the best security against inflation. Governmental policies in war and in peace must be practical and efficient with freedom from regimentation by an impractical Washington bureaucracy in order to assure independence of operation and bountiful production, fair and equitable market prices for farm products, and a sound program for conservation and use of our soil and natural resources. Educational progress and the social and economic stability and well-being of the farm family must be a prime national purpose.

National Party Platforms, Republican Platform of 1944, p.410

For the establishment of such a program we propose the following:

National Party Platforms, Republican Platform of 1944, p.410

1. A Department of Agriculture under practical and experienced administration, free from regimentation and confusing government manipulation and control of farm programs.

National Party Platforms, Republican Platform of 1944, p.410

2. An American market price to the American farmer and the protection of such price by means of support prices, commodity loans, or a combination thereof, together with such other economic means as will assure an income to agriculture that is fair and equitable in comparison with labor, business and industry. We oppose subsidies as a substitute for fair markets.

National Party Platforms, Republican Platform of 1944, p.410

3. Disposition of surplus war commodities in an orderly manner without destroying markets or continued production and without benefit to speculative profiteers.

National Party Platforms, Republican Platform of 1944, p.410

4. The control and disposition of future surpluses by means of (a) new uses developed through constant research, (b) vigorous development of foreign markets, (c) efficient domestic distribution to meet all domestic requirements, and (d) arrangements which will enable farmers to make necessary adjustments in production of any given basic crop only if domestic surpluses should become abnormal and exceed manageable proportions.

National Party Platforms, Republican Platform of 1944, p.410

5. Intensified research to discover new crops, and new and profitable uses for existing crops.

National Party Platforms, Republican Platform of 1944, p.410

6. Support of the principle of bona fide farmer-owned and farmer-operated co-operatives.

National Party Platforms, Republican Platform of 1944, p.410

7. Consolidation of all government farm credit under a non-partisan board.

National Party Platforms, Republican Platform of 1944, p.410

8. To make life more attractive on the family type farm through development of rural roads, sound extension of rural electrification service to the farm and elimination of basic evils of tenancy wherever they exist.

National Party Platforms, Republican Platform of 1944, p.410

9. Serious study of and search for a sound program of crop insurance with emphasis upon establishing a self-supporting program.

National Party Platforms, Republican Platform of 1944, p.410

10. A comprehensive program of soil, forest, water and wildlife conservation and development, and sound irrigation projects, administered as far as possible at State and regional levels.

Business and Industry

National Party Platforms, Republican Platform of 1944, p.410

We give assurance now to restore peacetime industry at the earliest possible time, using every care to avoid discrimination between different sections of the country, (a) by prompt settlement of war contracts with early payment of government obligations and disposal of surplus inventories, and (h) by disposal of surplus government plants, equipment, and supplies, with due consideration to small buyers and with care to prevent monopoly and injury to existing agriculture and industry.

National Party Platforms, Republican Platform of 1944, p.410

Small business is the basis of American enterprise. It must be preserved. If protected against discrimination and afforded equality of opportunity throughout the Nation, it will become the most potent factor in providing employment. It must also be aided by changes in taxation, by eliminating excessive and repressive regulation and government competition, by the enforcement of laws against monopoly and unfair competition, and by providing simpler and cheaper methods for obtaining venture capital necessary for growth and expansion.

National Party Platforms, Republican Platform of 1944, p.410

For the protection of the public, and for the security of millions of holders of policies of insurance in mutual and private companies, we insist upon strict and exclusive regulation and supervision of the business of insurance by the several States where local conditions are best known and where local needs can best be met.

National Party Platforms, Republican Platform of 1944, p.410

We favor the re-establishment and maintenance, as early as military considerations will permit, of a sound and adequate American Merchant Marine under private ownership and management.

National Party Platforms, Republican Platform of 1944, p.411

[p.411] The Republican Party pledges itself to foster the development of such strong privately owned air transportation systems and communications systems as will best serve the interests of the American people.

National Party Platforms, Republican Platform of 1944, p.411

The Federal Government should plan a program for flood control, inland waterways and other economically justifiable public works, and prepare the necessary plans in advance so that construction may proceed rapidly in emergency and in times of reduced employment. We urge that States and local governments pursue the same policy with reference to highways and other public works within their jurisdiction.

Taxation and Finance

National Party Platforms, Republican Platform of 1944, p.411

As soon as the war ends the present rates of taxation on individual incomes, on corporations, and on consumption should be reduced as far as is consistent with the payment of the normal expenditures of government in the postwar period. We reject the theory of restoring prosperity through government spending and deficit financing.

National Party Platforms, Republican Platform of 1944, p.411

We shall eliminate from the budget all wasteful and unnecessary expenditures and exercise the most rigid economy.

National Party Platforms, Republican Platform of 1944, p.411

It is essential that Federal and State tax structures be more effectively coordinated to the end that State tax sources be not unduly impaired.

National Party Platforms, Republican Platform of 1944, p.411

We shall maintain the value of the American dollar and regard the payment of government debt as an obligation of honor which prohibits any policy leading to the depreciation of the currency. We shall reduce that debt as soon as economic conditions make such reduction possible.

National Party Platforms, Republican Platform of 1944, p.411

Control of the currency must be restored to Congress by repeal of existing legislation which gives the President unnecessary powers over our currency.

Foreign Trade

National Party Platforms, Republican Platform of 1944, p.411

We assure American farmers, livestock producers, workers and industry that we will establish and maintain a fair protective tariff on competitive products so that the standards of living of our people shall not be impaired through the importation of commodities produced abroad by labor or producers functioning upon lower standards than our own.

National Party Platforms, Republican Platform of 1944, p.411

If the postwar world is to be properly organized, a great extension of world trade will be necessary to repair the wastes of war and build an enduring peace. The Republican Party, always remembering that its primary obligation, which must be fulfilled, is to our own workers, our own farmers and our own industry, pledges that it will join with others in leadership in every co-operative effort to remove unnecessary and destructive barriers to international trade. We will always bear in mind that the domestic market is America's greatest market and that tariffs which protect it against foreign competition should be modified only by reciprocal bilateral trade agreements approved by Congress.

Relief and Rehabilitation

National Party Platforms, Republican Platform of 1944, p.411

We favor the prompt extension of relief and emergency assistance to the peoples of the liberated countries without duplication and conflict between government agencies.

National Party Platforms, Republican Platform of 1944, p.411

We favor immediate feeding of the starving children of our Allies and friends in the Nazi-dominated countries and we condemn the New Deal administration for its failure, in the face of humanitarian demands, to make any effort to do this.

National Party Platforms, Republican Platform of 1944, p.411

We favor assistance by direct credits in reasonable amounts to liberated countries to enable them to buy from this country the goods necessary to revive their economic systems.

Bureaucracy

National Party Platforms, Republican Platform of 1944, p.411

The National Administration has become a sprawling, overlapping bureaucracy. It is undermined by executive abuse of power, confused lines of authority, duplication of effort, inadequate fiscal controls, loose personnel practices and an attitude of arrogance previously unknown in our history.

National Party Platforms, Republican Platform of 1944, p.411

The times cry out for the restoration of harmony in government, for a balance of legislative and executive responsibility, for efficiency and economy, for priming and abolishing unnecessary agencies and personnel, for effective fiscal and personnel controls, and for an entirely new spirit in our Federal Government.

National Party Platforms, Republican Platform of 1944, p.411

We pledge an administration wherein the President, acting in harmony with Congress, will effect these necessary reforms and raise the Federal [p.412] service to a high level of efficiency and competence.

National Party Platforms, Republican Platform of 1944, p.412

We insist that limitations must be placed upon spending by government corporations of vast sums never appropriated by Congress but made available by directives, and that their accounts should be subject to audit by the General Accounting Office.

Two-Term Limit for President

National Party Platforms, Republican Platform of 1944, p.412

We favor an amendment to the Constitution providing that no person shall be President of the United States for more than two terms of four years each.

Equal Rights

National Party Platforms, Republican Platform of 1944, p.412

We favor submission by Congress to the States of an amendment to the Constitution providing for equal rights for men and women. We favor job opportunities in the postwar world open to men and women alike without discrimination in rate of pay because of sex.

Veterans

National Party Platforms, Republican Platform of 1944, p.412

The Republican Party has always supported suitable measures to reflect the Nation's gratitude and to discharge its duty toward the veterans of all wars.

National Party Platforms, Republican Platform of 1944, p.412

We approve, have supported and have aided in the enactment of laws which provide for re-employment of veterans of this war in their old positions, for mustering-out-pay, for pensions for widows and orphans of such veterans killed or disabled, for rehabilitation of disabled veterans, for temporary unemployment benefits, for education and vocational training, and for assisting veterans in acquiring homes and farms and in establishing themselves in business.

National Party Platforms, Republican Platform of 1944, p.412

We shall be diligent in remedying defects in veterans' legislation and shall insist upon efficient administration of all measures for the veteran's benefit.

Racial and Religious Intolerance

National Party Platforms, Republican Platform of 1944, p.412

We unreservedly condemn the injection into American life of appeals to racial or religious prejudice.

National Party Platforms, Republican Platform of 1944, p.412

We pledge an immediate Congressional inquiry to ascertain the extent to which mistreatment, segregation and discrimination against Negroes who are in our armed forces are impairing morale and efficiency, and the adoption of corrective legislation.

National Party Platforms, Republican Platform of 1944, p.412

We pledge the establishment by Federal legislation of a permanent Fair Employment Practice Commission.

Anti-Poll Tax

National Party Platforms, Republican Platform of 1944, p.412

The payment of any poll tax should not be a condition of voting in Federal elections and we favor immediate submission of a Constitutional amendment for its abolition.

Anti-Lynching

National Party Platforms, Republican Platform of 1944, p.412

We favor legislation against lynching and pledge our sincere efforts in behalf of its early enactment.

Indians

National Party Platforms, Republican Platform of 1944, p.412

We pledge an immediate, just and final settlement of all Indian claims between the Government and the Indian citizenship of the Nation. We will take politics out of the administration of Indian affairs.

Problems of the West

National Party Platforms, Republican Platform of 1944, p.412

We favor a comprehensive program of reclamation projects for our arid and semi-arid States, with recognition and full protection of the rights and interests of those States in the use and control of water for present and future irrigation and other beneficial consumptive uses.

National Party Platforms, Republican Platform of 1944, p.412

We favor (a) exclusion from this country of livestock and fresh and chilled meat from countries harboring foot and mouth disease or Rinderpest; (b) full protection of our fisheries whether by domestic regulation or treaties; (c) consistent with military needs, the prompt return to private ownership of lands acquired for war purposes; (d) withdrawal or acquisition of lands for establishment of national parks, monuments, and wildlife refuges, only after due regard to local problems and under closer controls to be established by the Congress; (e) restoration of the long established public land policy which provides opportunity of ownership by citizens to promote the highest land use; (f) full development of our forests on the basis of cropping and sustained yield; cooperation with private owners for conservation and fire protection; (g) the prompt reopening of mines which can be operated by miners and workers not subject to military service [p.413] and which have been closed by bureaucratic denial of labor or material; (h) adequate stock-piling of war minerals and metals for possible future emergencies; (i) continuance, for tax purposes, of adequate depletion allowances on oil, gas and minerals; (j) administration of laws relating to oil and gas on the public domain to encourage exploratory operations to meet the public need; (k) continuance of present Federal laws on mining claims on the public domain, good faith administration thereof, and we state our opposition to the plans of the Secretary of the Interior to substitute a leasing system; and (l) larger representation in the Federal Government of men and women especially familiar with Western problems,

Hawaii

National Party Platforms, Republican Platform of 1944, p.413

Hawaii, which shares the Nation's obligations equally with the several States, is entitled to the fullest measure of home rule looking toward statehood; and to equality with the several States in the rights of her citizens and in the application of all our national laws.

Alaska

National Party Platforms, Republican Platform of 1944, p.413

Alaska is entitled to the fullest measure of home rule looking toward statehood.

Puerto Rico

National Party Platforms, Republican Platform of 1944, p.413

Statehood is a logical aspiration of the people of Puerto Rico who were made citizens of the United States by Congress in 1917; legislation affecting Puerto Rico, in so far as feasible, should be in harmony with the realization of that aspiration.

Palestine

National Party Platforms, Republican Platform of 1944, p.413

In order to give refuge to millions of distressed Jewish men, women and children driven from their homes by tyranny, we call for the opening of Palestine to their unrestricted immigration and land ownership, so that in accordance with the full intent and purpose of the Balfour Declaration of 1917 and the Resolution of a Republican Congress in 1922, Palestine may be constituted as a free and democratic Commonwealth. We condemn the failure of the President to insist that the mandatory of Palestine carry out the provision of the Balfour Declaration and of the mandate while he pretends to support them.

Free Press and Radio

National Party Platforms, Republican Platform of 1944, p.413

In times like these, when whole peoples have found themselves shackled by governments which denied the truth, or, worse, dealt in half-truths or withheld the facts from the public, it is imperative to the maintenance of a free America that the press and radio be free and that full and complete information be available to Americans. There must be no censorship except to the extent required by war necessity.

National Party Platforms, Republican Platform of 1944, p.413

We insistently condemn any tendency to regard the press or the radio as instruments of the Administration and the use of government publicity agencies for partisan ends. We need a new radio law which will define, in clear and unmistakable language, the role of the Federal Communications Commission.

National Party Platforms, Republican Platform of 1944, p.413

All channels of news must be kept open with equality of access to information at the source. If agreement can be achieved with foreign nations to establish the same principles, it will be a valuable contribution to future peace.

National Party Platforms, Republican Platform of 1944, p.413

Vital facts must not be withheld.

National Party Platforms, Republican Platform of 1944, p.413

We want no more Pearl Harbor reports.

Good Faith

National Party Platforms, Republican Platform of 1944, p.413

The acceptance of the nominations made by this Convention carries with it, as a matter of private honor and public faith, an undertaking by each candidate to be true to the principles and program herein set forth.

Conclusion

National Party Platforms, Republican Platform of 1944, p.413

The essential question at trial in this nation is whether men can organize together in a highly industrialized society, succeed, and still be free. That is the essential question at trial throughout the world today.

National Party Platforms, Republican Platform of 1944, p.413

In this time of confusion and strife, when moral values are being crushed on every side, we pledge ourselves to uphold with all our strength the Bill of Rights, the Constitution and the law of the land. We so pledge ourselves that the American tradition may stand forever as the beacon light of civilization.

President Roosevelt's Joint Statement with Churchill and Stalin on the Yalta Conference, 1945

Title: President Roosevelt's Joint Statement with Churchill and Stalin on the Yalta Conference

Author: Franklin D. Roosevelt

Date: February 11, 1945

Source: Public Papers of the Presidents, F. D. Roosevelt, 1944, Item 12

THE DEFEAT OF GERMANY

Public Papers of FDR, 1944, Item 12

We have considered and determined the military plans of the three Allied powers for the final defeat of the common enemy. The military staffs of the three Allied Nations have met in daily meetings throughout the Conference. These meetings have been most satisfactory from every point of view and have resulted in closer coordination of the military effort of the three Allies than ever before. The fullest information has been interchanged. The timing, scope, and coordination of new and even more powerful blows to be launched by our armies and air forces into the heart of Germany from the East, West, North, and South have been fully agreed and planned in detail.

Public Papers of FDR, 1944, Item 12

Our combined military plans will be made known only as we execute them, but we believe that the very close working partnership among the three staffs attained at this Conference will result in shortening the war. Meetings of the three staffs will be continued in the future whenever the need arises.

Public Papers of FDR, 1944, Item 12

Nazi Germany is doomed. The German people will only make the cost of their defeat heavier to themselves by attempting to continue a hopeless resistance.

THE OCCUPATION AND CONTROL OF GERMANY

Public Papers of FDR, 1944, Item 12

We have agreed on common policies and plans for enforcing the unconditional surrender terms which we shall impose together on Nazi Germany after German armed resistance has been finally crushed. These terms will not be made known until the final defeat of Germany has been accomplished. Under the agreed plan, the forces of the three powers will each occupy a separate zone of Germany. Coordinated administration and control has been provided for under the plan through a central control commission consisting of the Supreme Commanders of the three powers with headquarters in Berlin. It has been agreed that France should be invited by the three powers, if she should so desire, to take over a zone of occupation, and to participate as a fourth member of the control commission. The limits of the French zone will be agreed by the four Governments concerned through their representatives on the European Advisory Commission.

Public Papers of FDR, 1944, Item 12

It is our inflexible purpose to destroy German militarism and Nazism and to ensure that Germany will never again be able to disturb the peace of the world. We are determined to disarm and disband all German armed forces; break up for all time the German General Staff that has repeatedly contrived the resurgence of German militarism; remove or destroy all German military equipment; eliminate or control all German industry that could be used for military production; bring all war criminals to just and swift punishment and exact reparation in kind for the destruction wrought by the Germans; wipe out the Nazi Party, Nazi laws, organizations and institutions, remove all Nazi and militarist influences from public office and from the cultural and economic life of the German people; and take in harmony such other measures in Germany as may be necessary to the future peace and safety of the world. It is not our purpose to destroy the people of Germany, but only when Nazism and militarism have been extirpated will there be hope for a decent life for Germans, and a place for them in the comity of Nations.

REPARATION BY GERMANY

Public Papers of FDR, 1944, Item 12

We have considered the question of the damage caused by Germany to the Allied Nations in this war and recognized it as just that Germany be obliged to make compensation for this damage in kind to the greatest extent possible. A commission for the compensation of damage will be established. The commission will work in Moscow.

UNITED NATIONS CONFERENCE

Public Papers of FDR, 1944, Item 12

We are resolved upon the earliest possible establishment with our allies of a general international organization to maintain peace and security. We believe that this is essential, both to prevent aggression and to remove the political, economic, and social causes of war through the close and continuing collaboration of all peace-loving peoples.

Public Papers of FDR, 1944, Item 12

The foundations were laid at Dumbarton Oaks. On the important question of voting procedure, however, agreement was not there reached. The present Conference has been able to resolve this difficulty.

Public Papers of FDR, 1944, Item 12

We have agreed that a conference of United Nations should be called to meet at San Francisco in the United States on April 25, 1945, to prepare the charter of such an organization, along the lines proposed in the informal conversations at Dumbarton Oaks.

Public Papers of FDR, 1944, Item 12

The Government of China and the Provisional Government of France will be immediately consulted and invited to sponsor invitations to the conference jointly with the Governments of the United States, Great Britain, and the Union of Soviet Socialist Republics. As soon as the consultation with China and France has been completed, the text of the proposals on voting procedure will be made public.

DECLARATION ON LIBERATED EUROPE

Public Papers of FDR, 1944, Item 12

The Premier of the Union of Soviet Socialist Republics, the Prime Minister of the United Kingdom, and the President of the United States of America have consulted with each other in the common interests of the peoples of their countries and those of liberated Europe. They jointly declare their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three Governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite states of Europe to solve by democratic means their pressing political and economic problems.

Public Papers of FDR, 1944, Item 12

The establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will enable the liberated peoples to destroy the last vestiges of Nazism and Fascism and to create democratic institutions of their own choice. This is a principle of the Atlantic Charter—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor Nations.

Public Papers of FDR, 1944, Item 12

To foster the conditions in which the liberated peoples may exercise these rights, the three Governments will jointly assist the people in any European liberated state or former Axis satellite state in Europe where in their judgment conditions require (a) to establish conditions of internal peace; (b) to carry out emergency measures for the relief of distressed peoples; (c) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of governments responsive to the will of the people; and (d) to facilitate where necessary the holding of such elections.

Public Papers of FDR, 1944, Item 12

The three Governments will consult the other United Nations and provisional authorities or other Governments in Europe when matters of direct interest to them are under consideration.

Public Papers of FDR, 1944, Item 12

When, in the opinion of the three Governments, conditions in any European liberated state or any former Axis satellite state in Europe make such action necessary, they will immediately consult together on the measures necessary to discharge the joint responsibilities set forth in this declaration.

Public Papers of FDR, 1944, Item 12

By this declaration we reaffirm our faith in the principles of the Atlantic Charter, our pledge in the declaration by the United Nations, and our determination to build in cooperation with other peace-loving Nations world order under law, dedicated to peace, security, freedom, and general well-being of all mankind.

Public Papers of FDR, 1944, Item 12

In issuing this declaration, the three powers express the hope that the Provisional Government of the French Republic may be associated with them in the procedure suggested.

POLAND

Public Papers of FDR, 1944, Item 12

A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish provisional government which can be more broadly based than was possible before the recent liberation of western Poland. The provisional government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new government should then be called the Polish Provisional Government of National Unity.

Public Papers of FDR, 1944, Item 12

M. Molotov, Mr. Harriman, and Sir A. Clark Kerr are authorized as a commission to consult in the first instance in Moscow with members of the present provisional government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganization of the present government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

Public Papers of FDR, 1944, Item 12

When a Polish Provisional Government of National Unity has been properly formed in conformity with the above, the Government of the U. S.S. R., which now maintains diplomatic relations with the present provisional government of Poland, and the Government of the United Kingdom and the Government of the U.S. A. will establish diplomatic relations with the new Polish Provisional Government of National Unity, and will exchange ambassadors by whose reports the respective Governments will be kept informed about the situation in Poland.

Public Papers of FDR, 1944, Item 12

The three heads of government consider that the eastern frontier of Poland should follow the Curzon line with digressions from it in some regions of five to eight kilometers in favor of Poland. They recognized that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the western frontier of Poland should thereafter await the peace conference.

YUGOSLAVIA

Public Papers of FDR, 1944, Item 12

We have agreed to recommend to Marshal Tito and Dr. Subasic that the agreement between them should be put into effect immediately, and that a new government should be formed on the basis of that agreement.

Public Papers of FDR, 1944, Item 12

We also recommend that as soon as the new government has been formed it should declare that:

Public Papers of FDR, 1944, Item 12

1. The anti-Fascist Assembly of National Liberation (Avnoj) should be extended to include members of the last Yugoslav Parliament (Skupschina) who have not compromised themselves by collaboration with the enemy, thus forming a body to be known as a temporary Parliament; and,

Public Papers of FDR, 1944, Item 12

2. Legislative acts passed by the anti-Fascist Assembly of National Liberation will be subject to subsequent ratification by a constituent assembly.

Public Papers of FDR, 1944, Item 12

There was also a general review of other Balkan questions.

MEETINGS OF FOREIGN SECRETARIES

Public Papers of FDR, 1944, Item 12

Throughout the Conference, besides the daily meetings of the heads of governments and the Foreign Secretaries, separate meetings of the three Foreign Secretaries, and their advisers have also been held daily.

Public Papers of FDR, 1944, Item 12

These meetings have proved of the utmost value and the Conference agreed that permanent machinery should be set up for regular consultation between the three Foreign Secretaries. They will, therefore, meet as often as may be necessary, probably about every three or four months. These meetings will be held in rotation in the three capitals, the first meeting being held in London, after the United Nations Conference on World Organization.

UNITY FOR PEACE AS FOR WAR

Public Papers of FDR, 1944, Item 12

Our meeting here in the Crimea has reaffirmed our common determination to maintain and strengthen in the peace to come that unity of purpose and of action which has made victory possible and certain for the United Nations in this war. We believe that this is a sacred obligation which our Governments owe to our peoples and to all the peoples of the world.

Public Papers of FDR, 1944, Item 12

Only with the continuing and growing cooperation and understanding among our three countries and among all the peace-loving Nations can the highest aspiration of humanity be realized—a secure and lasting peace which will, in the words of the Atlantic Charter, "afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."

Public Papers of FDR, 1944, Item 12

Victory in this war and establishment of the proposed international organization will provide the greatest opportunity in all history to create in the years to come the essential conditions of such a peace.

Signed:

Public Papers of FDR, 1944, Item 12

WINSTON S. CHURCHILL

FRANKLIN D. ROOSEVELT

J. STALIN

President Roosevelt's Undelivered Address Prepared for Jefferson Day, 1945

Title: President Roosevelt's Undelivered Address Prepared for Jefferson Day

Author: Franklin D. Roosevelt

Date: April 13, 1945

Source: Public Papers of the Presidents, F. D. Roosevelt, 1944, Item 26

Public Papers of FDR, 1944, Item 26

Americans are gathered together this evening in communities all over the country to pay tribute to the living memory of Thomas Jefferson—one of the greatest of all democrats; and I want to make it clear that I am spelling that word "democrats" with a small d.

Public Papers of FDR, 1944, Item 26

I wish I had the power, just for this evening, to be present at all of these gatherings.

Public Papers of FDR, 1944, Item 26

In this historic year, more than ever before, we do well to consider the character of Thomas Jefferson as an American citizen of the world.

Public Papers of FDR, 1944, Item 26

As Minister to France, then as our first Secretary of State and as our third President, Jefferson was instrumental in the establishment of the United States as a vital factor in international affairs.

Public Papers of FDR, 1944, Item 26

It was he who first sent our Navy into far-distant waters to defend our rights. And the promulgation of the Monroe Doctrine was the logical development of Jefferson's far-seeing foreign policy.

Public Papers of FDR, 1944, Item 26

Today this Nation which Jefferson helped so greatly to build is playing a tremendous part in the battle for the rights of man all over the world.

Public Papers of FDR, 1944, Item 26

Today we are part of the vast Allied force—a force composed of flesh and blood and steel and spirit—which is today destroying the makers of war, the breeders of hatred, in Europe and in Asia.

Public Papers of FDR, 1944, Item 26

In Jefferson's time our Navy consisted of only a handful of frigates headed by the gallant U.S.S. Constitution—Old Ironsides—but that tiny Navy taught Nations across the Atlantic that piracy in the Mediterranean—acts of aggression against peaceful commerce and the enslavement of their crews—was one of those things which, among neighbors, simply was not done.

Public Papers of FDR, 1944, Item 26

Today we have learned in the agony of war that great power involves great responsibility. Today we can no more escape the consequences of German and Japanese aggression than could we avoid the consequences of attacks by the Barbary Corsairs a century and a half before.

Public Papers of FDR, 1944, Item 26

We, as Americans, do not choose to deny our responsibility.

Public Papers of FDR, 1944, Item 26

Nor do we intend to abandon our determination that, within the lives of our children and our children's children, there will not be a third world war.

Public Papers of FDR, 1944, Item 26

We seek peace—enduring peace. More than an end to war, we want an end to the beginnings of all wars—yes, an end to this brutal, inhuman, and thoroughly impractical method of settling the differences between governments.

Public Papers of FDR, 1944, Item 26

The once powerful, malignant Nazi state is crumbling. The Japanese war lords are receiving, in their own homeland, the retribution for which they asked when they attacked Pearl Harbor.

Public Papers of FDR, 1944, Item 26

But the mere conquest of our enemies is not enough.

Public Papers of FDR, 1944, Item 26

We must go on to do all in our power to conquer the doubts and the fears, the ignorance and the greed, which made this horror possible.

Public Papers of FDR, 1944, Item 26

Thomas Jefferson, himself a distinguished scientist, once spoke of "the brotherly spirit of Science, which unites into one family all its votaries of whatever grade, and however widely dispersed throughout the different quarters of the globe."

Public Papers of FDR, 1944, Item 26

Today, science has brought all the different quarters of the globe so close together that it is impossible to isolate them one from another.

Public Papers of FDR, 1944, Item 26

Today we are faced with the preeminent fact that, if civilization is to survive, we must cultivate the science of human relationships—the ability of all peoples, of all kinds, to live together and work together, in the same world, at peace.

Public Papers of FDR, 1944, Item 26

Let me assure you that my hand is the steadier for the work that is to be done, that I move more firmly into the task, knowing that you—millions and millions of you—are joined with me in the resolve to make this work endure.

Public Papers of FDR, 1944, Item 26

The work, my friends, is peace. More than an end of this war —an end to the beginnings of all wars. Yes, an end, forever, to this impractical, unrealistic settlement of the differences between governments by the mass killing of peoples.

Public Papers of FDR, 1944, Item 26

Today, as we move against the terrible scourge of war—as we go forward toward the greatest contribution that any generation of human beings can make in this world—the contribution of lasting peace, I ask you to keep up your faith. I measure the sound, solid achievement that can be made at this time by the straight edge of your own confidence and your resolve. And to you, and to all Americans who dedicate themselves with us to the making of an abiding peace, I say:

Public Papers of FDR, 1944, Item 26

The only limit to our realization of tomorrow will be our doubts of today. Let us move forward with strong and active faith.

President Truman's Address on Foreign Policy at the Navy Day Celebration in New York City, 1945

Title: President Truman's Address on Foreign Policy at the Navy Day Celebration in New York City

Author: Harry S Truman

Date: October 27, 1945

Source: Public Papers of the Presidents, Truman, 1945, p.431

Public Papers of Truman, 1945, p.431

Mayor La Guardia, ladies and gentlemen:

Public Papers of Truman, 1945, p.431

I am grateful for the magnificent reception which you have given me today in this great city of New York. I know that it is given me only as the representative of the gallant men and women of our naval forces, and on their behalf, as well as my own, I thank you.

Public Papers of Truman, 1945, p.431

New York joins the rest of the Nation in paying honor and tribute to the four million fighting Americans of the Navy, Marine Corps, and Coast Guard—and to the ships which carried them to victory.

Public Papers of Truman, 1945, p.431

On opposite sides of the world, across two oceans, our Navy opened a highway for the armies and air forces of the United States. They landed our gallant men, millions of them, on the beachheads of final triumph. Fighting from Murmansk, the English Channel and the Tyrrhenian Sea, to Midway, Guadalcanal, Leyte Gulf and Okinawa-they won the greatest naval victories in history. Together with their brothers in arms in the Army and Air Force, and with the men of the Merchant Marine, they have helped to win for mankind all over the world a new opportunity to live in peace and dignity—and we hope, in security.

Public Papers of Truman, 1945, p.431

In the harbor and rivers of New York City and in other ports along the coasts and rivers of the country, ships of that mighty United States Navy are at anchor. I hope that you and the people everywhere will visit them and their crews, seeing for yourselves what your sons and daughters, your labor and your money, have fashioned into an invincible weapon of liberty.

Public Papers of Truman, 1945, p.431–p.432

The fleet, on V-J Day, consisted of 1200 warships, more than 50,000 supporting and landing craft, and over 40,000 navy planes. By that day, ours was a sea power never before equalled in the history of the world. There were great carrier task forces capable of tracking down and sinking the enemy's fleets, beating down his air power, and pouring destruction on his war-making industries. There were submarines which roamed the seas, invading the enemy's own ports, and destroying his shipping in all the oceans. There were amphibious forces capable [p.432] of landing soldiers on beaches from Normandy to the Philippines. There were great battleships and cruisers which swept the enemy ships from the seas and bombarded his shore defense almost at will.

Public Papers of Truman, 1945, p.432

And history will never forget that great leader who, from his first day in office, fought to reestablish a strong American Navy—who watched that Navy and all the other might of this Nation grow into an invincible force for victory—who sought to make that force an instrument for a just and lasting peace—and who gave his life in the effort—Franklin D. Roosevelt.

Public Papers of Truman, 1945, p.432

The roll call of the battles of this fleet reads like a sign post around the globe—on the road to final victory: North Africa, Sicily, Italy, Normandy, and Southern France; the Coral Sea, Midway, Guadalcanal, and the Solomons; Tarawa, Saipan, Guam, the Philippine Sea, Leyte Gulf; Iwo Jima and Okinawa. Nothing which the enemy held on any coast was safe from its attack.

Public Papers of Truman, 1945, p.432

Now we are in the process of demobilizing our naval force. We are laying up ships. We are breaking up aircraft squadrons. We are rolling up bases, and releasing officers and men. But when our demobilization is all finished as planned, the United States will still be the greatest naval power on earth.

Public Papers of Truman, 1945, p.432

In addition to that naval power, we shall still have one of the most powerful air forces in the world. And just the other day, so that on short notice we could mobilize a powerful and well-equipped land, sea, and air force, I asked the Congress to adopt universal training.

Public Papers of Truman, 1945, p.432

Why do we seek to preserve this powerful Naval and Air Force, and establish this strong Army reserve? Why do we need to do that?

Public Papers of Truman, 1945, p.432

We have assured the world time and again—and I repeat it now-that we do not seek for ourselves one inch of territory in any place in the world. Outside of the right to establish necessary bases for our own protection, we look for nothing which belongs to any other power.

Public Papers of Truman, 1945, p.432

We do need this kind of armed might, however, for four principal tasks:

Public Papers of Truman, 1945, p.432

First, our Army, Navy, and Air Force, in collaboration with our allies, must enforce the terms of peace imposed upon our defeated enemies.

Public Papers of Truman, 1945, p.433

Second, we must fulfill the military obligations which we are undertaking as a member of the United Nations Organization—to support a lasting peace, by force if necessary.

Public Papers of Truman, 1945, p.433

Third, we must cooperate with other American nations to preserve the territorial integrity and the political independence of the nations of the Western Hemisphere.

Public Papers of Truman, 1945, p.433

Fourth, in this troubled and uncertain world, our military forces must be adequate to discharge the fundamental mission laid upon them by the Constitution of the United States—to "provide for the common defense" of the United States.

Public Papers of Truman, 1945, p.433

These four military tasks are directed not toward war—not toward conquest—but toward peace.

Public Papers of Truman, 1945, p.433

We seek to use our military strength solely to preserve the peace of the world. For we now know that this is the only sure way to make our own freedom secure.

Public Papers of Truman, 1945, p.433

That is the basis of the foreign policy of the people of the United States.

Public Papers of Truman, 1945, p.433

The foreign policy of the United States is based firmly on fundamental principles of righteousness and justice. In carrying out those principles we shall firmly adhere to what we believe to be right; and we shall not give our approval to any compromise with evil.

Public Papers of Truman, 1945, p.433

But we know that we cannot attain perfection in this world overnight. We shall not let our search for perfection obstruct our steady progress toward international cooperation. We must be prepared to fulfill our responsibilities as best we can, within the framework of our fundamental principles, even though we recognize that we have to operate in an imperfect world.

Public Papers of Truman, 1945, p.433

Let me restate the fundamentals of that foreign policy of the United States:

Public Papers of Truman, 1945, p.433

1. We seek no territorial expansion or selfish advantage. We have no plans for aggression against any other state, large or small. We have no objective which need clash with the peaceful aims of any other nation.

Public Papers of Truman, 1945, p.433

2. We believe in the eventual return of sovereign rights and self-government to all peoples who have been deprived of them by force.

Public Papers of Truman, 1945, p.434

3. We shall approve no territorial changes in any friendly part of the world unless they accord with the freely expressed wishes of the people concerned.

Public Papers of Truman, 1945, p.434

4. We believe that all peoples who are prepared for self-government should be permitted to choose their own form of government by their own freely expressed choice, without interference from any foreign source. That is true in Europe, in Asia, in Africa, as well as in the Western Hemisphere.

Public Papers of Truman, 1945, p.434

5. By the combined and cooperative action of our war allies, we shall help the defeated enemy states establish peaceful democratic governments of their own free choice. And we shall try to attain a world in which Nazism, Fascism, and military aggression cannot exist.

Public Papers of Truman, 1945, p.434

6. We shall refuse to recognize any government imposed upon any nation by the force of any foreign power. In some cases it may be impossible to prevent forceful imposition of such a government. But the United States will not recognize any such government.

Public Papers of Truman, 1945, p.434

7. We believe that all nations should have the freedom of the seas and equal rights to the navigation of boundary rivers and waterways and of rivers and waterways which pass through more than one country.

Public Papers of Truman, 1945, p.434

8. We believe that all states which are accepted in the society of nations should have access on equal terms to the trade and the raw materials of the world.

Public Papers of Truman, 1945, p.434

9. We believe that the sovereign states of the Western Hemisphere, without interference from outside the Western Hemisphere, must work together as good neighbors in the solution of their common problems.

Public Papers of Truman, 1945, p.434

10. We believe that full economic collaboration between all nations, great and small, is essential to the improvement of living conditions all over the world, and to the establishment of freedom from fear and freedom from want.

Public Papers of Truman, 1945, p.434

11. We shall continue to strive to promote freedom of expression and freedom of religion throughout the peace-loving areas of the world.

Public Papers of Truman, 1945, p.434

12. We are convinced that the preservation of peace between nations requires a United Nations Organization composed of all the peace-loving nations of the world who are willing jointly to use force if necessary to insure peace. [p.435]

Public Papers of Truman, 1945, p.435

Now, that is the foreign policy which guides the United States. That is the foreign policy with which it confidently faces the future.

Public Papers of Truman, 1945, p.435

It may not be put into effect tomorrow or the next day. But nonetheless, it is our policy; and we shall seek to achieve it. It may take a long time, but it is worth waiting for, and it is worth striving to attain.

Public Papers of Truman, 1945, p.435

The Ten Commandments themselves have not yet been universally achieved over these thousands of years. Yet we struggle constantly to achieve them, and in many ways we come closer to them each year. Though we may meet setbacks from time to time, we shall not relent in our efforts to bring the Golden Rule into the international affairs of the world.

Public Papers of Truman, 1945, p.435

We are now passing through a difficult phase of international relations. Unfortunately it has always been true after past wars, that the unity among allies, forged by their common peril, has tended to wear out as the danger passed.

Public Papers of Truman, 1945, p.435

The world cannot afford any letdown in the united determination of the allies in this war to accomplish a lasting peace. The world cannot afford to let the cooperative spirit of the allies in this war disintegrate. The world simply cannot allow this to happen. The people in the United States, in Russia, and Britain, in France and China, in collaboration with all the other peace-loving people, must take the course of current history into their own hands and mold it in a new direction-the direction of continued cooperation. It was a common danger which united us before victory. Let it be a common hope which continues to draw us together in the years to come.

Public Papers of Truman, 1945, p.435

The atomic bombs which fell on Hiroshima and Nagasaki must be made a signal, not for the old process of falling apart but for a new era—an era of ever-closer unity and ever-closer friendship among peaceful nations.

Public Papers of Truman, 1945, p.435

Building a peace requires as much moral stamina as waging a war. Perhaps it requires even more, because it is so laborious and painstaking and undramatic. It requires undying patience and continuous application. But it can give us, if we stay with it, the greatest reward that there is in the whole field of human effort.

Public Papers of Truman, 1945, p.436

Differences of the kind that exist today among nations that fought together so long and so valiantly for victory are not hopeless or irreconcilable. There are no conflicts of interest among the victorious powers so deeply rooted that they cannot be resolved. But their solution will require a combination of forbearance and firmness. It will require a steadfast adherence to the high principles which we have enunciated. It will also require a willingness to find a common ground as to the methods of applying those principles.

Public Papers of Truman, 1945, p.436

Our American policy is a policy of friendly partnership with all peaceful nations, and of full support for the United Nations Organization. It is a policy that has the strong backing of the American people. It is a policy around which we can rally without fear or misgiving.

Public Papers of Truman, 1945, p.436

The more widely and clearly that policy is understood abroad, the better and surer will be the peace. For our own part we must seek to understand the special problems of other nations. We must seek to understand their own legitimate urge toward security as they see it.

Public Papers of Truman, 1945, p.436

The immediate, the greatest threat to us is the threat of disillusionment, the danger of insidious skepticism—a loss of faith in the effectiveness of international cooperation. Such a loss of faith would be dangerous at any time. In an atomic age it would be nothing short of disastrous.

Public Papers of Truman, 1945, p.436

There has been talk about the atomic bomb scrapping all navies, armies, and air forces. For the present, I think that such talk is 100 percent wrong. Today, control of the seas rests in the fleets of the United States and her allies. There is no substitute for them. We have learned the bitter lesson that the weakness of this great Republic invites men of ill-will to shake the very foundations of civilization all over the world. And we had two concrete lessons in that.

Public Papers of Truman, 1945, p.436–p.437

What the distant future of the atomic research will bring to the fleet which we honor today, no one can foretell. But the fundamental mission of the Navy has not changed. Control of our sea approaches and of the skies above them is still the key to our freedom and to our ability to help enforce the peace of the world. No enemy will ever strike us directly except across the sea. We cannot reach out to help stop and defeat an aggressor without crossing the sea. Therefore, the [p.437] Navy, armed with whatever weapons science brings forth, is still dedicated to its historic task: control of the ocean approaches to our country and of the skies above them.

Public Papers of Truman, 1945, p.437

The atomic bomb does not alter the basic foreign policy of the United States. It makes the development and application of our policy more urgent than we could have dreamed 6 months ago. It means that we must be prepared to approach international problems with greater speed, with greater determination, with greater ingenuity, in order to meet a situation for which there is no precedent.

Public Papers of Truman, 1945, p.437

We must find the answer to the problems created by the release of atomic energy—we must find the answers to the many other problems of peace—in partnership with all the peoples of the United Nations. For their stake in world peace is as great as our own.

Public Papers of Truman, 1945, p.437

As I said in my message to the Congress, discussion of the atomic bomb with Great Britain and Canada and later with other nations cannot wait upon the formal organization of the United Nations. These discussions, looking toward a free exchange of fundamental scientific information, will be begun in the near future. But I emphasize again, as I have before, that these discussions will not be concerned with the processes of manufacturing the atomic bomb or any other instruments of war.

Public Papers of Truman, 1945, p.437

In our possession of this weapon, as in our possession of other new weapons, there is no threat to any nation. The world, which has seen the United States in two great recent wars, knows that full well. The possession in our hands of this new power of destruction we regard as a sacred trust. Because of our love of peace, the thoughtful people of the world know that that trust will not be violated, that it will be faithfully executed.

Public Papers of Truman, 1945, p.437

Indeed, the highest hope of the American people is that world cooperation for peace will soon reach such a state of perfection that atomic methods of destruction can be definitely and effectively outlawed forever.

Public Papers of Truman, 1945, p.437–p.438

We have sought, and we will continue to seek, the attainment of that objective. We shall pursue that course with all the wisdom, patience, [p.438] and determination that the God of Peace can bestow upon a people who are trying to follow in His path.

Public Papers of Truman, 1945, p.438

NOTE: The President spoke at 1:43 p.m. from a stand at the south end of the Sheep Meadow in Central Park, New York City. His opening words referred to Mayor Fiorello H. La Guardia. The address was carried over all radio networks.

Associated Press v. United States, 1945

Title: Associated Press v. United States

Author: U.S. Supreme Court

Date: June 18, 1945

Source: 326 U.S. 1 (No. 57)

This case was argued December 5 and 6, 1944, and was decided June 18, 1945, together with No. 58, Tribune Company et al. v. United States, and No. 59, United States v. Associated Press et al., also on appeals from the District Court of the United States for the Southern District of New York.

1945, Associated Press v. United States, 326 U.S. 1

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

1945, Associated Press v. United States, 326 U.S. 1

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Syllabus

1945, Associated Press v. United States, 326 U.S. 1

By-laws of the Associated Press, a cooperative association engaged in gathering and distributing news in interstate and foreign commerce, prohibited service of AP news to nonmembers, prohibited members from furnishing spontaneous news to nonmembers, and empowered members to block membership applications of competitors. A contract between AP and a Canadian press association obligated both to furnish news exclusively to each other. Charging, inter alia, that the bylaws and the contract violated the Sherman Antitrust Act, the Government sought an injunction against AP and member publishers. Upon the Government's motion, the District Court rendered summary judgment.

1945, Associated Press v. United States, 326 U.S. 1

Held:

1945, Associated Press v. United States, 326 U.S. 1

1. The bylaws and the contract, together with the admitted facts, justified summary judgment. Rule 56 of the Rules of Civil Procedure. P. 5.

1945, Associated Press v. United States, 326 U.S. 1

2. Publishers charged with violating the Sherman Act are subject, no less than others, to the summary judgment procedure. P. 7.

1945, Associated Press v. United States, 326 U.S. 1

3. The bylaws, on their face, constitute restraints of trade and violate the Sherman Act. P. 12.

1945, Associated Press v. United States, 326 U.S. 1

(a) That AP had not achieved a complete monopoly is irrelevant. P. 12. [326 U.S. 2]

1945, Associated Press v. United States, 326 U.S. 2

(b) Trade in news carried on among the States is interstate commerce. P. 14.

1945, Associated Press v. United States, 326 U.S. 2

(c) The fact that AP's activities are cooperative does not render the Sherman Act inapplicable. P. 14.

1945, Associated Press v. United States, 326 U.S. 2

(d) Although true in a general sense that an owner of property may dispose of it as he pleases, he can not go beyond the exercise of that right and, by contracts or combinations, express or implied, unduly hinder or obstruct the free flow of interstate commerce. P. 15.

1945, Associated Press v. United States, 326 U.S. 2

(e) The fact that there are other news agencies which sell news, and that AP's reports are not "indispensable," can give AP's restrictive bylaws no exemption under the Sherman Act. P. 17.

1945, Associated Press v. United States, 326 U.S. 2

(f) The result here does not involve an application of the "public utility" concept to the newspaper business. P. 19.

1945, Associated Press v. United States, 326 U.S. 2

(g) Arrangements or combinations designed to stifle competition can not be immunized through a membership device which would accomplish that purpose. P. 19.

1945, Associated Press v. United States, 326 U.S. 2

(h) Application of the Sherman Act to a combination of publishers to restrain trade in news does not abridge the freedom of the press guaranteed by the First Amendment. Pp. 19-20.

1945, Associated Press v. United States, 326 U.S. 2

4. The decree of the District Court, interpreted as meaning that AP news is to be furnished to competitors of members without discrimination through bylaws controlling membership or otherwise, is not vague and indefinite, and is approved. P. 21.

1945, Associated Press v. United States, 326 U.S. 2

5. The District Court did not err in refusing to hold as a violation of the Sherman Act standing alone (1) the bylaws provision forbidding service of AP news to nonmembers, (2) the bylaws provision forbidding AP members from furnishing spontaneous news to nonmembers, or (3) the Canadian press contract; and the court was justified in enjoining their observance temporarily pending AP's abandonment of the bylaws provision empowering members to block membership applications of competitors. P. 21.

1945, Associated Press v. United States, 326 U.S. 2

6. The fashioning of a decree in an antitrust case, to prevent future violations and eradicate existing evils, rests largely in the discretion of the trial court. P. 22.

1945, Associated Press v. United States, 326 U.S. 2

7. The case having been presented on the narrow issues arising out of undisputed facts, it cannot be said that the District Court's decree should have been broader, and, if the decree in its present form should prove inadequate to prevent further discriminatory trade restraints against nonmember newspapers, the District Court's retention of jurisdiction of the cause will enable it to take appropriate action. P. 22.

1945, Associated Press v. United States, 326 U.S. 2

52 F.Supp. 362, affirmed. [326 U.S. 3]

1945, Associated Press v. United States, 326 U.S. 3

Appeals from a decree of a district court of three judges in a suit by the United States to enjoin alleged violations of the Sherman Act.

BLACK, J., lead opinion

1945, Associated Press v. United States, 326 U.S. 3

MR. JUSTICE BLACK delivered the opinion of the Court.\*

1945, Associated Press v. United States, 326 U.S. 3

The publishers of more than 1,200 newspapers are members of the Associated Press (AP), a cooperative [326 U.S. 4] association incorporated under the Membership Corporations Law of the State of New York. Its business is the collection, assembly and distribution of news. The news it distributes is originally obtained by direct employees of the Association, employees of the member newspapers, and the employees of foreign independent news agencies with which AP has contractual relations, such as the Canadian Press. Distribution of the news is made through interstate channels of communication to the various newspaper members of the Association, who pay for it under an assessment plan which contemplates no profit to AP.

1945, Associated Press v. United States, 326 U.S. 4

The United States filed a bill in a Federal District Court for an injunction against AP and other defendants charging that they had violated the Sherman Anti-Trust Act, 26 Stat. 209, in that their acts and conduct constituted (1) a combination and conspiracy in restraint of trade and commerce in news among the states, and (2) an attempt to monopolize a part of that trade.

1945, Associated Press v. United States, 326 U.S. 4

The heart of the government's charge was that appellants had, by concerted action, set up a system of bylaws which prohibited all AP members from selling news to nonmembers, and which granted each member powers to block its nonmember competitors from membership. These bylaws, to which all AP members had assented, were, in the context of the admitted facts, charged to be in violation of the Sherman Act. A further charge related to a contract between AP and Canadian Press (a news agency of Canada similar to AP) under which the Canadian agency and AP obligated themselves to furnish news exclusively to each other. The District Court, composed of three judges, held that the bylaws unlawfully restricted admission to AP membership, and violated the Sherman Act insofar as the bylaws' provisions clothed a member with powers to impose or dispense with conditions upon the admission of his business competitor. [326 U.S. 5] Continued observance of these bylaws was enjoined. The court further held that the Canadian contract was an integral part of the restrictive membership conditions, and enjoined its observance pending abandonment of the membership restrictions. The government's motion for summary judgment, under Rule 56 of the Rules of Civil Procedure, 1 was granted, and its prayer for relief was granted in part and denied in part. 52 F.Supp. 362. Both sides have brought the case to us on direct appeal. 15 U.S.C. § 29; 28 U.S.C. § 345.

1945, Associated Press v. United States, 326 U.S. 5

At this point, it seems advisable to pass upon the contention of the appellants that there were genuine disputes as to material facts, and that the case therefore should have gone to trial. The only assignments of error made by the appellants in No. 57 (Associated Press et al. v. United States), relating to this question are that the court erred "[i]n holding that there was no genuine issue between the parties as to any material fact" and "[i]n not entering summary judgment against the plaintiff." This latter assignment is based on the premise that summary proceedings were properly utilized in the case. The appellants in No. 58 (Tribune Company et al. v. United States) have one assignment of error to the effect that

1945, Associated Press v. United States, 326 U.S. 5

[t]he defendants are entitled to a trial of genuine issues of fact unmentioned in the findings of the court but which if found for the defendants would render this holding unwarranted.

1945, Associated Press v. United States, 326 U.S. 5

None of the appellants has pointed to any [326 U.S. 6] disputed facts essential to a determination of the validity or invalidity of the bylaws and the contract. Admitting the existence of both the bylaws and the contract, their answers and their affidavits in the summary proceedings defended the legality of the restrictive arrangements, but did not in any instance deny that nonmembers of AP were denied access to news of AP and of all of its member publishers by reason of the concerted arrangements between the appellants. Nor was it denied that the bylaws granted AP members powers to impose restrictive conditions upon admission to membership of nonmember competitors. The court below, in making findings and entering judgment, carefully abstained from the consideration of any evidence which might possibly be in dispute. We agree that Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them. Sartor v. Arkansas Nat. Gas. Co., 321 U.S. 620. There was no injury to any of the appellants as a result of the summary proceedings, since, for reasons to be indicated, the restrictive arrangements, which appellants admitted, were sufficient to justify summary action by the court at that stage of the case. In reaching our conclusion on the summary judgment question, we are not unmindful of the argument that newspaper publishers charged with combining cooperatively to violate the Sherman Act are entitled to have a different and more favorable kind of trial procedure than all other persons covered by the Act. No language in the Sherman Act or the summary judgment statute lends support to the suggestion. There is no single element in our traditional insistence upon an equally fair trial for every person from which any such discriminatory trial practice could stem. For equal—not unequal—justice under law is the goal of our society. Our legal system has not established different measures of proof for the trial of cases in which equally intelligent and responsible [326 U.S. 7] defendants are charged with violating the same statutes. Member publishers of AP are engaged in business for profit exactly as are other business men who sell food, steel, aluminum, or anything else people need or want. See International News Service v. Associated Press, 248 U.S. 215, 229, 230. All are alike covered by the Sherman Act. The fact that the publisher handles news, while others handle food, does not, as we shall later point out, afford the publisher a peculiar constitutional sanctuary in which he can with impunity violate laws regulating his business practices.

1945, Associated Press v. United States, 326 U.S. 7

Nor is a publisher who engages in business practices made unlawful by the Sherman Act entitled to a partial immunity by reason of the "clear and present danger" doctrine which courts have used to protect freedom to speak, to print, and to worship. That doctrine, as related to this case, provides protection for utterances themselves, so that the printed or spoken word may not be that subject of previous restraint or punishment unless their expression creates a clear and present danger of bringing about a substantial evil which the government has power to prohibit. Bridges v. California, 314 U.S. 252, 261. Formulated as it was to protect liberty of thought and of expression, it would degrade the clear and present danger doctrine to fashion from it a shield for business publishers who engage in business practices condemned by the Sherman Act. Consequently, we hold that publishers, like all others charged with violating the Sherman Act, are subject to the provisions of the summary judgment statute. And that means that such judgments shall not be rendered against publishers or others where there are genuine disputes of fact on material issues. Accordingly, we treat the cause as did the court below, and will consider the validity of the bylaws and the contract exclusively on the basis of their terms and the background of facts which the appellants admitted. [326 U.S. 8]

1945, Associated Press v. United States, 326 U.S. 8

To put the issue into proper focus, it becomes necessary at this juncture to examine the bylaws.

1945, Associated Press v. United States, 326 U.S. 8

All members must consent to be bound by them. They impose upon members certain duties and restrictions in the conduct of their separate businesses. For a violation of the bylaws, severe disciplinary action may be taken by the Association. The Board of Directors may impose a fine of.$1,000.00 or suspend a member, and such "action…shall be final and conclusive. No member shall have any right to question the same." 2 The offending member may also be expelled by the members of the corporation for any reason

1945, Associated Press v. United States, 326 U.S. 8

which, in its absolute discretion, it shall deem of such a character as to be prejudicial to the welfare of the corporation and its members, or to justify such expulsion. The action of the regular members of the corporation in such regard shall be final, and there shall be no right of appeal against or review of such action.

1945, Associated Press v. United States, 326 U.S. 8

These bylaws, for a violation of which members may be thus fined, suspended, or expelled, require that each [326 U.S. 9] newspaper member publish the AP news regularly in whole or in part, and that each shall

1945, Associated Press v. United States, 326 U.S. 9

promptly furnish to the corporation, through its agents or employees, all the news of such member's district, the area of which shall be determined by the Board of Directors. 3

1945, Associated Press v. United States, 326 U.S. 9

All members are prohibited from selling or furnishing their spontaneous news to any agency or publisher except to AP. Other bylaws require each newspaper member to conduct his or its business in such manner that the news furnished by the corporations shall not be made available to any nonmember in advance of publication. The joint effect of these bylaws is to block all newspaper nonmembers from any opportunity to buy news from AP or any of its publisher members. Admission to membership in AP thereby becomes a prerequisite to obtaining AP news or buying news from any one of its more than twelve hundred publishers. The erection of obstacles to the acquisition of membership consequently can make it difficult, if not impossible, for nonmembers to get any of the news furnished by AP or any of the individual members of this combination of American newspaper publishers. 4

1945, Associated Press v. United States, 326 U.S. 9

The bylaws provide a very simple and nonburdensome road for admission of a noncompeting applicant. The Board of Directors in such case can elect the applicant without payment of money or the imposition of any other onerous terms. In striking contrast are the bylaws [326 U.S. 10] which govern admission of new members who do compete. Historically, as well as presently, applicants who would offer competition to old members have a hard road to travel. This appears from the following facts found by the District Court.

1945, Associated Press v. United States, 326 U.S. 10

AP originally functioned as an Illinois corporation, and at that time an existing member of the Association had an absolute veto power over the applications of a publisher who was or would be in competition with the old member. The Supreme Court of Illinois held that AP, thus operated, was in restraint of trade. Inter-Ocean Publishing Co. v. Associated Press, 184 Ill. 438, 56 N.E. 822. As a result of this decision, the present Association was organized in New York. Under the new bylaws, the unqualified veto power of the Illinois AP members was changed into a "right of protest" which, when exercised, prevented the AP directors from electing the applicants as in other cases. The old member's protest against his competitor's application could then be overruled only by the affirmative vote of four-fifths of all the members of AP.

1945, Associated Press v. United States, 326 U.S. 10

In 1931, the bylaws were amended so as to extend the right of protest to all who had been members for more than 5 years and upon whom no right of protest had been conferred by the 1900 bylaws. In 1942, after complaints to the Department of Justice had brought about an investigation, the bylaws were again amended. These bylaws, presently involved, leave the Board of Directors free to elect new members unless the applicants would compete with old members, and, in that event, the Board cannot act at all in the absence of consent by the applicant's member competitor. Should the old member object to admission of his competitor, the application must be referred to a regular or special meeting of the Association. As a prerequisite to election, he must (a) pay to the Association 10% of the total amount of the regular assessments received by it from old members in the same [326 U.S. 11] competitive field during the entire period from October 1, 1900, to the first day of the month preceding the date of the election of the applicant, 5 (b) relinquish any exclusive rights the applicant may have to any news or news picture services, and, when requested to do so by his member competitor in that field, must

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require the said news or news picture services, or any of them, to be furnished to such member or members, upon the same terms as they are made available to the applicant,

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and (c) receive a majority vote of the regular members who vote in person or by proxy. These obstacles to membership, and to the purchase of AP news, only existed where there was a competing old member in the same field.

1945, Associated Press v. United States, 326 U.S. 11

The District Court found that the bylaws, in and of themselves, were contracts in restraint of commerce 6 in that they contained provisions designed to stifle competition in the newspaper publishing field. 7 The court also [326 U.S. 12] found that AP's restrictive bylaws had hindered and impeded the growth of competing newspapers. 8 This latter finding, as to the past effect of the restrictions, is challenged. We are inclined to think that it is supported by undisputed evidence, but we do not stop to labor the point. For the court below found, and we think correctly, that the bylaws, on their face, and without regard to their past effect, constitute restraints of trade. Combinations are no less unlawful because they have not as yet resulted in restraint. An agreement or combination to follow a course of conduct which will necessarily restrain or monopolize a part of trade or commerce may violate the Sherman Act, whether it be "wholly nascent or abortive on the one hand, or successful on the other." 9 For [326 U.S. 13] these reasons the argument, repeated here in various forms, that AP had not yet achieved a complete monopoly is wholly irrelevant. Undisputed evidence did show, however, that its bylaws had tied the hands of all of its numerous publishers, to the extent that they could not and did not sell any part of their news so that it could reach any of their nonmember competitors. In this respect, the Court did find, and that finding cannot possibly be challenged, that AP's bylaws had hindered and restrained the sale of interstate news to nonmembers who competed with members.

1945, Associated Press v. United States, 326 U.S. 13

Inability to buy news from the largest news agency or any one of its multitude of members can have most serious effects on the publication of competitive newspapers, both those presently published and those which, but for these restrictions, might be published in the future. 10 This is illustrated by the District Court's finding that, in 26 cities of the United States, existing newspapers already have contracts for AP news and the same newspapers have contracts with United Press and International News Service under which new newspapers would be required to pay the contract holders large sums to enter the field. 11 The net effect is seriously to limit the opportunity of any newspaper to enter these cities. Trade restraints of this character, aimed at the destruction of competition, tend to block the initiative which brings newcomers into a field [326 U.S. 14] of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect. 12

1945, Associated Press v. United States, 326 U.S. 14

We need not again pass upon the contention that trade in news carried on among the states is not interstate commerce, Associated Press v. Labor Board, 301 U.S. 103, or that, because AP's activities are cooperative, they fall outside the sphere of business, American Medical Ass'n v. United States, 317 U.S. 519, 528. It is significant that, when Congress has desired to permit cooperatives to interfere with the competitive system of business, it has done so expressly by legislation. 13

1945, Associated Press v. United States, 326 U.S. 14

Nor can we treat this case as though it merely involved a reporter's contract to deliver his news reports exclusively to a single newspaper, or an exclusive agreement as to news between two newspapers in different cities. For such trade restraints might well be "reasonable," and therefore not in violation of the Sherman Act. Standard Oil Co. v. United States, 221 U.S. 1. But however innocent such agreements might be, standing alone, they would assume quite a different aspect if utilized as essential features of a program to hamper or destroy competition. It is in this light that we must view this case.

1945, Associated Press v. United States, 326 U.S. 14

It has been argued that the restrictive bylaws should be treated as beyond the prohibitions of the Sherman Act, since the owner of the property can choose his associates and can, as to that which he has produced by his own enterprise and sagacity, efforts or ingenuity, decide for [326 U.S. 15] himself whether and to whom to sell or not to sell. While it is true in a very general sense that one can dispose of his property as he pleases, he cannot

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go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

1945, Associated Press v. United States, 326 U.S. 15

United States v. Bausch & Lomb Co., 321 U.S. 707, 722. The Sherman Act was specifically intended to prohibit independent businesses from becoming "associates" in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete. Victory of a member of such a combination over its business rivals achieved by such collective means cannot, consistently with the Sherman Act or with practical, everyday knowledge, be attributed to individual "enterprise and sagacity"; such hampering of business rivals can only be attributed to that which really makes it possible—the collective power of an unlawful combination. That the object of sale is the creation or product of a man's ingenuity does not alter this principle. Fashion Originators' Guild, Inc., v. Federal Trade Commission, 312 U.S. 457, 668. 14 It is obviously fallacious to view the bylaws [326 U.S. 16] here in issue as instituting a program to encourage and permit full freedom of sale and disposal of property by its owners. Rather, these publishers have, by concerted arrangements, pooled their power to acquire, to purchase, and to dispose of news reports through the channels of commerce. They have also pooled their economic and news control power and, in exerting that power, have entered into agreements which the District Court found to be "plainly designed in the interest of preventing competition." 15 [326 U.S. 17]

1945, Associated Press v. United States, 326 U.S. 17

It is further contended that, since there are other news agencies which sell news, it is not a violation of the Act for an overwhelming majority of American publishers to combine to decline to sell their news to the minority. But the fact that an agreement to restrain trade does not inhibit competition in all of the objects of that trade cannot save it from the condemnation of the Sherman Act. 16 It is apparent that the exclusive right to publish news in a given field furnished by AP and all of its members gives many newspapers a competitive advantage over their rivals. 17 Conversely, a newspaper without AP service is [326 U.S. 18] more than likely to be at a competitive disadvantage. The District Court stated that it was to secure this advantage over rivals that the bylaws existed. It is true that the record shows that some competing papers have gotten along without AP news, but morning newspapers, which control 96% of the total circulation in the United States, have AP news service. And the District Court's unchallenged finding was that

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AP is a vast, intricately reticulated organization, the largest of its kind, gathering news from all over the world, the chief single source of news for the American press, universally agreed to be of great consequence.

1945, Associated Press v. United States, 326 U.S. 18

Nevertheless, we are asked to reverse these judgments on the ground that the evidence failed to show that AP reports, which might be attributable to their own "enterprise and sagacity," are clothed "in the robes of indispensability." The absence of "indispensability" is said to have been established under the following chain of reasoning: AP has made its news generally available to the people by supplying it to a limited and select group of publishers in the various cities; therefore, it is said, AP and its member publishers have not deprived the reading public of AP news; all local readers have an "adequate access" to AP news, since all they need do in any city to get it is to buy, on whatever terms they can in a protected market, the particular newspaper selected for the public by AP and its members. We reject these contentions. The proposed "indispensability" test would fly in the face of the language of the Sherman Act and all of our previous interpretations of it. Moreover, it would make that law a dead letter in all fields of business, a law which Congress has consistently maintained to be an essential safeguard to the kind of private competitive business economy this country has sought to maintain.

1945, Associated Press v. United States, 326 U.S. 18

The restraints on trade in news here were no less than those held to fall within the ban of the Sherman Act with [326 U.S. 19] reference to combinations to restrain trade outlets in the sale of tiles, Montague & Co. v. Lowry, 193 U.S. 38; or enameled ironware, Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20, 48-49; or lumber, Eastern States Retail Lumber Dealers' Assn. v. United States, 234 U.S. 600, 611; or women's clothes, Fashion Originators' Guild v. Federal Trade Commission, supra; or motion pictures, United States v. Crescent Amusement Co., 323 U.S. 173. Here, as in the Fashion Originators' Guild case, supra, 465,

1945, Associated Press v. United States, 326 U.S. 19

the combination is, in reality, an extra-governmental agency which prescribes rules for the regulation and restraint of interstate commerce and provides extrajudicial tribunals for determination and punishment of violations, and thus "trenches upon the power of the national legislature and violates the statute." Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 242.

1945, Associated Press v. United States, 326 U.S. 19

By the restrictive bylaws, each of the publishers in the combination has, in effect, "surrendered himself completely to the control of the association," Anderson v. Shipowners' Ass'n, 272 U.S. 359, 362, in respect to the disposition of news in interstate commerce. Therefore, this contractual restraint of interstate trade, "designed in the interest of preventing competition," cannot be one of the "normal and usual agreements in aid of trade and commerce which may be found not to be within the [Sherman] Act…. " Eastern States Retail Lumber Dealers' Assn. v. United States, supra, 612, 613. It is further said that we reach our conclusion by application of the "public utility" concept to the newspaper business. This is not correct. We merely hold that arrangements or combinations designed to stifle competition cannot be immunized by adopting a membership device accomplishing that purpose.

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Finally, the argument is made that to apply the Sherman Act to this association of publishers constitutes an abridgment of the freedom of the press guaranteed by the First Amendment. Perhaps it would be a sufficient answer to [326 U.S. 20] this contention to refer to the decisions of this Court in Associated Press v. Labor Board, supra, and Indiana Farmer's Guide Co. v. Prairie Farmer Co., 293 U.S. 268. It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford nongovernmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all, and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. 18 The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity. [326 U.S. 21]

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We now turn to the decree. Having adjudged the bylaws imposing restrictions on applications for membership to be illegal, the Court enjoined the defendants from observing them, or agreeing to observe any new or amended bylaw having a like purpose or effect. If further provided that nothing in the decree should prevent the adoption by the Associated Press of new or amended bylaws

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which will restrict admission, provided that members in the same city and in the same "field" (morning, evening or Sunday), as an applicant published in a newspaper in the United States of America or its Territories, shall not have power to impose, or dispense with, any conditions upon his admission, and that the bylaws shall affirmatively declare that the effect of admission upon the ability of such applicant to compete with members in the same city and "field" shall not be taken into consideration in passing upon its application.

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Some of appellants argue that this decree is vague and indefinite. They argue that it will be impossible for the Association to know whether or not its members took into consideration the competitive situation in passing upon applications for membership. We cannot agree that the decree is ambiguous. We assume, with the court below, that AP will faithfully carry out its purpose. Interpreting the decree to mean that AP news is to be furnished to competitors of old members without discrimination through bylaws controlling membership, or otherwise, we approve it.

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The Court also held that, taken in connection with the restrictive clauses on admissions to membership, those sections of the bylaws violated the Sherman Act which prevented service of AP news to nonmembers and prevented AP members from furnishing spontaneous news to anyone not a member of the Association. It held the agreement between AP and the Canadian Press, under which AP secured exclusive right to receive the news reports [326 U.S. 22] of the Canadian Press and its members was also, when taken in connection with the restrictive membership agreements, in violation of the Sherman Act. It declined to hold these bylaws and the agreement with Canadian Press illegal standing by themselves. It consequently enjoined their observance temporarily, pending AP's obedience to the decree enjoining the restrictive membership agreements. The Court's findings justified this phase of its injunction. United States v. Bausch & Lomb Co., supra, 724.

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The government has appealed from the Court's refusal to hold each of these last mentioned items a violation of the Sherman Act standing alone. The government also asks that the decree of the District Court be broadened so as permanently to enjoin observance of the Canadian Press contract and all the challenged bylaws. It also suggests certain specific terms which should be added to the decree to assure the complete eradication of AP's discrimination against competitors of its members.

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The fashioning of a decree in an Antitrust case in such way as to prevent future violations and eradicate existing evils is a matter which rests largely in the discretion of the Court. United States v. Crescent Amusement Co., supra. A full exploration of facts is usually necessary in order properly to draw such a decree. In this case, the government chose to present its case on the narrow issues which were within the realm of undisputed facts. In the situation thus narrowly presented, we are unable to say that the Court's decree should have gone further than it did. Furthermore, the District Court retained the cause for such further proceedings as might become necessary. If, as the government apprehends, the decree in its present form should not prove adequate to prevent further discriminatory trade restraints against nonmember newspapers, the Court's retention of the cause will enable it [326 U.S. 23] to take the necessary measures to cause the decree to be fully and faithfully carried out.

1945, Associated Press v. United States, 326 U.S. 23

The judgment in all three cases is affirmed.

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Affirmed.

1945, Associated Press v. United States, 326 U.S. 23

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

DOUGLAS, J., concurring

1945, Associated Press v. United States, 326 U.S. 23

MR. JUSTICE DOUGLAS, concurring.

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I join in the opinion of the Court. But, in view of the broader issues which have been injected into the discussion of the case, I add a few words to indicate what I deem to be the narrow compass of the decision.

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Every exclusive arrangement in the business or commercial field may produce a restraint of trade. A manufacturer who has only one retail outlet for his product may be said to restrain trade in the sense that other retailers are prevented from dealing in the commodity. And to a degree, the same kind of restraint may be found wherever a reporter is gathering news exclusively for one newspaper. But Standard Oil Co. v. United States, 221 U.S. 1, construed the Sherman Act to include not every restraint, but only those which were unreasonable. Starting from that premise, I assume that it would not be a violation of the Sherman Act if a newspaper in Seattle and one in New York made an agency agreement whereby each was to furnish exclusively to the other news reports from his locality.

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But such an exclusive arrangement, though innocent standing alone, might be part of a scheme which would violate the Sherman Act in one of two respects.

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(1) It might be a part of the machinery utilized to effect a restraint of trade in violation of § 1 of the Act. Cf. United States v. Bausch & Lomb Co., 321 U.S. 707. I think the exclusive arrangement employed by the Associated Press had such a necessary effect. As developed in the opinion of the Court, the bylaws of the Associated [326 U.S. 24] Press were aimed at the competitors of the Associated Press' members; their necessary effect was to hinder or impede competition with members of the combination. The District Court not only ordered the bylaws to be revised; it enjoined continuance of the exclusive arrangement until the restraint effected by the bylaws had been eliminated. That was plainly within its power. For it is well settled that a feature of an illegal restraint of trade, which is innocent by itself and which may be lawfully used if independently established, may be uprooted along with the other parts of an illegal arrangement. Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 461; United States v. Univis Lens Co., 316 U.S. 241, 254. We certainly cannot say that the District Court abused its discretion in adopting that course here as an interim measure pending a revision of the bylaws.

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(2) Such an exclusive arrangement as we have here might result in the growth of a monopoly in the furnishing of news, in the access to news, or in the gathering or distribution of news. Those are business activities subject to the Sherman Act (Indiana Farmers' Guide Co. v. Prairie Farmer Co., 293 U.S. 268), as well as other Acts of Congress regulating interstate commerce. Associated Press v. Labor Board, 301 U.S. 103. The District Court found that, in its present stage of development, the Associated Press had no monopoly of that character. Those findings are challenged here in the appeal taken by the United States. They are not reached in the present decision for the reason, discussed in the opinion of the Court, that they cannot be tried out on a motion for a summary judgment. The decree which we approve does not direct Associated Press to serve all applicants. It goes no further than to put a ban on Associated Press' practice of discriminating against competitors of its members in the same field or territory. That entails not only a discontinuance of the practice for the future, but an undoing of the wrong which has been [326 U.S. 25] done. If Associated Press, after the effects of that discrimination have been eliminated, freezes its membership at a given level, quite different problems would be presented. Whether that would result in a monopoly in violation of § 1 of the Act is distinct from the issue in this case.

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Only if a monopoly were shown to exist would we be faced with the public utility theory which has been much discussed in connection with this case and adopted by MR. JUSTICE FRANKFURTER. The decrees under the Sherman Act directed at monopolies have customarily been designed to break them up or dissolve them. See United States v. Crescent Amusement Co., 323 U.S. 173. There have been some exceptions. Thus, in United States v. Terminal Railroad Ass'n, 224 U.S. 383, an action was brought under the Sherman Act to dissolve a combination among certain railroads serving St. Louis. The combination had acquired control of all available facilities for connecting railroads on the east bank of the Mississippi with those on the west bank. The Court held that, as an alternative to dissolution, a plan should be submitted which provided for equality of treatment of all railroads. And see United States v. Great Lakes Towing Co., 208 F. 733, 747; id., 217 F. 656, appeal dismissed, 245 U.S. 675; United States v. New England Fish Exchange, 258 F. 732. Whether that procedure would be appropriate in this type of case or should await further legislative action (cf. Mr. Justice Brandeis' dissenting opinion, International News Service v. Associated Press, 248 U.S. 215, 248, 262) is a considerable question the discussion of which should not cloud the present decision. What we do today has no bearing whatsoever on it.

FRANKFURTER, J., concurring

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MR. JUSTICE FRANKFURTER, concurring.

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The District Court properly applied the Sherman Law in enjoining the defendants from continuing to enforce [326 U.S. 26] the existing bylaws restricting membership in the Associated Press, and further enjoining the enforcement of another restrictive bylaw forbidding Associated Press members to communicate "spontaneous" news to nonmembers. I would sustain the judgment substantially for the reasons given below by Judge Learned Hand. 52 F.Supp. 362.

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The Associated Press is, in essence, the common agent of about 1300 newspapers in the various cities throughout the country for the interchange of news which each paper collects in its own territory, and for the gathering, editing, and distributing of news which these member papers cannot collect single-handed, and which requires their pooled resources. The historic development of this agency, its world-wide scope, the pervasive influence it exerts in obtaining and disseminating information, the country's dependence upon it for news of the world—all these are matters of common knowledge, and have been abundantly spread upon the records of this Court. International News Service v. Associated Press, 248 U.S. 215; Associated Press v. Labor Board, 301 U.S. 103. See Desmond, The Press and World Affairs (1937) Chapters I, II, III.

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The bylaws in controversy operate, in substance, as a network of agreements among the members of the Associated Press whereby they mobilize the interest of all against the danger of competition to each by a present or future rival—to the extent that inability to obtain an Associated Press "franchise" is a serious factor in the competition between papers in the same city. While a member newspaper no longer has an absolute veto power in the denial of facilities of the Associated Press service to a rival paper applying for membership, for practical purposes, there remain effective barriers to admission to the Associated Press based solely on grounds of business competition. As Judge Learned Hand has pointed out, the abatement in the bylaw from a former absolute veto to a [326 U.S. 27] conditional veto against an applicant competing with an existing member

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by no means opened membership to all those who would be entitled to it, if the public has an interest in its being free from exclusion for competitive reasons, and if that interest is paramount. Although, as we have said, only a few members will have any direct personal interest in keeping out an applicant, the rest will not feel free to judge him regardless of the effect of his admission on his competitors. Each will know that the time may come when he will himself be faced with the application of a competitor…. A bylaw which leaves it open to members to vote solely as their self-interest may dictate disregards whatever public interest may exist.

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52 F.Supp. 362, 370, 371.

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Indubitably, then, we have here arrangements whereby members of the Associated Press bind one another from selling local news to nonmembers and exercise power, which reciprocal self-interest invokes, to help one another in keeping out competitors from membership in the Associated Press, with all the advantages that it brings to a newspaper. Since the Associated Press is an enterprise engaged in interstate commerce, Associated Press v. Labor Board, supra, these plainly are agreements in restraint of that commerce. But ever since the Sherman Law was saved from stifling literalness by "the rule of reason," Standard Oil Co. v. United States, 221 U.S. 1; United States v. American Tobacco Co., 221 U.S. 106, it is not sufficient to find a restraint. The decisive question is whether it is an unreasonable restraint. This depends, in essence, on the significance of the restraint in relation to a particular industry. Compare Chicago Board of Trade v. United States, 246 U.S. 231, 238.

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To be sure, the Associated Press is a cooperative organization of members who are "engaged in a commercial business for profit." Associated Press v. Labor Board, supra, at 128. But in addition to being a commercial [326 U.S. 28] enterprise, it has a relation to the public interest unlike that of any other enterprise pursued for profit. A free press is indispensable to the workings of our democratic society. The business of the press, and therefore the business of the Associated Press, is the promotion of truth regarding public matters by furnishing the basis for an understanding of them. Truth and understanding are not wares like peanuts or potatoes. And so, the incidence of restraints upon the promotion of truth through denial of access to the basis for understanding calls into play considerations very different from comparable restraints in a cooperative enterprise having merely a commercial aspect. I find myself entirely in agreement with Judge Learned Hand that

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neither exclusively, nor even primarily, are the interests of the newspaper industry conclusive, for that industry serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. To many, this is, and always will be, folly, but we have staked upon it our all.

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52 F.Supp. 362, 372.

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From this point of view, it is wholly irrelevant that the Associated Press itself has rival news agencies. As to ordinary commodities, agreements to curtail the supply and to fix prices are in violation of the area of free enterprise which the Sherman Law was designed to protect. The press in its commercial aspects is also subject to the regulation of the Sherman Law. Indiana Farmers' Guide Co. v. Prairie Farmer Co., 293 U.S. 268. But the freedom of enterprise protected by the Sherman Law necessarily has different aspects in relation to the press than in the case of ordinary commercial pursuits. The interest of [326 U.S. 29] the public is to have the flow of news not trammeled by the combined self-interest of those who enjoy a unique constitutional position precisely because of the public dependence on a free press. A public interest so essential to the vitality of our democratic government may be defeated by private restraints no less than by public censorship.

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Equally irrelevant is the objection that it turns the Associated Press into a "public utility" to deny to a combination of newspapers the right to treat access to their pooled resources as though they were regulating membership in a social club. The relation of such restraints upon access to news and the relation of such access to the function of a free press in our democratic society must not be obscured by the specialized notions that have gathered around the legal concept of "public utility."

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The short of the matter is that the bylaws which the District Court has struck down clearly restrict the commerce which is conducted by the Associated Press, and the restrictions are unreasonable because they offend the basic functions which a constitutionally guaranteed free press serves in our nation.

ROBERTS, J., dissenting

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MR. JUSTICE ROBERTS, dissenting in part.

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I think the judgment should be reversed. In respect of most of the questions involved, I might rest on the discussion by Judge Swan in his dissenting opinion in the District Court. The novelty and importance of the questions, and the summary disposition of them in the court's opinion, have, however, moved me to state my views in detail.

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This case deals with "news." News is information about matters of general interest. The term has been defined as "a report of a recent event." The report may be made to one moved by curiosity or to one who wishes to make some [326 U.S. 30] practical use of it. Newspapers obtain such reports and publish them as a part of a business conducted for profit. The proprietor of a newspaper, when he employs a person to inquire and report, engages personal service. I suppose no one would deny that he is entitled to the exclusive use of the report rendered as a result of the service for which he contracts and pays. I suppose that one rendering such service is free to contract with his employer that the product of his inquiries—the news he furnishes his employer—shall be used solely by the employer and not imparted to another.

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As I have said, news is the result of effort in the investigation of recent events. Every newspaper is interested in procuring news of happenings in its vicinity, and maintains a staff for that purpose. Such news may have some value to newspapers published in cities outside the locality of the occurrence. I assume that if two publishers agreed that each should supply a transcript of all reports he received to the other, and conditioned their agreement that neither would abuse the privilege accorded by giving away or selling what was furnished under the joint arrangement, there could be no objection under the Sherman Act. I had assumed, although the opinion appears to hold otherwise, that such an arrangement would not be obnoxious to the Sherman Act because many, rather than few, joined in it. I think that the situation would be no different if a machinery were created to facilitate the exchange of the news procured by each of the participants such as a partnership, an unincorporated association, or a nonprofit corporation.

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I assume it cannot be questioned that two or more persons desirous of obtaining news may agree to employ a single reporter, or a staff of reporters, to furnish them news, and agree amongst themselves that, as they share the expense involved, they themselves will use the fruit of [326 U.S. 31] the service and will not give it away or sell it. Although the procedure has obvious advantages, and is in itself innocent, I do not know, from the opinion of the court, whether it would be held that the inevitable or necessary operation, or necessary consequence of such an arrangement is to restrain competition in trade or commerce, and that it is, consequently, illegal. 1 Many expressions in the opinion seem to recognize that all AP does is to keep for its members that which, at joint expense, its members and employes have produced—its reports of world events. Thus, it is said that nonmembers are denied access to AP news, not, be it observed, to news. Again it is said that the bylaws "block all newspaper nonmembers from any opportunity to buy news from AP or any of its publisher members"; again, that

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the erection of obstacles to the acquisition of membership…can make it difficult, if not impossible for nonmembers to get any of the news furnished by AP….

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If these expressions stood alone as the factual basis of decision, we should know that the court is condemning a joint enterprise for the production of something—here, news copy—which those who produce it intend to use for their exclusive benefit. But it is impossible to deduce from the opinion that this is the ratio of decision.

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I do not understand that the court's decision is pitched on the fact that AP is a membership corporation. The same result could be attained by resort to a multi-party contract, to a partnership, or to an unincorporated association. The choice of the form of the cooperative [326 U.S. 32] enterprise does not affect the nature of the problem presented. 2

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AP was created to accomplish on a mutual, nonprofit, basis the two objects mentioned. Its purpose is stated by its charter as

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[t]he collection and interchange, with greater economy and efficiency, of information and intelligence for publication in the newspapers of its members.

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The organization started on a comparatively modest basis, to facilitate exchange of news reports amongst its members. It has grown into a cooperatively maintained news reporting agency having, in addition, its own reporters and agencies for the collection, arrangement, editing, and transmission to its members, of news, gathered by its employees, and those of others with whom it contracts.

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The question is whether the Sherman Act precludes such a cooperative arrangement and renders those who participate liable to furnish news copy, on equal terms, to all newspapers which desire it, as the court below has held. If so, it must be because the joint arrangement constitutes a contract, combination or conspiracy in restraint of trade, or a monopolization, or an attempt or combination or conspiracy to monopolize part or all of some branch of interstate or international trade or commerce or is a public utility subject to regulation. If AP's activities fall within the denunciation of the statute it must be because the members (1) have combined with the purpose to restrain trade by destroying competition or (2), even though their intent was innocent, have set up a combination which either (a) tends unreasonably to restrain, or (b) has in fact resulted, in undue and unreasonable restraint of free competition in trade or commerce; or (3) intended and attempted to monopolize a part or all of a branch of trade; [326 U.S. 33] or (4) have created an organization of such proportions that in fact it has such a monopoly; or (5) have created an agency which the Sherman Act renders a public utility subject to regulation notwithstanding the guarantees of the First Amendment of the Constitution.

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I am unable to determine on which of such possible grounds the judgment of illegality is rested. The court's opinion blends and mingles statements of fact, inferences and conclusions, and quotations from prior opinions wrested from their setting and context, in such fashion that I find it impossible to deduce more than that orderly analysis and discussion of facts relevant to any one of the possible methods of violation of the Sherman Act is avoided, in the view that separate consideration would disclose a lack of support for any finding of specific wrongdoing. But the general principle that nothing added to nothing will not add up to something holds true in this case. It is a tedious task to separate the generalities thus mingled in the opinion, but I can only essay it by discussing one aspect of the case at a time.

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In limine, it should be remembered that newspaper proprietors who are members of AP are not, as publishers, in the trade of buying or selling news. Their business is the publishing of newspapers. In this business, they print, inter alia, news, editorial comment, special articles, photographs, and advertisements. It has been held that a joint effort to obtain advertising to be published in all the papers parties to the arrangement, at special rates, is not a violation of the Sherman Act. 3 It has been repeatedly held by this court that the collection of information on behalf of the membership of an unincorporated association, and the furnishing of that information for pay to such persons as the association decides shall share it, is not a violation of [326 U.S. 34] the Sherman Act. 4 I think this is not because the exclusive right to use information or news copy obtained differs somewhat from property rights in tiles or lumber or pipe or women's fashions or motion picture film. I think it is because information gathered as the result of effort, or of compensation paid the gatherer, is protected as is property until published, and that unauthorized publication by another is a wrong redressable in the same way as unauthorized interference with one's rights in tangible property. In the very case of AP, this court has so held, 5 as has the Attorney General of the United States. 6 As the Attorney General has pointed out, this proposition is subject to the qualification that there must be no purpose to destroy competition or to monopolize, but with these matters I shall deal hereafter.

1945, Associated Press v. United States, 326 U.S. 34

First. Are the members of AP acting together with the purpose of destroying competition? I have not discovered any allegation in the complaint to that effect. The court below has not made any such finding. They deny any such purpose or intent and yet, as I read passages in the court's opinion, it is now found, on this summary judgment record, without a trial, that they are, and have been, actuated by such an intent. The opinion states

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An [326 U.S. 35] agreement or combination to follow a course of conduct which will necessarily restrain or monopolize a part of trade or commerce, may violate the Sherman Act whether it be "wholly nascent or abortive, on the one hand, or successful, on the other.

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I take this statement as suggesting the pleadings and proof disclose without contradiction, that AP and its members agreed or combined to restrain trade. There is no such allegation in the complaint, and there is not, and cannot be, any finding on this record to support the conclusion. The cases cited in the opinion of agreements to boycott or to drive competitors out of business, or to compel merchants to deal only with members of a group, are, as will appear, inapposite to the case at bar. The defendants say that they merely keep for their own members' use that which their own members' activity and expenditure has produced. We must not confuse the intent of the members with the size of their organization. These two matters seem to be inextricably blended in the court's treatment of the case, but they differ in their nature and as a basis for decision.

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But, it may be urged, intent is to be gathered from conduct, and those whose actions have in fact unduly restrained trade will not be heard to deny the purpose to accomplish the result of their conduct. This is sound doctrine, and it leads to an inquiry as to the actual imposition of prohibited restraints.

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Second. Has the plan and have the operations of AP the inevitable consequence of restraining competition between news agencies or newspapers, or have they, and do they now, necessarily tend to, or, in fact, unreasonably restrain such competition? On this question, the court below made no findings save one of dubious import.

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It is worthwhile to quote the finding to which the opinion of this court refers.

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The growth of news agencies has been fostered to some extent as a result of the restrictions of The Associated [326 U.S. 36] Press' services to its own members, but other restrictions imposed by The Associated Press have hampered and impeded the growth of competing news agencies and of newspapers competitive with members of The Associated Press.

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(Italics supplied.)

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The finding is vague, for it fails to specify what is meant by "other restrictions." The phrase cannot mean the membership restrictions of the bylaws, for those are mentioned in the preceding clause. Nor does this court's opinion furnish any additional light.

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Not only is the finding attacked, as the court's opinion admits, but, in addition, the record negatives the sweeping assumptions the court indulges respecting the effect of AP's activities.

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The opinion states that the members

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have, by concerted arrangements, pooled their power to acquire, to purchase, and to dispose of news reports through the channels of commerce,

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and, in addition, have

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pooled their economic and news control power and, in exerting that power, have entered into agreements which the District Court found to be "plainly designed in the interest of preventing competition."

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This sentence is characteristic of the opinion. In the first place, as will later appear, the record presents no question of "purchasing power." One cannot purchase the events of history; he can employ someone to report them to him. Does the sentence mean that AP has "purchased" all or most of the available reporters in the nation or the world? Secondly, the sentence seems to attribute to AP some sort of monopolization of the newspaper publishing business. And, finally, it seems to attribute to the court below a finding that AP has unduly or unreasonably restrained trade. As will appear, the court below made no such finding, and, because it could not do so, sought another ground on which to base its decision. Moreover, the facts assumed are specifically denied by the answer, and contradicted by the proofs. [326 U.S. 37]

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The uncontradicted proofs to which I shall later refer show that nonmember publishers not only have obtained, and now obtain, complete and satisfactory news coverage from other agencies, but have prospered and grown without AP news service.

1945, Associated Press v. United States, 326 U.S. 37

It is said in the opinion that the bylaws, as obstacles to membership, tend to make it difficult to obtain news furnished by AP or its members, and that it is apparent that the exclusive right which AP members have gives many newspapers a competitive advantage over their rivals. But the events of life are open to all who inquire. There is no dearth of those willing to inquire and report those events for proper compensation. Thus the court must here be holding that, if a concern gathers from the air, from the sunlight, or from the waters of the sea, by its effort and ingenuity, something that others have not garnered, it must make the results of its activity open to all, for if it sells to some and not to others, the former will have a competitive advantage. The exclusive use of that which is thus obtained always, in a sense, gives a competitive advantage over those less active and enterprising. The opinion seems to mean that no contract, however narrow its effect, however innocent its purpose, which in the least degree restricts competition 7 can survive attack under the Sherman Act; that no such concept as a reasonable restraint, a restraint limited to the legitimate protection of one's property or business, and limited in space or in time, or affecting a few only of all those engaged in a given trade, is free of illegality. Is not this to reestablish the harsh and sweeping effect attributed to the statute in United States v. Trans-Missouri Freight Association, 166 U.S. 290, and United States v. Joint Traffic Association, 171 U.S. 505, which was abandoned more than thirty years ago for the view, ever since maintained, that the statute [326 U.S. 38] merely adopted the common law concept of undue and unreasonable restraints of trade? 8 If the court is now to revert to the harsh and mechanical application of the act that every agreement which in any measure restrains trade (notwithstanding the truism that "every agreement concerning trade…restrains" 9) is illegal, the ruling should be made explicit and not left in the realm of speculation.

1945, Associated Press v. United States, 326 U.S. 38

The opinion says that the District Court found that the bylaws "contained provisions designed to stifle competition in the newspaper publishing field." The District Court made no finding, and reached no conclusion that AP imposed any restraint which was undue or unreasonable, and the matter quoted in footnotes 6 and 8 of the court's opinion does not support any such gloss as this court places on what the District Court said in its opinions or its formal findings and conclusions, as a mere reading will demonstrate.

1945, Associated Press v. United States, 326 U.S. 38

If collateral restraints in agreements for the sale of a business, and others of like sort, permitted and enforced at common law, and heretofore under the Sherman Act 10 as well, are now to fall under condemnation, we should know the fact.

1945, Associated Press v. United States, 326 U.S. 38

The opinion assumes that the competitors of AP suffer from an inability to buy news. It is replete with intimations [326 U.S. 39] that the cooperative activities of AP have, in fact, seriously impeded the founding and growth of other news gathering agencies than AP and its member news gathering agencies and other newspapers than AP's member newspapers. They are too many for enumeration, but may be illustrated by the court's statement that "historically, as well as presently, applicants who would offer competition to old members have a hard road to travel," and that "a newspaper without AP service is more than likely to be at a competitive disadvantage."

1945, Associated Press v. United States, 326 U.S. 39

These conclusions are without support in the record or in the findings of the court below, and are unsupported by any finding by this court based upon the facts of record. This can be demonstrated.

1945, Associated Press v. United States, 326 U.S. 39

The findings of the District Court, which this court has not modified, criticized, or overruled, establish beyond cavil that, despite the fact that AP was early in the field and has grown to great size, many other reporting agencies have been established, and grown in the United States, two of which, UP and INS, are now comparable to AP "in size, scope of coverage and efficiency." Additional agencies which furnish substantial news reporting services in the nation total between twenty and thirty. Statistics concerning them are not included in the record, but it is evident that some, singly, furnish substantial service, and all, taken together, afford a broad coverage in competition with AP, UP and INS, widely used in the newspaper world. Their past growth, and their opportunity for expansion, contradict the assumption that AP has unreasonably, or in substantial measure, restrained free competition. Rather, its success has stimulated others to enter the field and to compete with it.

1945, Associated Press v. United States, 326 U.S. 39

The District Court found: "AP does not prevent or hinder nonmember newspapers from obtaining access to domestic and foreign happenings and events." Newspaper publishers differ as to the comparative value of AP [326 U.S. 40] and other services; many choose one in preference to the other; some have relinquished one service and acquired the other. Vast newspaper enterprises have grown up which depend on services other than those furnished by AP. These include metropolitan newspapers with circulations running from two hundred thousand to over a million. Some which have not used AP reports have outstripped competitors who were members of AP.

1945, Associated Press v. United States, 326 U.S. 40

The uncontradicted evidence and the findings of the District Court disclose, amongst others, the following significant facts: in 1942, the total expenditures of AP and its subsidiaries were $12,986,000, those of UP and its affiliates $8,628,000 and those of INS and its affiliates $9,434,000. Thus, two competitors, found by the court below to be in every way comparable with AP, together expended over $5,000,000 more in that year than AP. In the same year, AP had 1,247 domestic and 5 foreign members, UP had 981 domestic and 391 foreign subscribers to its services, and INS, in 1941, 338 domestic newspaper subscribers and 3 such foreign subscribers. Here again, the total subscribers of its two most substantial competitors outnumbered AP's membership in both the domestic and the foreign field. In the matter of supplying features, news pictures, and news to radio stations, UP and INS would each appear to have at least as many users as AP, although the proofs and the findings do not afford an accurate measure of comparison.

1945, Associated Press v. United States, 326 U.S. 40

Many of the other agencies, as well as UP and INS, make contracts with their subscribers for the exclusive use of their material in the subscriber's area and field. Both UP and INS make what are known as "asset value" contracts with their subscribers under the terms of which any newspaper in the same area and field must pay to the existing subscriber the asset value of that subscriber's contract in order to obtain the service. Thus, all these agencies recognize that the exclusive right to publish the [326 U.S. 41] news furnished their members or subscribers is valuable. Neither as respects AP, nor any of the other agencies, is there a finding or evidence that such provisions work any hindrance or restraint of competition as between agencies or newspapers.

1945, Associated Press v. United States, 326 U.S. 41

As respects competition between newspapers which are members of AP and others, it is found that newspapers of large circulation in large municipalities, as well as those of medium and small circulation, have thriven and grown without AP service. The court below said:

1945, Associated Press v. United States, 326 U.S. 41

Upon this motion, we must take it as in dispute whether the general opinion in the calling is that the service of UP is better than that of AP, or vice versa.

1945, Associated Press v. United States, 326 U.S. 41

Newspapers have given up AP service for that of its competitors. Many, in varying localities and fields, not only belong to AP but patronize one or more of the other services, including UP and INS. Some of the largest and most powerful newspapers in the nation have grown to be such without AP service; not an instance is cited where a proposed newspaper was unable to start, or has been compelled to suspend, publication for lack of it. The record contradicts the assertion in the court's opinion that the proof demonstrates "the net effect is seriously to limit the opportunity of any new paper to enter these cities." No finding in these terms was made by the District Court. A great bulk of the material tendered by the defendants runs counter to the conclusion and certainly, in a summary judgment proceeding, to draw such a conclusion from the averments pro and con of the pleadings and affidavits, is to ignore what this court has said is permissible in such a proceeding.

1945, Associated Press v. United States, 326 U.S. 41

The court below has found that,

1945, Associated Press v. United States, 326 U.S. 41

at the present time, access to the news reports of one or more of AP, UP, or INS is essential to the successful conduct of any substantial newspaper serving the general reading public.

1945, Associated Press v. United States, 326 U.S. 41

(Italics supplied.) It is true also that the District Court found, referring to these three agencies, that, "of the three news [326 U.S. 42] agencies…AP ranks in the forefront in public reputation and esteem," whatever this may mean. If it means that it is thought the best of the three, this would not seem to advance the argument. If it means that AP is the largest of the three in expenditures, this also is true, but irrelevant. Whatever the significance of the finding, it certainly is not a finding that AP has restricted or limited competition either between news agencies or newspapers.

1945, Associated Press v. United States, 326 U.S. 42

In another aspect of the issue of restraint, the opinion ignores important facts. While it correctly states that, in the daily morning field, AP embraces 81% in number and 96% in circulation, it fails to state that UP serves such newspapers representing 40% in number and 64% in circulation. Again, in respect of the daily evening field, whereas AP members represent 59% in number and 77% in circulation, UP accounts for 45% in number and 65% in circulation. It will be seen that there is duplication because many newspapers take more than one of the existing services. Thus, as of 1941, of the 373 domestic morning English language dailies—with a total circulation of 15,849,132—152, with a total circulation of 10,701,498, were subscribers of UP and 55, with a total circulation of 4,149,929, were subscribers of INS; and, of the 1,480 domestic daily evening English language newspapers—with a total circulation of 19,616,674—664, with a total circulation of 16,781,020, were subscribers of UP and 206, with a total circulation of 8,608,180, were subscribers of INS.

1945, Associated Press v. United States, 326 U.S. 42

The record indicates that, in the large, the events reported by the leading agencies are the same; the differences between the reports being in the way they are written. Inability to peruse an AP report, therefore, does not mean that the reader fails to obtain knowledge of what is happening, but of a particular reporter's account of the event.

1945, Associated Press v. United States, 326 U.S. 42

Finally, the record contains affidavits which must, on the motion for summary judgment, be taken as true, of [326 U.S. 43] twenty-three persons who are in the newspaper business. These are too lengthy to quote. In general, the testimony was to this effect: ten said the UP service was adequate and complete; thirteen said that AP service was not necessary to the success of a newspaper; one said that a newspaper was at no competitive disadvantage through lack of AP service; and five testified their papers, to which AP membership was open, elected to use competing services. As of September, 1941, more than 600 domestic newspapers which were subscribers of UP were not members of AP. The fact is that AP does not attempt to restrain its members from taking services from other agencies. It is little wonder that the District Court refrained from finding that AP had unduly or unreasonably restrained competition between news agencies or newspapers.

1945, Associated Press v. United States, 326 U.S. 43

I conclude, therefore, that there is no justification for a holding that the operations of AP must inevitably result, or that its activities have in fact resulted, in any undue and unreasonable restraint of free competition in any branch of trade or commerce.

1945, Associated Press v. United States, 326 U.S. 43

Third. Have AP and its members intended, or attempted, to monopolize a branch of trade? As I have already pointed out, the events happening in the world are as open to all men as the air or the sunlight. The only agency required to report them is a human being who will inquire. Surely the supply of reporters is not less difficult to monopolize than the events to be reported.

1945, Associated Press v. United States, 326 U.S. 43

The court below reached conclusions as to monopoly which were required by the record:

1945, Associated Press v. United States, 326 U.S. 43

AP does not monopolize or dominate the furnishing of news reports, news pictures, or features to newspapers in the United States.

1945, Associated Press v. United States, 326 U.S. 43

AP does not monopolize or dominate access to the original source of news.

1945, Associated Press v. United States, 326 U.S. 43

AP does not monopolize or dominate transmission facilities for the gathering or distribution of news reports, news pictures, or features. [326 U.S. 44]

1945, Associated Press v. United States, 326 U.S. 44

If the opinion of this court means to suggest that, while the news can be gathered by anyone, because no one has, or can have, a monopoly of the events of history, AP monopolizes the services of those who report news which its energies and efforts have employed and trained (which is not shown), then, I submit, we have a new concept of monopolization, namely, that where some person, out of materials open to all, creates his own product by hiring persons to produce it, that person may not determine to whom he will sell and from whom he will withhold the product. Such a concept can only be justified on the public utility theory upon which the court below proceeded, of which I shall say something later.

1945, Associated Press v. United States, 326 U.S. 44

In spite of the quoted conclusions of the District Court (and no facts are cited in this court's opinion which negative their accuracy), I must take it that the court intends to hold that the pleadings and proofs disclose, without question, an intent or attempt to monopolize.

1945, Associated Press v. United States, 326 U.S. 44

I have quoted the finding made below that AP does not prevent or hinder nonmember newspapers from obtaining access to domestic or foreign news. The facts and figures I have cited above indicate no intent or attempt to absorb the entire field of news gathering and reporting, to exclude all others from the field, or to take over the entire field, to the end that no newspaper or combination of newspapers can obtain reports of the news. Paragraph 3 of the complaint charges an attempt to monopolize a part of trade and commerce and a combination and conspiracy to monopolize the same. The answer specifically denies the allegation. The amazing growth of competing agencies, and their size, would seem to indicate that any such supposed intent or attempt had been ill served by the operations of AP. At all events, there is no room in a summary judgment proceeding, based on the facts of record, for any such finding.

1945, Associated Press v. United States, 326 U.S. 44

Fourth. Have the defendants created an organization of such proportions as in fact to monopolize any part of trade [326 U.S. 45] or commerce? In answering the inquiry, I need do little more than refer to the facts already summarized. The opinion seeks support for a holding of monopolization by referring to a finding of the District Court in these words:

1945, Associated Press v. United States, 326 U.S. 45

AP is a vast, intricately, reticulated organization, the largest of its kind, gathering news from all over the world, the chief single source of news for the American press, universally agreed to be of great consequence.

1945, Associated Press v. United States, 326 U.S. 45

It may be conceded that the descriptive adjectives are not ill chosen, but the record would support a like finding with reference to UP and INS, save for the phrases "largest of its kind," and "chief." And, upon a full trial, it may well be that evidence produced would induce significant findings with respect to size and organization of other existing news agencies. Until now, it has been unquestioned that size alone does not bring a business organization within the condemnation of the Sherman Act. 11 And any consideration as to size would equally hold true whether the defendant is a single corporation dealing with many persons in trade or commerce or an instrumentality set up by a number of business enterprises to serve them all on a cooperative basis. The argument of the Government seems to assume that UP and INS, independent corporations, in spite of their size, are not monopolies or attempts to monopolize because they deal at arm's length with their patrons, whereas there is something sinister about AP because it deals on the same terms with its own members. I cannot perceive how, if AP falls within the denunciation of the statute, UP and INS do not equally, and by the same test. No significant feature of the practices of the one is absent in those of the others.

1945, Associated Press v. United States, 326 U.S. 45

Fifth. The court's opinion, under the guise of enforcing the Sherman Act, in fact renders AP a public utility subject [326 U.S. 46] to the duty to serve all on equal terms. This must be so, despite the disavowal of any such ground of decision. The District Court made this public utility theory the sole basis of decision, because it was unable to find support for a conclusion that AP either intended or attempted to, or in fact did, unreasonably restrain trade or monopolize or attempt to monopolize all or any part of any branch of trade within the decisions of this court interpreting and applying the Sherman Act. Realizing the lack of support for any other, the Government urges that the District Court's ground of decision is sound, and that this court should adopt it. Judge Swan, in his dissent below, has sufficiently disposed of this point, 12 and I refer to his opinion, in which I concur, without quoting or paraphrasing it.

1945, Associated Press v. United States, 326 U.S. 46

Suffice it to say that it is a novel application of the Sherman Act to treat it as legislation converting an organization, which neither restrains trade nor monopolizes it, nor holds itself out to serve the public generally, into a public utility because it furnishes a new sort of illumination—literary, as contrasted with physical—by pronouncing a fiat that the interest of consumers—the reading public—not that of competing news agencies or newspaper publishers—requires equal service to all newspapers on the part of AP, and that a court of equity, in the guise of an injunction, shall write the requisite regulatory statute. This is government by injunction with a vengeance.

1945, Associated Press v. United States, 326 U.S. 46

Moreover, it is to make a new statute by court decision. The Sherman Act does not deal with public utilities as such. They may violate the Act, as may persons engaged in private business. But that Act never was intended, and has never before been thought, to require a private corporation, not holding itself out to serve the public, whose operations neither were intended to nor tended unreasonably to restrain or monopolize trade, to fulfill the duty [326 U.S. 47] incident to a public calling, of serving all applicants on equal terms.

1945, Associated Press v. United States, 326 U.S. 47

For myself, I prefer to entrust regulatory legislation of commerce to the elected representatives of the people, instead of freezing it in the decrees of courts less responsive to the public will. I still believe that "the courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it." 13

1945, Associated Press v. United States, 326 U.S. 47

But more, the courts are unfit instruments to make and implement such policy. A wise judge has said in a case brought by AP to redress the alleged wrong of INS in "pirating" AP's news: 14

1945, Associated Press v. United States, 326 U.S. 47

Courts are ill equipped to make the investigations which should precede a determination of the limitations which should be set upon any property right in news or of the circumstances under which news gathered by a private agency should be deemed affected with a public interest. Courts would be powerless to prescribe the detailed regulations essential to full enjoyment of the rights conferred or to introduce the machinery required for enforcement of such regulations. Considerations such as these should lead us to decline to establish a new rule of law in the effort to redress a newly disclosed wrong, although the propriety of some remedy appears to be clear.

1945, Associated Press v. United States, 326 U.S. 47

The considerations which led to the conclusion are persuasively stated in the preceding pages of the cited opinion.

1945, Associated Press v. United States, 326 U.S. 47

The opinion asserts that, whatever the court below has said, this court does not adopt its reasons for the decree entered, but sustains its act on upon the basis of restraint and monopoly violative of a prohibitory law. I think, however, this is too superficial a conclusion. The fact remains, as the court below concedes, that the role essayed "is ordinarily `legislative.'" 15 [326 U.S. 48]

1945, Associated Press v. United States, 326 U.S. 48

From now on, AP is to operate under the tutelage of the court. It is ordered to submit for approval a revision of its bylaws, and, unless the court approves the changes, it is to be restrained from contracting with its members that they shall not disclose the news it furnishes, and from continuing its existing contract relations with a Canadian news agency, both of which are held, in and of themselves and apart from the alleged illegalities of the bylaws, innocent and legal. However the bylaws may be amended, and whatever judicial blessing may be given the new text, it is certain that every refusal to deal with any newspaper will evoke a fresh exercise of the judicial guardianship. Lawful practices may be threatened with injunction, as they are in the present decree, as a lever to compel obedience in some respect thought important by the court.

1945, Associated Press v. United States, 326 U.S. 48

The decree may well result not in freer competition, but in a monopoly in AP or UP, or in some resulting agency, and thus force full and complete regimentation of all news service to the people of the nation. The decree here approved may well be, and I think threatens to be, but a first step in the shackling of the press, which will subvert the constitutional freedom to print or to withhold, to print as and how one's reason or one's interest dictates. When that time comes, the state will be supreme, and freedom of the state will have superseded freedom of the individual to print, being responsible before the law for abuse of the high privilege.

1945, Associated Press v. United States, 326 U.S. 48

It is not protecting a freedom, but confining it, to prescribe where and how and under what conditions one must impart the literary product of his thought and research. This is fettering the press, not striking off its chains.

1945, Associated Press v. United States, 326 U.S. 48

The existing situation with respect to radio points the moral of what I have said. In that field, Congress has imposed regulation because, in contrast to the press, the physical channels of communication are limited, and chaos would result from unrestrained and unregulated use of [326 U.S. 49] such channels. But, in imposing regulation, Congress has refrained from any restraint on ownership of news or information or the right to use it. And any regulation of this major source of information, in the light of the constitutional guarantee of free speech, should be closely and jealously examined by the courts.

1945, Associated Press v. United States, 326 U.S. 49

The court goes far afield in citing Associated Press v. Labor Board, 301 U.S. 103, and Indiana Farmer's Guide Co. v. Prairie Farmer Co., 293 U.S. 268, as justifying the decree. Apart from the fact that the policy and the implementing regulation involved in the Associated Press case was that declared by Congress, not court-made, it is plain from the opinion that the freedom to publish or to refrain from publishing, the control of its news by AP and the entire conduct of its business, save only its duty to deal with employees as a class, was untouched. 16 In the Farmer's Guide case, all that was decided was that the newspapers there in question were engaging in interstate commerce, and that newspapers, like other business enterprises, can violate the Sherman Act by unreasonably restraining or monopolizing commerce in more than one state. I should be the last to deny the correctness of these propositions. But, as I have already said, when that case came to be retried, it was found that the concert of action in joint solicitation of advertising and granting a reduced rate for it if placed in all the journals in the combination violated none of the provisions of the Act. 17

1945, Associated Press v. United States, 326 U.S. 49

THE CHIEF JUSTICE joins in this opinion.

MURPHY, J., dissenting

1945, Associated Press v. United States, 326 U.S. 49

MR. JUSTICE MURPHY, dissenting.

1945, Associated Press v. United States, 326 U.S. 49

I

1945, Associated Press v. United States, 326 U.S. 49

If it were made clear by the undisputed facts that, by adopting their bylaws, the members of the Associated [326 U.S. 50] Press were engaged in a program to hamper or destroy competition, I could accept the decision reached by the Court. But the evidence introduced, in my opinion, falls far short of proving such a program, and hence the decision has grave implications relative to governmental restraint on a free press.

1945, Associated Press v. United States, 326 U.S. 50

As I view the situation, the members of the Associated Press were entirely within their legal rights in forming a cooperative organization with facilities for the collection and exchange of news and in limiting the membership therein. Members of an incorporated society, as a general rule, may extend the privilege of membership or withhold it on such terms as they see fit. And if exclusive access to these facilities and reports gave the members of the Associated Press a competitive advantage over business rivals who were not members, that alone would not make the advantage unlawful. In restricting the admission of business rivals, they were merely trying to preserve for themselves an advantage that had accrued to them from the exercise of business sagacity and foresight. Such an advantage, as I see it, is not a violation of the Sherman Act. Nor does this advantage require the Associated Press to share its products with competitors. Such a doctrine would discourage competitive enterprise, and would carry the antitrust laws to absurd lengths. In the words of the court below, "a combination may be within its rights although it operates to the prejudice of outsiders whom it excludes." 52 F.Supp. 362, 369.

1945, Associated Press v. United States, 326 U.S. 50

Thus, for the first time, the Court today uses the Sherman Act to outlaw a reasonable competitive advantage gained without the benefit of any of the evils that Congress had in mind when it enacted this statute. On the main issue before us, the record shows a complete absence of any monopoly, domination, price-fixing, coercion or other predatory practices by which competition is eliminated to the injury of the public interest. Apex Hosiery Co. v. Leader, [326 U.S. 51] 310 U.S. 469, 491-501. And the District Court was unable to find otherwise. Nothing appears save a large, successful organization which has attempted to protect the fruits of its own enterprise from use by competitors. To conclude on such evidence that the Associated Press has violated the Sherman Act is to ignore the repeated holdings of this Court that the purpose of the statute is to maintain free competition in interstate commerce and to eliminate only those restraints that unreasonably inhibit such competition.

1945, Associated Press v. United States, 326 U.S. 51

II

1945, Associated Press v. United States, 326 U.S. 51

Today is also the first time that the Sherman Act has been used as a vehicle for affirmative intervention by the Government in the realm of dissemination of information. As the Government states, this is an attempt to remove "barriers erected by private combination against access to reports of world news." That newspapers and news agencies are engaged in business for profit is beyond dispute. And it is undeniable that the Associated Press and other press associations can claim no immunity from the application of the general laws or of the Sherman Act in particular. Associated Press v. Labor Board, 301 U.S. 103, 132-133. But, at the same time, it is clear that they are engaged in collecting and distributing news and information, rather than in manufacturing automobiles, aluminum or gasoline. We cannot avoid that fact. Nor can we escape the fact that governmental action directly aimed at the methods or conditions of such collection or distribution is an interference with the press, however differing in degree it may be from governmental restraints on written or spoken utterances themselves.

1945, Associated Press v. United States, 326 U.S. 51

The tragic history of recent years demonstrates far too well how despotic governments may interfere with the press and other means of communication in their efforts to corrupt public opinion and to destroy individual freedom. [326 U.S. 52] Experience teaches us to hesitate before creating a precedent in which might lurk even the slightest justification for such interference by the Government in these matters. Proof of the justification and need for the use of the Sherman Act to liberate and remove unreasonable impediments from the channels of news distribution should therefore be clear and unmistakable. Only then can the precedent avoid being a dangerous one authorizing the use of the Sherman Act for unjustified governmental interference with the distribution of information.

1945, Associated Press v. United States, 326 U.S. 52

This does not mean that the Associated Press is entitled to any preferential treatment under the Sherman Act, or that the Government must meet any higher degree of proof of a statutory violation when dealing with the press than when dealing with any other field of commercial endeavor. Clear and unmistakable proof of a Sherman Act violation, especially where a summary judgment procedure is followed, is necessary in any case. And failure to insist upon compliance with that standard of proof is unwise under any circumstances. But such a failure has unusually dangerous implications when it appears with reference to an alleged violation of the Act by those who collect and distribute information. We should therefore be particularly vigilant in reviewing a case of this nature, a vigilance that apparently is not shared by the Court today.

1945, Associated Press v. United States, 326 U.S. 52

As applied to the Sherman Act, this means that an allegation by the Government that a monopoly or restraint of trade exists in the business of collecting and distributing information should be proved by clear evidence after a full canvas of all the pertinent facts. Nothing should be left to speculation, doubt or surmise. Nor can conjectures as to probabilities or inevitable consequences replace proof of the actual or potential existence of monopolies or restraints. In other words, before the Government is entitled to enjoin a combination or conspiracy alleged to be [326 U.S. 53] in restraint of news dissemination, it must be shown by competent evidence that such combination or conspiracy has, in fact, resulted in restraints or will inevitably produce actual restraints in the future. Full opportunity should be accorded the parties to cross-examine and rebut all the evidence adduced on both sides of the litigation. Such would be the requirements in any suit under the Sherman Act against those who sell food, steel or furniture, and no cogent reason is apparent for applying less stringent requirements when dealing with the business of the press. Indeed, the very nature of the newspaper business is a compelling reason for a strict adherence to these requirements. Any possible use of the Sherman Act as a ready vehicle for unjustified governmental interference in the dissemination of news is thus avoided by insistence upon these elemental standards of proof and fairness of procedure. The actual and potential dangers in any such interference greatly outweigh any public interest in destroying an abandoned, ineffective or abortive scheme that appears at first glance to restrain competition among newspapers.

1945, Associated Press v. United States, 326 U.S. 53

Accordingly I am unable to agree that this case should be disposed of in favor of the Government on a motion for summary judgment. The issues are too grave, and the possible consequences are too uncertain, not to require the Government to prove its case by more probative and convincing evidence than it has submitted so far. The admitted facts are either inconclusive or definitely lean in favor of the contentions of the Associated Press. These admitted facts, in my estimation, do not constitute such clear evidence of an alleged restraint of trade as to justify the proposed interference by the Government in the Associated Press membership rules which underlie the distribution of Associated Press dispatches. They do not justify the conclusion that the Associated Press bylaws, on their face and without regard to their past effect, will "necessarily" result in unlawful restraints. It may well be that [326 U.S. 54] these bylaws will restrain trade, and ought to be enjoined, but I am unwilling to reach that conclusion without requiring the parties and the court below to examine the facts more thoroughly, having in mind the dangerous implications inherent in this situation and the clarity of proof that the Government should present.

1945, Associated Press v. United States, 326 U.S. 54

III

1945, Associated Press v. United States, 326 U.S. 54

The nub of the complaint against the Associated Press is that its bylaws (1) allow discrimination in the condition of admission based upon the factor of an applicant's competition with a present member, and (2) enforce such discriminatory exclusion through a non-trading agreement among members, an agreement which the court below found to be reasonable when considered separately. In other words, these bylaw provisions are said to constitute a combination for the purpose of excluding competitors from that part of the market within the scope of the agreement, and hence be an unreasonable restraint of trade within the well settled meaning of the Sherman Act.

1945, Associated Press v. United States, 326 U.S. 54

It may be conceded that these bylaw provisions, on their face, are restrictive in nature, and that their natural effect is to exclude outside newspapers from the benefits of Associated Press membership. But that concession does not prove that these provisions are necessarily so unreasonable in nature as to be a restraint of the type clearly condemned by the Act. They may be regarded on this record as nothing more than the exercise of a trader's right arbitrarily to choose his own associates and to protect the fruits of his own enterprise from use by competitors. United States v. Colgate & Co., 250 U.S. 300, 307; International News Service v. Associated Press, 248 U.S. 215, 235. Any frustration of competition that might result from such an exercise is a normal incident of trade in a competitive economy, a lawful objective of business enterprise. Certainly the Sherman Act was not designed to discourage men from [326 U.S. 55] combining their talents and resources in order to outdo their rivals by producing better goods and services. It was meant to foster, rather than to thwart or punish, successful competition. Competitive practices emerge as unreasonable restraints of trade only if they are infused with an additional element of unfairness, such as monopoly, domination, coercion, price-fixing, or an unreasonable stifling of competition. If there is such a factor in this instance, however, it lies deep in the unfathomed sea of conflicting or unproved facts.

1945, Associated Press v. United States, 326 U.S. 55

If it were true that the Associated Press monopolizes or dominates the newspaper field, these bylaw provisions might be found to be unreasonable restraints of trade. Then the unfairness of excluding outside newspapers because of their competition would be manifest. See United States v. Terminal Railroad Ass'n, 224 U.S. 383. But the Government makes no such claim. In fact, the District Court specifically found no evidence of monopoly or domination by the Associated Press in the collection or distribution of news, the means of transmitting the news, or the access to the original sources of the news. A brisk rivalry with the United Press and the International News Service is recognized in these matters. Associated Press thus has no power, through the use of its bylaws or because of its size, to exclude nonmembers from receiving or obtaining news reports. In this respect, there is no basis for concluding that the bylaws will "necessarily" restrain trade.

1945, Associated Press v. United States, 326 U.S. 55

A point is made of the fact, however, that the Associated Press is the largest of the news agencies, ranking "in the forefront in public reputation and esteem" and constituting "the chief single source of news for the American press, universally agreed to be of great importance." A unique value is said to attach to Associated Press news reports, growing out of the fact that they are furnished by an agency composed of and controlled by newspapers representing nearly every shade of opinion and geographical [326 U.S. 56] section of the nation. These characteristics are claimed to furnish an invaluable guaranty that the news will be presented by Associated Press with a minimum of political and sectional bias. The great size and extent of the Associated Press facilities are also purported to lend a uniqueness to its reports.

1945, Associated Press v. United States, 326 U.S. 56

But there is no evidence in the present state of the record that these factors, if they exist, make the Associated Press reports so superior to those of its rival agencies as to clothe Associated Press reports in the robes of indispensability, or that competition by nonmembers is hindered or restrained unnecessarily. Perhaps the Government has evidence to that effect which should be introduced. In the absence of such evidence, however, neither the policy nor the language of the Sherman Act penalizes those who, by their enterprise and sagacity, have formed a news service of the first rank and of unique value in the eyes of a considerable portion of the public. A cooperative organization, untinged with any monopolistic or other objectionable hue, is free to exceed its competitors in size and excellence without losing its right to choose its members and to protect its own unique products from the use of others.

1945, Associated Press v. United States, 326 U.S. 56

If it were shown that the Associated Press, through its bylaws, has stifled or is inevitably bound to stifle competition by nonmember newspapers in an unreasonable manner, so as to injure the public interest, a violation of the Sherman Act would be beyond dispute. This appears to be the primary basis for the result reached by the Court today, for it states that inability to buy news from the Associated Press "can have" most serious effects on competing newspapers, and that they are "more than likely" to be at a competitive disadvantage. But even if competitive disadvantage, under some circumstances, is sufficient to prove an unreasonable stifling of competition, the Government has, as yet, produced no evidence to support the existence or the likelihood of such a disadvantage. [326 U.S. 57]

1945, Associated Press v. United States, 326 U.S. 57

On the contrary, the evidence submitted by the Associated Press and accepted as true by the District Court demonstrates that many newspapers have flourished without Associated Press service and have successfully competed with Associated Press members. These proofs also indicate that numerous papers actually prefer the services of other news agencies to that of Associated Press; several of them having actually dropped their Associated Press membership and become members of one of the other news associations. Moreover, there is a complete lack of any relevant proof justifying the conclusion that the Associated Press membership policy has prevented or hindered the birth of a competing newspaper, prevented or hindered the successful operation of one, or caused one to be discontinued.

1945, Associated Press v. United States, 326 U.S. 57

Nor does it appear from the record that any appreciable segment of the public has been unduly deprived of access to world news through inability to read Associated Press dispatches in nonmember newspapers. Indeed, the very presence of Associated Press newspapers in cities where there are competing nonmembers would seem to assure the public of Associated Press news at a small cost. The widespread service of the Associated Press, covering both towns with and without competing services, is to that extent a guarantee of adequate access to its dispatches.

1945, Associated Press v. United States, 326 U.S. 57

It is conceivable, of course, that these bylaws "can have" adverse effects upon competition and upon the public. But something more than a bare possibility should be required before we are justified in sanctioning interference by the Government with the private dissemination of information. There should be clear proof here not only of a competitive advantage, but also of some unfair use of any competitive advantage that the Associated Press may possess, or proof that it is acting so as to stifle competition unreasonably. Evidence of this nature, moreover, unless it is undisputed, should be thoroughly tested in the crucible [326 U.S. 58] of cross examination and counter evidence. An issue of this nature deserves more than a summary disposition.

1945, Associated Press v. United States, 326 U.S. 58

Thus, if it were shown that the Associated Press was using its bylaws to fix prices for news reports or to coerce nonmember newspapers in some way, a clear violation of the Sherman Act would be proved. Under certain circumstances, these bylaws conceivably might be employed for the purpose of coercing the nonmembers to join the Associated Press, to refrain from obtaining news from other sources or to cease operations. But no attempt has been made by the Government to allege or prove such facts, and their existence cannot be assumed any more than we can presuppose unfair destruction of competition in order to justify the decree of the court below.

1945, Associated Press v. United States, 326 U.S. 58

At the same time, however, most of the cases cited in support of the result reached by the Court today are relevant only to a situation where there is some element of coercion or unfairness present. Thus, the combination in Montague & Co. v. Lowry, 193 U.S. 38, was designed to force nonmembers to join as the price of being able "to transact their business as they had theretofore done." In Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20, a combination was formed to prohibit sales to nonmember jobbers, thereby tending to force them to join. In Eastern States Retail Lumber Dealers' Ass'n v. United States, 234 U.S. 600, retailers combined and refused to buy from wholesalers who sold directly to consumers, as a result of which the wholesalers were compelled to cease selling at retail. The combination in Fashion Originators' Guild, Inc. v. Federal Trade Commission, 312 U.S. 457, organized a boycott against those who refused to comply with its program, thus narrowing the market and forcing them to cease pirating designs. Finally, the combination in United States v. Crescent Amusement Co., 323 U.S. 173, used its buying power to eliminate competition with exhibitors and to acquire a monopoly in the areas in question. [326 U.S. 59]

1945, Associated Press v. United States, 326 U.S. 59

There is thus no direct or authoritative precedent guiding our decision in this case. None of the foregoing cases or any other that could be cited justifies us in sanctioning the application of the Sherman Act on an unproved assumption that a particular combination will "necessarily" and illegally restrain competition in the face of overwhelming evidence to the contrary. Nor are any of these cases authority for deciding a Sherman Act case on a motion for summary judgment where serious doubts exist as to the alleged unreasonableness of the restraint of trade. No case, moreover, bids us to sanction an application of the Sherman Act to the business of gathering and distributing news with our eyes closed to the inevitable implications and hazards.

1945, Associated Press v. United States, 326 U.S. 59

We stand at the threshold of a previously unopened door. We should pause long before opening it, lest the path be made clear for dangerous governmental interference in the future. A decree of the type present in this case is not of necessity an undue interference by the Government. If it were supported by facts, it would be a reasonable and justifiable method of liberating nonmember newspapers from the alleged coercive yoke of the Associated Press and of assuring the public of full access to the news of the world. But the danger lies in approving such a decree without insisting upon more proof than yet produced by the Government. If unsupported assumptions and conjectures as to the public interest and competition among newspapers are to warrant a relatively mild decree such as this one, they will also sustain unjust and more drastic measures. The blueprint will then have been drawn for the use of the despot of tomorrow.

1945, Associated Press v. United States, 326 U.S. 59

Since I am of the opinion that the judgment should be reversed and the cause remanded to the District Court for further consideration in light of the principles I have mentioned, I do not deem it necessary to comment in detail on the other parts of the decree discussed by the Court. [326 U.S. 60] At the same time, however, it seems only fair to state that, on the facts presented, it is difficult to see any justification for the agreement whereby Associated Press is given the exclusive right to Canadian Press news reports in the United States. Associated Press is thereby given an outright monopoly of the only available comprehensive news coverage of a great nation, no comparable substitute being available. The only other matter remaining in doubt is the bylaw restriction which prevents the Associated Press members from making their spontaneous local news available to nonmembers and to rival news agencies. The lower court appears to have thought this provision reasonable when considered apart from the membership restriction. On the present state of the record, I am not prepared to disagree, although I am inclined to believe that this provision may well be shown to be unreasonable.

Footnotes

BLACK, J., lead opinion (Footnotes)

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\* In Number 59, all the sitting Justices concur. In Numbers 57 and 58, MR. JUSTICE REED, MR. JUSTICE DOUGLAS and MR. JUSTICE RUTLEDGE concur. MR. JUSTICE FRANKFURTER concurs in that part of the opinion which discusses the District Court's decree, but concurs in the judgment of affirmance in a separate opinion.

1945, Associated Press v. United States, 326 U.S. 60

1. Rule 56 provides,

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A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof…. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

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2. The Directors who have this power to punish are elected by the members, but each member does not have equal voting privileges in the election. The bylaws grant one additional vote for each $25.00 of AP bonds held by a member. This means that in the election of Directors the owner of a $1,000.00 bond can cast 40 more votes than a member who owns no bonds. All members, however, do not, and cannot, under restrictive provisions of the bylaws, own an equal amount of bonds. In 1942, 99 out of 1247 members owned blocks of bonds of the face value of $1,000.00 or more, totaling more than 50% of the outstanding bonds. The court below found on the undisputed evidence that the bondholder vote, rather than the membership vote, controls the selection of AP Directors. The Directors have power to apportion among the members the expenses of collecting and distributing news, and to levy assessments upon the members. As to this apportionment and levy, the bylaws provide that

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There shall be no right to question the action of the Board of Directors in respect to such apportionment or assessments, either by appeal to a meeting of members, or otherwise, but the action of the Directors, when taken, shall be final and conclusive.

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3. Another bylaw provides that

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The news which a member shall furnish as herein required shall be all such news as is spontaneous in its origin, but shall not include any news that is not spontaneous its origin, or which has originated through deliberate and individual enterprise on the part of such member of the newspaper specified in such member's certificate of membership.

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4. The Court found that, out of the 1803 daily English language newspapers published in the United States, with a total circulation of 42,080,391, 1179 of them, with a circulation of 34,762,120, were under joint contractual obligations not to apply either AP or their own "spontaneous" news to any nonmember of AP.

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5. Under these terms, a new applicant could not have entered the morning field in New York without paying $1,432,142.73, and in Chicago, $416,631.90. For entering the evening field in the same cities, it would have cost $1,095,003.21, and $595,772.31, respectively.

1945, Associated Press v. United States, 326 U.S. 60

6.

1945, Associated Press v. United States, 326 U.S. 60

The bylaws of AP are, in effect, agreements between the members: that one which restricts AP to the transmission of news to members, and that which restricts any member to transmitting "spontaneous" news to the association, are both contracts in restraint of commerce. They restrict commerce because they limit the members' freedom to relay any news to others, either the news they learn themselves, or that which they learn collectively through AP as their agent.

1945, Associated Press v. United States, 326 U.S. 60

United States v. Associated Press, 52 F.Supp. 362, 368.

1945, Associated Press v. United States, 326 U.S. 60

7. The District Court found that, among all the news gathering agencies in the United States, AP ranked "in the forefront in public reputation and esteem," and that it was "the chief single source of news for the American press, universally agreed to be of great importance"; that the combination of AP owners acted together for the purpose of using the news gathering facilities of the individual publishers and of the combination, which news was made available to members and denied to others; and that the restrictive bylaws had been observed, carried out, and applied in practice. The Court declared that the conditions which old members could impose upon new applicants for membership were "plainly designed in the interests of preventing competition," and that the requirement of payments from new members to competing old members

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were also designed to compensate competitors for the loss in value of their membership, arising out of the applicant's improved position as a competitor.

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The Court pointed out that these restrictive provisions would "act as a deterrent", and might "prove a complete bar to the admission of [membership]."

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8. That finding is as follows:

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The growth of news agencies has been fostered to some extent as a result of the restrictions of The Associated Press' services to its own members, but other restrictions imposed by The Associated Press have hampered and impeded the growth of competing news agencies and of newspapers competitive with members of The Associated Press.

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The Court's opinion, and its findings as a whole show that the "other restrictions" found to have hampered competition were those relating to admissions to membership in AP and to restraints upon a member's freedom to sell his news.

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9. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 225. See also United States v. Trenton Potteries Co., 273 U.S. 392, 402; Fashion Originators' Guild of America, Inc. v. Federal Trade Commission, 312 U.S. 457, 466, 668; United States v. Patten, 226 U.S. 525, 543; Paramount Famous Lasky Corp. v. United States, 282 U.S. 30, 41; Standard Oil Co. v. United States, 221 U.S. 1, 65-66.

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10. The District Court found as a fact that

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It is practically impossible for any one newspaper alone to establish or maintain the organization requisite for collecting all of the news of the world, or any substantial part thereof; aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it.

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11. INS and UP make so-called "asset value" contracts under which, if another newspaper wishes to obtain their press services, the newcomer shall pay to the competitor holding the UP or INS contract the stipulated "asset value."

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12. Paramount Famous Lasky Corp. v. United States, supra, 42, quoted United States v. Colgate & Co., 250 U.S. 300, 307, to the following effect:

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The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word, to preserve the right of freedom to trade.

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13. See, e.g., 7 U.S.C. §§ 291, 292, as to farm cooperatives; 15 U.S.C. § 17, as to labor organizations. But see also, as to the latter, Apex Hosiery Co. v. Leader, 310 U.S. 469, 487-498.

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14. It is argued that the decision in Board of Trade v. Christie Grain & Stock Co., 198 U.S. 236, requires a holding that these arrangements are consistent with the Sherman Act. In that case, the Board of Trade gathered "quotations" of the prices on sales of grain for future delivery and sold the "information" under agreements forbidding the purchasers to reveal it. The Board of Trade filed suit to prevent its purchasers from breaking this agreement by transmitting the statistics to a "bucket shop or place where they are used as a basis for bets or illegal contracts," p. 246. It was said in the opinion that the statistics were in the nature of a "trade secret." The opinion stated that the Board's collection of statistical information was entitled to the protection of the laws; that it had a right to keep it to itself, and that it did not

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lose its rights by communicating the result to persons, even if many, in confidential relations to itself, under a contract not to make it public, and strangers to the trust will be restrained from getting at the knowledge by inducing a breach of trust, and using knowledge obtained by such a breach.

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Of course, one who has created or acquired something of value has a general right to use it according to the dictates of his own discretion, but this right of ownership is measured by the limitations of law, and the Sherman Act, which obviously restricts the free and untrammeled use of property, in the public interest, is a clear and pointed instance of the non-absolute character of property rights. An argument to the contrary was expressly rejected in Fashion Originators' Guild v. Federal Trade Commission, supra, 467, 468.

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Furthermore, the contracts involved in the Christie case were "not relied on as a cause of action." This Court found that those contracts did not show a purpose to deny sale of the statistics to nonmembers of the Board of Trade. Whether such a contractual restriction would have violated the Sherman Act, the Court refused to decide. In the instant case, as we have pointed out, both the individual publishers and AP have bound themselves to furnish their news to each other and to deny it to all others. Two later cases repeated the statement as to the right of one who gathered statistics to sell them on conditions. Neither of them, however, decided that such restrictive arrangements as appear in the instant case would not constitute unreasonable restraints of trade. Moore v. New York Cotton Exchange, 270 U.S. 593; Hunt v. New York Cotton Exchange, 205 U.S. 322.

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15. Even if additional purposes were involved, it would not justify the combination, since the Sherman Act cannot

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be evaded by good motives. The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and, it may be, of some good results.

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Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20, 49.

1945, Associated Press v. United States, 326 U.S. 60

16. United States v. Socony-Vacuum Oil Co., Inc., supra, 221, 224.

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This Court said in Paramount Famous Lasky Corp. v. United States, supra, 44,

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In order to establish violation of the Sherman Anti-Trust Act, it is not necessary to show that the challenged arrangement suppresses all competition between the parties, or that the parties themselves are discontented with the arrangement. The interest of the public in the preservation of competition is the primary consideration.

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Again, in Fashion Originators' Guild v. Federal Trade Commission, supra, 466, we said,

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Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For "it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition." United States v. E. C. Knight Co., 156 U.S. 1, 16; Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 237.

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See also Apex Hosiery Co. v. Leader, 310 U.S. 469, 485.

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17. The District Court pointed out that

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monopoly is a relative word. If one means by it the possession of something absolutely necessary to the conduct of an activity, there are few except the exclusive possession of some natural resource without which the activity is impossible. Most monopolies, like most patents, give control over only some means of production for which there is a substitute; the possessor enjoys an advantage over his competitors, but he can seldom shut them out altogether; his monopoly is measured by the handicap he can impose…. And yet that advantage alone may make a monopoly unlawful. It would be possible, for instance, to conduct some kind of a newspaper without any news service whatever; but nobody will maintain that, if AP were the only news service in existence, the members could keep it wholly to themselves and reduce all other papers to such news as they could gather by their own efforts.

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United States v. Associated Press, 52 F.Supp. 362, 371.

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18. It is argued that the decree interferes with freedom "to print as and how one's reason or one's interest dictates." The decree does not compel AP or its members to permit publication of anything which their "reason" tells them should not be published. It only provides that, after their "reason" has permitted publication of news, they shall not, for their own financial advantage, unlawfully combine to limit its publication. The only compulsion to print which appears in the record is found in the bylaws, previously set out, which compel members of the Association to print some AP news or subject themselves to fine or expulsion from membership in the Association.

ROBERTS, J., dissenting (Footnotes)

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1. The argument drawn from the Congressional exemption of farmers' cooperatives from the sweep of the Sherman Act falls short, since such cooperatives often are not mere joint purchasing agencies of things needed and used by the members, but are marketing agencies which may be thought to restrain commerce and tend toward monopoly. It was to safeguard the latter sort of activity that the exemption was granted.

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2.

1945, Associated Press v. United States, 326 U.S. 60

A cooperative enterprise, otherwise free from objection which carries with it no monopolistic menace, is not to be condemned as an undue restraint….

1945, Associated Press v. United States, 326 U.S. 60

Appalachian Coals, Inc. v. United States, 288 U.S. 344, 373-374.

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3. Prairie Farmer Publishing Co. v. Indiana Farmer's Guide Co., 88 F.2d 979, certiorari denied, 301 U.S. 696, rehearing denied, 302 U.S. 773.

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4. Board of Trade v. Christie Grain & Stock Co., 198 U.S. 236, 251, 252; Hunt v. New York Cotton Exchange, 205 U.S. 322, 333; United States v. New York C. & S. Exchange, 263 U.S. 611, 619; Moore v. New York Cotton Exchange, 270 U.S. 593, 604, 607.

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5. International News Service v. Associated Press, 248 U.S. 215.

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6.

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…it is no violation of the Anti-Trust Act for a group of newspapers to form an association to collect and distribute news for their common benefit, and, to that end, to agree to furnish the news collected by them only to each other or to the Association; provided that no attempt is made to prevent the members from purchasing or otherwise obtaining news from rival agencies. And if that is true the corollary must be true, namely, that newspapers desiring to form and maintain such an organization may determine who shall be and who shall not be their associates.

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(Letter of Attorney General Gregory of March 12, 1915).

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7. It was only in this limited sense that the court below found that the bylaws limited competition.

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8. Standard Oil Co. v. United States, 221 U.S. 1, 59-62; United States v. American Tobacco Co., 221 U.S. 106, 178-179; United States v. Terminal R. Ass'n, 224 U.S. 383, 394-395; Chicago Board of Trade v. United States, 246 U.S. 231, 238-239; Maple Flooring Mfrs. Ass'n v. United States, 268 U.S. 563, 582; Appalachian Coals v. United States, 288 U.S. 344, 359-361, 375, 376-377; Sugar Institute v. United States, 297 U.S. 553, 597-600; Interstate Circuit v. United States, 306 U.S. 208, 230-232.

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9. Chicago Board of Trade v. United States, supra, 238; Appalachian Coals v. United States, supra, 361.

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10. Oregon Steam Navigation Co. v. Winsor, 20 Wall. 64; Cincinnati Packet Co. v. Bay, 200 U.S. 179, 184, 185; United States v. General Electric Co., 272 U.S. 476; United States v. Bausch & Lomb Co., 321 U.S. 707.

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11. United States v. United States Steel Corp., 251 U.S. 417, 451; United States v. International Harvester Co., 274 U.S. 693, 707.

1945, Associated Press v. United States, 326 U.S. 60

12. 52 F.Supp. 375.

1945, Associated Press v. United States, 326 U.S. 60

13. Nebbia v. New York, 291 U.S. 502, 537.

1945, Associated Press v. United States, 326 U.S. 60

14. International News Service v. Associated Press, 248 U.S. 215, 267.

1945, Associated Press v. United States, 326 U.S. 60

15. 52 F.Supp. 370.

1945, Associated Press v. United States, 326 U.S. 60

16. See 301 U.S. 132-133.

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17. Supra, note 3.

Truman's News Conference on the Joint Declaration on Atomic Energy, 1945

Title: President Truman's News Conference Following the Signing of a Joint Declaration on Atomic Energy, 1945

Author: Harry S Truman

Date: November 15, 1945

Source: Public Papers of the Presidents, Truman, 1945, p.472

[With Prime Minister Attlee of Great Britain and Prime Minister King of Canada]

Public Papers of Truman, 1945, p.472

THE PRESIDENT. Will you please listen for just a moment. I am going to read to you the document which has been signed by the Prime Minister of Great Britain and the Prime Minister of Canada, and the President of the United States. Copies will be handed to you as you go out, as soon as I finish reading.

Public Papers of Truman, 1945, p.472

Questions on this document will have to come at a later time, when you are familiar with it.

Public Papers of Truman, 1945, p.472

This is headed "The President of the United States, the Prime Minister of the United Kingdom, and the Prime Minister of Canada, have issued the following statement.

Public Papers of Truman, 1945, p.472–p.473

"1. We recognize that the application of recent scientific discoveries to the methods and practice of war has placed at the disposal of mankind [p.473] means of destruction hitherto unknown, against which there can be no adequate military defense, and in the employment of which no single nation can in fact have a monopoly.

Public Papers of Truman, 1945, p.473

"2. We desire to emphasize that the responsibility for devising means to ensure that the new discoveries shall be used for the benefit of mankind, instead of as a means of destruction, rests not on our nations alone, but upon the whole civilized world. Nevertheless, the progress that we have made in the development and use of atomic energy demands that we take an initiative in the matter, and we have accordingly met together to consider the possibility of international action:

Public Papers of Truman, 1945, p.473

"(a) To prevent the use of atomic energy for destructive purposes.

Public Papers of Truman, 1945, p.473

"(b) To promote the use of recent and future advances in scientific knowledge, particularly in the utilization of atomic energy, for peaceful and humanitarian ends.

Public Papers of Truman, 1945, p.473

"3. We are aware that the only complete protection for the civilized world from the destructive use of scientific knowledge lies in the prevention of war. No system of safeguards that can be devised will of itself provide an effective guarantee against production of atomic weapons by a nation bent on aggression. Nor can we ignore the possibility of the development of other weapons, or of new methods of warfare, which may constitute as great a threat to civilization as the military use of atomic energy.

Public Papers of Truman, 1945, p.473

"4. Representing, as we do, the three countries which possess the knowledge essential to the use of atomic energy, we declare at the outset our willingness, as a first contribution, to proceed with the exchange of fundamental scientific information and the interchange of scientists and scientific literature for peaceful ends with any nation that will fully reciprocate.

Public Papers of Truman, 1945, p.473–p.474

"5. We believe that the fruits of scientific research should be made available to all nations, and that freedom of investigation and free interchange of ideas are essential to the progress of knowledge. In pursuance of this policy, the basic scientific information essential to the development of atomic energy for peaceful purposes has already been made available to the world. It is our intention that all further information of this character that may become available from time to time [p.474] shall be similarly treated. We trust that other nations will adopt the same policy, thereby creating an atmosphere of reciprocal confidence in which political agreement and cooperation will flourish.

Public Papers of Truman, 1945, p.474

"6. We have considered the question of the disclosure of detailed information concerning the practical industrial application of atomic energy. The military exploitation of atomic energy depends, in large part, upon the same methods and processes as would be required for industrial uses.

Public Papers of Truman, 1945, p.474

"We are not convinced that the spreading of the specialized information regarding the practical application of atomic energy, before it is possible to devise effective, reciprocal, and enforceable safeguards acceptable to all nations, would contribute to a constructive solution of the problem of the atomic bomb. On the contrary we think it might have the opposite effect. We are, however, prepared to share, on a reciprocal basis with others of the United Nations, detailed information concerning the practical industrial application of atomic energy just as soon as effective enforceable safeguards against its use for destructive purposes can be devised.

Public Papers of Truman, 1945, p.474

"7. In order to attain the most effective means of entirely eliminating the use of atomic energy for destructive purposes and promoting its widest use for industrial and humanitarian purposes, we are of the opinion that at the earliest practicable date a Commission should be set up under the United Nations Organization to prepare recommendations for submission to the Organization.

Public Papers of Truman, 1945, p.474

"The Commission should be instructed to proceed with the utmost dispatch and should be authorized to submit recommendations from time to time dealing with separate phases of its work.

Public Papers of Truman, 1945, p.474

"In particular, the Commission should make specific proposals:

Public Papers of Truman, 1945, p.474

"(a) For extending between all nations the exchange of basic scientific information for peaceful ends,

Public Papers of Truman, 1945, p.474

"(b) For control of atomic energy to the extent necessary to ensure its use only for peaceful purposes,

Public Papers of Truman, 1945, p.474

"(c) For the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction,

Public Papers of Truman, 1945, p.474–p.475

"(d) For effective safeguards by way of inspection and other means [p.475] to protect complying states against the hazards of violations and evasions.

Public Papers of Truman, 1945, p.475

"8. The work of the Commission should proceed by separate stages, the successful completion of each one of which will develop the necessary confidence of the world before the next stage is undertaken. Specifically, it is considered that the Commission might well devote its attention first to the wide exchange of scientists and scientific information, and as a second stage to the development of full knowledge concerning natural resources of raw materials.

Public Papers of Truman, 1945, p.475

"9. Faced with the terrible realities of the application of science to destruction, every nation will realize more urgently than before the overwhelming need to maintain the rule of law among nations and to banish the scourge of war from the earth. This can only be brought about by giving wholehearted support to the United Nations Organization, and by consolidating and extending its authority, thus creating conditions of mutual trust in which all peoples will be free to devote themselves to the arts of peace. It is our firm resolve to work without reservation to achieve these ends."

Public Papers of Truman, 1945, p.475

And this document is signed by the three of us. That's all.

Public Papers of Truman, 1945, p.475

Reporter: Thank you, Mr. President.

Public Papers of Truman, 1945, p.475

NOTE: President Truman's thirty-third news conference was held in his office at the White House at 11:05 a.m. on Thursday, November 15, 1945. The White House Official Reporter noted that Congressional leaders and other guests were sitting or standing around the President's desk—the President in the center with Mr. Attlee on his right, Mr. King on his left.

United States v. Lovett, 1946

Title: United States v. Lovett

Author: U.S. Supreme Court

Date: June 3, 1946

Source: 328 U.S. 303

This case was argued May 3 and 6, 1946, and was decided June 3, 1946, together with No. 810, United States v. Watson, and No. 811, United States v. Dodd, on certiorari to the same court, argued and decided on the same dates.

1946, United States v. Lovett, 328 U.S. 303

CERTIORARI TO THE COURT OF CLAIMS

Syllabus

1946, United States v. Lovett, 328 U.S. 303

1. The issue as to the validity of § 304 of the Urgent Deficiency Appropriation Act of 1943, providing that, after November 15, 1943, no salary or other compensation shall be paid to certain employees of the Government (specified by name) out of any monies then or thereafter appropriated except for services as jurors or members of the armed forces, unless they were again appointed by the President with the advice and consent of the Senate prior to such date, is not a mere political issue over which Congress has final say, and a challenge to its constitutionality presents a justiciable question to the courts. P. 313.

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(a) It is not a mere appropriation measure over which Congress has complete control. P. 313.

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(b) Its purpose was not merely to cut off the employees' compensation through regular disbursing channels, but permanently to bar them from government service, except as jurors or soldiers—because of what Congress thought of their political beliefs. P. 313.

1946, United States v. Lovett, 328 U.S. 303

(c) The Constitution did not contemplate that congressional action aimed at three individuals, which stigmatized their reputations and seriously impaired their chances to earn a living, could never be challenged in court. P. 314.

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2. Section 304 violates Article I, § 3, cl. 9 of the Constitution, which forbids the enactment of any bill of attainder or ex post facto law. P. 315.

1946, United States v. Lovett, 328 U.S. 303

(a) Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial, are bills of attainder prohibited by the Constitution. Cummins v. Missouri, 4 Wall. 277; Ex parte Garland, 4 Wall. 333. P. 315.

1946, United States v. Lovett, 328 U.S. 303

(b) Section 304 clearly accomplishes the punishment of named individuals without a judicial trial. P. 316. [328 U.S. 304]

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(c) The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found by Congress to be guilty of disloyalty make it no less effective than if it had been done by an Act which designated the conduct as criminal. P. 316.

1946, United States v. Lovett, 328 U.S. 304

104 Ct.Cls. 557, 66 F.Supp. 142, affirmed.

1946, United States v. Lovett, 328 U.S. 304

The Court of Claims entered judgments in favor of certain government employees for services rendered after November 15, 1943, to whom § 304 of the Urgent Deficiency Appropriation Act of 1943, 57 Stat. 431, 450, forbade payment of any compensation after that date from appropriated funds. 104 Ct.Cls. 557, 66 F.Supp. 142. This Court granted certiorari. 327 U.S. 773. Affirmed, p. 318.

BLACK, J., lead opinion

1946, United States v. Lovett, 328 U.S. 304

MR. JUSTICE BLACK delivered the opinion of the Court.

1946, United States v. Lovett, 328 U.S. 304

In 1943, the respondents, Lovett, Watson, and Dodd, were, and had been for several years, working for the Government. The government agencies which had lawfully [328 U.S. 305] employed them were fully satisfied with the quality of their work, and wished to keep them employed on their jobs. Over the protest of those employing agencies, Congress provided in § 304 of the Urgent Deficiency Appropriation Act of 1943, by way of an amendment attached to the House bill, that, after November 15, 1943, no salary or compensation should be paid respondents out of any monies then or thereafter appropriated except for services as jurors or members of the armed forces, unless they were, prior to November 15, 1943, again appointed to jobs by the President with the advice and consent of the Senate. 1 57 Stat. 431, 450. Notwithstanding the congressional enactment, and the failure of the President to reappoint respondents, the agencies kept all the respondents at work on their jobs for varying periods after November 15, 1943; but their compensation was discontinued after that date. To secure compensation for this post-November 15th work, respondents brought these actions in the Court of [328 U.S. 306] Claims. They urged that § 304 is unconstitutional and void on the grounds that: (1) The section, properly interpreted, shows a congressional purpose to exercise the power to remove executive employees, a power not entrusted to Congress, but to the Executive Branch of Government under Article II, § 1, 2, 3, and 4 of the Constitution; (2) the section violates Article I, § 9, Clause 3, of the Constitution, which provides that "No Bill of Attainder or ex post facto Law shall be passed"; (3) the section violates the Fifth Amendment, in that it singles out these three respondents and deprives them of their liberty and property without due process of law. The Solicitor General, appearing for the Government, joined in the first two of respondents' contentions, but took no position on the third. House Resolution 386, 89 Cong.Rec. 10882, and Joint Resolution No. 230, 78th Congress, 58 Stat. 113, authorized a special counsel to appear on behalf of the Congress. This counsel denied all three of respondents' contentions. He urged that § 304 was a valid exercise of congressional power under Article I, § 8, Clause 1; § 8, Clause 18, and § 9, Clause 7 of the Constitution, which sections empower Congress "To lay and collect Taxes…to pay the Debts and provide for the common Defence and general Welfare of the United States," and

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To make all Laws which shall be necessary and proper for carrying into Execution…all…Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof,

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and provide that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law…" Counsel for Congress also urged that § 304 did not purport to terminate respondents' employment. According to him, it merely cut off respondents' pay, and deprived governmental agencies of any power to make enforceable contracts with respondents for any further compensation. The contention was that this involved [328 U.S. 307] simply an exercise of congressional powers over appropriations, which, according to the argument, are plenary, and not subject to judicial review. On this premise, counsel for Congress urged that the challenge of the constitutionality of § 304 raised no justiciable controversy. The Court of Claims entered judgments in favor of respondents. Some of the judges were of the opinion that § 304, properly interpreted, did not terminate respondents' employment, but only prohibited payment of compensation out of funds generally appropriated, and that, consequently, the continued employment of respondents was valid, and justified their bringing actions for pay in the Court of Claims. Other members of the Court thought § 304 unconstitutional and void, either as a bill of attainder, an encroachment on exclusive executive authority, or a denial of due process. 104 Ct.Cls. 557, 66 F.Supp. 142. We granted certiorari because of the manifest importance of the questions involved.

1946, United States v. Lovett, 328 U.S. 307

In this Court, the parties and counsel for Congress have urged the same points as they did in the Court of Claims. According to the view we take, we need not decide whether § 304 is an unconstitutional encroachment on executive power or a denial of due process of law, and the section is not challenged on the ground that it violates the First Amendment. Our inquiry is thus confined to whether the actions, in the light of a proper construction of the Act, present justiciable controversies, and, if so, whether § 304 is a bill of attainder against these respondents, involving a use of power which the Constitution unequivocally declares Congress can never exercise. These questions require an interpretation of the meaning and purpose of the section, which, in turn, requires an understanding of the circumstances leading to its passage. We, consequently, find it necessary to set out these circumstances somewhat in detail. [328 U.S. 308]

1946, United States v. Lovett, 328 U.S. 308

In the background of the statute here challenged lies the House of Representatives' feeling in the late thirties that many "subversives" were occupying influential positions in the Government and elsewhere, and that their influence must not remain unchallenged. As part of its program against "subversive" activities, the House, in May, 1938, created a Committee on Un-American Activities, which became known as the Dies Committee, after its Chairman, Congressman Martin Dies. H.Res. 282, 83 Cong.Rec. 7568-7587. This Committee conducted a series of investigations and made lists of people and organizations it thought "subversive." See, e.g., H.Rep. No. 1, 77th Cong., 1st Sess.; H.Rep. No. 2743, 77th Cong., 2d Sess. The creation of the Dies Committee was followed by provisions such as § 9A of the Hatch Act, 53 Stat. 1148, 1149, and § 15(f) and 17(b) of the Emergency Relief Appropriation Act of 1941, 54 Stat. 611, which forbade the holding of a federal job by anyone who was a member of a political party or organization that advocated the overthrow of our constitutional form of Government in the United States. It became the practice to include a similar prohibition in all appropriations acts, together with criminal penalties for its violation. 2 Under these provisions, the Federal Bureau of Investigation began wholesale investigations of federal employees, which investigations were financed by special congressional appropriations. 55 Stat. 292, 56 Stat. 468, 482. Thousands were investigated.

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While all this was happening, Mr. Dies, on February 1, 1943, in a long speech on the floor of the House, attacked thirty-nine named government employees as "irresponsible, unrepresentative, crackpot, radical bureaucrats," and [328 U.S. 309] affiliates of "Communist front organizations." Among these named individuals were the three respondents. Congressman Dies told the House that respondents, as well as the other thirty-six individuals he named, were, because of their beliefs and past associations, unfit to "hold a Government position," and urged Congress to refuse "to appropriate money for their salaries." In this connection, he proposed that the Committee on Appropriations "take immediate and vigorous steps to eliminate these people from public office." 89 Cong.Rec. 474, 479, 486. Four days later, an amendment was offered to the Treasury-Post Office Appropriation Bill which provided that "no part of any appropriation contained in this act shall be used to pay the compensation of" the thirty-nine individuals Dies had attacked. 89 Cong.Rec. 645. The Congressional Record shows that this amendment precipitated a debate that continued for several days. Id. 645-742. All of those participating agreed that the "charges" against the thirty-nine individuals were serious. Some wanted to accept Congressman Dies' statements as sufficient proof of "guilt," while others referred to such proposed action as "legislative lynching," id. at 651, smacking "of the procedure in the French Chamber of Deputies, during the Reign of Terror." Id. at 654. The Dies charges were referred to as "indictments," and many claimed this made it necessary that the named federal employees be given a hearing and a chance to prove themselves innocent. Id. at 711. Congressman Dies then suggested that the Appropriations Committee "weigh the evidence and…take immediate steps to dismiss these people from the Federal service." Id. at 651. Eventually, a resolution was proposed to defer action until the Appropriations Committee could investigate, so that accused federal employees would get a chance to prove themselves "innocent" of communism or disloyalty, and so that each "man would [328 U.S. 310] have his day in court," and "There would be no star chamber proceedings." Id. at 711 and 713, but see id. at 715. The resolution which was finally passed authorized the Appropriations Committee, acting through a special subcommittee,

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…to examine into any and all allegations or charges that certain persons in the employ of the several executive departments and other executive agencies are unfit to continue in such employment by reason of their present association or membership or past association or membership in or with organizations whose aims or purposes are or have been subversive to the Government of the United States.

1946, United States v. Lovett, 328 U.S. 310

Id. at 734, 742. The Committee was to have full plenary powers, including the right to summon witnesses and papers, and was to report its "findings and determination" to the House. It was authorized to attach legislation recommended by it to any general or special appropriation measure, notwithstanding general House rules against such practice. Id. at 734. The purpose of the resolution was thus described by the Chairman of the Committee on Appropriations in his closing remarks in favor of its passage:

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The third and the really important effect is that we will expedite adjudication and disposition of these cases, and thereby serve both the accused and the Government. These men against whom charges are pending are faced with a serious situation. If they are not guilty, they are entitled to prompt exoneration; on the other hand, if they are guilty, then the quicker the Government removes them, the sooner and the more certainly will we protect the Nation against sabotage and fifth-column activity.

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Id. at 741.

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After the resolution was passed, a special subcommittee of the Appropriations Committee held hearings in secret executive session. Those charged with "subversive" beliefs and "subversive" associations were permitted to testify, but lawyers, including those representing the agencies [328 U.S. 311] by which the accused were employed, were not permitted to be present. At the hearings, committee members, the committee staff, and whatever witness was under examination were the only ones present. The evidence, aside from that given by the accused employees, appears to have been largely that of reports made by the Dies Committee, its investigators, and Federal Bureau of Investigation reports, the latter being treated as too confidential to be made public.

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After this hearing, the subcommittee's reports and recommendations were submitted to the House as part of the Appropriation Committee's report. The subcommittee stated that it had regarded the investigations "as in the nature of an inquest of office," with the ultimate purpose of purging the public service of anyone found guilty of "subversive activity." The committee, stating that "subversive activity" had not before been defined by Congress or by the courts, formulated its own definition of "subversive activity," which we set out in the margin. 3 Respondents Watson, Dodd, and Lovett were, according to the subcommittee, guilty of having engaged in "subversive activity within the definition adopted by the committee." H.Rep. No. 448, 78th Cong., 1st Sess., 7, 9. The ultimate finding and recommendation as to respondent Watson, which was substantially similar to the findings with respect to Lovett and Dodd, read as follows:

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Upon consideration of all of the evidence, your committee finds that the membership and association of Dr. Goodwin B. Watson with the organizations mentioned, [328 U.S. 312] and his views and philosophies as expressed in various statements and writings constitute subversive activity within the definition adopted by your committee, and that he is, therefore, unfit for the present to continue in Government employment.

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H.Rep. No. 448, 78th Cong., 1st Sess., p. 6. As to Lovett, the Committee further reported that it had rejected a "strong appeal" from the Secretary of the Interior for permission to retain Lovett in government service because, as the Committee stated, it could not

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escape the conviction that this official is unfit to hold a position of trust with this Government by reason of his membership, association, and affiliation with organizations whose aims and purposes are subversive to the Government of the United States.

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Id. at 12.

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Section 304 was submitted to the House along with the Committee Report. Congressman Kerr, who was chairman of the subcommittee, stated that the issue before the House was simply:"…whether or not the people of this country want men who are not in sympathy with the institutions of this country to run it." He said further: "…these people under investigation have no property rights in these offices. One Congress can take away their rights given them by another." 89 Cong.Rec. 4583. Other members of the House, during several days of debate, bitterly attacked the measure as unconstitutional and unwise. Id. at 4482-4487, 4546-4556, 4581-4605. Finally, § 304 was passed by the House.

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The Senate Appropriation Committee eliminated § 304, and its action was sustained by the Senate. 89 Cong.Rec. 5024. After the first conference report, which left the matter still in disagreement, the Senate voted 69 to 0 against the conference report which left § 304 in the bill. The House, however, insisted on the amendment, and indicated that it would not approve any appropriation bill without § 304. Finally, after the fifth conference report [328 U.S. 313] showed that the House would not yield, the Senate adopted § 304. When the President signed the bill, he stated

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The Senate yielded, as I have been forced to yield, to avoid delaying our conduct of the war. But I cannot so yield without placing on record my view that this provision is not only unwise and discriminatory, but unconstitutional.

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H.Doc. 264, 78th Cong., 1st Sess.

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I

1946, United States v. Lovett, 328 U.S. 313

In view of the facts just set out, we cannot agree with the two judges of the Court of Claims who held that § 304 required "a mere stoppage of disbursing routine, nothing more," and left the employer governmental agencies free to continue employing respondents and to incur contractual obligations by virtue of such continued work which respondents could enforce in the Court of Claims. Nor can we agree with counsel for Congress that the section did not provide for the dismissal of respondents, but merely forbade governmental agencies to compensate respondents for their work or to incur obligations for such compensation at any and all times. We therefore cannot conclude, as he urges, that § 304 is a mere appropriation measure, and that, since Congress, under the Constitution, has complete control over appropriations, a challenge to the measure's constitutionality does not present a justiciable question in the courts, but is merely a political issue over which Congress has final say.

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We hold that the purpose of § 304 was not merely to cut off respondents' compensation through regular disbursing channels, but permanently to bar them from government service, and that the issue of whether it is constitutional is justiciable. The section's language, as well as the circumstances of its passage which we have just described, show that no mere question of compensation procedure or of appropriations was involved, but that it [328 U.S. 314] was designed to force the employing agencies to discharge respondents and to bar their being hired by any other governmental agency. Cf. United States v. Dickerson, 310 U.S. 554. Any other interpretation of the section would completely frustrate the purpose of all who sponsored § 304, which clearly was to "purge" the then existing and all future lists of government employees of those whom Congress deemed guilty of "subversive activities," and therefore "unfit" to hold a federal job. What was challenged, therefore, is a statute which, because of what Congress thought to be their political beliefs, prohibited respondents from ever engaging in any government work except as jurors or soldiers. Respondents claimed that their discharge was unconstitutional; that they consequently rightfully continued to work for the Government, and that the Government owes them compensation for services performed under contracts of employment. Congress has established the Court of Claims to try just such controversies. What is involved here is a congressional proscription of Lovett, Watson, and Dodd, prohibiting their ever holding a government job. Were this case to be not justiciable, congressional action, aimed at three named individuals, which stigmatized their reputation and seriously impaired their chance to earn a living, could never be challenged in any court. Our Constitution did not contemplate such a result. To quote Alexander Hamilton,

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…a limited constitution…[is] one which contains certain specified exceptions to the legislative authority, such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

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Federalist Paper No. 78. [328 U.S. 315]

1946, United States v. Lovett, 328 U.S. 315

II

1946, United States v. Lovett, 328 U.S. 315

We hold that § 304 falls precisely within the category of congressional actions which the Constitution barred by providing that "No Bill of Attainder or ex post facto Law shall be passed." In Cummins v. Missouri, 4 Wall. 277, 323, this Court said,

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A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties.

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The Cummins decision involved a provision of the Missouri Reconstruction Constitution which required persons to take an Oath of Loyalty as a prerequisite to practicing a profession. Cummins, a Catholic Priest, was convicted for teaching and preaching as a minister without taking the oath. The oath required an applicant to affirm that he had never given aid or comfort to persons engaged in hostility to the United States, and had never "been a member of, or connected with, any order, society, or organization, inimical to the government of the United States…" In an illuminating opinion which gave the historical background of the constitutional prohibition against bills of attainder, this Court invalidated the Missouri constitutional provision both because it constituted a bill of attainder and because it had an ex post facto operation. On the same day the Cummins case was decided, the Court, in Ex parte Garland, 4 Wall. 333, also held invalid on the same grounds an Act of Congress which required attorneys practicing before this Court to take a similar oath. Neither of these cases has ever been overruled. They stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution. [328 U.S. 316] Adherence to this principle requires invalidation of § 304. We do adhere to it.

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Section 304 was designed to apply to particular individuals. 4 Just as the statute in the two cases mentioned, it "operates as a legislative decree of perpetual exclusion" from a chosen vocation. Ex parte Garland, supra, at 377. This permanent proscription from any opportunity to serve the Government is punishment, and of a most severe type. It is a type of punishment which Congress has only invoked for special types of odious and dangerous crimes, such as treason, 18 U.S.C. 2; acceptance of bribes by members of Congress, 18 U.S.C.199, 202, 203; or by other government officials, 18 U.S.C. 207, and interference with elections by Army and Navy officers, 18 U.S.C. 58.

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Section 304, thus, clearly accomplishes the punishment of named individuals without a judicial trial. The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty makes it no less galling or effective than if it had been done by an Act which designated the conduct as criminal. 5 No one would think that Congress could have passed a valid law stating that, after investigation, it had found Lovett, Dodd, and Watson "guilty" of the crime of engaging in "subversive activities," defined that term for the first time, and sentenced them to perpetual exclusion from any government employment. Section 304, while it does not use that language, accomplishes that result. The effect was to inflict punishment without the safeguards of a judicial trial and [328 U.S. 317] "determined by no previous law or fixed rule." 6 The Constitution declares that that cannot be done either by a State or by the United States.

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Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts. See Duncan v. Kahanamoku, 327 U.S. 304. And even the courts to which this important function was entrusted were commanded to stay their hands until and unless certain tested safeguards were observed. An accused in court must be tried by an impartial jury, has a right to be represented by counsel, he must be clearly informed of the charge against him, the law which he is charged with violating must have been passed before he committed the act charged, he must be confronted by the witnesses against him, he must not be compelled to incriminate himself, he cannot twice be put in jeopardy for the same offense, and, even after conviction, [328 U.S. 318] no cruel and unusual punishment can be inflicted upon him. See Chambers v. Florida, 309 U.S. 227, 235-238. When our Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they proscribed bills of attainder. Section 304 is one. Much as we regret to declare that an Act of Congress violates the Constitution, we have no alternative here.

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Section 304 therefore does not stand as an obstacle to payment of compensation to Lovett, Watson, and Dodd. The judgment in their favor is

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Affirmed.

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MR. JUSTICE JACKSON took no part in the consideration or decision of these cases.

FRANKFURTER, J., concurring

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MR. JUSTICE FRANKFURTER, whom MR. JUSTICE REED joins, concurring.

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Nothing would be easier than personal condemnation of the provision of the Urgent Deficiency Appropriation Act of 1943, here challenged . § 304, 57 Stat. 431, 450. 1 [328 U.S. 319] But the judicial function exacts considerations very different from those which may determine a vote in Congress for or against a measure. And what may be decisive for a Presidential disapproval may not at all satisfy the established criteria which alone justify this Court's striking down an act of Congress.

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It is not for us to find unconstitutionality in what Congress enacted, although it may imply notions that are abhorrent to us as individuals or policies we deem harmful to the country's wellbeing. Although it was proposed at the Constitutional Convention to have this Court share in the legislative process, the Framers saw fit to exclude it. And so,

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it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.

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Missouri, K. & T. R. Co. v. May, 194 U.S. 267, 270. This admonition was uttered by Mr. Justice Holmes in one of his earliest opinions, and it needs to be recalled whenever an exceptionally offensive enactment tempts the Court beyond its strict confinements.

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Not to exercise by indirection authority which the Constitution denied to this Court calls for the severest intellectual detachment, and the most alert self-restraint. The scrupulous observance, with some deviations, of the professed limits of this Court's power to strike down legislation has been, perhaps, the one quality the great judges of the Court have had in common. Particularly when Congressional legislation is under scrutiny, every rational trail must be pursued to prevent collision between Congress and Court. For Congress can readily mend its ways, or the people may express disapproval by choosing different representatives. But a decree of unconstitutionality by this Court is fraught with consequences so enduring and far-reaching as to be avoided unless no choice is left in reason. [328 U.S. 320]

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The inclusion of § 304 in the Appropriation Bill undoubtedly raises serious constitutional questions. But the most fundamental principle of constitutional adjudication is not to face constitutional questions, but to avoid them, if at all possible. And so the

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Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision.

1946, United States v. Lovett, 328 U.S. 320

Brandeis, J., concurring, in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, at 346. That a piece of legislation under scrutiny may be widely unpopular is as irrelevant to the observance of these rules for abstention from avoidable adjudications as that it is widely popular. Some of these rules may well appear over-refined or evasive to the laity. But they have the support not only of the profoundest wisdom. They have been vindicated, in conspicuous instances of disregard, by the most painful lessons of our constitutional history.

1946, United States v. Lovett, 328 U.S. 320

Such are the guiding considerations enjoined by constitutional principles and the best practice for dealing with the various claims of unconstitutionality so ably pressed upon us at the bar.

1946, United States v. Lovett, 328 U.S. 320

The Court reads § 304 as though it expressly discharged respondents from office which they held and prohibited them from holding any office under the Government in the future. On the basis of this reading, the Court holds that the provision is a bill of attainder, in that it "inflicts punishment without a judicial trial," Cummins v. Missouri, 4 Wall. 277, 323, and is therefore forbidden by Article I, § 9 of the Constitution. Congress is said to have inflicted this punishment upon respondents because it disapproved the beliefs they were thought to hold. Such a colloquial treatment of the statute neglects the relevant canons of constitutional adjudication and disregards those [328 U.S. 321] features of the legislation which call its validity into question on grounds other than inconsistency with the prohibition against bills of attainder. To characterize an act of Congress as a bill of attainder readily enlists, however, the instincts of a free people who are committed to a fair judicial process for the determination of issues affecting life, liberty, or property, and naturally abhor anything that resembles legislative determination of guilt and legislative punishment. As I see it, our duty precludes reading § 304 as the Court reads it. But even if it were to be so read the provision is not within the constitutional conception of a bill of attainder.

1946, United States v. Lovett, 328 U.S. 321

Broadly speaking, two types of constitutional claims come before this Court. Most constitutional issues derive from the broad standards of fairness written into the Constitution (e.g., "due process," "equal protection of the laws," "just compensation"), and the division of power as between States and Nation. Such questions, by their very nature, allow a relatively wide play for individual legal judgment. The other class gives no such scope. For this second class of constitutional issues derives from very specific provisions of the Constitution. These had their source in definite grievances, and led the Fathers to proscribe against recurrence of their experience. These specific grievances and the safeguards against their recurrence were not defined by the Constitution. They were defined by history. Their meaning was so settled by history that definition was superfluous. Judicial enforcement of the Constitution must respect these historic limits.

1946, United States v. Lovett, 328 U.S. 321

The prohibition of bills of attainder falls, of course, among these very specific constitutional provisions. The distinguishing characteristic of a bill of attainder is the substitution of legislative determination of guilt and legislative imposition of punishment for judicial finding and [328 U.S. 322] sentence.

1946, United States v. Lovett, 328 U.S. 322

A bill of attainder, by the common law, as our fathers imported it from England and practised it themselves before the adoption of the Constitution, was an act of sovereign power in the form of a special statute…by which a man was pronounced guilty or attainted of some crime, and punished by deprivation of his vested rights, without trial or judgment per legem terrae.

1946, United States v. Lovett, 328 U.S. 322

Farrar, Manual of the Constitution (1867) 419. And see 2 Story, Commentaries on the Constitution (5th ed., 1891) 216; 1 Cooley, Constitutional Limitations (8th ed., 1927) 536. It was this very special, narrowly restricted, intervention by the legislature, in matters for which a decent regard for men's interests indicated a judicial trial, that the Constitution prohibited. It must be recalled that the Constitution was framed in an era when dispensing justice was a well established function of the legislature. The prohibition against bills of attainder must be viewed in the background of the historic situation when moves in specific litigation that are now the conventional, and, for the most part, the exclusive, concern of courts were commonplace legislative practices. See Calder v. Bull, 3 Dall. 386; Wilkinson v. Leland, 2 Pet. 627, 660; Baltimore & Susquehanna R. Co. v. Nesbit, 10 How. 395; Pound, Justice According to Law, II (1914) 14 Col.L.Rev. 1-12; Woodruff, Chancery in Massachusetts (1889) 5 L.Q.Rev. 370. Cf. Sinking-Fund Cases, 99 U.S. 700. Bills of attainder were part of what now are staple judicial functions which legislatures then exercised. It was this part of their recognized authority which the Constitution prohibited when it provided that "No Bill of Attainder…shall be passed." Section 304 lacks the characteristics of the enactments in the Statutes of the Realm and the Colonial Laws that bear the hallmarks of bills of attainder.

1946, United States v. Lovett, 328 U.S. 322

All bills of attainder specify the offense for which the attainted person was deemed guilty and for which the [328 U.S. 323] punishment was imposed. There was always a declaration of guilt, either of the individual or the class to which he belonged. The offense might be a preexisting crime or an act made punishable ex post facto. Frequently, a bill of attainder was thus doubly objectionable because of its ex post facto features. This is the historic explanation for uniting the two mischiefs in one clause, "No Bill of Attainder or ex post facto Law shall be passed." No one claims that § 304 is an ex post facto law. If it is, in substance, a punishment for acts deemed "subversive" (the statute, of course, makes no such charge) for which no punishment had previously been provided, it would clearly be ex post facto. Therefore, if § 304 is a bill of attainder, it is also an ex post facto law. But if it is not an ex post facto law, the reasons that establish that it is not are persuasive that it cannot be a bill of attainder. No offense is specified, and no declaration of guilt is made. When the framers of the Constitution proscribed bills of attainder, they referred to a form of law which had been prevalent in monarchical England, and was employed in the colonies. They were familiar with its nature; they had experienced its use; they knew what they wanted to prevent. It was not a law unfair in general, even unfair because affecting merely particular individuals, that they outlawed by the explicitness of their prohibition of bills of attainder. "Upon this point, a page of history is worth a volume of logic." New York Trust Co. v. Eisner, 256 U.S. 345, 349. Nor should resentment against an injustice displace controlling history in judicial construction of the Constitution.

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Not only does § 304 lack the essential declaration of guilt. It likewise lacks the imposition of punishment in the sense appropriate for bills of attainder. The punishment imposed by the most dreaded bill of attainder was, of course, death; lesser punishments were imposed by similar bills more technically called bills of pains and penalties. [328 U.S. 324] The Constitution outlaws this entire category of punitive measures. Fletcher v. Peck, 6 Cranch. 87, 138; Cummins v. Missouri, 4 Wall. 277. The amount of punishment is immaterial to the classification of a challenged statute. But punishment is a prerequisite.

1946, United States v. Lovett, 328 U.S. 324

Punishment presupposes an offense, not necessarily an act previously declared criminal, but an act for which retribution is exacted. The fact that harm is inflicted by governmental authority does not make it punishment. Figuratively speaking, all discomforting action may be deemed punishment, because it deprives of what otherwise would be enjoyed. But there may be reasons other than punitive for such deprivation. A man may be forbidden to practice medicine because he has been convicted of a felony, Hawker v. New York, 170 U.S. 189, or because he is no longer qualified, Dent v. West Virginia, 129 U.S. 114.

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The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact.

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Cummins v. Missouri, 4 Wall. 277, 320.

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Is it clear, then, that the respondents were removed from office, still accepting the Court's reading of the statute, as a punishment for past acts? Is it clear, that is, to that degree of certitude which is required before this Court declares legislation by Congress unconstitutional? The disputed section does not say so. So far as the House of Representatives is concerned, the Kerr Committee, which proposed the measure, and many of those who voted in favor of the Bill (assuming it is appropriate to go behind the terms of a statute to ascertain the unexpressed motive of its members), no doubt considered the respondents "subversive," and wished to exclude them from the Government because of their past associations and their present views. But the legislation upon which we now pass judgment is the product of both Houses of Congress [328 U.S. 325] and the President. The Senate five times rejected the substance of § 304. It finally prevailed, not because the Senate joined in an unexpressed declaration of guilt and retribution for it, but because the provision was included in an important appropriation bill. The stiffest interpretation that can be placed upon the Senate's action is that it agreed to remove the respondents from office (still assuming the Court's interpretation of § 304) without passing any judgment on their past conduct or present views.

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Section 304 became law by the President's signature. His motive in allowing it to become law is free from doubt. He rejected the notion that the respondents were "subversive," and explicitly stated that he wished to retain them in the service of the Government. H.Doc. No. 264, 78th Cong., 1st Sess. Historically, Parliament passed bills of attainder at the behest of the monarch. See Adams, Constitutional History of England (Rev. ed., 1935) 228-29. The Constitution, of course, provides for the enactment of legislation even against disapproval by the Executive. But to hold that a measure which did not express a judgment of condemnation by the Senate, and carried an affirmative disavowal of such condemnation by the President constitutes a bill of attainder, disregards the historic tests for determining what is a bill of attainder. At the least, there are such serious objections to finding § 304 a bill of attainder that it can be declared unconstitutional only by a failure to observe that this Court reaches constitutional invalidation only through inescapable necessity.

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It must be evident to anyone that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility.

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1 Cooley, Constitutional Limitations (8th ed., 1927) 332. [328 U.S. 326]

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But even if it be agreed, for purposes of characterizing the deprivation of the statute as punishment, that the motive of Congress was past action of the respondents, presumed motive cannot supplant expressed legislative judgment.

1946, United States v. Lovett, 328 U.S. 326

The expectations of those who sought the enactment of legislation may not be used for the purpose of affixing to legislation when enacted a meaning which it does not express.

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United States v. Goelet, 232 U.S. 293, 298. Congress omitted from § 304 any condemnation for which the presumed punishment was a sanction. Thereby, it negatived the essential notion of a bill of attainder. It may be said that such a view of a bill of attainder offers Congress too easy a mode of evading the prohibition of the Constitution. Congress need merely omit its ground of condemnation, and legislate the penalty! But the prohibition against a "Bill of Attainder" is only one of the safeguards of liberty in the arsenal of the Constitution. There are other provisions in the Constitution, specific and comprehensive, effectively designed to assure the liberties of our citizens. The restrictive function of this clause against bills of attainder was to take from the legislature a judicial function which the legislature once possessed. If Congress adopted, as it did, a form of statute so lacking in any pretension to the very quality which gave a bill of attainder its significance, that of a declaration of guilt under circumstances which made its determination grossly unfair, it simply passed an act which this Court ought not to denounce as a bill of attainder. And not the less so because Congress may have been conscious of the limitations which the Constitution has placed upon it against passing bills of attainder. If Congress chooses to say that men shall not be paid, or even that they shall be removed from their jobs, we cannot decide that Congress also said that they are guilty of an offense. And particularly we cannot so decide as a [328 U.S. 327] necessary assumption for declaring an act of Congress invalid. Congress has not legislated that which is attributed to it, for the simple fact is that Congress has said nothing. The words Congress used are not susceptible of being read as a legislative verdict of guilt against the respondents, no matter what dictionary, or what form of argumentation, we use as aids.

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This analysis accords with our prior course of decision. In Cummins v. Missouri, supra, and Ex parte Garland, 4 Wall. 333, the Court dealt with legislation of very different scope and significance from that now before us. While the provisions involved in those cases did not condemn or punish specific persons by name, they proscribed all guilty of designated offenses. Refusal to take a prescribed oath operated as an admission of guilt, and automatically resulted in the disqualifying punishment. Avoidance of legislative proscription for guilt under the provisions in the Cummins and Garland cases required positive exculpation. That the persons legislatively punished were not named was a mere detail of identification. Congress and the Missouri legislature, respectively, had provided the most effective method for insuring identification. These enactments followed the example of English bills of attainder which condemned a named person and "his adherents." Section 304 presents a situation wholly outside the ingredients of the enactments that furnished the basis for the Cummins and Garland decisions. 2

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While § 304 is not a bill of attainder, as the gloss of history defines that phrase in the Constitution, acceptance of the Court's reading of § 304 would raise other serious [328 U.S. 328] constitutional questions. The first in magnitude and difficulty derives from the constitutional distribution of power over removal. For about a century, this Court astutely avoided adjudication of the power of control as between Congress and the Executive of those serving in the Executive branch of the Government "until it should be inevitably presented." Myers v. United States, 272 U.S. 52, 173. The Court then gave the fullest consideration to the problem. The case was twice argued, and was under consideration for nearly three years. So far as the issues could be foreseen, they were elaborately dealt with in opinions aggregating nearly two hundred pages. Within less than a decade, an opinion of fifteen pages largely qualified what the Myers case had apparently so voluminously settled. Humphrey's Executor v. United States, 295 U.S. 602. This experience serves as a powerful reminder of the Court's duty so to deal with Congressional enactments as to avoid their invalidation unless a road to any other decision is barred.

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The other serious problem the Court's interpretation of § 304 raises is that of due process. In one aspect, this is another phase of the constitutional issue of the removal power. For, if § 304 is to be construed as a removal from office, it cannot be determined whether singling out three government employees for removal violated the Fifth Amendment until it is decided whether Congress has a removal power at all over such employees, and how extensive it is. Even if the statute be read as a mere stoppage of disbursement, the question arises whether Congress can treat three employees of the Government differently from all others. But that question we do not have to answer. In any event, respondents are entitled to recover in this suit, and their remedy—a suit in the Court of Claims—is the same whatever view one takes of the legal significance of § 304. To be sure, § 304 also purports to prescribe conditions [328 U.S. 329] relating to future employment of respondents by the Government. This, too, is a question not now open for decision. Reemployment by any agency of the Government, or the desire for reemployment, is not now in controversy, "and, consequently, the subject may well be postponed until it actually arises for decision." Wilson v. New, 243 U.S. 332, 354. The "great gravity and delicacy" of this Court's function in passing upon the validity of an act of Congress is called into action only when absolutely necessary. Steamship Co. v. Emigration Commissioners, 113 U.S. 33, 39. It should not be exercised on the basis of imaginary and nonexistent facts. See Brandeis, J., concurring, in Ashwander v. Tennessee Valley Authority, supra, at 338-345.

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Since it is apparent that grave constitutional doubts will arise if we adopt the construction the Court puts on § 304, we ought to follow the practice which this Court has established from the time of Chief Justice Marshall. The approach appropriate to such a case as the one before us was thus summarized by Mr. Justice Holmes in a similar situation:

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…the rule is settled that, as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act. Even to avoid a serious doubt, the rule is the same. United States v. Delaware & Hudson Co., 213 U.S. 366, 407, 408. United States v. Standard Brewery, 251 U.S. 210, 220. Texas v. Eastern Texas R.R. Co., 258 U.S. 204, 217. Bratton v. Chandler, 260 U.S. 110, 114. Panama R.R. Co. v. Johnson, 264 U.S. 375, 390. Words have been strained more than they need to be strained here in order to avoid that doubt. United States v. Jin Fuey Moy, 241 U.S. 394, 401, 402.

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Blodgett v. Holden, 275 U.S. 142, 148.

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"When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality [328 U.S. 330] is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Crowell v. Benson, 285 U.S. 22, 62.

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Brandeis, J., concurring, in Ashwander v. Tennessee Valley Authority, supra, at 348.

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We are not faced inescapably with the necessity of adjudicating these serious constitutional questions. The obvious or, at the least, the one certain, construction of § 304 is that it forbids the disbursing agents of the Treasury to pay out of specifically appropriated moneys sums to compensate respondents for their services. We have noted the cloud cast upon this interpretation by manifestations by committees and members of the House of Representatives before the passage of this section. On the other hand, there is also much in the debates not only in the Senate, but also in the House, which supports the mere fiscal scope to be given to the statute. That such a construction is tenable settles our duty to adopt it and to avoid determination of constitutional questions of great seriousness.

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Accordingly, I feel compelled to construe § 304 as did Mr. Chief Justice Whaley below, 104 Ct.Cls. 557, 584, 66 F.Supp. 142, 147-148, whereby it merely prevented the ordinary disbursal of money to pay respondents' salaries. It did not cut off the obligation of the Government to pay for services rendered, and the respondents are, therefore, entitled to recover the judgment which they obtained from the Court of Claims.

Footnotes

BLACK, J., lead opinion (Footnotes)

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1. Section 304 provides:

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No part of any appropriation, allocation, or fund (1) which is made available under or pursuant to this Act, or (2) which is now, or which is hereafter made, available under or pursuant to any other Act, to any department, agency, or instrumentality of the United States, shall be used, after November 15, 1943, to pay any part of the salary, or other compensation for the personal services, of Goodwin B. Watson, William E. Dodd, Junior, and Robert Morss Lovett, unless prior to such date such person has been appointed by the President, by and with the advice and consent of the Senate: Provided, That this section shall not operate to deprive any such person of payment for leaves of absence or salary, or of any refund or reimbursement, which have accrued prior to November 15, 1943: Provided further, That this section shall not operate to deprive any such person of payment for services performed as a member of a jury or as a member of the armed forces of the United States nor any benefit, pension, or emolument resulting therefrom.

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As we shall point out, the President signed the bill because he had to do so, since the appropriated funds were imperatively needed to carry on the war. He felt, however, that § 304 of the bill was unconstitutional, and failed to reappoint respondents.

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2. 55 Stat. 92, § 5; 55 Stat. 265, § 504; 55 Stat. 303, § 7; 55 Stat. 366, § 10; 55 Stat. 408, § 3; 55 Stat. 446, § 5; 55 Stat. 466, § 704; 55 Stat. 499, § 10; House Doc. 833, 77th Cong., 2d Sess.

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3.

1946, United States v. Lovett, 328 U.S. 330

Subversive activity in this country derives from conduct intentionally destructive of or inimical to the Government of the United States—that which seeks to undermine its institutions, or to distort its functions, or to impede its projects, or to lessen its efforts, the ultimate end being to overturn it all. Such activity may be open and direct, as by effort to overthrow, or subtle and indirect, as by sabotage.

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H.Rep. No. 448, 78th Cong., 1st Sess., p. 5.

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4. This is, of course, one of the usual characteristics of bills of attainder. See Wooddeson Law Lectures: A Systematical View of the Laws of England (1792), No. 41, 622.

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5. See Cummins v. Missouri, supra, 4 Wall. at 325, 329; see also Fletcher v. Peck, 6 Cranch 87, 138-139; Burgess v. Salmon, 97 U.S. 381, 385.

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6. See dissent of Mr. Justice Miller in Cummins v. Missouri, supra, 4 Wall. at 388; see also Wooddeson, supra, at 624, 638 et seq. Section 304 has all the characteristics of bills of attainder, even as they are set out by Justice Miller's dissent, except the corruption of blood. 4 Wall. at 387. The American precedents do not consider corruption of blood a necessary element. Originally, a judgment of death was necessary to attaint, and the consequences of attainder were forfeiture and corruption of blood. Coke, First Institute (on Littleton) (Thomas ed. 1818) Vol. III, 559, 563, 565. If the judgment was lesser punishment than death, there was no attaint, and the bill was one of pains and penalties. Practically all the American precedents are bills of pains and penalties. See Thompson, Anti-Loyalist Legislation During the American Revolution (1908) 3 Ill.L.Rev. 81, 153 et passim; John C. Hamilton, History of the Republic of the United States (1859) Vol. III, 23-40. The Constitution, in prohibiting bills of attainder, undoubtedly included bills of pains and penalties, as the majority in the Cummins case held.

FRANKFURTER, J., concurring (Footnotes)

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1.

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SEC. 304. No part of any appropriation, allocation, or fund (1) which is made available under or pursuant to this Act, or (2) which is now, or which is hereafter made, available under or pursuant to any other Act, to any department, agency, or instrumentality of the United States, shall be used, after November 15, 1943, to pay any part of the salary, or other compensation for the personal services, of Goodwin B. Watson, William E. Dodd, Junior, and Robert Morss Lovett, unless prior to such date such person has been appointed by the President, by and with the advice and consent of the Senate: Provided, That this section shall not operate to deprive any such person of payment for leaves of absence or salary, or of any refund or reimbursement, which have accrued prior to November 15, 1943: Provided further, That this section shall not operate to deprive any such person of payment for services performed as a member of a jury or as a member of the armed forces of the United States nor any benefit, pension, or emolument resulting therefrom.

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2. Even against the holding that such enactments were bills of attainder, Mr. Justice Miller wrote the powerful dissent concurred in by Mr. Chief Justice Chase, Mr. Justice Swayne, and Mr. Justice Davis. 4 Wall. 333, 382.

Statement by President Truman Upon Signing the Employment Act of 1946

Title: Statement by President Truman Upon Signing the Employment Act of 1946

Author: Harry S Truman

Date: February 20, 1946

Source: Public Papers of the Presidents, Truman, 1946, pp.125-126

Public Papers of Truman, 1946, p.125

I HAVE SIGNED today the Employment Act of 1946. In enacting this legislation the Congress and the President are responding to an overwhelming demand of the people. The legislation gives expression to a deep-seated desire for a conscious and positive attack upon the ever-recurring problems of mass unemployment and ruinous depression.

Public Papers of Truman, 1946, p.125

Within three years after the First World War, we experienced farm foreclosures, business failures, and mass unemployment. In fact, the history of the last several decades has been one of speculative booms alternating with deep depression. The people have found themselves defenseless in the face of economic forces beyond their control.

Public Papers of Truman, 1946, p.125

Democratic government has the responsibility to use all its resources to create and maintain conditions under which free competitive enterprise can operate effectively-conditions under which there is an abundance of employment opportunity for those who are able, willing, and seeking to work.

Public Papers of Truman, 1946, p.125

It is not the Government's duty to supplant the efforts of private enterprise to find markets, or of individuals to find jobs. The people do expect the Government, however, to create and maintain conditions in which the individual businessman and the individual job seeker have a chance to succeed by their own efforts. That is the objective of the Employment Act of 1946.

Public Papers of Truman, 1946, p.125

The major provisions of this important legislation can be briefly summarized.

Public Papers of Truman, 1946, p.125

1. The Act declares that it is "the continuing policy and responsibility of the federal Government…to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining…conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work…" The Congress by this declaration has accepted a great responsibility.

Public Papers of Truman, 1946, p.125–p.126

2. The Congress has placed on the President the duty of formulating programs designed to accomplish the purpose of the Act. In signing this Act, I accept this responsibility, which I believe is in line with the responsibility placed on the President by the Constitution. This task is so great that I can perform it only with the full and [p.126] unqualified cooperation of all who are sincerely interested in the general welfare inside and outside the Government. Making this Act work must become one of the prime objectives of all of us: citizens generally, industry, labor, and agriculture, State and local governments, and the Federal Government.

Public Papers of Truman, 1946, p.126

3. The Act includes a significant provision that will facilitate cooperation between the Executive and the Congress in the formulation of policies and programs to accomplish the objectives of the Act. It establishes a joint Congressional Committee consisting of seven Members of the Senate and seven Members of the House. This committee is given an assignment of great scope and the highest importance.

Public Papers of Truman, 1946, p.126

4. The Act establishes in the Executive Office of the President a Council of Economic Advisers, composed of three members to be appointed by the President with the consent of the Senate. The new Council will be an important addition to the facilities available for preparing economic policies and programs. In carrying on this work, I expect the fullest cooperation between the Council, the Cabinet, and the several divisions of the Executive Office.

Public Papers of Truman, 1946, p.126

I am happy that the Senate adopted this legislation unanimously, the House of Representatives by a large majority. The result is not all I had hoped for, but I congratulate Members of both Houses and their leaders upon their constructive and fruitful efforts.

Public Papers of Truman, 1946, p.126

The Employment Act of 1946 is not the end of the road, but rather the beginning. It is a commitment by the Government to the people—a commitment to take any and all of the measures necessary for a healthy economy, one that provides opportunities for those able, willing, and seeking to work. We shall all try to honor that commitment.

Public Papers of Truman, 1946, p.126

NOTE: The Employment Act of 1946 is Public Law 304, 79th Congress (60 Stat. 23).

President Truman's Address at the Opening Session of the United Nations General Assembly, 1946

Title: President Truman's Address at the Opening Session of the United Nations General Assembly

Author: Harry S Truman

Date: October 23, 1946

Source: Public Papers of the Presidents, Truman, 1946, pp.457-463

Public Papers of Truman, 1946, p.457

Mr. President, members of the Assembly of the United Nations:

Public Papers of Truman, 1946, p.457

On behalf of the Government and the people of the United States I extend a warm and hearty welcome to the delegates who have come here from all parts of the world to represent their countries at this meeting of the General Assembly of the United Nations.

Public Papers of Truman, 1946, p.457

I recall with great pleasure the last occasion on which I met and spoke with the representatives of the United Nations. Many of you who are here today were present then. It was the final day of the Conference at San Francisco, when the United Nations Charter was signed. On that day the constitutional foundation of the United Nations was laid.

Public Papers of Truman, 1946, p.457

For the people of my country this meeting today has a special historic significance. After the first world war the United States refused to join the League of Nations and our seat was empty at the first meeting of the League Assembly. This time the United States is not only a member; it is the host to the United Nations.

Public Papers of Truman, 1946, p.457–p.458

I can assure you that the Government and the people of the United States are deeply proud and grateful that the United Nations [p.458] has chosen our country for its headquarters. We will extend the fullest measure of cooperation in making a home for the United Nations in this country. The American people welcome the delegates and the Secretariat of the United Nations as good neighbors and warm friends.

Public Papers of Truman, 1946, p.458

This meeting of the Assembly symbolizes the abandonment by the United States of a policy of isolation.

Public Papers of Truman, 1946, p.458

The overwhelming majority of the American people, regardless of party, support the United Nations.

Public Papers of Truman, 1946, p.458

They are resolved that the United States, to the full limit of its strength, shall contribute to the establishment and maintenance of a just and lasting peace among the nations of the world.

Public Papers of Truman, 1946, p.458

However, I must tell you that the American people are troubled by the failure of the Allied nations to make more progress in their common search for a lasting peace.

Public Papers of Truman, 1946, p.458

It is important to remember the intended place of the United Nations in moving toward this goal. The United Nations—as an organization—was not intended to settle the problems arising immediately out of the war. The United Nations was intended to provide the means for maintaining international peace in the future after just settlements have been made.

Public Papers of Truman, 1946, p.458

The settlement of these problems was deliberately consigned to negotiations among the Allies as distinguished from the United Nations. This was done in order to give the United Nations a better opportunity and a freer hand to carry out its long-range task of providing peaceful means for the adjustment of future differences, some of which might arise out of the settlements made as a result of this war.

Public Papers of Truman, 1946, p.458

The United Nations cannot, however, fulfill adequately its own responsibilities until the peace settlements have been made and unless these settlements form a solid foundation upon which to build a permanent peace.

Public Papers of Truman, 1946, p.458

I submit that these settlements, and our search for everlasting peace, rest upon the four essential freedoms.

Public Papers of Truman, 1946, p.458

These are freedom of speech, freedom of religion, freedom from want, and freedom from fear. These are fundamental freedoms to which all the United Nations are pledged under the Charter.

Public Papers of Truman, 1946, p.458

To the attainment of these freedoms-everywhere in the world—through the friendly cooperation of all nations, the Government and people of the United States are dedicated.

Public Papers of Truman, 1946, p.458

The fourth freedom—freedom from fear-means, above all else, freedom from fear of war.

Public Papers of Truman, 1946, p.458

This freedom is attainable now.

Public Papers of Truman, 1946, p.458

Lately we have all heard talk about the possibility of another world war. Fears have been aroused all over the world.

Public Papers of Truman, 1946, p.458

These fears are unwarranted and unjustified.

Public Papers of Truman, 1946, p.458

However, rumors of war still find willing listeners in certain places. If these rumors are not checked they are sure to impede world recovery.

Public Papers of Truman, 1946, p.458

I have been reading reports from many parts of the world. These reports all agree on one major point—the people of every nation are sick of war. They know its agony and its futility. No responsible government can ignore this universal feeling.

Public Papers of Truman, 1946, p.458

The United States of America has no wish to make war, now or in the future, upon any people anywhere in the world. The heart of our foreign policy is a sincere desire for peace. This nation will work patiently for peace by every means consistent with self-respect and security. Another world war would shatter the hopes of mankind and completely destroy civilization as we know it.

Public Papers of Truman, 1946, p.458–p.459

I am sure that every delegate in this hall [p.459] will join me in rejecting talk of war. No nation wants war. Every nation needs peace.

Public Papers of Truman, 1946, p.459

To avoid war and rumors and danger of war the peoples of all countries must not only cherish peace as an ideal but they must develop means of settling conflicts between nations in accordance with the principles of law and justice.

Public Papers of Truman, 1946, p.459

The difficulty is that it is easier to get people to agree upon peace as an ideal than to agree upon principles of law and justice or to agree to subject their own acts to the collective judgment of mankind.

Public Papers of Truman, 1946, p.459

But difficult as the task may be, the path along which agreement may be sought is clearly defined. We expect to follow that path with success.

Public Papers of Truman, 1946, p.459

In the first place, every member of the United Nations is legally and morally bound by the Charter to keep the peace. More specifically, every member is bound to refrain in its international relations from the threat, or use, of force against the territorial integrity or political independence of any state.

Public Papers of Truman, 1946, p.459

In the second place, I remind you that 23 members of the United Nations have bound themselves by the Charter of the Nuremberg Tribunal to the principle that planning, initiating or waging a war of aggression is a crime against humanity for which individuals as well as states shall be tried before the bar of international justice.

Public Papers of Truman, 1946, p.459

The basic principles upon which we are agreed go far, but not far enough, in removing the fear of war from the world. There must be agreement upon a positive, constructive course of action as well.

Public Papers of Truman, 1946, p.459

The peoples of the world know that there can be no real peace unless it is peace with justice for all—justice for small nations and for large nations and justice for individuals without distinction as to race, creed or color—a peace that will advance, not retard, the attainment of the four freedoms.

Public Papers of Truman, 1946, p.459

We shall attain freedom from fear when every act of every nation, in its dealings with every other nation, brings closer to realization the other freedoms-freedom of speech, freedom of religion, and freedom from want. Along this path we can find justice for all, without distinction between the strong and the weak among nations, and without discrimination among individuals.

Public Papers of Truman, 1946, p.459

After the peace has been made, I am convinced that the United Nations can and will prevent war between nations and remove the fear of war that distracts the peoples of the world and interferes with their progress toward a better life.

Public Papers of Truman, 1946, p.459

The war has left many parts of the world in turmoil. Differences have arisen among the Allies. It will not help us to pretend that this is not the case. But it is not necessary to exaggerate these differences.

Public Papers of Truman, 1946, p.459

For my part, I believe there is no difference of interest that need stand in the way of settling these problems and settling them in accordance with the principles of the United Nations Charter. Above all, we must not permit differences in economic and social systems to stand in the way of peace, either now or in the future. To permit the United Nations to be broken into irreconcilable parts by different political philosophies would bring disaster to the world.

Public Papers of Truman, 1946, p.459

So far as Germany and Japan are concerned, the United States is resolved that neither shall again become a cause for war. We shall continue to seek agreement upon peace terms which ensure that both Germany and Japan remain disarmed, that Nazi influence in Germany be destroyed and that the power of the war lords in Japan be eliminated forever.

Public Papers of Truman, 1946, p.459–p.460

The United States will continue to seek settlements arising from the war that are just to all states, large and small, that uphold [p.460] the human rights and fundamental freedoms to which the Charter pledges all its members, and that do not contain the seeds of new conflicts.

Public Papers of Truman, 1946, p.460

A peace between the nations based upon justice will make possible an early improvement in living conditions throughout the world and a quick recovery from the ravages of war. The world is crying for a just and durable peace with an intensity that must force its attainment at the earliest possible date.

Public Papers of Truman, 1946, p.460

If the members of the United Nations are to act together to remove the fear of war, the first requirement is for the Allied Nations to reach agreement on the peace settlements.

Public Papers of Truman, 1946, p.460

Propaganda that promotes distrust and misunderstanding among the Allies will not help us. Agreements designed to remove the fear of war can be reached only by the cooperation of nations to respect the legitimate interests of all states and act as good neighbors toward each other.

Public Papers of Truman, 1946, p.460

And lasting agreements between allies cannot be imposed by one nation nor can they be reached at the expense of the security, independence or integrity of any nation. There must be accommodation by all the Allied Nations in which mutual adjustments of lesser national interests are made in order to serve the greater interest of all in peace, security and justice.

Public Papers of Truman, 1946, p.460

This Assembly can do much toward recreating the spirit of friendly cooperation and toward reaffirming these principles of the United Nations which must be applied to the peace settlements. It must also prepare and strengthen the United Nations for the tasks that lie ahead after the settlements have been made.

Public Papers of Truman, 1946, p.460

All member nations, large and small, are represented here as equals. Wisdom is not the monopoly of strength or size. Small nations can contribute equally with the large nations toward bringing constructive thought and wise judgment to bear upon the formation of collective policy.

Public Papers of Truman, 1946, p.460

This Assembly is the world's supreme deliberative body.

Public Papers of Truman, 1946, p.460

The highest obligation of this Assembly is to speak for all mankind in such a way as to promote the unity of all members in behalf of a peace that will be lasting because it is rounded upon justice.

Public Papers of Truman, 1946, p.460

In seeking unity we should not be concerned about expressing differences freely. The United States believes that this Assembly should demonstrate the importance of freedom of speech to the cause of peace. I do not share the view of those who are fearful of the effects of free and frank discussions in the United Nations.

Public Papers of Truman, 1946, p.460

The United States attaches great importance to the principle of free discussion in this Assembly and in this Security Council. Free and direct exchange of arguments and information promotes understanding and therefore contributes in the long run to the removal of the fear of war and some of the causes of war.

Public Papers of Truman, 1946, p.460

The United States believes that the rule of unanimous accord among the five permanent members of the Security Council imposes upon these members a special obligation. This obligation is to seek and reach agreements that will enable them and the Security Council to fulfill their responsibilities under the Charter toward their fellow members of the United Nations and toward the maintenance of peace.

Public Papers of Truman, 1946, p.460–p.461

It is essential to the future of the United Nations that the members should use the Council as a means of promoting settlement of disputes as well as for airing them. The exercise of neither veto rights nor majority rights can make peace secure. There is no substitute for agreements that are universally acceptable because they are just to all [p.461] concerned. The Security Council is intended to promote that kind of agreement and it is fully qualified for that purpose.

Public Papers of Truman, 1946, p.461

Because it is able to function continuously, the Security Council represents a most significant development in international relations—the continued application of the public and peaceful methods of a council chamber to the settlement of disputes between nations.

Public Papers of Truman, 1946, p.461

Two of the greatest obligations undertaken by the United Nations toward the removal of the fear of war remain to be fulfilled.

Public Papers of Truman, 1946, p.461

First, we must reach an agreement establishing international controls of atomic energy that will ensure its use for peaceful purposes only, in accordance with the Assembly's unanimous resolution last winter.

Public Papers of Truman, 1946, p.461

Second, we must reach agreements that will remove the deadly fear of other weapons of mass destruction, in accordance with that same resolution.

Public Papers of Truman, 1946, p.461

Each of these obligations is going to be difficult to fulfill. Their fulfillment will require the utmost in perseverance and good faith, and we cannot succeed without setting fundamental precedents in the law of nations. Each will be worth everything in perseverance and good faith that we can give to it. The future safety of the United Nations, and of every member nation, depends upon the outcome.

Public Papers of Truman, 1946, p.461

On behalf of the United States I can say we are not discouraged. We shall continue to seek agreement by every possible means.

Public Papers of Truman, 1946, p.461

At the same time we shall also press for preparation of agreements in order that the Security Council may have at its disposal peace forces adequate to prevent acts of aggression.

Public Papers of Truman, 1946, p.461

The United Nations will not be able to remove the fear of war from the world unless substantial progress can be made in the next few years toward the realization of another of the four freedoms—freedom from want.

Public Papers of Truman, 1946, p.461

The Charter pledges the members of the United Nations to work together toward this end. The structure of the United Nations in this field is now nearing completion, with the Economic and Social Council, its commissions and related specialized agencies. It provides more complete and effective institutions through which to work than the world has ever had before.

Public Papers of Truman, 1946, p.461

A great opportunity lies before us.

Public Papers of Truman, 1946, p.461

In these constructive tasks which concern directly the lives and welfare of human beings throughout the world, humanity and self-interest alike demand of all of us the fullest cooperation.

Public Papers of Truman, 1946, p.461

The United States has already demonstrated in many ways its grave concern about economic reconstruction that will repair the damage done by war.

Public Papers of Truman, 1946, p.461

We have participated actively in every measure taken by the United Nations toward this end. We have in addition taken such separate national action as the granting of large loans and credits and renewal of our reciprocal trade-agreements program.

Public Papers of Truman, 1946, p.461

Through the establishment of the Food and Agriculture Organization, the International Bank for Reconstruction and Development and the International Monetary Fund, members of the United Nations have proved their capacity for constructive cooperation toward common economic objectives. In addition, the International Labor Organization is being brought into relationship with the United Nations.

Public Papers of Truman, 1946, p.461

Now we must complete that structure. The United States attaches the highest importance to the creation of the International Trade Organization now being discussed in London by a Preparatory Committee.

Public Papers of Truman, 1946, p.461–p.462

This country wants to see not only the rapid restoration of devastated areas but the industrial and agricultural progress of [p.462] the less well-developed areas of the world.

Public Papers of Truman, 1946, p.462

We believe that all nations should be able to develop a healthy economic life of their own. We believe that all peoples should be able to reap the benefits of their own labor and of their own natural resources.

Public Papers of Truman, 1946, p.462

There are immense possibilities in many parts of the world for industrial development and agricultural modernization.

Public Papers of Truman, 1946, p.462

These possibilities can be realized only by the cooperation of members of the United Nations, helping each other on a basis of equal rights.

Public Papers of Truman, 1946, p.462

In the field of social reconstruction and advancement the completion of the Charter for a World Health Organization is an important step forward.

Public Papers of Truman, 1946, p.462

The Assembly now has before it for adoption the constitution of another specialized agency in this field—the International Refugee Organization. It is essential that this Organization be created in time to take over from UNRRA as early as possible in the new year the tasks of caring for and repatriating or resettling the refugees and displaced persons of Europe. There will be similar tasks, of great magnitude, in the Far East.

Public Papers of Truman, 1946, p.462

The United States considers this a matter of great urgency in the cause of restoring peace and in the cause of humanity itself.

Public Papers of Truman, 1946, p.462

I intend to urge the Congress of the United States to authorize this country to do its full part, both in financial support of the International Refugee Organization and in joining with other nations to receive those refugees who do not wish to return to their former homes for reasons of political or religious belief.

Public Papers of Truman, 1946, p.462

The United States believes a concerted effort must be made to break down the barriers to a free flow of information among the nations of the world.

Public Papers of Truman, 1946, p.462

We regard freedom of expression and freedom to receive information—the right of the people to know—as among the most important of those human rights and fundamental freedoms to which we are pledged under the United Nations Charter.

Public Papers of Truman, 1946, p.462

The United Nations Educational, Scientific and Cultural Organization, which is meeting in November, is a recognition of this fact. That Organization is built upon the premise that since wars begin in the minds of men, the defense of peace must be constructed in the minds of men, and that a free exchange of ideas and knowledge among peoples is necessary to this task. The United States therefore attaches great importance to all activities designed to break down barriers to mutual understanding and to wider tolerance.

Public Papers of Truman, 1946, p.462

The United States will support the United Nations with all the resources that we possess.

Public Papers of Truman, 1946, p.462

The use of force or the threat of force anywhere in the world to break the peace is of direct concern to the American people.

Public Papers of Truman, 1946, p.462

The course of history has made us one of the stronger nations of the world. It has therefore placed upon us special responsibilities to conserve our strength and to use it rightly in a world so interdependent as our world today.

Public Papers of Truman, 1946, p.462

The American people recognize these special responsibilities. We shall do our best to meet them, both in the making of the peace settlements and in the fulfillment of the long-range tasks of the United Nations.

Public Papers of Truman, 1946, p.462

The American people look upon the United Nations not as a temporary expedient but as a permanent partnership—a partnership among the peoples of the world for their common peace and common well-being.

Public Papers of Truman, 1946, p.462

It must be the determined purpose of all of us to see that the United Nations lives and grows in the minds and the hearts of all people.

Public Papers of Truman, 1946, p.462–p.463

May Almighty God, in His infinite wisdom [p.463] and mercy, guide and sustain us as we seek to bring peace everlasting to the world.

Public Papers of Truman, 1946, p.463

With His help we shall succeed.

Public Papers of Truman, 1946, p.463

NOTE: The President spoke at 4:30 p.m. in the Assembly Hall, Flushing Meadow, New York City. His opening words referred to Paul-Henri Spaak of Belgium, President of the Assembly.

President Truman's First Annual Report on U.S. Participation in the United Nations, 1947

Title: President Truman's First Annual Report on U.S. Participation in the United Nations

Author: Harry S Truman

Date: February 5, 1947

Source: Public Papers of the Presidents, Truman, 1947, pp.118-122

Public Papers of Truman, 1947, p.118

To the Congress of the United States:

Public Papers of Truman, 1947, p.118

In accordance with the provisions of the United Nations Participation Act of 1945 I submit herewith my first annual report to the Congress on the activities of the United Nations and the participation of the United States therein. 1

1. On Mar. 19, 1946, I transmitted to the Congress the Report submitted to me by the Secretary of State on the First Part of the First Session of the General Assembly in London. [See 1946 volume, this series, Item 65.]

Public Papers of Truman, 1947, p.118

The Charter of the United Nations came into force as a fundamental law for the peoples of the world on October 24, 1945.

Public Papers of Truman, 1947, p.118

The General Assembly convened for the first time in London in January 1946. It elected the Secretary-General and brought into being the Security Council, the Economic and Social Council and the International Court of Justice.

Public Papers of Truman, 1947, p.118

In December 1946, at the Second Part of its First Session, in New York, the General Assembly completed its main organizational tasks by establishing the Trusteeship Council. Thus all of the principal organs of the United Nations have now been established. All of them, except the Trusteeship Council, have been working on their appointed tasks during most of the past year.

Public Papers of Truman, 1947, p.119

The policy of the United States, as I told the General Assembly in New York on October 23, 1946, is to "support the United Nations with all the resources that we possess…not as a temporary expedient but as a permanent partnership."

Public Papers of Truman, 1947, p.119

That policy—in season and out—in the face of temporary failure as well as in moments of success—has the support of the overwhelming majority of the American people. It must continue to have this support if the United States is to fulfill its appointed role in the United Nations, if the United Nations is to fulfill its purposes and if our land is to be preserved from the disaster of another and far more terrible war.

Public Papers of Truman, 1947, p.119

In the work of the United Nations during the past year the United States has sought constantly to carry out that policy. Our representatives have spoken for the whole Nation. They have been Democrats and Republicans, members of both the executive and legislative branches of our Government, men and women from private life.

Public Papers of Truman, 1947, p.119

The work of the United Nations during the past year has been the work of building foundations for the future.

Public Papers of Truman, 1947, p.119

First of all, there have been the structural foundations. The Assembly, the Councils, the Court and the Secretariat have had a vast amount of organizational work to do in order to establish themselves as functioning agencies of the international community. Much of this has been pioneering work. The whole structure of the United Nations is a far more extensive endeavor in international cooperation than the nations have ever before attempted.

Public Papers of Truman, 1947, p.119

The essential parts of this structure include not only the principal organs established by the Charter. They include equally the specialized agencies, such as the Food and Agriculture Organization, the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the International Bank for Reconstruction and Development, the International Monetary Fund, the proposed World Health Organization and International Trade Organization and several others. Each of these specialized agencies operates in a specific field under its own constitution. Each is or will be related to the central structure of the United Nations through the Economic and Social Council and the General Assembly. There is scarcely a field of activity having a common interest for the peoples of the world for which continuing instruments of international cooperation have not been developed during the past year.

Public Papers of Truman, 1947, p.119

Perhaps the most immediately significant development of the past year in this direction was the General Assembly's demonstration of its power to influence the policies of nations and to bring about greater understanding among them. The Assembly possesses few definitive powers. It makes recommendations that can be translated into effective law only by the action of the nations concerned. But the Assembly during its meetings in New York expressed a higher sovereignty of the people's will in a manner which promises much for its development as a dominant power for peace and progress in the world.

Public Papers of Truman, 1947, p.119

The building of the structural foundations of the United Nations during the past year has been accompanied by action over a very broad field toward giving life and meaning to the purposes and principles of the Charter.

Public Papers of Truman, 1947, p.119

There has been progress toward building security from war. Step by step we have advanced the first part of the way toward agreement on the essential principles of a truly effective international system of control over the means of destruction that science has placed in the hands of mankind.

Public Papers of Truman, 1947, p.119–p.120

The initiative in the control of atomic energy and other major weapons adaptable [p.120] to mass destruction was taken by the United States. The resolution creating the Atomic Energy Commission was adopted at the First Meeting of the General Assembly in London. The United States presented in the Atomic Energy Commission last June its proposal for international control of atomic energy. The Soviet Union opposed these proposals, but the Commission worked throughout the summer and fall to build the bases for agreement.

Public Papers of Truman, 1947, p.120

In October the Soviet Union introduced in the General Assembly proposals on the general regulation and reduction of armaments that seemed at first far removed from the United States position. Nevertheless, seven weeks later the Assembly was able to adopt unanimously a resolution reaffirming all the principles of the Atomic Energy Resolution and reflecting for the first time unanimous agreement on the essential principle of a system of international control and inspection established by treaty and not subject to any veto in its operations.

Public Papers of Truman, 1947, p.120

Two and a half weeks later, on December 31, the Atomic Energy Commission transmitted its first report to the Security Council. The Report had been adopted by the Commission by a vote of 10 to 0, the Soviet Union and Poland abstaining.

Public Papers of Truman, 1947, p.120

Many months of hard work and difficult negotiation in the Security Council and the Atomic Energy Commission lie ahead. Not all the essential principles have yet been agreed upon. The problem of enforcement must still be resolved. All the principles must be given specific and practical application in treaties and conventions unanimously agreed upon.

Public Papers of Truman, 1947, p.120

This is one of the main tasks before the United Nations in the coming year. To succeed, we must at the same time build the other essential foundations of a general system of collective security. The nations can safely lay aside their arms only in so far as their security is protected by other means.

Public Papers of Truman, 1947, p.120

An essential element of collective security will be the ability of the Security Council to fulfill its primary responsibility for the maintenance of international peace and security. In its consideration of international disputes during its first year the Council demonstrated increasing power to ameliorate situations that otherwise might have become dangerous and to influence the policies of nations in the direction of upholding the purposes and principles of the Charter. This was generally true even when the five permanent members failed to reach the required unanimity for definitive action. The Security Council's application on a continuing basis of the public and peaceful methods of the council chamber to the settlement of disputes between nations is a new development in international relations, the significance of which gives every promise of becoming more apparent in the year ahead.

Public Papers of Truman, 1947, p.120

Important steps have been taken by the United Nations during the past year toward economic reconstruction and toward establishing the necessary basis for an expanding peace-time trade and employment.

Public Papers of Truman, 1947, p.120

A draft Trade Charter establishing principles and practices aimed at increasing the volume of world trade and employment by reducing or eliminating artificial trade barriers and restrictions has been proposed by the United States and is now being developed by a Preparatory Committee of 18 nations. One of the primary United Nations' tasks of the year ahead is the adoption of such a Charter and the creation of an International Trade Organization to carry it out.

Public Papers of Truman, 1947, p.120–p.121

The General Assembly has unanimously asked the Economic and Social Council to act on recommendations for the reconstruction and integration of the European economy and establishment of an Economic Commission for Europe. This Commission would unite all the interested countries, including [p.121] the Soviet Union on the East and the United States on the West, in a common program. Steps toward economic reconstruction and development in the Far East will also be undertaken by the Economic and Social Council this year.

Public Papers of Truman, 1947, p.121

Progress has also been made by the Economic and Social Council and the specialized agencies during the past year in many other respects. It is not too much to say that the establishment and maintenance of lasting peace will depend in large part upon the ability of the United Nations to carry through to a successful conclusion the work it has begun toward world economic recovery and cooperation.

Public Papers of Truman, 1947, p.121

The promotion and protection of basic human rights for all peoples is a fundamental purpose of the United Nations. Active support for the wider realization of these rights and freedoms has been and should continue to be a primary objective of United States policy in the United Nations.

Public Papers of Truman, 1947, p.121

During the past year our representatives in the Assembly and the Economic and Social Council took the initiative in writing a charter for the International Refugee Organization under which the right to freedom and another chance for a decent life of a million victims of war and racial, political, or religious oppression would be preserved. I shall recommend to the Congress prompt acceptance of the constitution of the IRO and appropriation of our share of the expenses of its program.

Public Papers of Truman, 1947, p.121

The United States believes that freedom of information must be realized on a far wider basis than exists in the world today if the United Nations is to succeed. We have strongly supported the policy of public debate of all issues in the United Nations because this promotes public knowledge and understanding and gives the peoples of the world a more direct opportunity to influence the results. We have also asked for action to break down the barriers to a wider, freer flow of information in the world. Preparations are now going forward for a world conference on freedom of information before the end of this year as one step in this direction.

Public Papers of Truman, 1947, p.121

The provisions of the Charter relating to dependent peoples offer to those hundreds of millions who do not yet govern themselves their best hope for attainment of this and other basic human rights and freedoms. The United States Representatives took a leading part in the General Assembly in bringing about the establishment of the Trusteeship System in the face of sharp disagreements and other major difficulties that might have caused indefinite delay. The United States will support further steps during the coming year toward strengthening the Trusteeship System.

Public Papers of Truman, 1947, p.121

America has long been a symbol of freedom and democratic progress to peoples less favored than we have been. We must maintain their belief in us by our policies and our acts.

Public Papers of Truman, 1947, p.121

One of the important long-range achievements of the General Assembly's First Session was the adoption of resolutions introduced by the United States on the codification and development of international law.

Public Papers of Truman, 1947, p.121–p.122

The General Assembly unanimously directed its committee on codification to give first attention to the charter and the decision of the Nuremberg Tribunal, under which aggressive war is a crime against humanity for which individuals as well as states must be punished. The Assembly also agreed that genocide—the deliberate policy of extermination of a race or class or any other human group—was a crime under international law. These developments toward the application of international law to individuals as well as to states are of profound significance to the state. We cannot have lasting [p.122] peace unless a genuine rule of world law is established and enforced.

Public Papers of Truman, 1947, p.122

The justifiable hope and confidence to which the great progress of the United Nations in the past year has given rise can be betrayed and lost. The difficulties and dangers that lie before us are many and serious. They are strewn across the road that leads to the final peace settlements, to the establishment and maintenance of collective security, to the control of atomic energy and regulation and reduction of other arms, to the attainment of economic recovery and an expanding world economy, and to the wider realization of human rights.

Public Papers of Truman, 1947, p.122

Our policy of supporting the United Nations "with all the resources that we possess" must be given effective practical application on a genuinely national, bipartisan basis in every activity of the United Nations. This is just as necessary in the economic and social field as it is in the political field. We must pursue without hesitation bipartisan policies of economic cooperation with the rest of the world in such matters as economic reconstruction and development and the expansion of world trade and employment. Because of the interdependence of the economy of nations, it will also be vital to world recovery as well as to our own prosperity that we maintain at home a stable economy of high employment.

Public Papers of Truman, 1947, p.122

The responsibility of the United States is a particularly heavy one because of the power and influence that our history and our material resources have placed in our hands. No nation has a higher stake in the outcome than our own.

Public Papers of Truman, 1947, p.122

HARRY S. TRUMAN

Public Papers of Truman, 1947, p.122

NOTE: The report is printed in House Document 81 (80th Cong., 1st sess.).

Public Papers of Truman, 1947, p.122

For the President's address of October 23, 1946, to the United Nations General Assembly, see 1946 volume, this series, Item 236.

President Truman's Special Message to the Congress on Greece and Turkey: The Truman Doctrine, 1947

Title: President Truman's Special Message to the Congress on Greece and Turkey: The Truman Doctrine

Author: Harry S Truman

Date: March 12, 1947

Source: Public Papers of the Presidents, Truman, 1947, pp.176-180

[As delivered in person before a joint session]

Public Papers of Truman, 1947, p.176

Mr. President, Mr. Speaker, Members of the Congress of the United States:

Public Papers of Truman, 1947, p.176

The gravity of the situation which confronts the world today necessitates my appearance before a joint session of the Congress.

Public Papers of Truman, 1947, p.176

The foreign policy and the national security of this country are involved.

Public Papers of Truman, 1947, p.176

One aspect of the present situation, which I present to you at this time for your consideration and decision, concerns Greece and Turkey.

Public Papers of Truman, 1947, p.176

The United States has received from the Greek Government an urgent appeal for financial and economic assistance. Preliminary reports from the American Economic Mission now in Greece and reports from the American Ambassador in Greece corroborate the statement of the Greek Government that assistance is imperative if Greece is to survive as a free nation.

Public Papers of Truman, 1947, p.176

I do not believe that the American people and the Congress wish to turn a deaf ear to the appeal of the Greek Government.

Public Papers of Truman, 1947, p.176

Greece is not a rich country. Lack of sufficient natural resources has always forced the Greek people to work hard to make both ends meet. Since 1940, this industrious, peace loving country has suffered invasion, four years of cruel enemy occupation, and bitter internal strife.

Public Papers of Truman, 1947, p.176

When forces of liberation entered Greece they found that the retreating Germans had destroyed virtually all the railways, roads, port facilities, communications, and merchant marine. More than a thousand villages had been burned. Eighty-five percent of the children were tubercular. Livestock, poultry, and draft animals had almost disappeared. Inflation had wiped out practically all savings.

Public Papers of Truman, 1947, p.176

As a result of these tragic conditions, a militant minority, exploiting human want and misery, was able to create political chaos which, until now, has made economic recovery impossible.

Public Papers of Truman, 1947, p.176–p.177

Greece is today without funds to finance the importation of those goods which are essential to bare subsistence. Under these circumstances the people of Greece cannot make progress in solving their problems of reconstruction. Greece is in desperate need of financial and economic assistance to enable it to resume purchases of food, clothing, fuel and seeds. These are indispensable for the subsistence of its people and are obtainable only from abroad. Greece must have help to import the goods necessary to restore [p.177] internal order and security so essential for economic and political recovery.

Public Papers of Truman, 1947, p.177

The Greek Government has also asked for the assistance of experienced American administrators, economists and technicians to insure that the financial and other aid given to Greece shall be used effectively in creating a stable and self-sustaining economy and in improving its public administration.

Public Papers of Truman, 1947, p.177

The very existence of the Greek state is today threatened by the terrorist activities of several thousand armed men, led by Communists, who defy the government's authority at a number of points, particularly along the northern boundaries. A Commission appointed by the United Nations Security Council is at present investigating disturbed conditions in northern Greece and alleged border violations along the frontier between Greece on the one hand and Albania, Bulgaria, and Yugoslavia on the other.

Public Papers of Truman, 1947, p.177

Meanwhile, the Greek Government is unable to cope with the situation. The Greek army is small and poorly equipped. It needs supplies and equipment if it is to restore authority to the government throughout Greek territory.

Public Papers of Truman, 1947, p.177

Greece must have assistance if it is to become a self-supporting and self-respecting democracy.

Public Papers of Truman, 1947, p.177

The United States must supply this assistance. We have already extended to Greece certain types of relief and economic aid but these are inadequate.

Public Papers of Truman, 1947, p.177

There is no other country to which democratic Greece can turn.

Public Papers of Truman, 1947, p.177

No other nation is willing and able to provide the necessary support for a democratic Greek government.

Public Papers of Truman, 1947, p.177

The British Government, which has been helping Greece, can give no further financial or economic aid after March 31. Great Britain finds itself under the necessity of reducing or liquidating its commitments in several parts of the world, including Greece.

Public Papers of Truman, 1947, p.177

We have considered how the United Nations might assist in this crisis. But the situation is an urgent one requiring immediate action, and the United Nations and its related organizations are not in a position to extend help of the kind that is required.

Public Papers of Truman, 1947, p.177

It is important to note that the Greek Government has asked for our aid in utilizing effectively the financial and other assistance we may give to Greece, and in improving its public administration. It is of the utmost importance that we supervise the use of any funds made available to Greece, in such a manner that each dollar spent will count toward making Greece self-supporting, and will help to build an economy in which a healthy democracy can flourish.

Public Papers of Truman, 1947, p.177

No government is perfect. One of the chief virtues of a democracy, however, is that its defects are always visible and under democratic processes can be pointed out and corrected. The government of Greece is not perfect. Nevertheless it represents 85 percent of the members of the Greek Parliament who were chosen in an election last year. Foreign observers, including 692 Americans, considered this election to be a fair expression of the views of the Greek people.

Public Papers of Truman, 1947, p.177–p.178

The Greek Government has been operating in an atmosphere of chaos and extremism. It has made mistakes. The extension of aid by this country does not mean that the United States condones everything that the Greek Government has done or will do. We have condemned in the past, and we condemn now, extremist measures of the right or the left. We have in the past advised tolerance, and we advise tolerance now. [p.178] Greece's neighbor, Turkey, also deserves our attention.

Public Papers of Truman, 1947, p.178

The future of Turkey as an independent and economically sound state is clearly no less important to the freedom-loving peoples of the world than the future of Greece. The circumstances in which Turkey finds itself today are considerably different from those of Greece. Turkey has been spared the disasters that have beset Greece. And during the war, the United States and Great Britain furnished Turkey with material aid.

Public Papers of Truman, 1947, p.178

Nevertheless, Turkey now needs our support.

Public Papers of Truman, 1947, p.178

Since the war Turkey has sought additional financial assistance from Great Britain and the United States for the purpose of effecting that modernization necessary for the maintenance of its national integrity.

Public Papers of Truman, 1947, p.178

That integrity is essential to the preservation of order in the Middle East.

Public Papers of Truman, 1947, p.178

The British Government has informed us that, owing to its own difficulties, it can no longer extend financial or economic aid to Turkey.

Public Papers of Truman, 1947, p.178

As in the case of Greece, if Turkey is to have the assistance it needs, the United States must supply it. We are the only country able to provide that help.

Public Papers of Truman, 1947, p.178

I am fully aware of the broad implications involved if the United States extends assistance to Greece and Turkey, and I shall discuss these implications with you at this time.

Public Papers of Truman, 1947, p.178

One of the primary objectives of the foreign policy of the United States is the creation of conditions in which we and other nations will be able to work out a way of life free from coercion. This was a fundamental issue in the war with Germany and Japan. Our victory was won over countries which sought to impose their will, and their way of life, upon other nations.

Public Papers of Truman, 1947, p.178

To ensure the peaceful development of nations, free from coercion, the United States has taken a leading part in establishing the United Nations. The United Nations is designed to make possible lasting freedom and independence for all its members. We shall not realize our objectives, however, unless we are willing to help free peoples to maintain their free institutions and their national integrity against aggressive movements that seek to impose upon them totalitarian regimes. This is no more than a frank recognition that totalitarian regimes imposed upon free peoples, by direct or indirect aggression, undermine the foundations of international peace and hence the security of the United States.

Public Papers of Truman, 1947, p.178

The peoples of a number of countries of the world have recently had totalitarian regimes forced upon them against their will. The Government of the United States has made frequent protests against coercion and intimidation, in violation of the Yalta agreement, in Poland, Rumania, and Bulgaria. I must also state that in a number of other countries there have been similar developments.

Public Papers of Truman, 1947, p.178

At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one.

Public Papers of Truman, 1947, p.178

One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

Public Papers of Truman, 1947, p.178

The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms.

Public Papers of Truman, 1947, p.178–p.179

I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by [p.179] armed minorities or by outside pressures.

Public Papers of Truman, 1947, p.179

I believe that we must assist free peoples to work out their own destinies in their own way.

Public Papers of Truman, 1947, p.179

I believe that our help should be primarily through economic and financial aid which is essential to economic stability and orderly political processes.

Public Papers of Truman, 1947, p.179

The world is not static, and the status quo is not sacred. But we cannot allow changes in the status quo in violation of the Charter of the United Nations by such methods as coercion, or by such subterfuges as political infiltration. In helping free and independent nations to maintain their freedom, the United States will be giving effect to the principles of the Charter of the United Nations.

Public Papers of Truman, 1947, p.179

It is necessary only to glance at a map to realize that the survival and integrity of the Greek nation are of grave importance in a much wider situation. If Greece should fall under the control of an armed minority, the effect upon its neighbor, Turkey, would be immediate and serious. Confusion and disorder might well spread throughout the entire Middle East.

Public Papers of Truman, 1947, p.179

Moreover, the disappearance of Greece as an independent state would have a profound effect upon those countries in Europe whose peoples are struggling against great difficulties to maintain their freedoms and their independence while they repair the damages of war.

Public Papers of Truman, 1947, p.179

It would be an unspeakable tragedy if these countries, which have struggled so long against overwhelming odds, should lose that victory for which they sacrificed so much. Collapse of free institutions and loss of independence would be disastrous not only for them but for the world. Discouragement and possibly failure would quickly be the lot of neighboring peoples striving to maintain their freedom and independence.

Public Papers of Truman, 1947, p.179

Should we fail to aid Greece and Turkey in this fateful hour, the effect will be far reaching to the West as well as to the East.

Public Papers of Truman, 1947, p.179

We must take immediate and resolute action.

Public Papers of Truman, 1947, p.179

I therefore ask the Congress to provide authority for assistance to Greece and Turkey in the amount of $400,000,000 for the period ending June 30, 1948. In requesting these funds, I have taken into consideration the maximum amount of relief assistance which would be furnished to Greece out of the $350,000,000 which I recently requested that the Congress authorize for the prevention of starvation and suffering in countries devastated by the war.

Public Papers of Truman, 1947, p.179

In addition to funds, I ask the Congress to authorize the detail of American civilian and military personnel to Greece and Turkey, at the request of those countries, to assist in the tasks of reconstruction, and for the purpose of supervising the use of such financial and material assistance as may be furnished. I recommend that authority also be provided for the instruction and raining of selected Greek and Turkish personnel.

Public Papers of Truman, 1947, p.179

Finally, I ask that the Congress provide authority which will permit the speediest and most effective use, in terms of needed commodities, supplies, and equipment, of such funds as may be authorized.

Public Papers of Truman, 1947, p.179

If further funds, or further authority, should be needed for the purposes indicated in this message, I shall not hesitate to bring the situation before the Congress. On this subject the Executive and Legislative branches of the Government must work together.

Public Papers of Truman, 1947, p.179–p.180

This is a serious course upon which we embark. [p.180] I would not recommend it except that the alternative is much more serious.

Public Papers of Truman, 1947, p.180

The United States contributed $341,000,000,000 toward winning World War II. This is an investment in world freedom and world peace.

Public Papers of Truman, 1947, p.180

The assistance that I am recommending for Greece and Turkey amounts to little more than 1/10 of 1 percent of this investment. It is only common sense that we should safeguard this investment and make sure that it was not in vain.

Public Papers of Truman, 1947, p.180

The seeds of totalitarian regimes are nurtured by misery and want. They spread and grow in the evil soil of poverty and strife. They reach their full growth when the hope of a people for a better life has died.

Public Papers of Truman, 1947, p.180

We must keep that hope alive.

Public Papers of Truman, 1947, p.180

The free peoples of the world look to us for support in maintaining their freedoms.

Public Papers of Truman, 1947, p.180

If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of this Nation.

Public Papers of Truman, 1947, p.180

Great responsibilities have been placed upon us by the swift movement of events.

Public Papers of Truman, 1947, p.180

I am confident that the Congress will face these responsibilities squarely.

Public Papers of Truman, 1947, p.180

NOTE: For the President's statement upon signing the bill endorsing the Truman Doctrine, see Item 100.

Everson v. Board of Education, 1947

Title: Everson v. Board of Education of the Township of Ewing

Author: U.S. Supreme Court

Date: February 10, 1947

Source: 330 U.S. 1

This case was argued November 20, 1946, and was decided February 10, 1947.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF NEW JERSEY

Syllabus

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

Pursuant to a New Jersey statute authorizing district boards of education to make rules and contracts for the transportation of children to and from schools other than private schools operated for profit, a board of education by resolution authorized the reimbursement of parents for fares paid for the transportation by public carrier of children attending public and Catholic schools. The Catholic schools operated under the superintendency of a Catholic priest and, in addition to secular education, gave religious instruction in the Catholic Faith. A district taxpayer challenged the validity under the Federal Constitution of the statute and resolution so far as they authorized reimbursement to parents for the transportation of children attending sectarian schools. No question was raised as to whether the exclusion of private schools operated for profit denied equal protection of the laws; nor did the record show that there were any children in the district who attended, or would have attended but for the cost of transportation, any but public or Catholic schools.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

Held:

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

1. The expenditure of tax raised funds thus authorized was for a public purpose, and did not violate the due process clause of the Fourteenth Amendment. Pp. 5-8.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

2. The statute and resolution did not violate the provision of the First Amendment (made applicable to the states by the Fourteenth Amendment) prohibiting any "law respecting an establishment of religion." Pp. 8-18.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 1

133 N.J.L. 350, 44 A.2d 333, affirmed. [330 U.S. 2]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 2

In a suit by a taxpayer, the New Jersey Supreme Court held that the state legislature was without power under the state constitution to authorize reimbursement to parents of bus fares paid for transporting their children to schools other than public schools. 132 N.J.L. 98, 39 A.2d 75. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor a resolution passed pursuant to it violated the state constitution or the provisions of the Federal Constitution in issue. 133 N.J.L. 350, 44 A.2d 333. On appeal of the federal questions to this Court, affirmed, p. 18. [330 U.S. 3]

BLACK, J., lead opinion

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 3

MR. JUSTICE BLACK delivered the opinion of the Court.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 3

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of children to and from schools. 1 The appellee, a township board of education, acting pursuant to this statute, authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 3

The appellant, in his capacity as a district taxpayer, filed suit in a state court challenging the right of the Board to reimburse parents of parochial school students. He [330 U.S. 4] contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions. That court held that the legislature was without power to authorize such payment under the state constitution. 132 N.J.L. 98, 39 A.2d 75. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. 133 N.J.L. 350, 44 A.2d 333. The case is here on appeal under 28 U.S.C. § 344(a).

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 4

Since there has been no attack on the statute on the ground that a part of its language excludes children attending private schools operated for profit from enjoying State payment for their transportation, we need not consider this exclusionary language; it has no relevancy to any constitutional question here presented. 2 Furthermore, if the exclusion clause had been properly challenged, we do not know whether New Jersey's highest court would construe its statutes as precluding payment of the school [330 U.S. 5] transportation of any group of pupils, even those of a private school run for profit. 3 Consequently, we put to one side the question as to the validity of the statute against the claim that it does not authorize payment for the transportation generally of school children in New Jersey.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 5

The only contention here is that the state statute and the resolution, insofar as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent overlap. First. They authorize the State to take by taxation the private property of some and bestow it upon others to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment. Second. The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use of state power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the states.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 5

First. The due process argument that the state law taxes some people to help others carry out their private [330 U.S. 6] purposes is framed in two phases. The first phase is that a state cannot tax A to reimburse B for the cost of transporting his children to church schools. This is said to violate the due process clause because the children are sent to these church schools to satisfy the personal desires of their parents, rather than the public's interest in the general education of all children. This argument, if valid, would apply equally to prohibit state payment for the transportation of children to any nonpublic school, whether operated by a church or any other nongovernment individual or group. But the New Jersey legislature has decided that a public purpose will be served by using tax raised funds to pay the bus fares of all school children, including those who attend parochial schools. The New Jersey Court of Errors and Appeals has reached the same conclusion. The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 6

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax raised funds were to be expended was not a public one. Loan Association v. Topeka, 20 Wall. 655; Parkersburg v. Brown, 106 U.S. 487; Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. Green v. Frazier, 253 U.S. 233, 240. Otherwise, a state's power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general wellbeing [330 U.S. 7] of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. Davidson v. New Orleans, 96 U.S. 97, 103-104; Barbier v. Connolly, 113 U.S. 27, 31-32; Fallbrook Irrigation District v. Bradley, 164 U.S. 112, 157-158.

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It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. Cochran v. Louisiana State Board of Education, 281 U.S. 370; Holmes, J., in Interstate Ry. v. Massachusetts, 207 U.S. 79, 87. See opinion of Cooley, J., in Stuart v. School District No. 1 of Kalamazoo, 30 Mich. 69 (1874). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools, rather than run the risk of traffic and other hazards incident to walking or "hitchhiking." See Barbier v. Connolly, supra, at 31. See also cases collected 63 A.L.R. 413; 118 A.L.R. 806. Nor does it follow that a law has a private, rather than a public, purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 518. Subsidies and loans to individuals such as farmers and home owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.

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Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the State. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion [330 U.S. 8] by law. This is the exact question raised by appellant's second contention, to consideration of which we now turn.

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Second. The New Jersey statute is challenged as a "law respecting an establishment of religion." The First Amendment, as made applicable to the states by the Fourteenth, Murdock v. Pennsylvania, 319 U.S. 105, commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity. Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting an establishment of religion" probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights. Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again, 4 therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

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A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife and persecutions, generated in large part by established sects determined to [330 U.S. 9] maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of nonbelief in their doctrines, and failure to pay taxes and tithes to support them. 5

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These practices of the old world were transplanted to, and began to thrive in, the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or nonbelievers, would be required to support and attend. 6 An exercise of [330 U.S. 10] this authority was accompanied by a repetition of many of the old-world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated. 7 And all of these dissenters were compelled to pay tithes and taxes 8 to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters. [330 U.S. 11]

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These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence. 9 The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation. 10 It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty. But Virginia, where the established church had achieved a dominant influence in political affairs and where many excesses attracted wide public attention, provided a great stimulus and able leadership for the movement. The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

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The movement toward this end reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jefferson [330 U.S. 12] and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law. 11 In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or nonbeliever, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free, and that cruel persecutions were the inevitable result of government-established religions. Madison's Remonstrance received strong support throughout Virginia, 12 and the Assembly postponed consideration of the proposed tax measure until its next session. When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson. 13 The preamble to that Bill stated, among other things, that

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Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are [330 U.S. 13] a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either…; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern….

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And the statute itself enacted

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That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief…. 14

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This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective, and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute. Reynolds v. United States, supra, at 164; Watson v. Jones, 13 Wall. 679; Davis v. Beason, 133 U.S. 333, 342. Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states. 15 Most of them did soon provide similar constitutional protections [330 U.S. 14] for religious liberty. 16 But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups. 17 In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect. 18 Some churches have either sought or accepted state financial support for their schools. Here again, the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith. 19 The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion. 20

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The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it [330 U.S. 15] was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth. 21 The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom. 22 There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina, 23 quoted with approval by this Court in Watson v. Jones, 13 Wall. 679, 730:

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The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority.

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The "establishment of religion" clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining [330 U.S. 16] or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." Reynolds v. United States, supra, at 164.

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We must consider the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that state statute down if it is within the State's constitutional power, even though it approaches the verge of that power. See Interstate Ry. v. Massachusetts, Holmes, J., supra, at 85, 88. New Jersey cannot, consistently with the "establishment of religion" clause of the First Amendment, contribute tax raised funds to the support of an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Nonbelievers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief. [330 U.S. 17]

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Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State. The same possibility exists where the state requires a local transit company to provide reduced fares to school children, including those attending parochial schools, 24 or where a municipally owned transportation system undertakes to carry all school children free of charge. Moreover, state-paid policemen, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare. And parents might refuse to risk their children to the serious danger of traffic accidents going to and from parochial schools the approaches to which were not protected by policemen. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public [330 U.S. 18] highways and sidewalks. Of course, cutting off church schools from these services so separate and so indisputably marked off from the religious function would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

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This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious, rather than a public, school if the school meets the secular educational requirements which the state has power to impose. See Pierce v. Society of Sisters, 26 U.S. 510. It appears that these parochial schools meet New Jersey's requirements. The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 18

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 18

Affirmed.

JACKSON, J., dissenting

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 18

MR. JUSTICE JACKSON, dissenting.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 18

I find myself, contrary to first impressions, unable to join in this decision. I have a sympathy, though it is not ideological, with Catholic citizens who are compelled by law to pay taxes for public schools, and also feel constrained by conscience and discipline to support other schools for their own children. Such relief to them as [330 U.S. 19] this case involves is not, in itself, a serious burden to taxpayers, and I had assumed it to be as little serious in principle. Study of this case convinces me otherwise. The Court's opinion marshals every argument in favor of state aid, and puts the case in its most favorable light, but much of its reasoning confirms my conclusions that there are no good grounds upon which to support the present legislation. In fact, the undertones of the opinion, advocating complete and uncompromising separation of Church from State, seem utterly discordant with its conclusion, yielding support to their commingling in educational matters. The case which irresistibly comes to mind as the most fitting precedent is that of Julia who, according to Byron's reports, "whispering `I will ne'er consent,'—consented."

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 19

I

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 19

The Court sustains this legislation by assuming two deviations from the facts of this particular case; first, it assumes a state of facts the record does not support, and secondly, it refuses to consider facts which are inescapable on the record.

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The Court concludes that this

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legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools,

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and it draws a comparison between "state provisions intended to guarantee free transportation" for school children with services such as police and fire protection, and implies that we are here dealing with "laws authorizing new types of public services…. " This hypothesis permeates the opinion. The facts will not bear that construction.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 19

The Township of Ewing is not furnishing transportation to the children in any form; it is not operating school busses itself, or contracting for their operation, and it is not performing any public service of any kind with this [330 U.S. 20] taxpayer's money. All school children are left to ride as ordinary paying passengers on the regular busses operated by the public transportation system. What the Township does, and what the taxpayer complains of, is, at stated intervals, to reimburse parents for the fares paid, provided the children attend either public schools or Catholic Church schools. This expenditure of tax funds has no possible effect on the child's safety or expedition in transit. As passengers on the public busses, they travel as fast, and no faster, and are as safe, and no safer, since their parents are reimbursed, as before.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 20

In addition to thus assuming a type of service that does not exist, the Court also insists that we must close our eyes to a discrimination which does exist. The resolution which authorizes disbursement of this taxpayer's money limits reimbursement to those who attend public schools and Catholic schools. That is the way the Act is applied to this taxpayer.

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The New Jersey Act in question makes the character of the school, not the needs of the children, determine the eligibility of parents to reimbursement. The Act permits payment for transportation to parochial schools or public schools, but prohibits it to private schools operated in whole or in part for profit. Children often are sent to private schools because their parents feel that they require more individual instruction than public schools can provide, or because they are backward or defective, and need special attention. If all children of the state were objects of impartial solicitude, no reason is obvious for denying transportation reimbursement to students of this class, for these often are as needy and as worthy as those who go to public or parochial schools. Refusal to reimburse those who attend such schools is understandable only in the light of a purpose to aid the schools, because the state might well abstain from aiding a profit-making private enterprise. Thus, under the Act [330 U.S. 21] and resolution brought to us by this case, children are classified according to the schools they attend, and are to be aided if they attend the public schools or private Catholic schools, and they are not allowed to be aided if they attend private secular schools or private religious schools of other faiths.

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Of course, this case is not one of a Baptist or a Jew or an Episcopalian or a pupil of a private school complaining of discrimination. It is one of a taxpayer urging that he is being taxed for an unconstitutional purpose. I think he is entitled to have us consider the Act just as it is written. The statement by the New Jersey court that it holds the Legislature may authorize use of local funds "for the transportation of pupils to any school," 133 N.J.L. 350, 354, 44 A.2d 333, 337, in view of the other constitutional views expressed, is not a holding that this Act authorizes transportation of all pupils to all schools. As applied to this taxpayer by the action he complains of, certainly the Act does not authorize reimbursement to those who choose any alternative to the public school except Catholic Church schools.

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If we are to decide this case on the facts before us, our question is simply this: is it constitutional to tax this complainant to pay the cost of carrying pupils to Church schools of one specified denomination?

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 21

II

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 21

Whether the taxpayer constitutionally can be made to contribute aid to parents of students because of their attendance at parochial schools depends upon the nature of those schools and their relation to the Church. The Constitution says nothing of education. It lays no obligation on the states to provide schools, and does not undertake to regulate state systems of education if they see fit to maintain them. But they cannot, through school policy any more than through other means, invade rights secured [330 U.S. 22] to citizens by the Constitution of the United States. West Virginia State Board of Education v. Barnette, 319 U.S. 624. One of our basic rights is to be free of taxation to support a transgression of the constitutional command that the authorities "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " U.S.Const., Amend. I; Cantwell v. Connecticut, 310 U.S. 296.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 22

The function of the Church school is a subject on which this record is meager. It shows only that the schools are under superintendence of a priest, and that "religion is taught as part of the curriculum." But we know that such schools are parochial only in name—they, in fact, represent a worldwide and age-old policy of the Roman Catholic Church. Under the rubric "Catholic Schools," the Canon Law of the Church, by which all Catholics are bound, provides:

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1215. Catholic children are to be educated in schools where not only nothing contrary to Catholic faith and morals is taught, but rather in schools where religious and moral training occupy the first place…. (Canon 1372.)

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1216. In every elementary school, the children must, according to their age, be instructed in Christian doctrine.

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The young people who attend the higher schools are to receive a deeper religious knowledge, and the bishops shall appoint priests qualified for such work by their learning and piety. (Canon 1373.)

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1217. Catholic children shall not attend non-Catholic, indifferent schools that are mixed, that is to say, schools open to Catholics and non-Catholics alike. The bishop of the diocese only has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards [330 U.S. 23] to prevent loss of faith, it may be tolerated that Catholic children go to such schools. (Canon 1374.)

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1224. The religious teaching of youth in any schools is subject to the authority and inspection of the Church.

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The local Ordinaries have the right and duty to watch that nothing is taught contrary to faith or good morals in any of the schools of their territory.

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They, moreover, have the right to approve the books of Christian doctrine and the teachers of religion, and to demand, for the sake of safeguarding religion and morals, the removal of teachers and books. (Canon 1381.)

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(Woywod, Rev. Stanislaus, The New Canon Law, under imprimatur of Most Rev. Francis J. Spellman, Archbishop of New York and others, 1940.)

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It is no exaggeration to say that the whole historic conflict in temporal policy between the Catholic Church and non-Catholics comes to a focus in their respective school policies. The Roman Catholic Church, counseled by experience in many ages and many lands and with all sorts and conditions of men, takes what, from the viewpoint of its own progress and the success of its mission, is a wise estimate of the importance of education to religion. It does not leave the individual to pick up religion by chance. It relies on early and indelible indoctrination in the faith and order of the Church by the word and example of persons consecrated to the task.

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Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values. It is a relatively recent development, dating from about 1840.\* It is organized on [330 U.S. 24] the premise that secular education can be isolated from all religious teaching, so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that, after the individual has been instructed in worldly wisdom, he will be better fitted to choose his religion. Whether such a disjunction is possible, and, if possible, whether it is wise, are questions I need not try to answer.

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I should be surprised if any Catholic would deny that the parochial school is a vital, if not the most vital, part of the Roman Catholic Church. If put to the choice, that venerable institution, I should expect, would forego its whole service for mature persons before it would give up education of the young, and it would be a wise choice. Its growth and cohesion, discipline and loyalty, spring from its schools. Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 24

III

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 24

It is of no importance in this situation whether the beneficiary of this expenditure of tax raised funds is primarily the parochial school and incidentally the pupil, or whether the aid is directly bestowed on the pupil, with indirect benefits to the school. The state cannot maintain a Church, and it can no more tax its citizens to furnish free carriage to those who attend a Church. The prohibition against establishment of religion cannot be circumvented by a subsidy, bonus or reimbursement of expense to individuals for receiving religious instruction and indoctrination.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 24

The Court, however, compares this to other subsidies and loans to individuals, and says,

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Nor does it follow that a law has a private, rather than a public, purpose because [330 U.S. 25] it provides that tax raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 518.

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Of course, the state may pay out tax raised funds to relieve pauperism, but it may not, under our Constitution, do so to induce or reward piety. It may spend funds to secure old age against want, but it may not spend funds to secure religion against skepticism. It may compensate individuals for loss of employment, but it cannot compensate them for adherence to a creed.

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It seems to me that the basic fallacy in the Court's reasoning, which accounts for its failure to apply the principles it avows, is in ignoring the essentially religious test by which beneficiaries of this expenditure are selected. A policeman protects a Catholic, of course,—but not because he is a Catholic; it is because he is a man, and a member of our society. The fireman protects the Church school—but not because it is a Church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid, "is this man or building identified with the Catholic Church?" But, before these school authorities draw a check to reimburse for a student's fare, they must ask just that question, and, if the school is a Catholic one, they may render aid because it is such, while if it is of any other faith or is run for profit, the help must be withheld. To consider the converse of the Court's reasoning will best disclose its fallacy. That there is no parallel between police and fire protection and this plan of reimbursement is apparent from the incongruity of the limitation of this Act if applied to police and fire service. Could we sustain an Act that said the police shall protect pupils on the way to or from public schools and Catholic schools, but not [330 U.S. 26] while going to and coming from other schools, and firemen shall extinguish a blaze in public or Catholic school buildings, but shall not put out a blaze in Protestant Church schools or private schools operated for profit? That is the true analogy to the case we have before us, and I should think it pretty plain that such a scheme would not be valid.

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The Court's holding is that this taxpayer has no grievance, because the state has decided to make the reimbursement a public purpose, and therefore we are bound to regard it as such. I agree that this Court has left, and always should leave, to each state great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character. There is no answer to the proposition, more fully expounded by MR. JUSTICE RUTLEDGE, that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business, and thereby be supported in whole or in part at taxpayers' expense. That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom and which the Court is overlooking today. This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the states' hands out of religion, but to [330 U.S. 27] keep religion's hands off the state, and, above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse. Those great ends, I cannot but think, are immeasurably compromised by today's decision.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 27

This policy of our Federal Constitution has never been wholly pleasing to most religious groups. They all are quick to invoke its protections; they all are irked when they feel its restraints. This Court has gone a long way, if not an unreasonable way, to hold that public business of such paramount importance as maintenance of public order, protection of the privacy of the home, and taxation may not be pursued by a state in a way that even indirectly will interfere with religious proselyting. See dissent in Douglas v. Jeannette, 319 U.S. 157, 166; Murdock v. Pennsylvania, 319 U.S. 105; Martin v. Struthers, 319 U.S. 141; Jones v. Opelika, 316 U.S. 584, reversed on rehearing, 319 U.S. 103.

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But we cannot have it both ways. Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. If these principles seem harsh in prohibiting aid to Catholic education, it must not be forgotten that it is the same Constitution that alone assures Catholics the right to maintain these schools at all when predominant local sentiment would forbid them. Pierce v. Society of Sisters, 268 U.S. 510. Nor should I think that those who have done so well without this aid would want to see this separation between Church and State broken down. If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds, only to find that it carried political controls with it. Indeed, this Court has [330 U.S. 28] declared that "It is hardly lack of due process for the Government to regulate that which it subsidizes." Wickard v. Filburn, 317 U.S. 111, 131.

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But, in any event, the great purposes of the Constitution do not depend on the approval or convenience of those they restrain. I cannot read the history of the struggle to separate political from ecclesiastical affairs, well summarized in the opinion of MR. JUSTICE RUTLEDGE, in which I generally concur, without a conviction that the Court today is unconsciously giving the clock's hands a backward turn.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 28

MR. JUSTICE FRANKFURTER joins in this opinion.

RUTLEDGE, J., dissenting

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MR. JUSTICE RUTLEDGE, with whom MR. JUSTICE FRANKFURTER, MR. JUSTICE JACKSON and MR. JUSTICE BURTON agree, dissenting.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 28

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…. " U.S.Const., Amend. I.

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1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 28

Well aware that Almighty God hath created the mind free;…that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical;….

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We, the General Assembly, do enact, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief…. 1 [330 U.S. 29]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 29

I cannot believe that the great author of those words, or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment, now made applicable to all the states by the Fourteenth. 2 New Jersey's statute sustained is the first, if indeed it is not the second, breach to be made by this Court's action. That a third, and a fourth, and still others will be attempted we may be sure. For just as Cochran v. Board of Education, 281 U.S. 370, has opened the way by oblique ruling 3 for this decision, so will the two make wider the breach for a third. Thus, with time, the most solid freedom steadily gives way before continuing corrosive decision.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 29

This case forces us to determine squarely for the first time 4 what was "an establishment of religion" in the First Amendment's conception, and by that measure to decide whether New Jersey's action violates its command. The facts may be stated shortly, to give setting and color to the constitutional problem.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 29

By statute, New Jersey has authorized local boards of education to provide for the transportation of children "to and from school other than a public school" except one [330 U.S. 30] operated for profit wholly or in part, over established public school routes, or by other means, when the child lives "remote from any school." 5 The school board of Ewing Township has provided by resolution for "the transportation of pupils of Ewing to the Trenton and Pennington High Schools and Catholic Schools by way of public carrier…. " 6

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 30

Named parents have paid the cost of public conveyance of their children from their homes in Ewing to three public high schools and four parochial schools outside the district. 7 Semiannually, the Board has reimbursed the parents from public school funds raised by general taxation. Religion is taught as part of the curriculum in each [330 U.S. 31] of the four private schools, as appears affirmatively by the testimony of the superintendent of parochial schools in the Diocese of Trenton.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 31

The Court of Errors and Appeals of New Jersey, reversing the Supreme Court's decision, 132 N.J.L. 98, 39 A.2d 75, has held the Ewing board's action not in contravention of the state constitution or statutes or of the Federal Constitution. 133 N.J.L. 350, 44 A.2d 333. We have to consider only whether this ruling accords with the prohibition of the First Amendment implied in the due process clause of the Fourteenth.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 31

I

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 31

Not simply an established church, but any law respecting an establishment of religion, is forbidden. The Amendment was broadly, but not loosely, phrased. It is the compact and exact summation of its author's views formed during his long struggle for religious freedom. In Madison's own words characterizing Jefferson's Bill for Establishing Religious Freedom, the guaranty he put in our national charter, like the bill he piloted through the Virginia Assembly, was "a Model of technical precision, and perspicuous brevity." 8 Madison could not have confused "church" and "religion," or "an established church" and "an establishment of religion."

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The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily, it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the [330 U.S. 32] spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. In proof, the Amendment's wording and history unite with this Court's consistent utterances whenever attention has been fixed directly upon the question.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 32

"Religion" appears only once in the Amendment. But the word governs two prohibitions, and governs them alike. It does not have two meanings, one narrow, to forbid "an establishment," and another much broader, for securing "the free exercise thereof." "Thereof" brings down "religion" with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress, and now the states, are as broadly restricted concerning the one as they are regarding the other.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 32

No one would claim today that the Amendment is constricted, in "prohibiting the free exercise" of religion, to securing the free exercise of some formal or creedal observance, of one sect or of many. It secures all forms of religious expression, creedal, sectarian or nonsectarian, wherever and however taking place, except conduct which trenches upon the like freedoms of others or clearly and presently endangers the community's good order and security. 9 For the protective purposes of this phase of the basic freedom, street preaching, oral or by distribution of [330 U.S. 33] literature, has been given "the same high estate under the First Amendment as…worship in the churches and preaching from the pulpits." 10 And on this basis, parents have been held entitled to send their children to private religious schools. Pierce v. Society of Sisters, 268 U.S. 510. Accordingly, daily religious education commingled with secular is "religion" within the guaranty's comprehensive scope. So are religious training and teaching in whatever form. The word connotes the broadest content, determined not by the form or formality of the teaching or where it occurs, but by its essential nature, regardless of those details.

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"Religion" has the same broad significance in the twin prohibition concerning "an establishment." The Amendment was not duplicitous. "Religion" and "establishment" were not used in any formal or technical sense. The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 33

II

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 33

No provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history. The history includes not only Madison's authorship and the proceedings before the First Congress, but also the long and intensive struggle for religious freedom in America, more especially in Virginia, 11 of which the Amendment [330 U.S. 34] was the direct culmination. 12 In the documents of the times, particularly of Madison, who was leader in the Virginia struggle before he became the Amendment's sponsor, but also in the writings of Jefferson and others and in the issues which engendered them is to be found irrefutable confirmation of the Amendment's sweeping content.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 34

For Madison, as also for Jefferson, religious freedom was the crux of the struggle for freedom in general. Remonstrance, Par. 15, Appendix hereto. Madison was coauthor with George Mason of the religious clause in Virginia's great Declaration of Rights of 1776. He is credited with changing it from a mere statement of the principle of tolerance to the first official legislative pronouncement that freedom of conscience and religion are inherent rights of the individual. 13 He sought also to have the Declaration [330 U.S. 35] expressly condemn the existing Virginia establishment. 14 But the forces supporting it were then too strong.

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Accordingly, Madison yielded on this phase, but not for long. At once, he resumed the fight, continuing it before succeeding legislative sessions. As a member of the General Assembly in 1779, he threw his full weight behind Jefferson's historic Bill for Establishing Religious Freedom. That bill was a prime phase of Jefferson's broad program of democratic reform undertaken on his return from the Continental Congress in 1776 and submitted for the General Assembly's consideration in 1779 as his proposed revised Virginia code. 15 With Jefferson's departure for Europe in 1784, Madison became the Bill's prime [330 U.S. 36] sponsor. 16 Enactment failed in successive legislatures from its introduction in June, 1779, until its adoption in January, 1786. But, during all this time, the fight for religious freedom moved forward in Virginia on various fronts with growing intensity. Madison led throughout, against Patrick Henry's powerful opposing leadership until Henry was elected governor in November, 1784.

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The climax came in the legislative struggle of 1784-1785 over the Assessment Bill. See Supplemental Appendix hereto. This was nothing more nor less than a taxing measure for the support of religion, designed to revive the payment of tithes suspended since 1777. So long as it singled out a particular sect for preference, it incurred the active and general hostility of dissentient groups. It was broadened to include them, with the result that some subsided temporarily in their opposition. 17 As altered, the bill gave to each taxpayer the privilege of designating which church should receive his share of the tax. In default of designation, the legislature applied it to pious uses. 18 But what is of the utmost significance here, "in [330 U.S. 37] its final form, the bill left the taxpayer the option of giving his tax to education." 19

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Madison was unyielding at all times, opposing with all his vigor the general and nondiscriminatory, as he had the earlier particular and discriminatory, assessments proposed. The modified Assessment Bill passed second reading in December, 1784, and was all but enacted. Madison and his followers, however, maneuvered deferment of final consideration until November, 1785. And, before the Assembly reconvened in the fall, he issued his historic Memorial and Remonstrance. 20

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This is Madison's complete, though not his only, interpretation of religious liberty. 21 It is a broadside attack upon all forms of "establishment" of religion, both general and particular, nondiscriminatory or selective. Reflecting not only the many legislative conflicts over the Assessment Bill and the Bill for Establishing Religious Freedom, but also, for example, the struggles for religious incorporations and the continued maintenance of the glebes, the Remonstrance is at once the most concise and the most accurate statement of the views of the First Amendment's author concerning what is "an establishment of religion." Because it behooves us in the dimming distance of time not [330 U.S. 38] to lose sight of what he and his coworkers had in mind when, by a single sweeping stroke of the pen, they forbade an establishment of religion and secured its free exercise, the text of the Remonstrance is appended at the end of this opinion for its wider current reference, together with a copy of the bill against which it was directed.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 38

The Remonstrance, stirring up a storm of popular protest, killed the Assessment Bill. 22 It collapsed in committee shortly before Christmas, 1785. With this, the way was cleared at last for enactment of Jefferson's Bill for Establishing Religious Freedom. Madison promptly drove it through in January of 1786, seven years from the time it was first introduced. This dual victory substantially ended the fight over establishments, settling the issue against them. See note 33.

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The next year, Madison became a member of the Constitutional Convention. Its work done, he fought valiantly to secure the ratification of its great product in Virginia, as elsewhere, and nowhere else more effectively. 23 Madison was certain in his own mind that, under the Constitution "there is not a shadow of right in the general government to intermeddle with religion," 24 and that "this subject is, for the honor of America, perfectly free and [330 U.S. 39] unshackled. The government has no jurisdiction over it…. " 25 Nevertheless he pledged that he would work for a Bill of Rights, including a specific guaranty of religious freedom, and Virginia, with other states, ratified the Constitution on this assurance. 26

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 39

Ratification thus accomplished, Madison was sent to the first Congress. There he went at once about performing his pledge to establish freedom for the nation as he had done in Virginia. Within a little more than three years from his legislative victory at home, he had proposed and secured the submission and ratification of the First Amendment as the first article of our Bill of Rights. 27

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All the great instruments of the Virginia struggle for religious liberty thus became warp and woof of our constitutional tradition, not simply by the course of history, but by the common unifying force of Madison's life, thought and sponsorship. He epitomized the whole of that tradition in the Amendment's compact, but nonetheless comprehensive, phrasing.

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As the Remonstrance discloses throughout, Madison opposed every form and degree of official relation between religion and civil authority. For him, religion was a wholly private matter beyond the scope of civil power [330 U.S. 40] either to restrain or to support. 28 Denial or abridgment of religious freedom was a violation of rights both of conscience and of natural equality. State aid was no less obnoxious or destructive to freedom and to religion itself than other forms of state interference. "Establishment" and "free exercise" were correlative and coextensive ideas, representing only different facets of the single great and fundamental freedom. The Remonstrance, following the Virginia statute's example, referred to the history of religious conflicts and the effects of all sorts of establishments, current and historical, to suppress religion's free exercise. With Jefferson, Madison believed that to tolerate any fragment of establishment would be by so much to perpetuate restraint upon that freedom. Hence, he sought to tear out the institution not partially, but root and branch, and to bar its return forever.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 40

In no phase was he more unrelentingly absolute than in opposing state support or aid by taxation. Not even "three pence" contribution was thus to be exacted from any citizen for such a purpose. Remonstrance, Par. 3. 29 [330 U.S. 41] Tithes had been the lifeblood of establishment before and after other compulsions disappeared. Madison and his coworkers made no exceptions or abridgments to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever. "If it were lawful to impose a small tax for religion, the admission would pave the way for oppressive levies." 30 Not the amount, but "the principle of assessment, was wrong." And the principle was as much to prevent "the interference of law in religion" as to restrain religious intervention in political matters. 31 In this field, the authors of our freedom would not tolerate "the first experiment on our liberties" or "wait till usurped power had strengthened itself by exercise, and entangled the question in precedents." Remonstrance, Par. 3. Nor should we.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 41

In view of this history, no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. But if more were called for, the debates in the First Congress and this Court's consistent expressions, whenever it has touched on the matter directly, 32 supply it. [330 U.S. 42]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 42

By contrast with the Virginia history, the congressional debates on consideration of the Amendment reveal only sparse discussion, reflecting the fact that the essential issues had been settled. 33 Indeed, the matter had become so well understood as to have been taken for granted in all but formal phrasing. Hence, the only enlightening reference shows concern not to preserve any power to use public funds in aid of religion, but to prevent the Amendment from outlawing private gifts inadvertently by virtue of the breadth of its wording. 34 In the [330 U.S. 43] margin are noted also the principal decisions in which expressions of this Court confirm the Amendment's broad prohibition. 35 [330 U.S. 44]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 44

III.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 44

Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies. 36 Test oaths and religious qualification for office followed later. 37 These things none devoted to our great tradition of religious liberty would think of bringing back. Hence, today, apart from efforts to inject religious training or exercises and sectarian issues into the public schools, the only serious surviving threat to maintaining that complete and permanent separation of religion and civil power which the First Amendment commands is through use of the taxing power to support religion, religious establishments, or establishments having a religious foundation, whatever their form or special religious function.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 44

Does New Jersey's action furnish support for religion by use of the taxing power? Certainly it does, if the test remains undiluted as Jefferson and Madison made it, that money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own. 38 Today, as then, the furnishing of "contributions [330 U.S. 45] of money for the propagation of opinions which he disbelieves" is the forbidden exaction, and the prohibition is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 45

The funds used here were raised by taxation. The Court does not dispute, nor could it, that their use does, in fact, give aid and encouragement to religious instruction. It only concludes that this aid is not "support" in law. But Madison and Jefferson were concerned with aid and support in fact, not as a legal conclusion "entangled in precedents." Remonstrance, Par. 3. Here, parents pay money to send their children to parochial schools, and funds raised by taxation are used to reimburse them. This not only helps the children to get to school and the parents to send them. It aids them in a substantial way to get the very thing which they are sent to the particular school to secure, namely, religious training and teaching.

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Believers of all faiths, and others who do not express their feeling toward ultimate issues of existence in any creedal form, pay the New Jersey tax. When the money so raised is used to pay for transportation to religious schools, the Catholic taxpayer, to the extent of his proportionate share, pays for the transportation of Lutheran, Jewish and otherwise religiously affiliated children to receive their non-Catholic religious instruction. Their parents likewise pay proportionately for the transportation of Catholic children to receive Catholic instruction. Each thus contributes to "the propagation of opinions which he disbelieves" in so far as their religions differ, as do others who accept no creed without regard to those differences. Each [330 U.S. 46] thus pays taxes also to support the teaching of his own religion, an exaction equally forbidden, since it denies "the comfortable liberty" of giving one's contribution to the particular agency of instruction he approves. 39

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 46

New Jersey's action therefore exactly fits the type of exaction and the kind of evil at which Madison and Jefferson struck. Under the test they framed, it cannot be said that the cost of transportation is no part of the cost of education or of the religious instruction given. That it is a substantial and a necessary element is shown most plainly by the continuing and increasing demand for the state to assume it. Nor is there pretense that it relates only to the secular instruction given in religious schools, or that any attempt is or could be made toward allocating proportional shares as between the secular and the religious instruction. It is precisely because the instruction is religious and relates to a particular faith, whether one or another, that parents send their children to religious schools under the Pierce doctrine. And the very purpose of the state's contribution is to defray the cost of conveying the pupil to the place where he will receive not simply secular, but also and primarily religious, teaching and guidance.

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Indeed, the view is sincerely avowed by many of various faiths, 40 that the basic purpose of all education is or should be religious, that the secular cannot be and should not be separated from the religious phase and emphasis. Hence [330 U.S. 47] the inadequacy of public or secular education and the necessity for sending the child to a school where religion is taught. But whatever may be the philosophy or its justification, there is undeniably an admixture of religious with secular teaching in all such institutions. That is the very reason for their being. Certainly, for purposes of constitutionality, we cannot contradict the whole basis of the ethical and educational convictions of people who believe in religious schooling.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 47

Yet this very admixture is what was disestablished when the First Amendment forbade "an establishment of religion." Commingling the religious with the secular teaching does not divest the whole of its religious permeation and emphasis, or make them of minor part, if proportion were material. Indeed, on any other view, the constitutional prohibition always could be brought to naught by adding a modicum of the secular.

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An appropriation from the public treasury to pay the cost of transportation to Sunday school, to weekday special classes at the church or parish house, or to the meetings of various young people's religious societies, such as the YMCA, the YWCA, the YMHA, the Epworth League, could not withstand the constitutional attack. This would be true whether or not secular activities were mixed with the religious. If such an appropriation could not stand, then it is hard to see how one becomes valid for the same thing upon the more extended scale of daily instruction. Surely constitutionality does not turn on where or how often the mixed teaching occurs.

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Finally, transportation, where it is needed, is as essential to education as any other element. Its cost is as much a part of the total expense, except at times in amount, as the cost of textbooks, of school lunches, of athletic equipment, of writing and other materials; indeed, of all other [330 U.S. 48] items composing the total burden. Now, as always, the core of the educational process is the teacher-pupil relationship. Without this, the richest equipment and facilities would go for naught. See Judd v. Board of Education, 278 N.Y. 200, 212, 15 N.E.2d 576, 582. But the proverbial Mark Hopkins conception no longer suffices for the country's requirements. Without buildings, without equipment, without library, textbooks and other materials, and without transportation to bring teacher and pupil together in such an effective teaching environment, there can be not even the skeleton of what our times require. Hardly can it be maintained that transportation is the least essential of these items, or that it does not, in fact, aid, encourage, sustain and support, just as they do, the very process which is its purpose to accomplish. No less essential is it, or the payment of its cost, than the very teaching in the classroom or payment of the teacher's sustenance. Many types of equipment, now considered essential, better could be done without.

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For me, therefore, the feat is impossible to select so indispensable an item from the composite of total costs and characterize it as not aiding, contributing to, promoting or sustaining the propagation of beliefs which it is the very end of all to bring about. Unless this can be maintained, and the Court does not maintain it, the aid thus given is outlawed. Payment of transportation is no more, nor is it any the less, essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries, for buildings, equipment, and necessary materials. Nor is it any the less directly related, in a school giving religious instruction, to the primary religious objective all those essential items of cost are intended to achieve. No rational line can be drawn between payment for such larger, but not more necessary, items and payment for transportation. The only line that can be so drawn is one between more dollars and less. Certainly, in this [330 U.S. 49] realm, such a line can be no valid constitutional measure. Murdock v. Pennsylvania, 319 U.S. 105; Thomas v. Collins, 323 U.S. 516. 41 Now, as in Madison's time, not the amount, but the principle, of assessment is wrong. Remonstrance, Par. 3.

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IV

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 49

But we are told that the New Jersey statute is valid in its present application because the appropriation is for a public, not a private, purpose, namely, the promotion of education, and the majority accept this idea in the conclusion that all we have here is "public welfare legislation." If that is true, and the Amendment's force can be thus destroyed, what has been said becomes all the more pertinent. For then there could be no possible objection to more extensive support of religious education by New Jersey.

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If the fact alone be determinative that religious schools are engaged in education, thus promoting the general and individual welfare, together with the legislature's decision that the payment of public moneys for their aid makes their work a public function, then I can see no possible basis, except one of dubious legislative policy, for the state's refusal to make full appropriation for support of private, religious schools, just as is done for public [330 U.S. 50] instruction. There could not be, on that basis, valid constitutional objection. 42

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Of course, paying the cost of transportation promotes the general cause of education and the welfare of the individual. So does paying all other items of educational expense. And obviously, as the majority say, it is much too late to urge that legislation designed to facilitate the opportunities of children to secure a secular education serves no public purpose. Our nationwide system of public education rests on the contrary view, as do all grants in aid of education, public or private, which is not religious in character.

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These things are beside the real question. They have no possible materiality except to obscure the all-pervading, inescapable issue. Cf. Cochran v. Board of Education, supra. Stripped of its religious phase, the case presents no substantial federal question. Ibid. The public function argument, by casting the issue in terms of promoting the general cause of education and the welfare of the individual, ignores the religious factor and its essential connection with the transportation, thereby leaving out the only vital element in the case. So, of course, do the "public welfare" and "social legislation" ideas, for they come to the same thing. [330 U.S. 51]

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We have here, then, one substantial issue, not two. To say that New Jersey's appropriation and her use of the power of taxation for raising the funds appropriated are not for public purposes, but are for private ends, is to say that they are for the support of religion and religious teaching. Conversely, to say that they are for public purposes is to say that they are not for religious ones.

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This is precisely for the reason that education which includes religious training and teaching, and its support, have been made matters of private right and function, not public, by the very terms of the First Amendment. That is the effect not only in its guaranty of religion's free exercise, but also in the prohibition of establishments. It was on this basis of the private character of the function of religious education that this Court held parents entitled to send their children to private, religious schools. Pierce v. Society of Sisters, supra. Now it declares, in effect, that the appropriation of public funds to defray part of the cost of attending those schools is for a public purpose. If so, I do not understand why the state cannot go farther, or why this case approaches the verge of its power.

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In truth, this view contradicts the whole purpose and effect of the First Amendment as heretofore conceived. The "public function"—"public welfare"—"social legislation" argument seeks, in Madison's words, to "employ Religion [that is, here, religious education] as an engine of Civil policy." Remonstrance, Par. 5. It is of one piece with the Assessment Bill's preamble, although with the vital difference that it wholly ignores what that preamble explicitly states. 43 [330 U.S. 52]

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Our constitutional policy is exactly the opposite. It does not deny the value or the necessity for religious training, teaching or observance. Rather, it secures their free exercise. But, to that end, it does deny that the state can undertake or sustain them in any form or degree. For this reason, the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection, and, as the state cannot forbid, neither can it perform or aid in performing, the religious function. The dual prohibition makes that function altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison's Remonstrance, as it is of the Amendment itself.

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It is not because religious teaching does not promote the public or the individual's welfare, but because neither is furthered when the state promotes religious education, that the Constitution forbids it to do so. Both legislatures and courts are bound by that distinction. In failure to observe it lies the fallacy of the "public function"/"social legislation" argument, a fallacy facilitated by easy transference of the argument's basing from due process unrelated to any religious aspect to the First Amendment.

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By no declaration that a gift of public money to religious uses will promote the general or individual welfare, or the cause of education generally, can legislative bodies overcome the Amendment's bar. Nor may the courts sustain their attempts to do so by finding such consequences for appropriations which, in fact, give aid to or promote religious uses. Cf. Norris v. Alabama, 294 U.S. 587, 590; Hooven & Allison Co. v. Evatt, 324 U.S. 652, 659; Akins v. Texas, 325 U.S. 398, 402. Legislatures are free to make, [330 U.S. 53] and courts to sustain, appropriations only when it can be found that, in fact, they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small. No such finding has been or could be made in this case. The Amendment has removed this form of promoting the public welfare from legislative and judicial competence to make a public function. It is exclusively a private affair.

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The reasons underlying the Amendment's policy have not vanished with time or diminished in force. Now as when it was adopted, the price of religious freedom is double. It is that the church and religion shall live both within and upon that freedom. There cannot be freedom of religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse. Madison's Remonstrance, Par. 6, 8. 44 The great condition of religious liberty is that it be maintained free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation, it vanishes with the resting. Id. Par. 7, 8. 45 Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings, too, the struggle of sect against sect for the larger share, or for any. Here, one by numbers alone will benefit most; there, another. That is precisely the history of societies which have had an established religion and dissident [330 U.S. 54] groups. Id., Par. 8, 11. It is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. Ibid. The end of such strife cannot be other than to destroy the cherished liberty. The dominating group will achieve the dominant benefit, or all will embroil the state in their dissensions. Id., Par. 11. 46

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Exactly such conflicts have centered of late around providing transportation to religious schools from public funds. 47 The issue and the dissension work typically, in Madison's phrase, to

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destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects.

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Id., Par. 11. This occurs, as he well knew, over measures [330 U.S. 55] at the very threshold of departure from the principle. Id., Par. 3, 9, 11.

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In these conflicts, wherever success has been obtained, it has been upon the contention that, by providing the transportation, the general cause of education, the general welfare, and the welfare of the individual will be forwarded; hence, that the matter lies within the realm of public function, for legislative determination. 48 State courts have divided upon the issue, some taking the view that only the individual, others that the institution, receives the benefit. 49 A few have recognized that this dichotomy is false—that both, in fact, are aided. 50 [330 U.S. 56]

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The majority here does not accept, in terms, any of those views. But neither does it deny that the individual or the school, or indeed both, are benefited directly and substantially. 51 To do so would cut the ground from under the public function/social legislation thesis. On the contrary, the opinion concedes that the children are aided by being helped to get to the religious schooling. By converse necessary implication, as well as by the absence of express denial, it must be taken to concede also that the school is helped to reach the child with its religious teaching. The religious enterprise is common to both, as is the interest in having transportation for its religious purposes provided.

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Notwithstanding the recognition that this two-way aid is given, and the absence of any denial that religious teaching is thus furthered, the Court concludes that the aid so given is not "support" of religion. It is, rather, only support of education as such, without reference to its religious content, and thus becomes public welfare legislation. To this elision of the religious element from the case is added gloss in two respects, one that the aid extended partakes of the nature of a safety measure, the other that failure to provide it would make the state unneutral in religious matters, discriminating against or hampering such children concerning public benefits all others receive. [330 U.S. 57]

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As will be noted, the one gloss is contradicted by the facts of record, and the other is of whole cloth with the "public function" argument's excision of the religious factor. 52 But most important is that this approach, if valid, supplies a ready method for nullifying the Amendment's guaranty not only for this case and others involving small grants in aid for religious education, but equally for larger ones. The only thing needed will be for the Court again to transplant the "public welfare/public function" view from its proper nonreligious due process bearing to First Amendment application, holding that religious education is not "supported," though it may be aided, by the appropriation, and that the cause of education generally is furthered by helping the pupil to secure that type of training.

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This is not therefore just a little case over bus fares. In paraphrase of Madison, distant as it may be in its present form from a complete establishment of religion, it differs from it only in degree, and is the first step in that direction. Id.. Par. 9. 53 Today, as in his time,

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the same authority which can force a citizen to contribute three pence only…for the support of any one [religious] establishment, may force him

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to pay more, or "to conform to ally other establishment in all cases whatsoever." And now, as then,

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either…we must say, that the will of the Legislature is the only measure of their authority, and that, in the plenitude of this authority, they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred.

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Remonstrance, Par. 15.

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The realm of religious training and belief remains, as the Amendment made it, the kingdom of the individual [330 U.S. 58] man and his God. It should be kept inviolately private, not "entangled…in precedents" 54 or confounded with what legislatures legitimately may take over into the public domain.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 58

V

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 58

No one conscious of religious values can be unsympathetic toward the burden which our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' children's education; at the same time, the added cost of instruction for their own. Nor can one happily see benefits denied to children which others receive because, in conscience, they, or their parents for them, desire a different kind of training others do not demand.

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But if those feelings should prevail, there would be an end to our historic constitutional policy and command. No more unjust or discriminatory, in fact, is it to deny attendants at religious schools the cost of their transportation than it is to deny them tuitions, sustenance for their teachers, or any other educational expense which others receive at public cost. Hardship, in fact, there is which none can blink. But, for assuring to those who undergo it the greater, the most comprehensive freedom, it is one written by design and firm intent into our basic law.

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Of course, discrimination in the legal sense does not exist. The child attending the religious school has the same right as any other to attend the public school. But he foregoes exercising it because the same guaranty which assures this freedom forbids the public school or any agency of the [330 U.S. 59] state to give or aid him in securing the religious instruction he seeks.

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Were he to accept the common school, he would be the first to protest the teaching there of any creed or faith not his own. And it is precisely for the reason that their atmosphere is wholly secular that children are not sent to public schools under the Pierce doctrine. But that is a constitutional necessity, because we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion. Remonstrance, Par. 8, 12.

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That policy necessarily entails hardship upon persons who forego the right to educational advantages the state can supply in order to secure others it is precluded from giving. Indeed, this may hamper the parent and the child forced by conscience to that choice. But it does not make the state unneutral to withhold what the Constitution forbids it to give. On the contrary, it is only by observing the prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissensions inevitable when sect opposes sect over demands for public moneys to further religious education, teaching or training in any form or degree, directly or indirectly. Like St. Paul's freedom, religious liberty with a great price must be bought. And for those who exercise it most fully, by insisting upon religious education for their children mixed with secular, by the terms of our Constitution, the price is greater than for others.

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The problem, then, cannot be cast in terms of legal discrimination or its absence. This would be true even though the state, in giving aid, should treat all religious instruction alike. Thus, if the present statute and its application were shown to apply equally to all religious schools [330 U.S. 60] of whatever faith, 55 yet, in the light of our tradition, it could not stand. For then, the adherent of one creed still would pay for the support of another, the childless taxpayer with others more fortunate. Then too there would seem to be no bar to making appropriations for transportation and other expenses of children attending public or other secular schools, after hours in separate places and classes for their exclusively religious instruction. The person who embraces no creed also would be forced to pay for teaching what he does not believe. Again, it was the furnishing of "contributions of money for the propagation of opinions which he disbelieves" that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires not comprehensive identification of state with religion, but complete separation.

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VI

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 60

Short treatment will dispose of what remains. Whatever might be said of some other application of New Jersey's statute, the one made here has no semblance of bearing as a safety measure or, indeed, for securing expeditious conveyance. The transportation supplied is by public conveyance, subject to all the hazards and delays of the highway and the streets incurred by the public generally in going about its multifarious business.

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Nor is the case comparable to one of furnishing fire or police protection, or access to public highways. These things are matters of common right, part of the general [330 U.S. 61] need for safety. 56 Certainly the fire department must not stand idly by while the church burns. Nor is this reason why the state should pay the expense of transportation or other items of the cost of religious education. 57

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Needless to add, we have no such case as Green v. Frazier, 253 U.S. 233, or Carmichael v. Southern Coal Co., 301 U.S. 495, which dealt with matters wholly unrelated to the First Amendment, involving only situations where the "public function" issue was determinative.

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I have chosen to place my dissent upon the broad ground I think decisive, though, strictly speaking, the case might be decided on narrower issues. The New Jersey statute might be held invalid on its face for the exclusion of children [330 U.S. 62] who attend private, profit-making schools. 58 I cannot assume, as does the majority, that the New Jersey courts would write off this explicit limitation from the statute. Moreover, the resolution by which the statute was applied expressly limits its benefits to students of public and Catholic schools. 59 There is no showing that there are no other private or religious schools in this populous district. 60 I do not think it can be assumed there were none. 61 But, in the view I have taken, it is unnecessary to limit grounding to these matters. [330 U.S. 63]

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Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools. See Johnson, The Legal Status of Church-State Relationships in the United States (1934); Thayer, Religion in Public Education (1947); Note (1941) 50 Yale L.J. 917. In my opinion, both avenues were closed by the Constitution. Neither should be opened by this Court. The matter is not one of quantity, to be measured by the amount of money expended. Now, as in Madison's day, it is one of principle, to keep separate the separate spheres as the First Amendment drew them, to prevent the first experiment upon our liberties, and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other.

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The judgment should be reversed.

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APPENDIX

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 63

MEMORIAL AND REMONSTRANCE AGAINST

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RELIGIOUS ASSESSMENTS

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 63

To THE HONORABLE THE GENERAL ASSEMBLY

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OF

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 63

THE COMMONWEALTH OF VIRGINIA.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 63

A MEMORIAL AND REMONSTRANCE.

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We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration a Bill printed by order of the last Session of General Assembly, entitled "A [330 U.S. 64] Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound, as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

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1. Because we hold it for a fundamental and undeniable truth "that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence." 1 The Religion then of every man must be left to the conviction and conscience of every man, and it is the right of every man to exercise it as these may dictate. This right is, in its nature, an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men. It is unalienable also because what is here a right towards men is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent, both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe. And if a member of Civil Society who enters into any subordinate Association must always do it with a reservation of his duty to the general authority, much more must every man who becomes a member of any particular Civil Society do it with a saving of his allegiance to the Universal Sovereign. We maintain, therefore, that, in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. [330 U.S. 65] True it is that no other rule exists by which any question which may divide a Society can be ultimately determined but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

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2. Because, if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the coordinate departments; more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely that the metes and bounds which separate each department of power may be invariably maintained, but, more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

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3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity in exclusion of all other Religions may establish with the same ease any particular sect of Christians in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence [330 U.S. 66] only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever?

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4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are, by nature, equally free and independent," 2 all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of conscience." 3 Whilst we assert for ourselves a freedom to embrace, to profess, and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man. To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet preeminencies over their fellow citizens or that they will be seduced by them from the common opposition to the measure. [330 U.S. 67]

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5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages and throughout the world. The second an unhallowed perversion of the means of salvation.

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6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world; it is a contradiction to fact, for it is known that this Religion both existed and flourished not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. Nay, it is a contradiction in terms, for a Religion not invented by human policy must have preexisted and been supported before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author, and to foster in those who still reject it a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

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7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect point to the ages prior [330 U.S. 68] to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

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8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence, in fact, have ecclesiastical establishments had on Civil Society? In some instances, they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances, they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property—by neither invading the equal rights of any Sect nor suffering any Sect to invade those of another.

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9. Because the proposed establishment is a departure from that generous policy which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal [330 U.S. 69] of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last, in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions must view the Bill as a Beacon on our Coast, warning him to seek some other haven where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

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10. Because it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

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11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced amongst its several sects. Torrents of blood have been spilt in the old world by vain attempts of the secular arm to extinguish Religious discord by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If, with the salutary effects of this system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that "Christian [330 U.S. 70] forbearance, 4 love and charity" which of late mutually prevailed into animosities and jealousies which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

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12. Because the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions, and how small is the former. Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it and countenances by example the nations who continue in darkness in shutting out those who might convey it to them. Instead of leveling as far as possible every obstacle to the victorious progress of truth, the Bill, with an ignoble and unchristian timidity would circumscribe it with a wall of defence against the encroachments of error.

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13. Because attempts to enforce by legal sanctions acts obnoxious to so great a proportion of Citizens tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous?, and what may be the effect of so striking an example of impotency in the Government on its general authority.

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14. Because a measure of such singular magnitude and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined or its influence secured. "The people of the respective counties [330 U.S. 71] are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal before the voice either of the Representatives or of the Counties will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence that a fair appeal to the latter will reverse the sentence against our liberties.

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15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia as the "basis and foundation of Government," 5 it is enumerated with equal solemnity, or rather, studied emphasis. Either then we must say, that the will of the Legislature is the only measure of their authority, and that, in the plenitude of this authority, they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred. Either we must say that they may controul the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State, nay, that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly, or we must say that they have no authority to enact into law the Bill under consideration. We, the subscribers say, that the General Assembly of this Commonwealth have no such authority. And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty [330 U.S. 72] bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may, on the one hand, turn their councils from every act which would affront his holy prerogative or violate the trust committed to them, and, on the other, guide them into every measure which may he worthy of his [blessing, may re]dound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

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II Madison, 183-191

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SUPPLEMENTAL APPENDIX

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A BILL ESTABLISHING A PROVISION FOR TEACHERS

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OF THE CHRISTIAN RELIGION

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Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society, which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens as, from their circumstances and want of education, cannot otherwise attain such knowledge, and it is judged that such provision may be made by the Legislature without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies or communities of Christians;

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Be it therefore enacted by the General Assembly, That, for the support of Christian teachers, percentum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due, and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under [330 U.S. 73] the like restrictions and limitations as are or may be prescribed by the laws for raising the Revenues of this State.

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And be it enacted, That, for every sum so paid, the Sheriff or Collector shall give a receipt expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The Sheriff of every County, shall, on or before the \_\_\_ day of \_\_\_\_\_\_\_ in every year, return to the Court, upon oath, two alphabetical lists of the payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated, and one column for the names where no appropriation shall be made. One of which lists, after being recorded in a book to be kept for that purpose, shall be filed by the Clerk in his office; the other shall by the Sheriff be fixed up in the Court-house, there to remain for the inspection of all concerned. And the Sheriff, after deducting five percentum for the collection, shall forthwith pay to such person or persons as shall be appointed to receive the same by the Vestry, Elders, or Directors, however denominated of each such society, the sum so stated to be due to that society; or in default thereof, upon the motion of such person or persons to the next or any succeeding Court, execution shall be awarded for the same against the Sheriff and his security, his and their executors or administrators; provided that ten days previous notice be given of such motion. And upon every such execution, the Officer serving the same shall proceed to immediate sale of the estate taken and shall not accept of security for payment at the end of three months, nor to have the goods forthcoming at the day of sale; for his better direction wherein, the Clerk shall endorse upon every such execution that no security of any kind shall be taken. [330 U.S. 74]

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And be it further enacted, That the money to be raised by virtue of this Act, shall be by the Vestries Elders, or Directors of each religious society, appropriated to a provision for a Minister or Teacher of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominations of Quakers and Menonists, who may receive what is collected from their members, and place it in their general fund, to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship.

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And be it enacted, That all sums which at the time of payment to the Sheriff or Collector may not be appropriated by the person paying the same, shall be accounted for with the Court in manner as by this Act is directed, and after deducting for his collection, the Sheriff shall pay the amount thereof (upon account certified by the Court to the Auditors of Public Accounts, and by them to the Treasurer) into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever.

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THIS Act shall commence, and be in force, from and after the \_\_\_day of \_\_\_\_\_ in the year \_\_\_\_.

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A Copy from the Engrossed Bill.

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JOHN BECKLEY, C.H.D.

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Washington Mss. (Papers of George Washington, Vol. 21); Library of Congress.\*

Footnotes

BLACK, J., lead opinion (Footnotes)

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1.

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Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part.

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When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part.

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New Jersey Laws, 1941, c.191, p. 581; N.J.R.S.Cum.Supp., tit. 18, c. 14,§ 8.

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2. Appellant does not challenge the New Jersey statute or the resolution on the ground that either violates the equal protection clause of the Fourteenth Amendment by excluding payment for the transportation of any pupil who attends a "private school run for profit." Although the township resolution authorized reimbursement only for parents of Public and Catholic school pupils, appellant does not allege, nor is there anything in the record which would offer the slightest support to an allegation, that there were any children in the township who attended or would have attended, but for want of transportation, any but public and Catholic schools. It will be appropriate to consider the exclusion of students of private schools operated for profit when and if it is proved to have occurred, is made the basis of a suit by one in a position to challenge it, and New Jersey's highest court has ruled adversely to the challenger. Striking down a state law is not a matter of such light moment that it should be done by a federal court ex mero motu on a postulate neither charged nor proved, but which rests on nothing but a possibility. Cf. Liverpool, N.Y. & P. S.S. Co. v. Comm'rs of Emigration, 113 U.S. 33, 39.

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3. It might hold the excepting clause to be invalid, and sustain the statute with that clause excised. N.J.R.S., tit. 1, c. 1, § 10, provides with regard to any statute that, if

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any provision thereof, shall be declared to be unconstitutional…in whole or in part, by a court of competent jurisdiction, such…article…shall, to the extent that it is not unconstitutional,…be enforced….

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The opinion of the Court of Errors and Appeals in this very case suggests that state law now authorizes transportation of all pupils. Its opinion stated:

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Since we hold that the legislature may appropriate general state funds or authorize the use of local funds for the transportation of pupils to any school, we conclude that such authorization of the use of local funds is likewise authorized by Pamph.L. 1941, ch.191, and R.S. 18:7-78.

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133 N.J.L. 350, 354, 44 A.2d 333, 337. (Italics supplied.)

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4. See Reynolds v. United States, 98 U.S. 145, 162; cf. Knowlton v. Moore, 178 U.S. 41, 89, 106.

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5. See, e.g., Macaulay, History of England (1849) I, cc. 2, 4; The Cambridge Modern History (1908) V, cc. V, IX, XI; Beard, Rise of American Civilization (1933) I, 60; Cobb, Rise of Religious Liberty in America (1902) c. II; Sweet, The Story of Religion in America (1939) c. II; Sweet, Religion in Colonial America (1942) 320-322.

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6. See e.g., the charter of the colony of Carolina, which gave the grantees the right of

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patronage and advowsons of all the churches and chapels…together with licence and power to build and found churches, chapels and oratories…and to cause them to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England.

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Poore, Constitutions (1878) II, 1390, 1391. That of Maryland gave to the grantee Lord Baltimore

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the Patronages, and Advowsons of all Churches which…shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship…and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England, with all, and singular such, and as ample lights, Jurisdictions, Privileges,…as any Bishop…in our Kingdom of England, ever…hath had….

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MacDonald, Documentary Source Book of American History (1934) 31, 33. The Commission of New Hampshire of 1680, Poore, supra, II, 1277, stated:

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And above all things We do by these presents will, require and comand our said Councill to take all possible care for ye discountenancing of vice and encouraging of virtue and good living, and that, by such examples ye infidle may be invited and desire to partake of ye Christian Religion, and for ye greater ease and satisfaction of ye sd loving subjects in matters of religion, We do hereby require and comand yt liberty of conscience shall be allowed unto all protestants; yt such especially as shall be conformable to ye rites of ye Church of Engd shall be particularly countenanced and encouraged.

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See also Pawlet v. Clark, 9 Cranch 292.

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7. See, e.g., Semple, Baptists in Virginia (1894); Sweet, Religion in Colonial America, supra, at 131-152, 322-339.

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8. Almost every colony exacted some kind of tax for church support. See e.g. Cobb, op. cit. supra, note 5, 110 (Virginia); 131 (North Carolina); 169 (Massachusetts); 270 (Connecticut); 304, 310, 339 (New York); 386 (Maryland); 295 (New Hampshire).

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9. Madison wrote to a friend in 1774:

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That diabolical, hell-conceived principle of persecution rages among some…. This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five or six well meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all.

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I Writings of James Madison (1900) 18, 21.

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10. Virginia's resistance to taxation for church support was crystallized in the famous "Parsons' Cause" argued by Patrick Henry in 1763. For an account, see Cobb, op. cit. supra, note 5, 108-111.

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11. II Writings of James Madison, 183.

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12. In a recently discovered collection of Madison's papers, Madison recollected that his Remonstrance

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met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part, and even of not a few of the Sect formerly established by law.

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Madison, Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, in Fleet, Madison's "Detached Memorandum," 3 William and Mary Q. (1946) 534, 551, 555.

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13. For accounts of background and evolution of the Virginia Bill for Religious Liberty see, e.g., James, The Struggle for Religious Liberty in Virginia (1900); Thom, The Struggle for Religious Freedom in Virginia: The Baptists (1900); Cobb, op. cit. supra, note 5, 74-115; Madison, Monopolies, Perpetuities Corporations, Ecclesiastical Endowments, op. cit. supra, note 12, 554, 556.

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14. 12 Hening, Statutes of Virginia (1823) 84; Commager, Documents of American History (1944) 125.

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15. Permoli v. New Orleans, 3 How. 589. Cf. Barron v. Baltimore, 7 Pet. 243.

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16. For a collection of state constitutional provisions on freedom of religion see Gabel, Public Funds for Church and Private Schools (1937) 148-149. See also 2 Cooley, Constitutional Limitations (1927) 960-985.

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17. Test provisions forbade officeholders to "deny…the truth of the Protestant religion," e.g., Constitution of North Carolina (1776) § XXXII, II Poore, supra, 1413. Maryland permitted taxation for support of the Christian religion and limited civil office to Christians until 1818, id. I, 819, 820, 832.

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18. See Note 50 Yale L.J. (1941) 917; see also cases collected 14 L.R.A. 418; 5 A.L.R. 8, 9; 141 A.L.R. 1148.

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19. See cases collected 14 L.R.A. 418; 5 A.L.R. 879; 141 A.L.R. 1148.

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20. Ibid. See also Cooley, op. cit. supra, note 16.

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21. Terrett v. Taylor, 9 Cranch 43; Watson v. Jones, 13 Wall. 679; Davis v. Beason, 133 U.S. 333; cf. Reynolds v. United States, supra, 162; Reuben Quick Bear v. Leupp, 210 U.S. 50.

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22. Cantwell v. Connecticut, 310 U.S. 296; Jamison v. Texas, 318 U.S. 413; Largent v. Texas, 318 U.S. 418; Murdock v. Pennsylvania, supra; West Virginia State Board of Education v. Barnette, 319 U.S. 624; Follett v. McCormick, 321 U.S. 573; Marsh v. Alabama, 326 U.S. 501. Cf. Bradfield v. Roberts, 175 U.S. 291.

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23. Harmon v. Dreher, Speer's Equity Reports (S.C. 1843), 87, 120.

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24. New Jersey long ago permitted public utilities to charge school children reduced rates. See Public S. R. Co. v. Public Utility Comm'rs, 81 N. J L. 363, 80 A. 27 (1911); see also Interstate Ry. v. Massachusetts, supra. The District of Columbia Code requires that the new charter of the District public transportation company provide a three-cent fare "for school children…going to and from public, parochial, or like schools…. " 47 Stat. 752, 759.

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\* See Cubberley, Public Education in the United States (1934) ch. VI; Knight, Education in the United States (1941) ch. VIII.

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1. "A Bill for Establishing Religious Freedom," enacted by the General Assembly of Virginia, January 19, 1786. See 1 Randall, The Life of Thomas Jefferson (1858) 219-220; XII Hening's Statutes of Virginia (1823) 84.

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2. Schneider v. State, 308 U.S. 147; Cantwell v. Connecticut, 310 U.S. 296; Murdock v. Pennsylvania, 319 U.S. 105; Prince v. Massachusetts, 321 U.S. 158; Thomas v. Collins, 323 U.S. 516, 530.

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3. The briefs did not raise the First Amendment issue. The only one presented was whether the state's action involved a public or an exclusively private function under the due process clause of the Fourteenth Amendment. See Part IV, infra. On the facts, the cost of transportation here is inseparable from both religious and secular teaching at the religious school. In the Cochran case, the state furnished secular textbooks only. But see text, infra at note 40 et seq., and Part IV.

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4. Cf. note 3 and text, Part IV; see also note 35.

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5. The statute reads:

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Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of such children to and from school…other than a public school, except such school as is operated for profit in whole or in part.

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When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part.

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Laws of New Jersey (1941) c.191.

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6. The full text of the resolution is given in note 59 infra.

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7. The public schools attended were the Trenton Senior High School, the Trenton Junior High School, and the Pennington High School. Ewing Township itself provides no public high schools, affording only elementary public schools which stop with the eighth grade. The Ewing school board pays for both transportation and tuitions of pupils attending the public high schools. The only private schools, all Catholic, covered in application of the resolution are St. Mary's Cathedral High School, Trenton Catholic Boys High School, and two elementary parochial schools, St. Hedwig's Parochial School and St. Francis School. The Ewing board pays only for transportation to these schools, not for tuitions. So far as the record discloses, the board does not pay for or provide transportation to any other elementary school, public or private. See notes 58, 59 and text infra.

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8. IX Writings of James Madison (ed. by Hunt, 1910) 288; Padover, Jefferson (1942) 74. Madison's characterization related to Jefferson's entire revision of the Virginia Code, of which the Bill for Establishing Religious Freedom was part. See note 15.

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9. See Reynolds v. United States, 98 U.S. 145; Davis v. Beason, 133 U.S. 333; Mormon Church v. United States, 136 U.S. 1; Jacobson v. Massachusetts, 197 U.S. 11; Prince v. Massachusetts, 321 U.S. 158; also Cleveland v. United States, 329 U.S. 14.

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Possibly the first official declaration of the "clear and present danger" doctrine was Jefferson's declaration in the Virginia Statute for Establishing Religious Freedom:

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That it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.

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1 Randall, The Life of Thomas Jefferson (1858) 220; Padover, Jefferson (1942) 81. For Madison's view to the same effect, see note 28 infra.

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10. Murdock v. Pennsylvania, 319 U.S. 105, 109; Martin v. Struthers, 319 U.S. 141; Jamison v. Texas, 318 U.S. 413; Marsh v. Alabama, 326 U.S. 501; Tucker v. Texas, 326 U.S. 517.

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11. Conflicts in other states, and earlier in the colonies, contributed much to generation of the Amendment, but none so directly as that in Virginia or with such formative influence on the Amendment's content and wording. See Cobb, Rise of Religious Liberty in America (1902); Sweet, The Story of Religion in America (1939). The Charter of Rhode Island of 1663, II Poore, Constitutions (1878) 1595, was the first colonial charter to provide for religious freedom.

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The climactic period of the Virginia struggle covers the decade 1776-1786, from adoption of the Declaration of Rights to enactment of the Statute for Religious Freedom. For short accounts, see Padover, Jefferson (1942) c. V; Brant, James Madison, The Virginia Revolutionist (1941) cc. XII, XV; James, The Struggle for Religious Liberty in Virginia (1900) cc. X, XI; Eckenrode, Separation of Church and State in Virginia (1910). These works and Randall, see note 1, will be cited in this opinion by the names of their authors. Citations to "Jefferson" refer to The Works of Thomas Jefferson (ed. by Ford, 1904-1905); to "Madison," to The Writings of James Madison (ed. by Hunt, 1901-1910).

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12. Brant, cc. XII, XV; James, cc. X, XI; Eckenrode.

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13. See Brant, c. XII, particularly at 243. Cf. Madison's Remonstrance, Appendix to this opinion. Jefferson, of course, held the same view. See note 15.

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"Madison looked upon…religious freedom, to judge from the concentrated attention he gave it, as the fundamental freedom." Brant, 243, and see Remonstrance, Par. 1, 4, 15, Appendix.

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14. See Brant, 245-246. Madison quoted liberally from the Declaration in his Remonstrance, and the use made of the quotations indicates that he considered the Declaration to have outlawed the prevailing establishment in principle, if not technically.

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15. Jefferson was chairman of the revising committee and chief draftsman. Co-revisers were Wythe, Pendleton, Mason and Lee. The first enacted portion of the revision, which became known as Jefferson's Code, was the statute barring entailments. Primogeniture soon followed. Much longer the author was to wait for enactment of the Bill for Religious Freedom, and not until after his death was the corollary bill to be accepted in principle which he considered most important of all, namely, to provide for common education at public expense. See V Jefferson, 153. However, he linked this with disestablishment as corollary prime parts in a system of basic freedoms. I Jefferson, 78.

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Jefferson, and Madison by his sponsorship, sought to give the Bill for Establishing Religious Freedom as nearly constitutional status as they could at the time. Acknowledging that one legislature could not "restrain the acts of succeeding Assemblies…and that, therefore, to declare this act irrevocable would be of no effect in law," the Bill's concluding provision, as enacted, nevertheless asserted:

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Yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that, if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

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1 Randall, 220.

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16. See I Jefferson, 70-71; XII Jefferson, 447; Padover, 80.

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17. Madison regarded this action as desertion. See his letter to Monroe of April 12, 175; II Madison, 129, 131-132; James, cc. X, XI. But see Eckenrode, 91, suggesting it was surrender to the inevitable.

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The bill provided:

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That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid….

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See also notes 1, 43 infra.

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A copy of the Assessment Bill is to be found among the Washington manuscripts in the Library of Congress. Papers of George Washington, Vol. 231. Because of its crucial role in the Virginia struggle and bearing upon the First Amendment's meaning, the text of the Bill is set forth in the Supplemental Appendix to this opinion.

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18. Eckenrode, 99, 100.

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19. Id., 100; II Madison, 113. The bill directed the sheriff to pay

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all sums which…may not he appropriated by the person paying the same…into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever.

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20. See generally Eckenrode, c. V; Brant, James, and other authorities cited in note 11 above.

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21. II Madison, 183; and the Appendix to this opinion. Eckenrode, 100 ff. See also Fleet, Madison's "Detached Memoranda" (1946) III William & Mary Q. (3rd Series) 534, 554-562.

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22. The major causes assigned for its defeat include the elevation of Patrick Henry to the governorship in November of 1784; the blunder of the proponents in allowing the Bill for Incorporations to come to the floor and incur defeat before the Assessment Bill was acted on; Madison's astute leadership, taking advantage of every "break" to convert his initial minority into a majority, including the deferment of action on the third reading to the fall; the Remonstrance, bringing a flood of protesting petitions, and the general poverty of the time. See Eckenrode, c. V, for an excellent short, detailed account.

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23. See James, Brant, op. cit. supra, note 11.

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24. V Madison, 176. Cf. notes 33, 37.

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25. V Madison, 132.

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26. Brant, 250. The assurance made first to his constituents was responsible for Madison's becoming a member of the Virginia Convention which ratified the Constitution. See James, 154-158.

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27. The amendment with respect to religious liberties read, as Madison introduced it:

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The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

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1 Annals of Congress 434. In the process of debate, this was modified to its present form. See especially 1 Annals of Congress 729-731, 765; also note 34.

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28. See text of the Remonstrance, Appendix; also notes 13, 15, 24, 25 supra, and text.

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Madison's one exception concerning restraint was for "preserving public order." This he declared in a private letter, IX Madison, 484, 487, written after the First Amendment was adopted:

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The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded agst. by an entire abstinance of the Govt. from interference in any way whatever, beyond the necessity of preserving public order & protecting each sect agst. trespasses on its legal rights by others.

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Cf. note 9.

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29. The third ground of remonstrance, see the Appendix, bears repetition for emphasis here:

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Because it is proper to take alarm at the first experiment on our liberties…, [t]he freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that…the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever?

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(Emphasis added.) II Madison 183, 185-186.

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30. Eckenrode, 105, in summary of the Remonstrance.

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31.

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Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention falsified by the contradictory opinions of Rulers in all ages, and throughout the world; the second an unhallowed perversion of the means of salvation.

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Remonstrance, Appendix, Par. 5; II Madison 183, 187.

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32. As is pointed out above, note 3, and in Part IV, infra, Cochran v. Board of Education, 281 U.S. 370, was not such a case.

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33. See text supra at notes 24, 25. Madison, of course, was but one of many holding such views, but nevertheless agreeing to the common understanding for adoption of a Bill of Rights in order to remove all doubt engendered by the absence of explicit guaranties in the original Constitution.

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By 1791, the great fight over establishments had ended, although some vestiges remained then and later, even in Virginia. The glebes, for example, were not sold there until 1802. Cf. Eckenrode, 147. Fixing an exact date for "disestablishment" is almost impossible, since the process was piecemeal. Although Madison failed in having the Virginia Bill of Rights declare explicitly against establishment in 1776, cf. note 14 and text supra, in 1777, the levy for support of the Anglican clergy was suspended. It was never resumed. Eckenrode states:

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This act, in effect, destroyed the establishment. Many dates have been given for its end, but it really came on January 1, 1777, when the act suspending the payment of tithes became effective. This was not seen at the time…. But, in freeing almost half of the taxpayers from the burden of the state religion, the state religion was at an end. Nobody could be forced to support it, and an attempt to levy tithes upon Anglicans alone would be to recruit the ranks of dissent.

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P. 53. See also pp. 61, 64. The question of assessment however was revived "with far more strength than ever, in the summer of 1784." Id. at 64. It would seem more factual, therefore, to fix the time of disestablishment as of December, 1785-January, 1786, when the issue in large was finally settled.

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34. At one point, the wording was proposed: "No religion shall be established by law, nor shall the equal rights of conscience be infringed." 1 Annals of Congress 729. Cf. note 27. Representative Huntington of Connecticut feared this might be construed to prevent judicial enforcement of private pledges. He stated

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that he feared…that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia, but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meeting-houses was contributed in the same manner. These things were regulated by by laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it, for a support of ministers or building of places of worship might be construed into a religious establishment.

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1 Annals of Congress 730.

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To avoid any such possibility, Madison suggested inserting the word "national" before "religion," thereby not only again disclaiming intent to bring about the result Huntington feared, but also showing unmistakably that "establishment" meant public "support" of religion in the financial sense. 1 Annals of Congress 731. See also IX Madison, 484-487.

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35. The decision most closely touching the question, where it as squarely raised, is Quick Bear v. Leupp, 210 U.S. 50. The Court distinguished sharply between appropriations from public funds for the support of religious education and appropriations from funds held in trust by the Government essentially as trustee for private individuals, Indian wards, as beneficial owners. The ruling was that the latter could be disbursed to private, religious schools at the designation of those patrons for paying the cost of their education. But it was stated also that such a use of public moneys would violate both the First Amendment and the specific statutory declaration involved, namely, that

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it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school.

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210 U.S. at 79. Cf. Ponce v. Roman Catholic Apostolic Church, 210 U.S. 296, 322. And see Bradfield v. Roberts, 175 U.S. 291, an instance of highly artificial grounding to support a decision sustaining an appropriation for the care of indigent patients pursuant to a contract with a private hospital. Cf. also the authorities cited in note 9.

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36. See text at note 1.

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37. "…but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Const., Art. VI, § 3. See also the two forms prescribed for the President's Oath or Affirmation. Const., Art. II, § 1. Cf. Ex parte Garland, 4 Wall. 333; Cummings v. Missouri, 4 Wall. 277; United States v. Lovett, 328 U.S. 303.

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38. In the words of the Virginia statute, following the portion of the preamble quoted at the beginning of this opinion:

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…even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards which, ceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind….

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39. See note 38.

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40. See Bower, Church and State in Education (1944) 58:

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…the fundamental division of the education of the whole self into the secular and the religious could not be justified on the grounds of either a sound educational philosophy or a modern functional concept of the relation of religion to personal and social experience.

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See also Vere, The Elementary School, in Essays on Catholic Education in the United States (1942) 110-111; Gabel, Public Funds for Church and Private Schools (1937) 737-739

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41. It would seem a strange ruling that a "reasonable," that is, presumably a small, license fee cannot be placed upon the exercise of the right of religious instruction, yet that, under the correlative constitutional guaranty against "an establishment," taxes may be levied and used to aid and promote religious instruction, if only the amounts so used are small. See notes 30-31 supra, and text.

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Madison's objection to "three pence" contributions and his stress upon "denying the principle" without waiting until "usurped power had…entangled the question in precedents," note 29, were reinforced by his further characterization of the Assessment Bill:

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Distant as it may be, in its present form, from the Inquisition, it differs from it only in degree. The one is the first step, the other the last, in the career of intolerance.

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42. If it is part of the state's function to supply to religious schools or their patrons the smaller items of educational expense, because the legislature may say they perform a public function, it is hard to see why the larger ones also my not he paid. Indeed, it would seem even more proper and necessary for the state to do this. For if one class of expenditures is justified on the ground that it supports the general cause of education or benefits the individual, or can he made to do so by legislative declaration, so even more certainly would he the other. To sustain payment for transportation to school, for textbooks, for other essential materials, or perhaps for school lunches, and not for what makes all these things effective for their intended end, would be to make a public function of the smaller items and their cumulative effect, but to make wholly private in character the larger things without which the smaller could have no meaning or use.

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43.

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Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society, which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as, from their circumstances and want of education, cannot otherwise attain such knowledge, and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of preeminence amongst the different societies of communities of Christians;….

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Supplemental Appendix; Foote, Sketches of Virginia (1850) 340.

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44.

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Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world…. Because the establishment in question is not necessary for the support of Civil Government…. What influence, in fact, have ecclesiastical establishments had on Civil Society?…[I]n no instance have they been seen the guardians of the liberties of the people.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

II Madison 183, 187, 188.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

45.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

II Madison 183, 187.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

46.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that "Christian forbearance, love and charity" which, of late, mutually prevailed into animosities and jealousies which may not soon be appeased.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

II Madison 183, 189.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

47. In this case, briefs amici curiae have been filed on behalf of various organizations representing three religious sects, one labor union, the American Civil Liberties Union, and the states of Illinois, Indiana, Louisiana, Massachusetts, Michigan and New York. All these states have laws similar to New Jersey's, and all of them, with one religious sect, support the constitutionality of New Jersey's action. The others oppose it. Maryland and Mississippi have sustained similar legislation. Note 49 infra. No state without legislation of this sort has filed an opposing brief. But at least six states have held such action invalid, namely, Delaware, Oklahoma, New York, South Dakota, Washington, and Wisconsin. Note 49, infra. The New York ruling was overturned by amendment to the state constitution in 1938. Constitution of New York, Art. XI, 4.

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Furthermore, in this case, the New Jersey courts divided, the Supreme Court holding the statute and resolution invalid, 132 N.J.L. 98, 39 A.2d 75, the Court of Errors and Appeals reversing that decision, 133 N.J.L. 350, 44 A.2d 333. In both courts, as here, the judges split, one of three dissenting in the Supreme Court, three of nine in the Court of Errors and Appeals. The division is typical. See the cases cited in note 49.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

48. See the authorities cited in note 49, and see note 54.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

49. Some state courts have sustained statutes granting free transportation or free school books to children attending denominational schools on the theory that the aid as a benefit to the child, rather than to the school. See Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, with which compare Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W.2d 963; Cochran v. Board of Education, 168 La. 1030, 123 So. 664, aff'd, 281 U.S. 370; Borden v. Board of Education, 168 La. 1005, 123 So. 655; Board of Education v. Wheat, 174 Md. 314, 199 A. 628; Adams v. St. Mary's County, 180 Md. 550, 26 A.2d 377; Chance v. State Textbook R. & P. Board, 190 Miss. 453, 200 So. 706. See also Bowker v. Baer, 73 Cal.App.2d 653, 167 P.2d 256. Other courts have held such statutes unconstitutional under state constitutions as aid to the schools. Judd v. Board of Education, 278 N.Y. 200, 15 N.E.2d 576, but see note 47, supra; Smith v. Donahue, 202 App.Div. 656, 195 N.Y.S. 715; State ex rel. Traub v. Brown, 36 Del. 181, 172 A. 835; Gurney v. Ferguson, 190 Okla. 254, 122 P.2d 1002; Mitchell v. Consolidated School District, 17 Wash.2d 61, 135 P.2d 79; Van Straten v. Milquet, 180 Wis. 109, 192 N.W. 392. And cf. Hlebanja v. Brewe, 58 S.D. 351, 236 N.W. 296. And since many state constitutions have provisions forbidding the appropriation of public funds for private purposes, in these and other cases, the issue whether the statute was for a "public" or "private" purpose has been present. See Note (1941) 50 Yale L.J. 917, 925.

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50. E.g, Gurney v. Ferguson, 190 Okla. 254, 255, 122 P.2d 1002, 1003; Mitchell v. Consolidated School District, 17 Wash.2d 61, 68, 135 P.2d 79, 82; Smith v. Donahue, 202 App.Div. 656, 664, 195 N.Y.S. 715, 722; Board of Education v. Wheat, 174 Md. 314, dissenting opinion at 340, 199 A. 628 at 639. This is true whether the appropriation and payment are in form to the individual, or to the institution. Ibid. Questions of this gravity turn upon the purpose and effect of the state's expenditure to accomplish the forbidden object, not upon who receives the amount and applies it to that end or the form and manner of the payment.

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51. The payments here averaged roughly $40.00 a year per child.

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52. See Part V.

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

53. See also note 46 supra, and Remonstrance, Par. 3.

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54. Thus, each brief filed here by the supporters of New Jersey's action, see note 47, not only relies strongly on Cochran v. Board of Education, 281 U.S. 370, but either explicitly or in effect maintains that it is controlling in the present case.

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55. See text at notes 17-19 supra, and authorities cited; also Foote, Sketches of Virginia (1850) c. XV. Madison's entire thesis, as reflected throughout the Remonstrance and in his other writings, as well as in his opposition to the final form of the Assessment Bill, see note 43, was altogether incompatible with acceptance of general and "nondiscriminatory" support. See Brant, c. XII.

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56. The protections are of a nature which does not require appropriations specially made from the public treasury and earmarked, as is New Jersey's here, particularly for religious institutions or uses. The First Amendment does not exclude religious property or activities from protection against disorder or the ordinary accidental incidents of community life. It forbids support, not protection from interference or destruction.

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It is a matter not frequently recalled that President Grant opposed tax exemption of religious property as leading to a violation of the principle of separation of church and state. See President Grant's Seventh Annual Message to Congress, December 7, 1875, in IX Messages and Papers of the Presidents (1897) 4288-4289. Garfield, in a letter accepting the nomination for the presidency, said:

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…it would be unjust to our people, and dangerous to our institutions, to apply any portion of the revenues of the nation, or of the States, to the support of sectarian schools. The separation of the Church and the State in everything relating to taxation should be absolute.

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II The Works of James Abram Garfield (ed. by Hinsdale, 1883) 783.

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57. Neither do we have here a case of ratemaking by which a public utility extends reduced fares to all school children, including patrons of religious schools. Whether or not legislative compulsion upon a private utility to extend such an and advantage would be valid, or its extension by a municipally owned system, we are not required to consider. In the former instance, at any rate, and generally, if not always, in the latter, the vice of using the taxing power to raise funds for the support of religion would not be present.

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58. It would seem at least a doubtfully sufficient basis for reasonable classification that some children should be excluded simply because the only school feasible for them to attend, in view of geographic or other situation, might be one conducted in whole or in part for profit. Cf. note 5.

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59. See note 7 supra. The resolution was as follows, according to the school board's minutes read in proof:

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The transportation committee recommended the transportation of pupils of Ewing to the Trenton and Pennington High Schools and Catholic Schools by way of public carrier as in recent years. On Motion of Mr. Ralph Ryan and Mr. M. French. the same was adopted.

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(Emphasis added.) The New Jersey court's holding that the resolution was within the authority conferred by the state statute is binding on us. Reinman v. Little Rock, 237 U.S. 171, 176; Hadacheck v. Sebastian, 239 U.S. 394, 414.

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60. The population of Ewing Township, located near the City of Trenton, was 10,146 according to the census of 1940. Sixteenth Census of the United States, Population, Vol. 1, 674.

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61. In Thomas v. Collins, 323 U.S. 516, 530, it was said that the preferred place given in our scheme to the great democratic freedoms secured by the First Amendment gives them "a sanctity and a sanction not permitting dubious intrusions." Cf. Remonstrance, Par. 3, 9. And, in other cases, it has been held that the usual presumption of constitutionality will not work to save such legislative excursions in this field. United States v. Carolene Products Co., 304 U.S. 144, 152, note 4; see Wechsler, Stone and the Constitution (1946) 46 Col.L.Rev. 764, 795 et seq.

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Apart from the Court's admission that New Jersey's present action approaches the verge of her power, it would seem that a statute, ordinance or resolution which, on its face, singles out one sect only by name for enjoyment of the same advantages as public schools or their students, should be held discriminatory on its face by virtue of that fact alone, unless it were positively shown that no other sects sought or were available to receive the same advantages.

RUTLEDGE, J., dissenting (Footnotes)

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

1. Decl.Rights, Art. 16. [Note in the original.]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

2. Decl.Rights, Art. 1. [Note in the original.]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

3. Art. 16. [Note in the original.]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

4. Art. 16. [Note in the original.]

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

5. Decl.Rights—title. [Note in the original.]

RUTLEDGE, J., dissenting (Footnotes)

1947, Everson v. Board of Education of the Township of Ewing, 330 U.S. 74

\* This copy of the Assessment Bill is from one of the handbills which, on December 24, 1784, when the third reading of the bill was postponed, were ordered distributed to the Virginia counties by the House of Delegates. See Journal of the Virginia House of Delegates, December 24, 1784; Eckenrode, 102-103. The bill is therefore in its final form, for it never again reached the floor of the House. Eckenrode, 113.

President Truman's Special Message to the Congress on Civil Rights, 1948

Title: President Truman's Special Message to the Congress on Civil Rights

Author: Harry S Truman

Date: February 2, 1948

Source: Public Papers of the Presidents, Truman, 1948, pp.121-126

Public Papers of Truman, 1948, p.121

To the Congress of the United States:

Public Papers of Truman, 1948, p.121

In the State of the Union Message on January 7, 1948, I spoke of five great goals toward which we should strive in our constant effort to strengthen our democracy and improve the welfare of our people. The first of these is to secure fully our essential human rights. I am now presenting to the Congress my recommendations for legislation to carry us forward toward that goal.

Public Papers of Truman, 1948, p.121

This Nation was founded by men and women who sought these shores that they might enjoy greater freedom and greater opportunity than they had known before. The founders of the United States proclaimed to the world the American belief that all men are created equal, and that governments are instituted to secure the inalienable rights with which all men are endowed. In the Declaration of Independence and the Constitution of the United States, they eloquently expressed the aspirations of all mankind for equality and freedom.

Public Papers of Truman, 1948, p.121

These ideals inspired the peoples of other lands, and their practical fulfillment made the United States the hope of the oppressed everywhere. Throughout our history men and women of all colors and creeds, of all races and religions, have come to this country to escape tyranny and discrimination. Millions strong, they have helped build this democratic Nation and have constantly reinforced our devotion to the great ideals of liberty and equality. With those who preceded them, they have helped to fashion and strengthen our American faith—a faith that can be simply stated:

Public Papers of Truman, 1948, p.121

We believe that all men are created equal and that they have the right to equal justice under law.

Public Papers of Truman, 1948, p.121

We believe that all men have the right to freedom of thought and of expression and the right to worship as they please.

Public Papers of Truman, 1948, p.121

We believe that all men are entitled to equal opportunities for jobs, for homes, for good health and for education.

Public Papers of Truman, 1948, p.121

We believe that all men should have a voice in their government and that government should protect, not usurp, the rights of the people.

Public Papers of Truman, 1948, p.121

These are the basic civil rights which are the source and the support of our democracy.

Public Papers of Truman, 1948, p.121

Today, the American people enjoy more freedom and opportunity than ever before. Never in our history has there been better reason to hope for the complete realization of the ideals of liberty and equality.

Public Papers of Truman, 1948, p.121

We shall not, however, finally achieve the ideals for which this Nation was rounded so long as any American suffers discrimination as a result of his race, or religion, or color, or the land of origin of his forefathers.

Public Papers of Truman, 1948, p.121

Unfortunately, there still are examples-flagrant examples—of discrimination which are utterly contrary to our ideals. Not all groups of our population are free from the fear of violence. Not all groups are free to live and work where they please or to improve their conditions of life by their own efforts. Not all groups enjoy the full privileges of citizenship and participation in the government under which they live.

Public Papers of Truman, 1948, p.121

We cannot be satisfied until all our people have equal opportunities for jobs, for homes, for education, for health, and for political expression, and until all our people have equal protection under the law.

Public Papers of Truman, 1948, p.121

One year ago I appointed a committee of fifteen distinguished Americans and asked them to appraise the condition of our civil rights and to recommend appropriate action by Federal, state and local governments.

Public Papers of Truman, 1948, p.121–p.122

The committee's appraisal has resulted in a frank and revealing report. This report [p.122] emphasizes that our basic human freedoms are better cared for and more vigilantly defended than ever before. But it also makes clear that there is a serious gap between our ideals and some of our practices. This gap must be closed.

Public Papers of Truman, 1948, p.122

This will take the strong efforts of each of us individually, and all of us acting together through voluntary organizations and our governments.

Public Papers of Truman, 1948, p.122

The protection of civil rights begins with the mutual respect for the rights of others which all of us should practice in our daily lives. Through organizations in every community—in all parts of the country—we must continue to develop practical, workable arrangements for achieving greater tolerance and brotherhood.

Public Papers of Truman, 1948, p.122

The protection of civil rights is the duty of every government which derives its powers from the consent of the people. This is equally true of local, state, and national governments. There is much that the states can and should do at this time to extend their protection of civil rights. Wherever the law enforcement measures of state and local governments are inadequate to discharge this primary function of government, these measures should be strengthened and improved.

Public Papers of Truman, 1948, p.122

The Federal Government has a clear duty to see that Constitutional guarantees of individual liberties and of equal protection under the laws are not denied or abridged anywhere in our Union. That duty is shared by all three branches of the Government, but it can be fulfilled only if the Congress enacts modern, comprehensive civil rights laws, adequate to the needs of the day, and demonstrating our continuing faith in the free way of life.

Public Papers of Truman, 1948, p.122

I recommend, therefore, that the Congress enact legislation at this session directed toward the following specific objectives:

Public Papers of Truman, 1948, p.122

1. Establishing a permanent Commission on Civil Rights, a Joint Congressional Committee on Civil Rights, and a Civil Rights Division in the Department of Justice.

Public Papers of Truman, 1948, p.122

2. Strengthening existing civil rights statutes.

Public Papers of Truman, 1948, p.122

3. Providing Federal protection against lynching.

Public Papers of Truman, 1948, p.122

4. Protecting more adequately the right to vote,

Public Papers of Truman, 1948, p.122

5. Establishing a Fair Employment Practice Commission to prevent unfair discrimination in employment.

Public Papers of Truman, 1948, p.122

6. Prohibiting discrimination in interstate transportation facilities.

Public Papers of Truman, 1948, p.122

7. Providing home-rule and suffrage in Presidential elections for the residents of the District of Columbia.

Public Papers of Truman, 1948, p.122

8. Providing Statehood for Hawaii and Alaska and a greater measure of self-government for our island possessions.

Public Papers of Truman, 1948, p.122

9. Equalizing the opportunities for residents of the United States to become naturalized citizens.

Public Papers of Truman, 1948, p.122

10. Settling the evacuation claims of Japanese-Americans.

Strengthening the Government Organization

Public Papers of Truman, 1948, p.122

As a first stop, we must strengthen the organization of the Federal Government in order to enforce civil rights legislation more adequately and to watch over the state of our traditional liberties.

Public Papers of Truman, 1948, p.122

I recommend that the Congress establish a permanent Commission on Civil Rights reporting to the President. The Commission should continuously review our civil rights policies and practices, study specific problems, and make recommendations to the President at frequent intervals. It should work with other agencies of the Federal Government, with state and local governments, and with private organizations.

Public Papers of Truman, 1948, p.123

I also suggest that the Congress establish a Joint Congressional Committee on Civil Rights. This Committee should make a continuing study of legislative matters relating to civil rights and should consider means of improving respect for and enforcement of those rights.

Public Papers of Truman, 1948, p.123

These two bodies together should keep all of us continuously aware of the condition of civil rights in the United States and keep us alert to opportunities to improve their protection.

Public Papers of Truman, 1948, p.123

To provide for better enforcement of Federal civil rights laws, there will be established a Division of Civil Rights in the Department of Justice. I recommend that the Congress provide for an additional Assistant Attorney General to supervise this Division.

Strengthening Existing Civil Rights Statutes

Public Papers of Truman, 1948, p.123

I recommend that the Congress amend and strengthen the existing provisions of Federal law which safeguard the right to vote and the right to safety and security of person and property. These provisions are the basis for our present civil rights enforcement program.

Public Papers of Truman, 1948, p.123

Section 51 of Title 18 of the United States Code, which now gives protection to citizens in the enjoyment of rights secured by the Constitution or Federal laws, needs to be strengthened in two respects. In its present form, this section protects persons only if they are citizens, and it affords protection only against conspiracies by two or more persons. This protection should be extended to all inhabitants of the United States, whether or not they are citizens, and should be afforded against infringement by persons acting individually as well as in conspiracy.

Public Papers of Truman, 1948, p.123

Section 52 of Title 18 of the United States Code, which now gives general protection to individuals against the deprivation of Federally secured rights by public officers, has proved to be inadequate in some cases because of the generality of its language. An enumeration of the principal rights protected under this section is needed to make more definite and certain the protection which the section affords.

Federal Protection Against Lynching

Public Papers of Truman, 1948, p.123

A specific Federal measure is needed to deal with the crime of lynching—against which I cannot speak too strongly. It is a principle of our democracy, written into our Constitution, that every person accused of an offense against the law shall have a fair, orderly trial in an impartial court. We have made great progress toward this end, but I regret to say that lynching has not yet finally disappeared from our land. So long as one person walks in fear of lynching, we shall not have achieved equal justice under law. I call upon the Congress to take decisive action against this crime.

Protecting the Right to Vote

Public Papers of Truman, 1948, p.123

Under the Constitution, the right of all properly qualified citizens to vote is beyond question. Yet the exercise of this right is still subject to interference. Some individuals are prevented from voting by isolated acts of intimidation. Some whole groups are prevented by outmoded policies prevailing in certain states or communities.

Public Papers of Truman, 1948, p.123–p.124

We need stronger statutory protection of the right to vote. I urge the Congress to enact legislation forbidding interference by public officers or private persons with the right of qualified citizens to participate in primary, special and general elections in which Federal officers are to be chosen. This legislation should extend to elections for state as well as Federal officers insofar as [p.124] interference with the right to vote results from discriminatory action by public officers based on race, color, or other unreasonable classification.

Public Papers of Truman, 1948, p.124

Requirements for the payment of poll taxes also interfere with the right to vote. There are still seven states which, by their constitutions, place this barrier between their citizens and the ballot box. The American people would welcome voluntary action on the part of these states to remove this barrier. Nevertheless, I believe the Congress should enact measures insuring that the right to vote in elections for Federal officers shall not be contingent upon the payment of taxes.

Public Papers of Truman, 1948, p.124

I wish to make it clear that the enactment of the measures I have recommended will in no sense result in Federal conduct of elections. They are designed to give qualified citizens Federal protection of their right to vote. The actual conduct of elections, as always, will remain the responsibility of State governments.

Fair Employment Practice Commission

Public Papers of Truman, 1948, p.124

We in the United States believe that all men are entitled to equality of opportunity. Racial, religious and other invidious forms of discrimination deprive the individual of an equal chance to develop and utilize his talents and to enjoy the rewards of his efforts.

Public Papers of Truman, 1948, p.124

Once more I repeat my request that the Congress enact fair employment practice legislation prohibiting discrimination in employment based on race, color, religion or national origin. The legislation should create a Fair Employment Practice Commission with authority to prevent discrimination by employers and labor unions, trade and professional associations, and government agencies and employment bureaus. The degree of effectiveness which the wartime Fair Employment Practice Committee attained shows that it is possible to equalize job opportunity by government action and thus to eliminate the influence of prejudice in employment.

Interstate Transportation

Public Papers of Truman, 1948, p.124

The channels of interstate commerce should be open to all Americans on a basis of complete equality. The Supreme Court has recently declared unconstitutional state laws requiring segregation on public carriers in interstate travel. Company regulations must not be allowed to replace unconstitutional state laws. I urge the Congress to prohibit discrimination and segregation, in the use of interstate transportation facilities, by both public officers and the employees of private companies.

The District of Columbia

Public Papers of Truman, 1948, p.124

I am in full accord with the principle of local self-government for residents of the District of Columbia. In addition, I believe that the Constitution should be amended to extend suffrage in Presidential elections to the residents of the District.

Public Papers of Truman, 1948, p.124

The District of Columbia should be a true symbol of American freedom and democracy for our own people, and for the people of the world. It is my earnest hope that the Congress will promptly give the citizens of the District of Columbia their own local, elective government. They themselves can then deal with the inequalities arising from segregation in the schools and other public facilities, and from racial barriers to places of public accommodation which now exist for one-third of the District's population.

Public Papers of Truman, 1948, p.124–p.125

The present inequalities in essential services are primarily a problem for the District itself, but they are also of great concern to the whole Nation. Failing local corrective [p.125] action in the near future, the Congress should enact a model civil rights law for the Nation's Capital.

Our Territories and Possessions

Public Papers of Truman, 1948, p.125

The present political status of our Territories and possessions impairs the enjoyment of civil rights by their residents. I have in the past recommended legislation granting statehood to Alaska and Hawaii, and organic acts for Guam and American Samoa including a grant of citizenship to the people of these Pacific Islands. I repeat these recommendations.

Public Papers of Truman, 1948, p.125

Furthermore, the residents of the Virgin Islands should be granted an increasing measure of self-government, and the people of Puerto Rico should be allowed to choose their form of government and their ultimate status with respect to the United States.

Equality in Naturalization

Public Papers of Truman, 1948, p.125

All properly qualified legal residents of the United States should be allowed to become citizens without regard to race, color, religion or national origin. The Congress has recently removed the bars which formerly prevented persons from China, India and the Philippines from becoming naturalized citizens. I urge the Congress to remove the remaining racial or nationality barriers which stand in the way of citizenship for some residents of our country.

Evacuation Claims of the Japanese-Americans

Public Papers of Truman, 1948, p.125

During the last war more than one hundred thousand Japanese-Americans were evacuated from their homes in the Pacific states solely because of their racial origin. Many of these people suffered property and business losses as a result of this forced evacuation and through no fault of their own. The Congress has before it legislation establishing a procedure by which claims based upon these losses can be promptly considered and settled. I trust that favorable action on this legislation will soon be taken.

Public Papers of Truman, 1948, p.125

The legislation I have recommended for enactment by the Congress at the present session is a minimum program if the Federal Government is to fulfill its obligation of insuring the Constitutional guarantees of individual liberties and of equal protection under the law.

Public Papers of Truman, 1948, p.125

Under the authority of existing law, the Executive branch is taking every possible action to improve the enforcement of the civil rights statutes and to eliminate discrimination in Federal employment, in providing Federal services and facilities, and in the armed forces.

Public Papers of Truman, 1948, p.125

I have already referred to the establishment of the Civil Rights Division of the Department of Justice. The Federal Bureau of Investigation will work closely with this new Division in the investigation of Federal civil rights cases. Specialized training is being given to the Bureau's agents so that they may render more effective service in this difficult field of law enforcement.

Public Papers of Truman, 1948, p.125

It is the settled policy of the United States Government that there shall be no discrimination in Federal employment or in providing Federal services and facilities. Steady progress has been made toward this objective in recent years. I shall shortly issue an Executive Order containing a comprehensive restatement of the Federal non-discrimination policy, together with appropriate measures to ensure compliance.

Public Papers of Truman, 1948, p.125–p.126

During the recent war and in the years since its dose we have made much progress [p.126] toward equality of opportunity in our armed services without regard to race, color, religion or national origin. I have instructed the Secretary of Defense to take steps to have the remaining instances of discrimination in the armed services eliminated as rapidly as possible. The personnel policies and practices of all the services in this regard will be made consistent.

Public Papers of Truman, 1948, p.126

I have instructed the Secretary of the Army to investigate the status of civil rights in the Panama Canal Zone with a view to eliminating such discrimination as may exist there. If legislation is necessary, I shall make appropriate recommendations to the Congress.

Public Papers of Truman, 1948, p.126

The position of the United States in the world today makes it especially urgent that we adopt these measures to secure for all our people their essential rights.

Public Papers of Truman, 1948, p.126

The peoples of the world are faced with the choice of freedom or enslavement, a choice between a form of government which harnesses the state in the service of the individual and a form of government which chains the individual to the needs of the state.

Public Papers of Truman, 1948, p.126

We in the United States are working in company with other nations who share our desire for enduring world peace and who believe with us that, above all else, men must be free. We are striving to build a world family of nations—a world where men may live under governments of their own choosing and under laws of their own making.

Public Papers of Truman, 1948, p.126

As a part of that endeavor, the Commission on Human Rights of the United Nations is now engaged in preparing an international bill of human rights by which the nations of the world may bind themselves. by international covenant to give effect to basic human rights and fundamental freedoms. We have played a leading role in this undertaking designed to create a world order of law and justice fully protective of the rights and the dignity of the individual.

Public Papers of Truman, 1948, p.126

To be effective in those efforts, we must protect our civil rights so that by providing all our people with the maximum enjoyment of personal freedom and personal opportunity we shall be a stronger nation—stronger in our leadership, stronger in our moral position, stronger in the deeper satisfactions of a united citizenry.

Public Papers of Truman, 1948, p.126

We know that our democracy is not perfect. But we do know that it offers freer, happier life to our people than any totalitarian nation has ever offered.

Public Papers of Truman, 1948, p.126

If we wish to inspire the peoples of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.

Public Papers of Truman, 1948, p.126

We know the way. We need only the will.

HARRY S. TRUMAN

Public Papers of Truman, 1948, p.126

NOTE: The President's Committee on Civil Rights was established on December 5, 1946, by Executive Order 9808 (3 CFR, 1943-1948 Comp., p. 590). The Committee's report, entitled "To Secure These, Rights," was made public October 29, 1947 (Government Printing Office, 178 pp. )

Public Papers of Truman, 1948, p.126

On July 2, 1948, the President signed a bill in. response to his request for legislation dealing with evacuation claims of Japanese-Americans (62 Stat. 1231). On July 26 he issued Executive Order 9980 relating to fair employment practices in the Federal service, and Executive Order 9981 establishing the President's Committee on Equality of Treatment and Opportunity in the Armed Services (3 CFR, 1943-1948 Comp., pp. 720, 722).

Statement by President Truman Announcing Recognition of the State of Israel, 1948

Title: Statement by President Truman Announcing Recognition of the State of Israel

Author: Harry S Truman

Date: May 14, 1948

Source: Public Papers of the Presidents, Truman, 1948, p.258

Public Papers of Truman, 1948, p.258

THIS GOVERNMENT has been informed that a Jewish state has been proclaimed in Palestine, and recognition has been requested by the provisional government thereof.

Public Papers of Truman, 1948, p.258

The United States recognizes the provisional government as the de facto authority of the new State of Israel.

Republican Platform of 1948

Title: Republican Platform of 1948

Author: Republican Party

Date: 1948

Source: National Party Platforms, pp.450-454

I

Declaration of Principles

National Party Platforms, Republican Platform of 1948, p.450

To establish and maintain peace, to build a country in which every citizen can earn a good living with the promise of real progress for himself and his family, and to uphold as a beacon light for mankind everywhere, the inspiring American tradition of liberty, opportunity and justice for all—that is the Republican platform.

National Party Platforms, Republican Platform of 1948, p.450

To this end we propose as a guide to definite action the following principles:

National Party Platforms, Republican Platform of 1948, p.450

Maximum voluntary cooperation between citizens and minimum dependence on law; never, however, declining courageous recourse to law if necessary.

National Party Platforms, Republican Platform of 1948, p.450

Our competitive system furnishes vital opportunity for youth and for all enterprising citizens; it makes possible the productive power which is the unique weapon of our national defense; and is the mainspring of material well-being and political freedom.

National Party Platforms, Republican Platform of 1948, p.450

Government, as the servant of such a system, should take all needed steps to strengthen and develop public health, to promote scientific research, to provide security for the aged, and to promote a stable economy so that men and women need not fear the loss of their jobs or the threat of economic hardships through no fault of their own.

National Party Platforms, Republican Platform of 1948, p.450

The rights and obligations of workers are commensurate with the rights and obligations of employers and they are interdependent; these rights should be protected against coercion and exploitation from whatever quarter and with due regard for the general welfare of all.

National Party Platforms, Republican Platform of 1948, p.450

The soil as our basic natural resource must be conserved with increased effectiveness; and farm prices should be supported on a just basis.

National Party Platforms, Republican Platform of 1948, p.450

Development of the priceless national heritage which is in our West is vital to our nation.

National Party Platforms, Republican Platform of 1948, p.450

Administration of government must be economical and effective.

National Party Platforms, Republican Platform of 1948, p.450

Faulty governmental policies share an important responsibility for the present cruelly high cost of living. We pledge prompt action to correct these policies. There must be decent living at decent wages.

National Party Platforms, Republican Platform of 1948, p.450

Our common defense must be strengthened and unified.

National Party Platforms, Republican Platform of 1948, p.450

Our foreign policy is dedicated to preserving a free America in a free world of free men. This calls for strengthening the United Nations and primary recognition of America's self-interest in the liberty of other peoples. Prudently conserving our own resources, we shall cooperate on a self-help basis with other peace-loving nations.

National Party Platforms, Republican Platform of 1948, p.450

Constant and effective insistence on the personal dignity of the individual, and his right to complete justice without regard to race, creed or color, is a fundamental American principle.

National Party Platforms, Republican Platform of 1948, p.450

We aim always to unite and to strengthen; never to weaken or divide. In such a brotherhood will we Americans get results. Thus we will overcome all obstacles.

II

National Party Platforms, Republican Platform of 1948, p.450

In the past eighteen months, the Republican Congress, in the face of frequent obstruction from the Executive Branch, made a record of solid achievement. Here are some of the accomplishments of this Republican Congress:

National Party Platforms, Republican Platform of 1948, p.450

The long trend of extravagant and ill-advised Executive action reversed;

National Party Platforms, Republican Platform of 1948, p.450

the budget balanced;

National Party Platforms, Republican Platform of 1948, p.450

taxes reduced;

National Party Platforms, Republican Platform of 1948, p.450

limitation of Presidential tenure to two terms passed;

National Party Platforms, Republican Platform of 1948, p.450

assistance to veterans, their widows and orphans provided;

National Party Platforms, Republican Platform of 1948, p.450

assistance to agriculture and business enacted;

National Party Platforms, Republican Platform of 1948, p.450

elimination of the poll tax as a requisite to soldier voting;

National Party Platforms, Republican Platform of 1948, p.450

a sensible reform of the labor law, protecting all rights of Labor while safeguarding the entire community against those breakdowns in essential [p.451] industries which endanger the health and livelihood of all;

National Party Platforms, Republican Platform of 1948, p.451

a long-range farm program enacted;

National Party Platforms, Republican Platform of 1948, p.451

unification of the armed services launched;

National Party Platforms, Republican Platform of 1948, p.451

a military manpower law enacted;

National Party Platforms, Republican Platform of 1948, p.451

the United Nations fostered;

National Party Platforms, Republican Platform of 1948, p.451

a haven for displaced persons provided;

National Party Platforms, Republican Platform of 1948, p.451

the most far-reaching measures in history adopted to aid the recovery of the free world on a basis of self-help and with prudent regard for our own resources;

National Party Platforms, Republican Platform of 1948, p.451

and, finally, the development of intelligent plans and party teamwork for the day when the American people entrust the Executive as well as the Legislative branch of our National Government to the Republican Party.

National Party Platforms, Republican Platform of 1948, p.451

We shall waste few words on the tragic lack of foresight and general inadequacy of those now in charge of the Executive Branch of the National Government; they have lost the confidence of citizens of all parties.

III

National Party Platforms, Republican Platform of 1948, p.451

Present cruelly high prices are due in large part to the fact that the government has not effectively used the powers it possesses to combat inflation, but has deliberately encouraged higher prices.

National Party Platforms, Republican Platform of 1948, p.451

We pledge an attack upon the basic causes of inflation, including the following measures:

National Party Platforms, Republican Platform of 1948, p.451

progressive reduction of the cost of government through elimination of waste;

National Party Platforms, Republican Platform of 1948, p.451

stimulation of production as the surest way to lower prices;

National Party Platforms, Republican Platform of 1948, p.451

fiscal policies to provide increased incentives for production and thrift;

National Party Platforms, Republican Platform of 1948, p.451

a sound currency;

National Party Platforms, Republican Platform of 1948, p.451

reduction of the public debt.

National Party Platforms, Republican Platform of 1948, p.451

We pledge further, that in the management of our National Government, we shall achieve the abolition of overlapping, duplication, extravagance, and excessive centralization;

National Party Platforms, Republican Platform of 1948, p.451

the more efficient assignment of functions within the government;

National Party Platforms, Republican Platform of 1948, p.451

and the rooting out of Communism wherever found.

National Party Platforms, Republican Platform of 1948, p.451

These things are fundamental.

IV

National Party Platforms, Republican Platform of 1948, p.451

We must, however, do more.

National Party Platforms, Republican Platform of 1948, p.451

The Constitution gives us the affirmative mandate "to establish justice."

National Party Platforms, Republican Platform of 1948, p.451

In Lincoln's words: The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew and act anew.

National Party Platforms, Republican Platform of 1948, p.451

The tragic experience of Europe tells us that popular government disappears when it is ineffective and no longer can translate into action the aims and the aspirations of the people.

National Party Platforms, Republican Platform of 1948, p.451

Therefore, in domestic affairs, we propose:

National Party Platforms, Republican Platform of 1948, p.451

The maintenance of armed services for air, land and sea, to a degree which will insure our national security; and the achievement of effective unity in the Department of National Defense so as to insure maximum economy in money and manpower, and maximum effectiveness in case of war. We favor sustained effective action to procure sufficient manpower for the services, recognizing the American principle that every citizen has an obligation of service to his country.

National Party Platforms, Republican Platform of 1948, p.451

An adequate privately operated merchant marine, the continued development of our harbors and waterways, and the expansion of privately operated air transportation and communication systems.

National Party Platforms, Republican Platform of 1948, p.451

The maintenance of Federal finances in a healthy condition and continuation of the efforts so well started by the Republican Congress to reduce the enormous burden of taxation in order to provide incentives for the creation of new industries and new jobs, and to bring relief from inflation. We favor intelligent integration of Federal-State taxing and spending policies designed to eliminate wasteful duplication, and in order that the State and local governments may be able to assume their separate responsibilities, the Federal government shall as soon as practicable withdraw or reduce those taxes which can be best administered by local governments, with particular consideration of excise and inheritance taxes; and we favor restoring to America a working federalism.

National Party Platforms, Republican Platform of 1948, p.451

Small business, the bulwark of American enterprise, must be encouraged through aggressive anti-monopoly action, elimination of unnecessary controls, protection against discrimination, correction of tax abuses, and limitation of competition by governmental organizations.

National Party Platforms, Republican Platform of 1948, p.452

[p.452] Collective bargaining is an obligation as well as a right, applying equally to workers and employers; and the fundamental right to strike is subordinate only to paramount considerations of public health and safety. Government's chief function in this field is to promote good will, encourage cooperation, and where resort is had to intervention, to be impartial, preventing violence and requiring obedience to all law by all parties involved. We pledge continuing study to improve labor-management legislation in the light of experience and changing conditions.

National Party Platforms, Republican Platform of 1948, p.452

There must be a long-term program in the interest of agriculture and the consumer which should include: An accelerated program of sounder soil conservation; effective protection of reasonable market prices through flexible support prices, commodity loans, marketing agreements, together with such other means as may be necessary, and the development of sound farm credit; encouragement of family-size farms; intensified research to discover new crops, new uses for existing crops, and control of hoof and mouth and other animal diseases and crop pests; support of the principle of bona fide farmer-owned and farmer-operated co-operatives, and sound rural electrification.

National Party Platforms, Republican Platform of 1948, p.452

We favor progressive development of the Nation's water resources for navigation, flood control and power, with immediate action in critical areas.

National Party Platforms, Republican Platform of 1948, p.452

We favor conservation of all our natural resources and believe that conservation and stock-piling of strategic and critical raw materials is indispensable to the security of the United States.

National Party Platforms, Republican Platform of 1948, p.452

We urge the full development of our forests on the basis of cropping and sustained yield with co-operation of States and private owners for conservation and fire protection.

National Party Platforms, Republican Platform of 1948, p.452

We favor a comprehensive reclamation program for arid and semi-arid areas with full protection of the rights and interests of the States in the use and control of water for irrigation, power development incidental thereto and other beneficial uses; withdrawal or acquisition of lands for public purposes only by Act of Congress and after due consideration of local problems; development of processes for the extraction of oil and other substances from oil shale and coal; adequate representation of the West in the National Administration.

National Party Platforms, Republican Platform of 1948, p.452

Recognizing the Nation's solemn obligation to all veterans, we propose a realistic and adequate adjustment of benefits on a cost-of-living basis for service-connected disabled veterans and their dependents, and for the widows, orphans and dependents of veterans who died in the service of their country. All disabled veterans should have ample opportunity for suitable, self-sustaining employment. We demand good-faith compliance with veterans preference in Federal service with simplification and codification of the hundreds of piecemeal Federal laws affecting veterans, and efficient and businesslike management of the Veterans Administration. We pledge the highest possible standards of medical care and hospitalization.

National Party Platforms, Republican Platform of 1948, p.452

Housing can best be supplied and financed by private enterprise; but government can and should encourage the building of better homes at less cost. We recommend Federal aid to the States for local slum clearance and low-rental housing programs only where there is a need that cannot be met either by private enterprise or by the States and localities.

National Party Platforms, Republican Platform of 1948, p.452

Consistent with the vigorous existence of our competitive economy, we urge: extension of the Federal Old Age and Survivors' Insurance program and increase of the benefits to a more realistic level; strengthening of Federal-State programs designed to provide more adequate hospital facilities, too improve methods of treatment for the mentally ill, to advance maternal and child health and generally to foster a healthy America.

National Party Platforms, Republican Platform of 1948, p.452

Lynching or any other form of mob violence anywhere is a disgrace to any civilized state, and we favor the prompt enactment of legislation to end this infamy.

National Party Platforms, Republican Platform of 1948, p.452

One of the basic principles of this Republic is the equality of all individuals in their right to life, liberty, and the pursuit of happiness. This principle is enunciated in the Declaration of Independence and embodied in the Constitution of the United States; it was vindicated on the field of battle and became the cornerstone of this Republic. This right of equal opportunity to work and to advance in life should never be limited in any individual because of race, religion, color, or country of origin. We favor the enactment and just enforcement of such Federal legislation as may be necessary to maintain this right at all times in every part of this Republic.

National Party Platforms, Republican Platform of 1948, p.453

[p.453] We favor the abolition of the poll tax as a requisite to voting.

National Party Platforms, Republican Platform of 1948, p.453

We are opposed to the idea of racial segregation in the armed services of the United States.

V

National Party Platforms, Republican Platform of 1948, p.453

We pledge a vigorous enforcement of existing laws against Communists and enactment of such new legislation as may be necessary to expose the treasonable activities of Communists and defeat their objective of establishing here a godless dictatorship controlled from abroad.

National Party Platforms, Republican Platform of 1948, p.453

We favor a revision of the procedure for the election of the President and Vice President which will more exactly reflect the popular vote.

National Party Platforms, Republican Platform of 1948, p.453

We recommend to Congress the submission of a constitutional amendment providing equal rights for women.

National Party Platforms, Republican Platform of 1948, p.453

We favor equal pay for equal work regardless of sex.

National Party Platforms, Republican Platform of 1948, p.453

We propose a well-paid and efficient Federal career service.

National Party Platforms, Republican Platform of 1948, p.453

We favor the elimination of unnecessary Federal bureaus and of the duplication of the functions of necessary governmental agencies.

National Party Platforms, Republican Platform of 1948, p.453

We favor equality of educational opportunity for all and the promotion of education and educational facilities.

National Party Platforms, Republican Platform of 1948, p.453

We favor restoration to the States of their historic rights to the tide and submerged lands, tributary waters, lakes, and streams.

National Party Platforms, Republican Platform of 1948, p.453

We favor eventual statehood for Hawaii, Alaska and Puerto Rico. We urge development of Alaskan land communications and natural resources.

National Party Platforms, Republican Platform of 1948, p.453

We favor self-government for the residents of the nation's capital.

VI

National Party Platforms, Republican Platform of 1948, p.453

We dedicate our foreign policy to the preservation of a free America in a free world of free men. With neither malice nor desire for conquest, we shall strive for a just peace with all nations.

National Party Platforms, Republican Platform of 1948, p.453

America is deeply interested in the stability, security and liberty of other independent peoples. Within the prudent limits of our own economic welfare, we shall cooperate, on a basis of self-help and mutual aid, to assist other peace-loping nations to restore their economic independence and the human rights and fundamental freedoms for which we fought two wars and upon which dependable peace must build. We shall insist on businesslike and efficient administration of all foreign aid.

National Party Platforms, Republican Platform of 1948, p.453

We welcome and encourage the sturdy progress toward unity in Western Europe.

National Party Platforms, Republican Platform of 1948, p.453

We shall erect our foreign policy on the basis of friendly firmness which welcomes co-operation but spurns appeasement. We shall pursue a consistent foreign policy which invites steadiness and reliance and which thus avoids the misunderstandings from which wars result. We shall protect the future against the errors of the Democrat Administration, which has too often lacked clarity, competence or consistency in our vital international relationships and has too often abandoned justice.

National Party Platforms, Republican Platform of 1948, p.453

We believe in collective security against aggression and in behalf of justice and freedom. We shall support the United Nations as the world's best hope in this direction, striving to strengthen it and promote its effective evolution and use. The United Nations should progressively establish international law, be freed of any veto in the peaceful settlement of international disputes, and be provided with the armed forces contemplated by the Charter. We particularly commend the value of regional arrangements as prescribed by the Charter; and we cite the Western Hemispheric Defense Pact as a useful model.

National Party Platforms, Republican Platform of 1948, p.453

We shall nourish these Pan-American agreements in the new spirit of co-operation which implements the Monroe Doctrine.

National Party Platforms, Republican Platform of 1948, p.453

We welcome Israel into the family of nations and take pride in the fact that the Republican Party was the first to call for the establishment of a free and independent Jewish Commonwealth. The vacillation of the Democrat Administration on this question has undermined the prestige of the United Nations. Subject to the letter and spirit of the United Nations Charter, we pledge to Israel full recognition, with its boundaries as sanctioned by the United Nations and aid in developing its economy.

National Party Platforms, Republican Platform of 1948, p.453

We will foster and cherish our historic policy of friendship with China and assert our deep interest in the maintenance of its integrity and freedom.

National Party Platforms, Republican Platform of 1948, p.453

We shall seek to restore autonomy and self-sufficiency as rapidly as possible in our post-war occupied areas, guarding always against any rebirth of aggression.

National Party Platforms, Republican Platform of 1948, p.454

We shall relentlessly pursue our aims for the [p.454] universal limitation and control of arms and implements of war on a basis of reliable disciplines against bad faith.

National Party Platforms, Republican Platform of 1948, p.454

At all times safeguarding our own industry and agriculture, and under efficient administrative procedures for the legitimate consideration of domestic needs, we shall support the system of reciprocal trade and encourage international commerce.

National Party Platforms, Republican Platform of 1948, p.454

We pledge that under a Republican Administration all foreign commitments shall be made public and subject to constitutional ratification. We shall say what we mean and mean what we say. In all of these things we shall primarily consult the national security and welfare of our own United States. In all of these things we shall welcome the world's co-operation. But in none of these things shall we surrender our ideals or our free institutions.

National Party Platforms, Republican Platform of 1948, p.454

We are proud of the part that Republicans have taken in those limited areas of foreign policy in which they have been permitted to participate. We shall invite the Minority Party to join us under the next Republican Administration in stopping partisan politics at the water's edge.

National Party Platforms, Republican Platform of 1948, p.454

We faithfully dedicate ourselves to peace with justice.

VII

National Party Platforms, Republican Platform of 1948, p.454

Guided by these principles, with continuing faith in Almighty God; united in the spirit of brotherhood; and using to the full the skills, resources and blessings of liberty with which we are endowed; we, the American people, will courageously advance to meet the challenge of the future.

Democratic Platform of 1948

Title: Democratic Platform of 1948

Author: Democratic Party

Date: 1948

Source: National Party Platforms, pp.430-436

National Party Platforms, Democratic Platform of 1948, p.430

The Democratic Party adopts this platform in the conviction that the destiny of the United States is to provide leadership in the world toward a realization of the Four Freedoms.

National Party Platforms, Democratic Platform of 1948, p.430

We chart our future course as we charted our course under the leadership of Franklin D. Roosevelt and Harry S. Truman in the abiding belief that democracy—when dedicated to the service of all and not to a privileged few—proves its superiority over all other forms of government.

National Party Platforms, Democratic Platform of 1948, p.430

Our party record of the past is assurance of its policies and performance in the future.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which was entrusted with responsibility when twelve years of Republican neglect had blighted the hopes of mankind, had squandered the fruits of prosperity and had plunged us into the depths of depression and despair.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which rebuilt a shattered economy, rescued our banking system, revived our agriculture, reinvigorated our industry, gave labor strength and security, and led the American people to the broadest prosperity in our history.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which introduced the spirit of humanity into our law, as we outlawed child labor and the sweatshop, insured bank deposits, protected millions of home-owners and farmers from foreclosure, and established national social security.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party under which this nation before Pearl Harbor gave aid and strength to those countries which were holding back the Nazi and Fascist tide.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which stood at the helm and led the nation to victory in the war.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which, during the war, prepared for peace so well that when peace came reconversion promptly led to the greatest production and employment in this nation's life.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party under whose leadership farm owners' income in this nation increased from less than $2.5 billions in 1933 to more than $18 billions in 1947; independent business and professional income increased from less than $3 billions in 1933 to more than $22 billions in 1947; employees' earnings increased from $29 billions in 1933 to more than 128 billions in 1947; and employment grew from 39 million jobs in 1933 to a record of 60 million jobs in 1947.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party under which the framework of the world organization for peace and justice was formulated and created.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party under which were conceived the instruments for resisting Communist aggression and for rebuilding the economic strength of the democratic countries of Europe and Asia—the Truman Doctrine and the Marshall Plan. They are the materials with which we must build the peace.

National Party Platforms, Democratic Platform of 1948, p.430

Ours is the party which first proclaimed that the actions and policies of this nation in the foreign field are matters of national and not just party concern. We shall go forward on the course charted by President Roosevelt and President Truman and the other leaders of Democracy.

National Party Platforms, Democratic Platform of 1948, p.430

We reject the principle—which we have always rejected, but which the Republican 80th Congress enthusiastically accepted—that government exists for the benefit of the privileged few.

National Party Platforms, Democratic Platform of 1948, p.430

To serve the interests of all and not the few; to assure a world in which peace and justice can [p.431] prevail; to achieve security, full production, and full employment—this is our platform.

Our Foreign Policy

National Party Platforms, Democratic Platform of 1948, p.431

We declared in 1944 that the imperative duty of the United States was to wage the war to final triumph and to join with the other United Nations in the establishment of an international organization for the prevention of aggression and the maintenance of international peace and security.

National Party Platforms, Democratic Platform of 1948, p.431

Under Democratic leadership, those pledges were gloriously redeemed.

National Party Platforms, Democratic Platform of 1948, p.431

When the United States was treacherously and savagely attacked, our great Democratic President, Franklin D. Roosevelt, and a Democratic Congress preserved the nation's honor, and with high courage and with the invincible might of the American people, the challenge was accepted. Under his inspiring leadership, the nation created the greatest army that ever assembled under the flag, the mightiest air force, the most powerful navy on the globe, and the largest merchant marine in the world.

National Party Platforms, Democratic Platform of 1948, p.431

The nation's gallant sons on land, on sea, and in the air, ended the war in complete and overwhelming triumph. Armed aggression against peaceful peoples was resisted and crushed. Arrogant and powerful war lords were vanquished and forced to unconditional surrender.

National Party Platforms, Democratic Platform of 1948, p.431

Before the end of the war the Democratic administration turned to the task of establishing measures for peace and the prevention of aggression and the threat of another war. Under the leadership of a Democratic President and his Secretary of State, the United Nations was organized at San Francisco. The charter was ratified by an overwhelming vote of the Senate. We support the United Nations fully and we pledge our whole-hearted aid toward its growth and development. We will constitute to lead the way toward curtailment of the use of the veto. We shall favor such amendments and modifications of the charter as experience may justify. We will continue our efforts toward the establishment of an international armed force to aid its authority. We advocate the grant of a loan to the United Nations recommended by the President, but denied by the Republican Congress, for the construction of the United Nations headquarters in this country.

National Party Platforms, Democratic Platform of 1948, p.431

We pledge our best endeavors to conclude treaties of peace with our former enemies. Already treaties have been made with Italy, Hungary, Bulgaria and Rumania. We shall strive to conclude treaties with the remaining enemy states, based on justice and with guarantees against the revival of aggression, and for the preservation of peace.

National Party Platforms, Democratic Platform of 1948, p.431

We advocate the maintenance of an adequate Army, Navy and Air Force to protect the nation's vital interests and to assure our security against aggression.

National Party Platforms, Democratic Platform of 1948, p.431

We advocate the effective international control of weapons of mass destruction, including the atomic bomb, and we approve continued and vigorous efforts within the United Nations to bring about the successful consummation of the proposals which our Government has advanced.

National Party Platforms, Democratic Platform of 1948, p.431

The adoption of these proposals would be a vital and most important step toward safe and effective world disarmament and world peace under a strengthened United Nations which would then truly constitute a more effective parliament of the world's peoples.

National Party Platforms, Democratic Platform of 1948, p.431

Under the leadership of a Democratic President, the United States has demonstrated its friendship for other peace-loving nations and its support of their freedom and independence. Under the Truman doctrine vital aid has been extended to China, to Greece, and to Turkey. Under the Marshall Plan generous sums have been provided for the relief and rehabilitation of European nations striving to rebuild their economy and to secure and strengthen their safety and freedom. The Republican leadership in the House of Representatives, by its votes in the 80th Congress, has shown its reluctance to provide funds to support this program, the greatest move for peace and recovery made since the end of World War II.

National Party Platforms, Democratic Platform of 1948, p.431

We pledge a sound, humanitarian administration of the Marshall Plan.

National Party Platforms, Democratic Platform of 1948, p.431

We pledge support not only for these principles—we pledge further that we will not withhold necessary funds by which these principles can be achieved. Therefore, we pledge that we will implement with appropriations the commitments which are made in this nation's foreign program.

National Party Platforms, Democratic Platform of 1948, p.431

We pledge ourselves to restore the Reciprocal Trade Agreements program formulated in 1934 by Secretary of State Cordell Hull and operated [p.432] successfully for 14 years—until crippled by the Republican 80th Congress. Further, we strongly endorse our country's adherence to the International Trade Organization.

National Party Platforms, Democratic Platform of 1948, p.432

A great Democratic President established the Good Neighbor Policy toward the nations of the Western Hemisphere. The Act of Chapultepec was negotiated at Mexico City under Democratic leadership. It was carried forward in the Western Hemisphere defense pact concluded at Rio de Janeiro, which implemented the Monroe Doctrine and united the Western Hemisphere in behalf of peace.

National Party Platforms, Democratic Platform of 1948, p.432

We pledge continued economic cooperation with the countries of the Western Hemisphere. We pledge continued support of regional arrangements within the United Nations Charter, such as the Inter-American Regional Pact and the developing Western European Union.

National Party Platforms, Democratic Platform of 1948, p.432

President Truman, by granting immediate recognition to Israel, led the world in extending friendship and welcome to a people who have long sought and justly deserve freedom and independence.

National Party Platforms, Democratic Platform of 1948, p.432

We pledge full recognition to the State of Israel. We affirm our pride that the United States under the leadership of President Truman played a leading role in the adoption of the resolution of November 29, 1947, by the United Nations General Assembly for the creation of a Jewish State.

National Party Platforms, Democratic Platform of 1948, p.432

We approve the claims of the State of Israel to the boundaries set forth in the United Nations resolution of November 29th and consider that modifications thereof should be made only if fully acceptable to the State of Israel.

National Party Platforms, Democratic Platform of 1948, p.432

We look forward to the admission of the State of Israel to the United Nations and its full participation in the international community of nations. We pledge appropriate aid to the State of Israel in developing its economy and resources.

National Party Platforms, Democratic Platform of 1948, p.432

We favor the revision of the arms embargo to accord to the State of Israel the right of self-defense. We pledge ourselves to work for the modification of any resolution of the United Nations to the extent that it may prevent any such revision.

National Party Platforms, Democratic Platform of 1948, p.432

We continue to support, within the framework of the United Nations, the internationalization of Jerusalem and the protection of the Holy Places in Palestine.

National Party Platforms, Democratic Platform of 1948, p.432

The United States has traditionally been in sympathy with the efforts of subjugated countries to attain their independence, and to establish a democratic form of government. Poland is an outstanding example. After a century and a half of subjugation, it was resurrected after the first World War by our great Democratic President, Woodrow Wilson. We look forward to development of these countries as prosperous, free, and democratic fellow members of the United Nations.

Our Domestic Policies

National Party Platforms, Democratic Platform of 1948, p.432

The Republican 80th Congress is directly responsible for the existing and ever increasing high cost of living. It cannot dodge that responsibility. Unless the Republican candidates are defeated in the approaching elections, their mistaken policies will impose greater hardships and suffering on large numbers of the American people. Adequate food, clothing and shelter—the bare necessities of life—are becoming too expensive for the average wage earner and the prospects are more frightening each day. The Republican 80th Congress has lacked the courage to face this vital problem.

National Party Platforms, Democratic Platform of 1948, p.432

We shall curb the Republican inflation. We shall put a halt to the disastrous price rises which have come as a result of the failure of the Republican 80th Congress to take effective action on President Truman's recommendations, setting forth a comprehensive program to control the high cost of living.

National Party Platforms, Democratic Platform of 1948, p.432

We shall enact comprehensive housing legislation, including provisions for slum clearance and low-rent housing projects initiated by local agencies. This nation is shamed by the failure of the Republican 80th Congress to pass the vitally needed general housing legislation as recommended by the President. Adequate housing will end the need for rent control. Until then, it must be continued.

National Party Platforms, Democratic Platform of 1948, p.432

We pledge the continued maintenance of those sound fiscal policies which under Democratic leadership have brought about a balanced budget and reduction of the public debt by $28 billion since the close of the war.

National Party Platforms, Democratic Platform of 1948, p.432

We favor the reduction of taxes, whenever it is possible to do so without unbalancing the nation's economy, by giving a full measure of relief to those millions of low-income families on whom the wartime burden of taxation fell most [p.433] heavily. The form of tax reduction adopted by the Republican 80th Congress gave relief to those who need it least and ignored those who need it most.

National Party Platforms, Democratic Platform of 1948, p.433

We shall endeavor to remove tax inequities and to continue to reduce the public debt.

National Party Platforms, Democratic Platform of 1948, p.433

We are opposed to the imposition of a general federal sales tax.

National Party Platforms, Democratic Platform of 1948, p.433

We advocate the repeal of the Taft-Hartley Act. It was enacted by the Republican 80th Congress over the President's veto. That act was proposed with the promise that it would secure "the legitimate rights of both employees and employers in their relations affecting commerce." It has failed. The number of labor-management disputes has increased. The number of cases before the National Labor Relations Board has more than doubled since the Act was passed, and efficient and prompt administration is becoming more and more difficult. It has encouraged litigation in labor disputes and undermined the established American policy of collective bargaining. Recent decisions by the courts prove that the Act was so poorly drawn that its application is uncertain, and that it is probably, in some provisions, unconstitutional.

National Party Platforms, Democratic Platform of 1948, p.433

We advocate such legislation as is desirable to establish a just body of rules to assure free and effective collective bargaining, to determine, in the public interest, the rights of employees and employers, to reduce to a minimum their conflict of interests, and to enable unions to keep their membership free from communistic influences.

National Party Platforms, Democratic Platform of 1948, p.433

We urge that the Department of Labor be rebuilt and strengthened, restoring to it the units, including the Federal Mediation and Conciliation Service and the United States Employment Service, which properly belong to it, and which the Republican 80th Congress stripped from it over the veto of President Truman. We urge that the Department's facilities for collecting and disseminating economic information be expanded, and that a Labor Education Extension Service be established in the Department of Labor.

National Party Platforms, Democratic Platform of 1948, p.433

We favor the extension of the coverage of the Fair Labor Standards Act as recommended by President Truman, and the adoption of a minimum wage of at least 75 cents an hour in place of the present obsolete and inadequate minimum of 40 cents an hour.

National Party Platforms, Democratic Platform of 1948, p.433

We favor legislation assuring that the workers of our nation receive equal pay for equal work, regardless of sex.

National Party Platforms, Democratic Platform of 1948, p.433

We favor the extension of the Social Security program established under Democratic leadership, to provide additional protection against the hazards of old age, disability, disease or death. We believe that this program should include:

National Party Platforms, Democratic Platform of 1948, p.433

Increases in old-age and survivors' insurance benefits by at least 50 percent, and reduction of the eligibility age for women from 65 to 60 years; extension of old-age and survivors' and unemployment insurance to all workers not now covered; insurance against loss of earnings on account of illness or disability; improved public assistance for the needy.

National Party Platforms, Democratic Platform of 1948, p.433

We favor the enactment of a national health program far expanded medical research, medical education, and hospitals and clinics.

National Party Platforms, Democratic Platform of 1948, p.433

We will continue our efforts to aid the blind and other handicapped persons to become self-supporting.

National Party Platforms, Democratic Platform of 1948, p.433

We will continue our efforts to expand maternal care, improve the health of the nation's children, and reduce juvenile delinquency.

National Party Platforms, Democratic Platform of 1948, p.433

We approve the purposes of the Mental Health Act and we favor such appropriations as may be necessary to make it effective.

National Party Platforms, Democratic Platform of 1948, p.433

We advocate federal aid for education administered by and under the control of the states. We vigorously support the authorization, which was so shockingly ignored by the Republican 80th Congress, for the appropriation of $300 million as a beginning of Federal aid to the states to assist them in meeting the present educational needs. We insist upon the right of every American child to obtain a good education.

National Party Platforms, Democratic Platform of 1948, p.433

The nation can never discharge its debt to its millions of war veterans. We pledge ourselves to the continuance and improvement of our national program of benefits for veterans and their families.

National Party Platforms, Democratic Platform of 1948, p.433

We are proud of the sound and comprehensive program conceived, developed and administered under Democratic leadership, including the GI Bill of Rights, which has proved beneficial to many millions.

National Party Platforms, Democratic Platform of 1948, p.433

The level of veterans' benefits must be constantly re-examined in the light of the decline in the purchasing power of the dollar brought about by inflation.

National Party Platforms, Democratic Platform of 1948, p.434

Employment and economic security must be [p.434] afforded all veterans. We pledge a program of housing for veterans at prices they can afford to pay.

National Party Platforms, Democratic Platform of 1948, p.434

The disabled veteran must be provided with medical care and hospitalization of the highest possible standard.

National Party Platforms, Democratic Platform of 1948, p.434

We pledge our efforts to maintain continued farm prosperity, improvement of the standard of living and the working conditions of the farmer, and to preserve the family-size farm.

National Party Platforms, Democratic Platform of 1948, p.434

Specifically, we favor a permanent system of flexible price supports for agricultural products, to maintain farm income on a parity with farm operating costs; an intensified soil conservation program; an extended crop insurance program; improvement of methods of distributing agricultural products; development and maintenance of stable export markets; adequate financing for the school lunch program; the use of agricultural surpluses to improve the diet of low-income families in case of need; continued expansion of the rural electrification program; strengthening of all agricultural credit programs; intensified research to improve agricultural practices, and to find new uses for farm products.

National Party Platforms, Democratic Platform of 1948, p.434

We strongly urge the continuance of maximum farmer participation in all these programs.

National Party Platforms, Democratic Platform of 1948, p.434

We favor the repeal of the discriminatory taxes on the manufacture and sale of oleomargarine.

National Party Platforms, Democratic Platform of 1948, p.434

We will encourage farm co-operatives and oppose any revision of federal law designed to curtail their most effective functioning as a means of achieving economy, stability and security for American agriculture.

National Party Platforms, Democratic Platform of 1948, p.434

We favor provisions under which our fishery resources and industry will be afforded the benefits that will result from more scientific research and exploration.

National Party Platforms, Democratic Platform of 1948, p.434

We recognize the importance of small business in a sound American economy. It must be protected against unfair discrimination and monopoly, and be given equal opportunities with competing enterprises to expand its capital structure.

National Party Platforms, Democratic Platform of 1948, p.434

We favor non-discriminatory transportation charges and declare for the early correction of inequalities in such charges.

National Party Platforms, Democratic Platform of 1948, p.434

We pledge the continued full and unified regional development of the water, mineral, and other natural resources of the nation, recognizing that the progress already achieved under the initiative of the Democratic Party in the arid and semi-arid states of the West, as well as in the Tennessee Valley, is only an indication of still greater results which can be accomplished. Our natural resources are the heritage of all our people and must not be permitted to become the private preserves of monopoly.

National Party Platforms, Democratic Platform of 1948, p.434

The irrigation of arid land, the establishment of new, independent, competitive business and the stimulation of new industrial opportunities for all of our people depends upon the development and transmission of electric energy in accordance with the program and the projects so successfully launched under Democratic auspices during the past sixteen years.

National Party Platforms, Democratic Platform of 1948, p.434

We favor acceleration of the Federal Reclamation Program, the maximum beneficial use of water in the several states for irrigation and domestic supply. In this connection, we propose the establishment and maintenance of new family-size farms for veterans and others seeking settlement opportunities, the development of hydroelectric power and its widespread distribution over publicly owned transmission lines to assure benefits to the water users in financing irrigation projects, and to the power users for domestic and industrial purposes, with preference to public agencies and R.E.A. co-operatives.

National Party Platforms, Democratic Platform of 1948, p.434

These are the aims of the Democratic Party which in the future, as in the past, will place the interest of the people as individual citizens first.

National Party Platforms, Democratic Platform of 1948, p.434

We will continue to improve the navigable waterways and harbors of the nation.

National Party Platforms, Democratic `latform of 1948, p.434

We pledge to continue the policy initiated by the Democratic Party of adequate appropriations for flood control for the protection of life and property.

National Party Platforms, Democratic Platform of 1948, p.434

In addition to practicing false economy on flood control, the Republican-controlled 80th Congress was so cruel as even to deny emergency federal funds for the relief of individuals and municipalities victimized by recent great floods, tornadoes and other disasters.

National Party Platforms, Democratic Platform of 1948, p.434

We shall expand our programs for forestation, for the improvement of grazing lands, public and private, for the stockpiling of strategic minerals and the encouragement of a sound domestic mining industry. We shall carry forward experiments for the broader utilization of mineral resources in the highly beneficial manner already demonstrated in the program for the manufacture of synthetic liquid fuel from our vast deposits of [p.435] coal and oil shale and from our agricultural resources.

National Party Platforms, Democratic Platform of 1948, p.435

We pledge an intensive enforcement of the antitrust laws, with adequate appropriations.

National Party Platforms, Democratic Platform of 1948, p.435

We advocate the strengthening of existing antitrust laws by closing the gaps which experience has shown have been used to promote concentration of economic power.

National Party Platforms, Democratic Platform of 1948, p.435

We pledge a positive program to promote competitive business and to foster the development of independent trade and commerce.

National Party Platforms, Democratic Platform of 1948, p.435

We support the right of free enterprise and the right of all persons to work together in co-operatives and other democratic associations for the purpose of carrying out any proper business operations free from any arbitrary and discriminatory restrictions.

National Party Platforms, Democratic Platform of 1948, p.435

The Democratic Party is responsible for the great civil rights gains made in recent years in eliminating unfair and illegal discrimination based on race, creed or color,

National Party Platforms, Democratic Platform of 1948, p.435

The Democratic Party commits itself to continuing its efforts to eradicate all racial, religious and economic discrimination.

National Party Platforms, Democratic Platform of 1948, p.435

We again state our belief that racial and religious minorities must have the right to live, the right to work, the right to vote, the full and equal protection of the laws, on a basis of equality with all citizens as guaranteed by the Constitution.

National Party Platforms, Democratic Platform of 1948, p.435

We highly commend President Harry S. Truman for his courageous stand on the issue of civil rights.

National Party Platforms, Democratic Platform of 1948, p.435

We call upon the Congress to support our President in guaranteeing these basic and fundamental American Principles: (1) the right of full and equal political participation; (2) the right to equal opportunity of employment; (3) the right of security of person; (4) and the right of equal treatment in the service and defense of our nation.1

National Party Platforms, Democratic Platform of 1948, p.435

We pledge ourselves to legislation to admit a minimum of 400,000 displaced persons found eligible for United States citizenship without discrimination as to race or religion. We condemn the undemocratic action of the Republican 80th

National Party Platforms, Democratic Platform of 1948, p.435

Congress in passing an inadequate and bigoted bill for this purpose, which law imposes no-American restrictions based on race and religion upon such admissions.

National Party Platforms, Democratic Platform of 1948, p.435

We urge immediate statehood for Hawaii and Alaska; immediate determination by the people of Puerto Rico as to their form of government and their ultimate status with respect to the United States; and the maximum degree of local self-government for the Virgin Islands, Guam and Samoa.

National Party Platforms, Democratic Platform of 1948, p.435

We recommend to Congress the submission of a constitutional amendment on equal rights for women.

National Party Platforms, Democratic Platform of 1948, p.435

We favor the extension of the right of suffrage to the people of the District of Columbia.

National Party Platforms, Democratic Platform of 1948, p.435

We pledge adherence to the principle of nonpartisan civilian administration of atomic energy, and the development of atomic energy for peaceful purposes through free scientific inquiry for the benefit of all the people.

National Party Platforms, Democratic Platform of 1948, p.435

We urge the vigorous promotion of world-wide freedom in the gathering and dissemination of news by press, radio, motion pictures, newsreels and television, with complete confidence that an informed people will determine wisely the course of domestic and foreign policy.

National Party Platforms, Democratic Platform of 1948, p.435

We believe the primary step toward the achievement of world-wide freedom is access by all peoples to the facts and the truth. To that end, we will encourage the greatest possible vigor on the part of the United Nations Commission on Human Rights and the United Nations Economic and Social Council to establish the foundations on which freedom can exist in every nation.

National Party Platforms, Democratic Platform of 1948, p.435

We deplore the repeated attempts of Republicans in the 80th Congress to impose thought control upon the American people and to encroach on the freedom of speech and press.

National Party Platforms, Democratic Platform of 1948, p.435

We pledge the early establishment of a national science foundation under principles which will guarantee the most effective utilization of public and private research facilities.

National Party Platforms, Democratic Platform of 1948, p.435

We will continue our efforts to improve and strengthen our federal civil service, and provide adequate compensation.

National Party Platforms, Democratic Platform of 1948, p.435

We will continue to maintain an adequate American merchant marine.

National Party Platforms, Democratic Platform of 1948, p.435

We condemn Communism and other forms of totalitarianism and their destructive activity overseas and at home. We shall continue to build firm [p.436] defenses against Communism by strengthening the economic and social structure of our own democracy. We reiterate our pledge to expose and prosecute treasonable activities of anti-democratic and un-American organizations which would sap our strength, paralyze our will to defend ourselves, and destroy our unity, inciting race against race, class against class, and the people against free institutions.

National Party Platforms, Democratic Platform of 1948, p.436

We shall continue vigorously to enforce the laws against subversive activities, observing at all times the constitutional guarantees which protect free speech, the free press and honest political activity. We shall strengthen our laws against subversion to the full extent necessary, protecting at all times our traditional individual freedoms.

National Party Platforms, Democratic Platform of 1948, p.436

We recognize that the United States has become the principal protector of the free world. The free peoples of the world look to us for support in maintaining their freedoms. If we falter in our leadership, we may endanger the peace of the world—and we shall surely endanger the welfare of our own nation. For these reasons it is imperative that we maintain our military strength until world peace with justice is secure. Under the leadership of President Truman, our military departments have been united and our Government organization for the national defense greatly strengthened. We pledge to maintain adequate military strength, based on these improvements, sufficient to fulfill our responsibilities in occupation zones, defend our national interests, and to bolster those free nations resisting Communist aggression.

National Party Platforms, Democratic Platform of 1948, p.436

This is our platform. These are our principles. They form a political and economic policy which has guided our party and our nation.

National Party Platforms, Democratic Platform of 1948, p.436

The American people know these principles well. Under them, we have enjoyed greater security, greater prosperity, and more effective world leadership than ever before.

National Party Platforms, Democratic Platform of 1948, p.436

Under them and with the guidance of Divine Providence we can proceed to higher levels of prosperity and security; we can advance to a better life at home; we can continue our leadership in the world with ever-growing prospects for lasting peace.

President Truman's Address in Milwaukee, Wisconsin, on the Use of Atomic Energy, 1948

Title: President Truman's Address in Milwaukee, Wisconsin

Author: Harry S Truman

Date: October 14, 1948

Source: Public Papers of the Presidents, Truman, 1948, pp.787-792

Public Papers of Truman, 1948, p.787

Governor Thompson, and fellow Democrats of Wisconsin:

Public Papers of Truman, 1948, p.787

I am certainly most happy to be with you tonight. I have been all day—all afternoon coming across Wisconsin, and I have met the most enthusiastic and progressive people in the world. I am just as sure as I stand here that Milwaukee and Wisconsin are going to give overwhelming majorities to the Democratic ticket, on the second day of November, because the Democratic ticket stands for the welfare of the United States as a whole. You are going to elect a Governor and the whole ticket in the State, and I am sure that you will send a congressional delegation to Washington that I can work with for the next 4 years.

Public Papers of Truman, 1948, p.787

Now I am going to discuss with you tonight one of the most important subjects with which this country is faced. It is one of the key issues in this campaign, and I want you to be carefully interested in what I have to say to you, for it is more important.

Public Papers of Truman, 1948, p.787

During the last few weeks, I have been talking to people all over the country about the vital issues in this campaign. I hope you folks have been reading what I have been saying, because—unlike the Republican candidate for President—I have been saying exactly where I stand on vital issues.

Public Papers of Truman, 1948, p.787

I believe from the bottom of my heart that we are engaged in a great crusade to determine whether the powers of government will be used for the benefit of all the people or for the benefit of just a privileged few.

Public Papers of Truman, 1948, p.787

Tonight I'm going to talk about something that ought not to be in politics at all, but the Republican candidate has brought it in, and I have to tell you about it.

Public Papers of Truman, 1948, p.787

When he did this, he displayed a dangerous lack of understanding of the subject.

Public Papers of Truman, 1948, p.787

At the same time, he clearly implied a belief that there should be private exploitation of a tremendous asset which belongs to the people of the United States.

Public Papers of Truman, 1948, p.787

He blundered into a subject which is of immediate concern to every person in the United States and in the whole world. That is atomic energy.

Public Papers of Truman, 1948, p.787–p.788

This is a force which holds great danger of catastrophe in the wrong hands. At the [p.788] same time, it holds great promise of a better life in the right hands. Everyone must understand clearly what is involved.

Public Papers of Truman, 1948, p.788

Atomic power is so overwhelming that most people have difficulty in seeing how it affects their daily lives. But the fact is, the future of every one of us depends in large measure on whether atomic energy is used for good or for evil.

Public Papers of Truman, 1948, p.788

There are three fundamental facts about atomic energy that each of us should understand.

Public Papers of Truman, 1948, p.788

First of all, the atomic bomb is the most terrible and devastating weapon that man has ever contrived.

Public Papers of Truman, 1948, p.788

Second, because atomic energy is capable of destroying civilization, it must be controlled by international authority.

Public Papers of Truman, 1948, p.788

And third, if properly controlled, atomic energy can enrich human life for all the generations to come.

Public Papers of Truman, 1948, p.788

You remember how the atom bomb project began.

Public Papers of Truman, 1948, p.788

We were fighting a great war. We knew that the Nazis were trying to construct atomic bombs. We drew on the world's scientists and our whole heritage of organized knowledge to win this race with death. This called for foresight. And it called for courage.

Public Papers of Truman, 1948, p.788

It took foresight in 1940 to order the first research on atomic energy for military purposes. It took courage in 1942 to launch the atomic bomb project on a full scale.

Public Papers of Truman, 1948, p.788

Fortunately, we had a President who possessed both courage and foresight-Franklin D. Roosevelt.

Public Papers of Truman, 1948, p.788

Franklin Roosevelt did not live to see the outcome of that great venture.

Public Papers of Truman, 1948, p.788

It was after I became President that the first atomic explosion was set off in the New Mexico desert. That was while I was in Potsdam, Germany, in July 1945. Until that time, we did not know whether the bomb would work or not. Secretary of War Stimson came to Potsdam and informed personally of the awe-inspiring result of first explosion. Nothing like it had ever before been known.

Public Papers of Truman, 1948, p.788

That first explosion in the desert left a crater 1200 feet across. The sand in and around the crater was melted into glass. The steel tower—90 feet high—from which the bomb was exploded had completely vaporized. There wasn't a vestige of it left.

Public Papers of Truman, 1948, p.788

What this meant for the future was staggering to think about.

Public Papers of Truman, 1948, p.788

As President of the United States, I had the fateful responsibility of deciding whether or not to use this weapon for the first time. It was the hardest decision I ever had to make. But the President cannot duck hard problems—he cannot pass the buck.

Public Papers of Truman, 1948, p.788

I made the decision after discussions with the ablest men in our Government, and after long and prayerful consideration.

Public Papers of Truman, 1948, p.788

I decided that the bomb should be used in order to end the war quickly and save countless lives—Japanese as well as American.

Public Papers of Truman, 1948, p.788

But I resolved then and there to do everything I could to see that this awesome discovery was turned into a force for peace and the advancement of mankind.

Public Papers of Truman, 1948, p.788

Since then, it has been my constant aim to prevent its use for war and to hasten its use for peace.

Public Papers of Truman, 1948, p.788

Three months after the bomb was used, I met in Washington, D.C., with Prime Minister Attlee of Great Britain and Prime Minister Mackenzie King of Canada. These two great countries were Our partners in developing the atomic bomb.

Public Papers of Truman, 1948, p.788–p.789

After this conference, our three governments proposed that a United Nations Commission be established to work out a plan for the international control of atomic energy—a plan which would further the welfare rather than the destruction of mankind. [p.789] We were joined by France, China, and the Soviet Union in sponsoring the establishment of such a commission.

Public Papers of Truman, 1948, p.789

The commission first met in June 1946. The United States offered to stop making atomic bombs when an effective system of international control had been set up. We offered to dispose of our existing bombs, and to turn over to an international agency full information on the production of atomic energy.

Public Papers of Truman, 1948, p.789

Now, my friends, that is the first time in the history of the world that the greatest nation on earth has been willing to turn over its greatest asset for the welfare of the whole world.

Public Papers of Truman, 1948, p.789

I believe that these proposals by the United States Government will be regarded by history as one of the world's greatest examples of political responsibility and moral leadership. In these proposals lies the best assurance for world peace and for the security of this great Nation.

Public Papers of Truman, 1948, p.789

There has been no change in the American position. We still want atomic energy to be placed under international control-on a practical, realistic basis that means control that will work. Only on this basis can atomic energy be removed as an ominous threat to mankind and turned to the purpose which has been in my heart from the beginning: peace, prosperity, and progress for all nations and all people everywhere.

Public Papers of Truman, 1948, p.789

Until the right kind of international control is assured, we have no choice but to proceed with the development of atomic weapons. We Americans are not a warlike people. We want peace worse than anything else in this world. The world knows that the United States will never use the atomic bomb to wage aggressive war.

Public Papers of Truman, 1948, p.789

But in the hands of a nation bent on aggression, the atomic bomb could spell the end of civilization on this planet.

Public Papers of Truman, 1948, p.789

My friends, that must not happen.

Public Papers of Truman, 1948, p.789

The fearful power of atomic weapons must be placed beyond the reach of any irresponsible government or any power-mad dictator.

Public Papers of Truman, 1948, p.789

Now, all of you know the difficulties we have encountered in trying to achieve international control.

Public Papers of Truman, 1948, p.789

The great majority of the countries on the United Nations Atomic Energy Commission agreed upon a plan for an international agency with powers of ownership, operation, management, and inspection which would make effective control possible. But the Soviet Union rejected such a plan as an intrusion upon its national sovereignty.

Public Papers of Truman, 1948, p.789

The majority of the nations felt that the control agency ought not to be subject to a veto by any nation. The Soviet Union insisted upon its right to veto.

Public Papers of Truman, 1948, p.789

The issues which have thus far blocked agreement are serious. But I do not regard the situation as hopeless. Even now, in Paris, discussions are under way in the United Nations on this very subject. It is our hope that the Soviet Union and all members of the United Nations will see the wisdom, logic, and the necessity for adopting the plan of control so overwhelmingly supported by the United Nations Commission.

Public Papers of Truman, 1948, p.789

The conscience of humanity will not permit the awful force of atomic energy to be used for the self-destruction of the human race.

Public Papers of Truman, 1948, p.789

Now, my friends, of course, there is a price to be paid for mutual security of nations against the horrors of an atomic war. All nations must reckon with that price. The plain fact is that the international control of atomic energy does demand some sacrifice of national sovereignty.

Public Papers of Truman, 1948, p.789

The atom is no respecter of sovereignty of nations.

Public Papers of Truman, 1948, p.789–p.790

From the moment the atomic bomb [p.790] came a reality, the United States has stood ready to do its share—to make its sacrifice-so that a lasting peace can be achieved.

Public Papers of Truman, 1948, p.790

But we will not make a one-sided sacrifice. The United States will not be satisfied with anything less than a plan of international control which is clearly meant to work, and which will work. A "make-believe" control would be worse than none at all.

Public Papers of Truman, 1948, p.790

Now, while we are making these efforts toward international control of atomic energy, we have also been working to strengthen our atomic security and to hasten the use of atomic energy for peaceful purposes.

Public Papers of Truman, 1948, p.790

When the war ended, we faced a critical decision as to the means by which our work should be carried forward. Some people honestly believed that the development of atomic energy should be left in the hands of the armed services.

Public Papers of Truman, 1948, p.790

I could not agree to that.

Public Papers of Truman, 1948, p.790

A free society requires the supremacy of the civil rather than the military authority. This is in no sense a reflection upon our Armed Forces. It is part of the spirit of our free institutions that military specialists must always be under the direction of civilians.

Public Papers of Truman, 1948, p.790

Because of the power and world significance of atomic energy, I was convinced that it had to be placed under civilian control. The Democratic 79th Congress enacted a law which made civilian control possible. The wisdom of that decision has been proved again and again during the past 2 years.

Public Papers of Truman, 1948, p.790

We are steadily making advances in the field of atomic science.

Public Papers of Truman, 1948, p.790

I can assure you that the civilian Atomic Energy Commission has maintained the leadership and readiness of the United States in atomic weapons—despite the presence of what the Republican candidate for President is pleased to call the "dead hand" of government !

Public Papers of Truman, 1948, p.790

The progress we are making in developing atomic energy for peaceful uses may at first seem less dramatic than the creation of the atomic bomb. But, in fact, it promises the world a whole new age of creative abundance.

Public Papers of Truman, 1948, p.790

The Atomic Energy Commission has begun work on the first experimental plant intended to supply atomic power for industrial purposes.

Public Papers of Truman, 1948, p.790

Great progress is being made in the use of atomic materials for research in biology and medicine. Here, we are warring against cancer and other diseases which will take their terrible tolls of human lives.

Public Papers of Truman, 1948, p.790

Atomic materials are also opening up tremendous new possibilities in agriculture and industrial research. And these same radioactive materials are among our most important research tools in the field of fundamental physical science.

Public Papers of Truman, 1948, p.790

Fifty years from now, the world will be a vastly different place because the power of the atom is being harnessed. It is our job to see that atomic energy makes the world not a wasteland of destruction but a vastly better place in which to live.

Public Papers of Truman, 1948, p.790

Atomic energy is not just a new form of power—like coal and oil. It is a force which can be compared only with the cosmic energies of the sun itself.

Public Papers of Truman, 1948, p.790

The fission of—now, listen to this—the fission of a single pound of uranium releases as much energy as the burning of 3 million pounds of coal.

Public Papers of Truman, 1948, p.790

A force like this cannot be handled on a "business as usual" basis.

Public Papers of Truman, 1948, p.790

The Republican candidate for president made a speech on atomic energy at phoenix, Ariz., on September 23d.

Public Papers of Truman, 1948, p.790–p.791

The obvious implication in that speech is that the Republican candidate feels that the peacetime uses of atomic energy should be taken from the Government and turned over [p.791] to private corporations.

Public Papers of Truman, 1948, p.791

Here again is the basic conflict between the Democratic and the Republican parties.

Public Papers of Truman, 1948, p.791

Here again is the vital issue between the people and the selfish interests.

Public Papers of Truman, 1948, p.791

I believe that atomic energy should not be used to fatten the profits of big business.

Public Papers of Truman, 1948, p.791

I believe that atomic energy should be used for the benefit of all the people.

Public Papers of Truman, 1948, p.791

Now, my friends, the largest private corporation in the world is far too small to be entrusted with such power, least of all for its own profit.

Public Papers of Truman, 1948, p.791

Most responsible businessmen know this. Most men who know what atomic energy means do not talk about the "dead hand of government."

Public Papers of Truman, 1948, p.791

For our own protection and to insure our national security, we must continue to develop atomic energy as a public trust.

Public Papers of Truman, 1948, p.791

Our atomic materials are very precious, and must be guarded closely.

Public Papers of Truman, 1948, p.791

Atomic energy cannot and must not be another Teapot Dome for private exploitation-any more than it can be allowed to enter into competitive armaments. That is one of the most important things we are faced with. We don't want to make atomic energy the private interest of any corporations, no matter how big.

Public Papers of Truman, 1948, p.791

Our atomic plants cost billions of dollars of public money to build, and millions more to operate each year. They belong to all the people. They belong to us.

Public Papers of Truman, 1948, p.791

The use of atomic materials presents technical hazards which require very careful safety measures.

Public Papers of Truman, 1948, p.791

And here is the most important point of all. You cannot separate peacetime use of atomic materials from their potential military use.

Public Papers of Truman, 1948, p.791

Atomic material in a power station is not far from being an atomic arsenal. This is the blunt fact that requires an international control that will really work. The same fact makes it absolutely necessary to insist upon public ownership and control in the United States.

Public Papers of Truman, 1948, p.791

At the same time, we must make full use of the skill and initiative of private business. Business concerns have had and will continue to have an indispensable part in this great venture. This is a basic principle of the McMahon Atomic Energy Act of 1946-one of the wisest laws ever put on our statute books.

Public Papers of Truman, 1948, p.791

And, the success of our whole atomic energy program, military as well as peaceful, has been based on constant and effective teamwork between Government and private enterprise.

Public Papers of Truman, 1948, p.791

Today, over three thousand private contractors and suppliers are participating in our atomic energy program.

Public Papers of Truman, 1948, p.791

Today, the great atomic plants at Oak Ridge, and Hanford, and elsewhere are operated by private industrial organizations under Government supervision.

Public Papers of Truman, 1948, p.791

Today, scores of college and university laboratories are carrying out important atomic research.

Public Papers of Truman, 1948, p.791

Everything possible is being done to find legitimate opportunities for even greater participation by private enterprise, consistent always with public interest. But we must not put profit-making above the national welfare, my friends.

Public Papers of Truman, 1948, p.791

The platform of the Republican Party upon which my opponent is running for election fails to mention atomic energy.

Public Papers of Truman, 1948, p.791

I assumed at first that this was merely an oversight.

Public Papers of Truman, 1948, p.791

It is clear now, however, that this omission was deliberate.

Public Papers of Truman, 1948, p.791–p.792

It is clear from the comments of the Republican candidate that powerful, selfish [p.792] groups within the Republican Party are determined to exploit the atom for private profit.

Public Papers of Truman, 1948, p.792

I shall fight this effort with all the strength I have.

Public Papers of Truman, 1948, p.792

The Government is the indispensable trustee of the people for the development of atomic energy. Someday it may be 'possible to fit atomic energy more closely into the normal pattern of American business. But I cannot tell you that this is just around the corner. I will make no light promises of this sort.

Public Papers of Truman, 1948, p.792

Our national policy has been that atomic energy is such a vast new force in our lives that it must be kept under public control as long as the safety of the people's interest require. We must continue to follow that policy.

Public Papers of Truman, 1948, p.792

That is the only way we can assure the development of atomic energy for the benefit of humanity.

Public Papers of Truman, 1948, p.792

That is the only way we can assure that it will be used not for death but for a better life.

Public Papers of Truman, 1948, p.792

This great discovery belongs to the people and it must be used for the people.

Public Papers of Truman, 1948, p.792

There has been no more vital issue before the American people in this century.

Public Papers of Truman, 1948, p.792

The existence of civilization itself depends upon the wisdom and prudence of the American people in choosing the course we are to follow.

Public Papers of Truman, 1948, p.792

I pray that your decision will be the right one.

Public Papers of Truman, 1948, p.792

NOTE: The President spoke at 8:32 p.m. at Botcherr Field in Milwaukee. His opening words "Governor Thompson" referred to Carl W. Thompson, Democratic candidate for Governor of Wisconsin. He later referred to Prime Minister Clement R. Attlee of Great Britain and Prime Minister W. L. Mackenzie King of Canada.

Public Papers of Truman, 1948, p.792

The address was carried on a nationwide radio broadcast.

United Nations Universal Declaration of Human Rights, 1948

Title: Universal Declaration of Human Rights

Author: United Nations

Date: December 10, 1948

Source: U.N. General Assembly 2d. Session, Document A/811

Three years after the organization of the United Nations, the U.N. Commission on Human Rights, chaired by Eleanor Roosevelt, draft this resolution. The declaration was ratified by all member nations except the Soviet bloc. The Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Universal Declaration of Human Rights

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Universal Declaration of Human Rights

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Universal Declaration of Human Rights

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Universal Declaration of Human Rights

Whereas it is essential to promote the development of friendly relations between nations,

Universal Declaration of Human Rights

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Universal Declaration of Human Rights

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Universal Declaration of Human Rights

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

Universal Declaration of Human Rights

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Universal Declaration of Human Rights

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Universal Declaration of Human Rights

Everyone has the right to life, liberty and security of person.

Article 4.

Universal Declaration of Human Rights

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

Universal Declaration of Human Rights

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Universal Declaration of Human Rights

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

Universal Declaration of Human Rights

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Universal Declaration of Human Rights

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

Universal Declaration of Human Rights

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Universal Declaration of Human Rights

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

Universal Declaration of Human Rights

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Universal Declaration of Human Rights

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

Universal Declaration of Human Rights

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

Universal Declaration of Human Rights

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

Universal Declaration of Human Rights

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

Universal Declaration of Human Rights

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Universal Declaration of Human Rights

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

Universal Declaration of Human Rights

(1) Everyone has the right to a nationality.

Universal Declaration of Human Rights

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

Universal Declaration of Human Rights

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Universal Declaration of Human Rights

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

Universal Declaration of Human Rights

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

Universal Declaration of Human Rights

(1) Everyone has the right to own property alone as well as in association with others.

Universal Declaration of Human Rights

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Universal Declaration of Human Rights

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Universal Declaration of Human Rights

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

Universal Declaration of Human Rights

(1) Everyone has the right to freedom of peaceful assembly and association.

Universal Declaration of Human Rights

(2) No one may be compelled to belong to an association.

Article 21.

Universal Declaration of Human Rights

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Universal Declaration of Human Rights

(2) Everyone has the right of equal access to public service in his country.

Universal Declaration of Human Rights

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Universal Declaration of Human Rights

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

Universal Declaration of Human Rights

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Universal Declaration of Human Rights

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

Universal Declaration of Human Rights

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Universal Declaration of Human Rights

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Universal Declaration of Human Rights

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

Universal Declaration of Human Rights

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Universal Declaration of Human Rights

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

Universal Declaration of Human Rights

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages Elementary education shall be compulsory Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Universal Declaration of Human Rights

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Universal Declaration of Human Rights

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

Universal Declaration of Human Rights

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Universal Declaration of Human Rights

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Universal Declaration of Human Rights

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

Universal Declaration of Human Rights

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

Universal Declaration of Human Rights

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Universal Declaration of Human Rights

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Universal Declaration of Human Rights

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

McCollum v. Board of Education, 1948

Title: Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, Illinois

Author: U.S. Supreme Court

Date: March 8, 1948

Source: 333 U.S. 203

This case was argued December 8, 1947, and was decided March 8, 1948.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

APPEAL FROM THE SUPREME COURT OF ILLINOIS

Syllabus

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

With the permission of a board of education, granted under its general supervisory powers over the use of public school buildings, religious teachers, employed subject to the approval and supervision of the superintendent of schools by a private religious group including representatives of the Catholic, Protestant and Jewish faiths, gave religious instruction in public school buildings once each week. Pupils whose parents so requested were excused from their secular classes during the periods of religious instruction and were required to attend the religious classes; but other pupils were not released from their public school duties, which were compulsory under state law. A resident and taxpayer of the school district whose child was enrolled in the public schools sued in a state court for a writ of mandamus requiring the board of education to terminate this practice.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

Held:

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

1. A judgment of the State Supreme Court sustaining denial of the writ of mandamus on the ground that the state statutes granted the board of education authority to establish such a program drew into question "the validity of a statute" of the State within the meaning of § 237 of the Judicial Code, and was appealable to this Court. P. 206.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

2. As a resident and taxpayer of the school district and the parent of a child required by state law to attend the school, appellant had standing to maintain the suit. P. 206.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

3. Both state courts having ruled expressly on appellant's claim that the state program violated the Federal Constitution, a motion to dismiss the appeal on the ground that appellant failed properly to present that question in the State Supreme Court cannot be sustained. P. 207.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

4. This utilization of the State's tax supported public school system and its machinery for compulsory public school attendance to enable sectarian groups to give religious instruction to public school pupils in public school buildings violates the First Amendment of the Constitution, made applicable to the states by the Fourteenth Amendment. Pp. 209-212.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 203

396 Ill. 14, 71 N.E.2d 161, reversed. [333 U.S. 204]

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 204

The Supreme Court of Illinois affirmed a denial of a petition for a writ of mandamus requiring a board of education to terminate the giving of religious instruction by private teachers in the public schools. 396 Ill. 14, 71 N.E.2d 161. On appeal to this Court, reversed and remanded, p. 212.

BLACK, J., lead opinion

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 204

MR. JUSTICE BLACK delivered the opinion of the Court.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 204

This case relates to the power of a state to utilize its tax supported public school system in aid of religious [333 U.S. 205] instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 205

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County, Illinois. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools, where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boards of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill.Rev.Stat. ch. 122, §§ 123, 301 (1943).

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 205

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there, for a period of thirty minutes, substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public school religious group program violated the First and Fourteenth Amendments to the United States Constitution. The prayer of her petition was that the Board of Education be ordered to

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 205

adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools in Champaign School District Number 71,…and in all public school houses and buildings in said district when occupied by public schools. [333 U.S. 206]

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 206

The board first moved to dismiss the petition on the ground that, under Illinois law, appellant had no standing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented, and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instruction violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal, the State Supreme Court affirmed. 396 Ill. 14 71 N.E.2d 161. Appellant appealed to this Court under 28 U.S.C. § 344(a), and we noted probable jurisdiction on June 2, 1947.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 206

The appellees press a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the "validity of a statute of any State" as required by 28 U.S.C. § 344(a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U.S.C. § 344(a). Hamilton v. Regents of U. of Cal., 293 U.S. 245, 258. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action, a ground which is also without merit. Coleman v. Miller, 307 U.S. 433, 443, 445, 464. [333 U.S. 207] A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 207

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute. 1 In 1940, interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine, inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend; 2 they were held weekly, thirty minutes for [333 U.S. 208] the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools. 3 The classes were taught in three [333 U.S. 209] separate religious groups by Protestant teachers, 4 Catholic priests, and a Jewish rabbi, although, for the past several years, there have apparently been no classes instructed in the Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers. 5

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 209

The foregoing facts, without reference to others that appear in the record, show the use of tax supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the State's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released [333 U.S. 210] in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, 330 U.S. 1. There we said:

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 210

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. 6 Neither can force or influence a person to go to or to remain away from church against his will, or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. 7 Neither a state nor [333 U.S. 211] the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State."

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 211

Id. at 15-16. The majority in the Everson case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 211

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the Everson case, counsel for the respondents challenge those views as dicta, and urge that we reconsider and repudiate them. They argue that, historically, the First Amendment was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions. In addition, they ask that we distinguish or overrule our holding in the Everson case that the Fourteenth Amendment made the "establishment of religion" clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented, we are unable to accept either of these contentions.

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To hold that a state cannot, consistently with the First and Fourteenth Amendments, utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free [333 U.S. 212] exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the Everson case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

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Here not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State.

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The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

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Reversed and remanded.

FRANKFURTER, J., separate opinion

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 212

MR. JUSTICE FRANKFURTER delivered the following opinion, in which MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON join.\*

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We dissented in Everson v. Board of Education, 330 U.S. 1, because, in our view, the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of sectarian with secular instruction in the public schools. The Constitution of the United States forbids this.

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This case, in the light of the Everson decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer. This is so because the meaning [333 U.S. 213] of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church." But agreement, in the abstract, that the First Amendment was designed to erect a "wall of separation between church and State" does not preclude a clash of views as to what the wall separates. Involved is not only the Constitutional principle, but the implications of judicial review in its enforcement. Accommodation of legislative freedom and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the "wall of separation" metaphor until we have considered the relevant history of religious education in America, the place of the "released time" movement in that history, and its precise manifestation in the case before us.

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To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting. Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

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The emigrants who came to these shores brought this view of education with them. Colonial schools certainly [333 U.S. 214] started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of "one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures." The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47. 1

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The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstrance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involved support to religious education. See MR. JUSTICE RUTLEDGE's opinion in the Everson case, supra, 330 U.S. at 337. As the momentum for popular education increased and, in turn, evoked strong claims for State support of religious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various forms in other States. New York and Massachusetts provide famous chapters in the history that established dissociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sectarian Opposition, to the barring of tax funds to church schools, and later to any school in which sectarian doctrine was [333 U.S. 215] taught. 2 In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict. 3 The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters "connected with religious polity," and particularly "in a country composed of such a variety of religious sects as our country." Vidal v. Girard's Executors, 2 How. 127, 198. That was more than one hundred years ago.

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Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect, the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its [333 U.S. 216] people. 4 A totally different situation elsewhere, as illustrated, for instance, by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mould. See the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

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It is pertinent to remind that the establishment of this principle of Separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The nonsectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously [333 U.S. 217] free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion, however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home indoctrination in the faith of his choice.

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This development of the public school as a symbol of our secular unity was not a sudden achievement, nor attained without violent conflict. 5 While, in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resistance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time and place to place, thus representing in their totality the common interest of the nation.

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Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But, by 1875, the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In [333 U.S. 218] that year, President Grant made his famous remarks to the Convention of the Army of the Tennessee:

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Encourage free schools, and resolve that not one dollar appropriated for their support shall be appropriated to the support of any sectarian schools. Resolve that neither the State nor nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church and the private school, supported entirely by private contributions. Keep the church and the state forever separate.

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"The President's Speech at Des Moines," 22 Catholic World 433, 434-35 (1876).

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So strong was this conviction, that, rather than rest on the comprehensive prohibitions of the First and Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations, including a specific prohibition against the use of public funds for sectarian education, 6 such as had [333 U.S. 219] been written into many State constitutions. 7 By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history:

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It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State.

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Root, Addresses on Government and Citizenship, 137, 140. 8 The extent to which [333 U.S. 220] this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system "free from sectarian control." 9

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Prohibition of the commingling of sectarian and secular instruction in the public school is, of course, only half the story. A religious people was naturally concerned about the part of the child's education entrusted "to the family altar, the church, and the private school." The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive [333 U.S. 221] attempts were therefore frequently made to obtain public funds for religious schools. 10 But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These, however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday, as well as Sunday, schools. 11 They all fell short of their purpose. It was urged that, by appearing to make religion a "one day a week" matter, the [333 U.S. 222] Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

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Out of these inadequate efforts evolved the week-day church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were free to do so. Church leaders decided that, if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his "business hours."

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The initiation of the movement 12 may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York City in 1905, was that the public school unduly monopolized the child's time, and that the churches were entitled to their share of it. 13 This, the schools should "release." Accordingly, the Federation, citing the example of the Third Republic of France, 14 urged that, upon the request of their parents, [333 U.S. 223] children be excused from public school on Wednesday afternoon, so that the churches could provide "Sunday school on Wednesday." This was to be carried out on church premises under church authority. Those not desiring to attend church schools would continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

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The proposal aroused considerable opposition, and it took another decade for a "released time" scheme to become part of a public school system. Gary, Indiana, inaugurated the movement. At a time when industrial [333 U.S. 224] expansion strained the communal facilities of the city, Superintendent of Schools Wirt suggested a fuller use of the school buildings. Building on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Wirt's plan sought to rotate the schedules of the children during the school day so that some were in class, others were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was "released time" begun. The religious teaching was held on church premises, and the public schools had no hand in the conduct of these church schools. They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school, and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools. 15

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From such a beginning, "released time" has attained substantial proportions. In 1914-15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures, almost 2,000,000 in some 2,200 communities [333 U.S. 225] participated in "released time" programs during 1947. 16 A movement of such scope indicates the importance of the problem to which the "released time" programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

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Of course, "released time" as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some "released time" classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular "released time" program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court. 17 [333 U.S. 226]

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The substantial differences among arrangements lumped together as "released time" emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does "released time" operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, "subject to the approval and supervision of the superintendent." The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent, "who, in turn, will determine whether or not it is practical for said group to teach in said school [333 U.S. 227] system." If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

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Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and nonconformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend. 18 Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these nonparticipating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of [333 U.S. 228] their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and, in the process, sharpens the consciousness of religious differences, at least among some of the children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages. 19

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Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from educational theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey. 20 Movements like "released time" are seldom [333 U.S. 229] single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less than an hour a week; in fact, that affords evidence of [333 U.S. 230] a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind, the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as "dismissed time," whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school. 21 The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious [333 U.S. 231] instruction such momentum and planning. To speak of "released time" as being only half or three quarters of an hour is to draw a thread from a fabric.

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We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial. Different forms which "released time" has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute Separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

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Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity. [333 U.S. 232]

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We renew our conviction that

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we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion.

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Everson v. Board of Education, 330 U.S. at 59. If nowhere else, in the relation between Church and State, "good fences make good neighbors."

JACKSON, J., concurring

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MR. JUSTICE JACKSON, concurring.

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I join the opinion of MR. JUSTICE FRANKFURTER, and concur in the result reached by the Court, but with these reservations: I think it is doubtful whether the facts of this case establish jurisdiction in this Court, but, in any event, that we should place some bounds on the demands for interference with local schools that we are empowered or willing to entertain. I make these reservations a matter of record in view of the number of litigations likely to be started as a result of this decision.

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A Federal Court may interfere with local school authorities only when they invade either a personal liberty or a property right protected by the Federal Constitution. Ordinarily this will come about in either of two ways:

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First. When a person is required to submit to some religious rite or instruction or is deprived or threatened with deprivation of his freedom for resisting such unconstitutional requirement. We may then set him free or enjoin his prosecution. Typical of such cases was West Virginia State Board of Education v. Barnette, 319 U.S. 624. There, penalties were threatened against both parent and child for refusal of the latter to perform a compulsory ritual which offended his convictions. We intervened to shield them against the penalty. But here, complainant's son may join religious classes if he chooses and if his parents so request, or he may stay out of them. The complaint is that, when others join and he does not, it sets him apart as a dissenter, which is humiliating. [333 U.S. 233] Even admitting this to be true, it may be doubted whether the Constitution, which, of course, protects the right to dissent, can be construed also to protect one from the embarrassment that always attends nonconformity, whether in religion, politics, behavior or dress. Since no legal compulsion is applied to complainant's son himself, and no penalty is imposed or threatened from which we may relieve him, we can hardly base jurisdiction on this ground.

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Second. Where a complainant is deprived of property by being taxed for unconstitutional purposes, such as directly or indirectly to support a religious establishment. We can protect a taxpayer against such a levy. This was the Everson Case, 330 U.S. l, as I saw it then and see it now. It was complained in that case that the school treasurer drew a check on public funds to reimburse parents for a child's bus fare if he went to a Catholic parochial school or a public school, but not if he went to any other private or denominational school. Reference to the record in that case will show that the School District was not operating busses, so it was not a question of allowing Catholic children to ride publicly owned busses along with others in the interests of their safety, health or morals. The child had to travel to and from parochial school on commercial busses like other paying passengers and all other school children, and he was exposed to the same dangers. If it could, in fairness, have been said that the expenditure was a measure for the protection of the safety, health or morals of youngsters, it would not merely have been constitutional to grant it; it would have been unconstitutional to refuse it to any child merely because he was a Catholic. But, in the Everson Case, there was a direct, substantial and measurable burden on the complainant as a taxpayer to raise funds that were used to subsidize transportation to parochial schools. Hence, we [333 U.S. 234] had jurisdiction to examine the constitutionality of the levy and to protect against it if a majority had agreed that the subsidy for transportation was unconstitutional.

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In this case, however, any cost of this plan to the taxpayers is incalculable and negligible. It can be argued, perhaps, that religious classes add some wear and tear on public buildings, and that they should be charged with some expense for heat and light, even though the sessions devoted to religious instruction do not add to the length of the school day. But the cost is neither substantial nor measurable, and no one seriously can say that the complainant's tax bill has been proved to be increased because of this plan. I think it is doubtful whether the taxpayer in this case has shown any substantial property injury.

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If, however, jurisdiction is found to exist, it is important that we circumscribe our decision with some care. What is asked is not a defensive use of judicial power to set aside a tax levy or reverse a conviction, or to enjoin threats of prosecution or taxation. The relief demanded in this case is the extraordinary writ of mandamus to tell the local Board of Education what it must do. The prayer for relief is that a writ issue against the Board of Education

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ordering it to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools…and in all public school houses and buildings in said district when occupied by public schools.

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The plaintiff, as she has every right to be, is an avowed atheist. What she has asked of the courts is that they not only end the "released time" plan, but also ban every form of teaching which suggests or recognizes that there is a God. She would ban all teaching of the Scriptures. She especially mentions as an example of invasion of her rights "having pupils learn and recite such statements as, `The Lord is my Shepherd, I shall not want.'" And she objects to teaching that the King James version of the Bible "is [333 U.S. 235] called the Christian's Guide Book, the Holy Writ and the Word of God," and many other similar matters. This Court is directing the Illinois courts generally to sustain plaintiff's complaint without exception of any of these grounds of complaint, without discriminating between them and without laying down any standards to define the limits of the effect of our decision.

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To me, the sweep and detail of these complaints is a danger signal which warns of the kind of local controversy we will be required to arbitrate if we do not place appropriate limitation on our decision and exact strict compliance with jurisdictional requirements. Authorities list 256 separate and substantial religious bodies to exist in the continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.

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While we may and should end such formal and explicit instruction as the Champaign plan, and can at all times prohibit teaching of creed and catechism and ceremonial, and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure [333 U.S. 236] of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a "science" as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

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But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found "a Church without a Bishop and a State without a King," is more than I know. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they may summon to teaching about remote subjects such as Confucius or Mohammed. When instruction turns to proselyting and imparting knowledge becomes evangelism is, except in the crudest cases, a subtle inquiry. [333 U.S. 237]

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The opinions in this case show that public educational authorities have evolved a considerable variety of practices in dealing with the religious problem. Neighborhoods differ in racial, religious and cultural compositions. It must be expected that they will adopt different customs which will give emphasis to different values and will induce different experiments. And it must be expected that, no matter what practice prevails, there will be many discontented and possibly belligerent minorities. We must leave some flexibility to meet local conditions, some chance to progress by trial and error. While I agree that the religious classes involved here go beyond permissible limits, I also think the complaint demands more than plaintiff is entitled to have granted. So far as I can see, this Court does not tell the State court where it may stop, nor does it set up any standards by which the State court may determine that question for itself.

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The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. To lay down a sweeping constitutional doctrine as demanded by complainant and apparently approved by the Court, applicable alike to all school boards of the nation,

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to immediately adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools,

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is to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other, but which themselves, from time to time, change attitudes. It seems to me that to do so is to allow zeal for our own ideas of what is good in public instruction to induce us to accept the role of a super board of education for every school district in the nation.

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It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian [333 U.S. 238] begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions. If, with no surer legal guidance, we are to take up and decide every variation of this controversy, raised by persons not subject to penalty or tax but who are dissatisfied with the way schools are dealing with the problem, we are likely to have much business of the sort. And, more importantly, we are likely to make the legal "wall of separation between church and state" as winding as the famous serpentine wall designed by Mr. Jefferson for the University he founded.

REED, J., dissenting

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MR. JUSTICE REED, dissenting.

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The decisions reversing the judgment of the Supreme Court of Illinois interpret the prohibition of the First Amendment against the establishment of religion, made effective as to the states by the Fourteenth Amendment, to forbid pupils of the public schools electing, with the approval of their parents, courses in religious education. The courses are given, under the school laws of Illinois as approved by the Supreme Court of that state, by lay or clerical teachers supplied and directed by an interdenominational, local council of religious education. 1 The classes are held in the respective school buildings of the pupils at study or released time periods so as to avoid conflict with recitations. The teachers and supplies are paid for by the interdenominational group. 2 As I am [333 U.S. 239] convinced that this interpretation of the First Amendment is erroneous, I feel impelled to express the reasons for my disagreement. By directing attention to the many instances of close association of church and state in American society, and by recalling that many of these relations are so much a part of our tradition and culture that they are accepted without more, this dissent may help in an appraisal of the meaning of the clause of the First Amendment concerning the establishment of religion and of the reasons which lead to the approval or disapproval of the judgment below.

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The reasons for the reversal of the Illinois judgment, as they appear in the respective opinions, may be summarized by the following excerpts. The opinion of the Court, after stating the facts, says:

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The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education…. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in Everson v. Board of Education, 330 U.S. 1.

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Another opinion phrases it thus:

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We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

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These expressions in the decisions seem to [333 U.S. 240] leave open for further litigation variations from the Champaign plan. Actually, however, future cases must run the gauntlet not only of the judgment entered, but of the accompanying words of the opinions. I find it difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional. Is it the use of school buildings for religious instruction; the release of pupils by the schools for religious instruction during school hours; the so-called assistance by teachers in handing out the request cards to pupils, in keeping lists of them for release and records of their attendance; or the action of the principals in arranging an opportunity for the classes and the appearance of the Council's instructors? None of the reversing opinions say whether the purpose of the Champaign plan for religious instruction during school hours is unconstitutional, or whether it is some ingredient used in or omitted from the formula that makes the plan unconstitutional.

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From the tenor of the opinions, I conclude that their teachings are that any use of a pupil's school time, whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban. I reach this conclusion notwithstanding one sentence of indefinite meaning in the second opinion:

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We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial.

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The use of the words "cooperation," "fusion," "complete hands-off," "integrate" and "integrated" to describe the relations between the school and the Council in the plan evidences this. So does the interpretation of the word "aid." The criticized "momentum of the whole school atmosphere," "feeling of separatism" engendered in the nonparticipating [333 U.S. 241] sects, "obvious pressure…to attend," and "divisiveness" lead to the stated conclusion. From the holding and the language of the opinions, I can only deduce that religious instruction of public school children during school hours is prohibited. The history of American education is against such an interpretation of the First Amendment.

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The opinions do not say in words that the condemned practice of religious education is a law respecting an establishment of religion contrary to the First Amendment. The practice is accepted as a state law by all. I take it that, when the opinion of the Court says that

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The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects,

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and concludes

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This is beyond all question a utilization of the tax established and tax-supported public school system to aid religious groups to spread their faith,

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the intention of its author is to rule that this practice is a law "respecting an establishment of religion." That was the basis of Everson v. Board of Education, 330 U.S. 1. It seems obvious that the action of the School Board in permitting religious education in certain grades of the schools by all faiths did not prohibit the free exercise of religion. Even assuming that certain children who did not elect to take instruction are embarrassed to remain outside of the classes, one can hardly speak of that embarrassment as a prohibition against the free exercise of religion. As no issue of prohibition upon the free exercise of religion is before us, we need only examine the School Board's action to see if it constitutes an establishment of religion.

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The facts, as stated in the reversing opinions, are adequately set out if we interpret the abstract words used in the light of the concrete incidents of the record. It is [333 U.S. 242] correct to say that the parents "consented" to the religious instruction of the children, if we understand "consent" to mean the signing of a card like the one in the margin. 3 It is correct to say that "instructors were subject to the approval and supervision of the superintendent of schools," if it is understood that there were no definitive written rules and that the practice was as is shown in the excerpts from the findings below. 4 The substance of the [333 U.S. 243] religious education course is determined by the members of the various churches on the council, not by the superintendent. 5 The evidence and findings set out in the two preceding notes convince me that the "approval and supervision" referred to above are not of the teachers and the course of studies, but of the orderly presentation of the courses to those students who may elect the instruction. The teaching largely covered Biblical incidents. 6 The religious teachers and their teachings, in every real sense, [333 U.S. 244] were financed and regulated by the Council of Religious Education, not the School Board.

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The phrase "an establishment of religion" may have been intended by Congress to be aimed only at a state church. When the First Amendment was pending in Congress in substantially its present form,

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Mr. Madison said he apprehended the meaning of the words to be that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. 7

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Passing years, however, have brought about acceptance of a broader meaning, although never until today, I believe, has this Court widened its interpretation to any such degree as holding that recognition of the interest of our nation in religion, through the granting, to qualified representatives of the principal faiths, of opportunity to present religion as an optional, extracurricular subject during released school time in public school buildings, was equivalent to an establishment of religion. A reading of the general statements of eminent statesmen of former days, referred to in the opinions in this case and in Everson v. Board of Education, supra, will show that circumstances such as those in this case were far from the minds of the authors. The words and spirit of those statements may be wholeheartedly accepted without in the least impugning the judgment of the State of Illinois. 8 [333 U.S. 245]

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Mr. Jefferson, as one of the founders of the University of Virginia, a school which, from its establishment in 1819, has been wholly governed, managed and controlled by the State of Virginia, 9 was faced with the same problem that is before this Court today: the question of the Constitutional limitation upon religious education in public schools. In his annual report as Rector, to the President and Directors of the Literary Fund, dated October 7, 1822, approved by the Visitors of the University of whom Mr. Madison was one, 10 Mr. Jefferson set forth his views at some length. 11 These suggestions of Mr. Jefferson were [333 U.S. 246] adopted 12 and ch. II, § 1, of the Regulations of the University of October 4, 1824, provided that

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Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within, or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and expected to attend religious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour. 13 [333 U.S. 247]

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Thus, the "wall of separation between church and State" that Mr. Jefferson built at the University which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

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Mr. Madison's Memorial and Remonstrance against Religious Assessments, 14 relied upon by the dissenting Justices in Everson, is not applicable here. 15 Mr. Madison was one of the principal opponents in the Virginia General Assembly of A Bill Establishing a Provision for Teachers of the Christian Religion. The monies raised by the taxing section 16 of that bill were to be appropriated

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by the Vestries, Elders, or Directors of each religious society,…to a provision for a Minister or Teacher [333 U.S. 248] of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever….

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The conclusive legislative struggle over this act took place in the fall of 1785, before the adoption of the Bill of Rights. The Remonstrance had been issued before the General Assembly convened, and was instrumental in the final defeat of the act, which died in committee. Throughout the Remonstrance, Mr. Madison speaks of the "establishment" sought to be effected by the act. It is clear from its historical setting and its language that the Remonstrance was a protest against an effort by Virginia to support Christian sects by taxation. Issues similar to those raised by the instant case were not discussed. Thus, Mr. Madison's approval of Mr. Jefferson's report as Rector gives, in my opinion, a clearer indication of his views on the constitutionality of religious education in public schools than his general statements on a different subject.

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This Court summarized the amendment's accepted reach into the religious field, as I understand its scope, in Everson v. Board of Education, supra. The Court's opinion quotes the gist of the Court's reasoning in Everson. I agree, as there stated, that none of our governmental entities can "set up a church." I agree that they cannot "aid" all or any religions or prefer one "over another." But "aid" must be understood as a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions. "Prefer" must give an advantage to one "over another." I agree that pupils cannot "be released in part from their legal duty" of school attendance upon condition that they attend religious classes. But, as Illinois has held that it is within the discretion of the School Board to permit absence from school for religious instruction, [333 U.S. 249] no legal duty of school attendance is violated. 396 Ill. 14, 71 N.E.2d 161. If the sentence in the Court's opinion concerning the pupils' release from legal duty is intended to mean that the Constitution forbids a school to excuse a pupil from secular control during school hours to attend voluntarily a class in religious education, whether in or out of school buildings, I disagree. Of course, no tax can be levied to support organizations intended "to teach or practice religion." I agree, too, that the state cannot influence one toward religion against his will, or punish him for his beliefs. Champaign's religious education course does none of these things.

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It seems clear to me that the "aid" referred to by the Court in the Everson case could not have been those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society. This explains the well known fact that all churches receive "aid" from government in the form of freedom from taxation. The Everson decision itself justified the transportation of children to church schools by New Jersey for safety reasons. It accords with Cochran v. Louisiana State Board of Education, 281 U.S. 370, where this Court upheld a free textbook statute of Louisiana against a charge that it aided private schools on the ground that the books were for the education of the children, not to aid religious schools. Likewise, the National School Lunch Act aids all school children attending tax exempt schools. 17 In Bradfield v. Roberts, 175 U.S. 291, this Court held proper the payment of money by the Federal Government to build an addition to a hospital, chartered by individuals who were members of a Roman Catholic sisterhood and operated under the auspices of the Roman Catholic Church. This was done over the objection that it aided the establishment [333 U.S. 250] of religion. 18 While obviously in these instances the respective churches, in a certain sense, were aided, this Court has never held that such "aid" was in violation of the First or Fourteenth Amendment.

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Well recognized and long-established practices support the validity of the Illinois statute here in question. That statute, as construed in this case, is comparable to those in many states. 19 All differ to some extent. New York may be taken as a fair example. 20 In many states, the program [333 U.S. 251] is under the supervision of a religious council composed of delegates who are themselves communicants of various faiths. 21 As is shown by Bradfield v. Roberts, supra, the fact that the members of the council have religious affiliations is not significant. In some, instruction [333 U.S. 252] is given outside of the school buildings; in others, within these buildings. Metropolitan centers like New York usually would have available quarters convenient to schools. Unless smaller cities and rural communities use the school building at times that do not interfere with recitations, they may be compelled to give up religious education. I understand that pupils not taking religious education usually are given other work of a secular nature within the schools. 22 Since all these states use the facilities of the schools to aid the religious education to some extent, their desire to permit religious education to school children is thwarted by this Court's judgment. 23 Under it, as I understand its language, children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education. Teachers cannot keep the records as to which pupils are to be dismissed and which retained. To do so is said to be an "aid" in establishing religion; the use of public money for religion.

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Cases running into the scores have been in the state courts of last resort that involved religion and the schools. Except where the exercises with religious significance partook of the ceremonial practice of sects or groups, their [333 U.S. 253] constitutionality has been generally upheld. 24 Illinois itself promptly struck down as violative of its own constitution required exercises partaking of a religious ceremony. People ex rel. Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251. In that case, compulsory religious exercises—a reading from the King James Bible, the Lord's Prayer and the singing of hymns—were forbidden as "worship services." In this case, the Supreme Court of Illinois pointed out that, in the Ring case, the activities in the school were ceremonial and compulsory; in this, voluntary and educational. 396 Ill. 14, 221, 71 N.E.2d 161, 164.

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The practices of the federal government offer many examples of this kind of "aid" by the state to religion. The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for [333 U.S. 254] the proceedings. 25 The armed forces have commissioned chaplains from early days. 26 They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging to the United States and dedicated to the services of religion. 27 Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools. 28 The schools of the District of Columbia have opening exercises which "include a reading from the Bible without note or comment, and the Lord's prayer." 29

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In the United States Naval Academy and the United States Military Academy, schools wholly supported and completely controlled by the federal government, there are a number of religious activities. Chaplains are attached to both schools. Attendance at church services on Sunday is compulsory at both the Military and Naval Academies. 30 At West Point, the Protestant services are [333 U.S. 255] held in the Cadet Chapel, the Catholic in the Catholic Chapel, and the Jewish in the Old Cadet Chapel; at Annapolis, only Protestant services are held on the reservation, midshipmen of other religious persuasions attend the churches of the city of Annapolis. These facts indicate that both schools, since their earliest beginnings, have maintained and enforced a pattern of participation in formal worship.

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With the general statements in the opinions concerning the constitutional requirement that the nation and the states, by virtue of the First and Fourteenth Amendments, 31 may "make no law respecting an establishment of religion," I am in agreement. But, in the light of the meaning given to those words by the precedents, customs, and practices which I have detailed above, I cannot agree with the Court's conclusion that, when pupils compelled by law to go to school for secular education are released from school so as to attend the religious classes, churches are unconstitutionally aided. Whatever may be the wisdom of the arrangement as to the use of the school buildings made with the Champaign Council of Religious Education, it is clear to me that past practice shows such cooperation between the schools and a nonecclesiastical body is not forbidden by the First Amendment. When actual church services have always been permitted on government property, the mere use of the school buildings by a nonsectarian group for religious education ought not to be condemned as an establishment of religion. For a nonsectarian organization to give the type of instruction here offered cannot be said to violate our rule as to the establishment of religion by the state. The prohibition of enactments respecting the establishment of religion do [333 U.S. 256] not bar every friendly gesture between church and state. It is not an absolute prohibition against every conceivable situation where the two may work together, any more than the other provisions of the First Amendment—free speech, free press—are absolutes. 32 If abuses occur, such as the use of the instruction hour for sectarian purposes, I have no doubt, in view of the Ring case, that Illinois will promptly correct them. If they are of a kind that tend to the establishment of a church or interfere with the free exercise of religion, this Court is open for a review of any erroneous decision. This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A state is entitled to have great leeway in its legislation when dealing with the important social problems of its population. 33 A definite violation of legislative limits must be established. The Constitution should not be stretched to forbid national customs in the way courts act to reach arrangements to avoid federal taxation. 34 Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause, not a decorous introduction to the study of its text. The judgment should be affirmed.

Footnotes

BLACK, J., lead opinion (Footnotes)

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1. Appellant, taking issue with the facts found by the Illinois courts, argues that the religious education program in question is invalid under the Federal Constitution for any one of the following reasons: (1) In actual practice certain Protestant groups have obtained an overshadowing advantage in the propagation of their faiths over other Protestant sects; (2) the religious education program was voluntary in name only, because, in fact, subtle pressures were brought to bear on the students to force them to participate in it, and (3) the power given the school superintendent to reject teachers selected by religious groups and the power given the local Council on Religious Education to determine which religious faiths should participate in the program was a prior censorship of religion.

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In view of our decision, we find it unnecessary to consider these arguments or the disputed facts upon which they depend.

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2. The Supreme Court described the request card system as follows:

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…Admission to the classes was to be allowed only upon the express written request of parents, and then only to classes designated by the parents…. Cards were distributed to the parents of elementary students by the public school teachers requesting them to indicate whether they desired their children to receive religious education. After being filled out, the cards were returned to the teachers of religious education classes either by the public school teachers or the children….

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On this subject, the trial court found that

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…those students who have obtained the written consent of their parents therefor are released by the school authorities from their secular work, and in the grade schools for a period of thirty minutes' instruction in each week during said school hours, and forty-five minutes during each week in the junior high school, receive training in religious education…. Certain cards are used for obtaining permission of parents for their children to take said religious instruction courses, and they are made available through the offices of the superintendent of schools and through the hands of principals and teachers to the pupils of the school district. Said cards are prepared at the cost of the council of religious education. The handling and distribution of said cards does not interfere with the duties or suspend the regular secular work of the employees of the defendant….

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3. The State Supreme Court said:

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The record further discloses that the teachers conducting the religious classes were not teachers in the public schools, but were subject to the approval and supervision of the superintendent….

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The trial court found:

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Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings, said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system.

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The president of the local school board testified:

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…The Protestants would have one group and the Catholics, and would be given a room where they would have the class and we would go along with the plan of the religious people. They were all to be treated alike, with the understanding that the teachers they would bring into the school were approved by the superintendent…. The superintendent was the last word so far as the individual was concerned….

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4. There were two teachers of the Protestant faith. One was a Presbyterian, and had been a foreign missionary for that church. The second testified as follows:

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I am affiliated with the Christian church. I also work in the Methodist Church, and I taught at the Presbyterian. I am married to a Lutheran.

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5. The director of the Champaign Council on Religious Education testified:

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…If any pupil is absent, we turn in a slip just like any teacher would to the superintendent's office. The slip is a piece of paper with a number of hours in the school day and a square, and the teacher of the particular room for the particular hour records the absentees. It has their names and the grade and the section to which they belong. It is the same sheet that the geography and history teachers and all the other teachers use, and is furnished by the school….

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6. The dissent, agreed to by four judges, said:

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The problem then cannot be cast in terms of legal discrimination or its absence. This would be true even though the state, in giving aid, should treat all religious instruction alike…. Again, it was the furnishing of "contributions of money for the propagation of opinions which he disbelieves" that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation.

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Everson v. Board of Education, 330 U.S. 1, 59, 60.

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7. The dissenting judges said:

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In view of this history, no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises…. Legislatures are free to make, and courts to sustain, appropriations only when it can be found that, in fact, they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small.

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Everson v. Board of Education, 330 U.S. 1, 41, 52-53.

FRANKFURTER, J., separate opinion (Footnotes)

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\* MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON concurred also in the Court's opinion.

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1. For an exposition of the religious origins of American education, see S.W. Brown, The Secularization of American Education (1912) cc. I, II; Knight, Education in the United States (2d rev. ed. 1941) cc. III, V; Cubberley, Public Education in the United States (1934) cc. II, III.

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2. See Boese, Public Education in the City of New York (1869) c. XIV; Hall, Religious Education in the Public Schools of the State and City of New York (1914) cc. VI, VII; Palmer, The New York Public School (1905) cc. VI, VII, X, XII. And see New York Laws 1842, c. 150, § 14, amended, New York Laws 1844, c. 320, § 12.

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3. S. M. Smith, The Relation of the State to Religious Education in Massachusetts (1926) c. VII; Culver, Horace Mann and Religion in the Massachusetts Public Schools (1929).

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4. It has been suggested that secular education in this country is the inevitable "product of `the utter impossibility of harmonizing multiform creeds.'" T.W.M. Marshall, Secular Education in England and the United States, 1 American Catholic Quarterly Review 28, 308. It is precisely because of this "utter impossibility" that the fathers put into the Constitution the principle of complete "hands off" for a people as religiously heterogeneous as ours.

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5. See Cubberley, Public Education in the United States (1934) pp. 230 et seq.; Zollmann, The Relation of Church and State, in Lotz and Crawford, Studies in Religious Education (1931) 403, 418 et seq.; Payson Smith, The Public Schools and Religious Education, in Religion and Education (Sperr, Editor, 1945) pp. 32 et seq.; also Mahoney, The Relation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 180-1945 (1946) c. I, and see note 10, infra.

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6. President Grant's Annual Message to Congress, December 7, 1875, 4 Cong.Rec. 1, 5 et seq.; Ames, The Proposed Amendments to the Constitution of the United States during the First Century of its History, H.R.Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp 277-278. In addition to the first proposal, "The Blaine Amendment," five others to similar effect are cited by Ames. The reason for the failure of these attempts seems to have been in part that the "provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured." Id.

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In the form in which it passed the House of Representatives, the Blaine Amendment read as follows:

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No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof, and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan of credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or anti-religious sect, organization, or denomination shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit, and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution, and it shall not have the effect to impair rights of property already vested….

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H.Res. 1, 44th Cong., 1st Sess. (1876).

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7. See Constitutions of the States and United States, III Report of the New York State Constitutional Convention Committee (1938) Index, pp. 1766-67.

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8. It is worthy of interest that another famous American lawyer, and indeed one of the most distinguished of American judges, Jeremiah S. Black, expressed similar views nearly forty years before Mr. Root:

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The manifest object of the men who framed the institutions of this country was to have a State without religion, and a Church without politics—that is to say, they meant that one should never be used as an engine for any purpose of the other…. Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason, they built up a wall of complete and perfect partition between the two.

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From Religious Liberty (1856) in Black, Essays and Speeches (1886) 51, 53; cf. Brigance, Jeremiah Sullivan Black (1934). While Jeremiah S. Black and Elihu Root had many things in common, there were also important differences between them, perhaps best illustrated by the fact that one became Secretary of State to President Buchanan, the other to Theodore Roosevelt. That two men, with such different political alignment, should have shared identic views on a matter so basic to the wellbeing of our American democracy affords striking proof of the respect to be accorded to that principle.

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9. 25 Stat. 676, 677, applicable to North Dakota, South Dakota, Montana and Washington, required that the constitutional conventions of those States

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provide, by ordinances irrevocable without the consent of the United States and the people of said States…for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control….

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The same provision was contained in the Enabling Act for Utah, 28 Stat. 107, 108; Oklahoma, 34 Stat. 267, 270; New Mexico and Arizona, 36 Stat. 557, 559, 570. Idaho and Wyoming were admitted after adoption of their constitutions; that of Wyoming contained an irrevocable ordinance in the same terms. Wyoming Constitution, 1889, Ordinances, § 5. The Constitution of Idaho, while it contained no irrevocable ordinance, had a provision even more explicit in its establishment of separation. Idaho Constitution, 1889, art. IX, § 5.

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10. See, e.g., the New York experience, including, inter alia, the famous Hughes controversy of 1840-42, the conflict culminating in the Constitutional Convention of 1894, and the attempts to restore aid to parochial schools by revision of the New York City Charter, in 1901, and at the State Constitutional Convention of 1938. See McLaughlin, A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945 (1946) pp. 119-25; Mahoney; The Relation of the State to Religious Education in Early New York 1633-1825 (1941) c. VI; Hall, Religious Education in the Public Schools of the State and the City of New York (1914) pp. 46-47; Boese, Public Education in the City of New York (1&69) c. XIV; compare New York Laws 1901, vol. 3, § 1152, p. 492, with amendment, id. p. 668; see Nicholas Murray Butler, Religion and Education (Editorial) in 22 Educational Review 101, June, 1901; New York Times, April 8, 1901, p. 1, col. 1; April 9, 1901, p. 2, col. 5; April 19, 1901, p. 2, col. 2; April 21, 1901, p. 1, col. 3; Editorial, April 22, 1901, p. 6, col. 1.

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Compare S. 2499, 79th Cong., 2d Sess., providing for Federal aid to education, and the controversy engendered over the inclusion in the aid program of sectarian schools, fully discussed in, e.g., "The Nation's Schools," January through June, 1947.

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11. For surveys of the development of private religious education, see, e.g., A. A. Brown, A History of Religious Education in Recent Times (1923); Athearn, Religious Education and American Democracy (1917); Burns and Kohlbrenner, A History of Catholic Education in the United States (1937); Lotz and Crawford, Studies in Religious Education (1931) Parts I and IV.

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12. Reference should be made to Jacob Gould Schurman, who, in 1903, proposed a plan bearing close resemblance to that of Champaign. See Symposium, 75 The Outlook 635, 636, November 14, 1903; Crooker, Religious Freedom in American Education (1903) pp. 39 et seq.

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13. For the text of the resolution, a brief in its support, as well as an exposition of some of the opposition it inspired, see Wenner's book, Religious Education and the Public School (rev. ed.1913).

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14. The French example is cited not only by Wenner, but also by Nicholas Murray Butler, who thought released time was "restoring the American system in the state of New York." The Place of Religious Instruction in Our Educational System, 7 Vital Speeches 167, 168 (Nov. 28, 1940); see also Report of the President of Columbia University, 1934, pp.22-24. It is important to note, however, that the French practice must be viewed as the result of the struggle to emancipate the French schools from control by the Church. The leaders of this revolution, men like Paul Bert, Ferdinand Buisson, and Jules Ferry, agreed to this measure as one part of a great step towards, rather than a retreat from, the principle of Separation. The history of these events is described in Muzzey, State, Church, and School in France, The School Review, March through June, 1911.

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In effect, moreover, the French practice differs in crucial respects from both the Wenner proposal and the Champaign system. The law of 1882 provided that

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Public elementary schools will be closed one day a week in addition to Sunday in order to permit parents, if they so desire, to have their children given religious instruction outside of school buildings.

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Law No. 11,696, March 28, 1882, Bulletin des Lois, No. 690. This then approximates that aspect of released time generally known as "dismissed time." No children went to school on that day, and the public school was therefore not an alternative used to impel the children towards the religious school. The religious education was given "outside of school buildings."

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The Vichy Government attempted to introduce a program of religious instruction within the public school system remarkably similar to that in effect in Champaign. The proposal was defeated by intense opposition, which included the protest of the French clergy, who apparently feared State control of the Church. See Schwartz, Religious Instruction under Petain, 58 Christian Century 1170, Sept. 24, 1941.

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15. Of the many expositions of the Gary plan, see, e.g., A. A. Brown, The Week-Day Church Schools of Gary, Indiana, 11 Religious Education 5 (1916); Wirt, The Gary Public Schools and the Churches, id. at 221 (1916).

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16. See the 1947 Yearbook, International Council of Religious Education, p. 76; also New York Times, September 21, 1947, p. 22, col. 1.

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17. Respects in which programs differ include, for example, the amount of supervision by the public school of attendance and performance in the religious class, of the course of study, of the selection of teachers; methods of enrolment and dismissal from the secular classes; the amount of school time devoted to operation of the program; the extent to which school property and administrative machinery are involved; the effect on the public school program of the introduction of "released time"; the proportion of students who seek to be excused; the effect of the program on nonparticipants; the amount and nature of the publicity for the program in the public schools.

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The studies of detail in "released time" programs are voluminous. Most of these may be found in the issues of such periodicals as The International Journal of Religious Education, Religious Education, and Christian Century. For some of the more comprehensive studies found elsewhere, see Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3; Gorham, A Study of the Status of Weekday Church Schools in the United States (1934); Lotz, The Weekday Church School, in Lotz and Crawford, Studies in Religious Education (1931) c. XII; Forsyth, Week-Day Church Schools (1930); Settle, The Weekday Church School, Educational Bulletin No. 601 of The International Council of Religious Education (1930); Shaver, Present-Day Trends in Religious Education (1928) cc. VII, VIII; Gove, Religious Education on Public School Time (1926).

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18. It deserves notice that, in discussing with the relator her son's inability to get along with his classmates, one of his teachers suggested that "allowing him to take the religious education course might help him to become a member of the group."

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19. The divergent views expressed in the briefs submitted here on behalf of various religious organizations, as amici curiae, in themselves suggest that the movement has been a divisive and not an irenic influence in the community: The American Unitarian Association; The General Conference of Seventh Day Adventists; The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, The Northern Baptist Convention, The National Baptist Convention Inc., and the National Baptist Convention; The Protestant Council of the City of New York, and The Synagogue Council of America and National Community Relations Advisory Council.

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20. There is a prolific literature on the educational, social and religious merits of the "released time" movement. In support of "released time," the following may be mentioned: The International Council of Religious Education, and particularly the writings of Dr. Erwin L. Shaver, for some years Director of its Department of Weekday Religious Education, in publications of the Council and in numerous issues of The International Journal of Religious Education (e.g., They Reach One-Third, Dec., 1943, p. 11; Weekday Religious Education Today, Jan., 1944, p. 6), and Religious Education (e.g., Survey of Week-Day Religious Education, Feb., 1922, p. 51; The Movement for Weekday Religious Education, Jan.-Feb., 1946, p. 6); see also Information Service, Federal Council of Churches of Christ, May 29, 1943. See also Cutton, Answering the Arguments, The International Journal of Religious Education, June, 1930, p. 9, and Released Time, id. Sept., 1942, p. 12; Hauser, "Hands off the Public School?", Religious Education, Mar.-Apr., 1942, p. 99; Collins, Release Time for Religious Instruction, National Catholic Education Association Bulletin, May, 1945, pp. 21, 27-28; Weigle, Public Education and Religion, Religious Education, Apr.-June, 1940, p. 67; Nicholas Murray Butler, The Place of Religious Instruction in Our Educational System, 7 Vital Speeches 167 (Nov. 28, 1940); Howlett, Released Time for Religious Education in New York City, 64 Education 523, May, 1944; Blair, A Case for the Weekday Church School, 7 Frontiers of Democracy 75, Dec. 15, 1940; cf. Allred, Legal Aspects of Release Time (National Catholic Welfare Conference, 1947). Favorable views are also cited in the studies in note 17, supra. Many not opposed to "released time" have declared it "hardly enough" or "pitifully inadequate." E.g., Fleming, God in Our Public Schools (2d ed.1944) pp. 80-86; Howlett, Released Time for Religious Education in New York City, Religious Education, Mar.-Apr., 1942, p. 104; Cavert, Points of Tension Between Church and State in America Today, in Church and State in the Modern World (1937) 161, 168; F. E. Johnson, The Church and Society (1935) 125; Hubner, Professional Attitudes toward Religion in the Public Schools of the United States Since 1900 (1944) 108-109, 113; cf. Ryan, A Protestant Experiment in Religious Education, The Catholic World, June, 1922; Elliott, Are Weekday Church Schools the Solution?, The International Journal of Religious Education, Nov., 1940, p. 8; Elliott, Report of the Discussion, Religious Education, July Sept., 1940, p. 158.

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For opposing views, see V. T. Thayer, Religion in Public Education (1947) cc. VII, VIII; Moehlman, The Church as Educator (1947) c. X; Chave, A Functional Approach to Religious Education (1947) 104-107; A. W. Johnson, The Legal Status of Church-State Relationships in the United States (1934) 129-130; Newman, The Sectarian Invasion of Our Public Schools (1925). See also Payson Smith, The Public Schools and Religious Education, in Religion and Education (Sperry, Editor, 1945) 32, 42-47; Herrick, Religion in the Public Schools of America, 46 Elementary School Journal 119, Nov., 1945; Kallen, Churchmen's Claims on the Public School, The Nation's Schools, May, 1942, p. 49; June, 1942, p. 52. And cf. John Dewey, Religion in Our Schools (1908), reprinted in 2 Characters and Events (1929) 504, 508, 514. "Released time" was introduced in the public schools of the City of New York over the opposition of organizations like the Public Education Association and the United Parents Associations.

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The arguments and sources pro and con are collected in Hubner, Professional Attitudes toward Religion in the Public Schools in the United States since 1900 (1944) 94 et seq. And see the symposia, Teaching Religion in a Democracy, The International Journal of Religious Education, Nov., 1940, pp.6-16; The Aims of Week-Day Religious Education, Religious Education, Feb., 1922, p. 11; Released Time in New York City, id. Jan.-Feb., 1943, p. 15; Progress in Weekday Religious Education, id. Jan.-Feb., 1946, p. 6; Can Our Public Schools Do More about Religion?, 125 Journal of Education 245, Nov., 1942, id. at 273, Dec., 1942; Religious Instruction on School Time, 7 Frontiers of Democracy 72-77, Dec. 15, 1940, and the articles in 64 Education 519 et seq., May, 1944.

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21. See note 14, supra. Indications are that "dismissed time" is used in an inconsiderable number of the communities employing released time. Davis, Weekday Classes in Religious Education, U.S. Office of Education Bulletin 1941, No. 3, p. 22; Shaver, The Movement for Weekday Religious Education, Religious Education, Jan.-Feb., 1946, pp.6, 9.

REED, J., dissenting (Footnotes)

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1. The trial court found that:

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"The Champaign Council of Religious Education" [is] a voluntary association made up of the representatives of the Jewish, Roman Catholic and Protestant faiths in the school district.

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2. There is no extra cost to the state, but, as a theoretical accounting problem, it may be correct to charge to the classes their comparable proportion of the state expense for buildings, operation and teachers. In connection with the classes, the teachers need only keep a record of the pupils who attend. Increased custodial requirements are likewise nominal. It is customary to use school buildings for community activities when not needed for school purposes. See Ill.Rev.Stat., ch. 122, § 123.

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3.

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CHAMPAIGN COUNCIL OF RELIGIOUS EDUCATION

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1945-1946

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Parent's Request Card

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Please permit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in Grade \_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_ School to attend a class in Religious Education one period a week under the Auspices of the Champaign Council of Religious Education.

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(Check which) Date \_\_\_\_\_\_\_\_\_ \_\_\_\_ ( ) Interdenominational

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

( ) Protestant

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

( ) Roman Catholic

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( ) Jewish

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Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(Parent Name)

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Parent's Church \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Telephone No. \_\_\_\_\_\_\_\_\_ Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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A fee of 25 cents a semester is charged each pupil to help cover the cost of material used.

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If you wish your child to receive religious instruction, please sign this card and return to the school.

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Mae Chapin, Director

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Mae Chapin, the Director, was not a school employee.

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4.

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The superintendent testified that Jehovah's Witnesses or any other sect would be allowed to teach provided their teachers had proper educational qualifications, so that bad grammar, for instance, would not be taught to the pupils. A similar situation developed with reference to the Missouri Synod of the Lutheran Church. The evidence tends to show that, during the course of the trial, that group indicated it would affiliate with the Council of Religious Education.

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Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who, in turn, will determine whether or not it is practical for said group to teach in said school system.

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The court feels from all the facts in the record that an honest attempt has been made and is being made to permit religious instruction to be given by qualified outside teachers of any sect to people of their own faith in the manner above outlined. The evidence shows that no sect or religious group has ever been denied the right to use the schools in this manner.

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5. A finding reads:

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The curriculum of studies in the Protestant classes is determined by a committee of the Protestant members of the council of religious education after consultation with representatives of all the different faiths included in said council. The Jewish classes, of course, would deny the divinity of Jesus Christ. The teaching in the Catholic classes, of course, explains to Catholic pupils the teaching of the Catholic religion, and are not shared by other students who are Protestants or Jews. The teachings in the Protestant classes would undoubtedly, from the evidence, teach some doctrines that would not be accepted by the other two religions.

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6. It was found:

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The testimony shows that sectarian differences between the sects are not taught or emphasized in the actual teaching as it is conducted in the schools. The testimony of the religious education teachers, the secular teachers who testified, and the many children, mostly from Protestant families, who either took or did not take religious education courses, is to the effect that religious education classes have fostered tolerance, rather than intolerance.

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The Supreme Court of Illinois said: "The religious education courses do not go to the extent of being worship services, and do not include prayers or the singing of hymns." 396 Ill. 14, 21, 71 N.E.2d 161, 164.

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7. Annals of Congress 730.

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8. For example, Mr. Jefferson's striking phrase as to the "wall of separation between church and State" appears in a letter acknowledging "The affectionate sentiments of esteem and approbation" included in a testimonial to himself. In its context, it reads as follows:

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Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and State.

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8 The Writings of Thomas Jefferson (Washington ed., 1861) 113.

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9. Acts of the Assembly of 1818-19 (1819) 15; Phillips v. The Rector and Visitors of the University of Virginia, 97 Va. 472, 474 75, 34 S.E. 66, 67.

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10. 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 408, 409.

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11. Id., pp. 414-417:

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It was not, however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and his Maker, and the duties resulting from those relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation. The want of instruction in the various creeds of religious faith existing among our citizens presents, therefore, a chasm in a general institution of the useful sciences…. A remedy, however, has been suggested of promising aspect which, while it excludes the public authorities from the domain of religious freedom, will give to the sectarian schools of divinity the full benefit the public provisions made for instruction in the other branches of science…. It has therefore been in contemplation, and suggested by some pious individuals, who perceive the advantages of associating other studies with those of religion, to establish their religious schools on the confines of the University so as to give to their students ready and convenient access and attendance on the scientific lectures of the University and to maintain, by that means, those destined for the religious professions on as high a standing of science, and of personal weight and respectability, as may be obtained by others from the benefits of the University. Such establishments would offer the further and greater advantage of enabling the students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the building still to be erected, and destined to that purpose under impartial regulations, as proposed in the same report of the commissioners, or in the lecturing room of such professor…. Such an arrangement as would complete the circle of the useful sciences embraced by this institution, and would fill the chasm now existing, on principles which would leave inviolate the constitutional freedom of religion, the most inalienable and sacred of all human rights, over which the people and authorities of this state, individually and publicly, have ever manifested the most watchful jealousy; and could this jealousy be now alarmed, in the opinion of the legislature, by what is here suggested, the idea will be relinquished on any surmise of disapprobation which they might think proper to express.

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Mr. Jefferson commented upon the report on November 2, 1822, in a letter to Dr. Thomas Cooper, as follows:

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And by bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality.

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12 Ford, The Works of Thomas Jefferson, (Fed. ed., 1905), 272.

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12. 3 Randall, Life of Thomas Jefferson (1858) 471.

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13. 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 449.

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14. The texts of the Memorial and Remonstrance and the bill against which it was aimed, to-wit, A Bill Establishing a Provision for Teachers of the Christian Religion, are set forth in Everson v. Board of Education, 330 U.S. 1, 28, 63-74.

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15. See generally the dissent of MR. JUSTICE RUTLEDGE, 330 U.S. 1, 28.

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16. 330 U.S. at 72-73:

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Be it therefore enacted by the General Assembly, That for the support of Christian teachers, percentum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due, and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State.

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And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books….

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17. 60 Stat. 230, ch. 281, §§ 4, 11(d)(3).

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18. See Selective Draft Law Cases, 245 U.S. 366, 390; Quick Bear v. Leupp, 210 U.S. 50.

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19. Ed.Code of Cal. (Deering, 1944) § 8286; 6 Ind.Stat.Ann. (Burns, 1933) 1945 Supp. § 28-505a; 1 Code of Iowa ch. 299, § 299.2 (1946); Ky.Rev.Stat. (1946) § 158.220; 1 Rev.Stat. of Maine (1944) ch. 37, § 131; 2 Ann.Laws of Mass. (1945) ch. 76, § 1; Minn.Stat. (1945) § 132.05; N.Y. Education Law § 3210(1); 8 Ore.Comp.Laws Ann. (1940) § 111-3014; 24 Pa.Stat.Ann. (Purdon, 1930) 1947 Supp. § 1563; 1 Code of S.D. (1939) § 15.3202; 1 Code of W.Va. (1943) § 1847.

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20. Education Law § 3210(1) provides that:

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a. A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending.

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b. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish.

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Acting under the authority of the New York law, the State Commissioner of Education issued, on July 4, 1940, these regulations:

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1 Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and grounds will be excused upon the request in writing signed by the parent or guardian of the pupil.

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2 The courses in religious observance and education must be maintained and operated by or under the control of a duly constituted religious body or of duly constituted religious bodies.

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3 Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.

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4 Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each week.

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5 Such absence shall be for not more than one hour each week at the close of a session at a time to be fixed by the local school authorities.

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6 In the event that more than one school for religious observance and education is maintained in any district, the hour for absence for each particular public school in such district shall be the same for all such religious schools.

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On November 13, 1940, rules to govern the released time program of the New York City schools were adopted by the Board of Education of the City of New York. Under these rules, the practice of the religious education program is this: classes in religious education are to be held outside of school buildings; establishment of the program rests in the initiative of the church and home; enrollment is voluntary, and accomplished by this technique: the church distributes cards to the parents, and these are filled out and presented to the school; records of enrollment and arrangements for release are handled by school authorities; discipline is the responsibility of the church, and children who do not attend are kept at school and given other work. See Rules of the Board of Education of the City of New York adopted Nov. 13, 1940; Public Education Association, Released Time for Religious Education in New York City's Schools (1943); id. (1945).

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Constitutional approval by the New York Court of Appeals of these practices was given before the passage of Education Law § 3210(1). People ex rel. Lewis v. Graves, 245 N.Y.195, 156 N.E. 663.

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21. The New York City program is supervised by The Greater New York Coordinating Committee on Released Time, a group of laymen drawn from Jews, Protestants and Roman Catholics. This Committee is an example of a broad national effort to bring about religious education of children through cooperative action of schools and groups of members of various religious denominations. The methods vary in different states and cities, but are basically like the work of the New York City Committee. See Brief Sketches of Weekday Church Schools, Department of Weekday Religious Education, International Council of Religious Education, Chicago, Illinois (1944).

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22. See note 20 supra.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

23. The use of school buildings is not unusual. See Davis, Weekday Classes in Religious Education, U.S. Office of Education (Bulletin 1941, No. 3) 27; National Education Association, The State and Sectarian Education, Research Bulletin (Feb.1946) 36. The International Council of Religious Education advises that church buildings be used if possible. Shaver, Remember the Weekday, International Council of Religious Education (1946).

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

Today, approximately two thousand communities in all but two states provide religious education in cooperation with the public schools for more than a million and a half of pupils.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

Shaver, The Movement for Weekday Religious Education, Religious Education (Jan.-Feb.1946), p. 7.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

24. Many uses of religious material in the public schools in a manner that has some religious significance have been sanctioned by state courts. These practices have been permitted: reading selections from the King James Bible without comment; reading the Bible and repeating the Lord's Prayer; teaching the Ten Commandments; saying prayers, and using textbooks based upon the Bible and emphasizing its fundamental teachings. When conducted in a sectarian manner, reading from the Bible and singing hymns in the school's morning exercise have been prohibited, as has using the Bible as a textbook. There is a conflict of authority on the question of the constitutionality of wearing religious garb while teaching in the public schools. It has been held to be constitutional for school authorities to prohibit the reading of the Bible in the public schools. There is a conflict of authority on the constitutionality of the use of public school buildings for religious services held outside of school hours. The constitutionality, under state constitutions, of furnishing free textbooks and free transportation to parochial school children is in conflict. See Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930; Findley v. City of Conneaut, 12 Ohio Supp. 161. The earlier cases are collected in 5 A.L.R. 866 and 141 A.L.R. 1144.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

25. Rules of the House of Representatives (1943) Rule VII; Senate Manual (1947) 6, fn. 2.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

26. 3 Stat. 297 (1816).

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

27. Army Reg., No. 60-5 (1944); U.S. Navy Reg. (1920), ch. 1, § 2 and ch. 34, §§ 1-2.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

28. 58 Stat. 289.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

29. Board of Education Rules, ch. VI, § 4.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

30. Reg. for the U.S. Corps of Cadets (1947) 47:

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

Attendance at chapel is part of a cadet's training; no cadet will be exempted. Each cadet will receive religious training in one of the three principal faiths: Catholic, Protestant, or Jewish.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

U.S. Naval Academy Reg., Art. 4301(b):

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

Midshipmen shall attend church services on Sundays at the Naval Academy Chapel or at one of the regularly established churches in the city of Annapolis.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

Morning prayers are also required at Annapolis. U.S. Naval Academy Reg., Art. 4301(a): "Daily, except on Sundays, a Chaplain will conduct prayers in the mess hall, immediately before breakfast." Protestant and Catholic Chaplains take their turn in leading these prayers.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

31. The principles of the First Amendment were absorbed by the Fourteenth Amendment. Pennecamp v. Florida, 328 U.S. 331, 335.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

32. See Whitney v. California, 274 U.S. 357, 371; Reynolds v. United States, 98 U.S. 145, 166; Cantwell v. Connecticut, 310 U.S. 296, 303; Cox v. New Hampshire, 312 U.S. 569, 574, 576; Chaplinsky v. New Hampshire, 315 U.S. 568, 571; Prince v. Massachusetts, 321 U.S. 158.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

33. Cf. Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28.

1948, Illinois ex rel. McCollum v. Board of Education of School District, 333 U.S. 256

34. Higgins v. Smith, 308 U.S. 473; Helvering v. Clifford, 309 U.S. 331; Comm'r v. Tower, 327 U.S. 280; Lusthaus v. Comm'r, 327 U.S. 293.

Harry S Truman's Inaugural Address, 1949

Title: President Truman's Inaugural Address

Author: Harry S Truman

Date: January 20, 1949

Source: Public Papers of the Presidents, Truman, 1949, p.112-116

[Delivered in person at the Capitol]

Public Papers of Truman, 1949, p.112

Mr. Vice President, Mr. Chief Justice, fellow citizens:

Public Papers of Truman, 1949, p.112

I accept with humility the honor which the American people have conferred upon me. I accept it with a resolve to do all that I can for the welfare of this Nation and for the peace of the world.

Public Papers of Truman, 1949, p.112

In performing the duties of my office, I need the help and the prayers of every one of you. I ask for your encouragement and for your support. The tasks we face are difficult. We can accomplish them only if we work together.

Public Papers of Truman, 1949, p.112

Each period of our national history has had its special challenges. Those that confront us now are as momentous as any in the past. Today marks the beginning not only of a new administration, but of a period that will be eventful, perhaps decisive, for us and for the world.

Public Papers of Truman, 1949, p.112

It may be our lot to experience, and in a large measure bring about, a major turning point in the long history of the human race. The first half of this century has been marked by unprecedented and brutal attacks on the rights of man, and by the two most frightful wars in history. The supreme need of our time is for men to learn to live together in peace and harmony.

Public Papers of Truman, 1949, p.112

The peoples of the earth face the future with grave uncertainty, composed almost equally of great hopes and great fears. In this time of doubt, they look to the United States as never before for good will, strength, and wise leadership.

Public Papers of Truman, 1949, p.112

It is fitting, therefore, that we take this occasion to proclaim to the world the essential principles of the faith by which we live, and to declare our aims to all peoples.

Public Papers of Truman, 1949, p.112

The American people stand firm in the faith which has inspired this Nation from the beginning. We believe that all men have a right to equal justice under law and equal opportunity to share in the common good. We believe that all men have a right to freedom of thought and expression. We believe that all men are created equal because they are created in the image of God.

Public Papers of Truman, 1949, p.112

From this faith we will not be moved.

Public Papers of Truman, 1949, p.112

The American people desire, and are determined to work for, a world in which all nations and all peoples are free to govern themselves as they see fit, and to achieve a decent and satisfying life. Above all else, our people desire, and are determined to work for, peace on earth—a just and lasting peace—based on genuine agreement freely arrived at by equals.

Public Papers of Truman, 1949, p.112

In the pursuit of these aims, the United States and other like-minded nations find themselves directly opposed by a regime with contrary aims and a totally different concept of life.

Public Papers of Truman, 1949, p.112

That regime adheres to a false philosophy which purports to offer freedom, security, and greater opportunity to mankind. Misled by that philosophy, many peoples have sacrificed their liberties only to learn to their sorrow that deceit and mockery, poverty and tyranny, are their reward.

Public Papers of Truman, 1949, p.112

That false philosophy is communism.

Public Papers of Truman, 1949, p.112

Communism is based on the belief that man is so weak and inadequate that he is able to govern himself, and therefore requires the rule of strong masters.

Public Papers of Truman, 1949, p.112–p.113

Democracy is based on the conviction that [p.113] man has the moral and intellectual capacity, as well as the inalienable right, to govern himself with reason and justice.

Public Papers of Truman, 1949, p.113

Communism subjects the individual to arrest without lawful cause, punishment without trial, and forced labor as the chattel of the state. It decrees what information he shall receive, what art he shall produce, what leaders he shall follow, and what thoughts he shall think.

Public Papers of Truman, 1949, p.113

Democracy maintains that government is established for the benefit of the individual, and is charged with the responsibility of protecting the rights of the individual and his freedom in the exercise of those abilities of his.

Public Papers of Truman, 1949, p.113

Communism maintains that social wrongs can be corrected only by violence.

Public Papers of Truman, 1949, p.113

Democracy has proved that social justice can be achieved through peaceful change.

Public Papers of Truman, 1949, p.113

Communism holds that the world is so widely divided into opposing classes that war is inevitable.

Public Papers of Truman, 1949, p.113

Democracy holds that free nations can settle differences justly and maintain a lasting peace.

Public Papers of Truman, 1949, p.113

These differences between communism and democracy do not concern the United States alone. People everywhere are coming to realize that what is involved is material well-being, human dignity, and the right to believe in and worship God.

Public Papers of Truman, 1949, p.113

I state these differences, not to draw issues of belief as such, but because the actions resulting from the Communist philosophy are a threat to the efforts of free nations to bring about world recovery and lasting peace.

Public Papers of Truman, 1949, p.113

Since the end of hostilities, the United States has invested its substance and its energy in a great constructive effort to restore peace, stability, and freedom to the world.

Public Papers of Truman, 1949, p.113

We have sought no territory. We have imposed our will on none. We have asked for no privileges we would not extend to others.

Public Papers of Truman, 1949, p.113

We have constantly and vigorously supported the United Nations and related agencies as a means of applying democratic principles to international relations. We have consistently advocated and relied upon peaceful settlement of disputes among nations.

Public Papers of Truman, 1949, p.113

We have made every effort to secure agreement on effective international control of our most powerful weapon, and we have worked steadily for the limitation and control of all armaments.

Public Papers of Truman, 1949, p.113

We have encouraged, by precept and example, the expansion of world trade on a sound and fair basis.

Public Papers of Truman, 1949, p.113

Almost a year ago, in company with 16 free nations of Europe, we launched the greatest cooperative economic program in history. The purpose of that unprecedented effort is to invigorate and strengthen democracy in Europe, so that the free people of that continent can resume their rightful place in the forefront of civilization and can contribute once more to the security and welfare of the world.

Public Papers of Truman, 1949, p.113

Our efforts have brought new hope to all mankind. We have beaten back despair and defeatism. We have saved a number of countries from losing their liberty. Hundreds of millions of people all over the world now agree with us, that we need not have war—that we can have peace.

Public Papers of Truman, 1949, p.113

The initiative is ours.

Public Papers of Truman, 1949, p.113–p.114

We are moving on with other nations to build an even stronger structure of international order and justice. We shall have as our partners countries which, no longer solely concerned with the problem of national survival, are now working to improve [p.114] the standards of living of all their people. We are ready to undertake new projects to strengthen a free world.

Public Papers of Truman, 1949, p.114

In the coming years, our program for peace and freedom will emphasize four major courses of action.

Public Papers of Truman, 1949, p.114

First, we will continue to give unfaltering support to the United Nations and related agencies, and we will continue to search for ways to strengthen their authority and increase their effectiveness. We believe that the United Nations will be strengthened by the new nations which are being formed in lands now advancing toward self-government under democratic principles.

Public Papers of Truman, 1949, p.114

Second, we will continue our programs for world economic recovery.

Public Papers of Truman, 1949, p.114

This means, first of all, that we must keep our full weight behind the European recovery program. We are confident of the success of this major venture in world recovery. We believe that our partners in this effort will achieve the status of self-supporting nations once again.

Public Papers of Truman, 1949, p.114

In addition, we must carry out our plans for reducing the barriers to world trade and increasing its volume. Economic recovery and peace itself depend on increased world trade.

Public Papers of Truman, 1949, p.114

Third, we will strengthen freedom-loving nations against the dangers of aggression.

Public Papers of Truman, 1949, p.114

We are now working out with a number of countries a joint agreement designed to strengthen the security of the North Atlantic area. Such an agreement would take the form of a collective defense arrangement within the terms of the United Nations Charter.

Public Papers of Truman, 1949, p.114

We have already established such a defense pact for the Western Hemisphere by the treaty of Rio de Janeiro.

Public Papers of Truman, 1949, p.114

The primary purpose of these agreements is to provide unmistakable proof of the joint determination of the free countries to resist armed attack from any quarter. Every country participating in these arrangements must contribute all it can to the common defense.

Public Papers of Truman, 1949, p.114

If we can make it sufficiently clear, in advance, that any armed attack affecting our national security would be met with overwhelming force, the armed attack might never occur.

Public Papers of Truman, 1949, p.114

I hope soon to send to the Senate a treaty respecting the North Atlantic security plan.

Public Papers of Truman, 1949, p.114

In addition, we will provide military advice and equipment to free nations which will cooperate with us in the maintenance of peace and security.

Public Papers of Truman, 1949, p.114

Fourth, we must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas.

Public Papers of Truman, 1949, p.114

More than half the people of the world are living in conditions approaching misery. Their food is inadequate. They are victims of disease. Their economic life is primitive and stagnant. Their poverty is a handicap and a threat both to them and to more prosperous areas.

Public Papers of Truman, 1949, p.114

For the first time in history, humanity posesses the knowledge and skill to relieve suffering of these people.

Public Papers of Truman, 1949, p.114

The United States is pre-eminent among nations in the development of industrial and scientific techniques. The material resources which we can afford to use for assistance of other peoples are limited. But our imponderable resources in technical knowledge are constantly growing and are inexhaustible.

Public Papers of Truman, 1949, p.114–p.115

I believe that we should make available to peace-loving peoples the benefits of our store of technical knowledge in order to help them realize their aspirations for a better life. [p.115] And, in cooperation with other nations, we should foster capital investment in areas needing development.

Public Papers of Truman, 1949, p.115

Our aim should be to help the free peoples of the world, through their own efforts, to produce more food, more clothing, more materials for housing, and more mechanical power to lighten their burdens.

Public Papers of Truman, 1949, p.115

We invite other countries to pool their technological resources in this undertaking. Their contributions will be warmly welcomed. This should be a cooperative enterprise in which all nations work together through the United Nations and its specialized agencies whenever practicable. It must be a worldwide effort for the achievement of peace, plenty, and freedom.

Public Papers of Truman, 1949, p.115

With the cooperation of business, private capital, agriculture, and labor in this country, this program can greatly increase the industrial activity in other nations and can raise substantially their standards of living.

Public Papers of Truman, 1949, p.115

Such new economic developments must be devised and controlled to the benefit of the peoples of the areas in which they are established. Guarantees to the investor must be balanced by guarantees in the interest of the people whose resources and whose labor go into these developments.

Public Papers of Truman, 1949, p.115

The old imperialism—exploitation for foreign profit—has no place in our plans. What we envisage is a program of development based on the concepts of democratic fair-dealing.

Public Papers of Truman, 1949, p.115

All countries, including our own, will greatly benefit from a constructive program for the better use of the world's human and natural resources. Experience shows that our commerce with other countries expands as they progress industrially and economically.

Public Papers of Truman, 1949, p.115

Greater production is the key to prosperity and peace. And the key to greater production is a wider and more vigorous application of modern scientific and technical knowledge.

Public Papers of Truman, 1949, p.115

Only by helping the least fortunate of its members to help themselves can the human family achieve the decent, satisfying life that is the right of all people.

Public Papers of Truman, 1949, p.115

Democracy alone can supply the vitalizing force to stir the peoples of the world into triumphant action, not only against their human oppressors, but also against their ancient enemies—hunger, misery, and despair.

Public Papers of Truman, 1949, p.115

On the basis of these four major courses of action we hope to help create the conditions that will lead eventually to personal freedom and happiness for all mankind.

Public Papers of Truman, 1949, p.115

If we are to be successful in carrying out these policies, it is clear that we must have continued prosperity in this country and we must keep ourselves strong.

Public Papers of Truman, 1949, p.115

Slowly but surely we are weaving a world fabric of international security and growing prosperity.

Public Papers of Truman, 1949, p.115

We are aided by all who wish to live in freedom from fear—even by those who live today in fear under their own governments.

Public Papers of Truman, 1949, p.115

We are aided by all who want relief from lies and propaganda—those who desire truth and sincerity.

Public Papers of Truman, 1949, p.115

We are aided by all who desire self-government and a voice in deciding their own affairs.

Public Papers of Truman, 1949, p.115

We are aided by all who long for economic security—for the security and abundance that men in free societies can enjoy.

Public Papers of Truman, 1949, p.115

We are aided by all who desire freedom of speech, freedom of religion, and freedom to live their own lives for useful ends.

Public Papers of Truman, 1949, p.115

Our allies are the millions who hunger and thirst after righteousness.

Public Papers of Truman, 1949, p.115–p.116

In due time, as our stability becomes manifest, as more and more nations come to know the benefits of democracy and to participate [p.116] in growing abundance, I believe that those countries which now oppose us will abandon their delusions and join with the free nations of the world in a just settlement of international differences.

Public Papers of Truman, 1949, p.116

Events have brought our American democracy to new influence and new responsibilities. They will test our courage, our devotion to duty, and our concept of liberty.

Public Papers of Truman, 1949, p.116

But I say to all men, what we have achieved in liberty, we will surpass in greater liberty.

Public Papers of Truman, 1949, p.116

Steadfast in our faith in the Almighty, we will advance toward a world where man's freedom is secure.

Public Papers of Truman, 1949, p.116

To that end we will devote our strength, our resources, and our firmness of resolve. With God's help, the future of mankind will be assured in a world of justice, harmony, and peace.

Public Papers of Truman, 1949, p.116

NOTE: The President spoke at 12:35 p.m. from a platform erected at the east front of the Capitol. Immediately before the address the oath of office was administered by Chief Justice Vinson.

Public Papers of Truman, 1949, p.116

Two Bibles were used in the inaugural ceremony-the Bible used at the swearing-in of the President on April 12, 1945, and a Gutenberg Bible presented by the citizens of Independence, Mo. The President's left hand rested on both Bibles while he took the oath. The Bible used at the swearing-in of the President was open at Matthew 5, verses 3-11. The Gutenberg Bible was open at Exodus 20, verses 3-17.

White House Statement Announcing Recognition of the Government of Israel, 1949

Title: White House Statement Announcing Recognition of the Government of Israel

Author: Harry S Truman

Date: January 31, 1949

Source: Public Papers of the Presidents, Truman, 1949, p.121

Public Papers of Truman, 1949, p.121

ON October 24, 1948, the President stated that when a permanent government was elected in Israel, it would promptly be given de jure recognition. Elections for such a government were held on January 25th. The votes have now been counted, and this Government has been officially informed of the results. The United States Government is therefore pleased to extend de jure recognition to the Government of Israel as of this date.

President Truman's Special Message to Congress Recommending Point 4 Legislation, 1949

Title: President Truman's Special Message to Congress Recommending Point 4 Legislation

Author: Harry S Truman

Date: June 24, 1949

Source: Public Papers of the Presidents, Truman, 1949, pp.329-333

Public Papers of Truman, 1949, p.329

To the Congress of the United States:

Public Papers of Truman, 1949, p.329

In order to enable the United States, in cooperation with other countries, to assist the peoples of economically under-developed areas to raise their standards of living, I recommend the enactment of legislation to authorize an expanded program of technical assistance for such areas, and an experimental program for encouraging the outflow of private investment beneficial to their economic development. These measures are the essential first steps in an undertaking which will call upon private enterprise and voluntary organizations in the United States, as well as the Government, to take part in a constantly growing effort to improve economic conditions in the less developed regions of the world.

Public Papers of Truman, 1949, p.329

The grinding poverty and the lack of economic opportunity for many millions of people in the economically under-developed parts of Africa, the Near and Far East, and certain regions of Central and South America, constitute one of the greatest challenges of the world today. In spite of their age-old economic and social handicaps, the peoples in these areas have in recent decades been stirred and awakened. The spread of industrial civilization, the growing understanding of modern concepts of government, and the impact of two world wars have changed their lives and their outlook. They are eager to play a greater part in the community of nations.

Public Papers of Truman, 1949, p.329

All these areas have a common problem. They must create a firm economic base for the democratic aspirations of their citizens. Without such an economic base, they will be unable to meet the expectations which the modern world has aroused in their peoples. If they are frustrated and disappointed, they may turn to false doctrines which hold that the way of progress lies through tyranny.

Public Papers of Truman, 1949, p.329

For the United States the great awakening of these peoples holds tremendous promise. It is not only a promise that new and stronger nations will be associated with us in the cause of human freedom, it is also a promise of new economic strength and growth for ourselves.

Public Papers of Truman, 1949, p.329–p.330

With many of the economically underdeveloped areas of the world, we have long had ties of trade and commerce. In many instances today we greatly need the products of their labor and their resources. If the productivity and the purchasing power of these countries are expanded, our own industry and agriculture will benefit. Our experience shows that the volume of our foreign trade is far greater with highly [p.330] developed countries than it is with countries having a low standard of living and inadequate industry. To increase the output and the national income of the less developed regions is to increase our own economic stability.

Public Papers of Truman, 1949, p.330

In addition, the development of these areas is of utmost importance to our efforts to restore the economies of the free European nations. As the economies of the under-developed areas expand, they will provide needed products for Europe and will offer a better market for European goods. Such expansion is an essential part of the growing system of world trade which is necessary for European recovery.

Public Papers of Truman, 1949, p.330

Furthermore, the development of these areas will strengthen the United Nations and the fabric of world peace. The preamble to the Charter of the United Nations states that the economic and social advancement of all people is an essential bulwark of peace. Under Article 56 of the Charter, we have promised to take separate action and to act jointly with other nations "to promote higher standards of living, full employment, and conditions of economic and social progress and development."

Public Papers of Truman, 1949, p.330

For these various masons, assistance in the development of the economically underdeveloped areas has become one of the major elements of our foreign policy. In my inaugural address, I outlined a program to help the peoples of these areas to attain greater production as a way to prosperity and peace.

Public Papers of Truman, 1949, p.330

The major effort in such a program must be local in character; it must be made by the people of the under-developed areas themselves. It is essential, however, to the success of their effort that there be help from abroad. In some cases, the peoples of these areas will be unable to begin their part of this great enterprise without initial aid from other countries.

Public Papers of Truman, 1949, p.330

The aid that is needed falls roughly into two categories. The first is the technical, scientific and managerial knowledge necessary to economic development. This category includes not only medical and educational knowledge, and assistance and advice in such basic fields as sanitation, communications, road building and governmental services, but also, and perhaps most important, assistance in the survey of resources and in planning for long-range economic development.

Public Papers of Truman, 1949, p.330

The second category is production goods—machinery and equipment—and financial assistance in the creation of productive enterprises. The under-developed areas need capital for port and harbor development, roads and communications, irrigation and drainage projects, as well as for public utilities and the whole range of extractive, processing and manufacturing industries. Much of the capital required can be provided by these areas themselves, in spite of their low standards of living. But much must come from abroad.

Public Papers of Truman, 1949, p.330

The two categories of aid are closely related. Technical assistance is necessary to lay the groundwork for productive investment. Investment, in turn, brings with it technical assistance. In general, however, technical surveys of resources and of the possibilities of economic development must precede substantial capital investment. Furthermore, in many of the areas concerned, technical assistance in improving sanitation, communications or education is required to create conditions in which capital investment can be fruitful.

Public Papers of Truman, 1949, p.330–p.331

This country, in recent years, has conducted relatively modest programs of technical cooperation with other countries. In [p.331] the field of education, channels of exchange and communication have been opened between our citizens and those of other countries. To some extent, the expert assistance of a number of Federal agencies, such as the Public Health Service and the Department of Agriculture, has been made available to other countries. We have also participated in the activities of the United Nations, its specialized agencies, and other international organizations to disseminate useful techniques among nations.

Public Papers of Truman, 1949, p.331

Through these various activities, we have gained considerable experience in rendering technical assistance to other countries. What is needed now is to expand and integrate these activities and to concentrate them particularly on the economic development of underdeveloped areas.

Public Papers of Truman, 1949, p.331

Much of the aid that is needed can be provided most effectively through the United Nations. Shortly after my inaugural address, this government asked the Economic and Social Council of the United Nations to consider what the United Nations and the specialized international agencies could do in this program.

Public Papers of Truman, 1949, p.331

The Secretary General of the United Nations thereupon asked the United Nations secretariat and the secretariats of the specialized international agencies to draw up cooperative plans for technical assistance to under-developed areas. As a result, a survey was made of technical projects suitable for these agencies in such fields as industry, labor, agriculture, scientific research with respect to natural resources, and fiscal management. The total cost of the program submitted as a result of this survey was estimated to be about 35 million dollars for the first year. It is expected that the United Nations and the specialized international agencies will shortly adopt programs for carrying out projects of the type included in this survey.

Public Papers of Truman, 1949, p.331

In addition to our participation in this work of the United Nations, much of the technical assistance required can be provided directly by the United States to countries needing it. A careful examination of the existing information concerning the underdeveloped countries shows particular need for technicians and experts with United States training in plant and animal diseases, malaria and typhus control, water supply and sewer systems, metallurgy and mining, and nearly all phases of industry.

Public Papers of Truman, 1949, p.331

It has already been shown that experts in these fields can bring about tremendous improvements. For example, the health of the people of many foreign communities has been greatly improved by the work of United States sanitary engineers in setting up modern water supply systems. The food supply of many areas has been increased as the result of the advice of United States agricultural experts in the control of animal diseases and the improvement of crops. These are only examples of the wide range of benefits resulting from the careful application of modern techniques to local problems. The benefits which a comprehensive program of expert assistance will make possible can only be revealed by studies and surveys undertaken as a part of the program itself.

Public Papers of Truman, 1949, p.331

To inaugurate the program, I recommend a first year appropriation of not to exceed

45 million dollars. This includes 10 million dollars already requested in the 1950 Budget for activities of this character. The sum recommended will cover both our participation in the programs of the international agencies and the assistance to be provided directly by the United States.

Public Papers of Truman, 1949, p.331–p.332

In every case, whether the operation is [p.332] conducted through the United Nations, the other international agencies, or directly by the United States, the country receiving the benefit of the aid will be required to bear a substantial portion of the expense.

Public Papers of Truman, 1949, p.332

The activities necessary to carry out our program of technical aid will be diverse in character and will have to be performed by a number of different government agencies and private instrumentalities. It will be necessary to utilize not only the resources of international agencies and the United States Government, but also the facilities and the experience of the private business and nonprofit organizations that have long been active in this work.

Public Papers of Truman, 1949, p.332

Since a number of Federal agencies will be involved in the program, I recommend that the administration of the program be vested in the President, with authority to delegate to the Secretary of State and to other government officers, as may be appropriate. With such administrative flexibility, it will be possible to modify the management of the program as it expands and to meet the practical problems that will arise in its administration in the future.

Public Papers of Truman, 1949, p.332

The second category of outside aid needed by the under-developed areas is the provision of capital for the creation of productive enterprises. The International Bank for Reconstruction and Development and the Export-Import Bank have provided some capital for under-developed areas, and, as the economic growth of these areas progresses, should be expected to provide a great deal more. In addition, private sources of funds must be encouraged to provide a major part of the capital required.

Public Papers of Truman, 1949, p.332

In view of the present troubled condition of the world—the distortion of world trade, the shortage of dollars, and other aftereffects of the war—the problem of substantially increasing the flow of American capital abroad presents serious difficulties. In all probability novel devices will have to be employed if the investment from this country is to reach proportions sufficient to carry out the objectives of our program.

Public Papers of Truman, 1949, p.332

All countries concerned with the program should work together to bring about conditions favorable to the flow of private capital. To this end we are negotiating agreements with other countries to protect the American investor from unwarranted or discriminatory treatment under the laws of the country in which he makes his investment.

Public Papers of Truman, 1949, p.332

In negotiating such treaties we do not, of course, ask privileges for American capital greater than those granted to other investors in under-developed countries or greater than we ourselves grant in this country. We believe that American enterprise should not waste local resources, should provide adequate wages and working conditions for local labor, and should bear an equitable share of the burden of local taxes. At the same time, we believe that investors will send their capital abroad on an increasing scale only if they are given assurance against risk of loss through expropriation without compensation, unfair or discriminatory treatment, destruction through war or rebellion, or the inability to convert their earnings into dollars.

Public Papers of Truman, 1949, p.332

Although our investment treaties will be directed at mitigating such risks, they cannot eliminate them entirely. With the best will in the world a foreign country, particularly an under-developed country, may not be able to obtain the dollar exchange necessary for the prompt remittance of earnings on dollar capital. Damage or loss resulting from internal and international violence may be beyond the power of our treaty signatories to control.

Public Papers of Truman, 1949, p.333

Many of these conditions of instability in under-developed areas which deter foreign investment are themselves a consequence of the lack of economic development which only foreign investment can cure. Therefore, to wait until stable conditions are assured before encouraging the outflow of capital to under-developed areas would defer the attainment of our objectives indefinitely. It is necessary to take vigorous action now to break out of this vicious circle.

Public Papers of Truman, 1949, p.333

Since the development of under-developed economic areas is of major importance in our foreign policy, it is appropriate to use the resources of the government to accelerate private efforts toward that end. I recommend, therefore, that the Export-Import Bank be authorized to guarantee United States private capital, invested in productive enterprises abroad which contribute to economic development in under-developed areas, against the risks peculiar to those investments.

Public Papers of Truman, 1949, p.333

This guarantee activity will at the outset be largely experimental. Some investments may require only a guarantee against the danger of inconvertibility, others may need protection against the danger of expropriation and other dangers as well. It is impossible at this time to write a standard guarantee. The Bank will, of course, be able to require the payment of premiums for such protection, but there is no way now to determine what premium rates will be most appropriate in the long run. Only experience can provide answers to these questions.

Public Papers of Truman, 1949, p.333

The Bank has sufficient resources at the present time to begin the guarantee program and to carry on its lending activities as well without any increase in its authorized funds. If the demand for guarantees should prove large, and lending activities continue on the scale expected, it will be necessary to request the Congress at a later date to increase the authorized funds of the Bank.

Public Papers of Truman, 1949, p.333

The enactment of these two legislative proposals, the first pertaining to technical assistance and the second to the encouragement of foreign investment, will constitute a national endorsement of a program of major importance in our efforts for world peace and economic stability. Nevertheless, these measures are only the first steps. We are here embarking on a venture that extends far into the future. We are at the beginning of a rising curve of activity, private, governmental and international, that will continue for many years to come. It is all the more important, therefore, that we start promptly.

Public Papers of Truman, 1949, p.333

In the economically under-developed areas of the world today there are new creative energies. We look forward to the time when these countries will be stronger and more independent than they are now, and yet more closely bound to us and to other nations by ties of friendship and commerce, and by kindred ideals. On the other hand, unless we aid the newly awakened spirit in these peoples to find the course of fruitful development, they may fall under the control of those whose philosophy is hostile to human freedom, thereby prolonging the unsettled state of the world and postponing the achievement of permanent peace.

Public Papers of Truman, 1949, p.333

Before the peoples of these areas we hold out the promise of a better future through the democratic way of life. It is vital that we move quickly to bring the meaning of that promise home to them in their daily lives.

HARRY S. TRUMAN

Public Papers of Truman, 1949, p.333

NOTE: On June 5, 1950, the President approved the Foreign Economic Assistance Act of 1950 (64 Stat. 198).

Statement by President Truman on the Situation in Korea, 1950

Title: Statement by President Truman on the Situation in Korea

Author: Harry S Truman

Date: June 27, 1950

Source: Public Papers of the Presidents, Truman, 1950, p.492

Public Papers of Truman, 1950, p.492

IN KOREA the Government forces, which were armed to prevent border raids and to preserve internal security, were attacked by invading forces from North Korea. The Security Council of the United Nations called upon the invading troops to cease hostilities and to withdraw to the 38th parallel. This they have not done, but on the contrary have pressed the attack. The Security Council called upon all members of the United Nations to render every assistance to the United Nations in the execution of this resolution. In these circumstances I have ordered United States air and sea forces to give the Korean Government troops cover and support.

Public Papers of Truman, 1950, p.492

The attack upon Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war. It has defied the orders of the Security Council of the United Nations issued to preserve international peace and security. In these circumstances the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific area and to United States forces performing their lawful and necessary functions in that area.

Public Papers of Truman, 1950, p.492

Accordingly I have ordered the 7th Fleet to prevent any attack on Formosa. As a corollary of this action I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The 7th Fleet will see that this is done. The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.

Public Papers of Truman, 1950, p.492

I have also directed that United States Forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated.

Public Papers of Truman, 1950, p.492

I have similarly directed acceleration in the furnishing of military assistance to the forces of France and the Associated States in Indochina and the dispatch of a military mission to provide dose working relations with those forces.

Public Papers of Truman, 1950, p.492

I know that all members of the United Nations will consider carefully the consequences of this latest aggression in Korea in defiance of the Charter of the United Nations. A return to the rule of force in international affairs would have far-reaching effects. The United States will continue to uphold the rule of law.

Public Papers of Truman, 1950, p.492

I have instructed Ambassador Austin, as the representative of the United States to the Security Council, to report these steps to the Council.

President Truman's Veto of the Internal Security Bill, 1950

Title: President Truman's Veto of the Internal Security Bill

Author: Harry S Truman

Date: September 22, 1950

Source: Public Papers of the Presidents, Truman, 1950, pp.645-653

Public Papers of Truman, 1950, p.645

To the House of Representatives:

Public Papers of Truman, 1950, p.645

I return herewith, without my approval, H.R. 9490, the proposed "Internal Security Act of 1950.''

Public Papers of Truman, 1950, p.645

I am taking this action only after the most serious study and reflection and after consultation with the security and intelligence agencies of the Government. The Department of Justice, the Department of Defense, the Central Intelligence Agency, and the Department of State have all advised me that the bill would seriously damage the security and the intelligence operations for which they are responsible. They have strongly expressed the hope that the bill would not become law.

Public Papers of Truman, 1950, p.645

This is an omnibus bill containing many different legislative proposals with only one thing in common: they are all represented to be "anti-communist." But when the many complicated pieces of the bill are analyzed in detail, a startling result appears.

Public Papers of Truman, 1950, p.645

H.R. 9490 would not hurt the communists. Instead, it would help them.

Public Papers of Truman, 1950, p.645

It has been claimed over and over again that this is an "anti-communist" bill—a "communist control" bill. But in actual operation the bill would have results exactly the opposite of those intended.

Public Papers of Truman, 1950, p.645

It would actually weaken our existing internal security measures and would seriously hamper the Federal Bureau of Investigation and our other security agencies.

Public Papers of Truman, 1950, p.645

It would help the communists in their efforts to create dissension and confusion within our borders.

Public Papers of Truman, 1950, p.645

It would help the communist propagandists throughout the world who are trying to undermine freedom by discrediting as hypocrisy the efforts of the United States on behalf of freedom.

Public Papers of Truman, 1950, p.645

Specifically, some of the principal objections to the bill are as follows:

Public Papers of Truman, 1950, p.645

1. It would aid potential enemies by requiring the publication of a complete list of vital defense plants, laboratories, and other installations.

Public Papers of Truman, 1950, p.645

2. It would require the Department of Justice and its Federal Bureau of Investigation to waste immense amounts of time and energy attempting to carry out its unworkable registration provisions.

Public Papers of Truman, 1950, p.645

3. It would deprive us of the great assistance of many aliens in intelligence matters.

Public Papers of Truman, 1950, p.645

4. It would antagonize friendly governments.

Public Papers of Truman, 1950, p.645

5. It would put the Government of the United States in the thought control business.

Public Papers of Truman, 1950, p.646

6. It would make it easier for subversive aliens to become naturalized as United States citizens.

Public Papers of Truman, 1950, p.646

7. It would give Government officials vast powers to harass all of our citizens in the exercise of their right of free speech.

Public Papers of Truman, 1950, p.646

Legislation with these consequences is not necessary to meet the real dangers which communism presents to our free society. Those dangers are serious, and must be met. But this bill would hinder us, not help us, in meeting them. Fortunately, we already have on the books strong laws which give us most of the protection we need from the real dangers of treason, espionage, sabotage, and actions looking to the overthrow of our Government by force and violence. Most of the provisions of this bill have no relation to these real dangers.

Public Papers of Truman, 1950, p.646

One provision alone of this bill is enough to demonstrate how far it misses the real target. Section 5 would require the Secretary of Defense to "proclaim" and "have published in the Federal Register" a public catalogue of defense plants, laboratories, and all other facilities vital to our national defense-no matter how secret. I cannot imagine any document a hostile foreign government would desire more. Spies and saboteurs would willingly spend years of effort seeking to find out the information that this bill would require the Government to hand them on a silver platter. There are many provisions of this bill which impel me to return it without my approval, but this one would be enough by itself. It is inconceivable to me that a majority of the Congress could expect the Commander-in-Chief of the armed forces of the United States to approve such a flagrant violation of proper security safeguards.

Public Papers of Truman, 1950, p.646

This is only one example of many provisions in the bill which would in actual practice work to the detriment of our national security.

Public Papers of Truman, 1950, p.646

I know that the Congress had no intention of achieving such results when it passed this bill. I know that the vast majority of the members of Congress who voted for the bill sincerely intended to strike a blow at the communists.

Public Papers of Truman, 1950, p.646

It is true that certain provisions of this bill would improve the laws protecting us against espionage and sabotage. But these provisions are greatly outweighed by others which would actually impair our security.

Public Papers of Truman, 1950, p.646

I repeat, the net result of this bill would be to help the communists, not to hurt them.

Public Papers of Truman, 1950, p.646

I therefore most earnestly request the Congress to reconsider its action. I am confident that on more careful analysis most members of Congress will recognize that this bill is contrary to the best interests of our country at this critical time.

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H.R. 9490 is made up of a number of different parts. In summary, their purposes and probable effects may be described as follows:

Public Papers of Truman, 1950, p.646

Sections 1 through 17 are designed for two purposes. First, they are intended to force communist organizations to register and to divulge certain information about themselves—information on their officers, their finances, and, in some cases, their membership. These provisions would in practice be ineffective, and would result in obtaining no information about communists that the FBI and our other security agencies do not already have. But in trying to enforce these sections, we would have to spend a great deal of time, effort, and money—all to no good purpose.

Public Papers of Truman, 1950, p.646–p.647

Second, those provisions are intended to impose various penalties on communists and others covered by the terms of the bill. So far as communists are concerned, all these penalties which can be practicably enforced are already in effect under existing laws and procedures. But the language of the bill is so broad and vague that it might well result [p.647] in penalizing the legitimate activities of people who are not communists at all, but loyal citizens.

Public Papers of Truman, 1950, p.647

Thus the net result of these sections of the bill would be: no serious damage to the communists, much damage to the rest of us. Only the communist movement would gain from such an outcome.

Public Papers of Truman, 1950, p.647

Sections 18 through 21 and section 23 of this bill constitute, in large measure, the improvements in our internal security laws which I recommended some time ago. Although the language of these sections is in some respects weaker than is desirable, I should be glad to approve these provisions if they were enacted separately, since they are improvements developed by the FBI and other Government security agencies to meet certain clear deficiencies of the present law. But even though these improvements are needed, other provisions of the bill would weaken our security far more than these would strengthen it. We have better protection for our internal security under existing law than we would have with the amendments and additions made by H.R. 9490.

Public Papers of Truman, 1950, p.647

Sections 22 and 25 of this bill would make sweeping changes in our laws governing the admission of aliens to the United States and their naturalization as citizens.

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The ostensible purpose of these provisions is to prevent persons who would be dangerous to our national security from entering the country or becoming citizens. In fact, present law already achieves that objective.

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What these provisions would actually do is to prevent us from admitting to our country, or to citizenship, many people who could make real contributions to our national strength. The bill would deprive our Government and our intelligence agencies of the valuable services of aliens in security operations. It would require us to exclude and to deport the citizens of some friendly noncommunist countries. Furthermore, it would actually make it easier for subversive aliens to become United States citizens. Only the communist movement would gain from such actions.

Public Papers of Truman, 1950, p.647

Section 24 and sections 26 through 30 of this bill make a number of minor changes in the naturalization laws. None of them is of great significance—nor are they particularly relevant to the problem of internal security. These provisions, for the most part, have received little or no attention in the legislative process. I believe that several of them would not be approved by the Congress if they were considered on their merits, rather than as parts of an omnibus bill.

Public Papers of Truman, 1950, p.647

Section 31 of this bill makes it a crime to attempt to influence a judge or jury by public demonstration, such as picketing. While the courts already have considerable power to punish such actions under existing law, I have no objection to this section.

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Sections 100 through 117 of this bill (Title II) are intended to give the Government power, in the event of invasion, war, or insurrection in the United States in aid of a foreign enemy, to seize and hold persons who could be expected to attempt acts of espionage or sabotage, even though they had as yet committed no crime. It may be that legislation of this type should be on the statute books. But the provisions in H.R. 9490 would very probably prove ineffective to achieve the objective sought, since they would not suspend the writ of habeas corpus, and under our legal system to detain a man not charged with a crime would raise serious constitutional questions unless the writ of habeas corpus were suspended. Furthermore, it may well be that other persons than those covered by these provisions would be more important to detain in the event of emergency. This whole problem, therefore, should clearly be studied more thoroughly before further legislative action along these lines is considered.

Public Papers of Truman, 1950, p.648

In brief, when all the provisions of H.R. 9490 are considered together, it is evident that the great bulk of them are not directed toward the real and present dangers that exist from communism. Instead of striking blows at communism, they would strike blows at our own liberties and at our position in the forefront of those working for freedom in the world. At a time when our young men are fighting for freedom in Korea, it would be tragic to advance the objectives of communism in this country, as this bill would do.

Public Papers of Truman, 1950, p.648

Because I feel so strongly that this legislation would be a terrible mistake, I want to discuss more fully its worst features—sections r through 17, and sections 22 and 25.

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Most of the first seventeen sections of H.R. 9490 are concerned with requiting registration and annual reports, by what the bill calls "communist-action organizations" and "communist-front organizations," of names of officers, sources and uses of funds, and, in the case of "communist-action organizations," names of members.

Public Papers of Truman, 1950, p.648

The idea of requiring communist organizations to divulge information about themselves is a simple and attractive one. But it is about as practical as requiring thieves to register with the sheriff. Obviously, no such organization as the Communist Party is likely to register voluntarily.

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Under the provisions of the bill, if an organization which the Attorney General believes should register does not do so, he must request a five-man "Subversive Activities Control Board" to order the organization to register. The Attorney General would have to produce proof that the organization in question was in fact a "communist-action" or a "communist-front organization." To do this he would have to offer evidence relating to every aspect of the organization's activities. The organization could present opposing evidence. Prolonged hearings would be required to allow both sides to present proof and to cross-examine opposing witnesses.

Public Papers of Truman, 1950, p.648

To estimate the duration of such a proceeding involving the Communist Party, we need only recall that on much narrower issues the trial of the eleven communist leaders under the Smith Act consumed nine months. In a hearing under this bill, the difficulties of proof would be much greater and would take a much longer time.

Public Papers of Truman, 1950, p.648

The bill lists a number of criteria for the Board to consider in deciding whether or not an organization is a "communist-action" or "communist-front" organization. Many of these deal with the attitudes or states of mind of the organization's leaders. It is frequently difficult in legal proceedings to establish whether or not a man has committed an overt act, such as theft or perjury. But under this bill, the Attorney General would have to attempt the immensely more difficult task of producing concrete legal evidence that men have particular ideas or opinions. This would inevitably require the disclosure of many of the FBI's confidential sources of information and thus would damage our national security.

Public Papers of Truman, 1950, p.648

If, eventually, the Attorney General should overcome these difficulties and get a favorable decision from the Board, the Board's decision could be appealed to the Courts. The Courts would review any questions of law involved, and whether the Board's findings of fact were supported by the "preponderance" of the evidence.

Public Papers of Truman, 1950, p.648

All these proceedings would require great effort and much time. It is almost certain that from two to four years would elapse between the Attorney General's decision to go before the Board with a case, and the final disposition of the matter by the Courts.

Public Papers of Truman, 1950, p.648

And when all this time and effort had been spent, it is still most likely that no organization would actually register.

Public Papers of Truman, 1950, p.649

The simple fact is that when the Courts at long last found that a particular organization was required to register, all the leaders of the organization would have to do to frustrate the law would be to dissolve the organization and establish a new one with a different name and a new roster of nominal officers. The Communist Party has done this again and again in countries throughout the world. And nothing could be done about it except to begin all over again the long dreary process of investigative, administrative, and judicial proceedings to require registration.

Public Papers of Truman, 1950, p.649

Thus the net result of the registration provisions of this bill would probably be an endless chasing of one organization after another, with the communists always able to frustrate the law enforcement agencies and prevent any final result from being achieved. It could only result in wasting the energies of the Department of Justice and in destroying the sources of information of its FBI. To impose these fruitless burdens upon the FBI would divert it from its vital security duties and thus give aid and comfort to the very communists whom the bill is supposed to control.

Public Papers of Truman, 1950, p.649

Unfortunately, these provisions are not merely ineffective and unworkable. They represent a clear and present danger to our institutions.

Public Papers of Truman, 1950, p.649

In so far as the bill would require registration by the Communist Party itself, it does not endanger our traditional liberties. However, the application of the registration requirements to so-called communist-front organizations can be the greatest danger to freedom of speech, press and assembly, since the Alien and Sedition Laws of 1798. This danger arises out of the criteria or standards to be applied in determining whether an organization is a communist-front organization.

Public Papers of Truman, 1950, p.649

There would be no serious problem if the bill required proof that an organization was controlled and financed by the Communist Party before it could be classified as a communist-front organization. However, recognizing the difficulty of proving those matters, the bill would permit such a determination to be based solely upon "the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those" of the communist movement.

Public Papers of Truman, 1950, p.649

This provision could easily be used to classify as a communist-front organization any organization which is advocating a single policy or objective which is also being urged by the Communist Party or by a communist foreign government. In fact, this may be the intended result, since the bill defines "organization" to include "a group of persons \* \* \* permanently or temporarily associated together for joint action on any subject or subjects." Thus, an organization which advocates low-cost housing for sincere humanitarian reasons might be classified as a communist-front organization because the communists regularly exploit slum conditions as one of their fifth-column techniques.

Public Papers of Truman, 1950, p.649

It is not enough to say that this probably would not be done. The mere fact that it could be done shows clearly how the bill would open a Pandora's box of opportunities for official condemnation of organizations and individuals for perfectly honest opinions which happen to be stated also by communists.

Public Papers of Truman, 1950, p.649

The basic error of these sections is that they move in the direction of suppressing opinion and belief. This would be a very dangerous course to take, not because we have any sympathy for communist opinions, but because any governmental stifling of the free expression of opinion is a long step toward totalitarianism.

Public Papers of Truman, 1950, p.649–p.650

There is no more fundamental axiom of American freedom than the familiar statement: In a free country, we punish men for [p.650] the crimes they commit, but never for the opinions they have. And the reason this is so fundamental to freedom is not, as many suppose, that it protects the few unorthodox from suppression by the majority. To permit freedom of expression is primarily for the benefit of the majority, because it protects criticism, and criticism leads to progress.

Public Papers of Truman, 1950, p.650

We can and we will prevent espionage, sabotage, or other actions endangering our national security. But we would betray our finest traditions if we attempted, as this bill would attempt, to curb the simple expression of opinion. This we should never do, no matter how distasteful the opinion may be to the vast majority of our people. The course proposed by this bill would delight the communists, for it would make a mockery of the Bill of Rights and of our claims to stand for freedom in the world.

Public Papers of Truman, 1950, p.650

And what kind of effect would these provisions have on the normal expression of political views ? Obviously, if this law were on the statute books, the part of prudence would be to avoid saying anything that might be construed by someone as not deviating sufficiently from the current communist propaganda line. And since no one could be sure in advance what views were safe to express, the inevitable tendency would be to express no views on controversial subjects.

Public Papers of Truman, 1950, p.650

The result could only be to reduce the vigor and strength of our political life—an outcome that the communists would happily welcome, but that free men should abhor.

Public Papers of Truman, 1950, p.650

We need not fear the expression of ideas-we do need to fear their suppression.

Public Papers of Truman, 1950, p.650

Our position in the vanguard of freedom rests largely on our demonstration that the free expression of opinion, coupled with government by popular consent, leads to national strength and human advancement. Let us not, in cowering and foolish fear, throw away the ideals which are the fundamental basis of our free society.

Public Papers of Truman, 1950, p.650

Not only are the registration provisions of this bill unworkable and dangerous, they are also grossly misleading in that all but one of the objectives which are claimed for them are already being accomplished by other and superior methods—and the one objective which is not now being accomplished would not in fact be accomplished under this bill either.

Public Papers of Truman, 1950, p.650

It is claimed that the bill would provide information about the communist party and its members. The fact is, the FBI already possesses very complete sources of information concerning the communist movement in this country. If the FBI must disclose its sources of information in public hearings to require registration under this bill, its present sources of information, and its ability to acquire new information, will be largely destroyed.

Public Papers of Truman, 1950, p.650

It is claimed that this bill would deny income tax exemptions to communist organizations. The fact is that the Bureau of Internal Revenue already denies income tax exemptions to such organizations.

Public Papers of Truman, 1950, p.650

It is claimed that this bill would deny passports to communists. The fact is that the Government can and does deny passports to communists under existing law.

Public Papers of Truman, 1950, p.650

It is claimed that this bill would prohibit the employment of communists by the Federal Government. The fact is that the employment of communists by the Federal Government is already prohibited and, at least in the Executive Branch, there is an effective program to see that they are not employed.

Public Papers of Truman, 1950, p.650–p.651

It is claimed that this bill would prohibit the employment of communists in defense plants. The fact is that it would be years before this bill would have any effect of this nature—if it ever would. Fortunately, this objective is already being substantially achieved under the present procedures of the Department of Defense, and if the Congress [p.651] would enact one of the provisions I have recommended—which it did not include in this bill—the situation would be entirely taken care of, promptly and effectively.

Public Papers of Truman, 1950, p.651

It is also claimed—and this is the one new objective of the registration provisions of this bill—that it would require communist organizations to label all their publications and radio and television broadcasts as emanating from a communist source. The fact is that this requirement, even if constitutional, could be easily and permanently evaded, simply by the continuous creation of new organizations to distribute communist information.

Public Papers of Truman, 1950, p.651

Section 4(a) of the bill, like its registration provisions, would be ineffective, would be subject to dangerous abuse, and would seek to accomplish an objective which is already better accomplished under existing law.

Public Papers of Truman, 1950, p.651

This provision would make unlawful any agreement "to perform any act which would substantially contribute to the establishment within the United States" of a foreign controlled dictatorship. Of course, this provision would be unconstitutional if it infringed upon the fundamental right of the American people to establish for themselves by constitutional methods any form of government they choose. To avoid this, it is provided that this section "shall not apply to the proposal of a constitutional amendment." If this language limits the prohibition of the section to the use of unlawful methods, then it adds nothing to the Smith Act, under which eleven communist leaders have been convicted, and would be more difficult to enforce. Thus, it would accomplish nothing. Moreover, the bill does not even purport to define the phrase, unique in a criminal statute, "substantially contribute." A phrase so vague raises a serious constitutional question.

Public Papers of Truman, 1950, p.651

Sections 22 and 25 of this bill are directed toward the specific questions of who should be admitted to our country, and who should be permitted to become a United States citizen. I believe there is general agreement that the answers to those questions should be: We should admit to our country, within the available quotas, anyone with a legitimate purpose who would not endanger our security, and we should admit to citizenship, any immigrant who will be a loyal and constructive member of the community. Those are essentially the standards set by existing law. Under present law, we do not admit to our country known communists, because we believe they work to overthrow our Government, and we do not admit communists to citizenship, because we believe they are not loyal to the United States.

Public Papers of Truman, 1950, p.651

The changes which would be made in the present law by sections 22 and 25 would not reinforce those sensible standards. Instead, they would add a number of new standards, which, for no good and sufficient reason, would interfere with our relations with other countries and seriously damage our national security.

Public Papers of Truman, 1950, p.651

Section 22 would, for example, exclude from our country anyone who advocates any form of totalitarian or one-party government. We of course believe in the democratic system of competing political parties, offering a choice of candidates and policies. But a number of countries with which we maintain friendly relations have a different form of government.

Public Papers of Truman, 1950, p.651–p.652

Until now, no one has suggested that we should abandon cultural and commercial relations with a country merely because it has a form of government different from ours. Yet section 22 would require that. As one instance, it is clear that under the definitions of the bill the present government of Spain, among others, would be classified as "totalitarian." As a result, the Attorney General would be required to exclude [p.652] from the United States all Spanish businessmen, students, and other non-official travelers who support the present government of their country. I cannot understand how the sponsors of this bill can think that such an action would contribute to our national security

Public Papers of Truman, 1950, p.652

Moreover, the provisions of section 22 of this bill would strike a serious blow to our national security by taking away from the Government the power to grant asylum in this country to foreign diplomats who repudiate communist imperialism and wish to escape its reprisals. It must be obvious to anyone that it is in our national interest to persuade people to renounce communism, and to encourage their defection from communist forces. Many of these people are extremely valuable to our intelligence operations. Yet under this bill the Government would lose the limited authority it now has to offer asylum in our country as the great incentive for such defection.

Public Papers of Truman, 1950, p.652

In addition, the provisions of section 22 would sharply limit the authority of the Government to admit foreign diplomatic representatives and their families on official business. Under existing law, we already have the authority to send out of the country any person who abuses diplomatic privileges by working against the interests of the United States. But under this bill a whole series of unnecessary restrictions would be placed on the admission of diplomatic personnel. This is not only ungenerous for a country which eagerly sought and proudly holds the honor of being the seat of the United Nations, it is also very unwise, because it makes our country appear to be fearful of "foreigners," when in fact we are working as hard as we know how to build mutual confidence and friendly relations among the nations of the world.

Public Papers of Truman, 1950, p.652

Section 22 is so contrary to our national interests that it would actually put the Government into the business of thought control by requiring the deportation of any alien who distributes or publishes, or who is affiliated with an organization which distributes or publishes, any written or printed matter advocating (or merely expressing belief in) the economic and governmental doctrines of any form of totalitarianism. This provision does not require an evil intent or purpose on the part of the alien, as does a similar provision in the Smith Act. Thus, the Attorney General would be required to deport any alien operating or connected with a well-stocked bookshop containing books on economics or politics written by supporters of the present government of Spain, of Yugoslavia, or any one of a number of other countries. Section 25 would make the same aliens ineligible for citizenship. There should be no room in our laws for such hysterical provisions. The next logical step would be to "burn the books."

Public Papers of Truman, 1950, p.652

This illustrates the fundamental error of these immigration and naturalization provisions. It is easy to see that they are hasty and ill-considered. But far more significant—and far more dangerous—is their apparent underlying purpose. Instead of trying to encourage the free movement of people, subject only to the real requirements of national security, these provisions attempt to bar movement to anyone who is, or once was, associated with ideas we dislike, and in the process, they would succeed in barring many people whom it would be to our advantage to admit.

Public Papers of Truman, 1950, p.652

Such an action would be a serious blow to our work for world peace. We uphold—or have upheld till now, at any rate—the concept of freedom on an international scale. That is the root concept of our efforts to bring unity among the free nations and peace in the world.

Public Papers of Truman, 1950, p.652–p.653

The communists, on the other hand, attempt to break down in every possible way [p.653] the free interchange of persons and ideas. It will be to their advantage, and not ours, if we establish for ourselves an "iron curtain" against those who can help us in the fight for freedom.

Public Papers of Truman, 1950, p.653

Another provision of the bill which would greatly weaken our national security is Section 25, which would make subversive aliens eligible for naturalization as soon as they withdraw from organizations required to register under this bill, whereas under existing law they must wait for a period of ten years after such withdrawal before becoming eligible for citizenship. This proposal is clearly contrary to the national interest, and clearly gives to the communists an advantage they do not have under existing law.

Public Papers of Truman, 1950, p.653

I have discussed the provisions of this bill at some length in order to explain why I am convinced that it would be harmful to our security and damaging to the individual rights of our people if it were enacted.

Public Papers of Truman, 1950, p.653

Earlier this month, we launched a great Crusade for Freedom designed, in the words of General Eisenhower, to fight the big lie with the big truth. I can think of no better way to make a mockery of that crusade and of the deep American belief in human freedom and dignity which underlie it than to put the provisions of H.R. 9490 on our statute books.

Public Papers of Truman, 1950, p.653

I do not undertake lightly the responsibility of differing with the majority in both Houses of Congress who have voted for this bill. We are all Americans; we all wish to safeguard and preserve our constitutional liberties against internal and external enemies. But I cannot approve this legislation, which instead of accomplishing its avowed purpose would actually interfere with our liberties and help the communists against whom the bill was aimed.

Public Papers of Truman, 1950, p.653

This is a time when we must marshal all our resources and all the moral strength of our free system in self-defense against the threat of communist aggression. We will fail in this, and we will destroy all that we seek to preserve, if we sacrifice the liberties of our citizens in a misguided attempt to achieve national security.

Public Papers of Truman, 1950, p.653

There is no reason why we should fail. Our country has been through dangerous times before, without losing our liberties to external attack or internal hysteria. Each of us, in Government and out, has a share in guarding our liberties. Each of us must search his own conscience to find whether he is doing all that can be done to preserve and strengthen them.

Public Papers of Truman, 1950, p.653

No considerations of expediency can justify the enactment of such a bill as this, a bill which would so greatly weaken our liberties and give aid and comfort to those who would destroy us. I have, therefore, no alternative but to return this bill without my approval, and I earnestly request the Congress to reconsider its action.

HARRY S. TRUMAN

Public Papers of Truman, 1950, p.653

NOTE: On September 23 the Congress passed the bill over the President's veto. As enacted, H.R. 9490 is Public Law 831, 81st Congress (64 Stat. 987).

Public Papers of Truman, 1950, p.653

See also Item 207.

Joint Anti-Fascist Refugee Committee v. McGrath, 1951

Title: Joint Anti-Fascist Refugee Committee v. McGrath

Author: U.S. Supreme Court

Date: April 30, 1951

Source: 341 U.S. 123 (No. 8)

This case was argued October 11, 1950, and was decided April 30, 1951, together with No. 7, National Council of American-Soviet Friendship, Inc. et al. v. McGrath, Attorney General, et al.; and No. 71, International Workers Order, Inc. et al. v. McGrath, Attorney General, et al., also on certiorari to the same court.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Syllabus

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

Purporting to act under Part III, § 3 of Executive Order No. 9835, the Attorney General, without notice or hearing, designated the three petitioner organizations as Communist in a list furnished to the Loyalty Review Board for use in connection with determinations of disloyalty of government employees. The Board disseminated the list to all departments and agencies of the Government. Petitioners sued for declaratory judgments and injunctive relief. They alleged that their organizations were engaged in charitable or civic activities or in the business of fraternal insurance; all three implied an attitude of cooperation and helpfulness, rather than one of hostility or disloyalty toward the United States; and two expressly alleged that their respective organizations were not within any classification listed in Part III, § 3 of the Order. Petitioners further alleged that the actions of the Attorney General and the Board greatly hampered their activities and deprived them of rights in violation of the Constitution; that the Executive Order violates the First, Fifth, Ninth, and Tenth Amendments to the Constitution; that § 9A of the Hatch Act, as construed and applied, is void; and that petitioners were suffering irreparable injury and had no adequate remedy at law. The District Court granted motions to dismiss the complaints for failure to state claims upon which relief could be granted. The Court of Appeals affirmed.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

Held: The judgments are reversed, and the cases are remanded to the District Court with instructions to deny the motions that the complaints be dismissed for failure to state claims upon which relief could be granted. Pp. 124-125, 142.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123

85 U.S.App.D.C. 255, 177 F.2d 79; 86 U.S.App.D.C. 287, 182 F.2d 368, reversed. [341 U.S. 124]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

For the opinions of the Justices constituting the majority of the Court, see:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

Opinion of MR. JUSTICE BURTON, joined by MR. JUSTICE DOUGLAS, pp. 124-142.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

Opinion of MR. JUSTIC BLACK, pp. 142—149.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

Opinion of MR. JUSTICE FRANKFURTER, pp. 149—174.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

Opinion of MR. JUSTICE DOUGLAS, pp. 174-183.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

Opinion of MR. JUSTICE JACKSON, pp. 183187.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

For the dissenting opinion of MR. JUSTIC REED, joined by THE CHIEF JUSTICE and MR. JUSTICE MINTON, see pp. 187—213.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

MR. JUSTICE CLARK took no part in the consideration or decision of any of these cases.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

The cases are stated in the opinion of MR. JUSTICE BURTON, pp. 130-135. Reversed and remanded, p. 142.

BURTON, J., lead opinion

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

MR. JUSTICE BURTON announced the judgment of the Court and delivered the following opinion, in which MR. JUSTICE DOUGLAS joins.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 124

In each of these cases the same issue is raised by the dismissal of a complaint for its failure to state a claim upon which relief can be granted. That issue is whether, in the face of the facts alleged in the complaint and therefore admitted by the motion to dismiss, the Attorney [341 U.S. 125] General of the United States has authority to include the complaining organization in a list of organizations designated by him as Communist and furnished by him to the Loyalty Review Board of the United States Civil Service Commission. He claims to derive authority to do this from the following provisions in Part III, § 3, of Executive Order No. 9835, issued by the President, March 21, 1947:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

Part III—Responsibilities of Civil Service Commission

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

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1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

3 CFR, 1947 Supp., pp. 129, 131, 12 Fed.Reg. 1935, 1938.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 125

The respective complaints describe the complaining organizations as engaged in charitable or civic activities or in the business of fraternal insurance. Each implies an attitude of cooperation and helpfulness, rather than one of hostility or disloyalty, on the part of the organization toward the United States. Two of the complaints deny expressly that the organization is within any classification specified in Part III, § 3, of the order. [341 U.S. 126]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 126

For the reasons hereinafter stated, we conclude that, if the allegations of the complaints are taken as true (as they must be on the motions to dismiss), the Executive Order does not authorize the Attorney General to furnish the Loyalty Review Board with a list containing such a designation as he gave to each of these organizations without other justification. Under such circumstances, his own admissions render his designations patently arbitrary, because they are contrary to the alleged and uncontroverted facts constituting the entire record before us. The complaining organizations have not been afforded any opportunity to substantiate their allegations, but, at this stage of the proceedings, the Attorney General has chosen not to deny their allegations, and has not otherwise placed them in issue.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 126

Whatever may be his authority to designate these organizations as Communist upon undisclosed facts in his possession, he has not chosen to limit himself to that authorization. By his present procedure, he has claimed authority so to designate them upon the very facts alleged by them in their own complaints. Self-serving or not, those allegations do not state facts from which, alone, a reasonable determination can be derived that the organizations are Communist. To defend such a designation of them on the basis of the complaints alone is an assertion of Presidential authority so to designate an organization at the option of the Attorney General without reliance upon either disclosed or undisclosed facts supplying a reasonable basis for the determination. It is that, and only that outer limit of the authority of the Attorney General that is now before us.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 126

At least since 1939, increasing concern has been expressed, in and out of Congress, as to the possible presence in the employ of the Government of persons disloyal to it. This is reflected in the legislation, reports and executive orders culminating in Executive Order No. [341 U.S. 127] 9835. 1 That order announced the President's Employees Loyalty Program in the Executive Branch of the Government. It states that both

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 127

maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, and equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government…

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 127

It provides for the Loyalty Review Board, and sets up a standard for refusals of and removals from employment on grounds relating to loyalty. It outlines the use to be made in that connection of the list of organizations to be furnished by the Attorney General. 2 The [341 U.S. 128] organizations to be designated on that list are not limited to those having federal employees in their memberships. They may even exclude such employees from membership. Accordingly, the impact of the Attorney General's list is by no means limited to persons who are subject to the Employees Loyalty Program.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 128

The Attorney General included each of the complaining organizations in the list he furnished to the Loyalty Review Board November 24, 1947. That list was disseminated by the Board to all departments and agencies of the United States December 4, 1947. 13 Fed.Reg. 1473. 3 The complaints allege that such action resulted [341 U.S. 129] in nationwide publicity and caused the injuries to the complaining organizations which are detailed later. September 17, 1948, during the pendency of the instant cases but before action upon the appeals in any of them,

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 129

the Attorney General furnished the Loyalty Review Board with a consolidated list containing the names of all of the organizations previously designated by him as within Executive Order 9835, segregated according to the classifications enumerated in section 3, Part III, on the basis of dominant characteristics. 4

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 129

He enumerated six classifications and classified the three complaining organizations as "Communist." 5 [341 U.S. 130]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 130

The instant cases originated in the District Court for the District of Columbia, and come here after affirmance by the Court of Appeals. We granted certiorari because of the importance of the issues and their relation to the Employees Loyalty Program. No. 8, 339 U.S. 910; No. 7, 339 U.S. 956; No. 71, 340 U.S. 805.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 130

No. 8.—THE REFUGEE COMMITTEE CASE

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 130

The complainant is the Joint Anti-Fascist Refugee Committee, an unincorporated association in the City and State of New York. It is the petitioner here. The defendants in the original action were the Attorney General, Tom C. Clark, and the members of the Loyalty Review Board. J. Howard McGrath has been substituted as the Attorney General, and he and the members of that Board are the respondents here.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 130

The following statement, based on the allegations of the complaint, summarizes the situation before us: the complainant is "a charitable organization engaged in relief work" which carried on its relief activities from 1942 to 1946 under a license from the President's War Relief Control Board. Thereafter, it voluntarily submitted its program, budgets and audits for inspection by the Advisory Committee on Voluntary Foreign Aid of the United States Government. Since its inception, it has, through voluntary contributions, raised and disbursed funds for the benefit of anti-Fascist refugees who assisted the Government of Spain against its overthrow by force and violence. The organization's aims and purposes

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 130

are to raise, administer and distribute funds for the relief and rehabilitation of Spanish Republicans in exile and other [341 U.S. 131] anti-fascist refugees who fought in the war against Franco. 6

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 131

It has disbursed $1,011,448 in cash, and $217,903 in kind, for the relief of anti-Fascist refugees and their families. This relief has included money, food, shelter, educational facilities, medical treatment and supplies, and clothing to recipients in 11 countries, including the United States. The acts of the Attorney General and the Loyalty Review Board, purporting to be taken by them under authority of the Executive Order, have seriously and irreparably impaired, and will continue to so impair, the reputation of the organization and the moral support and good will of the American people necessary for the continuance of its charitable activities. Upon information and belief, these acts have caused many contributors, especially present and prospective civil servants, to reduce or discontinue their contributions to the organization; members and participants in its activities have been "vilified and subjected to public shame, disgrace, ridicule and obloquy…", thereby inflicting upon it economic injury and discouraging participation in its activities; it has been hampered in securing meeting places; and many people have refused to take part in its fund-raising activities.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 131

This complaint does not contain an express denial that the complaining organization is within the classifications [341 U.S. 132] named in Part III, § 3, of Executive Order No. 9835. It does, however, state that the actions of the Attorney General and the Loyalty Review Board which are complained of are unauthorized and without warrant in law, and amount to a deprivation of the complainant's rights in violation of the Constitution; that Executive Order No. 9835, on its face and as construed and applied, violates the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States, and that § 9A of the Hatch Act, 53 Stat. 1148, 5 U.S.C. (1946 ed., Supp. III) § 118j, insofar as it purports to authorize the instant application of the order, is void. 7 It asks for declaratory and injunctive relief, alleging that the complaining organization is suffering irreparable loss and that no adequate remedy is available to it except through the equity powers of the District Court. That court granted a motion to dismiss the complaint for its failure to state a claim upon which relief could be granted, and denied the complainant's motion for a preliminary injunction. 8 The Court of Appeals affirmed, one judge dissenting. Joint Anti-Fascist Refugee Committee v. Clark, 85 U.S.App.D.C. 255, 177 F.2d 79.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 132

No. 7.—THE NATIONAL COUNCIL CASE

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 132

In this case, the court below relied upon its decision in the Refugee Committee case and reached the same result, per curiam (unreported). Except as indicated below in our summary of the facts alleged, this case, for our purposes, is like the first. The complainants, who are the [341 U.S. 133] petitioners here, are the National Council of American-Soviet Friendship, Inc., a New York nonprofit membership corporation, organized in 1943; the Denver Council of American-Soviet Friendship, a Colorado unincorporated association and local affiliate of the National Council; and six individual officers and directors of one or the other of these organizations. The purpose of the National Council

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 133

is to strengthen friendly relations between the United States and the Union of Soviet Socialist Republics by disseminating to the American people educational material regarding the Soviet Union, by developing cultural relations between the peoples of the two nations, and by combatting anti-Soviet propaganda designed to disrupt friendly relations between the peoples of these nations and to divide the United Nations.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 133

The complaint alleges that all of the complainants are seriously and irreparably injured in their capacity to conduct the National Council's educational, cultural and fund-raising program, and that the individual complainants have suffered personal losses such as the removal of one from an assistant rectorship of a church, the loss by another of a teaching position, and numerous cancellations of lecturing and professional engagements. The complaint expressly states that—

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 133

In all its activities, the National Council has sought to further the best interests of the American people by lawful, peaceful and constitutional means. It has never in any way engaged in any conduct or activity which provides any basis for it to be designated as

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 133

totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means. [341 U.S. 134]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 134

No. 71.—THE INTERNATIONAL WORKERS CASE

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 134

The complaining organization, which is the petitioner here, is a fraternal benefit society, organized in 1930 as a corporation under the Insurance Law of the State of New York operating for the mutual benefit of its members and their beneficiaries and not for profit. It is licensed and operates in the District of Columbia and several states; its purposes are comparable to those of fraternal benefit societies in general; it operates under a lodge system, and has a representative form of government; at the time of the promulgation of the Department of Justice list, it had 185,000 members, including employees of the Federal Government and of various states and municipalities; it provided life insurance protection for its membership exceeding $120,000,000; its activities have been the subject of administrative and judicial proceedings in addition to those before the insurance departments of the states in which it functions, and, as a result of such proceedings, "the purposes, and activities of the order have been held to be free from any illegal or improper taint…. " 9 Among the allegations of damage, made upon information and belief, the complaint states that, [341 U.S. 135] solely as a result of the respondents' acts, there have been instituted against the order and its members a multiplicity of administrative proceedings, including those to rescind licenses, franchises, or tax exemptions, or to impede the naturalization of its members. Because of respondents' acts, many such members, especially present and prospective civil servants, have resigned or withdrawn from membership in the order, and many potential members have declined to join it. 10

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 135

The second amended complaint was dismissed by the District Court, 88 F.Supp. 873. That judgment was affirmed by the Court of Appeals, one judge dissenting. 86 U.S.App.D.C. 287, 182 F.2d 368.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 135

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1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 135

If, upon the allegations in any of these complaints, it had appeared that the acts of the respondents, from which relief was sought, were authorized by the President under his Executive Order No. 9835, the case would have bristled with constitutional issues. On that basis, the complaint would have raised questions as to the justiciability and [341 U.S. 136] merit of claims based upon the First, Fifth, Ninth and Tenth Amendments to the Constitution. It is our obligation, however, not to reach those issues unless the allegations before us squarely present them. See United States v. Lovett, 328 U.S. 303, 320. Cf. United Public Workers v. Mitchell, 330 U.S. 75; Myers v. United States, 272 U.S. 52.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 136

The Executive Order contains no express or implied attempt to confer power on anyone to act arbitrarily or capriciously—even assuming a constitutional power to do so. The order includes in the purposes of the President's program not only the protection of the United States against disloyal employees, but the "equal protection" of loyal employees against unfounded accusations of disloyalty. 3 CFR, 1947 Supp., p. 129, 12 Fed.Reg. 1935. The standards stated for refusal of and removal from employment require that, "on all the evidence, reasonable grounds [shall] exist for belief that the person involved is disloyal…. " Id. at 132, 12 Fed.Reg. 1938. Obviously it would be contrary to the purpose of that order to place on a list to be disseminated under the Loyalty Program any designation of an organization that was patently arbitrary and contrary to the uncontroverted material facts. The order contains the express requirement that each designation of an organization by the Attorney General on such a list shall be made only after an "appropriate…determination" as prescribed in Part III, § 3. An "appropriate" governmental "determination" must be the result of a process of reasoning. It cannot be an arbitrary fiat contrary to the known facts. This is inherent in the meaning of "determination." It is implicit in a government of laws, and not of men. Where an act of an official plainly falls outside of the scope of his authority, he does not make that act legal by doing it and then invoking the doctrine of administrative construction to cover it. [341 U.S. 137]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 137

It remains, therefore, for us to decide whether, on the face of these complaints, the Attorney General is acting within his authority in furnishing the Loyalty Review Board with a designation of the complaining organizations either as "Communist" or as within any other classification of Part III, § 3, of the order. In the National Council and International Workers cases, the complaining organization is alleged not only to be a civic or insurance organization, apparently above reproach from the point of view of loyalty to the United States, but it is also declared to be one that is not within any classification listed in Part III, § 3, of the order. In the Refugee Committee case, the negative allegations are omitted, but the affirmative allegations are incompatible with the inclusion of the complaining organization within any of the designated classifications. The inclusion of any of the complaining organizations in the designated list solely on the facts alleged in the respective complaints, which must be the basis for our decision here, is therefore an arbitrary and unauthorized act. In the two cases where the complaint specifically alleges the factual absence of any basis for the designation, and the respondents' motion admits that allegation, the designation is necessarily contrary to the record. The situation is comparable to one which would be created if the Attorney General, under like circumstances, were to designate the American National Red Cross as a Communist organization. Accepting as common knowledge the charitable and loyal status of that organization, there is no doubt that, in the absence of any contrary claim asserted against it, the Executive Order does not authorize its inclusion by the Attorney General as a "Communist" organization or as coming within any of the other classifications named in Part III, § 3, of the order.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 137

Since we find that the conduct ascribed to the Attorney General by the complaints is patently arbitrary, the deference [341 U.S. 138] ordinarily due administrative construction of an administrative order is not sufficient to bring his alleged conduct within the authority conferred by Executive Order No. 9835. The doctrine of administrative construction never has been carried so far as to permit administrative discretion to run riot. If applied to this case and compounded with the assumption that the President's Executive Order was drafted for him by his Attorney General, the conclusion would rest upon the premise that the Attorney General has attempted to delegate to himself the power to act arbitrarily. We cannot impute such an attempt to the Nation's highest law enforcement officer any more than we can to its President.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 138

In thus emphasizing an outer limit to what can be considered an authorized designation of an organization under the order, the instant cases serve a valuable purpose. They demonstrate that the order does not authorize, much less direct, the exercise of any such absolute power as would permit the inclusion in the Attorney General's list of a designation that is patently arbitrary or contrary to fact. 11 [341 U.S. 139]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 139

When the acts of the Attorney General and of the members of the Loyalty Review Board are stripped of the Presidential authorization claimed for them by the respondents, they stand, on the face of these complaints, as unauthorized publications of admittedly unfounded designations of the complaining organizations as "Communist." Their effect is to cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation. The complaints, on that basis, sufficiently charge that such acts violate each complaining organization's common law right to be free from defamation.

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A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 139

Restatement, Torts, § 559. 12

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 139

These complaints do not raise the question of the personal liability of public officials for money damages caused by their ultra vires acts. See Spalding v. Vilas, [341 U.S. 140] 161 U.S. 483. They ask only for declaratory and injunctive relief striking the names of the designated organizations from the Attorney General's published list and, as far as practicable, correcting the public records.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 140

The respondents are not immune from such a proceeding. Only recently, this Court recognized that

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the action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff's property) can be regarded as so "illegal" as to permit a suit for specific relief against the officer as an individual…if it is not within the officer's statutory powers or, if within those powers…, if the powers, or their exercise in the particular case, are constitutionally void.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 140

Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 701-702. The same is true here, where the acts complained of are beyond the officer's authority under the Executive Order. 13

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 140

Finally, the standing of the petitioners to bring these suits is clear. 14 The touchstone to justiciability is injury [341 U.S. 141] to a legally protected right 15 and the right of a bona fide charitable organization to carry on its work free from defamatory statements of the kind discussed is such a right.

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It is unrealistic to contend that, because the respondents gave no orders directly to the petitioners to change their course of conduct, relief cannot be granted against what the respondents actually did. We long have granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them. Columbia Broadcasting System v. United States, 316 U.S. 407; Pierce v. Society of Sisters, 268 U.S. 510; Buchanan v. Warley, 245 U.S. 60; Truax v. Raich, 239 U.S. 33. 16 The complaints here amply allege past and impending serious damages caused by the actions of which the petitioners complain.

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Nothing we have said purports to adjudicate the truth of petitioners' allegations that they are not, in fact, communistic. We have assumed that the designations made by the Attorney General are arbitrary because we are compelled to make that assumption by his motions to dismiss the complaints. Whether the complaining organizations are in fact communistic or whether the Attorney General possesses information from which he could reasonably [341 U.S. 142] find them to be so must await determination by the District Court upon remand.

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For these reasons, we find it necessary to reverse the judgments of the Court of Appeals in the respective cases, and to remand each case to the District Court with instructions to deny the respondents' motion that the complaint be dismissed for failure to state a claim upon which relief can be granted.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 142

Reversed and remanded.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 142

MR. JUSTICE CLARK took no part in the consideration or decision of any of these cases.

BLACK, J., concurring

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 142

MR. JUSTICE BLACK, concurring.

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Without notice or hearing, and under color of the President's Executive Order No. 9835, the Attorney General found petitioners guilty of harboring treasonable opinions and designs, officially branded them as Communists, and promulgated his findings and conclusions for particular use as evidence against government employees suspected of disloyalty. In the present climate of public opinion, it appears certain that the Attorney General's much publicized findings, regardless of their truth or falsity, are the practical equivalents of confiscation and death sentences for any blacklisted organization not possessing extraordinary financial, political or religious prestige and influence. The Government not only defends the power of the Attorney General to pronounce such deadly edicts, but also argues that individuals or groups so condemned have no standing to seek redress in the courts, even though a fair judicial hearing might conclusively demonstrate their loyalty. My basic reasons for rejecting these and other contentions of the Government are in summary the following: [341 U.S. 143]

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(1) I agree with MR. JUSTICE BURTON that petitioners have standing to sue for the reason among others that they have a right to conduct their admittedly legitimate political, charitable and business operations free from unjustified governmental defamation. Otherwise, executive officers could act lawlessly with impunity. And, assuming that the President may constitutionally authorize the promulgation of the Attorney General's list, I further agree with MR. JUSTICE BURTON that this Court should not attribute to the President a purpose to vest in a cabinet officer the power to destroy political, social, religious or business organizations by "arbitrary fiat," and thus the methods employed by the Attorney General exceed his authority under Executive Order No. 9835.

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(2) Assuming, though I deny, that the Constitution permits the executive officially to determine, list and publicize individuals and groups as traitors and public enemies, I agree with MR. JUSTICE FRANKFURTER that the Due Process Clause of the Fifth Amendment would bar such condemnation without notice and a fair hearing. My views previously expressed under similar circumstances are relevant here. E.g., dissenting opinion in Ludecke v. Watkins, 335 U.S. 160, 173; and see In re Oliver, 333 U.S. 257.

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(3) More fundamentally, however, in my judgment, the executive has no constitutional authority, with or without a hearing, officially to prepare and publish the lists challenged by petitioners. In the first place, the system adopted effectively punishes many organizations and their members merely because of their political beliefs and utterances, and, to this extent, smacks of a most evil type of censorship. This cannot be reconciled with the First Amendment as I interpret it. See my dissent in American Communications Assn. v. Douds, 339 U.S. 382, 445. Moreover, officially prepared and proclaimed governmental [341 U.S. 144] blacklists possess almost every quality of bills of attainder, the use of which was from the beginning forbidden to both national and state governments. U.S.Const. Art. I, §§ 9, 10. It is true that the classic bill of attainder was a condemnation by the legislature following investigation by that body, see United States v. Lovett, 328 U.S. 303, while, in the present case, the Attorney General performed the official tasks. But I cannot believe that the authors of the Constitution, who outlawed the bill of attainder, inadvertently endowed the executive with power to engage in the same tyrannical practices that had made the bill such an odious institution. 1

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There is argument that executive power to issue these pseudo-bills of attainder can be implied from the undoubted power of the Government to hire and discharge employees and to protect itself against treasonable individuals or organizations. 2 Our basic law, however, wisely [341 U.S. 145] withheld authority for resort to executive investigations, condemnations and blacklists as a substitute for imposition of legal types of penalties by courts following trial and conviction in accordance with procedural safeguards of the Bill of Rights. 3

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In this day when prejudice, hate and fear are constantly invoked to justify irresponsible smears and persecution of persons even faintly suspected of entertaining unpopular views, it may be futile to suggest that the cause of internal security would be fostered, not hurt, by faithful adherence to our constitutional guarantees of individual liberty. Nevertheless, since prejudice manifests itself in much the same way in every age and country, and since what has happened before can happen again, it surely should not be amiss to call attention to what has occurred when dominant governmental groups have been left free to give uncontrolled rein to their prejudices against unorthodox minorities. As specific illustration, I am adding as an appendix Macaulay's account of a parliamentary proscription which took place when popular prejudice was high; this is only one out of many similar [341 U.S. 146] instances that readily can be found. 4 Memories of such events were fresh in the minds of the founders when they forbade the use of the bill of attainder.

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APPENDIX TO OPINION OF MR. JUSTICE BLACK.

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James II, the last Stuart king of England, was driven from his throne in 1688 by William of Orange. After a brief sojourn at Saint Germains in France, James landed in Ireland, where he was supported by those Irish Catholics who had suffered greatly at the hands of the English Protestant colonists. One of his first official acts was to call an Irish Parliament, which enacted the bill of attainder described by the historian Macaulay as follows:

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…[the Commons] respected no prerogative, however ancient, however legitimate, however salutary, if they apprehended that [James II] might use it to protect the race which they abhorred. They were not satisfied till they had extorted his reluctant consent to a portentous law, a law without a parallel in the history of civilised countries, the great Act of Attainder.

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A list was framed containing between two and three thousand names. At the top was half the peerage of Ireland. Then came baronets, knights, clergymen, squires, merchants, yeomen, artisans, women, children. No investigation was made. Any member who wished to rid himself of a creditor, a rival, a private enemy, gave in the name to the clerk at the table, and it was generally inserted without discussion. The only debate of which any account has come down to us related to the Earl of Strafford. He had friends in the House who ventured to offer something in his favour. But a few words from [341 U.S. 147] Simon Luttrell settled the question. "I have," he said, "heard the King say some hard things of that lord." This was thought sufficient, and the name of Strafford stands fifth in the long table of the proscribed.

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Days were fixed before which those whose names were on the list were required to surrender themselves to such justice as was then administered to English Protestants in Dublin. If a proscribed person was in Ireland, he must surrender himself by the tenth of August. If he had left Ireland since the fifth of November, 1688, he must surrender himself by the first of September. If he had left Ireland before the fifth of November, 1688, he must surrender himself by the first of October. If he failed to appear by the appointed day, he was to be hanged, drawn, and quartered without a trial, and his property was to the confiscated. It might be physically impossible for him to deliver himself up within the time fixed by the Act. He might be bedridden. He might be in the West Indies. He might be in prison. Indeed there notoriously were such cases. Among the attainted Lords was Mountjoy. He had been induced by the villany of Tyrconnel to trust himself at Saint Germains; he had been thrown into the Bastile; he was still lying there; and the Irish parliament was not ashamed to enact that, unless he could, within a few weeks, make his escape from his cell and present himself at Dublin, he should be put to death.

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As it was not even pretended that there had been any inquiry into the guilt of those who were thus proscribed, as not a single one among them had been heard in his own defence, and as it was certain that it would be physically impossible for many of them to surrender themselves in time, it was clear that nothing but a large exercise of the royal prerogative of mercy could prevent the perpetration of iniquities so horrible that no precedent could be found for them even in the lamentable history of the [341 U.S. 148] troubles of Ireland. The Commons therefore determined that the royal prerogative of mercy should be limited. Several regulations were devised for the purpose of making the passing of pardons difficult and costly, and finally it was enacted that every pardon granted by his Majesty, after the end of November, 1689, to any of the many hundreds of persons who had been sentenced to death without a trial should be absolutely void and of none effect. Sir Richard Nagle came in state to the bar of the Lords and presented the bill with a speech worthy of the occasion. "Many of the persons here attainted," said he, "have been proved traitors by such evidence as satisfies us. As to the rest, we have followed common fame."

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With such reckless barbarity was the list framed that fanatical royalists, who were, at that very time, hazarding their property, their liberty, their lives, in the cause of James, were not secure from proscription. The most learned man of whom the Jacobite party could boast was Henry Dodwell, Camdenian Professor in the University of Oxford. In the cause of hereditary monarchy, he shrank from no sacrifice and from no danger. It was about him that William [of Orange] uttered those memorable words: "He has set his heart on being a martyr; and I have set mine on disappointing him." But James was more cruel to friends than William to foes. Dodwell was a Protestant; he had some property in Connaught; these crimes were sufficient, and he was set down in the long roll of those who were doomed to the gallows and the quartering block.

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That James would give his assent to a bill which took from him the power of pardoning, seemed to many persons impossible…. He might also have seen that the right course was the wise course. Had he, on this great occasion, had the spirit to declare that he would not shed the blood of the innocent, and that, even as respected the guilty, he would not divest himself of the power of tempering [341 U.S. 149] judgment with mercy, he would have regained more hearts in England than he would have lost in Ireland. But it was ever his fate to resist where he should have yielded and to yield where he should have resisted. The most wicked of all laws received his sanction, and it is but a very small extenuation of his guilt that his sanction was somewhat reluctantly given.

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That nothing might be wanting to the completeness of this great crime, extreme care was taken to prevent the persons who were attainted from knowing that they were attainted till the day of grace fixed in the Act was passed. The roll of names was not published, but kept carefully locked up in Fitton's closet. Some Protestants, who still adhered to the cause of James but who were anxious to know whether any of their friends or relations had been proscribed, tried hard to obtain a sight of the list, but solicitation, remonstrance, even bribery proved vain. Not a single copy got abroad till it was too late for any of the thousands who had been condemned without a trial to obtain a pardon.

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…That the colonists, when they had won the victory, grossly abused it, that their legislation was, during many years, unjust and tyrannical, is most true. But it is not less true that they never quite came up to the atrocious example set by their vanquished enemy during his short tenure of power.

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3 Macaulay, History of England from the Accession of James the Second (London, 1855) 216-220. (Footnotes appearing in the original have been omitted.)

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MR. JUSTICE FRANKFURTER, concurring.

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The more issues of law are inescapably entangled in political controversies, especially those that touch the passions of the day, the more the Court is under duty to dispose of a controversy within the narrowest confines [341 U.S. 150] that intellectual integrity permits. And so I sympathize with the endeavor of my brother BURTON to decide these cases on a ground as limited as that which has commended itself to him. Unfortunately, I am unable to read the pleadings as he does. Therefore, I must face up to larger issues. But in a case raising delicate constitutional questions, it is particularly incumbent first to satisfy the threshold inquiry whether we have any business to decide the case at all. Is there, in short, a litigant before us who has a claim presented in a form and under conditions "appropriate for judicial determination"? Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240.

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I

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Limitation on "the judicial Power of the United States" is expressed by the requirement that a litigant must have "standing to sue" or, more comprehensively, that a federal court may entertain a controversy only if it is "justiciable." Both characterizations mean that a court will not a decide a question unless the nature of the action challenged, the kind of injury inflicted, and the relationship between the parties are such that judicial determination is consonant with what was, generally speaking, the business of the Colonial courts and the courts of Westminster when the Constitution was framed. The jurisdiction of the federal courts can be invoked only under circumstances which to the expert feel of lawyers constitute a "case or controversy." The scope and consequences of the review with which the judiciary is entrusted over executive and legislative action require us to observe these bounds fastidiously. See the course of decisions beginning with Hayburn's Case, 2 Dall. 409, through Parker v. Los Angeles County, 338 U.S. 327. These generalities have had myriad applications. Each application, even to a situation not directly pertinent to what [341 U.S. 151] is before us, reflects considerations relevant to decision here. I shall confine my inquiry, however, by limiting it to suits seeking relief from governmental action.

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(1) The simplest application of the concept of "standing" is to situations in which there is no real controversy between the parties. Regard for the separation of powers, see Muskrat v. United States, 219 U.S. 346, and for the importance to correct decision of adequate presentation of issues by clashing interests, see Chicago & G.T. R. Co. v. Wellman, 143 U.S. 339, restricts the courts of the United States to issues presented in an adversary manner. A petitioner does not have standing to sue unless he is "interested in, and affected adversely by, the decision" of which he seeks review. His "interest must be of a personal, and not of an official, nature." Braxton County Court v. West Virginia, 208 U.S. 192, 197; see also Commonwealth of Massachusetts v. Mellon, 262 U.S. 447. The interest must not be wholly negligible, as that of a taxpayer of the Federal Government is considered to be, Frothingham v. Mellon, 262 U.S. 447; cf. Crampton v. Zabriskie, 101 U.S. 601. A litigant must show more than that "he suffers in some indefinite way in common with people generally." Frothingham v. Mellon, supra, at 488.

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Adverse personal interest, even of such an indirect sort as arises from competition, is ordinarily sufficient to meet constitutional standards of justiciability. The courts may therefore by statute be given jurisdiction over claims based on such interests. Federal Communications Commission v. Sanders Radio Station, 309 U.S. 470, 642; cf. Interstate Commerce Comm'n v. Oregon-Washington R. Co., 288 U.S. 14.

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(2) To require a court to intervene in the absence of a statute, however, either on constitutional grounds or in the exercise of inherent equitable powers, something more than adverse personal interest is needed. This additional element is usually defined in terms which assume the answer. [341 U.S. 152] It is said that the injury must be "a wrong which directly results in the violation of a legal right." Alabama Power Co. v. Ickes, 302 U.S. 464, 479. Or that the controversy "must be definite and concrete, touching the legal relations of parties having adverse legal interests." Aetna Life Ins. Co. v. Haworth, supra, at 240-241. These terms have meaning only when contained by the facts to which they have been applied. In seeking to determine whether in the case before us the standards they reflect are met, therefore, we must go to the decisions. They show that the existence of "legal" injury has turned on the answer to one or more of these questions: (a) will the action challenged at any time substantially affect the "legal" interests of any person? (b) does the action challenged affect the petitioner with sufficient "directness"? (c) is the action challenged sufficiently "final"? Since each of these questions itself contains a word of art, we must look to experience to find their meaning.

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(a) Will the action challenged at any time substantially affect the "legal" interests of any person? A litigant ordinarily has standing to challenge governmental action of a sort that, if taken by a private person, would create a right of action cognizable by the courts. United States v. Lee, 106 U.S. 196. 1 Or standing may be based on an interest created by the Constitution or a statute. E.g., Parker v. Fleming, 329 U.S. 531; Coleman v. Miller, 307 U.S. 433; cf. Bell v. Hood, 327 U.S. 678. But if no comparable common law right exists and no such constitutional or statutory interest has been created, relief is not available judicially. Thus, at least unless capricious discrimination is asserted, there is no protected interest in contracting with the Government. A litigant therefore has no standing [341 U.S. 153] to object that an official has misinterpreted his instructions in requiring a particular clause to be included in a contract. Perkins v. Lukens Steel Co., 310 U.S. 113. Similarly, a determination whether the Government is within its powers in distributing electric power may be of enormous financial consequence to a private power company, but it has no standing to raise the issue. Tennessee Electric Power Co. v. TVA, 306 U.S. 118; cf. Alabama Power Co. v. Ickes, 302 U.S. 464. The common law does not recognize an interest in freedom from honest competition; a court will give protection from competition by the Government, therefore, only when the Constitution or a statute creates such a right.

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(b) Does the action challenged affect petitioner with sufficient "directness"? Frequently governmental action directly affects the legal interests of some person, and causes only a consequential detriment to another. Whether the person consequentially harmed can challenge the action is said to depend on the "directness" of the impact of the action on him. A shipper has no standing to attack a rate not applicable to him but merely affecting his previous competitive advantage over shippers subject to the rate. Hines Trustees v. United States, 263 U.S. 143, 148; Sprunt & Son v. United States, 281 U.S. 249, 255, 257. When those consequentially affected may resort to an administrative agency charged with their protection, courts are especially reluctant to give them "standing" to claim judicial review. See Atlanta v. Ickes, 308 U.S. 517; cf. Associated Industries v. Ickes, 134 F.2d 694. 2 [341 U.S. 154]

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But it is not always true that only the person immediately affected can challenge the action. The fact that an advantageous relationship is terminable at will does not prevent a litigant from asserting that improper interference with it gives him "standing" to assert a right of action. Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229. On this principle, an alien employee was allowed to challenge a State law requiring his employer to discharge all but a specified proportion of alien employees, Truax v. Raich, 239 U.S. 33, and a private school to enjoin enforcement of a statute requiring parents to send their children to public schools, Pierce v. Society of Sisters, 268 U.S. 510. The likelihood that the interests of the petitioner will be adequately protected by the person directly affected is a relevant consideration, compare Columbia Broadcasting System v. United States, 316 U.S. 407, 423-424, with Schenley Distillers Corp. v. United States, 326 U.S. 432, 435, as is, probably, the nature of the relationship involved. See Davis & Farnum Mfg. Co. v. Los Angeles, 189 U.S. 207, 220; Truax v. Raich, 239 U.S. 33, 38-39. 3

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(c) Is the action challenged sufficiently final? Although a litigant is the person most directly affected by the challenged action of the Government, he may not have "standing" to raise his objections in a court if the action has not, as it were, come to rest. 4 Courts do not [341 U.S. 155] review issues, especially constitutional issues, until they have to. See Parker v. Los Angeles County, supra, and see Brandeis, J., concurring in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341. In part, this practice reflects the tradition that courts, having final power, can exercise it most wisely by restricting themselves to situations in which decision is necessary. In part, it is founded on the practical wisdom of not coming prematurely or needlessly in conflict with the executive or legislature. See Rochester Tel. Corp. v. United States, 307 U.S. 125, 130-131. Controversies, therefore, are often held nonjusticiable

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[w]here the action sought to be reviewed may have the effect of forbidding or compelling conduct on the part of the person seeking to review it, but only if some further action is taken by the Commission.

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Rochester Telephone Corp. v. United States, supra, at 129; and see Chicago & S. Air Lines v. Waterman S.S. Corp., 333 U.S. 103. There is no "standing" to challenge a preliminary administrative determination, although the determination itself causes some detriment to the litigant. United States v. Los Angeles & S.L. R. Co., 273 U.S. 299; cf. Ex parte Williams, 277 U.S. 267. Nor does the reservation of authority to act to a petitioner's detriment entitle him to challenge the reservation when it is conceded that the authority will be exercised only on a contingency which appears not to be imminent. Eccles v. Peoples Bank, 333 U.S. 426. Lack of finality also explains the decision in Standard Scale Co. v. Farrell, 249 U.S. 571. There, the Court was faced by an advisory "specification" of characteristics desirable in ordinary measuring scales. The specification could be enforced only by independent local officers' withholding their approval of the equipment. Justiciability was denied. 5 [341 U.S. 156]

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"Finality" is not, however, a principle inflexibly applied. If the ultimate impact of the challenged action on the petitioner is sufficiently probable and not too distant, and if the procedure by which that ultimate action may be questioned is too onerous or hazardous, "standing" is given to challenge the action at a preliminary stage. Terrace v. Thompson, 263 U.S. 197; Santa Fe Pac, R. Co. v. Lane, 244 U.S. 492,; see Waite v. Macy, 246 U.S. 606. It is well settled that equity will enjoin enforcement of criminal statutes found to be unconstitutional

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when it is found to be essential to the protection of the property rights, as to which the jurisdiction of a court of equity has been invoked.

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E.g., Philadelphia Co. v. Stimson, 223 U.S. 605, 621. 6 And if the determination challenged creates a status which enforces a course of conduct through penal sanctions, a litigant need not subject himself to the penalties to challenge the determination. La Crosse Tel. Corp. v. Wisconsin Board, 336 U.S. 18; Shields v. Utah Idaho R. Co., 305 U.S. 177.

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(3) Whether "justiciability" exists, therefore, has most often turned on evaluating both the appropriateness of the issues for decision by courts and the hardship of denying judicial relief. This explains the inference to be drawn from the cases that "standing" to challenge official action is more apt to exist when that action is not within the scope of official authority than when the objection to the administrative decision goes only to its correctness. See United States v. Los Angeles & S.L. R. Co., 273 U.S. 299, 314-315; Pennsylvania R. Co. v. Labor Board, 261 [341 U.S. 157] U.S. 72; Ex parte Williams, 277 U.S. 267, 271. 7 The objection to judicial restraint of an unauthorized exercise of powers is not weighty. 8

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II

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The injury asserted in the cases at bar does not fall into any familiar category. Petitioner in No. 8, the Joint Anti-Fascist Refugee Committee, is, according to its complaint, an unincorporated association engaged in relief work on behalf of Spanish Republican refugees. [341 U.S. 158] Since its inception, it has distributed relief totaling $1,229,351; currently it is committed to regular monthly remittances of $5,400. Its revenues have been obtained from public contributions, garnered largely at meetings and social functions. The National Council of American-Soviet Friendship, petitioner in No. 7, is a nonprofit membership corporation whose purpose is alleged to be to strengthen friendly relations between the United States and the Soviet Union by developing cultural relations "between the peoples of the two nations" and by disseminating in this country educational materials about Russia. It has obtained its funds through public appeals and through collections at meetings. Petitioner in No. 71 is the International Workers Order. Its complaint states that it is a fraternal benefit society, comprising over 1,800 lodges, with assets totaling approximately $5,000,000. Its members pay dues for the general expenses of the Order, and many of them make additional contributions for life, sickness and disability insurance. In addition to its insurance activities, the Order

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attempts to encourage the preservation of the cultural heritages and artistic values developed…by the peoples of the different countries of the world and brought with them to the United States.

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In November, 1947, each of these organizations was included in the list of groups designated by the Attorney General as within the provisions of Executive Order No. 9835, the President's Loyalty Order. The list was disseminated to all departments and agencies of the Government. Six months later, each was with more particularity labeled "communist." Each alleges substantial injury as a consequence. Publicity and meeting places have become difficult for the Refugee Committee and the Council to obtain. The federal tax exemptions of all three organizations have been revoked; licenses necessary to solicitation of funds have been denied the [341 U.S. 159] Refugee Committee; and the New York Superintendent of Insurance has begun proceedings, in which a representative of the Attorney General of the United States has appeared, for dissolution of the Order. Most important, each of the organizations asserts that it has lost supporters and members, especially from present or prospective federal employees. Claiming that the injury is irreparable, each asks for relief by way of a declaratory judgment and an injunction.

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The novelty of the injuries described in these petitions does not alter the fact that they present the characteristics which have in the past led this Court to recognize justiciability. They are unlike claims which the courts have hitherto found incompatible with the judicial process. No lack of finality can be urged. Designation works an immediate substantial harm to the reputations of petitioners. The threat which it carries for those members who are, or propose to become, federal employees makes it not a finicky or tenuous claim to object to the interference with their opportunities to retain or secure such employees as members. The membership relation is as substantial as that protected in Truax v. Raich and Pierce v. Society of Sisters, supra. And it is at least doubtful that the members could or would adequately present the organizations' objections to the designation provisions of the Order.

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Only on the ground that the organizations assert no interest protected in analogous situations at common law, by statute, or by the Constitution, therefore, can plausible challenge to their "standing" here be made. But the reasons which made an exercise of judicial power inappropriate in Perkins v. Lukens Steel Co., Tennessee Electric Power Co. v. TVA, and Alabama Power Co. v. Ickes, supra, are not apposite here. There, the injuries were such that, had they not been inflicted by the Government, they clearly could not have been redressed. In Perkins v. Lukens [341 U.S. 160] Steel Co., it was not asserted that the authority under which the Government acted was invalid; only the correctness of an interpretation of a statute in the course of the exercise of an admitted power was challenged. In the power cases, protection from competition was sought, but the thrust of the law is to preserve competition, not to give protection from it. The action there challenged, furthermore, was not directed at named individuals. Here, on the other hand, petitioners seek to challenge governmental action stigmatizing them individually. They object not to a particular erroneous application of a valid power, but to the validity of the regulation authorizing the action. They point to two types of injury, each of a sort which, were it not for principles of governmental immunity, would be clearly actionable at common law.

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This controversy is therefore amenable to the judicial process. 9 Its justiciability does not depend solely on the fact that the action challenged is defamatory. Not every injury inflicted by a defamatory statement of a government officer can be redressed in court. On the balance of all considerations, the exercise here of judicial power accords with traditional canons for access to courts without inroads on the effective conduct of government.

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III

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This brings us to the merits of the claims before the Court. Petitioners are organizations which, on the face of the record, are engaged solely in charitable or insurance activities. They have been designated "communist" by the Attorney General of the United States. This designation [341 U.S. 161] imposes no legal sanction on these organizations other than that it serves as evidence in ridding the Government of persons reasonably suspected of disloyalty. It would be blindness, however, not to recognize that, in the conditions of our time, such designation drastically restricts the organizations, if it does not proscribe them. Potential members, contributors or beneficiaries of listed organizations may well be influenced by use of the designation, for instance, as ground for rejection of applications for commissions in the armed forces or for permits for meetings in the auditoriums of public housing projects. Compare Act of April 3, 1948, § 110(c), 62 Stat. 143, 22 U.S.C. (Supp. III) § 1508(c). Yet designation has been made without notice, without disclosure of any reasons justifying it, without opportunity to meet the undisclosed evidence or suspicion on which designation may have been based, and without opportunity to establish affirmatively that the aims and acts of the organization are innocent. It is claimed that thus to maim or decapitate, on the mere say-so of the Attorney General, an organization to all outward-seeming engaged in lawful objectives is so devoid of fundamental fairness as to offend the Due Process Clause of the Fifth Amendment.

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Fairness of procedure is "due process in the primary sense." Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673, 681. It is ingrained in our national traditions, and is designed to maintain them. In a variety of situations, the Court has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted demands of fair play enshrined in the Constitution.

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[T]his court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. [341 U.S. 162] One of these principles is that no person shall be deprived of his liberty without opportunity, at some time to be heard….

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

The Japanese Immigrant Case, 189 U.S. 86, 100-101.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

[B]y "due process" is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

Hagar v. Reclamation District, 111 U.S. 701, 708.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

Before its property can be taken under the edict of an administrative officer, the appellant is entitled to a fair hearing upon the fundamental facts.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

Southern R. Co. v. Virginia, 290 U.S. 190, 199.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

Brinkerhoff-Faris Co. v. Hill, supra, at 682.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 162

The requirement of "due process" is not a fair-weather or timid assurance. It must be respected in periods of calm and in times of trouble; it protects aliens as well as citizens. But "due process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing, as it does in its ultimate analysis, respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, "due process" is compounded of history, [341 U.S. 163] reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 163

Fully aware of the enormous powers thus given to the judiciary, and especially to its Supreme Court, those who founded this Nation put their trust in a judiciary truly independent—in judges not subject to the fears or allurements of a limited tenure and by the very nature of their function detached from passing and partisan influences.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 163

It may fairly be said that, barring only occasional and temporary lapses, this Court has not sought unduly to confine those who have the responsibility of governing by giving the great concept of due process doctrinaire scope. The Court has responded to the infinite variety and perplexity of the tasks of government by recognizing that what is unfair in one situation may be fair in another. Compare, for instance, Murray v. Hoboken Land & Improvement Co., 18 How. 272, with Ng Fung Ho v. White, 259 U.S. 276, and see Federal Communications Comm'n v. WJR, 337 U.S. 265, 275. Whether the ex parte procedure to which the petitioners were subjected duly observed "the rudiments of fair play", Chicago, M. & St. P. R. Co. v. Polt, 232 U.S. 165, 168, cannot, therefore, be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment. [341 U.S. 164]

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 164

Applying them to the immediate situation, we note that publicly designating an organization as within the proscribed categories of the Loyalty Order does not directly deprive anyone of liberty or property. Weight must also be given to the fact that such designation is not made by a minor official, but by the highest law officer of the Government. Again, it is fair to emphasize that the individual's interest is here to be weighed against a claim of the greatest of all public interests, that of national security. In striking the balance, the relevant considerations must be fairly, which means coolly, weighed with due regard to the fact that this Court is not exercising a primary judgment, but is sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government.

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But the significance we attach to general principles may turn the scale when competing claims appeal for supremacy. Achievements of our civilization as precious as they were hard won were summarized by Mr. Justice Brandeis when he wrote that, "in the development of our liberty, insistence upon procedural regularity has been a large factor." Burdeau v. McDowell, 256 U.S. 465, 477 (dissenting). It is noteworthy that procedural safeguards constitute the major portion of our Bill of Rights. And so no one now doubts that, in the criminal law, a

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person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence.

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In re Oliver, 333 U.S. 257, 273. "The hearing, moreover, must be a real one, not a sham or a pretense." Palko v. Connecticut, 302 U.S. 319, 327. Nor is there doubt that notice and hearing are prerequisite to due process in civil proceedings, e.g., Coe v. Armour Fertilizer Works, 237 U.S. 413. Only the narrowest exceptions, justified by history, become part of the habits of our people or, [341 U.S. 165] by obvious necessity, are tolerated. Ownbey v. Morgan, 256 U.S. 94; Endicott-Johnson Corp. v. Encyclopedia Press, 266 U.S. 285; see Cooke v. United States, 267 U.S. 517, 536.

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It is against this background of guiding considerations that we must view the rather novel aspects of the situation at hand. It is not true that the evils against which the Loyalty Order was directed are wholly devoid of analogy in our own history. The circumstances attending the Napoleonic conflicts, which gave rise to the Sedition Act of 1798, 1 Stat. 596, readily come to mind. But it is true that the executive action now under scrutiny is of a sort not heretofore challenged in this Court. That, of itself, does not justify the ex parte summary designation procedure. It does make it necessary to consider its validity when judged by our whole experience with the Due Process Clause.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 165

IV

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 165

The construction placed by this Court upon legislation conferring administrative powers shows consistent respect for a requirement of fair procedure before men are denied or deprived of rights. From a great mass of cases, running the full gamut of control over property and liberty, there emerges the principle that statutes should be interpreted, if explicit language does not preclude, so as to observe due process in its basic meaning. See, e.g., Anniston Mfg. Co. v. Davis, 301 U.S. 337; American Power & Light Co. v. SEC, 329 U.S. 90, 107-108; Wong Yang Sung v. McGrath, 339 U.S. 33, 49. Fair hearings have been held essential for rate determinations 10 and, generally, to deprive [341 U.S. 166] persons of property. 11 An opportunity to be heard is constitutionally necessary to deport persons even though they make no claim of citizenship, and is accorded to aliens seeking entry in the absence of specific directions to the contrary. 12 Even in the distribution by the Government of benefits that may be withheld, the opportunity of a hearing is deemed important. 13 [341 U.S. 167]

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The high social and moral values inherent in the procedural safeguard of a fair hearing are attested by the narrowness and rarity of the instances when we have sustained executive action even though it did not observe the customary standards of procedural fairness. It is in these instances that constitutional compulsion regarding fair procedure was directly in issue. Thus, it has been held that the Constitution cannot be invoked to prevent Congress from authorizing disbursements on the ex parte determination of an administrative officer that prescribed conditions are met. United States v. Babcock, 250 U.S. 328; cf. United States ex rel. Dunlap v. Black, 128 U.S. 40. The importation of goods is a privilege which, if Congress clearly so directs, may likewise be conditioned on ex parte findings. Buttfield v. Stranahan, 192 U.S. 470; cf. Hilton v. Merrett, 110 U.S. 97. Only by a close division of the Court was it held that, at a time of national emergency, when war has not been closed by formal peace, the Attorney General is not required to give a hearing before denying hospitality to an alien deemed dangerous to public security. Ludecke v. Watkins, 335 U.S. 160; United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537. Again, when decisions of administrative officers in execution of legislation turn exclusively on considerations similar to those on which the legislative body could itself have acted summarily, notice and hearing may not be commanded by the Constitution. Bi-Metallic Co. v. Colorado, 239 U.S. 441. 14 [341 U.S. 168] Finally, summary administrative procedure may be sanctioned by history or obvious necessity. But these are so rare as to be isolated instances. Murray v. Hoboken Land & Improvement Co., 18 How. 272; Springer v. United States, 102 U.S. 586; Lawton v. Steele, 152 U.S. 133.

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This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society. Regard for this principle has guided Congress and the Executive. Congress has often entrusted, as it may, protection of interests which it has created to administrative agencies, rather than to the courts. But rarely has it authorized such agencies to act without those essential safeguards for fair judgment which in the course of centuries have come to be associated with due process. See Switchmen's Union v. National Mediation Board, 320 U.S. 297; Tutun v. United States, 270 U.S. 568, 576, 577; Pennsylvania R. Co. v. Labor Board, 261 U.S. 72. 15 And When Congress [341 U.S. 169] has given an administrative agency discretion to determine its own procedure, the agency has rarely chosen to dispose of the rights of individuals without a hearing, however informal. 16 [341 U.S. 170]

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The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness, and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. 17

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 170

An opportunity to be heard may not seem vital when an issue relates only to technical questions susceptible [341 U.S. 171] of demonstrable proof on which evidence is not likely to be overlooked and argument on the meaning and worth of conflicting and cloudy data not apt to be helpful. But, in other situations, an admonition of Mr. Justice Holmes becomes relevant. "One has to remember that, when one's interest is keenly excited, evidence gathers from all sides around the magnetic point…. " 18 It should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe. Compare Brown, The French Revolution in English History.

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The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.

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United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 551 (dissenting). Appearances in the dark are apt to look different in the light of day.

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Man, being what he is, cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truthseeking, and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss [341 U.S. 172] notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done. 19

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 172

V

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 172

The strength and significance of these considerations—considerations which go to the very ethos of the scheme of our society—give a ready answer to the problem before us. That a hearing has been thought indispensable in so many other situations, leaving the cases of denial exceptional, does not of itself prove that it must be found essential here. But it does place upon the Attorney General the burden of showing weighty reason for departing in this instance from a rule so deeply imbedded in history and in the demands of justice. Nothing in the Loyalty Order requires him to deny organizations opportunity to present their case. The Executive Order, defining his powers, directs only that designation shall be made "after appropriate investigation and determination." This surely does not preclude an administrative procedure, however informal, which would incorporate the essentials of due process. Nothing has been presented to the Court to [341 U.S. 173] indicate that it will be impractical or prejudicial to a concrete public interest to disclose to organizations the nature of the case against them and to permit them to meet it if they can. Indeed, such a contention could hardly be made, inasmuch as the Loyalty Order itself requires partial disclosure and hearing in proceedings against a Government employee who is a member of a proscribed organization. Whether such procedure sufficiently protects the rights of the employee is a different story. Such as it is, it affords evidence that the wholly summary process for the organizations is inadequate. 20 And we have controlling proof that Congress did not think that the Attorney General's procedure was indispensable for the protection of the public interest. The McCarran Act, passed under circumstances certainly not more serene than when the Loyalty Order was issued, grants organizations a full administrative hearing, subject to judicial review, before they are required to register as "Communist action" or "Communist front." 21

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We are not here dealing with the grant of Government largess. We have not before us the measured action of Congress, with the pause that is properly engendered when the validity of legislation is assailed. The Attorney General is certainly not immune from the historic requirements of fairness merely because he acts, however conscientiously, in the name of security. Nor does he obtain immunity on the ground that designation is not an "adjudication" or a "regulation" in the conventional use of those terms. Due process is not confined in its scope to the particular forms in which rights have heretofore been [341 U.S. 174] found to have been curtailed for want of procedural fairness. Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances.

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Therefore the petitioners did set forth causes of action which the District Court should have entertained.

DOUGLAS, J., concurring

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 174

MR. JUSTICE DOUGLAS, concurring.

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While I join in the opinion of MR. JUSTICE BURTON, which would dispose of the cases on procedural grounds, the Court has decided them on the Constitution. And so I turn to that aspect of the cases.

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The resolution of the constitutional question presents one of the gravest issues of this generation. There is no doubt in my mind of the need for the Chief Executive and the Congress to take strong measures against any Fifth Column worming its way into government—a Fifth Column that has access to vital information and the purpose to paralyze and confuse. The problems of security are real. So are the problems of freedom. The paramount issue of the age is to reconcile the two.

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In days of great tension, when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within. The present cases, together with No. 49, Bailey v. Richardson, 341 U.S. 918, affirmed today by an equally divided Court, are simple illustrations of that trend.

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I disagree with MR. JUSTICE JACKSON that an organization—whether it be these petitioners, the American Red Cross, the Catholic Church, the Masonic Order, or the Boy Scouts—has no standing to object to being labeled "subversive" in these ex parte proceedings. The opinion [341 U.S. 175] of MR. JUSTICE FRANKFURTER disposes of that argument. This is not an instance of name calling by public officials. This is a determination of status—a proceeding to ascertain whether the organization is or is not "subversive." This determination has consequences that are serious to the condemned organizations. Those consequences flow in part, of course, from public opinion. But they also flow from actions of regulatory agencies that are moving in the wake of the Attorney General's determination to penalize or police these organizations. 1 An organization branded as "subversive" by the Attorney General is maimed and crippled. The injury is real, immediate, and incalculable.

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The requirements for fair trials under our system of government need no elaboration. A party is entitled to [341 U.S. 176] know the charge against him; he is also entitled to notice and opportunity to be heard. Those principles were, in my opinion, violated here.

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The charge that these organizations are "subversive" could be clearly defined. But how can anyone in the context of the Executive Order say what it means? It apparently does not necessarily mean "totalitarian," "facist" or "communist," because they are separately listed. Does it mean an organization with socialist ideas? There are some who lump Socialists and Communists together. Does it mean an organization that thinks the lot of some peasants has been improved under Soviet auspices? Does it include an organization that is against the action of the United Nations in Korea? Does it embrace a group which on some issues of international policy aligns itself with the Soviet viewpoint? Does it mean a group which has unwittingly become the tool for Soviet propaganda? Does it mean one into whose membership some Communists have infiltrated? Or does it describe only an organization which, under the guise of honorable activities, serves as a front for Communist activities?

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No one can tell from the Executive Order what meaning is intended. No one can tell from the records of the cases which one the Attorney General applied. The charge is flexible; it will mean one thing to one officer, another to someone else. It will be given meaning according to the predilections of the prosecutor; "subversive," to some, will be synonymous with "radical"; "subversive," to others, will be synonymous with "communist." It can be expanded to include those who depart from the orthodox party line—to those whose words and actions (though completely loyal) do not conform to the orthodox view on foreign or domestic policy. These flexible standards, which vary with the mood or political philosophy of the prosecutor, are weapons which can be made as sharp or as blunt as the occasion requires. Since they are subject [341 U.S. 177] to grave abuse, they have no place in our system of law. When we employ them, we plant within our body politic the virus of the totalitarian ideology which we oppose.

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It is not enough to know that the men applying the standard are honorable and devoted men. This is a government of laws, not of men. The powers being used are the powers of government over the reputations and fortunes of citizens. In situations far less severe or important than these, a party is told the nature of the charge against him. Thus, when a defendant is summoned before a federal court to answer to a claim for damages or to a demand for an injunction against him, there must be a "plain statement of the claim showing that the pleader is entitled to relief." 2 If that is necessary for even the most minor claim asserted against a defendant, we should require no less when it comes to determinations that may well destroy the group against whom the charge of being "subversive" is directed. 3 When the Government becomes the moving party, and levels its great powers against the citizen, it should be held to the same standards of fair dealing as we prescribe for other legal contests. To let the Government adopt such lesser ones as suits the convenience of its officers is to start down the totalitarian path.

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The trend in that direction is only emphasized by the failure to give notice and hearing on the charges in these cases and by the procedure adopted in Bailey v. Richardson, supra. [341 U.S. 178]

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Notice and opportunity to be heard are fundamental to due process of law. We would reverse these cases out of hand if they were suits of a civil nature to establish a claim against petitioners. Notice and opportunity to be heard are indispensable to a fair trial whether the case be criminal or civil. See Coe v. Armour Fertilizer Works, 237 U.S. 413, 424; Palko v. Connecticut, 302 U.S. 319, 327; In re Oliver, 333 U.S. 257, 273. The gravity of the present charges is proof enough of the need for notice and hearing before the United States officially brands these organizations as "subversive." No more critical governmental ruling can be made against an organization these days. It condemns without trial. It destroys without opportunity to be heard. The condemnation may in each case be wholly justified. But government in this country cannot, by edict, condemn or place beyond the pale. The rudiments of justice, as we know it, call for notice and hearing—an opportunity to appear and to rebut the charge.

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The system used to condemn these organizations is bad enough. The evil is only compounded when a government employee is charged with being disloyal. Association with or membership in an organization found to be "subversive" weighs heavily against the accused. He is not allowed to prove that the charge against the organization is false. That case is closed; that line of defense is taken away. The technique is one of guilt by association—one of the most odious institutions of history. The fact that the technique of guilt by association was used in the prosecutions at Nuremberg 4 does not make it [341 U.S. 179] congenial to our constitutional scheme. Guilt under our system of government is personal. When we make guilt vicarious, we borrow from systems alien to ours, and ape our enemies. Those short-cuts may at times seem to serve noble aims, but we depreciate ourselves by indulging in them. When we deny even the most degraded person the rudiments of a fair trial, we endanger the liberties of everyone. We set a pattern of conduct that is dangerously expansive, and is adaptable to the needs of any majority bent on suppressing opposition or dissension.

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It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law. The case of Dorothy Bailey is an excellent illustration of how dangerous a departure from our constitutional standards can be. She was charged with being a Communist and with being active in a Communist "front organization." The Review Board stated that the case against her was based on reports, some of which came from "informants certified to us by the Federal Bureau of Investigation as experienced and entirely reliable." [341 U.S. 180]

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Counsel for Dorothy Bailey asked that their names be disclosed. That was refused.

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Counsel for Dorothy Bailey asked if these informants had been active in a certain union. The chairman replied, "I haven't the slightest knowledge as to who they were or how active they have been in anything."

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Counsel for Dorothy Bailey asked if those statements of the informants were under oath. The chairman answered, "I don't think so."

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The Loyalty Board convicts on evidence which it cannot even appraise. The critical evidence may be the word of an unknown witness who is "a paragon of veracity, a knave, or the village idiot." 5 His name, his reputation, his prejudices, his animosities, his trustworthiness are unknown both to the judge and to the accused. The accused has no opportunity to show that the witness lied or was prejudiced or venal. Without knowing who her accusers are, she has no way of defending. She has nothing to offer except her own word and the character testimony of her friends.

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Dorothy Bailey was not, to be sure, faced with a criminal charge, and hence not technically entitled under the Sixth Amendment to be confronted with the witnesses against her. But she was on trial for her reputation, her job, her professional standing. A disloyalty trial is the most crucial event in the life of a public servant. If condemned, he is branded for life as a person unworthy of trust or confidence. To make that condemnation without meticulous regard for the decencies of a fair trial is abhorrent to fundamental justice.

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I do not mean to imply that, but for these irregularities, the system of loyalty trials is constitutional. I do not see how the constitutionality of this dragnet system of loyalty trials which has been entrusted to the administrative agencies of government can be sustained. Every government [341 U.S. 181] employee must take an oath of loyalty. 6 If he swears falsely, he commits perjury, and can be tried in court. In such a trial, he gets the full protection of the Bill of Rights, including trial by jury and the presumption of innocence. I am inclined to the view that, when a disloyalty charge is substituted for perjury and an administrative board substituted for the court, "the spirit and the letter of the Bill of Rights" are offended. 7

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The problem of security is real, and the Government need not be paralyzed in handling it. The security problem, however, relates only to those sensitive areas where secrets are or may be available, where critical policies are being formulated, or where sabotage can be committed. The department heads must have leeway in handling their personnel problems in these sensitive areas. The question is one of the fitness or qualifications of an individual for a particular position. One can be transferred from those areas even when there is no more than a suspicion as to his loyalty. We meet constitutional difficulties when the Government undertakes to punish by proclaiming the disloyalty of an employee and making him ineligible for any government post. The British have avoided those difficulties by applying the loyalty procedure only in sensitive areas, and in using it to test the qualifications of an employee for a particular [341 U.S. 182] post, not to condemn him for all public employment. 8 When we go beyond that procedure and adopt the dragnet system now in force, we trench upon the civil rights of our people. We condemn by administrative edict, rather than by jury trial. 9 Of course, no one has a constitutional [341 U.S. 183] right to a government job. But every citizen has a right to a fair trial when his government seeks to deprive him of the privileges of first-class citizenship.

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The evil of these cases is only emphasized by the procedure employed in Dorothy Bailey's case. Together, they illustrate how deprivation of our citizens of fair trials is subversion from within.

JACKSON, J., concurring

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MR. JUSTICE JACKSON, concurring.

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It is unfortunate that this Court should flounder in wordy disagreement over the validity and effect of procedures which have already been pursued for several years. The extravagance of some of the views expressed and the intemperance of their statement may create a suspicion that the decision of the case does not rise above the political controversy that engendered it.

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MR. JUSTICE BURTON, and those for whom he speaks, would rescue the Loyalty Order from inquiry as to its validity by spelling out an admission by the Attorney General that it has been arbitrarily misapplied. MR. JUSTICE BLACK would have us hold that listing by the Attorney General of organizations alleged to be subversive is the equivalent of a bill of attainder for treason after the fashion of those of the Stuart kings, while MR. JUSTICE REED contends, in substance, that the designation is a mere press release without legal consequences.

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If the Court agreed that an accused employee could challenge the designation, its effect would be only advisory or prima facie; but, as I point out later, the Court refuses so to limit the effect of the designation. In view of these and other diversified opinions, none of which has attracted sufficient adherents for a Court and none of which I can fully accept, I shall state rather than argue my view of the matter.

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1. The Loyalty Order does affect substantive legal rights.—I agree that mere designation as subversive deprives [341 U.S. 184] the organizations themselves of no legal right or immunity. By it, they are not dissolved, subjected to any legal prosecution, punished, penalized, or prohibited from carrying on any of their activities. Their claim of injury is that they cannot attract audiences, enlist members, or obtain contributions as readily as before. These, however, are sanctions applied by public disapproval, not by law. It is quite true that the popular censure is focused upon them by the Attorney General's characterization. But the right of privacy does not extend to organized groups or associations which solicit funds or memberships or to corporations dependent upon the state for their charters. 1 The right of individuals to assemble is one thing; the claim that an organization of secret undisclosed character may conduct public drives for funds or memberships is another. They may be free to solicit, propagandize, and hold meetings, but they are not free from public criticism or exposure. If the only effect of the Loyalty Order was that suffered by the organizations, I should think their right to relief very dubious.

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But the real target of all this procedure is the government employee who is a member of, or sympathetic to, one or more accused organizations. He not only may be discharged, but disqualified from employment, upon no other ground than such membership or sympathetic affiliation. And he cannot attack the correctness of the Attorney General's designation in any loyalty proceeding. 2 [341 U.S. 185]

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Ordinary dismissals from government service which violate no fixed tenure concern only the Executive branch, and courts will not review such discretionary action. 3 However, these are not discretionary discharges, but discharges pursuant to an order having force of law. Administrative machinery is publicly set up to comb the whole government service 4 to discharge persons or to declare them ineligible for employment upon an incontestable finding, made without hearing, that some organization is subversive. To be deprived not only of present government employment, but of future opportunity for it, certainly is no small injury when government employment so dominates the field of opportunity.

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The fact that one may not have a legal right to get or keep a government post does not mean that he can be adjudged ineligible illegally. Perkins v. Elg. 5 [341 U.S. 186]

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2. To promulgate with force of law a conclusive finding of disloyalty without hearing at some stage before such finding becomes final is a denial of due process of law.—On this subject, I agree with the opinion of MR. JUSTICE FRANKFURTER. That the safeguard of a hearing would not defeat the effectiveness of a Loyalty Program is apparently the judgment of Congress and of State Legislatures, for, as he points out, both congressional and state loyalty legislation recognize the right.

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3. The organizations may vindicate unconstitutional deprivation of members' rights.—There are two stages at which administrative hearings could protect individuals' legal rights—one is before an organization is designated as subversive, the other is when the individual, because of membership, is accused of disloyalty. Either choice might be a permissible solution of a difficult problem inherent in such an extensive program. But an equally divided Court today, erroneously, I think, rejects the claim that the individual has hearing rights. 6 I am unable to comprehend the process by which those who think the Attorney General's designation is no more than a press release can foreclose attack upon it in the employees' case. Also beyond my understanding is how a Court whose collective opinion is that the designations are subject to judicial inquiry can, at the same time, say that a discharge based at least in part on them is not.

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By the procedures of this Loyalty Order, both groups and individuals may be labeled disloyal and subversive. The Court grants judicial review and relief to the group, while refusing it to the individual. So far as I recall, this is the first time this Court has held rights of individuals subordinate and inferior to those of organized groups. I think that is an inverted view of the law—it is justice turned bottom-side up. [341 U.S. 187]

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I have believed that a corporation can maintain an action to protect rights under the Due Process or Equal Protection Clauses of the Fourteenth Amendment, e.g., Wheeling Steel Corp. v. Glander, 337 U.S. 562, 574. The only practical judicial policy when people pool their capital, their interests, or their activities under a name and form that will identify collective interests often is to permit the association or corporation in a single case to vindicate the interests of all.

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This procedure is appropriate here, where the Government has lumped all the members' interests in the organization, so that condemnation of the one will reach all. The Government proceeds on the basis that each of these associations is so identical with its members that the subversive purpose and intents of the one may be attributed to and made conclusive upon the other. Having adopted this procedure in the Executive Department, I think the Government can hardly ask the Judicial Department to deny the standing of the organizations to vindicate its members' rights.

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Unless a hearing is provided in which the organization can present evidence as to its character, a presumption of disloyalty is entered against its every member employee, and, because of it, he may be branded disloyal, discharged, and rendered ineligible for government service. I would reverse the decisions for lack of due process in denying a hearing at any stage.

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MR. JUSTICE REED, with whom THE CHIEF JUSTICE and MR. JUSTICE MINTON join, dissenting.

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The three organizations named in the caption, together with certain other groups and individuals, filed suits in the United States District Court for the District of Columbia primarily to have declared unconstitutional Executive Order No. 9835, March 21, 1947, 12 Fed.Reg. 1935, as applied against these petitioners. Acting under [341 U.S. 188] Part III, § 3 of Executive Order No. 9835, note 3, infra, the Attorney General, on November 24, 1947, transmitted the required list of organizations to the Loyalty Review Board. This list included the three above-named organizations. The Board promptly disseminated the information to all departments and agencies. It was published as Appendix A to Title 5, Administrative Personnel, CFR § 210.11(b)(6). 13 Fed.Reg. 1471. Later, September 17, 1948, the three organizations were designated by the Attorney General as "communist." 13 Fed.Reg. 6135. The relief sought by petitioners was to have the names of the organizations deleted from the allegedly unconstitutionally created lists because of the obvious harm to their activities by reason of their designation.

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The list was transmitted to the Board by the Attorney General as a part of the plan of the President, broadly set forth in Executive Order No. 9835, to furnish maximum protection

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against infiltration of disloyal persons into the ranks of [government] employees, and equal protection from unfounded accusations of disloyalty

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for the loyal employees. 12 Fed.Reg. 1935. Executive Order No. 9835 came after long consideration of the problems of possible damage to the Government from disloyalty among its employees. 92 Cong.Rec. 9601. See the Report of the President's Temporary Commission on Employee Loyalty (appointed 1946), p. 23:

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The presence within the government of any disloyal or subversive persons, or the attempt by any such persons to obtain government employment, presents a problem of such importance that it must be dealt with vigorously and effectively.

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A list of subversive organizations under Executive Order No. 9300, 3 CFR, 1943 Cum.Supp., 1252, was likewise disseminated to government agencies. 13 Fed.Reg. 1473. [341 U.S. 189] Great Britain (see note 31, infra), Australia (Act of October 20, 1950), New Zealand (Deynzer v. Campbell, (1950) N.Z.L.R. 790; 37th Rep., Public Service Comm'n, New Zealand, 1949, p. 14; 38th Rep., Public Service Comm'n, New Zealand, 1950, p. 12), and the Union of South Africa (Act No. 44 of 1950) have taken legislative or administrative steps to control disloyalty among government employees. See The Report of the Royal Commission (Canada) appointed under Order in Council, P.C. 411, February 5, 1946. The method of dealing with communism and communists adopted by the Commonwealth of Australia was held beyond the powers of that government. Australian Communist Party v. Commonwealth, decision of Friday, March 9, 1951, 83 C.L.R. 1.

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The procedure for designating these petitioners as communists may be summarized as follows: Executive Order No. 9835, Part III, was issued by the President as Chief Executive, "in the interest of the internal management of the Government" and under the Civil Service Act of 1883, 22 Stat. 403, as amended, 5 U.S.C. § 632 et seq., and § 9A of the Hatch Act. 5 U.S.C.Supp. II, § 118j. The former acts give general regulatory powers over the employment and discharge of government personnel; the latter is more specific. 1 These present cases do not involve the removal of any employee. [341 U.S. 190] The Order required investigation of the loyalty of applicants for government employment and similar investigation of present employees. To assure uniformity and fairness throughout the Government in the investigation of employees, a Loyalty Review Board was created to review loyalty cases from any department or agency, disseminate information pertinent to employee loyalty programs, and advise the heads thereof. Standards were provided for employment and discharge. So far as pertinent to the objections of petitioner to inclusion on the list of subversive and communist organizations, they appear in note 3 and in the note below. 2 It was apparently to avoid the necessity of continuous reexamination by all government departments and agencies of the characteristics of organizations suspected of aims inimical to the Government that provision was made in the Order for examination and designation of such organizations by [341 U.S. 191] the Attorney General. 12 Fed.Reg. 1938, Part III, § 3. 3 It was under this plan that the Attorney General made his designations.

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The designations made available for the use of the Loyalty Review Board and the departmental or agency loyalty boards, the result of the investigation of the Attorney General into the character of organizations that might fall under suspicion as totalitarian, fascist, communist or subversive. The list does not furnish a basis for any court action against the organizations so designated. It, of course, might follow from discovery of facts by the investigation that criminal or civil proceedings would be begun to enforce an applicable criminal statute or to cancel the franchise or some license of a listed organization. In such a proceeding, however, the accused organization would have the usual protections of any defendant. The list is evidence only of the character of the listed organizations in proceedings before loyalty boards to determine whether "reasonable" grounds exist for belief "that the employee under consideration" is disloyal to the Government of the United States. See note 2, supra. The names were placed on the list by the Attorney General after investigation. If legally permissible, as carried out by the Attorney General, there is no question but that a single investigation as to the character of [341 U.S. 192] an organization is preferable to one by each of the more than a hundred agencies of government that are catalogued in the United States Government Organization Manual. To require a determination as to each organization for the administrative hearing of each employee investigated for disloyalty would be impossible. The employee's association with a listed organization does not, under the Order, establish, even prima facie, reasonable grounds for belief in the employee's disloyalty. 4

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None of the complaints denies that the Attorney General made an "investigation" of the organizations to determine whether or not they were totalitarian, fascist, communist or subversive as required by Part III, § 3, or that he had material information concerning disloyal activities on their part. The Council came the nearest to such an allegation in the quoted excerpts from their complaint in note 10, but we read them as no more than allegations of unconstitutionality because "investigation" without notice and hearing is not "appropriate." Certainly there is no specific allegation of the way in which the Attorney General failed to follow the Order. We therefore assume that the designation was made after appropriate investigation and determination. 5 [341 U.S. 193]

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No objection is or could reasonably be made in the records or briefs to an examination by the Government into the loyalty of its employees. Although the Founders of this Republic rebelled against their established government of England and won our freedom, the creation of our own constitutional government endowed that new government, the United States of America, with the right and duty to protect its existence against any force that seeks its overthrow or changes in its structure by other than constitutional means. Tolerant as we are of all political efforts by argument or persuasion to change the basis of our social, economic or political life, the line is drawn sharply and clearly at any act or incitement to act in violation of our constitutional processes. Surely the Government need not await an employee's conviction of a crime involving disloyalty before separating him from public service. Governments cannot be indifferent to manifestations of subversion. As soon as these are significant enough reasonably to cause concern as to the likelihood of action, the duty to protect the state compels the exertion of governmental power. Not to move would brand a government with a dangerous weakness of will. The determination of the time for action rests with the executive and legislature arms. An objection to consideration of an employee's sympathetic association with an admitted totalitarian, fascist, communist or subversive group, as bearing upon the propriety of his retention or employment as a government employee, would have no better standing. The Order gives conclusive indication of the type of organization that is meant by the four [341 U.S. 194] word-labels. 6 Following them in Part III, § 3, 12 Fed.Reg. 1938, are the words,

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or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

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Bracketed with membership in listed organizations (Exec.Order No. 9835, Part V) as activities for consideration in determining an employee's loyalty are those listed below. These are the standards that define the type of organization subject to designation. 7 Of course, the Order means that a communist or subversive organization is of the same general character as one that seeks to alter our form of government by unconstitutional means, 13 Fed.Reg. 6137, to-wit, by force and violence.

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Procedure under the Executive Order does not require "proof" in the sense of a court proceeding that these communist organizations teach or incite to force and violence [341 U.S. 195] to obtain their objectives. 8 What is required by the Order is an examination and determination by the Attorney General that these organizations are "communist." The description "communist" is adequate for the purposes of inquiry and listing. No such precision of definition is necessary as a criminal prosecution might require. Cf. United States v. Chemical Foundation, 272 U.S. 1, 14. Communism is well understood to mean a group seeking to overthrow by force and violence governments such as ours and to establish a new government based on public ownership and direction of productive property. Undoubtedly, there are reasonable grounds to conclude that accepted history teaches that revolution by force and violence to accomplish this end is a tenet of communists. 9 No more is necessary to justify an organization's designation as communist. [341 U.S. 196]

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As a basis for petitioners' attack on the list, the Refugee Committee set forth facts in its complaint to show its charitable character. These indicate activities and expenditures in aid of the Spanish Republicans in flight from their homeland. The International Workers Order sets forth facts to show that it was a duly organized fraternal benefit society under New York law, furnishing sickness and death benefits as well as life insurance protection to its members. It states other worthy objectives in which it is engaged, and asserts it is not an organization such as are referred to in the Order, Part III, § 3, supra. The Council, too, sets out its purpose to promote American-Soviet friendship by means of education and information. It asserts:

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In all its activities, the National Council has sought to further the best interests of the American people by lawful, peaceful and constitutional means.

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The absence of any provision in the Order or rules for notice to suspected organizations, for hearings with privilege to the organizations to confront witnesses, cross-examine, produce evidence, and have representation of counsel or judicial review of the conclusion reached by the Attorney General is urged by the petitioners as a procedure so fundamentally unfair and restrictive of personal freedoms as to violate the Federal Constitution, specifically the Due Process Clause and the First Amendment. No opportunity was allowed by the Attorney General for petitioners to offer proof of the legality of their purposes or to disprove charges of subversive operations. [341 U.S. 197] This is the real gravamen of each complaint, the basis upon which the determination of unconstitutionality is sought. 10

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To these complaints, the Government filed motions to dismiss because of failure to state a claim upon which relief could be granted. The motions were granted by the District Court, and the Court of Appeals affirmed.

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Admissions by motions to dismiss.—It is held in MR. JUSTICE BURTON's opinion that the motion to dismiss should have been denied. It is said:

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The inclusion of any of the complaining organizations in the designated list solely on the facts alleged in the respective complaints, which must be the basis for our decision here, is therefore an arbitrary and unauthorized act. In the two cases where the complaint specifically alleges the factual absence of any [341 U.S. 198] basis for the designation, and the respondents' motion admits that allegation, the designation is necessarily contrary to the record.

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I understand MR. JUSTICE BURTON's opinion to hold that, as a motion to strike for failure to state a cause of action admits all well pleaded facts, respondents' motion admits such allegations in the complaint as that quoted in the third preceding paragraph from the Council's complaint and the assertions that petitioners are not "totalitarian, facist, communist or subversive." Such statements, however, appear to me to be only conclusions of law as to the effect of facts stated, or empty assertions or conclusions without well pleaded facts to sustain them. 11 Where the issue is the permissibility of designation without notice or hearing, a motion to strike does not admit an allegation of "arbitrary" action, or that "all its activities (are)…constitutional." These complaints may not be decided upon any such posture in pleading. Petitioners' charge, that their "designation" violates due process and the First Amendment, remains the issue.

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Standing to sue.—A question is raised by the United States as to petitioners' standing to maintain these actions. It seems unnecessary to analyze that problem in this dissent. If there should be a determination that petitioners' constitutional rights are violated by petitioners' designation under Part III, § 3, of the Order, it would seem they would have standing to seek redress. The "standing" turns on the existence of the federal right. 12 Does petitioners' designation abridge their rights under the First Amendment? Do petitioners have a constitutional right under the Due Process Clause of the Fifth [341 U.S. 199] Amendment to require a hearing before the Attorney General designates them as a subversive or communist organization for the purposes of Executive Order No. 9835?

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First Amendment.—Petitioners assert that their inclusion on the disloyal list has abridged their freedom of speech, since listeners or readers are more difficult to obtain for their speeches and publications, and parties interested in their work are more hesitant to become associates. The Refugee Committee brief adds that "thought" is also abridged. A concurring opinion accepts these arguments to the point of concluding that the publication of the lists "with or without a hearing" violates the First Amendment.

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This Court, throughout the years, has maintained the protection of the First Amendment as a major safeguard to the maintenance of a free republic. This Nation has never suffered from an enforced conformity of expression or a limitation of criticism. But neither are we compelled to endure espionage and sedition. Wide as are the freedoms of the First Amendment, this Court has never hesitated to deny the individual's right to use the privileges for the overturn of law and order. Reasonable restraints for the fair protection of the Government against incitement to sedition cannot properly be said to be "undemocratic" or contrary to the guarantees of free speech. Otherwise, the guarantee of civil rights would be a mockery. 13 Even when this Court spoke out most strongly against previous restraints, it was careful to recognize that

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The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.

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Near v. Minnesota, 283 U.S. 697, 716. [341 U.S. 200]

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Recognizing that the designation, rightly or wrongly, of petitioner organizations as communist impairs their ability to carry forward successfully whatever legitimate objects they seek to accomplish, we do not accept their argument that such interference is an abridgment of First Amendment guarantees. 14 They are in the position of every proponent of unpopular views. Heresy induces strong expressions of opposition. So long as petitioners are permitted to voice their political ideas, free from suggestions for the opportune use of force to accomplish their social and economic aims, it is hard to understand how any advocate of freedom of expression can assert that their right has been unconstitutionally abridged. As nothing in the orders or regulations concerning this list limits the teachings or support of these organizations, we do not believe that any right of theirs under the First Amendment is abridged by publication of the list.

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Due Process.—This point brings us face to face with the argument that, whether the Attorney General was right or wrong in listing these organizations, his designation cannot stand because a final decision of ineligibility for employment without notice and hearing rises to the importance of a constitutional defect. If standards for definition of organizations includable on the list are necessary, the order furnishes adequate tests, as appears from the text preceding notes 2 and 7 above and the standards set out in those notes. Compare cases cited, note 6, supra.

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Does due process require notice and hearing for the Department of Justice investigation under Executive Order No. 9835, Part III, § 3, note 3, supra, preliminary to listing? As a standard for due process, one cannot do better than to accept as a measure that no one may be deprived of liberty or property without such reasonable [341 U.S. 201] notice and hearing as fairness requires. This is my understanding of the meaning of the opinions upon due process cited in the concurring opinions. We are not here concerned with the rightfulness of the extent of participation in the investigations that might be claimed by petitioners. 15 They were given no chance to take part. Their claim is that the listing resulted in a deprivation of liberty or property contrary to the procedure required by the Fifth Amendment. 16 [341 U.S. 202]

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The contention can be answered summarily by saying that there is no deprivation of any property or liberty of any listed organization by the Attorney General's designation. It may be assumed that the listing is hurtful to their prestige, reputation and earning power. It may be such an injury as would entitle organizations to damages in a tort action against persons not protected by privilege. See Spalding v. Vilas, 161 U.S. 483; Glass v. Ickes, 73 App.D.C. 3, 117 F.2d 273. This designation, however, does not prohibit any business of the organizations, subject them to any punishment, or deprive them of liberty of speech or other freedom. The cases relied upon in the briefs and opinions of the majority as requiring notice and hearing before valid action can be taken by administrative officers are where complainant will lose some property or enforceable civil or statutory right by the action taken or proposed. 17 "[A] mere abstract declaration" by an administrator regarding the character of an organization, without the effect of forbidding [341 U.S. 203] or compelling conduct on the part of complainant, ought not to be subject to judicial interference. Rochester Telephone Corp. v. United States, 307 U.S. 125, 129. That is, it does not require notice and hearing.

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These petitioners are not ordered to do anything, and are not punished for anything. Their position may be analogized to that of persons under grand jury investigation. Such persons have no right to notice by and hearing before a grand jury—only a right to defend the charge at trial. 18 Property may be taken for government use without notice or hearing by a mere declaration of taking by the authorized official. No court has doubted the constitutionality of such summary action under the due process clause when just compensation must be paid ultimately. 19 Persons may be barred from certain positions merely because of their associations. 20

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To allow petitioners entry into the investigation would amount to interference with the Executive's discretion, contrary to the ordinary operations of Government. Long ago, Mr. Chief Justice Taney, in Decatur v. Paulding, 14 Pet. 497, stated the rule and the reason against judicial interference with executive discretion:

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The head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion….

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If a suit should come before this Court, which involved the construction of any of these laws, the Court certainly would not be bound to adopt the construction given by the head of a department. [341 U.S. 204] And if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress in order to ascertain the rights of the parties in the cause before them.

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The interference of the Courts with the performance of the ordinary duties of the executive departments of the government would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given to them.

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P. 516. That rule still stands. Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 704. 21 This Court applied it recently in Chicago & Southern Air Lines, Inc., v. Waterman S.S. Corp., 333 U.S. 103, as to foreign policy decisions of the President concerning overseas airline licenses. 22 In Louisiana v. McAdoo, 234 U.S. 627, the State sought to [341 U.S. 205] enjoin an order of the Secretary of the Treasury fixing the customs rate on sugar as "arbitrary, illegal, and unjust," and irreparably injurious to the State. The Court refused the State permission to file the suit as, in reality, a suit against the United States, saying an officer may be compelled to act ministerially.

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But if the matter in respect to which the action of the official is sought is one in which the exercise of either judgment or discretion is required, the courts will refuse to substitute their judgment or discretion for that of the official intrusted by law with its execution. Interference in such a case would be to interfere with the ordinary functions of government.

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P. 633. It seems clearly erroneous to suggest that "listing" determines any "guilt" or "punishment" for the organizations or has any finality in determining the loyalty of members. The President and the Attorney General pointed this out. 23 It is written into the Code of Federal Regulations, [341 U.S. 206] 5 CFR § 210.11(b)(6), note 4, supra. The standard for discharge emphasizes the meaning. See notes 2 and 7, supra.

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Before stating our conclusions, a comment should be made as to the introduction by the concurring opinions of a discussion of the rights of a member of these organizations. It is suggested by one concurrence that, as the

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Government proceeds on the basis that each of these associations is so identical with its members that the subversive purpose and intents of the one may be attributed to and made conclusive upon the other,

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the organization must be permitted to vindicate the members' rights or due process is not satisfied. Another concurrence states "an employee may lose his job because of the Attorney General's secret and ex parte action." Both concurrences indicate, it seems to me, that, as a member of petitioner organizations is denied due process by the effect of listing the organizations, the organization is likewise denied due process in the listing. Without accepting the logic of the concurrences, and waiving inquiry as to the standing of a corporation or unincorporated association to defend the rights of a member to employment, we think the suggestions as to lack of due process are based on an erroneous premise. Employees generally, under executive departments and agencies, whether or not members of listed organizations, without special statutory protection such as permanent employees under the competitive and classified civil service laws and regulations or preference eligibles under the Veterans' Preference Act of 1944, 58 Stat. 387, 5 U.S.C. § 851, 5 CFR, Parts 9 and 22, and Part 2, § 2.104, are subject to summary removal by the appointing officers. 24 Listing of these organizations [341 U.S. 207] does not conclude the members' rights to hold government employment. It is only one piece of evidence for consideration. 25 That mere membership in listed organizations does not normally bring about findings of disloyalty is graphically shown by a report of proceedings under the loyalty program. 26 The procedure for removal of employees suspected of disloyalty follows the routine prescribed for the removal of employees on other grounds for dismissal. Employees under investigation have never had the right to confrontation, cross-examination and quasi-judicial hearing. 37 Stat. 555, as amended, 5 [341 U.S. 208] U.S.C. § 652. Normal removal procedure functions for permanent employees about in this way. The employing agency may remove for the efficiency of the service, including grounds for disqualification of an applicant. 5 CFR, 1947 Supp. § 9.101. 27 Removal requires notice and charges. 28 Before the loyalty review boards, similar procedure is followed. 29 Where initial consideration indicates [341 U.S. 209] a removal of an incumbent for disloyalty may be warranted, notice is provided for. 30 Thus, there is scrupulous care taken to see that an employee who has fallen under suspicion has notice of the charges and an opportunity to explain his actions. The employee has no opportunity to disprove the characterization placed upon the listed organization by the Attorney General for the practical reasons stated following note 2, supra. The employee does have every opportunity to explain his association with that organization. The Constitution requires for the employee no more than this fair opportunity to explain his questioned activities. Such procedure is quite similar to that followed in Great [341 U.S. 210] Britain in the removal or transfer of civil servants from positions "vital to the security of the State." The Prime Minister assumed the authority to designate membership in the Communist Party or "other forms of continuing association" therewith as sufficient to bar employment in sensitive areas. 31

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Conclusion.—In our judgment, organizations are not affected by these designations in such a manner as to [341 U.S. 211] permit a court's interference or to deny due process. That conclusion holds good also when we assume the organizations may present their members' grievances over discharge as a part of the organization's case. The administrative hearing granted an employee facing discharge is a statutory modification of the employing agent's former authority to discharge summarily. Such act or grace does not create a constitutional right. Due process is called for in determinations affecting rights.

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What petitioners seek is a ruling that the Government cannot designate organizations as communist for the purpose of furthering investigations into employees' loyalty by the employing agencies without giving those organizations an opportunity to examine and meet the information on which the list is based. One can understand that position. There is a natural hesitation against any action that may damage any person or organization through an error that notice and hearing might correct. Such attitude of tolerance is reflected in § 13 of the Internal Security Act of 1950, 64 Stat. 987, 998. A statutory requirement for notice and administrative hearing, however, [341 U.S. 212] does not mean the existence of a constitutional requirement. 32

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The Executive has authority to gather information concerning the loyalty of its employees, as congressional committees have power to investigate matters of legislative interest. A public statement of legislative conclusions on information that later may be found erroneous may damage those investigated, but it is not a civil judgment or a criminal conviction. Due process does not apply. Questions of propriety of political action are not for the courts. Information that an employee associates with or belongs to organizations considered communistic may be deemed by the Executive a sound reason for making inquiries into the desirability of the employment of that employee. That is not "guilt by association." It is a warning to investigate the conduct of the employee and his opportunity for harm.

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While we must be on guard against being moved to conclusions on the constitutionality of action, legislative or executive, by the circumstances of the moment, undoubtedly varying conditions call for differences in procedure. Due process requires appraisal in the light of conditions confronting the executive during the continuation of the challenged action. 33 Power lies in the executive to guard the Nation from espionage, subversion and sedition by examining into the loyalty of employees, and due process in such investigation depends upon the particular exercise of that power in particular conditions. 34 In investigations to determine the purposes of suspected organizations, the Government should be free to proceed without notice or hearing. Petitioners will have protection [341 U.S. 213] when steps are taken to punish or enjoin their activities. Where notice and such administrative hearing as the Code Federal Regulations prescribes precede punishment, injunction or discharge, petitioners and their members' rights to due process are protected.

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The judgment of the Court of Appeals should be affirmed.

Footnotes

BURTON, J., lead opinion (Footnotes)

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1. E.g., § 9A of the Hatch Political Activity Act, August 2, 1939, 53 Stat. 1148, 5 U.S.C. (1946 ed., Supp. III) § 118j; Smith Act, June 28, 1940, 54 Stat. 671, now 18 U.S.C. (1946 ed., Supp. III) §§ 2385, 2387; Voorhis Anti-Propaganda Act, October 17, 1940, 54 Stat. 1201, now 18 U.S.C. (1946 ed., Supp. III) § 2386; many appropriation act riders barring the use of funds to pay

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any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence:…

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such as that at 55 Stat. 42, § 3; Exec. Order No. 9300, "Establishing the Interdepartmental Committee to Consider Cases of Subversive Activity on the Part of Federal Employees", February 5, 1943, 3 CFR, 1943 Cum.Supp., p. 1252, 8 Fed.Reg. 1701; and Exec. Order No. 9806, "Establishing the President's Temporary Commission on Employee Loyalty", November 25, 1946, 3 CFR, 1946 Supp., p. 183, 11 Fed.Reg. 13863. See also United States v. Lovett, 328 U.S. 303, 308-313. A later expression of congressional policy appears in Title I (the Subversive Activities Control Act of 1950) of the Internal Security Act of 1950 (the McCarran Act) of September 23, 1950, 64 Stat. 987. This requires any "Communist-action organization" or "Communist-front organization" to register with the Attorney General (§ 7) and provides for hearings before a newly created "Subversive Activities Control Board" (§§ 12, 13).

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2.

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Part V—Standards

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1. The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.

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2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:

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\* \* \* \*

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f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

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3 CFR, 1947 Supp., p. 132, 12 Fed.Reg. 1938.

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3. As published in the Federal Register, March 20, 1948, the list includes two groups. The first group contains none of the present complainants. The Attorney General explains that that group

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is reported as having been previously named as subversive by the Department of Justice. and as having been previously disseminated among the Government agencies for use in connection with consideration of employee loyalty under Executive Order No. 9300, issued February 5, 1943….

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13 Fed.Reg. 1473. The second group includes each of the complaining organizations. The Attorney General lists this group, with the first, under the general heading "Appendix A—List of Organizations Designated by the Attorney General Pursuant to Executive Order No. 9835." 5 CFR, 1949, c. II, Pt. 210, pp. 199-201, 13 Fed.Reg. 1471, 1473. He then places the second group under the following subheading: "Under Part III, section 3, of Executive Order No. 9835, the following additional organizations are designated:…" Id. at 201, 13 Fed.Reg. 1473.

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4. 13 Fed.Reg. 6137-6138. This classification was disseminated to all departments and agencies September 21, 1948, and the classified list was published October 21, 1948, as an amendment to 5 CFR, 1949, c. II, Pt. 210, pp. 200-202, 203-205.

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5. The six classifications were: "Totalitarian," "Fascist," "Communist," "Subversive," "Organizations Which Have `Adopted a Policy of Advocating or Approving the Commission of Acts of Force and Violence to Deny Others Their Rights Under the Constitution of the United States,'" and "Organizations Which `Seek to Alter the Form of Government of the United States by Unconstitutional Means.'" 5 CFR, 1949, c. II, Pt. 210, pp. 203-205, 13 Fed.Reg. 6137-6138.

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The Attorney General also explained that—

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Applying the elementary rule of statutory construction, each of these classifications must be taken to be independent and mutually exclusive of the others. It may well be that a designated organization, by reason of origin, leadership, control, purposes, policies or activities, alone or in combination, may fall within more than one of the specified classifications. In such cases, a reasonable interpretation of the Executive order would seem to require that designation be predicated upon its dominant characteristics, rather than extended to include all other classifications possible on the basis of what may be subordinate attributes of the group. In classifying the designated organizations, the Attorney General has been guided by this policy. Accordingly, it should not be assumed that an organization's dominant characteristic is its only characteristic.

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Id. at 203, 13 Fed..Reg. 6137.

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6. The complaint adds that—

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Before the end of the war in Europe, this relief consisted of: (1) the release and assistance of those of the aforesaid refugees who were in concentration camps in Vichy France, North Africa, and other countries; (2) transportation and asylum for those of the aforesaid refugees in flight; (3) direct relief and aid, to those of the aforesaid refugees requiring help, through the Red Cross and other international agencies. At the present time, the Joint Anti-Fascist Refugee Committee relief work is principally devoted to aiding those Spanish Republican refugees, and other anti-fascist refugees who fought against Franco, located in France and Mexico.

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7. Executive Order No. 9835 purports to rest, in part, upon the authority of § 9A of the Hatch Act. 3 CFR, 1947 Supp., p. 129, 12 Fed.Reg. 1935.

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8. In this case, unlike the others, the complainant asked that a three-judge District Court be convened, pursuant to 28 U.S.C. (1946 ed.) § 380a, now part of 28 U.S.C. (1946 ed., Supp. III) §§ 2281-2284. The District Court, however, dismissed the complaint without convening such a court.

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9. The complaint also alleges in Part IV:

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8. The purpose, objectives and activities of the Order are in no sense subversive. The Order is not an organization within the meaning of Part III, section 3 of Executive Order No. 9835, and it has not adopted a policy of advocating or approving the commission of acts of force or violence, or to deny other persons the rights under the Constitution or as seeking to alter the form of government by unconstitutional means, but, on the contrary, the Order is opposed to the commission of acts of force or violence, fights against the denial of rights to any person, and is opposed to the altering of our form of government by any illegal or unconstitutional means. The Order is dedicated to the democratic ideals and traditions of the United States and the principles of freedom and equality embodied in the Constitution.

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10. The complaint attacks the constitutionality of § 9A of the Hatch Act, but does not ask for the convening of a three-judge District Court.

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In this case, A. L. Drayton, as a member of the order and a civil employee of the United States, sought permission from the District Court to intervene under Rule 24(b) of the Federal Rules of Civil Procedure, and to have added as defendants three members of the Loyalty Review Board of the Post Office Department. His motion was denied and his appeal from that denial dismissed. The respondents now advise us that, in a separate proceeding, he appealed to the Loyalty Review Board from a decision adverse to his loyalty, with the result that such decision has been reversed, and that he has returned to duty. While he has not withdrawn his appeal from the denial of his motion to intervene, we find no reason to review the discretion exercised by the District Court in denying that motion. Allen Calculators v. National Cash Register Co., 322 U.S. 137; see 4 Moore's Federal Practice (2d ed. 1950) 62-64.

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11. The designation of these organizations was not preceded by any administrative hearing. The organizations received no notice that they were to be listed, had no opportunity to present evidence on their own behalf, and were not informed of the evidence on which the designations rest. See Chin Yow v. United States, 208 U.S. 8.

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We have noted the following recitals made by the Attorney General in describing his standard procedure in the preparation of his lists:

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After the issuance of Executive Order No. 9835 by the President, the Department of Justice compiled all available data with respect to the type of organization to be dealt with under that order. The investigative reports of the Federal Bureau of Investigation concerning such organizations were correlated. Memoranda on each such organization were prepared by attorneys of the Department. The list of organizations contained herein has been certified to the Board by the Attorney General on the basis of recommendations of attorneys of the Department as reviewed by the Solicitor General, the Assistant Attorneys General, and the Assistant Solicitor General, and subsequent careful study of all by the Attorney General.

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5 CFR, 1949, c. II, Pt. 210, pp. 199-200, 13 Fed.Reg. 1471.

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These recitals, however, relate to the mechanics used, rather than to the appropriateness of the determination or the justification for the respective designations. They fall short of disclosing that there has been such an administrative hearing as would offset the admissions of the specific allegations of the complaints which are inherent in the respondents' motions to dismiss. See Fed.Rules Civ.Proc., 12(b) and 56(c), and Regan v. Farmers' Loan & Trust Co., 154 U.S. 362, 401-402.

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We have treated the designation of an organization by the Attorney General in his list as including his furnishing of that list to the Loyalty Review Board with knowledge of that Board's obligation to disseminate it to all departments and agencies of the Government.

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12. As an illustration of the meaning of § 559, the Restatement suggests:

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2. A writes in a letter to B that C is a member of the Ku Klux Klan. B lives in a community in which a substantial number of the citizens regard this organization as a discreditable one. A has defamed C.

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See also, Spanel v. Pegler, 160 F.2d 619, 171 A.L.R. 699; Wright v. Farm Journal, 158 F.2d 976; Grant v. Reader's Digest Ass'n, 151 F.2d 733; Mencher v. Chesley, 297 N.Y. 94, 75 N.E.2d 257; Prosser, Handbook of the Law of Torts § 91; 171 A.L.R. 709-710, Note.

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13. We do not reach either the validity of the Employees Loyalty Program or the effect of the respondents' acts in furnishing and disseminating a comparable list in any instance where such acts are within the authority purportedly granted by the Executive Order. Cf. Carter v. Carter Coal Co., 298 U.S. 238, 289-292; United States v. Butler, 297 U.S. 1, 68-78; Linder v. United States, 268 U.S. 5, 17; M'Culloch v. Maryland, 4 Wheat. 316, 423.

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14. Rule 17(b) of the Federal Rules of Civil Procedure gives unincorporated associations the right to sue in their own names for the enforcement of rights existing under the Constitution or laws of the United States. And see Restatement, Torts, § 561(2) and Comment b thereon. See also New York Society for Suppression of Vice v. MacFadden Publications, 260 N.Y. 167, 183 N.E. 284; cf. Pullman Co. v. Local Union No. 2928 of United Steelworkers of America, 152 F.2d 493.

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15. Utah Fuel Co. v. National Bituminous Coal Comm'n, 306 U.S. 56; Shields v. Utah Idaho Central R. Co., 305 U.S. 177; Philadelphia Co. v. Stimson, 223 U.S. 605.

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16. United States v. Los Angeles & S.L. R. Co., 273 U.S. 299, 309-310, does not prescribe a contrary course. In that case, we held that the Interstate Commerce Commission order fixing a rate base could not be attacked by a bill in equity when the base could be challenged in subsequent proceedings fixing the rate. No comparable alternative relief is available here.

BLACK, J., concurring (Footnotes)

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1. In November, 1794, there was introduced in Congress a resolution of public disapprovable of certain "self-created Democratic societies" thought to be responsible for stirring up the people to insurrection. Madison opposed the resolution, apparently believing that, if it were enacted, it would be a bill of attainder. His views in this regard are reported as follows:

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It is in vain to say that this indiscriminate censure is no punishment. If it falls on classes, or individuals, it will be a severe punishment…. Is not this proposition, if voted, a vote of attainder?

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4 Annals of Cong. 934 (1794).

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2. But compare Madison in Federalist Paper No. 42:

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As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it. But as new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free governments, have usually wreaked their alternate malignity on each other, the Convention have, with great judgment, opposed a barrier to this peculiar danger by inserting a Constitutional definition of the crime, fixing the proof necessary for conviction of it, and restraining the Congress, even in punishing it, from extending the consequences of guilt beyond the person of its author.

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3. One purpose of the Attorney General's blacklist under Executive Order 9835 is for use as evidence against government employees tried for disloyalty before loyalty boards acting under the same Executive Order. Proof of membership in a blacklisted organization, or of association with its members, can weigh heavily against a government employee's loyalty. Thus, an employee may lose his job because of the Attorney General's secret and ex parte action. This is well illustrated in the case of Bailey v. Richardson, 341 U.S. 918, decided today by an equally divided Court. The Loyalty Board's finding against Miss Bailey appears to have rested in part on her supposed association with such organizations and in part on secret unsworn hearsay statements communicated to the Board by anonymous informers. Judge Edgerton's dissenting opinion demonstrates how the entire loyalty program grossly deprives government employees of the benefits of constitutional safeguards. Bailey v. Richardson, 86 U.S.App.D.C. 248, 182 F.2d 46, 66.

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4. The Appendix is an illustration of persecution of Protestants by Catholics. For instances of persecution of Catholics by Protestants, see my dissenting opinion in American Communications Assn. v. Douds, 339 U.S. 382, 445, particularly notes 3, 4 and 7.

FRANKFURTER, J., concurring (Footnotes)

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1. The decisions are collected in the dissenting opinion in Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 705.

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2. A statute may, of course confer, standing even in this situation. Federal Communications Comm'n v. Sanders Radio Station, 309 U.S. 470, 642; Columbia Broadcasting System v. United States, 316 U.S. 407; cf. Youngstown Sheet & Tube Co. v. United States, 295 U.S. 476; Stark v. Wickard, 321 U.S. 288.

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3. The Davis & Farnum case held that a subcontractor did not have standing to enjoin a municipal ordinance which prohibited a construction project in violation of a right of the owner of the land on which it was to be built. The Court held that the petitioner had no legal interest in the controversy, since his interest was only "indirect."

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4. Government action is "final" in the sense here involved when at no future time will its impact on the petitioner become more conclusive, definite, or substantial. "Finality" is also employed in a different sense, with which we are not here concerned, in reference to judicial action not subject to subsequent revisory executive or legislative action. Cf. United States v. Ferreira, 13 How. 40.

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5. The Court expressed the decision in terms of the nonlegislative character of the specification. But since the validity of the specification could be determined in an action for injunction or mandamus against the local officers, the decision does not establish that final administrative action is immune from review because it is not legislative in form.

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6. See also decisions treating as "justiciable" bills to enjoin regulations which create duties immediately enforceable by imposition of penalties. Assigned Car Cases, 274 U.S. 564; United States v. Baltimore & O. R. Co., 293 U.S. 454.

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7. In the Los Angeles case, the Court thus supported its conclusion that the bill was not justiciable under general equity powers:

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The investigation was undertaken in aid of the legislative purpose of regulation. In conducting the investigation, and in making the report, the Commission performed a service specifically delegated and prescribed by Congress. Its conclusions, if erroneous in law, may be disregarded. But neither its utterances, nor its processes of reasoning, as distinguished from its acts, are a subject for injunction.

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273 U.S. at 314-315. Pennsylvania R. Co. v. Labor Board, 261 U.S. 72, was a bill to enjoin the Railroad Labor Board from publishing that the petitioner had violated its decision. Decisions of the Board were not legally enforceable, and the Court therefore concluded that they violated "no legal or equitable right of the complaining company." 261 U.S. at 85. The Court considered at length, however, the company's argument that the Board had been given no jurisdiction to decide the particular issue involved. That it found it necessary to decide this issue against the company on the merits indicates that it thought a stronger case for standing would have been presented had the decision been beyond the Board's authority. In Ex parte Williams, 277 U.S. at 271, there is a suggestion that a litigant may have standing to enjoin a tax assessment when the challenge is to the validity of the statute authorizing the assessment, although there would be no standing to challenge the assessment on the ground that it denied equal protection of the laws.

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8. Compare the decisions which hold that certain executive officers are not liable in suits for damages for erroneous or even malicious conduct in office, so long as they are acting within the scope of the authority given them. Spalding v. Vilas, 161 U.S. 483; Gregoire v. Biddle, 177 F.2d 579.

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9. A Denver affiliate of the National Council, joined as petitioner in No. 7, has standing identical with its parent. The individual petitioners in that suit, however, have as officers of the Council an interest which is too remote to justify finding the issues justiciable as to them.

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10. The reasonableness of rates has, of course, been held in part a question for the courts. Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287; cf. Chicago, M. & St. P.R. Co. v. Minnesota, 134 U.S. 418. But to the extent that finality is accorded to the determination of an administrative agency, the Court has exacted a high standard of procedural fairness. Ohio Bell Tel. Co. v. Commission, 301 U.S. 292, 304; see ICC v. Louisville & N. R. Co., 227 U.S. 88; United States v. Abilene & S. R. Co., 265 U.S. 274; West Ohio Gas Co. v. Commission (No. 1), 294 U.S. 63; Railroad Comm'n v. Pacific Gas & Electric Co., 302 U.S. 388; Morgan v. United States, 304 U.S. 1; cf. United States v. Illinois Central R. Co., 291 U.S. 457.

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11. In Southern R. Co. v. Virginia, 290 U.S. 190, the Court declared unconstitutional a state officer's ex parte order that a railroad install an overhead crossing. Compare Monongahela Bridge Co. v. United States, 216 U.S. 177, in which a comparable order of the Secretary of War, entered after hearing, was upheld. In decisions involving local taxation for improvements, the Court has required that owners be given a hearing on valuation, as well as on the question whether their property has been benefited whenever that determination has not been legislatively made. See, e.g., Embree v. Kansas City Road Dist., 240 U.S. 242; cf. Anniston Mfg. Co. v. Davis, 301 U.S. 337. And although an individual's interest has been created by an ex parte decision, it may not be destroyed "without that character of notice and opportunity to be heard essential to due process of law." United States ex rel. Turner v. Fisher, 222 U.S. 204, 208; Garfield v. Goldsby, 211 U.S. 249. See also Ex parte Robinson, 19 Wall. 505.

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12. The Japanese Immigrant Case, 189 U.S. 86; see Kwock Jan Fat v. White, 253 U.S. 454; Wong Yang Sung v. McGrath, 339 U.S. 33; cf. United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537. In Lloyd Sabaudo Societa v. Elting, 287 U.S. 329, the Court held that a steamship company required to pay a fine to obtain port clearance for a ship which had brought a diseased alien to this country was entitled to determination of the facts by fair procedure. The Court disapproved in part Oceanic Nav. Co. v. Stranahan, 214 U.S. 320.

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13. In Dismuke v. United States, 297 U.S. 167, 172, the Court said that,

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in the absence of compelling language, resort to the courts to assert a right which the statute creates will be deemed to be curtailed only so far as authority to decide is given to the administrative officer…. If he is authorized to determine questions of fact, his decision must be accepted unless he exceeds his authority by making a determination which is arbitrary or capricious or unsupported by evidence,…or by failing to follow a procedure which satisfies elementary standards of fairness and reasonableness essential to the due conduct of the proceeding which Congress has authorized….

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14. Thus, no hearing need be granted on the question whether property is needed for a public use. Rindge Co. v. Los Angeles, 262 U.S. 700. Cf. Martin v. Mott, 12 Wheat. 19; United States v. Bush & Co., 310 U.S. 371.

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15. Cf. Norwegian Nitrogen Co. v. United States, 288 U.S. 294. In recent customs legislation, Congress has required a hearing on objections to appraisement. 38 Stat. 187, as amended, 19 U.S.C. § 1501; see Freund, Administrative Powers over Persons and Property, 163. In numberless other situations, Congress has required the essentials of a hearing. Among those that have come before this Court are removal orders of the Federal Reserve Board, Board of Governors v. Agnew, 329 U.S. 441; determinations under the Hatch Act, Oklahoma v. Civil Service Comm'n, 330 U.S. 127; induction orders under the draft law, Estep v. United States, 327 U.S. 114; minimum price orders of the Secretary of Agriculture, Stark v. Wickard, 321 U.S. 288; price control, Yakus v. United States, 321 U.S. 414; minimum wage determinations, Opp Cotton Mills v. Administrator, 312 U.S. 126; labor relations regulation, Labor Board v. Mackay Radio, 304 U.S. 333; Labor Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 47; Shields v. Utah Idaho R. Co., 305 U.S. 177; Inland Empire Council v. Millis, 325 U.S. 697.

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16. In 1941, the Attorney General's Committee on Administrative Procedure reported that it

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found in its investigation of the administrative process few instances of indifference on the part of the agencies to the basic values which underlie a fair hearing.

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These values it defined as follows:

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Before adverse action is to be taken by an agency, whether it be denying privileges to an applicant or bounties to a claimant, before a cease-and-desist order is issued or privileges or bounties are permanently withdrawn, before an individual is ordered directly to alter his method of business, or before discipline is imposed upon him, the individual immediately concerned should be apprised not only of the contemplated action with sufficient precision to permit his preparation to resist, but, before final action, he should be apprised of the evidence and contentions brought forward against him so that he may meet them. He must be offered a forum which provides him with an opportunity to bring his own contentions home to those who will adjudicate the controversy in which he is concerned. The forum itself must be one which is prepared to receive and consider all that he offers which is relevant to the controversy.

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Final Report, p. 62.

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The monographs prepared under the direction of the Committee support the conclusion that by statutory direction or administrative interpretation agencies consistently grant at least minimum rights of hearing. For example, the Walsh-Healey Act is enforceable by the Government's recovery of liquidated damages and by its withholding further contracts for a three-year period. Administrative hearings are employed for all contested action. Monograph of the Attorney General's Committee on Administrative Procedure, S.Doc. No. 186, 76th Cong., 3d Sess., Part 1, p. 7. It is generally the practice of the Veteran's Administration to grant hearings on request of claimants. Id., Part 2, p. 11. Hearings are granted on request on applications for permits from the Federal Alcohol Administration, id., Part 5, p. 6, and when licenses granted under the Grain Standards Act are suspended or revoked, id., Part 7, p. 10. The Federal Deposit Insurance Corporation determines admissibility of banks to membership without giving the applicant a hearing or formal opportunity to contradict the bank examiner's report. However, grounds for disapproval are reported to the applicant. Id., Part 13, p. 15. War Department officials grant hearings on applications to construct installations in navigable waters, except when it is clear that the application should or should not be granted. S.Doc. No. 10, 77th Cong., 1st Sess., Part 2, p. 7. A 1939 amendment to the social security law requires hearings in the event a claimant is dissatisfied with the disposition of the case by the Bureau of Old-Age and Survivors Insurance. Id., Part. 3, p. 14. The Department of the Interior grants hearings in allocating grazing lands, id., Part 7, pp. 9, 10; in disposing of applications for mineral leases, except where hearing would serve no useful purpose, id. at 26; and in determining questions of fact necessary to issuing mining patents, id. at 36. Hearings are frequently employed in investigations under flexible tariff procedures of the Tariff Commission, id., Part. 14, p. 12.

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17. The importance of opportunity to be heard is recognized as well by the English courts. The leading case is Board of Education v. Rice, [1911] A.C. 179. Lord Loreburn said in dictum,

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In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that, in doing either, they must act in good faith, and fairly listen to both sides, for that is a duty lying upon everyone who decides anything…. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.

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Id. at 182. This principle has been approved in a long line of decisions. See Local Government Board v. Arlidge, [1915] A.C. 120, 132-133; General Medical Council v. Spackman, [1943] A.C. 627; Errington v. Minister of Health, [1935] 1 K.B. 249; Rex v. Westminster, [1941] 1 K.B. 53. The Committee on Minister's Powers reported in 1936 that, while in administrative determination in a Minister may

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depart from the usual forms of legal procedure or from the common law rules of evidence, he ought not to depart from or offend against "natural justice."

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Three principles of "natural justice" were stated to be that "a man may not be a judge in his own cause," that "No party ought to be condemned unheard," and that "a party is entitled to know the reason for the decision." Report of Committee on Ministers' Powers, Cmd. 4060, pp. 75-80.

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18. Mr. Justice Holmes made this remark in a letter to Mr. Arthur Garfield Hays in 1928. See Bent, Justice Oliver Wendell Holmes 312.

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19.

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In a government like ours, entirely popular, care should be taken in every part of the system not only to do right, but to satisfy the community that right is done.

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5 The Writings and Speeches of Daniel Webster, 163. The same thought is reflected in a recent opinion by the Lord Chief Justice. A witness in a criminal case had been interrogated by the court in the absence of the defendant. Quashing the conviction, Lord Goddard said:

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That is a matter which cannot possibly be justified. I am not suggesting for one moment that the justices had any sinister or improper motive in acting as they did. It may be that they sent for this officer in the interests of the accused; it may be that the information which the officer gave was in the interests of the accused. That does not matter. Time and again, this court has said that justice must not only be done, but must manifestly be seen to be done….

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Rex v. Justices of Bodmin, (1947) 1 K.B. 321, 325.

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20. Other evidence is furnished by the State of New York. The Feinberg Law, comparable in purpose and in its scheme to the Loyalty Order, makes notice and hearing prerequisite to designation of organizations. See Thompson v. Wallin, 301 N.Y. 476, 484, 95 N.E.2d 806.

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21. Act of September 23, 1950, c. 1024, §§ 13, 14, 64 Stat. 987, 998, 1001.

DOUGLAS, J., concurring (Footnotes)

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1. The Bureau of Internal Revenue canceled the tax-exempt status of contributions to eight "subversive" organizations shortly after the Attorney General's list was released. The Bureau's announcement of the revocation indicated that the listing provided the basis for it. Treasury Dept. Press Release No. S-613, Feb. 4, 1948, 5 C.C.H. 1948 Fed.Tax Rep. par. 6075.

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The New York Feinberg Law, directed at eliminating members of subversive organizations from employment in the public schools, authorizes the Board of Regents to utilize the Attorney General's list in drawing up its own list of subversive organizations. Membership in a listed organization is prima facie evidence of disqualification. Laws of New York 1949, c. 360, ¶ 3022(2). The New York Superintendent of Insurance recently brought an action to dissolve the International Workers Order, Inc., petitioner in No. 71, on the grounds that it was on the Attorney General's list. Matter of People of New York, Motion 165, Supreme Court of New York County, Dec. 18, 1950. (See 199 Misc. 941.)

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The Maryland Ober Law requires candidates for appointive or elective office to certify whether they are members of "subversive" organizations. Laws of Maryland 1949, c. 86, ¶¶ 10-15. The Commission which drafted the Act contemplated that the Attorney General's list would be employed in policing these oaths. Report of Commission on Subversive Activities to Governor Lane and the Maryland General Assembly, January 1949, p. 43.

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2. Rule 8(a), Federal Rules of Civil Procedure.

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3. As MR. JUSTICE FRANKFURTER points out, due process requires no less. But apart from due process in the constitutional sense is the power of the Court to prescribe standards of conduct and procedure for inferior federal courts and agencies. See McNabb v. United States, 318 U.S. 332.

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4. The International Tribunal tried Nazi organizations to determine whether they were "criminal." Art. 9, Charter of the International Military Tribunal, Nazi Conspiracy and Aggression, Vol. 1, Office of U.S. Chief Counsel, U.S. Government Printing Office (1946) p. 6. That procedure, unlike the present one, provided that accused organizations might defend themselves against that charge. Ibid. But the finding of guilt as to an organization was binding on an individual who was later brought to trial for the crime of membership in a criminal organization. Article 10 provided:

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In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case, the criminal nature of the group or organization is considered proved, and shall not be questioned.

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Id.

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5. Barth, The Loyalty of Free Men (1951) p. 109.

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6. The oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as follows:

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I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

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23 Stat. 22, R.S. § 1757, 5 U.S.C. § 16. And see Act of Sept. 6, 1950, c. 896, § 1209, 64 Stat. 595, 764.

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7. See the address by Benjamin V. Cohen, Cong. R. c., A785, A786.

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8. 448 H.C.Deb. 1703 et seq., 3418 et seq. (5th Ser. 1947-1948). The meticulous care with which this small select group is handled is reflected in the letter of the Prime Minister, dated Dec. 1, 1948, reporting on the purge of communists and fascists from the civil service. 459 H.C.Deb. 830 (5th Ser. 1948-1949).

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The number of cases considered by the end of April 1950, was 86, classified as follows:

Transferred to nonsecret departments 32

Resigned 5

Exonerated and reinstated 19

Dismissed (including one Fascist) 7

Retired for health reasons before

completion of investigations 1

On special leave, either sub judice or confirmed

Communists awaiting transfer or dismissal 22

Total 86

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See British Information Services, Reference Division, April, 1950.

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9. The Civil Service Commission reports as of February, 1951, the following statistics relating to adjudications of loyalty under Executive Order No. 9835 of March 21, 1947:

Total cases received by Loyalty Boards 14,910

Less: cases where employee left the service

during investigations 1,722

Cases received for adjudication 13,188

Less: cases where employee thereafter resigned 1,331

field investigation reports pending in loyalty boards 1,060

cases in Department of the Army 1,304

Cases adjudicated 9,493

Eligible determinations 8,964

Ineligible, excluding 20 cases on review 529

Disposition of ineligibles:

Dismissed 307

Restored after appeal 19

On appeal 26

JACKSON, J., concurring (Footnotes)

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1. United States v. Morton Salt Co., 338 U.S. 632, 652.

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2.

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Boards…should not enter upon any evidential investigation of the nature of any of the organizations identified in the Attorney General's list for the purpose of attacking, contradicting, or modifying the controlling conclusion reached by the Attorney General in such list…. The Board should permit no evidence or argument before it on the point.

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Loyalty Review Board, Memorandum No. 2, March 9, 1948.

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3. Eberlein v. United States, 257 U.S. 82; Keim v. United States, 177 U.S. 290.

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This is true although reasons stated are alleged to be false or the officer taking the action is alleged to have acted in a biased, prejudicial and unfair manner. Golding v. United States, 78 Ct.Cl. 682, 685, certiorari denied 292 U.S. 643.

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4.

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A total of 3,166 Government employees have quit or have been discharged under President Truman's loyalty program since it began March 21, 1947, the Loyalty Review Board reported today.

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Of these, 294 actually were discharged for disloyalty. The remainder, 2,872, quit while under investigation and might or might not have been found disloyal.

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New York Times, January 16, 1951.

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5. 307 U.S. 325, 349. That was an action to mandamus the Secretary of State to issue a passport, to which it was conceded Miss Elg had no legal right, its issuance being wholly within Executive discretion which the courts would not attempt to control. Chief Justice Hughes pointed out, however, that its denial to Miss Elg was not grounded in the Secretary's general discretion, but "solely on the ground that she had lost her native born American citizenship." Finding that ground untenable, this Court directed its decree against the Secretary. The Secretary might say she would get no passport, but he could not, for unjustifiable reasons, say she was ineligible for one.

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6. Bailey v. Richardson, 341 U.S. 918.

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1. 5 U.S.C.Supp. II, § 118j:

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(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

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(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

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2. See 12 Fed.Reg. 1938, 5 CFR § 210.11(a):

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(a) Standard. The standard for the refusal of employment or the removal from employment in an Executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States. The panel shall reach its decision on consideration of the complete file, arguments, brief and testimony presented to it.

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(b) Activities and associations. Among the activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may be one or more of the following:

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\* \* \* \*

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(6) Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

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3.

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3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

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a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

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4. 5 CFR § 210.11(b)(6):

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Such membership, affiliation or sympathetic association is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case….

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See 5 CFR § 200.1.

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5. 13 Fed.Reg. 1471:

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After the issuance of Executive Order No. 9835 by the President, the Department of Justice compiled all available data with respect to the type of organization to be dealt with under that order. The investigative reports of the Federal Bureau of Investigation concerning such organizations were correlated. Memoranda on each such organization were prepared by attorneys of the Department. The list of organizations contained herein has been certified to the Board by the Attorney General on the basis of recommendations of attorneys of the Department as reviewed by the Solicitor General, the Assistant Attorneys General, and the Assistant Solicitor General, and subsequent careful study of all by the Attorney General.

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Cf. United States v. Chemical Foundation, 272 U.S. 1, 14; Lewis v. United States, 279 U.S. 63, 73.

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6. Cf. Nash v. United States, 229 U.S. 373, 377; New York Central Securities Corp. v. United States, 287 U.S. 12, 24; United States v. Petrillo, 332 U.S. 1.

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7. 5 CFR § 210.11(b):

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(1) Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;

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(2) Treason or sedition or advocacy thereof;

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(3) Advocacy of revolution or force or violence to alter the constitutional form of government of the United States;

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(4) Intentional, unauthorized disclosure to any person under circumstances which may indicate disloyalty to the United States, of documents or information of a confidential or nonpublic character obtained by the person making the disclosure as a result of his employment by the Government of the United States, or prior to his employment;

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(5) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States;….

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See also n. 2, supra.

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8. In Schneiderman v. United States, 320 U.S. 118, 148, 158, a review of the evidence of communist theory upon the use of force and violence presented in that record led this Court to hold that the evidence concerning communist teaching upon force and violence was not so "clear, unequivocal and convincing" as to justify deportation of that defendant. We refused specifically to pass upon the attitude of communism toward force and violence. 320 U.S. at 148, 158.

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9. The Russian Imperial Government fell quickly in February, 1917, because its power had been sapped by bureaucratic rapacity and war losses, as well as by communist revolutionary doctrines. Even under those circumstances, there are said to have been more than a thousand casualties in St. Petersburg. I Trotsky, History of the Russian Revolution, 141.

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The doctrine and practices of communism clearly enough teach the use of force against an existing noncommunist government to justify an official of our Government taking steps to protect governmental personnel by screening individuals to determine whether they accept force and violence as a political weapon. From the last paragraphs of the Communist Manifesto to the seizure of the last satellite, force and violence appears as a communist method for gaining control. Lenin, Collected Works (1930), Vol. XVIII, pp. 279-280; Trotsky, op. cit., 106, 120, 144, 151; Lenin, The State and Revolution, August, 1917, Foreign Languages Publishing House, Moscow (1949), 28, 30, 33. Translations furnished me indicate the same attitude on the part of Stalin. Collected Works, Vol. I, pp. 131-137, 185-205, 241-246; Vol. III, pp. 367-370. And see Leites, The Operational Code of the Politburo (1950) c. xiii, "Violence."

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See § 2 of the Internal Security Act of 1950, 64 Stat. 987.

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10. In the Refugee Committee complaint, unconstitutionality of the designation was predicated upon repugnancy:

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1) It is repugnant to the Constitution of the United States as a deprivation of freedom of speech, of the press, and of assembly and association in violation of the First Amendment.

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2)…as a deprivation of the fundamental rights of the people of the United States reserved to the people of the United States by the Ninth and Tenth Amendments.

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3)…as a deprivation of liberty and property without due process of law in violation of the Fifth Amendment.

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In the Council case, it was predicated upon a lack of "any advance notice" and the Attorney General's acting "without making `an appropriate investigation and determination' as required" by the Order. It was said:

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The aforesaid actions of the defendants have been arbitrary, capricious, contrary to law, in excess of statutory right and authority. Such actions have violated the rights of the plaintiffs guaranteed by the First and Fifth Amendments to the Constitution, and are contrary to the Ninth and Tenth Amendments.

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The same general allegations of violations of the Due Process Clause and First Amendment appear in No. 71, International Workers Order, Inc.

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11. Nortz v. United States, 294 U.S. 317, 324; Pierce Oil Corp. v. Hope, 248 U.S. 498; Straus v. Foxworth, 231 U.S. 162, 168.

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12. Bell v. Hood, 327 U.S. 678, 681, 684; Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 690.

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13. United Public Workers v. Mitchell, 330 U.S. 75, 95, and cases cited; American Communications Assn. v. Douds, 339 U.S. 382, 394-399; Feiner v. New York, 340 U.S. 315, 320-321..

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14. The fairness of that designation is considered under the next point.

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15. Perhaps they would insist not only on notice that an investigation is to be had, but on an opportunity to be present and to have counsel, to cross-examine, to object to the introduction of evidence, to argue and to have judicial review. Cf. Hiatt v. Compagna, 178 F.2d 42, affirmed by an equally divided court, 340 U.S. 880. An injunction against listing could have delayed administration until today.

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The statutory requirement for a hearing explains the statement in Morgan v. United States, 304 U.S. 1, 14, that,

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in administrative proceedings of a quasi-judicial character, the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand "a fair and open hearing," essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an "inexorable safeguard."

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This hearing was a rate determination proceeding.

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See the statement in the first Morgan case, 298 U.S. 468, 480:

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That duty is widely different from ordinary executive action. It is a duty which carries with it fundamental procedural requirements. There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact.

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No enforceable rights to a hearing exist in an alien seeking admission to the United States. United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 544; Ekiu v. United States, 142 U.S. 651. To the extent that Ng Fung Ho v. White, 259 U.S. 276, requires a hearing, it is on the issue of alienage, and not of admissibility.

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16. Of course, notice to petitioners that an investigation was to be had to determine whether they had seditious purposes would be useless without opportunity for an administrative hearing. That is the effect of petitioners' argument.

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17. For example, Shields v. Utah Idaho R. Co., 305 U.S. 177, interpreted a statutory requirement for determination by the Interstate Commerce Commission of the subjection of the railroad to the Railway Labor Act to necessitate procedural due process, "the hearing of evidence and argument". We held, p. 183, that equity had cognizance of an objection to the proceeding, as "arbitrary and capricious", p. 185, because failure to post a prescribed notice is punishable as a crime. A "right" was asserted.

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Reliance on Interstate Commerce Comm'n v. Louisville & N.R. Co., 227 U.S. 88, is misplaced. The statute gave a right to a full hearing, p. 91.

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United States v. Lovett, 328 U.S. 303, 316, protected an employee against what this Court held was legislative decree of exclusion from government employment without trial.

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Columbia Broadcasting System v. United States, 316 U.S. 407, 418, depends upon this Court's ruling that the regulation there subjected to attack required the Federal Communications Commission to reject applications and cancel outstanding licenses "on the grounds specified in the regulations, without more."

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18. Duke v. United States, 90 F.2d 840; United States v. Central Supply Assn., 34 F.Supp. 241.

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19. 46 Stat. 1421; Catlin v. United States, 324 U.S. 229, 231.

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20. E.g., underwriters from bank employment or direction. 48 Stat. 194, as amended, 49 Stat. 709, 12 U.S.C. § 78.

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21. This Court has declared the courts cannot supervise departmental action in discharge for inefficient rating, Keim v. United States, 177 U.S. 290, or enjoin leases of public lands where no contract rights are involved, Chapman v. Sheridan-Wyoming Co., 338 U.S. 621, 625. Cf. Work v. United States ex rel. Rives, 267 U.S. 175.

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22. It said, p. 111

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It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

And added, pp. 112-113:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

Until the decision of the Board has Presidential approval, it grants to privilege and denies no right. It can give nothing and can take nothing away from the applicant or a competitor. It may be a step which if erroneous will mature into a prejudicial result, as an order fixing valuations in a rate proceeding may foreshow and compel a prejudicial rate order. But administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

23. 5 C.F.R., App.A., p. 200, 13 Fed.Reg. 1471-1473:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

In connection with the designation of these organizations, the Attorney General has pointed out, as the President had done previously, that it is entirely possible that many persons belonging to such organizations may be loyal to the United States; that membership in, affiliation with, or sympathetic association with, any organization designated is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case. "Guilt by association" has never been one of the principles of our American jurisprudence. We must be satisfied that reasonable grounds exist for concluding that an individual is disloyal. That must be the guide.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

24. Keim v. United States, 177 U.S. 290; United Public Workers v. Mitchell, 330 U.S. 75, 102. Classified civil service employees by statute shall have notice of the charges in writing and the privilege of filing an answer with affidavits. The statute adds,

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

5 U.S.C. § 652, 37 Stat. 555. And cf. Executive Order dated July 27, 1897, amending Civil Service Rule II, in 18th Report of the U.S. Civil Service Commission, at 282.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

25. 5 CFR § 220.2(a)(6). See note 4, supra.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

26.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

A total of 3,166 Government employees have quit or have been discharged under President Truman's loyalty program since it began March 21, 1947, the Loyalty Review Board reported today.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

Of these, 294 actually were discharged for disloyalty. The remainder, 2,872, quit while under investigation, and might or might not have been found disloyal.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

The loyalty figures cover all 2,000,000 or more Government employees, plus the additional thousands hired since the program was begun in the spring of 1947.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

The regular monthly loyalty report showed that loyalty boards of the various Federal agencies had received 13,842 reports from the Federal Bureau of Investigation and other investigating agencies since March 21, 1947. This meant investigators found something about those persons that raised a question about their loyalty.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

Of the cases ruled on by loyalty boards, 8,371 were found loyal and 522 disloyal. Of the 522, 294 were discharged, 186 won their jobs back on appeal, and forty-two are still waiting decisions.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

New York Times, January 16, 1951.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

See also n. 9 of MR. JUSTICE DOUGLAS' concurrence.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

27. Disqualification grounds are in 5 CFR § 2.104(a):

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(a) An applicant may be denied examination and an eligible may be denied appointment for any of the following reasons:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(1) Dismissal from employment for delinquency or misconduct.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(2) Physical or mental unfitness for the position for which applied.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(3) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(4) Intentional false statements or deception or fraud in examination or appointment.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(5) Refusal to furnish testimony as required by § 5.3 of this chapter.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(6) Habitual use of intoxicating beverages to excess.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(7) On all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(8) Any legal or other disqualification which makes the applicant unfit for the service.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

Paragraph (7) is new. Cf. 12 Fed.Reg. 1938.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

28. 5 CFR § 9.102(1):

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

See Part 22 for appeals under Veterans' Preference Act of 1944.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

29. 5 CFR, Part 220.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

30. 5 CFR § 220.2(f) and (g).

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(g)…The notice of proposed removal action required in paragraph (f) of this section shall state to the employee:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(1) The charges against him in factual detail, setting forth with particularity the facts and circumstances relating to the charges so far as security considerations will permit, in order to enable the employee to submit his answer, defense or explanation.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(2) His right to answer the charges in writing, under oath or affirmation, within a specified reasonable period of time, not less than ten (10) calendar days from the date of the receipt by the employee of the notice.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(3) His right to have an administrative hearing on the charges before a loyalty board in the agency, upon his request.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(4) His right to appear before such board personally, to be represented by counsel or representative of his own choosing, and to present evidence in his behalf.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

Id., § 220.3(d):

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

(d) Presentation of evidence. Both the Government and the applicant or employee may introduce such evidence as the board may deem proper in the particular case.

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The board shall take into consideration the fact that the applicant or employee may have been handicapped in his defense by the nondisclosure to him of confidential information or by the lack of opportunity to cross-examine persons constituting such sources of information.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

31. The Prime Minister first described this program in a statement in the House of Commons, March 15, 1948, 448 H.C.Deb. 1703 ff., and in further detail on March 25, id. at 3418 ff. The standards for the program are set forth at 451 H.C.Deb., Written Answers, p. 118, in the form of instructions to three "advisers on Communists and Fascists in the Civil Service," retired civil servants designated to perform a function essentially parallel to that of the Loyalty Review Board here:

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

1. The Government have stated that no one who is believed to be:—

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(i) either a member of the Communist Party or of a Fascist organization; or

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(ii) associated with either the Communist Party or a Fascist organization in such a way as to raise legitimate doubts about his reliability;

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is to be employed in connection with work the nature of which is vital to the security of the State.

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2. You have been appointed to advise Ministers, in any cases referred to you, whether in your opinion their prima facie ruling that a civil servant comes under (i) or (ii) above is or is not substantiated. The decision on what employment is to be regarded as involving "connection with work the nature of which is vital to the security of the State" is one not for you, but for Ministers in charge of Departments.

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3. Your functions do not extend beyond advising the Minister whether the prima facie case has or has not been substantiated. You are not concerned with the action which he may decide to take in relation to the matter.

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The Prime Minister stated that the civil servant concerned would be informed as specifically as possible of the charges against him, but that

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It is quite impossible—and everyone will realise that it is—that we should give in detail exactly the sources of information. If we do that, we destroy anything like an effective security service.

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Id., Vol. 448, at 3423. He would be allowed to appear personally in response to charges. Id. at 3426.

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While the program is primarily intended to effect the transfer of unreliable civil servants to jobs not vital to the security of the state (unless their technical training fits them only for security jobs), nevertheless it has apparently been extended to cover all jobs in certain agencies, such as the Air Ministry Headquarters. Id., Vol. 452, at 940-941.

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The Prime Minister did not answer directly questions as to the scope of the order in relation to "the telephone service and key telephone exchanges," id., Vol. 448, at 1705, or "members of the Services who are engaged in dealing with secret processes." Id. at 1706.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

32. Cf. Standard Computing Scale Co. v. Farrell, 249 U.S. 571.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

33. Hirabayashi v. United States, 320 U.S. 81, 93, 100.

1951, Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 213

34. Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 426, 442.

Dennis v. United States, 1951

Title: Dennis v. United States

Author: U.S. Supreme Court

Date: June 4, 1951

Source: 341 U.S. 494

This case was argued December 4, 1950, and was decided June 4, 1951.

1951, Dennis v. United States, 341 U.S. 494

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1951, Dennis v. United States, 341 U.S. 494

FOR THE SECOND CIRCUIT

Syllabus

1951, Dennis v. United States, 341 U.S. 494

1. As construed and applied in this case, §§ 2(a)(1), 2(a)(3) and 3 of the Smith Act, 54 Stat. 671, making it a crime for any person knowingly or willfully to advocate the overthrow or destruction of the Government of the United States by force or violence, to organize or help to organize any group which does so, or to conspire to do so, do not violate the First Amendment or other provisions of the Bill of Rights and do not violate the First or Fifth Amendments because of indefiniteness. Pp. 495-499, 517.

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2. Petitioners, leaders of the Communist Party in this country, were indicted in a federal district court under § 3 of the Smith Act for willfully and knowingly conspiring (1) to organize as the Communist Party a group of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and (2) knowingly and willfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. The trial judge instructed the jury that they could not convict unless they found that petitioners intended to overthrow the Government "as speedily as circumstances would permit," but that, if they so found, then, as a matter of law, there was sufficient danger of a substantive evil that Congress has a right to prevent to justify application of the statute under the First Amendment. Petitioners were convicted, and the convictions were sustained by the Court of Appeals. This Court granted certiorari, limited to the questions: (1) Whether either § 2 or § 3 of the Smith Act, inherently or as construed and applied in the instant case, violates the First Amendment and other provisions of the Bill of Rights, and (2) whether either § 2 or § 3, inherently or as construed and applied in the instant case, violates the First and Fifth Amendments because of indefiniteness.

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Held: The convictions are affirmed. Pp. 495-499, 511-512, 517.

1951, Dennis v. United States, 341 U.S. 494

183 F.2d 201, affirmed. [341 U.S. 495]

1951, Dennis v. United States, 341 U.S. 495

For the opinions of the Justices constituting the majority of the Court, see:

1951, Dennis v. United States, 341 U.S. 495

Opinion of THE CHIEF JUSTICE, joined by MR. JUSTICE REED, MR. JUSTICE BURTON and MR. JUSTICE MINTON, p. 495.

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Opinion of MR. JUSTICE FRANKFURTER, p. 517.

1951, Dennis v. United States, 341 U.S. 495

Opinion of MR. JUSTICE JACKSON, p. 561.

1951, Dennis v. United States, 341 U.S. 495

For the dissenting opinion of MR. JUSTICE BLACK, see p. 579.

1951, Dennis v. United States, 341 U.S. 495

For the dissenting opinion of MR. JUSTICE DOUGLAS, see p. 581.

1951, Dennis v. United States, 341 U.S. 495

The case is stated in the opinion of THE CHIEF JUSTICE, pp. 495-499.

1951, Dennis v. United States, 341 U.S. 495

Affirmed, p. 517.

VINSON, J., lead opinion

1951, Dennis v. United States, 341 U.S. 495

MR. CHIEF JUSTICE VINSON announced the judgment of the Court and an opinion in which MR. JUSTICE REED, MR. JUSTICE BURTON and MR. JUSTICE MINTON join.

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Petitioners were indicted in July, 1948, for violation of the conspiracy provisions of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) § 11, during the period of April, 1945, to July, 1948. The pretrial motion to quash the indictment on the grounds, inter alia, that the statute was unconstitutional was denied, United States v. Foster, 80 F.Supp. 479, and the case was set for trial on January 17, 1949. A verdict of guilty as to all the petitioners was returned by the jury on October 14, 1949. The Court of Appeals affirmed the convictions. 183 F.2d 201. We granted certiorari, 340 U.S. 863, limited to the following two questions: (1) Whether either § 2 or § 3 of the Smith [341 U.S. 496] Act, inherently or as construed and applied in the instant case, violates the First Amendment and other provisions of the Bill of Rights; (2) whether either § 2 or § 3 of the Act, inherently or as construed and applied in the instant case, violates the First and Fifth Amendments because of indefiniteness.

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Sections 2 and 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) §§ 10, 11 (see present 18 U.S.C. § 2385), provide as follows:

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SEC. 2.(a) It shall be unlawful for any person—

1951, Dennis v. United States, 341 U.S. 496

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;

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(2) with intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

1951, Dennis v. United States, 341 U.S. 496

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

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(b) For the purposes of this section, the term "government in the United States" means the Government of the United States, the government of any State, Territory, or possession of the United States, the government of the District of Columbia, or the [341 U.S. 497] government of any political subdivision of any of them.

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SEC. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of this title.

1951, Dennis v. United States, 341 U.S. 497

The indictment charged the petitioners with willfully and knowingly conspiring (1) to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and (2) knowingly and willfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. The indictment further alleged that § 2 of the Smith Act proscribes these acts and that any conspiracy to take such action is a violation of § 3 of the Act.

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The trial of the case extended over nine months, six of which were devoted to the taking of evidence, resulting in a record of 16,000 pages. Our limited grant of the writ of certiorari has removed from our consideration any question as to the sufficiency of the evidence to support the jury's determination that petitioners are guilty of the offense charged. Whether, on this record, petitioners did, in fact, advocate the overthrow of the Government by force and violence is not before us, and we must base any discussion of this point upon the conclusions stated in the opinion of the Court of Appeals, which treated the issue in great detail. That court held that the record in this case amply supports the necessary finding of the jury that petitioners, the leaders of the Communist Party in this country, were unwilling to work within our framework of democracy, but intended to initiate a violent revolution whenever the propitious occasion appeared. Petitioners dispute the meaning to be drawn from the evidence, contending that the Marxist-Leninist [341 U.S. 498] doctrine they advocated taught that force and violence to achieve a Communist form of government in an existing democratic state would be necessary only because the ruling classes of that state would never permit the transformation to be accomplished peacefully, but would use force and violence to defeat any peaceful political and economic gain the Communists could achieve. But the Court of Appeals held that the record supports the following broad conclusions: by virtue of their control over the political apparatus of the Communist Political Association, 1 petitioners were able to transform that organization into the Communist Party; that the policies of the Association were changed from peaceful cooperation with the United States and its economic and political structure to a policy which had existed before the United States and the Soviet Union were fighting a common enemy, namely, a policy which worked for the overthrow of the Government by force and violence; that the Communist Party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double meaning language; that the Party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party; that the literature of the Party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the Party was, during the period in question, to achieve a successful overthrow of the existing order by force and violence. [341 U.S. 499]

1951, Dennis v. United States, 341 U.S. 499

I

1951, Dennis v. United States, 341 U.S. 499

It will be helpful in clarifying the issues to treat next the contention that the trial judge improperly interpreted the statute by charging that the statute required an unlawful intent before the jury could convict. More specifically, he charged that the jury could not find the petitioners guilty under the indictment unless they found that petitioners had the intent to "overthrow…the Government of the United States by force and violence as speedily as circumstances would permit."

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Section 2(a)(1) makes it unlawful

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to knowingly or willfully advocate,…or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence…. ;

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Section 2(a)(3), "to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow…. " Because of the fact that § 2(a)(2) expressly requires a specific intent to overthrow the Government, and because of the absence of precise language in the foregoing subsections, it is claimed that Congress deliberately omitted any such requirement. We do not agree. It would require a far greater indication of congressional desire that intent not be made an element of the crime than the use of the disjunctive "knowingly or willfully" in § 2(a)(1), or the omission of exact language in § 2(a)(3). The structure and purpose of the statute demand the inclusion of intent as an element of the crime. Congress was concerned with those who advocate and organize for the overthrow of the Government. Certainly those who recruit and combine for the purpose of advocating overthrow intend to bring about that overthrow. We hold that the statute requires as an essential element of the crime proof of the intent of those who are charged with its violation to overthrow the Government by force and violence. See [341 U.S. 500] Williams v. United States, 341 U.S. 97, 101-102 (1951); Screws v. United States, 325 U.S. 91, 101-105 (1945); Cramer v. United States, 325 U.S. 1, 31 (1945).

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Nor does the fact that there must be an investigation of a state of mind under this interpretation afford any basis for rejection of that meaning. A survey of Title 18 of the U.S. Code indicates that the vast majority of the crimes designated by that Title require, by express language, proof of the existence of a certain mental state, in words such as "knowingly," "maliciously," "willfully," "with the purpose of," "with intent to," or combinations or permutations of these and synonymous terms. The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence. See American Communications Assn. v. Douds, 339 U.S. 382, 411 (1950).

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It has been suggested that the presence of intent makes a difference in the law when an "act otherwise excusable or carrying minor penalties" is accompanied by such an evil intent. Yet the existence of such an intent made the killing condemned in Screws, supra, and the beating in Williams, supra, both clearly and severely punishable under state law, offenses constitutionally punishable by the Federal Government. In those cases, the Court required the Government to prove that the defendants intended to deprive the victim of a constitutional right. If that precise mental state may be an essential element of a crime, surely an intent to overthrow the Government of the United States by advocacy thereof is equally susceptible of proof. 2 [341 U.S. 501]

1951, Dennis v. United States, 341 U.S. 501

II

1951, Dennis v. United States, 341 U.S. 501

The obvious purpose of the statute is to protect existing Government not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism. That it is within the power of the Congress to protect the Government of the United States from armed rebellion is a proposition which requires little discussion. Whatever theoretical merit there may be to the argument that there is a "right" to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence. The question with which we are concerned here is not whether Congress has such power, but whether the means which it has employed conflict with the First and Fifth Amendments to the Constitution.

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One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that, by its terms, it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press. Although we do not agree that the language itself has that significance, we must bear in mind that it is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution. American Communications Assn. v. Douds, 339 U.S. 382, 407 (1950). We are not here confronted with cases similar to Thornhill v. Alabama, 310 U.S. 88 (1940); Herndon v. Lowry, 301 U.S. 242 (1937), and De Jonge v. Oregon, 299 U.S. 353 (1937), [341 U.S. 502] where a state court had given a meaning to a state statute which was inconsistent with the Federal Constitution. This is a federal statute which we must interpret as well as judge. Herein lies the fallacy of reliance upon the manner in which this Court has treated judgments of state courts. Where the statute as construed by the state court transgressed the First Amendment, we could not but invalidate the judgments of conviction.

1951, Dennis v. United States, 341 U.S. 502

The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion. Thus, the trial judge properly charged the jury that they could not convict if they found that petitioners did "no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas." He further charged that it was not unlawful

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to conduct in an American college or university a course explaining the philosophical theories set forth in the books which have been placed in evidence.

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Such a charge is in strict accord with the statutory language, and illustrates the meaning to be placed on those words. Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged.

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III

1951, Dennis v. United States, 341 U.S. 502

But although the statute is not directed at the hypothetical cases which petitioners have conjured, its application in this case has resulted in convictions for the teaching and advocacy of the overthrow of the Government by force and violence, which, even though coupled with the intent to accomplish that overthrow, contains an element of speech. For this reason, we must pay special [341 U.S. 503] heed to the demands of the First Amendment marking out the boundaries of speech.

1951, Dennis v. United States, 341 U.S. 503

We pointed out in Douds, supra, that the basis of the First Amendment is the hypothesis that speech can rebut speech, propaganda will answer propaganda, free debate of ideas will result in the wisest governmental policies. It is for this reason that this Court has recognized the inherent value of free discourse. An analysis of the leading cases in this Court which have involved direct limitations on speech, however, will demonstrate that both the majority of the Court and the dissenters in particular cases have recognized that this is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations.

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No important case involving free speech was decided by this Court prior to Schenck v. United States, 249 U.S. 47 (1919). Indeed, the summary treatment accorded an argument based upon an individual's claim that the First Amendment protected certain utterances indicates that the Court at earlier dates placed no unique emphasis upon that right. 3 It was not until the classic dictum of Justice Holmes in the Schenck case that speech per se received that emphasis in a majority opinion. That case involved a conviction under the Criminal Espionage Act, 40 Stat. 217. The question the Court faced was whether the evidence was sufficient to sustain the conviction. Writing for a unanimous Court, Justice Holmes stated that the

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question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right [341 U.S. 504] to prevent.

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249 U.S. at 52. But the force of even this expression is considerably weakened by the reference at the end of the opinion to Goldman v. United States, 245 U.S. 474 (1918), a prosecution under the same statute. Said Justice Holmes,

1951, Dennis v. United States, 341 U.S. 504

Indeed, [Goldman] might be said to dispose of the present contention if the precedent covers all media concludendi. But as the right to free speech was not referred to specially, we have thought fit to add a few words.

1951, Dennis v. United States, 341 U.S. 504

249 U.S. at 52. The fact is inescapable, too, that the phrase bore no connotation that the danger was to be any threat to the safety of the Republic. The charge was causing and attempting to cause insubordination in the military forces and obstruct recruiting. The objectionable document denounced conscription and its most inciting sentence was, "You must do your share to maintain, support and uphold the rights of the people of this country." 249 U.S. at 51. Fifteen thousand copies were printed, and some circulated. This insubstantial gesture toward insubordination in 1917 during war was held to be a clear and present danger of bringing about the evil of military insubordination.

1951, Dennis v. United States, 341 U.S. 504

In several later cases involving convictions under the Criminal Espionage Act, the nub of the evidence the Court held sufficient to meet the "clear and present danger" test enunciated in Schenck was as follows: Frohwerk v. United States, 249 U.S. 204 (1919)—publication of twelve newspaper articles attacking the war; Debs v. United States, 249 U.S. 211 (1919)—one speech attacking United States' participation in the war; Abrams v. United States, 250 U.S. 616 (1919)—circulation of copies of two different socialist circulars attacking the war; Schaefer v. United States, 251 U.S. 466 (1920)—publication of a German language newspaper with allegedly false articles, critical of capitalism and the war; Pierce v. United States, 252 U.S. 239 (1920)—circulation of copies of a four-page pamphlet written by a clergyman, attacking [341 U.S. 505] the purposes of the war and United States' participation therein. Justice Holmes wrote the opinions for a unanimous Court in Schenck, Frohwerk and Debs. He and Justice Brandeis dissented in Abrams, Schaefer and Pierce. The basis of these dissents was that, because of the protection which the First Amendment gives to speech, the evidence in each case was insufficient to show that the defendants had created the requisite danger under Schenck. But these dissents did not mark a change of principle. The dissenters doubted only the probable effectiveness of the puny efforts toward subversion. In Abrams, they wrote,

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I do not doubt for a moment that, by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent.

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250 U.S. at 627. And in Schaefer the test was said to be one of "degree," 251 U.S. at 482, although it is not clear whether "degree" refers to clear and present danger or evil. Perhaps both were meant.

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The rule we deduce from these cases is that, where an offense is specified by a statute in nonspeech or nonpress terms, a conviction relying upon speech or press as evidence of violation may be sustained only when the speech or publication created a "clear and present danger" of attempting or accomplishing the prohibited crime, e.g., interference with enlistment. The dissents, we repeat, in emphasizing the value of speech, were addressed to the argument of the sufficiency of the evidence.

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The next important case 4 before the Court in which free speech was the crux of the conflict was Gitlow v. New York, 268 U.S. 652 (1925). There, New York had [341 U.S. 506] made it a crime to advocate "the necessity or propriety of overthrowing…organized government by force…. " The evidence of violation of the statute was that the defendant had published a Manifesto attacking the Government and capitalism. The convictions were sustained, Justices Holmes and Brandeis dissenting. The majority refused to apply the "clear and present danger" test to the specific utterance. Its reasoning was as follows: the "clear and present danger" test was applied to the utterance itself in Schenck because the question was merely one of sufficiency of evidence under an admittedly constitutional statute. Gitlow however, presented a different question. There a legislature had found that a certain kind of speech was, itself, harmful and unlawful. The constitutionality of such a state statute had to be adjudged by this Court just as it determined the constitutionality of any state statute, namely, whether the statute was "reasonable." Since it was entirely reasonable for a state to attempt to protect itself from violent overthrow, the statute was perforce reasonable. The only question remaining in the case became whether there was evidence to support the conviction, a question which gave the majority no difficulty. Justices Holmes and Brandeis refused to accept this approach, but insisted that, wherever speech was the evidence of the violation, it was necessary to show that the speech created the "clear and present danger" of the substantive evil which the legislature had the right to prevent. Justices Holmes and Brandeis, then, made no distinction between a federal statute which made certain acts unlawful, the evidence to support the conviction being speech, and a statute which made speech itself the crime. This approach was emphasized in Whitney v. California, 274 U.S. 357 (1927), where the Court was confronted with a conviction under the California Criminal Syndicalist statute. The Court sustained the conviction, Justices Brandeis and Holmes [341 U.S. 507] concurring in the result. In their concurrence they repeated that, even though the legislature had designated certain speech as criminal, this could not prevent the defendant from showing that there was no danger that the substantive evil would be brought about.

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Although no case subsequent to Whitney and Gitlow has expressly overruled the majority opinions in those cases, there is little doubt that subsequent opinions have inclined toward the Holmes-Brandeis rationale. 5 And in American Communications Assn. v. Douds, supra, we were called upon to decide the validity of § 9(h) of the Labor Management Relations Act of 1947. That section required officials of unions which desired to avail themselves of the facilities of the National Labor Relations Board to take oaths that they did not belong to the Communist Party and that they did not believe in the overthrow of the Government by force and violence. We pointed out that Congress did not intend to punish belief, but rather intended to regulate the conduct of union affairs. We therefore held that any indirect sanction on speech which might arise from the oath requirement did not present a proper case for the "clear and present danger" test, for the regulation was aimed at conduct, rather than speech. In discussing the proper measure of evaluation of this kind of legislation, we suggested that the Homes-Brandeis philosophy insisted that, where [341 U.S. 508] there was a direct restriction upon speech, a "clear and present danger" that the substantive evil would be caused was necessary before the statute in question could be constitutionally applied. And we stated,

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[The First] Amendment requires that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom.

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339 U.S. at 412. But we further suggested that neither Justice Holmes nor Justice Brandeis ever envisioned that a shorthand phrase should be crystallized into a rigid rule to be applied inflexibly without regard to the circumstances of each case. Speech is not an absolute, above and beyond control by the legislature when its judgment, subject to review here, is that certain kinds of speech are so undesirable as to warrant criminal sanction. Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phrase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature. See American Communications Assn. v. Douds, 339 U.S. at 397. To those who would paralyze our Government in the face of impending threat by encasing it in a semantic straitjacket we must reply that all concepts are relative.

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In this case, we are squarely presented with the application of the "clear and present danger" test, and must decide what that phrase imports. We first note that many of the cases in which this Court has reversed convictions by use of this or similar tests have been based on the fact that the interest which the State was attempting to protect was itself too insubstantial to warrant restriction of speech. In this category we may put such cases as Schneider v. State, 308 U.S. 147 (1939); Cantwell v. Connecticut, 310 U.S. 296 (1940); Martin v. Struthers, 319 U.S. 141 (1943); West Virginia Board of Education [341 U.S. 509] v. Barnette, 319 U.S. 624 (1943); Thomas v. Collins, 323 U.S. 516 (1945); Marsh v. Alabama, 326 U.S. 501 (1946); but cf. Prince v. Massachusetts, 321 U.S. 158 (1944); Cox v. New Hampshire, 312 U.S. 569 (1941). Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase "clear and present danger" of the utterances bringing about the evil within the power of Congress to punish.

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Obviously, the words cannot mean that, before the Government may act, it must wait until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt. In the instant case, the trial judge charged the jury that they could not convict unless they found that petitioners intended to overthrow the Government [341 U.S. 510] "as speedily as circumstances would permit." This does not mean, and could not properly mean, that they would not strike until there was certainty of success. What was meant was that the revolutionists would strike when they thought the time was ripe. We must therefore reject the contention that success or probability of success is the criterion.

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The situation with which Justices Holmes and Brandeis were concerned in Gitlow was a comparatively isolated event, bearing little relation in their minds to any substantial threat to the safety of the community. Such also is true of cases like Fiske v. Kansas, 274 U.S. 380 (1927), and De Jonge v. Oregon, 299 U.S. 353 (1937); but cf. Lazar v. Pennsylvania, 286 U.S. 532 (1932). They were not confronted with any situation comparable to the instant one—the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis.

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Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows:

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In each case, [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.

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183 F.2d at 212. We adopt this statement of the rule. As articulated by Chief Judge Hand, it is as succinct and inclusive as any other we might devise at this time. It takes into consideration those factors which we deem relevant, and relates their significances. More we cannot expect from words.

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Likewise, we are in accord with the court below, which affirmed the trial court's finding that the requisite danger existed. The mere fact that, from the period 1945 to 1948, petitioners' activities did not result in an attempt to overthrow the Government by force and violence is, of course, no answer to the fact that there was a group that was ready to make the attempt. The formation [341 U.S. 511] by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score. And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger. Cf. Pinkerton v. United States, 328 U.S. 640 (1946); Goldman v. United States, 245 U.S. 474 (1918); United States v. Rabinowich, 238 U.S. 78 (1915). If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added.

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IV

1951, Dennis v. United States, 341 U.S. 511

Although we have concluded that the finding that there was a sufficient danger to warrant the application of the statute was justified on the merits, there remains the problem of whether the trial judge's treatment of the issue was correct. He charged the jury, in relevant part, as follows:

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In further construction and interpretation of the statute, I charge you that it is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and advocacy of action for the accomplishment of that purpose, by language reasonably and ordinarily calculated to incite persons to such action. Accordingly, you cannot find the defendants or any of them guilty of the crime charged [341 U.S. 512] unless you are satisfied beyond a reasonable doubt that they conspired to organize a society, group and assembly of persons who teach and advocate the overthrow or destruction of the Government of the United States by force and violence and to advocate and teach the duty and necessity of overthrowing or destroying the Government of the United States by force and violence, with the intent that such teaching and advocacy be of a rule or principle of action and by language reasonably and ordinarily calculated to incite persons to such action, all with the intent to cause the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

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\* \* \* \*

1951, Dennis v. United States, 341 U.S. 512

If you are satisfied that the evidence establishes beyond a reasonable doubt that the defendants, or any of them, are guilty of a violation of the statute, as I have interpreted it to you, I find as matter of law that there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution.

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This is matter of law about which you have no concern. It is a finding on a matter of law which I deem essential to support my ruling that the case should be submitted to you to pass upon the guilt or innocence of the defendants….

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It is thus clear that he reserved the question of the existence of the danger for his own determination, and the question becomes whether the issue is of such a nature that it should have been submitted to the jury.

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The first paragraph of the quoted instructions calls for the jury to find the facts essential to establish the substantive crime, violation of §§ 2(a)(1) and 2(a)(3) of [341 U.S. 513] the Smith Act, involved in the conspiracy charge. There can be no doubt that, if the jury found those facts against the petitioners, violation of the Act would be established. The argument that the action of the trial court is erroneous in declaring as a matter of law that such violation shows sufficient danger to justify the punishment despite the First Amendment rests on the theory that a jury must decide a question of the application of the First Amendment. We do not agree.

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When facts are found that establish the violation of a statute, the protection against conviction afforded by the First Amendment is a matter of law. The doctrine that there must be a clear and present danger of a substantive evil that Congress has a right to prevent is a judicial rule to be applied as a matter of law by the courts. The guilt is established by proof of facts. Whether the First Amendment protects the activity which constitutes the violation of the statute must depend upon a judicial determination of the scope of the First Amendment applied to the circumstances of the case.

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Petitioners' reliance upon Justice Brandeis' language in his concurrence in Whitney, supra, is misplaced. In that case, Justice Brandeis pointed out that the defendant could have made the existence of the requisite danger the important issue at her trial, but that she had not done so. In discussing this failure, he stated that the defendant could have had the issue determined by the court or the jury. 6 No realistic construction of this disjunctive language [341 U.S. 514] could arrive at the conclusion that he intended to state that the question was only determinable by a jury. Nor is the incidental statement of the majority in Pierce, supra, of any more persuasive effect. 7 There, the issue of the probable effect of the publication had been submitted to the jury, and the majority was apparently addressing its remarks to the contention of the dissenters that the jury could not reasonably have returned a verdict of guilty on the evidence. 8 Indeed, in the very case in which the phrase was born, Schenck, this Court itself examined the record to find whether the requisite danger appeared, and the issue was not submitted to a jury. And in every later case in which the Court has measured the validity of a statute by the "clear and present danger" test, that determination has been by the court, the question of the danger not being submitted to the jury.

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The question in this case is whether the statute which the legislature has enacted may be constitutionally applied. In other words, the Court must examine judicially [341 U.S. 515] the application of the statute to the particular situation, to ascertain if the Constitution prohibits the conviction. We hold that the statute may be applied where there is a "clear and present danger" of the substantive evil which the legislature had the right to prevent. Bearing, as it does, the marks of a "question of law," the issue is properly one for the judge to decide.

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V

1951, Dennis v. United States, 341 U.S. 515

There remains to be discussed the question of vagueness—whether the statute as we have interpreted it is too vague, not sufficiently advising those who would speak of the limitations upon their activity. It is urged that such vagueness contravenes the First and Fifth Amendments. This argument is particularly nonpersuasive when presented by petitioners, who, the jury found, intended to overthrow the Government as speedily as circumstances would permit. See Abrams v. United States, 250 U.S. 616, 627-629 (1919) (dissenting opinion); Whitney v. California, 274 U.S. 357, 373 (1927) (concurring opinion); Taylor v. Mississippi, 319 U.S. 583, 589 (1943). A claim of guilelessness ill becomes those with evil intent. Williams v. United States, 341 U.S. 97, 101-102 (1951); Jordan v. De George, 341 U.S. 223, 230-232 (1951); American Communications Assn. v. Douds, 339 U.S. at 413; Screws v. United States, 325 U.S. 91, 101 (1945).

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We agree that the standard as defined is not a neat, mathematical formulary. Like all verbalizations it is subject to criticism on the score of indefiniteness. But petitioners themselves contend that the verbalization "clear and present danger" is the proper standard. We see no difference, from the standpoint of vagueness, whether the standard of "clear and present danger" is one contained in haec verba within the statute, or whether it is the judicial measure of constitutional applicability. We [341 U.S. 516] have shown the indeterminate standard the phrase necessarily connotes. We do not think we have rendered that standard any more indefinite by our attempt to sum up the factors which are included within its scope. We think it well serves to indicate to those who would advocate constitutionally prohibited conduct that there is a line beyond which they may not go—a line which they, in full knowledge of what they intend and the circumstances in which their activity takes place, will well appreciate and understand. Williams, supra, at 101-102; Jordan, supra, at 230-232; United States v. Petrillo, 332 U.S. 1, 7 (1948); United States v. Wurzbach, 280 U.S. 396, 399 (1930); Nash v. United States, 229 U.S. 373, 376-377 (1913). Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to bring about the evil, this Court will review the convictions with the scrupulous care demanded by our Constitution. But we are not convinced that, because there may be borderline cases at some time in the future, these convictions should be reversed because of the argument that these petitioners could not know that their activities were constitutionally proscribed by the statute.

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We have not discussed many of the questions which could be extracted from the record, although they were treated in detail by the court below. Our limited grant of the writ of certiorari has withdrawn from our consideration at this date those questions, which include, inter alia, sufficiency of the evidence, composition of jury, and conduct of the trial.

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We hold that §§ 2(a)(1), 2(a)(3) and 3 of the Smith Act do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness. Petitioners intended to overthrow the Government of the United States as speedily as the circumstances would permit. Their conspiracy [341 U.S. 517] to organize the Communist Party and to teach and advocate the overthrow of the Government of the United States by force and violence created a "clear and present danger" of an attempt to overthrow the Government by force and violence. They were properly and constitutionally convicted for violation of the Smith Act. The judgments of conviction are

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Affirmed.

1951, Dennis v. United States, 341 U.S. 517

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

FRANKFURTER, J., concurring

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MR. JUSTICE FRANKFURTER, concurring in affirmance of the judgment.

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The defendants were convicted under § 3 of the Smith Act for conspiring to violate § 2 of that Act, which makes it unlawful

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to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence.

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Act of June 28, 1940, § 2(a)(3), 54 Stat. 670, 671, 18 U.S.C. § 10, now 18 U.S.C. § 2385. The substance of the indictment is that the defendants between April 1, 1945, and July 20, 1948, agreed to bring about the dissolution of a body known as the Communist Political Association and to organize in its place the Communist Party of the United States; that the aim of the new party was "the overthrow and destruction of the Government of the United States by force and violence"; that the defendants were to assume leadership of the Party and to recruit members for it and that the Party was to publish books and conduct classes, teaching the duty and the necessity of forceful overthrow. The jury found all the defendants guilty. With one exception, each was sentenced to imprisonment for five years and to a fine of $10,000. The convictions were affirmed by the Court of Appeals for the Second [341 U.S. 518] Circuit. 183 F.2d 201. We were asked to review this affirmance on all the grounds considered by the Court of Appeals. These included not only the scope of the freedom of speech guaranteed by the Constitution, but also serious questions regarding the legal composition of the jury and the fair conduct of the trial. We granted certiorari, strictly limited, however, to the contention that §§ 2 and 3 of the Smith Act, inherently and as applied, violated the First and Fifth Amendments. 340 U.S. 863. No attempt was made to seek an enlargement of the range of questions thus defined, and these alone are now open for our consideration. All others are foreclosed by the decision of the Court of Appeals.

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As thus limited, the controversy in this Court turns essentially on the instructions given to the jury for determining guilt or innocence. 9 F.R.D. 367. The first question is whether—wholly apart from constitutional matters—the judge's charge properly explained to the jury what it is that the Smith Act condemns. The conclusion that he did so requires no labored argument. On the basis of the instructions, the jury found, for the purpose of our review, that the advocacy which the defendants conspired to promote was to be a rule of action, by language reasonably calculated to incite persons to such action, and was intended to cause the overthrow of the Government by force and violence as soon as circumstances permit. This brings us to the ultimate issue. In enacting a statute which makes it a crime for the defendants to conspire to do what they have been found to have conspired to do, did Congress exceed its constitutional power?

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Few questions of comparable import have come before this Court in recent years. The appellants maintain that they have a right to advocate a political theory, so long, at least, as their advocacy does not create an immediate danger of obvious magnitude to the very existence of [341 U.S. 519] our present scheme of society. On the other hand, the Government asserts the right to safeguard the security of the Nation by such a measure as the Smith Act. Our judgment is thus solicited on a conflict of interests of the utmost concern to the wellbeing of the country. This conflict of interests cannot be resolved by a dogmatic preference for one or the other, nor by a sonorous formula which is, in fact, only a euphemistic disguise for an unresolved conflict. If adjudication is to be a rational process, we cannot escape a candid examination of the conflicting claims with full recognition that both are supported by weighty title-deeds.

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I

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There come occasions in law, as elsewhere, when the familiar needs to be recalled. Our whole history proves even more decisively than the course of decisions in this Court that the United States has the powers inseparable from a sovereign nation.

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America has chosen to be, in many respects, and to many purposes, a nation, and for all these purposes, her government is complete; to all these objects, it is competent.

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Chief Justice Marshall in Cohens v. Virginia, 6 Wheat. 264, 414. The right of a government to maintain its existence—self-preservation—is the most pervasive aspect of sovereignty. "Security against foreign danger," wrote Madison, "is one of the primitive objects of civil society." The Federalist, No. 41. The constitutional power to act upon this basic principle has been recognized by this Court at different periods and under diverse circumstances.

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To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come…. The government, possessing the powers which are to be exercised [341 U.S. 520] for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth….

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Chinese Exclusion Case, 130 U.S. 581, 606. See also De Lima v. Bidwell, 182 U.S. 1; Mackenzie v. Hare, 239 U.S. 299; Missouri v. Holland, 252 U.S. 416; United States v. Curtiss-Wright Corp., 299 U.S. 304. The most tragic experience in our history is a poignant reminder that the Nation's continued existence may be threatened from within. To protect itself from such threats, the Federal Government

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is invested with all those inherent and implied powers which, at the time of adopting the Constitution, were generally considered to belong to every government as such, and as being essential to the exercise of its functions.

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Mr. Justice Bradley, concurring in Legal Tender Cases, 12 Wall. 457, 554, 556, and see In re Debs, 158 U.S. 564, 582.

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But even the all-embracing power and duty of self-preservation are not absolute. Like the war power, which is indeed an aspect of the power of self-preservation, it is subject to applicable constitutional limitations. See Hamilton v. Kentucky Distilleries Co., 251 U.S. 146, 156. Our Constitution has no provision lifting restrictions upon governmental authority during periods of emergency, although the scope of a restriction may depend on the circumstances in which it is invoked.

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The First Amendment is such a restriction. It exacts obedience even during periods of war; it is applicable when war clouds are not figments of the imagination no less than when they are. The First Amendment categorically demands that

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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The right of a man to think what he [341 U.S. 521] pleases, to write what he thinks, and to have his thoughts made available for others to hear or read has an engaging ring of universality. The Smith Act and this conviction under it no doubt restrict the exercise of free speech and assembly. Does that, without more, dispose of the matter?

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Just as there are those who regard as invulnerable every measure for which the claim of national survival is invoked, there are those who find in the Constitution a wholly unfettered right of expression. Such literalness treats the words of the Constitution as though they were found on a piece of outworn parchment instead of being words that have called into being a nation with a past to be preserved for the future. The soil in which the Bill of Rights grew was not a soil of arid pedantry. The historic antecedents of the First Amendment preclude the notion that its purpose was to give unqualified immunity to every expression that touched on matters within the range of political interest. The Massachusetts Constitution of 1780 guaranteed free speech; yet there are records of at least three convictions for political libels obtained between 1799 and 1803. 1 The Pennsylvania Constitution of 1790 and the Delaware Constitution of 1792 expressly imposed liability for abuse of the right of free speech. 2 Madison's own State put on its books in 1792 a statute confining the abusive exercise of the right of utterance. 3 And it deserves to be noted that, in writing to John Adams' wife, Jefferson did not rest his condemnation of the Sedition Act of 1798 on his belief in [341 U.S. 522] unrestrained utterance as to political matter. The First Amendment, he argued, reflected a limitation upon Federal power, leaving the right to enforce restrictions on speech to the States. 4 [341 U.S. 523]

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The language of the First Amendment is to be read not as barren words found in a dictionary but as symbols of historic experience illumined by the presuppositions of those who employed them. Not what words did Madison and Hamilton use, but what was it in their minds which they conveyed? Free speech is subject to prohibition of those abuses of expression which a civilized society may forbid. As in the case of every other provision of the Constitution that is not crystallized by the nature of its technical concepts, the fact that the First Amendment is not self-defining and self-enforcing neither impairs its usefulness nor compels its paralysis as a living instrument. [341 U.S. 524]

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"The law is perfectly well settled," this Court said over fifty years ago,

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that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed.

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Robertson v. Baldwin, 165 U.S. 275, 281. That this represents the authentic view of the Bill of Rights and the spirit in which it must be construed has been recognized again and again in cases that have come here within the last fifty years. See, e.g., Gompers v. United States, 233 U.S. 604, 610. Absolute rules would inevitably lead to absolute exceptions, and such exceptions would eventually corrode the rules. 5 The demands of free speech in a democratic society, as well as the interest [341 U.S. 525] in national security are better served by candid and informed weighing of the competing interests, within the confines of the judicial process, than by announcing dogmas too inflexible for the non-Euclidian problems to be solved.

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But how are competing interests to be assessed? Since they are not subject to quantitative ascertainment, the issue necessarily resolves itself into asking, who is to make the adjustment?—who is to balance the relevant factors and ascertain which interest is in the circumstances to prevail? Full responsibility for the choice cannot be given to the courts. Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.

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Primary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the Congress. The nature of the power to be exercised by this Court has been delineated in decisions not charged with the emotional appeal of situations such as that now before us. We are to set aside the judgment of those whose duty it is to legislate only if there is no reasonable basis for it. Sinking-Fund Cases, 99 U.S. 700, 718; Mugler v. Kansas, 123 U.S. 623, 660-661; United States v. Carolene Products Co., 304 U.S. 144. We are to determine whether a statute is sufficiently definite to meet the constitutional requirements of due process, and whether it respects the safeguards against undue concentration of authority secured by separation of power. United States v. Cohen Grocery Co., 255 U.S. 81. [341 U.S. 526] We must assure fairness of procedure, allowing full scope to governmental discretion but mindful of its impact on individuals in the context of the problem involved. Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123. And, of course, the proceedings in a particular case before us must have the warrant of substantial proof. Beyond these powers we must not go; we must scrupulously observe the narrow limits of judicial authority even though self-restraint is alone set over us. Above all, we must remember that this Court's power of judicial review is not "an exercise of the powers of a super-legislature." Mr. Justice Brandeis and Mr. Justice Holmes, dissenting in Burns Baking Co. v. Bryan, 264 U.S. 504, 534.

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A generation ago, this distribution of responsibility would not have been questioned. See Fox v. Washington, 236 U.S. 273; Meyer v. Nebraska, 262 U.S. 390; Bartels v. Iowa, 262 U.S. 404; cf. New York ex rel. Bryant v. Zimmerman, 278 U.S. 63. But, in recent decisions, we have made explicit what has long been implicitly recognized. In reviewing statutes which restrict freedoms protected by the First Amendment, we have emphasized the close relation which those freedoms bear to maintenance of a free society. See Kovacs v. Cooper, 336 U.S. 77, 89, 95 (concurring). Some members of the Court—and at times a majority—have done more. They have suggested that our function in reviewing statutes restricting freedom of expression differs sharply from our normal duty in sitting in judgment on legislation. It has been said that such statutes

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must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice.

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Thomas v. Collins, 323 U.S. 516, 530. It has been suggested, with the casualness of a footnote, that such legislation is not [341 U.S. 527] presumptively valid, see United States v. Carolene Products Co., 304 U.S. 144, 152, n. 4, and it has been weightily reiterated that freedom of speech has a "preferred position" among constitutional safeguards. Kovacs v. Cooper, 336 U.S. 77, 88.

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The precise meaning intended to be conveyed by these phrases need not now be pursued. It is enough to note that they have recurred in the Court's opinions, and their cumulative force has, not without justification, engendered belief that there is a constitutional principle, expressed by those attractive but imprecise words, prohibiting restriction upon utterance unless it creates a situation of "imminent" peril against which legislation may guard. 6 It is on this body of the Court's pronouncements that the defendants' argument here is based.

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In all fairness, the argument cannot be met by reinterpreting the Court's frequent use of "clear" and "present" to mean an entertainable "probability." In giving this meaning to the phrase "clear and present danger," the Court of Appeals was fastidiously confining the rhetoric of opinions to the exact scope of what was decided by them. We have greater responsibility for having given constitutional support, over repeated protests, to uncritical libertarian generalities. [341 U.S. 528]

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Nor is the argument of the defendants adequately met by citing isolated cases. Adjustment of clash of interests which are at once subtle and fundamental is not likely to reveal entire consistency in a series of instances presenting the clash. It is not too difficult to find what one seeks in the language of decisions reporting the effort to reconcile free speech with the interests with which it conflicts. The case for the defendants requires that their conviction be tested against the entire body of our relevant decisions. Since the significance of every expression of thought derives from the circumstances evoking it, results reached, rather than language employed give the vital meaning. See Cohens v. Virginia, 6 Wheat. 264, 442; Wambaugh, The Study of Cases, 10.

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There is an added reason why we must turn to the decisions. "Great cases," it is appropriate to remember,

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like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.

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Mr. Justice Holmes, dissenting in Northern Securities Co. v. United States, 193 U.S. 197, 400-401.

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This is such a case. Unless we are to compromise judicial impartiality and subject these defendants to the risk of an ad hoc judgment influenced by the impregnating atmosphere of the times, the constitutionality of their conviction must be determined by principles established in cases decided in more tranquil periods. If those decisions are to be used as a guide, and not as an argument, it is important to view them as a whole, and to distrust the easy generalizations to which some of them lend themselves. [341 U.S. 529]

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II

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We have recognized and resolved conflicts between speech and competing interests in six different types of cases. 7

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1. The cases involving a conflict between the interest in allowing free expression of ideas in public places and the interest in protection of the public peace and the primary uses of streets and parks, were too recently considered to be rehearsed here. Niemotko v. Maryland, 340 U.S. 268, 273. It suffices to recall that the result in each case was found to turn on the character of the interest with which the speech clashed, the method used to impose the restriction, and the nature and circumstances of the utterance prohibited. While the decisions recognized the importance of free speech and carefully scrutinized the justification for its regulation, they rejected the notion that vindication of the deep public interest in freedom of expression requires subordination of all conflicting values.

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2. A critique of the cases testing restrictions on picketing is made more difficult by the inadequate recognition by the Court from the outset that the loyalties and responses evoked and exacted by picket lines differentiate this form of expression from other modes of communication. See Thornhill v. Alabama, 310 U.S. 88. But the [341 U.S. 530] crux of the decision in the Thornhill case was that a State could not constitutionally punish peaceful picketing when neither the aim of the picketing nor the manner in which it was carried out conflicted with a substantial interest. In subsequent decisions, we sustained restrictions designed to prevent recurrence of violence, Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287, or reasonably to limit the area of industrial strife, Carpenters & Joiners Union v. Ritter's Cafe, 315 U.S. 722; cf. Bakery & Pastry Drivers Local v. Wohl, 315 U.S. 769. We held that a State's policy against restraints of trade justified it in prohibiting picketing which violated that policy, Giboney v. Empire Storage Co., 336 U.S. 490; we sustained restrictions designed to encourage self-employed persons, International Brotherhood of Teamsters Union v. Hanke, 339 U.S. 470, and to prevent racial discrimination, Hughes v. Superior Court, 339 U.S. 460. The Fourteenth Amendment bars a State from prohibiting picketing when there is no fair justification for the breadth of the restriction imposed. American Federation of Labor v. Swing, 312 U.S. 321; Cafeteria Employees Union v. Angelos, 320 U.S. 293. But it does not prevent a State from denying the means of communication that picketing affords in a fair balance between the interests of trade unionism and other interests of the community.

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3. In three cases, we have considered the scope and application of the power of the Government to exclude, deport, or denaturalize aliens because of their advocacy or their beliefs. In United States ex rel. Turner v. Williams, 194 U.S. 279, we held that the First Amendment did not disable Congress from directing the exclusion of an alien found in an administrative proceeding to be an anarchist. "[A]s long as human governments endure," we said, "they cannot be denied the power of self-preservation, as that question is presented here." [341 U.S. 531] 194 U.S. at 294. In Schneiderman v. United States, 320 U.S. 118, and Bridges v. Wixon, 326 U.S. 135, we did not consider the extent of the power of Congress. In each case, by a closely divided Court, we interpreted a statute authorizing denaturalization or deportation to impose on the Government the strictest standards of proof.

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4. History regards "freedom of the press" as indispensable for a free society and for its government. We have, therefore, invalidated discriminatory taxation against the press and prior restraints on publication of defamatory matter. Grosjean v. American Press Co., 297 U.S. 233; Near v. Minnesota, 283 U.S. 697.

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We have also given clear indication of the importance we attach to dissemination of ideas in reviewing the attempts of States to reconcile freedom of the press with protection of the integrity of the judicial process. In Pennekamp v. Florida, 328 U.S. 331, the Court agreed that the Fourteenth Amendment barred a State from adjudging in contempt of court the publisher of critical and inaccurate comment about portions of a litigation that, for all practical purposes, were no longer pending. We likewise agreed, in a minor phase of our decision in Bridges v. California, 314 U.S. 252, that even when statements in the press relate to matters still pending before a court, convictions for their publication cannot be sustained if their utterance is too trivial to be deemed a substantial threat to the impartial administration of justice.

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The Court has, however, sharply divided on what constitutes a sufficient interference with the course of justice. In the first decision, Patterson v. Colorado, 205 U.S. 454, the Court affirmed a judgment for contempt imposed by a State supreme court for publication of articles reflecting on the conduct of the court in cases still before it on [341 U.S. 532] motions for rehearing. In the Bridges case, however, a majority held that a State court could not protect itself from the implied threat of a powerful newspaper that failure of an elected judge to impose a severe sentence would be a "serious mistake." The same case also placed beyond a State's power to punish the publication of a telegram from the president of an important union who threatened a damaging strike in the event of an adverse decision. The majority in Craig v. Harney, 331 U.S. 367, 376, held that the Fourteenth Amendment protected "strong," "intemperate," "unfair" criticism of the way an elected lay judge was conducting a pending civil case. None of the cases establishes that the public interest in a free press must in all instances prevail over the public interest in dispassionate adjudication. But the Bridges and Craig decisions, if they survive, tend to require a showing that interference be so imminent and so demonstrable that the power theoretically possessed by the State is largely paralyzed.

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5. Our decision in American Communications Assn. v. Douds, 339 U.S. 382, recognized that the exercise of political rights protected by the First Amendment was necessarily discouraged by the requirement of the Taft-Hartley Act that officers of unions employing the services of the National Labor Relations Board sign affidavits that they are not Communists. But we held that the statute was not for this reason presumptively invalid. The problem, we said, was

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one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communists and others identified by § 9(h) pose continuing threats to that public interest when in positions of union leadership. [341 U.S. 533]

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339 U.S. at 400. On balance, we decided that the legislative judgment was a permissible one. 8

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6. Statutes prohibiting speech because of its tendency to lead to crime present a conflict of interests which bears directly on the problem now before us. The first case in which we considered this conflict was Fox v. Washington, supra. The statute there challenged had been interpreted to prohibit publication of matter "encouraging an actual breach of law." We held that the Fourteenth Amendment did not prohibit application of the statute to an article which we concluded incited a breach of laws against indecent exposure. We said that the statute

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lays hold of encouragements that, apart from statute, if directed to a particular person's conduct, generally would make him who uttered them guilty of a misdemeanor, if not an accomplice or a principal in the crime encouraged, and deals with the publication of them to a wider and less selected audience.

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236 U.S. at 277-278. To be sure, the Fox case preceded the explicit absorption of the substance of the First Amendment in the Fourteenth. But subsequent decisions extended the Fox principle to free speech situations. They are so important to the problem before us that we must consider them in detail.

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(a) The first important application of the principle was made in six cases arising under the Espionage Act of 1917. That Act prohibits conspiracies and attempts [341 U.S. 534] to "obstruct the recruiting or enlistment service." In each of the first three cases, Mr. Justice Holmes wrote for a unanimous Court, affirming the convictions. The evidence in Schenck v. United States, 249 U.S. 47, showed that the defendant had conspired to circulate among men called for the draft 15,000 copies of a circular which asserted a "right" to oppose the draft. The defendant in Frohwerk v. United States, 249 U.S. 204, was shown to have conspired to publish in a newspaper twelve articles describing the sufferings of American troops and the futility of our war aims. The record was inadequate, and we said that it was therefore

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impossible to say that it might not have been found that the circulation of the paper was in quarters where a little breath would be enough to kindle a flame and that the fact was known and relied upon by those who sent the paper out.

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249 U.S. at 209. In Debs v. United States, 249 U.S. 211, the indictment charged that the defendant had delivered a public speech expounding socialism and praising Socialists who had been convicted of abetting violation of the draft laws.

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The ground of decision in each case was the same. The First Amendment

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cannot have been, and obviously was not, intended to give immunity for every possible use of language. Robertson v. Baldwin, 165 U.S. 275, 281.

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Frohwerk v. United States, supra, at 206.

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The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

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Schenck v. United States, supra, at 52. When "the words used had as their natural tendency and reasonably probable effect to obstruct the recruiting service," and "the defendant had the specific intent to do so in his mind," conviction in wartime is not prohibited by the Constitution. Debs v. United States, supra, at 216. [341 U.S. 535]

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In the three succeeding cases, Holmes and Brandeis, JJ., dissented from judgments of the Court affirming convictions. The indictment in Abrams v. United States, 250 U.S. 616, was laid under an amendment to the Espionage Act which prohibited conspiracies to advocate curtailment of production of material necessary to prosecution of the war, with the intent thereby to hinder the United States in the prosecution of the war. It appeared that the defendants were anarchists who had printed circulars and distributed them in New York City. The leaflets repeated standard Marxist slogans, condemned American intervention in Russia, and called for a general strike in protest. In Schaefer v. United States, 251 U.S. 466, the editors of a German language newspaper in Philadelphia were charged with obstructing the recruiting service and with willfully publishing false reports with the intent to promote the success of the enemies of the United States. The evidence showed publication of articles which accused American troops of weakness and mendacity, and in one instance misquoted or mistranslated two words of a Senator's speech. The indictment in Pierce v. United States, 252 U.S. 239, charged that the defendants had attempted to cause insubordination in the armed forces and had conveyed false reports with intent to interfere with military operations. Conviction was based on circulation of a pamphlet which belittled Allied war aims and criticized conscription in strong terms.

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In each case, both the majority and the dissenting opinions relied on Schenck v. United States. The Court divided on its view of the evidence. The majority held that the jury could infer the required intent and the probable effect of the articles from their content. Holmes and Brandeis, JJ., thought that only "expressions of opinion and exhortations," 250 U.S. at 631, were involved, that they were "puny anonymities," 250 U.S. at 629, "impotent to produce the evil against which the statute aimed," 251 [341 U.S. 536] U.S. 493, and that, from them, the specific intent required by the statute could not reasonably be inferred. The Court agreed that an incitement to disobey the draft statute could constitutionally be punished. It disagreed over the proof required to show such an incitement.

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(b) In the eyes of a majority of the Court, Gitlow v. New York, 268 U.S. 652, presented a very different problem. There, the defendant had been convicted under a New York statute nearly identical with the Smith Act now before us. The evidence showed that the defendant was an official of the Left Wing Section of the Socialist Party, and that he was responsible for publication of a Left Wing Manifesto. This document repudiated "moderate Socialism," and urged the necessity of a militant "revolutionary Socialism," based on class struggle and revolutionary mass action. No evidence of the effect of the Manifesto was introduced, but the jury were instructed that they could not convict unless they found that the document advocated employing unlawful acts for the purpose of overthrowing organized government.

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The conviction was affirmed. The question, the Court held, was entirely different from that involved in Schenck v. United States, where the statute prohibited acts without reference to language. Here, where

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the legislative body has determined generally, in the constitutional exercise of its discretion, that utterances of a certain kind involve such danger of substantive evil that they may be punished, the question whether any specific utterance coming within the prohibited class is likely, in and of itself, to bring about the substantive evil is not open to consideration.

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268 U.S. at 670. It is sufficient that the defendant's conduct falls within the statute, and that the statute is a reasonable exercise of legislative judgment.

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This principle was also applied in Whitney v. California, 274 U.S. 357, to sustain a conviction under a State criminal syndicalism statute. That statute made it a [341 U.S. 537] felony to assist in organizing a group assembled to advocate the commission of crime, sabotage, or unlawful acts of violence as a means of effecting political or industrial change. The defendant was found to have assisted in organizing the Communist Labor Party of California, an organization found to have the specified character. It was held that the legislature was not unreasonable in believing organization of such a party

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involves such danger to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power.

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274 U.S. at 371.

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In neither of these cases did Mr. Justice Holmes and Mr. Justice Brandeis accept the reasoning of the Court. "`The question,'" they said, quoting from Schenck v. United States,

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"in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that [the State] has a right to prevent."

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268 U.S. at 672-673. Since the Manifesto circulated by Gitlow "had no chance of starting a present conflagration," 268 U.S. at 673, they dissented from the affirmance of his conviction. In Whitney v. California, they concurred in the result reached by the Court, but only because the record contained some evidence that organization of the Communist Labor Party might further a conspiracy to commit immediate serious crimes, and the credibility of the evidence was not put in issue by the defendant. 9

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(c) Subsequent decisions have added little to the principles established in these two groups of cases. In the only case arising under the Espionage Act decided by this Court during the last war, the substantiality of the evidence was the crucial issue. The defendant in Hartzel [341 U.S. 538] v. United States, 322 U.S. 680, was an educated man and a citizen, not actively affiliated with any political group. In 1942, he wrote three articles condemning our wartime allies and urging that the war be converted into a racial conflict. He mailed the tracts to 600 people, including high-ranking military officers. According to his testimony, his intention was to "create sentiment against war amongst the white races." The majority of this Court held that a jury could not reasonably infer from these facts that the defendant had acted with a specific intent to cause insubordination or disloyalty in the armed forces.

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Of greater importance is the fact that the issue of law which divided the Court in the Gitlow and Whitney cases has not again been clearly raised, although in four additional instances we have reviewed convictions under comparable statutes. Fiske v. Kansas, 274 U.S. 380, involved a criminal syndicalism statute similar to that before us in Whitney v. California. We reversed a conviction based on evidence that the defendant exhibited an innocuous preamble to the constitution of the Industrial Workers of the World in soliciting members for that organization. In Herndon v. Lowry, 301 U.S. 242, the defendant had solicited members for the Communist Party, but there was no proof that he had urged or even approved those of the Party's aims which were unlawful. We reversed a conviction obtained under a statute prohibiting an attempt to incite to insurrection by violence on the ground that the Fourteenth Amendment prohibited conviction where, on the evidence, a jury could not reasonably infer that the defendant had violated the statute the State sought to apply. 10 [341 U.S. 539]

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The other two decisions go no further than to hold that the statute, as construed by the State courts, exceeded the bounds of a legislative judgment founded in reason. The statute presented in De Jonge v. Oregon, 299 U.S. 353, had been construed to apply to anyone who merely assisted in the conduct of a meeting held under the auspices of the Communist Party. In Taylor v. Mississippi, 319 U.S. 583, the statute prohibited dissemination of printed matter "designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi." We reversed a conviction for what we concluded was mere criticism and prophesy, without indicating whether we thought the statute could in any circumstances validly be applied. What the defendants communicated, we said,

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is not claimed or shown to have been done with an evil or sinister purpose, to have advocated or incited subversive action against the nation or state, or to have threatened any clear and present danger to our institutions or our Government.

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319 U.S. at 589-590.

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I must leave to others the ungrateful task of trying to reconcile all these decisions. In some instances, we have too readily permitted juries to infer deception from error, or intention from argumentative or critical statements. Abrams v. United States, supra; Schaefer v. United States, supra; Pierce v. United States, supra; Gilbert v. Minnesota, 254 U.S. 325. In other instances, we weighted the interest in free speech so heavily that we permitted essential conflicting values to be destroyed. Bridges v. California, supra; Craig v. Harney, supra. Viewed as a whole, however, the decisions express an attitude toward the judicial function and a standard of values which, for me, are decisive of the case before us.

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First.—Free-speech cases are not an exception to the principle that we are not legislators, that direct policymaking is not our province. How best to reconcile competing [341 U.S. 540] interests is the business of legislatures, and the balance they strike is a judgment not to be displaced by ours, but to be respected unless outside the pale of fair judgment.

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On occasion, we have strained to interpret legislation in order to limit its effect on interests protected by the First Amendment. Schneiderman v. United States, supra; Bridges v. Wixon, supra. In some instances, we have denied to States the deference to which I think they are entitled. Bridges v. California, supra; Craig v. Harney, supra. Once in this recent course of decisions the Court refused to permit a jury to draw inferences which seemed to me to be obviously reasonable. Hartzel v. United States, supra.

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But in no case has a majority of this Court held that a legislative judgment, even as to freedom of utterance, may be overturned merely because the Court would have made a different choice between the competing interests had the initial legislative judgment been for it to make. In the cases in which the opinions go farthest towards indicating a total rejection of respect for legislative determinations, the interests between which choice was actually made were such that decision might well have been expressed in the familiar terms of want of reason in the legislative judgment. In Thomas v. Collins, 323 U.S. 516, for example, decision could not unreasonably have been placed on the ground that no substantial interest justified a State in requiring an out-of-State labor leader to register before speaking in advocacy of the cause of trade unionism. In Martin v. City of Struthers, 319 U.S. 141, it was broadly held that a municipality was not justified in prohibiting knocking on doors and ringing doorbells for the purpose of delivering handbills. But since the good faith and reasonableness of the regulation were placed in doubt by the fact that the city did not think it necessary also to prohibit door-to-door commercial [341 U.S. 541] sales, decision could be sustained on narrower ground. And compare Breard v. Alexandria, post, p. 622, decided this day.

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In other cases, moreover, we have given clear indication that even when free speech is involved, we attach great significance to the determination of the legislature. Gitlow v. New York, supra; Whitney v. California, supra; American Communications Assn. v. Douds, supra; cf. Bridges v. California, 314 U.S. at 260. And see Hughes v. Superior Court, supra; International Brotherhood of Teamsters Union v. Hanke, supra.

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In Gitlow v. New York, we put our respect for the legislative judgment in terms which, if they were accepted here, would make decision easy. For that case held that, when the legislature has determined that advocacy of forceful overthrow should be forbidden, a conviction may be sustained without a finding that, in the particular case, the advocacy had a close relation to a serious attempt at overthrow. We held that it was enough that the statute be a reasonable exercise of the legislative judgment, and that the defendant's conduct fall within the statute.

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One of the judges below rested his affirmance on the Gitlow decision, and the defendants do not attempt to distinguish the case. They place their argument squarely on the ground that the case has been overruled by subsequent decisions. It has not been explicitly overruled. But it would be disingenuous to deny that the dissent in Gitlow has been treated with the respect usually accorded to a decision.

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The result of the Gitlow decision was to send a left-wing Socialist to jail for publishing a Manifesto expressing Marxist exhortations. It requires excessive tolerance of the legislative judgment to suppose that the Gitlow publication in the circumstances could justify serious concern. [341 U.S. 542]

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In contrast, there is ample justification for a legislative judgment that the conspiracy now before us is a substantial threat to national order and security. If the Smith Act is justified at all, it is justified precisely because it may serve to prohibit the type of conspiracy for which these defendants were convicted. The court below properly held that, as a matter of separability, the Smith Act may be limited to those situations to which it can constitutionally be applied. See 183 F.2d at 214-215. Our decision today certainly does not mean that the Smith Act can constitutionally be applied to facts like those in Gitlow v. New York. While reliance may properly be placed on the attitude of judicial self-restraint which the Gitlow decision reflects, it is not necessary to depend on the facts or the full extent of the theory of that case in order to find that the judgment of Congress, as applied to the facts of the case now before us, is not in conflict with the First Amendment.

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Second.—A survey of the relevant decisions indicates that the results which we have reached are on the whole those that would ensue from careful weighing of conflicting interests. The complex issues presented by regulation of speech in public places, by picketing, and by legislation prohibiting advocacy of crime have been resolved by scrutiny of many factors besides the imminence and gravity of the evil threatened. The matter has been well summarized by a reflective student of the Court's work.

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The truth is that the "clear and present danger" test is an oversimplified judgment unless it takes account also of a number of other factors: the relative seriousness of the danger in comparison with the value of the occasion for speech or political activity; the availability of more moderate controls than those which the state has imposed, and perhaps the specific intent with which the speech or activity is launched. No matter how rapidly we utter the phrase "clear and present danger," or how [341 U.S. 543] closely we hyphenate the words, they are not a substitute for the weighing of values. They tend to convey a delusion of certitude when what is most certain is the complexity of the strands in the web of freedoms which the judge must dissentangle.

1951, Dennis v. United States, 341 U.S. 543

Freund, On Understanding the Supreme Court, 27-28.

1951, Dennis v. United States, 341 U.S. 543

It is a familiar experience in the law that new situations do not fit neatly into legal conceptions that arose under different circumstances to satisfy different needs. So it was when the injunction was tortured into an instrument of oppression against labor in industrial conflicts. So it is with the attempt to use the direction of thought lying behind the criterion of "clear and present danger" wholly out of the context in which it originated, and to make of it an absolute dogma and definitive measuring rod for the power of Congress to deal with assaults against security through devices other than overt physical attempts.

1951, Dennis v. United States, 341 U.S. 543

Bearing in mind that Mr. Justice Holmes regarded questions under the First Amendment as questions of "proximity and degree," Schenck v. United States, 249 U.S. at 52, it would be a distortion, indeed a mockery, of his reasoning to compare the "puny anonymities," 250 U.S. at 629, to which he was addressing himself in the Abrams case in 1919 or the publication that was "futile and too remote from possible consequences," 268 U.S. at 673, in the Gitlow case in 1925 with the setting of events in this case in 1950.

1951, Dennis v. United States, 341 U.S. 543

It does an ill service to the author of the most quoted judicial phrases regarding freedom of speech, to make him the victim of a tendency which he fought all his life, whereby phrases are made to do service for critical analysis by being turned into dogma.

1951, Dennis v. United States, 341 U.S. 543

It is one of the misfortunes of the law that ideas become encysted in phrases, and thereafter for a long time cease to provoke further analysis.

1951, Dennis v. United States, 341 U.S. 543

Holmes, J., dissenting, in Hyde v. United [341 U.S. 544] States, 225 U.S. 347, 384, at 391.

1951, Dennis v. United States, 341 U.S. 544

The phrase "clear and present danger," in its origin,

1951, Dennis v. United States, 341 U.S. 544

served to indicate the importance of freedom of speech to a free society, but also to emphasize that its exercise must be compatible with the preservation of other freedoms essential to a democracy and guaranteed by our Constitution.

1951, Dennis v. United States, 341 U.S. 544

Pennekamp v. Florida, 328 U.S. 331, 350, 352-353 (concurring). It were far better that the phrase be abandoned than that it be sounded once more to hide from the believers in an absolute right of free speech the plain fact that the interest in speech, profoundly important as it is, is no more conclusive in judicial review than other attributes of democracy or than a determination of the people's representatives that a measure is necessary to assure the safety of government itself.

1951, Dennis v. United States, 341 U.S. 544

Third.—Not every type of speech occupies the same position on the scale of values. There is no substantial public interest in permitting certain kinds of utterances:

1951, Dennis v. United States, 341 U.S. 544

the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace.

1951, Dennis v. United States, 341 U.S. 544

Chaplinsky v. New Hampshire, 315 U.S. 568, 572. We have frequently indicated that the interest in protecting speech depends on the circumstances of the occasion. See cases collected in Niemotko v. Maryland, 340 U.S. at 275-283. It is pertinent to the decision before us to consider where on the scale of values we have in the past placed the type of speech now claiming constitutional immunity.

1951, Dennis v. United States, 341 U.S. 544

The defendants have been convicted of conspiring to organize a party of persons who advocate the overthrow of the Government by force and violence. The jury has found that the object of the conspiracy is advocacy as "a rule or principle of action," "by language reasonably and ordinarily calculated to incite persons to such action," [341 U.S. 545] and with the intent to cause the overthrow "as speedily as circumstances would permit."

1951, Dennis v. United States, 341 U.S. 545

On any scale of values which we have hitherto recognized, speech of this sort ranks low.

1951, Dennis v. United States, 341 U.S. 545

Throughout our decisions, there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action and advocacy that such action be taken. The distinction has its root in the conception of the common law, supported by principles of morality, that a person who procures another to do an act is responsible for that act as though he had done it himself. This principle was extended in Fox v. Washington, supra, to words directed to the public generally which would constitute an incitement were they directed to an individual. It was adapted in Schenck v. United States, supra, into a rule of evidence designed to restrict application of the Espionage Act. It was relied on by the Court in Gitlow v. New York, supra. The distinction has been repeated in many of the decisions in which we have upheld the claims of speech. We frequently have distinguished protected forms of expression from statements which "incite to violence and crime and threaten the overthrow of organized government by unlawful means." Stromberg v. California, 283 U.S. at 369. See also Near v. Minnesota, 283 U.S. at 716; De Jonge v. Oregon, 299 U.S. at 365; Cantwell v. Connecticut, 310 U.S. 296, 308; Taylor v. Mississippi, 319 U.S. at 589.

1951, Dennis v. United States, 341 U.S. 545

It is true that there is no divining rod by which we may locate "advocacy." Exposition of ideas readily merges into advocacy. The same Justice who gave currency to application of the incitement doctrine in this field dissented four times from what he thought was its misapplication. As he said in the Gitlow dissent, "Every idea is an incitement." 268 U.S. at 673. Even though advocacy of overthrow deserves little protection, we should hesitate to prohibit it if we thereby inhibit the [341 U.S. 546] interchange of rational ideas so essential to representative government and free society.

1951, Dennis v. United States, 341 U.S. 546

But there is underlying validity in the distinction between advocacy and the interchange of ideas, and we do not discard a useful tool because it may be misused. That such a distinction could be used unreasonably by those in power against hostile or unorthodox views does not negate the fact that it may be used reasonably against an organization wielding the power of the centrally controlled international Communist movement. The object of the conspiracy before us is so clear that the chance of error in saying that the defendants conspired to advocate, rather than to express ideas is slight. MR. JUSTICE DOUGLAS quite properly points out that the conspiracy before us is not a conspiracy to overthrow the Government. But it would be equally wrong to treat it as a seminar in political theory.

1951, Dennis v. United States, 341 U.S. 546

III

1951, Dennis v. United States, 341 U.S. 546

These general considerations underlie decision of the case before us.

1951, Dennis v. United States, 341 U.S. 546

On the one hand is the interest in security. The Communist Party was not designed by these defendants as an ordinary political party. For the circumstances of its organization, its aims and methods, and the relation of the defendants to its organization and aims, we are concluded by the jury's verdict. The jury found that the Party rejects the basic premise of our political system—that change is to be brought about by nonviolent constitutional process. The jury found that the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence. It found that the Party entertains and promotes this view not as a prophetic insight or as a bit of unworldly speculation, [341 U.S. 547] but as a program for winning adherents and as a policy to be translated into action.

1951, Dennis v. United States, 341 U.S. 547

In finding that the defendants violated the statute, we may not treat as established fact that the Communist Party in this country is of significant size, well organized, well disciplined, conditioned to embark on unlawful activity when given the command. But, in determining whether application of the statute to the defendants is within the constitutional powers of Congress, we are not limited to the facts found by the jury. We must view such a question in the light of whatever is relevant to a legislative judgment. We may take judicial notice that the Communist doctrines which these defendants have conspired to advocate are in the ascendency in powerful nations who cannot be acquitted of unfriendliness to the institutions of this country. We may take account of evidence brought forward at this trial and elsewhere, much of which has long been common knowledge. In sum, it would amply justify a legislature in concluding that recruitment of additional members for the Party would create a substantial danger to national security.

1951, Dennis v. United States, 341 U.S. 547

In 1947, it has been reliably reported, at least 60,000 members were enrolled in the Party. 11 Evidence was introduced in this case that the membership was organized in small units, linked by an intricate chain of command, and protected by elaborate precautions designed to prevent disclosure of individual identity. There are no reliable data tracing acts of sabotage or espionage directly to these defendants. But a Canadian Royal Commission appointed in 1946 to investigate espionage reported that it was "overwhelmingly established" that [341 U.S. 548] "the Communist movement was the principal base within which the espionage network was recruited." 12 The most notorious spy in recent history was led into the service of the Soviet Union through Communist indoctrination. 13 Evidence supports the conclusion that members of the Party seek and occupy positions of importance in political and labor organizations. 14 Congress was not barred by the Constitution from believing that indifference to such experience would be an exercise not of freedom, but of irresponsibility.

1951, Dennis v. United States, 341 U.S. 548

On the other hand is the interest in free speech. The right to exert all governmental powers in aid of maintaining our institutions and resisting their physical overthrow does not include intolerance of opinions and speech that cannot do harm although opposed and perhaps alien to dominant, traditional opinion. The treatment of its [341 U.S. 549] minorities, especially their legal position, is among the most searching tests of the level of civilization attained by a society. It is better for those who have almost unlimited power of government in their hands to err on the side of freedom. We have enjoyed so much freedom for so long that we are perhaps in danger of forgetting how much blood it cost to establish the Bill of Rights.

1951, Dennis v. United States, 341 U.S. 549

Of course, no government can recognize a "right" of revolution, or a "right" to incite revolution if the incitement has no other purpose or effect. But speech is seldom restricted to a single purpose, and its effects may be manifold. A public interest is not wanting in granting freedom to speak their minds even to those who advocate the overthrow of the Government by force. For, as the evidence in this case abundantly illustrates, coupled with such advocacy is criticism of defects in our society. Criticism is the spur to reform, and Burke's admonition that a healthy society must reform in order to conserve has not lost its force. Astute observers have remarked that one of the characteristics of the American Republic is indifference to fundamental criticism. Bryce, The American Commonwealth, c. 84. It is a commonplace that there may be a grain of truth in the most uncouth doctrine, however false and repellent the balance may be. Suppressing advocates of overthrow inevitably will also silence critics who do not advocate overthrow but fear that their criticism may be so construed. No matter how clear we may be that the defendants now before us are preparing to overthrow our Government at the propitious moment, it is self-delusion to think that we can punish them for their advocacy without adding to the risks run by loyal citizens who honestly believe in some of the reforms these defendants advance. It is a sobering fact that, in sustaining the convictions before us, we can hardly escape restriction on the interchange of ideas. [341 U.S. 550]

1951, Dennis v. United States, 341 U.S. 550

We must not overlook the value of that interchange. Freedom of expression is the well spring of our civilization—the civilization we seek to maintain and further by recognizing the right of Congress to put some limitation upon expression. Such are the paradoxes of life. For social development of trial and error, the fullest possible opportunity for the free play of the human mind is an indispensable prerequisite. The history of civilization is in considerable measure the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other truths. Therefore, the liberty of man to search for truth ought not to be fettered, no matter what orthodoxies he may challenge. Liberty of thought soon shrivels without freedom of expression. Nor can truth be pursued in an atmosphere hostile to the endeavor or under dangers which are hazarded only by heroes.

1951, Dennis v. United States, 341 U.S. 550

The interest, which [the First Amendment] guards, and which gives it its importance, presupposes that there are no orthodoxies—religious, political, economic, or scientific—which are immune from debate and dispute. Back of that is the assumption—itself an orthodoxy, and the one permissible exception—that truth will be most likely to emerge, if no limitations are imposed upon utterances that can with any plausibility be regarded as efforts to present grounds for accepting or rejecting propositions whose truth the utterer asserts, or denies.

1951, Dennis v. United States, 341 U.S. 550

International Brotherhood of Electrical Workers v. Labor Board, 181 F.2d 34, 40. In the last analysis, it is on the validity of this faith that our national security is staked.

1951, Dennis v. United States, 341 U.S. 550

It is not for us to decide how we would adjust the clash of interests which this case presents were the primary responsibility for reconciling it ours. Congress has determined that the danger created by advocacy of overthrow justifies the ensuing restriction on freedom of speech. The determination was made after due deliberation, and [341 U.S. 551] the seriousness of the congressional purpose is attested by the volume of legislation passed to effectuate the same ends. 15

1951, Dennis v. United States, 341 U.S. 551

Can we then say that the judgment Congress exercised was denied it by the Constitution? Can we establish a constitutional doctrine which forbids the elected representatives of the people to make this choice? Can we hold that the First Amendment deprives Congress of what it deemed necessary for the Government's protection?

1951, Dennis v. United States, 341 U.S. 551

To make validity of legislation depend on judicial reading of events still in the womb of time a forecast, that is, of the outcome of forces, at best, appreciated only with knowledge of the topmost secrets of nations—is to charge the judiciary with duties beyond its equipment. We do not expect courts to pronounce historic verdicts on bygone events. Even historians have conflicting views to this day on the origins and conduct of the French Revolution, or, for that matter, varying interpretations of "the glorious Revolution" of 1688. It is as absurd to be confident that we can measure the present clash of forces and [341 U.S. 552] their outcome as to ask us to read history still enveloped in clouds of controversy.

1951, Dennis v. United States, 341 U.S. 552

In the light of their experience, the Framers of the Constitution chose to keep the judiciary dissociated from direct participation in the legislative process. In asserting the power to pass on the constitutionality of legislation, Marshall and his Court expressed the purposes of the Founders. See Charles A. Beard, The Supreme Court and the Constitution. But the extent to which the exercise of this power would interpenetrate matters of policy could hardly have been foreseen by the most prescient. The distinction which the Founders drew between the Court's duty to pass on the power of Congress and its complementary duty not to enter directly the domain of policy is fundamental. But, in its actual operation, it is rather subtle, certainly to the common understanding. Our duty to abstain from confounding policy with constitutionality demands perceptive humility as well as self-restraint in not declaring unconstitutional what in a judge's private judgment is deemed unwise and even dangerous.

1951, Dennis v. United States, 341 U.S. 552

Even when moving strictly within the limits of constitutional adjudication, judges are concerned with issues that may be said to involve vital finalities. The too easy transition from disapproval of what is undesirable to condemnation as unconstitutional has led some of the wisest judges to question the wisdom of our scheme in lodging such authority in courts. But it is relevant to remind that, in sustaining the power of Congress in a case like this, nothing irrevocable is done. The democratic process, at all events, is not impaired or restricted. Power and responsibility remain with the people, and, immediately, with their representatives. All the Court says is that Congress was not forbidden by the Constitution to pass this enactment and that a prosecution under it may be brought against a conspiracy such as the one before us. [341 U.S. 553]

1951, Dennis v. United States, 341 U.S. 553

IV

1951, Dennis v. United States, 341 U.S. 553

The wisdom of the assumptions underlying the legislation and prosecution is another matter. In finding that Congress has acted within its power, a judge does not remotely imply that he favors the implications that lie beneath the legal issues. Considerations there enter which go beyond the criteria that are binding upon judges within the narrow confines of their legitimate authority. The legislation we are here considering is but a truncated aspect of a deeper issue. For me, it has been most illuminatingly expressed by one in whom responsibility and experience have fructified native insight, the Director-General of the British Broadcasting Corporation:

1951, Dennis v. United States, 341 U.S. 553

We have to face up to the fact that there are powerful forces in the world today misusing the privileges of liberty in order to destroy her. The question must be asked, however, whether suppression of information or opinion is the true defense. We may have come a long way from Mill's famous dictum that:

1951, Dennis v. United States, 341 U.S. 553

If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind,

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but Mill's reminders from history as to what has happened when suppression was most virulently exercised ought to warn us that no debate is ever permanently won by shutting one's ears or by even the most Draconian policy of silencing opponents. The debate must be won . And it must be won with full information. Where there are lies, they must be shown for what they are. Where there are errors, they must be refuted. It would be a major defeat if the enemies of democracy forced us to abandon our faith in the power of informed discussion, and so brought us down [341 U.S. 554] to their own level. Mankind is so constituted, moreover, that, if, where expression and discussion are concerned, the enemies of liberty are met with a denial of liberty, many men of goodwill will come to suspect there is something in the proscribed doctrine after all. Erroneous doctrines thrive on being expunged. They die if exposed.

1951, Dennis v. United States, 341 U.S. 554

Sir William Haley, What Standards for Broadcasting? Measure, Vol. I, No. 3, Summer 1950, pp. 211-212.

1951, Dennis v. United States, 341 U.S. 554

In the context of this deeper struggle, another voice has indicated the limitations of what we decide today. No one is better equipped than George F. Kennan to speak on the meaning of the menace of Communism and the spirit in which we should meet it.

1951, Dennis v. United States, 341 U.S. 554

If our handling of the problem of Communist influence in our midst is not carefully moderated—if we permit it, that is, to become an emotional preoccupation and to blind us to the more important positive tasks before us—we can do a damage to our national purpose beyond comparison greater than anything that threatens us today from the Communist side. The American Communist party is today, by and large, an external danger. It represents a tiny minority in our country, it has no real contact with the feelings of the mass of our people, and its position as the agency of a hostile foreign power is clearly recognized by the overwhelming mass of our citizens.

1951, Dennis v. United States, 341 U.S. 554

But the subjective emotional stresses and temptations to which we are exposed in our attempt to deal with this domestic problem are not an external danger: they represent a danger within ourselves—a danger that something may occur in our own minds and souls which will make us no longer like the persons by whose efforts this republic was founded and held together, but rather like the representatives [341 U.S. 555] of that very power we are trying to combat: intolerant, secretive, suspicious, cruel, and terrified of internal dissension because we have lost our own belief in ourselves and in the power of our ideals. The worst thing that our Communists could do to us, and the thing we have most to fear from their activities, is that we should become like them.

1951, Dennis v. United States, 341 U.S. 555

That our country is beset with external dangers I readily concede. But these dangers, at their worst, are ones of physical destruction, of the disruption of our world security, of expense and inconvenience and sacrifice. These are serious, and sometimes terrible things, but they are all things that we can take and still remain Americans.

1951, Dennis v. United States, 341 U.S. 555

The internal danger is of a different order. America is not just territory and people. There is lots of territory elsewhere, and there are lots of people; but it does not add up to America. America is something in our minds and our habits of outlook which causes us to believe in certain things and to behave in certain ways, and by which, in its totality, we hold ourselves distinguished from others. If that, once goes there will be no America to defend. And that can go too easily if we yield to the primitive human instinct to escape from our frustrations into the realms of mass emotion and hatred and to find scapegoats for our difficulties in individual fellow-citizens who are, or have at one time been, disoriented or confused.

1951, Dennis v. United States, 341 U.S. 555

George F. Kennan, Where Do You Stand on Communism? New York Times Magazine, May 27, 1951, pp. 7, 53, 55.

1951, Dennis v. United States, 341 U.S. 555

Civil liberties draw, at best, only limited strength from legal guaranties. Preoccupation by our people with the constitutionality, instead of with the wisdom, of legislation or of executive action is preoccupation with a false value. Even those who would most freely use the judicial [341 U.S. 556] brake on the democratic process by invalidating legislation that goes deeply against their grain, acknowledge, at least by paying lip service, that constitutionality does not exact a sense of proportion or the sanity of humor or an absence of fear. Focusing attention on constitutionality tends to make constitutionality synonymous with wisdom. When legislation touches freedom of thought and freedom of speech, such a tendency is a formidable enemy of the free spirit. Much that should be rejected as illiberal, because repressive and envenoming, may well be not unconstitutional. The ultimate reliance for the deepest needs of civilization must be found outside their vindication in courts of law; apart from all else, judges, howsoever they may conscientiously seek to discipline themselves against it, unconsciously are too apt to be moved by the deep undercurrents of public feeling. A persistent, positive translation of the liberating faith into the feelings and thoughts and actions of men and women is the real protection against attempts to strait-jacket the human mind. Such temptations will have their way, if fear and hatred are not exorcized. The mark of a truly civilized man is confidence in the strength and security derived from the inquiring mind. We may be grateful for such honest comforts as it supports, but we must be unafraid of its incertitudes. Without open minds, there can be no open society. And if society be not open, the spirit of man is mutilated, and becomes enslaved.

1951, Dennis v. United States, 341 U.S. 556

APPENDIX TO OPINION OF MR. JUSTICE FRANKFURTER.

1951, Dennis v. United States, 341 U.S. 556

Opinions responsible for the view that speech could not constitutionally be restricted unless there would result from it an imminent—i.e., close at hand—substantive evil.

1951, Dennis v. United States, 341 U.S. 556

1. Thornhill v. Alabama, 310 U.S. 88, 104-105 (State statute prohibiting picketing held invalid):

1951, Dennis v. United States, 341 U.S. 556

…Every [341 U.S. 557] expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion….

1951, Dennis v. United States, 341 U.S. 557

…[N]o clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter.

1951, Dennis v. United States, 341 U.S. 557

2. Bridges v. California, 314 U.S. 252, 262-263 (convictions for contempt of court reversed):

1951, Dennis v. United States, 341 U.S. 557

…[T]he "clear and present danger" language of the Schenck case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, Schenck v. United States, supra, [249 U.S. 47]; Abrams v. United States, 250 U.S. 616; under a criminal syndicalism act, Whitney v. California, supra, [274 U.S. 357]; under an "anti-insurrection" act, Herndon v. Lowry, supra, [301 U.S. 242], and for breach of the peace at common law, Cantwell v. Connecticut, supra, [310 U.S. 296]. And, very recently, we have also suggested that "clear and present danger" is an appropriate guide in determining the constitutionality of restrictions upon expression where the substantive evil sought to be prevented [341 U.S. 558] by the restriction is "destruction of life or property, or invasion of the right of privacy." Thornhill v. Alabama, 310 U.S. 88, 105.

1951, Dennis v. United States, 341 U.S. 558

\* \* \* \*

1951, Dennis v. United States, 341 U.S. 558

What finally emerges from the "clear and present danger" cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished. Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits any law "abridging the freedom of speech, or of the press." It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow.

1951, Dennis v. United States, 341 U.S. 558

3. West Virginia Board of Education v. Barnette, 319 U.S. 624, 639 (flag salute requirement for school children held invalid):

1951, Dennis v. United States, 341 U.S. 558

In weighing arguments of the parties, it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible [341 U.S. 559] of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that, while it is the Fourteenth Amendment which bears directly upon the State, it is the more specific limiting principles of the First Amendment that finally govern this case.

1951, Dennis v. United States, 341 U.S. 559

4. Thomas v. Collins, 323 U.S. 516, 529-530 (State statute requiring registration of labor organizers held invalid as applied):

1951, Dennis v. United States, 341 U.S. 559

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. Schneider v. State, 308 U.S. 147; Cantwell v. Connecticut, 310 U.S. 296; Prince v. Massachusetts, 321 U.S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare United States v. Carolene Products Co., 304 U.S. 144, 152-153.

1951, Dennis v. United States, 341 U.S. 559

For these reasons, any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. [341 U.S. 560]

1951, Dennis v. United States, 341 U.S. 560

5. Craig v. Harney, 331 U.S. 367, 376 (conviction for contempt of court reversed):

1951, Dennis v. United States, 341 U.S. 560

The fires which [the language] kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.

1951, Dennis v. United States, 341 U.S. 560

6. Giboney v. Empire Storage Co., 336 U.S. 490, 503 (injunction against picketing upheld):

1951, Dennis v. United States, 341 U.S. 560

…There was clear danger, imminent and immediate, that, unless restrained, appellants would succeed in making [the State's policy against restraints of trade] a dead letter insofar as purchases by nonunion men were concerned….

1951, Dennis v. United States, 341 U.S. 560

7. Terminiello v. Chicago, 337 U.S. 1, 4-5 (conviction for disorderly conduct reversed):

1951, Dennis v. United States, 341 U.S. 560

Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire, supra, [315 U.S. 568,] 571-572, is nevertheless protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. See Bridges v. California, 314 U.S. 252, 262; Craig v. Harney, 331 U.S. 367, 373. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

1951, Dennis v. United States, 341 U.S. 560

8. American Communications Assn. v. Douds, 339 U.S. 382, 396, 412 ("Non-Communist affidavit" provision of Taft-Hartley Act upheld):

1951, Dennis v. United States, 341 U.S. 560

Speech may be fought with speech. Falsehoods and fallacies must be exposed, not suppressed, unless there is not sufficient time to avert the evil consequences of noxious doctrine by argument and education. That is the command of the First Amendment.

1951, Dennis v. United States, 341 U.S. 560

And again,

1951, Dennis v. United States, 341 U.S. 560

[The First] Amendment requires [341 U.S. 561] that one be permitted to believe what he will. It requires that one be permitted to advocate what he will unless there is a clear and present danger that a substantial public evil will result therefrom.

JACKSON, J., concurring

1951, Dennis v. United States, 341 U.S. 561

MR. JUSTICE JACKSON, concurring.

1951, Dennis v. United States, 341 U.S. 561

This prosecution is the latest of never-ending, because never successful, quests for some legal formula that will secure an existing order against revolutionary radicalism. It requires us to reappraise, in the light of our own times and conditions, constitutional doctrines devised under other circumstances to strike a balance between authority and liberty.

1951, Dennis v. United States, 341 U.S. 561

Activity here charged to be criminal is conspiracy—that defendants conspired to teach and advocate, and to organize the Communist Party to teach and advocate, overthrow and destruction of the Government by force and violence. There is no charge of actual violence or attempt at overthrow. 1

1951, Dennis v. United States, 341 U.S. 561

The principal reliance of the defense in this Court is that the conviction cannot stand under the Constitution because the conspiracy of these defendants presents no "clear and present danger" of imminent or foreseeable overthrow. [341 U.S. 562]

1951, Dennis v. United States, 341 U.S. 562

I

1951, Dennis v. United States, 341 U.S. 562

The statute before us repeats a pattern, originally devised to combat the wave of anarchistic terrorism that plagued this country about the turn of the century, 2 which lags at least two generations behind Communist Party techniques.

1951, Dennis v. United States, 341 U.S. 562

Anarchism taught a philosophy of extreme individualism and hostility to government and property. Its avowed aim was a more just order, to be achieved by violent destruction of all government. 3 Anarchism's sporadic and uncoordinated acts of terror were not integrated with an effective revolutionary machine, but the Chicago Haymarket riots of 1886, 4 attempted murder of the industrialist Frick, attacks on state officials, and [341 U.S. 563] assassination of President McKinley in 1901, were fruits of its preaching.

1951, Dennis v. United States, 341 U.S. 563

However, extreme individualism was not educive to cohesive and disciplined organization. Anarchism fell into disfavor among incendiary radicals, many of whom shifted their allegiance to the rising Communist Party. Meanwhile, in Europe, anarchism had been displaced by Bolshevism as the doctrine and strategy of social and political upheaval. Led by intellectuals hardened by revolutionary experience, it was a more sophistic&ted, dynamic and realistic movement. Establishing a base in the Soviet Union, it founded an aggressive international Communist apparatus which has modeled and directed a revolutionary movement able only to harass our own country. But it has seized control of a dozen other countries.

1951, Dennis v. United States, 341 U.S. 563

Communism, the antithesis of anarchism, 5 appears today as a closed system of thought representing Stalin's [341 U.S. 564] version of Lenin's version of Marxism. As an ideology, it is not one of spontaneous protest arising from American working-class experience. It is a complicated system of assumptions, based on European history and conditions, shrouded in an obscure and ambiguous vocabulary, which allures our ultrasophisticated intelligentsia more than our hard-headed working people. From time to time it champions all manner of causes and grievances and makes alliances that may add to its foothold in government or embarrass the authorities.

1951, Dennis v. United States, 341 U.S. 564

The Communist Party, nevertheless, does not seek its strength primarily in numbers. Its aim is a relatively small party whose strength is in selected, dedicated, indoctrinated, and rigidly disciplined members. From established policy it tolerates no deviation and no debate. It seeks members that are, or may be, secreted in strategic posts in transportation, communications, industry, government, and especially in labor unions where it can compel employers to accept and retain its members. 6 It also seeks to infiltrate and control organizations of professional and other groups. Through these placements in positions of power, it seeks a leverage over society that will make up in power of coercion what it lacks in power of persuasion.

1951, Dennis v. United States, 341 U.S. 564

The Communists have no scruples against sabotage, terrorism, assassination, or mob disorder, but violence is not with them, as with the anarchists, an end in itself. The Communist Party advocates force only when prudent and profitable. Their strategy of stealth precludes premature or uncoordinated outbursts of violence, except, of course, when the blame will be placed on shoulders other than their own. They resort to violence as to truth, not [341 U.S. 565] as a principle but as an expedient. Force or violence, as they would resort to it, may never be necessary, because infiltration and deception may be enough.

1951, Dennis v. United States, 341 U.S. 565

Force would be utilized by the Communist Party not to destroy government, but for its capture. The Communist recognizes that an established government in control of modern technology cannot be overthrown by force until it is about ready to fall of its own weight. Concerted uprising, therefore, is to await that contingency, and revolution is seen not as a sudden episode, but as the consummation of a long process.

1951, Dennis v. United States, 341 U.S. 565

The United States, fortunately, has experienced Communism only in its preparatory stages, and, for its pattern of final action, must look abroad. Russia, of course, was the pilot Communist revolution which, to the Marxist, confirms the Party's assumptions and points its destiny. 7 [341 U.S. 566] But Communist technique in the overturn of a free government was disclosed by the coup d'etat in which they seized power in Czechoslovakia. 8 There, the Communist Party, during its preparatory stage, claimed and received protection for its freedoms of speech, press, and assembly. Pretending to be but another political party, it eventually was conceded participation in government, where it entrenched reliable members chiefly in control of police and information services. When the government faced a foreign and domestic crisis, the Communist Party had established a leverage strong enough to threaten civil war. In a period of confusion, the Communist plan unfolded, and the underground organization came to the surface throughout the country in the form chiefly of labor "action committees." Communist officers of the unions took over transportation, and allowed only persons with party permits to travel. Communist printers took over the newspapers and radio, and put out only party-approved versions of events. Possession was taken of telegraph and telephone systems, and communications were cut off wherever directed by party heads. Communist unions took over the factories, and in the cities, a partisan distribution of food was managed by the Communist organization. A virtually bloodless abdication by the elected government admitted the Communists to power, whereupon they instituted a reign of oppression and terror, and ruthlessly denied to all others the freedoms which had sheltered their conspiracy. [341 U.S. 567]

1951, Dennis v. United States, 341 U.S. 567

II

1951, Dennis v. United States, 341 U.S. 567

The foregoing is enough to indicate that,.either by accident or design, the Communist stratagem outwits the anti-anarchist pattern of statute aimed against "overthrow by force and violence" if qualified by the doctrine that only "clear and present danger" of accomplishing that result will sustain the prosecution.

1951, Dennis v. United States, 341 U.S. 567

The "clear and present danger" test was an innovation by Mr. Justice Holmes in the Schenck case, 9 reiterated and refined by him and Mr. Justice Brandeis in later cases, 10 all arising before the era of World War II revealed the subtlety and efficacy of modernized revolutionary techniques used by totalitarian parties. In those cases, they were faced with convictions under so-called criminal syndicalism statutes aimed at anarchists but which, loosely construed, had been applied to punish socialism, pacifism, and left-wing ideologies, the charges often resting on far-fetched [341 U.S. 568] inferences which, if true, would establish only technical or trivial violations. They proposed "clear and present danger" as a test for the sufficiency of evidence in particular cases.

1951, Dennis v. United States, 341 U.S. 568

I would save it, unmodified, for application as a "rule of reason" 11 in the kind of case for which it was devised. When the issue is criminality of a hot-headed speech on a street corner, or circulation of a few incendiary pamphlets, or parading by some zealots behind a red flag, or refusal of a handful of school children to salute our flag, it is not beyond the capacity of the judicial process to gather, comprehend, and weigh the necessary materials for decision whether it is a clear and present danger of substantive evil or a harmless letting off of steam. It is not a prophecy, for the danger in such cases has matured by the time of trial or it was never present. The test applies and has meaning where a conviction is sought to be based on a speech or writing which does not directly or explicitly advocate a crime, but to which such tendency is sought to be attributed by construction or by implication from external circumstances. The formula in such cases favors freedoms that are vital to our society, and even if sometimes applied too generously, the consequences cannot be grave. But its recent expansion has extended, in particular to Communists, unprecedented immunities. 12 Unless we are to hold our Government captive in a judge-made verbal trap, we must approach the problem of a well organized, nationwide conspiracy, such as I have [341 U.S. 569] described, as realistically as our predecessors faced the trivialities that were being prosecuted until they were checked with a rule of reason.

1951, Dennis v. United States, 341 U.S. 569

I think reason is lacking for applying that test to this case. [341 U.S. 570]

1951, Dennis v. United States, 341 U.S. 570

If we must decide that this Act and its application are constitutional only if we are convinced that petitioner's conduct creates a "clear and present danger" of violent overthrow, we must appraise imponderables, including international and national phenomena which baffle the best informed foreign offices and our most experienced politicians. We would have to foresee and predict the effectiveness of Communist propaganda, opportunities for infiltration, whether, and when, a time will come that they consider propitious for action, and whether and how fast our existing government will deteriorate. And we would have to speculate as to whether an approaching Communist coup would not be anticipated by a nationalistic fascist movement. No doctrine can be sound whose application requires us to make a prophecy of that sort in the guise of a legal decision. The judicial process simply is not adequate to a trial of such far-flung issues. The answers given would reflect our own political predilections, and nothing more.

1951, Dennis v. United States, 341 U.S. 570

The authors of the clear and present danger test never applied it to a case like this, nor would I. If applied as it is proposed here, it means that the Communist plotting is protected during its period of incubation; its preliminary stages of organization and preparation are immune from the law; the Government can move only after imminent action is manifest, when it would, of course, be too late.

1951, Dennis v. United States, 341 U.S. 570

III

1951, Dennis v. United States, 341 U.S. 570

The highest degree of constitutional protection is due to the individual acting without conspiracy. But even an individual cannot claim that the Constitution protects him in advocating or teaching overthrow of government by force or violence. I should suppose no one would doubt that Congress has power to make such attempted [341 U.S. 571] overthrow a crime. But the contention is that one has the constitutional right to work up a public desire, and will to do what it is a crime to attempt. I think direct incitement by speech or writing can be made a crime, and I think there can be a conviction without also proving that the odds favored its success by 99 to 1, or some other extremely high ratio.

1951, Dennis v. United States, 341 U.S. 571

The names of Mr. Justice Holmes and Mr. Justice Brandeis cannot be associated with such a doctrine of governmental disability. After the Schenck case, in which they set forth the clear and present danger test, they joined in these words of Mr. Justice Holmes, spoken for a unanimous Court:

1951, Dennis v. United States, 341 U.S. 571

…[T]he First Amendment, while prohibiting legislation against free speech as such, cannot have been, and obviously was not, intended to give immunity for every possible use of language. Robertson v. Baldwin, 165 U.S. 275, 281. We venture to believe that neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to make criminal the counseling of a murder within the jurisdiction of Congress would be an unconstitutional interference with free speech.

1951, Dennis v. United States, 341 U.S. 571

Frohwerk v. United States, 249 U.S. 204, 206.

1951, Dennis v. United States, 341 U.S. 571

The same doctrine was earlier stated in Fox v. Washington, 236 U.S. 273, 277, and that case was recently and with approval cited in Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502.

1951, Dennis v. United States, 341 U.S. 571

As aptly stated by Judge Learned Hand in Masses Publishing Co. v. Patten, 244 F. 535, 540:

1951, Dennis v. United States, 341 U.S. 571

One may not counsel or advise others to violate the law as it stands. Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state. [341 U.S. 572]

1951, Dennis v. United States, 341 U.S. 572

Of course, it is not always easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation. It is a question of fact in each case.

1951, Dennis v. United States, 341 U.S. 572

IV

1951, Dennis v. United States, 341 U.S. 572

What really is under review here is a conviction of conspiracy, after a trial for conspiracy, on an indictment charging conspiracy, brought under a statute outlawing conspiracy. With due respect to my colleagues, they seem to me to discuss anything under the sun except the law of conspiracy. One of the dissenting opinions even appears to chide me for "invoking the law of conspiracy." As that is the case before us, it may be more amazing that its reversal can be proposed without even considering the law of conspiracy.

1951, Dennis v. United States, 341 U.S. 572

The Constitution does not make conspiracy a civil right. The Court has never before done so, and I think it should not do so now. Conspiracies of labor unions, trade associations, and news agencies have been condemned, although accomplished, evidenced and carried out, like the conspiracy here, chiefly by letter-writing, meetings, speeches and organization. Indeed, this Court seems, particularly in cases where the conspiracy has economic ends, to be applying its doctrines with increasing severity. While I consider criminal conspiracy a dragnet device capable of perversion into an instrument of injustice in the hands of a partisan or complacent judiciary, it has an established place in our system of law, and no reason appears for applying it only to concerted action claimed to disturb interstate commerce and withholding it from those claimed to undermine our whole Government. 13 [341 U.S. 573]

1951, Dennis v. United States, 341 U.S. 573

The basic rationale of the law of conspiracy is that a conspiracy may be an evil in itself, independently of any other evil it seeks to accomplish. Thus, we recently held in Pinkerton v. United States, 328 U.S. 640, 643-644,

1951, Dennis v. United States, 341 U.S. 573

It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established…. And the plea of double jeopardy is no defense to a conviction for both offenses….

1951, Dennis v. United States, 341 U.S. 573

So far does this doctrine reach that it is well settled that Congress may make it a crime to conspire with others to do what an individual may lawfully do on his own. This principle is illustrated in conspiracies that violate the antitrust laws as sustained and applied by this Court. Although one may raise the prices of his own products, and many, acting without concert, may do so, the moment they conspire to that end, they are punishable. The same principle is applied to organized labor. Any workman may quit his work for any reason, but concerted actions to the same end are in some circumstances forbidden. National Labor Relations Act, as amended, 61 Stat. 136, § 8(b), 29 U.S.C. § 158(b).

1951, Dennis v. United States, 341 U.S. 573

The reasons underlying the doctrine that conspiracy may be a substantive evil in itself, apart from any evil it may threaten, attempt, or accomplish, are peculiarly appropriate to conspiratorial Communism.

1951, Dennis v. United States, 341 U.S. 573

The reason for finding criminal liability in case of a combination to effect an unlawful end or to use unlawful means, where none would exist, even though the act contemplated were actually committed by an individual, is that a combination of persons to commit a wrong, either as an end or as a means to an end, is so much more dangerous, because of its increased power to do wrong, because it is more difficult [341 U.S. 574] to guard against and prevent the evil designs of a group of persons than of a single person, and because of the terror which fear of such a combination tends to create in the minds of people. 14

1951, Dennis v. United States, 341 U.S. 574

There is lamentation in the dissents about the injustice of conviction in the absence of some overt act. Of course, there has been no general uprising against the Government, but the record is replete with acts to carry out the conspiracy alleged, acts such as always are held sufficient to consummate the crime where the statute requires an overt act.

1951, Dennis v. United States, 341 U.S. 574

But the shorter answer is that no overt act is or need be required. The Court, in antitrust cases, early upheld the power of Congress to adopt the ancient common law that makes conspiracy itself a crime. Through Mr. Justice Holmes, it said:

1951, Dennis v. United States, 341 U.S. 574

Coming next to the objection that no overt act is laid, the answer is that the Sherman Act punishes the conspiracies at which it is aimed on the common law footing—that is to say, it does not make the doing of any act other than the act of conspiring a condition of liability.

1951, Dennis v. United States, 341 U.S. 574

Nash v. United States, 229 U.S. 373, 378. Reiterated, United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 252. It is not to be supposed that the power of Congress to protect the Nation's existence is more limited than its power to protect interstate commerce.

1951, Dennis v. United States, 341 U.S. 574

Also, it is urged that, since the conviction is for conspiracy to teach and advocate, and to organize the Communist Party to teach and advocate, the First Amendment is violated because freedoms of speech and press protect teaching and advocacy regardless of what is taught or advocated. I have never thought that to be the law. [341 U.S. 575]

1951, Dennis v. United States, 341 U.S. 575

I do not suggest that Congress could punish conspiracy to advocate something, the doing of which it may not punish. Advocacy or exposition of the doctrine of communal property ownership, or any political philosophy unassociated with advocacy of its imposition by force or seizure of government by unlawful means could not be reached through conspiracy prosecution. But it is not forbidden to put down force or violence, it is not forbidden to punish its teaching or advocacy, and the end being punishable, there is no doubt of the power to punish conspiracy for the purpose.

1951, Dennis v. United States, 341 U.S. 575

The defense of freedom of speech or press has often been raised in conspiracy cases, because, whether committed by Communists, by businessmen, or by common criminals, it usually consists of words written or spoken, evidenced by letters, conversations, speeches or documents. Communication is the essence of every conspiracy, for only by it can common purpose and concert of action be brought about or be proved. However, when labor unions raised the defense of free speech against a conspiracy charge, we unanimously said:

1951, Dennis v. United States, 341 U.S. 575

It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now….

1951, Dennis v. United States, 341 U.S. 575

…It is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed…. Such an expansive interpretation [341 U.S. 576] of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade, as well as many other agreements and conspiracies deemed injurious to society.

1951, Dennis v. United States, 341 U.S. 576

Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498, 502.

1951, Dennis v. United States, 341 U.S. 576

A contention by the press itself, in a conspiracy case, that it was entitled to the benefits of the "clear and present danger" test, was curtly rebuffed by this Court, saying:

1951, Dennis v. United States, 341 U.S. 576

Nor is a publisher who engages in business practices made unlawful by the Sherman Act entitled to a partial immunity by reason of the "clear and present danger" doctrine…. Formulated as it was to protect liberty of thought and of expression, it would degrade the clear and present danger doctrine to fashion from it a shield for business publishers who engage in business practices condemned by the Sherman Act….

1951, Dennis v. United States, 341 U.S. 576

Associated Press v. United States, 326 U.S. 1, 7. I should think it at least as "degrading" to fashion of it a shield for conspirators whose ultimate purpose is to capture or overthrow the Government.

1951, Dennis v. United States, 341 U.S. 576

In conspiracy cases, the Court not only has dispensed with proof of clear and present danger, but even of power to create a danger:

1951, Dennis v. United States, 341 U.S. 576

It long has been settled, however, that a "conspiracy to commit a crime is a different offense from the crime that is the object of the conspiracy."…Petitioners, for example, might have been convicted here of a conspiracy to monopolize without ever having acquired the power to carry out the object of the conspiracy….

1951, Dennis v. United States, 341 U.S. 576

American Tobacco Co. v. United States, 328 U.S. 781, 789.

1951, Dennis v. United States, 341 U.S. 576

Having held that a conspiracy alone is a crime and its consummation is another, it would be weird legal reasoning to hold that Congress could punish the one only if there was "clear and present danger" of the second. This [341 U.S. 577] would compel the Government to prove two crimes in order to convict for one.

1951, Dennis v. United States, 341 U.S. 577

When our constitutional provisions were written, the chief forces recognized as antagonists in the struggle between authority and liberty were the Government, on the one hand, and the individual citizen, on the other. It was thought that, if the state could be kept in its place, the individual could take care of himself.

1951, Dennis v. United States, 341 U.S. 577

In more recent times, these problems have been complicated by the intervention between the state and the citizen of permanently organized, well financed, semi-secret and highly disciplined political organizations. Totalitarian groups here and abroad perfected the technique of creating private paramilitary organizations to coerce both the public government and its citizens. These organizations assert as against our Government all of the constitutional rights and immunities of individuals, and at the same time exercise over their followers much of the authority which they deny to the Government. The Communist Party realistically is a state within a state, an authoritarian dictatorship within a republic. It demands these freedoms not for its members, but for the organized party. It denies to its own members at the same time the freedom to dissent, to debate, to deviate from the party line, and enforces its authoritarian rule by crude purges, if nothing more violent.

1951, Dennis v. United States, 341 U.S. 577

The law of conspiracy has been the chief means at the Government's disposal to deal with the growing problems created by such organizations. I happen to think it is an awkward and inept remedy, but I find no constitutional authority for taking this weapon from the Government. There is no constitutional right to "gang up" on the Government.

1951, Dennis v. United States, 341 U.S. 577

While I think there was power in Congress to enact this statute and that, as applied in this case, it cannot be [341 U.S. 578] held unconstitutional, 15 I add that I have little faith in the long-range effectiveness of this conviction to stop the rise of the Communist movement. Communism will not go to jail with these Communists. No decision by this Court can forestall revolution whenever the existing government fails to command the respect and loyalty of the people and sufficient distress and discontent is allowed to grow up among the masses. Many failures by fallen governments attest that no government can long prevent revolution by outlawry. 16 Corruption, ineptitude, inflation, oppressive taxation, militarization, injustice, and loss of leadership capable of intellectual initiative in domestic or foreign affairs are allies on which the Communists [341 U.S. 579] count to bring opportunity knocking to their door. Sometimes I think they may be mistaken. But the Communists are not building just for today—the rest of us might profit by their example.

BLACK, J., dissenting

1951, Dennis v. United States, 341 U.S. 579

MR. JUSTICE BLACK, dissenting.

1951, Dennis v. United States, 341 U.S. 579

Here again, as in Breard v. Alexandria, post, p. 622, decided this day, my basic disagreement with the Court is not as to how we should explain or reconcile what was said in prior decisions, but springs from a fundamental difference in constitutional approach. Consequently, it would serve no useful purpose to state my position at length.

1951, Dennis v. United States, 341 U.S. 579

At the outset, I want to emphasize what the crime involved in this case is, and what it is not. These petitioners were not charged with an attempt to overthrow the Government. They were not charged with overt acts of any kind designed to overthrow the Government. They were not even charged with saying anything or writing anything designed to overthrow the Government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date: the indictment is that they conspired to organize the Communist Party and to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the Government. No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids. I would hold § 3 of the Smith Act authorizing this prior restraint unconstitutional on its face and as applied.

1951, Dennis v. United States, 341 U.S. 579

But let us assume, contrary to all constitutional ideas of fair criminal procedure, that petitioners, although not indicted for the crime of actual advocacy, may be punished for it. Even on this radical assumption, the other opinions in this case show that the only way to affirm [341 U.S. 580] these convictions is to repudiate directly or indirectly the established "clear and present danger" rule. This the Court does in a way which greatly restricts the protections afforded by the First Amendment. The opinions for affirmance indicate that the chief reason for jettisoning the rule is the expressed fear that advocacy of Communist doctrine endangers the safety of the Republic. Undoubtedly a governmental policy of unfettered communication of ideas does entail dangers. To the Founders of this Nation, however, the benefits derived from free expression were worth the risk. They embodied this philosophy in the First Amendment's command that "Congress shall make no law…abridging the freedom of speech, or of the press…. " I have always believed that the First Amendment is the keystone of our Government, that the freedoms it guarantees provide the best insurance against destruction of all freedom. At least as to speech in the realm of public matters, I believe that the "clear and present danger" test does not "mark the furthermost constitutional boundaries of protected expression," but does "no more than recognize a minimum compulsion of the Bill of Rights." Bridges v. California, 314 U.S. 252, 263.

1951, Dennis v. United States, 341 U.S. 580

So long as this Court exercises the power of judicial review of legislation, I cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness." Such a doctrine waters down the First Amendment so that it amounts to little more than an admonition to Congress. The Amendment as so construed is not likely to protect any but those "safe" or orthodox views which rarely need its protection. I must also express my objection to the holding because, as MR. JUSTICE DOUGLAS dissent shows, it sanctions the determination of a crucial issue of fact by the judge, rather than by the jury. Nor can I let this opportunity [341 U.S. 581] pass without expressing my objection to the severely limited grant of certiorari in this case which precluded consideration here of at least two other reasons for reversing these convictions: (1) the record shows a discriminatory selection of the jury panel which prevented trial before a representative cross-section of the community; (2) the record shows that one member of the trial jury was violently hostile to petitioners before and during the trial.

1951, Dennis v. United States, 341 U.S. 581

Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, that, in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society.

DOUGLAS, J., dissenting

1951, Dennis v. United States, 341 U.S. 581

MR. JUSTICE DOUGLAS, dissenting.

1951, Dennis v. United States, 341 U.S. 581

If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching of methods of terror and other seditious conduct should be beyond the pale along with obscenity and immorality. This case was argued as if those were the facts. The argument imported much seditious conduct into the record. That is easy, and it has popular appeal, for the activities of Communists in plotting and scheming against the free world are common knowledge. But the fact is that no such evidence was introduced at the trial. There is a statute which makes a seditious conspiracy unlawful. 1 Petitioners, however, were not [341 U.S. 582] charged with a "conspiracy to overthrow" the Government. They were charged with a conspiracy to form a party and groups and assemblies of people who teach and advocate the overthrow of our Government by force or violence and with a conspiracy to advocate and teach its overthrow by force and violence. 2 It may well be that indoctrination in the techniques of terror to destroy the Government would be indictable under either statute. But the teaching which is condemned here is of a different character.

1951, Dennis v. United States, 341 U.S. 582

So far as the present record is concerned, what petitioners did was to organize people to teach and themselves teach the Marxist-Leninist doctrine contained chiefly in four books: 3 Stalin, Foundations of Leninism (1924); Marx and Engels, Manifesto of the Communist Party (1848); Lenin, The State and Revolution (1917); History of the Communist Party of the Soviet Union (B.) (1939).

1951, Dennis v. United States, 341 U.S. 582

Those books are to Soviet Communism what Mein Kampf was to Nazism. If they are understood, the ugliness of Communism is revealed, its deceit and cunning are exposed, the nature of its activities becomes apparent, and the chances of its success less likely. That is not, of course, the reason why petitioners chose these books for their classrooms. They are fervent Communists to whom these volumes are gospel. They preached the creed with the hope that some day it would be acted upon. [341 U.S. 583]

1951, Dennis v. United States, 341 U.S. 583

The opinion of the Court does not outlaw these texts nor condemn them to the fire, as the Communists do literature offensive to their creed. But if the books themselves are not outlawed, if they can lawfully remain on library shelves, by what reasoning does their use in a classroom become a crime? It would not be a crime under the Act to introduce these books to a class, though that would be teaching what the creed of violent overthrow of the Government is. The Act, as construed, requires the element of intent—that those who teach the creed believe in it. The crime then depends not on what is taught, but on who the teacher is. That is to make freedom of speech turn not on what is said, but on the intent with which it is said. Once we start down that road, we enter territory dangerous to the liberties of every citizen.

1951, Dennis v. United States, 341 U.S. 583

There was a time in England when the concept of constructive treason flourished. Men were punished not for raising a hand against the king, but for thinking murderous thoughts about him. The Framers of the Constitution were alive to that abuse, and took steps to see that the practice would not flourish here. Treason was defined to require overt acts—the evolution of a plot against the country into an actual project. The present case is not one of treason. But the analogy is close when the illegality is made to turn on intent, not on the nature of the act. We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did, but for what they thought; they get convicted not for what they said, but for the purpose with which they said it.

1951, Dennis v. United States, 341 U.S. 583

Intent, of course, often makes the difference in the law. An act otherwise excusable or carrying minor penalties may grow to an abhorrent thing if the evil intent is present. We deal here, however, not with ordinary acts, but with speech, to which the Constitution has given a special sanction. [341 U.S. 584]

1951, Dennis v. United States, 341 U.S. 584

The vice of treating speech as the equivalent of overt acts of a treasonable or seditious character is emphasized by a concurring opinion, which, by invoking the law of conspiracy, makes speech do service for deeds which are dangerous to society. The doctrine of conspiracy has served divers and oppressive purposes, and, in its broad reach, can be made to do great evil. But never until today has anyone seriously thought that the ancient law of conspiracy could constitutionally be used to turn speech into seditious conduct. Yet that is precisely what is suggested. I repeat that we deal here with speech alone, not with speech plus acts of sabotage or unlawful conduct. Not a single seditious act is charged in the indictment. To make a lawful speech unlawful because two men conceive it is to raise the law of conspiracy to appalling proportions. That course is to make a radical break with the past and to violate one of the cardinal principles of our constitutional scheme.

1951, Dennis v. United States, 341 U.S. 584

Free speech has occupied an exalted position because of the high service it has given our society. Its protection is essential to the very existence of a democracy. The airing of ideas releases pressures which otherwise might become destructive. When ideas compete in the market for acceptance, full and free discussion exposes the false, and they gain few adherents. Full and free discussion even of ideas we hate encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart.

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Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have counted on it to keep us from embracing what is cheap and false; we have trusted the common sense of our [341 U.S. 585] people to choose the doctrine true to our genius and to reject the rest. This has been the one single outstanding tenet that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world.

1951, Dennis v. United States, 341 U.S. 585

There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. That is the meaning of the clear and present danger test. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction.

1951, Dennis v. United States, 341 U.S. 585

Yet free speech is the rule, not the exception. The restraint to be constitutional must be based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed. The classic statement of these conditions was made by Mr. Justice Brandeis in his concurring opinion in Whitney v. California, 274 U.S. 357, 376-377,

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Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended [341 U.S. 586] is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger, it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.

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Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.

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(Italics added.) [341 U.S. 587]

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I had assumed that the question of the clear and present danger, being so critical an issue in the case, would be a matter for submission to the jury. It was squarely held in Pierce v. United States, 252 U.S. 239, 244, to be a jury question. Mr. Justice Pitney, speaking for the Court, said,

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Whether the statement contained in the pamphlet had a natural tendency to produce the forbidden consequences, as alleged, was a question to be determined not upon demurrer, but by the jury at the trial.

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That is the only time the Court has passed on the issue. None of our other decisions is contrary. Nothing said in any of the nonjury cases has detracted from that ruling. 4 The statement in Pierce v. United States, supra, states the law as it has been, and as it should be. The Court, I think, errs when it treats the question as one of law.

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Yet, whether the question is one for the Court or the jury, there should be evidence of record on the issue. This record, however, contains no evidence whatsoever showing that the acts charged, viz., the teaching of the Soviet theory of revolution with the hope that it will be realized, have created any clear and present danger to the Nation. The Court, however, rules to the contrary. It says,

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The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score.

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That ruling is, in my view, not responsive to the issue in the case. We might as well say that the speech of [341 U.S. 588] petitioners is outlawed because Soviet Russia and her Red Army are a threat to world peace.

1951, Dennis v. United States, 341 U.S. 588

The nature of Communism as a force on the world scene would, of course, be relevant to the issue of clear and present danger of petitioners' advocacy within the United States. But the primary consideration is the strength and tactical position of petitioners and their converts in this country. On that, there is no evidence in the record. If we are to take judicial notice of the threat of Communists within the nation, it should not be difficult to conclude that, as a political party, they are of little consequence. Communists in this country have never made a respectable or serious showing in any election. I would doubt that there is a village, let alone a city or county or state, which the Communists could carry. Communism in the world scene is no bogeyman; but Communism as a political faction or party in this country plainly is. Communism has been so thoroughly exposed in this country that it has been crippled as a political force. Free speech has destroyed it as an effective political party. It is inconceivable that those who went up and down this country preaching the doctrine of revolution which petitioners espouse would have any success. In days of trouble and confusion, when bread lines were long, when the unemployed walked the streets, when people were starving, the advocates of a short-cut by revolution might have a chance to gain adherents. But today there are no such conditions. The country is not in despair; the people know Soviet Communism; the doctrine of Soviet revolution is exposed in all of its ugliness, and the American people want none of it.

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How it can be said that there is a clear and present danger that this advocacy will succeed is, therefore, a mystery. Some nations less resilient than the United States, where illiteracy is high and where democratic traditions are only budding, might have to take drastic [341 U.S. 589] steps and jail these men for merely speaking their creed. But in America, they are miserable merchants of unwanted ideas; their wares remain unsold. The fact that their ideas are abhorrent does not make them powerful.

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The political impotence of the Communists in this country does not, of course, dispose of the problem. Their numbers; their positions in industry and government; the extent to which they have, in fact, infiltrated the police, the armed services, transportation, stevedoring, power plants, munitions works, and other critical places—these facts all bear on the likelihood that their advocacy of the Soviet theory of revolution will endanger the Republic. But the record is silent on these facts. If we are to proceed on the basis of judicial notice, it is impossible for me to say that the Communists in this country are so potent or so strategically deployed that they must be suppressed for their speech. I could not so hold unless I were willing to conclude that the activities in recent years of committees of Congress, of the Attorney General, of labor unions, of state legislatures, and of Loyalty Boards were so futile as to leave the country on the edge of grave peril. To believe that petitioners and their following are placed in such critical positions as to endanger the Nation is to believe the incredible. It is safe to say that the followers of the creed of Soviet Communism are known to the FBI; that, in case of war with Russia, they will be picked up overnight, as were all prospective saboteurs at the commencement of World War II; that the invisible army of petitioners is the best known, the most beset, and the least thriving of any fifth column in history. Only those held by fear and panic could think otherwise.

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This is my view if we are to act on the basis of judicial notice. But the mere statement of the opposing views indicates how important it is that we know the facts before we act. Neither prejudice nor hate nor senseless [341 U.S. 590] fear should be the basis of this solemn act. Free speech—the glory of our system of government—should not be sacrificed on anything less that plain and objective proof of danger that the evil advocated is imminent. On this record, no one can say that petitioners and their converts are in such a strategic position as to have even the slightest chance of achieving their aims.

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The First Amendment provides that "Congress shall make no law…abridging the freedom of speech." The Constitution provides no exception. This does not mean, however, that the Nation need hold its hand until it is in such weakened condition that there is no time to protect itself from incitement to revolution. Seditious conduct can always be punished. But the command of the First Amendment is so clear that we should not allow Congress to call a halt to free speech except in the extreme case of peril from the speech itself. The First Amendment makes confidence in the common sense of our people and in their maturity of judgment the great postulate of our democracy. Its philosophy is that violence is rarely, if ever, stopped by denying civil liberties to those advocating resort to force. The First Amendment reflects the philosophy of Jefferson

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that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order. 5

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The political censor has no place in our public debates. Unless and until extreme and necessitous circumstances are shown, our aim should be to keep speech unfettered and to allow the processes [341 U.S. 591] of law to be invoked only when the provocateurs among us move from speech to action.

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Vishinsky wrote in 1938 in The Law of the Soviet State, "In our state, naturally, there is and can be no place for freedom of speech, press, and so on for the foes of socialism."

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Our concern should be that we accept no such standard for the United States. Our faith should be that our people will never give support to these advocates of revolution, so long as we remain loyal to the purposes for which our Nation was founded.

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APPENDIX TO OPINION OF MR. JUSTICE DOUGLAS.

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There have been numerous First Amendment cases before the Court raising the issue of clear and present danger since Mr. Justice Holmes first formulated the test in Schenck v. United States, 249 U.S. 47, 52. Most of them, however, have not involved jury trials.

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The cases which may be deemed at all relevant to our problem can be classified as follows:

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CONVICTIONS FOR CONTEMPT OF COURT (NON-JURY): Near v. Minnesota, 283 U.S. 697; Bridges v. California, 314 U.S. 252; Thomas v. Collins, 323 U.S. 516; Pennekamp v. Florida, 328 U.S. 331; Craig v. Harney, 331 U.S. 367.

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CONVICTIONS BY STATE COURTS SITTING WITHOUT JURIES, GENERALLY FOR VIOLATIONS OF LOCAL ORDINANCES: Lovell v. Griffin, 303 U.S. 444; Schneider v. State, 308 U.S. 147; Cantwell v. Connecticut, 310 U.S. 296; Marsh v. Alabama, 326 U.S. 501; Tucker v. Texas, 326 U.S. 517; Winters v. New York, 333 U.S. 507; Saia v. New York, 334 U.S. 558; Kovacs v. Cooper, 336 U.S. 77; Kunz v. New York, 340 U.S. 290; Feiner v. New York, 340 U.S. 315.

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INJUNCTIONS AGAINST ENFORCEMENT OF STATE OR LOCAL LAWS (NON-JURY): Grosjean v. American Press Co., 297 [341 U.S. 592] U.S. 233; Hague v. CIO, 307 U.S. 496; Minersville School District v. Gobitis, 310 U.S. 586; West Virginia Board of Education v. Barnette, 319 U.S. 624.

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ADMINISTRATIVE PROCEEDINGS (NON-JURY): Bridges v. Wixon, 326 U.S. 135; Schneiderman v. United States, 320 U.S. 118; American Communications Association v. Douds, 339 U.S. 382.

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CASES TRIED BEFORE JURIES FOR VIOLATIONS OF STATE LAWS DIRECTED AGAINST ADVOCACY OF ANARCHY, CRIMINAL SYNDICALISM, ETC.: Gilbert v. Minnesota, 254 U.S. 325; Gitlow v. New York, 268 U.S. 652; Whitney v. California, 274 U.S. 357; Fiske v. Kansas, 274 U.S. 380; Stromberg v. California, 283 U.S. 359; De Jonge v. Oregon, 299 U.S. 353; Herndon v. Lowry, 301 U.S. 242; Taylor v. Mississippi, 319 U.S. 583; or for minor local offenses: Cox v. New Hampshire, 312 U.S. 569; Chaplinsky v. New Hampshire, 315 U.S. 568; Terminiello v. Chicago, 337 U.S. l; Niemotko v. Maryland, 340 U.S. 268.

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FEDERAL PROSECUTIONS BEFORE JURIES UNDER THE ESPIONAGE ACT OF 1917 FOLLOWING WORLD WAR I: Schenck v. United States, 249 U.S. 47; Frohwerk v. United States, 249 U.S. 204; Debs v. United States, 249 U.S. 211; Abrams v. United States, 250 U.S. 616; Schaefer v. United States, 251 U.S. 466; Pierce v. United States, 252 U.S. 239. Pierce v. United States ruled that the question of clear and present danger was for the jury. In the other cases in this group the question whether the issue was for the court or the jury was not raised or passed upon.

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FEDERAL PROSECUTION BEFORE A JURY UNDER THE ESPIONAGE ACT OF 117 FOLLOWING WORLD WAR II: Hartzel v. United States, 322 U.S. 680. The jury was instructed on clear and present danger in terms drawn from the language of Mr. Justice Holmes in Schenck v. United States, supra, p. 52. The Court reversed the conviction on the ground that there had not been sufficient evidence for submission of the case to the jury.

Footnotes

VINSON, J., lead opinion (Footnotes)

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1. Following the dissolution of the Communist International in 1943, the Communist Party of the United States dissolved and was reconstituted as the Communist Political Association. The program of this Association was one of cooperation between labor and management, and, in general, one designed to achieve national unity and peace and prosperity in the post-war period.

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2. We have treated this point because of the discussion accorded it by the Court of Appeals and its importance to the administration of this statute, compare Johnson v. United States, 318 U.S. 189 (1943), although petitioners themselves requested a charge similar to the one given, and under Rule 30 of the Federal Rules of Criminal Procedure would appear to be barred from raising this point on appeal. Cf. Boyd v. United States, 271 U.S. 104 (1926).

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3. Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918); Fox v. Washington, 236 U.S. 273 (1915); Davis v. Massachusetts, 167 U.S. 43 (1897); see Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439 (1911); Robertson v. Baldwin, 165 U.S. 275, 281 (1897).

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4. Cf. Gilbert v. Minnesota, 254 U.S. 325 (1920).

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5. Contempt of court: Craig v. Harney, 331 U.S. 367, 373 (1947); Pennecamp v. Florida, 328 U.S. 331, 333-336 (1946); Bridges v. California, 314 U.S. 252, 260-263 (1941).

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Validity of state statute: Thomas v. Collins, 323 U.S. 516, 530 (1945); Taylor v. Mississippi, 319 U.S. 583, 589-590 (1943); Thornhill v. Alabama, 310 U.S. 88, 104-106 (1940).

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Validity of local ordinance or regulation: West Virginia Board of Education v. Barnette, 319 U.S. 624, 639 (1943); Carlson v. California, 310 U.S. 106, 113 (1940).

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Common law offense: Cantwell v. Connecticut, 310 U.S. 296, 308, 311 (1940).

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6.

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Whether, in 1919, when Miss Whitney did the things complained of, there was in California such clear and present danger of serious evil might have been made the important issue in the case. She might have required that the issue be determined either by the court or the jury. She claimed below that the statute, as applied to her, violated the Federal Constitution, but she did not claim that it was void because there was no clear and present danger of serious evil, nor did she request that the existence of these conditions of a valid measure thus restricting the rights of free speech and assembly be passed upon by the court or a jury. On the other hand, there was evidence on which the court or jury might have found that such danger existed.

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(Emphasis added.) 274 U.S. at 379.

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7.

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Whether the printed words would, in fact, produce as a proximate result a material interference with the recruiting or enlistment service, or the operation or success of the forces of the United States, was a question for the jury to decide in view of all the circumstances of the time and considering the place and manner of distribution.

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252 U.S. 239, 250 (1920).

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8. A similarly worded expression is found in that part of the majority opinion sustaining the overruling of the defendants' general demurrer to the indictment. 252 U.S. at 244. Since the defendants had not raised the issue of "clear and present danger" at the trial, it is clear that the Court was not faced with the question whether the trial judge erred in not determining, as a conclusive matter, the existence or nonexistence of a "clear and present danger." The only issue to which the remarks were addressed was whether the indictment sufficiently alleged the violation.

FRANKFURTER, J., concurring (Footnotes)

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1. Mass.Const., 1780, Part I, Art. XVI. See Duniway, Freedom of the Press in Massachusetts, 144-146.

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2. Pa.Const., 1790, Art. IX, § 7; Del.Const., 1792, Art. I, § 5.

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3. The General Assembly of Virginia passed a statute on December 26, 1792, directed at establishment of

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any government separate from, or independent of the government of Virginia, within the limits thereof, unless by act of the legislature of this commonwealth for that purpose first obtained.

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The statute provided that

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EVERY person…who shall by writing or advised speaking, endeavour to instigate the people of this commonwealth to erect or establish such government without such assent as aforesaid, shall be adjudged guilty of a high crime and misdemeanor….

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Va.Code, 1803, c. CXXXVI.

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4. In a letter to Abigail Adams, dated September 11, 1804, Jefferson said with reference to the Sedition Act:

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Nor does the opinion of the unconstitutionality and consequent nullity of that law remove all restraint from the overwhelming torrent of slander which is confounding all vice and virtue, all truth and falsehood in the US. The power to do that is fully possessed by the several state legislatures. It was reserved to them, and was denied to the general government, by the constitution according to our construction of it. While we deny that Congress have a right to controul the freedom of the press, we have ever asserted the right of the states, and their exclusive right, to do so.

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The letter will be published in a forthcoming volume of The Papers of Thomas Jefferson (Boyd ed.), to which I am indebted for its reproduction here in its exact form.

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The Sedition Act of July 14, 1798, was directed at two types of conduct. Section 1 made it a criminal offense to conspire "to impede the operation of any law of the United States," and to "counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination." Section 2 provided:

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That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

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1 Stat. 596-597.

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No substantial objection was raised to § 1 of the Act. The argument against the validity of § 2 is stated most fully in the Virginia Report of 1799-1800. That Report, prepared for the House of Delegates by a committee of which Madison was chairman, attempted to establish that the power to regulate speech was not delegated to the Federal Government by the Constitution, and that the First Amendment had prohibited the National Government from exercising the power. In reply, it was urged that power to restrict seditious writing was implicit in the acknowledged power of the Federal Government to prohibit seditious acts, and that the liberty of the press did not extend to the sort of speech restricted by the Act. See the Report of the Committee of the House of Representatives to which were referred memorials from the States, H.R.Rep. No. 110, 5th Cong., 3d Sess., published in American State Papers, Misc. Vol. 1, p. 181. For an extensive contemporary account of the controversy, see St. George Tucker's 1803 edition of Blackstone's Commentaries, Appendix to Vol. First, Part Second, Note G.

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5. Professor Alexander Meiklejohn is a leading exponent of the absolutist interpretation of the First Amendment. Recognizing that certain forms of speech require regulation, he excludes those forms of expression entirely from the protection accorded by the Amendment.

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The constitutional status of a merchant advertising his wares, of a paid lobbyist fighting for the advantage of his client, is utterly different from that of a citizen who is planning for the general welfare.

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Meiklejohn, Free Speech, 39.

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The radio as it now operates among us is not free. Nor is it entitled to the protection of the First Amendment. It is not engaged in the task of enlarging and enriching human communication. It is engaged in making money.

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Id. at 104. Professor Meiklejohn even suggests that scholarship may now require such subvention and control that it no longer is entitled to protection by the First Amendment. See id. at 99-100. Professor Chafee, in his review of the Meiklejohn book, 62 Harv.L.Rev. 891, has subjected this position to trenchant comment.

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6. In Hartzel v. United States, 322 U.S. 680, 687, the Court reversed a conviction for willfully causing insubordination in the military forces on the ground that the intent required by the statute was not shown. It added that there was a second element necessary to conviction,

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consisting of a clear and present danger that the activities in question will bring about the substantive evils which Congress has a right to prevent. Schenck v. United States, 249 U.S. 47. Both elements must be proved by the Government beyond a reasonable doubt.

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Other passages responsible for attributing to the Court the principle that imminence of the apprehended evil is necessary to conviction in free speech cases are collected in an Appendix to this opinion, post, p. 556.

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7. No useful purpose would be served by considering here decisions in which the Court treated the challenged regulation as though it imposed no real restraint on speech or on the press. E.g., Associated Press v. Labor Board, 301 U.S. 103; Valentine v. Chrestensen, 316 U.S. 52; Railway Express Agency v. New York, 336 U.S. 106; Lewis Publishing Co. v. Morgan, 229 U.S. 288. We recognized that restrictions on speech were involved in United States ex rel. Milwaukee Publishing Co. v. Burleson, 255 U.S. 407, and Gilbert v. Minnesota, 254 U.S. 325; but the decisions raised issues so different from those presented here that they too need not be considered in detail. Our decisions in Stromberg v. California, 283 U.S. 359, and Winters v. New York, 333 U.S. 507, turned on the indefiniteness of the statutes.

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8. The Taft-Hartley Act also requires that an officer of a union using the services of the National Labor Relations Board take oath that he

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does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

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The Court divided on the validity of this requirement. Test oaths raise such special problems that decisions on their validity are not directly helpful here. See West Virginia Board of Education v. Barnette, 319 U.S. 624.

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9. Burns v. United States, 274 U.S. 328, adds nothing to the decision in Whitney v. California.

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10. In Herndon v. Georgia, 295 U.S. 441, the opinion of the Court was concerned solely with a question of procedure. Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo, however, thought that the problem of Gitlow v. New York was raised. See 295 U.S. at 446.

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11. See the testimony of the Director of the Federal Bureau of Investigation. Hearings before the House Committee on Un-American Activities, on H.R. 1884 and H.R. 2122, 80th Cong., 1st Sess., Part 2, p. 37.

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12. Report of the Royal Commission to Investigate Communication of Secret and Confidential Information to Agents of a Foreign Power, June 27, 1946, p. 44. There appears to be little reliable evidence demonstrating directly that the Communist Party in this country has recruited persons willing to engage in espionage or other unlawful activity on behalf of the Soviet Union. The defection of a Soviet diplomatic employee, however, led to a careful investigation of an espionage network in Canada, and has disclosed the effectiveness of the Canadian Communist Party in conditioning its members to disclose to Soviet agents vital information of a secret character. According to the Report of the Royal Commission investigating the network, conspiratorial characteristics of the Party similar to those shown in the evidence now before us were instrumental in developing the necessary motivation to cooperate in the espionage. See pp. 43-83 of the Report.

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13. The Communist background of Dr. Klaus Fuchs was brought out in the proceedings against him. See The [London] Times, Mar. 2, 1950, p.2, col. 6.

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14. See American Communications Assn. v. Douds, 339 U.S. 382. Former Senator Robert M. La Follette, Jr., has reported his experience with infiltration of Communist sympathizers into congressional committee staffs. Collier's, Feb. 8, 1947, p. 22.

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15. Immigration laws require, for instance, exclusion and deportation of aliens who advocate the overthrow of the Government by force and violence, and declare ineligible for naturalization aliens who are members of organizations so advocating. Act of Feb. 5, 1917, § 19, 39 Stat. 889, 8 U.S.C. § 155; Act of Oct. 16, 1918, 40 Stat. 1012, 8 U.S.C. § 137; Act of Oct. 14, 1940, § 305, 54 Stat. 1141, 8 U.S.C. § 705. The Hatch Act prohibits employment by any Government agency of members of organizations advocating overthrow of "our constitutional form of government." Act of Aug. 2, 1939, § 9A, 53 Stat. 1148, 5 U.S.C. (Supp. III) § 118j. The Voorhis Act of Oct. 17, 1940, was passed to require registration of organizations subject to foreign control which engage in political activity. 54 Stat. 1201, 18 U.S.C. § 2386. The Taft-Hartley Act contains a section designed to exclude Communists from positions of leadership in labor organizations. Act of June 23, 1947, § 9(h), 61 Stat. 146, 29 U.S.C. (Supp. III) § 159(h). And, most recently, the McCarran Act requires registration of "Communist action" and "Communist front" organizations. Act of Sept. 23, 1950, § 7, 64 Stat. 987, 993.

JACKSON, J., concurring (Footnotes)

1951, Dennis v. United States, 341 U.S. 592

1. The Government's own summary of its charge is:

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The indictment charged that from, April 1, 1945, to the date of the indictment, petitioners unlawfully, willfully, and knowingly conspired with each other and with other persons unknown to the grand jury (1) to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and (2) knowingly and willfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. The indictment alleged that Section 2 of the Smith Act proscribes these acts, and that the conspiracy to take such action is a violation of Section 3 of the act (18 U.S.C. 10, 11 (1946 ed.)).

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2. The Government says this Act before us was modeled after the New York Act of 1909, sustained by this Court in Gitlow v. New York, 268 U.S. 652. That, in turn, as the Court pointed out, followed an earlier New York Act of 1902. Shortly after the assassination of President McKinley by an anarchist, Congress adopted the same concepts in the Immigration Act of March 3, 1903. 32 Stat. 1213, § 2. Some germs of the same concept can be found in some reconstruction legislation, such as the Enforcement Act of 1871, 17 Stat. 13. The Espionage Act of 1917, 40 Stat. 217, tit. 1, § 3, which gave rise to a series of civil rights decisions, applied only during war and defined as criminal "false statements with intent" to interfere with our war effort or cause insubordination in the armed forces or obstruct recruiting. However, a wave of "criminal syndicalism statutes" were enacted by the States. They were generally upheld, Whitney v. California, 274 U.S. 357, and prosecutions under them were active from 1919 to 1924. In California alone, 531 indictments were returned and 164 persons convicted. 4 Encyc.Soc.Sci. 582, 583. The Smith Act followed closely the terminology designed to incriminate the methods of terroristic anarchism.

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3. Elementary texts amplify the theory and practice of these movements which must be greatly oversimplified in this opinion. See Anarchism, 2 Encyc.Soc.Sci. 46; Nihilism, 11 Encyc.Soc.Sci. 377.

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4. Spies v. Illinois, 122 Ill. 1, 12 N.E. 865, 17 N.E. 898.

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5. Prof. Beard demonstrates this antithesis by quoting the Russian anarchist leader Bakunin, as follows:

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"Marx is an authoritarian and centralizing communist. He wishes what we wish: the complete triumph of economic and social equality, however, within the state and through the power of the state, through the dictatorship of a very strong and, so to speak, despotic provisional government, that is, by the negation of liberty. His economic ideal is the state as the sole owner of land and capital, tilling the soil by means of agricultural associations, under the management of its engineers, and directing through the agency of capital all industrial and commercial associations.

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"We demand the same triumph of economic and social equality through the abolition of the state and everything called juridical right, which is according to our view the permanent negation of human right. We wish the reconstruction of society and the establishment of the unity of mankind not from above downward through authority, through socialistic officials, engineers and public technicians, but from below upward through the voluntary federation of labor associations of all kinds emancipated entirely from the yoke of the state."

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Beard, Individualism and Capitalism, 1 Encyc.Soc.Sci. 145, 158.

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6. For methods and objects of infiltration of labor unions, see American Communications Assn. v. Douds, 339 U.S. 382, 422.

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7. The Czar's government, in February, 1917, literally gave up, almost without violence, to the Provisional Government because it was ready to fall apart from its corruption, ineptitude, superstition, oppression and defeat. The revolutionary parties had little to do with this, and regarded it as a bourgeoisie triumph. Lenin was an exile in Switzerland, Trotsky in the United States, and Stalin was in Siberia. The Provisional Government attempted to continue the war against Germany, but it, too, was unable to solve internal problems, and its Galician campaign failed with heavy losses. By October, its prestige and influence sank so low that it could not continue. Meanwhile, Lenin and Trotsky had returned and consolidated the Bolshevik position around the Soviets, or trade unions. They simply took over power in an almost bloodless revolution between October 25 and November 7, 1917. That Lenin and Trotsky represented only a minority was demonstrated in November elections, in which the Bolsheviks secured less than a quarter of the seats. Then began the series of opportunistic movements to entrench themselves in power. Faced by invasion of the allies, by counterrevolution, and the attempted assassination of Lenin, terrorism was resorted to on a large scale, and all the devices of the Czar's police state were reestablished. See 1 Carr, The Bolshevik Revolution 1917-1923, 99-110, and Moore, Soviet Politics—The Dilemma of Power, 117-139.

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8. Duchacek, The Strategy of Communist Infiltration: Czechoslovakia, 1944-1948, World Politics, Vol. II, No. 3 (April 1950) 345-372, and The February Coup in Czechoslovakia, id., July, 1950, 511-532; see also Kertesz, The Methods of Communist Conquest: Hungary, 1944-1947, id., October 1950, 20-54; Lasswell, The Strategy of Soviet Propaganda, 24 Acad.Pol.Sci.Proc. 214, 221. See also Friedman, The Break-up of Czech Democracy.

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9. Schenck v. United States, 249 U.S. 47. This doctrine has been attacked as one which "annuls the most significant purpose of the First Amendment. It destroys the intellectual basis of our plan of self-government." Meiklejohn, Free Speech And Its Relation to Self-Government, 29. It has been praised:

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The concept of freedom of speech received for the first time an authoritative judicial interpretation in accord with the purpose of the framers of the Constitution.

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Chafee, Free Speech in the United States, 82. In either event, it is the only original judicial thought on the subject, all later cases having made only extensions of its application. All agree that it means something very important, but no two seem to agree on what it is. See concurring opinion, MR. JUSTICE FRANKFURTER, Kovacs v. Cooper, 336 U.S. 77, 89.

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10. Gitlow v. New York, 268 U.S. 652; Whitney v. California, 274 U.S. 357. Holmes' comment on the former, in his letters to Sir Frederick Pollock of June 2 and 18, 1925, as "a case in which conscience and judgment are a little in doubt," and description of his dissent as one "in favor of the rights of an anarchist (so-called) to talk drool in favor of the proletarian dictatorship" show the tentative nature of his test, even as applied to a trivial case. Holmes-Pollock Letters (Howe ed.1946).

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11. So characterized by Mr. Justice Brandeis in Schaefer v. United States, 251 U.S. 466, 482.

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12. Recent cases have pushed the "clear and present danger" doctrine to greater extremes. While Mr. Justice Brandeis said only that the evil to be feared must be "imminent" and "relatively serious," Whitney v. California, 274 U.S. 357, 376 and 377, more recently it was required

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that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished.

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Bridges v. California, 314 U.S. 252, 263. (Italics supplied.)

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Schneiderman v. United States, 320 U.S. 118, overruled earlier holdings that the courts could take judicial notice that the Communist Party does advocate overthrow of the Government by force and violence. This Court reviewed much of the basic Communist literature that is before us now, and held that it was within "the area of allowable thought," id. at 139, that it does not show lack of attachment to the Constitution, and that success of the Communist Party would not necessarily mean the end of representative government. The Court declared further that

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[a] tenable conclusion from the foregoing is that the Party, in 1927, desired to achieve its purpose by peaceful and democratic means, and, as a theoretical matter, justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open.

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Id. at 157. Moreover, the Court considered that this

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mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time—prediction that is not calculated or intended to be presently acted upon….

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ibid., was within the realm of free speech. A dissent by Mr. Chief Justice Stone, for himself and Justices Roberts and Frankfurter, challenged these naive conclusions, as they did again in Bridges v. Wixon, 326 U.S. 135, in which the Court again set aside an Attorney General's deportation order. Here, Mr. Justice Murphy, without whom there would not have been a majority for the decision, speaking for himself in a concurring opinion, pronounced the whole deportation statute unconstitutional, as applied to Communists, under the "clear and present danger test," because

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Not the slightest evidence was introduced to show that either Bridges or the Communist Party seriously and imminently threatens to uproot the Government by force or violence.

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326 U.S. at 165.

1951, Dennis v. United States, 341 U.S. 592

13. These dangers were more fully set out in Krulewitch v. United States, 336 U.S. 440, 445.

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14. Miller on Criminal Law, 110. Similar reasons have been reiterated by this Court. United States v. Rabinowich, 238 U.S. 78, 88; Pinkerton v. United States, 328 U.S. 640, 643-644.

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15. The defendants have had the benefit so far in this case of all the doubts and confusions afforded by attempts to apply the "clear and present danger" doctrine. While I think it has no proper application to the case, these efforts have been in response to their own contentions and favored, rather than prejudiced, them. There is no call for reversal on account of it.

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16. The pathetically ineffective efforts of free European states to overcome feebleness of the Executive and decomposition of the Legislative branches of government by legal proscriptions are reviewed in Loewenstein, Legislative Control of Political Extremism in European Democracies, 38 Col.L.Rev. 591, 725 (1938). The Nazi Party seizure of power in Germany occurred while both it and its Communist counterpart were under sentence of illegality from the courts of the Weimar Republic. The German Criminal Code struck directly at the disciplinary system of totalitarian parties. It provided:

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The participation in an organization the existence, constitution, or purposes of which are to be kept secret from the Government, or in which obedience to unknown superiors or unconditional obedience to known superiors is pledged, is punishable by imprisonment up to six months for the members and from one month to one year for the founders and officers. Public officials may be deprived of the right to hold public office for a period of from one to five years.

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2 Nazi Conspiracy and Aggression (GPO 1946) 11. The Czar's government of Russia fell while the Communist leaders were in exile. See n. 7. Instances of similar failures could be multiplied indefinitely.

DOUGLAS, J., dissenting (Footnotes)

1951, Dennis v. United States, 341 U.S. 592

1. 18 U.S.C. § 2384 provides:

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If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $5,000 or imprisoned not more than six years, or both.

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2. 54 Stat. 671, 18 U.S.C. §§ 10, 11.

1951, Dennis v. United States, 341 U.S. 592

3. Other books taught were Stalin, Problems of Leninism, Strategy and Tactics of World Communism (H.R.Doc. No. 619, 80th Cong., 2d Sess.), and Program of the Communist International.

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4. The cases which reached the Court are analyzed in the Appendix attached to this opinion, post, p. 591.

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5. 12 Hening's Stat. (Virginia 1823), c. 34, p. 84. Whipple, Our Ancient Liberties (1927), p. 95, states:

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This idea that the limit on freedom of speech or press should be set only by an actual overt act was not new. It had been asserted by a long line of distinguished thinkers, including John Locke, Montesquieu in his The Spirit of the Laws ("Words do not constitute an overt act"), the Rev. Phillip Furneaux, James Madison, and Thomas Jefferson.

Statement and Order by President Truman on Relieving General MacArthur of His Commands, 1951

Title: Statement and Order by President Truman on Relieving General MacArthur of His Commands

Author: Harry S Truman

Date: April 11, 1951

Source: Public Papers of the Presidents, Truman, 1951, pp.222-223

Public Papers of Truman, 1951, p.222

[1.] Statement by the President:

Public Papers of Truman, 1951, p.222

With deep regret I have concluded that General of the Army Douglas MacArthur is unable to give his wholehearted support to the policies of the United States Government and of the United Nations in matters pertaining to his official duties. In view of the specific responsibilities imposed upon me by the Constitution of the United States and the added responsibility which has been entrusted to me by the United Nations, I have decided that I must make a change of command in the Far East. I have, therefore, relieved General MacArthur of his commands and have designated Lt. Gen. Matthew B. Ridgway as his successor.

Public Papers of Truman, 1951, p.222

Full and vigorous debate on matters of national policy is a vital element in the constitutional system of our free democracy. It is fundamental, however, that military commanders must be governed by the policies and directives issued to them in the manner provided by our laws and Constitution. In time of crisis, this consideration is particularly compelling.

Public Papers of Truman, 1951, p.222

General MacArthur's place in history as one of our greatest commanders is fully established. The Nation owes him a debt of gratitude for the distinguished and exceptional service which he has rendered his country in posts of great responsibility. For that reason I repeat my regret at the necessity for the action I feel compelled to take in his case.

Public Papers of Truman, 1951, p.222

[2.] Order by the President to General MacArthur:

Public Papers of Truman, 1951, p.222

I deeply regret that it becomes my duty as President and Commander in Chief of the United States military forces to replace you as Supreme Commander, Allied Powers; Commander in Chief, United Nations Command; Commander in Chief, Far East; and Commanding General, U.S. Army, Far East.

Public Papers of Truman, 1951, p.222

You will turn over your commands, effective at once, to Lt. Gen. Matthew B. Ridgway. You are authorized to have issued such orders as are necessary to complete desired travel to such place as you select.

Public Papers of Truman, 1951, p.222–p.223

My reasons for your replacement will be made public concurrently with the delivery to you of the foregoing order, and are contained [p.223] in the next following message. (See attached Statement by the President.)

Public Papers of Truman, 1951, p.223

NOTE: On April 11 the White House released the text of an order from Secretary of Defense George C. Marshall to Lt. Gen. Matthew B. Ridgway informing him that the President was appointing him to succeed Gen. Douglas MacArthur. He also notified General Ridgway that Lt. Gen. James A. Van Fleet would take his place as commander of the 8th Army in Korea.

Public Papers of Truman, 1951, p.223

On the same day the White House also made public the following:

Public Papers of Truman, 1951, p.223

1. A message, dated December 6, 1950, from the Joint Chiefs of Staff to General MacArthur. The message transmitted the text of a Presidential memorandum, dated December 5, directing that no speech, press release, or other public statement concerning foreign or military policy should be released until cleared by the State Department or the Department of Defense, and further directing that advance copies of speeches or press releases be submitted to the White House.

Public Papers of Truman, 1951, p.223

2. A message, dated March 20, 1951, from the Joint Chiefs of Staff to General MacArthur, informing him that the President was about to announce that the United Nations was prepared to discuss conditions of settlement in Korea.

Public Papers of Truman, 1951, p.223

3. A statement by General MacArthur, published in the New York Times of March 24, 1951, pointing out the weaknesses of Red China "even under inhibitions which now restrict activity of the United Nations forces and the corresponding military advantages which accrue to Red China." The statement also contained two paragraphs which are noted in Item 108 [2] below.

Public Papers of Truman, 1951, p.223

4. A message, dated March 24, 1951, from the Joint Chiefs of Staff to General MacArthur informing him that the President had directed that his attention be called to the memorandum of December 6, 1950 (1 above), and further informing him that "in view of the information given you 20 March 1951 (2 above) any further statements by you must be coordinated as prescribed in the order of 6 December."

Public Papers of Truman, 1951, p.223

5. A letter to Representative Joseph W. Martin, Jr., House Minority Leader, dated March 20, 1951, which Representative Martin published in the Congressional Record of April 5 (vol. 97, P. 3380), and which spoke of "meeting force with maximum counter force" in the Korean conflict.

Democratic Platform of 1952

Title: Democratic Platform of 1952

Author: Democratic Party

Date: 1952

Source: National Party Platforms, pp.473-487

Preamble

National Party Platforms, Democratic Platform of 1952, p.473

Our nation has entered into an age in which Divine Providence has permitted the genius of man to unlock the secret of the atom.

National Party Platforms, Democratic Platform of 1952, p.473

No system of government can survive the challenge of an atomic era unless its administration is committed to the stewardship of a trustee imbued with a democratic faith, a buoyant hope for the future, the charity of brotherhood, and the vision to translate these ideals into the realities of human government. The Government of the United States, administered by the Democratic Party, is today so entrusted.

National Party Platforms, Democratic Platform of 1952, p.473

The free choice of the Democratic Party by the people of America as the instrument to achieve that purpose will mean world peace with honor, national security based on collective pacts with other free nations, and a high level of human dignity. National survival demands that these goals be attained, and the endowments of the Democratic Party alone can assure their attainment.

National Party Platforms, Democratic Platform of 1952, p.473

For twenty years, under the dedicated guidance of Franklin Delano Roosevelt and Harry S. Truman, our country has moved steadily along the road which has led the United States of America to world leadership in the cause of freedom.

National Party Platforms, Democratic Platform of 1952, p.473

We will not retreat one inch along that road. Rather, it is our prayerful hope that the people, whom we have so faithfully served, will renew the mandate to continue our service and that Almighty God may grant us the wisdom to succeed.

Twenty Years of Progress

Achieving Prosperity

National Party Platforms, Democratic Platform of 1952, p.473

An objective appraisal of the past record clearly demonstrates that the Democratic Party has been the chosen American instrument to achieve prosperity, build a stronger democracy, erect the structure of world peace, and continue on the path of progress.

National Party Platforms, Democratic Platform of 1952, p.474

[p.474] Democratic Party policies and programs rescued American business from total collapse from the fatal economic consequences of watered stock, unsound banks, useless and greedy holding companies, high tariff barriers, and predatory business practices, all of which prevailed under the last Republican administrations. Democratic policies have enabled the Federal Government to help all business, small and large, to achieve the highest rate of productivity, the widest domestic and world markets, and the largest profits in the history of the Nation.

National Party Platforms, Democratic Platform of 1952, p.474

The simple fact is that today there are more than four million operating business enterprises in this country, over one million more than existed in 1932. Corporate losses in that fateful year were over three billion dollars; in 1951, corporate profits, after taxes, reached the staggering total of eighteen billion.

National Party Platforms, Democratic Platform of 1952, p.474

Democratic policies and programs rescued American agriculture from the economic consequences of blight, drought, flood and storm, from oppressive and indiscriminate foreclosures, and from the ruinous conditions brought about by the bungling incompetence and neglect of the preceding twelve years of Republican maladministration. Economic stability, soil conservation, rural electrification, farm dwelling improvement, increased production and efficiency and more than sevenfold increase in cash income have been the return to farmers for their faith in the Democratic Party.

National Party Platforms, Democratic Platform of 1952, p.474

Democratic labor policies have rescued the wage earners in this country from mass unemployment and from sweatshop slavery at starvation wages. Under our Democratic administrations, decent hours, decent wages, and decent working conditions have become the rule rather than the exception.

National Party Platforms, Democratic Platform of 1952, p.474

Self organizations of labor unions and collective bargaining, both of which are the keystone to labor management, peace and prosperity, must be encouraged, for the good of all.

National Party Platforms, Democratic Platform of 1952, p.474

Unemployment is now less than 3 per cent of the labor force, compared with almost 25 per cent in 1932. Trade union membership has reached a total of 16 million, which is more than five times the total of 1932.

National Party Platforms, Democratic Platform of 1952, p.474

The welfare of all economic and social groups in our society has been promoted by the sound, progressive and humane policies of the Democratic Party.

Strengthening Democracy

National Party Platforms, Democratic Platform of 1952, p.474

We are convinced that lasting prosperity must be founded upon a healthy democratic society respectful of the rights of all people.

National Party Platforms, Democratic Platform of 1952, p.474

Under Democratic Party leadership more has been done in the past twenty years to enhance the sanctity of individual rights than ever before in our history. Racial and religious minorities have progressed further toward real equality than during the preceding 150 years.

National Party Platforms, Democratic Platform of 1952, p.474

Governmental services, Democratically administered, have been improved and extended. The efficiency, economy, and integration of Federal operations have been advocated and effectuated through sound programs and policies. Through cooperative programs of Federal aid, State and local governments have been encouraged and enabled to provide many more services.

National Party Platforms, Democratic Platform of 1952, p.474

The Democratic Party has been alert to the corroding and demoralizing effects of dishonesty and disloyalty in the public service. It has exposed and punished those who would corrupt the integrity of the public service, and it has always championed honesty and morality in government. The loyalty program of President Truman has served effectively to prevent infiltration by subversive elements and to protect honest and loyal public servants against unfounded and malicious attacks.

National Party Platforms, Democratic Platform of 1952, p.474

We commend the relentless and fearless actions of Congressional Committees which, under vigorous Democratic leadership, have exposed dereliction in public service, and we pledge our support to a continuance of such actions as conditions require them.

National Party Platforms, Democratic Platform of 1952, p.474

The administration of our government by the Democratic Party has been based upon principles of justice and equity, and upon the American tradition of fair play. Men who are elected to high political office are entrusted with high responsibilities. Slander, defamation of character, deception and dishonesty are as truly transgressions of God's commandments, when resorted to by men in public life, as they are for all other men.

Building Peace with Honor

National Party Platforms, Democratic Platform of 1952, p.474

The Democratic Party has worked constantly for peace—lasting peace, peace with honor, freedom, justice and security for all nations.

National Party Platforms, Democratic Platform of 1952, p.474

The return of the Democratic Party to power in 1933 marked the end of a tragic era of isolationism [p.475] fostered by Republican Administrations which had deliberately and callously rejected the golden opportunity created by Woodrow Wilson for collective action to secure the peace.

National Party Platforms, Democratic Platform of 1952, p.475

This folly contributed to the second World War. Victory in that war has presented the nations of the world a new opportunity which the Democratic Party is determined shall not be lost.

National Party Platforms, Democratic Platform of 1952, p.475

We have helped establish the instrumentalities through which the hope of mankind for universal world peace can be realized. Under Democratic leadership, our Nation has moved promptly and effectively to meet and repel the menace to world peace by Soviet imperialism.

Progress in the New Era

National Party Platforms, Democratic Platform of 1952, p.475

The Democratic Party believes that past progress is but a prelude to the bureau aspirations which may be realized in the future.

National Party Platforms, Democratic Platform of 1952, p.475

Under Democratic Party leadership, America has accepted each new challenge of history and has found practical solutions to meet and overcome them. This we have done without departing from the principles of our basic philosophy, that is, the destiny of man to achieve his earthly ends in the spirit of brotherhood.

National Party Platforms, Democratic Platform of 1952, p.475

A great Democrat—Franklin Delano Roosevelt—devised the programs of the New Deal to meet the pressing problems of the 1930s. Another great Democrat—Harry S. Truman—devised the programs of the Fair Deal to meet the complex problems of America in the 1940s. The Democratic Party is ready to face and solve the challenging problems of the 1950s. We dedicate ourselves to the magnificent work of these great Presidents and to mould and adapt their democratic principles to the new problems of the years ahead.

National Party Platforms, Democratic Platform of 1952, p.475

In this spirit we adopt and pledge ourselves to this, the Democratic platform for 1952:

Our Goal is Peace With Honor

National Party Platforms, Democratic Platform of 1952, p.475

Peace with honor is the greatest of all our goals. We pledge our unremitting efforts to avert another world war. We are determined that the people shall be spared that frightful agony.

National Party Platforms, Democratic Platform of 1952, p.475

We are convinced that peace and security can be safeguarded if America does not deviate from the practical and successful policies developed under Democratic leadership since the close of World War II. We will resolutely move ahead with the constructive task of promoting peace.

The Democratic Program for Peace and National Security

Supporting the United Nations

National Party Platforms, Democratic Platform of 1952, p.475

Under Democratic leadership, this country sponsored and helped create the United Nations and became a charter member and staunchly supports its aims.

National Party Platforms, Democratic Platform of 1952, p.475

We will continue our efforts to strengthen the United Nations, improve its institutions as experience requires, and foster its growth and development.

National Party Platforms, Democratic Platform of 1952, p.475

The Communist aggressor has been hurled back from South Korea. Thus, Korea has proved, once and for all, that the United Nations will resist aggression. We urge continued effort, by every honorable means, to bring about a fair and effective peace settlement in Korea in accordance with the principles of the United Nations' charter.

Strong National Defense

National Party Platforms, Democratic Platform of 1952, p.475

Our Nation has strengthened its national defenses against the menace of Soviet aggression.

National Party Platforms, Democratic Platform of 1952, p.475

The Democratic Party will continue to stand unequivocally for the strong, balanced defense forces for this country—land, sea and air. We will continue to support the expansion and maintenance of the military and civil defense forces required for our national security. We reject the defeatist view of those who say we cannot afford the expense and effort necessary to defend ourselves. We express our full confidence in the Joint Chiefs of Staff. We voice complete faith in the ability and valor of our armed forces, and pride in their accomplishments.

Collective Strength for the Free World

National Party Platforms, Democratic Platform of 1952, p.475

We reject the ridiculous notions of those who would have the United States face the aggressors alone. That would be the most expensive—and the most dangerous—method of seeking security. This nation needs strong allies, around the world, making their maximum contribution to the common defense. They add their strength to ours in the defense of freedom.

National Party Platforms, Democratic Platform of 1952, p.475

The Truman Doctrine in 1947, the organization of hemisphere defense at Rio de Janeiro that same year, the Marshall Plan in 1948, the North Atlantic Treaty in 1949, the Point IV program, the resistance to Communist aggression in Korea, the Pacific Security pacts in 1951, and the Mutual Security programs now under way—all stand as [p.476] landmarks of America's progress in mobilizing the strength of the free world to keep the peace.

Encouraging European Unity

National Party Platforms, Democratic Platform of 1952, p.476

We encourage the economic and political unity of free Europe and the increasing solidarity of the nations of the North Atlantic Community.

National Party Platforms, Democratic Platform of 1952, p.476

We hail the Schuman Plan to pool the basic resources of industrial Western Europe, and the European Defense Community. We are proud of America's part in carrying these great projects forward, and we pledge our continuing support until they are established.

Support for Free Germany

National Party Platforms, Democratic Platform of 1952, p.476

We welcome the German Federal Republic into the company of free nations. We are determined that Germany shall remain free and continue as a good neighbor in the European community. We sympathize with the German people's wish for unity and will continue to do everything we can by peaceful means to overcome the Kremlin's obstruction of that rightful aim.

Support for the Victims of Soviet Imperialism

National Party Platforms, Democratic Platform of 1952, p.476

We will not abandon the once-free peoples of Central and Eastern Europe who suffer now under the Kremlin's tyranny in violation of the Soviet Union's most solemn pledges at Tehran, Yalta, and Potsdam. The United States should join other nations in formally declaring genocide to be an international crime in time of peace as well as war. This crime was exposed once more by the shocking revelations of Soviet guilt as disclosed in the report filed in Congress by the special committee investigating the Katyn Forest massacre. We look forward to the clay when the liberties of Poland and the other oppressed Soviet satellites, including Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, Lithuania, Estonia and Latvia and other nations in Asia under Soviet domination, will be restored to them and they can again take their rightful place in the community of free nations. We will carry forward and expand the vital and effective program of the "Voice of America" for penetration of the "Iron Curtain," bringing truth and hope to all the people subjugated by the Soviet Empire.

Support for the Nations of the Middle East

National Party Platforms, Democratic Platform of 1952, p.476

We seek to enlist the people of the Middle East to work with us and with each other in the development of the region, the lifting of health and living standards, and the attainment of peace. We favor the development of integrated security arrangements for the Middle East and other assistance to help safeguard the independence of the countries in the area.

National Party Platforms, Democratic Platform of 1952, p.476

We pledge continued assistance to Israel so that she may fulfill her humanitarian mission of providing shelter and sanctuary for her homeless Jewish refugees while strengthening her economic development.

National Party Platforms, Democratic Platform of 1952, p.476

We will continue to support the tripartite declaration of May 1950, to encourage Israel and the Arab States to settle their differences by direct negotiation, to maintain and protect the sanctity of the Holy Places and to permit free access to them.

National Party Platforms, Democratic Platform of 1952, p.476

We pledge aid to the Arab States to enable them to develop their economic resources and raise the living standards of their people. We support measures for the relief and reintegration of the Palestine refugees, and we pledge continued assistance to the reintegration program voted by the General Assembly of the United Nations in January 1952.

South Asia: A Testing Ground for Democracy

National Party Platforms, Democratic Platform of 1952, p.476

In the subcontinent of South Asia, we pledge continuing support for the great new countries of India and Pakistan in their efforts to create a better life for their people and build strong democratic governments to stand as bastions of liberty in Asia, secure against the threat of Communist subversion.

Collective Security in the Pacific

National Party Platforms, Democratic Platform of 1952, p.476

We welcome free Japan as a friendly neighbor and an ally in seeking security and progress for the whole Pacific area. America's security pacts with Japan and with the Philippines, Australia, and New Zealand are indispensable steps toward comprehensive mutual security arrangements in that area. Our military and economic assistance to the Nationalist Government of China on Formosa has strengthened that vital outpost of the free world, and will be continued.

Strengthening the Americas

National Party Platforms, Democratic Platform of 1952, p.476

In the Western Hemisphere, we pledge ourselves to continue the policy of the good neighbor. We will strive constantly to strengthen the bonds of friendship and cooperation with our Latin [p.477] American allies who are joined with us in the defense of the Americas.

Disarmament Remains the Goal

National Party Platforms, Democratic Platform of 1952, p.477

The free world is rearming to secure the peace. Under Democratic leadership, America always stands prepared to join in a workable system for foolproof inspection and limitation of all armaments, including atomic weapons. This Nation has taken the leadership in proposing concrete, practical plans for such a system. We are determined to carry on the effort for real, effective disarmament.

National Party Platforms, Democratic Platform of 1952, p.477

We look forward to the day when a great share of the resources now devoted to the armaments program can be diverted into the channels of peaceful production to speed the progress of America and of the underdeveloped regions of the world.

Helping Other People to Help Themselves

National Party Platforms, Democratic Platform of 1952, p.477

Even though we cannot now disarm, we will go forward as rapidly as possible in developing the imaginative and farsighted concept of President Truman embodied in the Point IV program.

National Party Platforms, Democratic Platform of 1952, p.477

We will continue to encourage use of American skills and capital in helping the people of underdeveloped lands to combat disease, raise living standards, improve land tenure and develop industry and trade. The continuance of ever stronger and more vigorous Point IV programs—sponsored both by this country and by the United Nations—is an indispensable element in creating a peaceful world.

Upholding the Principle of Self-Determination

National Party Platforms, Democratic Platform of 1952, p.477

In an era when the "satellite state" symbolizes both the tyranny of the aggressor nations and the extinction of liberty in small nations, the Democratic Party reasserts and reaffirms the Wilsonian principle of the right of national self-determination. It is part of the policy of the Democratic Party, therefore, to encourage and assist small nations and all peoples in the peaceful and orderly achievement of their legitimate aspirations toward political, geographical and ethnic integrity so that they may dwell in the family of sovereign nations with freedom and dignity.

Expanding World Trade

National Party Platforms, Democratic Platform of 1952, p.477

The Democratic Party has always stood for expanding trade among free nations. We reassert that stand today. We vigorously oppose any restrictive policies which would weaken the highly successful reciprocal trade program fathered by Cordell Hull.

National Party Platforms, Democratic Platform of 1952, p.477

Since 1934, the United States has taken the lead in fostering the expansion and liberalization of world trade.

National Party Platforms, Democratic Platform of 1952, p.477

Our own economy requires expanded export markets for our manufactured and agricultural products and a greater supply of essential imported raw materials. At the same time, our friends throughout the world will have opportunity to earn their own way to higher living standards with lessened dependence on our aid.

Progressive Immigration Policies

National Party Platforms, Democratic Platform of 1952, p.477

Solution of the problem of refugees from communism and overpopulation has become a permanent part of the foreign policy program of the Democratic Party. We pledge continued cooperation with other free nations to solve it.

National Party Platforms, Democratic Platform of 1952, p.477

We pledge continued aid to refugees from communism and the enactment of President Truman's proposals for legislation in this field. In this way we can give hope and courage to the victims of Soviet brutality and can carry on the humanitarian tradition of the Displaced Persons Act.

National Party Platforms, Democratic Platform of 1952, p.477

Subversive elements must be screened out and prevented from entering our land, but the gates must be left open for practical numbers of desirable persons from abroad whose immigration to this country provides an invigorating infusion into the stream of American life, as well as a significant contribution to the solution of the world refugee and overpopulation problems.

National Party Platforms, Democratic Platform of 1952, p.477

We pledge continuing revision of our immigration and naturalization laws to do away with any unjust and unfair practices against national groups which have contributed some of our best citizens. We will eliminate distinctions between native-born and naturalized citizens. We want no "second-class" citizens in free America.

Our Domestic Policy

Economic Opportunity and Growth

National Party Platforms, Democratic Platform of 1952, p.477

The United States is today a land of boundless opportunity. Never before has it offered such a large measure of prosperity, security and hope for all its people.

National Party Platforms, Democratic Platform of 1952, p.477

Horizons of even greater abundance and opportunity lie before us under a Democratic Administration responsive to the will of the people.

National Party Platforms, Democratic Platform of 1952, p.478

[p.478] The Democratic Administration has had a guiding principle since taking office 20 years ago: that the prosperity and growth of this Nation are indivisible. Every step we have taken to help the farmers has also helped the workers and business. Every improvement in the status of the worker has helped both farmers and business. Every expansion of business has provided more jobs for workers and greater demand for farm products.

A Stabilized Economy

Combatting Inflation

National Party Platforms, Democratic Platform of 1952, p.478

The Democratic Administration early recognized that defense production would limit the amount of goods in civilian markets, and subject our economy to heavy inflationary pressure. To prevent this from resulting in ruinous inflation, the Administration proposed pay-as-we-go taxation to keep the national debt as low as possible and ' to prevent excess money pressure on scarce goods and services.

National Party Platforms, Democratic Platform of 1952, p.478

Direct controls were also proposed to channel scarce materials into highly essential defense production, and to keep prices down.

National Party Platforms, Democratic Platform of 1952, p.478

In 1951 and 1952 Republican Congressmen demonstrated their attitude toward these necessary measures when they sponsored amendments which would have destroyed all controls.

Prices

National Party Platforms, Democratic Platform of 1952, p.478

We shall strive to redress the injury done to the American people—especially to white collar workers and fixed-income families—by the weakening amendments which the Republicans in Congress have forced into our anti-inflation laws.

National Party Platforms, Democratic Platform of 1952, p.478

We pledge continuance of workable controls so long as the emergency requires them. We pledge fair and impartial enforcement of controls and their removal as quickly as economic conditions allow.

Rents

National Party Platforms, Democratic Platform of 1952, p.478

We strongly urge continued federal rent control in critical defense areas and in the many other localities still suffering from a substantial shortage of adequate housing at reasonable prices.

Full Employment

National Party Platforms, Democratic Platform of 1952, p.478

The Democratic Administration prudently passed the Employment Act of 1946 declaring it to be national policy never again to permit large-scale unemployment to stalk the land. We will assure the transition from defense production to peace-time production without the ravages of unemployment. We pledge ourselves at all times to the maintenance of maximum employment, production, and purchasing power in the American economy.

Integrity in Government Finances

National Party Platforms, Democratic Platform of 1952, p.478

We solemnly pledge the preservation of the financial strength of the Government. We have demonstrated our ability to maintain and enhance the nation's financial strength. In the six full fiscal years since V-J Day, our fiscal policy has produced a $4 billion budget surplus. We have reduced the public debt $17 billion from the postwar peak.

National Party Platforms, Democratic Platform of 1952, p.478

We have demonstrated our ability to make fiscal policy contribute in a positive way to economic growth and the maintenance of high-level employment. The policies which have been followed have given us the greatest prosperity in our history. Sustained economic expansion has provided the funds necessary to finance our defense and has still left our people with record high consumer incomes and business with a record volume of investment. Employment and personal incomes are at record levels. Never have Americans enjoyed a higher standard of living and saved more for contingencies and old age.

Federal Taxes

National Party Platforms, Democratic Platform of 1952, p.478

We believe in fair and equitable taxation. We oppose a Federal general sales tax. We adhere to the principle of ability to pay. We have enacted an emergency excess profits tax to prevent profiteering from the defense program and have vigorously attacked special tax privileges.

Tax Reductions

National Party Platforms, Democratic Platform of 1952, p.478

In the future, as in the past, we will hold firm to policies consistent with sound financing and continuing economic progress. As rapidly as defense requirements permit, we favor reducing taxes, especially for people with lower incomes. But we will not imperil our Nation's security by making reckless promises to reduce taxes. We deplore irresponsible assertions that national security can be achieved without paying for it.

Closing Tax Loopholes

National Party Platforms, Democratic Platform of 1952, p.479

Justice requires the elimination of tax loopholes [p.479] which favor special groups. We pledge continued efforts to the elimination of remaining loopholes.

Government Expenditures

National Party Platforms, Democratic Platform of 1952, p.479

We believe in keeping government expenditures to the lowest practicable level. The great bulk of our national budget consists of obligations incurred for defense purposes. We pledge ourselves to a vigilant review of our expenditures in order to reduce them as much as possible.

The American Farmer and Agriculture

National Party Platforms, Democratic Platform of 1952, p.479

We know that national prosperity depends upon a vigorous, productive and expanding agriculture.

National Party Platforms, Democratic Platform of 1952, p.479

We take great pride in our Party's record of performance and in the impressive gains made by American agriculture in the last two decades. Under programs of Democratic Administrations the net agricultural income has increased from less than two billion dollars to almost fifteen billion dollars. These programs must be continued and improved.

Resource Conservation

National Party Platforms, Democratic Platform of 1952, p.479

The soil resources of our country have been conserved and strengthened through the Soil Conservation Service, the Agricultural Conservation Program, the Forestry and the Research programs, with their incentives to increased production through sound conservation farming. These programs have revolutionized American agriculture and must be continued and expanded. We will accelerate programs of upstream flood prevention, watershed protection, and soil, forest and water conservation in all parts of the country. These conservation measures are a national necessity; they are invaluable to our farmers, and add greatly to the welfare of all Americans and of generations yet unborn.

Grass Roots Administration

National Party Platforms, Democratic Platform of 1952, p.479

We will continue the widest possible farmer participation through referenda, farmer-elected committees, local soil conservation districts, and self-governing agencies in the conduct and administration of these truly democratic programs, initiated and developed under Democratic administrations.

Price Supports

National Party Platforms, Democratic Platform of 1952, p.479

Under the present farm program, our farmers have performed magnificently and have achieved unprecedented production. We applaud the recent Congressional action in setting aside the "sliding scale" for price support through 1954, and we will continue to protect the producers of basic agricultural commodities under the terms of a mandatory price support program at not less than ninety percent of parity. We continue to advocate practical methods for extending price supports to other storables and to the producers of perishable commodities, which account for three-fourths of all farm income.

Abundant Production

National Party Platforms, Democratic Platform of 1952, p.479

We will continue to assist farmers in providing abundant and stable supplies of agricultural commodities for the consumers at reasonable prices, and in assuring the farmer the opportunity to earn a fair return commensurate with that enjoyed by other segments of the American economy.

National Party Platforms, Democratic Platform of 1952, p.479

The agricultural adjustment programs encourage the production of abundant supplies while enabling producers to keep supply in line with consumer demand, preventing wide fluctuations and bringing stability to the agricultural income of the Nation. We pledge retention of such programs.

National Party Platforms, Democratic Platform of 1952, p.479

We pledge continued efforts to provide adequate storage facilities for grain and other farm products with sufficient capacity for needed reserves for defense, and other emergency requirements, in order to protect the integrity of the farm price support programs.

Research

National Party Platforms, Democratic Platform of 1952, p.479

We are justly proud of the outstanding achievements of our agricultural research. We favor a greatly expanded research and education program for American agriculture in order that both production and distribution may more effectively serve consumers and producers alike, and thus meet the needs of the modern world. We favor especial emphasis on the development of new crops and varieties, on crop and livestock disease and pest control, and on agricultural statistics and marketing services.

Marketing

National Party Platforms, Democratic Platform of 1952, p.479

We must find profitable markets for the products of our farms, and we should produce all that these markets will absorb. To this end we will [p.480] continue our efforts to reduce trade barriers, both at home and abroad, to provide better marketing and inspection facilities, and to find new uses and outlets for our foods and fibers both in domestic and foreign markets.

Farm Credit

National Party Platforms, Democratic Platform of 1952, p.480

We have provided credit facilities for all agriculture, including means by which young men, veterans of military service, and farm tenants have been encouraged to become farmers and farm home-owners, and through which low-income farmers have been assisted in establishing self-sustaining and fully productive farm units. We will not waver in our efforts to provide such incentives.

Crop Insurance

National Party Platforms, Democratic Platform of 1952, p.480

Crop insurance to protect farmers against loss from destruction of their crops by natural causes has been created and developed under Democratic Administrations into a sound business operation. This program should be expanded as rapidly as experience justifies, in order that its benefits may be made available to every farmer.

Rural Electrification

National Party Platforms, Democratic Platform of 1952, p.480

Democratic Administrations have established the great Rural Electrification Program, which has brought light and power to the rural homes of our Nation. In 1935, only 10% of the farm homes of America had the benefits of electricity. Today 85% of our rural homes enjoy the benefits of electric light and power. We will continue to fight to make electricity available to all rural homes, with adequate facilities for the generation and transmission of power. Through the Rural Telephone Program, inaugurated by the Democratic 81st Congress, we will provide the opportunity for every farm home to have this modern essential service. We pledge support of these self-liquidating farm programs.

Cooperatives

National Party Platforms, Democratic Platform of 1952, p.480

We will continue to support the sound development and growth of bona fide farm cooperatives and to protect them from punitive taxation.

Defense Needs

National Party Platforms, Democratic Platform of 1952, p.480

We will continue to recognize agriculture as an essential defense industry, and to assist in providing all the necessary tools, machinery, fertilizer, and manpower needed by farmers in meeting production goals.

Family Farming

National Party Platforms, Democratic Platform of 1952, p.480

The family farm is the keystone of American agriculture. We will strive unceasingly to make the farm homes of our country healthier and happier places in which to live. We must see that our youth continues to find attractive opportunity in the field of agriculture.

National Party Platforms, Democratic Platform of 1952, p.480

The Republican Party platform is loud in its criticism of our great farm programs. We challenge Republicans and other enemies of farm progress to justify their opposition to the program now in operation, to oppose the improvements here proposed, or to advocate repeal of a single vital part of our program.

A Fair Deal for Workers

Good Incomes

National Party Platforms, Democratic Platform of 1952, p.480

There can be no national prosperity unless our working men and women continue to prosper and enjoy rising living standards. The rising productivity of American workers is a key to our unparalleled industrial progress. Good incomes for our workers are the secret of our great and growing consumer markets.

Labor-Management Relations

National Party Platforms, Democratic Platform of 1952, p.480

Good labor-management relations are essential to good incomes for wage earners and rising output from our factories. We believe that to the widest possible extent consistent with the public interest, management and labor should determine wage rates and conditions of employment through free collective bargaining.

Taft-Hartley Act

National Party Platforms, Democratic Platform of 1952, p.480

We strongly advocate the repeal of the Taft-Hartley Act.

National Party Platforms, Democratic Platform of 1952, p.480

The Taft-Hartley Act has been proved to be inadequate, unworkable, and unfair. It interferes in an arbitrary manner with collective bargaining, tipping the scales in favor of management against labor.

National Party Platforms, Democratic Platform of 1952, p.480

The Taft-Hartley Act has revived the injunction as a weapon against labor in industrial relations. The Act has arbitrarily forbidden traditional hiring [p.481] practices which are desired by both management and labor in many industries. The Act has forced workers to act as strikebreakers against their fellow unionists. The Act has served to interfere with one of the most fundamental rights of American workers—the right to organize in unions of their own choosing.

National Party Platforms, Democratic Platform of 1952, p.481

We deplore the fact that the Taft-Hartley Act provides an inadequate and unfair means of meeting with national emergency situations. We advocate legislation that will enable the President to deal fairly and effectively with cases where a breakdown in collective bargaining seriously threatens the national safety or welfare.

National Party Platforms, Democratic Platform of 1952, p.481

In keeping with the progress of the times, and based on past experiences, a new legislative approach toward the entire labor management problem should be explored.

Fair Labor Standards

National Party Platforms, Democratic Platform of 1952, p.481

We pledge to continue our efforts so that government programs designed to establish improved fair labor standards shall prove a means of assuring minimum wages, hours and protection to workers, consistent with present-day progress.

Equal Pay for Equal Work

National Party Platforms, Democratic Platform of 1952, p.481

We believe in equal pay for equal work, regardless of sex, and we urge legislation to make that principle effective.

The Physically-Handicapped

National Party Platforms, Democratic Platform of 1952, p.481

We promise to further the program to afford employment opportunities both in government and in private industry for physically handicapped persons.

Migratory Workers

National Party Platforms, Democratic Platform of 1952, p.481

We advocate prompt improvement of employment conditions of migratory workers and increased protection of their safety and health.

Strengthening Free Enterprise

National Party Platforms, Democratic Platform of 1952, p.481

The free enterprise system has flourished and prospered in America during these last twenty years as never before. This has been made possible by the purchasing power of all our people and we are determined that the broad base of our prosperity shall be maintained.

Small and Independent Business

National Party Platforms, Democratic Platform of 1952, p.481

Small and independent business is the backbone of American free enterprise. Upon its health depends the growth of the economic system whose competitive spirit has built this Nation's industrial strength and provided its workers and consumers with an incomparably high standard of living.

National Party Platforms, Democratic Platform of 1952, p.481

Independent business is the best offset to monopoly practice The Government's role is to insure that independent business receives equally fair treatment with its competitors.

National Party Platforms, Democratic Platform of 1952, p.481

Congress has established the permanent Small Business Committee of the Senate and the Special Small Business Committee of the House, which have continued to render great service to this important segment of our economy. We favor continuance of both these committees with all the powers to investigate and report conditions, correct discriminations, and propose needed legislation.

National Party Platforms, Democratic Platform of 1952, p.481

We pledge ourselves to increased efforts to assure that small business be given equal opportunity to participate in Government contracts, and that a suitable proportion of the dollar volume of defense contracts be channeled into independent small business. The Small Defense Plants Administration, which our Party caused to be established, should retain its independent status and be made a continuing agency, equipped with sufficient lending powers to assist qualified small business in securing defense contracts.

National Party Platforms, Democratic Platform of 1952, p.481

We urge the enactment of such laws as will provide favorable incentives to the establishment and survival of independent businesses, especially in the provision of tax incentives and access to equity or risk capital.

Enforcement of Anti-Trust Laws

National Party Platforms, Democratic Platform of 1952, p.481

Free competitive enterprise must remain free and competitive if the productive forces of this Nation are to remain strong. We are alarmed over the increasing concentration of economic power in the hands of a few.

National Party Platforms, Democratic Platform of 1952, p.481

We reaffirm our belief in the necessity of vigorous enforcement of the laws against trusts, combinations, and restraints of trade, which laws are vital to the safeguarding of the public interest and of small competitive business men against predatory monopolies. We will seek adequate appropriations [p.482] for the Department of Justice and the Federal Trade Commission for vigorous investigation and for enforcement of the anti-trust laws. We support the right of all persons to work together in cooperatives and other democratic associations for the purpose of carrying out any proper business operations free from any arbitrary and discriminatory restrictions.

Protection of Investors and Consumers

National Party Platforms, Democratic Platform of 1952, p.482

We must avoid unnecessary business controls. But we cannot close our eyes to the special problems which require Government surveillance. The Government must continue its efforts to stop unfair selling practices which deceive investors, and unfair trade practices which deceive consumers.

Transportation

National Party Platforms, Democratic Platform of 1952, p.482

In the furtherance of national defense and commerce, we pledge continued Government support, on a sound financial basis, for further development of the Nation's transportation systems, land, sea and air. We endorse a policy of fostering the safest and most reliable air transportation system of the world. We favor fair, nondiscriminatory freight rates to encourage economic growth in all parts of the country.

Highways

National Party Platforms, Democratic Platform of 1952, p.482

In cooperation with State and local governmental units, we will continue to plan, coordinate, finance, and encourage the expansion of our road and highway network, including access roads, for the dual purposes of national defense and efficient motor transportation. We support expansion of farm-to-market roads.

Rivers and Harbors

National Party Platforms, Democratic Platform of 1952, p.482

We pledge continued development of our harbors and waterways.

Merchant Marine

National Party Platforms, Democratic Platform of 1952, p.482

We will continue to encourage and support an adequate Merchant Marine.

Our Natural Resources

National Party Platforms, Democratic Platform of 1952, p.482

The United States has been blessed with the richest natural resources of any nation on earth.

National Party Platforms, Democratic Platform of 1952, p.482

Yet, unless we redouble our conservation efforts we will become a "have-not" nation in some of the most important raw materials upon which depend our industries, agriculture, employment and high standard of living. This can be prevented by a well rounded and nation-wide conservation effort.

Land and Water Resources

National Party Platforms, Democratic Platform of 1952, p.482

We favor sound, progressive development of the Nation's land and water resources for flood control, navigation, irrigation, power, drainage, soil conservation and creation of new, small family-sized farms, with immediate action in critical areas.

National Party Platforms, Democratic Platform of 1952, p.482

We favor the acceleration of all such projects, including construction of transmission facilities to load centers for wider and more equitable distribution of electric energy at the lowest cost to the consumer with continuing preference to public agencies and REA Cooperatives.

National Party Platforms, Democratic Platform of 1952, p.482

The Democratic Party denounces all obstructionist devices designed to prevent or retard utilization of the Nation's power and water resources for the benefit of the people, their enterprises and interests.

National Party Platforms, Democratic Platform of 1952, p.482

The wise policy of the Democratic Party in encouraging multipurpose projects throughout the country is responsible for America's productive superiority over any nation in the world and is one of the greatest single factors leading toward the accomplishment of world peace. Without these projects our atomic weapons program could never have been achieved, and without additional such projects it cannot be expanded.

National Party Platforms, Democratic Platform of 1952, p.482

The Democratic Party is dedicated to a continuation of the natural resources development policy inaugurated and carried out under the administrations of Presidents Roosevelt and Truman, and to the extension of that policy to all parts of the Nation—North, South, East, Midwest, West and the territories to the end that the Nation and its people receive maximum benefits from these resources to which they have an inherent right.

National Party Platforms, Democratic Platform of 1952, p.482

The Democratic Party further pledges itself to protect these resources from destructive monopoly and exploitation.

River Basin Development

National Party Platforms, Democratic Platform of 1952, p.482

We pledge the continued full and unified regional development of the water, mineral and other natural resources of the nation, recognizing that the progress already achieved under the initiative of the Democratic Party in the arid and [p.483] semi-arid States of the West, as well as in the Tennessee Valley, is only an indication of still greater results which can be accomplished.

Fertilizer Development

National Party Platforms, Democratic Platform of 1952, p.483

Great farming areas, particularly of the Midwest and West, are in acute need of low-cost commercial fertilizers. To meet this demand, we favor the opening of the Nation's phosphate rock deposits in the West, through prompt provision of sufficient low-cost hydro-electric power to develop this great resource.

Forests and Public Lands

National Party Platforms, Democratic Platform of 1952, p.483

We seek to establish and demonstrate such successful policies of forest and land management on Federal property as will materially assist State and private owners in their conservation efforts. Conservation of forest and range lands is vital to the strength and welfare of the Nation. Our forest and range lands must be protected and used wisely in order to produce a continuing supply of basic raw materials for industry; to reduce damaging floods; and to preserve the sources of priceless water. With adequate appropriations to carry out feasible projects, we pledge a program of forest protection, reforestation projects and sound practices of production and harvesting which will promote sustained yields of forest crops.

National Party Platforms, Democratic Platform of 1952, p.483

We propose to increase forest access roads in order to improve cutting practices on both public and private lands.

National Party Platforms, Democratic Platform of 1952, p.483

On the public land ranges we pledge continuance of effective conservation and use programs, including the extension of water pond construction and restoration of forage cover.

Arid Areas

National Party Platforms, Democratic Platform of 1952, p.483

In many areas of the Nation assistance is needed to provide water for irrigation, domestic and industrial purposes. We pledge that in working out programs for rational distribution of water from Federal sources we will aid in delivering this essential of life cheaply and abundantly.

Minerals and Fuels

National Party Platforms, Democratic Platform of 1952, p.483

The Nation's minerals and fuels are essential to the national defense and development of our country. We pledge the adoption of policies which will further encourage the exploration and development of additional reserves of our mineral resources. We subscribe to the principles of the Stockpiling Act and will lend our efforts to strengthening and expanding its provisions and those of the Defense Production Act to meet our military and civilian needs. Additional access roads should be constructed with Government aid. Our synthetic fuels, including monetary metals, research program should go forward. Laws to aid and assist these objectives will be advocated.

Domestic Fisheries

National Party Platforms, Democratic Platform of 1952, p.483

We favor increased research and exploration for conserving and better utilizing fishery resources; expanded research and education to promote new fishery products and uses and new markets; promotion of world trade in fish products; a public works and water policy providing adequate protection for domestic fishery resources; and treaties with other nations for conservation and better utilization of international fisheries.

Wildlife Recreations

National Party Platforms, Democratic Platform of 1952, p.483

In our highly complex civilization, outdoor recreation has become essential to the health and happiness of our people.

National Party Platforms, Democratic Platform of 1952, p.483

The Democratic Party has devoted its efforts to the preservation, restoration and increase of the bird, animal and fish life which abound in this Nation. State, local and private agencies have cooperated in this worthy endeavor. We have extended and vastly improved the parks, forests, beaches, streams, preserves and wilderness areas across the land.

National Party Platforms, Democratic Platform of 1952, p.483

To the 28,000,000 of our citizens who annually purchase fishing and hunting licenses, we pledge continued efforts to improve all recreational areas.

Atomic Energy

National Party Platforms, Democratic Platform of 1952, p.483

In the field of atomic energy, we pledge ourselves:

National Party Platforms, Democratic Platform of 1952, p.483

(1) to maintain vigorous and non-partisan civilian administrations, with adequate security safeguards;

National Party Platforms, Democratic Platform of 1952, p.483

(2) to promote the development of nuclear energy for peaceful purposes in the interests of America and mankind;

National Party Platforms, Democratic Platform of 1952, p.483

(3) to build all the atomic and hydrogen firepower needed to defend our country, deter aggression, and promote world peace;

National Party Platforms, Democratic Platform of 1952, p.484

(4) To exert every effort to bring about bona fide [p.484] international control and inspection of all atomic weapons.

Social Security

National Party Platforms, Democratic Platform of 1952, p.484

Our national system of social security, conceived and developed by the Democratic Party, needs to be extended and improved.

Old Age and Survivors Insurance

National Party Platforms, Democratic Platform of 1952, p.484

We favor further strengthening of old age and survivors insurance, through such improvements as increasing benefits, extending them to more people and lowering the retirement age for women.

National Party Platforms, Democratic Platform of 1952, p.484

We favor the complete elimination of the work clause for the reason that those contributing to the Social Security program should be permitted to draw benefits, upon reaching the age of eligibility, and still continue to work.

Unemployment Insurance

National Party Platforms, Democratic Platform of 1952, p.484

We favor a stronger system of unemployment insurance, with broader coverage and substantially increased benefits, including an allowance for dependents.

Public Assistance

National Party Platforms, Democratic Platform of 1952, p.484

We favor further improvements in public assistance programs for the blind, the disabled, the aged and children in order to help our less fortunate citizens meet the needs of daily living.

Private Plans

National Party Platforms, Democratic Platform of 1952, p.484

We favor and encourage the private endeavors of social agencies, mutual associations, insurance companies, industry-labor groups, and cooperative societies to provide against the basic hazards of life through mutually agreed upon benefit plans designed to complement our present social security program.

Needs of Our Aging Citizens

National Party Platforms, Democratic Platform of 1952, p.484

Our older citizens constitute an immense reservoir of skilled, mature judgment and ripened experience. We pledge ourselves to give full recognition to the right of our older citizens to lead a proud, productive and independent life throughout their years.

National Party Platforms, Democratic Platform of 1952, p.484

In addition to the fundamental improvements in Old Age and Survivors Insurance, which are outlined above, we pledge ourselves, in cooperation with the States and private industry, to encourage the employment of older workers. We commend the 82nd Congress for eliminating the age restriction on employment in the Federal Government.

Health

National Party Platforms, Democratic Platform of 1952, p.484

We will continue to work for better health for every American, especially our children. We pledge continued and wholehearted support for the campaign that modern medicine is waging against mental illness, cancer, heart disease and other diseases.

Research

National Party Platforms, Democratic Platform of 1952, p.484

We favor continued and vigorous support, from private and public sources, of research into the causes, prevention and cure of disease.

Medical Education

National Party Platforms, Democratic Platform of 1952, p.484

We advocate Federal aid for medical education to help overcome the growing shortage of doctors, nurses, and other trained health personnel.

Hospitals and Health Centers

National Party Platforms, Democratic Platform of 1952, p.484

We pledge continued support for Federal aid to hospital construction. We pledge increased Federal aid to promote public health through preventive programs and health services, especially in rural areas.

Cost of Medical Care

National Party Platforms, Democratic Platform of 1952, p.484

We also advocate a resolute attack on the heavy financial hazard of serious illness. We recognize that the costs of modern medical care have grown to be prohibitive for many millions of people. We commend President Truman for establishing the non-partisan Commission on the Health Needs of the Nation to seek an acceptable solution of this urgent problem.

Housing

National Party Platforms, Democratic Platform of 1952, p.484

We pledge ourselves to the fulfillment of the programs of private housing, public low-rent housing, slum clearance, urban redevelopment, farm housing and housing research as authorized by the Housing Act of 1949.

National Party Platforms, Democratic Platform of 1952, p.484

We deplore the efforts of special interests groups, which themselves have prospered through Government guarantees of housing mortgages, to [p.485] destroy those programs adopted to assist families of low-income.

Additional Legislation

National Party Platforms, Democratic Platform of 1952, p.485

We pledge ourselves to enact additional legislation to promote housing required for defense workers, middle income families, aged persons and migratory farm laborers.

Veterans' Housing

National Party Platforms, Democratic Platform of 1952, p.485

We pledge ourselves to provide special housing aids to veterans and their families.

Education

National Party Platforms, Democratic Platform of 1952, p.485

Every American child, irrespective of color, national origin, economic status or place of residence should have every educational opportunity to develop his potentialities.

National Party Platforms, Democratic Platform of 1952, p.485

Local, State and Federal governments have shared responsibility to contribute appropriately to the pressing needs of our educational system. We urge that Federal contributions be made available to State and local units which adhere to basic minimum standards.

National Party Platforms, Democratic Platform of 1952, p.485

The Federal Government should not dictate nor control educational policy.

National Party Platforms, Democratic Platform of 1952, p.485

We pledge immediate consideration for those school systems which need further legislation to provide Federal aid for new school construction, teachers' salaries and school maintenance and repair.

National Party Platforms, Democratic Platform of 1952, p.485

We urge the adoption by appropriate legislative action of the proposals advocated by the President's Commission on Higher Education, including Federal scholarships.

National Party Platforms, Democratic Platform of 1952, p.485

We will continue to encourage the further development of vocational training which helps people acquire skills and technical knowledge so essential to production techniques.

Child Welfare

National Party Platforms, Democratic Platform of 1952, p.485

The future of America depends on adequate provision by Government for the needs of those of our children who cannot be cared for by their parents or private social agencies.

Maternity, Child Health and Welfare Services

National Party Platforms, Democratic Platform of 1952, p.485

The established national policy of aiding States and localities, through the Children's Bureau and other agencies, to insure needed maternity, child health and welfare services should be maintained and extended. Especially important are the detection and treatment of physical defects and diseases which, if untreated, are reflected in adult life in draft rejections and as handicapped workers. The Nation, as a whole, should provide maternity and health care for the wives, babies and pre-school children of those who serve in our armed forces.

School Lunches

National Party Platforms, Democratic Platform of 1952, p.485

We will enlarge the school lunch program which has done so much for millions of American school children and charitable institutions while at the same time benefiting producers.

Day Care Facilities

National Party Platforms, Democratic Platform of 1952, p.485

Since several million mothers must now be away from their children during the day, because they are engaged in defense work, facilities for adequate day care of these children should be provided and adequately financed.

Children of Migratory Workers

National Party Platforms, Democratic Platform of 1952, p.485

The Nation, as a whole, has a responsibility to support health, educational, and welfare services for the children of agricultural migratory workers who are now almost entirely without such services while their parents are engaged in producing essential crops.

Veterans

National Party Platforms, Democratic Platform of 1952, p.485

The Democratic Party is determined to advance the welfare of all the men and women who have seen service in the armed forces. We pledge ourselves to continue and improve our national program of benefits for veterans and their families, to provide the best possible medical care and hospitalization for the disabled veteran, and to help provide every veteran an opportunity to be a productive and responsible citizen with an assured place in the civilian community.

Strengthening Democratic Government

Streamlining the Federal Government

National Party Platforms, Democratic Platform of 1952, p.485

The public welfare demands that our government be efficiently and economically operated and that it be reorganized to meet changing needs. During the present Democratic Administration, more reorganization has been accomplished than by all its predecessors. We pledge our support to continuing reorganization wherever improvements [p.486] can be made. Only constant effort by the Executive, the Congress, and the public will enable our Government to render the splendid service to which our citizens are entitled.

Improving the Postal Service

National Party Platforms, Democratic Platform of 1952, p.486

We pledge a continuing increase in the services of the United States Postal Service. Through efficient handling of mail, improved working conditions for postal employees, and more frequent services, the Democratic Party promises its efforts to provide the greatest communication system in the world for the American people.

Strengthening the Civil Service

National Party Platforms, Democratic Platform of 1952, p.486

Good government requires a Civil Service high in quality and prestige. We deplore and condemn smear attacks upon the character and reputations of our Federal workers. We will continue our fight against partisan political efforts to discredit the Federal service and undermine American principles of justice and fair play.

National Party Platforms, Democratic Platform of 1952, p.486

Under President Truman's leadership, the Federal Civil Service has been extended to include a greater proportion of positions than ever before. He has promoted a record number of career appointees to top level policy positions. We will continue to be guided by these enlightened policies, and we will continue our efforts to provide Federal service with adequate pay, sound retirement provisions, good working conditions, and an opportunity for advancement.

National Party Platforms, Democratic Platform of 1952, p.486

We will use every proper means to eliminate pressure by private interests seeking undeserved favors from the Government. We advocate the strongest penalties against those who try to exert improper influence, and against any who may yield to it.

Democracy in Federal Elections

National Party Platforms, Democratic Platform of 1952, p.486

We advocate new legislation to provide effective regulation and full disclosure of campaign expenditures in elections to Federal office, including political advertising from any source.

National Party Platforms, Democratic Platform of 1952, p.486

We recommend that Congress provide for a non-partisan study of possible improvements in the methods of nominating and electing Presidents and in the laws relating to Presidential succession. Special attention should be given to the problem of assuring the widest possible public participation in Presidential nominations.

Strengthening Basic Freedoms

National Party Platforms, Democratic Platform of 1952, p.486

We will continue to press strongly for world-wide freedom in the gathering and dissemination of news and for support to the work of the United Nations Commission on Human Rights in furthering this and other freedoms.

Equal Rights Amendment

National Party Platforms, Democratic Platform of 1952, p.486

We recommend and endorse for submission to the Congress a constitutional amendment providing equal rights for women.

Puerto Rico

National Party Platforms, Democratic Platform of 1952, p.486

Under Democratic Party leadership, a new status has been developed for Puerto Rico. This new status is based on mutual consent and common devotion to the United States, formalized in a new Puerto Rican Constitution. We welcome the dignity of the new Puerto Rican Commonwealth and pledge our support of the Commonwealth, its continued development and growth.

Alaska and Hawaii

National Party Platforms, Democratic Platform of 1952, p.486

By virtue of their strategic geographical locations, Alaska and Hawaii are vital bastions in the Pacific. These two territories have contributed greatly to the welfare and economic development of our country and have become integrated into our economic and social life. We, therefore, urge immediate statehood for these two territories.

Other Territories and Possessions

National Party Platforms, Democratic Platform of 1952, p.486

We favor increased self-government for the Virgin Islands and other outlying territories and the trust territory of the Pacific.

District of Columbia

National Party Platforms, Democratic Platform of 1952, p.486

We favor immediate home rule and ultimate national representation for the District of Columbia.

American Indians

National Party Platforms, Democratic Platform of 1952, p.486

We shall continue to use the powers of the Federal Government to advance the health, education and economic well-being of our American Indian citizens, without impairing their cultural traditions. We pledge our support to the cause of fair and equitable treatment in all matters essential to and desirable for their individual and tribal welfare.

National Party Platforms, Democratic Platform of 1952, p.487

The American Indian should be completely integrated [p.487] into the social, economic and political life of the nation. To that end we shall move to secure the prompt final settlement of Indian claims and to remove restrictions on the rights of Indians individually and through their tribal councils to handle their own fiscal affairs.

National Party Platforms, Democratic Platform of 1952, p.487

We favor the repeal of all acts or regulations that deny to Indians rights or privileges held by citizens generally.

Constitutional Government

National Party Platforms, Democratic Platform of 1952, p.487

The Democratic Party has demonstrated its belief in the Constitution as a charter of individual freedom and an effective instrument for human progress. Democratic Administrations have placed upon the statute books during the last twenty years a multitude of measures which testify to our belief in the Jeffersonian principle of local control, even in general legislation involving nation-wide programs. Selective service, Social Security, Agricultural Adjustment, Low Rent Housing, Hospital, and many other legislative programs have placed major responsibilities in States and counties and provide fine examples of how benefits can be extended through Federal-State cooperation.

National Party Platforms, Democratic Platform of 1952, p.487

In the present world crisis with new requirements of Federal action for national security, and accompanying provision for public services and individual rights related to defense, constitutional principles must and will be closely followed. Our record and our clear commitments, in this platform, measure our strong faith in the ability of constitutional government to meet the needs of our times.

Improving Congressional Procedures

National Party Platforms, Democratic Platform of 1952, p.487

In order that the will of the American people may be expressed upon all legislative proposals, we urge that action be taken at the beginning of the 83rd Congress to improve Congressional procedures so that majority rule prevails and decisions can be made after reasonable debate without being blocked by a minority in either House.

Civil Rights

National Party Platforms, Democratic Platform of 1952, p.487

The Democratic Party is committed to support and advance the individual rights and liberties of all Americans.

National Party Platforms, Democratic Platform of 1952, p.487

Our country is founded on the proposition that all men are created equal. This means that all citizens are equal before the law and should enjoy equal political rights. They should have equal opportunities for education, for economic advancement, and for decent living conditions.

National Party Platforms, Democratic Platform of 1952, p.487

We will continue our efforts to eradicate discrimination based on race, religion or national origin.

National Party Platforms, Democratic Platform of 1952, p.487

We know this task requires action, not just in one section of the Nation, but in all sections. It requires the cooperative efforts of individual citizens and action by State and local governments. It also requires Federal action. The Federal Government must live up to the ideals of the Declaration of Independence and must exercise the powers vested in it by the Constitution.

National Party Platforms, Democratic Platform of 1952, p.487

We are proud of the progress that has been made in securing equality of treatment and opportunity in the Nation's armed forces and the civil service and all areas under Federal jurisdiction. The Department of Justice has taken an important part in successfully arguing in the courts for the elimination of many illegal discriminations, including those involving rights to own and use real property, to engage in gainful occupations and to enroll in publicly supported higher educational institutions. We are determined that the Federal Government shall continue such policies.

National Party Platforms, Democratic Platform of 1952, p.487

At the same time, we favor Federal legislation effectively to secure these rights to everyone: (1) the right to equal opportunity for employment; (2) the right to security of persons; (3) the right to full and equal participation in the Nation's political life, free from arbitrary restraints. We also favor legislation to perfect existing Federal civil rights statutes and to strengthen the administrative machinery for the protection of civil rights.

Conclusion

National Party Platforms, Democratic Platform of 1952, p.487

Under the guidance, protection, and help of Almighty God we shall succeed in bringing to the people of this Nation a better and more rewarding life and to the peoples of the entire world, new hope and a lasting, honorable peace.

Republican Platform of 1952

Title: Republican Platform of 1952

Author: Republican Party

Date: 1952

Source: National Party Platforms, pp.496-505

Preamble

National Party Platforms, Republican Platform of 1952, p.496

We maintain that man was not born to be ruled, but that he consented to be governed; and that the reasons that moved him thereto are few and simple. He has voluntarily submitted to government because, only by the establishment of just laws, and the power to enforce those laws, can an orderly life be maintained, full and equal opportunity for all be established, and the blessings of liberty be perpetuated.

National Party Platforms, Republican Platform of 1952, p.496

We hold that government, and those entrusted with government, should set a high example of honesty, of justice, and unselfish devotion to the public good; that they should labor to maintain tranquillity at home and peace and friendship with all the nations of the earth.

National Party Platforms, Republican Platform of 1952, p.496

We assert that during the last twenty years, leaders of the Government of the United States under successive Democrat Administrations, and especially under this present Administration, have failed to perform these several basic duties; but, on the contrary, that they have evaded them, [p.497] flouted them, and by a long succession of vicious acts, so undermined the foundations of our Republic as to threaten its existence.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have arrogantly deprived our citizens of precious liberties by seizing powers never granted.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they work unceasingly to achieve their goal of national socialism.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have disrupted internal tranquillity by fostering class strife for venal political purposes.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have choked opportunity and hampered progress by unnecessary and crushing taxation.

National Party Platforms, Republican Platform of 1952, p.497

They claim prosperity but the appearance of economic health is created by war expenditures, waste and extravagance, planned emergencies, and war crises. They have debauched our money by cutting in half the purchasing power of our dollar.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have weakened local self-government which is the cornerstone of the freedom of men.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have shielded traitors to the Nation in high places, and that they have created enemies abroad where we should have friends.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have violated our liberties by turning loose upon the country a swarm of arrogant bureaucrats and their agents who meddle intolerably in the lives and occupations of our citizens.

National Party Platforms, Republican Platform of 1952, p.497

We charge that there has been corruption in high places, and that examples of dishonesty and dishonor have shamed the moral standards of the American people.

National Party Platforms, Republican Platform of 1952, p.497

We charge that they have plunged us into war in Korea without the consent of our citizens through their authorized representatives in the Congress, and have carried on that war without will to victory.

Foreign Policy

National Party Platforms, Republican Platform of 1952, p.497

The present Administration, in seven years, has squandered the unprecedented power and prestige which were ours at the close of World War II.

National Party Platforms, Republican Platform of 1952, p.497

In that time, more than 500 million non-Russian people of fifteen different countries have been absorbed into the power sphere of Communist Russia, which proceeds confidently with its plan for world conquest.

National Party Platforms, Republican Platform of 1952, p.497

We charge that the leaders of the Administration in power lost the peace so dearly earned by World War II.

National Party Platforms, Republican Platform of 1952, p.497

The moral incentives and hopes for a better world which sustained us through World War II were betrayed, and this has given Communist Russia a military and propaganda initiative which, if unstayed, will destroy us.

National Party Platforms, Republican Platform of 1952, p.497

They abandoned friendly nations such as Latvia, Lithuania, Estonia, Poland and Czechoslovakia to fend for themselves against the Communist aggression which soon swallowed them.

National Party Platforms, Republican Platform of 1952, p.497

They required the National Government of China to surrender Manchuria with its strategic ports and railroads to the control of Communist Russia. They urged that Communists be taken into the Chinese Government and its military forces. And finally they denied the military aid that had been authorized by Congress and which was crucially needed if China were to be saved. Thus they substituted on our Pacific flank a murderous enemy for an ally and friend.

National Party Platforms, Republican Platform of 1952, p.497

In all these respects they flouted our peace-assuring pledges such as the Atlantic Charter, and did so in favor of despots, who, it was well-known, consider that murder, terror, slavery, concentration camps and the ruthless and brutal denial of human rights are legitimate means to their desired ends.

National Party Platforms, Republican Platform of 1952, p.497

Tehran, Yalta and Potsdam were the scenes of those tragic blunders with others to follow. The leaders of the Administration in power acted without the knowledge or consent of Congress or of the American people. They traded our overwhelming victory for a new enemy and for new oppressions and new wars which were quick to come.

National Party Platforms, Republican Platform of 1952, p.497

In South Korea, they withdrew our occupation troops in the face of the aggressive, poised for action, Communist military strength on its northern border. They publicly announced that Korea was of no concern to us. Then when the Communist forces acted to take what seemed to have been invited, they committed this nation to fight back under the most unfavorable conditions. Already the tragic cost is over 110,000 American casualties.

National Party Platforms, Republican Platform of 1952, p.497

With foresight, the Korean War would never have happened.

National Party Platforms, Republican Platform of 1952, p.497

In going back into Korea, they evoked the patriotic and sacrificial support of the American people. But by their hampering orders they produced [p.498] stalemates and ignominious bartering with our enemies, and they offer no hope of victory.

National Party Platforms, Republican Platform of 1952, p.498

They have effectively ignored many vital areas in the face of a global threat requiring balanced handling.

National Party Platforms, Republican Platform of 1952, p.498

The people of the other American Republics are resentful of our neglect of their legitimate aspirations and cooperative friendship.

National Party Platforms, Republican Platform of 1952, p.498

The Middle East and much of Africa seethe with anti-American sentiment.

National Party Platforms, Republican Platform of 1952, p.498

The peoples of the Far East who are not under Communist control find it difficult to sustain their morale as they contrast Russia's "Asia First" policy with the "Asia Last" policy of those in control of the Administration now in power.

National Party Platforms, Republican Platform of 1952, p.498

Here at home they have exhibited corruption, incompetence, and disloyalty in public office to such an extent that the very concept of free representative government has been tarnished and has lost its idealistic appeal to those elsewhere who are confronted with the propaganda of Communism.

National Party Platforms, Republican Platform of 1952, p.498

They profess to be following a defensive policy of "containment" of Russian Communism which has not contained it.

National Party Platforms, Republican Platform of 1952, p.498

Those in control of the Party in power have, in reality, no foreign policy. They swing erratically from timid appeasement to reckless bluster.

National Party Platforms, Republican Platform of 1952, p.498

The good in our foreign policies has been accomplished with Republican cooperation, such as the organization of the United Nations, the establishment of the trusteeship principle for dependent peoples, the making of peace with Japan and Germany, and the building of more solid security in Europe. But in the main the Republican Party has been ignored and its participation has not been invited.

National Party Platforms, Republican Platform of 1952, p.498

The American people must now decide whether to continue in office the party which has presided over this disastrous reversal of our fortunes and the loss of our hopes for a peaceful world.

National Party Platforms, Republican Platform of 1952, p.498

The Republican Party offers, in contrast to the performances of those now running our foreign affairs, policies and actions based on enlightened self-interest and animated by courage, self-respect, steadfastness, vision, purpose, competence and spiritual faith.

National Party Platforms, Republican Platform of 1952, p.498

The supreme goal of our foreign policy will be an honorable and just peace. We dedicate ourselves to wage peace and to win it.

National Party Platforms, Republican Platform of 1952, p.498

We shall eliminate from the State Department and from every Federal office, all, wherever they may be found, who share responsibility for the needless predicaments and perils in which we find ourselves. We shall also sever from the public payroll the hordes of loafers, incompetents and unnecessary employees who clutter the administration of our foreign affairs. The confusions, overlappings, and extravagance of our agencies abroad hold us up to the ridicule of peoples whose friendship we seek.

National Party Platforms, Republican Platform of 1952, p.498

We shall substitute a compact and efficient organization where men of proven loyalty and ability shall have responsibility for reaching our objectives. They will reflect a dynamic initiative. Thus we can win the support and confidence which go only to those who demonstrate a capacity to define and get results.

National Party Platforms, Republican Platform of 1952, p.498

We shall have positive peace-building objectives wherever this will serve the enlightened self-interest of our Nation and help to frustrate the enemy's designs against us.

National Party Platforms, Republican Platform of 1952, p.498

In Western Europe we shall use our friendly influence, without meddling or imperialistic attitudes, for ending the political and economic divisions which alone prevent that vital area from being strong on its own right.

National Party Platforms, Republican Platform of 1952, p.498

We shall encourage and aid the development of collective security forces there, as elsewhere, so as to end the Soviet power to intimidate directly or by satellites, and so that the free governments will be sturdy to resist Communist inroads.

National Party Platforms, Republican Platform of 1952, p.498

In the balanced consideration of our problems, we shall end neglect of the Far East which Stalin has long identified as the road to victory over the West. We shall make it clear that we have no intention to sacrifice the East to gain time for the West.

National Party Platforms, Republican Platform of 1952, p.498

The Republican Party has consistently advocated a national home for the Jewish people since a Republican Congress declared its support of that objective thirty years ago.

National Party Platforms, Republican Platform of 1952, p.498

In providing a sanctuary for Jewish people rendered homeless by persecution, the State of Israel appeals to our deepest humanitarian instincts. We shall continue our friendly interest in this constructive and inspiring undertaking.

National Party Platforms, Republican Platform of 1952, p.498

We shall put our influence at the service of peace between Israel and the Arab States, and we shall cooperate to bring economic and social stability to that area.

National Party Platforms, Republican Platform of 1952, p.499

[p.499] Our ties with the sister Republics of the Americas will be strengthened.

National Party Platforms, Republican Platform of 1952, p.499

The Government of the United States, under Republican leadership, will repudiate all commitments contained in secret understandings such as those of Yalta which aid Communist enslavements. It will be made clear, on the highest authority of the President and the Congress, that United States policy, as one of its peaceful purposes, looks happily forward to the genuine independence of those captive peoples.

National Party Platforms, Republican Platform of 1952, p.499

We shall again make liberty into a beacon light of hope that will penetrate the dark places. That program will give the Voice of America a real function. It will mark the end of the negative, futile and immoral policy of "containment" which abandons countless human beings to a despotism and godless terrorism, which in turn enables the rulers to forge the captives into a weapon for our destruction.

National Party Platforms, Republican Platform of 1952, p.499

We shall support the United Nations and loyally help it to become what it was designed to be, a place where differences would be harmonized by honest discussion and a means for collective security under agreed concepts of justice. We shall seek real meaning and value for our regional security treaties, which implies that all parties shall contribute their loyal support and fair shares.

National Party Platforms, Republican Platform of 1952, p.499

We shall see to it that no treaty or agreement with other countries deprives our citizens of the rights guaranteed them by the Federal Constitution.

National Party Platforms, Republican Platform of 1952, p.499

We shall always measure our foreign commitments so that they can be borne without endangering the economic health or sound finances of the United States. Stalin said that "the moment for the decisive blow" would be when the free nations were isolated and were in a state of "practical bankruptcy." We shall not allow ourselves to be isolated and economically strangled, and we shall not let ourselves go bankrupt.

National Party Platforms, Republican Platform of 1952, p.499

Sums available by this test, if competently used, will be more effective than vastly larger sums incompetently spent for vague and endless purposes. We shall not try to buy good will. We shall earn it by sound, constructive, self-respecting policies and actions.

National Party Platforms, Republican Platform of 1952, p.499

We favor international exchange of students and of agricultural and industrial techniques, and programs for improvement of public health.

National Party Platforms, Republican Platform of 1952, p.499

We favor the expansion of mutually-advantageous world trade. To further this objective we shall press for the elimination of discriminatory practices against our exports, such as preferential tariffs, monetary license restrictions, and other arbitrary devices. Our reciprocal trade agreements will be entered into and maintained on a basis of true reciprocity, and to safeguard our domestic enterprises and the payrolls of our workers against unfair import competition.

National Party Platforms, Republican Platform of 1952, p.499

The policies we espouse will revive the contagious, liberating influences which are inherent in freedom. They will inevitably set up strains and stresses within the captive world which will make the rulers impotent to continue in their monstrous ways and mark the beginning of their end.

National Party Platforms, Republican Platform of 1952, p.499

Our nation will become again the dynanamic, moral and spiritual force which was the despair of despots and the hope of the oppressed. As we resume this historic role, we ourselves will come to enjoy again the reality of peace, security and solvency, not the shabby and fleeting counterfeit which is the gift of the Administration in power.

National Defense

National Party Platforms, Republican Platform of 1952, p.499

On the prudent assumption that Communist Russia may not accommodate our own disgracefully-lagging program for preparedness, we should develop with utmost speed a force-in-being, as distinguished from paper plans, of such power as to deter sudden attack or promptly and decisively defeat it. This defense against sudden attack requires the quickest possible development of appropriate and completely-adequate air power and the simultaneous readiness of coordinated air, land, and sea forces, with all necessary installations, bases, supplies and munitions, including atomic energy weapons in abundance.

National Party Platforms, Republican Platform of 1952, p.499

Generally, we shall see to it that our military services are adequately supported in all ways required, including manpower, to perform their appropriate tasks in relation to the defense of this country and to meet our treaty obligations.

National Party Platforms, Republican Platform of 1952, p.499

We shall coordinate our military policy with our foreign policy, always seeking universal limitation and control of armaments on a dependable basis.

National Party Platforms, Republican Platform of 1952, p.499

We shall review our entire preparedness program and we shall strip it clean of waste, lack of coordination, inertia, and conflict between the services. We shall see that our fighting men in Korea, or wherever they may be, shall not lack [p.500] the best of weapons or other supplies or services needed for their welfare.

Communism

National Party Platforms, Republican Platform of 1952, p.500

By the Administration's appeasement of Communism at home and abroad it has permitted Communists and their fellow travelers to serve in many key agencies and to infiltrate our American life. When such infiltrations became notorious through the revelations of Republicans in Congress, the Executive Department stubbornly refused to deal with it openly and vigorously. It raised the false cry of "red herring" and took other measures to block and discredit investigations. It denied files and information to Congress. It set up boards of its own to keep information secret and to deal lightly with security risks and persons of doubtful loyalty. It only undertook prosecution of the most notorious Communists after public opinion forced action.

National Party Platforms, Republican Platform of 1952, p.500

The result of these policies is the needless sacrifice of American lives, a crushing cost in dollars for defense, possession by Russia of the atomic bomb, the lowering of the Iron Curtain, and the present threats to world peace. Our people have been mired in fear and distrust and employees of integrity in the Government service have been cruelly maligned by the Administration's tolerance of people of doubtful loyalty.

National Party Platforms, Republican Platform of 1952, p.500

There are no Communists in the Republican Party. We have always recognized Communism to be a world conspiracy against freedom and religion. We never compromised with Communism and we have fought to expose it and to eliminate it in government and American life.

National Party Platforms, Republican Platform of 1952, p.500

A Republican President will appoint only persons of unquestioned loyalty. We will overhaul loyalty and security programs. In achieving these purposes a Republican President will cooperate with Congress. We pledge close coordination of our intelligence services for protecting our security. We pledge fair but vigorous enforcement of laws to safeguard our country from subversion and disloyalty. By such policies we will keep the country secure and restore the confidence of the American people in the integrity of our Government.

Small Business in a Free Economy

National Party Platforms, Republican Platform of 1952, p.500

For twenty years the Administration has praised free enterprise while actually wrecking it. Here a little, there a little, year by year, it has sought to curb, regulate, harass, restrain and punish. There is scarcely a phase of our economic and social life today in which Government does not attempt to interfere.

National Party Platforms, Republican Platform of 1952, p.500

Such hostility deadens initiative, discourages invention and experiment, and weakens the self-reliance indispensable to the Nation's vitality. Merciless taxation, the senseless use of controls and ceaseless effort to enter business on its own account, have led the present Government to unrestrained waste and extravagance in spending, irresponsibility in decision and corruption in administration.

National Party Platforms, Republican Platform of 1952, p.500

The anti-monopoly laws have been employed, not to preserve and foster competition, but to further the political ambitions of the men in power. Wage and price controls have been utilized, not to maintain economic stability, but to reward the friends and punish the enemies of leaders of the Party in power.

National Party Platforms, Republican Platform of 1952, p.500

Neither small nor large business can flourish in such an atmosphere. The Republican Party will end this hostility to initiative and enterprise.

National Party Platforms, Republican Platform of 1952, p.500

We will aid small business in every practicable way. We shall remove tax abuses and injurious price and wage controls. Efforts to plan and regulate every phase of small business activity will cease. We will maintain special committees in Congress whose chief function will be to study and review continuously the problems of small business and recommend legislation for their relief. We shall always be mindful of the importance of keeping open the channels of opportunity for young men and women.

National Party Platforms, Republican Platform of 1952, p.500

We will follow principles of equal enforcement of the anti-monopoly and unfair-competition statutes and will simplify their administration to assist the businessman who, in good faith, seeks to remain in compliance. At the same time, we shall relentlessly protect our free enterprise system against monopolistic and unfair trade practices.

National Party Platforms, Republican Platform of 1952, p.500

We will oppose Federal rent control except in those areas where the expansion of defense production has been accompanied by critical housing shortages. With local cooperation we shall aid slum clearance.

National Party Platforms, Republican Platform of 1952, p.500

Our goal is a balanced budget, a reduced national debt, an economical administration and a cut in taxes. We believe in combating inflation [p.501] by encouraging full production of goods and food, and not through a program of restrictions.

Taxation and Monetary Policy

National Party Platforms, Republican Platform of 1952, p.501

Only with a sound economy can we properly carry out both the domestic and foreign policies which we advocate. The wanton extravagance and inflationary policies of the Administration in power have cut the value of the dollar in half and imposed the most confiscatory taxes in our history. These policies have made the effective control of Government expenditures impossible. If this Administration is left in power, it will further cheapen the dollar, rob the wage earner, impoverish the farmer and reduce the true value of the savings, pensions, insurance and investments of millions of our people. Further inflation must be and can be prevented. Sound tax and monetary policies are essential to this end. We advocate the following tax policies:

National Party Platforms, Republican Platform of 1952, p.501

1. Reduction of expenditures by the elimination of waste and extravagance so that the budget will be balanced and a general tax reduction can be made.

National Party Platforms, Republican Platform of 1952, p.501

2. An immediate study directed toward reallocation of fields of taxation between the Federal, State, and municipal governments so as to allow greater fiscal freedom to the States and municipalities, thus minimizing double taxation and enabling the various divisions of government to meet their obligations more efficiently.

National Party Platforms, Republican Platform of 1952, p.501

3. A thorough revision and codification of the present hodge-podge of internal revenue laws.

National Party Platforms, Republican Platform of 1952, p.501

4. Administration of the tax laws free from politics, favoritism and corruption.

National Party Platforms, Republican Platform of 1952, p.501

We advocate the following monetary policies:

National Party Platforms, Republican Platform of 1952, p.501

1. A Federal Reserve System exercising its functions in the money and credit system without pressure for political purposes from the Treasury or the White House.

National Party Platforms, Republican Platform of 1952, p.501

2. To restore a domestic economy, and to use our influence for a world economy, of such stability as will permit the realization of our aim of a dollar on a fully-convertible gold basis.

Agriculture

National Party Platforms, Republican Platform of 1952, p.501

The good earth is the food storehouse for future generations. The tending of the soil is a sacred responsibility. Development of a sound farm program is a high national duty. Any program that will benefit farmers must serve the national welfare. A prosperous agriculture with free and independent farmers is fundamental to the national interest.

National Party Platforms, Republican Platform of 1952, p.501

We charge the present Administration with seeking to destroy the farmers' freedom. We denounce the Administration's use of tax money and a multitude of Federal agencies to put agriculture under partisan political dictation and to make the farmer dependent upon government. We condemn the Brannan plan which aims to control the farmer and to socialize agriculture. We brand as unscrupulous the Administration's manipulation of grain markets during the 1948 election campaign to drive down farm prices, and its deliberate misrepresentation of laws passed by the Republican 80th Congress, which authorized a long-range farm price support program and provided for adequate grain storage.

National Party Platforms, Republican Platform of 1952, p.501

We condemn as a fraud on both the farmer and the consumer the Brannan plan scheme to pay direct subsidies from the Federal Treasury in lieu of prices to producers.

National Party Platforms, Republican Platform of 1952, p.501

We favor a farm program aimed at full parity prices for all farm products in the market place. Our program includes commodity loans on non-perishable products, "on-the-farm" storage, sufficient farm credit, and voluntary self-supporting crop insurance. Where government action on perishable commodities is desirable, we recommend locally-controlled marketing agreements and other voluntary methods.

National Party Platforms, Republican Platform of 1952, p.501

Our program should include commodity loans on all non-perishable products supported at the level necessary to maintain a balanced production. We do not believe in restrictions on the American farmers' ability to produce.

National Party Platforms, Republican Platform of 1952, p.501

We favor a bi-partisan Federal Agricultural Commission with power to review the policies and administration of our farm programs and to make recommendations.

National Party Platforms, Republican Platform of 1952, p.501

We support a constructive and expanded soil conservation program administered through locally-controlled local districts, and which shall emphasize that payments shall be made for practices and improvements of a permanent nature.

National Party Platforms, Republican Platform of 1952, p.501

Flood control programs should include the application of sound land use, reforestation and water-management practices on each watershed. These, so far as feasible, should be decentralized [p.502] and locally-controlled to insure economy and effective soil conservation.

National Party Platforms, Republican Platform of 1952, p.502

We recommend expanded agricultural research and education to promote new crops and uses, new markets, both foreign and domestic, more trustworthy crop and market estimates, a realistic trade program for agriculture aimed at restoring foreign markets and developing new outlets at home. Promotion of world trade must be on a basis of fair competition.

National Party Platforms, Republican Platform of 1952, p.502

We support the principle of bona fide farmer-owned, farmer-operated co-operatives and urge the further development of rural electrification and communication, with federally-assisted production of power and facilities for distribution when these are not adequately available through private enterprise at fair rates.

National Party Platforms, Republican Platform of 1952, p.502

We insist that an adequate supply of manpower on the farm is necessary to our national welfare and security and shall do those things required to assure this result.

National Party Platforms, Republican Platform of 1952, p.502

The Republican Party will create conditions providing for farm prosperity and stability, safe-guarding the farmers' independence and opening opportunities for young people in rural communities. We will do those things necessary to simplify and make efficient the operation of the Department of Agriculture, prevent that Department from assuming powers neither intended nor delegated by Congress, and to place the administration of farm programs as closely as possible to State and local levels.

Labor

National Party Platforms, Republican Platform of 1952, p.502

The Republican Party believes that regular and adequate income for the employee together with uninterrupted production of goods and services, through the medium of private enterprise, are essential to a sound national economy. This can only be obtained in an era of industrial peace.

National Party Platforms, Republican Platform of 1952, p.502

With the above in mind, we favor the retention of the Taft-Hartley Act, which guarantees:

To the Working Man:

National Party Platforms, Republican Platform of 1952, p.502

The right to quit his job at any time.

National Party Platforms, Republican Platform of 1952, p.502

The right to take part in legal union activities.

National Party Platforms, Republican Platform of 1952, p.502

The right to remain in his union so long as he pays his dues.

National Party Platforms, Republican Platform of 1952, p.502

The right to protection against unfair practices by either employer or union officials.

National Party Platforms, Republican Platform of 1952, p.502

The right to political activity of his own choice and freedom to contribute thereto.

National Party Platforms, Republican Platform of 1952, p.502

The right to a job without first joining a union.

National Party Platforms, Republican Platform of 1952, p.502

The right to a secret ballot in any election concerned with his livelihood.

National Party Platforms, Republican Platform of 1952, p.502

The right to protection from personal financial responsibility in damage cases against his union.

To the Labor Unions:

National Party Platforms, Republican Platform of 1952, p.502

The right to establish "union shop" contracts by agreement with management.

National Party Platforms, Republican Platform of 1952, p.502

The right to strike.

National Party Platforms, Republican Platform of 1952, p.502

The right to free collective bargaining.

National Party Platforms, Republican Platform of 1952, p.502

The right to protection from rival unions during the life of union contracts.

National Party Platforms, Republican Platform of 1952, p.502

The right to assurance from employers that they will bargain only with certified unions as a protection against unfair labor practices.

National Party Platforms, Republican Platform of 1952, p.502

We urge the adoption of such amendments to the Taft-Hartley Act as time and experience show to be desirable, and which further protect the rights of labor, management and the public.

National Party Platforms, Republican Platform of 1952, p.502

We condemn the President's seizure of plants and industries to force the settlement of labor disputes by claims of inherent Constitutional powers.

Natural Resources

National Party Platforms, Republican Platform of 1952, p.502

We vigorously advocate a full and orderly program for the development and conservation of our natural resources.

National Party Platforms, Republican Platform of 1952, p.502

We deplore the policies of the present Administration which allow special premiums to foreign producers of minerals available in the United States. We favor reasonable depletion allowances, defense procurement policies, synthetic fuels research, and public land policies, including good-faith administration of our mining laws, which will encourage exploration and development of our mineral resources consistent with our growing industrial and defense needs.

National Party Platforms, Republican Platform of 1952, p.502

We favor stockpiling of strategic and critical raw materials and special premium incentives for their domestic exploration and development.

National Party Platforms, Republican Platform of 1952, p.502

We favor restoration to the States of their rights to all lands and resources beneath navigable inland and offshore waters within their historic boundaries.

National Party Platforms, Republican Platform of 1952, p.503

We favor protection of our fisheries by domestic [p.503] regulation and treaties, including safeguards against unfair foreign competition.

Public Works and Water Policy

National Party Platforms, Republican Platform of 1952, p.503

The Federal Government and State and local governments should continuously plan programs of economically justifiable public works.

National Party Platforms, Republican Platform of 1952, p.503

We favor continuous and comprehensive investigations of our water resources and orderly execution of programs approved by the Congress. Authorized water projects should go forward progressively with immediate priority for those with defense significance, those in critical flood and water-shortage areas, and those substantially completed.

National Party Platforms, Republican Platform of 1952, p.503

We favor greater local participation in the operation and control, and eventual local ownership, of federally-sponsored, reimbursable water projects.

National Party Platforms, Republican Platform of 1952, p.503

We vigorously oppose the efforts of this national Administration, in California and elsewhere, to undermine state control over water use, to acquire paramount water rights without just compensation, and to establish all-powerful federal socialistic valley authorities.

Public Lands

National Party Platforms, Republican Platform of 1952, p.503

We favor restoration of the traditional Republican public land policy, which provided opportunity for ownership by citizens to promote the highest land use. We favor an impartial study of tax-free Federal lands and their uses to determine their effects on the economic and fiscal structures of our States and local communities.

National Party Platforms, Republican Platform of 1952, p.503

In the management of public lands and forests we pledge the elimination of arbitrary bureaucratic practices. To this end we favor legislation to define the rights and privileges of grazers and other cooperators and users, to provide the protection of independent judicial review against administrative invasions of those rights and privileges, and to protect the public against corrupt or monopolistic exploitation and bureaucratic favoritism.

Veterans

National Party Platforms, Republican Platform of 1952, p.503

We believe that active duty in the Armed Forces of the United States of America during a state of war or National emergency constitutes a special service to our Nation, and entitles those who have so served to aid and compensation in return for this service.

National Party Platforms, Republican Platform of 1952, p.503

Consequently we propose:

National Party Platforms, Republican Platform of 1952, p.503

That the aid and compensation given to veterans of previous wars be extended to veterans of the Korean conflict;

National Party Platforms, Republican Platform of 1952, p.503

That compensation be fairly and adequately adjusted to meet changes in the cost of living;

National Party Platforms, Republican Platform of 1952, p.503

That aid be given to veterans, particularly disabled veterans, to obtain suitable employment, by providing training and education, and through strict compliance with veterans' preference laws in Federal service;

National Party Platforms, Republican Platform of 1952, p.503

That the Veterans' Administration be maintained as a single, independent agency in full charge of all veterans' affairs, and that the Veterans' Administration manage veterans' affairs in an efficient, prompt and uniform manner;

National Party Platforms, Republican Platform of 1952, p.503

That the Veterans' Administration should be equipped to provide and maintain medical and hospital care of the highest possible standard for all eligible veterans.

Social Security

National Party Platforms, Republican Platform of 1952, p.503

Inflation has already cut in half the purchasing power of the retirement and other benefits under the Federal Old Age and Survivors Insurance system. Sixty million persons are covered under the system and four and one-half million are now receiving benefits.

National Party Platforms, Republican Platform of 1952, p.503

The best assurance of preserving the benefits for which the worker has paid is to stop the inflation which causes the tragic loss of purchasing power, and that we propose to do.

National Party Platforms, Republican Platform of 1952, p.503

We favor amendment of the Old Age and Survivors Insurance system to provide coverage for those justly entitled to it but who are now excluded.

National Party Platforms, Republican Platform of 1952, p.503

We shall work to achieve a simple, more effective and more economical method of administration.

National Party Platforms, Republican Platform of 1952, p.503

We shall make a thorough study of universal pay-as-we-go pension plans.

Health

National Party Platforms, Republican Platform of 1952, p.503

We recognize that the health of our people as well as their proper medical care cannot be maintained if subject to Federal bureaucratic dictation. There should be a division of responsibility between [p.504] government, the physician, the voluntary hospital, and voluntary health insurance. We are opposed to Federal compulsory health insurance with its crushing cost, wasteful inefficiency, bureaucratic dead weight, and debased standards of medical care. We shall support those health activities by government which stimulate the development of adequate hospital services without Federal interference in local administration. We favor support of scientific research. We pledge our continuous encouragement of improved methods of assuring health protection.

Education

National Party Platforms, Republican Platform of 1952, p.504

The tradition of popular education, tax-supported and free to all, is strong with our people. The responsibility for sustaining this system of popular education has always rested upon the local communities and the States. We subscribe fully to this principle.

Civil Rights

National Party Platforms, Republican Platform of 1952, p.504

We condemn bigots who inject class, racial and religious prejudice into public and political matters. Bigotry is un-American and a danger to the Republic.

National Party Platforms, Republican Platform of 1952, p.504

We deplore the duplicity and insincerity of the Party in power in racial and religious matters. Although they have been in office as a Majority Party for many years, they have not kept nor do they intend to keep their promises.

National Party Platforms, Republican Platform of 1952, p.504

The Republican Party will not mislead, exploit or attempt to confuse minority groups for political purposes. All American citizens are entitled to full, impartial enforcement of Federal laws relating to their civil rights.

National Party Platforms, Republican Platform of 1952, p.504

We believe that it is the primary responsibility of each State to order and control its own domestic institutions, and this power, reserved to the states, is essential to the maintenance of our Federal Republic. However, we believe that the Federal Government should take supplemental action within its constitutional jurisdiction to oppose discrimination against race, religion or national origin.

National Party Platforms, Republican Platform of 1952, p.504

We will prove our good faith by:

National Party Platforms, Republican Platform of 1952, p.504

Appointing qualified persons, without distinction of race, religion or national origin, to responsible positions in the Government.

National Party Platforms, Republican Platform of 1952, p.504

Federal action toward the elimination of lynching.

National Party Platforms, Republican Platform of 1952, p.504

Federal action toward the elimination of poll taxes as a prerequisite to voting.

National Party Platforms, Republican Platform of 1952, p.504

Appropriate action to end segregation in the District of Columbia.

National Party Platforms, Republican Platform of 1952, p.504

Enacting Federal legislation to further just and equitable treatment in the area of discriminatory employment practices. Federal action should not duplicate state efforts to end such practices; should not set up another huge bureaucracy.

Censorship

National Party Platforms, Republican Platform of 1952, p.504

We pledge not to infringe by censorship or gag-order the right of a free people to know what their Government is doing.

Equal Rights

National Party Platforms, Republican Platform of 1952, p.504

We recommend to Congress the submission of a Constitutional Amendment providing equal rights for men and women.

National Party Platforms, Republican Platform of 1952, p.504

We favor legislation assuring equal pay for equal work regardless of sex.

Statehood

National Party Platforms, Republican Platform of 1952, p.504

We favor immediate statehood for Hawaii.

National Party Platforms, Republican Platform of 1952, p.504

We favor statehood for Alaska under an equitable enabling act.

National Party Platforms, Republican Platform of 1952, p.504

We favor eventual statehood for Puerto Rico.

District of Columbia

National Party Platforms, Republican Platform of 1952, p.504

We favor self-government and national suffrage for the residents of the Nation's Capital.

Indian Affairs

National Party Platforms, Republican Platform of 1952, p.504

All Indians are citizens of the United States and no longer should be denied full enjoyment of their rights of citizenship.

National Party Platforms, Republican Platform of 1952, p.504

We shall eliminate the existing shameful waste by the Bureau of Indian Affairs which has obstructed the accomplishment of our national responsibility for improving the condition of our Indian friends. We pledge to undertake programs to provide the Indians with equal opportunities for education, health protection and economic development.

National Party Platforms, Republican Platform of 1952, p.504

The next Republican Administration will welcome the advice and counsel of Indian leaders in selecting the Indian Commissioner.

Civil Service

National Party Platforms, Republican Platform of 1952, p.504

We condemn the flagrant violations of the Civil Service merit system by the Party in power.

National Party Platforms, Republican Platform of 1952, p.505

[p.505] We favor a personnel program for the Federal career service comparable to the best practices of progressive private employers. Federal employees shall be selected under a strengthened and extended merit system. Civil servants of ability and integrity shall receive proper recognition, with merit the sole test for promotion.

Delivery of Mail

National Party Platforms, Republican Platform of 1952, p.505

We pledge a more efficient and frequent mail delivery service.

Government Reorganization

National Party Platforms, Republican Platform of 1952, p.505

We pledge a thorough reorganization of the Federal Government in accordance with the principles set forth in the report of the Hoover Commission which was established by the Republican 80th Congress.

National Party Platforms, Republican Platform of 1952, p.505

We denounce the duplicity in submitting to Congress for approval, reorganization plans which were represented as being in accordance with the principles of the Hoover Commission recommendations, but which in fact were actually intended to further partisan political purposes of the Administration in power.

Corruption

National Party Platforms, Republican Platform of 1952, p.505

The present Administration's sordid record of corruption has shocked and sickened the American people. Its leaders have forfeited any right to public faith by the way they transact the Federal Government's business.

National Party Platforms, Republican Platform of 1952, p.505

Fraud, bribery, graft, favoritism and influence-peddling have come to light. Immorality and unethical behavior have been found to exist among some who were entrusted with high policy-making positions, and there have been disclosures of close alliances between the present Government and underworld characters.

National Party Platforms, Republican Platform of 1952, p.505

Republicans exposed eases of questionable and criminal conduct and relentlessly pressed for full investigations into the cancer-like spread of corruption in the Administration. These investigations uncovered a double standard in Federal tax law enforcement—lenient treatment to political favorites including even some gangsters and crooks, but harassment and threats of prosecution for many honest taxpayers over minor discrepancies.

National Party Platforms, Republican Platform of 1952, p.505

Besides tax fixes and scandals in the Internal Revenue Bureau, investigations have disclosed links between high officials and crime, favoritism and influence in the RFC, profiteering in grain, sale of postmasterships, tanker-ship deals in the Maritime Commission, ballot-box stuffing and thievery, and bribes and pay-offs in contract awards by officials in agencies exercising extraordinary powers and disbursing billions of dollars.

National Party Platforms, Republican Platform of 1952, p.505

Under public pressure, the Administration took reluctant steps to clean house. But it was so eager to cover up and block more revelations that its clean-up drive launched with much fanfare ended in a farce.

National Party Platforms, Republican Platform of 1952, p.505

The Republican Party pledges to put an end to corruption, to oust the crooks and grafters, to administer tax laws fairly and impartially, and to restore honest government to the people.

Republican 80th Congress

National Party Platforms, Republican Platform of 1952, p.505

The Republican Party does not rest its case upon promises alone. We have a record of performance which was grossly defamed by the Party in power. The Republican 80th Congress launched the program to stop Communism; unified the armed services; authorized a 70-group Air Force which the President blocked; enacted a national service law; balanced the budget; accumulated an eight-billion-dollar surplus; reduced taxes, with 70 per cent of the tax savings to those with incomes under $5,000; freed 7,400,000 wage earners in the lower brackets from having to pay any further income tax at all, allowed married couples to divide their incomes for tax purposes, and granted an additional $600 exemption to those over 65 years of age and to the blind; enacted the Taft-Hartley law for equitable labor-management relations; passed the first long-range agriculture program; increased social security benefits; and carried out every single pledge they made to the voters in the 1946 election.

Conclusion

National Party Platforms, Republican Platform of 1952, p.505

Upon this statement of truths and this pledge of performance, the Republican Party stands confident that it expresses the hopes of the citizens of America and certain that it points out with integrity a road upon which free men may march into a new day—a new and better day—in which shall be fulfilled the decent aspirations of our people for peace, for solvency and for the fulfillment of our best welfare, under the guidance of Divine Providence.

Youngstown Sheet & Tube Co. v. Sawyer, 1952

Title: Youngstown Sheet & Tube Co. v. Sawyer

Author: U.S. Supreme Court

Date: June 2, 1952

Source: 343 U.S. 579

This case was argued May 12-13, 1952, and was decided June 2, 1952, together with No. 745, Sawyer, Secretary of Commerce v. Youngstown Sheet & Tube Co. et al., also on certiorari to the same court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Syllabus

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579

To avert a nationwide strike of steel workers in April 1952, which he believed would jeopardize national defense, the President issued an Executive Order directing the Secretary of Commerce to seize and operate most of the steel mills. The Order was not based upon any specific statutory authority, but was based generally upon all powers vested in the President by the Constitution and laws of the United States and as President of the United States and Commander in Chief of the Armed Forces. The Secretary issued an order seizing the steel mills and directing their presidents to operate them as operating managers for the United States in accordance with his regulations and directions. The President promptly reported these events to Congress; but Congress took no action. It had provided other methods of dealing with such situations, and had refused to authorize governmental seizures of property to settle labor disputes. The steel companies sued the Secretary in a Federal District Court, praying for a declaratory judgment and injunctive relief. The District Court issued a preliminary injunction, which the Court of Appeals stayed.

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Held:

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1. Although this case has proceeded no further than the preliminary injunction stage, it is ripe for determination of the constitutional validity of the Executive Order on the record presented. Pp. 584-585.

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(a) Under prior decisions of this Court, there is doubt as to the right to recover in the Court of Claims on account of properties unlawfully taken by government officials for public use. P. 585.

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(b) Seizure and governmental operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement. P. 585. [343 U.S. 580]

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2. The Executive Order was not authorized by the Constitution or laws of the United States, and it cannot stand. Pp. 585-589.

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(a) There is no statute which expressly or impliedly authorizes the President to take possession of this property as he did here. Pp. 585-586.

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(b) In its consideration of the Taft-Hartley Act in 1947, Congress refused to authorize governmental seizures of property as a method of preventing work stoppages and settling labor disputes. P. 586.

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(c) Authority of the President to issue such an order in the circumstances of this case cannot be implied from the aggregate of his powers under Article II of the Constitution. Pp. 587-589.

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(d) The Order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. P. 587.

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(e) Nor can the Order be sustained because of the several provisions of Article II which grant executive power to the President. Pp. 587-589.

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(f) The power here sought to be exercised is the lawmaking power, which the Constitution vests in the Congress alone, in both good and bad times. Pp. 587-589.

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(g) Even if it be true that other Presidents have taken possession of private business enterprises without congressional authority in order to settle labor disputes, Congress has not thereby lost its exclusive constitutional authority to make the laws necessary and proper to carry out all powers vested by the Constitution "in the Government of the United States, or any Department or Officer thereof." Pp. 588-589.

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103 F.Supp. 569, affirmed.

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For concurring opinion of MR. JUSTICE FRANKFURTER, see post, p. 593.

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For concurring opinion of MR. JUSTICE DOUGLAS, see post, p. 629.

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For concurring opinion of MR. JUSTICE JACKSON, see post, p. 634.

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For concurring opinion of MR. JUSTICE BURTON, see post, p. 655.

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For opinion of MR. JUSTICE CLARK, concurring in the judgment of the Court, see post, p. 660.

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For dissenting opinion of MR. CHIEF JUSTICE VINSON, joined by MR. JUSTICE REED and MR. JUSTICE MINTON, see post, p. 667.

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The District Court issued a preliminary injunction restraining the Secretary of Commerce from carrying out the terms of Executive Order No. 10340, 16 Fed.Reg. [343 U.S. 581] 3503. 103 F.Supp. 569. The Court of Appeals issued a stay. 90 U.S.App.D.C. \_\_\_, 197 F.2d 582. This Court granted certiorari. 343 U.S. 937. The judgment of the District Court is affirmed, p. 589. [343 U.S. 582]

BLACK, J., lead opinion

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 582

MR. JUSTICE BLACK delivered the opinion of the Court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 582

We are asked to decide whether the President was acting within his constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills. The mill owners argue that the President's order amounts to lawmaking, a legislative function which the Constitution has expressly confided to the Congress, and not to the President. The Government's position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe which would inevitably result from a stoppage of steel production, and that, in meeting this grave emergency, the President was acting within the aggregate of his constitutional powers as the Nation's Chief Executive and the Commander in Chief of the Armed Forces of the United States. The issue emerges here from the following series of events:

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In the latter part of 1951, a dispute arose between the steel companies and their employees over terms and conditions that should be included in new collective bargaining agreements. Long-continued conferences failed to resolve the dispute. On December 18, 1951, the employees' representative, United Steelworkers of America, CIO, gave notice of an intention to strike when the existing bargaining agreements expired on December 31. The Federal Mediation and Conciliation Service then intervened in an effort to get labor and management to agree. This failing, the President on December 22, 1951, referred the dispute to the Federal Wage Stabilization [343 U.S. 583] Board 1 to investigate and make recommendations for fair and equitable terms of settlement. This Board's report resulted in no settlement. On April 4, 1952, the Union gave notice of a nationwide strike called to begin at 12:01 a.m. April 9. The indispensability of steel as a component of substantially all weapons and other war materials led the President to believe that the proposed work stoppage would immediately jeopardize our national defense and that governmental seizure of the steel mills was necessary in order to assure the continued availability of steel. Reciting these considerations for his action, the President, a few hours before the strike was to begin, issued Executive Order 10340, a copy of which is attached as an appendix, post, p. 589. The order directed the Secretary of Commerce to take possession of most of the steel mills and keep them running. The Secretary immediately issued his own possessory orders, calling upon the presidents of the various seized companies to serve as operating managers for the United States. They were directed to carry on their activities in accordance with regulations and directions of the Secretary. The next morning the President sent a message to Congress reporting his action. Cong.Rec. April 9, 1952, p. 3962. Twelve days later, he sent a second message. Cong.Rec. April 21, 1952, p. 4192. Congress has taken no action.

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Obeying the Secretary's orders under protest, the companies brought proceedings against him in the District Court. Their complaints charged that the seizure was not authorized by an act of Congress or by any constitutional provisions. The District Court was asked to declare the orders of the President and the Secretary invalid and to issue preliminary and permanent injunctions restraining their enforcement. Opposing the motion for preliminary [343 U.S. 584] injunction, the United States asserted that a strike disrupting steel production for even a brief period would so endanger the wellbeing and safety of the Nation that the President had "inherent power" to do what he had done—power "supported by the Constitution, by historical precedent, and by court decisions." The Government also contended that, in any event, no preliminary injunction should be issued, because the companies had made no showing that their available legal remedies were inadequate or that their injuries from seizure would be irreparable. Holding against the Government on all points, the District Court, on April 30, issued a preliminary injunction restraining the Secretary from "continuing the seizure and possession of the plants…and from acting under the purported authority of Executive Order No. 10340." 103 F.Supp. 569. On the same day, the Court of Appeals stayed the District Court's injunction. 90 U.S.App.D.C. \_\_\_, 197 F.2d 582. Deeming it best that the issues raised be promptly decided by this Court, we granted certiorari on May 3 and set the cause for argument on May 12. 343 U.S. 937.

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Two crucial issues have developed: First. Should final determination of the constitutional validity of the President's order be made in this case which has proceeded no further than the preliminary injunction stage? Second. If so, is the seizure order within the constitutional power of the President?

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I

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 584

It is urged that there were nonconstitutional grounds upon which the District Court could have denied the preliminary injunction, and thus have followed the customary judicial practice of declining to reach and decide constitutional questions until compelled to do so. On this basis, it is argued that equity's extraordinary injunctive relief should have been denied because (a) seizure of the companies' properties did not inflict irreparable damages, [343 U.S. 585] and (b) there were available legal remedies adequate to afford compensation for any possible damages which they might suffer. While separately argued by the Government, these two contentions are here closely related, if not identical. Arguments as to both rest in large part on the Government's claim that, should the seizure ultimately be held unlawful, the companies could recover full compensation in the Court of Claims for the unlawful taking. Prior cases in this Court have cast doubt on the right to recover in the Court of Claims on account of properties unlawfully taken by government officials for public use as these properties were alleged to have been. See e.g., Hooe v. United States, 218 U.S. 322, 335-336; United States v. North American Co., 253 U.S. 330, 333. But see Larson v. Domestic & Foreign Corp., 337 U.S. 682, 701-702. Moreover, seizure and governmental operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement. Viewing the case this way, and in the light of the facts presented, the District Court saw no reason for delaying decision of the constitutional validity of the orders. We agree with the District Court, and can see no reason why that question was not ripe for determination on the record presented. We shall therefore consider and determine that question now.

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II

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The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President [343 U.S. 586] to take both personal and real property under certain conditions. 2 However, the Government admits that these conditions were not met, and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (§ 201(b) of the Defense Production Act) as "much too cumbersome, involved, and time-consuming for the crisis which was at hand."

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Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency. 3 Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining. 4 Consequently, the plan Congress adopted in that Act did not provide for seizure under any circumstances. Instead, the plan sought to bring about settlements by use of the customary devices of mediation, conciliation, investigation by boards of inquiry, and public reports. In some instances, temporary injunctions were authorized to provide cooling-off periods. All this failing, unions were left free to strike after a secret vote by employees as to whether they wished to accept their employers' final settlement offer. 5 [343 U.S. 587]

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It is clear that, if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President…"; that "he shall take Care that the Laws be faithfully executed", and that he "shall be Commander in Chief of the Army and Navy of the United States."

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The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

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Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The [343 U.S. 588] first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States…. " After granting many powers to the Congress, Article I goes on to provide that Congress may

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make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution. The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control.

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It is said that other Presidents, without congressional authority, have taken possession of private business enterprises in order to settle labor disputes. But even if this be true, Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution [343 U.S. 589] "in the Government of the United States, or any Department or Officer thereof."

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The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power, and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

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The judgment of the District Court is

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Affirmed.

FRANKFURTER, J., statement

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MR. JUSTICE FRANKFURTER.

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Although the considerations relevant to the legal enforcement of the principle of separation of powers seem to me more complicated and flexible than may appear from what MR. JUSTICE BLACK has written, I join his opinion because I thoroughly agree with the application of the principle to the circumstances of this case. Even though such differences in attitude toward this principle may be merely differences in emphasis and nuance, they can hardly be reflected by a single opinion for the Court. Individual expression of views in reaching a common result is therefore important.

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APPENDIX TO OPINION OF THE COURT

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 589

EXECUTIVE ORDER

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 589

Directing the Secretary of Commerce to Take Possession of and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 589

Operate the Plants and Facilities of Certain Steel Companies

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WHEREAS, on December 16, 1950, I proclaimed the existence of a national emergency which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national [343 U.S. 590] security and to fulfill our responsibilities in the efforts being made throughout the United Nations and otherwise to bring about a lasting peace; and

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WHEREAS American fighting men and fighting men of other nations of the United Nations are now engaged in deadly combat with the forces of aggression in Korea, and forces of the United States are stationed elsewhere overseas for the purpose of participating in the defense of the Atlantic Community against aggression; and

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WHEREAS the weapons and other materials needed by our armed forces and by those joined with us in the defense of the free world are produced to a great extent in this country, and steel is an indispensable component of substantially all of such weapons and materials; and

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WHEREAS steel is likewise indispensable to the carrying out of programs of the Atomic Energy Commission of vital importance to our defense efforts; and

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WHEREAS a continuing and uninterrupted supply of steel is also indispensable to the maintenance of the economy of the United States, upon which our military strength depends; and

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WHEREAS a controversy has arisen between certain companies in the United States producing and fabricating steel and the elements thereof and certain of their workers represented by the United Steel Workers of America, CIO, regarding terms and conditions of employment; and

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WHEREAS the controversy has not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board, to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233, and a strike has been called for 12:01 A. M., April 9, 1952; and

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WHEREAS a work stoppage would immediately jeopardize and imperil our national defense and the defense [343 U.S. 591] of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field; and

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WHEREAS, in order to assure the continued availability of steel and steel products during the existing emergency, it is necessary that the United States take possession of and operate the plants, facilities, and other property of the said companies as hereinafter provided:

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NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

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1. The Secretary of Commerce is hereby authorized and directed to take possession of all or such of the plants, facilities, and other property of the companies named in the list attached hereto, or any part thereof, as he may deem necessary in the interests of national defense, and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation.

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2. In carrying out this order, the Secretary of Commerce may act through or with the aid of such public or private instrumentalities or persons as he may designate, and all Federal agencies shall cooperate with the Secretary of Commerce to the fullest extent possible in carrying out the purposes of this order.

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3. The Secretary of Commerce shall determine and prescribe terms and conditions of employment under which the plants, facilities, and other properties possession of which is taken pursuant to this order shall be operated. The Secretary of Commerce shall recognize the rights of workers to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, adjustment of grievances, or other mutual aid or protection, provided [343 U.S. 592] that such activities do not interfere with the operation of such plants, facilities, and other properties.

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4. Except so far as the Secretary of Commerce shall otherwise provide from time to time, the managements of the plants, facilities, and other properties possession of which is taken pursuant to this order shall continue their functions, including the collection and disbursement of funds in the usual and ordinary course of business in the names of their respective companies and by means of any instrumentalities used by such companies.

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5. Except so far as the Secretary of Commerce may otherwise direct, existing rights and obligations of such companies shall remain in full force and effect, and there may be made, in due course, payments of dividends on stock, and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations, and expenditures may be made for other ordinary corporate or business purposes.

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6. Whenever, in the judgment of the Secretary of Commerce, further possession and operation by him of any plant, facility, or other property is no longer necessary or expedient in the interest of national defense, and the Secretary has reason to believe that effective future operation is assured, he shall return the possession and operation of such plant, facility, or other property to the company in possession and control thereof at the time possession was taken under this order.

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7. The Secretary of Commerce is authorized to prescribe and issue such regulations and orders not inconsistent herewith as he may deem necessary or desirable for carrying out the purposes of this order, and he may delegate and authorize subdelegation of such of his functions under this order as he may deem desirable.

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Harry S Truman.

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The White House, April 8, 1952. [343 U.S. 593]

FRANKFURTER, J., concurring

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MR. JUSTICE FRANKFURTER, concurring.

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Before the cares of the White House were his own, President Harding is reported to have said that government, after all, is a very simple thing. He must have said that, if he said it, as a fleeting inhabitant of fairyland. The opposite is the truth. A constitutional democracy like ours is perhaps the most difficult of man's social arrangements to manage successfully. Our scheme of society is more dependent than any other form of government on knowledge and wisdom and self-discipline for the achievement of its aims. For our democracy implies the reign of reason on the most extensive scale. The Founders of this Nation were not imbued with the modern cynicism that the only thing that history teaches is that it teaches nothing. They acted on the conviction that the experience of man sheds a good deal of light on his nature. It sheds a good deal of light not merely on the need for effective power if a society is to be at once cohesive and civilized, but also on the need for limitations on the power of governors over the governed.

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To that end, they rested the structure of our central government on the system of checks and balances. For them, the doctrine of separation of powers was not mere theory; it was a felt necessity. Not so long ago, it was fashionable to find our system of checks and balances obstructive to effective government. It was easy to ridicule that system as outmoded—too easy. The experience through which the world has passed in our own day has made vivid the realization that the Framers of our Constitution were not inexperienced doctrinaires. These long-headed statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power. It is absurd to see a dictator in a representative product of the sturdy democratic traditions of the Mississippi Valley. [343 U.S. 594] The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

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The Framers, however, did not make the judiciary the overseer of our government. They were familiar with the revisory functions entrusted to judges in a few of the States, and refused to lodge such powers in this Court. Judicial power can be exercised only as to matters that were the traditional concern of the courts at Westminster, and only if they arise in ways that to the expert feel of lawyers constitute "Cases" or "Controversies." Even as to questions that were the staple of judicial business, it is not for the courts to pass upon them unless they are indispensably involved in a conventional litigation—and then only to the extent that they are so involved. Rigorous adherence to the narrow scope of the judicial function is especially demanded in controversies that arouse appeals to the Constitution. The attitude with which this Court must approach its duty when confronted with such issues is precisely the opposite of that normally manifested by the general public. So-called constitutional questions seem to exercise a mesmeric influence over the popular mind. This eagerness to settle—preferably forever—a specific problem on the basis of the broadest possible constitutional pronouncements may not unfairly be called one of our minor national traits. An English observer of our scene has acutely described it:

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At the first sound of a new argument over the United States Constitution and its interpretation, the hearts of Americans leap with a fearful joy. The blood stirs powerfully in their veins, and a new lustre brightens their eyes. Like King Harry's men before Harfleur, they stand like greyhounds in the slips, straining upon the start.

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The Economist, May 10, 1952, p. 370. [343 U.S. 595]

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The path of duty for this Court, it bears repetition, lies in the opposite direction. Due regard for the implications of the distribution of powers in our Constitution and for the nature of the judicial process as the ultimate authority in interpreting the Constitution, has not only confined the Court within the narrow domain of appropriate adjudication. It has also led to "a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision." Brandeis, J., in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, 346. A basic rule is the duty of the Court not to pass on a constitutional issue at all, however narrowly it may be confined, if the case may, as a matter of intellectual honesty, be decided without even considering delicate problems of power under the Constitution. It ought to be, but apparently is not, a matter of common understanding that clashes between different branches of the government should be avoided if a legal ground of less explosive potentialities is properly available. Constitutional adjudications are apt, by exposing differences, to exacerbate them.

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So here, our first inquiry must be not into the powers of the President, but into the powers of a District Judge to issue a temporary injunction in the circumstances of this case. Familiar as that remedy is, it remains an extraordinary remedy. To start with a consideration of the relation between the President's powers and those of Congress—a most delicate matter that has occupied the thoughts of statesmen and judges since the Nation was founded and will continue to occupy their thoughts as long as our democracy lasts—is to start at the wrong end. A plaintiff is not entitled to an injunction if money damages would fairly compensate him for any wrong he may have suffered. The same considerations by which the Steelworkers, in their brief amicus, demonstrate, from the seizure here in controversy, consequences [343 U.S. 596] that cannot be translated into dollars and cents, preclude a holding that only compensable damage for the plaintiffs is involved. Again, a court of equity ought not to issue an injunction, even though a plaintiff otherwise makes out a case for it, if the plaintiff's right to an injunction is overborne by a commanding public interest against it. One need not resort to a large epigrammatic generalization that the evils of industrial dislocation are to be preferred to allowing illegality to go unchecked. To deny inquiry into the President's power in a case like this, because of the damage to the public interest to be feared from upsetting its exercise by him, would, in effect, always preclude inquiry into challenged power, which presumably only avowed great public interest brings into action. And so, with the utmost unwillingness, with every desire to avoid judicial inquiry into the powers and duties of the other two branches of the government, I cannot escape consideration of the legality of Executive Order No. 10340.

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The pole-star for constitutional adjudications is John Marshall's greatest judicial utterance, that "it is a constitution we are expounding." McCulloch v. Maryland, 4 Wheat. 316, 407. That requires both a spacious view in applying an instrument of government "made for an undefined and expanding future," Hurtado v. California, 110 U.S. 516, 530, and as narrow a delimitation of the constitutional issues as the circumstances permit. Not the least characteristic of great statesmanship which the Framers manifested was the extent to which they did not attempt to bind the future. It is no less incumbent upon this Court to avoid putting fetters upon the future by needless pronouncements today.

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Marshall's admonition that "it is a constitution we are expounding" is especially relevant when the Court is required to give legal sanctions to an underlying principle of the Constitution—that of separation of powers. [343 U.S. 597] "The great ordinances of the Constitution do not establish and divide fields of black and white." Holmes, J., dissenting in Springer v. Philippine Islands, 277 U.S. 189, 209.

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The issue before us can be met, and therefore should be, without attempting to define the President's powers comprehensively. I shall not attempt to delineate what belongs to him by virtue of his office beyond the power even of Congress to contract; what authority belongs to him until Congress acts; what kind of problems may be dealt with either by the Congress or by the President, or by both, cf. La Abra Silver Mng. Co. v. United States, 175 U.S. 423; what power must be exercised by the Congress and cannot be delegated to the President. It is as unprofitable to lump together in an undiscriminating hotch-potch past presidential actions claimed to be derived from occupancy of the office as it is to conjure up hypothetical future cases. The judiciary may, as this case proves, have to intervene in determining where authority lies as between the democratic forces in our scheme of government. But, in doing so, we should be wary and humble. Such is the teaching of this Court's role in the history of the country.

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It is in this mood and with this perspective that the issue before the Court must be approached. We must therefore put to one side consideration of what powers the President would have had if there had been no legislation whatever bearing on the authority asserted by the seizure, or if the seizure had been only for a short, explicitly temporary period, to be terminated automatically unless Congressional approval were given. These and other questions, like or unlike, are not now here. I would exceed my authority were I to say anything about them.

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The question before the Court comes in this setting. Congress has frequently—at least 16 times since 1916—[343 U.S. 598] specifically provided for executive seizure of production, transportation, communications, or storage facilities. In every case, it has qualified this grant of power with limitations and safeguards. This body of enactments—summarized in tabular form in Appendix I, post. p.615—demonstrates that Congress deemed seizure so drastic a power as to require that it be carefully circumscribed whenever the President was vested with this extraordinary authority. The power to seize has uniformly been given only for a limited period or for a defined emergency, or has been repealed after a short period. Its exercise has been restricted to particular circumstances such as "time of war or when war is imminent," the needs of "public safety" or of "national security or defense," or "urgent and impending need." The period of governmental operation has been limited, as, for instance, to "sixty days after the restoration of productive efficiency." Seizure statutes usually make executive action dependent on detailed conditions: for example, (a) failure or refusal of the owner of a plant to meet governmental supply needs or (b) failure of voluntary negotiations with the owner for the use of a plant necessary for great public ends. Congress often has specified the particular executive agency which should seize or operate the plants or whose judgment would appropriately test the need for seizure. Congress also has not left to implication that just compensation be paid; it has usually legislated in detail regarding enforcement of this litigation-breeding general requirement. (See Appendix I, post, p. 615.)

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Congress, in 1947, was again called upon to consider whether governmental seizure should be used to avoid serious industrial shutdowns. Congress decided against conferring such power generally and in advance, without special Congressional enactment to meet each particular need. Under the urgency of telephone and coal strikes in [343 U.S. 599] the winter of 1946, Congress addressed itself to the problems raised by "national emergency" strikes and lockouts. 1 The termination of wartime seizure powers on December 31, 1946, brought these matters to the attention of Congress with vivid impact. A proposal that the President be given powers to seize plants to avert a shutdown where the "health or safety" of the Nation was endangered was thoroughly canvassed by Congress, and rejected. No room for doubt remains that the proponents as well as the opponents of the bill which became the Labor Management Relations Act of 1947 clearly understood that, as a result of that legislation, the only recourse for preventing a shutdown in any basic industry, after failure of mediation, was Congress. 2 Authorization for seizure as [343 U.S. 600] an available remedy for potential dangers was unequivocally put aside. The Senate Labor Committee, through its Chairman, explicitly reported to the Senate that a general grant of seizure powers had been considered and rejected in favor of reliance on ad hoc legislation, as a particular emergency might call for it. 3 An amendment presented in the House providing that, where necessary "to preserve and protect the public health and security," the President might seize any industry in which there is [343 U.S. 601] an impending curtailment of production, was voted down after debate, by a vote of more than three to one. 4

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 601

In adopting the provisions which it did, by the Labor Management Relations Act of 1947, for dealing with a "national emergency" arising out of a breakdown in peaceful industrial relations, Congress was very familiar with Governmental seizure as a protective measure. On a balance of considerations, Congress chose not to lodge this power in the President. It chose not to make available in advance a remedy to which both industry and labor were fiercely hostile. 5 In deciding that authority to seize should be given to the President only after full consideration of the particular situation should show such legislation to be necessary, Congress presumably acted on experience with similar industrial conflicts in the past. It evidently assumed that industrial shutdowns in basic industries are not instances of spontaneous generation, [343 U.S. 602] and that danger warnings are sufficiently plain before the event to give ample opportunity to start the legislative process into action.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 602

In any event, nothing can be plainer than that Congress made a conscious choice of policy in a field full of perplexity and peculiarly within legislative responsibility for choice. In formulating legislation for dealing with industrial conflicts, Congress could not more clearly and emphatically have withheld authority than it did in 1947. Perhaps as much so as is true of any piece of modern legislation, Congress acted with full consciousness of what it was doing, and in the light of much recent history. Previous seizure legislation had subjected the powers granted to the President to restrictions of varying degrees of stringency. Instead of giving him even limited powers, Congress, in 1947, deemed it wise to require the President, upon failure of attempts to reach a voluntary settlement, to report to Congress if he deemed the power of seizure a needed shot for his locker. The President could not ignore the specific limitations of prior seizure statutes. No more could he act in disregard of the limitation put upon seizure by the 1947 Act.

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It cannot be contended that the President would have had power to issue this order had Congress explicitly negated such authority in formal legislation. Congress has expressed its will to withhold this power from the President as though it had said so in so many words. The authoritatively expressed purpose of Congress to disallow such power to the President and to require him, when in his mind the occasion arose for such a seizure, to put the matter to Congress and ask for specific authority from it, could not be more decisive if it had been written into §§ 206-210 of the Labor Management Relations Act of 1947. Only the other day, we treated the Congressional gloss upon those sections as part of the Act. Bus Employees v. Wisconsin Board, 340 U.S. 383, 395-396. [343 U.S. 603] Grafting upon the words a purpose of Congress thus unequivocally expressed is the regular legislative mode for defining the scope of an Act of Congress. It would be not merely infelicitous draftsmanship, but almost offensive gaucherie, to write such a restriction upon the President's power, in terms, into a statute, rather than to have it authoritatively expounded, as it was, by controlling legislative history.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 603

By the Labor Management Relations Act of 1947, Congress said to the President, "You may not seize. Please report to us and ask for seizure power if you think it is needed in a specific situation." This, of course, calls for a report on the unsuccessful efforts to reach a voluntary settlement, as a basis for discharge by Congress of its responsibility—which it has unequivocally reserved—to fashion further remedies than it provided. 6 But it is now claimed that the President has seizure power by virtue of the Defense Production Act of 1950 and its Amendments. 7 And the claim is based on the occurrence of new events—Korea and the need for stabilization, etc.—although it was well known that seizure power was withheld by the Act of 1947, and although the President, whose specific requests for other authority were, in the main, granted by Congress, never suggested that, in view of the new events, he needed the power of seizure which Congress in its judgment had decided to withhold from him. The utmost that the Korean conflict may imply is that it may have been desirable to have given the President further authority, a freer hand in these matters. Absence of authority in the President to deal with a crisis does not [343 U.S. 604] imply want of power in the Government. Conversely, the fact that power exists in the Government does not vest it in the President. The need for new legislation does not enact it. Nor does it repeal or amend existing law.

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No authority that has since been given to the President can, by any fair process of statutory construction, be deemed to withdraw the restriction or change the will of Congress as expressed by a body of enactments, culminating in the Labor Management Relations Act of 1947. Title V of the Defense Production Act, entitled "Settlement of Labor Disputes," pronounced the will of Congress "that there be effective procedures for the settlement of labor disputes affecting national defense," and that "primary reliance" be placed

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upon the parties to any labor dispute to make every effort, through negotiation and collective bargaining and the full use of mediation and conciliation facilities, to effect a settlement in the national interest. 8

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 604

Section 502 authorized the President to hold voluntary conferences of labor, industry, and public and government representatives and to "take such action as may be agreed upon in any such conference and appropriate to carry out the provisions of this title," provided that no action was taken inconsistent with the Labor Management Relations Act of 1947. 9 This provision 10 was said by the Senate Committee [343 U.S. 605] on Banking and Currency to contemplate a board similar to the War Labor Board of World War II and "a national labor-management conference such as was held during World War II, when a "no strike, no lock-out" pledge was obtained." 11 Section 502 was believed necessary [343 U.S. 606] in addition to existing means for settling disputes voluntarily because the Federal Mediation and Conciliation Service could not enter a labor dispute unless requested by one party. 12 Similar explanations of Title V were given in the Conference Report and by Senator Ives, a member of the Senate Committee to whom Chairman Maybank during the debates on the Senate floor referred questions relating to Title V. 13 Senator Ives said:

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It should be remembered in this connection that, during the period of the present emergency, it is expected that the Congress will not adjourn, but, at most, will recess only for very limited periods of time. If, therefore, any serious work stoppage should arise or even be threatened, in spite of the terms of the Labor-Management Relations Act of 1947, the Congress would be readily available to pass such legislation as might be needed to meet the difficulty. 14 [343 U.S. 607]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 607

The Defense Production Act affords no ground for the suggestion that the 1947 denial to the President of seizure powers has been impliedly repealed, and its legislative history contradicts such a suggestion. Although the proponents of that Act recognized that the President would have a choice of alternative methods of seeking a mediated settlement, they also recognized that Congress alone retained the ultimate coercive power to meet the threat of "any serious work stoppage."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 607

That conclusion is not changed by what occurred after the passage of the 1950 Act. Seven and a half months later, on April 21, 1951, the President, by Executive Order 10233, gave the reconstituted Wage Stabilization Board authority to investigate labor disputes either (1) submitted voluntarily by the parties, or (2) referred to it by the President. 15 The Board can only make "recommendations to the parties as to fair and equitable terms of settlement," unless the parties agree to be bound by the Board's recommendations. About a month thereafter, Subcommittees of both the House and Senate Labor Committees began hearings on the newly assigned disputes functions of the Board. 16 Amendments to deny the [343 U.S. 608] Board these functions were voted down in the House, 17 and Congress extended the Defense Production Act without changing Title V in relevant part. 18 The legislative history of the Defense Production Act and its Amendments in 1951 cannot possibly be vouched for more than Congressional awareness and tacit approval that the President had charged the Wage Stabilization Board with authority to seek voluntary settlement of labor disputes. The most favorable interpretation of the statements in the committee reports can make them mean no more than "[w]e are glad to have all the machinery possible for the voluntary settlement of labor disputes." In considering the Defense Production Act Amendments, Congress was never asked to approve—and there is not the slightest indication that the responsible committees ever had in mind—seizure of plants to coerce settlement of disputes. [343 U.S. 609] We are not even confronted by an inconsistency between the authority conferred on the Wage Board, as formulated by the Executive Order, and the denial of Presidential seizure powers under the 1947 legislation. The Board has been given merely mediatory powers similar to those of agencies created by the Taft-Hartley Act and elsewhere, with no other sanctions for acceptance of its recommendations than are offered by its own moral authority and the pressure of public opinion. The Defense Production Act and the disputes-mediating agencies created subsequent to it still leave for solution elsewhere the question what action can be taken when attempts at voluntary settlement fail. To draw implied approval of seizure power from this history is to make something out of nothing.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 609

It is one thing to draw an intention of Congress from general language and to say that Congress would have explicitly written what is inferred, where Congress has not addressed itself to a specific situation. It is quite impossible, however, when Congress did specifically address itself to a problem, as Congress did to that of seizure, to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld. To find authority so explicitly withheld is not merely to disregard in a particular instance the clear will of Congress. It is to disrespect the whole legislative process and the constitutional division of authority between President and Congress.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 609

The legislative history here canvassed is relevant to yet another of the issues before us, namely, the Government's argument that overriding public interest prevents the issuance of the injunction despite the illegality of the seizure. I cannot accept that contention. "Balancing the equities" when considering whether an injunction should issue, is lawyers' jargon for choosing between conflicting public interests. When Congress itself has struck [343 U.S. 610] the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 610

Apart from his vast share of responsibility for the conduct of our foreign relations, the embracing function of the President is that "he shall take Care that the Laws be faithfully executed…. " Art. II, § 3. The nature of that authority has, for me, been comprehensively indicated by Mr. Justice Holmes.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 610

The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 610

Myers v. United States, 272 U.S. 52, 177. The powers of the President are not as particularized as are those of Congress. But unenumerated powers do not mean undefined powers. The separation of powers built into our Constitution gives essential content to undefined provisions in the frame of our government.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 610

To be sure, the content of the three authorities of government is not to be derived from an abstract analysis. The areas are partly interacting, not wholly disjointed. The Constitution is a framework for government. Therefore, the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them. It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them. In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part [343 U.S. 611] of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by § 1 of Art. II.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 611

Such was the case of United States v. Midwest Oil Co., 236 U.S. 459. The contrast between the circumstances of that case and this one helps to draw a clear line between authority not explicitly conferred yet authorized to be exercised by the President and the denial of such authority. In both instances, it was the concern of Congress under express constitutional grant to make rules and regulations for the problems with which the President dealt. In the one case, he was dealing with the protection of property belonging to the United States; in the other, with the enforcement of the Commerce Clause and with raising and supporting armies and maintaining the Navy. In the Midwest Oil case, lands which Congress had opened for entry were, over a period of 80 years and in 252 instances, and by Presidents learned and unlearned in the law, temporarily withdrawn from entry so as to enable Congress to deal with such withdrawals. No remotely comparable practice can be vouched for executive seizure of property at a time when this country was not at war, in the only constitutional way in which it can be at war. It would pursue the irrelevant to reopen the controversy over the constitutionality of some acts of Lincoln during the Civil War. See J. G. Randall, Constitutional Problems under Lincoln (Revised ed.1951). Suffice it to say that he seized railroads in territory where armed hostilities had already interrupted the movement of troops to the beleaguered Capital, and his order was ratified by the Congress.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 611

The only other instances of seizures are those during the periods of the first and second World Wars. 19 In his eleven seizures of industrial facilities, President Wilson [343 U.S. 612] acted, or at least purported to act, 20 under authority granted by Congress. Thus, his seizures cannot be adduced as interpretations by a President of his own powers in the absence of statute.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 612

Down to the World War II period, then, the record is barren of instances comparable to the one before us. Of twelve seizures by President Roosevelt prior to the enactment of the War Labor Disputes Act in June, 1943, three were sanctioned by existing law, and six others [343 U.S. 613] were effected after Congress, on December 8, 1941, had declared the existence of a state of war. In this case, reliance on the powers that flow from declared war has been commendably disclaimed by the Solicitor General. Thus, the list of executive assertions of the power of seizure in circumstances comparable to the present reduces to three in the six-month period from June to December of 1941. We need not split hairs in comparing those actions to the one before us, though much might be said by way of differentiation. Without passing on their validity, as we are not called upon to do, it suffices to say that these three isolated instances do not add up, either in number, scope, duration or contemporaneous legal justification, to the kind of executive construction of the Constitution revealed in the Midwest Oil case. Nor do they come to us sanctioned by long-continued acquiescence of Congress giving decisive weight to a construction by the Executive of its powers.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 613

A scheme of government like ours no doubt at times feels the lack of power to act with complete, all-embracing, swiftly moving authority. No doubt a government with distributed authority, subject to be challenged in the courts of law, at least long enough to consider and adjudicate the challenge, labors under restrictions from which other governments are free. It has not been our tradition to envy such governments. In any event, our government was designed to have such restrictions. The price was deemed not too high in view of the safeguards which these restrictions afford. I know no more impressive words on this subject than those of Mr. Justice Brandeis:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 613

The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, [343 U.S. 614] by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 614

Myers v. United States, 272 U.S. 52, 240, 293.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 614

It is not a pleasant judicial duty to find that the President has exceeded his powers, and still less so when his purposes were dictated by concern for the Nation's wellbeing, in the assured conviction that he acted to avert danger. But it would stultify one's faith in our people to entertain even a momentary fear that the patriotism and the wisdom of the President and the Congress, as well as the long view of the immediate parties in interest, will not find ready accommodation for differences on matters which, however close to their concern and however intrinsically important, are overshadowed by the awesome issues which confront the world. When, at a moment of utmost anxiety, President Washington turned to this Court for advice, and he had to be denied it as beyond the Court's competence to give, Chief Justice Jay, on behalf of the Court, wrote thus to the Father of his Country:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 614

We exceedingly regret every event that may cause embarrassment to your administration, but we derive consolation from the reflection that your judgment will discern what is right, and that your usual prudence, decision, and firmness will surmount every obstacle to the preservation of the rights, peace, and dignity of the United States.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 614

Letter of August 8, 1793, 3 Johnston, Correspondence and Public Papers of John Jay (1891), 489.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 614

In reaching the conclusion that conscience compels, I too derive consolation from the reflection that the President and the Congress, between them, will continue to safeguard the heritage which comes to them straight from George Washington. [343 U.S. 620]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 620

[pp. 615 et seq.—Appendix I (table)]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 620

[343 U.S. 615]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

APPENDIX I

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

SYNOPTIC ANALYSIS OF LEGISLATION

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

AUTHORIZING SEIZURE OF INDUSTRIAL PROPERTY

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

TERMS AND CONDITIONS OF

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

LIMITATIONS ON ITS EMPLOYMENT DURING

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

STATUTE DURATION SCOPE OF AUTHORITY EXERCISE SEIZURE COMPENSATION

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

As extended or

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

As enacted repealed

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1. Railroad and Telegraph Not "in force any President may "take possession a. "When in his [the President's] None. President shall appoint three

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of 1862, 12 Stat. 334. longer than is of" telegraph lines and rail- judgment the public safety commissioners to assess com-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

necessary for the roads; prescribe rules for their may require it." pensation to which the com-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 1/31/62; suppression of operation; and place all officers b. President may not "engage pany is entitled and to report

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

amended, 12 Stat. 625, this rebellion." and employees under military in any work of railroad con- to Congress for its action.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

7/14/62. control. struction."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

2. § 120 of National No time limit. President, through the head of a. Exercisable "in time of war None. Compensation "shall be fair and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Defense Act of 1916, 39 any department, may seize or when war is imminent." just."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 166, 213, 50 U.S.C. any plant and may operate b. Plant is equipped for making

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 80, as amended. plants through the Army Ord- "necessary supplies or equip-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

nance Department. ment for the Army" or "in

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/3/16. the opinion of the Secretary

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of War" can be transformed

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

readily to such use.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

c. Owner refuses to give govern-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ment order precedence or to

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

perform.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

3. Army Appropriations No time limit. President, through Secretary of Exercisable "in time of war."\* None. Compensation "shall be fair

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of 1916, 39 Stat. 619, War, may take possession of and just."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

645, 10 U.S.C. § 1361. and utilize any system or part

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of any system of transporta-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 8/29/16. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

4. Naval Emergency Fund No time limit. President may Exercisable "in time of war" (or None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of 1917, 39 Stat. 1. "take over for use or opera- of national emergency deter-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1168, 1192-1195, 50 tion" any factory "whether mined by the President before

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

U.S.C. § 82. [or not] the United States 3/1/18).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

has…agreement with President shall determine "just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 3/4/17. Cf. the owner or occupier." compensation"; if the claimant

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Emergency Shipping is dissatisfied, he shall be paid

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Fund Act of 1917, infra.) 2. "take immediate possession a. Owner fails or refuses to give None. 50 percent of the amount de-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of any factory" producing precedence to an order for termined by the President and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ships or war material for "ships or war material as the may sue, subject to existing

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the Navy. necessities of the Govern- law, in the district courts and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ment"; refuses to deliver or to the Court of Claims for the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

comply with a contract as rest of "just compensation."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

modified by President.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. Exercisable within "the limits

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of the amounts appropriated

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

therefor."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

5. Emergency Shipping To 6 months after Repealed after 3 President may Exercisable "within the limits None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Fund Act of 1917, 40 peace with the years, § 2(a) 1. "take over for use or opera- of the amounts herein author- Same as next above, except that

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 182. German Empire, (1), 41 Stat. tion" any plant, "whether ized." the prepaid percentage when

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

40 Stat. 182, 183. 988, 6/5/20. [or not] United States has the owner is dissatisfied is

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/15/17. …agreement with the 75 percent.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

owner or occupier."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

2. "take immediate possession Failure or refusal of owner of None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of any…plant" "equipped ship-building plant to give

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

for the building or produc- Government orders preced-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

tion of ships or material." ence or to comply with order.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

6. 1918 Amendments to To 6 months after Repealed after 2 President may a. The street railroad is neces- None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Emergency Shipping peace with the years, 41 Stat. 1. "take possession of… sary for transporting em-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Fund Act of 1917. German Empire. 988, 6/5/20. any street railroad." ployees of plants which are

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or may be hereafter engaged

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

A. 40 Stat. 535. in "construction of ships or

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

equipment therefor for the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 4/22/18. United States.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. Exercisable "within the limits Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of the amounts herein author-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ized."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

B. 40 Stat. 1020, 1022 To 6 months after Repealed after 2. extend seized plants con- Exercisable "within the limits of None

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

peace with the 1 1/2 years, 41 structing ships or materials the amounts herein author-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

German Empire. Stat. 988, 6/5/ therefor and requisition land ized."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

20. for use in extensions.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

7. Food and Fuel Act of To end of World President may The requisitioning is "necessary None. President "shall ascertain and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1917, 40 Stat. 276. War I with Ger- 1. requisition foods, fuels, to the support of the Army or pay a just compensation"; if

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

many. feeds, etc., and storage the…Navy, or any other the owner is dissatisfied, he

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 8/10/17. facilities for them. public use connected with the shall be paid 75 percent of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

common defense." amount determined by the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 10, 40 Stat. 276, 279. President and may sue in the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

district courts, which are here-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

by given jurisdiction, for the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

rest of "just compensation."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 12, 40 Stat. 276, 279. 2. take over any factory, a. President finds "it necessary President may make regulations

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

packing house, oil pipe line, to secure an adequate supply for "the employment, control,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

mine, or other plant where of necessaries for…the and compensation of em-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

any necessaries are or may Army or…the Navy, or ployees."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

be "produced, prepared, or for any other public use con-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

mined, and to operate the nected with the common Same as in the Emergency Ship-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

same." defense." ping Fund Act of 1917, supra.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. President must turn facility

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

back as soon as further Gov-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ernment operation "is not

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

essential for the national

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

security or defense."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 25, 40 Stat. 276. 284 To end of World 3. "requisition and take over Producer or dealer President may "prescribe…Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

War I with Ger- the plant, business, and all a. Fails to conform to prices regulations…for the em-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

many. appurtenances thereof be- or regulations set by the ployment, control, and com-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

longing to such producer Federal Trade Commission pensation of the employees."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or dealer" of coal and coke, under the direction of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

and may operate it through President, who deems it

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

an agency of his choice. "necessary for the efficient

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

prosecution of the war,"

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. Fails to operate efficiently,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or conducts business in a

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

way "prejudicial to the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

public interest."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

8. Joint Resolution of July "during the con- Terminated on President may "take possession President deems "it necessary None. Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

16, 1918, 40 Stat. 904 tinuance of the 7/31/10 by re- …of [and operate] any for the national security or

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

present war." peal, 7/11/19, telegraph, telephone, marine defense."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

41 Stat. 157. cable or radio system."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9. § 16 of Federal Water No time limit. President may take possession a. President believes, as "evi- None. Owner shall be paid "just and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Power Act of 1920, 41 of any project, dams, power denced by a written order fair compensation for the use

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 1063, 1072, 16 houses, transmission lines, addressed to the holder of any of said property as may be fixed

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

U.S.C. § 809. etc., constructed or operated license hereunder [that] the by the [Federal Power] commis-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

under a license from the Fed- safety of the United States sion upon the basis of a reason-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/10/20. eral Power Commission and demands it." able profit in time of peace, and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

may operate them. b. Seizure is "for the purpose the cost of restoring said

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of manufacturing nitrates, property to as good condition

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

explosives, or munitions of as existed at the time of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

war, or for any other purpose taking over thereof, less the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

involving the safety of the reasonable value of any im-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

United States." provements…made thereto

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

c. Control is limited to the "length by the United States and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of time as may appear to the which are valuable and service-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

President to be necessary to able to the [owner]."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

accomplish said purposes."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10. § 606 of Communica- No time limit. President may "use or control a. President proclaims that there None. President shall ascertain just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

tions Act of 1934, 48 Stat. …any such station and/or exists compensation and certify it to

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1064, 1104, 47 U.S.C. its apparatus and equipment (1) war or threat of war or Congress for appropriation; if

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 606(c). by any department of the (2) a state of public peril, or the owner is dissatisfied, he shall

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Government under such regu- disaster or other national be paid 75 percent of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/19/34. lations as he may prescribe." emergency, amount determined by the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or President and may sue, sub-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. It is necessary to preserve ject to existing law, in the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the neutrality of the United district courts and the Court of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

States. Claims for the rest of "just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

compensation."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

11. Amendments to Com- No time limit. Same power as in § 606(c), Com- a. President proclaims a state or None. Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

munications Act, 56 Stat. munications Act of 1934, next threat of war.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

18, 47 U.S.C. § 606(d). above. b. President "deems it neces-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

sary in the interest of the na-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 1/26/42. tional security and defense."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

c. Power to seize and use prop-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

erty continues to "not later

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

than six months after the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

termination of such state or

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

threat of war" or than a date

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

set by concurrent resolution

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of Congress.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

12. § 8(b) of National De- No time limit. Repealed in less Secretary of Navy, under Presi- a. Secretary of Navy deems any Secretary of Navy may operate Secretary of Navy may "fix the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

fense Act of 1940, 54 than 3 months, dent's direction, may "take existing plant necessary for the plant "either by Govern- compensation."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 676, 680. 9/16/40, 54 over and operate such plant the national defense. ment personnel or by contract

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 885, 893 or facility." b. He is unable to reach agree- with private firms."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ment with its owner for its

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

use or operation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

13. §9 of Selective Training To 5/15/45, 54 Extended to President may "take immedi- a. Plant is equipped for or None. "The compensation…shall be

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

and Service Act of 1940, Stat. 885, 897. 3/31/47, 60 ate possession of any such capable of being readily trans- fair and just."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

54 Stat. 885, 892, 50 Stat. 341, 342. plant." (Extended by formed for the manufacture of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

U.S.C.App. (1946 ed.) amendment to "any plant, necessary supplies.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 309. mine, or facility" capable of b. Owner refuses to give Govern-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

producing "any articles or ment order precedence or to

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 9/16/40; amend- materials which may be re- fill it.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ed by War Labor Dis- quired…or which may be

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act, 57 Stat. 163, useful" for the war effort.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

164, q.v., infra. 57 Stat. 163, 164.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

14. § 3 of War Labor Dis- To termination of President may "take immedi- a. Finding and proclamation Same "terms and conditions of Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act of 1943, 57 this Act by con- ate possession" of "any plant, by the President that employment which were in

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 163, 164, 50 U.S.C. current resolu- mine, or facility equipped for (1) there is an interruption effect at the time [of taking]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

App. (1946 ed.) § 1503. tion by Congress the manufacture, production, on account of a labor dis- possession," except that terms

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or of hostilities. or mining of any articles or turbance, and conditions might be

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/25/43. Plants seized pre- materials which may be re- (2) the war effort will be un- changed by order of the War

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

viously may be quired…or which may be duly impeded, Labor Board, on application.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

operated until 6 useful" for the war effort. (3) seizure is necessary to in- §§ 4, 5, 57 Stat. 163, 165.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

months after sure operation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

termination of b. Plant must be returned to

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

hostilities. owner within 60 days "after

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the restoration of the produc-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

tive efficiency."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

15. Title VIII, Repricing To termination of President may "take immediate a. The Secretary of a Depart- None. Same as next above.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of War Contracts," of hostilities. possession of the plant of ment deems the price of an

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Revenue Act of 1943, 58 plants…and…operate article or service required di-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Stat. 21, 92, 50 U.S.C. them in accordance with sec- rectly or indirectly by the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

App. (1946 ed.) § 1192. tion 9 of the Selective Train- Department is unreasonable.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ing and Service Act of 1940, b. The Secretary, after the re-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 2/25/44, as amended. fusal of the person furnishing

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the article or service to agree

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

to a price, sets a price.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

c. The person "wilfully refuses,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

or wilfully fails" to furnish

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the articles or services at the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

price fixed by the Secretary.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

16. Selective Service Act of No time limit. President may "take immediate a. President with advice of the None. "Fair and just compensation

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1948, 62 Stat. 604, 625 possession of any plant, mine, National Security Resources shall be paid."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

626, 50 U.S.C.App. or other facility…and to Board determines prompt de-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 468. operate it…and to livery of articles or materials

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

tion of such articles or mate- is "in the interest of the na-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 6/24/48. rials." tional security."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

b. Procurement "has been au-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

thorized by the Congress exclu-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

sively for the use of the armed

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

forces. or the A.E.C.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

c. Owner refuses or fails to give

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

precedence to Government

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

order placed with notice that

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

it is made pursuant to this

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

section, or to fill the order

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

properly.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

17. § 201(a) of Defense To 6/30/51. But Extended to President may "requisition" President determines that None. President shall determine just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Production Act, 64 Stat. see § 716(a), 64 7/31/51, 65 "equipment, supplies or com- a. its use is "needed for na- compensation as of the time

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

798, 799, 50 U.S.C.App. Stat. 798, 822. Stat. 110, ponent parts thereof, or mate- tional defense," the property is taken; if owner

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 2081(a). Extended to rials or facilities necessary for b. the need is "immediate and is dissatisfied, he shall be

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

6/30/52, § 111, the manufacture, servicing, impending," "will not ad- promptly paid 75 percent of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 9/8/50; 65 Stat. 131, or operation of such equip- mit of delay or resort to the amount determined by the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

amendment, 65 Stat. 131, 144. ment, supplies, or component any other source of supply," President and may sue within

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

132, q.v., infra. parts." 64 Stat. 798, 799. c. other reasonable means of three years in the district

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Restricted in the main to obtaining use of the prop- courts or the Court of Claims,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

personal property by § 102(b), erty have been exhausted regardless of the amount in-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

65 Stat. 132 volved, for the rest of "just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

compensation."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

18. § 102(b)(2) of Defense To 6/30/52, 65 Court condemnation of real President deems the real prop- None. Under existing statutes for con-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Production Act Amend- Stat. 131, 144. property in accordance with erty "necessary in the interest demnation. Immediate pos-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ments of 1951, 65 Stat. existing statutes. of national defense." session given only upon deposit

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

131, 132, 50 U.S.C.App. of amount "estimated to be just

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 2081(b). compensation," 75 percent of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

which is immediately paid

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Enacted 7/31/51. without prejudice to the owner.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

APPENDIX II

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

SUMMARY OF SEIZURES OF INDUSTRIAL PLANTS

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

AND FACILITIES BY THE PRESIDENT

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Civil War Period

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

DURATION OF

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

PLANT OR FACILITY SEIZED SEIZURE ORDER EFFECTING SEIZURE AUTHORITY CITED REASON FOR SEIZURE OPERATIONS DURING SEIZURE

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

From To

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads and telegraph lines 4/27/61 (?) Order of Secretary of War dated 4/27/61 None. Communications between Washington and Northern troops guarded railway and tele-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

between Washington and appointing Thomas A. Scott officer in the North were interrupted by bands of graph facilities; they were repaired and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Annapolis, Md.{1} charge. War of the Rebellion, Official southern sympathizers who destroyed restored to operation under orders of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Records of the Union and Confederate railway and telegraph facilities. Secretary of War.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Armies, Ser. I, Vol. II, 603.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Telegraph lines. 2/26/62 (?) Order of Secretary of War dated 2/25/62 "by virtue of the act of Congress" (presum- To insure effective transmission and secur- Lines operated under military supervision;

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

appointing Anson Stager officer in charge. ably Railroad and Telegraph Act of 1862, ity of military communications. censorship of messages; lines extended and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Richardson, Messages and Papers of the 12 Stat. 334). completed subject to limitations of Joint

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Resolution of July 14, 1862, 12 Stat. 625.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 5/25/62 8/8/65 Order of Secretary of War dated 5/25/62. "by virtue of the authority vested by act of To insure effective priority to movement of Railways operated under military supervi-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Richardson, Messages and Papers of the Congress" (presumably Railroad and troops and supplies. sion; lines extended and completed subject

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Presidents, Lincoln, Order of May 25, Telegraph Act of 1862, 12 Stat. 334). to limitations of Joint Resolution of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1862. July 14, 1862, 12 Stat. 625; interruption of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

regular passenger and freight traffic.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

World War I Period{2}

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bigelow-Hartford Carpet Co., 12/27/17 12/31/19 Order of Secretary of War, Req. 20A/C, Constitution and laws.{3} Requisitioned for use of United States Car-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Lowell, Mass. Ord. No. 62, dated 12/27/17. tridge Co. for cartridge manufacture.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 12/28/17 3/1/20 Presidential proclamation, 40 Stat. 1733 Joint Resolution of April 6, 1917. Labor difficulties; congestion; ineffective Wage increase; changes in operating prac-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Joint Resolution of Dec. 7, 1917. operation in terms of war effort. tices and procedures.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

"all other powers thereto me enabling."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Liberty Ordnance Co., Bridge- 1/7/18 5/20/19 Order of Secretary of War, Req. 26 A/C, Constitution and laws.{3} Inadequate financing and other difficulties Turned over to American Can Co. for oper-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

port, Conn. Ord. No. 27, dated 1/5/18. leading to failure to perform contract for ation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

manufacture of 75 mm. guns.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Hoboken Land & Improvement 2/28/18 4/1/19 Order of Secretary of War, Req. 37 A/C, Constitution and laws.{3} Requisitioned for use of Remington Arms-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Co., Hoboken, N.J. Ord. No. 516, dated 2/28/18. U.M.C. Co. for cartridge manufacture.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bijur Motor Appliance Co., 4/1/18 5/1/19 Order of Secretary of War, Req. 37 A/C, Constitution and laws.{3} Requisitioned for use of Remington Arms-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Hoboken, N.J. 8/15/18 Ord. No. 516, dated 2/28/18. U.M.C. Co. for cartridge manufacture.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Jewel Tea Co., Hoboken, N.J. 4/1/18 9/2/19 Order of Secretary of War, Req. 37 A/C, Constitution and laws.{3} Requisitioned for use of Remington Arms-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

U.M.C. Co. for cartridge manufacture.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

[343 U.S. 621]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Telegraph lines. 7/25/18 7/31/19 Presidential proclamation, 40 Stat. 1807. Joint Resolution of July 16, 1918. Labor difficulties. Anti- union discrimination terminated.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

"all other powers thereto me enabling."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Smith & Wesson, Springfield, 9/13/18 1/31/19 Order of Secretary of War, Req. 709 B/C, Constitution and laws.{3} Labor difficulties. Anti-union discrimination terminated;

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Mass. Ord. No. 604, dated 8/31/18. operation by the National Operating

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Co., a Government corporation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Federal Enameling & Stamp- 9/23/18 12/13/18 Order of Secretary of War, Req. 738 B/C, Constitution and laws.{3} Failure to fill compulsory order.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ing Co., McKees Rocks, Pa. Ord. No. 609, dated 9/11/18.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Mosler Safe Co., Hamilton, 9/23/19 2/25/19 Order of Secretary of War, Req. 781 B/C, Constitution and laws.{3} Failure to fill compulsory order.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Ohio. Ord. No. 612, dated 9/23/18.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bush Terminal Co., Brooklyn, (?) (?) (?) Act of Aug. 29, 1916. (?) (?)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

N.Y. Food and Fuel Act of 1917.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

World War {4}—Seizures Connected With Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1. Before Pearl Harbor.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

CHANGES IN CONDITIONS OF

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

DURATION OF EXECUTIVE DURATION OF EMPLOYMENT DURING REPORTED LEGAL

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

PLANT OR FACILITY SEIZED SEIZURE ORDER STATUTORY AUTHORITY CITED{5} STOPPAGE SEIZURE{7} BASIS FOR CHANGES ACTION{8}

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

North American Aviation, Inc., 6/9/41 7/2/71 8773. None. (Order cites contracts of com- 6/5/41 6/10/41 Property returned on agreement Agreement of parties on Na-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Inglewood, Calif. 6 Fed.Reg. 2777 pany with Government and ownership of parties to wage increase and tional Defense Mediation

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

by Government of machinery, mate- maintenance of membership. Board recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

rials and work in progress in plant.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Federal Shipbuilding & Drydock 8/23/41 1/6/42 8868. None. (Order cites contracts of com- 8/6/41 8/23/41 Maintenance off membership National Defense Mediation

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Co., Kearny, N.J. 6 Fed.Reg. 4349. pany with Government and ownership during period of seizure. Board recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

by Government of vessels under con-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

struction, materials and equipment in

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

yard.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Air Associates, Inc., Bendix, N.J. 10/30/41 12/29/41 8928. None. (Order cites contracts of com- 7/11/41 7/27/41 Strikers reinstated over replace- Agreement of parties on Na-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

6 Fed.Reg. 5559. pany with Government and ownership ments hired by company prior tional Defense Mediation

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

by Government of facilities in plant.) 9/30/41 10/24/41 to seizure. Board recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

[343 U.S. 621]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

2. Between Pearl Harbor and the Passage of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

War Labor Disputes Act, June 25, 1943.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Toledo, P. & W. R. Co. 3/21/42 10/1/45 9108 None. 12/28/41 3/21/42 Wage increase during period of War Labor Board recommenda- Toledo P. & W. R. Co. v. Stover,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

7 Fed.Reg. 2201 seizure. tion. 60 F.Supp. 587 (S.D.Ill.1945).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

General Cable Co., Bayonne, N.J., 8/13/42 8/20/42 9220 None. 8/10/42 8/13/42 None. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

plant. 7 Fed.Reg. 6413 tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

S. A. Woods Machine Co., South 8/19/42 8/25/45 9225. None. None. None. Maintenance of membership. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Boston, Mass. 7 Fed.Reg. 6627 tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Coal Mines. 5/2/43 10/12/43 9340. None. 4/22/43 5/2/43 Six-day week; eight-hour day. Order of the Secretary of In- United States v. Pewee Coal Co.,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

8 Fed.Reg. 5695. (To increase take-home pay.) terior. 341 U.S. 114; NLRB v. West Ky.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

6/1/43 6/7/43\* Coal Co., 152 F.2d 198 (6th Cir.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1945); Glen Alden Coal Co. v.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

6/20/43 (?)\* NLRB, 141 F.2d 47 (3d Cir. 1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

American R. Co. of Porto Rico. 5/13/43 7/1/44 9341 None. 5/12/43 5/13/43 Wage increase. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

8 Fed.Reg. 6323. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

3. Between June 25, 1943, and VJ Day.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Atlantic Basin Iron Works, Brook- 9/3/43 9/22/43 9375. War Labor Disputes Act. None. None. Maintenance of membership. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

lyn, N.Y. 8 Fed.Reg. 12253. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Coal Mines. 11/1/43 6/21/44 9393. War Labor Disputes Act. 10/12/43 11/4/43\* Changes in wages and hours. Agreement with Secretary of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

8 Fed.Reg. 14877. 11/1/43 Interior.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Leather Manufacturers in Salem, 11/20/43 12/13/43 9395B. None. 9/25/43 11/24/43\* None. (Jurisdictional strike.) None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Peabody, and Danvers, Mass. 8 Fed.Reg. 16957. (sporadic) (sporadic)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Western Electric Co., Point Breeze 12/19/43 3/23/44 9408. War Labor Disputes Act. 12/14/43 12/19/43 None. (Strike in protest of War None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

plant, Baltimore, Md. 8 Fed.Reg. 16958. Labor Board nonsegregation

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ruling.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 12/30/45 1/18/44 9412. Act of Aug. 29, 1916. None. None. Control relinquished when par- Presidential arbitration based Thorne v. Washington Terminal Co.,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

8 Fed.Reg. 16958 ties accepted Presidential com- on Railway Labor Act Emer- 55 F.Supp. 139 (D.D.C.1944)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

promise of wage demands. gency Board recommendations.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Fall River, Mass., Textile Plants. 2/7/44 2/28/44 9420. War Labor Disputes Act. 12/13/43 2/14/44\* Property returned upon agree- War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg. 1563. ment by parties on seniority tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

provisions.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

[343 U.S. 623]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Department of Water and Power, 2/23/44 2/29/44 9426. War Labor Disputes Act. 2/14/44 2/24/44 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Los Angeles, Calif. 9 Fed.Reg. 2113.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Jenkins Bros., Inc., Bridgeport, 4/13/44 6/15/44 9435. § 9, Selective Service Act of 1940 as None. None. Wage increase. War Labor Board recommenda- In re Jenkins Bros., Inc., 15

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Conn. 9 Fed.Reg. 2113. amended. tion. W.L.R. 719 (D.D.C.1944).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Ken-Rad Tube & Lamp Co., 4/13/44 6/15/44 9436. § 9, Selective Service Act of 1940 as None. None. Changes in wage scales; main- War Labor Board recommenda- Ken-Rad Tube & Lamp Corp. v.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Owensboro, Ky. 9 Fed.Reg. 4063. amended. tenance of membership. tion. Badeau, 55 F.Supp. 193

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

(W.D.Ky. 1944).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Montgomery Ward & Co., Chi- 4/25/44 5/9/44 9438. None. None. None. None. (Government extended War Labor Board recommenda- United States v. Montgomery Ward &

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

cago, Ill., facilities. 9 Fed.Reg. 4459. expired contract pending tion. Co., 150 F.2d 369

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

NLRB election to determine (7th Cir.1945).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

bargaining representative.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Montgomery Ward & Co., Hum- 5/21/44 7/2/45 9443. § 9, Selective Service Act of 1940 as 5/5/44 5/21/44 Maintenance of membership; War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

mer Mfg. division, Springfield, 9 Fed.Reg. 5395 amended. voluntary check-off. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Philadelphia Transportation Co., 8/3/44 8/17/44 9459. Act of Aug. 29, 1916. 8/1/44 8/7/44\* None. (Strike is protest of None United States v. McMenamin, 58 F.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Philadelphia, Pa. 9 Fed.Reg. 9878. First War Powers Act of 1941. WLB nonsegregation ruling.) Supp. 478 (E.D.Pa.1944).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 9 of Selective Service Act of 1940,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

as amended.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Midwest Trucking Operators. 8/11/44 1/1/45 9462. Act of Aug. 29, 1916. 8/4/44 8/11/44 Wage increase. War Labor Board recommen-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

11/1/45 9 Fed.Reg. 10071. First War Powers Act of 1941. dation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

§ 9, Selective Service Act of 1940, as

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

amended by the War Labor Disputes Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

San Francisco, Calif., Machine 8/14/44 9/14/45 9463. § 9, Selective Service Act of 1940 as Sporadic. Sporadic. Union agreed not to discipline War Labor Board recommend- San Francisco Lodge No. 68 IAM v.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Shops. 8/19/44 9 Fed.Reg. 9879. amended. employees who worked over- dation. Forrestal, 58 F.Supp. 466

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9466. time. Cancellation of em- (N.D.Calif. 1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg. 10139. ployee draft deferments, gas

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

rations, and job referral rights.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Anthracite Coal Mines. 8/23/44 2/24/45 9469.{9} § 9, Selective Service Act of 1940 as 6/29/44 8/23/44 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9/19/44 9 Fed.Reg. 10343. amended by the War Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. 8/?/44 9/?/44{10}

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

International Nickel Co., Hunt- 8/29/44 10/14/44 9473. § 9, Selective Service Act of 1940 as 8/18/44 8/29/44 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ington, W.Va., plant. 9 Fed.Reg. 10613. amended.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

[343 U.S. 624]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Hughes Tool Co., Houston Tex., 9/2/44 8/29/45 9475A. § 9, Selective Service Act of 1940 as None. None. Maintenance of membership War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

facilities. 9 Fed.Reg. 10943. amended. during period of seizure. dation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cleveland Graphite Bronze Co., 9/5/44 11/8/44 9477. § 9, Selective Service Act of 1940 as 8/31/44 9/5/44 Union agreed to arbitrate griev- War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cleveland, Ohio. 9 Fed.Reg. 10941. amended by the War Labor Disputes ance which had precipitated dation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. the strike.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Twentieth Century Brass Works, 9/9/44 2/17/45 9480. § 9, Selective Service Act of 1940 as 8/21/44 9/9/44 Wage increase. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Inc., Minneapolis, Minn. 9 Fed.Reg. 11143. amended. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Farrell Cheeck Steel Co., Sandus- 9/23/44 8/28/45 9484. § 9, Selective Service Act of 1940 as 9/11/44 9/23/44 Wage increase; maintenance of War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

ky, Ohio. 9 Fed.Reg. 11731 amended by the War Labor Disputes membership during period of tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Toledo, Ohio, Machine Shops. 11/4/44 11/6/44 9496. § 9, Selective Service Act of 1940 as 10/27/44 11/5/44 None. (Jurisdictional strike.) None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg. 13187. amended by the War Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cudahy Bros. Co., Cudahy, Wis. 12/6/44 8/31/45 9505. § 9, Selective Service Act of 1940 as None. None. Maintenance of membership; War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg. 14473. amended by the War Labor Disputes voluntary check-off. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Montgomery Ward & Co., Detroit, 12,27/44 10/18/45 9508. War Labor Disputes Act. 12/9/44 12/27/44 Maintenance of membership and War Labor Board recommenda- National War Labor Board v. Mont-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Mich., and other facilities. 9 Fed.Reg. 15079. § 9, Selective Service Act of 1940 as voluntary check-off during tion. gomery Ward & Co., 144 F.2d 528

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

amended. period of seizure. (D.C.Cir.1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cleveland Electric Illuminating 1/13/45 1/15/45 9511. § 9, Selective Service Act of 1940 as 1/12/45 1/13/45 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Co., Cleveland, Ohio. 10 Fed.Reg. 549. amended.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bingham & Garfield R.R., Utah. 1/24/45 8/29/45 9516. Act of Aug. 29, 1916. 1/23/45 1/24/45 Property returned upon agree- Railway Labor Act Emergency

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 1313. First War Powers Act of 1941. ment by parties on wage scale Board recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

War Labor Disputes Act. for certain positions.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

American Enka Corp., Enka, N.C. 2/18/45 6/6/45 9523. War Labor Disputes Act. 2/7/45 2/18/45 None. (Strike over question of War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 2133. Selective Service Act as amended. contract interpretation sub- tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

mitted to arbitration.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Coal Mines:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bituminous. 4/10/45 5/12/45 9536. 4/1/45 4/11/45 Wage increase. Agreement of parties.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10/25/45 10 Fed.Reg. 3939. § 9, Selective Service Act as amended by

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

the War Labor Disputes Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Anthracite. 5/3/45 6/23/45 9548. 5/1/45 6/24/45\* Wage increase. Agreement of parties.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 5025.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cities Service Refining Corp., 4/17/45 12/23/45 9540. § 9, Selective Service Act of 1940 as (?) 4/17/45 None. (Strike over housing None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Lake Charles, La., plant. 10 Fed.Reg. 4193. amended by the War Labor Disputes conditions.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

United Engineering Co., Ltd., 4/25/45 8/31/45 9542. § 9, Selective Service Act of 1940 as 4/12/45 (?)\* Union's privileges under con- War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

San Francisco, Calif. 10 Fed.Reg. 4591. amended by the War Labor Disputes tract revoked. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Cocker Machine & Foundry Co., 5/20/45 8/31/45 9552. § 9, Selective Service Act of 1940 as (?) 5/20/45 Wage increase; maintenance of War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Gastonia, N.C. 10 Fed.Reg. 5757. amended by the War Labor Disputes membership during period of tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Chicago, Ill., Motor Carriers. 5/23/45 8/16/45 9554. § 9, Selective Service Act of 1940 as 5/19/45 5/24/45 Wage increase. War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 5981. amended by the War Labor Disputes tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. 6/16/45 6/27/45\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Gaffney Mfg. Co., Gaffney, S.C. 5/28/45 9/9/45 9559. § 9, Selective Service Act of 1940 as (?) 5/28/45 Wage increase and maintenance War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 6287. amended by the War Labor Disputes of membership during period tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. of seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Mary-Leila Cotton Mills, Greens- 6/1/45 8/31/45 9560. § 9, Selective Service Act of 1940 as 4/1/45 6/1/45 Contract extension; mainte- War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

boro, Ga. 10 Fed.Reg. 6547. amended by the War Labor Disputes nance of membership and vol- tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. untary check-off during period

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

of seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Humble Oil & Refining Co., Ingle- 6/5/45 8/3/45 9564. § 9, Selective Service Act of 1940 as None. None. Maintenance of membership War Labor Board recommenda- Eighth Regional War Labor Bd. v.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

side, Tex., plant. 10 Fed.Reg. 6791. amended by the War Labor Disputes during period of seizure. tion. Humble Oil & Refining Co., 145

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. F.2d 462 (5th Cir.1945).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Pure Oil Co., Cabin Creek oil 6/6/45 9/10/45 9565. § 9, Selective Service Act of 1940 as 5/14/45 6/6/45 Maintenance of membership War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

field, Dawes, W.Va., facilities. 10 Fed.Reg. 6792. amended by the War Labor Disputes during period of seizure. tion.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Scranton Transit Co., Scranton, 6/14/45 7/8/45 9570. § 9, Selective Service Act of 1940 as 5/20/45 6/14/45 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Pa. 10 Fed.Reg. 6792. amended by § 3 of the War Labor Dis-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 20, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Diamond Alkali Co., Painesville, 6/19/45 7/19/45 9574. § 9, Selective Service Act of 1940 as 6/15/45 6/19/45 Property returned upon agree- None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Ohio. 10 Fed.Reg. 7435. amended by the War Labor Disputes ment by parties to wage in-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. crease.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Texas Co., Port Arthur, Tex., 7/1/45 9/10/45 9577A. § 9, Selective Service Act of 1940 as 6/29/45 7/1/45 None. (Strike over racial dis-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

plant. 10 Fed.Reg. 8090. amended by the War Labor Disputes crimination.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Goodyear Tire & Rubber Co., 7/4/45 8/30/45 9585. § 9, Selective Service Act of 1940 as 6/20/45 7/4/45 Agreement by union to submit (?).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Akron, Ohio. 10 Fed.Reg. 8335. amended by the War Labor Disputes future disputes to federal

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. agency.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Sinclair Rubber Co., Houston, 7/19/45 11/19/45 9589A. § 9, Selective Service Act of 1940 as None. None. Change in union security ar- War Labor Board recommenda-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Tex., butadiene plant. 10 Fed.Reg. 8949. amended by the War Labor Disputes rangements. tions.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Springfield Plywood Co., Spring- 7/25/45 8/30/45 9593. § 9, Selective Service Act of 1940 as (?) 7/25/45 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

field, Oreg. 10 Fed.Reg. 9379. amended by the War Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

U.S. Rubber Co., Detroit, Mich., 7/31/45 10/10/45 9595. § 9, Selective Service Act of 1940 as 7/14/45 7/31/45 None. None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

facilities. 10 Fed.Reg. 9571. amended by the War Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

4. Between VJ Day and the Expiration of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

War Labor Disputes Act Seizure Powers, Dec. 31, 1946.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Illinois Central R. Co. 8/23/45 5/27/46 9602. § 9, Selective Service Act of 1940 as None. None. None. (Jurisdictional strike) Railway Labor Act Emergency

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

10 Fed.Reg. 10957. amended by § 3 of the War Labor Board recommended against

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Disputes Act. change.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Petroleum Refineries and Pipe- 10/4/45 12/12/45 9639. § 9, Selective Service Act of 1940 as 9/16/45 10/5/45 Plants returned on agreement of Ad hoc factfinding board recom-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

lines. (One-half national re- 2/?/46 10 Fed.Reg. 12592. amended by the War Labor Disputes owners to 18 percent wage mendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

fining capacity.) Act. increase.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Capital Transit Co., Washington, 11/21/45 1/7/46 9658. § 9, Selective Service Act of 1940 as 11/6/45 11/7/45 Facilities returned when parties Ad hoc arbitration board award.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

D.C. 10 Fed.Reg. 14351. amended by § 3 of the War Labor agreed to arbitration award.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Disputes Act. 11/20/45 11/21/45 on wages.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Great Lakes Towing Co., Cleve- 11/29/45 12/18/46 9661. § 9. Selective Service Act of 1940 as 9/4/45 11/29/45 Wage increase. National Wage Stabilization

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

land, Ohio. 10 Fed.Reg. 14591. amended by § 3 of the War Labor 11/1/45 Board recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Disputes Act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Meatpacking Industry. 1/24/46 3/12/46 9685. § 9, Selective Service Act of 1940 as 1/16/46 1/28/46\* Plants returned as companies Ad hoc factfinding board recom-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

5/22/46 11 Fed.Reg. 989. amended by the War Labor Disputes agreed to wage increase rec- mendation approved by Na-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9690. Act. ommended by factfinding tional Wage Stabilization

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

11 Fed.Reg. 1337. board. Board.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

New York Harbor Tugboat Com- 2/5/46 3/3/46 9693. § 9, Selective Service Act of 1940 as 2/4/46 2/13/46\* Properties returned after agree- None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

panies. 11 Fed.Reg. 1421. amended by § 3 of the War Labor dis- ment of parties to arbitrate

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act. dispute.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 5/17/46 5/26/46 9727. § 9, Selective Service Act of 1940 as 5/23/46 5/25/46\* Properties returned after unions Railway Labor Act Emergency

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

11 Fed.Reg. 5461. amended by § 3 of the War Labor Dis- agreed to Presidential com- Board recommendation as

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act. promise of wage demands. modified by President.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Bituminous Coal Mines. 5/21/46 6/30/47 9728. § 9, Selective Service Act of 1940 as 4/1/46 5/11/46 Wage increase, welfare and re- Contract between union and United States v. United Mine

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

11 Fed.Reg. 5593. amended by the War Labor Disputes tirement fund, mine safety Secretary of Interior. Workers, 330 U.S. 258, Jones &

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act. 5/23/46 5/25/46\* provisions, and recognition of Laughlin Steel Co. v. UMW, 159

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

UMW as representative of F.2d 18 (D.C.Cir.1946); Krug v.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

supervisory employees during Fox, 161 F.2d 1013 (4th Cir.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

period of seizure. 1947).\*\*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Monongahela Connecting R. Co., 6/14/46 8/12/46 9736. § 8, Selective Service Act of 1940 as 6/10/46 6/14/46 None. (Property returned on None.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Pittsburgh, Pa. 11 Fed.Reg. 6661. amended by § 3 of the War Labor Dis- recession of union from wage

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

putes Act. demands.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Act of Aug. 29, 1916.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

First War Powers Act of 1941.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

5. Since the expiration of the

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

War Labor Disputes Act Seizure Powers, Dec. 31, 1946.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 5/10/48 7/9/48 9957. Act of Aug. 29, 1916. None. None. Property returned on agreement Railway Labor Act Emergency United States v. Brotherhood of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

13 Fed.Reg. 2502. of parties to wage increase. Board recommendation as Locomotive Engineers, 79 F.Supp.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

modified. 485 (D.D.C.1948).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Chicago, Rock Island & Pacific 7/8/50 5/23/52 10141. Act of Aug. 29, 1916. 6/25/50 7/8/50 Property returned on agreement Railway Labor Act Emergency

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

R.Co. 15 Fed.Reg. 4363. of parties to wage increase. Board recommendation as

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

modified.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Railroads. 8/27/50 5/23/52 10155. Act of Aug. 29, 1916. 12/10/50 12/15/50 Agreement reached by carriers Railway Labor Act Emergency

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

15 Fed.Reg. 5785. and some of the Brotherhoods Board recommendation as

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

1/29/51 2/19/51 put into effect. Property re- modified.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

turned on agreement of parties

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

3/9/52 3/12/52 to wage increase.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

World War II Period{4}—Seizures

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Unconnected with Labor Disputes

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

DURATION OF EXECUTIVE

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

PLANT OR FACILITY SEIZED SEIZURE ORDER STATUTORY AUTHORITY CITED{5} REASONS FOR SEIZURE CHANGES INSTITUTED DURING SEIZURE

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Grand River Dam Authority, Okla- 11/19/41 7/41/46 8944. § 16, Federal Power Act. This was a State power project, financed by federal Federal Works Administrator replaced management

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

homa. 6 Fed.Reg. 5947. loan and grant. Seizure was based on (1) State de- and completed the project. Transferred to Depart-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

fault on loan interest; (2) refusal of State legislature ment of Interior, Executive Order No. 9373, 8 Fed.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

to issue bonds to complete financing; (3) failure to Reg. 12001, 8/30/43. Returned pursuant to Act of

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

meet scheduled completion date in power-short de- July 31, 1946, 60 Stat. 743.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

fense ares.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Brewster Aeronautical Corp., Long 4/18/42 5/20/42 9141. None. (1) Inefficient management; (2) failure to operate at New board of directors and officers installed; majority

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Island City, N.U., Newark, 7 Fed.Reg. 2961. full capacity; (3) failure to maintain delivery sched- shareholders established 2 1/2-year voting trust in favor

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

N.J., Johnsville, Pa. ules on Army and Navy aircraft. (Congressional of new president.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

investigation suggested labor difficulties as well, due

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

to employment of enemy aliens.)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Triumph Explosives, Inc., Mary- 10/12/42 2/28/43 9254. None. Overpayments (presumably bribes) of $1,400,000 to New board of directors and officers; indictments against

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

land and Delaware plants. 6/5/43 7 Fed.Reg. 8333. procurement officers. former officials.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Howarth Pivoted Bearings Co., 6/14/43 8/25/45 9351. None. Inefficient management. Designees of Secretary of Navy operated plant for

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Philadelphia, Pa. 8 Fed.Reg. 8097. duration of war.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Remington Rand, Inc., Southport, 11/23/43 9/30/44 9399. § 9, Selective Service Act of 1940 as (1) Norden bombsight parts production of unaccept- Designees of Secretary of Navy supervised operations

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

N.Y., plant. 8 Fed.Reg. 16269. amended. able quality; (2) deliveries behind schedule. for duration of seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Los Angeles Shipbuilding & Dry- 12/8/43 8/25/45 9400. § 9, Selective Service Act of 1940 as (1) Excessive costs; (2) production behind schedule. Operated by contractor (Todd Shipyard Co.) for dura-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

dock Corp., Los Angeles, Calif. 8 Fed.Reg. 16641. amended. tion of war.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

York Safe & Lock Co., York, Pa. 1/23/44 3/15/45 9416. § 9, Selective Service Act of 1940 as (1) Inefficient management; (2) deliveries behind Designees of Secretary of Navy operated company for

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg.936. amended. schedule. duration of war, except for a portion which was con-

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

demned and transferred to Blaw-Knox Co.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

Lord Mfg. Co., Erie, Pa.{11} 10/24/45 8/25/45 9493. Tit. VIII, Revenue Act of 1943. Refusal to deliver items at "fair and reasonable Designees of Secretary of Navy operated company for

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

9 Fed.Reg. 12860. § 9, Selective Service Act of 1940 as prices" fixed by the Secretary of the Navy in con- duration of war.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

amended.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 615

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APPENDIX FOOTNOTES

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\* Governmental possession of the Nation's railroads taken on December 28, 1917, was specifically terminated by statute on March 1, 1920, prior to the end of the "war." See § 200 of the Transportation Act of 1920, 41 Stat. 456, 457.

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1. Clyde B. Aitchison states that, on March 31, 1861, the Federal authorities took "under military control the Philadelphia, Wilmington & Baltimore Railway to insure uninterrupted communication between the North Atlantic States and Washington." Aitchison, War Time Control of American Railways, 26 Va.L.Rev. 847, 856 (1940). He adds that the return of the road to its private owners followed "shortly thereafter." Ibid. Original documents on this seizure are unavailable, and it has, therefore, not been included in this table.

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2. The material in this table is taken from original documents in the National Archives and Hearings before the Senate Special Committee Investigating the Munitions Industry, 73d Cong., Part 17, 4270-4271 (1934).

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3. Although no specific statutory authority was cited in the seizing order, it is clear from correspondence and reports in connection with the administration of the program that the seizure was effected under wartime legislation. See, e.g., Davisson, History of the Advisory Section, Administrative Division, Ordnance Office in connection with the Commandeering of Private Property, National Archives, Records of the War Department, Office of the Chief of Ordnance, O.O. 023/1362, Nov. 1920; Letter from Ordnance Office, Administrative Division to The Adjutant General, National Archives, Records of the War Department, Office of The Adjutant General, AG 386.2, Jan. 7, 1919.

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4. The material in this table is summarized from a number of sources, chief of which are the War Labor Reports, contemporary accounts in the New York Times, United States National Wage Stabilization Board, Research and statics report No. 2 (1946), and Johnson, Government Seizures and Labor Disputes (Philadelphia, Pa., 1948) (unpublished doctoral dissertation at the University of Pennsylvania). Question marks appear in the tables in instances where no satisfactory information on the particular point was available.

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5. Each of the Executive Orders uses the stock phrase "the Constitution and laws" as authority for the President's action, as well as his position as Commander in Chief. Only specific statutory authority relied upon is given in this table. The form of reference of the particular Executive Order is used. Statutes referred to in the table are analyzed in Appendix I, supra, p. 615. For convenience, their citations are repeated here:

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(1) Army Appropriations Act of Aug. 29, 1916, 39 Stat. 619, 645, 10 U.S.C. § 1361.

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(2) Federal Water Power Act of 1920, § 16, 41 Stat. 1063, 1072, 16 U.S.C. § 809.

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(3) Selective Training and Service Act of 1940, § 9, 54 Stat. 885, 892.

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(4) War Labor Disputes Act, § 3, 57 Stat. 163, 164.

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(5) Revenue Act of 1943, Tit. VIII, "Repricing of War Contracts," 58 Stat. 21, 92.

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When seizures of transportation facilities were effected through agencies other than the War Department, the First War Powers Act of 1941, 55 Stat. 838, was cited. Title I of that Act permitted the President to shift certain functions among executive agencies in aid of the war effort. The Act of Aug. 29, 1916, authorizing seizure of transportation facilities, specified that it should be accomplished through the Secretary of War.

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6. Stoppages continuing during seizure are indicated by an asterisk (\*).

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7. Unless otherwise indicated, changes in conditions of employment instituted during seizure were continued by management upon the return of the facilities to its control.

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8. Validity of seizure was challenged in comparatively few cases. Most litigation concerned the consequences of seizure. Cases in which the validity of the seizure was attacked are indicated by double asterisks (\*\*).

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9. This order was followed by a series drawn in the same terms extending the seizure to additional mines. The Executive Orders were: No. 9474; 9 Fed.Reg. 10815; No. 9476, 9 Fed.Reg. 10817; No. 9478, 9 Fed.Reg. 11045; No. 9481, 9 Fed.Reg. 11387; No. 9482, 9 Fed.Reg. 11459; No. 9483, 9 Fed.Reg. 11601.

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10. A series of strikes for recognition by supervisory employees at the various mines were usually, though not always, terminated on seizure of the affected property.

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11. See Lord Mfg. Co. v. Collisson, 62 F.Supp. 79 (W.D.Pa. 1945). [343 U.S. 629]

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MR. JUSTICE DOUGLAS, concurring.

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There can be no doubt that the emergency which caused the President to seize these steel plants was one that bore heavily on the country. But the emergency did not create power; it merely marked an occasion when power should be exercised. And the fact that it was necessary that measures be taken to keep steel in production does not mean that the President, rather than the Congress, had the constitutional authority to act. The Congress, as well as the President, is trustee of the national welfare. The President can act more quickly than the Congress. The President, with the armed services at his disposal, can move with force, as well as with speed. All executive power—from the reign of ancient kings to the rule of modern dictators—has the outward appearance of efficiency.

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Legislative power, by contrast, is slower to exercise. There must be delay while the ponderous machinery of committees, hearings, and debates is put into motion. That takes time, and, while the Congress slowly moves into action, the emergency may take its toll in wages, consumer goods, war production, the standard of living of the people, and perhaps even lives. Legislative action may indeed often be cumbersome, time-consuming, and apparently inefficient. But, as Mr. Justice Brandeis stated in his dissent in Myers v. United States, 272 U.S. 52, 293:

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The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy. [343 U.S. 630]

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We therefore cannot decide this case by determining which branch of government can deal most expeditiously with the present crisis. The answer must depend on the allocation of powers under the Constitution. That, in turn, requires an analysis of the conditions giving rise to the seizure, and of the seizure itself.

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The relations between labor and industry are one of the crucial problems of the era. Their solution will doubtless entail many methods—education of labor leaders and business executives; the encouragement of mediation and conciliation by the President and the use of his great office in the cause of industrial peace, and the passage of laws. Laws entail sanctions—penalties for their violation. One type of sanction is fine and imprisonment. Another is seizure of property. An industry may become so lawless, so irresponsible, as to endanger the whole economy. Seizure of the industry may be the only wise and practical solution.

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The method by which industrial peace is achieved is of vital importance not only to the parties, but to society as well. A determination that sanctions should be applied, that the hand of the law should be placed upon the parties, and that the force of the courts should be directed against them is an exercise of legislative power. In some nations, that power is entrusted to the executive branch as a matter of course or in case of emergencies. We chose another course. We chose to place the legislative power of the Federal Government in the Congress. The language of the Constitution is not ambiguous or qualified. It places not some legislative power in the Congress; Article I, Section 1 says

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All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

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The legislative nature of the action taken by the President seems to me to be clear. When the United States [343 U.S. 631] takes over an industrial plant to settle a labor controversy, it is condemning property. The seizure of the plant is a taking in the constitutional sense. United States v Pewee Coal Co., 341 U.S. 114. A permanent taking would amount to the nationalization of the industry. A temporary taking falls short of that goal. But though the seizure is only for a week or a month, the condemnation is complete, and the United States must pay compensation for the temporary possession. United States v. General Motors Corp., 323 U.S. 373; United States v. Pewee Coal Co., supra.

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The power of the Federal Government to condemn property is well established. Kohl v. United States, 91 U.S. 367. It can condemn for any public purpose, and I have no doubt but that condemnation of a plant, factory, or industry in order to promote industrial peace would be constitutional. But there is a duty to pay for all property taken by the Government. The command of the Fifth Amendment is that no "private property be taken for public use, without just compensation." That constitutional requirement has an important bearing on the present case.

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The President has no power to raise revenues. That power is in the Congress by Article I, Section 8 of the Constitution. The President might seize, and the Congress, by subsequent action, might ratify the seizure. 1 But, until and unless Congress acted, no condemnation would be lawful. The branch of government that has the power to pay compensation for a seizure is the only one able to authorize a seizure or make lawful one that [343 U.S. 632] the President has effected. 2 That seems to me to be the necessary result of the condemnation provision in the Fifth Amendment. It squares with the theory of checks and balances expounded by MR. JUSTICE BLACK in the opinion of the Court, in which I join.

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If we sanctioned the present exercise of power by the President, we would be expanding Article II of the Constitution and rewriting it to suit the political conveniences of the present emergency. Article II, which vests the "executive Power" in the President, defines that power with particularity. Article II, Section 2, makes the Chief Executive the Commander in Chief of the Army and Navy. But our history and tradition rebel at the thought that the grant of military power carries with it authority over civilian affairs. Article II, Section 3 provides that the President shall,

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from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.

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The power to recommend legislation, granted to the President, serves only to emphasize that it is his function to recommend, and that it is the function of the Congress to legislate. Article II, [343 U.S. 633] Section 3, also provides that the President "shall take Care that the Laws be faithfully executed." But, as MR. JUSTICE BLACK and MR. JUSTICE FRANKFURTER point out, the power to execute the laws starts and ends with the laws Congress has enacted.

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The great office of President is not a weak and powerless one. The President represents the people, and is their spokesman in domestic and foreign affairs. The office is respected more than any other in the land. It gives a position of leadership that is unique. The power to formulate policies and mould opinion inheres in the Presidency and conditions our national life. The impact of the man and the philosophy he represents may at times be thwarted by the Congress. Stalemates may occur when emergencies mount and the Nation suffers for lack of harmonious, reciprocal action between the White House and Capitol Hill. That is a risk inherent in our system of separation of powers. The tragedy of such stalemates might be avoided by allowing the President the use of some legislative authority. The Framers with memories of the tyrannies produced by a blending of executive and legislative power rejected that political arrangement. Some future generation may, however, deem it so urgent that the President have legislative authority that the Constitution will be amended. We could not sanction the seizures and condemnations of the steel plants in this case without reading Article II as giving the President not only the power to execute the laws, but to make some. Such a step would most assuredly alter the pattern of the Constitution.

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We pay a price for our system of checks and balances, for the distribution of power among the three branches of government. It is a price that today may seem exorbitant to many. Today, a kindly President uses the seizure power to effect a wage increase and to keep the steel furnaces in production. Yet tomorrow, another [343 U.S. 634] President might use the same power to prevent a wage increase, to curb trade unionists, to regiment labor as oppressively as industry thinks it has been regimented by this seizure.

JACKSON, J., concurring

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MR. JUSTICE JACKSON, concurring in the judgment and opinion of the Court.

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That comprehensive and undefined presidential powers hold both practical advantages and grave dangers for the country will impress anyone who has served as legal adviser to a President in time of transition and public anxiety. While an interval of detached reflection may temper teachings of that experience, they probably are a more realistic influence on my views than the conventional materials of judicial decision which seem unduly to accentuate doctrine and legal fiction. But, as we approach the question of presidential power, we half overcome mental hazards by recognizing them. The opinions of judges, no less than executives and publicists, often suffer the infirmity of confusing the issue of a power's validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies—such as wages or stabilization—and lose sight of enduring consequences upon the balanced power structure of our Republic.

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A judge, like an executive adviser, may be surprised at the poverty of really useful and unambiguous authority applicable to concrete problems of executive power as they actually present themselves. Just what our forefathers did envision, or would have envisioned had they foreseen modern conditions, must be divined from materials almost as enigmatic as the dreams Joseph was called upon to interpret for Pharaoh. A century and a half of partisan debate and scholarly speculation yields no net result, but only supplies more or less apt quotations from [343 U.S. 635] respected sources on each side of any question. They largely cancel each other. 1 And court decisions are indecisive because of the judicial practice of dealing with the largest questions in the most narrow way.

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The actual art of governing under our Constitution does not, and cannot, conform to judicial definitions of the power of any of its branches based on isolated clauses, or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate depending upon their disjunction or conjunction with those of Congress. We may well begin by a somewhat over-simplified grouping of practical situations in which a President may doubt, or others may challenge, his powers, and by distinguishing roughly the legal consequences of this factor of relativity.

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1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. 2 In these circumstances, [343 U.S. 636] and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government, [343 U.S. 637] as an undivided whole, lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

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2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least, as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables, rather than on abstract theories of law. 3

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3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling [343 U.S. 638] the Congress from acting upon the subject. 4 Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 638

Into which of these classifications does this executive seizure of the steel industry fit? It is eliminated from the first by admission, for it is conceded that no congressional authorization exists for this seizure. That takes away also the support of the many precedents and declarations which were made in relation, and must be confined, to this category. 5 [343 U.S. 639]

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Can it then be defended under flexible tests available to the second category? It seems clearly eliminated from that class, because Congress has not left seizure of private property an open field, but has covered it by three statutory policies inconsistent with this seizure. In cases where the purpose is to supply needs of the Government itself, two courses are provided: one, seizure of a plant which fails to comply with obligatory orders placed by the Government; 6 another, condemnation of facilities, including temporary use under the power of eminent domain. 7 The third is applicable where it is the general economy of the country that is to be protected, rather than exclusive governmental interests. 8 None of these were invoked. In choosing a different and inconsistent way of his own, the President cannot claim that it is necessitated or invited by failure of Congress to legislate upon the occasions, grounds and methods for seizure of industrial properties. [343 U.S. 640]

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This leaves the current seizure to be justified only by the severe tests under the third grouping, where it can be supported only by any remainder of executive power after subtraction of such powers as Congress may have over the subject. In short, we can sustain the President only by holding that seizure of such strike-bound industries is within his domain and beyond control by Congress. Thus, this Court's first review of such seizures occurs under circumstances which leave presidential power most vulnerable to attack and in the least favorable of possible constitutional postures.

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I did not suppose, and I am not persuaded, that history leaves it open to question, at least in the courts, that the executive branch, like the Federal Government as a whole, possesses only delegated powers. The purpose of the Constitution was not only to grant power, but to keep it from getting out of hand. However, because the President does not enjoy unmentioned powers does not mean that the mentioned ones should be narrowed by a niggardly construction. Some clauses could be made almost unworkable, as well as immutable, by refusal to indulge some latitude of interpretation for changing times. I have heretofore, and do now, give to the enumerated powers the scope and elasticity afforded by what seem to be reasonable, practical implications, instead of the rigidity dictated by a doctrinaire textualism.

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The Solicitor General seeks the power of seizure in three clauses of the Executive Article, the first reading, "The executive Power shall be vested in a President of the United States of America." Lest I be thought to exaggerate, I quote the interpretation which his brief puts upon it: "In our view, this clause constitutes a grant of all the executive powers of which the Government is capable." If that be true, it is difficult to see why the [343 U.S. 641] forefathers bothered to add several specific items, including some trifling ones. 9

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The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image. Continental European examples were no more appealing. And, if we seek instruction from our own times, we can match it only from the executive powers in those governments we disparagingly describe as totalitarian. I cannot accept the view that this clause is a grant in bulk of all conceivable executive power, but regard it as an allocation to the presidential office of the generic powers thereafter stated.

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The clause on which the Government next relies is that "The President shall be Commander in Chief of the Army and Navy of the United States…. " These cryptic words have given rise to some of the most persistent controversies in our constitutional history. Of course, they imply something more than an empty title. But just what authority goes with the name has plagued presidential advisers who would not waive or narrow it by nonassertion, yet cannot say where it begins or ends. It undoubtedly puts the Nation's armed forces under presidential command. Hence, this loose appellation is sometimes advanced as support for any presidential action, internal or external, involving use of force, the [343 U.S. 642] idea being that it vests power to do anything, anywhere, that can be done with an army or navy.

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That seems to be the logic of an argument tendered at our bar—that the President having, on his own responsibility, sent American troops abroad derives from that act "affirmative power" to seize the means of producing a supply of steel for them. To quote,

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Perhaps the most forceful illustration of the scope of Presidential power in this connection is the fact that American troops in Korea, whose safety and effectiveness are so directly involved here, were sent to the field by an exercise of the President's constitutional powers.

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Thus, it is said, he has invested himself with "war powers."

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I cannot foresee all that it might entail if the Court should indorse this argument. Nothing in our Constitution is plainer than that declaration of a war is entrusted only to Congress. Of course, a state of war may, in fact, exist without a formal declaration. But no doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture. 10 [343 U.S. 643] I do not, however, find it necessary or appropriate to consider the legal status of the Korean enterprise to discountenance argument based on it.

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Assuming that we are in a war de facto, whether it is or is not a war de jure, does that empower the Commander in Chief to seize industries he thinks necessary to supply our army? The Constitution expressly places in Congress power "to raise and support Armies" and "to provide and maintain a Navy." (Emphasis supplied.) This certainly lays upon Congress primary responsibility for supplying the armed forces. Congress alone controls the raising of revenues and their appropriation, and may determine in what manner and by what means they shall be spent for military and naval procurement. I suppose no one would doubt that Congress can take over war supply as a Government enterprise. On the other hand, if Congress sees fit to rely on free private enterprise collectively bargaining with free labor for support and maintenance of our armed forces, can the Executive, because of lawful disagreements incidental to that process, seize the facility for operation upon Government-imposed terms?

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 643

There are indications that the Constitution did not contemplate that the title Commander in Chief of the [343 U.S. 644] Army and Navy will constitute him also Commander in Chief of the country, its industries and its inhabitants. He has no monopoly of "war powers," whatever they are. While Congress cannot deprive the President of the command of the army and navy, only Congress can provide him an army or navy to command. It is also empowered to make rules for the "Government and Regulation of land and naval Forces," by which it may, to some unknown extent, impinge upon even command functions.

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That military powers of the Commander in Chief were not to supersede representative government of internal affairs seems obvious from the Constitution and from elementary American history. Time out of mind, and even now, in many parts of the world, a military commander can seize private housing to shelter his troops. Not so, however, in the United States, for the Third Amendment says,

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No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

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Thus, even in war time, his seizure of needed military housing must be authorized by Congress. It also was expressly left to Congress to "provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions…. " 11 Such a limitation on the command power, written at a time when the militia, rather than a standing army, was contemplated as the military weapon of the Republic, underscores the Constitution's policy that Congress, not the Executive, should control utilization of the war power as an instrument of domestic policy. Congress, fulfilling that function, has authorized the President to use the army to enforce certain civil rights. 12 On the other hand, Congress has forbidden him to use the army for the purpose [343 U.S. 645] of executing general laws except when expressly authorized by the Constitution or by Act of Congress. 13

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 645

While broad claims under this rubric often have been made, advice to the President in specific matters usually has carried overtones that powers, even under this head, are measured by the command functions usual to the topmost officer of the army and navy. Even then, heed has been taken of any efforts of Congress to negative his authority. 14

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We should not use this occasion to circumscribe, much less to contract, the lawful role of the President as Commander in Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. But, when it is turned inward not because of rebellion, but because of a lawful economic struggle between industry and labor, it should have no such indulgence. His command power is not such an absolute as might be implied from that office in a militaristic system, but is subject to limitations consistent with a constitutional Republic whose law and policymaking branch [343 U.S. 646] is a representative Congress. The purpose of lodging dual titles in one man was to insure that the civilian would control the military, not to enable the military to subordinate the presidential office. No penance would ever expiate the sin against free government of holding that a President can escape control of executive powers by law through assuming his military role. What the power of command may include I do not try to envision, but I think it is not a military prerogative, without support of law, to seize persons or property because they are important or even essential for the military and naval establishment.

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The third clause in which the Solicitor General finds seizure powers is that "he shall take Care that the Laws be faithfully executed…. 15 That authority must be matched against words of the Fifth Amendment that "No person shall be…deprived of life, liberty or property, without due process of law…. " One gives a governmental authority that reaches so far as there is law, the other gives a private right that authority shall go no farther. These signify about all there is of the principle that ours is a government of laws, not of men, and that we submit ourselves to rulers only if under rules.

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The Solicitor General lastly grounds support of the seizure upon nebulous, inherent powers never expressly granted, but said to have accrued to the office from the customs and claims of preceding administrations. The plea is for a resulting power to deal with a crisis or an emergency according to the necessities of the case, the unarticulated assumption being that necessity knows no law.

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Loose and irresponsible use of adjectives colors all nonlegal and much legal discussion of presidential powers. [343 U.S. 647] "Inherent" powers, "implied" powers, "incidental" powers, "plenary" powers, "war" powers and "emergency" powers are used, often interchangeably and without fixed or ascertainable meanings.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 647

The vagueness and generality of the clauses that set forth presidential powers afford a plausible basis for pressures within and without an administration for presidential action beyond that supported by those whose responsibility it is to defend his actions in court. The claim of inherent and unrestricted presidential powers has long been a persuasive dialectical weapon in political controversy. While it is not surprising that counsel should grasp support from such unadjudicated claims of power, a judge cannot accept self-serving press statements of the attorney for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself. But prudence has counseled that actual reliance on such nebulous claims stop short of provoking a judicial test. 16 [343 U.S. 648]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 648

The Solicitor General, acknowledging that Congress has never authorized the seizure here, says practice of prior Presidents has authorized it. He seeks color of legality from claimed executive precedents, chief of which is President Roosevelt's seizure, on June 9, 1941, of the California plant of the North American Aviation Company. Its superficial similarities with the present case, upon analysis, yield to distinctions so decisive that it [343 U.S. 649] cannot be regarded as even a precedent, much less an authority for the present seizure. 17

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 649

The appeal, however, that we declare the existence of inherent powers ex necessitate to meet an emergency asks us to do what many think would be wise, although [343 U.S. 650] it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engender for authoritative action, knew, too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion, when the public safety may require it, 18 they made no express provision for exercise of extraordinary authority because of a crisis. 19 I do not think we rightfully may so amend their work, and, if we could, I am not convinced it would be wise to do so, although many modern nations have forthrightly recognized that war and economic crises may upset the normal balance between liberty and authority. [343 U.S. 651] Their experience with emergency powers may not be irrelevant to the argument here that we should say that the Executive, of his own volition, can invest himself with undefined emergency powers.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 651

Germany, after the First World War, framed the Weimar Constitution, designed to secure her liberties in the Western tradition. However, the President of the Republic, without concurrence of the Reichstag, was empowered temporarily to suspend any or all individual rights if public safety and order were seriously disturbed or endangered. This proved a temptation to every government, whatever its shade of opinion, and, in 13 years, suspension of rights was invoked on more than 250 occasions. Finally, Hitler persuaded President Von Hindenberg to suspend all such rights, and they were never restored. 20

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 651

The French Republic provided for a very different kind of emergency government known as the "state of siege." It differed from the German emergency dictatorship, particularly in that emergency powers could not be assumed at will 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. 21

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 651

Great Britain also has fought both World Wars under a sort of temporary dictatorship created by legislation. 22 As Parliament is not bound by written constitutional limitations, it established a crisis government simply by [343 U.S. 652] 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,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 652

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. 23

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 652

Thus, parliamentary control made emergency powers compatible with freedom.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 652

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.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 652

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. 24 They were invoked from time to time as need appeared. Under this procedure, we retain Government [343 U.S. 653] 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.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 653

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.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 653

As to whether there is imperative necessity for such powers, it is relevant to note the gap that exists between the President's paper powers and his real powers. The Constitution does not disclose the measure of the actual controls wielded by the modern presidential office. That instrument must be understood as an Eighteenth-Century sketch of a government hoped for, not as a blueprint of the Government that is. Vast accretions of federal power, eroded from that reserved by the States, have magnified the scope of presidential activity. Subtle shifts take place in the centers of real power that do not show on the face of the Constitution.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 653

Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality, his decisions so far overshadow any others that, almost alone, he fills the public eye and ear. No other personality in public life can begin to compete with him in access to the public mind through modern methods of communications. By his prestige as head of state and his influence upon public opinion, he exerts a leverage upon those who are supposed [343 U.S. 654] to check and balance his power which often cancels their effectiveness.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 654

Moreover, rise of the party system has made a significant extraconstitutional supplement to real executive power. No appraisal of his necessities is realistic which overlooks that he heads a political system, as well as a legal system. Party loyalties and interests, sometimes more binding than law, extend his effective control into branches of government other than his own, and he often may win, as a political leader, what he cannot command under the Constitution. Indeed, Woodrow Wilson, commenting on the President as leader both of his party and of the Nation, observed,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 654

If he rightly interpret the national thought and boldly insist upon it, he is irresistible…. His office is anything he has the sagacity and force to make it. 25

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 654

I cannot be brought to believe that this country will suffer if the Court refuses further to aggrandize the presidential office, already so potent and so relatively immune from judicial review, 26 at the expense of Congress.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 654

But I have no illusion that any decision by this Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems. A crisis that challenges the President equally, or perhaps primarily, challenges Congress. If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 654

The essence of our free Government is "leave to live by no man's leave, underneath the law"—to be governed by those impersonal forces which we call law. Our Government [343 U.S. 655] is fashioned to fulfill this concept so far as humanly possible. The Executive, except for recommendation and veto, has no legislative power. The executive action we have here originates in the individual will of the President, and represents an exercise of authority without law. No one, perhaps not even the President, knows the limits of the power he may seek to exert in this instance, and the parties affected cannot learn the limit of their rights. We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 655

Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up. 27

BURTON, J., concurring

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 655

MR. JUSTICE BURTON, concurring in both the opinion and judgment of the Court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 655

My position may be summarized as follows:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 655

The validity of the President's order of seizure is at issue and ripe for decision. Its validity turns upon its relation to the constitutional division of governmental power between Congress and the President. [343 U.S. 656]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 656

The Constitution has delegated to Congress power to authorize action to meet a national emergency of the kind we face. 1 Aware of this responsibility, Congress has responded to it. It has provided at least two procedures for the use of the President.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 656

It has outlined one in the Labor Management Relations Act, 1947, better known as the Taft-Hartley Act. The accuracy with which Congress there describes the present emergency demonstrates its applicability. It says:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 656

Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe…. 2 [343 U.S. 657]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 657

In that situation, Congress has authorized not only negotiation, conciliation and impartial inquiry, but also a 60-day cooling-off period under injunction, followed by 20 days for a secret ballot upon the final offer of settlement and then by recommendations from the President to Congress. 3

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 657

For the purposes of this case, the most significant feature of that Act is its omission of authority to seize an affected industry. The debate preceding its passage demonstrated the significance of that omission. Collective bargaining, rather than governmental seizure, was to be relied upon. Seizure was not to be resorted to without specific congressional authority. Congress reserved to itself the opportunity to authorize seizure to meet particular emergencies. 4 [343 U.S. 658]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 658

The President, however, chose not to use the Taft-Hartley procedure. He chose another course, also authorized by Congress. He referred he controversy to the Wage Stabilization Board. 5 If that course had led to a settlement of the labor dispute, it would have avoided the need for other action. It, however, did not do so.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 658

Now it is contended that, although the President did not follow the procedure authorized by the Taft-Hartley Act, his substituted procedure served the same purpose, and must be accepted as its equivalent. Without appraising that equivalence, it is enough to point out that neither procedure carried statutory authority for the seizure of private industries in the manner now at issue. 6 The exhaustion of both procedures fails to cloud the [343 U.S. 659] clarity of the congressional reservation of seizure for its own consideration.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 659

The foregoing circumstances distinguish this emergency from one in which Congress takes no action and outlines no governmental policy. In the case before us, Congress authorized a procedure which the President declined to follow. Instead, he followed another procedure which he hoped might eliminate the need for the first. Upon its failure, he issued an executive order to seize the steel properties in the face of the reserved right of Congress to adopt or reject that course as a matter of legislative policy.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 659

This brings us to a further crucial question. Does the President, in such a situation, have inherent constitutional power to seize private property which makes congressional action in relation thereto unnecessary? We find no such power available to him under the present circumstances. The present situation is not comparable to that of an imminent invasion or threatened attack. We do not face the issue of what might be the President's constitutional power to meet such catastrophic situations. Nor is it claimed that the current seizure is in the nature of a military command addressed by the President, as Commander-in-Chief, to a mobilized nation waging, or imminently threatened with, total war. 7 [343 U.S. 660]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 660

The controlling fact here is that Congress, within its constitutionally delegated power, has prescribed for the President specific procedures, exclusive of seizure, for his use in meeting the present type of emergency. Congress has reserved to itself the right to determine where and when to authorize the seizure of property in meeting such an emergency. Under these circumstances, the President's order of April 8 invaded the jurisdiction of Congress. It violated the essence of the principle of the separation of governmental powers. Accordingly, the injunction against its effectiveness should be sustained.

CLARK, J., concurring

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 660

MR. JUSTICE CLARK, concurring in the judgment of the Court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 660

One of this Court's first pronouncements upon the powers of the President under the Constitution was made by Mr. Chief Justice John Marshall some one hundred and fifty years ago. In Little v. Barreme, 1 he used this characteristically clear language in discussing the power of the President to instruct the seizure of the Flying Fish, a vessel bound from a French port:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 660

It is by no means clear that the president of the United States whose high duty it is to "take care that the laws be faithfully executed" and who is commander in chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then-existing state of things, have empowered the officers commanding the armed vessels of the United States to seize, and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce. But when it is observed that [an act of Congress] gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound or sailing to a French port, the legislature seem to have prescribed that [343 U.S. 661] the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port. 2

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 661

Accordingly, a unanimous Court held that the President's instructions had been issued without authority, and that they could not "legalize an act which, without those instructions, would have been a plain trespass." I know of no subsequent holding of this Court to the contrary. 3

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 661

The limits of presidential power are obscure. However, Article II, no less than Article I, is part of "a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." 4 Some of our Presidents, such as Lincoln,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 661

felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation. 5 [343 U.S. 662]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 662

Others, such as Theodore Roosevelt, thought the President to be capable, as a "steward" of the people, of exerting all power save that which is specifically prohibited by the Constitution or the Congress. 6 In my view—taught me not only by the decision of Mr. Chief Justice Marshall in Little v. Barreme, but also by a score of other pronouncements of distinguished members of this bench—the Constitution does grant to the President extensive authority in times of grave and imperative national emergency. In fact, to my thinking, such a grant may well be necessary to the very existence of the Constitution itself. As Lincoln aptly said, "[is] it possible to lose the nation and yet preserve the Constitution? 7 In describing this authority, I care not whether one calls it "residual," "inherent," "moral," "implied," "aggregate," "emergency," or otherwise. I am of the conviction that those who have had the gratifying experience of being the President's lawyer have used one or more of these adjectives only with the utmost of sincerity and the highest of purpose.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 662

I conclude that, where Congress has laid down specific procedures to deal with the type of crisis confronting the President, he must follow those procedures in meeting the crisis; but that, in the absence of such action by Congress, the President's independent power to act depends upon the gravity of the situation confronting the nation. I cannot sustain the seizure in question because here, as in Little v. Barreme, Congress had prescribed methods to be followed by the President in meeting the emergency at hand. [343 U.S. 663]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 663

Three statutory procedures were available: those provided in the Defense Production Act of 1950, the Labor Management Relations Act, and the Selective Service Act of 1948. In this case, the President invoked the first of these procedures; he did not invoke the other two.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 663

The Defense Production Act of 1950 provides for mediation of labor disputes affecting national defense. Under this statutory authorization, the President has established the Wage Stabilization Board. The Defense Production Act, however, grants the President no power to seize real property except through ordinary condemnation proceedings, which were not used here, and creates no sanctions for the settlement of labor disputes.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 663

The Labor Management Relations Act, commonly known as the Taft-Hartley Act, includes provisions adopted for the purpose of dealing with nationwide strikes. They establish a procedure whereby the President may appoint a board of inquiry and thereafter, in proper cases, seek injunctive relief for an 80-day period against a threatened work stoppage. The President can invoke that procedure whenever, in his opinion,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 663

a threatened or actual strike…affecting an entire industry…will, if permitted to occur or to continue, imperil the national health or safety. 8

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 663

At the time that Act was passed, Congress specifically rejected a proposal to empower the President to seize any "plant, mine, or facility" in which a threatened work stoppage would, in his judgment, "imperil the public health or security." 9 Instead, the Taft-Hartley Act directed the President, in the event a strike had not been settled during the 80-day injunction period, to submit to Congress "a full and comprehensive report…together with such recommendations as he may see fit to make for consideration and [343 U.S. 664] appropriate action." 10 The legislative history of the Act demonstrates Congress' belief that the 80-day period would afford it adequate opportunity to determine whether special legislation should be enacted to meet the emergency at hand. 11

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 664

The Selective Service Act of 1948 gives the President specific authority to seize plants which fail to produce goods required by the armed forces or the Atomic Energy Commission for national defense purposes. The Act provides that, when a producer from whom the President has ordered such goods "refuses or fails" to fill the order within a period of time prescribed by the President, the President may take immediate possession of the producer's plant. 12 This language is significantly broader than [343 U.S. 665] that used in the National Defense Act of 1916 and the Selective Training and Service Act of 1940, which provided for seizure when a producer "refused" to supply essential defense materials, but not when he "failed" to do so. 13

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 665

These three statutes furnish the guideposts for decision in this case. Prior to seizing the steel mills on April 8, the President had exhausted the mediation procedures of the Defense Production Act through the Wage Stabilization Board. Use of those procedures had failed to avert the impending crisis; however, it had resulted in a 99-day postponement of the strike. The Government argues that this accomplished more than the maximum 80-day waiting period possible under the sanctions of the Taft-Hartley Act, and therefore amounted to compliance with the substance of that Act. Even if one were to accept this somewhat hyperbolic conclusion, the hard fact remains that neither the Defense Production Act nor Taft-Hartley authorized the seizure challenged here, and the Government made no effort to comply with the procedures [343 U.S. 666] established by the Selective Service Act of 1948, a statute which expressly authorizes seizures when producers fail to supply necessary defense materiel. 14

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 666

For these reasons, I concur in the judgment of the Court. As Mr. Justice Story once said:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 666

For the executive department of the government, this court entertain the most entire respect, and, amidst the multiplicity of cares in that department, it may, without any violation of decorum, be presumed, that sometimes there may be an inaccurate construction of a law. It is our duty to expound the laws as we find them in the records of state; [343 U.S. 667] and we cannot, when called upon by the citizens of the country, refuse our opinion, however it may differ from that of very great authorities." 15

VINSON, J., dissenting

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

MR CHIEF JUSTICE VINSON, with whom MR. JUSTICE REED and MR. JUSTICE MINTON join, dissenting.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

The President of the United States directed the Secretary of Commerce to take temporary possession of the Nation's steel mills during the existing emergency because

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

The District Court ordered the mills returned to their private owners on the ground that the President's action was beyond his powers under the Constitution.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

This Court affirms. Some members of the Court are of the view that the President is without power to act in time of crisis in the absence of express statutory authorization. Other members of the Court affirm on the basis of their reading of certain statutes. Because we cannot agree that affirmance is proper on any ground, and because of the transcending importance of the questions presented not only in this critical litigation, but also to the powers of the President and of future Presidents to act in time of crisis, we are compelled to register this dissent.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

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1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 667

In passing upon the question of Presidential powers in this case, we must first consider the context in which those powers were exercised. [343 U.S. 668]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 668

Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times. A world not yet recovered from the devastation of World War II has been forced to face the threat of another and more terrifying global conflict.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 668

Accepting in full measure its responsibility in the world community, the United States was instrumental in securing adoption of the United Nations Charter, approved by the Senate by a vote of 89 to 2. The first purpose of the United Nations is to

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 668

maintain international peace and security, and, to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace…. 1

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 668

In 1950, when the United Nations called upon member nations "to render every assistance" to repel aggression in Korea, the United States furnished its vigorous support. 2 For almost two full years, our armed forces have been fighting in Korea, suffering casualties of over 108,000 men. Hostilities have not abated. The "determination of the United Nations to continue its action in Korea to meet the aggression" has been reaffirmed. 3 Congressional support of the action in Korea has been manifested by provisions for increased military manpower and equipment and for economic stabilization, as hereinafter described.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 668

Further efforts to protect the free world from aggression are found in the congressional enactments of the Truman Plan for assistance to Greece and Turkey 4 and [343 U.S. 669] the Marshall Plan for economic aid needed to build up the strength of our friends in Western Europe. 5 In 1949, the Senate approved the North Atlantic Treaty under which each member nation agrees that an armed attack against one is an armed attack against all. 6 Congress immediately implemented the North Atlantic Treaty by authorizing military assistance to nations dedicated to the principles of mutual security under the United Nations Charter. 7 The concept of mutual security recently has been extended by treaty to friends in the Pacific. 8

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 669

Our treaties represent not merely legal obligations, but show congressional recognition that mutual security for the free world is the best security against the threat of aggression on a global scale. The need for mutual security is shown by the very size of the armed forces outside the free world. Defendant's brief informs us that the Soviet Union maintains the largest air force in the world, and maintains ground forces much larger than those presently available to the United States and the countries joined with us in mutual security arrangements. Constant international tensions are cited to demonstrate how precarious is the peace.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 669

Even this brief review of our responsibilities in the world community discloses the enormity of our undertaking. Success of these measures may, as has often been [343 U.S. 670] observed, dramatically influence the lives of many generations of the world's peoples yet unborn. Alert to our responsibilities, which coincide with our own self-preservation through mutual security, Congress has enacted a large body of implementing legislation. As an illustration of the magnitude of the over-all program, Congress has appropriated $130 billion for our own defense and for military assistance to our allies since the June, 1950, attack in Korea.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 670

In the Mutual Security Act of 1951, Congress authorized

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 670

military, economic, and technical assistance to friendly countries to strengthen the mutual security and individual and collective defenses of the free world…. 9

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 670

Over $5 1/2 billion were appropriated for military assistance for fiscal year 1952, the bulk of that amount to be devoted to purchase of military equipment. 10 A request for over $7 billion for the same purpose for fiscal year 1953 is currently pending in Congress. 11 In addition to direct shipment of military equipment to nations of the free world, defense production in those countries relies upon shipment of machine tools and allocation of steel tonnage from the United States. 12

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 670

Congress also directed the President to build up our own defenses. Congress, recognizing the "grim fact…that the United States is now engaged in a struggle for survival" and that "it is imperative that we now take those necessary steps to make our strength equal to the peril of the hour," granted authority to draft men into [343 U.S. 671] the armed forces. 13 As a result, we now have over 3,500,000 men in our armed forces. 14

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 671

Appropriations for the Department of Defense; which had averaged less than $13 billion per year for the three years before attack in Korea, were increased by Congress to $48 billion for fiscal year 1951 and to $60 billion for fiscal year 1952. 15 A request for $51 billion for the Department of Defense for fiscal year 1953 is currently pending in Congress. 16 The bulk of the increase is for military equipment and supplies—guns, tanks, ships, planes and ammunition—all of which require steel. Other defense programs requiring great quantities of steel include the large scale expansion of facilities for the Atomic Energy Commission 17 and the expansion of the Nation's productive capacity affirmatively encouraged by Congress. 18

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 671

Congress recognized the impact of these defense programs upon the economy. Following the attack in Korea, the President asked for authority to requisition property and to allocate and fix priorities for scarce goods. In the Defense Production Act of 1950, Congress granted the powers requested and, in addition, granted power to stabilize prices and wages and to provide for settlement [343 U.S. 672] of labor disputes arising in the defense program. 19 The Defense Production Act was extended in 1951, a Senate Committee noting that, in the dislocation caused by the programs for purchase of military equipment "lies the seed of an economic disaster that might well destroy the military might we are straining to build." 20 Significantly, the Committee examined the problem "in terms of just one commodity, steel," and found "a graphic picture of the over-all inflationary danger growing out of reduced civilian supplies and rising incomes." Even before Korea, steel production at levels above theoretical 100% capacity was not capable of supplying civilian needs alone. Since Korea, the tremendous military demand for steel has far exceeded the increases in productive capacity. This Committee emphasized that the shortage of steel, even with the mills operating at full capacity, coupled with increased civilian purchasing power, presented grave danger of disastrous inflation. 21

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 672

The President has the duty to execute the foregoing legislative programs. Their successful execution depends upon continued production of steel and stabilized prices for steel. Accordingly, when the collective bargaining agreements between the Nation's steel producers and their employees, represented by the United Steel Workers, were due to expire on December 31, 1951, and a strike shutting down the entire basic steel industry was threatened, the President acted to avert a complete shutdown of steel production. On December 22, 1951, he certified the dispute to the Wage Stabilization Board, requesting that the Board investigate the dispute and promptly report its recommendation as to fair and equitable terms of settlement. The Union complied with the President's [343 U.S. 673] request and delayed its threatened strike while the dispute was before the Board. After a special Board panel had conducted hearings and submitted a report, the full Wage Stabilization Board submitted its report and recommendations to the President on March 20, 1952.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 673

The Board's report was acceptable to the Union, but was rejected by plaintiffs. The Union gave notice of its intention to strike as of 12:01 a.m., April 9, 1952, but bargaining between the parties continued with hope of settlement until the evening of April 8, 1952. After bargaining had failed to avert the threatened shutdown of steel production, the President issued the following Executive Order:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 673

WHEREAS on December 16, 1950, I proclaimed the existence of a national emergency which requires that the military, naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made throughout the United Nations and otherwise to bring about a lasting peace; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 673

WHEREAS American fighting men and fighting men of other nations of the United Nations are now engaged in deadly combat with the forces of aggression in Korea, and forces of the United States are stationed elsewhere overseas for the purpose of participating in the defense of the Atlantic Community against aggression; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 673

WHEREAS the weapons and other materials needed by our armed forces and by those joined with us in the defense of the free world are produced to a great extent in this country, and steel is an indispensable component of substantially all of such weapons and materials; and [343 U.S. 674]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS steel is likewise indispensable to the carrying out of programs of the Atomic Energy Commission of vital importance to our defense efforts; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS a continuing and uninterrupted supply of steel is also indispensable to the maintenance of the economy of the United States, upon which our military strength depends; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS a controversy has arisen between certain companies in the United States producing and fabricating steel and the elements thereof and certain of their workers represented by the United Steel Workers of America, CIO, regarding terms and conditions of employment; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS the controversy has not been settled through the processes of collective bargaining or through the efforts of the Government, including those of the Wage Stabilization Board, to which the controversy was referred on December 22, 1951, pursuant to Executive Order No. 10233, and a strike has been called for 12:01 A. M., April 9, 1952; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS a work stoppage would immediately jeopardize and imperil our national defense and the defense of those joined with us in resisting aggression, and would add to the continuing danger of our soldiers, sailors, and airmen engaged in combat in the field; and

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

WHEREAS in order to assure the continued availability of steel and steel products during the existing emergency, it is necessary that the United States take possession of and operate the plants, facilities, and other property of the said companies as hereinafter provided:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 674

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the [343 U.S. 675] United States, and as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

1. The Secretary of Commerce is hereby authorized and directed to take possession of all or such of the plants, facilities, and other property of the companies named in the list attached hereto, or any part thereof, as he may deem necessary in the interests of national defense, and to operate or to arrange for the operation thereof and to do all things necessary for, or incidental to, such operation…. 22

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

The next morning, April 9, 1952, the President addressed the following Message to Congress:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

To the Congress of the United States:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

The Congress is undoubtedly aware of the recent events which have taken place in connection with the management-labor dispute in the steel industry. These events culminated in the action which was taken last night to provide for temporary operation of the steel mills by the Government.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

I took this action with the utmost reluctance. The idea of Government operation of the steel mills is thoroughly distasteful to me, and I want to see it ended as soon as possible. However, in the situation which confronted me yesterday, I felt that I could make no other choice. The other alternatives appeared to be even worse—so much worse that I could not accept them.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 675

One alternative would have been to permit a shutdown in the steel industry. The effects of such a shut-down would have been so immediate and damaging with respect to our efforts to support our Armed Forces and to protect our national security that it made this alternative unthinkable. [343 U.S. 676]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 676

The only way that I know of, other than Government operation, by which a steel shut-down could have been avoided was to grant the demands of the steel industry for a large price increase. I believed and the officials in charge of our stabilization agencies believed that this would have wrecked our stabilization program. I was unwilling to accept the incalculable damage which might be done to our country by following such a course.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 676

Accordingly, it was my judgment that Government operation of the steel mills for a temporary period was the least undesirable of the courses of action which lay open. In the circumstances, I believed it to be, and now believe it to be, my duty and within my powers as President to follow that course of action.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 676

It may be that the Congress will deem some other course to be wiser. It may be that the Congress will feel we should give in to the demands of the steel industry for an exorbitant price increase and take the consequences so far as resulting inflation is concerned.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 676

It may be that the Congress will feel the Government should try to force the steel workers to continue to work for the steel companies for another long period, without a contract, even though the steel workers have already voluntarily remained at work without a contract for 100 days in an effort to reach an orderly settlement of their differences with management.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 676

It may even be that the Congress will feel that we should permit a shut-down of the steel industry, although that would immediately endanger the safety of our fighting forces abroad and weaken the whole structure of our national security. [343 U.S. 677]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

I do not believe the Congress will favor any of these courses of action, but that is a matter for the Congress to determine.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

It may be, on the other hand, that the Congress will wish to pass legislation establishing specific terms and conditions with reference to the operation of the steel mills by the Government. Sound legislation of this character might be very desirable.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

On the basis of the facts that are known to me at this time, I do not believe that immediate congressional action is essential; but I would, of course, be glad to cooperate in developing any legislative proposals which the Congress may wish to consider.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

If the Congress does not deem it necessary to act at this time, I shall continue to do all that is within my power to keep the steel industry operating and at the same time make every effort to bring about a settlement of the dispute so the mills can be returned to their private owners as soon as possible. 23

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

Twelve days passed without action by Congress. On April 21, 1952, the President sent a letter to the President of the Senate in which he again described the purpose and need for his action and again stated his position that "The Congress can, if it wishes, reject the course of action I have followed in this matter." 24 Congress has not so acted to this date.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 677

Meanwhile, plaintiffs instituted this action in the District Court to compel defendant to return possession of the steel mills seized under Executive Order 10340. In this litigation for return of plaintiffs' properties, we assume that defendant Charles Sawyer is not immune from judicial restraint, and that plaintiffs are entitled to equitable relief if we find that the Executive Order [343 U.S. 678] under which defendant acts is unconstitutional. We also assume without deciding that the courts may go behind a President's finding of fact that an emergency exists. But there is not the slightest basis for suggesting that the President's finding in this case can be undermined. Plaintiffs moved for a preliminary injunction before answer or hearing. Defendant opposed the motion, filing uncontroverted affidavits of Government officials describing the facts underlying the President's order.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 678

Secretary of Defense Lovett swore that

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 678

a work stoppage in the steel industry will result immediately in serious curtailment of production of essential weapons and munitions of all kinds.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 678

He illustrated by showing that 84% of the national production of certain alloy steel is currently used for production of military-end items and that 35% of total production of another form of steel goes into ammunition, 80% of such ammunition now going to Korea. The Secretary of Defense stated that: "We are holding the line [in Korea] with ammunition, and not with the lives of our troops."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 678

Affidavits of the Chairman of the Atomic Energy Commission, the Secretary of the Interior, defendant as Secretary of Commerce, and the Administrators of the Defense Production Administration, the National Production Authority, the General Services Administration and the Defense Transport Administration were also filed in the District Court. These affidavits disclose an enormous demand for steel in such vital defense programs as the expansion of facilities in atomic energy, petroleum, power, transportation and industrial production, including steel production. Those charged with administering allocations and priorities swore to the vital part steel production plays in our economy. The affidavits emphasize the critical need for steel in our defense program, [343 U.S. 679] the absence of appreciable inventories of steel, and the drastic results of any interruption in steel production.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 679

One is not here called upon even to consider the possibility of executive seizure of a farm, a corner grocery store or even a single industrial plant. Such considerations arise only when one ignores the central fact of this case—that the Nation's entire basic steel production would have shut down completely if there had been no Government seizure. Even ignoring for the moment whatever confidential information the President may possess as "the Nation's organ for foreign affairs," 25 the uncontroverted affidavits in this record amply support the finding that "a work stoppage would immediately jeopardize and imperil our national defense."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 679

Plaintiffs do not remotely suggest any basis for rejecting the President's finding that any stoppage of steel production would immediately place the Nation in peril. Moreover, even self-generated doubts that any stoppage of steel production constitutes an emergency are of little comfort here. The Union and the plaintiffs bargained for 6 months with over 100 issues in dispute—issues not limited to wage demands, but including the union shop and other matters of principle between the parties. At the time of seizure, there was not, and there is not now, the slightest evidence to justify the belief that any strike will be of short duration. The Union and the steel companies may well engage in a lengthy struggle. Plaintiffs' counsel tells us that "sooner or later" the mills will operate again. That may satisfy the steel companies and, perhaps, the Union. But our soldiers and our allies will hardly be cheered with the assurance that the ammunition upon which their lives depend will be forthcoming—"sooner or later," or, in other words, "too little and too late." [343 U.S. 680]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 680

Accordingly, if the President has any power under the Constitution to meet a critical situation in the absence of express statutory authorization, there is no basis whatever for criticizing the exercise of such power in this case.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 680

II

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 680

The steel mills were seized for a public use. The power of eminent domain, invoked in this case, is an essential attribute of sovereignty, and has long been recognized as a power of the Federal Government. Kohl v. United States, 91 U.S. 367 (1876). Plaintiffs cannot complain that any provision in the Constitution prohibits the exercise of the power of eminent domain in this case. The Fifth Amendment provides: "nor shall private property be taken for public use, without just compensation." It is no bar to this seizure for, if the taking is not otherwise unlawful, plaintiffs are assured of receiving the required just compensation. United States v. Pewee Coal Co., 341 U.S. 114 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 680

Admitting that the Government could seize the mills, plaintiffs claim that the implied power of eminent domain can be exercised only under an Act of Congress; under no circumstances, they say, can that power be exercised by the President unless he can point to an express provision in enabling legislation. This was the view adopted by the District Judge when he granted the preliminary injunction. Without an answer, without hearing evidence, he determined the issue on the basis of his "fixed conclusion…that defendant's acts are illegal" because the President's only course in the face of an emergency is to present the matter to Congress and await the final passage of legislation which will enable the Government to cope with threatened disaster.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 680

Under this view, the President is left powerless at the very moment when the need for action may be most pressing and when no one, other than he, is immediately [343 U.S. 681] capable of action. Under this view, he is left powerless because a power not expressly given to Congress is nevertheless found to rest exclusively with Congress'.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Consideration of this view of executive impotence calls for further examination of the nature of the separation of powers under our tripartite system of Government.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

The Constitution provides:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Art. I,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Section 1. "All legislative Powers herein granted shall be vested in a Congress of the United States…."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Art. II,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Section 1. "The executive Power shall be vested in a President of the United States of America…."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Section 2. "The President shall be Commander in Chief of the Army and Navy of the United States…."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

"He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;…"

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Section 3. "He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient;…The shall take Care that the Laws be faithfully executed…. "

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Art. III,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

Section 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 681

The whole of the "executive Power" is vested in the President. Before entering office, the President swears that he "will faithfully execute the Office of President of the [343 U.S. 682] United States, and will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States." Art. II, § 1.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 682

This comprehensive grant of the executive power to a single person was bestowed soon after the country had thrown the yoke of monarchy. Only by instilling initiative and vigor in all of the three departments of Government, declared Madison, could tyranny in any form be avoided. 26 Hamilton added:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 682

Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. 27

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 682

It is thus apparent that the Presidency was deliberately fashioned as an office of power and independence. Of course, the Framers created no autocrat capable of arrogating any power unto himself at any time. But neither did they create an automaton impotent to exercise the powers of Government at a time when the survival of the Republic itself may be at stake.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 682

In passing upon the grave constitutional question presented in this case, we must never forget, as Chief Justice Marshall admonished, that the Constitution is "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs," and that "[i]ts means are adequate to its ends." 28 Cases do arise presenting questions which could not have been foreseen by the Framers. In such cases, the Constitution has been treated as a living document adaptable to new situations. 29 [343 U.S. 683] But we are not called upon today to expand the Constitution to meet a new situation. For, in this case, we need only look to history and time-honored principles of constitutional law—principles that have been applied consistently by all branches of the Government throughout our history. It is those who assert the invalidity of the Executive Order who seek to amend the Constitution in this case.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 683

III

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 683

A review of executive action demonstrates that our Presidents have on many occasions exhibited the leadership contemplated by the Framers when they made the President Commander in Chief, and imposed upon him the trust to "take Care that the Laws be faithfully executed." With or without explicit statutory authorization, Presidents have at such times dealt with national emergencies by acting promptly and resolutely to enforce legislative programs, at least to save those programs until Congress could act. Congress and the courts have responded to such executive initiative with consistent approval.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 683

Our first President displayed at once the leadership contemplated by the Framers. When the national revenue laws were openly flouted in some sections of Pennsylvania, President Washington, without waiting for a call from the state government, summoned the militia and took decisive steps to secure the faithful execution of the laws. 30 When international disputes engendered by the French revolution threatened to involve this country in war, and while congressional policy remained uncertain, Washington issued his Proclamation of Neutrality. Hamilton, whose defense of the Proclamation [343 U.S. 684] has endured the test of time, invoked the argument that the Executive has the duty to do that which will preserve peace until Congress acts and, in addition, pointed to the need for keeping the Nation informed of the requirements of existing laws and treaties as part of the faithful execution of the laws. 31

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 684

President John Adams issued a warrant for the arrest of Jonathan Robbins in order to execute the extradition provisions of a treaty. This action was challenged in Congress on the ground that no specific statute prescribed the method to be used in executing the treaty. John Marshall, then a member of the House of Representatives, made the following argument in support of the President's action:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 684

The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but, till this be done, it seems the duty of the Executive department to execute the contract by any means it possesses. 32

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 684

Efforts in Congress to discredit the President for his action failed. 33 Almost a century later, this Court had [343 U.S. 685] occasion to give its express approval to "the masterly and conclusive argument of John Marshall." 34

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 685

Jefferson's initiative in the Louisiana Purchase, the Monroe Doctrine, and Jackson's removal of Government deposits from the Bank of the United States further serve to demonstrate by deed what the Framers described by word when they vested the whole of the executive power in the President.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 685

Without declaration of war, President Lincoln took energetic action with the outbreak of the War Between the States. He summoned troops and paid them out of the Treasury without appropriation therefor. He proclaimed a naval blockade of the Confederacy and seized ships violating that blockade. Congress, far from denying the validity of these acts, gave them express approval. The most striking action of President Lincoln was the Emancipation Proclamation, issued in aid of the successful prosecution of the War Between the States, but wholly without statutory authority. 35

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 685

In an action furnishing a most apt precedent for this case, President Lincoln, without statutory authority, directed the seizure of rail and telegraph lines leading to Washington. 36 Many months later, Congress recognized and confirmed the power of the President to seize railroads and telegraph lines and provided criminal penalties for interference with Government operation. 37 This Act did not confer on the President any additional powers of seizure. Congress plainly rejected the view that the President's acts had been without legal sanction until [343 U.S. 686] ratified by the legislature. Sponsors of the bill declared that its purpose was only to confirm the power which the President already possessed. 38 Opponents insisted a statute authorizing seizure was unnecessary, and might even be construed as limiting existing Presidential powers. 39

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 686

Other seizures of private property occurred during the War Between the States, just as they had occurred during previous wars. 40 In United States v. Russell, 13 Wall. 623 (1872), three river steamers were seized by Army Quartermasters on the ground of "imperative military necessity." This Court affirmed an award of compensation, stating:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 686

Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized and appropriated to the public use, or may even be destroyed without the consent of the owner.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 686

\* \* \* \*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 686

Exigencies of the kind do arise in time of war or impending public danger, but it is the emergency, as was said by a great magistrate, that gives the right, [343 U.S. 687] and it is clear that the emergency must be shown to exist before the taking can be justified. Such a justification may be shown, and, when shown, the rule is well settled that the officer taking private property for such a purpose, if the emergency is fully proved, is not a trespasser, and that the government is bound to make full compensation to the owner. 41

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 687

In In re Neagle, 135 U.S. 1 (1890), this Court held that a federal officer had acted in line of duty when he was guarding a Justice of this Court riding circuit. It was conceded that there was no specific statute authorizing the President to assign such a guard. In holding that such a statute was not necessary, the Court broadly stated the question as follows:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 687

[The President] is enabled to fulfil the duty of his great department, expressed in the phrase that "he shall take care that the laws be faithfully executed."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 687

Is this duty limited to the enforcement of acts of Congress or of treaties of the United States according to their express terms, or does it include the rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution? 42

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 687

The latter approach was emphatically adopted by the Court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 687

President Hayes authorized the widespread use of federal troops during the Railroad Strike of 1877. 43 President Cleveland also used the troops in the Pullman Strike, [343 U.S. 688] of 1895 and his action is of special significance. No statute authorized this action. No call for help had issued from the Governor of Illinois; indeed Governor Altgeld disclaimed the need for supplemental forces. But the President's concern was that federal laws relating to the free flow of interstate commerce and the mails be continuously and faithfully executed without interruption. 44 To further this aim, his agents sought and obtained the injunction upheld by this Court in In re Debs, 158 U.S. 564 (1895). The Court scrutinized each of the steps taken by the President to insure execution of the "mass of legislation" dealing with commerce and the mails and gave his conduct full approval. Congress likewise took note of this use of Presidential power to forestall apparent obstacles to the faithful execution of the laws. By separate resolutions, both the Senate and the House commended the Executive's action. 45

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 688

President Theodore Roosevelt seriously contemplated seizure of Pennsylvania coal mines if a coal shortage necessitated such action. 46 In his autobiography, President Roosevelt expounded the "Stewardship Theory" of Presidential power, stating that

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 688

the executive as subject only to the people, and, under the Constitution, bound to serve the people affirmatively in cases where the Constitution does not explicitly forbid him to render the service. 47

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 688

Because the contemplated seizure of the coal mines was based on this theory, then ex-President Taft criticized President Roosevelt in a passage in his book relied upon by the District Court in this case. Taft, Our Chief Magistrate and His Powers (1916), 139-147. In the same book, however, President Taft agreed that [343 U.S. 689] such powers of the President as the duty to "take Care that the Laws be faithfully executed" could not be confined to "express Congressional statutes." Id. at 88. In re Neagle, supra, and In re Debs, supra, were cited as conforming with Taft's concept of the office, id. at pp. 88-94, as they were later to be cited with approval in his opinion as Chief Justice in Myers v. United States, 272 U.S. 52, 133 (1926). 48

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 689

In 1909, President Taft was informed that government-owned oil lands were being patented by private parties at such a rate that public oil lands would be depleted in a matter of months. Although Congress had explicitly provided that these lands were open to purchase by United States citizens, 29 Stat. 526 (1897), the President nevertheless ordered the lands withdrawn from sale "[i]n aid of proposed legislation." In United States v. Midwest Oil Co., 236 U.S. 459 (1915), the President's action was sustained as consistent with executive practice throughout our history. An excellent brief was filed in the case by the Solicitor General, Mr. John W. Davis, together with Assistant Attorney General Knaebel, later Reporter for this Court. In this brief, the situation confronting President Taft was described as "an emergency; there was no time to wait for the action of Congress." The brief then discusses the powers of the President under the Constitution in such a case:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 689

Ours is a self-sufficient Government within its sphere. (Ex parte Siebold, 100 U.S. 371, 395; In re Debs, 158 U.S. 564, 578.) "Its means are adequate to its ends" (McCulloch v. Maryland, 4 [343 U.S. 690] Wheat. 316, 424), and it is rational to assume that its active forces will be found equal in most things to the emergencies that confront it. While perfect flexibility is not to be expected in a Government of divided powers, and while division of power is one of the principal features of the Constitution, it is the plain duty of those who are called upon to draw the dividing lines to ascertain the essential, recognize the practical, and avoid a slavish formalism which can only serve to ossify the Government and reduce its efficiency without any compensating good. The function of making laws is peculiar to Congress, and the Executive cannot exercise that function to any degree. But this is not to say that all of the subjects concerning which laws might be made are perforce removed from the possibility of Executive influence. The Executive may act upon things and upon men in many relations which have not, though they might have, been actually regulated by Congress. In other words, just as there are fields which are peculiar to Congress and fields which are peculiar to the Executive, so there are fields which are common to both, in the sense that the Executive may move within them until they shall have been occupied by legislative action. These are not the fields of legislative prerogative, but fields within which the lawmaking power may enter and dominate whenever it chooses. This situation results from the fact that the President is the active agent not of Congress, but of the Nation. As such, he performs the duties which the Constitution lays upon him immediately, and as such, also, he executes the laws and regulations adopted by Congress. He is the agent of the people of the United States, deriving all his powers from them and responsible directly to them. In no [343 U.S. 691] sense is he the agent of Congress. He obeys and executes the laws of Congress not because Congress is enthroned in authority over him, but because the Constitution directs him to do so.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 691

Therefore it follows that, in ways short of making laws or disobeying them, the Executive may be under a grave constitutional duty to act for the national protection in situations not covered by the acts of Congress, and in which, even, it may not be said that his action is the direct expression of any particular one of the independent powers which are granted to him specifically by the Constitution. Instances wherein the President has felt and fulfilled such a duty have not been rare in our history, though, being for the public benefit and approved by all, his acts have seldom been challenged in the courts. We are able, however, to present a number of apposite cases which were subjected to judicial inquiry.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 691

The brief then quotes from such cases as In re Debs, supra, and In re Neagle, supra, and continues:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 691

As we understand the doctrine of the Neagle case, and the cases therein cited, it is clearly this: the Executive is authorized to exert the power of the United States when he finds this necessary for the protection of the agencies, the instrumentalities, or the property of the Government. This does not mean an authority to disregard the wishes of Congress on the subject when that subject lies within its control and when those wishes have been expressed, and it certainly does not involve the slightest semblance of a power to legislate, much less to "suspend" legislation already passed by Congress. It involves the performance of specific acts not of a [343 U.S. 692] legislative but purely of an executive character—acts which are not in themselves laws, but which presuppose a "law" authorizing him to perform them. This law is not expressed either in the Constitution or in the enactments of Congress, but reason and necessity compel that it be implied from the exigencies of the situation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 692

In none of the cases which we have mentioned, nor in the cases cited in the extracts taken from the Neagle case, was it possible to say that the action of the President was directed, expressly or impliedly, by Congress. The situations dealt with had never been covered by any act of Congress, and there was no ground whatever for a contention that the possibility of their occurrence had ever been specifically considered by the legislative mind. In none of those cases did the action of the President amount merely to the execution of some specific law.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 692

Neither does any of them stand apart in principle from the case at bar, as involving the exercise of specific constitutional powers of the President in a degree in which this case does not involve them. Taken collectively, the provisions of the Constitution which designate the President as the official who must represent us in foreign relations, in commanding the Army and Navy, in keeping Congress informed of the state of the Union, in insuring the faithful execution of the laws and in recommending new ones, considered in connection with the sweeping declaration that the executive power shall be vested in him, completely demonstrate that his is the watchful eye, the active hand, the overseeing dynamic force of the United States. 49 [343 U.S. 693]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 693

This brief is valuable not alone because of the caliber of its authors, but because it lays bare in succinct reasoning the basis of the executive practice which this Court approved in the Midwest Oil case.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 693

During World War I, President Wilson established a War Labor Board without awaiting specific direction by Congress. 50 With William Howard Taft and Frank P. Walsh as co-chairmen, the Board had as its purpose the prevention of strikes and lockouts interfering with the production of goods needed to meet the emergency. Effectiveness of War Labor Board decision was accomplished by Presidential action, including seizure of industrial plants. 51 Seizure of the Nation's railroads was also ordered by President Wilson. 52

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 693

Beginning with the Bank Holiday Proclamation 53 and continuing through World War II, executive leadership and initiative were characteristic of President Franklin D. Roosevelt's administration. In 1939, upon the outbreak [343 U.S. 694] of war in Europe, the President proclaimed a limited national emergency for the purpose of strengthening our national defense. 54 In May of 1941, the danger from the Axis belligerents having become clear, the President proclaimed "an unlimited national emergency" calling for mobilization of the Nation's defenses to repel aggression. 55 The President took the initiative in strengthening our defenses by acquiring rights from the British Government to establish air bases in exchange for over-age destroyers. 56

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 694

In 1941, President Roosevelt acted to protect Iceland from attack by Axis powers, when British forces were withdrawn, by sending our forces to occupy Iceland. Congress was informed of this action on the same day that our forces reached Iceland. 57 The occupation of Iceland was but one of "at least 125 incidents" in our history in which Presidents,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 694

without congressional authorization, and in the absence of a declaration of war, [have] ordered the Armed Forces to take action or maintain positions abroad. 58

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 694

Some six months before Pearl Harbor, a dispute at a single aviation plant at Inglewood, California, interrupted a segment of the production of military aircraft. In spite of the comparative insignificance of this work stoppage to total defense production, as contrasted with the complete paralysis now threatened by a shutdown of the entire basic steel industry, and even though [343 U.S. 695] our armed forces were not then engaged in combat, President Roosevelt ordered the seizure of the plant

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 695

pursuant to the powers vested in [him] by the Constitution and laws of the United States, as President of the United States of America and Commander in Chief of the Army and Navy of the United States. 59

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 695

The Attorney General (Jackson) vigorously proclaimed that the President had the moral duty to keep this Nation's defense effort a "going concern." His ringing moral justification was coupled with a legal justification equally well stated:

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The Presidential proclamation rests upon the aggregate of the Presidential powers derived from the Constitution itself and from statutes enacted by the Congress.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 695

The Constitution lays upon the President the duty "to take care that the laws be faithfully executed." Among the laws which he is required to find means to execute are those which direct him to equip an enlarged army, to provide for a strengthened navy, to protect Government property, to protect those who are engaged in carrying out the business of the Government, and to carry out the provisions of the Lend-Lease Act. For the faithful execution of such laws, the President has back of him not only each general law enforcement power conferred by the various acts of Congress, but the aggregate of all such laws plus that wide discretion as to method vested in him by the Constitution for the purpose of executing the laws.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 695

The Constitution also places on the President the responsibility and vests in him the powers of Commander in Chief of the Army and of the Navy. These weapons for the protection of the continued existence of the Nation are placed in his sole command [343 U.S. 696] and the implication is clear that he should not allow them to become paralyzed by failure to obtain supplies for which Congress has appropriated the money and which it has directed the President to obtain. 60

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 696

At this time, Senator Connally proposed amending the Selective Training and Service Act to authorize the President to seize any plant where an interruption of production would unduly impede the defense effort. 61 Proponents of the measure in no way implied that the legislation would add to the powers already possessed by the President, 62 and the amendment was opposed as unnecessary, since the President already had the power. 63 The amendment relating to plant seizures was not approved at that session of Congress. 64

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 696

Meanwhile, and also prior to Pearl Harbor, the President ordered the seizure of a shipbuilding company and an aircraft parts plant. 65 Following the declaration of war, but prior to the Smith-Connally Act of 1943, five additional industrial concerns were seized to avert interruption [343 U.S. 697] of needed production. 66 During the same period, the President directed seizure of the Nation's coal mines to remove an obstruction to the effective prosecution of the war. 67

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 697

The procedures adopted by President Roosevelt closely resembled the methods employed by President Wilson. A National War Labor Board, like its predecessor of World War I, was created by Executive Order to deal effectively and fairly with disputes affecting defense production. 68 Seizures were considered necessary, upon disobedience of War Labor Board orders, to assure that the mobilization effort remained a "going concern," and to enforce the economic stabilization program.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 697

At the time of the seizure of the coal mines, Senator Connally's bill to provide a statutory basis for seizures and for the War Labor Board was again before Congress. As stated by its sponsor, the purpose of the bill was not to augment Presidential power, but to "let the country know that the Congress is squarely behind the President." 69 As in the case of the legislative recognition of President Lincoln's power to seize, Congress again recognized that the President already had the necessary power, for there was no intention to "ratify" past actions of doubtful validity. Indeed, when Senator Tydings offered an amendment to the Connally bill expressly to confirm and validate the seizure of the coal mines, sponsors of the bill [343 U.S. 698] opposed the amendment as casting doubt on the legality of the seizure, and the amendment was defeated. 70 When the Connally bill, S. 796, came before the House, all parts after the enacting clause were stricken, and a bill introduced by Representative Smith of Virginia was substituted and passed. This action in the House is significant because the Smith bill did not contain the provisions authorizing seizure by the President, but did contain provisions controlling and regulating activities in respect to properties seized by the Government under statute "or otherwise." 71 After a conference, the seizure provisions of the Connally bill, enacted as the Smith-Connally or War Labor Disputes Act of 1943, 57 Stat. 163, were agreed to by the House.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 698

Following passage of the Smith-Connally Act, seizures to assure continued production on the basis of terms recommended by the War Labor Board were based upon that Act as well as upon the President's power under the Constitution and the laws generally. A question did arise as to whether the statutory language relating to "any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials" 72 authorized the seizure of properties of Montgomery Ward & Co., a retail department store and mail-order concern. The Attorney General (Biddle) issued an opinion that the President possessed the power to seize Montgomery Ward properties to prevent a work stoppage whether or not the terms of the Smith-Connally Act authorized such a seizure. 73 This opinion was in line with [343 U.S. 699] the views on Presidential powers maintained by the Attorney General's predecessors (Murphy 74 and Jackson 75) and his successor (Clark 76). Accordingly, the President ordered seizure of the Chicago properties of Montgomery Ward in April, 1944, when that company refused to obey a War Labor Board order concerning the bargaining representative of its employees in Chicago. 77 In Congress, a Select Committee to Investigate Seizure of the Property of Montgomery Ward & Co., assuming that the terms of the Smith-Connally Act did not cover this seizure, concluded that the seizure "was not only within the constitutional power, but was the plain duty of the President." 78 Thereafter, an election determined the bargaining representative for the Chicago employees and the properties were returned to Montgomery Ward & Co. In December, 1944, after continued defiance of a series of War Labor Board orders, President Roosevelt ordered the seizure of Montgomery Ward properties throughout the country. 79 The Court of Appeals for the Seventh Circuit upheld this seizure on statutory grounds, and also indicated its disapproval of a lower court's denial of seizure power apart from express statute. 80 [343 U.S. 700]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 700

More recently, President Truman acted to repel aggression by employing our armed forces in Korea. 81 Upon the intervention of the Chinese Communists, the President proclaimed the existence of an unlimited national emergency requiring the speedy build-up of our defense establishment. 82 Congress responded by providing for increased manpower and weapons for our own armed forces, by increasing military aid under the Mutual Security Program, and by enacting economic stabilization measures, as previously described.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 700

This is but a cursory summary of executive leadership. But it amply demonstrates that Presidents have taken prompt action to enforce the laws and protect the country whether or not Congress happened to provide in advance for the particular method of execution. At the minimum, the executive actions reviewed herein sustain the action of the President in this case. And many of the cited examples of Presidential practice go far beyond the extent of power necessary to sustain the President's order to seize the steel mills. The fact that temporary executive seizures of industrial plants to meet an emergency have not been directly tested in this Court furnishes not the slightest suggestion that such actions have been illegal. Rather, the fact that Congress and the courts have consistently recognized and given their support to such executive action indicates that such a power of seizure has been accepted throughout our history.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 700

History bears out the genius of the Founding Fathers, who created a Government subject to law but not left subject to inertia when vigor and initiative are required. [343 U.S. 701]

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 701

IV

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 701

Focusing now on the situation confronting the President on the night of April 8, 1952, we cannot but conclude that the President was performing his duty under the Constitution to "take Care that the Laws be faithfully executed"—a duty described by President Benjamin Harrison as "the central idea of the office." 83

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 701

The President reported to Congress the morning after the seizure that he acted because a work stoppage in steel production would immediately imperil the safety of the Nation by preventing execution of the legislative programs for procurement of military equipment. And, while a shutdown could be averted by granting the price concessions requested by plaintiffs, granting such concessions would disrupt the price stabilization program also enacted by Congress. Rather than fail to execute either legislative program, the President acted to execute both.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 701

Much of the argument in this case has been directed at straw men. We do not now have before us the case of a President acting solely on the basis of his own notions of the public welfare. Nor is there any question of unlimited executive power in this case. The President himself closed the door to any such claim when he sent his Message to Congress stating his purpose to abide by any action of Congress, whether approving or disapproving his seizure action. Here, the President immediately made sure that Congress was fully informed of the temporary action he had taken only to preserve the legislative programs from destruction until Congress could act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 701

The absence of a specific statute authorizing seizure of the steel mills as a mode of executing the laws—both the military procurement program and the anti-inflation program—has not until today been thought to prevent [343 U.S. 702] the President from executing the laws. Unlike an administrative commission confined to the enforcement of the statute under which it was created, or the head of a department when administering a particular statute, the President is a constitutional officer charged with taking care that a "mass of legislation" be executed. Flexibility as to mode of execution to meet critical situations is a matter of practical necessity. This practical construction of the "Take Care" clause, advocated by John Marshall, was adopted by this Court in In re Neagle, In re Debs and other cases cited supra. See also Ex parte Quirin, 317 U.S. 1, 26 (1942). Although more restrictive views of executive power, advocated in dissenting opinions of Justices Holmes, McReynolds and Brandeis, were emphatically rejected by this Court in Myers v. United States, supra, members of today's majority treat these dissenting views as authoritative.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 702

There is no statute prohibiting seizure as a method of enforcing legislative programs. Congress has in no wise indicated that its legislation is not to be executed by the taking of private property (subject, of course, to the payment of just compensation) if its legislation cannot otherwise be executed. Indeed, the Universal Military Training and Service Act authorizes the seizure of any plant that fails to fill a Government contract 84 or the properties of any steel producer that fails to allocate steel as directed for defense production. 85 And the Defense Production Act authorizes the President to requisition equipment and condemn real property needed without delay in the defense effort. 86 Where Congress authorizes seizure in instances not necessarily crucial to the defense [343 U.S. 703] program, it can hardly be said to have disclosed an intention to prohibit seizures where essential to the execution of that legislative program.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 703

Whatever the extent of Presidential power on more tranquil occasions, and whatever the right of the President to execute legislative programs as he sees fit without reporting the mode of execution to Congress, the single Presidential purpose disclosed on this record is to faithfully execute the laws by acting in an emergency to maintain the status quo, thereby preventing collapse of the legislative programs until Congress could act. The President's action served the same purposes as a judicial stay entered to maintain the status quo in order to preserve the jurisdiction of a court. In his Message to Congress immediately following the seizure, the President explained the necessity of his action in executing the military procurement and anti-inflation legislative programs and expressed his desire to cooperate with any legislative proposals approving, regulating or rejecting the seizure of the steel mills. Consequently, there is no evidence whatever of any Presidential purpose to defy Congress or act in any way inconsistent with the legislative will.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 703

In United States v. Midwest Oil Co., supra, this Court approved executive action where, as here, the President acted to preserve an important matter until Congress could act—even though his action in that case was contrary to an express statute. In this case, there is no statute prohibiting the action taken by the President in a matter not merely important, but threatening the very safety of the Nation. Executive inaction in such a situation, courting national disaster, is foreign to the concept of energy and initiative in the Executive as created by the Founding Fathers. The Constitution was itself

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 703

adopted in a period of grave emergency…. While emergency does not create power, emergency may furnish [343 U.S. 704] the occasion for the exercise of power. 87

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 704

The Framers knew, as we should know in these times of peril, that there is real danger in Executive weakness. There is no cause to fear Executive tyranny so long as the laws of Congress are being faithfully executed. Certainly there is no basis for fear of dictatorship when the Executive acts, as he did in this case, only to save the situation until Congress could act.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 704

V

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 704

Plaintiffs place their primary emphasis on the Labor Management Relations Act of 1947, hereinafter referred to as the Taft-Hartley Act, but do not contend that that Act contains any provision prohibiting seizure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 704

Under the Taft-Hartley Act, as under the Wagner Act, collective bargaining and the right to strike are at the heart of our national labor policy. Taft-Hartley preserves the right to strike in any emergency, however serious, subject only to an 80-day delay in cases of strikes imperiling the national health and safety. 88 In such a case, the President may appoint a board of inquiry to report the facts of the labor dispute. Upon receiving that report, the President may direct the Attorney General to petition a District Court to enjoin the strike. If the injunction is granted, it may continue in effect for no more than 80 days, during which time the board of inquiry makes further report and efforts are made to settle the dispute. When the injunction is dissolved, the President is directed to submit a report to Congress together with his recommendations. 89

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 704

Enacted after World War II, Taft-Hartley restricts the right to strike against private employers only to a limited [343 U.S. 705] extent and for the sole purpose of affording an additional period of time within which to settle the dispute. Taft-Hartley in no way curbs strikes before an injunction can be obtained and after an 80-day injunction is dissolved.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 705

Plaintiffs admit that the emergency procedures of Taft-Hartley are not mandatory. Nevertheless, plaintiffs apparently argue that, since Congress did provide the 80-day injunction method for dealing with emergency strikes, the President cannot claim that an emergency exists until the procedures of Taft-Hartley have been exhausted. This argument was not the basis of the District Court's opinion, and, whatever merit the argument might have had following the enactment of Taft-Hartley, it loses all force when viewed in light of the statutory pattern confronting the President in this case.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 705

In Title V of the Defense Production Act of 1950, 90 Congress stated:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 705

It is the intent of Congress, in order to provide for effective price and wage stabilization pursuant to title IV of this Act and to maintain uninterrupted production, that there be effective procedures for the settlement of labor disputes affecting national defense.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 705

(§ 501.) Title V authorized the President to initiate labor-management conferences and to take action appropriate to carrying out the recommendations of such conferences and the provisions of Title V. (§ 502.) Due regard is to be given to collective bargaining practice and stabilization policies, and no action taken is to be inconsistent with Taft-Hartley and other laws. (§ 503.) The purpose of these provisions was to authorize the President "to establish a board, commission or other agency, similar [343 U.S. 706] to the War Labor Board of World War II, to carry out the title." 91

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 706

The President authorized the Wage Stabilization Board (WSB), which administers the wage stabilization functions of Title IV of the Defense Production Act, also to deal with labor disputes affecting the defense program. 92 When extension of the Defense Production Act was before Congress in 1951, the Chairman of the Wage Stabilization Board described in detail the relationship between the Taft-Hartley procedures applicable to labor disputes imperiling the national health and safety and the new WSB disputes procedures especially devised for settlement of labor disputes growing out of the needs of the defense program. 93 Aware that a technique separate from Taft-Hartley had been devised, members of Congress attempted to divest the WSB of its disputes powers. These attempts were defeated in the House, were not brought to a vote in the Senate, and the Defense Production Act was extended through June 30, 1952, without change in the disputes powers of the WSB. 94 [343 U.S. 707] Certainly this legislative creation of a new procedure for dealing with defense disputes negatives any notion that Congress intended the earlier and discretionary Taft-Hartley procedure to be an exclusive procedure.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 707

Accordingly, as of December 22, 1951, the President had a choice between alternate procedures for settling the threatened strike in the steel mills: one route created to deal with peacetime disputes; the other route specially created to deal with disputes growing out of the defense and stabilization program. There is no question of bypassing a statutory procedure, because both of the routes available to the President in December were based upon statutory authorization. Both routes were available in the steel dispute. The Union, by refusing to abide by the defense and stabilization program, could have forced the President to invoke Taft-Hartley at that time to delay the strike a maximum of 80 days. Instead, the Union agreed to cooperate with the defense program and submit the dispute to the Wage Stabilization Board.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 707

Plaintiffs had no objection whatever at that time to the President's choice of the WSB route. As a result, the strike was postponed, a WSB panel held hearings and reported the position of the parties and the WSB recommended the terms of a settlement which it found were fair and equitable. Moreover, the WSB performed a function which the board of inquiry contemplated by Taft-Hartley could not have accomplished when it checked the recommended wage settlement against its own wage stabilization regulations issued pursuant to its stabilization functions under Title IV of the Defense Production Act. Thereafter, the parties bargained on the basis of the WSB recommendation.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 707

When the President acted on April 8, he had exhausted the procedures for settlement available to him. Taft-Hartley was a route parallel to, not connected with, the WSB procedure. The strike had been delayed 99 [343 U.S. 708] days, as contrasted with the maximum delay of 80 days under Taft-Hartley. There had been a hearing on the issues in dispute and bargaining which promised settlement up to the very hour before seizure had broken down. Faced with immediate national peril through stoppage in steel production, on the one hand, and faced with destruction of the wage and price legislative programs, on the other, the President took temporary possession of the steel mills as the only course open to him consistent with his duty to take care that the laws be faithfully executed.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 708

Plaintiffs' property was taken and placed in the possession of the Secretary of Commerce to prevent any interruption in steel production. It made no difference whether the stoppage was caused by a union-management dispute over terms and conditions of employment, a union-Government dispute over wage stabilization, or a management-Government dispute over price stabilization. The President's action has thus far been effective not in settling the dispute, but in saving the various legislative programs at stake from destruction until Congress could act in the matter.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 708

VI

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 708

The diversity of views expressed in the six opinions of the majority, the lack of reference to authoritative precedent, the repeated reliance upon prior dissenting opinions, the complete disregard of the uncontroverted facts showing the gravity of the emergency, and the temporary nature of the taking all serve to demonstrate how far afield one must go to affirm the order of the District Court.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 708

The broad executive power granted by Article II to an officer on duty 365 days a year cannot, it is said, be invoked to avert disaster. Instead, the President must confine himself to sending a message to Congress recommending action. Under this messenger-boy concept of [343 U.S. 709] the Office, the President cannot even act to preserve legislative programs from destruction so that Congress will have something left to act upon. There is no judicial finding that the executive action was unwarranted because there was, in fact, no basis for the President's finding of the existence of an emergency 95 for, under this view, the gravity of the emergency and the immediacy of the threatened disaster are considered irrelevant as a matter of law.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 709

Seizure of plaintiffs' property is not a pleasant undertaking. Similarly unpleasant to a free country are the draft which disrupts the home and military procurement which causes economic dislocation and compels adoption of price controls, wage stabilization and allocation of materials. The President informed Congress that even a temporary Government operation of plaintiffs' properties was "thoroughly distasteful" to him, but was necessary to prevent immediate paralysis of the mobilization program. Presidents have been in the past, and any man worthy of the Office should be in the future, free to take at least interim action necessary to execute legislative programs essential to survival of the Nation. A sturdy judiciary should not be swayed by the unpleasantness or unpopularity of necessary executive action, but must independently determine for itself whether the President was acting, as required by the Constitution, to "take Care that the Laws be faithfully executed."

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 709

As the District Judge stated, this is no time for "timorous" judicial action. But neither is this a time for timorous executive action. Faced with the duty of executing the defense programs which Congress had enacted and the disastrous effects that any stoppage in steel production would have on those programs, the President acted to preserve those programs by seizing the steel mills. [343 U.S. 710] There is no question that the possession was other than temporary in character, and subject to congressional direction—either approving, disapproving, or regulating the manner in which the mills were to be administered and returned to the owners. The President immediately informed Congress of his action, and clearly stated his intention to abide by the legislative will. No basis for claims of arbitrary action, unlimited powers, or dictatorial usurpation of congressional power appears from the facts of this case. On the contrary, judicial, legislative and executive precedents throughout our history demonstrate that, in this case, the President acted in full conformity with his duties under the Constitution. Accordingly, we would reverse the order of the District Court.

Footnotes

BLACK, J., lead opinion (Footnotes)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

1. This Board was established under Executive Order 10233, 16 Fed.Reg. 3503.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

2. The Selective Service Act of 1948, 62 Stat. 604, 625-627, 50 U.S.C. App (Supp. IV) § 468; the Defense Production Act of 1950, Tit. II, 64 Stat. 798, as amended, 65 Stat. 132.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

3. 93 Cong.Rec. 3637-3645.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

4. 93 Cong.Rec. 3835-3836.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

5. Labor Management Relations Act, 1947, 61 Stat. 136, 152-156, 29 U.S.C. (Supp.IV) §§ 141, 171-180.

FRANKFURTER, J., concurring (Footnotes)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

1. The power to seize plants under the War Labor Disputes Act ended with the termination of hostilities, proclaimed on Dec. 31, 1946, prior to the incoming of the Eightieth Congress, and the power to operate previously seized plants ended on June 30, 1947, only a week after the enactment of the Labor Management Relations Act over the President's veto. 57 Stat. 163, 165, 50 U.S.C.App. (1946 ed.) § 1503. See 2 Legislative History of the Labor Management Relations Act, 1947 (published by National Labor Relations Board, 1948), 1145, 1519, 1626.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

2. Some of the more directly relevant statements are the following:

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In most instances, the force of public opinion should make itself sufficiently felt in this 80-day period to bring about a peaceful termination of the controversy. Should this expectation fail, the bill provides for the President's laying the matter before Congress for whatever legislation seems necessary to preserve the health and safety of the Nation in the crisis.

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Senate Report No. 105, 80th Cong., 1st Sess. 15.

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"We believe it would be most unwise for the Congress to attempt to adopt laws relating to any single dispute between private parties." Senate Minority Report, id. Part 2, at 17.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

In the debates, Senator H. Alexander Smith, a member of the Senate Committee on Labor and Public Welfare, said,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

In the event of a deadlock and a strike is not ended, the matter is referred to the President, who can use his discretion as to whether he will present the matter to the Congress, whether or not the situation is such that emergency legislation is required.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

Nothing has been done with respect to the Smith-Connally Act. There is no provision for taking over property or running plants by the Government. We simply provide a procedure which we hope will be effective in 99 out of 100 cases where the health or safety of the people may be affected, and still leave a loophole for congressional action.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

93 Cong.Rec. 4281.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

The President in his veto message said,

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

…it would be mandatory for the President to transfer the whole problem to the Congress, even if it were not in session. Thus, major economic disputes between employers and their workers over contract terms might ultimately be thrown into the political arena for disposition. One could scarcely devise a less effective method for discouraging critical strikes.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

93 Cong.Rec. 7487.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

3. Senator Taft said:

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

If there finally develops a complete national emergency threatening the safety and health of the people of the United States, Congress can pass an emergency law to cover the particular emergency….

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We have felt that, perhaps in the case of a general strike, or in the case of other serious strikes, after the termination of every possible effort to resolve the dispute, the remedy might be an emergency act by Congress for that particular purpose.

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…But while such a bill [for seizure of plants and union funds] might be prepared, I should be unwilling to place such a law on the books until we actually face such an emergency, and Congress applies the remedy for the particular emergency only. Eighty days will provide plenty of time within which to consider the possibility of what should be done, and we believe very strongly that there should not be anything in this law which prohibits finally the right to strike.

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93 Cong.Rec. 3835-3836.

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4. 93 Cong.Rec. 3637-3645.

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5. See, for instance, the statements of James B. Carey, Secretary of the CIO, in opposition to S. 2054, 77th Cong., 1st Sess., which eventually became the War Labor Disputes Act. Central to that Act, of course, was the temporary grant of the seizure power to the President. Mr. Carey then said:

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Senator BURTON. If this would continue forever, it might mean the nationalization of industry?

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Mr. CAREY. Let us consider it on a temporary basis. How is the law borne by labor? Here is the Government-sponsored strike-breaking agency, and nothing more.

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\* \* \* \*

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Our suggestion of a voluntary agreement of the representatives of industry and labor and Government, participating in calling a conference, is a democratic way. The other one is the imposition of force, the other is the imposition of seizure of certain things for a temporary period; the destruction of collective bargaining, and it would break down labor relations that may have been built up over a long period.

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Hearing before a Subcommittee of the Senate Committee on the Judiciary on S. 2054, 77th Cong., 1st Sess. 132.

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6. Clearly, the President's message of April 9 and his further letter to the President of the Senate on April 21 do not satisfy this requirement. Cong.Rec. April 9, 1952, pp. 3962-3963; id., April 21, 1952, p. 4192.

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7. 64 Stat. 798 et seq., 65 Stat. 131 et seq., 50 U.S.C. App. § 2061 et seq.

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8. §§ 501, 502, 64 Stat. 798, 812, 50 U.S.C.App. §§ 2121, 2122.

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9. §§ 502, 503, 64 Stat. 798, 812, 50 U.S.C.App. §§ 2122, 2123.

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10. The provision of § 502 in S. 3936, as reported by the Senate Committee on Banking and Currency, read as follows:

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The President is authorized, after consultation with labor and management, to establish such principles and procedures and to take such action as he deems appropriate for the settlement of labor disputes affecting national defense, including the designation of such persons, boards or commissions as he may deem appropriate to carry out the provisions of this title.

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That language was superseded in the Conference Report by the language that was finally enacted. H.R.Rep. No. 3042, 81st Cong., 2d Sess. 16, 35. The change made by the Conference Committee was for the purpose of emphasizing the voluntary nature of the cooperation sought from he public, labor, and management; as Senator Ives explained under repeated questioning, "If any group were to hold out, there would be no agreement [on action to carry out the provisions of this title]." 96 Cong.Rec. 14071. Chairman Maybank of the Senate Committee on Banking and Currency said,

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The labor disputes title of the Senate was accepted by the House with amendment which merely indicates more specific avenues through which the President may bring labor and management together.

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Id. at 14073.

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11. S.Rep. No. 2250, 81st Cong., 2d Sess. 41; H.R.Rep. No. 3042, 81st Cong., 2d Sess. 35. It is hardly necessary to note that Congressional authorization of an agency similar to the War Labor Board does not imply a Congressional grant of seizure power similar to that given the President specifically by § 3 of the War Labor Disputes Act of 1943. The War Labor Board, created by § 7 of the 1943 Act, had only administrative sanctions. See 57 Stat. 163, 166167; see Report of Senate Committee on Labor and Public Welfare, The Disputes Functions of the Wage Stabilization Board, 1951, S.Rep. No. 1037, 82d Cong., 1st Sess. 6. The seizure power given by Congress in § 3 of the 1943 Act was given to the President, not to the War Labor Board, and was needed only when the War Labor Board reported it had failed; the seizure power was separate and apart from the War Labor Board machinery for settling disputes. At most, the Defense Production Act does what § 7 of the War Labor Disputes Act did; the omission of any grant of seizure power similar to § 3 is too obvious not to have been conscious. At any rate, the Wage Stabilization Board differs substantially from the earlier War Labor Board. In 1951 the Senate Committee studying the disputes functions of the Wage Stabilization Board pointed out the substantial differences between that Board and its predecessor, and concluded that "The new Wage Stabilization Board…does not rely on title V of the Defense Production Act for its authority." S.Rep. No. 1037, 82d Cong., 1st Sess., supra, at 4-6.

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12. S.Rep. No. 2250, 81st Cong., 2d Sess. 41.

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13. See 96 Cong.Rec. 14071.

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14. Id. at 12275. Just before the paragraph quoted in the text, Senator Ives had said:

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In fact, the courts have upheld the constitutionality of the national emergency provisions of the Labor-Management Relations Act of 1947, which can require that workers stay on the job for at least 80 days when a strike would seriously threaten the national health and safety in peacetime.

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By the terms of the pending bill, the Labor-Management Relations Act of 1947 would be controlling in matters affecting the relationship between labor and management, including collective bargaining. It seems to me, however, that this is as far as we should go in legislation of this type.

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15. 16 Fed.Reg. 3503. The disputes functions were not given to the Wage Stabilization Board under Title V, see note 11, supra, but apparently under the more general Title IV, entitled "Price and Wage Stabilization."

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16. See Hearings before a Subcommittee of the House Committee on Education and Labor, Disputes Functions of Wage Stabilization Board, 82d Cong., 1st Sess. (May 28-June 15, 1951); Hearings before the Subcommittee on Labor and Labor-Management Relations of Senate Committee on Labor and Public Welfare, Wage Stabilization and Disputes Program, 82d Cong., 1st Sess. (May 17-June 7, 1951). The resulting Report of the Senate Committee, S.Rep. No. 1037, 82d Cong., 1st Sess. 9, recommended that "Title V of the Defense Production Act be retained," and that

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[n]o statutory limitations be imposed on the President's authority to deal with disputes through voluntary machinery; such limitations, we believe, would infringe on the President's constitutional power.

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(Emphasis added.) The Committee found, id. at 10, that the

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Wage Stabilization Board relies completely on voluntary means for settling disputes and is, therefore, an extension of free collective bargaining. The Board has no powers of legal compulsion.

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"Executive Order No. 10233," the Committee found further, "does not in any way run counter to the…Taft-Hartley Act. It is simply an additional tool, not a substitute for these laws." Of particular relevance to the present case, the Committee declared:

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The recommendations of the Wage Stabilization Board in disputes certified by the President have no compulsive force. The parties are free to disregard recommendations of the Wage Stabilization Board….

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There is, of course, the President's authority to seize plants under the Selective Service Act [a power not here used], but this is an authority which exists independently of the Wage Stabilization Board and its disputes-handling functions. In any case, seizure is an extraordinary remedy, and the authority to seize, operates whether or not there is a disputes-handling machinery.

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Id. at 5.

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17. 97 Cong.Rec. 8390-8415.

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18. 65 Stat. 131.

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19. Instances of seizure by the President are summarized in Appendix II, post, p. 620.

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20. One of President Wilson's seizures has given rise to controversy. In his testimony in justification of the Montgomery Ward seizure during World War II, Attorney General Biddle argued that the World War I seizure of Smith & Wesson could not be supported under any of the World War I statutes authorizing seizure. He thus adduced it in support of the claim of so-called inherent Presidential power of seizure. See Hearings before House Select Committee to Investigate the Seizure of Montgomery Ward, 78th Cong., 2d Sess. 167-168. In so doing, he followed the ardor of advocates in claiming everything. In his own opinion to the President, he rested the power to seize Montgomery Ward on the statutory authority of the War Labor Disputes Act, see 40 Op.Atty.Gen. 312 (1944), and the Court of Appeals decision upholding the Montgomery Ward seizure confined itself to that ground. United States v. Montgomery Ward & Co., 150 F.2d 369. What Attorney General Biddle said about Smith & Wesson was, of course, post litem motam. Whether or not the World War I statutes were broad enough to justify that seizure, it is clear that the taking officers conceived themselves as moving within the scope of statute law. See Letter from Administrative Div., Advisory Sec. to War Dep't. Bd. of Appraisers, National Archives, Records of the War Department, Office of the Chief of Ordnance, O.O. 004.002/194 Smith & Wesson, Apr. 2, 1919; n. 3, Appendix II, post, p. 620. Thus, whether or not that seizure was within the statute, it cannot properly be cited as a precedent for the one before us. On this general subject, compare Attorney General Knox's opinion advising President Theodore Roosevelt against the so-called "stewardship" theory of the Presidency. National Archives, Opinions of the Attorney General, Book 31, Oct. 10, 1902 (R.G. 60); Theodore Roosevelt, Autobiography, 388-389; 3 Morison, The Letters of Theodore Roosevelt, 323-366.

DOUGLAS, J., concurring (Footnotes)

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1. What a President may do as a matter of expediency or extremity may never reach a definitive constitutional decision. For example, President Lincoln suspended the writ of habeas corpus, claiming the constitutional right to do so. See Ex parte Merryman, 17 Fed.Cas. No. 9,487. Congress ratified his action by the Act of March 3, 1863. 12 Stat. 755.

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2. Mr. Justice Brandeis, speaking for the Court in United States v. North American Co., 253 U.S. 330, 333, stated that the basis of the Government's liability for a taking of property was legislative authority:

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In order that the Government shall be liable, it must appear that the officer who has physically taken possession of the property was duly authorized so to do, either directly by Congress or by the official upon whom Congress conferred the power.

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That theory explains cases like United States v. Causby, 328 U.S. 256, where the acts of the officials resulting in a taking were acts authorized by the Congress, though the Congress had not treated the acts as one of appropriation of private property.

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Wartime seizures by the military in connection with military operations (cf. United States v. Russell, 13 Wall. 623) are also in a different category.

JACKSON, J., concurring (Footnotes)

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1. A Hamilton may be matched against a Madison. 7 The Works of Alexander Hamilton, 76-117; 1 Madison, Letters and Other Writings, 611-654. Professor Taft is counterbalanced by Theodore Roosevelt. Taft, Our Chief Magistrate and His Powers, 139-140; Theodore Roosevelt, Autobiography, 388-389. It even seems that President Taft cancels out Professor Taft. Compare his "Temporary Petroleum Withdrawal No. 5" of September 27, 1909, United States v. Midwest Oil Co., 236 U.S. 459, 467, 468, with his appraisal of executive power in "Our Chief Magistrate and His Powers" 139-140.

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2. It is in this class of cases that we find the broadest recent statements of presidential power, including those relied on here. United States v. Curtiss-Wright Corp., 299 U.S. 304, involved not the question of the President's power to act without congressional authority, but the question of his right to act under and in accord with an Act of Congress. The constitutionality of the Act under which the President had proceeded was assailed on the ground that it delegated legislative powers to the President. Much of the Court's opinion is dictum, but the ratio decidendi is contained in the following language:

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When the President is to be authorized by legislation to act in respect of a matter intended to affect a situation in foreign territory, the legislator properly bears in mind the important consideration that the form of the President's action—or, indeed, whether he shall act at all—may well depend, among other things, upon the nature of the confidential information which he has or may thereafter receive, or upon the effect which his action may have upon our foreign relations. This consideration, in connection with what we have already said on the subject, discloses the unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed. As this court said in Mackenzie v. Hare, 239 U.S. 299, 311,

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As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality, it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers.

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(Italics supplied.)

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Id. at 321-322.

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That case does not solve the present controversy. It recognized internal and external affairs as being in separate categories, and held that the strict limitation upon congressional delegations of power to the President over internal affairs does not apply with respect to delegations of power in external affairs. It was intimated that the President might act in external affairs without congressional authority, but not that he might act contrary to an Act of Congress.

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Other examples of wide definition of presidential powers under statutory authorization are Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., 333 U.S. 103, and Hirabayashi v. United States, 320 U.S. 81. But see, Jecker v. Montgomery, 13 How. 498, 515; United States v. Western Union Telegraph Co., 272 F. 311; aff'd, 272 F. 893; rev'd on consent of the parties, 260 U.S. 754; United States Harness Co. v. Graham, 288 F. 929.

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3. Since the Constitution implies that the writ of habeas corpus may be suspended in certain circumstances, but does not say by whom, President Lincoln asserted and maintained it as an executive function in the face of judicial challenge and doubt. Ex parte Merryman, 17 Fed.Cas. 144; Ex parte Milligan, 4 Wall. 2, 125; see Ex parte Bollman, 4 Cranch 75, 101. Congress eventually ratified his action. Habeas Corpus Act of March 3, 1863, 12 Stat. 755. See Hall, Free Speech in War Time, 21 Col.L.Rev. 526. Compare Myers v. United States, 272 U.S. 52, with Humphrey's Executor v. United States, 295 U.S. 602, and Hirabayashi v. United States, 320 U.S. 81, with the case at bar. Also compare Ex parte Vallandingham, 1 Wall. 243, with Ex parte Milligan, supra.

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4. President Roosevelt's effort to remove a Federal Trade Commissioner was found to be contrary to the policy of Congress and impinging upon an area of congressional control, and so his removal power was cut down accordingly. Humphrey's Executor v. United States, 295 U.S. 602. However, his exclusive power of removal in executive agencies, affirmed in Myers v. United States, 272 U.S. 52, continued to be asserted and maintained. Morgan v. Tennessee Valley Authority, 115 F.2d 990, cert. denied, 312 U.S. 701; In re Power to Remove Members of the Tennessee Valley Authority, 39 Op.Atty.Gen. 145; President Roosevelt's Message to Congress of March 23, 1938, The Public Papers and Addresses of Franklin D. Roosevelt, 1938 (Rosenman), 151.

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5. The oft-cited Louisiana Purchase had nothing to do with the separation of powers as between the President and Congress, but only with state and federal power. The Louisiana Purchase was subject to rather academic criticism not upon the ground that Mr. Jefferson acted without authority from Congress, but that neither had express authority to expand the boundaries of the United States by purchase or annexation. Mr. Jefferson himself had strongly opposed the doctrine that the States' delegation of powers to the Federal Government could be enlarged by resort to implied powers. Afterwards, in a letter to John Breckenridge dated August 12, 1803, he declared:

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The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The Legislature, in casting behind them metaphysical subtleties and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them, unauthorized, what we know they would have done for themselves had they been in a situation to do it.

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10 The Writings of Thomas Jefferson 407, 411.

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6. Selective Service Act of 1948, § 18, 62 Stat. 625, 50 U.S.C.App. (Supp. IV) § 468(c).

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7. Defense Production Act of 1950, § 201, 64 Stat. 799, amended, 65 Stat. 132, 50 U.S.C.App. (Supp. IV) § 2081. For the latitude of the condemnation power which underlies this Act, see United States v. Westinghouse Co., 339 U.S. 261, and cases therein cited.

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8. Labor Management Relations Act, 1947, §§ 206-210, 61 Stat. 136, 155, 156, 29 U.S.C. (Supp. IV) §§ 141, 176-180. The analysis, history and application of this Act are fully covered by the opinion of the Court, supplemented by that of MR. JUSTICE FRANKFURTER and of MR. JUSTICE BURTON, in which I concur.

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9.

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…he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices….

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U.S.Const., Art. II, § 2. He "…shall Commission all the Officers of the United States." U.S.Const., Art. II, § 3. Matters such as those would seem to be inherent in the Executive, if anything is.

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10. How widely this doctrine espoused by the President's counsel departs from the early view of presidential power is shown by a comparison. President Jefferson, without authority from Congress, sent the American fleet into the Mediterranean, where it engaged in a naval battle with the Tripolitan fleet. He sent a message to Congress on December 8, 1801, in which he said:

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Tripoli, the least considerable of the Barbary States, had come forward with demands unfounded either in right or in compact, and had permitted itself to denounce war on our failure to comply before a given day. The style of the demand admitted but one answer. I sent a small squadron of frigates into the Mediterranean…with orders to protect our commerce against the threatened attack…. Our commerce in the Mediterranean was blockaded, and that of the Atlantic in peril…. One of the Tripolitan cruisers having fallen in with and engaged the small schooner Enterprise,…was captured, after a heavy slaughter of her men…. Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offense also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that, in the exercise of this important function confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight.

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I Richardson, Messages and Papers of the Presidents, 314.

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11. U.S.Const., Art. I, § 8, cl. 15.

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12. 14 Stat. 29, 16 Stat. 143, 8 U.S.C. § 55.

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13. 20 Stat. 152, 10 U.S. C § 15

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14. In 1940, President Roosevelt proposed to transfer to Great Britain certain overage destroyers and small patrol boats then under construction. He did not presume to rely upon any claim of constitutional power as Commander in Chief. On the contrary, he was advised that such destroyers—if certified not to be essential to the defense of the United States—could be "transferred, exchanged, sold, or otherwise disposed of," because Congress had so authorized him. Accordingly, the destroyers were exchanged for air bases. In the same opinion, he was advised that Congress had prohibited the release or transfer of the so-called "mosquito boats" then under construction, so those boats were not transferred. Acquisition of Naval and Air Bases in Exchange for Over-age Destroyers, 39 Op.Atty.Gen. 484. See also Training of British Flying Students in the United States, 40 Op.Atty.Gen. 58.

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15. U.S.Const., Art. II, § 3.

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16. President Wilson, just before our entrance into World War I, went before the Congress and asked its approval of his decision to authorize merchant ships to carry defensive weapons. He said:

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No doubt I already possess that authority without special warrant of law, by the plain implication of my constitutional duties and powers; but I prefer, in the present circumstances, not to act upon general implication. I wish to feel that the authority and the power of the Congress are behind me in whatever it may become necessary for me to do. We are jointly the servants of the people, and must act together and in their spirit, so far as we can divine and interpret it.

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XVII Richardson, op. cit., 8211.

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When our Government was itself in need of shipping whilst ships flying the flags of nations overrun by Hitler, as well as belligerent merchantmen, were immobilized in American harbors where they had taken refuge, President Roosevelt did not assume that it was in his power to seize such foreign vessels to make up our own deficit. He informed Congress:

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I am satisfied, after consultation with the heads of the interested departments and agencies of the Government, that we should have statutory authority to take over any such vessels as our needs may require….

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87 Cong.Rec. 3072 (77th Cong., 1st Sess.); The Public Papers and Addresses of Franklin D. Roosevelt, 1941 (Rosenman), 94. The necessary statutory authority was shortly forthcoming. 55 Stat. 242.

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In his first inaugural address, President Roosevelt pointed out two courses to obtain legislative remedies, one being to enact measures he was prepared to recommend, the other to enact measures "the Congress may build out of its experience and wisdom." He continued,

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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.

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(Emphasis supplied.) The Public Papers and Addresses of Franklin D. Roosevelt, 1933 (Rosenman), 15.

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On March 6, 1933, President Roosevelt proclaimed the Bank Holiday. The Proclamation did not invoke constitutional powers of the Executive, but expressly and solely relied upon the Act of Congress of October 6, 1917, 40 Stat. 411, § 5(b), as amended. He relied steadily on legislation to empower him to deal with economic emergency. The Public Papers and Addresses of Franklin D. Roosevelt, 1933 (Rosenman), 24.

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It is interesting to note Holdsworth's comment on the powers of legislation by proclamation when in the hands of the Tudors.

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The extent to which they could be legally used was never finally settled in this century, because the Tudors made so tactful a use of their powers that no demand for the settlement of this question was raised.

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4 Holdsworth, History of English Law, 104.

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17. The North American Aviation Company was under direct and binding contracts to supply defense items to the Government. No such contracts are claimed to exist here. Seizure of plants which refused to comply with Government orders had been expressly authorized by Congress in § 9 of the Selective Service Act of 1940, 54 Stat. 885, 892, so that the seizure of the North American plant was entirely consistent with congressional policy. The company might have objected on technical grounds to the seizure, but it was taken over with acquiescence, amounting to all but consent, of the owners, who had admitted that the situation was beyond their control. The strike involved in the North American case was in violation of the union's collective agreement, and the national labor leaders approved the seizure to end the strike. It was described as in the nature of an insurrection, a Communist-led political strike against the Government's lend lease policy. Here we have only a loyal, lawful, but regrettable economic disagreement between management and labor. The North American plant contained government-owned machinery, material and goods in the process of production to which workmen were forcibly denied access by picketing strikers. Here, no Government property is protected by the seizure. See New York Times of June 10, 1941, pp. 1, 14 and 16, for substantially accurate account of the proceedings and the conditions of violence at the North American plant.

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The North American seizure was regarded as an execution of congressional policy. I do not regard it as a precedent for this, but, even if I did, I should not bind present judicial judgment by earlier partisan advocacy.

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Statements from a letter by the Attorney General to the Chairman of the Senate Committee on Labor and Public Welfare, dated February 2, 1949, with reference to pending labor legislation, while not cited by any of the parties here, are sometimes quoted as being in support of the "inherent" powers of the President. The proposed bill contained a mandatory provision that, during certain investigations, the disputants in a labor dispute should continue operations under the terms and conditions of employment existing prior to the beginning of the dispute. It made no provision as to how continuance should be enforced, and specified no penalty for disobedience. The Attorney General advised that, in appropriate circumstances, the United States would have access to the courts to protect the national health, safety and welfare. This was the rule laid down by this Court in Texas & N.O. R. Co. v. Brotherhood of Railway Clerks, 281 U.S. 548. The Attorney General observed:

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However, with regard to the question of the power of the Government under Title III, I might point out that the inherent power of the President to deal with emergencies that affect the health, safety and welfare of the entire Nation is exceedingly great. See Opinion of Attorney General Murphy of October 4, 1939 (39 Op.A.G. 344, 347); United States v. United Mine Workers of America, 330 U.S. 258 (1947).

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See Hearings before the Senate Committee on Labor and Public Welfare on S. 249, 81st Cong., 1st Sess. 263. Regardless of the general reference to "inherent powers," the citations were instances of congressional authorization. I do not suppose it is open to doubt that power to see that the laws are faithfully executed was ample basis for the specific advice given by the Attorney General in this letter.

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18. U.S. Const., Art. I, § 9, cl. 2.

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19. I exclude, as in a very limited category by itself, the establishment of martial law. Cf. Ex parte Milligan, 4 Wall. 2; Duncan v. Kahanamoku, 327 U.S. 304.

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20. 1 Nazi Conspiracy and Aggression 126-127; Rossiter, Constitutional Dictatorship, 33-61; Brecht, Prelude to Silence, 138.

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21. Rossiter, Constitutional Dictatorship, 117-129.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

22. Defence of the Realm Act, 1914, 4 & 5 Geo. V, c. 29, as amended, c. 63; Emergency Powers (Defence) Act, 1939, 2 & 3 Geo. VI, c. 62; Rossiter, Constitutional Dictatorship, 135-184.

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23. Churchill, The Unrelenting Struggle, 13. See also id. at 279-281.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

24. 39 Op.Atty.Gen. 348.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

25. Wilson, Constitutional Government in the United States, 669.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

26. Rossiter, The Supreme Court and the Commander in Chief, 126-132.

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27. We follow the judicial tradition instituted on a memorable Sunday in 1612 when King James took offense at the independence of his judges and, in rage, declared: "Then I am to be under the law—which it is treason to affirm." Chief Justice Coke replied to his King: "Thus, wrote Bracton, `The King ought not to be under any man, but he is under God and the Law.'" 12 Coke 65 (as to its verity, 18 Eng.Hist.Rev. 664-675); 1 Campbell, Lives of the Chief Justices (1849), 272.

BURTON, J., concurring (Footnotes)

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1.

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Article I

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Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States….

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\* \* \* \*

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Section. 8. The Congress shall have Power…;

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\* \* \* \*

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To regulate Commerce with foreign Nations, and among the several States…;

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

\* \* \* \*

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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2. 61 Stat. 155, 29 U.S.C. (Supp. IV) § 176.

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3. 361 Stat. 155-156, 29 U.S.C. (Supp. IV) §§ 176-180.

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4. The Chairman of the Senate Committee sponsoring the bill said in the Senate:

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We did not feel that we should put into the law, as a part of the collective bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining. It will not make a bona-fide attempt to settle if it thinks it will receive a better deal under the final arbitration which may be provided.

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We have felt that perhaps in the case of a general strike, or in the case of other serious strikes, after the termination of every possible effort to resolve the dispute, the remedy might be an emergency act by Congress for that particular purpose.

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I have had in mind drafting such a bill, giving power to seize the plants and other necessary facilities, to seize the unions, their money, and their treasury, and requisition trucks and other equipment; in fact, to do everything that the British did in their general strike of 1926. But while such a bill might be prepared, I should be unwilling to place such a law on the books until we actually face such an emergency, and Congress applies the remedy for the particular emergency only. Eighty days will provide plenty of time within which to consider the possibility of what should be done, and we believe very strongly that there should not be anything in this law which prohibits finally the right to strike.

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93 Cong.Rec. 3835-3836.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

Part of this quotation was relied upon by this Court in Bus Employees v. Wisconsin Board, 340 U.S. 383, 396, note 21.

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5. Under Titles IV and V of the Defense Production Act of 1950, 64 Stat. 803-812, 50 U.S.C. App. (Supp. IV) §§ 2101-2123, and see Exec.Order No. 10233, 16 Fed.Reg. 3503.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

6. Congress has authorized other types of seizure under conditions not present here. Section 201 of the Defense Production Act authorizes the President to acquire specific "real property, including facilities, temporary use thereof, or other interest therein…" by condemnation. 64 Stat. 799, as amended, 65 Stat. 132, see 50 U.S.C.App. (Supp. IV) § 2081. There have been no declarations of taking or condemnation proceedings in relation to any of the properties involved here. Section 18 of the Selective Service Act of 1948 authorizes the President to take possession of a plant or other facility failing to fill certain defense orders placed with it in the manner there prescribed. 62 Stat. 625, 50 U.S.C.App. (Supp. IV) § 468. No orders have been so placed with the steel plants seized.

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7. The President and Congress have recognized the termination of the major hostilities in the total wars in which the Nation has been engaged. Many wartime procedures have expired or been terminated.

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The War Labor Disputes Act, 57 Stat. 163 et seq., 50 U.S.C.App. §§ 1501-1511, expired June 30, 1947, six months after the President's declaration of the end of hostilities, 3 CFR, 1946 Supp., p. 77. The Japanese Peace Treaty was approved by the Senate March 20, 1952, Cong.Rec. Mar. 20, 1952, p. 2635, and proclaimed by the President April 28, 1952, 17 Fed.Reg. 3813.

CLARK, J., concurring (Footnotes)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

1. 2 Cranch 170 (1804).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

2. Id. at 177-178 (emphasis changed).

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3. Decisions of this Court which have upheld the exercise of presidential power include the following: Prize Cases, 2 Black. 635 (1863) (subsequent ratification of President's acts by Congress); In re Neagle, 135 U.S. 1 (1890) (protection of federal officials from personal violence while performing official duties); In re Debs, 158 U.S. 564 (1895) (injunction to prevent forcible obstruction of interstate commerce and the mails); United States v. Midwest Oil Co., 236 U.S. 459 (1915) (acquiescence by Congress in more than 250 instances of exercise of same power by various Presidents over period of 80 years); Myers v. United States, 272 U.S. 52 (1926) (control over subordinate officials in executive department) [but see Humphrey's Executor v. United States, 295 U.S. 602, 626-628 (1935)]; Hirabayashi v. United States, 320 U.S. 81 (1943), and Korematsu v. United States, 323 U.S. 214 (1944) (express congressional authorization); cf. United States v. Russell, 13 Wall. 623 (1871) (imperative military necessity in area of combat during war); United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936) (power to negotiate with foreign governments); United States v. United Mine Workers, 330 U.S. 258 (1947) (seizure under specific statutory authorization).

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4. Mr. Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, 415 (1819).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

5. Letter of April 4, 1864, to A.G. Hodges, in 10 Complete Works of Abraham Lincoln (Nicolay and Hay ed. 1894), 66.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

6. Roosevelt, Autobiography (1914 ed.), 371-372.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

7. Letter of April 4, 1864, to A.G. Hodges, in 10 Complete Works of Abraham Lincoln (Nicolay and Hay ed. 1894), 66.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

8. 61 Stat. 155, 29 U.S.C. (Supp. IV) § 176.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

9. 93 Cong.Rec. 3637-3645; cf. id. at 3835-3836.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

10. 61 Stat. 156, 29 U.S.C. (Supp. IV) § 180.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

11. E.g., S.Rep. No. 105, 80th Cong., 1st Sess. 15; 93 Cong.Rec. 3835-3836; id. at 4281.

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12. The producer must have been notified that the order was placed pursuant to the Act. The Act provides in pertinent part as follows:

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(a) Whenever the President after consultation with and receiving advice from the National Security Resources Board determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the armed forces of the United States, or for the use of the Atomic Energy Commission, he is authorized, through the head of any Government agency, to place with any person operating a plant, mine, or other facility capable of producing such articles or materials an order for such quantity of such articles or materials as the President deems appropriate. Any person with whom an order is placed pursuant to the provisions of this section shall be advised that such order is placed pursuant to the provisions of this section.

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\* \* \* \*

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(c) In case any person with whom an order is placed pursuant to the provisions of subsection (a) refuses or fails—

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\* \* \* \*

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(2) to fill such order within the period of time prescribed by the President or as soon thereafter as possible as determined by the President;

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(3) to produce the kind or quality of articles or materials ordered; or

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(4) to furnish the quantity, kind, and quality of articles or materials ordered at such price as shall be negotiated between such person and the Government agency concerned; or in the event of failure to negotiate a price, to furnish the quantity, kind, and quality of articles or materials ordered at such price as he may subsequently be determined to be entitled to receive under subsection (d);

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the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any Government agency, for the production of such articles or materials as may be required by the Government.

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62 Stat. 625, 50 U.S.C.App. (Supp. IV) § 468. The Act was amended in 1951 and redesignated the Universal Military Training and Service Act, but no change was made in this section. 65 Stat. 75.

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13. 39 Stat. 213; 54 Stat. 892.

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14. The Government has offered no explanation, in the record, the briefs, or the oral argument, as to why it could not have made both a literal and timely compliance with the provisions of that Act. Apparently the Government could have placed orders with the steel companies for the various types of steel needed for defense purposes, and instructed the steel companies to ship the materiel directly to producers of planes, tanks, and munitions. The Act does not require that government orders cover the entire capacity of a producer's plant before the President has power to seize.

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Our experience during World War I demonstrates the speed with which the Government can invoke the remedy of seizing plants which fail to fill compulsory orders. The Federal Enameling & Stamping Co., of McKees Rocks, Pa. was served with a compulsory order on September 13, 1918, and seized on the same day. The Smith & Wesson plant at Springfield, Mass. was seized on September 13, 1918, after the company had failed to make deliveries under a compulsory order issued the preceding week. Communication from Ordnance Office to War Department Board of Appraisers, entitled "Report on Plants Commandeered by the Ordnance Office," Dec. 19, 1918, pp. 3, 4, in National Archives, Records of the War Department, Office of the Chief of Ordnance, O.O. 004.002/260. Apparently the Mosler Safe Co., of Hamilton, Ohio, was seized on the same day on which a compulsory order was issued. Id. at 2; Letter from counsel for Mosler Safe Co. to Major General George W. Goethals, Director of Purchase, Storage and Traffic, War Department, Dec. 9, 1918, p. 1, in National Archives, Records of the War Department, Office of the General Staff, PST Division 400.1202.

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15. The Orono, 18 Fed.Cas. No. 10,585 (Cir. Ct. D. Mass. 1812).

VINSON, J., dissenting (Footnotes)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

1. 59 Stat. 1031, 1037 (1945); 91 Cong.Rec. 8190 (1945).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

2. U.N. Security Council, U.N. Doc. S/1501 (1950); Statement by the President, June 26, 1950, United States Policy in the Korean Crisis, Dept. of State Pub. (1950), 16.

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3. U.N. General Assembly, U.N. Doc. A/1771 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

4. 61 Stat. 103 (1947)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

5. 62 Stat. 137 (1948), as amended, 63 Stat. 50 (1949), 64 Stat. 98 (1950).

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6. 63 stat. 2241, 2252 (1949), extended to Greece and Turkey, S.Exec. E, 82d cong., 2d Sess. (1952), advice and consent of the Senate granted. 98 Cong.Rec. 930.

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7. 63 Stat. 714 (1949).

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8. S.Execs. A, B, C and D, 82d cong., 2d Sess. (1952), advice and consent of the senate granted. 98 Cong.Rec. 2594, 2595, 2605.

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9. 65 Stat. 373 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

10. 65 Stat. 730 (1951); see H.R.Doc. No. 147, 82d Cong., 1st Sess. 3 (1951).

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11. See H.R.Doc. No. 382, 82d Cong., 2d Sess. (1952).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

12. Hearings before Senate Committee on Foreign Relations on the Mutual Security Act of 1952, 82d Cong., 2d Sess. 565-566 (1952); Hearings before House Committee on Foreign Affairs on the Mutual Security Act of 1952, 82d Cong., 2d Sess. 370 (1952).

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13. 65 Stat. 75 (1951); S.Rep. No. 117, 82d Cong., 1st Sess. 3 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

14. Address by Secretary of Defense Lovett before the American Society of Newspaper Editors, Washington, April 18, 1952.

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15. Fiscal Year 1952, 65 Stat. 423, 760 (1951); F.Y. 1951, 64 Stat. 595, 1044, 1223, 65 Stat. 48 (1950-1951); F.Y. 1950, 63 Stat. 869, 973, 987 (1949); F.Y. 1949, 62 Stat. 647 (1948); F.Y. 1948, 61 Stat. 551 (1947).

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16. See H.R.Rep. No. 1685, 82d Cong., 2d Sess. 2 (1952), on H.R. 7391.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

17. See H.R.Rep. No. 384, 82d Cong., 1st Sess. 5 (1951); 97 Cong.Rec. 13647-13649.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

18. Defense Production Act, Tit. III. 64 Stat. 798, 800 (1950), 65 Stat. 138 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

19. Note 18, supra, Tits. IV and V.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

20. S.Rep. No. 470, 82d Cong., 1st Sess. 8 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

21. Id. at 8-9.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

22. Exec.Order 10340, 17 Fed.Reg. 3139 (1952).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

23. Cong.Rec. April 9, 1952, pp. 3962-3963.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

24. Cong.Rec. April 21, 1952, p. 4192.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

25. Chicago & Southern Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 111 (1948), and cases cited.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

26. The Federalist, No. XLVIII.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

27. The Federalist, No. LXX.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

28. McCulloch v. Maryland, 4 Wheat. 316, 415, 424 (1819).

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29. United States v. Classic, 313 U.S. 299, 315-316 (1941); Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 442 443 (1934).

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30. 4 Annals of Congress 1411, 1413 (1794).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

31. IV Works of Hamilton (Lodge ed.1904) 432-444.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

32. 10 Annals of Congress 596, 613-614 (1800); also printed in 5 Wheat. App. pp. 3, 27 (1820).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

33. 10 Annals of Congress 619 (1800).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

34. Fong Yue Ting v. United States, 149 U.S. 698, 714 (1893).

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35. See Prize Cases, 2 Black 635 (1863); Randall, Constitutional Problems Under Lincoln (1926); Corwin, The President: Office and Powers (1948 ed.), 277-281.

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36. War of the Rebellion, Official Records of the Union and Confederate Armies, Series I, Vol. II (1880), pp.603-604.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

37. 12 Stat. 334 (1862)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

38. Senator Wade, Cong.Globe, 37th Cong., 2d Sess. 509 (1862); Rep. Blair, id. at 548.

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39. Senators Browning, Fessenden, Cowan, Grimes, id. at 510, 512, 516, 520.

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40. In 1818, the House Committee on Military Affairs recommended payment of compensation for vessels seized by the Army during the War of 1812. American State Papers, Claims (1834), 649. Mitchell v. Harmony, 13 How. 115, 134 (1852), involving seizure of a wagon train by an Army officer during the Mexican War, noted that such executive seizure was proper in case of emergency, but affirmed a personal judgment against the officer on the ground that no emergency had been found to exist. The judgment was paid by the United States pursuant to Act of Congress. 10 Stat. 727 (1852).

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41. 13 Wall. at 627-628. Such a compensable taking was soon distinguished from the noncompensable taking and destruction of property during the extreme exigencies of a military campaign. United States v. Pacific R. Co., 120 U.S. 227 (1887).

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42. 135 U.S. at 64.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

43. Rich, The Presidents and Civil Disorder (1941), 72-86.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

44. Cleveland, The Government in the Chicago Strike of 1894 (1913).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

45. 26 Cong.Rec. 7281-7284, 7544-7546 (1894).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

46. Theodore Roosevelt, Autobiography (1916 ed.), 479-491.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

47. Id. at 378.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

48. Humphrey's Executor v. United States, 295 U.S. 602, 626 (1935), disapproved expressions in the Myers opinion only to the extent that they related to the President's power to remove members of quasi-legislative and quasi-judicial commissions as contrasted with executive employees.

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49. Brief for the United States, No. 278, October Term, 1914, pp. 11, 75-77, 88-90.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

50. National War Labor Board. Bureau of Labor Statistics, Bull. 287 (1921).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

51. Id. at 24 25, 32-34. See also 2 Official U.S.Bull. (1918), No. 412; 8 Baker, Woodrow Wilson, Life & Letters (1939), 400-402; Berman, Labor Disputes and the President (1924), 125-153; Pringle, The Life and Times of William Howard Taft (1939), 915-925.

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52. 39 Stat. 619, 645 (1916), provides that the President may take possession of any system of transportation in time of war. Following seizure of the railroads by President Wilson, Congress enacted detailed legislation regulating the mode of federal control. 40 Stat. 451 (1918).

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When Congress was considering the statute authorizing the President to seize communications systems whenever he deemed such action necessary during the war, 40 Stat. 904 (1918), Senator (later President) Harding opposed on the ground that there was no need for such stand-by powers because, in event of a present necessity, the Chief Executive "ought to" seize communications lines, "else he would be unfaithful to his duties as such Chief Executive." 56 Cong.Rec. 9064 (1918).

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53. 48 Stat. 1689 (1933).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

54. 54 Stat. 2643 (1939).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

55. 55 Stat. 1647 (1941).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

56. 86 Cong.Rec. 11354 (1940) (Message of the President). See 39 Op.Atty.Gen. 484 (1940). Attorney General Jackson's opinion did not extend to the transfer of "mosquito boats," solely because an express statutory prohibition on transfer was applicable.

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57. 87 Cong.Rec. 5868 (1941) (Message of the President).

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58. Powers of the President to Send the Armed Forces Outside the United States, Report prepared by executive department for use of joint committee of Senate Committees on Foreign Relations and Armed Services, 82d Cong., 1st Sess., Committee Print, 2 (1951).

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59. Exec.Order 8773, 6 Fed.Reg. 2777 (1941).

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60. See 89 Cong.Rec. 3992 (1943). The Attorney General also noted that the dispute at North American Aviation was Communist-inspired, and more nearly resembled an insurrection than a labor strike. The relative size of North American Aviation and the impact of an interruption in production upon our defense effort were not described.

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61. 87 Cong.Rec. 4932 (1941). See also S. 1600 and S. 2054, 77th Cong., 1st Sess. (1941).

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62. Reps. May, Whittington; 87 Cong.Rec. 5895, 5972 (1941).

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63. Reps. Dworshak, Feddis, Harter, Dirksen, Hook; 87 Cong.Rec. 5901, 5910, 5974, 5975 (1941).

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64. The plant seizure amendment passed the Senate, but was rejected in the House after a Conference Committee adopted the amendment. 87 Cong.Rec. 6424 (1941).

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65. Exec.Order 8868, 6 Fed.Reg. 4349 (1941); Exec.Order 8928, 6 Fed.Reg. 5559 (1941).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

66. Exec.Order 9141, 7 Fed.Reg. 2961 (1942); Exec.Order 9220 7 Fed.Reg. 6413 (1942); Exec.Order 9225, 7 Fed.Reg. 6627 (1942), Exec.Order 9254, 7 Fed.Reg. 8333 (1942); Exec.Order 9351, 8 Fed.Reg. 8097 (1943).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

67. Exec.Order 9340, 8 Fed.Reg. 5695 (1943).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

68. Exec.Order 9017, 7 Fed.Reg. 237 (1942); 1 Termination Report of the National War Labor Board 5-11.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

69. 89 Cong.Rec. 3807 (1943). Similar views of the President's existing power were expressed by Senators Lucas, Wheeler, Austin and Barkley. Id. at 3885-3887, 3896, 3992.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

70. 89 cong. Rec. 3989-3992 (1943).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

71. S. 796, 78th cong., 1st Sess., §§ 12, 13 (1943), as passed by the House.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

72. 57 stat. 163, 164 (1943).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

73. 40 Op.Atty.Gen. 312 (1944). See also Hearings before House Select committee to Investigate Seizure of Montgomery Ward & Co., 78th Cong., 2d Sess. 117-132 (1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

74. 39 Op.Atty.Gen. 343, 347 (1939)

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

75. Note 60, supra.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

76. Letter introduced in Hearings before Senate Committee on Labor and Public Welfare on S. 249, 81st Cong., 1st Sess. 232 (1949) pointing to the "exceedingly great" powers of the President to deal with emergencies even before the Korean crisis.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

77. Exec.Order 9438, 9 Fed.Reg. 4459 (1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

78. H.R.Rep. No.1904, 78th Cong., 2d Sess. 25 (1944) (the Committee divided along party lines).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

79. Exec.Order 9508, 9 Fed.Reg. 15079 (1944).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

80. United States v. Montgomery Ward & Co., 150 F.2d 369 (c A. 7th Cir.1945), reversing 58 F.Supp. 408 (N.D.Ill.1945). See also Ken-Rad Tube & Lamp Corp. v. Badeau, 55 F.Supp. 193, 197-199 (W. D. Ky.1944), where the court held that a seizure was proper with or without express statutory authorization.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

81. United States Policy in the Korean Crisis (1950), Dept. of State Pub. 3922.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

82. 15 Fed.Reg. 9029 (1950).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

83. Harrison, This Country of Ours (1897), 98.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

84. 62 Stat. 604, 626 (1948), 50 U.S.C. App. (Supp. IV) § 468(c).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

85. 62 Stat. 604, 627 (1948), 50 U.S.C. App. (Supp. IV) § 468(h)(1).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

86. Tit. II, 64 Stat. 798, 799 (1950), as amended, 65 Stat. 138 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

87. Home Building Loan Assn. v. Blaisdell, 290 U.S. 398, 425 426 (1934).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

88. See Bus Employees v. Wisconsin Board, 340 U.S. 383 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

89. §§ 206-210, Labor Management Relations Act of 1947. 29 U.S.C. (Supp.IV) §§ 176-180.

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

90. 64 Stat. 812, 65 Stat. 132 (1950).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

91. H.R.Rep. No. 3042, 81st Cong., 2d Sess. 35 (1950) (Conference Report). See also S.Rep. No. 2250, 81st Cong., 2d Sess. 41 (1950).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

92. Exec.Order 10161, 15 Fed.Reg. 6105 (1950), as amended, Exec.Order 10233, 16 Fed.Reg. 3503 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

93. Hearings before the House Committee on Banking and Currency on Defense Production Act Amendments of 1951, 82d Cong., 1st Sess. 305-306, 312-313 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

94. The Lucas Amendment to abolish the disputes function of the WSB was debated at length in the House, the sponsor of the amendment pointing out the similarity of the WSB functions to those of the War Labor Board and noting the seizures that occurred when War Labor Board orders were not obeyed. 97 Cong.Rec. 8390-8415. The amendment was rejected by a vote of 217 to 113. Id. at 8415. A similar amendment introduced in the Senate was withdrawn. 97 Cong.Rec. 7373-7374. The Defense Production Act was extended without amending Tit. V or otherwise affecting the disputes functions of the WSB. 65 Stat. 132 (1951).

1952, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 710

95. Compare Sterling v. Constantin, 287 U.S. 378, 399-401 (1932).

President Truman's Veto of Bill To Revise the Laws Relating to Immigration, Naturalization, and Nationality, 1952

Title: President Truman's Veto of Bill To Revise the Laws Relating to Immigration, Naturalization, and Nationality

Author: Harry S Truman

Date: June 25, 1952

Source: Public Papers of the Presidents, Truman, 1952-1953, pp.441-447

Public Papers of Truman, 1952-1953, p.441

To the House of Representatives:

Public Papers of Truman, 1952-1953, p.441

I return herewith, without my approval, H.R. 5678, the proposed Immigration and Nationality Act.

Public Papers of Truman, 1952-1953, p.441

In outlining my objections to this bill, I want to make it clear that it contains certain provisions that meet with my approval. This is a long and complex piece of legislation. It has 164 separate sections, some with more than 40 subdivisions. It presents a difficult problem of weighing the good against the bad, and arriving at a judgment on the whole.

Public Papers of Truman, 1952-1953, p.441

H.R. 5678 is an omnibus bill which would revise and codify all of our laws relating to immigration, naturalization, and nationality.

Public Papers of Truman, 1952-1953, p.441

A general revision and modernization of these laws unquestionably is needed and long overdue, particularly with respect to immigration. But this bill would not provide us with an immigration policy adequate for the present world situation. Indeed, the bill, taking all its provisions together, would be a step backward and not a step forward. In view of the crying need for reform in the field of immigration, I deeply regret that I am unable to approve H.R. 5678.

Public Papers of Truman, 1952-1953, p.441

In recent years, our immigration policy has become a matter of major national concern. Long dormant questions about the effect of our immigration laws now assume first rate importance. What we do in the field of immigration and naturalization is vital to the continued growth and internal development of the United States—to the economic and social strength of our country-which is the core of the defense of the free world. Our immigration policy is equally, if not more important to the conduct of our foreign relations and to our responsibilities of moral leadership in the struggle for world peace.

Public Papers of Truman, 1952-1953, p.441

In one respect, this bill recognizes the great international significance of our immigration and naturalization policy, and takes a step to improve existing laws. All racial bars to naturalization would be removed, and at least some minimum immigration quota would be afforded to each of the free nations of Asia.

Public Papers of Truman, 1952-1953, p.441

I have long urged that racial or national barriers to naturalization be abolished. This was one of the recommendations in my civil rights message to the Congress on February 2, 1948. On February 19, 1951, the House of Representatives unanimously passed a bill to carry it out.

Public Papers of Truman, 1952-1953, p.441

But now this most desirable provision comes before me embedded in a mass of legislation which would perpetuate injustices of long standing against many other nations of the world, hamper the efforts we are making to rally the men of East and West alike to the cause of freedom, and intensify the repressive and inhumane aspects of our immigration procedures. The price is too high, and in good conscience I cannot agree to pay it.

Public Papers of Truman, 1952-1953, p.441–p.442

I want all our residents of Japanese ancestry, and all our friends throughout the far East, to understand this point clearly. I cannot take the step I would like to take, and strike down the bars that prejudice has erected against them, without, at the same time, establishing new discriminations against the peoples of Asia and approving harsh and repressive measures directed at all who seek a new life within our boundaries. I am sure that with a little more time and a little more discussion in this country the public conscience and the good sense of the American people will assert themselves, and [p.442] we shall be in a position to enact an immigration and naturalization policy that will be fair to all.

Public Papers of Truman, 1952-1953, p.442

In addition to removing racial bars to naturalization, the bill would permit American women citizens to bring their alien husbands to this country as non-quota immigrants, and enable alien husbands of resident women aliens to come in under the quota in a preferred status. These provisions would be a step toward preserving the integrity of the family under our immigration laws, and are clearly desirable.

Public Papers of Truman, 1952-1953, p.442

The bill would also relieve transportation companies of some of the unjustified burdens and penalties now imposed upon them. In particular, it would put an end to the archaic requirement that carriers pay the expenses of aliens detained at the port of entry, even though such aliens have arrived with proper travel documents.

Public Papers of Truman, 1952-1953, p.442

But these few improvements are heavily outweighed by other provisions of the bill which retain existing defects in our laws, and add many undesirable new features.

Public Papers of Truman, 1952-1953, p.442

The bill would continue, practically without change, the national origins quota system, which was enacted, into law in 1924, and put into effect in 1929. This quota system-always based upon assumptions at variance with our American ideals—is long since out of date and more than ever unrealistic in the face of present world conditions.

Public Papers of Truman, 1952-1953, p.442

This system hinders us in dealing with current immigration problems, and is a constant handicap in the conduct of our foreign relations. As I stated in my message to Congress on March 24, 1952, on the need for an emergency program of immigration from Europe, "Our present quota system is not only inadequate to most present emergency needs, it is also an obstacle to the development of an enlightened and satisfactory immigration policy for the long-run future."

Public Papers of Truman, 1952-1953, p.442

The inadequacy of the present quota system has been demonstrated since the end of the war, when we were compelled to resort to emergency legislation to admit displaced persons. If the quota system remains unchanged, we shall be compelled to resort to similar emergency legislation again, in order to admit any substantial portion of the refugees from communism or the victims of overcrowding in Europe.

Public Papers of Truman, 1952-1953, p.442

With the idea of quotas in general there is no quarrel. Some numerical limitation must be set, so that immigration will be within our capacity to absorb. But the overall limitation of numbers imposed by the national origins quota system is too small for our needs today, and the country by country limitations create a pattern that is insulting to large numbers of our finest citizens, irritating to our allies abroad, and foreign to our purposes and ideals.

Public Papers of Truman, 1952-1953, p.442

The overall quota limitation, under the law of 1924, restricted annual immigration to approximately 150,000. This was about one-seventh of one percent of our total population in 1920. Taking into account the growth in population since 1920, the law now allows us but one-tenth of one percent of our total population. And since the largest national quotas are only partly used, the number actually coming in has been in the neighborhood of one-fifteenth of one percent. This is far less than we must have in the years ahead to keep up with the growing needs of the Nation for manpower to maintain the strength and vigor of our economy.

Public Papers of Truman, 1952-1953, p.442–p.443

The greatest vice of the present quota system, however, is that it discriminates, deliberately and intentionally, against many of the peoples of the world. The purpose behind it was to cut down and virtually eliminate immigration to this country from Southern and Eastern Europe. A theory was invented to rationalize this objective. The theory was that in order to be readily assimilable, European immigrants should be admitted in proportion to the numbers of persons of their respective national stocks already here as shown by the census of 1920. Since Americans of English, Irish and German descent were most numerous, immigrants [p.443] of those three nationalities got the lion's share—more than two-thirds—of the total quota. The remaining third was divided up among all the other nations given quotas.

Public Papers of Truman, 1952-1953, p.443

The desired effect was obtained. Immigration from the newer sources of Southern and Eastern Europe was reduced to a trickle. The quotas allotted to England and Ireland remained largely unused, as was intended. Total quota immigration fell to a half or a third—and sometimes even less—of the annual limit of 154,000. People from such countries as Greece, or Spain, or Latvia were virtually deprived of any opportunity to come here at all, simply because Greeks or Spaniards or Latvians had not come here before 1920 in any substantial numbers.

Public Papers of Truman, 1952-1953, p.443

The idea behind this discriminatory policy was, to put it baldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. It was thought that people of West European origin made better citizens than Rumanians or Yugoslavs or Ukrainians or Hungarians or Baits or Austrians. Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that "all men are created equal." It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations, "Give me your tired, your poor, your huddled masses yearning to breathe free."

Public Papers of Truman, 1952-1953, p.443

It repudiates our basic religious concepts, our belief in the brotherhood of man, and in the words of St. Paul that "there is neither Jew nor Greek, there is neither bond nor free…. for ye are all one in Christ Jesus."

Public Papers of Truman, 1952-1953, p.443

The basis of this quota system was false and unworthy in 1924. It is even worse now. At the present time, this quota system keeps out the very people we want to bring in. It is incredible to me that, in this year of 1952, we should again be enacting into law such a slur on the patriotism, the capacity, and the decency of a large part of our citizenry.

Public Papers of Truman, 1952-1953, p.443

Today, we have entered into an alliance, the North Atlantic Treaty, with Italy, Greece, and Turkey against one of the most terrible threats mankind has ever faced. We are asking them to join with us in protecting the peace of the world. We are helping them to build their defenses, and train their men, in the common cause. But, through this bill we say to their people: You are less worthy to come to this country than Englishmen or Irishmen; you Italians, who need to find homes abroad in the hundreds of thousands—you shall have a quota of 5,645; you Greeks, struggling to assist the helpless victims of a communist civil war-you shall have a quota of 308; and you Turks, you are brave defenders of the Eastern flank, but you shall have a quota of only 225!

Public Papers of Truman, 1952-1953, p.443–p.444

Today, we are "protecting" ourselves, as we were in 1924, against being flooded by immigrants from Eastern Europe. This is fantastic. The countries of Eastern Europe have fallen under the communist yoke—they are silenced, fenced off by barbed wire and minefields—no one passes their borders but at the risk of his life. We do not need to be protected against immigrants from these countries—on the contrary we want to stretch out a helping hand, to save those who have managed to flee into Western Europe, to succor those who are brave enough to escape from barbarism, to welcome and restore them against the day when their countries will, as we hope, be free again. But this we cannot do, as we would like to do, because the quota for Poland is only 6,500, as against the 138,000 exiled Poles, all over Europe, who are asking to come to these shores; because the quota for the now subjugated Baltic countries is little more than 700—against the 23,000 Baltic refugees imploring us to admit them to a new life here; because the quota for Rumania is only 289, and some 30,000 Rumanians, who have managed to escape the labor camps and the mass deportations of their Soviet masters, have asked our help. These are only a few examples of the absurdity, the cruelty of carrying [p.444] over into this year of 1952 the isolationist limitations of our 1924 law.

Public Papers of Truman, 1952-1953, p.444

In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration. We do not limit our cities to their 1920 boundaries—we do not hold our corporations to their 1920 capitalizations-we welcome progress and change to meet changing conditions in every sphere of life, except in the field of immigration.

Public Papers of Truman, 1952-1953, p.444

The time to shake off this dead weight of past mistakes is now. The time to develop a decent policy of immigration—a fitting instrument for our foreign policy and a true reflection of the ideals we stand for, at home and abroad—is now. In my earlier message on immigration, I tried to explain to the Congress that the situation we face in immigration is an emergency—that it must be met promptly. I have pointed out that in the last few years, we have blazed a new trail in immigration, through our Displaced Persons Program. Through the combined efforts of the Government and private agencies, working together not to keep people out, but to bring qualified people in, we summoned our resources of good will and human feeling to meet the task. In this program, we have found better techniques to meet the immigration problems of the 1950's.

Public Papers of Truman, 1952-1953, p.444

None of this fruitful experience of the last three years is reflected in this bill before me. None of the crying human needs of this time of trouble is recognized in this bill. But it is not too late. The Congress can remedy these defects, and it can adopt legislation to meet the most critical problems before adjournment.

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The only consequential change in the 1924 quota system which the bill would make is to extend a small quota to each of the countries of Asia. But most of the beneficial effects of this gesture are offset by other provisions of the bill. The countries of Asia are told in one breath that they shall have quotas for their nationals, and in the next, that the nationals of the other countries, if their ancestry is as much as 50 percent Asian, shall be charged to these quotas.

Public Papers of Truman, 1952-1953, p.444

It is only with respect to persons of oriental ancestry that this invidious discrimination applies. All other persons are charged to the country of their birth. But persons with Asian ancestry are charged to the countries of Asia, wherever they may have been born, or however long their ancestors have made their homes outside the land of their origin. These provisions are without justification.

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I now wish to turn to the other provisions of the bill, those dealing with the qualifications of aliens and immigrants for admission, with the administration of the laws, and with problems of naturalization and nationality. In these provisions too, I find objections that preclude my signing this bill.

Public Papers of Truman, 1952-1953, p.444

The bill would make it even more difficult to enter our country. Our resident aliens would be more easily separated from homes and families under grounds of deportation, both new and old, which would specifically be made retroactive. Admission to our citizenship would be made more difficult; expulsion from our citizenship would be made easier. Certain rights of native born, first generation Americans would be limited. All our citizens returning from abroad would be subjected to serious risk of unreasonable invasions of privacy. Seldom has a bill exhibited the distrust evidenced here for citizens and aliens alike—at a time when we need unity at home, and the confidence of our friends abroad.

Public Papers of Truman, 1952-1953, p.444–p.445

We have adequate and fair provisions in our present law to protect us against the entry of criminals. The changes made by the bill in those provisions would result in empowering minor immigration and consular officials to act as prosecutor, judge and jury in determining whether acts constituting a crime have been committed. Worse, we would be compelled to exclude certain people because they have been convicted by "courts" in communist countries that know no justice. Under this provision, no matter how construed, it would not be possible for us to admit many of the men and women [p.445] who have stood up against totalitarian repression and have been punished for doing so. I do not approve of substituting totalitarian vengeance for democratic justice. I will not extend full faith and credit to the judgments of the communist secret police.

Public Papers of Truman, 1952-1953, p.445

The realities of a world, only partly free, would again be ignored in the provision flatly barring entry to those who made misrepresentations in securing visas. To save their lives and the lives of loved ones still imprisoned, refugees from tyranny sometimes misstate various details of their lives. We do not want to encourage fraud. But we must recognize that conditions in some parts of the world drive our friends to desperate steps. An exception restricted to cases involving misstatement of country of birth is not sufficient. And to make refugees from oppression forever deportable on such technical grounds is shabby treatment indeed.

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Some of the new grounds of deportation which the bill would provide are unnecessarily severe. Defects and mistakes in admission would serve to deport at any time because of the bill's elimination, retroactively as well as prospectively, of the present humane provision barring deportations on such grounds five years after entry. Narcotic drug addicts would be deportable at any time, whether or not the addiction was culpable, and whether or not cured. The threat of deportation would drive the addict into hiding beyond the reach of cure, and the danger to the country from drug addiction would be increased.

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I am asked to approve the reenactment of highly objectionable provisions now contained in the Internal Security Act of 1950—a measure passed over my veto shortly after the invasion of South Korea. Some of these provisions would empower the Attorney General to deport any alien who has engaged or has had a purpose to engage in activities "prejudicial to the public interest" or "subversive to the national security." No standards or definitions are provided to guide discretion in the exercise of powers so sweeping. To punish undefined "activities" departs from traditional American insistence on established standards of guilt. To punish an undefined "purpose" is thought control.

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These provisions are worse than the infamous Alien Act of 1798, passed in a time of national fear and distrust of foreigners, which gave the President power to deport any alien deemed "dangerous to the peace and safety of the United States." Alien residents were thoroughly frightened and citizens much disturbed by that threat to liberty.

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Such powers are inconsistent with our democratic ideals. Conferring powers like that upon the Attorney General is unfair to him as well as to our alien residents. Once fully informed of such vast discretionary powers vested in the Attorney General, Americans now would and should be just as alarmed as Americans were in 1798 over less drastic powers vested in the President.

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Heretofore, for the most part, deportation and exclusion have rested upon findings of fact made upon evidence. Under this bill, they would rest in many instances upon the "opinion" or "satisfaction" of immigration or consular employees. The change from objective findings to subjective feelings is not compatible with our system of justice. The result would be to restrict or eliminate judicial review of unlawful administrative action.

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The bill would sharply restrict the present opportunity of citizens and alien residents to save family members from deportation. Under the procedures of present law, the Attorney General can exercise his discretion to suspend deportation in meritorious cases. In each such case, at the present time, the exercise of administrative discretion is subject to the scrutiny and approval of the Congress. Nevertheless, the bill would prevent this discretion from being used in many cases where it is now available, and would narrow the circle of those who can obtain relief from the letter of the law. This is most unfortunate, because the bill, in its [p.446] other provisions, would impose harsher restrictions and greatly increase the number of cases deserving equitable relief.

Public Papers of Truman, 1952-1953, p.446

Native-born American citizens who are dual nationals would be subjected to loss of citizenship on grounds not applicable to other native-born American citizens. This distinction is a slap at millions of Americans whose fathers were of alien birth.

Public Papers of Truman, 1952-1953, p.446

Children would be subjected to additional risk of loss of citizenship. Naturalized citizens would be subjected to the risk of denaturalization by any procedure that can be found to be permitted under any State law or practice pertaining to minor civil law suits. Judicial review of administrative denials of citizenship would be severely limited and impeded in many cases, and completely eliminated in others. I believe these provisions raise serious constitutional questions. Constitutionality aside, I see no justification in national policy for their adoption.

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Section 401 of this bill would establish a Joint Congressional Committee on Immigration and Nationality Policy. This committee would have the customary powers to hold hearings and to subpoena witnesses, books, papers and documents. But the Committee would also be given powers over the Executive branch which are unusual and of a highly questionable nature. Specifically, section 401 would provide that "The Secretary of State and the Attorney General shall without delay submit to the Committee all regulations, instructions, and all other information as requested by the Committee relative to the administration of this Act."

Public Papers of Truman, 1952-1953, p.446

This section appears to be another attempt to require the Executive branch to make available to the Congress administrative documents, communications between the President and his subordinates, confidential files, and other records of that character. It also seems to imply that the Committee would undertake to supervise or approve regulations. Such proposals are not consistent with the Constitutional doctrine of the separation of powers.

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In these and many other respects, the bill raises basic questions as to our fundamental immigration and naturalization policy, and the laws and practices for putting that policy into effect.

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Many of the aspects of the bill which have been most widely criticized in the public debate are reaffirmations or elaborations of existing statutes or administrative procedures. Time and again, examination discloses that the revisions of existing law that would be made by the bill are intended to solidify some restrictive practice of our immigration authorities, or to overrule or modify some ameliorative decision of the Supreme Court or other Federal courts. By and large, the changes that would be made by the bill do not depart from the basically restrictive spirit of our existing laws—but intensify and reinforce it.

Public Papers of Truman, 1952-1953, p.446

These conclusions point to an underlying condition which deserves the most careful study. Should we not undertake a reassessment of our immigration policies and practices in the light of the conditions that face us in the second half of the twentieth century? The great popular interest which this bill has created, and the criticism which it has stirred up, demand an affirmative answer. I hope the Congress will agree to a careful reexamination of this entire matter.

Public Papers of Truman, 1952-1953, p.446

To assist in this complex task, I suggest the creation of a representative commission of outstanding Americans to examine the basic assumptions of our immigration policy, the quota system and all that goes with it, the effect of our present immigration and nationality laws, their administration, and the ways in which they can be brought in line with our national ideals and our foreign policy.

Public Papers of Truman, 1952-1953, p.446–p.447

Such a commission should, I believe, be established by the Congress. Its membership should be bi-partisan and divided equally among persons from private life and persons from public life. I suggest that four members be appointed by the President, four by the President of the Senate, and four by the Speaker of the House of Representatives. The commission should be [p.447] given sufficient funds to employ a staff and it should have adequate powers to hold hearings, take testimony, and obtain information. It should make a report to the President and to the Congress within a year from the time of its creation.

Public Papers of Truman, 1952-1953, p.447

Pending the completion of studies by such a commission, and the consideration of its recommendations by the Congress, there are certain steps which I believe it is most important for the Congress to take this year.

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first, I urge the Congress to enact legislation removing racial barriers against Asians from our laws. Failure to take this step profits us nothing and can only have serious consequences for our relations with the peoples of the far East. A major contribution to this end would be the prompt enactment by the Senate of H.R. 403. That bill, already passed by the House of Representatives, would remove the racial bars to the naturalization of Asians.

Public Papers of Truman, 1952-1953, p.447

Second, I strongly urge the Congress to enact the temporary, emergency immigration legislation which I recommended three months ago. In my message of March 24, 1952, I advised the Congress that one of the gravest problems arising from the present world crisis is created by the overpopulation in parts of Western Europe. That condition is aggravated by the flight and expulsion of people from behind the iron curtain. In view of these serious problems, I asked the Congress to authorize the admission of 300,000 additional immigrants to the United States over a three year period. These immigrants would include Greek nationals, Dutch nationals, Italians from Italy and Trieste, Germans and persons of German ethnic origin, and religious and political refugees from communism in Eastern Europe. This temporary program is urgently needed. It is very important that the Congress act upon it this year. I urge the Congress to give prompt and favorable consideration to the bills introduced by Senator Hendrickson and Representative Celler (S. 3109 and H.R. 7376), which will implement the recommendations contained in my message of March 24.

Public Papers of Truman, 1952-1953, p.447

I very much hope that the Congress will take early action on these recommendations. Legislation to carry them out will correct some of the unjust provisions of our laws, will strengthen us at home and abroad, and will serve to relieve a great deal of the suffering and tension existing in the world today.

HARRY S. TRUMAN

Public Papers of Truman, 1952-1953, p.447

NOTE: On June 27 the Congress passed the bill over the President's veto. As enacted, H.R. 5678 is Public Law 414, 82d Congress (66 Stat. 163).

Public Papers of Truman, 1952-1953, p.447

On June 30, the President signed Proclamation 2980 (3 CFR, 1949-1953 Comp., p. 161) revising the immigration quota list.

Public Papers of Truman, 1952-1953, p.447

For the President's message to Congress on civil rights, dated February 2, 1948, see 1948 volume, this series, Item 20.

Public Papers of Truman, 1952-1953, p.447

For the President's message to Congress on aid for refugees and displaced persons, dated March 24, see Item 65, this volume.

United States v. Rumely, 1953

Title: United States v. Rumely

Author: U.S. Supreme Court

Date: March 9, 1953

Source: 345 U.S. 41

This case was argued December 11-12, 1952, and was decided March 9, 1953.

1953, United States v. Rumely, 345 U.S. 41

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1953, United States v. Rumely, 345 U.S. 41

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Syllabus

1953, United States v. Rumely, 345 U.S. 41

Respondent was secretary of an organization which, among other things, engaged in the sale of books of a political nature. He refused to disclose to a committed of Congress the names of those who made bulk purchases of these books for further distribution, and was convicted under R.S. § 102, as amended, which provides penalties for refusal to give testimony or to produce relevant papers "upon any matter" under congressional inquiry. Under the resolution empowering it to function, the Committee was

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authorized and directed to conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation.

1953, United States v. Rumely, 345 U.S. 41

Held: The Committee was without power to exact the information sought from respondent. Pp. 42-48.

1953, United States v. Rumely, 345 U.S. 41

(a) To construe the resolution as authorizing the Committee to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, would raise doubts of constitutionality in view of the prohibition of the First Amendment. P. 46.

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(b) The phrase "lobbying activities" in the resolution is to be construed as lobbying in the commonly accepted sense of "representations made directly to the Congress, its members, or its committees," and not as extending to attempts "to saturate the thinking of the community." P. 47.

1953, United States v. Rumely, 345 U.S. 41

(c) The scope of the resolution defining respondent's duty to answer must be ascertained as of the time of his refusal, and cannot be enlarged by subsequent action of Congress. Pp. 47-48.

1953, United States v. Rumely, 345 U.S. 41

90 U.S.App.D.C. 382, 197 F.2d 155, affirmed.

1953, United States v. Rumely, 345 U.S. 41

Respondent was convicted under R.S. § 102, as amended, 2 U.S.C. § 192, for refusal to give certain information to a congressional committee. The Court of [345 U.S. 42] Appeals reversed. 90 U.S.App.D.C. 382, 197 F.2d 166. This Court granted certiorari. 344 U.S. 812. Affirmed, p. 48.

FRANKFURTER, J., lead opinion

1953, United States v. Rumely, 345 U.S. 42

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

1953, United States v. Rumely, 345 U.S. 42

The respondent Rumely was Secretary of an organization known as the Committee for Constitutional Government, which, among other things, engaged in the sale of books of a particular political tendentiousness. He refused to disclose to the House Select Committee on Lobbying Activities the names of those who made bulk purchases of these books for further distribution, and was convicted under R.S. § 102, as amended, 52 Stat. 942, 2 U.S.C. § 192, which provides penalties for refusal to give testimony or to produce relevant papers "upon any matter" under congressional inquiry. The Court of Appeals reversed, one judge dissenting. It held that the committee before which Rumely refused to furnish this information had no authority to compel its production. 90 U.S.App.D.C. 382, 197 F.2d 166. Since the Court of Appeals thus took a view of the committee's authority contrary to that adopted by the House in citing Rumely for contempt, we granted certiorari. 344 U.S. 812. This issue—whether the committee was authorized to [345 U.S. 43] exact the information which the witness withheld—must first be settled before we may consider whether Congress had the power to confer upon the committee the authority which it claimed.

1953, United States v. Rumely, 345 U.S. 43

Although we are here dealing with a resolution of the House of Representatives, the problem is much the same as that which confronts the Court when called upon to construe a statute that carries the seeds of constitutional controversy. The potential constitutional questions have far-reaching import. We are asked to recognize the penetrating and pervasive scope of the investigative power of Congress. The reach that may be claimed for that power is indicated by Woodrow Wilson's characterization of it:

1953, United States v. Rumely, 345 U.S. 43

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.

1953, United States v. Rumely, 345 U.S. 43

Wilson, Congressional Government, 303.

1953, United States v. Rumely, 345 U.S. 43

Although the indispensable "informing function of Congress" is not to be minimized, determination of the "rights" which this function implies illustrates the common juristic situation thus defined for the Court by Mr. Justice Holmes:

1953, United States v. Rumely, 345 U.S. 43

All rights tend to declare themselves [345 U.S. 44] absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached.

1953, United States v. Rumely, 345 U.S. 44

Hudson County Water Co. v. McCarter, 209 U.S. 349, 355. President Wilson did not write in light of the history of events since he wrote; more particularly, he did not write of the investigative power of Congress in the context of the First Amendment. And so we would have to be that "blind" Court, against which Mr. Chief Justice Taft admonished in a famous passage, Child Labor Tax Case, 259 U.S. 20, 37, that does not see what "[a]ll others can see and understand" not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation.

1953, United States v. Rumely, 345 U.S. 44

Accommodation of these contending principles—the one underlying the power of Congress to investigate, the other at the basis of the limitation imposed by the First Amendment—is not called for until after we have construed the scope of the authority which the House of Representatives gave to the Select Committee on Lobbying Activities. The pertinent portion of the resolution of August 12, 1949, reads:

1953, United States v. Rumely, 345 U.S. 44

The Committee is authorized and directed to conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation.

1953, United States v. Rumely, 345 U.S. 44

H.Res. 298, 81st Cong., 1st Sess.

1953, United States v. Rumely, 345 U.S. 44

This is the controlling charter of the committee's powers. Its right to exact testimony and to call for the production of documents must be found in this language. The resolution must speak for itself, since Congress put [345 U.S. 45] no gloss upon it at the time of its passage. Nor is any help to be had from the fact that the purpose of the Buchanan Committee, as the Select Committee was known, was to try to "find out how well [the Federal Regulation of Lobbying Act of 1946, 60 Stat. 839] worked." 96 Cong.Rec. 13882. That statute had a section of definitions, but Congress did not define the terms "lobbying" or "lobbying activities" in that Act, for it did not use them. Accordingly, the phrase "lobbying activities" in the resolution must be given the meaning that may fairly be attributed to it, having special regard for the principle of constitutional adjudication which makes it decisive in the choice of fair alternatives that one construction may raise serious constitutional questions avoided by another. In a long series of decisions, we have acted on this principle. In the words of Mr. Chief Justice Taft, "[i]t is our duty in the interpretation of federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality." Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346. Again, what Congress has written, we said through Mr. Chief Justice (then Mr. Justice) Stone, "must be construed with an eye to possible constitutional limitations so as to avoid doubts as to its validity." Lucas v. Alexander, 279 U.S. 573, 577. As phrased by Mr. Chief Justice Hughes,

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if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

1953, United States v. Rumely, 345 U.S. 45

Crowell v. Benson, 285 U.S. 22, 62, and cases cited.

1953, United States v. Rumely, 345 U.S. 45

Patently, the Court's duty to avoid a constitutional issue, if possible, applies not merely to legislation technically speaking, but also to congressional action by way of resolution. See Federal Trade Comm'n v. American Tobacco Co., 264 U.S. 298. Indeed, this duty of not [345 U.S. 46] needlessly projecting delicate issues for judicial pronouncement is even more applicable to resolutions than to formal legislation. It can hardly be gainsaid that resolutions secure passage more casually and less responsibly, in the main, than do enactments requiring presidential approval.

1953, United States v. Rumely, 345 U.S. 46

Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment. In light of the opinion of Prettyman, J., below and of some of the views expressed here, it would not be seemly to maintain that these doubts are fanciful or factitious. Indeed, adjudication here, if it were necessary, would affect not an evanescent policy of Congress, but its power to inform itself, which underlies its policymaking function. Whenever constitutional limits upon the investigative power of Congress have to be drawn by this Court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits. Experience admonishes us to tread warily in this domain. The loose language of Kilbourn v. Thompson, 103 U.S. 168, the weighty criticism to which it has been subjected, see, e.g., Fairman, Mr. Justice Miller and the Supreme Court, 332-334; Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv.L.Rev. 153, the inroads that have been made upon that case by later cases, McGrain v. Daugherty, 273 U.S. 135, 170-171, and Sinclair v. United States, 279 U.S. 263, strongly counsel abstention from adjudication unless no choice is left. [345 U.S. 47]

1953, United States v. Rumely, 345 U.S. 47

Choice is left. As a matter of English, the phrase "lobbying activities" readily lends itself to the construction placed upon it below, namely, "lobbying in its commonly accepted sense," that is, "representations made directly to the Congress, its members, or its committees", 90 U.S.App.D.C. 382, 197 F.2d 166, 175, and does not reach what was in Chairman Buchanan's mind, attempts "to saturate the thinking of the community." 96 Cong.Rec. 13883. If "lobbying" was to cover all activities of anyone intending to influence, encourage, promote or retard legislation, why did Congress differentiate between "lobbying activities" and other "activities…intended to influence"? Had Congress wished to authorize so extensive an investigation of the influences that form public opinion, would it not have used language at least as explicit as it employed in the very resolution in question in authorizing investigation of government agencies? Certainly it does not violence to the phrase "lobbying activities" to give it a more restricted scope. To give such meaning is not barred by intellectual honesty. So to interpret is in the candid service of avoiding a serious constitutional doubt. "Words have been strained more than they need to be strained here in order to avoid that doubt." Mr. Justice Holmes, in Blodgett v. Holden, 275 U.S. 142, 148, 276 U.S. 594, with the concurrence of Mr. Justice Brandeis, Mr. Justice Sanford and Mr. Justice Stone. With a view to observing this principle of wisdom and duty, the Court very recently strained words more than they need be strained here. United States v. CIO, 335 U.S. 106. The considerations which prevailed in that case should prevail in this.

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Only a word need be said about the debate in Congress after the committee reported that Rumely had refused to produce the information which he had a right to refuse under the restricted meaning of the phrase "lobbying activities." The view taken at that time by the committee and by the Congress that the committee was authorized [345 U.S. 48] to ask Rumely for the information he withheld is not legislative history defining the scope of a congressional measure. What was said in the debate on August 30, 1950, after the controversy had arisen regarding the scope of the resolution of August 12, 1949, had the usual infirmity of post litem motam, self-serving declarations.\* In any event, Rumely's duty to answer must be judged as of the time of his refusal. The scope of the resolution defining that duty is therefore to be ascertained as of that time and cannot be enlarged by subsequent action of Congress.

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Grave constitutional questions are matters properly to be decided by this Court but only when they inescapably come before us for adjudication. Until then, it is our duty to abstain from marking the boundaries of congressional power or delimiting the protection guaranteed by the First Amendment. Only by such self-restraint will we avoid the mischief which has followed occasional departures from the principles which we profess.

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The judgment below should be

1953, United States v. Rumely, 345 U.S. 48

Affirmed.

1953, United States v. Rumely, 345 U.S. 48

MR. JUSTICE BURTON and MR. JUSTICE MINTON took no part in the consideration or decision of this case.

DOUGLAS, J., concurring

1953, United States v. Rumely, 345 U.S. 48

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, concurring.

1953, United States v. Rumely, 345 U.S. 48

Respondent was convicted under an indictment charging willful refusal to produce records and give testimony before a Committee of the House of Representatives in violation of R.S. § 102, as amended, 52 Stat. 942, 2 U.S.C. § 192. 1 [345 U.S. 49] The Committee, known as the Select Committee on Lobbying Activities, was created on August 12, 1949, by House Resolution 298 2 which provides in part as follows:

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The committee is authorized and directed to conduct at study and investigation of (1) all lobbying activities intended to influence, encourage, promote, or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote, or retard legislation.

1953, United States v. Rumely, 345 U.S. 49

Count one of the indictment charged that respondent willfully refused to produce records, duly subpoenaed, of the Committee for Constitutional Government (CCG), showing the name and address of each person from whom a total of $1,000 or more had been received by CCG from January 1, 1947, to May 1, 1950, for any purpose including receipts from the sale of books and pamphlets. Count six charged a similar offense as to a subpoena calling for the name and address of each person from whom CCG had received between those dates a total of $500 or more for any purpose. Count seven charged a willful refusal to give the name of a woman from Toledo who gave respondent $2,000 for distribution of The Road Ahead, a book written by John T. Flynn.

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The background of the subpoena and of the questions asked respondent is contained in a report of the Select [345 U.S. 50] Committee, H.R.Rep.No.3024, 81st Cong., 2d Sess. It appears that CCG and respondent, its executive, registered under the Regulation of Lobbying Act, 60 Stat. 839, 2 U.S.C. § 261 et seq., on October 7, 1946. The reports under this registration (which was made under protest) showed that CCG had spent about $2,000,000 from October, 1946, to August ,1950. The basic function of CCG, according to the Select Committee, was the "distribution of printed material to influence legislation indirectly." The Regulation of Lobbying Act requires disclosure of contributions of $500 or more received or expended to influence, directly or indirectly, the passage or defeat of any legislation by the Congress. 2 U.S.C. §§ 264. The Select Committee reported that, after enactment of the Regulation of Lobbying Act, CCG adopted a policy of accepting payments of over $490 only if the contributor specified that the funds be used for the distribution of one or more of its books or pamphlets. It then applied the term "sale" to the "contribution," and did not report them under the Regulation of Lobbying Act. H.R.Rep. No.3024, supra, pp. 1, 2.

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The Report of the Select Committee also shows that, while respondent was willing to give the Committee the total income of CCG, he refused to reveal the identity of the purchasers of books and literature because, "under the Bill of Rights, that is beyond the power of your committee to investigate." Id., p. 8. The books involved were The Road Ahead by John T. Flynn, The Constitution of the United States by Thomas J. Norton, Compulsory Medical Care by Melchior Palyi, and Why the Taft-Hartley Law by Irving B. McCann. Most of the purchasers (about 90 percent) had the books shipped to themselves; the rest told CCG the individuals to send them to or the type of person (e.g., "farm leaders") who should receive them. One person had CCG send Compulsory [345 U.S. 51] Medical Care by Melchior Palyi to 15,550 libraries. 3

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The Select Committee stated in its report:

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Our study of this organization indicates very clearly that its most important function is the distribution of books and pamphlets in order to influence legislation directly and indirectly. It attempts to influence legislation directly by sending copies of books, pamphlets, and other printed materials to Members of Congress. It attempts to influence legislation indirectly by distributing hundreds of thousands of copies of these printed materials to people throughout the United States.

1953, United States v. Rumely, 345 U.S. 51

Of particular significance is the fact that Edward A. Rumely and the Committee for Constitutional Government, Inc., in recent years have devised a scheme for raising enormous funds without filing true reports pursuant to the provisions of the Federal Regulation of Lobbying Act. This scheme has the color of legality, but, in fact, is a method of circumventing the law. It utilizes the system outlined above whereby contributions to the Committee for Constitutional Government are designated as payments for the purchase of books, which are transmitted to others at the direction of the purchaser, with both the contributor of the money and the recipients of the books totally unaware of the subterfuge in most cases.

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H.R.Rep. No. 3024, supra, p. 2. [345 U.S. 52]

1953, United States v. Rumely, 345 U.S. 52

The Select Committee insisted that the information demanded of respondent was relevant to its investigation of "lobbying activities" within the meaning of the Resolution. It said:

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Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Committee for Constitutional Government, Inc., is evading or violating the letter or the spirit of the Federal Regulation of Lobbying Act by the establishment of a class of contributions called "Receipts from the sale of books and literature," or whether they are complying with a law which requires amendments to strengthen it.

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The policy of the Committee for Constitutional Government, Inc., of refusing to accept contributions of more than $490 unless earmarked for books, etc., may also involve: (1) Dividing large contributions into installments of $490 or less, and causing the records of the Committee for Constitutional Government to reflect receipt of each installment on a different date, and/or causing the records of the Committee for Constitutional Government to give credit, for the several installments, to various relatives and associates of the actual contributor. (2) Causing the Committee for Constitutional Government's records as to "Contributions" to reflect less than the total amount of contributions actually received, by labeling some part of such funds as payments made for printed matter.

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Because of the refusal of the Committee for Constitutional Government, Inc., to produce pertinent financial records, this committee was unable to determine whether or not the Federal Regulation of Lobbying Act requires amendment to prevent division of [345 U.S. 53] large contributions into installments, or to prevent the crediting of contributions to others than the real contributor, or to prevent the use of other subterfuges.

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H.R.Rep. No. 3024, supra, pp. 2-3.

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The Select Committee submitted its report to the House (96 Cong.Rec., p 13873) and offered a Resolution that the Speaker certify respondent's refusal to answer to the United States Attorney for the District of Columbia. Id., p. 13881. The House adopted the Resolution, id., p. 13893, and on August 31, 1950, the Speaker certified respondent's refusal to testify.

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Respondent was convicted and sentenced to a fine of $1,000 and to imprisonment for six months. The Court of Appeals reversed by a divided vote, 197 F.2d 166, the majority holding that "lobbying activities" as used in the Resolution creating the Select Committee did not authorize the inquiries made of respondent. In its view, the term "lobbying activities" meant direct contact with Congress, not attempts to influence public opinion through the sale of books and documents.

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I

1953, United States v. Rumely, 345 U.S. 53

The Court holds that Resolution 298, which authorized the Select Committee to investigate "lobbying activities," did not extend to the inquiry on which this contempt proceeding is based. The difficulty with that position starts with Resolution 298. Its history makes plain that it was intended to probe the sources of support of lobbyists registered under the Regulation of Lobbying Act. Congressman Sabath, one of the sponsors of the Resolution, included CCG in a "partial list of some of the large lobby organizations and their reports of expenditures for the first quarter of 1949." See 95 Cong.Rec., p. 11386. The Regulation of Lobbying Act, under which respondent and CCG were registered, applies to all persons soliciting [345 U.S. 54] or receiving money to be used principally "To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States." 2 U.S.C. § 266(b). Congressman Buchanan, who introduced the Resolution and who became Chairman of the Select Committee, said that the purpose of the Resolution was to investigate the operations of that Act. 4 Not a word in the Resolution, not a word in the debate preceding its adoption suggests that the inquiry was to be delimited, restricted, or confined to particular methods of collecting money to influence legislation directly or indirectly.

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The Select Committee took the same broad view of its authority. 5 It concluded that "all substantial attempts to influence legislation for pay or for any consideration constitute lobbying." H.R.Rep. No. 3239, 81st Cong., 2d Sess., p. 1. It said that "pamphleteering" was a lobbying activity that overshadows "the traditional techniques of contact and persuasion." Id., p. 3. And it cited for its conclusion the activities of CCG. Id. This conclusion was reached over vehement objections by three minority members of the Select Committee who insisted that an investigation of that breadth exceeded the authority of the Resolution and infringed on the constitutional rights of free speech and free press. Id., Part 2, p. 2. [345 U.S. 55]

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This was the posture of the case when the Select Committee referred respondent's refusal to testify to the House for contempt proceedings. Congressman Buchanan called the collection of funds through the sale of books and pamphlets an evasion of the Regulation of Lobbying Act. 96 Cong.Rec. 13882. He pressed on the House the importance of controlling that kind of activity in a regulation of lobbying. And he asked that the House ratify the conclusion of the Select Committee that respondent was in contempt. Id., pp. 13886, 13887. That construction of the Resolution was challenged by Congressman Halleck, a member of the Select Committee who signed the minority report. He argued that the contempt citation sought had

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nothing to do with the influencing of legislation in the ordinary ways of seeing Members of Congress or communicating with them. It has only to do with the formation of public opinion among the people of the country.

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Id., p. 13888. Congressman Halleck's argument was two-fold—that the inquiry was not within the purview of the Resolution and that, if it were, it would be unconstitutional. Id., pp. 13887-13888. Others took up the debate on those issues. The vote was taken, and the Resolution passed. Id., p. 13893.

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Thus, the House had squarely before it the meaning of its earlier Resolution. A narrower construction than the Select Committee adopted was urged upon it. Congressmen pleaded long and earnestly for the narrow construction, and pointed out that, if the broader interpretation were taken, the inquiry would be trenching on the constitutional rights of citizens. I cannot say, in the face of that close consideration of the question by the House itself, that the Select Committee exceeded its authority. The House of Representatives made known its construction of the powers it had granted. If, at the beginning, there were any doubts as to the meaning of [345 U.S. 56] Resolution 298, the House removed them. The Court is repudiating what the House emphatically affirmed when it now says that the Select Committee lacked the authority to compel respondent to answer the questions propounded.

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II

1953, United States v. Rumely, 345 U.S. 56

Of necessity, I come then to the constitutional questions. Respondent represents a segment of the American press. Some may like what his group publishes; others may disapprove. These tracts may be the essence of wisdom to some; to others, their point of view and philosophy may be anathema. To some ears, their words may be harsh and repulsive; to others, they may carry the hope of the future. We have here a publisher who, through books and pamphlets, seeks to reach the minds and hearts of the American people. He is different in some respects from other publishers. But the differences are minor. Like the publishers of newspapers, magazines, or books, this publisher bids for the minds of men in the market place of ideas. The aim of the historic struggle for a free press was "to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their government." Grosjean v. American Press Co., 297 U.S. 233, 247. That is the tradition behind the First Amendment. Censorship or previous restraint is banned. Near v. State of Minnesota, 283 U.S. 697. Discriminatory taxation is outlawed. Grosjean v. American Press Co., supra. The privilege of pamphleteering, as well as the more orthodox types of publications, may neither be licensed (Lovell v. City of Griffin, 303 U.S. 444) nor taxed. Murdock v. Pennsylvania, 319 U.S. 105. Door to door distribution is privileged. Martin v. Struthers, 319 U.S. 141. These are illustrative of the preferred position granted speech and the press by the First Amendment. The command that "Congress [345 U.S. 57] shall make no law…abridging the freedom of speech, or of the press" has behind it a long history. It expresses the confidence that the safety of society depends on the tolerance of government for hostile, as well as friendly, criticism, that, in a community where men's minds are free, there must be room for the unorthodox, as well as the orthodox, views.

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If the present inquiry were sanctioned, the press would be subjected to harassment that, in practical effect, might be as serious as censorship. A publisher, compelled to register with the federal government, would be subjected to vexatious inquiries. A requirement that a publisher disclose the identity of those who buy his books, pamphlets, or papers is indeed the beginning of surveillance of the press. True, no legal sanction is involved here. Congress has imposed no tax, established no board of censors, instituted no licensing system. But the potential restraint is equally severe. The finger of government leveled against the press is ominous. Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular what the "powers that be" dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged. The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in disrepute in the orthodox school of thought will be suspect and subject to investigation. The press and its readers will pay a heavy price in harassment. But that will be minor in comparison with the menace of [345 U.S. 58] the shadow which government will cast over literature that does not follow the dominant party line. If the lady from Toledo can be required to disclose what she read yesterday and what she will read tomorrow, fear will take the place of freedom in the libraries, bookstores, and homes of the land. Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law. The power of investigation is also limited. 6 Inquiry into personal and private affairs is precluded. See Kilbourn v. Thompson, 103 U.S. 168, 190; McGrain v. Daugherty, 273 U.S. 135, 173-174; Sinclair v. United States, 279 U.S. 263, 292. And so is any matter in respect to which no valid legislation could be had. Kilbourn v. Thompson, supra, pp. 194-195; McGrain v. Daugherty, supra, p. 171. Since Congress could not by law require of respondent what the House demanded, it may not take the first step in an inquiry ending in fine or imprisonment.

Footnotes

FRANKFURTER, J., lead opinion (Footnotes)

1953, United States v. Rumely, 345 U.S. 58

\* The ambiguity of the terms of the resolution—that is, whether questions asked to which answers were refused were within those terms—is reflected by the close division by which the committee's view of its own authority prevailed. The vote was 183 to 175.

DOUGLAS, J., concurring (Footnotes)

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1. This section provides in pertinent part:

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Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House,…or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common fail for not less than one month nor more than twelve months.

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2. H.Res. 298, 81st Cong., 1st Sess.

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3. When the Taft-Hartley law was under discussion, CCG published a pamphlet "Labor Monopolies or Freedom" of which 250,000 copies were distributed.

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All members of Congress got a copy. It went to publishers. People who could take opinion that way, and mint it into small coin to distribute to others.

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H.R.Rep.No.3024, supra, p. 11. Respondent testified that Frank Gannett paid for that distribution.

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4.

1953, United States v. Rumely, 345 U.S. 58

Pressure groups interpret the Lobbying Act in different ways. Some file expenses. Others file full budget, but list expenditures they judge allocable to legislative activities. Still others file only expenditures directly concerned with lobbying.

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Some organizations argue they need not file unless principal purpose is influencing legislation. But Justice Department says, "principal" includes all who have substantial legislative interests. Lobbies also differ on who filed expenditures—organizations or individuals.

1953, United States v. Rumely, 345 U.S. 58

95 Cong.Rec. 11389.

1953, United States v. Rumely, 345 U.S. 58

5. An analysis of the scope of the investigation and the meaning of "lobbying" is contained in the General Interim Report of the Select Committee. H.R.Rep. No. 3138, 81st Cong., 2d Sess., pp. 5 et seq.

1953, United States v. Rumely, 345 U.S. 58

6. Cf. Barsky v. United States, 83 U.S.App.D.C. 127, 167 F.2d 241, certiorari denied, 334 U.S. 843, rehearing denied, 339 U.S. 971, and Marshall v. United States, 85 U.S.App.D.C. 184, 176 F.2d 473, certiorari denied, 339 U.S. 933, rehearing denied, 339 U.S. 959.

Dwight D. Eisenhower's Inaugural Address, 1953

Title: President Eisenhower's Inaugural Address, 1953

Author: Dwight D. Eisenhower

Date: January 20, 1953

Source: Public Papers of the Presidents, Eisenhower, 1953, pp.1-8

[Delivered in person at the Capitol]

Public Papers of Eisenhower, 1953, p.1

MY FRIENDS, before I begin the expression of those thoughts that I deem appropriate to this moment, would you permit me the privilege of uttering a little private prayer of my own. And I ask that you bow your heads:

Public Papers of Eisenhower, 1953, p.1

Almighty God, as we stand here at this moment my future associates in the Executive branch of Government join me in beseeching that Thou will make full and complete our dedication to the service of the people in this throng, and their fellow citizens everywhere.

Public Papers of Eisenhower, 1953, p.1

Give us, we pray, the power to discern clearly right from wrong, and allow all our words and actions to be governed thereby, and by the laws of this land. Especially we pray that our concern shall be for all the people regardless of station, race or calling.

Public Papers of Eisenhower, 1953, p.1

May cooperation be permitted and be the mutual aim of those who, under the concepts of our Constitution, hold to differing political faiths; so that all may work for the good of our beloved country and Thy glory. Amen.

Public Papers of Eisenhower, 1953, p.1

My fellow citizens:

Public Papers of Eisenhower, 1953, p.1

The world and we have passed the midway point of a century of continuing challenge. We sense with all our faculties that forces of good and evil are massed and armed and opposed as rarely before in history.

Public Papers of Eisenhower, 1953, p.1

This fact defines the meaning of this day. We are summoned by this honored and historic ceremony to witness more than the act of one citizen swearing his oath of service, in the presence of God. We are called as a people to give testimony in the sight of the world to our faith that the future shall belong to the free.

Public Papers of Eisenhower, 1953, p.1–p.2

Since this century's beginning, a time of tempest has seemed to come upon the continents of the earth. Masses of Asia have awakened to strike off shackles of the past. Great nations of [p.2] Europe have fought their bloodiest wars. Thrones have toppled and their vast empires have disappeared. New nations have been born.

Public Papers of Eisenhower, 1953, p.2

For our own country, it has been a time of recurring trial. We have grown in power and in responsibility. We have passed through the anxieties of depression and of war to a summit unmatched in man's history. Seeking to secure peace in the world, we have had to fight through the forests of the Argonne to the shores of Iwo Jima, and to the cold mountains of Korea.

Public Papers of Eisenhower, 1953, p.2

In the swift rush of great events, we find ourselves groping to know the full sense and meaning of these times in which we live. In our quest of understanding, we beseech God's guidance. We summon all our knowledge of the past and we scan all signs of the future. We bring all our wit and all our will to meet the question:

Public Papers of Eisenhower, 1953, p.2

How far have we come in man's long pilgrimage from darkness toward the light? Are we nearing the light—a day of freedom and of peace for all mankind? Or are the shadows of another night closing in upon us?

Public Papers of Eisenhower, 1953, p.2

Great as are the preoccupations absorbing us at home, concerned as we are with matters that deeply affect our livelihood today and our vision of the future, each of these domestic problems is dwarfed by, and often even created by, this question that involves all humankind.

Public Papers of Eisenhower, 1953, p.2

This trial comes at a moment when man's power to achieve good or to inflict evil surpasses the brightest hopes and the sharpest fears of all ages. We can turn rivers in their courses, level mountains to the plains. Oceans and land and sky are avenues for our colossal commerce. Disease diminishes and life lengthens.

Public Papers of Eisenhower, 1953, p.2

Yet the promise of this life is imperiled by the very genius that has made it possible. Nations amass wealth. Labor sweats to create—and turns out devices to level not only mountains but also cities. Science seems ready to confer upon us, as its final gift, the power to erase human life from this planet.

Public Papers of Eisenhower, 1953, p.2–p.3

At such a time in history, we who are free must proclaim anew [p.3] our faith. This faith is the abiding creed of our fathers. It is our faith in the deathless dignity of man, governed by eternal moral and natural laws.

Public Papers of Eisenhower, 1953, p.3

This faith defines our full view of life. It establishes, beyond debate, those gifts of the Creator that are man's inalienable rights, and that make all men equal in His sight.

Public Papers of Eisenhower, 1953, p.3

In the light of this equality, we know that the virtues most cherished by free people—love of truth, pride of work, devotion to country—all are treasures equally precious in the lives of the most humble and of the most exalted. The men who mine coal and fire furnaces, and balance ledgers, and turn lathes, and pick cotton, and heal the sick and plant corn—all serve as proudly and as profitably for America as the statesmen who draft treaties and the legislators who enact laws.

Public Papers of Eisenhower, 1953, p.3

This faith rules our whole way of life. It decrees that we, the people, elect leaders not to rule but to serve. It asserts that we have the right to choice of our own work and to the reward of our own toil. It inspires the initiative that makes our productivity the wonder of the world. And it warns that any man who seeks to deny equality among all his brothers betrays the spirit of the free and invites the mockery of the tyrant.

Public Papers of Eisenhower, 1953, p.3

It is because we, all of us, hold to these principles that the political changes accomplished this day do not imply turbulence, upheaval or disorder. Rather this change expresses a purpose of strengthening our dedication and devotion to the precepts of our founding documents, a conscious renewal of faith in our country and in the watchfulness of a Divine Providence.

Public Papers of Eisenhower, 1953, p.3

The enemies of this faith know no god but force, no devotion but its use. They tutor men in treason. They feed upon the hunger of others. Whatever defies them, they torture, especially the truth.

Public Papers of Eisenhower, 1953, p.3–p.4

Here, then, is joined no argument between slightly differing philosophies. This conflict strikes directly at the faith of our fathers and the lives of our sons. No principle or treasure that we hold, from the spiritual knowledge of our free schools and [p.4] churches to the creative magic of free labor and capital, nothing lies safely beyond the reach of this struggle.

Public Papers of Eisenhower, 1953, p.4

Freedom is pitted against slavery; lightness against the dark.

Public Papers of Eisenhower, 1953, p.4

The faith we hold belongs not to us alone but to the free of all the world. This common bond binds the grower of rice in Burma and the planter of wheat in Iowa, the shepherd in southern Italy and the mountaineer in the Andes. It confers a common dignity upon the French soldier who dies in Indo-China, the British soldier killed in Malaya, the American life given in Korea.

Public Papers of Eisenhower, 1953, p.4

We know, beyond this, that we are linked to all free peoples not merely by a noble idea but by a simple need. No free people can for long cling to any privilege or enjoy any safety in economic solitude. For all our own material might, even we need markets in the world for the surpluses of our farms and our factories. Equally, we need for these same farms and factories vital materials and products of distant lands. This basic law of interdependence, so manifest in the commerce of peace, applies with thousand-fold intensity in the event of war.

Public Papers of Eisenhower, 1953, p.4

So we are persuaded by necessity and by belief that the strength of all free peoples lies in unity; their danger, in discord.

Public Papers of Eisenhower, 1953, p.4

To produce this unity, to meet the challenge of our time, destiny has laid upon our country the responsibility of the free world's leadership.

Public Papers of Eisenhower, 1953, p.4

So it is proper that we assure our friends once again that, in the discharge of this responsibility, we Americans know and we observe the difference between world leadership and imperialism; between firmness and truculence; between a thoughtfully calculated goal and spasmodic reaction to the stimulus of emergencies.

Public Papers of Eisenhower, 1953, p.4

We wish our friends the world over to know this above all: we face the threat—not with dread and confusion—but with confidence and conviction.

Public Papers of Eisenhower, 1953, p.4

We feel this moral strength because we know that we are not helpless prisoners of history. We are free men. We shall remain free, never to be proven guilty of the one capital offense against freedom, a lack of stanch faith.

Public Papers of Eisenhower, 1953, p.5

In pleading our just cause before the bar of history and in pressing our labor for world peace, we shall be guided by certain fixed principles. These principles are:

Public Papers of Eisenhower, 1953, p.5

1. Abhorring war as a chosen way to balk the purposes of those who threaten us, we hold it to be the first task of statesmanship to develop the strength that will deter the forces of aggression and promote the conditions of peace. For, as it must be the supreme purpose of all free men, so it must be the dedication of their leaders, to save humanity from preying upon itself.

Public Papers of Eisenhower, 1953, p.5

In the light of this principle, we stand ready to engage with any and all others in joint effort to remove the causes of mutual fear and distrust among nations, so as to make possible drastic reduction of armaments. The sole requisites for undertaking such effort are that—in their purpose—they be aimed logically and honestly toward secure peace for all; and that—in their result—they provide methods by which every participating nation will prove good faith in carrying out its pledge.

Public Papers of Eisenhower, 1953, p.5

2. Realizing that common sense and common decency alike dictate the futility of appeasement, we shall never try to placate an aggressor by the false and wicked bargain of trading honor for security. Americans, indeed, all free men, remember that in the final choice a soldier's pack is not so heavy a burden as a prisoner's chains.

Public Papers of Eisenhower, 1953, p.5

3. Knowing that only a United States that is strong and immensely productive can help defend freedom in our world, we view our Nation's strength and security as a trust upon which rests the hope of free men everywhere. It is the firm duty of each of our free citizens and of every free citizen everywhere to place the cause of his country before the comfort, the convenience of himself.

Public Papers of Eisenhower, 1953, p.5

4. Honoring the identity and the special heritage of each nation in the world, we shall never use our strength to try to impress upon another people our own cherished political and economic institutions.

Public Papers of Eisenhower, 1953, p.5–p.6

5. Assessing realistically the needs and capacities of proven [p.6] friends of freedom, we shall strive to help them to achieve their own security and well-being. Likewise, we shall count upon them to assume, within the limits of their resources, their full and just burdens in the common defense of freedom.

Public Papers of Eisenhower, 1953, p.6

6. Recognizing economic health as an indispensable basis of military strength and the free world's peace, we shall strive to foster everywhere, and to practice ourselves, policies that

courage productivity and profitable trade. For the impoverishment of any single people in the world means danger to the well-being of all other peoples.

Public Papers of Eisenhower, 1953, p.6

7. Appreciating that economic need, military security and political wisdom combine to suggest regional groupings of free peoples, we hope, within the framework of the United Nations, to help strengthen such special bonds the world over. The nature of these ties must vary with the different problems of different areas.

Public Papers of Eisenhower, 1953, p.6

In the Western Hemisphere, we enthusiastically join with all our neighbors in the work of perfecting a community of fraternal trust and common purpose.

Public Papers of Eisenhower, 1953, p.6

In Europe, we ask that enlightened and inspired leaders of the Western nations strive with renewed vigor to make the unity of their peoples a reality. Only as free Europe unitedly marshals its strength can it effectively safeguard, even with our help, its spiritual and cultural heritage.

Public Papers of Eisenhower, 1953, p.6

8. Conceiving the defense of freedom, like freedom itself, to be one and indivisible, we hold all continents and peoples in equal regard and honor. We reject any insinuation that one race or another, one people or another, is in any sense inferior or expendable.

Public Papers of Eisenhower, 1953, p.6

9. Respecting the United Nations as the living sign of all people's hope for peace, we shall strive to make it not merely an eloquent symbol but an effective force. And in our quest for an honorable peace, we shall neither compromise, nor tire, nor ever cease.

Public Papers of Eisenhower, 1953, p.7

By these rules of conduct, we hope to be known to all peoples.

Public Papers of Eisenhower, 1953, p.7

By their observance, an earth of peace may become not a vision but a fact.

Public Papers of Eisenhower, 1953, p.7

This hope—this supreme aspiration—must rule the way we live.

Public Papers of Eisenhower, 1953, p.7

We must be ready to dare all for our country. For history does not long entrust the care of freedom to the weak or the timid. We must acquire proficiency in defense and display stamina in purpose.

Public Papers of Eisenhower, 1953, p.7

We must be willing, individually and as a Nation, to accept whatever sacrifices may be required of us. A people that values its privileges above its principles soon loses both.

Public Papers of Eisenhower, 1953, p.7

These basic precepts are not lofty abstractions, far removed from matters of daily living. They are laws of spiritual strength that generate and define our material strength. Patriotism means equipped forces and a prepared citizenry. Moral stamina means more energy and more productivity, on the farm and in the factory. Love of liberty means the guarding of every resource that makes freedom possible—from the sanctity of our families and the wealth of our soil to the genius of our scientists.

Public Papers of Eisenhower, 1953, p.7

And so each citizen plays an indispensable role. The productivity of our heads, our hands and our hearts is the source of all the strength we can command, for both the enrichment of our lives and the winning of the peace.

Public Papers of Eisenhower, 1953, p.7

No person, no home, no community can be beyond the reach of this call. We are summoned to act in wisdom and in conscience, to work with industry, to teach with persuasion, to preach with conviction, to weigh our every deed with care and with compassion. For this truth must be clear before us: whatever America hopes to bring to pass in the world must first come to pass in the heart of America.

Public Papers of Eisenhower, 1953, p.7

The peace we seek, then, is nothing less than the practice and fulfillment of our whole faith among ourselves and in our dealings with others. This signifies more than the stilling of guns, casing the sorrow of war. More than escape from death, it is a way of life. More than a haven for the weary, it is a hope for the brave.

Public Papers of Eisenhower, 1953, p.8

This is the hope that beckons us onward in this century of trial. This is the work that awaits us all, to be done with bravery, with charity, and with prayer to Almighty God.

Public Papers of Eisenhower, 1953, p.8

My citizens—I thank you.

Public Papers of Eisenhower, 1953, p.8

NOTE: This text follows the White House release of the address. The President spoke from a platform erected on the steps of the central east front of the Capitol. Immediately before the address the oath of office was administered by Chief Justice Fred M. Vinson.

Message to Congress Transmitting Reorganization Plan of 1953 Creating the Department of Health, Education, and Welfare

Title: Message to Congress Transmitting Reorganization Plan of 1953 Creating the Department of Health, Education, and Welfare

Author: Dwight D. Eisenhower

Date: March 12, 1953

Source: Public Papers of the Presidents, Eisenhower, 1953, pp.94-98

Public Papers of Eisenhower, 1953, p.94

To the Congress of the United States:

transmit herewith Reorganization Plan No. 1 of 1953, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended.

Public Papers of Eisenhower, 1953, p.94

In my message of February 2, 1953, I stated that I would send to the Congress a reorganization plan defining a new administrative status for Federal activities in health, education, and social security. This plan carries out that intention by creating a Department of Health, Education, and Welfare as one of the executive departments of the Government and by transferring to it the various units of the Federal Security Agency. The Department will be headed by a Secretary of Health, Education, and Welfare, who will be assisted by an Under Secretary and two Assistant Secretaries.

Public Papers of Eisenhower, 1953, p.94–p.95

The purpose of this plan is to improve the administration of the vital health, education, and social security functions now being carried on in the Federal Security Agency by giving them departmental rank. Such action is demanded by the importance and magnitude of these functions, which affect the well-being of millions of our citizens. The programs carried on by the Public Health Service include, for example, the conduct and [p.95] promotion of research into the prevention and cure of such dangerous ailments as cancer and heart disease. The Public Health Service also administers payments to the States for the support of their health services and for urgently needed hospital construction. The Office of Education collects, analyzes and distributes to school administrators throughout the country information relating to the organization and management of educational systems. Among its other functions is the provision of financial help to school districts burdened by activities of the United States Government. State assistance to the aged, the blind, the totally disabled, and dependent children is heavily supported by grants-in-aid administered through the Social Security Administration. The old age and survivors insurance system and child development and welfare programs are additional responsibilities of that Administration. Other offices of the Federal Security Agency are responsible for the conduct of Federal vocational rehabilitation programs and for the enforcement of food and drug laws.

Public Papers of Eisenhower, 1953, p.95

There should be an unremitting effort to improve those health, education, and social security programs which have proved their value. I have already recommended the expansion of the social security system to cover persons not now protected, the continuation of assistance to school districts Whose population has been greatly increased by the expansion of defense activities, and the strengthening of our food and drug laws.

Public Papers of Eisenhower, 1953, p.95

But good intent and high purpose are not enough; all such programs depend for their success upon efficient, responsible administration. I have recently taken action to assure that the Federal Security Administrator's views are given proper consideration in executive councils by inviting her to attend meetings of the Cabinet. Now the establishment of the new Department provided for in Reorganization Plan No. 1 of 1953 will give the needed additional assurance that these matters will receive the full consideration they deserve in the whole operation of the Government.

Public Papers of Eisenhower, 1953, p.96

This need has long been recognized. In 1923, President Harding proposed a Department of Education and Welfare, which was also to include health functions. In 1924, the Joint Committee on Reorganization recommended a new department similar to that suggested by President Harding. In 1932, one of President Hoover's reorganization proposals called for the concentration of health, education and recreational activities in a single executive department. The President's Committee on Administrative Management in 1937 recommended the placing of health, education and social security functions in a Department of Social Welfare. This recommendation was partially implemented in 1939 by the creation of the Federal Security Agency—by which action the Congress indicated its approval of the grouping of these functions in a single agency. A new department could not be proposed at that time because the Reorganization Act of 1939 prohibited the creation of additional executive departments. In 1949, the Commission on Organization of the Executive Branch of the Government proposed the creation of a department for social security and education.

Public Papers of Eisenhower, 1953, p.96–p.97

The present plan will make it possible to give the officials directing the Department titles indicative of their responsibilities and salaries comparable to those received by their counterparts in other executive departments. As the Under Secretary of an executive department, the Secretary's principal assistant will be better equipped to give leadership in the Department's organization and management activities, for which he will be primarily responsible. The plan opens the way to further administrative improvement by authorizing the Secretary to centralize services and activities common to the several agencies of the Department. It also establishes a uniform method of appointment for the heads of the three major constituent agencies. At present, the Surgeon General and the Commissioner of Education are appointed by the President and confirmed by the Senate, while the Commissioner for Social Security is appointed by the Federal [p.97] Security Administrator. Hereafter, all three will be Presidential appointees subject to Senate confirmation.

Public Papers of Eisenhower, 1953, p.97

I believe, and this plan reflects my conviction, that these several fields of Federal activity should continue within the framework of a single department. The plan at the same time assures that the Office of Education and the Public Health Service retain the professional and substantive responsibilities vested by law in those agencies or in their heads. The Surgeon General, the Commissioner of Education and the Commissioner of Social Security will all have direct access to the Secretary.

Public Papers of Eisenhower, 1953, p.97

There should be in the Department an Advisory Committee on Education, made up of persons chosen by the Secretary from outside the Federal Government, which would advise the Secretary with respect to the educational programs of the Department. I recommend the enactment of legislation authorizing the defrayal of the expenses of this Committee. The creation of such a Committee as an advisory body to the Secretary will help ensure the maintenance of responsibility for the public educational system in State and local governments while preserving the national interest in education through appropriate Federal action.

Public Papers of Eisenhower, 1953, p.97

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1953 is necessary to accomplish one or more of the purposes set forth in section 2 ( a ) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of these reorganizations, it is necessary to include in the reorganization plan provisions for the appointment and compensation of the new officers specified in sections 1, 2, 3, and 4 of the reorganization plan. The rates of compensation fixed for these officers are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

Public Papers of Eisenhower, 1953, p.97–p.98

Although the effecting of the reorganizations provided for in the reorganization plan will not in itself result in immediate savings, the improvement achieved in administration will in the [p.98] future allow the performance of necessary services at greater savings than present operations would permit. An itemization of these savings in advance of actual experience is not practicable.

DWIGHT D. EISENHOWER

Public Papers of Eisenhower, 1953, p.98

NOTE: Reorganization Plan 1 of 1953 is published in the U.S. Statutes at Large (67 Stat. 631) and in the 1949-1953 Compilation of title 3 of the Code of Federal Regulations (p. 1022). Public Law 13, 83d Congress (67 Stat. 18), advanced the effective date to April 11, 1953.

President Eisenhower's Address to the United Nations on Peaceful Uses of Atomic Energy, 1953

Title: President Eisenhower's Address to the United Nations on Peaceful Uses of Atomic Energy

Author: Dwight D. Eisenhower

Date: December 8, 1953

Source: Public Papers of the Presidents, Eisenhower, 1953, pp.813-822

Public Papers of Eisenhower, 1953, p.813

Madame President, Members of the General Assembly:

Public Papers of Eisenhower, 1953, p.813

When Secretary General Hammarskjold's invitation to address this General Assembly reached me in Bermuda, I was just beginning a series of conferences with the Prime Ministers and Foreign Ministers of Great Britain and of France. Our subject was some of the problems that beset our world.

Public Papers of Eisenhower, 1953, p.813–p.814

During the remainder of the Bermuda Conference, I had constantly [p.814] in mind that ahead of me lay a great honor. That honor is mine today as I stand here, privileged to address the General Assembly of the United Nations.

Public Papers of Eisenhower, 1953, p.814

At the same time that I appreciate the distinction of addressing you, I have a sense of exhilaration as I look upon this Assembly.

Public Papers of Eisenhower, 1953, p.814

Never before in history has so much hope for so many people been gathered together in a single organization. Your deliberations and decisions during these somber years have already realized part of those hopes.

Public Papers of Eisenhower, 1953, p.814

But the great tests and the great accomplishments still lie ahead. And in the confident expectation of those accomplishments, I would use the office which, for the time being, I hold, to assure you that the Government of the United States will remain steadfast in its support of this body. This we shall do in the conviction that you will provide a great share of the wisdom, the courage, and the faith which can bring to this world lasting peace for all nations, and happiness and well-being for all men.

Public Papers of Eisenhower, 1953, p.814

Clearly, it would not be fitting for me to take this occasion to present to you a unilateral American report on Bermuda. Nevertheless, I assure you that in our deliberations on that lovely island we sought to invoke those same great concepts of universal peace and human dignity which are so clearly etched in your Charter.

Public Papers of Eisenhower, 1953, p.814

Neither would it be a measure of this great opportunity merely to recite, however hopefully, pious platitudes.

Public Papers of Eisenhower, 1953, p.814

I therefore decided that this occasion warranted my saying to you some of the things that have been on the minds and hearts of my legislative and executive associates and on mine for a great many months—thoughts I had originally planned to say primarily to the American people.

Public Papers of Eisenhower, 1953, p.814

I know that the American people share my deep belief that if a danger exists in the world, it is a danger shared by all—and equally, that if hope exists in the mind of one nation, that hope should be shared by all.

Public Papers of Eisenhower, 1953, p.814–p.815

Finally, if there is to be advanced any proposal designed to ease even by the smallest measure the tensions of today's world, what [p.815] more appropriate audience could there be than the members of the General Assembly of the United Nations?

Public Papers of Eisenhower, 1953, p.815

I feel impelled to speak today in a language that in a sense is new—one which I, who have spent so much of my life in the military profession, would have preferred never to use.

Public Papers of Eisenhower, 1953, p.815

That new language is the language of atomic warfare.

Public Papers of Eisenhower, 1953, p.815

The atomic age has moved forward at such a pace that every citizen of the world should have some comprehension, at least in comparative terms, of the extent of this development of the utmost significance to every one of us. Clearly, if the peoples of the world are to conduct an intelligent search for peace, they must be armed with the significant facts of today's existence.

Public Papers of Eisenhower, 1953, p.815

My recital of atomic danger and power is necessarily stated in United States terms, for these are the only incontrovertible facts that I know. I need hardly point out to this Assembly, however, that this subject is global, not merely national in character.

Public Papers of Eisenhower, 1953, p.815

On July 16, 1945, the United States set off the world's first atomic explosion. Since that date in 1945, the United States of America has conducted 42 test explosions.

Public Papers of Eisenhower, 1953, p.815

Atomic bombs today are more than 25 times as powerful as the weapons with which the atomic age dawned, while hydrogen weapons are in the ranges of millions of tons of TNT equivalent.

Public Papers of Eisenhower, 1953, p.815

Today, the United States' stockpile of atomic weapons, which, of course, increases daily, exceeds by many times the explosive equivalent of the total of all bombs and all shells that came from every plane and every gun in every theatre of war in all of the years of World War II.

Public Papers of Eisenhower, 1953, p.815

A single air group, whether afloat or land-based, can now deliver to any reachable target a destructive cargo exceeding in power all the bombs that fell on Britain in all of World War II.

Public Papers of Eisenhower, 1953, p.815

In size and variety, the development of atomic weapons has been no less remarkable. The development has been such that atomic weapons have virtually achieved conventional status within our armed services. In the United States, the Army, the Navy, the Air Force, and the Marine Corps are all capable of putting this weapon to military use.

Public Papers of Eisenhower, 1953, p.816

But the dread secret, and the fearful engines of atomic might, are not ours alone.

Public Papers of Eisenhower, 1953, p.816

In the first place, the secret is possessed by our friends and allies, Great Britain and Canada, whose scientific genius made a tremendous contribution to our original discoveries, and the designs of atomic bombs.

Public Papers of Eisenhower, 1953, p.816

The secret is also known by the Soviet Union.

Public Papers of Eisenhower, 1953, p.816

The Soviet Union has informed us that, over recent years, it has devoted extensive resources to atomic weapons. During this period, the Soviet Union has exploded a series of atomic devices, including at least one involving thermo-nuclear reactions.

Public Papers of Eisenhower, 1953, p.816

If at one time the United States possessed what might have been called a monopoly of atomic power, that monopoly ceased to exist several years ago. Therefore, although our earlier start has permitted us to accumulate what is today a great quantitative advantage, the atomic realities of today comprehend two facts of even greater significance.

Public Papers of Eisenhower, 1953, p.816

First, the knowledge now possessed by several nations will eventually be shared by others—possibly all others.

Public Papers of Eisenhower, 1953, p.816

Second, even a vast superiority in numbers of weapons, and a consequent capability of devastating retaliation, is no preventive, of itself, against the fearful material damage and toll of human lives that would be inflicted by surprise aggression.

Public Papers of Eisenhower, 1953, p.816

The free world, at least dimly aware of these facts, has naturally embarked on a large program of warning and defense systems. That program will be accelerated and expanded.

Public Papers of Eisenhower, 1953, p.816

But let no one think that the expenditure of vast sums for weapons and systems of defense can guarantee absolute safety for the cities and citizens of any nation. The awful arithmetic of the atomic bomb does not permit of any such easy solution. Even against the most powerful defense, an aggressor in possession of the effective minimum number of atomic bombs for a surprise attack could probably place a sufficient number of his bombs on the chosen targets to cause hideous damage.

Public Papers of Eisenhower, 1953, p.816–p.817

Should such an atomic attack be launched against the United [p.817] States, our reactions would be swift and resolute. But for me to say that the defense capabilities of the United States are such that they could inflict terrible losses upon an aggressor—for me to say that the retaliation capabilities of the United States are so great that such an aggressor's land would be laid waste—all this, while fact, is not the true expression of the purpose and the hope of the United States.

Public Papers of Eisenhower, 1953, p.817

To pause there would be to confirm the hopeless finality of a belief that two atomic colossi are doomed malevolently to eye each other indefinitely across a trembling world. To stop there would be to accept helplessly the probability of civilization destroyed-the annihilation of the irreplaceable heritage of mankind handed down to us generation from generation—and the condemnation of mankind to begin all over again the age-old struggle upward from savagery toward decency, and right, and justice.

Public Papers of Eisenhower, 1953, p.817

Surely no sane member of the human race could discover victory in such desolation. Could anyone wish his name to be coupled by history with such human degradation and destruction.

Public Papers of Eisenhower, 1953, p.817

Occasional pages of history do record the faces of the "Great Destroyers" but the whole book of history reveals mankind's never-ending quest for peace, and mankind's God-given capacity to build.

Public Papers of Eisenhower, 1953, p.817

It is with the book of history, and not with isolated pages, that the United States will ever wish to be identified. My country wants to be constructive, not destructive. It wants agreements, not wars, among nations. It wants itself to live in freedom, and in the confidence that the people of every other nation enjoy equally the right of choosing their own way of life.

Public Papers of Eisenhower, 1953, p.817

So my country's purpose is to help us move out of the dark chamber of horrors into the light, to find a way by which the minds of men, the hopes of men, the souls of men everywhere, can move forward toward peace and happiness and well being.

Public Papers of Eisenhower, 1953, p.817

In this quest, I know that we must not lack patience.

Public Papers of Eisenhower, 1953, p.818

I know that in a world divided, such as ours today, salvation cannot be attained by one dramatic act.

Public Papers of Eisenhower, 1953, p.818

I know that many steps will have to be taken over many months before the world can look at itself one day and truly realize that a new climate of mutually peaceful confidence is abroad in the world.

Public Papers of Eisenhower, 1953, p.818

But I know, above all else, that we must start to take these steps—now.

Public Papers of Eisenhower, 1953, p.818

The United States and its allies, Great Britain and France, have over the past months tried to take some of these steps. Let no one say that we shun the conference table.

Public Papers of Eisenhower, 1953, p.818

On the record has long stood the request of the United States, Great Britain, and France to negotiate with the Soviet Union the problems of a divided Germany.

Public Papers of Eisenhower, 1953, p.818

On that record has long stood the request of the same three nations to negotiate an Austrian Peace Treaty.

Public Papers of Eisenhower, 1953, p.818

On the same record still stands the request of the United Nations to negotiate the problems of Korea.

Public Papers of Eisenhower, 1953, p.818

Most recently, we have received from the Soviet Union what is in effect an expression of willingness to hold a Four Power Meeting. Along with our allies, Great Britain and France, we were pleased to see that this note did not contain the unacceptable preconditions previously put forward.

Public Papers of Eisenhower, 1953, p.818

As you already know from our joint Bermuda communique, the United States, Great Britain, and France have agreed promptly to meet with the Soviet Union.

Public Papers of Eisenhower, 1953, p.818

The Government of the United States approaches this conference with hopeful sincerity. We will bend every effort of our minds to the single purpose of emerging from that conference with tangible results toward peace—the only true way of lessening international tension.

Public Papers of Eisenhower, 1953, p.818

We never have, we never will, propose or suggest that the Soviet Union surrender what is rightfully theirs.

Public Papers of Eisenhower, 1953, p.818

We will never say that the peoples of Russia are an enemy with whom we have no desire ever to deal or mingle in friendly and fruitful relationship.

Public Papers of Eisenhower, 1953, p.819

On the contrary, we hope that this coming Conference may initiate a relationship with the Soviet Union which will eventually bring about a free intermingling of the peoples of the East and of the West—the one sure, human way of developing the understanding required for confident and peaceful relations.

Public Papers of Eisenhower, 1953, p.819

Instead of the discontent which is now settling upon Eastern Germany, occupied Austria, and the countries of Eastern Europe, we seek a harmonious family of free European nations, with none a threat to the other, and least of all a threat to the peoples of Russia.

Public Papers of Eisenhower, 1953, p.819

Beyond the turmoil and strife and misery of Asia, we seek peaceful opportunity for these peoples to develop their natural resources and to elevate their lives.

Public Papers of Eisenhower, 1953, p.819

These are not idle words or shallow visions. Behind them lies a story of nations lately come to independence, not as a result of war, but through free grant or peaceful negotiation. There is a record, already written, of assistance gladly given by nations of the West to needy peoples, and to those suffering the temporary effects of famine, drought, and natural disaster.

Public Papers of Eisenhower, 1953, p.819

These are deeds of peace. They speak more loudly than promises or protestations of peaceful intent.

Public Papers of Eisenhower, 1953, p.819

But I do not wish to rest either upon the reiteration of past proposals or the restatement of past deeds. The gravity of the time is such that every new avenue of peace, no matter how dimly discernible, should be explored.

Public Papers of Eisenhower, 1953, p.819

There is at least one new avenue of peace which has not yet been well explored—an avenue now laid out by the General Assembly of the United Nations.

Public Papers of Eisenhower, 1953, p.819

In its resolution of November 18th, 1953, this General Assembly suggested—and I quote—"that the Disarmament Commission study the desirability of establishing a sub-committee consisting of representatives of the Powers principally involved, which should seek in private an acceptable solution…and report on such a solution to the General Assembly and to the Security Council not later than 1 September 1954."

Public Papers of Eisenhower, 1953, p.820

The United States, heeding the suggestion of the General Assembly of the United Nations, is instantly prepared to meet privately with such other countries as may be "principally involved," to seek "an acceptable solution" to the atomic armaments race which overshadows not only the peace, but the very life, of the world.

Public Papers of Eisenhower, 1953, p.820

We shall carry into these private or diplomatic talks a new conception.

Public Papers of Eisenhower, 1953, p.820

The United States would seek more than the mere reduction or elimination of atomic materials for military purposes.

Public Papers of Eisenhower, 1953, p.820

It is not enough to take this weapon out of the hands of the soldiers. It must be put into the hands of those who will know how to strip its military casing and adapt it to the arts of peace.

Public Papers of Eisenhower, 1953, p.820

The United States knows that if the fearful trend of atomic military buildup can be reversed, this greatest of destructive forces can be developed into a great boon, for the benefit of all mankind.

Public Papers of Eisenhower, 1953, p.820

The United States knows that peaceful power from atomic energy is no dream of the future. That capability, already proved, is here—now—today. Who can doubt, if the entire body of the world's scientists and engineers had adequate amounts of fissionable material with which to test and develop their ideas, that this capability would rapidly be transformed into universal, efficient, and economic usage.

Public Papers of Eisenhower, 1953, p.820

To hasten the day when fear of the atom will begin to disappear from the minds of people, and the governments of the East and West, there are certain steps that can be taken now.

Public Papers of Eisenhower, 1953, p.820

I therefore make the following proposals:

Public Papers of Eisenhower, 1953, p.820

The Governments principally involved, to the extent permitted by elementary prudence, to begin now and continue to make joint contributions from their stockpiles of normal uranium and fissionable materials to an International Atomic Energy Agency. We would expect that such an agency would be set up under the aegis of the United Nations.

Public Papers of Eisenhower, 1953, p.820–p.821

The ratios of contributions, the procedures and other details [p.821] would properly be within the scope of the "private conversations" I have referred to earlier.

Public Papers of Eisenhower, 1953, p.821

The United States is prepared to undertake these explorations in good faith. Any partner of the United States acting in the same good faith will find the United States a not unreasonable or ungenerous associate.

Public Papers of Eisenhower, 1953, p.821

Undoubtedly initial and early contributions to this plan would be small in quantity. However, the proposal has the great virtue that it can be undertaken without the irritations and mutual suspicions incident to any attempt to set up a completely acceptable system of world-wide inspection and control.

Public Papers of Eisenhower, 1953, p.821

The Atomic Energy Agency could be made responsible for the impounding, storage, and protection of the contributed fissionable and other materials. The ingenuity of our scientists will provide special safe conditions under which such a bank of fissionable material can be made essentially immune to surprise seizure.

Public Papers of Eisenhower, 1953, p.821

The more important responsibility of this Atomic Energy Agency would be to devise methods whereby this fissionable material would be allocated to serve the peaceful pursuits of mankind. Experts would be mobilized to apply atomic energy to the needs of agriculture, medicine, and other peaceful activities. A special purpose would be to provide abundant electrical energy in the power-starved areas of the world. Thus the contributing powers would be dedicating some of their strength to serve the needs rather than the fears of mankind.

Public Papers of Eisenhower, 1953, p.821

The United States would be more than willing—it would be proud to take up with others "principally involved" the development of plans whereby such peaceful use of atomic energy would be expedited.

Public Papers of Eisenhower, 1953, p.821

Of those "principally involved" the Soviet Union must, of course, be one.

Public Papers of Eisenhower, 1953, p.821

I would be prepared to submit to the Congress of the United States, and with every expectation of approval, any such plan that would:

Public Papers of Eisenhower, 1953, p.822

First—encourage world-wide investigation into the most effective peacetime uses of fissionable material, and with the certainty that they had all the material needed for the conduct of all experiments that were appropriate;

Public Papers of Eisenhower, 1953, p.822

Second—begin to diminish the potential destructive power of the world's atomic stockpiles;

Public Papers of Eisenhower, 1953, p.822

Third—allow all peoples of all nations to see that, in this enlightened age, the great powers of the earth, both of the East and of the West, are interested in human aspirations first, rather than in building up the armaments of war;

Public Papers of Eisenhower, 1953, p.822

Fourth—open up a new channel for peaceful discussion, and initiate at least a new approach to the many difficult problems that must be solved in both private and public conversations, if the world is to shake off the inertia imposed by fear, and is to make positive progress toward peace.

Public Papers of Eisenhower, 1953, p.822

Against the dark background of the atomic bomb, the United States does not wish merely to present strength, but also the desire and the hope for peace.

Public Papers of Eisenhower, 1953, p.822

The coming months will be fraught with fateful decisions. In this Assembly; in the capitals and military headquarters of the world; in the hearts of men everywhere, be they governors or governed, may they be the decisions which will lead this world out of fear and into peace.

Public Papers of Eisenhower, 1953, p.822

To the making of these fateful decisions, the United States pledges before you—and therefore before the world—its determination to help solve the fearful atomic dilemma—to devote its entire heart and mind to find the way by which the miraculous inventiveness of man shall not be dedicated to his death, but consecrated to his life.

Public Papers of Eisenhower, 1953, p.822

I again thank the delegates for the great honor they have done me, in inviting me to appear before them, and in listening to me so courteously. Thank you.

Public Papers of Eisenhower, 1953, p.822

NOTE: The President's opening words referred to Mme. Vijaya Pandit, President of the United Nations General Assembly.

Brown v. Board of Education of Topeka, 1954

Title: Brown v. Board of Education of Topeka

Author: U.S. Supreme Court

Date: May 17, 1954

Source: 347 U.S. 483

This case was argued December 9, 1952, and was reargued December 8, 1953. The case was decided May 17, 1954, together with No. 2, Briggs et al. v. Elliott et al., on appeal from the United States District Court for the Eastern District of South Carolina, argued December 9-10, 1952, reargued December 7-8, 1953; No. 4, Davis et al. v. County School Board of Prince Edward County, Virginia, et al., on appeal from the United States District Court for the Eastern District of Virginia, argued December 10, 1952, reargued December 7-8, 1953, and No. 10, Gebhart et al. v. Belton et al., on certiorari to the Supreme Court of Delaware, argued December 11, 1952, reargued December 9, 1953.

1954, Brown v. Board of Education of Topeka, 347 U.S. 483

APPEAL FROM THE UNITED STATES DISTRICT COURT

1954, Brown v. Board of Education of Topeka, 347 U.S. 483

FOR THE DISTRICT OF KANSAS

Syllabus

1954, Brown v. Board of Education of Topeka, 347 U.S. 483

Segregation of white and Negro children in the public schools of a State solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment—even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Pp. 486-496.

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(a) The history of the Fourteenth Amendment is inconclusive as to its intended effect on public education. Pp. 489-490.

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(b) The question presented in these cases must be determined not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the Nation. Pp. 492-493.

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(c) Where a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms. P. 493.

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(d) Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. Pp. 493-494.

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(e) The "separate but equal" doctrine adopted in Plessy v. Ferguson, 163 U.S. 537, has no place in the field of public education. P. 495. [347 U.S. 484]

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(f) The cases are restored to the docket for further argument on specified questions relating to the forms of the decrees. Pp. 495-496. [347 U.S. 486]

WARREN, J., lead opinion

1954, Brown v. Board of Education of Topeka, 347 U.S. 486

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

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These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. 1 [347 U.S. 487]

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In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, [347 U.S. 488] they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in Plessy v. Fergson, 163 U.S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

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The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. 2 Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court. 3 [347 U.S. 489]

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Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then-existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

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An additional reason for the inconclusive nature of the Amendment's history with respect to segregated schools is the status of public education at that time. 4 In the South, the movement toward free common schools, supported [347 U.S. 490] by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences, as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states, and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

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In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. 5 The doctrine of [347 U.S. 491] "separate but equal" did not make its appearance in this Court until 1896 in the case of Plessy v. Ferguson, supra, involving not education but transportation. 6 American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. 7 In Cumming v. County Board of Education, 175 U.S. 528, and Gong Lum v. Rice, 275 U.S. 78, the validity of the doctrine itself was not challenged. 8 In more recent cases, all on the graduate school [347 U.S. 492] level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. Missouri ex rel. Gaines v. Canada, 305 U.S. 337; Sipuel v. Oklahoma, 332 U.S. 631; Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in Sweatt v. Painter, supra, the Court expressly reserved decision on the question whether Plessy v. Ferguson should be held inapplicable to public education.

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In the instant cases, that question is directly presented. Here, unlike Sweatt v. Painter, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. 9 Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

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In approaching this problem, we cannot turn the clock back to 1868, when the Amendment was adopted, or even to 1896, when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout [347 U.S. 493] the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

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Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

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We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

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In Sweatt v. Painter, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In McLaurin v. Oklahoma State Regents, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: "…his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." [347 U.S. 494] Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

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Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. 10

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Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. 11 Any language [347 U.S. 495] in Plessy v. Ferguson contrary to this finding is rejected.

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We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. 12

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Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. 13 The Attorney General [347 U.S. 496] of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954. 14

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It is so ordered.

Footnotes

WARREN, J., lead opinion (Footnotes)

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1. In the Kansas case, Brown v. Board of Education, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan.Gen.Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F.Supp. 797. The case is here on direct appeal under 28 U.S.C. § 1253.

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In the South Carolina case, Briggs v. Elliott, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S.C.Const., Art. XI, § 7; S.C.Code § 5377 (1942). The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools, and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F.Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U.S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F.Supp. 920. The case is again here on direct appeal under 28 U.S.C. § 1253.

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In the Virginia case, Davis v. County School Board, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va.Const., § 140; Va.Code § 22-221 (1950). The three-judge District Court, convened under 28 U.S.C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F.Supp. 337. The case is here on direct appeal under 28 U.S.C. § 1253.

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In the Delaware case, Gebhart v. Belton, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del.Const., Art. X, § 2; Del.Rev.Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel. 87 A.2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, infra), but did not rest his decision on that ground. Id. at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A.2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U.S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

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2. 344 U.S. 1, 141, 891.

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3. 345 U.S. 972. The Attorney General of the United States participated both Terms as amicus curiae.

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4. For a general study of the development of public education prior to the Amendment, see Butts and Cremin, A History of Education in American Culture (1953), Pts. I, II; Cubberley, Public Education in the United States (1934 ed.), cc. II-XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, supra, at 269-275; Cubberley, supra, at 288-339, 408-431; Knight, Public Education in the South (1922), cc. VIII, IX. See also H. Ex.Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (e.g., the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, supra, at 408-423. In the country as a whole, but particularly in the South, the War virtually stopped all progress in public education. Id. at 427-428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, A History of Freedom of Teaching in American Schools (1941), 112-132, 175-195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, supra, at 563-565.

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5. Slaughter-House Cases, 16 Wall. 36, 67-72 (1873); Strauder v. West Virginia, 100 U.S. 303, 307-308 (1880):

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It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

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See also Virginia v. Rives, 100 U.S. 313, 318 (1880); Ex parte Virginia, 100 U.S. 339, 344-345 (1880).

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6. The doctrine apparently originated in Roberts v. City of Boston, 59 Mass.198, 206 (1850), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass.Acts 1855, c. 256. But elsewhere in the North, segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

7. See also Berea College v. Kentucky, 211 U.S. 45 (1908).

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

8. In the Cummin case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the Gong Lum case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

9. In the Kansas case, the court below found substantial equality as to all such factors. 98 F.Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F.Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F.Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A.2d 137, 149.

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10. A similar finding was made in the Delaware case:

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

I conclude from the testimony that, in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

87 A.2d 862, 865.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

11. K.B. Clark, Effect of Prejudice and Discrimination on Personality Development (Mid-century White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), c. VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation A Survey of Social Science Opinion, 26 J.Psychol. 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int.J.Opinion and Attitude Res. 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed., 1949), 44-48; Frazier, The Negro in the United States (1949), 674-681. And see generally Myrdal, An American Dilemma (1944).

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

12. See Bolling v. Sharpe, post, p. 497, concerning the Due Process Clause of the Fifth Amendment.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

13.

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

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(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

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(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

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5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

1954, Brown v. Board of Education of Topeka, 347 U.S. 496

(a) should this Court formulate detailed decrees in these cases;

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(b) if so, what specific issues should the decrees reach;

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(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

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(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

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14. See Rule 42, Revised Rules of this Court (effective July 1, 1954).

President Eisenhower's Special Message to the Congress Regarding a National Highway Program, 1955

Title: President Eisenhower's Special Message to the Congress Regarding a National Highway Program

Author: Dwight D. Eisenhower

Date: February 22, 1955

Source: Public Papers of the Presidents, Eisenhower, 1955, pp.275-280

Public Papers of Eisenhower, 1955, p.275

To the Congress of the United States:

Public Papers of Eisenhower, 1955, p.275

Our unity as a nation is sustained by free communication of thought and by easy transportation of people and goods. The ceaseless flow of information throughout the Republic is matched by individual and commercial movement over a vast system of interconnected highways criss-crossing the Country and joining at our national borders with friendly neighbors to the north and south.

Public Papers of Eisenhower, 1955, p.275

Together, the uniting forces of our communication and transportation systems are dynamic elements in the very name we bear—United States. Without them, we would be a mere alliance of many separate parts.

Public Papers of Eisenhower, 1955, p.275

The Nation's highway system is a gigantic enterprise, one of our largest items of capital investment. Generations have gone into its building. Three million, three hundred and sixty-six thousand miles of road, travelled by 58 million motor vehicles, comprise it. The replacement cost of its drainage and bridge and tunnel works is incalculable. One in every seven Americans gains his livelihood and supports his family out of it. But, in large part, the network is inadequate for the nation's growing needs.

Public Papers of Eisenhower, 1955, p.275–p.276

In recognition of this, the Governors in July of last year at my request began a study of both the problem and methods by which the Federal Government might assist the States in its solution. I appointed in September the President's Advisory Committee on a National Highway Program, headed by Lucius D. Clay, to work with the Governors and to propose a plan of action for submission to the Congress. At the same time, a committee representing departments and agencies of the national Government was organized to conduct studies coordinated with the other two groups. [p.276] All three were confronted with inescapable evidence that action, comprehensive and quick and forward-looking, is needed.

Public Papers of Eisenhower, 1955, p.276

First: Each year, more than 36 thousand people are killed and more than a million injured on the highways. To the home where the tragic aftermath of an accident on an unsafe road is a gap in the family circle, the monetary worth of preventing that death cannot be reckoned. But reliable estimates place the measurable economic cost of the highway accident toll to the Nation at more than $4.3 billion a year.

Public Papers of Eisenhower, 1955, p.276

Second: The physical condition of the present road net increases the cost of vehicle operation, according to many estimates, by as much as one cent per mile of vehicle travel. At the present rate of travel, this totals more than $5 billion a year. The cost is not borne by the individual vehicle operator alone. It pyramids into higher expense of doing the nation's business. Increased highway transportation costs, passed on through each step in the distribution of goods, are paid ultimately by the individual consumer.

Public Papers of Eisenhower, 1955, p.276

Third: In case of an atomic attack on our key cities, the road net must permit quick evacuation of target areas, mobilization of defense forces and maintenance of every essential economic function. But the present system in critical areas would be the breeder of a deadly congestion within hours of an attack.

Public Papers of Eisenhower, 1955, p.276

Fourth: Our Gross National Product, about $357 billion in 1954, is estimated to reach over $500 billion in 1965 when our population will exceed 180 million and, according to other estimates, will travel in 81 million vehicles 814 billion vehicle miles that year. Unless the present rate of highway improvement and development is increased, existing traffic jams only faintly foreshadow those of ten years hence.

Public Papers of Eisenhower, 1955, p.276–p.277

To correct these deficiencies is an obligation of Government at every level. The highway system is a public enterprise. As the owner and operator, the various levels of Government have a responsibility for management that promotes the economy of the nation and properly serves the individual user. In the case of the [p.277] Federal Government, moreover, expenditures on a highway program are a return to the highway user of the taxes which he pays in connection with his use of the highways.

Public Papers of Eisenhower, 1955, p.277

Congress has recognized the national interest in the principal roads by authorizing two Federal-aid systems, selected cooperatively by the States, local units and the Bureau of Public Roads.

Public Papers of Eisenhower, 1955, p.277

The Federal-aid primary system as of July 1, 1954, consisted of 234,407 miles, connecting all the principal cities, county seats, ports, manufacturing areas and other traffic generating centers.

Public Papers of Eisenhower, 1955, p.277

In 1944 the Congress approved the Federal-aid secondary system, which on July 1, 1954, totalled 482,972 miles, referred to as farm-to-market roads—important feeders linking farms, factories, distribution outlets and smaller communities with the primary system.

Public Papers of Eisenhower, 1955, p.277

Because some sections of the primary system, from the viewpoint of national interest are more important than others, the Congress in 1944 authorized the selection of a special network, not to exceed 40,000 miles in length, which would connect by routes, as direct as practicable, the principal metropolitan areas, cities and industrial centers, serve the national defense, and connect with routes of continental importance in the Dominion of Canada and the Republic of Mexico.

Public Papers of Eisenhower, 1955, p.277

This National System of Interstate Highways, although it embraces only 1.2 percent of total road mileage, joins 42 State capital cities and 90 percent of all cities over 50,000 population. It carries more than a seventh of all traffic, a fifth of the rural traffic, serves 65 percent of the urban and 45 percent of the rural population. Approximately 37,600 miles have been designated to date. This system and its mileage are presently included within the Federal-aid primary system.

Public Papers of Eisenhower, 1955, p.277

In addition to these systems, the Federal Government has the principal, and in many cases the sole, responsibility for roads that cross or provide access to Federally owned land—more than one-fifth the nation's area.

Public Papers of Eisenhower, 1955, p.277–p.278

Of all these, the Interstate System must be given top priority [p.278] in construction planning. But at the current rate of development, the Interstate network would not reach even a reasonable level of extent and efficiency in half a century. State highway departments cannot effectively meet the need. Adequate right-of-way to assure control of access; grade separation structures; relocation and realignment of present highways; all these, done on the necessary scale within an integrated system, exceed their collective capacity.

Public Papers of Eisenhower, 1955, p.278

If we have a congested and unsafe and inadequate system, how then can we improve it so that ten years from now it will be fitted to the nation's requirements?

Public Papers of Eisenhower, 1955, p.278

A realistic answer must be based on a study of all phases of highway financing, including a study of the costs of completing the several systems of highways, made by the Bureau of Public Roads in cooperation with the State highway departments and local units of government. This study, made at the direction of the 83rd Congress in the 1954 Federal-aid Highway Act, is the most comprehensive of its kind ever undertaken.

Public Papers of Eisenhower, 1955, p.278

Its estimates of need show that a 10-year construction program to modernize all our roads and streets will require expenditure of $ 101 billion by all levels of Government.

Public Papers of Eisenhower, 1955, p.278

The preliminary 10-year totals of needs by road systems are:

Billions

Interstate (urban $11 rural, rural $12 billion) $23

Federal-aid Primary (urban $10, rural $20 billion) 30

Federal-aid Secondary (entirely rural) 15

Sub-total of Federal-aid Systems (urban $21, rural $47 billion) 68

Other roads and streets (urban $16, rural $17 billion) 33

Total of needs (urban $37, rural $64 billion) $101

Public Papers of Eisenhower, 1955, p.278

The Governors' Conference and the President's Advisory Committee are agreed that the Federal share of the needed construction program should be about 30 percent of the total, leaving to State and local units responsibility to finance the remainder.

Public Papers of Eisenhower, 1955, p.278–p.279

The obvious responsibility to be accepted by the Federal [p.279] Government, in addition to the existing Federal interest in our 3,366,000-mile network of highways, is the development of the Interstate System with its most essential urban arterial connections. In its report, the Advisory Committee recommends:

Public Papers of Eisenhower, 1955, p.279

1. That the Federal Government assume principal responsibility for the cost of a modern Interstate Network to be completed by 1964 to include the most essential urban arterial connections; at an annual average cost of $2.5 billion for the ten year period.

Public Papers of Eisenhower, 1955, p.279

2. That Federal contributions to primary and secondary road systems, now at the rate authorized by the 1954 Act of approximately $525 million annually, be continued.

Public Papers of Eisenhower, 1955, p.279

3. That Federal funds for that portion of the Federal-aid systems in urban areas not on the Interstate System, now approximately $75 million annually, be continued.

Public Papers of Eisenhower, 1955, p.279

4. That Federal funds for Forest Highways be continued at the present $22.5 million per year rate.

Public Papers of Eisenhower, 1955, p.279

Under these proposals, the total Federal expenditures through the ten year period would be:

Billions

Interstate System $25. 000

Federal-aid Primary and Secondary 5,250

Federal-aid Urban 750

Forest Highways 225

Total $31. 225

Public Papers of Eisenhower, 1955, p.279

The extension of necessary highways in the Territories and highway maintenance and improvement in National Parks, on Indian lands and on other public lands of the United States will continue to be treated in the budget for these particular subjects.

Public Papers of Eisenhower, 1955, p.279

A sound Federal highway program, I believe, can and should stand on its own feet, with highway users providing the total dollars necessary for improvement and new construction. Financing of interstate and Federal-aid systems should be based on the planned use of increasing revenues from present gas and diesel oil taxes, augmented in limited instances with tolls.

Public Papers of Eisenhower, 1955, p.279–p.280

I am inclined to the view that it is sounder to finance this program [p.280] by special bond issues, to be paid off by the above-mentioned revenues which will be collected during the useful life of the roads and pledged to this purpose, rather than by an increase in general revenue obligations.

Public Papers of Eisenhower, 1955, p.280

At this time, I am forwarding for use by the Congress in its deliberations the Report to the President made by the President's Advisory Committee on a National Highway Program. This study of the entire highway traffic problem and presentation of a detailed solution for its remedy is an analytical review of the major elements in a most complex situation. In addition, the Congress will have available the study made by the Bureau of Public Roads at the direction of the 83rd Congress.

Public Papers of Eisenhower, 1955, p.280

These two documents together constitute a most exhaustive examination of the National highway system, its problems and their remedies. Inescapably, the vastness of the highway enterprise fosters varieties of proposals which must be resolved into a national highway pattern. The two reports, however, should generate recognition of the urgency that presses upon us; approval of a general program that will give us a modern safe highway system; realization of the rewards for prompt and comprehensive action. They provide a solid foundation for a sound program.

DWIGHT D. EISENHOWER

Public Papers of Eisenhower, 1955, p.280

NOTE: The report of the President's Advisory Committee on a National Highway Program, transmitted to the Congress with this message, is entitled "A 10-Year National Highway Program" (H. Doc. 93, 84th Cong., 1st sess.). The study made by the Bureau of Public Roads, referred to by the President, was submitted to the Congress by the Secretary of Commerce in two reports entitled "Needs of the Highway Systems, 1955-84" (H. Doc. 120, 84th Cong., 1st sess.), and "Progress and Feasibility of Toll Roads and Their Relation to the Federal-Aid Program" (H. Doc. 139, 84th Cong., 1st Sess. ).

President Eisenhower's Statement on Disarmament Presented at the Geneva Conference, 1955

Title: President Eisenhower's Statement on Disarmament Presented at the Geneva Conference

Author: Dwight D. Eisenhower

Date: July 21, 1955

Source: Public Papers of the Presidents, Eisenhower, 1955, pp.713-716

Public Papers of Eisenhower, 1955, p.713

Mr. Chairman, Gentlemen:

Public Papers of Eisenhower, 1955, p.713

Disarmament is one of the most important subjects on our agenda. It is also extremely difficult. In recent years the scientists have discovered methods of making weapons many, many times more destructive of opposing armed forces—but also of homes, and industries and lives—than ever known or even imagined before. These same scientific discoveries have made much more complex the problems of limitation and control and reduction of armament.

Public Papers of Eisenhower, 1955, p.713

After our victory as Allies in World War II, my country rapidly disarmed. Within a few years our armament was at a very low level. Then events occurred beyond our borders which caused us to realize that we had disarmed too much. For our own security and to safeguard peace we needed greater strength. Therefore we proceeded to rearm and to associate with others in a partnership for peace and for mutual security.

Public Papers of Eisenhower, 1955, p.713

The American people are determined to maintain and if necessary increase this armed strength for as long a period as is necessary to safeguard peace and to maintain our security.

Public Papers of Eisenhower, 1955, p.713–p.714

But we know that a mutually dependable system for less armament [p.714] on the part of all nations would be a better way to safeguard peace and to maintain our security.

Public Papers of Eisenhower, 1955, p.714

It would ease the fears of war in the anxious hearts of people everywhere. It would lighten the burdens upon the backs of the people. It would make it possible for every nation, great and small, developed and less developed, to advance the standards of living of its people, to attain better food, and clothing, and shelter, more of education and larger enjoyment of life.

Public Papers of Eisenhower, 1955, p.714

Therefore the United States government is prepared to enter into a sound and reliable agreement making possible the reduction of armament. I have directed that an intensive and thorough study of this subject be made within our own government. From these studies, which are continuing, a very important principle is emerging to which I referred in my opening statement on Monday.

Public Papers of Eisenhower, 1955, p.714

No sound and reliable agreement can be made unless it is completely covered by an inspection and reporting system adequate to support every portion of the agreement.

Public Papers of Eisenhower, 1955, p.714

The lessons of history teach us that disarmament agreements without adequate reciprocal inspection increase the dangers of war and do not brighten the prospects of peace.

Public Papers of Eisenhower, 1955, p.714

Thus it is my view that the priority attention of our combined study of disarmament should be upon the subject of inspection and reporting.

Public Papers of Eisenhower, 1955, p.714

Questions suggest themselves.

Public Papers of Eisenhower, 1955, p.714

How effective an inspection system can be designed which would be mutually and reciprocally acceptable within our countries and the other nations of the world? How would such a system operate? What could it accomplish?

Public Papers of Eisenhower, 1955, p.714

Is certainty against surprise aggression attainable by inspection? Could violations be discovered promptly and effectively counteracted?

Public Papers of Eisenhower, 1955, p.714–p.715

We have not as yet been able to discover any scientific or other inspection method which would make certain of the elimination of nuclear weapons. So far as we are aware no other nation has [p.715] made such a discovery. Our study of this problem is continuing. We have not as yet been able to discover any accounting or other inspection method of being certain of the true budgetary facts of total expenditures for armament. Our study of this problem is continuing. We by no means exclude the possibility of finding useful checks in these fields.

Public Papers of Eisenhower, 1955, p.715

As you can see from these statements, it is our impression that many past proposals of disarmament are more sweeping than can be insured by effective inspection.

Public Papers of Eisenhower, 1955, p.715

Gentlemen, since I have been working on this memorandum to present to this Conference, I have been searching my heart and mind for something that I could say here that could convince everyone of the great sincerity of the United States in approaching this problem of disarmament.

Public Papers of Eisenhower, 1955, p.715

I should address myself for a moment principally to the Delegates from the Soviet Union, because our two great countries admittedly possess new and terrible weapons in quantities which do give rise in other parts of the world, or reciprocally, to the fears and dangers of surprise attack.

Public Papers of Eisenhower, 1955, p.715

I propose, therefore, that we take a practical step, that we begin an arrangement, very quickly, as between ourselves—immediately. These steps would include:

Public Papers of Eisenhower, 1955, p.715

To give to each other a complete blueprint of our military establishments, from beginning to end, from one end of our countries to the other; lay out the establishments and provide the blueprints to each other.

Public Papers of Eisenhower, 1955, p.715–p.716

Next, to provide within our countries facilities for aerial photography to the other country—we to provide you the facilities within our country, ample facilities for aerial reconnaissance, where you can make all the pictures you choose and take them to your own country to study, you to provide exactly the same facilities for us and we to make these examinations, and by this step to convince the world that we are providing as between ourselves against the possibility of great surprise attack, thus lessening danger and relaxing tension. Likewise we will make more easily [p.716] attainable a comprehensive and effective system of inspection and disarmament, because what I propose, I assure you, would be but a beginning.

Public Papers of Eisenhower, 1955, p.716

Now from my statements I believe you will anticipate my suggestion. It is that we instruct our representatives in the Subcommittee on Disarmament in discharge of their mandate from the United Nations to give priority effort to the study of inspection and reporting. Such a study could well include a step by step testing of inspection and reporting methods.

Public Papers of Eisenhower, 1955, p.716

The United States is ready to proceed in the study and testing of a reliable system of inspections and reporting, and when that system is proved, then to reduce armaments with all others to the extent that the system will provide assured results.

Public Papers of Eisenhower, 1955, p.716

The successful working out of such a system would do much to develop the mutual confidence which will open wide the avenues of progress for all our peoples.

Public Papers of Eisenhower, 1955, p.716

The quest for peace is the statesman's most exacting duty. Security of the nation entrusted to his care is his greatest responsibility. Practical progress to lasting peace is his fondest hope. Yet in pursuit of his hope he must not betray the trust placed in him as guardian of the people's security. A sound peace—with security, justice, well-being, and freedom for the people of the world—can be achieved, but only by patiently and thoughtfully following a hard and sure and tested road.

Public Papers of Eisenhower, 1955, p.716

NOTE The President's opening words "Mr. Chairman" referred to Nikolai Bulganin, Chairman, Council of Ministers, U.S.S.R., who served as chairman at this meeting.

Brown v. Board of Education of Topeka, 1955

Title: Brown v. Board of Education of Topeka

Author: U.S. Supreme Court

Date: May 31, 1955

Source: 349 U.S. 294

This case was Reargued on the question of relief April 11-14, 1955. Opinions and judgments in this case, together with No. 2, Briggs et al. v. Elliott et al., on appeal from the United States District Court for the Eastern District of South Carolina; No. 3, Davis et al. v. County School Board of Prince Edward County, Virginia, et al., on appeal from the United States District Court for the Eastern District of Virginia; No. 4, Bolling et al. v. Sharpe et al., on certiorari to the United States Court of Appeals for the District of Columbia Circuit, and No. 5, Gebhart et al. v. Belton et al., on certiorari to the Supreme Court of Delaware, were announced on May 31, 1955

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

APPEAL FROM THE UNITED STATES DISTRICT COURT

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

FOR THE DISTRICT OF KANSAS.

Syllabus

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

1. Racial discrimination in public education is unconstitutional, 347 U.S. 483, 497, and all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle. P. 298.

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

2. The judgments below (except that in the Delaware case) are reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis with all deliberate speed. P. 301.

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

(a) School authorities have the primary responsibility for elucidating, assessing and solving the varied local school problems which may require solution in fully implementing the governing constitutional principles. P. 299.

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

(b) Courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. P. 299.

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

(c) Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. P. 299.

1955, Brown v. Board of Education of Topeka, 349 U.S. 294

(d) In fashioning and effectuating the decrees, the courts will be guided by equitable principles—characterized by a practical flexibility in shaping remedies and a facility for adjusting and reconciling public and private needs. P. 300. [349 U.S. 295]

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(e) At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. P. 300.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(f) Courts of equity may properly take into account the public interest in the elimination in a systematic and effective manner of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles enunciated in 347 U.S. 483, 497; but the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. P. 300.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(g) While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with the ruling of this Court. P. 300.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(h) Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. P. 300.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(i) The burden rests on the defendants to establish that additional time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. P. 300.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(j) The courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. Pp. 300-301.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(k) The courts will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. P. 301.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

(l) During the period of transition, the courts will retain jurisdiction of these cases. P. 301.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

3. The judgment in the Delaware case, ordering the immediate admission of the plaintiffs to schools previously attended only by white children, is affirmed on the basis of the principles stated by this Court in its opinion, 347 U.S. 483, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in the light of this opinion. P. 301.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

98 F.Supp. 797, 103 F.Supp. 920, 103 F.Supp. 337 and judgment in No. 4, reversed and remanded.

1955, Brown v. Board of Education of Topeka, 349 U.S. 295

91 A.2d 137, affirmed and remanded. [349 U.S. 298]

WARREN, J., lead opinion

1955, Brown v. Board of Education of Topeka, 349 U.S. 298

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1955, Brown v. Board of Education of Topeka, 349 U.S. 298

These cases were decided on May 17, 1954. The opinions of that date, 1 declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

1955, Brown v. Board of Education of Topeka, 349 U.S. 298

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. 2 In view of the nationwide importance of the decision, we invited the Attorney General of the United [349 U.S. 299] States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

1955, Brown v. Board of Education of Topeka, 349 U.S. 299

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as amici curiae, and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

1955, Brown v. Board of Education of Topeka, 349 U.S. 299

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts. 3 [349 U.S. 300]

1955, Brown v. Board of Education of Topeka, 349 U.S. 300

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies 4 and by a facility for adjusting and reconciling public and private needs. 5 These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

1955, Brown v. Board of Education of Topeka, 349 U.S. 300

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools [349 U.S. 301] on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

The judgments below, except that, in the Delaware case, are accordingly reversed, and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in light of this opinion.

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

It is so ordered.

Footnotes

WARREN, J., lead opinion (Footnotes)

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

1. 347 U.S. 483; 347 U.S. 497.

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

2. Further argument was requested on the following questions, 347 U.S. 483, 495-496, n. 13, previously propounded by the Court:

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(a) should this Court formulate detailed decrees in these cases;

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(b) if so, what specific issues should the decrees reach;

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and, if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

3. The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U.S.C. §§ 2281 and 2284. These cases will accordingly be remanded to those three-judge courts. See Briggs v. Elliott, 342 U.S. 350.

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

4. See Alexander v. Hillman, 296 U.S. 222, 239.

1955, Brown v. Board of Education of Topeka, 349 U.S. 301

5. See Hecht Co. v. Bowles, 321 U.S. 321, 329-330.

Pennsylvania v. Nelson, 1956

Title: Pennsylvania v. Nelson

Author: U.S. Supreme Court

Date: April 2, 1956

Source: 350 U.S. 497

This case was argued November 15-16, 1955, and was decided April 2, 1956.

1956, Pennsylvania v. Nelson, 350 U.S. 497

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA,

1956, Pennsylvania v. Nelson, 350 U.S. 497

WESTERN DISTRICT

Syllabus

1956, Pennsylvania v. Nelson, 350 U.S. 497

The Smith Act, as amended, 18 U.S.C. § 2385, which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act, which proscribes the same conduct. Pp. 498-510.

1956, Pennsylvania v. Nelson, 350 U.S. 497

1. The scheme of federal regulation is so pervasive as to make reasonable the inference that the Congress left no room for the States to supplement it. Pp. 502-504.

1956, Pennsylvania v. Nelson, 350 U.S. 497

2. The federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. Pp. 504-505.

1956, Pennsylvania v. Nelson, 350 U.S. 497

3. Enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program. Pp. 505-510.

1956, Pennsylvania v. Nelson, 350 U.S. 497

377 Pa. 58, 104 A.2d 133, affirmed. [350 U.S. 498]

WARREN, J., lead opinion

1956, Pennsylvania v. Nelson, 350 U.S. 498

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

1956, Pennsylvania v. Nelson, 350 U.S. 498

The respondent Steve Nelson, an acknowledged member of the Communist Party, was convicted in the Court of Quarter Sessions of Allegheny County, Pennsylvania, of a violation of the Pennsylvania Sedition Act 1 and sentenced to imprisonment for twenty years and to a fine of $10,000 and to costs of prosecution in the sum of $13,000. The Superior Court affirmed the conviction. 172 Pa.Super. 125, 92 A.2d 431. The Supreme Court of Pennsylvania, recognizing but not reaching many alleged serious trial errors and conduct of the trial court infringing upon respondent's right to due process of law, 2 decided [350 U.S. 499] the case on the narrow issue of supersession of the state law by the Federal Smith Act. 3 In its opinion, the court stated: '

1956, Pennsylvania v. Nelson, 350 U.S. 499

And, while the Pennsylvania statute proscribes sedition against either the Government of the United States or the Government of Pennsylvania, it is only alleged sedition against the United States with which the instant case is concerned. Out of all the voluminous testimony, we have not found, nor has anyone pointed to, a single word indicating a seditious act or even utterance directed against the Government of Pennsylvania. 4

1956, Pennsylvania v. Nelson, 350 U.S. 499

The precise holding of the court, and all that is before us for review, is that the Smith Act of 1940, 5 as amended in 1948, 6 which prohibits the knowing advocacy of the overthrow of the Government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act, which proscribes the same conduct.

1956, Pennsylvania v. Nelson, 350 U.S. 499

Many State Attorneys General and the Solicitor General of the United States appeared as amici curiae for petitioner, and several briefs were filed on behalf of the respondent. Because of the important question of federal-state relationship involved, we granted certiorari. 348 U.S. 814. [350 U.S. 500]

1956, Pennsylvania v. Nelson, 350 U.S. 500

It should be said at the outset that the decision in this case does not affect the right of States to enforce their sedition laws at times when the Federal Government has not occupied the field and is not protecting the entire country from seditious conduct. The distinction between the two situations was clearly recognized by the court below. 7 Nor does it limit the jurisdiction of the States where the Constitution and Congress have specifically given them concurrent jurisdiction, as was done under the Eighteenth Amendment and the Volstead Act. United States v. Lanza, 260 U.S. 377. Neither does it limit the right of the State to protect itself at any time against sabotage or attempted violence of all kinds. 8 Nor does it prevent the State from prosecuting where the same act constitutes both a federal offense and a state offense under the police power, as was done in Fox v. Ohio, 5 How. 410, and Gilbert v. Minnesota, 254 U.S. 325, relied upon by petitioner as authority herein. In neither of those cases did the state statute impinge on [350 U.S. 501] federal jurisdiction. In the Fox case, the federal offense was counterfeiting. The state offense was defrauding the person to whom the spurious money was passed. In the Gilbert case this Court, in upholding the enforcement of a state statute, proscribing conduct which would "interfere with or discourage the enlistment of men in the military or naval forces of the United States or of the State of Minnesota," treated it not as an act relating to

1956, Pennsylvania v. Nelson, 350 U.S. 501

the raising of armies for the national defense, nor to rules and regulations for the government of those under arms [a constitutionally exclusive federal power]. It [was] simply a local police measure…. 9

1956, Pennsylvania v. Nelson, 350 U.S. 501

Where, as in the instant case, Congress has not stated specifically whether a federal statute has occupied a field in which the States are otherwise free to legislate, 10 different [350 U.S. 502] criteria have furnished touchstones for decision. Thus,

1956, Pennsylvania v. Nelson, 350 U.S. 502

[t]his Court, in considering the validity of state laws in the light of…federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment, and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula.

1956, Pennsylvania v. Nelson, 350 U.S. 502

Hines v. Davidowitz, 312 U.S. 52, 67. And see Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230-231. In this case, we think that each of several tests of supersession is met.

1956, Pennsylvania v. Nelson, 350 U.S. 502

First,

1956, Pennsylvania v. Nelson, 350 U.S. 502

[t]he scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.

1956, Pennsylvania v. Nelson, 350 U.S. 502

Rice v. Santa Fe Elevator Corp., 331 U.S. at 230. The Congress determined in 1940 that it was necessary for it to reenter the field of anti-subversive legislation, which had been abandoned by it in 1921. In that year, it enacted the Smith Act, which proscribes advocacy of the overthrow of any government—federal, state or local—by force and violence and organization of and knowing membership in a group which so advocates. 11 Conspiracy to commit any of these acts is punishable under the general criminal conspiracy provisions in 18 U.S.C. § 371. The Internal Security Act of 1950 is aimed more directly at Communist organizations. 12 It distinguishes between "Communist [350 U.S. 503] action organizations" and "Communist front organizations," 13 requiring such organizations to register and to file annual reports with the Attorney General giving complete details as to their officers and funds. 14 Members of Communist action organizations who have not been registered by their organization must register as individuals. 15 Failure to register in accordance with the requirements of Sections 786-787 is punishable by a fine of not more than $10,000 for an offending organization and by a fine of not more than $10,000 or imprisonment for not more than five years or both for an individual offender—each day of failure to register constituting a separate offense. 16 And the Act imposes certain sanctions upon both "action" and "front" organizations and their members. 17 The Communist Control Act of 1954 declares

1956, Pennsylvania v. Nelson, 350 U.S. 503

that the Communist Party of the United States, although purportedly a political party, is, in fact, an instrumentality of a conspiracy to overthrow the Government of the United States,

1956, Pennsylvania v. Nelson, 350 U.S. 503

and that

1956, Pennsylvania v. Nelson, 350 U.S. 503

its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. 18

1956, Pennsylvania v. Nelson, 350 U.S. 503

It also contains a legislative finding that the Communist Party is a "Communist action organization" within the meaning of the Internal Security Act of 1950, and provides that "knowing" members of the Communist Party are "subject to all the provisions and penalties" of that Act. 19 It furthermore sets up a new classification of "Communist-infiltrated organizations," 20 [350 U.S. 504] and provides for the imposition of sanctions against them.

1956, Pennsylvania v. Nelson, 350 U.S. 504

We examine these Acts only to determine the congressional plan. Looking to all of them in the aggregate, the conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it. Therefore, a state sedition statute is superseded regardless of whether it purports to supplement the federal law. As was said by Mr. Justice Holmes in Charleston & Western Carolina R. Co. v. Varnville Furniture Co., 237 U.S. 597, 604:

1956, Pennsylvania v. Nelson, 350 U.S. 504

When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go.

1956, Pennsylvania v. Nelson, 350 U.S. 504

Second, the federal statutes

1956, Pennsylvania v. Nelson, 350 U.S. 504

touch a field in which the federal interest is so dominant that the federal system [must] be assumed to preclude enforcement of state laws on the same subject.

1956, Pennsylvania v. Nelson, 350 U.S. 504

Rice v. Santa Fe Elevator Corp., 331 U.S. at 230, citing Hines v. Davidowitz, supra. 21 Congress has devised an all-embracing program for resistance to the various forms of totalitarian aggression. Our external defenses have been strengthened, and a plan to [350 U.S. 505] protect against internal subversion has been made by it. It has appropriated vast sums, not only for our own protection, but also to strengthen freedom throughout the world. It has charged the Federal Bureau of Investigation and the Central Intelligence Agency with responsibility for intelligence concerning Communist seditious activities against our Government, and has denominated such activities as part of a world conspiracy. It accordingly proscribed sedition against all government in the nation—national, state and local. Congress declared that these steps were taken

1956, Pennsylvania v. Nelson, 350 U.S. 505

to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government…. 22

1956, Pennsylvania v. Nelson, 350 U.S. 505

Congress having thus treated seditious conduct as a matter of vital national concern, it is in no sense a local enforcement problem. As was said in the court below:

1956, Pennsylvania v. Nelson, 350 U.S. 505

Sedition against the United States is not a local offense. It is a crime against the Nation. As such, it should be prosecuted and punished in the Federal courts, where this defendant has, in fact, been prosecuted and convicted and is now under sentence. 23 It is not only important, but vital, that such prosecutions should be exclusively within the control of the Federal Government…. 24

1956, Pennsylvania v. Nelson, 350 U.S. 505

Third, enforcement of state sedition acts presents a serious danger of conflict with the administration of the federal program. Since 1939, in order to avoid a hampering of uniform enforcement of its program by sporadic local prosecutions, the Federal Government has urged [350 U.S. 506] local authorities not to intervene in such matters, but to turn over to the federal authorities immediately and unevaluated all information concerning subversive activities. The President made such a request on September 6, 1939, when he placed the Federal Bureau of Investigation in charge of investigation in this field:

1956, Pennsylvania v. Nelson, 350 U.S. 506

The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations.

1956, Pennsylvania v. Nelson, 350 U.S. 506

This task must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.

1956, Pennsylvania v. Nelson, 350 U.S. 506

To this end, I request all police officers, sheriffs, and all other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws. 25

1956, Pennsylvania v. Nelson, 350 U.S. 506

And, in addressing the Federal-State Conference on Law Enforcement Problems of National Defense, held on August 5 and 6, 1940, only a few weeks after the passage of the Smith Act, the Director of the Federal Bureau of Investigation said:

1956, Pennsylvania v. Nelson, 350 U.S. 506

The fact must not be overlooked that meeting the spy, the saboteur and the subverter is a problem that must be handled on a nationwide basis. An isolated incident in the middle west may be of little significance, but, when fitted into a national pattern [350 U.S. 507] of similar incidents, it may lead to an important revelation of subversive activity. It is for this reason that the President requested all of our citizens and law enforcing agencies to report directly to the Federal Bureau of Investigation any complaints or information dealing with espionage, sabotage or subversive activities. In such matters, time is of the essence. It is unfortunate that, in a few States, efforts have been made by individuals not fully acquainted with the far-flung ramifications of this problem to interject superstructures of agencies between local law enforcement and the FBI to sift what might be vital information, thus delaying its immediate reference to the FBI. This cannot be if our internal security is to be best served. This is no time for red tape or amateur handling of such vital matters. There must be a direct and free flow of contact between the local law enforcement agencies and the FBI. The job of meeting the spy or saboteur is one for experienced men of law enforcement. 26

1956, Pennsylvania v. Nelson, 350 U.S. 507

Moreover, the Pennsylvania Statute presents a peculiar danger of interference with the federal program. For, as the court below observed:

1956, Pennsylvania v. Nelson, 350 U.S. 507

Unlike the Smith Act, which can be administered only by federal officers acting in their official capacities, indictment for sedition under the Pennsylvania statute can be initiated upon an information made by a private individual. The opportunity thus present for the indulgence of personal spite and hatred or for furthering some selfish advantage or ambition need only be mentioned to be appreciated. Defense of the Nation by law, no less than by arms, should be a public, and not a private, undertaking. It is [350 U.S. 508] important that punitive sanctions for sedition against the United States be such as have been promulgated by the central governmental authority and administered under the supervision and review of that authority's judiciary. If that be done, sedition will be detected and punished no less, wherever it may be found, and the right of the individual to speak freely and without fear, even in criticism of the government, will, at the same time, be protected. 27

1956, Pennsylvania v. Nelson, 350 U.S. 508

In his brief, the Solicitor General states that forty-two States plus Alaska and Hawaii have statutes which, in some form, prohibit advocacy of the violent overthrow of established government. These statutes are entitled anti-sedition statutes, criminal anarchy laws, criminal syndicalist laws, etc. Although all of them are primarily directed against the overthrow of the United States Government, they are in no sense uniform. And our attention has not been called to any case where the prosecution has been successfully directed against an attempt to destroy state or local government. Some of these Acts are studiously drawn, and purport to protect fundamental rights by appropriate definitions, standards of proof, and orderly procedures in keeping with the avowed congressional purpose "to protect freedom from those who would destroy it, without infringing upon the freedom of all our people." Others are vague, and are almost wholly without such safeguards. Some even purport to punish mere membership in subversive organizations, which the federal statutes do not punish where federal registration requirements have been fulfilled. 28 [350 U.S. 509]

1956, Pennsylvania v. Nelson, 350 U.S. 509

When we were confronted with a like situation in the field of labor-management relations, Mr. Justice Jackson wrote:

1956, Pennsylvania v. Nelson, 350 U.S. 509

A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. 29

1956, Pennsylvania v. Nelson, 350 U.S. 509

Should the States be permitted to exercise a concurrent jurisdiction in this area, federal enforcement would encounter not only the difficulties mentioned by Mr. Justice Jackson, but the added conflict engendered by different criteria of substantive offenses.

1956, Pennsylvania v. Nelson, 350 U.S. 509

Since we find that Congress has occupied the field to the exclusion of parallel state legislation, that the dominant interest of the Federal Government precludes state intervention, and that administration of state Acts would conflict with the operation of the federal plan, we are convinced that the decision of the Supreme Court of Pennsylvania is unassailable.

1956, Pennsylvania v. Nelson, 350 U.S. 509

We are not unmindful of the risk of compounding punishments which would be created by finding concurrent state power. In our view of the case, we do not reach the question whether double or multiple punishment for the same overt acts directed against the United States has constitutional sanction. 30 Without compelling [350 U.S. 510] indication to the contrary, we will not assume that Congress intended to permit the possibility of double punishment. Cf. Houston v. Moore, 5 Wheat. 1, 31, 75; Jerome v. United States, 318 U.S. 101, 105.

1956, Pennsylvania v. Nelson, 350 U.S. 510

The judgment of the Supreme Court of Pennsylvania is

1956, Pennsylvania v. Nelson, 350 U.S. 510

Affirmed.

1956, Pennsylvania v. Nelson, 350 U.S. 510

[For dissenting opinion of MR. JUSTICE REED, joined by MR. JUSTICE BURTON and MR. JUSTICE MINTON, see post, p. 512.]

1956, Pennsylvania v. Nelson, 350 U.S. 510

APPENDIX

1956, Pennsylvania v. Nelson, 350 U.S. 510

Pennsylvania Penal Code § 207

1956, Pennsylvania v. Nelson, 350 U.S. 510

The word "sedition," as used in this section, shall mean:

1956, Pennsylvania v. Nelson, 350 U.S. 510

Any writing, publication, printing, cut, cartoon, utterance, or conduct, either individually or in connection or combination with any other person, the intent of which is:

1956, Pennsylvania v. Nelson, 350 U.S. 510

(a) To make or cause to be made any outbreak or demonstration of violence against this State or against the United States.

1956, Pennsylvania v. Nelson, 350 U.S. 510

(b) To encourage any person to take any measures or engage in any conduct with a view of overthrowing or destroying or attempting to overthrow or destroy, by any force or show or threat of force, the Government of this State or of the United States.

1956, Pennsylvania v. Nelson, 350 U.S. 510

(c) To incite or encourage any person to commit any overt act with a view to bringing the Government of this State or of the United States into hatred or contempt.

1956, Pennsylvania v. Nelson, 350 U.S. 510

(d) To incite any person or persons to do or attempt to do personal injury or harm to any officer of this State or of the United States, or to damage or destroy any public property or the property of any public official because of his official position. [350 U.S. 511]

1956, Pennsylvania v. Nelson, 350 U.S. 511

The word "sedition" shall also include:

1956, Pennsylvania v. Nelson, 350 U.S. 511

(e) The actual damage to, or destruction of, any public property or the property of any public official, perpetrated because the owner or occupant is in official position.

1956, Pennsylvania v. Nelson, 350 U.S. 511

(f) Any writing, publication, printing, cut, cartoon, or utterance which advocates or teaches the duty, necessity, or propriety of engaging in crime, violence, or any form of terrorism, as a means of accomplishing political reform or change in government.

1956, Pennsylvania v. Nelson, 350 U.S. 511

(g) The sale, gift or distribution of any prints, publications, books, papers, documents, or written matter in any form, which advocates, furthers or teaches sedition as hereinbefore defined.

1956, Pennsylvania v. Nelson, 350 U.S. 511

(h) Organizing or helping to organize or becoming a member of any assembly, society, or group, where any of the policies or purposes thereof are seditious as hereinbefore defined.

1956, Pennsylvania v. Nelson, 350 U.S. 511

Sedition shall be a felony. Whoever is guilty of sedition shall, upon conviction thereof, be sentenced to pay a fine not exceeding ten thousand dollars ($10,000), or to undergo imprisonment not exceeding twenty(20) years, or both.

1956, Pennsylvania v. Nelson, 350 U.S. 511

18 U.S.C. § 2385

1956, Pennsylvania v. Nelson, 350 U.S. 511

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

1956, Pennsylvania v. Nelson, 350 U.S. 511

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of [350 U.S. 512] overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

1956, Pennsylvania v. Nelson, 350 U.S. 512

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

1956, Pennsylvania v. Nelson, 350 U.S. 512

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

REED, J., dissenting

1956, Pennsylvania v. Nelson, 350 U.S. 512

MR. JUSTICE REED, with whom MR. JUSTICE BURTON and MR. JUSTICE MINTON join, dissenting.

1956, Pennsylvania v. Nelson, 350 U.S. 512

The problems of governmental power may be approached in this case free from the varied viewpoints that focus on the problems of national security. This is a jurisdictional problem of general importance because it involves an asserted limitation on the police power of the States when it is applied to a crime that is punishable also by the Federal Government. As this is a recurring problem, it is appropriate to explain our dissent.

1956, Pennsylvania v. Nelson, 350 U.S. 512

Congress has not, in any of its statutes relating to sedition, specifically barred the exercise of state power to punish the same Acts under state law. And we read the majority opinion to assume for this case that, absent federal legislation, there is no constitutional bar to punishment of sedition against the United States by both a State and the Nation. 1 The majority limits to the federal [350 U.S. 513] courts the power to try charges of sedition against the Federal Government.

1956, Pennsylvania v. Nelson, 350 U.S. 513

First, the Court relies upon the pervasivness of the anti-subversive legislation embodied in the Smith Act of 1940, 18 U.S.C. § 2385, the Internal Security Act of 1950, 64 Stat. 987, and the Communist Control Act of 1954, 68 Stat. 775. It asserts that these Acts, in the aggregate, mean that Congress has occupied the "field of sedition" to the exclusion of the States. The "occupation of the field" argument has been developed by this Court for the Commerce Clause and legislation thereunder to prevent partitioning of this country by locally erected trade barriers. In those cases, this Court has ruled that state legislation is superseded when it conflicts with the comprehensive regulatory scheme and purpose of a federal plan. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148. The two cases cited by the Court to support its argument that the broad treatment of any subject within the federal power bars supplemental action by States are of this nature. In our view, neither case is apposite to the Smith Act. The Varnville case dealt with general regulation of interstate commerce making the originating carrier liable to the holder of its interstate bill of lading for damage caused by a common carrier of property. This Court held that the section through the federal commerce power superseded a state right of action against a nonoriginating carrier for damages and a penalty for injury occurring on another line. The pertinent section, 34 Stat. 595, § 7, expressed a controlling federal policy for this commerce. The Rice case dealt with regulations of warehouses. We barred state action in that area because the Act declared that the authority it conferred "shall be exclusive with respect to all persons securing a license" under the Act. 331 U.S. at 224 and 233.

1956, Pennsylvania v. Nelson, 350 U.S. 513

But the federal sedition laws are distinct criminal statutes that punish willful advocacy of the use of force [350 U.S. 514] against "the government of the United States or the government of any State." These criminal laws proscribe certain local activity without creating any statutory or administrative regulation. There is, consequently, no question as to whether some general congressional regulatory scheme might be upset by a coinciding state plan. 2 In these circumstances, the conflict should be clear and direct before this Court reads a congressional intent to void state legislation into the federal sedition acts. 3 Chief Justice Marshall wrote:

1956, Pennsylvania v. Nelson, 350 U.S. 514

To interfere with the penal laws of a State where they…have for their sole object the internal government of the country is a very serious measure which Congress cannot be supposed to adopt lightly or inconsiderately…. It would be taken deliberately, and the intention would be clearly and unequivocally expressed.

1956, Pennsylvania v. Nelson, 350 U.S. 514

Cohens v. Virginia, 6 Wheat. 264, 443. Moreover, it is quite apparent that, since 1940, Congress has been keenly aware of the magnitude of existing state legislation proscribing sedition. It may be validly assumed that, in these circumstances, this Court should not void state legislation without a clear mandate from Congress. 4 [350 U.S. 515]

1956, Pennsylvania v. Nelson, 350 U.S. 515

We cannot agree that the federal criminal sanctions against sedition directed at the United States are of such a pervasive character as to indicate an intention to void state action.

1956, Pennsylvania v. Nelson, 350 U.S. 515

Secondly, the Court states that the federal sedition statutes touch a field "in which the federal interest is so dominant" they must preclude state laws on the same subject. This concept is suggested in a comment on Hines v. Davidowitz, 312 U.S. 52, in the Rice case, at 230. The Court in Davidowitz ruled that federal statutes compelling alien registration preclude enforcement of state statutes requiring alien registration. We read Davidowitz to teach nothing more than that, when the Congress provided a single nationwide integrated system of regulation so complete as that for aliens' registration (with fingerprinting, a scheduling of activities, and continuous information as to their residence), the Act bore so directly on our foreign relations as to make it evident that Congress intended only one uniform national alien registration system. 5 [350 U.S. 516]

1956, Pennsylvania v. Nelson, 350 U.S. 516

We look upon the Smith Act as a provision for controlling incitements to overthrow by force and violence the Nation, or any State, or any political subdivision of either. 6 Such an exercise of federal police power carries, we think, no such dominancy over similar state powers as might be attributed to continuing federal regulations concerning foreign affairs or coinage, for example. 7 In the responsibility of national and local governments to protect themselves against sedition, there is no "dominant interest." [350 U.S. 517]

1956, Pennsylvania v. Nelson, 350 U.S. 517

We are citizens of the United States and of the State wherein we reside, and are dependent upon the strength of both to preserve our rights and liberties. Both may enact criminal statutes for mutual protection unless Congress has otherwise provided. It was so held in Gilbert v. Minnesota, 254 U.S. 325. In Gilbert, the federal interest in raising armies did not keep this Court from permitting Minnesota to punish persons who interfered with enlistments (id. at 326), even though a comprehensive federal criminal law proscribed identical activity. 40 Stat. 553. We do not understand that case as does the majority. In our view, this Court treated the Minnesota statute only alternatively as a police measure, p. 331. Minnesota made it unlawful to advocate "that men should not enlist in the military or naval forces of the United States." It was contended, pp. 327-328, that the power to punish such advocacy was "conferred upon Congress and withheld from the States." This Court ruled against the contention, saying:

1956, Pennsylvania v. Nelson, 350 U.S. 517

An army, of course, can only be raised and directed by Congress, in neither has the State power, but it has power to regulate the conduct of its citizens and to restrain the exertion of baleful influences against the promptings of patriotic duty to the detriment of the welfare of the Nation and State. To do so is not to usurp a National power; it is only to render a service to its people….

1956, Pennsylvania v. Nelson, 350 U.S. 517

Id. at 330-331. 8 [350 U.S. 518]

1956, Pennsylvania v. Nelson, 350 U.S. 518

Thirdly, the Court finds ground for abrogating Pennsylvania's anti-sedition statute because, in the Court's view, the State's administration of the Act may hamper the enforcement of the federal law. Quotations are inserted from statements of President Roosevelt and Mr. Hoover, the Director of the Federal Bureau of Investigation, to support the Court's position. But a reading of the quotations leads us to conclude that their purpose was to gain prompt knowledge of evidence of subversive activities so that the federal agency could be fully advised. We find no suggestion from any official source that state officials should be less alert to ferret out or punish subversion. The Court's attitude as to interference seems to us quite contrary to that of the Legislative and Executive Departments. Congress was advised of the existing state sedition legislation when the Smith Act was enacted, and has been kept current with its spread. 9 No declaration of exclusiveness followed. In this very case, the Executive appears by brief of the Department of Justice, amicus curiae. The brief summarizes this point:

1956, Pennsylvania v. Nelson, 350 U.S. 518

The administration of the various state laws has not, in the course of the fifteen years that the federal and state sedition laws have existed side by side, in fact, interfered with, embarrassed, or impeded the enforcement of the Smith Act. The significance of this absence of conflict in administration or enforcement [350 U.S. 519] of the federal and state sedition laws will be appreciated when it is realized that this period has included the stress of wartime security requirements and the federal investigation and prosecution under the Smith Act of the principal national and regional Communist leaders. 10

1956, Pennsylvania v. Nelson, 350 U.S. 519

Id. at 30-31. Mere fear by courts of possible difficulties does not seem to us in these circumstances a valid reason for ousting a State from exercise of its police power. Those are matters for legislative determination.

1956, Pennsylvania v. Nelson, 350 U.S. 519

Finally, and this one point seems in and of itself decisive, there is an independent reason for reversing the Pennsylvania Supreme Court. The Smith Act appears in Title 18 of the United States Code, which Title codifies the federal criminal laws. Section 3231 of that Title provides:

1956, Pennsylvania v. Nelson, 350 U.S. 519

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

1956, Pennsylvania v. Nelson, 350 U.S. 519

That declaration springs from the federal character of our Nation. It recognizes the fact that maintenance of order and fairness rests primarily with the States. The section was first enacted in 1825, and has appeared successively in the federal criminal laws since that time. 11 This Court has interpreted the section to mean that States may provide concurrent legislation in the absence of explicit congressional intent to the contrary. Sexton v. California, 189 U.S. 319, 324-325. The majority's position in this case [350 U.S. 520] cannot be reconciled with that clear authorization of Congress.

1956, Pennsylvania v. Nelson, 350 U.S. 520

The law stands against any advocacy of violence to change established governments. Freedom of speech allows full play to the processes of reason. The state and national legislative bodies have legislated within constitutional limits so as to allow the widest participation by the law enforcement officers of the respective governments. The individual States were not told that they are powerless to punish local acts of sedition, nominally directed against the United States. Courts should not interfere. We would reverse the judgment of the Supreme Court of Pennsylvania.

Footnotes

WARREN, J., lead opinion (Footnotes)

1956, Pennsylvania v. Nelson, 350 U.S. 520

1. Pa. Penal Code § 207, 18 Purdon's Pa.Stat.Ann. § 4207. The text of the statute is set out in an Appendix to this opinion, post, p. 510.

1956, Pennsylvania v. Nelson, 350 U.S. 520

2. The Supreme Court also did not have to reach the question of the constitutionality of subdivision (c) of the Pennsylvania Act, the basis of four counts of the twelve-count indictment, which punishes utterances

1956, Pennsylvania v. Nelson, 350 U.S. 520

or conduct [intended to] incite or encourage any person to commit any overt act with a view to bringing the Government of this State or of the United States into hatred or contempt.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Cf. Winters v. New York, 333 U.S. 507. This provision is strangely reminiscent of the Sedition Act of 1798, 1 Stat. 596, which punished utterances made

1956, Pennsylvania v. Nelson, 350 U.S. 520

with intent to defame the…government, or either house of the…Congress, or the…President, or to bring them…into contempt or disrepute; or to excite against them…the hatred of the good people of the United States….

1956, Pennsylvania v. Nelson, 350 U.S. 520

3. 377 Pa. 58, 104 A.2d 133.

1956, Pennsylvania v. Nelson, 350 U.S. 520

4. 377 Pa. at 69, 104 A.2d at 139.

1956, Pennsylvania v. Nelson, 350 U.S. 520

5. 54 Stat. 670.

1956, Pennsylvania v. Nelson, 350 U.S. 520

6. 318 U.S.C. § 2385. The text of the statute is set out in an Appendix to this opinion, post, p. 511. (Another part of the Smith Act, punishing the advocacy of mutiny, is now 18 U.S.C. § 2387.)

1956, Pennsylvania v. Nelson, 350 U.S. 520

7.

1956, Pennsylvania v. Nelson, 350 U.S. 520

No question of federal supersession of a state statute was in issue…when the Supreme Court upheld the validity of the state statutes in Gitlow v. New York, 268 U.S. 652 (1925), and Whitney v. California, 274 U.S. 357 (1927).

1956, Pennsylvania v. Nelson, 350 U.S. 520

377 Pa. at 73-74, 104 A.2d at 141.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Although the judgments of conviction in both Gitlow and Whitney were rendered in 1920, before repeal of the federal wartime sedition statute of 1918, 41 Stat. 1359, the question of supersession was not raised in either case, and, of course, not considered in this Court's opinions.

1956, Pennsylvania v. Nelson, 350 U.S. 520

8.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Nor is a State stripped of its means of self-defense by the suspension of its sedition statute through the entry of the Federal Government upon the field. There are many valid laws on Pennsylvania's statute books adequate for coping effectively with actual or threatened internal civil disturbances. As to the nationwide threat to all citizens, imbedded in the type of conduct interdicted by a sedition act, we are—all of us—protected by the Smith Act, and in a manner more efficient and more consistent with the service of our national welfare in all respects.

1956, Pennsylvania v. Nelson, 350 U.S. 520

377 Pa. at 70, 104 A.2d at 139.

1956, Pennsylvania v. Nelson, 350 U.S. 520

9. 254 U.S. at 331. The Court went on to observe:

1956, Pennsylvania v. Nelson, 350 U.S. 520

…the State knew the conditions which existed and could have a solicitude for the public peace, and this record justifies it. Gilbert's remarks were made in a public meeting. They were resented by his auditors. There were protesting interruptions, also accusations and threats against him, disorder and intimations of violence. And such is not an uncommon experience. On such occasions, feeling usually runs high, and is impetuous; there is a prompting to violence, and when violence is once yielded to, before it can be quelled, tragedies may be enacted. To preclude such result or a danger of it is a proper exercise of the power of the State.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Id. at 331-332.

1956, Pennsylvania v. Nelson, 350 U.S. 520

10. Petitioner makes the subsidiary argument that 18 U.S.C. § 3231 shows a congressional intention not to supersede state criminal statutes by any provision of Title 18. Section 3231 provides:

1956, Pennsylvania v. Nelson, 350 U.S. 520

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

1956, Pennsylvania v. Nelson, 350 U.S. 520

The office of the second sentence is merely to limit the effect of the jurisdictional grant of the first sentence. There was no intention to resolve particular supersession questions by the Section.

1956, Pennsylvania v. Nelson, 350 U.S. 520

11. See Appendix, post, p. 511. See also the Voorhis Act, passed in 1940, now codified as 18 U.S.C. § 2386, and the Foreign Agents Registration Act, passed in 1938, 22 U.S.C. § 611 et seq.

1956, Pennsylvania v. Nelson, 350 U.S. 520

12. 50 U.S.C. § 781 et seq.

1956, Pennsylvania v. Nelson, 350 U.S. 520

13. Id. § 782(3), (4).

1956, Pennsylvania v. Nelson, 350 U.S. 520

14. Id., § 786.

1956, Pennsylvania v. Nelson, 350 U.S. 520

15. Id., § 787.

1956, Pennsylvania v. Nelson, 350 U.S. 520

16. Id., § 794(a).

1956, Pennsylvania v. Nelson, 350 U.S. 520

17. Id. §§ 784, 785, 789, 790.

1956, Pennsylvania v. Nelson, 350 U.S. 520

18. 50 U.S.C. (1955 Supp.) § 841.

1956, Pennsylvania v. Nelson, 350 U.S. 520

19. Id. § 843.

1956, Pennsylvania v. Nelson, 350 U.S. 520

20. Id. § 782(4A).

1956, Pennsylvania v. Nelson, 350 U.S. 520

21. It is worth observing that, in Hines, this Court held a Pennsylvania statute providing for alien registration was superseded by Title III of the same Act of which the commonly called Smith Act was Title I. Title II amended certain statutes dealing with the exclusion and deportation of aliens. The provisions of Title I involve a field of no less dominant federal interest than Titles II and III, in which Congress manifestly did not desire concurrent state action.

1956, Pennsylvania v. Nelson, 350 U.S. 520

22. 50 U.S.C. § 781(15).

1956, Pennsylvania v. Nelson, 350 U.S. 520

23. United States v. Mesarosh [Nelson], 116 F.Supp. 345, aff'd, 223 F.2d 449, cert. granted, 350 U.S. 922.

1956, Pennsylvania v. Nelson, 350 U.S. 520

24. 377 Pa. at 76, 104 A.2d at 142.

1956, Pennsylvania v. Nelson, 350 U.S. 520

25. The Public Papers and Addresses of Franklin D. Roosevelt, 1939 Volume, pp. 478-479 (1941).

1956, Pennsylvania v. Nelson, 350 U.S. 520

26. Proceedings, p. 23.

1956, Pennsylvania v. Nelson, 350 U.S. 520

27. 377 Pa. at 74-75, 104 A.2d at 141.

1956, Pennsylvania v. Nelson, 350 U.S. 520

28. E.g., compare Fla.Stat., 1953, § 876.02:

1956, Pennsylvania v. Nelson, 350 U.S. 520

Any person who—…(5) Becomes a member of, associated with or promotes the interest of any criminal anarchistic, communistic, nazi-istic or fascistic organization,…[s]hall be guilty of a felony…,

1956, Pennsylvania v. Nelson, 350 U.S. 520

with 50 U.S.C. § 783(f):

1956, Pennsylvania v. Nelson, 350 U.S. 520

Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 787 or section 788 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

1956, Pennsylvania v. Nelson, 350 U.S. 520

29. Garner v. Teamsters Union, 346 U.S. 485, 490-491.

1956, Pennsylvania v. Nelson, 350 U.S. 520

30. But see Grant, The Lanza Rule of Successive Prosecutions, 32 Col.L.Rev. 1309.

REED, J., dissenting (Footnotes)

1956, Pennsylvania v. Nelson, 350 U.S. 520

1. No problem of double punishment exists in this case. See the Court's opinion, p. 499, and its last paragraph, p. 509. See United States v. Lanza, 260 U.S. 377, 382; The Federalist, No. 32. Cf. Houston v. Moore, 5 Wheat. 1, statement at p. 22 with that at pp. 44-45.

1956, Pennsylvania v. Nelson, 350 U.S. 520

2. Hunt, Federal Supremacy and State Anti-Subversive Legislation, 53 Mich.L.Rev. 407, 427-428; Note, 55 Col.L.Rev. 83, 90.

1956, Pennsylvania v. Nelson, 350 U.S. 520

3. Gilbert v. Minnesota, 254 U.S. 325, 328-333; Reid v. Colorado, 187 U.S. 137, 148; Sinnot v. Davenport, 22 How. 227, 243; Fox v. Ohio, 5 How. 410, 432-435.

1956, Pennsylvania v. Nelson, 350 U.S. 520

4. Forty-two States, along with Alaska and Hawaii, now have laws which penalize the advocacy of violent overthrow of the federal or state governments. Digest of the Public Record of Communism in the United States (Fund for the Republic, 1955) 266-306. In hearings before the House Judiciary Committee on the proposed Smith Act, both witnesses and members of the Committee made references to existing state sedition laws. Hearings before Subcommittee No. 3, Committee on the Judiciary, House of Representatives, on H.R. 5138, 76th Cong., 1st Sess., pp. 7, 69, 83-85. Similar comment was heard in the congressional debates. 84 Cong.Rec. 10452. In fact, the Smith Act was patterned on the New York Criminal Anarchy Statute. Commonwealth v. Nelson, 377 Pa. 58, 86, 104 A.2d 133, 147. The original text of the Smith Act is set out in the hearings before Subcommittee No. 3, supra, p. 1, and the New York Act may be read in Gitlow v. New York, 268 U.S. 652, 654-655. Further evidence of congressional notice of state legislation may be found since the passage of the Smith Act. S.Rep. No. 1358, 81st Cong., 2d Sess., p. 9; H.R.Rep. No. 2980, 81st Cong., 2d Sess., p. 2; H.R.Rep. No.1950, 81st Cong., 2d Sess., pp. 25-46 (Un-American Activities Committee). See 67 Harv.L.Rev. 1419, 1420; 40 Cornell L.Rev. 130, 133.

1956, Pennsylvania v. Nelson, 350 U.S. 520

5. In Allen-Bradley Local v. Board, 315 U.S. 740, 749, we said:

1956, Pennsylvania v. Nelson, 350 U.S. 520

In the Hines case, a federal system of alien registration was held to supersede a state system of registration. But there, we were dealing with a problem which had an impact on the general field of foreign relations. The delicacy of the issues which were posed alone raised grave questions as to the propriety of allowing a state system of regulation to function alongside of a federal system. In that field, any "concurrent state power that may exist is restricted to the narrowest of limits." P. 68. Therefore, we were more ready to conclude that a federal Act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.

1956, Pennsylvania v. Nelson, 350 U.S. 520

The Davidowitz case is distinguishable on other grounds. Alien registration is not directly related to control of undesirable conduct; consequently there is no imperative problem of local law enforcement. 102 Pa.L.Rev. at 1091. There is also considerable legislative history behind the Alien Registration Act which suggests that Congress was trying to avoid overburdening of aliens; some features of the conflicting state law had been expressly rejected by Congress. 312 U.S. at 71-73. See 39 Minn.L.Rev. 213. It should be noted also that the coincidence between the state and federal laws in the Davidowitz case was so great that no real purpose was served by the state law. 34 Boston U.L.Rev. 514, 517-518.

1956, Pennsylvania v. Nelson, 350 U.S. 520

States are barred by the Constitution from entering into treaties and by 18 U.S.C. § 953 from correspondence or intercourse with foreign governments with relation to their disputes or controversies with this Nation.

1956, Pennsylvania v. Nelson, 350 U.S. 520

6. Such efforts may be punishable crimes. Dennis v. United States, 341 U.S. 494, 508-510.

1956, Pennsylvania v. Nelson, 350 U.S. 520

7. It seems quite reasonable to believe

1956, Pennsylvania v. Nelson, 350 U.S. 520

that the exclusion principle is to be more strictly applied when the Congress acts in a field wherein the constitutional grant of power to the federal government is exclusive, as in its right to protect interstate commerce and to control international relations.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Albertson v. Millard, 106 F.Supp. 635, 641.

1956, Pennsylvania v. Nelson, 350 U.S. 520

8. Mr. Justice Brandeis, dissenting, emphasized the ruling here applicable thus:

1956, Pennsylvania v. Nelson, 350 U.S. 520

Congress has the exclusive power to legislate concerning the Army and the Navy of the United States, and to determine, among other things, the conditions of enlistment….

1956, Pennsylvania v. Nelson, 350 U.S. 520

…The States act only under the express direction of Congress….

1956, Pennsylvania v. Nelson, 350 U.S. 520

…As exclusive power over enlistments in the Army and the Navy of the United States and the responsibility for the conduct of war is vested by the Federal Constitution in Congress, legislation by State on this subject is necessarily void unless authorized by Congress…. Here, Congress not only had exclusive power to act on the subject; it had exercised that power directly by the Espionage Law before Gilbert spoke the words for which he was sentenced…. The States may not punish treason against the United States…although indirectly acts of treason may affect them vitally. No more may they arrogate to themselves authority to punish the teaching of pacifism which the legislature of Minnesota appears to have put into that category.

1956, Pennsylvania v. Nelson, 350 U.S. 520

Id. at 336-343.

1956, Pennsylvania v. Nelson, 350 U.S. 520

9. See note 4, supra.

1956, Pennsylvania v. Nelson, 350 U.S. 520

10. The brief added, p. 31:

1956, Pennsylvania v. Nelson, 350 U.S. 520

…the Attorney General of the United States recently informed the attorneys general of the several states…that a full measure of federal-state cooperation would be in the public interest. See New York Times, Sept. 15, 1955, p. 19.

1956, Pennsylvania v. Nelson, 350 U.S. 520

11. 4 Stat. 115, 122-123; 18 U.S.C.A. § 3231 (Historical and Revision Notes).

President Eisenhower's Veto of Bill To Amend the Natural Gas Act, 1956

Title: President Eisenhower's Veto of Bill To Amend the Natural Gas Act

Author: Dwight D. Eisenhower

Date: February 17, 1956

Source: Public Papers of the Presidents, Eisenhower, 1956, pp.256-257

Public Papers of Eisenhower, 1956, p.256

To the House of Representatives:

Public Papers of Eisenhower, 1956, p.256

I am unable to approve H. R. 6645 "To Amend the Natural Gas Act as Amended." This I regret because I am in accord with its basic objectives.

Public Papers of Eisenhower, 1956, p.256

Since the passage of this Bill, a body of evidence has accumulated indicating that private persons, apparently representing only a very small segment of a great and vital industry, have been seeking to further their own interests by highly questionable activities. These include efforts that I deem to be so arrogant and so much in defiance of acceptable standards of propriety as to risk creating doubt among the American people concerning the integrity of governmental processes.

Public Papers of Eisenhower, 1956, p.256

Legally constituted agencies of government are now engaged in investigating this situation. These investigations cannot be concluded before the expiration of the ten-day period within which the President must act upon the legislation under the Constitution.

Public Papers of Eisenhower, 1956, p.256

I believe I would not be discharging my own duty were I to approve this legislation before the activities in question have been fully investigated by the Congress and the Department of Justice. To do so under such conditions could well create long-term apprehension in the minds of the American people. It would be a disservice both to the people and to their Congress. Accordingly, I return H. R. 6645 without my approval.

Public Papers of Eisenhower, 1956, p.256

At the same time, I must make quite clear that legislation conforming to the basic objectives of H. R. 6645 is needed. It is needed because the type of regulation of producers of natural gas which is required under present law will discourage individual initiative and incentive to explore for and develop new sources of supply.

Public Papers of Eisenhower, 1956, p.256–p.257

In the long run this will limit supplies of gas which is contrary [p.257] not only to the national interest but especially to the interest of consumers.

Public Papers of Eisenhower, 1956, p.257

I feel that any new legislation, in addition to furthering the long-term interest of consumers in plentiful supplies of gas, should include specific language protecting consumers in their right to fair prices.

Public Papers of Eisenhower, 1956, p.257

DWIGHT D. EISENHOWER

Democratic Platform of 1956

Title: Democratic Platform of 1956

Author: Democratic Party

Date: 1956

Source: National Party Platforms, pp.523-542

Preamble

National Party Platforms, Democratic Platform of 1956, p.523

In the brief space of three and one-haft years, the people of the United States have come to realize, with tragic consequences, that our National Government cannot be trusted to the hands of political amateurs, dominated by representatives of special privilege.

National Party Platforms, Democratic Platform of 1956, p.523

Four years ago they were beguiled, by empty promises and pledges, to elect as President a recent convert to Republicanism. Our people have now learned that the party of Lincoln has been made captive to big businessmen with small minds. They have found that they are now ruled by a Government which they did not elect, and to which they have not given their consent. Their awareness of this fact was demonstrated in 1954 when they returned control of the legislative machinery of the Federal Government to the 84th Democratic Congress.

National Party Platforms, Democratic Platform of 1956, p.523

From the wreckage of American world leadership under a Republican Administration, this great Democratic Congress has salvaged a portion of the world prestige our Nation enjoyed under the brilliant Administrations of Franklin Delano Roosevelt and Harry S. Truman.

National Party Platforms, Democratic Platform of 1956, p.523

Our Democratic 84th Congress made one of the greatest legislative records in the history of our country. It enacted an active program of progressive, humane legislation, which has repudiated the efforts of reactionary Republicanism to stall America's progress. When we return to the halls of Congress next January, and with a Democratic President in the White House, it will be the plan and purpose of our Party to complete restoration and rehabilitation of American leadership in world affairs. We pledge return of our National Government to its rightful owners, the people of the United States.

National Party Platforms, Democratic Platform of 1956, p.523

On the threshold of an atomic age, in mid-Twentieth Century, our beloved Nation needs the vision, vigor and vitality which can be infused into it only by a government under the Democratic Party.

National Party Platforms, Democratic Platform of 1956, p.524

We approach the forthcoming election with [p.524] a firm purpose of effecting such infusion; and with the help and assistance of Divine Providence we shall endeavor to accomplish it. To the end that the people it has served so well may know our program for the return of America to the highway of progress, the Democratic Party herewith submits its platform for 1956.

I. Foreign Policy and National Defense

National Party Platforms, Democratic Platform of 1956, p.524

The Democratic Party affirms that world peace is a primary objective of human society. Peace is more than a suspension of shooting while frenzied and fearful nations stockpile armaments of annihilation.

National Party Platforms, Democratic Platform of 1956, p.524

Achievement of world peace requires political statesmanship and economic wisdom, international understanding and dynamic leadership. True peace is the tranquillity of ordered justice on a global scale. It may be destroyed without a shot being fired. It can be fostered and preserved only by the solid unity and common brotherhood of the peoples of the world in the cause of freedom.

National Party Platforms, Democratic Platform of 1956, p.524

The hopes and aspirations of the peoples of all nations for justice and peace depend largely upon the courageous and enlightened administration of the foreign and defense policies of the United States. We deplore the fact that the administration of both policies since 1953 has confused timidity with courage, and blindness with enlightenment.

The Republican Record of Confusion and Complacency Is the President's Responsibility.

National Party Platforms, Democratic Platform of 1956, p.524

The world's hopes for lasting peace depend upon the conduct of our foreign policy, a function which the Constitution vests in the President of the United States and one which has not been effectively exercised by President Eisenhower. Since 1953, responsibility for foreign affairs has been President Eisenhower's, his alone, and his in full.

National Party Platforms, Democratic Platform of 1956, p.524

In the past three years, his conduct of our policies has moved us into realms where we risk grave danger. He has failed to seek peace with determination, for his disarmament policy has failed to strike hard at the institution of war. His handling of the day-by-day problems of international affairs has unnecessarily and dangerously subjected the American people to the risk of atomic world war.

Our Government Lacks Leadership.

National Party Platforms, Democratic Platform of 1956, p.524

We need bold leadership, yet in the three years since Stalin's death, in the full year since President

National Party Platforms, Democratic Platform of 1956, p.524

Eisenhower's meeting at the "summit," the Republican Administration has not offered a single concrete new idea to meet the new-style political and economic offensive of the Soviets, which represents, potentially, an even graver challenge than Stalin's use of force. President Eisenhower and his Secretary of State talk at cross-purposes, praising neutralism one day, condemning it the next. The Republicans seem unable either to make up their minds or to give us leadership, while the unity of the free world rapidly disintegrates.

National Party Platforms, Democratic Platform of 1956, p.524

We in America need to make our peaceful purpose clear beyond dispute in every corner of the world—yet Secretary Dulles brags of "brinks of war." We need a foreign policy which rises above jockeying for partisan position or advantage—yet, not in memory has there been so little bipartisanship in the administration of our policies, so little candor in their Presentation to our people, so much pretending that things are better than they are.

The Republican Bluster and Bluff.

National Party Platforms, Democratic Platform of 1956, p.524

Four years ago the Republican Party boasted of being able to produce a foreign policy which was to free the Communist satellites, unleash Chiang Kai-shek, repudiate the wartime agreements, and reverse the policy of containing Communist expansion.

National Party Platforms, Democratic Platform of 1956, p.524

Since 1953 they have done just the opposite, standing silent when the peoples rise in East Germany and Poland, and thereby weakening the positive Democratic policy of halting Communist expansion.

Our Friends Lose Faith In Us.

National Party Platforms, Democratic Platform of 1956, p.524

Our friends abroad now doubt our sincerity. They have seen the solid assurance of collective security under a Democratic Administration give place to the uncertainties of personal diplomacy. They have seen the ties of our international alliances and friendship weakened by inept Republican maneuvering.

National Party Platforms, Democratic Platform of 1956, p.524

They have seen traditional action and boldness in foreign affairs evaporate into Republican complacency, retrenchment and empty posturing.

The Failure Abroad.

National Party Platforms, Democratic Platform of 1956, p.524

Blustering without dynamic action will not alter the fact that the unity and strength of the free world have been drastically impaired. Witness the decline of NATO, the bitter tragedy of Cyprus, the withdrawal of French forces to North Africa, the uncertainty and dangers in the Middle East, an uncertain and insecure Germany, and resentment rising against United States leadership everywhere.

National Party Platforms, Democratic Platform of 1956, p.525

[p.525] In Asia—in Burma, Ceylon, Indonesia, India—anti-Americanism grows apace, aggravated by the clumsy actions of our Government, and fanned by the inept utterances of our "statesmen."

National Party Platforms, Democratic Platform of 1956, p.525

In the Middle East, the Eisenhower Administration has dawdled and drifted. The results have been disastrous, and worse threatens. Only the good offices of the United Nations in maintaining peace between Israel and her neighbors conceal the diplomatic incapacities of the Republican Administration. The current crisis over Suez is a consequence of inept and vacillating Republican policy. Our Government's mistakes have placed us in a position in the Middle East which threatens the free world with a loss of power and prestige, potentially more dangerous than any we have suffered in the past decade.

The Failure at Home.

National Party Platforms, Democratic Platform of 1956, p.525

Political considerations of budget balancing and tax reduction now come before the wants of our national security and the needs of our Allies. The Republicans have slashed our own armed strength, weakened our capacity to deal with military threats, stifled our air force, starved our army and weakened our capacity to deal with aggression of any sort save by retreat or by the alternatives, "massive retaliation" and global atomic war. Yet, while our troubles mount, they tell us our prestige was never higher, they tell us we were never more secure.

The Challenge Is For Democracy to Meet.

National Party Platforms, Democratic Platform of 1956, p.525

The Democratic Party believes that "waging peace" is a monumental task to be performed honestly, forthrightly, with dedication and consistent effort.

National Party Platforms, Democratic Platform of 1956, p.525

The way to lasting peace is to forego bluster and bluff, to regain steadiness of purpose, to join again in faithful concert with the community of free nations, to look realistically at the challenging circumstances which confront us, to face them candidly and imaginatively, and to return to the Democratic policy of peace through strength.

National Party Platforms, Democratic Platform of 1956, p.525

This is a task for Democrats. This facing of new problems, this rising to new challenges, has been our Party's mission and its glory for three generations past. President Truman met and mastered Stalin's challenge a decade ago, with boldness, courage and imagination, and so will we turn to the challenge before us now, pressing the search for real and lasting peace. TO THIS WE PLEDGE:

Support for the United Nations.

National Party Platforms, Democratic Platform of 1956, p.525

The United Nations is indispensable for the maintenance of world peace and for the settlement of controversies between nations small and large. We pledge our every effort to strengthen its usefulness and expand its role as guide and guardian of international security and peace. We deplore the Republicans' tendency to use the United Nations only when it suits them, ignoring or by passing it whenever they please.

National Party Platforms, Democratic Platform of 1956, p.525

We pledge determined opposition to the admission of the Communist Chinese into the United Nations. They have proven their complete hostility to the purposes of this organization. We pledge continued support to Nationalist China.

Release of American Prisoners.

National Party Platforms, Democratic Platform of 1956, p.525

We urge a continuing effort to effect the release of all Americans detained by Communist China.

Support for Effective Disarmament.

National Party Platforms, Democratic Platform of 1956, p.525

In this atomic age, war threatens the very survival of civilization. To eliminate the danger of atomic war, a universal, effective and enforced disarmament system must be the goal of responsible men and women everywhere. So long as we lack enforceable international control of weapons, we must maintain armed strength to avoid war. But technological advances in the field of nuclear weapons make disarmament an ever more urgent problem. Time and distance can never again protect any nation of the world. The Eisenhower Administration, despite its highly publicized proposals for aerial inspection, has made no progress toward this great objective. We pledge the Democratic Party to pursue vigorously this great goal of enforced disarmament in full awareness that irreparable injury, even total destruction, now threatens the human race.

Adequate Defense Forces.

National Party Platforms, Democratic Platform of 1956, p.525

We reject the false Republican notion that this country can afford only a second-best defense. We stand for strong defense forces so clearly superior in modern weapons to those of any possible enemy that our armed strength will make an attack upon the free world unthinkable, and thus be a major force for world peace. The Republican Administration stands indicted for failing to recognize the necessity of proper living standards for the men and women of our armed forces and their families. We pledge ourselves to the betterment of the living conditions of the members of our armed services, and to a needed increase in the so-called "fringe benefits."

Training for Defense.

National Party Platforms, Democratic Platform of 1956, p.525

The Democratic Party pledges itself to a bold and imaginative program [p.526] devised to utilize fully the brain power of America's youth, including its talent in the scientific and technical fields.

National Party Platforms, Democratic Platform of 1956, p.526

Scholarships and loan assistance and such other steps as may be determined desirable must be employed to secure this objective. This is solely in the interest of necessary and adequate national defense.

Strengthening Civil Defense.

National Party Platforms, Democratic Platform of 1956, p.526

We believe that a strong, effective civil defense is a necessary part of national defense. Advances in nuclear weapons have made existing civil defense legislation and practices obsolete.

National Party Platforms, Democratic Platform of 1956, p.526

We pledge ourselves to establish a real program for protecting the civilian population and industry of our Nation in place of the present weak and ineffective program. We believe that this is essentially a Federal responsibility.

Collective Security Arrangements.

National Party Platforms, Democratic Platform of 1956, p.526

The Democratic Party inaugurated and we strongly favor collective defense arrangements, such as NATO and the Organization of American States, within the framework of the United Nations. We realize, as the Republicans have not, that mutually recognized common interests can be flexibly adapted to the varied needs and aspirations of all countries concerned.

Winning the Productivity Race.

National Party Platforms, Democratic Platform of 1956, p.526

The Republican Party has not grasped one of the dominant facts of mid-century—that the growth of productive power of the Communist states presents a challenge which cannot be evaded. The Democratic Party is confident that, through the freedom we enjoy, a vast increase in productive power of our Nation and our Allies will be achieved, and by their combined capacity they will surmount any challenge.

Economic Development Abroad.

National Party Platforms, Democratic Platform of 1956, p.526

We believe that, in the cause of peace, America must support the efforts of underdeveloped countries on a cooperative basis to organize their own resources and to increase their own economic productivity, so that they may enjoy the higher living standards which science and modern industry make possible. We will give renewed strength to programs of economic and technical assistance. We support a multilateral approach to these programs, where-ever possible, so that burdens are shared and resources pooled among all the economically developed countries with the capital and skills to help in this great task.

National Party Platforms, Democratic Platform of 1956, p.526

Further, while recognizing the relation of our national security to the role of the United States in international affairs, the Democratic Party believes the time has come for a realistic reappraisal of the American foreign aid program, particularly as to its extent and the conditions under which it should be continued. This reappraisal will determine the standards by which further aid shall be granted, keeping in mind America's prime objective of securing world peace.

Bringing the Truth to the World.

National Party Platforms, Democratic Platform of 1956, p.526

The tools of truth and candor are even more important than economic tools. The Democratic Party believes that once our Government is purged of the confusion and complacency fostered by the Republican Administration a new image of America will emerge in the world: the image of a confident America dedicated to its traditional principles, eager to work with other peoples, honest in its pronouncements, and consistent in its policies.

Freedom for Captive Nations.

National Party Platforms, Democratic Platform of 1956, p.526

We condemn the Republican Administration for its heartless record of broken promises to the unfortunate victims of Communism. Candidate Eisenhower's 1952 pledges to "liberate" the captive peoples have been disavowed and dishonored.

National Party Platforms, Democratic Platform of 1956, p.526

We declare our deepest concern for the plight of the freedom-loving peoples of Central and Eastern Europe and of Asia, now under the yoke of Soviet dictatorship. The United States, under Democratic leaders, has never recognized the forcible annexation of Lithuania, Latvia, and Estonia, or condoned the extension of the Kremlin's tyranny over Poland, Bulgaria, Rumania, Czechoslovakia, Hungary, Albania and other countries.

National Party Platforms, Democratic Platform of 1956, p.526

We look forward to the day when the liberties of all captive nations will be restored to them and they can again take their rightful place in the community of free nations.

National Party Platforms, Democratic Platform of 1956, p.526

We shall press before the United Nations the principle that Soviet Russia withdraw its troops from the captive countries, so as to permit free, fair and unfettered elections in the subjugated areas, in compliance with the Atlantic Charter and other binding commitments.

Upholding the Principle of Self-Determination.

National Party Platforms, Democratic Platform of 1956, p.526

We rededicate ourselves to the high principle of national self-determination, as enunciated by Woodrow Wilson, whose leadership brought freedom and independence to uncounted millions.

National Party Platforms, Democratic Platform of 1956, p.526

It is the policy of the Democratic Party, therefore, to encourage and assist small nations and all [p.527] peoples, behind the Iron Curtain and outside, in the peaceful and orderly achievement of their legitimate aspirations toward political, geographical, and ethnic integrity, so that they may dwell in the family of sovereign nations with freedom and dignity. We are opposed to colonialism and Communist imperialism.

National Party Platforms, Democratic Platform of 1956, p.527

We shall endeavor to apply this principle to the desires of all peoples for self-determination.

Reciprocal Trade Among the Nations.

National Party Platforms, Democratic Platform of 1956, p.527

The Democratic Party has always worked for expanding trade among free nations. Expanding world trade is necessary not only for our friends, but for ourselves; it is the way to meet America's growing need for industrial raw materials. We shall continue to support vigorously the Hull Reciprocal Trade Program.

National Party Platforms, Democratic Platform of 1956, p.527

Under Democratic Administrations, the operation of this Act was conducted in a manner that recognized equities for agriculture, industry and labor. Under the present Republican Administration, there has been a most flagrant disregard of these important segments of our economy resulting in serious economic injury to hundreds of thousands of Americans engaged in these pursuits. We pledge correction of these conditions.

Encouraging European Unity.

National Party Platforms, Democratic Platform of 1956, p.527

Through the Marshall Plan, the European Economic Organization and NATO, the Democratic Party encouraged and supported efforts to achieve greater economic and political unity among the free nations of Europe, and to increase the solidarity of the nations of the North Atlantic community. We will continue those efforts, taking into account the viewpoints and aspirations of different sectors of the European community, particularly in regard to practical proposals for the unification of Germany.

Peace and Justice in the Middle East.

National Party Platforms, Democratic Platform of 1956, p.527

The Democratic Party stands for the maintenance of peace in the Middle East, which is essential to the well-being and progress of all its peoples.

National Party Platforms, Democratic Platform of 1956, p.527

We will urge Israel and the Arab States to settle their differences by peaceful means, and to maintain the sanctity of the Holy Places in the Holy Land and permit free access to them.

National Party Platforms, Democratic Platform of 1956, p.527

We will assist Israel to build a sound and viable economy for her people, so that she may fulfill her humanitarian mission of providing shelter and sanctuary for her homeless Jewish refugees while strengthening her national development.

National Party Platforms, Democratic Platform of 1956, p.527

We will assist the Arab States to develop their economic resources and raise the living standards of their people. The plight of the Arab refugees commands our continuing sympathy and concern. We will assist in carrying out large-scale projects for their resettlement in countries where there is room and opportunity for them.

National Party Platforms, Democratic Platform of 1956, p.527

We support the principle of free access to the Suez Canal under suitable international auspices. The present policies of the Eisenhower Administration in the Middle East are unnecessarily increasing the risk that war will break out in this area. To prevent war, to assure peace, we will faithfully carry out our country's pledge under the Tripartite Declaration of 1950 to oppose the use or threat of force and to take such action as may be necessary in the interest of peace, both within and outside the United Nations, to prevent any violation of the frontiers of any armistice lines.

National Party Platforms, Democratic Platform of 1956, p.527

The Democratic Party will act to redress the dangerous imbalance of arms in the area resulting from the shipment of Communist arms to Egypt, by selling or supplying defensive weapons to Israel, and will take such steps, including security guarantees, as may be required to deter aggression and war in the area.

National Party Platforms, Democratic Platform of 1956, p.527

We oppose, as contrary to American principles, the practice of any government which discriminates against American citizens on grounds of race or religion. We will not countenance any arrangement or treaty with any government which by its terms or in its practical application would sanction such practices.

Support for Free Asia.

National Party Platforms, Democratic Platform of 1956, p.527

The people of Asia seek a new and freer life and they are in a commendable hurry to get it. They struggle against poverty, ill health and illiteracy. In the aftermath of war, China became a victim of Communist tyranny. But many new free nations have arisen in South and Southeast Asia. South Korea remains free, and the new Japan has abandoned her former imperial and aggressive ways. America's task and interest in Asia is to help the governments of free peoples demonstrate that they have improved living standards without yielding to Communist tyranny or domination by anyone. That task will be carried out under Democratic leadership.

Support of Our Good Neighbors to the South.

National Party Platforms, Democratic Platform of 1956, p.527

In the Western Hemisphere the Democratic Party will restore the policy of the "good neighbor" [p.528] which has been alternately neglected and abused by the Republican Administration. We pledge ourselves to fortify the defenses of the Americas. In this respect, we will intensify our cooperation with our neighboring republics to help them strengthen their economies, improve educational opportunities, and combat disease. We will strive to make the Western Hemisphere an inspiring example of what free peoples working together can accomplish.

Progressive Immigration Policies.

National Party Platforms, Democratic Platform of 1956, p.528

America's long tradition of hospitality and asylum for those seeking freedom, opportunity, and escape from oppression, has been besmirched by the delays, failures and broken promises of the Republican Administration. The Democratic Party favors prompt revision of the immigration and nationality laws to eliminate unfair provisions under which admissions to this country depend upon quotas based upon the accident of national origin. Proper safeguards against subversive elements should be provided. Our immigration procedures must reflect the principles of our Bill of Rights.

National Party Platforms, Democratic Platform of 1956, p.528

We favor eliminating the provisions of law which charge displaced persons admitted to our shores against quotas for future years. Through such "mortgages" of future quotas, thousands of qualified persons are being forced to wait long years before they can hope for admission.

National Party Platforms, Democratic Platform of 1956, p.528

We also favor more liberal admission of relatives to eliminate the unnecessary tragedies of broken families.

National Party Platforms, Democratic Platform of 1956, p.528

We favor elimination of unnecessary distinctions between native-born and naturalized citizens. There should be no "second class" citizenship in the United States.

National Party Platforms, Democratic Platform of 1956, p.528

The administration of the Refugee Relief Act of 1953 has been a disgrace to our country. Rescue has been denied to innocent, defenseless and suffering people, the victims of war and the aftermath of wars. The purpose of the Act has been defeated by Republican mismanagement.

Victims of Communist Oppression.

National Party Platforms, Democratic Platform of 1956, p.528

We will continue to support programs providing succor for escapees from behind the Iron Curtain, and bringing help to the victims of war and Communist oppression.

The Challenge of the Next Four Years.

National Party Platforms, Democratic Platform of 1956, p.528

Today new challenges call for new ideas and new methods.

National Party Platforms, Democratic Platform of 1956, p.528

In the coming years, our great necessity will be to pull together as a people, with true non-partisanship in foreign affairs under leaders informed, courageous and responsible.

National Party Platforms, Democratic Platform of 1956, p.528

We shall need to work closely with each other as Americans. If we here indict the Republican record, we acknowledge gratefully the efforts of individual Republicans to achieve true bipartisan-ship. In this spirit an affirmative, cooperative policy can be developed. We shall need to work closely, also, with others all around the world. For there is much to do—to create once more the will and the power to transform the principles of the United Nations into a living reality; to awaken ourselves and others to the effort and sacrifice which alone can win justice and peace.

II. the Domestic Policy—the Republican Reaction to 20 Years of Progress

The Democratic Bequest.

National Party Platforms, Democratic Platform of 1956, p.528

Twenty years of vivid Democratic accomplishments revived and reinforced our economic system, and wrote humanity upon the statute books. All this, the current Republican Administration inherited.

The Republican Brand of Prosperity.

National Party Platforms, Democratic Platform of 1956, p.528

Substituting deceptive slogans and dismal deeds for the Democratic program, the Republicans have been telling the American people that "we are now more prosperous than ever before in peacetime." For the American farmer, the small businessman and the low-income worker, the old people living on a pittance, the young people seeking an American standard of education, and the minority groups seeking full employment opportunity at adequate wages, this tall tale of Republican prosperity has been an illusion.

National Party Platforms, Democratic Platform of 1956, p.528

The evil is slowly but surely infiltrating the entire economic system. Its fever signs are evidenced by soaring monopoly profits, while wages lag, farm income collapses, and small-business failures multiply at an alarming rate.

National Party Platforms, Democratic Platform of 1956, p.528

The first time-bomb of the Republican crusade against full prosperity for all was the hard-money policy. This has increased the debt burden on depressed farms, saddled heavier costs on small business, foisted higher interest charges on millions of homeowners (including veterans), pushed up unnecessarily the cost of consumer credit, and swelled the inordinate profits of a few lenders of money. It has wrought havoc with the bond market, with resulting financial loss to the ordinary owners of Government bonds.

National Party Platforms, Democratic Platform of 1956, p.528

The Republican tax policy has joined hands in an unholy alliance with the hard-money policy. [p.529] Fantastic misrepresentation of the Government's budgetary position has been used to deny tax relief to low- and middle-income families, while tax concessions and handouts have been generously sprinkled among potential campaign contributors to Republican coffers. The disastrously reactionary farm program, the hardhearted resistance to adequate expansion of Social Security and other programs for human well-being, and favoritism in the award of Government contracts, all have watered the economic tree at the top and neglected its roots.

The Stunting of Our Economic Progress.

National Party Platforms, Democratic Platform of 1956, p.529

The Republicans say that employment and production are "higher" than ever before. The fact is that our over-all rate of growth has been crippled and stunted in contrast to its faster increase during the Democratic years from 1947 to 1953, after World War II.

National Party Platforms, Democratic Platform of 1956, p.529

With production lagging behind full capacity, unemployment has grown.

National Party Platforms, Democratic Platform of 1956, p.529

The Republican claim that this stunted prosperity is the price of peace is a distortion. National-security outlays have averaged a higher part of our total production during these Republican years than during 1947-53, and yet the annual growth in total production during these Republican years has been only about 60 percent as fast as in the preceding Democratic years. The progress of low-income families toward an American standard of living, rapid during the Democratic years, has ground to a stop under the Republicans.

National Party Platforms, Democratic Platform of 1956, p.529

Federal budgetary outlays for education and health, old-age assistance and child care, slum clearance and resource development, and all the other great needs of our people have been mercilessly slashed from an annual rate of more than $57 per capita under the Democrats to $33 per capita under the Republicans, a cut of 42 percent.

The Failure of the Republican Budget-Balancers.

National Party Platforms, Democratic Platform of 1956, p.529

During the Republican fiscal years 1954-1957 as a whole, the deficits have averaged larger, and the surpluses smaller, than during the Democratic fiscal years 1947-1953, financial manipulation to the contrary notwithstanding.

Democratic Principles for Full Prosperity for All:

National Party Platforms, Democratic Platform of 1956, p.529

(1) We repudiate the Republican stunting of our economic growth, and we reassert the principles of the Full Employment Act of 1946;

National Party Platforms, Democratic Platform of 1956, p.529

(2) We pledge ourselves to achieve an honest and realistic balance of the Federal Budget in a just and fully prosperous American economy;

National Party Platforms, Democratic Platform of 1956, p.529

(3) We pledge ourselves to equitable tax revisions and monetary policies designed to combine economic progress with economic justice. We condemn the Republican use of our revenue and money systems to benefit the few at the expense of the vast majority of our people;

National Party Platforms, Democratic Platform of 1956, p.529

(4) We pledge ourselves to work toward the reduction and elimination of poverty in America;

National Party Platforms, Democratic Platform of 1956, p.529

(5) We pledge ourselves to full parity of income and living standards for agriculture; to strike off the shackles which the Taft-Hartley law has unjustly imposed on labor; and to foster the more rapid growth of legitimate business enterprise by rounding this growth upon the expanding consuming power of the people; and

National Party Platforms, Democratic Platform of 1956, p.529

(6) We pledge ourselves to expand world trade and to enlarge international economic cooperation, all toward the end of a more prosperous and more peaceful world.

Democratic Goals To Be Achieved During Four Years of Progress.

National Party Platforms, Democratic Platform of 1956, p.529

By adhering to these principles, we shall strive to attain by 1960 the following full prosperity objectives for all American families:

National Party Platforms, Democratic Platform of 1956, p.529

(1) A 500 billion dollar national economy in real terms;

National Party Platforms, Democratic Platform of 1956, p.529

(2) An increase of 20 percent or better in the average standard of living;

National Party Platforms, Democratic Platform of 1956, p.529

(3) An increase in the annual income of American families, with special emphasis on those whose incomes are below $2000;

National Party Platforms, Democratic Platform of 1956, p.529

(4) A determined drive toward parity of incomes and living standards for those engaged in the vital pursuit of agriculture;

National Party Platforms, Democratic Platform of 1956, p.529

(5) The addition of all necessary classrooms for our primary and secondary schools; the construction of needed new homes, with a proper proportion devoted to the rehousing of low- and middle-income families in urban and rural areas; the increase of benefits under the Old Age Assistance and Old Age Survivors Insurance Programs; a substantial expansion in hospital facilities and medical research; and a doubling of our programs for resource development and conservation; and

National Party Platforms, Democratic Platform of 1956, p.529

(6) National defense outlays based upon our national needs, not permitting false economy to jeopardize our very survival.

National Party Platforms, Democratic Platform of 1956, p.530

This country of ours, in the factory, in business [p.530] and on the farm, is blessed with ever-increasing productive power. The Republicans have not permitted this potential abundance to be released for the mutual benefit of all. We reject this stunted Republican concept of America. We pledge ourselves to release the springs of abundance, to bring this abundance to all, and thus to fulfill the full promise of America.

National Party Platforms, Democratic Platform of 1956, p.530

These are our Democratic goals for the next four years. We set them forth in vivid contrast to Republican lip-service protestations that they, too, are for these goals. Their little deeds belie their large and hollow slogans. Our performance in the past gives validity to our goals for the future.

National Party Platforms, Democratic Platform of 1956, p.530

Our victory in 1956 will make way for the commencement of these four years of progress.

III. Free Enterprise

National Party Platforms, Democratic Platform of 1956, p.530

"Equal rights for all and special privileges for none," the tested Jeffersonian principle, remains today the only philosophy by which human rights can be preserved by government.

National Party Platforms, Democratic Platform of 1956, p.530

It is a sad fact in the history of the Republican Party that, under its control, our Government has always become an instrument of special privilege; not a government of the people, by the people, and for the people. We have had, instead, under Harding, Coolidge and Hoover, and now under Eisenhower, government of the many, by the few, and for the few.

National Party Platforms, Democratic Platform of 1956, p.530

We recognize monopolies and monopolistic practices as the real barriers between the people and their economic and political freedom. Monopolies act to stifle equality of opportunity and prevent the infusion of fresh blood into the life-stream of our economy. The Republican Administration has allowed giant corporate entities to dominate our economy. For example, forty thousand automobile dealers now know they were incapable of coping with these giants. They were, as the Democratic 84th Congress found, subjected to abuse and threatened with extinction. The result was passage of the O'Mahoney-Celler bill giving the automobile dealers of America economic freedom. We enacted this law, and we pledge that it shall be retained upon the statute books as a monument to the Democratic Party's concern for small business.

National Party Platforms, Democratic Platform of 1956, p.530

We pledge ourselves to the restoration of truly competitive conditions in American industry. Affirmative action within the framework of

National Party Platforms, Democratic Platform of 1956, p.530

American tradition will be taken to curb corporate mergers that would contribute to the growth of economic concentration.

Small and Independent Business.

National Party Platforms, Democratic Platform of 1956, p.530

In contrast to the maladministration by the Republican Party of the Federal program to assist small and independent business, we pledge ourselves—

National Party Platforms, Democratic Platform of 1956, p.530

(1) To the strict and impartial enforcement of the laws originally fostered and strengthened by the Democratic Party and designed to prevent monopolies and other concentrations of economic and financial power; and to enact legislation to close loopholes in the laws prohibiting price discrimination;

National Party Platforms, Democratic Platform of 1956, p.530

(2) To tax relief for all small and independent businesses by fair and equitable adjustments in Federal taxation which will encourage business expansion, and to the realistic application of the principle of graduated taxation to such corporate income. An option should be provided to spread Federal estate taxes over a period of years when an estate consists principally of the equity capital of a closely held small business;

National Party Platforms, Democratic Platform of 1956, p.530

(3) To adoption of all practical means of making long- and short-term credit available to small and independent businessmen at reasonable rates;

National Party Platforms, Democratic Platform of 1956, p.530

(4) To the award of a substantially higher proportion of Government contracts to independent small businesses, and to the award of a far larger percentage of military procurement, by value, after competitive bids rather than by negotiation behind closed doors. We severely condemn Republican discrimination against small and independent business;

National Party Platforms, Democratic Platform of 1956, p.530

(5) To replacement of the weak and ineffective Republican conduct of the Small Business Administration, and its reconstitution as a vigorous, independent agency which will advocate the cause of small and independent businessmen, and render genuine assistance in fulfilling their needs and solving their problems. We condemn the Republican Administration for its failure to serve this important segment of our economy.

Law Enforcement.

National Party Platforms, Democratic Platform of 1956, p.530

We pledge ourselves to the fair and impartial administration of justice. The Republican Administration has degraded the great powers of law enforcement. It has not used them in the service of equal justice under law, but for concealment, coercion, persecution, political advantage and special interests.

Merchant Marine.

National Party Platforms, Democratic Platform of 1956, p.531

In the interest of our national [p.531] security, and of the maintenance of American standards of wages and living, and in order that our waterborne overseas commerce shall not be unfairly discriminated against by low-cost foreign competition, we pledge our continued encouragement and support of a strong and adequate American Merchant Marine.

Transportation.

National Party Platforms, Democratic Platform of 1956, p.531

The public and national defense interests require the development and maintenance, under the competitive free enterprise system, of a strong, efficient and financially sound system of common-carrier transportation by water, highway, rail, and air, with each mode enabled, through sound and intelligent exercise of regulatory powers, to realize its inherent economic advantages and to reflect its full competitive capabilities. Public interest also requires, under reasonable standards, the admission of new licensees, where public convenience may be served, into the transport fields. We deplore the lack of enforcement of safety regulations for protection of life and property under the present Republican Administration, and pledge strict enforcement of such regulations.

Highways.

National Party Platforms, Democratic Platform of 1956, p.531

We commend the foresight of the Democratic 84th Congress for its enactment of the greatest program in history for expansion of our highway network, and we congratulate it upon its rejection of the unsound, unworkable, inadequate and unfair roads bill proposed by the present Republican Administration. In cooperation with state and local governments, we will continue the programs developed and fostered under prior Democratic Administrations for planning, coordinating, financing and encouraging the expansion of our national road and highway network so vital to defense and transportation in the motor age. We support expansion of farm-to-market roads.

Rivers and Harbors.

National Party Platforms, Democratic Platform of 1956, p.531

We pledge continued development of harbors and waterways as a vital segment of our transportation system. We denounce as capricious and arbitrary the Eisenhower pocket veto of the 1956 Rivers and Harbors bill, which heartlessly deprived the people in many sections of our country of vitally needed public works projects.

IV. A Magna Charta for Labor

Labor-Management Relations.

National Party Platforms, Democratic Platform of 1956, p.531

Harmonious labor-management relations are productive of good incomes for wage earners and conducive to rising output from our factories. We believe that, to the widest possible extent consistent with the public interest, management and labor should determine wage rates and conditions of employment through free collective bargaining.

National Party Platforms, Democratic Platform of 1956, p.531

The Taft-Hartley Act passed by the Republican-dominated 80th Congress seriously impaired this relationship as established in the Wagner National Labor Relations Act, enacted under the Roosevelt Administration. The Wagner Act protected, encouraged and guaranteed the rights of workers to organize, to join unions of their own choice, and to bargain collectively through these unions without coercion.

National Party Platforms, Democratic Platform of 1956, p.531

The vicious anti-union character of the Taft-Hartley Act was expressly recognized by Candidate Eisenhower during the 1952 election campaign.

National Party Platforms, Democratic Platform of 1956, p.531

At that time, he made a solemn promise to eliminate its unjust provisions and to enact a fair law. President Eisenhower and his Administration have failed utterly, however, to display any executive initiative or forcefulness toward keeping this pledge to the workers. He was further responsible for administratively amending Taft-Hartley into a more intensely anti-labor weapon by stacking the National Labor Relations Board with biased pro-management personnel who, by administrative decision, transformed the Act into a management weapon. One such decision removed millions of workers from the jurisdiction of the NLRB, which in many cases left them without protection of either State or Federal legislation.

National Party Platforms, Democratic Platform of 1956, p.531

We unequivocally advocate repeal of the Taft-Hartley Act. The Act must be repealed because State "right-to-work" laws have their genesis in its discriminatory anti-labor provisions.

National Party Platforms, Democratic Platform of 1956, p.531

It must be repealed because its restrictive provisions deny the principle that national legislation based on the commerce clause of the Constitution normally overrides conflicting State laws.

National Party Platforms, Democratic Platform of 1956, p.531

The Taft-Hartley Act has been proven to be inadequate, unworkable and unfair. It interferes in an arbitrary manner with collective bargaining, causing imbalance in the relationship between management and labor.

National Party Platforms, Democratic Platform of 1956, p.531

Upon return of our National Government to the Democratic Party, a new legislative approach toward the entire labor-management problem will be adopted, based on past experience and the principles of the Wagner National Labor Relations [p.532] Act and the Norris-La Guardia Anti-Injunction Law.

Fair Labor Standards.

National Party Platforms, Democratic Platform of 1956, p.532

We commend the action of the Democratic 84th Congress which raised the minimum wage from 75 cents to $1.00 an hour despite the strenuous objection of President Eisenhower and the Republicans in Congress. However, the inadequacies of the minimum wage become apparent as the cost of living increases, and we feel it imperative to raise the minimum wage to at least $1.25 an hour, in order to approximate present-day needs more closely.

National Party Platforms, Democratic Platform of 1956, p.532

We further pledge as a matter of priority to extend full protection of the Fair Labor Standards Act to all workers in industry engaged in, or affecting, interstate commerce.

Walsh-Healey Contracts Act.

National Party Platforms, Democratic Platform of 1956, p.532

We pledge revision and honest administration of the Walsh-Healey Act, to restore its effectiveness and usefulness as an instrument for maintaining fair standards of wages and hours for American workers.

Equal Pay for Equal Work.

National Party Platforms, Democratic Platform of 1956, p.532

We advocate legislation to provide equal pay for equal work, regardless of sex.

The Physically Handicapped.

National Party Platforms, Democratic Platform of 1956, p.532

The Democratic Party has always supported legislation to benefit the disabled worker. The physically handicapped have proved their value to Government and industry. We pledge our continued support of legislation to improve employment opportunities of physically handicapped persons.

Migratory Workers.

National Party Platforms, Democratic Platform of 1956, p.532

We shall support legislation providing for the protection and improvement of the general welfare of migratory workers.

Jobs for Depressed Areas.

National Party Platforms, Democratic Platform of 1956, p.532

We pledge our Party to support legislation providing for an effective program to promote industry and create jobs in depressed industrial and rural areas so that such areas may be restored to economic stability.

V. Agriculture

National Party Platforms, Democratic Platform of 1956, p.532

Sustained national prosperity is dependent upon a vigorous agricultural economy.

National Party Platforms, Democratic Platform of 1956, p.532

We condemn the defeatist attitude of the Eisenhower Administration in refusing to take effective action to assure the well-being of farm families. We condemn its fear of abundance, its lack of initiative in developing domestic markets, and its dismal failure to obtain for the American farmer his traditional and deserved share of the world market. Its extravagant expenditure of money intended for agricultural benefit, without either direction or results, is a national calamity.

National Party Platforms, Democratic Platform of 1956, p.532

The Eisenhower Administration has failed utterly to develop any programs to meet the desperate needs of farmers in the face of fantastic promises, and it has sabotaged the progressive programs inherited from prior Democratic Administrations by failing to administer them properly in the interest either of farmers or of the Nation as a whole.

National Party Platforms, Democratic Platform of 1956, p.532

Specifically, we denounce President Eisenhower's veto of the constructive legislation proposed and passed by the Democratic 84th Congress to reverse the alarming fall of farm prices and restore farmers to a position of first-class economic citizenship in the sharing of benefits from American productive ability.

National Party Platforms, Democratic Platform of 1956, p.532

We also condemn the Republican Administration for its abandonment of the true principles of soil conservation and for its destruction of the Soil Conservation Service. We pledge to support continued improvements in the soil bank program passed by the Democratic 84th Congress and originally opposed by President Eisenhower and Secretary Ezra Taft Benson. We deplore the diversion of this conservation program into a direct vote-buying scheme.

National Party Platforms, Democratic Platform of 1956, p.532

Farmers have had to struggle for three and one-half years while their net farm income has fallen more than one billion dollars a year. Their parity ratio, which under Democratic Administrations had been 100 percent or more during the eleven years prior to 1953, dropped to as low as 80 percent during the Eisenhower Administration, and the farmers' share of the consumers' food dollar shrank from 47 cents in 1952 to as low as only 38 cents. One stark fact stands out clearly for all to see—disastrously low farm prices and record high consumer prices vie with each other for the attention of responsible government. In a reduction of this incongruous spread lies the answer to some of the most vexing problems of agricultural economics.

National Party Platforms, Democratic Platform of 1956, p.532

In their courageous fight to save their homes and land, American farmers have gone deeper and deeper into debt. Last year farmers' mortgage indebtedness increased more than in any year in history with the exception of the year 1923.

National Party Platforms, Democratic Platform of 1956, p.532

The Democratic Party met similar situations forthrightly in the past with concrete remedial [p.533] action. It takes legitimate pride in its consistent record of initiating and developing every constructive program designed to protect and conserve the human and natural resources so vital to our rural economy. These programs enabled consumers to obtain more abundant supplies of high-quality food and fiber at reasonable prices while maintaining adequate income for farmers and improving the level of family living in rural areas.

National Party Platforms, Democratic Platform of 1956, p.533

In order to regain the ground lost during the Eisenhower Administration, and in order better to serve both consumers and producers, the Democratic Party pledges continuous and vigorous support to the following policies:

National Party Platforms, Democratic Platform of 1956, p.533

Sponsor a positive and comprehensive program to conserve our soil, water and forest resources for future generations;

National Party Platforms, Democratic Platform of 1956, p.533

Promote programs which will protect and preserve the family-type farm as a bulwark of American life, and encourage farm-home ownership, including additional assistance to family farmers and young farmers in the form of specially designed credit and price-support programs, technical aid, and enlarged soil conservation allowances.

National Party Platforms, Democratic Platform of 1956, p.533

Maintain adequate reserves of agricultural commodities strategically situated, for national security purposes. Such stockpiles should be handled as necessary strategic reserves, so that farmers will not be penalized by depressed prices for their efficiency and diligence in producing abundance;

National Party Platforms, Democratic Platform of 1956, p.533

Promote international exchange of commodities by creating an International Food Reserve, fostering commodity agreements, and vigorously administering the Foreign Agricultural Trade Development and Assistance Act;

National Party Platforms, Democratic Platform of 1956, p.533

Undertake immediately by appropriate action to endeavor to regain the full 100 percent of parity the farmers received under the Democratic Administrations. We will achieve this by means of supports on basic commodities at 90 percent of parity and by means of commodity loans, direct purchases, direct payments to producers, marketing agreements and orders, production adjustments, or a combination of these, including legislation, to bring order and stability into the relationship between the producer, the processor and the consumer;

National Party Platforms, Democratic Platform of 1956, p.533

Develop practical measures for extending price supports to feed grains and other nonbasic storables and to the producers of perishable commodities such as meat, poultry, dairy products and the like;

National Party Platforms, Democratic Platform of 1956, p.533

Inaugurate a food-stamp or other supplemental food program administered by appropriate State or local agencies to insure that no needy family shall be denied an adequate and wholesome diet because of low income;

National Party Platforms, Democratic Platform of 1956, p.533

Continue and expand school lunch and special milk programs to meet the dietary needs of all school children;

National Party Platforms, Democratic Platform of 1956, p.533

Increase the distribution of food to public institutions and organizations and qualified private charitable agencies, and increase the distribution of food and fiber to needy people in other nations through recognized charitable and religious channels;

National Party Platforms, Democratic Platform of 1956, p.533

Devise and employ effective means to reduce the spread between producers' prices and consumers' costs, and improve market facilities and marketing practices;

National Party Platforms, Democratic Platform of 1956, p.533

Expand the program of agricultural research and education for better distribution, preservation and marketing of farm products to serve both producers and consumers, and promote increased industrial use of farm surpluses;

National Party Platforms, Democratic Platform of 1956, p.533

Provide for an increased reservoir of farm credit at lower rates, designed particularly to accommodate operators of small family-type farms, and extend crop insurance to maximum coverage and protection;

National Party Platforms, Democratic Platform of 1956, p.533

Return the administration of farm programs to farmer-elected committeemen, eliminate the deplorable political abuses in Federal employment in many agricultural counties as practiced by the Eisenhower Administration, and restore leadership to the administration of soil conservation districts;

National Party Platforms, Democratic Platform of 1956, p.533

Insure reliable and low-cost rural electric and telephone service;

National Party Platforms, Democratic Platform of 1956, p.533

Exercise authority in existing law relating to imports of price-supported agricultural commodities in raw, manufactured or processed form as part of our national policy to minimize damage to our domestic economy;

National Party Platforms, Democratic Platform of 1956, p.533

Encourage bona fide farm cooperatives which help farmers reduce the cost-price squeeze, and protect such cooperatives against punitive taxation;

National Party Platforms, Democratic Platform of 1956, p.533

Expand farm forestry marketing research and price reporting on timber products, and provide [p.534] adequate credit designed to meet the needs of timber farmers; and

National Party Platforms, Democratic Platform of 1956, p.534

Enact a comprehensive farm program which, under intelligent and sympathetic Democratic administration, will make the rural homes of America better and healthier places in which to live.

VI. General Welfare

National Party Platforms, Democratic Platform of 1956, p.534

The Democratic Party believes that America can and must adopt measures to assure every citizen an opportunity for a full, healthy and happy life. To this end, we pledge ourselves to the expansion and improvement of the great social welfare programs inaugurated under Democratic Administrations.

Social Security.

National Party Platforms, Democratic Platform of 1956, p.534

By lowering the retirement age for women and for disabled persons, the Democratic 84th Congress pioneered two great advances in Social Security, over the bitter opposition of the Eisenhower Administration. We shall continue our efforts to broaden and strengthen this program by increasing benefits to keep pace with improving standards of living; by raising the wage base upon which benefits depend; and by increasing benefits for each year of covered employment.

Unemployment Insurance.

National Party Platforms, Democratic Platform of 1956, p.534

We shall continue to work for a stronger unemployment insurance system, with broader coverage and increased benefits consistent with rising earnings. We shall also work for the establishment of a floor to assure minimum level and duration of benefits, and fair eligibility rules.

Wage Losses Due to Illness.

National Party Platforms, Democratic Platform of 1956, p.534

In 1946, a Democratic Congress enacted an insurance program to protect railroad workers against temporary wage losses due to short-term illnesses. Because this program has worked so effectively, we favor extending similar protection to other workers.

Public Assistance.

National Party Platforms, Democratic Platform of 1956, p.534

We pledge improvements in the public assistance program even beyond those enacted by the Democratic 84th Congress, through increased aid for the aged, the blind, dependent children, the disabled and other needy persons who are not adequately protected by our contributory insurance programs.

Additional Needs of Our Senior Citizens.

National Party Platforms, Democratic Platform of 1956, p.534

To meet the needs of the 14 million Americans aged 65 or over, we pledge ourselves to seek means of assuring these citizens greater income through expanded opportunities for employment, vocational retraining and adult education; better housing and health services for the aged; rehabilitation of the physically and mentally disabled to restore them to independent, productive lives; and intensified medical and other research aimed both at lengthening life and making the longer life more truly livable.

Health and Medical Care.

National Party Platforms, Democratic Platform of 1956, p.534

The strength of our Nation depends on the health of our people. The shortage of trained medical and health personnel and facilities has impaired American health standards and has increased the cost of hospital care beyond the financial capacities of most American families.

National Party Platforms, Democratic Platform of 1956, p.534

We pledge ourselves to initiate programs of Federal financial aid, without Federal controls, for medical education.

National Party Platforms, Democratic Platform of 1956, p.534

We pledge continuing and increased support for hospital construction programs, as well as increased Federal aid to public health services, particularly in rural areas.

Medical research.

National Party Platforms, Democratic Platform of 1956, p.534

Mindful of the dramatic progress made by medical research in recent years, we shall continue to support vigorously all efforts, both public and private, to wage relentless war on diseases which afflict the bodies and minds of men. We commend the Democratic Party for its leadership in obtaining greater Congressional authorizations in this field.

Housing.

National Party Platforms, Democratic Platform of 1956, p.534

We pledge our Party to immediate revival of the basic housing program enacted by the Democratic Congress in 1949, to expansion of this program as our population and resources grow, and to additional legislation to provide housing for middle-income families and aged persons. Aware of the financial burdens which press upon most American communities and prevent them from taking full advantage of Federal urban redevelopment and renewal programs, we favor increasing the Federal share of the cost of these programs.

National Party Platforms, Democratic Platform of 1956, p.534

We reaffirm the goal expressed by a Democratic Congress in 1949 that every American family is entitled to a "decent home and a suitable living environment." The Republican Administration has sabotaged that goal by reducing the public housing program to a fraction of the Nation's need.

National Party Platforms, Democratic Platform of 1956, p.534

We pledge that the housing insurance and mortgage guarantee programs will be redirected [p.535] in the interest of the home owner, and that the availability of low-interest housing credit will be kept consistent with the expanding housing needs of the Nation.

National Party Platforms, Democratic Platform of 1956, p.535

We favor providing aid to urban and suburban communities in better planning for their future development and redevelopment.

Education.

National Party Platforms, Democratic Platform of 1956, p.535

Every American child, irrespective of race or national origin, economic status or place of residence, has full right under the law and the Constitution, without discrimination, to every educational opportunity for developing his potentialities.

National Party Platforms, Democratic Platform of 1956, p.535

We are now faced with shortages of educational facilities that threaten national security, economic prosperity and human well-being. The resources of our States and localities are already strained to the limit. Federal aid and action should be provided, within the traditional framework of State and local control.

National Party Platforms, Democratic Platform of 1956, p.535

We pledge the Democratic Party to the following:

National Party Platforms, Democratic Platform of 1956, p.535

(1) Legislation providing Federal financing to assist States and local communities to build schools, and to provide essential health and safety services for all school children;

National Party Platforms, Democratic Platform of 1956, p.535

(2) Better educational, health and welfare opportunities for children of migratory workers;

National Party Platforms, Democratic Platform of 1956, p.535

(3) Assistance to programs for training teachers of exceptional children;

National Party Platforms, Democratic Platform of 1956, p.535

(4) Programs providing for the training of teachers to meet the critical shortage in technical and scientific fields; and

National Party Platforms, Democratic Platform of 1956, p.535

(5) Expansion of the program of student, teacher and cultural exchange with other nations.

Vocational Education.

National Party Platforms, Democratic Platform of 1956, p.535

We commend the 84th Congress for voting the maximum authorized funds for vocational education under the Smith-Hughes Act for the first time in the history of the Act. We pledge continuing and increased support of vocational training for youth and adults, including aid to the States and localities for area technical-vocational schools.

Child Welfare.

National Party Platforms, Democratic Platform of 1956, p.535

To keep pace with the growing need for child care and welfare, we pledge an expanded program of grants to the States. We pledge continued support of adequate day care centers to care for the children of the millions of American mothers who work to help support their families.

Aid to the Physically Handicapped.

National Party Platforms, Democratic Platform of 1956, p.535

There are today several million physically handicapped citizens, many of whom could become self-supporting if given the opportunity and training for rehabilitation. We pledge support to a vastly expanded rehabilitation program for these physically handicapped, including increased aid to the States, in contrast to the grossly inadequate action of the Republican Administration.

VII. Financial Policy

Tax Adjustment.

National Party Platforms, Democratic Platform of 1956, p.535

A fully expanding economy can yield enough tax revenues to meet the inescapable obligations of government, balance the Federal Budget, and lighten the tax burden. The immediate need is to correct the inequities in the tax structure which reflect the Republican determination to favor the few at the expense of the many. We favor realistic tax adjustments, giving first consideration to small independent business and the small individual taxpayer. Lower-income families need tax relief; only a Democratic victory will assure this. We favor an increase in the present personal tax exemption of $600 to a minimum of at least $800.

Debt Management.

National Party Platforms, Democratic Platform of 1956, p.535

The Republican debt management policy of higher interest rates serves only to benefit a few to the detriment of the general taxpayer, the small borrower, and the small and middle-class investor in Government bonds. We pledge ourselves to a vigilant review of our debt management policy in order to reduce interest rates in the service of our common welfare.

Protection of Investors.

National Party Platforms, Democratic Platform of 1956, p.535

Effective administration of the Federal securities laws has been undermined by Republican appointees with conflicting interests. Millions of investors who have bought securities with their savings are today without adequate protection. We favor vigorous administration and revision of the laws to provide investor safeguards for securities extensively traded in the over-the-counter market, for foreign securities distributed in the United States, and against proxy contest abuses.

VIII. Government Operations

National Party Platforms, Democratic Platform of 1956, p.535

The Democratic Party pledges that it will return the administration of our National Government to a sound, efficient, and honest basis.

Civil Service and Federal Employee Relations.

National Party Platforms, Democratic Platform of 1956, p.535

The Eisenhower Administration has failed either [p.536] to understand or trust the Federal employee. Its record in personnel management constitutes a grave indictment of policies reflecting prejudices and excessive partisanship to the detriment of employee morale.

National Party Platforms, Democratic Platform of 1956, p.536

Intelligent and sympathetic programs must be immediately undertaken to insure the re-establishment of the high morale and efficiency which were characteristic of the Federal worker during 20 years of Democratic Administrations.

National Party Platforms, Democratic Platform of 1956, p.536

To accomplish these objectives, we propose:

National Party Platforms, Democratic Platform of 1956, p.536

(1) Protection and extension of the merit system through the enactment of laws to specify the rights and responsibilities of workers;

National Party Platforms, Democratic Platform of 1956, p.536

(2) A more independent Civil Service Commission in order that it may provide the intelligent leadership essential in perfecting a proper Civil Service System;

National Party Platforms, Democratic Platform of 1956, p.536

(3) Promotion within the Federal Service under laws assuring advancement on merit and proven ability;

National Party Platforms, Democratic Platform of 1956, p.536

(4) Salary increases of a nature that will insure a truly competitive scale at all levels of employment;

National Party Platforms, Democratic Platform of 1956, p.536

(5) Recognition by law of the right of employee organizations to represent their members and to participate in the formulation and improvement of personnel policies and practices; and

National Party Platforms, Democratic Platform of 1956, p.536

(6) A fair and non-political loyalty program, by law, which will protect the Nation against subversion and the employee against unjust and un-American treatment.

Restoring the Efficiency of the Postal Service.

National Party Platforms, Democratic Platform of 1956, p.536

The bungling policies of the Republican Administration have crippled and impaired the morale, efficiency and reputation of the U. S. Postal Service. Mail carriers and clerks and other Postal employees are compelled to work under intolerable conditions. Communication by mail and service by parcel post have been delayed and retarded with resulting hardships, business losses and inconveniences. A false concept of economy has impaired seriously the efficiency of the best communication system in the world.

National Party Platforms, Democratic Platform of 1956, p.536

We pledge ourselves to programs which will:

National Party Platforms, Democratic Platform of 1956, p.536

(1) Restore the principle that the Postal Service is a public service to be operated in the interest of improved business economy and better communication, as well as an aid to the dissemination of information and intelligence;

National Party Platforms, Democratic Platform of 1956, p.536

(2) Restore Postal employee morale through the strengthening of the merit system, with promotions by law rather than caprice or partisan politics, and payment of realistic salaries reflecting the benefits of an expanded economy;

National Party Platforms, Democratic Platform of 1956, p.536

(3) Establish a program of research and development on a scale adequate to insure the most modern and efficient handling of the mails; and

National Party Platforms, Democratic Platform of 1956, p.536

(4) Undertake modernization and construction of desperately needed Postal facilities designed to insure the finest Postal system in the world.

Conflict of Interests.

National Party Platforms, Democratic Platform of 1956, p.536

Maladministration and selfish manipulation have characterized Federal Administration during the Eisenhower years, Taxpayers, paying billions of dollars each year to their Government, demand and must have the highest standards of honesty, integrity and efficiency as a minimum requirement of Federal Executive conduct. We pledge a strong merit system as a substitute for cynical policies of spoils and special favor which are now the rule of the day. We seek the constant improvement of the Federal Government apparatus to accomplish these ends.

National Party Platforms, Democratic Platform of 1956, p.536

Under certain conditions, we recognize the need for the employment of personnel without compensation in the Executive Branch of the Government. But the privileges extended these dollar-a-year men have resulted in grave abuses of power. Some of these representatives of large corporations have assumed a dual loyalty to the Government and to the corporations that pay them. These abuses under the Republican Administration have been scandalous. The Democratic Party proposes that any necessary use of non-compensated employees shall be made only after the most careful scrutiny and under the most rigidly prescribed safeguards to prevent any conflict of interests.

Freedom of Information.

National Party Platforms, Democratic Platform of 1956, p.536

During recent years there has developed a practice on the part of Federal agencies to delay and withhold information which is needed by Congress and the general public to make important decisions affecting their lives and destinies. We believe that this trend toward secrecy in Government should be reversed and that the Federal Government should return to its basic tradition of exchanging and promoting the freest flow of information possible in those unclassified areas where secrets involving weapons development and bona fide national [p.537] security are not involved. We condemn the Eisenhower Administration for the excesses practiced in this vital area, and pledge the Democratic Party to reverse this tendency, substituting a rule of law for that of broad claims of executive privilege.

National Party Platforms, Democratic Platform of 1956, p.537

We reaffirm our position of 1952 "to press strongly for world-wide freedom in the gathering and dissemination of news." We shall press for free access to information throughout the world for our journalists and scholars.

Clean Elections.

National Party Platforms, Democratic Platform of 1956, p.537

The shocking disclosures in the last Congress of attempts by selfish interests to exert improper influence on members of Congress have resulted in a Congressional investigation now under way. The Democratic Party pledges itself to provide effective regulation and full disclosure of campaign expenditures and contributions in elections to Federal offices.

Equal Rights Amendment.

National Party Platforms, Democratic Platform of 1956, p.537

We of the Democratic Party recommend and indorse for submission to the Congress a Constitutional amendment providing equal rights for women.

Veterans Administration.

National Party Platforms, Democratic Platform of 1956, p.537

We are spending approximately 4 3/4 billion dollars per year on veterans' benefits. There are more than 22 million veterans in civil life today and approximately 4 million veterans or dependents of deceased veterans drawing direct cash benefits from the Veterans Administration. It is clear that a matter of such magnitude demands more prominence in the affairs of Government. We pledge that we will elevate the Veterans Administration to a place of dignity commensurate with its importance in national affairs.

National Party Platforms, Democratic Platform of 1956, p.537

We charge the present Administration with open hostility toward the veterans' hospital program as disclosed by its efforts to restrict severely that program in fiscal year 1954. We further charge the Administration with incompetence and gross neglect in the handling of veterans' benefits in the following particulars:

National Party Platforms, Democratic Platform of 1956, p.537

( 1 ) The refusal to allow service connection for disabilities incurred in or aggravated by military service, and the unwarranted reduction of disability evaluations in cases where service connection has been allowed; and

National Party Platforms, Democratic Platform of 1956, p.537

(2) The failure to give proper protection to veterans purchasing homes under the VA home loan program both by inadequate supervision of the program and, in some instances, by active cooperation with unscrupulous builders, lenders and real estate brokers.

National Party Platforms, Democratic Platform of 1956, p.537

In recognition of the valiant efforts of those who served their Nation in its gravest hours, we pledge:

National Party Platforms, Democratic Platform of 1956, p.537

(1) Continuance of the Veterans Administration as an independent Federal agency handling veterans programs;

National Party Platforms, Democratic Platform of 1956, p.537

(2) Continued recognition of war veterans, with adequate compensation for the service-connected disabled and for the survivors of those who have passed away in service or from service-incurred disabilities; and with pensions for disabled and distressed veterans, and for the dependents of those who have passed on, where they are in need or unable to provide for themselves;

National Party Platforms, Democratic Platform of 1956, p.537

(3) Maintenance of the Veterans Administration hospital system, with no impairment in the high quality of medical and hospital service;

National Party Platforms, Democratic Platform of 1956, p.537

(4) Priority of hospitalization for the service-connected disabled, and the privilege of hospital care when beds are available for the non-service-connected illness of veterans who are sick and without funds or unable to procure private hospitalization;

National Party Platforms, Democratic Platform of 1956, p.537

(5) Fair administration of veterans preference laws, and employment opportunities for handicapped and disabled veterans;

National Party Platforms, Democratic Platform of 1956, p.537

(6) Full hearings for war veterans filing valid applications with the review, corrective and settlement boards of the Federal Government; and

National Party Platforms, Democratic Platform of 1956, p.537

(7) Support for legislation to obtain an extension of the current law to enable veterans to obtain homes and farms through the continuance of the GI Loan Program.

Statehood for Alaska and Hawaii.

National Party Platforms, Democratic Platform of 1956, p.537

We condemn the Republican Administration for its utter disregard of the rights to statehood of both Alaska and Hawaii. These territories have contributed greatly to our national economic and cultural life and are vital to our defense. They are part of America and should be recognized as such. We of the Democratic Party, therefore, pledge immediate Statehood for these two territories. We commend these territories for the action their people have taken in the adoption of constitutions which will become effective forthwith when they are admitted into the Union.

Puerto Rico.

National Party Platforms, Democratic Platform of 1956, p.537

The Democratic Party views with satisfaction the progress and growth achieved by [p.538] Puerto Rico since its political organization as a Commonwealth under Democratic Party leadership. We pledge, once again, our continued support of the Commonwealth and its development and growth along lines of increasing responsibility and authority, keeping as functions of the Federal Government only such as are essential to the existence of the compact of association adopted by the Congress of the United States and the people of Puerto Rico.

National Party Platforms, Democratic Platform of 1956, p.538

The progress of Puerto Rico under Commonwealth status has been notable proof of the great benefits which flow from self-government and the good neighbor policy which under Democratic leadership this country has always followed.

Virgin Islands.

National Party Platforms, Democratic Platform of 1956, p.538

We favor increased self-government for the Virgin Islands to provide for an elected Governor and a Resident Commissioner in the Congress of the United States. We denounce the scandalous administration of the first Eisenhower-appointed Governor of the Virgin Islands.

Other Territories and Possessions.

National Party Platforms, Democratic Platform of 1956, p.538

We favor increased self-government for Guam, other outlying territories and the Trust Territory of the Pacific.

District of Columbia.

National Party Platforms, Democratic Platform of 1956, p.538

We favor immediate home rule and ultimate national representation for the District of Columbia.

American Indians.

National Party Platforms, Democratic Platform of 1956, p.538

Recognizing that all American Indians are citizens of the United States and of the States in which they reside, and acknowledging that the Federal Government has a unique legal and moral responsibility for Indians which is imposed by the Constitution and spelled out in treaties, statutes and court decisions, we pledge:

National Party Platforms, Democratic Platform of 1956, p.538

Prompt adoption of a Federal program to assist Indian tribes in the full development of their human and natural resources, and to advance the health, education and economic well-being of Indian citizens, preserving their traditions without impairing their cultural heritage;

National Party Platforms, Democratic Platform of 1956, p.538

No alteration of any treaty or other Federal-Indian contractual relationships without the free consent of the Indian tribes concerned; reversal of the present policies which are tending toward erosion of Indian rights, reduction of their economic base through alienation of their lands, and repudiation of Federal responsibility;

National Party Platforms, Democratic Platform of 1956, p.538

Prompt and expeditious settlement of Indian claims against the United States, with full recognition of the rights of both parties; and

National Party Platforms, Democratic Platform of 1956, p.538

Elimination of all impediments to full citizenship for American Indians.

Governmental Balance.

National Party Platforms, Democratic Platform of 1956, p.538

The Democratic Party has upheld its belief in the Constitution as a charter of individual rights, an effective instrument for human progress. Democratic Administrations placed upon the statute books during their last 20 years a multitude of measures which testify to our belief in the Jeffersonian principle of local control even in general legislation involving Nation-wide programs. Selective Service, Social Security, agricultural adjustment, low-rent housing, hospital, and many other legislative programs have placed major responsibilities in States and counties, and provide fine examples of how benefits can be extended through Federal-State cooperation.

National Party Platforms, Democratic Platform of 1956, p.538

While we recognize the existence of honest differences of opinion as to the true location of the Constitutional line of demarcation between the Federal Government and the States, the Democratic Party expressly recognizes the vital importance of the respective States in our Federal Union. The Party of Jefferson and Jackson pledges itself to continued support of those sound principles of local government which will best serve the welfare of our people and the safety of our democratic rights.

Improving Congressional Procedures.

National Party Platforms, Democratic Platform of 1956, p.538

In order that the will of the American people may be expressed upon all legislative proposals, we urge that action he taken at the beginning of the 85th Congress to improve Congressional procedures so that majority rule prevails and decisions can be made after reasonable debate without being blocked by a minority in either House.

IX. Natural Resources

National Party Platforms, Democratic Platform of 1956, p.538

Our national economic strength and welfare depend primarily upon the development of our land, water, mineral and energy resources, with which this Nation has been abundantly blessed.

National Party Platforms, Democratic Platform of 1956, p.538

We pledge unstinting support to a full and integrated program of development, protection, management and conservation of all of our natural resources for all of the people.

National Party Platforms, Democratic Platform of 1956, p.538

The framework of time-tested conservation and mining policy is fixed in laws under which America [p.539] has developed its natural resources for the general welfare.

National Party Platforms, Democratic Platform of 1956, p.539

The Democratic 84th Congress has remained steadfast to this traditional policy. It has built upon the tremendous conservation and development achievements of the Roosevelt and Truman Administrations by undertaking the greatest program of natural resources development ever assumed by any Congress in our Nation's history.

National Party Platforms, Democratic Platform of 1956, p.539

This constructive Democratic record, embracing all resources of land, water, energy and minerals, is in sharp contrast to the faithless performance of the Eisenhower Administration which has despoiled future generations of their heritage by utter failure to safeguard natural resources. Our people will long remember this betrayal of their heritage as symbolized by the infamous Dixon-Yates contract; the A1 Sarena timber scheme; the low-level Hells Canyon Dams; and for its unreasonable resistance to authorizing the Niagara Project which would benefit so many millions in the State of New York and adjacent areas.

National Party Platforms, Democratic Platform of 1956, p.539

We condemn, and will continue to decry, this pillaging of our dwindling natural resource wealth through political manipulation and administrative subversion by the Eisenhower Administration. We pledge ourselves to halt this betrayal of the people's trust.

National Party Platforms, Democratic Platform of 1956, p.539

We shall devise for the American people a dynamic, far-reaching and progressive conservation program.

National Party Platforms, Democratic Platform of 1956, p.539

The Democratic Party proposes, and will strive to secure, this comprehensive resources program for America's future.

Land.

National Party Platforms, Democratic Platform of 1956, p.539

Our land will be preserved and improved for the present and future needs of our people, and not wastefully exploited to benefit special-interest groups.

Soil Conservation.

National Party Platforms, Democratic Platform of 1956, p.539

In contrast to the wasteful neglect of the present Administration, soil conservation practices will be stimulated and intensified to reduce land deterioration under the vital Soil Conservation Service assistance program conceived and fostered by the Democratic Party.

National Parks, Recreation and Wildlife.

National Party Platforms, Democratic Platform of 1956, p.539

We pledge adoption of an immediate and broad policy to mobilize the efforts of private and public agencies for protection of existing recreational areas, provision of new ones, and improvement of inadequate facilities. Slum conditions fostered by Republican neglect are intolerable to the tens of millions of Americans using our national parks and forests. Democratic Administration will end this shocking situation.

National Party Platforms, Democratic Platform of 1956, p.539

Fish and game habitats will be guarded against encroachment for commercial purposes. All river basin development plans will take into full consideration their effect upon fish, wildlife, national park and wilderness areas. The Fish and Wildlife Service must and will be returned to the career status from which it was removed by the political patronage policy of the present Administration.

National Party Platforms, Democratic Platform of 1956, p.539

Recreational facilities for the millions of field and stream sportsmen of America will be conserved and expanded.

Forest and Grazing Lands.

National Party Platforms, Democratic Platform of 1956, p.539

Timber on Federal commercial forest lands will be harvested and managed on a sustained-yield basis.

National Party Platforms, Democratic Platform of 1956, p.539

We propose to increase forest access roads in order to improve cutting practices on both public and private lands.

National Party Platforms, Democratic Platform of 1956, p.539

Private owners of farm, forest and range lands need and must have financial and technical assistance so that all lands will be utilized to contribute more fully to the national welfare by production of food and fiber and protection of our watersheds. Any effort to transform grazing permits from a revocable license to a vested right will be rejected.

National Party Platforms, Democratic Platform of 1956, p.539

We will vigorously advocate Federally-financed forestation, upstream erosion control and flood control programs on our public range, timber lands and small drainage basins to protect our watersheds and double the rate of forage and commercial timber growth. We will promote cooperative programs with Government assistance to reduce timber losses from fire, insects, and disease.

National Party Platforms, Democratic Platform of 1956, p.539

Prospecting and mining on unreserved Federal lands will be encouraged, but surface areas not needed in mining will be safeguarded by appropriate legislation.

Water.

National Party Platforms, Democratic Platform of 1956, p.539

We pledge the resumption of rapid and orderly multiple-purpose river basin development throughout the country. This program will bring into reality the full potential benefits of flood control, irrigation and our domestic and municipal water supply from surface and underground waters. It will also materially aid low-cost power, navigation, recreation, fish and wild-life propagation and mineral development. We [p.540] pledge our aid to the growing requirements of the semiarid Western States for an adequate water supply to meet the vital domestic, irrigation and industrial needs of the rapidly growing urban centers. Enhanced regional economies will strengthen the economy of the Nation as a whole.

National Party Platforms, Democratic Platform of 1956, p.540

We will take appropriate and vigorous steps to prevent comprehensive drainage basin development plans from being fragmented by single-purpose projects. The conservation of water is essential to the life of the Nation. The Democratic Party pledges itself to conservation of water in the public interest.

National Party Platforms, Democratic Platform of 1956, p.540

The Democratic 84th Congress has taken a long step toward reducing the pollution of our rivers and streams. We pledge continuation and expansion of this program, vital to every citizen.

National Party Platforms, Democratic Platform of 1956, p.540

The program of obtaining a large new source of fresh water supply from salt water was begun by the Democratic Party, but has been allowed to lapse by the Eisenhower Republican Administration. It will be resumed and accelerated.

Energy.

National Party Platforms, Democratic Platform of 1956, p.540

We pledge ourselves to carry forward, under national policy, aggressive programs to provide abundant supplies of low-cost energy, including continued research for the development of synthetic liquid fuel from coal, shale and agricultural products. These we must have to feed our insatiable industrial economy, to enable our workers to develop their skills and increase their productivity, to provide more jobs at higher wages, to meet the ever-mounting demands for domestic and farm uses, including the production of lower-cost farm fertilizers and lower-cost power to consumers.

National Party Platforms, Democratic Platform of 1956, p.540

We will carry forward increased and full production of hydroelectric power on our rivers and of steam generation for the Tennessee Valley Authority to meet its peacetime and defense requirements. Such self-liquidating projects must go forward in a rapid and orderly manner, with appropriate financing plans. Integrated regional transmission systems will enhance exchange of power and encourage diversified industrial development.

National Party Platforms, Democratic Platform of 1956, p.540

We shall once more rigorously enforce the anti-monopoly and public body preference clauses, including the Holding Company Act, administratively circumvented by the Eisenhower Republican Administration. We shall preserve and strengthen the public power competitive yardstick in power developments under TVA, REA, Bureau of Reclamation, Bonneville, Southeast and Southwest Power Administrations and other future projects, including atomic power plants, under a policy of the widest possible use of electric energy at the lowest possible cost.

Minerals.

National Party Platforms, Democratic Platform of 1956, p.540

The Republican Administration has seriously neglected and ignored one of the Nation's basic industries, metal mining. We recognize that a healthy mining industry is essential to the economy of the Nation, and therefore pledge immediate efforts toward the establishment of a realistic, long-range minerals policy. The Nation's minerals and fuels are essential to the safety, security and development of our country. We pledge the adoption of policies which will further encourage the exploration and development of additional reserves of our mineral resources.

Domestic Fisheries.

National Party Platforms, Democratic Platform of 1956, p.540

We will undertake comprehensive scientific and economic research programs for the conservation and better utilization of, and new markets for, fishery products. We favor and will encourage reciprocal world trade in fish products.

National Party Platforms, Democratic Platform of 1956, p.540

We pledge ourselves to a public works and water policy providing adequate protection for domestic fishery resources.

National Party Platforms, Democratic Platform of 1956, p.540

We favor treaties with other nations for conservation and better utilization of international fisheries.

Scenic Resources.

National Party Platforms, Democratic Platform of 1956, p.540

To the end that the scenic beauty of our land may be preserved and maintained for this and future generations to enjoy, we pledge accelerated support of educational programs to stimulate individual responsibility and pride in clean, attractive surroundings—from big cities to rural areas.

X. Atomic Energy

National Party Platforms, Democratic Platform of 1956, p.540

The atomic era came into being and was developed under Democratic Administrations.

National Party Platforms, Democratic Platform of 1956, p.540

The genius of American scientists, engineers and workmen, supported by the vision and courage of Franklin D. Roosevelt, made possible the splitting of the atom and the development of the first atomic bomb in time to end World War II.

National Party Platforms, Democratic Platform of 1956, p.540

With the ending of the war, the supremacy of America in atomic weapons was maintained under the leadership of President Truman, and the United States pushed ahead vigorously toward [p.541] utilizing this new form of energy in peaceful pursuits, particularly in the fields of medicine, agriculture and industry. By the end of the Truman Administration, the pre-eminence of the United States in the nuclear field was clearly established, and we were on the threshold of large-scale development of industrial nuclear energy at home and as an instrument of world peace.

National Party Platforms, Democratic Platform of 1956, p.541

The Eisenhower Administration promptly reversed the field and plunged the previously independent and nonpartisan Atomic Energy Commission into partisan politics. For example, President Eisenhower ordered the Commission to sign the scandalous Dixon-Yates contract. He was later forced to repudiate the same contract, after the exposure of the illegal activities of one of his own consultants with a secret office in the Bureau of the Budget.

National Party Platforms, Democratic Platform of 1956, p.541

The Republican Administration has followed the same pattern in the field of atomic energy that it has pursued in its treatment of other natural resources—lofty words, little action, but steady service to selfish interests. While the AEC and the special private interests consult and confer, the United States is lagging instead of leading in the world race for nuclear power, international prestige and world markets.

National Party Platforms, Democratic Platform of 1956, p.541

The Democrats in Congress believed that the national interest thus became imperiled, and they moved to meet the challenge both at home and abroad. They established a nonpartisan panel of eminent Americans to study the impact of the peaceful atom.

National Party Platforms, Democratic Platform of 1956, p.541

Following the comprehensive report of this panel, the Joint Congressional Committee on Atomic Energy held extensive hearings on bills to accelerate the atomic reactor demonstration program. Though the bills were reported unanimously from committee, the Republican members of Congress, under heavy pressure from the White House, insured the final defeat of this legislation in the Congress.

National Party Platforms, Democratic Platform of 1956, p.541

But the fight to bring nuclear power to the people has only begun. As the United States was first in the development of the atom as a weapon, so the United States must lead in bringing the blessings of the peaceful uses of nuclear energy to mankind.

National Party Platforms, Democratic Platform of 1956, p.541

Hence, the Democratic Party pledges itself:

National Party Platforms, Democratic Platform of 1956, p.541

(1) To restore nonpartisan administration of the vital atomic energy program and to expand and accelerate nuclear development by vigorous action:

National Party Platforms, Democratic Platform of 1956, p.541

(2) To accelerate the domestic civilian atomic power program by the construction of a variety of demonstration prototype reactors;

National Party Platforms, Democratic Platform of 1956, p.541

(3) To give reality—life and meaning—to the "Atoms for Peace" program. We will substitute deeds for words;

National Party Platforms, Democratic Platform of 1956, p.541

(4) To increase the production of fissionable material for use in a stockpile for peacetime commitments at home and abroad, and for an ever-present reserve for weapons to guarantee freedom in the world;

National Party Platforms, Democratic Platform of 1956, p.541

(5) To conduct a comprehensive survey of radiation hazards from bomb tests and reactor operations, in order to determine what additional measures are required to protect existing and future generations from these invisible dangers; and

National Party Platforms, Democratic Platform of 1956, p.541

(6) To make the maximum contribution to the defense of our Nation and the free world through the development of a balanced and flexible stockpile of nuclear weapons, containing a sufficient number and variety to support our armed services in any contingency.

XI. Civil Rights

National Party Platforms, Democratic Platform of 1956, p.541

The Democratic Party is committed to support and advance the individual rights and liberties of all Americans. Our country is founded on the proposition that all men are created equal. This means that all citizens are equal before the law and should enjoy all political rights. They should have equal opportunities for education, for economic advancement, and for decent living conditions.

National Party Platforms, Democratic Platform of 1956, p.541

We will continue our efforts to eradicate discrimination based on race, religion or national origin. We know this task requires action, not just in one section of the Nation, but in all sections. It requires the cooperative efforts of individual citizens, and action by State and local governments. It also requires Federal action. The Federal Government must live up to the ideals of the Declaration of Independence and must exercise the powers vested in it by the Constitution.

National Party Platforms, Democratic Platform of 1956, p.541

We are proud of the record of the Democratic Party in securing equality of treatment and opportunity in the nation's armed forces, the Civil [p.542] Service, and in all areas under Federal jurisdiction. The Democratic Party pledges itself to continue its efforts to eliminate illegal discriminations of all kinds, in relation to (1) full rights to vote, (2) full rights to engage in gainful occupations, (3) full rights to enjoy security of the person, and (4) full rights to education in all publicly supported institutions.

National Party Platforms, Democratic Platform of 1956, p.542

Recent decisions of the Supreme Court of the United States relating to segregation in publicly supported schools and elsewhere have brought consequences of vast importance to our Nation as a whole and especially to communities directly affected. We reject all proposals for the use of force to interfere with the orderly determination of these matters by the courts.

National Party Platforms, Democratic Platform of 1956, p.542

The Democratic Party emphatically reaffirms its support of the historic principle that ours is a government of laws and not of men; it recognizes the Supreme Court of the United States as one of the three Constitutional and coordinate branches of the Federal Government, superior to and separate from any political party, the decisions of which are part of the law of the land. We condemn the efforts of the Republican Party to make it appear that this tribunal is a part of the Republican Party.

National Party Platforms, Democratic Platform of 1956, p.542

We condemn the Republican Administration's violation of the rights of Government employees by a heartless and unjustified confusing of "security" and "loyalty" for the sole purpose of political gain and regardless of consequences to individual victims and to the good name of the United States. We condemn the Republican Administration's misrepresentation of facts and violation of individual rights in a wicked and unprincipled attempt to degrade and destroy the Democratic Party, and to make political capital for the Republican Party.

Republican Platform of 1956

Title: Republican Platform of 1956

Author: Republican Party

Date: 1956

Source: National Party Platforms, pp.545-562

Declaration of Faith

National Party Platforms, Republican Platform of 1956, p.545

America's trust is in the merciful providence of God, in whose image every man is created…the source of every man's dignity and freedom.

National Party Platforms, Republican Platform of 1956, p.545

In this trust our Republic was founded. We give devoted homage to the Founding Fathers. They not only proclaimed that the freedom and rights of men came from the Creator and not from the State, but they provided safeguards to those freedoms.

National Party Platforms, Republican Platform of 1956, p.545

Our Government was created by the people for all the people, and it must serve no less a purpose.

National Party Platforms, Republican Platform of 1956, p.545

The Republican Party was formed 100 years ago to preserve the Nation's devotion to these ideals.

National Party Platforms, Republican Platform of 1956, p.545

On its Centennial, the Republican Party again calls to the minds of all Americans the great truth first spoken by Abraham Lincoln: "The legitimate object of Government is to do for a community of people whatever they need to have done but cannot do at all, or cannot so well do, for themselves in their separate and individual capacities. But in all that people can individually do as well for themselves, Government ought not to interfere."

National Party Platforms, Republican Platform of 1956, p.545

Our great President Dwight D. Eisenhower has counseled us further: "In all those things which deal with people, be liberal, be human. In all those things which deal with people's money, or their economy, or their form of government, be conservative."

National Party Platforms, Republican Platform of 1956, p.545

While jealously guarding the free institutions and preserving the principles upon which our Republic was founded and has flourished, the purpose of the Republican Party is to establish and maintain a peaceful world and build at home a dynamic prosperity in which every citizen fairly shares.

National Party Platforms, Republican Platform of 1956, p.545

We shall ever build anew, that our children and their children, without distinction because of race, creed or color, may know the blessings of our free land.

National Party Platforms, Republican Platform of 1956, p.545

We believe that basic to governmental integrity are unimpeachable ethical standards and irreproachable personal conduct by all people in government. We shall continue our insistence on honesty as an indispensable requirement of public service. We shall continue to root out corruption whenever and wherever it appears.

National Party Platforms, Republican Platform of 1956, p.545

We are proud of and shall continue our far-reaching and sound advances in matters of basic human needs—expansion of social security—broadened coverage in unemployment insurance —improved housing—and better health protection for all our people. We are determined that our government remain warmly responsive to the urgent social and economic problems of our people.

National Party Platforms, Republican Platform of 1956, p.545

To these beliefs we commit ourselves as we present this record and declare our goals for the future.

National Party Platforms, Republican Platform of 1956, p.545

Nearly four years ago when the people of this Nation entrusted their Government to President Eisenhower and the Republican Party, we were locked in a costly and stalemated war. Now we have an honorable peace, which has stopped the bitter toll in casualties and resources, ended depressing wartime restraints, curbed the runaway inflation and unleashed the boundless energy of our people to forge forward on the road to progress.

National Party Platforms, Republican Platform of 1956, p.545

In four years we have achieved the highest economic level with the most widely shared benefits that the world has ever seen. We of the Republican Party have fostered this prosperity and are dedicated to its expansion and to the preservation of the climate in which it has thrived.

National Party Platforms, Republican Platform of 1956, p.545

We are proud of our part in bringing into a position of unique authority in the world one who symbolizes, as can no other man, the hopes of all [p.546] peoples for peace, liberty and justice. One leader in the world today towers above all others and inspires the trust, admiration, confidence and good will of all the peoples of every nation—Dwight D. Eisenhower. Under his leadership, the Republican Administration has carried out foreign policies which have enabled our people to enjoy in peace the blessings of liberty. We shall continue to work unceasingly for a just and enduring peace in a world freed of tyranny.

National Party Platforms, Republican Platform of 1956, p.546

Every honorable means at our command has been exercised to alleviate the grievances and causes of armed conflict among nations. The advance of Communism and its enslavement of people has been checked, and, at key points, thrown back. Austria, Iran and Guatemala have been liberated from Kremlin control. Forces of freedom are at work in the nations still enslaved by Communist imperialism.

National Party Platforms, Republican Platform of 1956, p.546

We firmly believe in the right of peoples everywhere to determine their form of government, their leaders, their destiny, in peace. Where needed, in order to promote peace and freedom throughout the world, we shall within the prudent limits of our resources, assist friendly countries in their determined efforts to strengthen their economies.

National Party Platforms, Republican Platform of 1956, p.546

We hold high hopes for useful service to mankind in the power of the atom. We shall generously assist the International Atomic Energy Agency, now evolving from President Eisenhower's "Atoms for Peace" proposal, in an effort to find ways to dedicate man's genius not to his death, but to his life.

National Party Platforms, Republican Platform of 1956, p.546

We maintain that no treaty or international agreement can deprive any of our citizens of Constitutional rights. We shall see to it that no treaty or agreement with other countries attempts to deprive our citizens of the rights guaranteed them by the Federal Constitution.

National Party Platforms, Republican Platform of 1956, p.546

President Eisenhower has given the world bold proposals for mutual arms reduction and protection against aggression through flying sentinels in an "open sky."

National Party Platforms, Republican Platform of 1956, p.546

We support this and his further offer of United States participation in an international fund for economic development financed from the savings brought by true disarmament. We approve his determined resistance to disarmament without effective inspection.

National Party Platforms, Republican Platform of 1956, p.546

We work and pray for the day when the domination of any people from any source will have ended, and when there will be liberation and true freedom for the hundreds of millions of individuals now held in subjugation. We shall continue to dedicate our best efforts to this lofty purpose.

National Party Platforms, Republican Platform of 1956, p.546

We shall continue vigorously to support the United Nations.

National Party Platforms, Republican Platform of 1956, p.546

We shall continue to oppose the seating of Communist China in the United Nations.

National Party Platforms, Republican Platform of 1956, p.546

We shall maintain our powerful military strength as a deterrent to aggression and as a guardian of the peace. We shall maintain it ready, balanced and technologically advanced for these objectives only.

National Party Platforms, Republican Platform of 1956, p.546

Good times in America have reached a breadth and depth never before known by any nation. Moreover, it is a prosperity of a nation at peace, not at war. We shall continue to encourage the good business and sound employee relationships which have made possible for the first time in our history a productive capacity of more than $400 billion a year. Nearly 67 million people have full-time jobs, with real wages and personal income at record highs.

National Party Platforms, Republican Platform of 1956, p.546

The farmers of America are at last able to look to the future with a confidence based on expanding peacetime markets instead of on politically contrived formulas foredoomed to fail except in a wartime economy. The objective is to insure that agriculture shares fairly and fully in our record prosperity without needless Federal meddlings and domination.

National Party Platforms, Republican Platform of 1956, p.546

Restoration of integrity in government has been an essential element to the achievement of our unparalleled good times. We will faithfully preserve the sound financial management which already has reduced annual spending $14 billion below the budgets planned by our Democratic predecessors and made possible in 1954 a $7.4-billion tax cut, the largest one-year tax reduction in history.

National Party Platforms, Republican Platform of 1956, p.546

We will ever fight the demoralizing influence of inflation as a national way of life. We are proud to have fulfilled our 1952 pledge to halt the skyrocketing cost of living that in the previous 13 years had cut the value of the dollar by half, and robbed millions of the full value of their wages, savings, insurance, pensions and social security.

National Party Platforms, Republican Platform of 1956, p.547

We have balanced the budget. We believe [p.547] and will continue to prove that thrift, prudence and a sensible respect for living within income applies as surely to the management of our Government's budget as it does to the family budget.

National Party Platforms, Republican Platform of 1956, p.547

We hold that the major world issue today is whether Government shall be the servant or the master of men. We hold that the Bill of Rights is the sacred foundation of personal liberty. That men are created equal needs no affirmation, but they must have equality of opportunity and protection of their civil rights under the law.

National Party Platforms, Republican Platform of 1956, p.547

We hold that the strict division of powers and the primary responsibility of State and local governments must be maintained, and that the centralization of powers in the national Government leads to expansion of the mastery of our lives,

National Party Platforms, Republican Platform of 1956, p.547

We hold that the protection of the freedom of men requires that budgets be balanced, waste in government eliminated, and taxes reduced.

National Party Platforms, Republican Platform of 1956, p.547

In these and all other areas of proper Government concern, we pledge our best thought and whole energy to a continuation of our prized peace, prosperity and progress.

National Party Platforms, Republican Platform of 1956, p.547

For our guidance in fulfilling this responsibility, President Eisenhower has given us a statement of principles that is neither partisan nor prejudiced, but warmly American:

National Party Platforms, Republican Platform of 1956, p.547

The individual is of supreme importance.

National Party Platforms, Republican Platform of 1956, p.547

The spirit of our people is the strength of our nation.

National Party Platforms, Republican Platform of 1956, p.547

America does not prosper unless all Americans prosper.

National Party Platforms, Republican Platform of 1956, p.547

Government must have a heart as well as a head.

National Party Platforms, Republican Platform of 1956, p.547

Courage in principle, cooperation in practice make freedom positive.

National Party Platforms, Republican Platform of 1956, p.547

To stay free, we must stay strong.

National Party Platforms, Republican Platform of 1956, p.547

Under God, we espouse the cause of freedom and justice and peace for all peoples. Embracing these guides to positive, constructive action, and in their rich spirit, we ask the support of the American people for the election of a Republican Congress and the re-election of the Nation's devoted and dedicated leader—Dwight D. Eisenhower.

Declaration of Determination

National Party Platforms, Republican Platform of 1956, p.547

In the interest of complete public understanding, elaboration of Republican aspirations and achievements is desirable in the areas of broadest public concern.

Dynamic Economy—Free Labor

Taxation and Fiscal Policy

National Party Platforms, Republican Platform of 1956, p.547

The Republican Party takes pride in calling attention to the outstanding fiscal achievements of the Eisenhower Administration, several of which are mentioned in the foreword to these resolutions.

National Party Platforms, Republican Platform of 1956, p.547

In order to progress further in correcting the unfortunate results of unwise financial management during 20 years of Democrat Administrations, we pledge to pursue the following objectives:

National Party Platforms, Republican Platform of 1956, p.547

Further reductions in Government spending as recommended in the Hoover Commission Report, without weakening the support of a superior defense program or depreciating the quality of essential services of government to our people.

National Party Platforms, Republican Platform of 1956, p.547

Continued balancing of the budget, to assure the financial strength of the country which is so vital to the struggle of the free world in its battle against Communism; and to maintain the purchasing power of a sound dollar, and the value of savings, pensions and insurance.

National Party Platforms, Republican Platform of 1956, p.547

Gradual reduction of the national debt.

National Party Platforms, Republican Platform of 1956, p.547

Then, insofar as consistent with a balanced budget, we pledge to work toward these additional objectives:

National Party Platforms, Republican Platform of 1956, p.547

Further reductions in taxes with particular consideration for low and middle income families.

National Party Platforms, Republican Platform of 1956, p.547

Initiation of a sound policy of tax reductions which will encourage small independent businesses to modernize and progress.

National Party Platforms, Republican Platform of 1956, p.547

Continual study of additional ways to correct inequities in the effect of various taxes.

National Party Platforms, Republican Platform of 1956, p.547

Consistent with the Republican Administration's accomplishment in stemming the inflation —which under five Democrat Administrations had cut the value of the dollar in half, and so had robbed the wage earner and millions of thrifty citizens who had savings, pensions and insurance—we endorse the present policy of freedom for the Federal Reserve System to combat both inflation and deflation by wise fiscal policy.

National Party Platforms, Republican Platform of 1956, p.547

The Republican Party believes that sound money, which retains its buying power, is an essential foundation for new jobs, a higher standard [p.548] of living, protection of savings, a secure national defense, and the general economic growth of the country.

Business and Economic Policy

National Party Platforms, Republican Platform of 1956, p.548

The Republican Party has as a primary concern the continued advancement of the well-being of the individual. This can be attained only in an economy that, as today, is sound, free and creative, ever building new wealth and new jobs for all the people.

National Party Platforms, Republican Platform of 1956, p.548

We believe in good business for all business—small, medium and large. We believe that competition in a free economy opens unrivaled opportunity and brings the greatest good to the greatest number.

National Party Platforms, Republican Platform of 1956, p.548

The sound economic policies of the Eisenhower Administration have created an atmosphere of confidence in which good businesses flourish and can plan for growth to create new job opportunities for our expanding population.

National Party Platforms, Republican Platform of 1956, p.548

We have eliminated a host of needless controls. To meet the immense demands of our expanding economy, we have initiated the largest highway, air and maritime programs in history, each soundly financed.

National Party Platforms, Republican Platform of 1956, p.548

We shall continue to advocate the maintenance and expansion of a strong, efficient, privately-owned and operated and soundly financed system of transportation that will serve all of the needs of our Nation under Federal regulatory policies that will enable each carrier to realize its inherent economic advantages and its full competitive capabilities.

National Party Platforms, Republican Platform of 1956, p.548

We recognize the United States' world leadership in aviation, and we shall continue to encourage its technical development and vigorous expansion. Our goal is to support and sponsor air services and to make available to our citizens the safest and most comprehensive air transportation. We favor adequate funds and expeditious action in improving air safety, and highest efficiency in the control of air traffic.

National Party Platforms, Republican Platform of 1956, p.548

We stand for forward-looking programs, created to replace our war-built merchant fleet with the most advanced types in design, with increased speed. Adaptation of new propulsion power units, including nuclear, must be sponsored and achieved.

National Party Platforms, Republican Platform of 1956, p.548

We should proceed with the prompt construction of the Atomic Powered Peace Ship in order that we may demonstrate to the world, in this as in other fields, the peaceful uses of the atom.

National Party Platforms, Republican Platform of 1956, p.548

Our steadily rising prosperity is constantly reflecting the confidence of our citizens in the policies of our Republican Administration.

Small Business

National Party Platforms, Republican Platform of 1956, p.548

We pledge the continuation and improvement of our drive to aid small business. Every constructive potential avenue of improvement both legislative and executive—has been explored in our search for ways in which to widen opportunities for this important segment of America's economy.

National Party Platforms, Republican Platform of 1956, p.548

Beginning with our creation of the very successful Small Business Administration, and continuing through the recently completed studies and recommendations of the Cabinet Committee on Small Business, which we strongly endorse, we have focused our attention on positive measures to help small businesses get started and grow.

National Party Platforms, Republican Platform of 1956, p.548

Small Business can look forward to expanded participation in federal procurement—valuable financing and technical aids—a continuously vigorous enforcement of anti-trust laws—important cuts in the burdens of paper work, and certain tax reductions as budgetary requirements permit.

National Party Platforms, Republican Platform of 1956, p.548

Small business now is receiving approximately one-third, dollar-wise, of all Defense contracts. We recommend a further review of procurement procedures for all defense departments and agencies with a view to facilitating and extending such participation for the further benefit of Small Business.

National Party Platforms, Republican Platform of 1956, p.548

We favor loans at reasonable rates of interest to small businesses which have records of permanency but who are in temporary need and which are unable to obtain credit in commercial channels. We recommend an extension at the earliest opportunity of the Small Business Administration which is now scheduled to expire in mid 1957.

National Party Platforms, Republican Platform of 1956, p.548

We also propose:

National Party Platforms, Republican Platform of 1956, p.548

Additional technical research in problems of development and distribution for the benefit of small business;

National Party Platforms, Republican Platform of 1956, p.548

Legislation to enable closer Federal scrutiny of mergers which have a significant or potential monopolistic connotations;

National Party Platforms, Republican Platform of 1956, p.549

[p.549] Procedural changes in the antitrust laws to facilitate their enforcement;

National Party Platforms, Republican Platform of 1956, p.549

Simplification of wage reporting by employers for purposes of social security records and income tax withholding;

National Party Platforms, Republican Platform of 1956, p.549

Continuance of the vigorous SEC policies which are providing maximum protection to the investor and maximum opportunity for the financing of small business without costly red tape.

Labor

National Party Platforms, Republican Platform of 1956, p.549

Under the Republican Administration, as our country has prospered, so have its people. This is as it should be, for as President Eisenhower said: "Labor is the United States. The men and women, who with their minds, their hearts and hands, create the wealth that is shared in this country—they are America."

National Party Platforms, Republican Platform of 1956, p.549

The Eisenhower Administration has brought to our people the highest employment, the highest wages and the highest standard of living ever enjoyed by any nation. Today there are nearly 67 million men and women at work in the United States, 4 million more than in 1952. Wages have increased substantially over the past 3 1/2 years; but, more important, the American wage earner today can buy more than ever before for himself and his family because his pay check has not been eaten away by rising taxes and soaring prices.

National Party Platforms, Republican Platform of 1956, p.549

The record of performance of the Republican Administration on behalf of our working men and women goes still further. The Federal minimum wage has been raised for more than 2 million workers. Social Security has been extended to an additional 10 million workers and the benefits raised for 6 1/2 million. The protection of unemployment insurance has been brought to 4 million additional workers. There have been increased workmen's compensation benefits for longshoremen and harbor workers, increased retirement benefits for railroad employees, and wage increases and improved welfare and pension plans for federal employees.

National Party Platforms, Republican Platform of 1956, p.549

In addition, the Eisenhower Administration has enforced more vigorously and effectively than ever before, the laws which protect the working standards of our people.

National Party Platforms, Republican Platform of 1956, p.549

Workers have benefited by the progress which has been made in carrying out the programs and principles set forth in the 1952 Republican platform. All workers have gained and unions have grown in strength and responsibility, and have increased their membership by 2 millions.

National Party Platforms, Republican Platform of 1956, p.549

Furthermore, the process of free collective bargaining has been strengthened by the insistence of this Administration that labor and management settle their differences at the bargaining table without the intervention of the Government. This policy has brought to our country an unprecedented period of labor-management peace and understanding.

National Party Platforms, Republican Platform of 1956, p.549

We applaud the effective, unhindered, collective bargaining which brought an early end to the 1956 steel strike, in contrast to the six months' upheaval, Presidential seizure of the steel industry and ultimate Supreme Court intervention under the last Democrat Administration.

National Party Platforms, Republican Platform of 1956, p.549

The Eisenhower Administration will continue to fight for dynamic and progressive programs which, among other things, will:

National Party Platforms, Republican Platform of 1956, p.549

Stimulate improved job safety of our workers, through assistance to the States, employees and employers;

National Party Platforms, Republican Platform of 1956, p.549

Continue and further perfect its programs of assistance to the millions of workers with special employment problems, such as older workers, handicapped workers, members of minority groups, and migratory workers;

National Party Platforms, Republican Platform of 1956, p.549

Strengthen and improve the Federal-State Employment Service and improve the effectiveness of the unemployment insurance system;

National Party Platforms, Republican Platform of 1956, p.549

Protect by law, the assets of employee welfare and benefit plans so that workers who are the beneficiaries can be assured of their rightful benefits;

National Party Platforms, Republican Platform of 1956, p.549

Assure equal pay for equal work regardless of Sex;

National Party Platforms, Republican Platform of 1956, p.549

Clarify and strengthen the eight-hour laws for the benefit of workers who are subject to federal wage standards on Federal and Federally-assisted construction, and maintain and continue the vigorous administration of the Federal prevailing minimum wage law for public supply contracts;

National Party Platforms, Republican Platform of 1956, p.549

Extend the protection of the Federal minimum wage laws to as many more workers as is possible and practicable;

National Party Platforms, Republican Platform of 1956, p.549

Continue to fight for the elimination of discrimination in employment because of race, creed, color, national origin, ancestry or sex;

National Party Platforms, Republican Platform of 1956, p.550

Provide assistance to improve the economic [p.550] conditions of areas faced with persistent and substantial unemployment;

National Party Platforms, Republican Platform of 1956, p.550

Revise and improve the Taft-Hartley Act so as to protect more effectively the rights of labor unions, management, the individual worker, and the public. The protection of the right of workers to organize into unions and to bargain collectively is the firm and permanent policy of the Eisenhower Administration. In 1954, 1955 and again in 1956, President Eisenhower recommended constructive amendments to this Act. The Democrats in Congress have consistently blocked these needed changes by parliamentary maneuvers. The Republican Party pledges itself to overhaul and improve the Taft-Hartley Act along the lines of these recommendations.

Human Welfare and Advancement

Health, Education and Welfare

National Party Platforms, Republican Platform of 1956, p.550

The Republican Party believes that the physical, mental, and spiritual well-being of the people is as important as their economic health. It will continue to support this conviction with vigorous action.

National Party Platforms, Republican Platform of 1956, p.550

Republican action created the Department of Health, Education and Welfare as the first new Federal department in 40 years, to raise the continuing consideration of these problems for the first time to the highest council of Government, the President's Cabinet.

National Party Platforms, Republican Platform of 1956, p.550

Through the White House Conference on Education, our Republican Administration initiated the most comprehensive Community-State-Federal attempt ever made to solve the pressing problems of primary and secondary education.

National Party Platforms, Republican Platform of 1956, p.550

Four thousand communities, studying their school populations and their physical and financial resources, encouraged our Republican Administration to urge a five-year program of Federal assistance in building schools to relieve a critical classroom shortage.

National Party Platforms, Republican Platform of 1956, p.550

The Republican Party will renew its efforts to enact a program based on sound principles of need and designed to encourage increased state and local efforts to build more classrooms.

National Party Platforms, Republican Platform of 1956, p.550

Our Administration also proposed for the first time in history, a thorough nation-wide analysis of rapidly growing problems in education beyond the high schools.

National Party Platforms, Republican Platform of 1956, p.550

The Republican Party is determined to press all such actions that will help insure that every child has the educational opportunity to advance to his own greatest capacity.

National Party Platforms, Republican Platform of 1956, p.550

We have fully resolved to continue our steady gains in man's unending struggle against disease and disability.

National Party Platforms, Republican Platform of 1956, p.550

We have supported the distribution of free vaccine to protect millions of children against dreaded polio.

National Party Platforms, Republican Platform of 1956, p.550

Republican leadership has enlarged Federal assistance for construction of hospitals, emphasizing low-cost care of chronic diseases and the special problems of older persons, and increased Federal aid for medical care of the needy.

National Party Platforms, Republican Platform of 1956, p.550

We have asked the largest increase in research funds ever sought in one year to intensify attacks on cancer, mental illness, heart disease and other dread diseases.

National Party Platforms, Republican Platform of 1956, p.550

We demand once again, despite the reluctance of the Democrat 84th Congress, Federal assistance to help build facilities to train more physicians and scientists.

National Party Platforms, Republican Platform of 1956, p.550

We have encouraged a notable expansion and improvement of voluntary health insurance, and urge that reinsurance and pooling arrangements be authorized to speed this progress.

National Party Platforms, Republican Platform of 1956, p.550

We have strengthened the Food and Drug Administration, and we have increased the vocational rehabilitation program to enable a larger number of the disabled to return to satisfying activity.

National Party Platforms, Republican Platform of 1956, p.550

We have supported measures that have made more housing available than ever before in history, reduced urban slums in local-federal partnership, stimulated record home ownership, and authorized additional low-rent public housing.

National Party Platforms, Republican Platform of 1956, p.550

We initiated the first flood insurance program in history under Government sponsorship in cooperation with private enterprise.

National Party Platforms, Republican Platform of 1956, p.550

We shall continue to seek extension and perfection of a sound social security system.

National Party Platforms, Republican Platform of 1956, p.550

We pledge close cooperation with State, local and private agencies to reduce the ghastly toll of fatalities on the Nation's highways.

Rural America's Recovery—Agriculture

National Party Platforms, Republican Platform of 1956, p.550

The men and women operating the farms and ranches of America have confidence in President Eisenhower and the Republican farm program. Our farmers have earned the respect and appreciation [p.551] of our entire nation for their energy, resourcefulness, efficiency, and ability.

National Party Platforms, Republican Platform of 1956, p.551

Agriculture, our basic industry, must remain free and prosperous. The Republican Party will continue to move boldly to help the farmer obtain his full share of the rewards of good business and good Government. It is committed to a program for agriculture which creates the widest possible markets and highest attainable income for our farm and ranch families. This program must be versatile and flexible to meet effectively the impact of rapidly changing conditions. It does not envision making farmers dependent upon direct governmental payments for their incomes. Our objective is markets which return full parity to our farm and ranch people when they sell their products. There is no simple, easy answer to farm problems. Our approach as ever is a many-sided, versatile and positive program to help all farmers and ranchers.

National Party Platforms, Republican Platform of 1956, p.551

Farm legislation, developed under the Democrat Administration to stimulate production in wartime, carried a built-in mechanism for the accumulation of price-depressing surpluses in peacetime. Under laws sponsored by the Republican Administration, almost $7 billion in price-depressing surplus farm products have been moved into use, and the rate of movement is being accelerated.

National Party Platforms, Republican Platform of 1956, p.551

Agriculture is successfully making the transition from wartime to peacetime markets, with less disruption than at any time after a great war. We are gratified by the improvement this year in farm prices and income as a result of our policies.

National Party Platforms, Republican Platform of 1956, p.551

Our Republican Administration fostered a constructive Soil Bank Program further to reduce surpluses and to permit improvement of our soil, water and timber resources. The Democrat Party tactics of obstruction and delay have prevented our farm families from receiving the full benefits of this program in 1956.

National Party Platforms, Republican Platform of 1956, p.551

However, by aggressive action, we now have the Soil Bank in operation, and in 3 months, half a million farmers have contracted to shift more than 10 million acres from producing more surpluses to a soil reserve for the future. For this they already have earned $225 million.

National Party Platforms, Republican Platform of 1956, p.551

This program is a sound aid to removing the burdens of surpluses which Democrat programs placed on farmers. It is now moving into full operation.

National Party Platforms, Republican Platform of 1956, p.551

Benefits of Social Security have been extended to farm families. Programs of loans and grants for farm families hit by flood and drought have been made operative.

National Party Platforms, Republican Platform of 1956, p.551

Tax laws were improved to help farmers with respect to livestock, farm equipment, and conservation practices. We initiated action to refund to the farmers $60 million annually in taxes on gasoline used in machinery on the farm.

National Party Platforms, Republican Platform of 1956, p.551

Cooperation between the U. S. Department of Agriculture, the State Departments of Agriculture and land grant colleges and universities is at an all-time high. This Republican Administration has increased support for agricultural research and education to the highest level in history. New records of assistance to farm and ranch families in soil and water conservation were attained in every year of this Republican Administration.

National Party Platforms, Republican Platform of 1956, p.551

Convinced that the Government should ever be the farmer's helper, never his master, the Republican Party is pledged:

National Party Platforms, Republican Platform of 1956, p.551

To establish an effective, new research program, fully and completely implemented to find and vigorously promote new uses for farm crops;

National Party Platforms, Republican Platform of 1956, p.551

To move our agriculture commodities into use at home and abroad, and to use every appropriate and effective means to improve marketing, so that farmers can produce and sell their products to increase their income and enjoy an improving level of living;

National Party Platforms, Republican Platform of 1956, p.551

To encourage the improvement of quality in farm products through agricultural research, education and price support differentials, thus increasing market acceptance both at home and abroad;

National Party Platforms, Republican Platform of 1956, p.551

To further help and cooperate with the several States as co-equals with the federal government to provide needed research, education, service and regulatory programs;

National Party Platforms, Republican Platform of 1956, p.551

To develop farm programs that are fair to all farmers;

National Party Platforms, Republican Platform of 1956, p.551

To work toward full freedom instead of toward more regimentation, developing voluntary rather than oppressive farm programs;

National Party Platforms, Republican Platform of 1956, p.551

To encourage agricultural producers in their efforts to seek solutions to their own production and price problems;

National Party Platforms, Republican Platform of 1956, p.551

To provide price supports as in the Agricultural Act of 1954 that protect farmers, rather than price their products out of the market;

National Party Platforms, Republican Platform of 1956, p.552

To continue our commodity loan and marketing [p.552] agreement programs as effective marketing tools;

National Party Platforms, Republican Platform of 1956, p.552

To make every effort to develop a more accurate measurement of farm parity;

National Party Platforms, Republican Platform of 1956, p.552

To safeguard our precious soil and water resources for generations yet unborn;

National Party Platforms, Republican Platform of 1956, p.552

To encourage voluntary self-supporting federal crop insurance;

National Party Platforms, Republican Platform of 1956, p.552

To bring sympathetic and understanding relief promptly to farm and ranch families hard hit with problems of drought, flood or other natural disaster, or economic disaster, and to maintain the integrity of these programs by terminating them when the emergency is over;

National Party Platforms, Republican Platform of 1956, p.552

To assist the young people of American farms and ranches in their development as future farmers and homemakers;

National Party Platforms, Republican Platform of 1956, p.552

To continue and expand the Republican-sponsored school milk program, to encourage further use of the school lunch program now benefiting 11 million children, and to foster improved nutritional levels;

National Party Platforms, Republican Platform of 1956, p.552

To provide constructive assistance by effective purchase and donation to ease temporary market surpluses, especially for the producers of perishable farm products;

National Party Platforms, Republican Platform of 1956, p.552

To give full support to farmer-owned and farmer-operated co-operatives;

National Party Platforms, Republican Platform of 1956, p.552

To encourage and assist adequate private and cooperative sources of credit, to provide supplemental credit through the Farmers Home Administration where needed, with an understanding of both the human and economic problems of farmers and ranchers;

National Party Platforms, Republican Platform of 1956, p.552

To expand rural electrification through REA loans for generation and transmission, and to expand rural communication facilities;

National Party Platforms, Republican Platform of 1956, p.552

To continue the improvement of rural mail delivery to farm families;

National Party Platforms, Republican Platform of 1956, p.552

To promote fully the Republican-sponsored Rural-Development Program to broaden the operation and increase the income of low income farm families and help tenant farmers;

National Party Platforms, Republican Platform of 1956, p.552

To work with farmers, ranchers and others to carry forward the Great Plains program to achieve wise use of lands in the area subject to wind erosion, so that the people of this region can enjoy a higher standard of living; and in summation:

National Party Platforms, Republican Platform of 1956, p.552

To keep agriculture strong, free, attuned to peace and not war, to stand ready with a reserve

National Party Platforms, Republican Platform of 1956, p.552

capacity at all times as a part of our defense, based on sound agricultural economy.

National Party Platforms, Republican Platform of 1956, p.552

We are an expanding nation. Our needs for farm products will continue to grow. Farm prices are improving and farm income is climbing.

National Party Platforms, Republican Platform of 1956, p.552

Our farm and ranch people are confident of the future, despite efforts to frighten them into accepting economic nostrums and political panaceas. Record numbers of farms are owned by those who operate them.

National Party Platforms, Republican Platform of 1956, p.552

The Republican Party is pledged to work for improved farm prices and farm income. We will seek that improvement boldly, in ways that protect the family farm. Our objective is a prosperous, expanding and free agriculture. We are dedicated to creating the opportunity for farmers to earn a high per-family income in a world at peace.

Federal Government Integrity

National Party Platforms, Republican Platform of 1956, p.552

The Republican Party is wholeheartedly committed to maintaining a Federal Government that is clean, honorable and increasingly efficient. It proudly affirms that it has achieved this kind of Government and dedicated it to the service of all the people.

National Party Platforms, Republican Platform of 1956, p.552

Our many economic and social advances of the past four years are the result of our faithful adherence to our 1952 pledge to reverse a 20-year Democratic philosophy calling for more and more power in Washington.

National Party Platforms, Republican Platform of 1956, p.552

We have left no stone unturned to remove from Government the irresponsible and those whose employment was not clearly consistent with national security.

National Party Platforms, Republican Platform of 1956, p.552

We believe that working for the Government is not a right but a privilege. Based on that principle we will continue a security program to make certain that all people employed by our Government are of unquestioned loyalty and trustworthiness. The Republican Party will, realistically and in conformity with constitutional safeguards for the individual, continue to protect our national security by enforcing our laws fairly, vigorously, and with certainty. We will act through the new division established to this end in the Department of Justice, and by close coordination among the intelligence services.

National Party Platforms, Republican Platform of 1956, p.552

We promise unwavering vigilance against corruption and waste, and shall continue so to manage the public business as to warrant our [p.553] people's full confidence in the integrity of their Government.

National Party Platforms, Republican Platform of 1956, p.553

We condemn illegal lobbying for any cause and improper use of money in political activities, including the use of funds collected by compulsion for political purposes contrary to the personal desires of the individual.

Efficiency and Economy in Government.

National Party Platforms, Republican Platform of 1956, p.553

We pledge to continue our far reaching program for improving the efficiency and the effectiveness of the Federal Government in accordance with the principles set forth in the report of the Hoover Commission.

National Party Platforms, Republican Platform of 1956, p.553

We are unalterably opposed to unwarranted growth of centralized Federal power. We shall carry forward the worthy effort of the Kestnbaum Commission on Intergovernmental Affairs to clarify Federal relationships and strengthen State and local government.

National Party Platforms, Republican Platform of 1956, p.553

We shall continue to dispense with Federal activities wrongfully competing with private enterprise, and take other sound measures to reduce the cost of Government.

Governmental Affairs

Postal Service.

National Party Platforms, Republican Platform of 1956, p.553

In the last four years, under direction from President Eisenhower to improve the postal service and reduce costs, we have modernized and revitalized the postal establishment from top to bottom, inside and out. We have undertaken and substantially completed the largest reorganization ever to take place in any unit of business or government:

National Party Platforms, Republican Platform of 1956, p.553

We have provided more than 1200 badly-needed new post office buildings, and are adding two more every day. We are using the very latest types of industrial equipment where practicable; and, through a program of research and engineering, we are inventing new mechanical and electronic devices to speed the movement of mail by eliminating tedious old-fashioned methods.

National Party Platforms, Republican Platform of 1956, p.553

We have improved service across the country in hundreds of ways. We have extended city carrier service to millions of new homes in thousands of urban and suburban communities which have grown and spread under the favorable economic conditions brought about by the Eisenhower Administration.

National Party Platforms, Republican Platform of 1956, p.553

We have re-inspired the morale of our half-million employees through new programs of promotion based on ability, job training and safety, and through our sponsorship of increased pay and fringe benefits.

National Party Platforms, Republican Platform of 1956, p.553

We have adopted the most modern methods of transportation, accounting and cost control, and other operating procedures; through them we have saved many millions of dollars a year for the taxpayers while advancing the delivery of billions of letters by a day or more—all this while reducing the enormous deficit of the Department from its all time high of almost three-quarters of a billion dollars in 1952 to less than half that amount in 1955.

National Party Platforms, Republican Platform of 1956, p.553

We pledge to continue our efforts, blocked by the Democratic leadership of the 84th Congress, for a financially sound, more nearly self-sustaining postal service—with the users of the mails paying a greater share of the costs instead of the taxpayers bearing the burden of huge postal deficits.

National Party Platforms, Republican Platform of 1956, p.553

We pledge to continue and to complete this vitally needed program of modernization of buildings, equipment, methods and service, so that the American people will receive the kind of mail delivery they deserve—the speediest and best that American ingenuity, technology and modern business management can provide.

Civil Service.

National Party Platforms, Republican Platform of 1956, p.553

We will vigorously promote, as we have in the past, a non-political career service under the merit system which will attract and retain able servants of the people. Many gains in this field, notably pay increases and a host of new benefits, have been achieved in their behalf in less than four years.

National Party Platforms, Republican Platform of 1956, p.553

The Republican Party will continue to fight for eagerly desired new advances for Government employees, and realistic reappraisement and adjustment of benefits for our retired civil service personnel.

Statehood for Alaska and Hawaii.

National Party Platforms, Republican Platform of 1956, p.553

We pledge immediate statehood for Alaska, recognizing the fact that adequate provision for defense requirements must be made.

National Party Platforms, Republican Platform of 1956, p.553

We pledge immediate statehood for Hawaii.

Puerto Rico.

National Party Platforms, Republican Platform of 1956, p.553

We shall continue to encourage the Commonwealth of Puerto Rico in its political growth and economic development in accordance with the wishes of its people and the fundamental principle of self-determination.

Indian Affairs.

National Party Platforms, Republican Platform of 1956, p.553

We shall continue to pursue our enlightened policies which are now producing exceptional advances in the long struggle to help [p.554] the American Indian gain the material and social advantages of his birthright and citizenship, while maintaining to the fullest extent the cultural integrity of the various tribal groups.

National Party Platforms, Republican Platform of 1956, p.554

We commend the present administration for its progressive programs which have achieved such striking progress in preparing our Indian citizens for participation in normal community life. Health, educational and employment opportunities for Indians have been greatly expanded beyond any previous level, and we favor still further extensions of these programs.

National Party Platforms, Republican Platform of 1956, p.554

We favor most sympathetic and constructive execution of the Federal trusteeship over Indian affairs, always in full consultation with Indians in the management of their interests and the expansion of their rights of self-government in local and tribal affairs.

National Party Platforms, Republican Platform of 1956, p.554

We urge the prompt adjudication or settlement of pending Indian claims.

District of Columbia.

National Party Platforms, Republican Platform of 1956, p.554

We favor self-government, national suffrage and representation in the Congress of the United States for residents of the District of Columbia.

Equal Rights.

National Party Platforms, Republican Platform of 1956, p.554

We recommend to Congress the submission of a constitutional amendment providing equal rights for men and women.

Equal Opportunity and Justice

Civil Rights

National Party Platforms, Republican Platform of 1956, p.554

The Republican Party points to an impressive record of accomplishment in the field of civil rights and commits itself anew to advancing the rights of all our people regardless of race, creed, color or national origin.

National Party Platforms, Republican Platform of 1956, p.554

In the area of exclusive Federal jurisdiction, more progress has been made in this field under the present Republican Administration than in any similar period in the last 80 years.

National Party Platforms, Republican Platform of 1956, p.554

The many Negroes who have been appointed to high public positions have played a significant part in the progress of this Administration.

National Party Platforms, Republican Platform of 1956, p.554

Segregation has been ended in the District of Columbia Government and in the District public facilities including public schools, restaurants, theaters and playgrounds. The Eisenhower Administration has eliminated discrimination in all federal employment.

National Party Platforms, Republican Platform of 1956, p.554

Great progress has been made in eliminating employment discrimination on the part of those who do business with the Federal Government and secure Federal contracts. This Administration has impartially enforced Federal civil rights statutes, and we pledge that we will continue to do so. We support the enactment of the civil rights program already presented by the President to the Second Session of the 84th Congress.

National Party Platforms, Republican Platform of 1956, p.554

The regulatory agencies under this Administration have moved vigorously to end discrimination in interstate commerce. Segregation in the active Armed Forces of the United States has been ended. For the first time in our history there is no segregation in veterans' hospitals and among civilians on naval bases. This is an impressive record. We pledge ourselves to continued progress in this field.

National Party Platforms, Republican Platform of 1956, p.554

The Republican Party has unequivocally recognized that the supreme law of the land is embodied in the Constitution, which guarantees to all people the blessings of liberty, due process and equal protection of the laws. It confers upon all native-born and naturalized citizens not only citizenship in the State where the individual resides but citizenship of the United States as well. This is an unqualified right, regardless of race, creed or color.

National Party Platforms, Republican Platform of 1956, p.554

The Republican Party accepts the decision of the U.S.. Supreme Court that racial discrimination in publicly supported schools must be progressively eliminated. We concur in the conclusion of the Supreme Court that its decision directing school desegregation should be accomplished with "all deliberate speed" locally through Federal District Courts. The implementation order of the Supreme Court recognizes the complex and acutely emotional problems created by its decision in certain sections of our country where racial patterns have been developed in accordance with prior and long-standing decisions of the same tribunal.

National Party Platforms, Republican Platform of 1956, p.554

We believe that true progress can be attained through intelligent study, understanding, education and good will. Use of force or violence by any group or agency will tend only to worsen the many problems inherent in the situation. This progress must be encouraged and the work of the courts supported in every legal manner by all branches of the Federal Government to the end that the constitutional ideal of the law, regardless of race, creed or color, be steadily achieved.[p.555]

Immigration

National Party Platforms, Republican Platform of 1956, p.555

The Republican Party supports an immigration policy which is in keeping with the traditions of America in providing a haven for oppressed peoples, and which is based on equality of treatment, freedom from implications of discrimination between racial, nationality and religious groups, and flexible enough to conform to changing needs and conditions.

National Party Platforms, Republican Platform of 1956, p.555

We believe that such a policy serves our self-interest, reflects our responsibility for world leadership and develops maximum cooperation with other nations in resolving problems in this area.

National Party Platforms, Republican Platform of 1956, p.555

We support the President's program submitted to the 84th Congress to carry out needed modifications in existing law and to take such further steps as may be necessary to carry out our traditional policy.

National Party Platforms, Republican Platform of 1956, p.555

In that concept, this Republican Administration sponsored the Refugee Relief Act to provide asylum for thousands of refugees, expellees and displaced persons, and undertook in the face of Democrat opposition to correct the inequities in existing law and to bring our immigration policies in line with the dynamic needs of the country and principles of equity and justice.

National Party Platforms, Republican Platform of 1956, p.555

We believe also that the Congress should consider the extension of the Refugee Relief Act of 1953 in resolving this difficult refugee problem which resulted from world conflict. To all this we give our wholehearted support.

Human Freedom and Peace

National Party Platforms, Republican Platform of 1956, p.555

Under the leadership of President Eisenhower, the United States has advanced foreign policies which enable our people to enjoy the blessings of liberty and peace.

National Party Platforms, Republican Platform of 1956, p.555

The changes in the international scene have been so great that it is easy to forget the conditions we inherited in 1953.

National Party Platforms, Republican Platform of 1956, p.555

Peace, so hardly won in 1945, had again been lost. The Korean War, with its tragic toll of more than an eighth of a million American casualties, seemed destined to go on indefinitely. Its material costs and accompanying inflation were undermining our economy.

National Party Platforms, Republican Platform of 1956, p.555

Freedom was under assault, and despotism was on the march. Armed conflict continued in the Far East, and tensions mounted elsewhere.

National Party Platforms, Republican Platform of 1956, p.555

The threat of global war increased daily.

National Party Platforms, Republican Platform of 1956, p.555

International Communism which, in 1945, ruled the 200 million people in the Soviet Union and Baltic States, was conquering so that, by 1952, it dominated more than 700 million people in 15 once-independent nations.

Today.

National Party Platforms, Republican Platform of 1956, p.555

Now, we are at peace. The Korean War has been ended. The Communist aggressors have been denied their goals.

National Party Platforms, Republican Platform of 1956, p.555

The threat of global war has receded.

National Party Platforms, Republican Platform of 1956, p.555

The advance of Communism has been checked, and, at key points, thrown back. The once-monolithic structure of International Communism, denied the stimulant of successive conquests, has shown hesitancy both internally and abroad.

The Far East.

National Party Platforms, Republican Platform of 1956, p.555

The Korean War was brought to a close when the Communist rulers were made to realize that they could not win.

National Party Platforms, Republican Platform of 1956, p.555

The United States has made a Collective Defense Treaty with the Republic of Korea which will exclude, for the future, the Communist miscalculation as to announced American interests and intentions which led to the original aggression.

National Party Platforms, Republican Platform of 1956, p.555

The United States has made a security Treaty with the Republic of China coveting Formosa and the Pescadores; and the Congress, by virtually unanimous action, has authorized the President to employ the armed forces of the United States to defend this area. As a result, the Chinese Communists have not attempted to implement their announced intention to take Formosa by force.

National Party Platforms, Republican Platform of 1956, p.555

In Indochina, the Republics of Vietnam and Cambodia and Laos are now free and independent nations. The Republic of Vietnam, with the United States assistance, has denied the Communists the gains which they expected from the withdrawal of French forces.

National Party Platforms, Republican Platform of 1956, p.555

The security of Southeast Asia has now been bolstered by the collective-defense system of SEATO, and its peoples encouraged by the declarations in the Pacific Charter of the principles of equal rights and self-determination of peoples.

The Middle East and Southeast Asia.

National Party Platforms, Republican Platform of 1956, p.555

The Middle East has been strengthened by the defensive unity of the four "northern tier" countries—Turkey, Iraq, Iran and Pakistan—which hold gateways to the vast oil resources upon which depend the industry and military strength of the free world. This was made possible by the [p.556] liberation of Iran from the grip of the Communist Tudeh Party. Iran has again made its oil reserves available to the world under an equitable settlement negotiated by the United States.

National Party Platforms, Republican Platform of 1956, p.556

We have maintained, and will maintain, friendly relations with all nations in this vital area, seeking to mediate differences among them, and encouraging their legitimate national aspirations.

Europe.

National Party Platforms, Republican Platform of 1956, p.556

In Western Europe, the scene has been transformed. The Federal Republic of Germany, which until 1953 was denied sovereignty and the opportunity to join the North Atlantic Treaty Organization, has now had full sovereignty restored by the Treaties of 1954, and has become a member of NATO despite the intense opposition of the Soviet Union.

National Party Platforms, Republican Platform of 1956, p.556

NATO itself has been strengthened by developing reliance upon new weapons and retaliatory power, thus assisting the NATO countries increasingly to attain both economic welfare and adequate military defense.

National Party Platforms, Republican Platform of 1956, p.556

On our initiative, the political aspects of NATO are being developed. Instead of being merely a military alliance, NATO will provide a means for coordinating the policies of the member states on vital matters, such as the reunification of Germany, the liberation of the satellites, and general policies in relation to the Soviet Union.

National Party Platforms, Republican Platform of 1956, p.556

Austria has been liberated. The freedom treaty, blocked since 1947 by the Soviet Union, was signed in 1955. For the first time since the end of World War II, Red Army forces in Europe evacuated occupied lands.

National Party Platforms, Republican Platform of 1956, p.556

The emotion-charged dispute between Italy and Yugoslavia about Trieste was settled with the active participation of the United States. The City of Trieste was restored to Italian sovereignty, and United States and British forces withdrawn.

National Party Platforms, Republican Platform of 1956, p.556

The Spanish base negotiations, which had long languished, were successfully concluded, and close working relations in this important respect established between the United States and Spain.

The Americas.

National Party Platforms, Republican Platform of 1956, p.556

Our good neighbor policy continues to prove its wisdom.

National Party Platforms, Republican Platform of 1956, p.556

The American Republics have taken effective steps against the cancer of Communism. At the Caracas Conference of March, 1954, they agreed that if International Communism gained control of the political institutions of any American republic, this would endanger them all, and would call for collective measures to remove the danger. This new Doctrine, first proposed by the United States, extends into modern times the principles of the Monroe Doctrine.

National Party Platforms, Republican Platform of 1956, p.556

A first fruit of the Caracas Doctrine was the expulsion of the Communist regime ruling Guatemala. Today, Guatemala is liberated from Kremlin control. The Organization of American States has grown in vigor. It has acted promptly and effectively to settle hemispheric disputes. In Costa Rica, for the first time in history, international aerial inspection was employed to maintain peace. The Panama Conference was probably the most successful in the long history of the Organization of American States in its promotion of good will, understanding and friendship.

Relations with Soviet Russia.

National Party Platforms, Republican Platform of 1956, p.556

Far-reaching steps have been taken to eliminate the danger of a third world war. President Eisenhower led the way at Geneva. There he impressed the Soviet leaders and the world with the dedication of the United States to peace, but also with its determination not to purchase peace at the price of freedom.

National Party Platforms, Republican Platform of 1956, p.556

That Summit Conference set new forces into motion. The Soviet rulers professed to renounce the use of violence, which Stalin had made basic in the Communist doctrine. Then followed a repudiation of Stalin, the growth of doctrinal disputes within the Communist Party, and a discrediting of Party authority and its evil power. Forces of liberalism within the Soviet Bloc challenge the brutal and atheistic doctrines of Soviet Communism. For the first time, we see positive evidence that forces of freedom and liberation will inevitably prevail if the free nations maintain their strength, unity and resolution.

The future.

National Party Platforms, Republican Platform of 1956, p.556

We re-dedicate ourselves to the pursuit of a just peace and the defense of human liberty and national independence.

National Party Platforms, Republican Platform of 1956, p.556

We shall continue vigorously to support the United Nations.

National Party Platforms, Republican Platform of 1956, p.556

We shall continue our cooperation with our sister states of the Americas for the strengthening of our security, economic and social ties with them.

National Party Platforms, Republican Platform of 1956, p.556

We shall continue to support the collective-security system begun in 1947 and steadily developed on a bipartisan basis. That system has joined the United States with 42 other nations in common defense of freedom. It has created [p.557] a deterrent to war which cannot be nullified by Soviet veto.

National Party Platforms, Republican Platform of 1956, p.557

Where needed, we shall help friendly countries maintain such local forces and economic strength as provide a first bulwark against Communist aggression or subversion. We shall reinforce that defense by a military capacity which, operating in accordance with the United Nations Charter, could so punish aggression that it ceases to be a profitable pursuit.

National Party Platforms, Republican Platform of 1956, p.557

We will continue efforts with friends and allies to assist the underdeveloped areas of the free world in their efforts to attain greater freedom, independence and self-determination, and to raise their standards of living.

National Party Platforms, Republican Platform of 1956, p.557

We recognize the existence of a major threat to international peace in the Near East. We support a policy of impartial friendship for the peoples of the Arab states and Israel to promote a peaceful settlement of the causes of tension in that area, including the human problem of the Palestine-Arab refugees.

National Party Platforms, Republican Platform of 1956, p.557

Progress toward a just settlement of the tragic conflict between the Jewish State and the Arab nations in Palestine was upset by the Soviet Bloc sale of arms to Arab countries. But prospects of peace have now been reinforced by the mission to Palestine of the United Nations Secretary General upon the initiative of the United States.

National Party Platforms, Republican Platform of 1956, p.557

We regard the preservation of Israel as an important tenet of American foreign policy. We are determined that the integrity of an independent Jewish State shall be maintained. We shall support the independence of Israel against armed aggression. The best hope for peace in the Middle East lies in the United Nations. We pledge our continued efforts to eliminate the obstacles to a lasting peace in this area.

National Party Platforms, Republican Platform of 1956, p.557

We shall continue to seek the reunification of Germany in freedom, and the liberation of the satellite states—Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Latvia, Lithuania, Estonia and other, once-free countries now behind the Iron Curtain. The Republican Party stands firmly with the peoples of these countries in their just quest for freedom. We are confident that our peaceful policies, resolutely pursued, will finally restore freedom and national independence to oppressed peoples and nations.

National Party Platforms, Republican Platform of 1956, p.557

We continue to oppose the seating of Communist China in the United Nations, thus upholding international morality. To seat a Communist China which defies, by word and deed, the principles of the United Nations Charter would be to betray the letter, violate the spirit and subvert the purposes of that charter. It would betray our friend and ally, the Republic of China. We will continue our determined efforts to free the remaining Americans held prisoner by Communist China.

National Party Platforms, Republican Platform of 1956, p.557

Recognizing economic health as an indispensable basis of military strength and world peace, we shall strive to foster abroad and to practice at home, policies to encourage productivity and profitable trade.

National Party Platforms, Republican Platform of 1956, p.557

Barriers which impede international trade and the flow of capital should be reduced on a gradual, selective and reciprocal basis, with full recognition of the necessity to safeguard domestic enterprises, agriculture and labor against unfair import competition. We proudly point out that the Republican Party was primarily responsible for initiating the escape clause and peril point provisions of law to make effective the necessary safeguards for American agriculture, labor and business. We pledge faithful and expeditious administration of these provisions.

National Party Platforms, Republican Platform of 1956, p.557

We are against any trade with the Communist world that would threaten the security of the United States and our allies.

National Party Platforms, Republican Platform of 1956, p.557

We recognize that no single nation can alone defend the liberty of all nations threatened by Communist aggression or subversion. Mutual security means effective mutual cooperation. Poverty and unrest in less developed countries make them the target for international communism. We must help them achieve the economic growth and stability necessary to attain and preserve their independence.

National Party Platforms, Republican Platform of 1956, p.557

Technical and economic assistance programs are effective countermeasures to Soviet economic offensives and propaganda. They provide the best way to create the political and social stability essential to lasting peace.

National Party Platforms, Republican Platform of 1956, p.557

We will strive to bring about conditions that will end the injustices of nations divided against their will, of nations held subject to foreign domination, of peoples deprived of the right of self-government.

National Party Platforms, Republican Platform of 1956, p.557

We reaffirm the principle of freedom for all peoples, and look forward to the eventual end of colonialism.

National Party Platforms, Republican Platform of 1956, p.558

[p.558] We will overlook no opportunity that, with prudence, can be taken to bring about a progressive elimination of the barriers that interfere with the free flow of news, information and ideas, and the exchange of persons between the free peoples and the captive peoples of the world. We favor the continuance and development of the "exchange-of-persons" programs between free nations.

National Party Platforms, Republican Platform of 1956, p.558

We approve appropriate action to oppose the imposition by foreign governments of discrimination against United States citizens, based on their religion or race.

National Party Platforms, Republican Platform of 1956, p.558

We shall continue the bipartisan development of foreign policies. We hold this necessary if those policies are to have continuity, and be regarded by other free nations as dependable.

National Party Platforms, Republican Platform of 1956, p.558

The Republican Party pledges itself to continue the dynamic, courageous, sound and patriotic policies which have protected and promoted the interests of the United States during the past four years.

National Party Platforms, Republican Platform of 1956, p.558

In a world fraught with peril, peace can be won and preserved only by vigilance and inspired leadership. In such a world, we believe it is essential that the vast experience of our proven leader, President Dwight D. Eisenhower, continues to guide our country in the achievement and maintenance of a just, honorable and durable peace.

Bulwark for the Free World—Our National Defense

National Party Platforms, Republican Platform of 1956, p.558

The military strength of the United States has been a key factor in the preservation of world peace during the past four years. We are determined to maintain that strength so long as our security and the peace of the world require it.

National Party Platforms, Republican Platform of 1956, p.558

This Administration, within six months after President Eisenhower's inauguration, ended the war in Korea by concluding an honorable armistice. The lesson of that war and our lack of preparedness which brought it about will not be forgotten. Such mistakes must not be repeated.

National Party Platforms, Republican Platform of 1956, p.558

As we maintain and strengthen the security of this Nation, we shall, consistent with this Administration's dedication to peace, strive for the acceptance of realistic proposals for disarmament and the humanitarian control of weapons of mass destruction.

National Party Platforms, Republican Platform of 1956, p.558

Our country's defense posture is today a visible and powerful deterrent against attack by any enemy, from any quarter, at any time.

National Party Platforms, Republican Platform of 1956, p.558

We have the strongest striking force in the world—in the air—on the sea—and a magnificent supporting land force in our Army and Marine Corps. Such visible and powerful deterrents must continue to include:

National Party Platforms, Republican Platform of 1956, p.558

A) A jet-powered, long-range strategic air force, and a tactical air force of the fastest and very latest type aircraft, with a striking capability superior to any other;

National Party Platforms, Republican Platform of 1956, p.558

B) The most effective guided and ballistic missiles;

National Party Platforms, Republican Platform of 1956, p.558

C) A modern navy, with a powerful naval aircraft arm prepared to keep the sea lanes open to meet any assignment;

National Party Platforms, Republican Platform of 1956, p.558

D) An army whose mobility and unit firepower are without equal;

National Party Platforms, Republican Platform of 1956, p.558

E) Bases, strategically dispersed at home and around the world, essential to all these operations.

National Party Platforms, Republican Platform of 1956, p.558

We will maintain and improve the effective strength and state of readiness of all these armed forces.

National Party Platforms, Republican Platform of 1956, p.558

To achieve this objective, we must depend upon attracting to, and retaining in our military services vigorous and well-trained manpower, and upon continuously maintaining in reserve, an enthusiastic and well-informed group of men and women. This will require incentives that will make armed service careers attractive and rewarding. A substantial start has been made toward bolstering the rewards and benefits that accompany a military career. We must continue to provide them.

National Party Platforms, Republican Platform of 1956, p.558

In order that American youth in our armed services shall be provided with the most modern weapons, we have supported and will continue to support an effective and well-directed program of research and development, staffed by men of the highest caliber and ability in this field. There is no substitute for the best where the lives of our men and the defense of our Nation are concerned.

National Party Platforms, Republican Platform of 1956, p.558

We fully appreciate the importance of scientific knowledge and its application particularly in the military field.

National Party Platforms, Republican Platform of 1956, p.558

We pledge ourselves to stimulate and encourage the education of our young people in the sciences with a determination to maintain our technological leadership.

National Party Platforms, Republican Platform of 1956, p.559

In this age of weapons of inconceivable destructiveness, [p.559] we must not neglect the protection of the civilian population by all known means, while, at the same time, preparing our armed forces for every eventuality.

National Party Platforms, Republican Platform of 1956, p.559

We wholeheartedly agree with President Eisenhower that our military defense must be backed by a strong civil defense, and that an effective civil defense is an important deterrent against attack upon our country, and an indispensable reliance should our nation ever be attacked.

National Party Platforms, Republican Platform of 1956, p.559

We support his proposals for strengthening civil defense, mindful that it has become an effective Government arm to deal with natural disasters.

National Party Platforms, Republican Platform of 1956, p.559

We shall continue to carry forward, vigorously and effectively, the valued services of the Federal Bureau of Investigation, as well as all other Government intelligence agencies, so as to insure that we are protected at all times against subversive activities. We will never relax our determined efforts to keep our Government, and our people, safely guarded against all enemies from within.

National Party Platforms, Republican Platform of 1956, p.559

We agree and assert that civilian authority and control over our defense structure and program must be maintained at all times. We believe, without qualification, that in our present Commander-in-Chief, Dwight D. Eisenhower, this Nation possesses a leader equipped by training, temperament, and experience in war and in peace, for both that personal example and that direction of our national defense in which the American people will continue to have confidence, and in which the peoples of all the free world will find an increasing sense of security and of an opportunity for peace.

Veterans

National Party Platforms, Republican Platform of 1956, p.559

We believe that active duty in the Armed Forces during a state of war or national emergency is the highest call of citizenship constituting a special service to our nation and entitles those who have served to positive assistance to alleviate the injuries, hardships and handicaps imposed by their service.

National Party Platforms, Republican Platform of 1956, p.559

In recognizing this principle under previous Republican Administrations we established the Veterans Administration. This Republican Administration increased compensation and pension benefits for veterans and survivors to provide more adequate levels and to off-set cost of living increases that occurred during the most recent Democratic Administration.

National Party Platforms, Republican Platform of 1956, p.559

We have also improved quality of hospital service and have established a long-range program for continued improvement of such service. We have strengthened and extended survivors' benefits, thus affording greater security for all veterans in the interest of equity and justice.

National Party Platforms, Republican Platform of 1956, p.559

In advancing this Republican program we pledge:

National Party Platforms, Republican Platform of 1956, p.559

That compensation for injuries and disease arising out of service be fairly and generously provided for all disabled veterans and for their dependents or survivors;

National Party Platforms, Republican Platform of 1956, p.559

That a pension program for disabled war veterans in need and for their widows and orphans in need be maintained as long as necessary to assure them adequate income;

National Party Platforms, Republican Platform of 1956, p.559

That all veterans be given equal and adequate opportunity for readjustment following service, including unemployment compensation when needed, but placing emphasis on obtaining suitable employment for veterans, particularly those disabled, by using appropriate facilities of government and by assuring that Federal employment preference and re-employment rights, to which the veteran is entitled, are received;

National Party Platforms, Republican Platform of 1956, p.559

That the Veterans Administration be continued as a single independent agency providing veterans services;

National Party Platforms, Republican Platform of 1956, p.559

That the service-disabled continue to receive first-priority medical services of the highest standard and that non-service disabled war veterans in need receive hospital care to the extent that beds are available.

Guarding and Improving Our Resources

National Party Platforms, Republican Platform of 1956, p.559

One of the brightest areas of achievement and progress under the Eisenhower Administration has been in resource conservation and development and in sound, long-range public works programing.

National Party Platforms, Republican Platform of 1956, p.559

Policies of sound conservation and wise development—originally advanced half a century ago under that preeminent Republican conservation team of President Theodore Roosevelt and Gifford Pinchot and amplified by succeeding Republican Administrations—have been pursued by the Eisenhower Administration. While meeting the essential development needs of the people, this Administration has conserved and safeguarded [p.560] our natural resources for the greatest good of all, now and in the future.

National Party Platforms, Republican Platform of 1956, p.560

Our national parks, national forests and wildlife refuges are now more adequately financed, better protected and more extensive than ever before. Long-range improvement programs, such as Mission 66 for the National Parks system, are now under way, and studies are nearing completion for a comparable program for the National Forests. These forward-looking programs will be aggressively continued.

National Party Platforms, Republican Platform of 1956, p.560

Our Republican Administration has modernized and vitalized our mining laws by the first major revision in more than 30 years.

Recreation, parks and wildlife.

National Party Platforms, Republican Platform of 1956, p.560

ACHIEVEMENTS: Reversed the 15-year trend of neglect of our National Parks by launching the 10-year, $785 million Mission 66 parks improvement program. Has nearly completed field surveys for a comparable forest improvement program. Obtained passage of the so-called "Week-end Miner Bill." Added more than 400,000 acres to our National Park system, and 90,000 acres to wildlife refuges. Has undertaken well-conceived measures to protect reserved areas of all types and to provide increased staffs and operating funds for public recreation agencies.

National Party Platforms, Republican Platform of 1956, p.560

We favor full recognition of recreation as an important public use of our national forests and public domain lands.

National Party Platforms, Republican Platform of 1956, p.560

We favor a comprehensive study of the effect upon wildlife of the drainage of our wetlands.

National Party Platforms, Republican Platform of 1956, p.560

We favor recognition, by the States, of wild-life and recreation management and conservation as a beneficial use of water.

National Party Platforms, Republican Platform of 1956, p.560

We subscribe to the general objectives of groups seeking to guard the beauty of our land and to promote clean, attractive surroundings throughout America.

National Party Platforms, Republican Platform of 1956, p.560

We recognize the need for maintaining isolated wilderness areas to provide opportunity for future generations to experience some of the wilderness living through which the traditional American spirit of hardihood was developed.

Public land and forest resources.

National Party Platforms, Republican Platform of 1956, p.560

ACHIEVEMENTS: Approved conservation programs of many types, including improvement of western grazing lands through reseeding programs, water-spreading systems, and encouragement of soil-and moisture-conservation practices by range users. Returned to the States their submerged lands and resources of their coasts, out to their historical boundaries—an area comprising about one tenth of the area off the Continental Shelf and about 17 per cent of the mineral resources. Initiated leasing of the Federally owned 83 per cent of the Continental Shelf which is expected ultimately to bring from 6 to 8 billion dollars into the Treasury and already has brought in over 250 million dollars. Enacted new legislation to encourage multiple use of the public domain.

National Party Platforms, Republican Platform of 1956, p.560

We commend the Eisenhower Administration for its administration of our public lands and for elimination of bureaucratic abuses. We recommend continuing study and evaluation of the advisability of returning unused or inadequately used public lands.

National Party Platforms, Republican Platform of 1956, p.560

We commend the Administration for expanding forest research and access road construction.

National Party Platforms, Republican Platform of 1956, p.560

We shall continue to improve timber conservation practices, recreational facilities, grazing management, and watershed protection of our national forests and our public domain.

Minerals.

National Party Platforms, Republican Platform of 1956, p.560

Recognizing that a vigorous and efficient mineral industry is essential to the long-term development of the United States, and to its defense, we believe the Federal Government should foster a long-term policy for the development and prudent use of domestic mineral resources, and to assure access to necessary sources abroad, without dangerously weakening the market for domestic production of defense-essential materials.

National Party Platforms, Republican Platform of 1956, p.560

We favor reasonable depletion allowances. We favor freedom of mineral producers from unnecessary governmental regulation; expansion of government minerals exploration and research, and establishment of minerals stockpile objectives which will reduce, and, where possible, eliminate foreseeable wartime shortages.

National Party Platforms, Republican Platform of 1956, p.560

ACHIEVEMENTS: St. Lawrence Seaway and power projects, Colorado River Storage Project, Great Lakes connecting channels, small watershed protection and flood prevention under local control, Mississippi Gulf level canal, extension of water-pollution control program, survey of power potential of Passamaquoddy Bay tides, expansion of small project development for flood control, navigation and reclamation; extension to all 48 States of water facilities act, accelerated research on saline water conversion, authorized planning surveys and construction of [p.561] more than 200 navigation, flood-control, beach erosion, rivers and harbors, reclamation, and watershed projects throughout the nation, advanced partnership water resource developments in a number of states.

Water resources.

National Party Platforms, Republican Platform of 1956, p.561

Water resource development legislation enacted under the Eisenhower Administration already has ushered in one of the greatest water resource development programs this Nation has ever seen, a soundly-conceived construction program that will continue throughout this Century and beyond.

National Party Platforms, Republican Platform of 1956, p.561

We recognize that the burgeoning growth of our Nation requires a combination of Federal, State and local water and power development—a real partnership of effort by all interested parties. In no other way can the nation meet the huge and accelerated demands for increasing generating capacity and uses of water, both by urban and agricultural areas. We also are aware that water demands have been accentuated by the ravages of drought, creating emergency conditions in many sections of our country. We commend the Eisenhower Administration for encouraging state and local governments, public agencies, and regulated private enterprise, to participate actively in comprehensive water and power development. In such partnership we are leading the way with great Federal developments such as the Upper Colorado Project and with partnership projects of great importance, some of which have been shelved by the Democratic 84th Congress.

National Party Platforms, Republican Platform of 1956, p.561

In the marketing of federally produced power we support preference to public bodies and cooperatives under the historic policy of the Congress.

National Party Platforms, Republican Platform of 1956, p.561

We will continue to press for co-operative solution of all problems of water supply and distribution, reclamation, pollution, flood control, and saline-water conversion.

National Party Platforms, Republican Platform of 1956, p.561

We pledge legislative support to the arid and semi-arid states in preserving the integrity of their water laws and customs as developed out of the necessities of these regions. We affirm the historic policy of Congress recognizing State water rights, as repeatedly expressed in Federal law over the past 90 years.

National Party Platforms, Republican Platform of 1956, p.561

We pledge an expansion in research and planning of water resource development programs, looking to the future when it may be necessary to re-distribute water from water-surplus areas to water-deficient areas.

Fisheries.

National Party Platforms, Republican Platform of 1956, p.561

ACHIEVEMENTS: Accelerated research and administrative action to rehabilitate our long-neglected fishing industry. Approval of measures for additional conservation and propagation of fish. Development of the comprehensive program for fisheries management and assistance adopted by the Congress.

National Party Platforms, Republican Platform of 1956, p.561

We favor continuation of the Eisenhower program to rehabilitate our long-neglected domestic fishing industry.

National Party Platforms, Republican Platform of 1956, p.561

We advocate protective treaties insuring the United States commercial-fisheries industry against unfair foreign competition.

National Party Platforms, Republican Platform of 1956, p.561

The Republican Party is acutely aware that a foundation stone of the nation's strength is its wealth of natural resources and the high development of its physical assets. They are the basis of our great progress in 180 years of freedom and of our nation's military and economic might.

National Party Platforms, Republican Platform of 1956, p.561

We pledge that we will continue the policies of sound conservation and wise development instituted by this Administration to insure that our resources are managed as a beneficial trust for all the people.

For a Brighter Tomorrow: Atomic Energy.

National Party Platforms, Republican Platform of 1956, p.561

The Republican Party pledges continuous, vigorous development of Atomic Energy:

National Party Platforms, Republican Platform of 1956, p.561

for the defense of our own country and to deter aggression, and

National Party Platforms, Republican Platform of 1956, p.561

for the promotion of world peace and the enhancement of our knowledge of basic science and its application to industry, agriculture and the healing arts.

National Party Platforms, Republican Platform of 1956, p.561

From the passage of the first Atomic Energy Act in 1946 to the beginning of this Republican Administration, a stalemate had existed, and only an arms race with the prospect of eventual catastrophe faced the nations of the world.

National Party Platforms, Republican Platform of 1956, p.561

President Eisenhower has inaugurated and led a strong program for developing the peaceful atom—a program which has captured the imagination of men and women everywhere with its widespread, positive achievements.

National Party Platforms, Republican Platform of 1956, p.561

The Government and private enterprise are working together on a number of large-scale projects designed to develop substantial quantities of electric power from atomic sources. The [p.562] first power reactor will be completed next year. More and more private funds are being invested as the Government monopoly is relaxed.

National Party Platforms, Republican Platform of 1956, p.562

In relaxing its monopoly, Government can stimulate private enterprise to go ahead by taking recognition of the tremendous risks involved and the complexity of the many technical problems that will arise, and assist in those ways that will make advances possible.

National Party Platforms, Republican Platform of 1956, p.562

The Atomic Energy Commission also is encouraging a vigorous rural electrification program by cooperatives.

National Party Platforms, Republican Platform of 1956, p.562

Every day, radioactive isotopes are brought more and more into use on farms, in clinics and hospitals, and in industry. The use of isotopes already has resulted in annual savings of hundreds of millions of dollars and the nuclear age has only begun.

National Party Platforms, Republican Platform of 1956, p.562

It is to the benefit of the United States, as well as to all nations everywhere, that the uses of atomic energy be explored and shared. The Republican Party pledges that it will continue this imaginative, world-embracing program. We shall continue to chart our course so as to fortify the security of the free nations and to further the prosperity and progress of all people everywhere.

Declaration of Dedication

National Party Platforms, Republican Platform of 1956, p.562

With utmost confidence in the future and with justifiable pride in our achievements, the Republican Party warmly greets the dawn of our second century of service in the cause of unity and progress in the Nation.

National Party Platforms, Republican Platform of 1956, p.562

As the Party of the Young and in glowing appreciation of his dynamic leadership and inspiration, we respectfully dedicate this Platform of the Party of the Future to our distinguished President Dwight D. Eisenhower, and to the Youth of America.

President Eisenhower's Address to the American People on the Situation in the Middle East, 1957

Title: President Eisenhower's Address to the American People on the Situation in the Middle East

Author: Dwight D. Eisenhower

Date: February 20, 1957

Source: Public Papers of the Presidents, Eisenhower, 1957, pp.147-156

[Delivered by radio and television from the President's Office]

Public Papers of Eisenhower, 1957, p.147

My Fellow Citizens:

May I first explain to you that for some days I have been experiencing a very stubborn cough, so if because of this I should have to interrupt myself this evening, I crave your indulgence in advance.

Public Papers of Eisenhower, 1957, p.147

I come to you again to talk about the situation in the Middle East. The future of the United Nations and peace in the Middle East may be at stake.

Public Papers of Eisenhower, 1957, p.147

In the four months since I talked to you about the crisis in that area, the United Nations has made considerable progress in resolving some of the difficult problems. We are now, however, faced with a fateful moment as the result of the failure of Israel to withdraw its forces behind the Armistice lines, as contemplated by the United Nations Resolutions on this subject.

Public Papers of Eisenhower, 1957, p.147

I have already today met with leaders of both Parties from the Senate and the House of Representatives. We had a very useful exchange of views. It was the general feeling of that meeting that I should lay the situation before the American people.

Public Papers of Eisenhower, 1957, p.147

Now, before talking about the specific issues involved, I want to make clear that these issues are not something remote and abstract, but involve matters vitally touching upon the future of each one of us.

Public Papers of Eisenhower, 1957, p.147

The Middle East is a land-bridge between the Eurasian and African continents. Millions of tons of commerce are transmitted through it annually. Its own products, especially petroleum, are essential to Europe and to the Western world.

Public Papers of Eisenhower, 1957, p.147–p.148

The United States has no ambitions or desires in this region. It hopes only that each country there may maintain its independence [p.148] and live peacefully within itself and with its neighbors and, by peaceful cooperation with others, develop its own spiritual and material resources. But that much is vital to the peace and well-being of us all. This is our concern today.

Public Papers of Eisenhower, 1957, p.148

So tonight I report to you on the matters in controversy and on what I believe the position of the United States must be.

Public Papers of Eisenhower, 1957, p.148

When I talked to you last October, I pointed out that the United States fully realized that military action against Egypt resulted from grave and repeated provocations. But I said also that the use of military force to solve international disputes could not be reconciled with the principles and purposes of the United Nations. I added that our country could not believe that resort to force and war would for long serve the permanent interests of the attacking nations, which were Britain, France and Israel.

Public Papers of Eisenhower, 1957, p.148

So I pledged that the United States would seek through the United Nations to end the conflict. We would strive to bring about a recall of the forces of invasion, and then make a renewed and earnest effort through that Organization to secure justice, under international law, for all the parties concerned.

Public Papers of Eisenhower, 1957, p.148

Since that time much has been achieved and many of the dangers implicit in the situation have been avoided. The Governments of Britain and France have withdrawn their forces from Egypt. Thereby they showed respect for the opinions of mankind as expressed almost unanimously by the 80 nation members of the United Nations General Assembly.

Public Papers of Eisenhower, 1957, p.148

I want to pay tribute to the wisdom of this action of our friends and allies. They made an immense contribution to world order. Also they put the other nations of the world under a heavy obligation to see to it that these two nations do not suffer by reason of their compliance with the United Nations Resolutions. This has special application, I think, to their treaty rights to passage through the Suez Canal which had been made an international waterway for all by the Treaty of 1888.

Public Papers of Eisenhower, 1957, p.148–p.149

The Prime Minister of Israel, in answer to a personal communication, assured me early in November that Israel would willingly [p.149] withdraw its forces if and when there should be created a United Nations force to move into the Suez Canal area. This force was, in fact, created and has moved into the Canal area.

Public Papers of Eisenhower, 1957, p.149

Subsequently, Israeli forces were withdrawn from much of the territory of Egypt which they had occupied. However, Israeli forces still remain outside the Armistice lines. They are at the mouth of the Gulf of Aqaba which is about 100 miles from the nearest Israeli territory. They are also in the Gaza Strip which, by the Armistice Agreement, was to be occupied by Egypt. These facts create the present crisis.

Public Papers of Eisenhower, 1957, p.149

We are approaching a fateful moment when either we must recognize that the United Nations is unable to restore peace in this area, or the United Nations must renew with increased vigor its efforts to bring about Israeli withdrawal.

Public Papers of Eisenhower, 1957, p.149

Repeated, but, so far, unsuccessful, efforts have been made to bring about a voluntary withdrawal by Israel. These efforts have been made both by the United Nations and by the United States and other member states.

Public Papers of Eisenhower, 1957, p.149

Equally serious efforts have been made to bring about conditions designed to assure that if Israel will withdraw in response to the repeated requests of the United Nations, there will then be achieved a greater security and tranquility for that nation. This means that the United Nations would assert a determination to see that in the Middle East there will be a greater degree of justice and compliance with international law than was the case prior to the events of last October-November.

Public Papers of Eisenhower, 1957, p.149

A United Nations Emergency Force, with Egypt's consent, entered that nation's territory in order to help maintain the cease-fire, which the United Nations called for on November 2. The Secretary General, who ably and devotedly serves the United Nations, has recommended a number of measures which might be taken by the United Nations and by its Emergency Force to assure for the future the avoidance by either side of belligerent acts.

Public Papers of Eisenhower, 1957, p.149–p.150

The United Nations General Assembly on February 2 by an [p.150] overwhelming vote adopted a pertinent Resolution. It was to the effect that, after full withdrawal of Israel from the Gulf of Aqaba and Gaza areas, the United Nations Emergency Force should be placed on the Egyptian-Israeli Armistice lines to assure the scrupulous maintenance of the Armistice Agreement. Also the United Nations General Assembly called for the implementation of other measures proposed by the Secretary General. These other measures embraced the use of the United Nations Emergency Forces at the mouth of the Gulf of Aqaba, so as to assure non-belligerency in this area.

Public Papers of Eisenhower, 1957, p.150

The United States was a co-sponsor of this United Nations Resolution. Thus the United States sought to assure that Israel would, for the future, enjoy its rights under the Armistice and under international law.

Public Papers of Eisenhower, 1957, p.150

In view of the valued friendly relations which the United States has always had with the State of Israel, I wrote to Prime Minister Ben-Gurion on February 3. I recalled his statement to me of November 8 to the effect that the Israeli forces would be withdrawn under certain conditions, and I urged that, in view of the General Assembly Resolutions of February 2, Israel should complete that withdrawal.

Public Papers of Eisenhower, 1957, p.150

However, the Prime Minister, in his reply, took the position that Israel would not evacuate its military forces from the Gaza Strip unless Israel retained the civil administration and police. This would be in contradiction to the Armistice Agreement. Also, the reply said that Israel would not withdraw from the Straits of Aqaba unless freedom of passage through the Straits was assured.

Public Papers of Eisenhower, 1957, p.150

It was a matter of keen disappointment to us that the Government of Israel, despite the United Nations action, still felt unwilling to withdraw.

Public Papers of Eisenhower, 1957, p.150–p.151

However, in a further effort to meet the views of Israel in these respects, Secretary of State Dulles, at my direction, gave to the Government of Israel on February 11 a statement of United [p.151] States policy. This has now been made public. It pointed out that neither the United States nor the United Nations had authority to impose upon the parties a substantial modification of the Armistice Agreement which was freely signed by both Israel and Egypt. Nevertheless, the statement said, the United States as a member of the United Nations would seek such disposition of the United Nations Emergency Force as would assure that the Gaza Strip could no longer be used as a source of armed infiltration and reprisals.

Public Papers of Eisenhower, 1957, p.151

The Secretary of State orally informed the Israeli Ambassador that the United States would be glad to urge and support, also, some participation by the United Nations, with the approval of Egypt, in the administration of the Gaza Strip. The principal population of the Strip consists of about 200,000 Arab refugees, who exist largely as a charge upon the benevolence of the United Nations and its members.

Public Papers of Eisenhower, 1957, p.151

With reference to the passage into and through the Gulf of Aqaba, we expressed the conviction that the Gulf constitutes international waters, and that no nation has the right to prevent free and innocent passage in the Gulf. We announced that the United States was prepared to exercise this right itself and to join with others to secure general recognition of this right.

Public Papers of Eisenhower, 1957, p.151

The Government of Israel has not yet accepted, as adequate insurance of its own safety after withdrawal, the far-reaching United Nations Resolution of February 2 plus the important declaration of United States policy made by our Secretary of State on February 11.

Public Papers of Eisenhower, 1957, p.151

Israel seeks something more. It insists on firm guarantees as a condition to withdrawing its forces of invasion.

Public Papers of Eisenhower, 1957, p.151

This raises a basic question of principle. Should a nation which attacks and occupies foreign territory in the face of United Nations disapproval be allowed to impose conditions on its own withdrawal?

Public Papers of Eisenhower, 1957, p.151–p.152

If we agree that armed attack can properly achieve the purposes [p.152] of the assailant, then I fear we will have turned back the clock of international order. We will, in effect, have countenanced the use of force as a means of settling international differences and through this gaining national advantages.

Public Papers of Eisenhower, 1957, p.152

I do not, myself, see how this could be reconciled with the Charter of the United Nations. The basic pledge of all the members of the United Nations is that they will settle their international disputes by peaceful means, and will not use force against the territorial integrity of another state.

Public Papers of Eisenhower, 1957, p.152

If the United Nations once admits that international disputes can be settled by using force, then we will have destroyed the very foundation of the Organization, and our best hope of establishing a world order. That would be a disaster for us all.

Public Papers of Eisenhower, 1957, p.152

I would, I feel, be untrue to the standards of the high office to which you have chosen me, if I were to lend the influence of the United States to the proposition that a nation which invades another should be permitted to exact conditions for withdrawal.

Public Papers of Eisenhower, 1957, p.152

Of course, we and all the members of the United Nations ought to support justice and conformity with international law. The first Article of the Charter states the purpose of the United Nations to be "the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means, and in conformity with justice and international law, adjustment or settlement of international disputes." But it is to be observed that conformity with justice and international law are to be brought about "by peaceful means."

Public Papers of Eisenhower, 1957, p.152

We cannot consider that the armed invasion and occupation of another country are "peaceful means" or proper means to achieve justice and conformity with international law.

Public Papers of Eisenhower, 1957, p.152

We do, however, believe that upon the suppression of the present act of aggression and breach of the peace, there should be a greater effort by the United Nations and its members to secure justice and conformity with international law. Peace and justice are two sides of the same coin.

Public Papers of Eisenhower, 1957, p.153

Perhaps the world community has been at fault in not having paid enough attention to this basic truth. The United States, for its part, will vigorously seek solutions of the problems of the area in accordance with justice and international law. And we shall in this great effort seek the association of other like-minded nations which realize, as we do, that peace and justice are in the long run inseparable.

Public Papers of Eisenhower, 1957, p.153

But the United Nations faces immediately the problem of what to do next. If it does nothing, if it accepts the ignoring of its repeated resolutions calling for the withdrawal of invading forces, then it will have admitted failure. That failure would be a blow to the authority and influence of the United Nations in the world and to the hopes which humanity placed in the United Nations as the means of achieving peace with justice.

Public Papers of Eisenhower, 1957, p.153

I do not believe that Israel's default should be ignored because the United Nations has not been able effectively to carry out its resolutions condemning the Soviet Union for its armed suppression of the people of Hungary. Perhaps this is a case where the proverb applies that two wrongs do not make a right.

Public Papers of Eisenhower, 1957, p.153

No one deplores more than I the fact that the Soviet Union ignores the resolutions of the United Nations. Also no nation is more vigorous than is the United States in seeking to exert moral pressure against the Soviet Union, which by reason of its size and power, and by reason of its veto in the Security Council, is relatively impervious to other types of sanction.

Public Papers of Eisenhower, 1957, p.153

The United States and other free nations are making clear by every means at their command the evil of Soviet conduct in Hungary. It would indeed be a sad day if the United States ever felt that it had to subject Israel to the same type of moral pressure as is being applied to the Soviet Union.

Public Papers of Eisenhower, 1957, p.153–p.154

There can, of course, be no equating of a nation like Israel with that of the Soviet Union. The people of Israel, like those of the United States, are imbued with a religious faith and a sense of moral values. We are entitled to expect, and do expect, from [p.154] such peoples of the free world a contribution to world order which unhappily we cannot expect from a nation controlled by atheistic despots.

Public Papers of Eisenhower, 1957, p.154

It has been suggested that United Nations actions against Israel should not be pressed because Egypt has in the past violated the Armistice Agreement and international law. It is true that both Egypt and Israel, prior to last October, engaged in reprisals in violation of the Armistice agreements. Egypt ignored the United Nations in exercising belligerent rights in relation to Israeli shipping in the Suez Canal and in the Gulf of Aqaba. However, such violations constitute no justification for the armed invasion of Egypt by Israel which the United Nations is now seeking to undo.

Public Papers of Eisenhower, 1957, p.154

Failure to withdraw would be harmful to the long term good of Israel. It would, in addition to its injury to the United Nations, jeopardize the prospects of the peaceful solution of the problems of the Mid-East. This could bring incalculable ills to our friends and indeed to our nation itself. It would make infinitely more difficult the realization of the goals which I laid out in my Middle East message of January fifth to the Congress seeking to strengthen the area against Communist aggression, direct or indirect.

Public Papers of Eisenhower, 1957, p.154

The United Nations must not fail. I believe that—in the interests of peace—the United Nations has no choice but to exert pressure upon Israel to comply with the withdrawal resolutions. Of course, we still hope that the Government of Israel will see that its best immediate and long-term interests lie in compliance with the United Nations and in placing its trust in the Resolutions of the United Nations and in the declaration of the United States with reference to the future.

Public Papers of Eisenhower, 1957, p.154

Egypt, by accepting the Six Principles adopted by the Security Council last October in relation to the Suez Canal, bound itself to free and open transit through the Canal without discrimination, and to the principle that the operation of the Canal should be insulated from the politics of any country.

Public Papers of Eisenhower, 1957, p.155

We should not assume that if Israel withdraws, Egypt will prevent Israeli shipping from using the Suez Canal or the Gulf of Aqaba. If, unhappily, Egypt does hereafter violate the Armistice agreement or other international obligations, then this should be dealt with firmly by the society of nations.

Public Papers of Eisenhower, 1957, p.155

The present moment is a grave one, but we are hopeful that reason and right will prevail. Since the events of last October-November, solid progress has been made, in conformity with the Charter of the United Nations. There is the cease-fire, the forces of Britain and France have been withdrawn, the forces of Israel have been partially withdrawn, and the clearing of the Canal nears completion. When Israel completes its withdrawal, it will have removed a definite block to further progress.

Public Papers of Eisenhower, 1957, p.155

Once this block is removed, there will be serious and creative tasks for the United Nations to perform. There needs to be respect for the right of Israel to national existence and to internal development. Complicated provisions insuring the effective international use of the Suez Canal will need to be worked out in detail. The Arab refugee problem must be solved. As I said in my special message to Congress on January 5, it must be made certain that all the Middle East is kept free from aggression and infiltration.

Public Papers of Eisenhower, 1957, p.155

Finally, all who cherish freedom, including ourselves, should help the nations of the Middle East achieve their just aspirations for improving the well-being of their peoples.

Public Papers of Eisenhower, 1957, p.155

What I have spoken about tonight is only one step in a long process calling for patience and diligence, but at this moment it is the critical issue on which future progress depends.

Public Papers of Eisenhower, 1957, p.155

It is an issue which can be solved if only we will apply the principles of the United Nations.

Public Papers of Eisenhower, 1957, p.155

That is why, my fellow Americans, I know that you want the United States to continue to use its maximum influence to sustain those principles as the world's best hope for peace. [p.156]

Public Papers of Eisenhower, 1957, p.156

Good night—and thank you very much.

Public Papers of Eisenhower, 1957, p.156

NOTE: In further reference to this subject a White House statement was issued on February 22, 1957, from which the following is excerpted:

Public Papers of Eisenhower, 1957, p.156

The President and the Secretary of State discussed the speech of last night of Prime Minister Ben-Gurion of Israel insofar as the text was available.

Public Papers of Eisenhower, 1957, p.156

The President and the Secretary regret that the Government of Israel has not yet found it possible to withdraw its forces from the Gaza Strip and the Gulf of Aqaba.

Public Papers of Eisenhower, 1957, p.156

The door is certainly not closed to further discussion of the situation.

Public Papers of Eisenhower, 1957, p.156

The President and the Secretary welcome such further discussion because they believe that a full understanding of the United States position and the United Nations Resolutions of February second should make it possible for Israel to proceed with the withdrawal.

Yates v. United States, 1957

Title: Yates v. United States

Author: U.S. Supreme Court

Date: June 17, 1957

Source: 354 U.S. 298 (No. 6)

This case was argued October 8-9, 1956, and was decided June 17, 1957, together with No. 7, Schneiderman v. United States, and No. 8, Richmond et al. v. United States, also on certiorari to the same Court.

1957, Yates v. United States, 354 U.S. 298

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1957, Yates v. United States, 354 U.S. 298

FOR THE NINTH CIRCUIT

Syllabus

1957, Yates v. United States, 354 U.S. 298

The 14 petitioners, leaders of the Communist Party in California, were indicted in 1951 in a Federal District Court under § 3 of the Smith Act and 18 U.S.C. § 371 for conspiring (1) to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) to organize, as the Communist Party of the United States, a society of persons who so advocate and teach, all with the intent of causing the overthrow of the Government by force and violence as speedily as circumstances would permit. The indictment charged that the conspiracy originated in 1940 and continued down to the date of the indictment, and that, in carrying it out, petitioners and their coconspirators would (a) become members and officers of the Communist Party, with knowledge of its unlawful purposes, and assume leadership in carrying out its policies and activities, (b) cause to be organized units of the Party in California and elsewhere, (c) write and publish articles on such advocacy and teaching, (d) conduct schools for the indoctrination of Party members in such advocacy and teaching, and (e) recruit new Party members, particularly from among persons employed in the key industries of the Nation. It also alleged 23 overt acts in furtherance of the conspiracy. Petitioners were convicted after a jury trial, and their convictions were sustained by the Court of Appeals.

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Held: The convictions are reversed, and the cause is remanded to the District Court with directions to enter judgments of acquittal as to five of the petitioners and to grant a new trial as to the others. Pp. 300-338.

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1. Since the Communist Party came into being in 1945, and the indictment was not returned until 1951, the three-year statute of limitations had run on the "organizing" charge, and required the withdrawal of that part of the indictment from the jury's consideration. Pp. 303-312. [354 U.S. 299]

1957, Yates v. United States, 354 U.S. 299

(a) Applying the rule that criminal statutes are to be construed strictly, the word "organize," as used in the Smith Act, is construed as referring only to acts entering into the creation of a new organization, and not to acts thereafter performed in carrying on its activities, even though the latter may loosely be termed "organizational." Pp. 303-311.

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(b) The trial court's mistaken construction of the word "organize" was not harmless error; the circumstances are such as to call for application of the rule which requires a verdict to be set aside where it is supportable on one ground, but not another, and it is impossible to tell which ground the jury selected. Pp. 311-312.

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2. The Smith Act does not prohibit advocacy and teaching of forcible overthrow of the Government as an abstract principle, divorced from any effort to instigate action to that end; the trial court's charge to the jury furnished wholly inadequate guidance on this central point in the case, and the conviction cannot be allowed to stand. Dennis v. United States, 341 U.S. 494, distinguished. Pp. 312-327.

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3. The evidence against five of the petitioners is so clearly insufficient that their acquittal should be ordered, but that as to the others is such as not to justify closing the way to their retrial. Pp. 327-334.

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4. Determinations favorable to petitioner Schneiderman made by this Court in Schneiderman v. United States, 320 U.S. 118, a denaturalization proceeding in which he was the prevailing party, are not conclusive in this proceeding under the doctrine of collateral estoppel, and he is not entitled to a judgment of acquittal on that ground. Federal Trade Commission v. Cement Institute, 333 U.S. 683. Pp. 335-338.

1957, Yates v. United States, 354 U.S. 299

225 F.2d 146, reversed and remanded. [354 U.S. 300]

HARLAN, J., lead opinion

1957, Yates v. United States, 354 U.S. 300

MR. JUSTICE HARLAN delivered the opinion of the Court.

1957, Yates v. United States, 354 U.S. 300

We brought these cases here to consider certain questions arising under the Smith Act which have not heretofore been passed upon by this Court, and otherwise to review the convictions of these petitioners for conspiracy to violate that Act. Among other things, the convictions are claimed to rest upon an application of the Smith Act which is hostile to the principles upon which its constitutionality was upheld in Dennis v. United States, 341 U.S. 494.

1957, Yates v. United States, 354 U.S. 300

These 14 petitioners stand convicted, after a jury trial in the United States District Court for the Southern District of California, upon a single count indictment charging them with conspiring (1) to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) to organize, as the Communist Party of the United States, a society of persons who so advocate and teach, all with the intent of causing the overthrow of the Government by force and violence as speedily as circumstances would permit. Act of June 28, 1940, § 2(a)(1) and (3), 54 [354 U.S. 301] Stat. 670, 671, 18 U.S.C. §§ 371, 2385. 1 The conspiracy is alleged to have originated in 1940 and continued down to the date of the indictment in 1951. The indictment charged that, in carrying out the conspiracy, the defendants [354 U.S. 302] and their co-conspirators would (a) become members and officers of the Communist Party, with knowledge of its unlawful purposes, and assume leadership in carrying out its policies and activities; (b) cause to be organized units of the Party in California and elsewhere; (c) write and publish, in the "Daily Worker" and other Party organs, articles on the proscribed advocacy and teaching; (d) conduct schools for the indoctrination of Party members in such advocacy and teaching, and (e) recruit new Party members, particularly from among persons employed in the key industries of the nation. Twenty-three overt acts in furtherance of the conspiracy were alleged.

1957, Yates v. United States, 354 U.S. 302

Upon conviction, each of the petitioners was sentenced to five years' imprisonment and a fine of $10,000. The [354 U.S. 303] Court of Appeals affirmed. 225 F.2d 146. We granted certiorari for the reasons already indicated. 350 U.S. 860.

1957, Yates v. United States, 354 U.S. 303

In the view we take of this case, it is necessary for us to consider only the following of petitioners' contentions: (1) that the term "organize," as used in the Smith Act, was erroneously construed by the two lower courts; (2) that the trial court's instructions to the jury erroneously excluded from the case the issue of "incitement to action"; (3) that the evidence was so insufficient as to require this Court to direct the acquittal of these petitioners, and (4) that petitioner Schneiderman's conviction was precluded by this Court's judgment in Schneiderman v. United States, 320 U.S. 118, under the doctrine of collateral estoppel. 2 For reasons given hereafter, we conclude that these convictions must be reversed and the case remanded to the District Court with instructions to enter judgments of acquittal as to certain of the petitioners, and to grant a new trial as to the rest.

1957, Yates v. United States, 354 U.S. 303

I. The Term "Organize"

1957, Yates v. United States, 354 U.S. 303

One object of the conspiracy charged was to violate the third paragraph of 18 U.S.C. § 2385, which provides:

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Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any [government in the United States] by force or violence…[s]hall be fined not more than $10,000 or imprisoned not more than ten years, or both. 3 [354 U.S. 304]

1957, Yates v. United States, 354 U.S. 304

Petitioners claim that "organize" means to "establish," "found," or "bring into existence," and that, in this sense, the Communist Party 4 was organized by 1945 at the latest. 5 On this basis, petitioners contend that this part of the indictment, returned in 1951, was barred by the three-year statute of limitations. 6 The Government, on the other hand, says that "organize" connotes a continuing process which goes on throughout the life of an organization, and that, in the words of the trial court's instructions to the jury, the term includes such things as "the recruiting of new members and the forming of new units, and the regrouping or expansion of existing clubs, classes and other units of any society, party, group or other organization." The two courts below accepted the Government's position. We think, however, that petitioners' position must prevail, upon principles stated by Chief Justice Marshall more than a century ago in United States v. Wiltberger, 5 Wheat. 76, 95-96, as follows:

1957, Yates v. United States, 354 U.S. 304

The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative, not in the judicial, department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment. [354 U.S. 305]

1957, Yates v. United States, 354 U.S. 305

It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this: that, though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorise us to say so. It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases.

1957, Yates v. United States, 354 U.S. 305

The statute does not define what is meant by "organize." Dictionary definitions are of little help, for, as those offered us sufficiently show, the term is susceptible [354 U.S. 306] of both meanings attributed to it by the parties here. 7 The fact that the Communist Party comprises various components and activities, in relation to which some of the petitioners bore the title of "Organizer," does not advance us towards a solution of the problem. The charge here is that petitioners conspired to organize the Communist Party, and, unless "organize" embraces the continuing concept contended for by the Government, the establishing of new units within the Party and similar activities, following the Party's initial formation in 1945, have no independent significance or vitality so far as the "organizing" charge is involved. Nor are we here concerned with the quality of petitioners' activities as such—that is, whether particular activities may properly be categorized as "organizational." Rather, the issue is whether the term "organize," as used in this statute, is limited by temporal concepts. Stated most simply, the problem is to choose between two possible answers to the question: when was the Communist Party "organized"? Petitioners contend that the only natural answer to the question is the formation date—in this case, 1945. The Government would have us answer the question by saying that the Party today is still not completely "organized"; [354 U.S. 307] that "organizing" is a continuing process that does not end until the entity is dissolved.

1957, Yates v. United States, 354 U.S. 307

The legislative history of the Smith Act is no more revealing as to what Congress meant by "organize" than is the statute itself. The Government urges that "organize" should be given a broad meaning, since acceptance of the term in its narrow sense would require attributing to Congress the intent that this provision of the statute should not apply to the Communist Party as it then existed. The argument is that, since the Communist Party as it then existed had been born in 1919 and the Smith Act was not passed until 1940, the use of "organize" in its narrow sense would have meant that these provisions of the statute would never have reached the act of organizing the Communist Party, except for the fortuitous rebirth of the Party in 1945—an occurrence which, of course, could not have been foreseen in 1940. This, says the Government, could hardly have been the congressional purpose, since the Smith Act as a whole was particularly aimed at the Communist Party, and its "organizing" provisions were especially directed at the leaders of the movement.

1957, Yates v. United States, 354 U.S. 307

We find this argument unpersuasive. While the legislative history of the Smith Act does show that concern about communism was a strong factor leading to this legislation, it also reveals that the statute, which was patterned on state anti-sedition laws directed not against Communists but against anarchists and syndicalists, was aimed equally at all groups falling within its scope. 8 [354 U.S. 308] More important, there is no evidence whatever to support the thesis that the organizing provision of the statute was written with particular reference to the Communist Party. Indeed, the congressional hearings indicate that it was the "advocating and teaching" provision of the Act, rather than the "organizing" provision, which was especially thought to reach Communist activities. 9

1957, Yates v. United States, 354 U.S. 308

Nor do there appear to be any other reasons for ascribing to "organize" the Government's broad interpretation. While it is understandable that Congress should have wished to supplement the general provisions of the Smith Act by a special provision directed at the activities of those responsible for creating a new organization of the proscribed type, such as was the situation involved in the Dennis case, we find nothing which suggests that the "organizing" provision was intended to reach beyond this, that is, to embrace the activities of those concerned with carrying on the affairs of an already existing organization. Such activities were already amply covered by other provisions of the Act, such as the "membership" clause, 10 and the basic prohibition of "advocacy" in conjunction with the conspiracy provision, and there is thus no need to stretch the "organizing" provision to fill any gaps in the statute. Moreover, it is difficult to find any considerations, comparable to those relating to persons responsible for creating a new organization, which would have led the Congress to single out for special treatment those persons occupying so-called organizational positions in an existing organization, especially when this same section of the statute proscribes membership in such an organization without drawing any distinction between those holding executive office and others. [354 U.S. 309]

1957, Yates v. United States, 354 U.S. 309

On the other hand, we also find unpersuasive petitioners' argument as to the intent of Congress. In support of the narrower meaning of "organize," they argue that the Smith Act was patterned after the California Criminal Syndicalism Act; 11 that the California courts have consistently taken "organize" in that Act in its narrow sense; 12 and that, under such cases as Willis v. Eastern Trust & Banking Co., 169 U.S. 295, 304, 309, and Joines v. Patterson, 274 U.S. 544, 549, it should be presumed that Congress in adopting the wording of the California Act intended "organize" to have the same meaning as that given it by the California courts. As the hearings on the Smith Act show, however, its particular prototype was the New York Criminal Anarchy Act, 13 not the California statute, and the "organizing" provisions of the New York Act have never been construed by any court. Moreover, to the extent that the language of the California statute, which itself was patterned on the earlier New York legislation, might be significant, we think that little weight can be given to these California decisions. The

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general rule that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording…is a presumption of legislative intention…which varies in strength with the similarity of the language, the established character of the decisions in the jurisdiction from which the language was adopted and the presence or lack of other indicia of intention.

1957, Yates v. United States, 354 U.S. 309

Carolene Products Co. v. United States, 323 [354 U.S. 310] U.S. 18, 26. Here, the three California cases relied on by petitioners were all decisions of lower courts, and, in the absence of anything in the legislative history indicating that they were called to its attention, we should not assume that Congress was aware of them.

1957, Yates v. United States, 354 U.S. 310

We are thus left to determine for ourselves the meaning of this provision of the Smith Act, without any revealing guides as to the intent of Congress. In these circumstances, we should follow the familiar rule that criminal statutes are to be strictly construed, and give to "organize" its narrow meaning, that is, that the word refers only to acts entering into the creation of a new organization, and not to acts thereafter performed in carrying on its activities, even though such acts may loosely be termed "organizational." See United States v. Wiltberger, supra; United States v. Lacher, 134 U.S. 624, 628; United States v. Gradwell, 243 U.S. 476, 485; Fasulo v. United States, 272 U.S. 620, 628. Such indeed is the normal usage of the word "organize," 14 and, until the decisions below in this case, the federal trial courts in which the question had arisen uniformly gave it that meaning. See United States v. Flynn, unreported (D.C.S.D.N.Y.), No. C. 137-37, aff'd, 216 F.2d 354, 358; United States v. Mesarosh, 116 F.Supp. 345, aff'd, 223 F.2d 449, 465 (dissenting opinion of Hastie, J.); see also United States v. Dennis, unreported (D.C.S.D.N.Y.), No. C. 128-87, aff'd, 183 F.2d 201, 341 U.S. 494. 15 [354 U.S. 311] We too think this statute should be read

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according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation.

1957, Yates v. United States, 354 U.S. 311

United States v. Temple, 105 U.S. 97, 99.

1957, Yates v. United States, 354 U.S. 311

The Government contends that, even if the trial court was mistaken in its construction of the statute, the error was harmless because the conspiracy charged embraced both "advocacy" of violent overthrow and "organizing" the Communist Party, and the jury was instructed that, in order to convict, it must find a conspiracy extending to both objectives. Hence, the argument is, the jury must, in any event, be taken to have found petitioners guilty of conspiring to advocate, and the convictions are supportable on that basis alone. We cannot accept this proposition for a number of reasons. The portions of the trial court's instructions relied on by the Government are not sufficiently clear or specific to warrant our drawing the inference that the jury understood it must find an agreement extending to both "advocacy" and "organizing" in order to convict. 16 Further, in order to convict, the jury was required, as the court charged, to find an overt act which was "knowingly done in furtherance of an object or purpose of the conspiracy charged in the indictment," and we have no way of knowing whether the overt act found by the jury was one which it believed to be in furtherance [354 U.S. 312] of the "advocacy", rather than the "organizing" objective of the alleged conspiracy. The character of most of the overt acts alleged associates them as readily with "organizing" as with "advocacy." 17 In these circumstances, we think the proper rule to be applied is that which requires a verdict to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected. Stromberg v. California, 283 U.S. 359, 367-368; Williams v. North Carolina, 317 U.S. 287, 291-292; Cramer v. United States, 325 U.S. 1, 36, n. 45.

1957, Yates v. United States, 354 U.S. 312

We conclude, therefore, that, since the Communist Party came into being in 1945, and the indictment was not returned until 1951, the three-year statute of limitations had run on the "organizing" charge, and required the withdrawal of that part of the indictment from the jury's consideration. Samuel v. United States, 169 F.2d 787, 798. See also Haupt v. United States, 330 U.S. 631, 641, n. 1; Stromberg v. California, supra, at 368.

1957, Yates v. United States, 354 U.S. 312

II. Instructions to the Jury

1957, Yates v. United States, 354 U.S. 312

Petitioners contend that the instructions to the jury were fatally defective in that the trial court refused to charge that, in order to convict, the jury must find that the advocacy which the defendants conspired to promote was of a kind calculated to "incite" persons to action for the forcible overthrow of the Government. It is argued that advocacy of forcible overthrow as mere abstract doctrine is within the free speech protection of the First [354 U.S. 313] Amendment; that the Smith Act, consistently with that constitutional provision, must be taken as proscribing only the sort of advocacy which incites to illegal action, and that the trial court's charge, by permitting conviction for mere advocacy, unrelated to its tendency to produce forcible action, resulted in an unconstitutional application of the Smith Act. The Government, which at the trial also requested the court to charge in terms of "incitement," now takes the position, however, that the true constitutional dividing line is not between inciting and abstract advocacy of forcible overthrow, but rather between advocacy as such, irrespective of its inciting qualities, and the mere discussion or exposition of violent overthrow as an abstract theory.

1957, Yates v. United States, 354 U.S. 313

We print in the margin the pertinent parts of the trial court's instructions. 18 After telling the jury that it could [354 U.S. 314] not convict the defendants for holding or expressing mere opinions, beliefs, or predictions relating to violent overthrow, the trial court defined the content of the proscribed advocacy or teaching in the following terms, which are crucial here:

1957, Yates v. United States, 354 U.S. 314

Any advocacy or teaching which does not include the urging of force and violence as the means of overthrowing and destroying the Government of the United States is not within the issue of the indictment here, and can constitute no basis for any finding against the defendants.

1957, Yates v. United States, 354 U.S. 314

The kind of advocacy and teaching which is charged and upon which your verdict must be [354 U.S. 315] reached is not merely a desirability, but a necessity that the Government of the United States be overthrown and destroyed by force and violence, and not merely a propriety, but a duty to overthrow and destroy the Government of the United States by force and violence.

1957, Yates v. United States, 354 U.S. 315

There can be no doubt from the record that, in so instructing the jury, the court regarded as immaterial, and intended to withdraw from the jury's consideration, any issue as to the character of the advocacy in terms of its capacity to stir listeners to forcible action. Both the petitioners and the Government submitted proposed instructions which would have required the jury to find [354 U.S. 316] that the proscribed advocacy was not of a mere abstract doctrine of forcible overthrow, but of action to that end, by the use of language reasonably and ordinarily calculated to incite persons to such action. 19 The trial court rejected these proposed instructions on the ground that any necessity for giving them which may have existed at [354 U.S. 317] the time the Dennis case was tried 20 was removed by this Court's subsequent decision in that case. The court made it clear in colloquy with counsel that, in its view, the illegal advocacy was made out simply by showing that what was said dealt with forcible overthrow, and that it was uttered with a specific intent to accomplish that purpose, 21 insisting that all such advocacy was punishable [354 U.S. 318] "whether it is language of incitement or not." The Court of Appeals affirmed on a different theory, as we shall see later on.

1957, Yates v. United States, 354 U.S. 318

We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not.

1957, Yates v. United States, 354 U.S. 318

The distinction between advocacy of abstract doctrine and advocacy directed at promoting unlawful action is one that has been consistently recognized in the opinions of this Court, beginning with Fox v. Washington, 236 U.S. 273, and Schenck v. United States, 249 U.S. 47. 22 This distinction was heavily underscored in Gitlow v. New York, 268 U.S. 652, in which the statute involved 23 was nearly identical with the one now before us, and where the Court, despite the narrow view there taken of the First Amendment, 24 said:

1957, Yates v. United States, 354 U.S. 318

The statute does not penalize the utterance or publication of abstract "doctrine" or academic discussion having no quality of incitement to any concrete action…. It is not the abstract "doctrine" of overthrowing organized government by unlawful means which is denounced by the statute, but the advocacy of action for the accomplishment of that purpose…. This [Manifesto]…is [in] the language of direct incitement…. That the jury were warranted in finding that the Manifesto advocated not merely the abstract doctrine of overthrowing organized government by force, violence and [354 U.S. 319] unlawful means, but action to that end, is clear…. That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear.

1957, Yates v. United States, 354 U.S. 319

Id. at 664-669.

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We need not, however, decide the issue before us in terms of constitutional compulsion, for our first duty is to construe this statute. In doing so, we should not assume that Congress chose to disregard a constitutional danger zone so clearly marked, or that it used the words "advocate" and "teach" in their ordinary dictionary meanings when they had already been construed as terms of art carrying a special and limited connotation. See Willis v. Eastern Trust & Banking Co., supra; Joines v. Patterson, supra; James v. Appel, 192 U.S. 129, 135. The Gitlow case and the New York Criminal Anarchy Act there involved, which furnished the prototype for the Smith Act, were both known and adverted to by Congress in the course of the legislative proceedings. 25 Cf. Carolene Products Co. v. United States, supra. The legislative history of the Smith Act and related bills shows beyond all question that Congress was aware of the distinction between the advocacy or teaching of abstract doctrine and the advocacy or teaching of action, and that it did not intend to disregard it. 26 The statute was aimed [354 U.S. 320] at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from action.

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The Government's reliance on this Court's decision in Dennis is misplaced. The jury instructions which were refused here were given there, 27 and were referred to by this Court as requiring "the jury to find the facts essential to establish the substantive crime." 341 U.S. at 512 (emphasis added). It is true that, at one point in the late Chief Justice's opinion, it is stated that the Smith Act "is directed at advocacy, not discussion," id. at 502, but it is clear that the reference was to advocacy of action, not ideas, for, in the very next sentence, the opinion emphasizes that the jury was properly instructed that there could be no conviction for "advocacy in the realm of ideas." The two concurring opinions in that case likewise emphasize the distinction with which we are concerned. Id. at 518, 534, 536, 545, 546, 547, 571, 572.

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In failing to distinguish between advocacy of forcible overthrow as an abstract doctrine and advocacy of action to that end, the District Court appears to have been led astray by the holding in Dennis that advocacy of violent action to be taken at some future time was enough. It seems to have considered that, since "inciting" speech is usually thought of as something calculated to induce immediate action, and since Dennis held advocacy of action for future overthrow sufficient, this meant that advocacy, irrespective of its tendency to generate action, is punishable, provided only that it is uttered with a specific intent to accomplish overthrow. In other words, the District Court apparently thought that Dennis obliterated the traditional dividing line between advocacy of abstract doctrine and advocacy of action. 28 [354 U.S. 321]

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This misconceives the situation confronting the Court in Dennis and what was held there. Although the jury's verdict, interpreted in light of the trial court's instructions, 29 did not justify the conclusion that the defendants' advocacy was directed at, or created any danger of, immediate overthrow, it did establish that the advocacy was aimed at building up a seditious group and maintaining it in readiness for action at a propitious time. In such circumstances, said Chief Justice Vinson, the Government need not hold its hand

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until the putsch is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required.

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341 U.S. at 509. The essence of the Dennis holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to immediate action, by advocacy found to be directed to "action for the accomplishment" of forcible overthrow, to violence as "a rule or principle of action," and employing "language of incitement," id. at 511-512, is not constitutionally protected when the group is of sufficient size and cohesiveness, is sufficiently oriented towards action, and other circumstances are such as reasonably to justify apprehension that action will occur. This is quite a different thing from the view of the District Court here that mere doctrinal justification of forcible overthrow, if engaged in with the intent to accomplish overthrow, is punishable per se under the Smith Act. That sort of advocacy, even though uttered with the hope that it may ultimately lead to violent revolution, is too remote from concrete action to be regarded [354 U.S. 322] as the kind of indoctrination preparatory to action which was condemned in Dennis. As one of the concurring opinions in Dennis put it:

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Throughout our decisions, there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken.

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Id. at 545. There is nothing in Dennis which makes that historic distinction obsolete.

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The Court of Appeals took a different view from that of the District Court. While seemingly recognizing that the proscribed advocacy must be associated in some way with action, and that the instructions given the jury here fell short in that respect, it considered that the instructions which the trial court refused were unnecessary in this instance because establishment of the conspiracy, here charged under the general conspiracy statute, required proof of an overt act, whereas in Dennis, where the conspiracy was charged under the Smith Act, no overt act was required. 30 In other words, the Court of Appeals thought that the requirement of proving an overt act was an adequate substitute for the linking of the advocacy to action which would otherwise have been necessary. 31 This, of course, is a mistaken notion, for the [354 U.S. 323] overt act will not necessarily evidence the character of the advocacy engaged in, nor, indeed, is an agreement to advocate forcible overthrow itself an unlawful conspiracy if it does not call for advocacy of action. The statement in Dennis that "it is the existence of the conspiracy which creates the danger," 341 U.S. at 511, does not support the Court of Appeals. Bearing in mind that Dennis, like all other Smith Act conspiracy cases thus far, including this one, involved advocacy which had already taken place, and not advocacy still to occur, it is clear that, in context, the phrase just quoted referred to more than the basic agreement to advocate.

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The mere fact that [during the indictment period] petitioners' activities did not result in an attempt to overthrow the Government by force and violence is, of course, no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that [354 U.S. 324] the time had come for action, coupled with…world conditions,…disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger…. If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added.

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341 U.S. at 510-511 (emphasis supplied). The reference of the term "conspiracy," in context, was to an agreement to accomplish overthrow at some future time, implicit in the jury's findings under the instructions given, rather than to an agreement to speak. Dennis was thus not concerned with a conspiracy to engage at some future time in seditious advocacy, but rather with a conspiracy to advocate presently the taking of forcible action in the future. It was action, not advocacy, that was to be postponed until "circumstances" would "permit." We intimate no views as to whether a conspiracy to engage in advocacy in the future, where speech would thus be separated from action by one further remove, is punishable under the Smith Act.

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We think, thus, that both of the lower courts here misconceived Dennis.

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In light of the foregoing we are unable to regard the District Court's charge upon this aspect of the case as adequate. The jury was never told that the Smith Act does not denounce advocacy in the sense of preaching abstractly the forcible overthrow of the Government. We think that the trial court's statement that the proscribed advocacy must include the "urging," "necessity," and "duty" of forcible overthrow, and not merely its "desirability" and "propriety," may not be regarded as a sufficient substitute for charging that the Smith Act reaches only advocacy of action for the overthrow of government by force and violence. The essential distinction [354 U.S. 325] is that those to whom the advocacy is addressed must be urged to do something, now or in the future, rather than merely to believe in something. At best, the expressions used by the trial court were equivocal, since, in the absence of any instructions differentiating advocacy of abstract doctrine from advocacy of action, they were as consistent with the former as they were with the latter. Nor do we regard their ambiguity as lessened by what the trial court had to say as to the right of the defendants to announce their beliefs as to the inevitability of violent revolution, or to advocate other unpopular opinions. Especially when it is unmistakable that the court did not consider the urging of action for forcible overthrow as being a necessary element of the proscribed advocacy, but rather considered the crucial question to be whether the advocacy was uttered with a specific intent to accomplish such overthrow, 32 we would not be warranted in assuming that the jury drew from these instructions more than the court itself intended them to convey.

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Nor can we accept the Government's argument that the District Court was justified in not charging more than it did because the refused instructions proposed by both sides specified that the advocacy must be of a character reasonably calculated to "incite" to forcible overthrow, a term which, it is now argued, might have conveyed to the jury an implication that the advocacy must be of immediate action. Granting that some qualification of the proposed instructions would have been permissible to dispel such an implication, and that it was not necessary even that the trial court should have employed the particular term "incite," it was nevertheless incumbent on the court to make clear in some fashion that the advocacy must be of action and not merely abstract doctrine. The instructions given not only do not employ the word [354 U.S. 326] "incite," but also avoid the use of such terms and phrases as "action," "call for action," "as a rule or principle of action," and so on, all of which were offered in one form or another by both the petitioners and the Government. 33

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What we find lacking in the instructions here is illustrated by contrasting them with the instructions given to the Dennis jury, upon which this Court's sustaining of the convictions in that case was bottomed. There, the trial court charged:

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In further construction and interpretation of the statute [the Smith Act], I charge you that it is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and advocacy of action for the accomplishment of that purpose, by language reasonably and ordinarily calculated to incite persons to such action. Accordingly, you cannot find the defendants or any of them guilty of the crime charged unless you are satisfied beyond a reasonable doubt that they conspired…to advocate and teach the duty and necessity of overthrowing or destroying the Government of the United States by force and violence, with the intent that such teaching and advocacy be of a rule or principle of action and by language reasonably and ordinarily calculated to incite persons to such action, all with the intent to cause the overthrow…as speedily as circumstances would permit.

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(Emphasis added.) 9 F.R.D. 367, 391, and see 341 U.S. at 511-512.

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We recognize that distinctions between advocacy or teaching of abstract doctrines, with evil intent, and that which is directed to stirring people to action, are often subtle and difficult to grasp, for, in a broad sense, as Mr. Justice Holmes said in his dissenting opinion in Gitlow, [354 U.S. 327] supra, 268 U.S. at 673: "Every idea is an incitement." But the very subtlety of these distinctions required the most clear and explicit instructions with reference to them, for they concerned an issue which went to the very heart of the charges against these petitioners. The need for precise and understandable instructions on this issue is further emphasized by the equivocal character of the evidence in this record, with which we deal in Part III of this opinion. Instances of speech that could be considered to amount to "advocacy of action" are so few and far between as to be almost completely overshadowed by the hundreds of instances in the record in which overthrow, if mentioned at all, occurs in the course of doctrinal disputation so remote from action as to be almost wholly lacking in probative value. Vague references to "revolutionary" or "militant" action of an unspecified character which are found in the evidence might, in addition, be given too great weight by the jury in the absence of more precise instructions. Particularly in light of this record, we must regard the trial court's charge in this respect as furnishing wholly inadequate guidance to the jury on this central point in the case. We cannot allow a conviction to stand on such "an equivocal direction to the jury on a basic issue." Bollenbach v. United States, 326 U.S. 607, 613.

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III. The Evidence

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The determinations already made require a reversal of these convictions. Nevertheless, in the exercise of our power under 28 U.S.C. § 2106 to "direct the entry of such appropriate judgment…as may be just under the circumstances," we have conceived it to be our duty to scrutinize this lengthy record 34 with care, in order to determine whether the way should be left open for a new trial of all or some of these petitioners. Such a judgment, we [354 U.S. 328] think, should, on the one hand, foreclose further proceedings against those of the petitioners as to whom the evidence in this record would be palpably insufficient upon a new trial, and should, on the other hand, leave the Government free to retry the other petitioners under proper legal standards, especially since it is by no means clear that certain aspects of the evidence against them could not have been clarified to the advantage of the Government had it not been under a misapprehension as to the burden cast upon it by the Smith Act. In judging the record by these criteria, we do not apply to these cases the rigorous standards of review which, for example, the Court of Appeals would be required to apply in reviewing the evidence if any of these petitioners are convicted upon a retrial. Compare Dennis v. United States, supra, at 516. Rather, we have scrutinized the record to see whether there are individuals as to whom acquittal is unequivocally demanded. We do this because it is, in general, too hypothetical and abstract an inquiry to try to judge whether the evidence would have been inadequate had the cases been submitted under a proper charge, and had the Government realized that all its evidence must be channeled into the "advocacy", rather than the "organizing" charge. We think we may do this by drawing on our power under 28 U.S.C. § 2106, because, under that statute, we would no doubt be justified in refusing to order acquittal even where the evidence might be deemed palpably insufficient, particularly since petitioners have asked in the alternative for a new trial as well as for acquittal. See Bryan v. United States, 338 U.S. 552.

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On this basis, we have concluded that the evidence against petitioners Connelly, Kusnitz, Richmond, Spector, and Steinberg is so clearly insufficient that their acquittal should be ordered, but that, as to petitioners Carlson, Dobbs, Fox, Healey (Mrs. Connelly), Lambert, Lima, Schneiderman, Stack, and Yates, we would not be justified [354 U.S. 329] in closing the way to their retrial. We proceed to the reasons for these conclusions.

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At the outset, in view of the conclusions reached in Part I of this opinion, we must put aside as against all petitioners the evidence relating to the "organizing" aspect of the alleged conspiracy, except insofar as it bears upon the "advocacy" charge. That, indeed, dilutes in a substantial way a large part of the evidence, for the record unmistakably indicates that the Government relied heavily on its "organizing" charge. Two further general observations should also be made about the evidence as to the "advocacy" charge. The first is that both the Government and the trial court evidently proceeded on the theory that advocacy of abstract doctrine was enough to offend the Smith Act, whereas, as we have held, it is only advocacy of forcible action that is proscribed. The second observation is that both the record and the Government's brief in this Court make it clear that the Government's thesis was that the Communist Party, or at least the Communist Party of California, constituted the conspiratorial group, and that membership in the conspiracy could therefore be proved by showing that the individual petitioners were actively identified with the Party's affairs, and thus, inferentially, parties to its tenets. This might have been well enough towards making out the Government's case if advocacy of the abstract doctrine of forcible overthrow satisfied the Smith Act, for we would at least have little difficulty in saying on this record that a jury could justifiably conclude that such was one of the tenets of the Communist Party, and there was no dispute as to petitioners' active identification with Party affairs. But, when it comes to Party advocacy or teaching in the sense of a call to forcible action at some future time, we cannot but regard this record as strikingly deficient. At best, this voluminous record shows but a half dozen or so scattered incidents which, even under the loosest [354 U.S. 330] standards, could be deemed to show such advocacy. Most of these were not connected with any of the petitioners, or occurred many years before the period covered by the indictment. We are unable to regard this sporadic showing as sufficient to justify viewing the Communist Party as the nexus between these petitioners and the conspiracy charged. We need scarcely say that however much one may abhor even the abstract preaching of forcible overthrow of government, or believe that forcible overthrow is the ultimate purpose to which the Communist Party is dedicated, it is upon the evidence in the record that the petitioners must be judged in this case.

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We must, then, look elsewhere than to the evidence concerning the Communist Party as such for the existence of the conspiracy to advocate charged in the indictment. As to the petitioners Connelly, Kusnitz, Richmond, Spector, and Steinberg, we find no adequate evidence in the record which would permit a jury to find that they were members of such a conspiracy. For all purposes relevant here, the sole evidence as to them was that they had long been members, officers or functionaries of the Communist Party of California, and that, standing alone, as Congress has enacted in § 4(f) of the Internal Security Act of 1950, 35 makes out no case against them. So far as this record shows, none of them has engaged in or been associated with any but what appear to have been wholly lawful activities, 36 or has ever made a single remark or [354 U.S. 331] been present when someone else made a remark, which would tend to prove the charges against them. Connelly and Richmond were, to be sure, the Los Angeles and Executive Editors, respectively, of the Daily People's World, the West Coast Party organ, but we can find nothing in the material introduced into evidence from that newspaper which advances the Government's case.

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Moreover, apart from the inadequacy of the evidence to show, at best, more than the abstract advocacy and teaching of forcible overthrow by the Party, it is difficult to perceive how the requisite specific intent to accomplish such overthrow could be deemed proved by a showing of mere membership or the holding of office in the Communist Party. We therefore think that, as to these petitioners, the evidence was entirely too meagre to justify putting them to a new trial, and that their acquittal should be ordered.

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As to the nine remaining petitioners, we consider that a different conclusion should be reached. There was testimony from the witness Foard, and other evidence, tying Fox, Healey, Lambert, Lima, Schneiderman, Stack, and Yates to Party classes conducted in the San Francisco area during the year 1946 where there occurred what might be considered to be the systematic teaching and advocacy of illegal action which is condemned by the statute. It might be found that one of the purposes of such classes was to develop in the members of the group a readiness to engage at the crucial time, perhaps during war or during attack upon the United States from without, in such activities as sabotage and street fighting in order to divert and diffuse the resistance of the authorities and, if possible, to seize local vantage points. There was also testimony as to activities in the Los Angeles area, during the period covered by the indictment, which might be considered to amount to "advocacy of action," and with which petitioners Carlson and Dobbs were linked. From the [354 U.S. 332] testimony of the witness Scarletto, it might be found that individuals considered to be particularly trustworthy were taken into an "underground" apparatus and there instructed in tasks which would be useful when the time for violent action arrived. Scarletto was surreptitiously indoctrinated in methods, as he said, of moving "masses of people in time of crisis." It might be found, under all the circumstances, that the purpose of this teaching was to prepare the members of the underground apparatus to engage in, to facilitate, and to cooperate with violent action directed against government when the time was ripe. In short, while the record contains evidence of little more than a general program of educational activity by the Communist Party which included advocacy of violence as a theoretical matter, we are not prepared to say, at this stage of the case, that it would be impossible for a jury, resolving all conflicts in favor of the Government and giving the evidence as to these San Francisco and Los Angeles episodes its utmost sweep, to find that advocacy of action was also engaged in when the group involved was thought particularly trustworthy, dedicated, and suited for violent tasks.

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Nor can we say that the evidence linking these nine petitioners to that sort of advocacy, with the requisite specific intent, is so tenuous as not to justify their retrial under proper legal standards. Fox, Healey, Lambert, Lima, Schneiderman, Stack, and Yates, as members of the State and San Francisco County Boards, were shown to have been closely associated with Ida Rothstein, the principal teacher of the San Francisco classes, who also, during this same period, arranged in a devious and conspiratorial manner for the holding of Board meetings at the home of the witness Honig which were attended by these petitioners. It was also shown that, from time to time, instructions emanated from the Boards or their members to instructors of groups at lower levels . And while none [354 U.S. 333] of the written instructions produced at the trial were invidious in themselves, it might be inferred that additional instructions were given which were not reduced to writing. Similarly, there was evidence of close association between petitioners Carlson and Dobbs and associates or superiors of the witness Scarletto which might be taken as indicating that these two petitioners had knowledge of the apparatus in which Scarletto was active. And finally, all of these nine petitioners were shown either to have made statements themselves or apparently approved statements made in their presence which a jury might take as some evidence of their participation with the requisite intent in a conspiracy to advocate illegal action.

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As to these nine petitioners, then, we shall not order an acquittal.

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Before leaving the evidence, we consider it advisable, in order to avoid possible misapprehension upon a new trial, to deal briefly with petitioners' contention that the evidence was insufficient to prove the overt act required for conviction of conspiracy under 18 U.S.C. § 371. Only 2 of the 11 overt acts alleged in the indictment to have occurred within the period of the statute of limitations were proved. Each was a public meeting held under Party auspices at which speeches were made by one or more of the petitioners extolling leaders of the Soviet Union and criticizing various aspects of the foreign policy of the United States. At one of the meetings, an appeal for funds was made. Petitioners contend that these meetings do not satisfy the requirement of the statute that there be shown an act done by one of the conspirators "to effect the object of the conspiracy." The Government concedes that nothing unlawful was shown to have been said or done at these meetings, but contends that these occurrences nonetheless sufficed as overt acts under the jury's findings. [354 U.S. 334]

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We think the Government's position is correct. It is not necessary that an overt act be the substantive crime charged in the indictment as the object of the conspiracy. Pierce v. United States, 252 U.S. 239, 244; United States v. Rabinowich, 238 U.S. 78, 86. Nor, indeed, need such an act, taken by itself, even be criminal in character. Braverman v. United States, 317 U.S. 49. The function of the overt act in a conspiracy prosecution is simply to manifest "that the conspiracy is at work," Carlson v. United States, 187 F.2d 366, 370, and is neither a project still resting solely in the minds of the conspirators nor a fully completed operation no longer in existence. The substantive offense here charged as the object of the conspiracy is speech, rather than the specific action that typically constitutes the gravamen of a substantive criminal offense. Were we to hold that some concrete action leading to the overthrow of the Government was required, as petitioners appear to suggest, we would have changed the nature of the offense altogether. No such drastic change in the law can be drawn from Congress' perfunctory action in 1948 bringing Smith Act cases within 18 U.S.C. § 371.

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While, upon a new trial, the overt act must be found, in view of what we have held, to have been in furtherance of a conspiracy to "advocate," rather than to "organize," we are not prepared to say that one of the episodes relied on here could not be found to be in furtherance of such an objective if, under proper instructions, a jury should find that the Communist Party was a vehicle through which the alleged conspiracy was promoted. While, in view of our acquittal of Steinberg, the first of these episodes, in which he is alleged to have been involved, may no longer be relied on as an overt act, this would not affect the second episode, in which petitioner Schneiderman was alleged and proved to have participated.

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For the foregoing reasons we think that the way must be left open for a new trial to the extent indicated. [354 U.S. 335]

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IV. Collateral Estoppel

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There remains to be dealt with petitioner Schneiderman's claim based on the doctrine of collateral estoppel by judgment. Petitioner urges that, in Schneiderman v. United States, 320 U.S. 118, a denaturalization proceeding in which he was the prevailing party, this Court made determinations favorable to him which are conclusive in this proceeding under the doctrine of collateral estoppel. Specifically, petitioner contends that the Schneiderman decision determined, for purposes of this proceeding, (1) that the teaching of Marxism-Leninism by the Communist Party was not necessarily the advocacy of violent overthrow of government; (2) that at least one tenable conclusion to be drawn from the evidence was that the Communist Party desired to achieve its goal of socialism through peaceful means; (3) that it could not be presumed, merely because of his membership or officership in the Communist Party, that Schneiderman adopted an illegal interpretation of Marxist doctrine, and, finally, (4) that, absent proof of overt acts indicating that Schneiderman personally adopted a reprehensible interpretation, the Government had failed to establish its burden by the clear and unequivocal evidence necessary in a denaturalization case. In the courts below, petitioner urged unsuccessfully that these determinations were conclusive in this proceeding under the doctrine of collateral estoppel, and entitled him either to an acquittal or to special instructions to the jury. He makes the same contentions here.

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We are in agreement with petitioner that the doctrine of collateral estoppel is not made inapplicable by the fact that this is a criminal case, whereas the prior proceedings were civil in character. United States v. Oppenheimer, 242 U.S. 85. We agree further that the nonexistence of a fact may be established by a judgment no less than its [354 U.S. 336] existence; that, in other words, a party may be precluded under the doctrine of collateral estoppel from attempting a second time to prove a fact that he sought unsuccessfully to prove in a prior action. Sealfon v. United States, 332 U.S. 575. Nor need we quarrel with petitioner's premise that the standard of proof applicable in denaturalization cases is at least no greater than that applicable in criminal proceedings. Compare Helvering v. Mitchell, 303 U.S. 391; Murphy v. United States, 272 U.S. 630. We assume, without deciding, that substantially the same standards of proof are applicable in the two types of cases. Cf. Klapprott v. United States, 335 U.S. 601, 612. Nevertheless, for reasons that will appear, we think that the doctrine of collateral estoppel does not help petitioner here.

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We differ with petitioner, first of all, in his estimate of what the Schneiderman case determined for purposes of the doctrine of collateral estoppel. That doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed fact and law, that were essential to the decision. Commissioner v. Sunnen, 333 U.S. 591, 601-602; Tait v. Western Maryland R. Co., 289 U.S. 620; The Evergreens v. Nunan, 141 F.2d 927, 928. As we read the Schneiderman opinion, the only determination essential to the decision was that Schneiderman had not, prior to 1927, adopted an interpretation of the Communist Party's teachings featuring "agitation and exhortation calling for present violent action." 320 U.S. at 157-159. If it be accepted that the holding extended in the alternative to the character of advocacy engaged in by the Communist Party, then the essential finding was that the Party had not, in 1927, engaged in "agitation and exhortation calling for present violent action." Ibid. The Court in Schneiderman certainly did not purport to determine what the doctrinal content of "Marxism-Leninism" might be at all times and in all places. Nor did it establish that the books and pamphlets introduced against [354 U.S. 337] Schneiderman in that proceeding could not support in any way an inference of criminality, no matter how or by whom they might thereafter be used. At most, we think, it made the determinations we have stated, limited to the time and place that were then in issue.

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It is therefore apparent that the determinations made by this Court in Schneiderman could not operate as a complete bar to this proceeding. Wholly aside from the fact that the Court was there concerned with the state of affairs existing in 1927, whereas we are concerned here with the period 1948-1951, the issues in the present case are quite different. We are not concerned here with whether petitioner has engaged in "agitation and exhortation calling for present violent action," whether in 1927 or later. Even if it were conclusively established against the Government that neither petitioner nor the Communist Party had ever engaged in such advocacy, that circumstance would constitute no bar to a conviction under 18 U.S.C. § 371 of conspiring to advocate forcible overthrow of government in violation of the Smith Act. It is not necessary for conviction here that advocacy of "present violent action" be proved. Petitioner's demand for judgment of acquittal must therefore be rejected. The decision in Federal Trade Commission v. Cement Institute, 333 U.S. 683, 708-709, is precisely in point, and is controlling.

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What we have said we think also disposes of petitioner's contention that the trial court should have instructed the jury that certain evidentiary or subordinate issues must be taken as conclusively determined in his favor. The argument is that the determinations made in the Schneiderman case are not wholly irrelevant to this case, even if they do not conclude it, and hence that petitioner should be entitled to an instruction giving those determinations such partial conclusive effect as they might warrant. We think, however, that the doctrine [354 U.S. 338] of collateral estoppel does not establish any such concept of "conclusive evidence" as that contended for by petitioner. The normal rule is that a prior judgment need be given no conclusive effect at all unless it establishes one of the ultimate facts in issue in the subsequent proceeding. So far as merely evidentiary or "mediate" facts are concerned, the doctrine of collateral estoppel is inoperative. The Evergreens v. Nunan, 141 F.2d 927; Restatement, Judgments § 68, comment p. Whether there are any circumstances in which the giving of limiting instructions such as those requested here might be necessary or proper we need not now determine. Cf. Bordonaro Bros. Theatres, Inc. v. Paramount Pictures, Inc., 203 F.2d 676, 678. It is sufficient for us to hold that, in this case, the matters of fact and mixed fact and law necessarily determined by the prior judgment, limited as they were to the year 1927, were so remote from the issues as to justify their exclusion from evidence in the discretion of the trial judge.

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Since there must be a new trial, we have not found it necessary to deal with the contentions of the petitioners as to the fairness of the trial already held. The judgment of the Court of Appeals is reversed, and the case remanded to the District Court for further proceedings consistent with this opinion.

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It is so ordered.

BURTON, J., concurring

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MR. JUSTICE BURTON, concurring in the result.

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I agree with the result reached by the Court, and with the opinion of the Court except as to its interpretation of the term "organize" as used in the Smith Act. As to that, I agree with the interpretation given it by the Court of Appeals. 225 F.2d 146.

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MR. JUSTICE BRENNAN and MR. JUSTICE WHITTAKER took no part in the consideration or decision of this case. [354 U.S. 339]

BLACK, J., concurring and dissenting

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MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurring in part and dissenting in part.

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I

1957, Yates v. United States, 354 U.S. 339

I would reverse every one of these convictions, and direct that all the defendants be acquitted. In my judgment, the statutory provisions on which these prosecutions are based abridge freedom of speech, press and assembly in violation of the First Amendment to the United States Constitution. See my dissent and that of MR. JUSTICE DOUGLAS in Dennis v. United States, 341 U.S. 494, 579, 581. Also see my opinion in American Communications Assn. v. Douds, 339 U.S. 382, 445.

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The kind of trials conducted here are wholly dissimilar to normal criminal trials. Ordinarily, these "Smith Act" trials are prolonged affairs lasting for months. In part, this is attributable to the routine introduction in evidence of massive collections of books, tracts, pamphlets, newspapers, and manifestoes discussing Communism, Socialism, Capitalism, Feudalism and governmental institutions in general, which, it is not too much to say, are turgid, diffuse, abstruse, and just plain dull. Of course, no juror can or is expected to plow his way through this jungle of verbiage. The testimony of witnesses is comparatively insignificant. Guilt or innocence may turn on what Marx or Engels or someone else wrote or advocated as much as a hundred or more years ago. Elaborate, refined distinctions are drawn between "Communism," "Marxism," "Leninism," "Trotskyism," and "Stalinism." When the propriety of obnoxious or unorthodox views about government is in reality made the crucial issue, as it must be in cases of this kind, prejudice makes conviction inevitable except in the rarest circumstances. [354 U.S. 340]

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II

1957, Yates v. United States, 354 U.S. 340

Since the Court proceeds on the assumption that the statutory provisions involved are valid, however, I feel free to express my views about the issues it considers.

1957, Yates v. United States, 354 U.S. 340

First.—I agree with Part I of the Court's opinion, that deals with the statutory term, "organize" and holds that the organizing charge in the indictment was barred by the three-year statute of limitations.

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Second.—I also agree with the Court insofar as it holds that the trial judge erred in instructing that persons could be punished under the Smith Act for teaching and advocating forceful overthrow as an abstract principle. But, on the other hand, I cannot agree that the instruction which the Court indicates it might approve is constitutionally permissible. The Court says that persons can be punished for advocating action to overthrow the Government by force and violence where those to whom the advocacy is addressed are urged "to do something, now or in the future, rather than merely to believe in something." Under the Court's approach, defendants could still be convicted simply for agreeing to talk, as distinguished from agreeing to act. I believe that the First Amendment forbids Congress to punish people for talking about public affairs, whether or not such discussion incites to action, legal or illegal. See Meiklejohn, Free Speech and Its Relation to Self-Government. Cf. Chafee, Book Review, 62 Harv.L.Rev. 891. As the Virginia Assembly said in 1785, in its "Statute for Religious Liberty," written by Thomas Jefferson,

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it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order…. \* Cf. Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 501-502; Labor [354 U.S. 341] Board v. Virginia Electric & P. Co., 314 U.S. 469, 476-480; Virginia Electric & P. Co. v. Labor Board, 319 U.S. 533, 539.

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Third.—I also agree with the Court that petitioners, Connelly, Kusnitz, Richmond, Spector, and Steinberg, should be ordered acquitted, since there is no evidence that they have ever engaged in anything but "wholly lawful activities." But, in contrast to the Court, I think the same action should also be taken as to the remaining nine defendants. The Court's opinion summarizes the strongest evidence offered against these defendants. This summary reveals a pitiful inadequacy of proof to show beyond a reasonable doubt that the defendants were guilty of conspiring to incite persons to act to overthrow the Government. The Court says:

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In short, while the record contains evidence of little more than a general program of educational activity by the Communist Party which included advocacy of violence as a theoretical matter, we are not prepared to say, at this stage of the case, that it would be impossible for a jury, resolving all conflicts in favor of the Government and giving the evidence as to these San Francisco and Los Angeles episodes its utmost sweep, to find that advocacy of action was also engaged in when the group involved was thought particularly trustworthy, dedicated, and suited for violent tasks.

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It seems unjust to compel these nine defendants, who have just been through one four-month trial, to go through the ordeal of another trial on the basis of such flimsy evidence. As the Court's summary demonstrates, the evidence introduced during the trial against these defendants was insufficient to support their conviction. Under such circumstances, it was the duty of the trial judge to direct a verdict of acquittal. If the jury had [354 U.S. 342] been discharged so that the Government could gather additional evidence in an attempt to convict, such a discharge would have been a sound basis for plea of former jeopardy in a second trial. See Wade v. Hunter, 336 U.S. 684, and cases cited there. I cannot agree that "justice" requires this Court to send these cases back to put these defendants in jeopardy again in violation of the spirit, if not the letter, of the Fifth Amendment's provision against double jeopardy.

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Fourth.—The section under which this conspiracy indictment was brought, 18 U.S.C. § 371, requires proof of an overt act done "to effect the object of the conspiracy." Originally, 11 such overt acts were charged here. These 11 have now dwindled to 2, and, as the Court says:

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Each was a public meeting held under Party auspices at which speeches were made by one or more of the petitioners extolling leaders of the Soviet Union and criticizing various aspects of the foreign policy of the United States. At one of the meetings ,an appeal for funds was made. Petitioners contend that these meetings do not satisfy the requirement of the statute that there be shown an act done by one of the conspirators "to effect the object of the conspiracy." The Government concedes that nothing unlawful was shown to have been said or done at these meetings, but contends that these occurrences nonetheless sufficed as overt acts under the jury's findings.

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The Court holds that attendance at these lawful and orderly meetings constitutes an "overt act" sufficient to meet the statutory requirements. I disagree.

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The requirement of proof of an overt act in conspiracy cases is no mere formality, particularly in prosecutions like these, which, in many respects are akin to trials for treason. Article III, § 3, of the Constitution provides [354 U.S. 343] that

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No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

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One of the objects of this provision was to keep people from being convicted of disloyalty to government during periods of excitement, when passions and prejudices ran high, merely because they expressed "unacceptable" views. See Cramer v. United States, 325 U.S. 1, 48. The same reasons that make proof of overt acts so important in treason cases apply here. The only overt act which is now charged against these defendants is that they went to a constitutionally protected public assembly where they took part in lawful discussion of public questions, and where neither they nor anyone else advocated or suggested overthrow of the United States Government. Many years ago, this Court said that

1957, Yates v. United States, 354 U.S. 343

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.

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United States v. Cruikshank, 92 U.S. 542, 552. And see De Jonge v. Oregon, 299 U.S. 353, 364-365. In my judgment, defendants' attendance at these public meetings cannot be viewed as an overt act to effectuate the object of the conspiracy charged.

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III

1957, Yates v. United States, 354 U.S. 343

In essence, petitioners were tried upon the charge that they believe in and want to foist upon this country a different, and, to us, a despicable, form of authoritarian government in which voices criticizing the existing order are summarily silenced. I fear that the present type of prosecutions are more in line with the philosophy of authoritarian government than with that expressed by our First Amendment.

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Doubtlessly, dictators have to stamp out causes and beliefs which they deem subversive to their evil regimes. [354 U.S. 344] But governmental suppression of causes and beliefs seems to me to be the very antithesis of what our Constitution stands for. The choice expressed in the First Amendment in favor of free expression was made against a turbulent background by men such as Jefferson, Madison, and Mason—men who believed that loyalty to the provisions of this Amendment was the best way to assure a long life for this new nation and its Government. Unless there is complete freedom for expression of all ideas, whether we like them or not, concerning the way government should be run and who shall run it, I doubt if any views, in the long run, can be secured against the censor. The First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us.

CLARK, J., dissenting

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MR. JUSTICE CLARK, dissenting.

1957, Yates v. United States, 354 U.S. 344

The petitioners, principal organizers and leaders of the Communist Party in California, have been convicted for a conspiracy covering the period 1940 to 1951. They were engaged in this conspiracy with the defendants in Dennis v. United States, 341 U.S. 494 (1951). The Dennis defendants, named as coconspirators but not indicted with the defendants here, were convicted in New York under the former conspiracy provisions of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) § 11. They have served or are now serving prison terms as a result of their convictions.

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The conspiracy charged here is the same as in Dennis, except that here it is geared to California conditions, and brought, for the period 1948 to 1951, under the general conspiracy statute, 18 U.S.C. § 371, rather than the old conspiracy section of the Smith Act. The indictment [354 U.S. 345] charges petitioners with a conspiracy to violate two sections of the Smith Act, as recodified in 18 U.S.C. § 2385, by knowingly and willfully (1) teaching and advocating the violent overthrow of the Government of the United States, and (2) organizing in California through the creation of groups, cells, schools, assemblies of persons, and the like, the Communist Party, a society which teaches or advocates violent overthrow of the Government.

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The conspiracy includes the same group of defendants as in the Dennis case, though petitioners here occupied a lower echelon in the party hierarchy. They nevertheless served in the same army and were engaged in the same mission. The convictions here were based upon evidence closely paralleling that adduced in Dennis and in United States v. Flynn, 216 F.2d 354 (C.A.2d Cir.1954), both of which resulted in convictions. This Court laid down in Dennis the principles governing such prosecutions, and they were closely adhered to here, although the nature of the two cases did not permit identical handling.

1957, Yates v. United States, 354 U.S. 345

I would affirm the convictions. However, the Court has freed five of the convicted petitioners and ordered new trials for the remaining nine. As to the five, it says that the evidence is "clearly insufficient." I agree with the Court of Appeals, the District Court, and the jury that the evidence showed guilt beyond a reasonable doubt. 1 It paralleled that in Dennis and Flynn, and was [354 U.S. 346] equally as strong. In any event, this Court should not acquit anyone here. In its long history, I find no case in which an acquittal has been ordered by this Court solely on the facts. It is somewhat late to start in now usurping the function of the jury, especially where new trials are to be held covering the same charges. It may be—although, after today's opinion ,it is somewhat doubtful—that, under the new theories announced by the Court [354 U.S. 347] for Smith Act prosecutions sufficient evidence might be available on remand. To say the least, the Government should have an opportunity to present its evidence under these changed conditions.

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I cannot agree that half of the indictment against the remaining nine petitioners should be quashed as barred by the statute of limitations. I agree with my Brother BURTON that the Court has incorrectly interpreted the [354 U.S. 348] term "organize" as used in the Smith Act. The Court concludes that the plain words of the Act, 2 "Whoever organizes or helps or attempts to organize any society, group, or assembly of persons" (emphasis added) embodies only those "acts entering into the creation of a new organization." As applied to the Communist Party, the Court holds that it refers only to the reconstitution of the Party in 1945, and a part of the prosecution here is therefore barred by the three-year statute of limitations. This construction frustrates the purpose of the Congress, for the Act was passed in 1940 primarily to curb the growing strength and activity of the Party. 3 Under such an interpretation, all prosecution would have been barred at the very time of the adoption of the Act, for the Party was formed in 1919. If the Congress had been concerned with the initial establishment of the Party, it would not have used the words "helps or attempts," nor the phrase "group, [354 U.S. 349] or assembly of persons." It was concerned with the new Communist fronts, cells, schools, and other groups, as well as assemblies of persons, which were being created nearly every day under the aegis of the Party to carry on its purposes. This is what the indictment here charges and the proof shows beyond doubt was, in fact, done. The decision today prevents for all time any prosecution of Party members under this subparagraph of the Act.

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While the holding of the Court requires a reversal of the case and a retrial, the Court very properly considers the instructions given by the trial judge. I do not agree with the conclusion of the Court regarding the instructions, but I am highly pleased to see that it disposes of this problem, so that, on the new trial, instructions will be given that will at least meet the views of the Court. I have studied the section of the opinion concerning the instructions, and, frankly, its "artillery of words" leaves me confused as to why the majority concludes that the charge as given was insufficient. I thought that Dennis merely held that a charge was sufficient where it requires a finding that

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the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence…. , not as a prophetic insight or as a bit of…speculation, but as a program for winning adherents and as a policy to be translated into action

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as soon as the circumstances permit. 341 U.S. at 546-547 (concurring opinion). I notice however that, to the majority,

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The essence of the Dennis holding was that indoctrination of a group in preparation for future violent action, as well as exhortation to immediate action, by advocacy found to be directed to "action for the accomplishment" of forcible overthrow, to violence "as a rule or principle of action," and employing "language of incitement," id. at 511-512, is not constitutionally protected when the group is of sufficient [354 U.S. 350] size and cohesiveness, is sufficiently oriented towards action, and other circumstances are such as reasonably to justify apprehension that action will occur.

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I have read this statement over and over, but do not seem to grasp its meaning, for I see no resemblance between it and what the respected Chief Justice wrote in Dennis, nor do I find any such theory in the concurring opinions. As I see it, the trial judge charged, in essence, all that was required under the Dennis opinions, whether one takes the view of the Chief Justice or of those concurring in the judgment. Apparently what disturbs the Court now is that the trial judge here did not give the Dennis charge, although both the prosecution and the defense asked that it be given. Since he refused to grant these requests, I suppose the majority feels that there must be some difference between the two charges, else the one that was given in Dennis would have been followed here. While there may be some distinctions between the charges, as I view them, they are without material difference. I find, as the majority intimates, that the distinctions are too "subtle and difficult to grasp."

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However, in view of the fact that the case must be retried regardless of the disposition made here on the charges, I see no reason to engage in what becomes nothing more than an exercise in semantics with the majority about this phase of the case. Certainly, if I had been sitting at the trial I would have given the Dennis charge, not because I consider it any more correct, but simply because it had the stamp of approval of this Court. Perhaps this approach is too practical. But I am sure the trial judge realizes now that practicality often pays.

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I should perhaps add that I am in agreement with the Court in its holding that petitioner Schneiderman can find no aid from the doctrine of collateral estoppel.

Footnotes

HARLAN, J., lead opinion (Footnotes)

1957, Yates v. United States, 354 U.S. 350

1. The Smith Act, as enacted in 1940, provided in pertinent part as follows:

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SEC. 2. (a) It shall be unlawful for any person—

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(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence…;

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(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

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(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

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\* \* \* \*

1957, Yates v. United States, 354 U.S. 350

SEC. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of this title.

1957, Yates v. United States, 354 U.S. 350

\* \* \* \*

1957, Yates v. United States, 354 U.S. 350

SEC. 5. (a) Any person who violates any of the provisions of this title shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than ten years, or both.

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Effective September 1, 1948, the Smith Act was repealed, and substantially reenacted as 18 U.S.C. § 2385, as part of the 1948 recodification. 62 Stat. 808. Section 2385 provided in pertinent part as follows:

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Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States…by force or violence…; or

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Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence…; or

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Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

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Shall be fined not more than $10,000 or imprisoned not more than ten years, or both….

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For convenience, the original Smith Act and § 2385 will both be referred to in this opinion as "the Smith Act."

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It will be noted that the recodification did not carry into § 2385 the conspiracy section of the Smith Act (§ 3). The latter provision, however, was in substance restored to § 2385 on July 24, 1956, to apply to offenses committed on or after that date. 70 Stat. 623.

1957, Yates v. United States, 354 U.S. 350

The conspiracy charged in this case was laid under § 3 of the Smith Act for the period 1940 to September 1, 1948, and for the period thereafter, down to the filing of the indictment in 1951, under the general conspiracy statute, 18 U.S.C. § 371, providing in pertinent part as follows:

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If two or more persons conspire…to commit any offense against the United States,…and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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2. We find it unnecessary to consider the petitioners' contention with respect to the District Court's alleged failure to apply the "clear and present danger" rule, as well as the contention that their motions for a new trial and a continuance were erroneously denied.

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3. See note 1, supra, at p. 302.

1957, Yates v. United States, 354 U.S. 350

4. Except where otherwise indicated, throughout this opinion, "Communist Party" refers to the present Communist Party of the United States.

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5. It is not disputed that the Communist Party, as referred to in the indictment, came into being no later than July, 1945, when the Communist Political Association was disbanded and reconstituted as the Communist Party of the United States. The original Party was founded in this country in 1919.

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6. 62 Stat. 828, 18 U.S.C. § 3282.

1957, Yates v. United States, 354 U.S. 350

7. Both petitioners and the Government cite the following definitions of "organize" from Webster's New International Dictionary (2d ed.):

1957, Yates v. United States, 354 U.S. 350

1. To furnish with organs; to give an organic structure to…. 2. To arrange or constitute in interdependent parts, each having a special function, act, office, or relation with respect to the whole; to systematize; to get into working order; as, to organize an army; to organize recruits.

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The Government also gives us the following from Funk & Wagnall's New Standard Dictionary (1947):

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1. To bring into systematic connection and cooperation as parts of a whole, or to bring the various parts of into effective correlation and cooperation; as, to organize the peasants into an army.

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And petitioners cite Black's Law Dictionary, as follows:

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To establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions.

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8. Representative John W. McCormack, one of the leading proponents of the Smith Act, stated before the Subcommittee of the Committee on the Judiciary, House of Representatives:

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And, by the way, this bill is not alone aimed at Communists; this bill is aimed at anyone who advocates the overthrow of Government by violence and force.

1957, Yates v. United States, 354 U.S. 350

Hearing before Subcommittee No. 2 of the House Committee on the Judiciary on H.R. 4313 and H.R. 6427, 74th Cong., 1st Sess., May 22, 1935, Serial 5, p. 3.

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9. Id., passim.

1957, Yates v. United States, 354 U.S. 350

10. The "organizing" section, supra, n. 1, also makes it an offense "to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof."

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11. Cal.Stat. 1919, c. 188, West's Ann. Cal.Codes, Penal Code, § 11401.

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12. See People v. Thurman, 62 Cal.App. 147, 216 P. 394; People v. Thornton, 63 Cal.App. 724, 219 P. 1020; People v. Ware, 67 Cal.App. 81, 226 P. 956.

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13. N.Y.Laws 1902, c. 371, McKinney's N.Y.Laws, Penal Law, § 161.

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14. In other contexts, state courts have given the term that meaning. See State ex rel. Childs v. School District, 54 Minn. 213, 55 N.W. 1122; Whitmire v. Cass, 213 S.C. 230, 236, 49 S.E.2d 1, 3; Warren v. Barber Asphalt Pav. Co., 115 Mo. 572, 576-577, 22 S.W. 490-491; Commonwealth v. Wm. Mann Co., 150 Pa. 64, 70, 24 A. 601, 602.

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15. Following the decision of the Court of Appeals for the Ninth Circuit in this case, "organize" has been given its wider meaning by two District Courts in that circuit, United States v. Fujimoto, reported on another point, 107 F.Supp. 865, and United States v. Huff, as yet unreported, now pending on appeal to the Court of Appeals. The Court of Appeals for the Sixth Circuit, following the Ninth Circuit, has likewise given the term its broader meaning. Wellman v. United States, 227 F.2d 757.

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16. The trial court did no more on this score than to charge, in the language of the indictment, that the conspiracy had two objects, namely, to advocate and teach forcible overthrow and to organize the Communist Party as a vehicle for that purpose, and then instruct the jury that it must find that "the conspiracy charged in the indictment" had been proved beyond a reasonable doubt.

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17. Of the 23 overt acts charged, 20 alleged attendance of various defendants at meetings or conventions, and 3 alleged the issuance and circulation of "directives" by certain of the defendants. Only two of the acts alleged were proved. Both were Party meetings unmarked by any advocacy of the type that the petitioners were allegedly conspiring to promote.

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18. The trial court charged:

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As used in the Smith Act and the indictment:

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(1) the word "advocate" means to urge or "to plead in favor of;…to support, vindicate, or recommend publicly…";

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(2) the word "teach" means "to instruct…show how…to guide the studies of…";

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\* \* \* \*

1957, Yates v. United States, 354 U.S. 350

The holding of a belief or opinion does not constitute advocacy or teaching. Hence, the Smith Act does not prohibit persons who may believe that the violent overthrow and destruction of the Government of the United States is probable or inevitable from expressing that belief. Whether such belief be reasonable or unreasonable is immaterial. Prediction or prophecy is not advocacy.

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Any advocacy or teaching which does not include the urging of force and violence as the means of overthrowing and destroying the Government of the United States is not within the issue of the indictment here, and can constitute no basis for any finding against the defendants.

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The kind of advocacy and teaching which is charged and upon which your verdict must be reached is not merely a desirability, but a necessity that the Government of the United States be overthrown and destroyed by force and violence, and not merely a propriety, but a duty to overthrow and destroy the Government of the United States by force and violence.

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1957, Yates v. United States, 354 U.S. 350

The word "willfully," as used in the indictment, means a statement or declaration made or other act done with the specific intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

1957, Yates v. United States, 354 U.S. 350

The defendants, in common with all other persons living under our Constitution, have a general right protected by the First Amendment to hold, express, teach and advocate opinions, even though their opinions are rejected by the overwhelming majority of the American people, and have the further right to organize or combine peaceably with other persons for the purpose of spreading and promoting their opinions more effectively.

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Whether you agree with these opinions or whether they seem to you reasonable, unreasonable, absurd, distasteful or hateful has no bearing whatever on the right of other persons to maintain them and to seek to persuade others of their validity.

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No inference that any of the defendants knowingly and willfully conspired as charged in the indictment, or intended to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, may be drawn from the advocacy or teaching of socialism or other economic or political or social doctrines, by reason of any unpopularity of such doctrines or by reason of any opinion you may hold with respect to whether such doctrines, or the opinions or beliefs of any of the defendants, are unreasonable, distasteful, absurd or hateful.

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The defendants, in common with other persons living under our Constitution, have the right protected by the First Amendment to criticize our system of Government and the Government itself, even though the speaking or writing of such criticism may undermine confidence in the Government or cause or increase discontent. They have the right also to criticize the foreign policy of the United States and the role being played by this country in international affairs, and to praise the foreign policy of other governments and the role being played by those governments in international affairs.

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The right of the defendants to enjoy such freedom of expression is unaffected by whether or not the opinions spoken or published may seem to you to be crudely intemperate, or to contain falsehoods, or to be designed to embarrass the Government. No inference of conspiracy to advocate and teach the necessity and duty of overthrow and destruction of the Government of the United States by force and violence, or of intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, may be drawn from such expressions alone.

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19. Petitioners' proposed instructions were:

1957, Yates v. United States, 354 U.S. 350

Where the Smith Act, the statute which these defendants are charged with conspiring to violate, speaks of advocating and teaching the duty and necessity of overthrowing the Government by force and violence, this refers only to statements which, in the language of incitement to action, urge immediate action to overthrow the then existing government under the then existing circumstances. A statement, on the other hand, that, if our form of government should change in the future, violent overthrow of the government would then become necessary and right, is not within the Smith Act's prohibition, and would not constitute any basis for a finding against the defendants here.

1957, Yates v. United States, 354 U.S. 350

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1957, Yates v. United States, 354 U.S. 350

For purposes of this trial, a person can be said to teach or advocate the overthrow and destruction of the Government of the United States by force and violence only when his expressions are designed to induce action, rather than discussion or belief, and only when they are expressed in language which, under the circumstances in which it is used, is reasonably and ordinarily calculated to incite persons to such action, rather than merely to discussion or belief.

1957, Yates v. United States, 354 U.S. 350

\* \* \* \*

1957, Yates v. United States, 354 U.S. 350

The burden is on the prosecution to show beyond a reasonable doubt that a common understanding existed among the alleged coconspirators as to the specific content of expressions amounting to advocacy of the overthrow and destruction of the Government by force and violence. The Government must further show that this understanding included an understanding that such advocacy would be in language amounting to incitement to action, and that it would take place under circumstances such as to lead to a probability that it would inspire persons to take action toward violent overthrow.

1957, Yates v. United States, 354 U.S. 350

The Government's burden is not met by proof that the defendant shared certain beliefs and made joint efforts to persuade other persons to adopt them, no matter what you may find the content of such beliefs to have been, or whether you may agree or disagree with such beliefs.

1957, Yates v. United States, 354 U.S. 350

The Government's proposed instruction was:

1957, Yates v. United States, 354 U.S. 350

In further construction and interpretation of the statute, I charge you that it is not the abstract doctrine of overthrowing or destroying organized government by unlawful means which is denounced by this law, but the teaching and advocacy of action for the accomplishment of that purpose, by language reasonably and ordinarily calculated to incite persons to such action. Accordingly, you cannot find the defendants or any of them guilty of the crime charged unless you are satisfied beyond a reasonable doubt that they conspired to organize a society, group and assembly of persons who teach and advocate the overthrow or destruction of the Government of the United States by force and violence and to advocate and teach the duty and necessity of overthrowing or destroying the Government of the United States by force and violence, with the intent that such teaching and advocacy be of a rule or principle of action, and by language reasonably and ordinarily calculated to incite persons to such action, all with the intent to cause the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

1957, Yates v. United States, 354 U.S. 350

20. The Government's proposed instruction was that given by the trial court in the Dennis case, 341 U.S. 494. See p. 326, infra.

1957, Yates v. United States, 354 U.S. 350

21. Having stated that all advocacy and teaching of forcible overthrow of Government was punishable "whether it is language of incitement or not," so long as it was done with the requisite intent, the court added,

1957, Yates v. United States, 354 U.S. 350

It seems to me this question of "incitement to" is involved around the question of sufficiency of evidence to indicate intent. The language used is language of philosophy and theory and academic treatment, rather than language…[of] "incitement to action." If the jury should convict on that sort of language, [the] argument would be the evidence was insufficient to sustain the conviction….

1957, Yates v. United States, 354 U.S. 350

22. For discussion of the principal cases in this Court on the subject, see the several opinions in Dennis v. United States, supra.

1957, Yates v. United States, 354 U.S. 350

23. The New York Criminal Anarchy Act, note 13, supra.

1957, Yates v. United States, 354 U.S. 350

24. See Dennis v. United States, supra, at 541.

1957, Yates v. United States, 354 U.S. 350

25. Hearings on H.R. 4313 and H.R. 6427, May 22, 1935, at pp. 5, 6, cited in note 8, supra.

1957, Yates v. United States, 354 U.S. 350

26. At the hearing cited in note 8, supra, Representative McCormack repeatedly emphasized that the proscribed advocacy was inciting advocacy. For example, he stated: "…the word `advocacy' means `in a manner to incite,' as construed by the Supreme Court in the Gitlow case…. " (P. 5.)

1957, Yates v. United States, 354 U.S. 350

…Government has a right to make it a crime for a person to use language specifically inciting to the commission of illegal acts…. [I]t is advocacy in the manner to incite, knowingly to advocate in a manner to incite to the overthrow of the Government….

1957, Yates v. United States, 354 U.S. 350

(P. 15.) See also pp. 4, 8, 11.

1957, Yates v. United States, 354 U.S. 350

27. See p. 326, infra.

1957, Yates v. United States, 354 U.S. 350

28. See United States v. Schneiderman, 106 F.Supp. 906, 923.

1957, Yates v. United States, 354 U.S. 350

29. The writ of certiorari in Dennis did not bring up the sufficiency of the evidence. 340 U.S. 863.

1957, Yates v. United States, 354 U.S. 350

30. See note 1, supra.

1957, Yates v. United States, 354 U.S. 350

31. The Court of Appeals stated, 225 F.2d at 151:

1957, Yates v. United States, 354 U.S. 350

Finally [referring to Dennis], the opinion of the Court of Appeals and a concurring opinion in the Supreme Court gave approval of instructions of the trial judge in Dennis requiring the jury to find "language of incitement" was used by the conspirators there. Another phrase given approval is that the doctrine of destruction had become a "rule of action." In conjunction with an indictment based upon such a statute proscribing organization for the purpose of teaching and advocating overthrow, but which required neither proof of overt acts nor a specifically planned objective, such precautionary instructions were well enough. But these expressions of the judges in instructions in connection with the original statute established no unalterable requirement that such phrases themselves be used ipsissimis verbis where the changes in the basic law and an entirely different indictment predicated upon the conspiracy statute have rendered admonitions to a jury in such language supererogatory.

1957, Yates v. United States, 354 U.S. 350

And further, at p. 162:

1957, Yates v. United States, 354 U.S. 350

The gist of the substantive crime of conspiracy is that an unlawful combination and agreement becomes a positive crime only when some of the proved conspirators enter the field of action pursuant to the criminal design. Therefore, if the conspiracy did not become a rule of action pursuant to the proscribed intent, there would have been no violation of the conspiracy statute. The use of such phrases [as incitement] in instructions might have been well enough where a violation of the Smith Act alone was charged in its original form. It would be folly to command imperatively that these specific phrases be each used in instructions after a trial on an indictment such as the present one.

1957, Yates v. United States, 354 U.S. 350

It may also be noted that, for the period 1940 to September 1, 1948 (see note 1, supra), the conspiracy charge here was laid under the old Smith Act.

1957, Yates v. United States, 354 U.S. 350

32. See pp. 317-318, supra.

1957, Yates v. United States, 354 U.S. 350

33. See note 19, supra.

1957, Yates v. United States, 354 U.S. 350

34. The record consists of some 14,000 typewritten pages.

1957, Yates v. United States, 354 U.S. 350

35. 64 Stat. 987, 50 U.S.C. § 783(f):

1957, Yates v. United States, 354 U.S. 350

Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.

1957, Yates v. United States, 354 U.S. 350

36. While there was evidence that might tend to link petitioner Richmond to "the conspiracy," i.e., evidence of association by him with other petitioners, and with an individual who might be found by the jury to have engaged during the same period in the proscribed advocacy, see pp. 332-333, infra we think that, without more, such evidence would not justify refusal to direct an acquittal.

BLACK, J., concurring and dissenting (Footnotes)

1957, Yates v. United States, 354 U.S. 350

\* 12 Hening's Stat. (Virginia 1823), c. 34, p. 85.

CLARK, J., dissenting (Footnotes)

1957, Yates v. United States, 354 U.S. 350

1. Petitioners Richmond, Connelly, Kusnitz, Steinberg, and Spector are set free.

1957, Yates v. United States, 354 U.S. 350

Richmond, at the time of his indictment, had for many years been the editor-in-chief of the Daily People's World, the official organ of the Party on the West Coast. He had joined the Party in 1931, and received his indoctrination in Communist technique at the offices of the Daily Worker, the official Party paper on the East Coast. In 1937, he was chosen by the Party's Central Committee to be managing editor of the Daily People's World, and was transferred to California. From 1946 through 1948, he regularly attended secret meetings of the state and county boards of the Party, admission to which was by identification from a special list of Party members prepared by the Party chairman or its security chief. Party strategy was mapped out at "very secret meetings" attended by Richmond and the core of the Party machinery, including at least seven of the petitioners here. Richmond served on a special committee to help develop "preconvention discussion" with petitioner Yates; he represented the state committee at the 1950 convention; he addressed many Party meetings preaching the "vanguard role" of the Party and the importance of the People's World in the Communist movement, and his articles in the paper urged the "Leninist and Marxist approach."

1957, Yates v. United States, 354 U.S. 350

Connelly, a Party member since at least 1938, was the Los Angeles editor of the People's World. During the mobilization effort early in World War II, he devoted his efforts to "building up sentiment against…the war effort" among steel, aircraft, and shipyard workers. He attended the same secret meetings attended by Richmond.

1957, Yates v. United States, 354 U.S. 350

There can be no question that the proof sustained the charges against Richmond and Connelly in the conspiracy. Their newspaper was the conduit through which the Party announced its aims, policies, and decisions, sought its funds, and recruited its members. It is the height of naivete to claim that the People's World does not publish appeals to its readers to follow Party doctrine in seeking the overthrow of the Government by force, but it is stark reality to conclude that such a publication provides an incomparable means of promoting the Party's aim of forcible seizure when the time is ripe.

1957, Yates v. United States, 354 U.S. 350

Petitioner Spector has been active in the California Party since the early 1930's. He taught "Marxism-Leninism" in Party schools and was "division organizer" in Los Angeles County. He attended "underground meetings" with petitioners Lambert, Dobbs, Healy, Carlson, and Schneiderman. The witness Rosser testified that these meetings were "so hid that you couldn't get to them unless you were invited and taken there." In 1946, he "conducted classes" for Party members in Hollywood, and in 1947, as a member of a committee of three Party officials, examined the witness Russell, a student in one of his classes, on charges of being a Party "police spy."

1957, Yates v. United States, 354 U.S. 350

Petitioner Kusnitz, following an organizational indoctrination period in New York City, became a Party leader in California in 1946, served as "section organizer," and later as "organizational secretary" in Los Angeles. Her position was directly below that of the local chairman in Party hierarchy. She attended many secret meetings, and was present at a Party meeting with petitioner Yates when Yates advocated the necessity of "Soviet support" and "Marxist-Leninist training" as a means of bringing about the Soviet "type of government…all over the world." She contributed articles to Communist publications, and was very active in the "regrouping of…clubs into smaller units"; conducting a "six session leadership training seminar"; carrying on campaigns for subscriptions to the People's World, and leading the "Party Building drive" for the recruitment of members.

1957, Yates v. United States, 354 U.S. 350

Petitioner Henry Steinberg, active in the Young Communist League, and associated with the Party since 1936, was the "educational director." He took part in the creation of the program for the Party's training schools in Los Angeles County. His "education department" sponsored several meetings, one honoring the 25th anniversary of the death of Lenin. He worked with petitioner Schneiderman, the Party Chairman in California, attended meetings regularly, was active in circulation drives for the People's World, and was the principal speaker at many meetings.

1957, Yates v. United States, 354 U.S. 350

2. 18 U.S.C. § 2385.

1957, Yates v. United States, 354 U.S. 350

3. Congressman McCormack's remarks on the floor of the House of Representatives on July 29, 1939, during the debate on the Smith Act, reflect the underlying purpose behind that Act. He stated, inter alia:

1957, Yates v. United States, 354 U.S. 350

We all know that the Communist movement has as its ultimate objective the overthrow of government by force and violence or by any means, legal or illegal, or a combination of both. That testimony was indisputably produced before the special committee of which I was chairman, and came from the lips not of those who gave hearsay testimony, but of the actual official records of the Communist Party of the United States, presented to our committee by the executive secretary of the Communist Party and the leader of the Communist Party in the United States, Earl Browder…. Therefore, a Communist is one who intends knowingly or willfully to participate in any actions, legal or illegal, or a combination of both, that will bring about the ultimate overthrow of our Government. He is the one we are aiming at.…

1957, Yates v. United States, 354 U.S. 350

(Emphasis added.) 84 Cong.Rec. 10454.

1957, Yates v. United States, 354 U.S. 350

See also Hearings before Subcommittee No. 3 of the House Committee on the Judiciary on H.R. 5138, 76th Cong., 1st Sess. 84.

President Eisenhower's Address to the American People on the Situation in Little Rock, 1957

Title: President Eisenhower's Address to the American People on the Situation in Little Rock

Author: Dwight D. Eisenhower

Date: September 24, 1957

Source: Public Papers of the Presidents, Eisenhower, 1957, pp.689-694

[Delivered by radio and television from the President's Office at 9:00 p.m.]

Public Papers of Eisenhower, 1957, p.689–p.690

Good Evening, My Fellow Citizens:

For a few minutes this evening I want to speak to you about the serious situation that has arisen in Little Rock. To make this talk I have come to the President's office in the White House. I [p.690] could have spoken from Rhode Island, where I have been staying recently, but I felt that, in speaking from the house of Lincoln, of Jackson and of Wilson, my words would better convey both the sadness I feel in the action I was compelled today to take and the firmness with which I intend to pursue this course until the orders of the Federal Court at Little Rock can be executed without unlawful interference.

Public Papers of Eisenhower, 1957, p.690

In that city, under the leadership of demagogic extremists, disorderly mobs have deliberately prevented the carrying out of proper orders from a Federal Court. Local authorities have not eliminated that violent opposition and, under the law, I yesterday issued a Proclamation calling upon the mob to disperse.

Public Papers of Eisenhower, 1957, p.690

This morning the mob again gathered in front of the Central High School of Little Rock, obviously for the purpose of again. preventing the carrying out of the Court's order relating to the admission of Negro children to that school.

Public Papers of Eisenhower, 1957, p.690

Whenever normal agencies prove inadequate to the task and it becomes necessary for the Executive Branch of the Federal Government to use its powers and authority to uphold Federal Courts, the President's responsibility is inescapable.

Public Papers of Eisenhower, 1957, p.690

In accordance with that responsibility, I have today issued an Executive Order directing the use of troops under Federal authority to aid in the execution of Federal law at Little Rock, Arkansas. This became necessary when my Proclamation of yesterday was not observed, and the obstruction of justice still continues.

Public Papers of Eisenhower, 1957, p.690

It is important that the reasons for my action be understood by all our citizens.

Public Papers of Eisenhower, 1957, p.690

As you know, the Supreme Court of the United States has decided that separate public educational facilities for the races are inherently unequal and therefore compulsory school segregation laws are unconstitutional.

Public Papers of Eisenhower, 1957, p.690–p.691

Our personal opinions about the decision have no bearing on the matter of enforcement; the responsibility and authority of the Supreme Court to interpret the Constitution are very clear. Local Federal Courts were instructed by the Supreme Court to issue [p.691] such orders and decrees as might be necessary to achieve admission to public schools without regard to race—and with all deliberate speed.

Public Papers of Eisenhower, 1957, p.691

During the past several years, many communities in our Southern States have instituted public school plans for gradual progress in the enrollment and attendance of school children of all races in order to bring themselves into compliance with the law of the land.

Public Papers of Eisenhower, 1957, p.691

They thus demonstrated to the world that we are a nation in which laws, not men, are supreme.

Public Papers of Eisenhower, 1957, p.691

I regret to say that this truth—the cornerstone of our liberties-was not observed in this instance.

Public Papers of Eisenhower, 1957, p.691

It was my hope that this localized situation would be brought under control by city and State authorities. If the use of local police powers had been sufficient, our traditional method of leaving the problems in those hands would have been pursued. But when large gatherings of obstructionists made it impossible for the decrees of the Court to be carried out, both the law and the national interest demanded that the President take action.

Public Papers of Eisenhower, 1957, p.691

Here is the sequence of events in the development of the Little Rock school case.

Public Papers of Eisenhower, 1957, p.691

In May of 1955, the Little Rock School Board approved a moderate plan for the gradual desegregation of the public schools in that city. It provided that a start toward integration would be made at the present term in the high school, and that the plan would be in full operation by 1963. Here I might say that in a number of communities in Arkansas integration in the schools has already started and without violence of any kind. Now this Little Rock plan was challenged in the courts by some who believed that the period of time as proposed in the plan was too long.

Public Papers of Eisenhower, 1957, p.691–p.692

The United States Court at Little Rock, which has supervisory responsibility under the law for the plan of desegregation in the public schools, dismissed the challenge, thus approving a gradual rather than an abrupt change from the existing system. The [p.692] court found that the school board had acted in good faith in planning for a public school system free from racial discrimination.

Public Papers of Eisenhower, 1957, p.692

Since that time, the court has on three separate occasions issued orders directing that the plan be carried out. All persons were instructed to refrain from interfering with the efforts of the school board to comply with the law.

Public Papers of Eisenhower, 1957, p.692

Proper and sensible observance of the law then demanded the respectful obedience which the nation has a right to expect from all its people. This, unfortunately, has not been the case at Little Rock. Certain misguided persons, many of them imported into Little Rock by agitators, have insisted upon defying the law and have sought to bring it into disrepute. The orders of the court have thus been frustrated.

Public Papers of Eisenhower, 1957, p.692

The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President's command.

Public Papers of Eisenhower, 1957, p.692

Unless the President did so, anarchy would result.

Public Papers of Eisenhower, 1957, p.692

There would be no security for any except that which each one of us could provide for himself.

Public Papers of Eisenhower, 1957, p.692

The interest of the nation in the proper fulfillment of the law's requirements cannot yield to opposition and demonstrations by some few persons.

Public Papers of Eisenhower, 1957, p.692

Mob rule cannot be allowed to override the decisions of our courts.

Public Papers of Eisenhower, 1957, p.692–p.693

Now, let me make it very clear that Federal troops are not being used to relieve local and state authorities of their primary duty to preserve the peace and order of the community. Nor are the troops there for the purpose of taking over the responsibility of the School Board and the other responsible local officials in running Central High School. The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere [p.693] except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court.

Public Papers of Eisenhower, 1957, p.693

The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock. This challenge must be met and with such measures as will preserve to the people as a whole their lawfully-protected rights in a climate permitting their free and fair exercise.

Public Papers of Eisenhower, 1957, p.693

The overwhelming majority of our people in every section of the country are united in their respect for observance of the law—even in those cases where they may disagree with that law.

Public Papers of Eisenhower, 1957, p.693

They deplore the call of extremists to violence.

Public Papers of Eisenhower, 1957, p.693

The decision of the Supreme Court concerning school integration, of course, affects the South more seriously than it does other sections of the country. In that region I have many warm friends, some of them in the city of Little Rock. I have deemed it a great personal privilege to spend in our Southland tours of duty while in the military service and enjoyable recreational periods since that time.

Public Papers of Eisenhower, 1957, p.693

So from intimate personal knowledge, I know that the overwhelming majority of the people in the South—including those of Arkansas and of Little Rock—are of good will, united in their efforts to preserve and respect the law even when they disagree with it.

Public Papers of Eisenhower, 1957, p.693

They do not sympathize with mob rule. They, like the rest of our nation, have proved in two great wars their readiness to sacrifice for America.

Public Papers of Eisenhower, 1957, p.693

A foundation of our American way of life is our national respect for law.

Public Papers of Eisenhower, 1957, p.693–p.694

In the South, as elsewhere, citizens are keenly aware of the tremendous disservice that has been done to the people of Arkansas [p.694] in the eyes of the nation, and that has been done to the nation in the eyes of the world.

Public Papers of Eisenhower, 1957, p.694

At a time when we face grave situations abroad because of the hatred that Communism bears toward a system of government based on human rights, it would be difficult to exaggerate the harm that is being done to the prestige and influence, and indeed to the safety, of our nation and the world.

Public Papers of Eisenhower, 1957, p.694

Our enemies are gloating over this incident and using it everywhere to misrepresent our whole nation. We are portrayed as a violator of those standards of conduct which the peoples of the world united to proclaim in the Charter of the United Nations. There they affirmed "faith in fundamental human rights" and "in the dignity and worth of the human person" and they did so "without distinction as to race, sex, language or religion."

Public Papers of Eisenhower, 1957, p.694

And so, with deep confidence, I call upon the citizens of the State of Arkansas to assist in bringing to an immediate end all interference with the law and its processes. If resistance to the Federal Court orders ceases at once, the further presence of Federal troops will be unnecessary and the City of Little Rock will return to its normal habits of peace and order and a blot upon the fair name and high honor of our nation in the world will be removed.

Public Papers of Eisenhower, 1957, p.694

Thus will be restored the image of America and of all its parts as one nation, indivisible, with liberty and justice for all.

Public Papers of Eisenhower, 1957, p.694

Good night, and thank you very much.

Public Papers of Eisenhower, 1957, p.694

NOTE: The President referred to Proclamation 3204 "Obstruction of Justice in the State of Arkansas" and Executive Order 10730 "Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas," published in the Federal Register (22 F. R. 7628) and in Title 3 of the Code of Federal Regulations.

President Eisenhower's News Conference on U.S. Plans to Launch an Earth Satellite, 1957

Title: President Eisenhower's News Conference on U.S. Plans to Launch an Earth Satellite

Author: Dwight D. Eisenhower

Date: October 9, 1957

Source: Public Papers of the Presidents, Eisenhower, 1957, p.719

Prior to the beginning of the conference, Mr. Hagerty distributed copies of a statement by the President summarizing facts in the development of an earth satellite by the United States. See Item 211.

Public Papers of Eisenhower, 1957, p.719

THE PRESIDENT. Please sit down.

Public Papers of Eisenhower, 1957, p.719

Good morning, ladies and gentlemen. Do you have any questions you would like to ask me?

Public Papers of Eisenhower, 1957, p.719

Q. Merriman Smith, United Press: Mr. President, Russia has launched an earth satellite. They also claim to have had a successful firing of an intercontinental ballistics missile, none of which this country has done. I ask you, sir, what are we going to do about it?

Public Papers of Eisenhower, 1957, p.719

THE PRESIDENT. Well, let's take, first, the earth satellite, as opposed to the missile, because they are related only indirectly in the physical sense, and in our case not at all.

Public Papers of Eisenhower, 1957, p.719

The first mention that was made of an earth satellite that I know of, was about the spring of 1955—I mean the first mention to me—following upon a conference in Rome where plans were being laid for the working out of the things to be done in the International Geophysical Year.

Public Papers of Eisenhower, 1957, p.719

Our people came back, studying a recommendation of that conference that we now undertake, the world undertake, the launching of a small earth satellite; and somewhere in I think May or June of 1955 it was recommended to me, by the Committee for the International Geophysical Year and through the National Science Foundation, that we undertake this project with a satellite to be launched somewhere during the Geophysical Year, which was from June 1957 until December 1958.

Public Papers of Eisenhower, 1957, p.719

The sum asked for to launch a missile was $22 million and it was approved.

Public Papers of Eisenhower, 1957, p.719–p.720

For the Government, the National Science Foundation was [p.720] made the monitor of the work, for the simple reason that from the beginning the whole American purpose and design in this effort has been to produce the maximum in scientific information. The project was sold to me on this basis.

Public Papers of Eisenhower, 1957, p.720

My question was: What does mankind hope to learn? And the answer of the scientists was, "We don't exactly know, and that is the reason we want to do it; but we do hope to learn lots of things about outer space that will be valuable to the scientific world."

Public Papers of Eisenhower, 1957, p.720

They did mention such things as temperatures, radiation, ionization, pressures, I believe residual pressures, from such air as would be at the altitude where successful orbiting was possible.

Public Papers of Eisenhower, 1957, p.720

That is the kind of information the scientists were looking for, and which they hoped to obtain from this project.

Public Papers of Eisenhower, 1957, p.720

Now, in the first instance they thought they would merely put up a satellite, and very quickly they found they thought they could put up a satellite with a considerable instrumentation to get, even during the Geophysical Year, the kind of information to which I have just referred. So they came back, said they needed some more money. This time they went up to $66 million, and we said, "All right; that is—'m view of the fact we are conducting this basic research, this seems logical." So we did that.

Public Papers of Eisenhower, 1957, p.720

Then they came back, and I forget which one of the steps it came along, and they realized when you put this machine in the air, you had to have some very specially equipped observation stations. So the money, the sum of money, again went up to provide for these observation stations. And so the final sum approved, I think about a year ago, something of that kind, was $110,000,000, with notice that that might have to go up even still more.

Public Papers of Eisenhower, 1957, p.720

There never has been one nickel asked for accelerating the program. Never has it been considered as a race; merely an engagement on our part to put up a vehicle of this kind during the period that I have already mentioned.

Public Papers of Eisenhower, 1957, p.720–p.721

Again emphasizing the nonmilitary character of the effort, we [p.721] have kept the Geophysical Year Committees of other nations fully informed all the time as, for example, the frequencies we would use when we put this in the air so that everybody, all nations, could from the beginning track it exactly, know exactly where it was—I believe it was 108 megacycles we were to use, and that was agreed throughout the world.

Public Papers of Eisenhower, 1957, p.721

We are still going ahead on this program to make certain that before the end of the calendar year 1958 we have put a vehicle in the air with the maximum ability that we can devise for obtaining the kind of scientific information that I have stated.

Public Papers of Eisenhower, 1957, p.721

Now, every scientist that I have talked to since this occurred—I recalled some of them and asked them—every one of them has spoken in most congratulatory terms about the capabilities of the Russian scientists in putting this in the air.

Public Papers of Eisenhower, 1957, p.721

They expressed themselves as pleased rather than chagrined because at least the Soviets have proved the first part of it, that this thing will successfully orbit. But there are a lot of other things in the scientific inquiry that are not yet answered, and which we are pushing ahead to answer.

Public Papers of Eisenhower, 1957, p.721

Now that is the story on the satellite.

Public Papers of Eisenhower, 1957, p.721

It is supplemented by a statement that we prepared this morning that has some of the basic facts, to include the sequence of events.

Public Papers of Eisenhower, 1957, p.721

As to their firing of an intercontinental missile, we have not been told anything about the details of that firing. They have proved again and, indeed, this launching of the satellite proves, that they can hurl an object a considerable distance. They also said, as I recall that announcement, that it landed in the target area, which could be anywhere, because you can make target areas the size you please; and they also said it was a successful re-entry into the atmosphere, and landing at or near the target.

Public Papers of Eisenhower, 1957, p.721–p.722

Now, that is a great accomplishment, if done. I have talked to you in the past about our own development in this regard as far as security considerations permit, and I can say this: the ICBM, the IRBM, we call them, are still going ahead—those projects—[p.722] on the top priority within the Government, incidentally a priority which was never accorded to the satellite program.

Public Papers of Eisenhower, 1957, p.722

The satellite program, having an entirely different purpose, even the scientists did not even think of it as a security instrument; and the only way that the Defense Department is in it at all is because one of them, the Navy, was called upon as the agency to have the sites and the mechanisms for putting it into the air.

Public Papers of Eisenhower, 1957, p.722

Q. Charles S. von Fremd, CBS News: Mr. President, Khrushchev claims we are now entering a period when conventional planes, bombers, and fighters will be confined to museums because they are outmoded by the missiles which Russia claims she has now perfected; and Khrushchev's remarks would seem to indicate he wants us to believe that our Strategic Air Command is now outmoded. Do you think that SAC is outmoded?

Public Papers of Eisenhower, 1957, p.722

THE PRESIDENT. No. I believe it would be dangerous to predict what science is going to do in the next twenty years, but it is going to be a very considerable time in this realm just as in any other before the old is completely replaced by the new, and even then it will be a question of comparative costs and accuracy of methods of delivery.

Public Papers of Eisenhower, 1957, p.722

It is going to be a long term. It is not a revolutionary process that will take place in the reequipping of defense forces, it will be an evolutionary.

Public Papers of Eisenhower, 1957, p.722

Q. Robert E. Clark, International News Service: Mr. President, do you think our scientists made a mistake in not recognizing that we were, in effect in a race with Russia in launching this satellite, and not asking you for top priority and more money to speed up the program?

Public Papers of Eisenhower, 1957, p.722

THE PRESIDENT. Well, no, I don't, because even yet, let's remember this: the value of that satellite going around the earth is still problematical, and you must remember the evolution that our people went through and the evolution that the others went through.

Public Papers of Eisenhower, 1957, p.722–p.723

From 1945, when the Russians captured all of the German scientists in Peenemunde, which was their great laboratory and experimental [p.723] grounds for the production of the ballistic missiles they used in World War II, they have centered their attention on the ballistic missile.

Public Papers of Eisenhower, 1957, p.723

Originally, our people seemed to be more interested in the aerodynamic missile. We have a history of going back for quite a ways in modest research in the intercontinental ballistic missile, but until there were very great developments in the atomic bomb, it did not look profitable and economical to pursue that course very much, and our people did not go into it very earnestly until somewhere along about 1953, I think.

Public Papers of Eisenhower, 1957, p.723

Now, so far as this satellite itself is concerned, if we were doing it for science, and not for security, which we were doing, I don't know of any reasons why the scientists should have come in and urged that we do this before anybody else could do it.

Public Papers of Eisenhower, 1957, p.723

Now, quite naturally, you will say, "Well, the Soviets gained a great psychological advantage throughout the world," and I think in the political sense that is possibly true; but in the scientific sense it is not true except for the proof of the one thing, that they have got the propellants and the projectors that will put these things in the air.

Public Papers of Eisenhower, 1957, p.723

Q. Kenneth M. Scheibel, Gannett Newspapers: Mr. President, could you give the public any assurance that our own satellite program will be brought up to par with Russia or possibly an improvement on it?

Public Papers of Eisenhower, 1957, p.723

THE PRESIDENT. Well now, let's get this straight: I am not a scientist. I go to such men as Dr. Waterman, Dr. Bronk, Dr. Lawrence, all of the great scientists of this country, and they assured me back in the spring, I think it was, of 1955 this could be done, and they asked for a very modest sum of money compared to the sums we were spending on other research. So, in view of the fact that, as I said before, this was basic research, I approved it.

Public Papers of Eisenhower, 1957, p.723–p.724

Now, the satellite that we are planning to put in the air will certainly provide much more information, if it operates successfully [p.724] throughout. According to plan, it will provide much more information than this one.

Public Papers of Eisenhower, 1957, p.724

Q. Mrs. May Craig, Portland (Maine) Press Herald: Mr. President, you have spoken of the scientific aspects of the satellite. Do you not think that it has immense significance, the satellite, immense significance in surveillance of other countries, and leading to space platforms which could be used for rockets?

Public Papers of Eisenhower, 1957, p.724

THE PRESIDENT. Not at this time, no. There is no—suddenly all America seems to become scientists, and I am hearing many, many ideas. [Laughter] And I think that, given time, satellites will be able to transmit to the earth some kind of information with respect to what they see on the earth or what they find on the earth.

Public Papers of Eisenhower, 1957, p.724

But I think that that period is a long ways off when you stop to consider that even now the Russians, under a dictatorial society where they had some of the finest scientists in the world who have for many years been working on this, apparently from what they say they have put one small ball in the air.

Public Papers of Eisenhower, 1957, p.724

I wouldn't believe that at this moment you have to fear the intelligence aspects of this.

Public Papers of Eisenhower, 1957, p.724

Q. Laurence H. Burd, Chicago Tribune: Mr. President, considering what we know of Russia's progress in the missile field, are you satisfied with our own progress in that field, or do you feel there have been unnecessary delays in our development of missiles?

Public Papers of Eisenhower, 1957, p.724

THE PRESIDENT. I can't say there has been unnecessary delay. I know that from the time that I came here and got into the thing earnestly, we have done everything I can think of. I will say this: generally speaking, more than one scientist has told me we were actually spending some money where it was doing no good.

Public Papers of Eisenhower, 1957, p.724

Now the great reason for spending more money is because of the number of strings you put on your bow. In almost every field we have had several types and kinds working ahead to find which would be the more successful, so I can't say that I am dissatisfied.

Public Papers of Eisenhower, 1957, p.725

I can say this: I wish we were further ahead and knew more as to accuracy and to the erosion and to the heat-resistant qualities of metals and all the other things we have to know about. I wish we knew more about it at this moment.

Public Papers of Eisenhower, 1957, p.725

Q. Mr. Burd: Is there some way that could have been done, something that could have been done that wasn't done?

Public Papers of Eisenhower, 1957, p.725

THE PRESIDENT. Well, I'll tell you. Shortly after I came here I immediately assembled a group of scientists through the Defense Secretary to study the whole thing and to give us something on which we could proceed with confidence, or at least pursuing the greatest possibilities according to scientific conclusions.

Public Papers of Eisenhower, 1957, p.725

That we have done, and I think we have done it very earnestly, with a great deal of expense, a great deal of time and effort, and I don't know what we could have done more.

Public Papers of Eisenhower, 1957, p.725

Q. William H. Lawrence, New York Times: Mr. President, could you give us, sir, the American story, that is this Government's version of the incident that Mr. Khrushchev described to Mr. Reston in his interview when the Soviet Government put forth a feeler as to whether or not Marshal Zhukov would be welcomed in this country, and according to Mr. Khrushchev was rebuffed?

Public Papers of Eisenhower, 1957, p.725

THE PRESIDENT. Well, I will say this: about the rebuff I know nothing. If there was any committed, I am sure it was unintentional.

Public Papers of Eisenhower, 1957, p.725–p.726

Now, what happened: You will recall somebody in one of these meetings asked me whether I thought that a meeting between Mr. Wilson and Marshal Zhukov might produce anything useful, and I said it might, and that later I was talking to the Secretary about it, and he said it was a hypothetical question and got a hypothetical answer. I don't know whether it would do any good or not; and he said, "Well, there is this one thing about it, we have got to beware"—and, of course, this we all know—"of bilateral talks when you have allies and comrades in very great ventures like we have in NATO, and so on." At that moment talks were [p.726] going on in Britain on disarmament on a multilateral basis, and it would have probably had a very bad interpretation in the world if any such thing at that time had taken place.

Public Papers of Eisenhower, 1957, p.726

The only follow-up that I know of, was somebody asked the State Department—it may have been an ambassador, I don't know, somebody asked the State Department—well, was this a serious thing? Was this an invitation? And he said exactly what I have just told you, it was merely a hypothetical answer to a hypothetical question.

Public Papers of Eisenhower, 1957, p.726

So far as I know, there has never been any additional activity in connection with it.

Public Papers of Eisenhower, 1957, p.726

Q. J. Anthony Lewis, New York Times: Sir, a question on Little Rock. Do you share Representative Hays' view that the situation there may be stabilizing sufficiently so that law enforcement could soon be left to local authorities?

Public Papers of Eisenhower, 1957, p.726

THE PRESIDENT. Certainly I am very hopeful. I didn't know he had expressed that as an opinion or conviction. I thought he said that it looked like this could happen. As quickly as the local people, as I told you last week, say that they have got the thing right in their hands, why, we no longer have a function there.

Public Papers of Eisenhower, 1957, p.726

Q. Rod MacLeish, Westinghouse Broadcasting Company: Sir, getting back to the missile and satellite question, in answer to Mr. Smith's question, you were commenting on the Russian claims of developing an ICBM, and you said if done this is a great achievement. Is there doubt in your mind, sir, or in the minds—

Public Papers of Eisenhower, 1957, p.726

THE PRESIDENT. I said—now, wait a minute—I said, "if done," when I said "if it's shot accurately to deliver its load at a predetermined spot, that was a very great achievement."

Public Papers of Eisenhower, 1957, p.726

Q. Mr. MacLeish: My question would be, sir, what is our estimation of the Russian claim judged by your "if done" additionally?

Public Papers of Eisenhower, 1957, p.726–p.727

THE PRESIDENT. I am not going to give you an estimate of the [p.727] Russian claim. I will just say this: we weren't invited to witness it; I think that they have fired objects a very considerable distance, but I don't know anything about their accuracy, and until you know something of their accuracy, you know nothing at all about their usefulness in warfare.

Public Papers of Eisenhower, 1957, p.727

Q. Mr. MacLeish: Mr. Wilson said yesterday he doubted they had an ICBM. Is that your view?

Public Papers of Eisenhower, 1957, p.727

THE PRESIDENT. Well, he was probably talking in these terms. I did not see his statement, so I am not commenting on his statement, I am just saying this: he may have been talking in terms of the perfection you need from a military weapon before it is really a weapon.

Public Papers of Eisenhower, 1957, p.727

Q. Raymond P. Brandt, St. Louis Post-Dispatch: The Russians apparently have a better launching device than we have. They have put their missile in the air, and they claim it is 25 percent stronger than the launching device for the ICBM. Now, my question is: Are we making any plans or going to spend any more money on our rocket program? In other words, has Mr. Holaday received new instructions?

Public Papers of Eisenhower, 1957, p.727

THE. PRESIDENT. Well, Mr. Holaday couldn't receive new instructions from me, for the simple reason that if he doesn't know more about it than I do, I am very foolish to have him there. Now, I have provided to the limit of my ability the money that they have asked for, and that is all I can do.

Public Papers of Eisenhower, 1957, p.727

Q. Elizabeth S. Carpenter, Arkansas Gazette: Mr. President, from all the reports and information which has come to you during this Little Rock school crisis, is it your feeling that Central High School could have been peacefully integrated if Governor Faubus had not called out the Guard in the first place?

Public Papers of Eisenhower, 1957, p.727

THE PRESIDENT. Well, you are asking me to speculate on history after history has become such but I would say this—

Public Papers of Eisenhower, 1957, p.727

Q. Mrs. Carpenter: But you do have FBI reports before you?

Public Papers of Eisenhower, 1957, p.727–p.728

THE PRESIDENT. You do have this: at other points in Arkansas, integration took place, beginnings at integration particularly took [p.728] place, without any disturbance whatsoever. I don't know of any particular reason why this one should have been different.

Public Papers of Eisenhower, 1957, p.728

Q. Charles W. Bailey, Minneapolis Star and Tribune: Sir, can you tell us, sir, whether you had any advance information that a Russian satellite launching was imminent?

Public Papers of Eisenhower, 1957, p.728

THE PRESIDENT. Not imminent. For a number of months different scientists have told me, or different people—I don't know whether it was ever told to me officially—that they were working on it, they were doing something about it; but again, no one ever suggested to me as anything of a race except, of course, more than once we would say, well, there is going to be a great psychological advantage in world politics to putting the thing up. But that didn't seem to be a reason, in view of the real scientific character of our development, there didn't seem to be a reason for just trying to grow hysterical about it.

Public Papers of Eisenhower, 1957, p.728

Q. John Scali, Associated Press: Mr. President, to return to the Zhukov matter for a moment, sir, you said, in answer to an earlier question, that your reply at the news conference the last time on Mr. Zhukov was a hypothetical answer to a hypothetical question. Could you tell us how you view the possibility of a visit by Marshal Zhukov today?

Public Papers of Eisenhower, 1957, p.728

THE PRESIDENT. Well, I should like to say this: As you know, we have many allies in the world, and anything that looks like a bilateral attempt to dictate to the world on the part of ourselves and any other country, we try carefully to avoid. So anything that we would do we would be certain to clear with our allies; and if everybody agreed, why, that would be one answer. If everybody was fearful, we would have to take that into consideration.

Public Papers of Eisenhower, 1957, p.728–p.729

Q. Chalmers M. Roberts, Washington Post: Is it a correct interpretation of what you have said about your satisfaction with the missile program as separate from the satellite program that you have no plans to take any steps to combine the various government units which are involved in this program, and which give [p.729] certainly the public appearance of a great deal of service rivalry, with some reason to feel that this is why we seem to be lagging behind the Soviets?

Public Papers of Eisenhower, 1957, p.729

THE PRESIDENT. Well now, Mr. Roberts, there seem to be certain facts that are obvious. First of all, I didn't say I was satisfied. I said I didn't know what we could have done better.

Public Papers of Eisenhower, 1957, p.729

The cost of these duplicating, or seemingly duplicating, programs is quite enormous, and I would like to save it. But even now, where two in the IRBM class seem to have gone far enough that we should have some basis of comparison, at my direction there was set up a committee of experts to decide which way we should go; and they have decided—or did the last time, just certainly a few days ago—that they didn't have quite yet the basis of fact on which they could determine which was the best direction to go.

Public Papers of Eisenhower, 1957, p.729

Now, in almost every field that I know of, air-to-air, ground-to-air, air-to-ground, ground-to-ground, ballistic missiles, aerodynamic, there are some of these programs that are overlapping all the time.

Public Papers of Eisenhower, 1957, p.729

As I think I told you before, the last estimate I had on armed military research and development, the money we spend yearly without putting a single weapon in our arsenal is $5,200,000,000. Now that isn't any weak, pusillanimous effort; that is a lot of money.

Public Papers of Eisenhower, 1957, p.729

Q. Marvin L. Arrowsmith, Associated Press: Mr. President, Senator Butler of Maryland says he is reliably informed that the Navy, if it wanted to, could launch a satellite right away quick. Do you know is that true? Are they sticking to schedule just for the purpose of—

Public Papers of Eisenhower, 1957, p.729

THE PRESIDENT. Well, he must have some information that I don't have.

Public Papers of Eisenhower, 1957, p.729–p.730

Now, when the scientific community decided to put this thing with the Navy they looked over the thinking and the plans and the developments of the scientists connected with the several services before they decided on one, and at that time the Navy [p.730] had one, I think it was called the Viking, and they assigned it because they thought that offered the greatest probability.

Public Papers of Eisenhower, 1957, p.730

Now, I understand that other services have claimed they could have done this quicker, and so on. I don't know that any of the other services know all the problems that the Navy has encountered, but anyway it was again a scientific determination and wasn't anything service or political about it. It was the scientists that agreed upon it.

Public Papers of Eisenhower, 1957, p.730

Q. Ray L. Scherer, National Broadcasting Company: Mr. President, the scientists seem most impressed with the fact that the Russian satellite weighs as much as it does, 184 pounds. Does your information indicate that we will launch one that heavy?

Public Papers of Eisenhower, 1957, p.730

THE PRESIDENT. I will tell you this: I think this is not secret at all, Dr. Bronk visited me again yesterday, and he had had a talk with one of the very high officials in the governmental scientific work of Russia and he said merely that he didn't know that that figure was correct. So far as I know we are not thinking of putting one of that weight in the air.

Public Papers of Eisenhower, 1957, p.730

Q. Hazel Markel, National Broadcasting Company: Mr. President, in light of the great faith which the American people have in your military knowledge and leadership, are you saying at this time that with the Russian satellite whirling about the world, you are not more concerned nor overly concerned about our Nation's security?

Public Papers of Eisenhower, 1957, p.730

THE PRESIDENT. Well, I think I have time and again emphasized my concern about the Nation's security. I believe I just a few months back went on the television to make a special plea about this. As a matter of fact, I plead very strongly for $38 billion in new appropriations this year, and was cut quite severely in that new appropriations for next year.

Public Papers of Eisenhower, 1957, p.730–p.731

Now, so far as the satellite itself is concerned, that does not raise my apprehensions, not one iota. I see nothing at this moment, at this stage of development, that is significant in that development as far as security is concerned, except, as I pointed out, it does definitely prove the possession by the Russian scientists [p.731] of a very powerful thrust in their rocketry, and that is important. I can only say that I have had every group that I know anything about, to ask them is there anything more we can do in the development of our rocket program any better than it is being done? And, except for certain minor items or, you might say, almost involving administration, there has been little said.

Public Papers of Eisenhower, 1957, p.731

Q. Tom Kelly, Washington Daily News: Mr. President, could you tell me what is our best knowledge of the weight of the Russian satellite; and if it does weigh anything close to 180 pounds, is this an indication that it is scientifically more valuable than ours will be when we get it up?

Public Papers of Eisenhower, 1957, p.731

THE PRESIDENT. Well, certainly again I am quoting the scientists, there is no indication that this will be scientifically more valuable. If it is 180 pounds, I think it has astonished our scientists; I would say that.

Public Papers of Eisenhower, 1957, p.731

Q. Robert E. Clark, International News Service: Can you tell us more about the satellite you say we plan to launch in December? Will this be the initial sphere that would weigh only a few pounds, and would not contain any recording instruments?

Public Papers of Eisenhower, 1957, p.731

THE PRESIDENT. That was the plan. The plan is, the first one that goes up, is just merely to let it orbit, checking your speeds, your directions, your equipment and everything else, and the next one—you see, the equipment that goes into these things is a very expensive—it is the most delicate machinery, and in that equipment itself is involved some of the latest scientific discoveries that we have.

Public Papers of Eisenhower, 1957, p.731

Now, the satellite—the mere fact that this thing orbits involves no new discovery to science. They knew it could be done—at least they say so, and they have for a long time—so that is no new discovery, so in itself it imposes no additional threat to the United States.

[Confers with Mr. Hagerty.]

Public Papers of Eisenhower, 1957, p.731

THE PRESIDENT. Mr. Hagerty reminds me there may be several of these test vehicles put out before the instrumentation itself goes up.

Public Papers of Eisenhower, 1957, p.732

Q. Donald J. Gonzales, United Press: Sir, do you believe that the United States should now attempt to negotiate an earth satellite agreement outside of the overall first step program Which has been previously proposed ?

Public Papers of Eisenhower, 1957, p.732

THE PRESIDENT. Mr. Dulles issued a statement on that last evening which seems to have been misinterpreted. He said that, with reference to this reported suggestion by Mr. Khrushchev, that there should be a U. S.-Soviet study of the control of objects entering outer space.

Public Papers of Eisenhower, 1957, p.732

The Department of State first recalls that the London proposals of last August made by Canada, France, United Kingdom, and the United States called for just such a study. It is hoped that this offer will be accepted by the Soviet Union.

Public Papers of Eisenhower, 1957, p.732

The State Department emphasizes that these London proposals call for a multilateral international study and not a bilateral study between the United States and U. S. S. R., and the United States would not be disposed to consider any alteration of this aspect of the proposals, although if its associates agree to such a study it might be initiated without waiting the conclusion of other substantive features of the proposal.

Public Papers of Eisenhower, 1957, p.732

I just suggest you don't forget it said that if our associates agree, then we think that such a study, not a plan, but such a study could be initiated.

Public Papers of Eisenhower, 1957, p.732

Merriman Smith, United Press: Thank you, Mr. President.

Public Papers of Eisenhower, 1957, p.732

NOTE: President Eisenhower's one hundred and twenty-third news conference was held in the Executive Office Building from 10:29 to 11:02 o'clock on Thursday morning, October 9, 1957. In attendance: 245.

Perez v. Brownell, 1958

Title: Perez v. Brownell

Author: U.S. Supreme Court

Date: March 31, 1958

Source: 356 U.S. 44

This case was originally argued May 1, 1957, and was restored to the calendar for reargument June 24, 1957. Reargument occured October 28, 1957, and the case was decided March 31, 1958. On this same day, an order was entered substituting Attorney General Rogers for former Attorney General Brownell as the party respondent. See post, p. 915.

1958, Perez v. Brownell, 356 U.S. 44

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1958, Perez v. Brownell, 356 U.S. 44

FOR THE NINTH CIRCUIT

Syllabus

1958, Perez v. Brownell, 356 U.S. 44

In proceedings to deport a person born in the United States, the Government denied that he was an American citizen on the ground that, by voting in a Mexican political election and remaining outside of the United States in wartime to avoid military service, he had lost his citizenship under § 401(e) and (j) of the Nationality Act of 1940, as amended. He sued for a judgment declaring him to be a citizen but was denied relief.

1958, Perez v. Brownell, 356 U.S. 44

Held: It was within the authority of Congress, under its power to regulate the relations of the United States with foreign countries, to provide in § 401(e) that anyone who votes in a foreign political election shall lose his American citizenship, and the judgment is affirmed. Pp. 45-62.

1958, Perez v. Brownell, 356 U.S. 44

(a) The power of Congress to regulate foreign relations may reasonably be deemed to include a power to deal with voting by American citizens in foreign political elections, since Congress could find that such activities, because they might give rise to serious international embarrassment, relate to the conduct of foreign relations. Pp. 57-60.

1958, Perez v. Brownell, 356 U.S. 44

(b) Since withdrawal of the citizenship of Americans who vote in foreign political elections is reasonably calculated to effect the avoidance of embarrassment in the conduct of foreign relations, such withdrawal is within the power of Congress, acting under the Necessary and Proper Clause. Pp. 60-62.

1958, Perez v. Brownell, 356 U.S. 44

(c) There is nothing in the language, the context, the history or the manifest purpose of the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship. P. 58, n. 3. [356 U.S. 45]

1958, Perez v. Brownell, 356 U.S. 45

(d) No opinion is expressed with respect to the constitutionality of § 401(j) relating to persons who remain outside the United States to avoid military service. P. 62.

1958, Perez v. Brownell, 356 U.S. 45

235 F.2d 364, affirmed.

FRANKFURTER, J., lead opinion

1958, Perez v. Brownell, 356 U.S. 45

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

1958, Perez v. Brownell, 356 U.S. 45

Petitioner, a national of the United States by birth, has been declared to have lost his American citizenship by operation of the Nationality Act of 1940, 54 Stat. 1137, as amended by the Act of September 27, 1944, 58 Stat. 746. Section 401 of that Act 1 provided that

1958, Perez v. Brownell, 356 U.S. 45

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

1958, Perez v. Brownell, 356 U.S. 45

\* \* \* \*

1958, Perez v. Brownell, 356 U.S. 45

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

1958, Perez v. Brownell, 356 U.S. 45

\* \* \* \* [356 U.S. 46]

1958, Perez v. Brownell, 356 U.S. 46

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

1958, Perez v. Brownell, 356 U.S. 46

He seeks a reversal of the judgment against him on the ground that these provisions were beyond the power of Congress to enact.

1958, Perez v. Brownell, 356 U.S. 46

Petitioner was born in Texas in 1909. He resided in the United States until 1919 or 1920, when he moved with his parents to Mexico, where he lived, apparently without interruption, until 1943. In 1928, he was informed that he had been born in Texas. At the outbreak of World War II, petitioner knew of the duty of male United States citizens to register for the draft, but he failed to do so. In 1943, he applied for admission to the United States as an alien railroad laborer, stating that he was a native-born citizen of Mexico, and was granted permission to enter on a temporary basis. He returned to Mexico in 1944, and shortly thereafter applied for and was granted permission, again as a native-born Mexican citizen, to enter the United States temporarily to continue his employment as a railroad laborer. Later in 1944, he returned to Mexico once more. In 1947, petitioner applied for admission to the United States at El Paso, Texas, as a citizen of the United States. At a Board of Special Inquiry hearing (and in his subsequent appeals to the Assistant Commissioner and the Board of Immigration Appeals), he admitted having remained outside of the United States to avoid military service and having voted in political elections in Mexico. He was ordered excluded on the ground that he had expatriated himself; this order was affirmed on appeal. In 1952, petitioner, claiming to be a native-born citizen of Mexico, [356 U.S. 47] was permitted to enter the United States as an alien agricultural laborer. He surrendered in 1953 to immigration authorities in San Francisco as an alien unlawfully in the United States, but claimed the right to remain by virtue of his American citizenship. After a hearing before a Special Inquiry Officer, he was ordered deported as an alien not in possession of a valid immigration visa; this order was affirmed on appeal to the Board of Immigration Appeals.

1958, Perez v. Brownell, 356 U.S. 47

Petitioner brought suit in 1954 in a United States District Court for a judgment declaring him to be a national of the United States. 2 The court, sitting without a jury, found (in addition to the undisputed facts set forth above) that petitioner had remained outside of the United States from November, 1944, to July, 1947, for the purpose of avoiding service in the armed forces of the United States, and that he had voted in a "political election" in Mexico in 1946. The court, concluding that he had thereby expatriated himself, denied the relief sought by the petitioner. The United States Court of Appeals for the Ninth Circuit affirmed. 235 F.2d 364. We granted certiorari because of the constitutional questions raised by the petitioner. 352 U.S. 908. [356 U.S. 48]

1958, Perez v. Brownell, 356 U.S. 48

Statutory expatriation, as a response to problems of international relations, was first introduced just a half century ago. Long before that, however, serious friction between the United States and other nations had stirred consideration of modes of dealing with the difficulties that arose out of the conflicting claims to the allegiance of foreign-born persons naturalized in the United States, particularly when they returned to the country of their origin.

1958, Perez v. Brownell, 356 U.S. 48

As a starting point for grappling with this tangle of problems, Congress in 1868 formally announced the traditional policy of this country that it is the "natural and inherent right of all people" to divest themselves of their allegiance to any state, 15 Stat. 223, R.S. § 1999. Although the impulse for this legislation had been the refusal by other nations, notably Great Britain, to recognize a right in naturalized Americans who had been their subjects to shed that former allegiance, the Act of 1868 was held by the Attorney General to apply to divestment by native-born and naturalized Americans of their United States citizenship. 14 Op.Atty.Gen. 295, 296. In addition, while the debate on the Act of 1868 was proceeding, negotiations were completed on the first of a series of treaties for the adjustment of some of the disagreements that were constantly arising between the United States and other nations concerning citizenship. These instruments typically provided that each of the signatory nations would regard as a citizen of the other such of its own citizens as became naturalized by the other. E.g., Treaty with the North German Confederation, Feb. 22, 1868, 2 Treaties, Conventions, International Acts, etc. (comp. Malloy, 1910), 1298. This series of treaties initiated this country's policy of automatic divestment of citizenship for specified conduct affecting our foreign relations. [356 U.S. 49]

1958, Perez v. Brownell, 356 U.S. 49

On the basis, presumably, of the Act of 1868 and such treaties as were in force, it was the practice of the Department of State during the last third of the nineteenth century to make rulings as to forfeiture of United States citizenship by individuals who performed various acts abroad. See Borchard, Diplomatic Protection of Citizens Abroad, §§ 319, 324. Naturalized citizens who returned to the country of their origin were held to have abandoned their citizenship by such actions as accepting public office there or assuming political duties. See Davis to Weile, Apr. 18, 1870, 3 Moore, Digest of International Law, 737; Davis to Taft, Jan. 18, 1883, 3 id. at 739. Native-born citizens of the United States (as well as naturalized citizens outside of the country of their origin) were generally deemed to have lost their American citizenship only if they acquired foreign citizenship. See Bayard to Suzzara-Verdi, Jan. 27, 1887, 3 id. at 714; see also Comitis v. Parkerson, 56 F. 556, 559.

1958, Perez v. Brownell, 356 U.S. 49

No one seems to have questioned the necessity of having the State Department, in its conduct of the foreign relations of the Nation, pass on the validity of claims to American citizenship and to such of its incidents as the right to diplomatic protection. However, it was recognized in the Executive Branch that the Department had no specific legislative authority for nullifying citizenship, and several of the Presidents urged Congress to define the acts by which citizens should be held to have expatriated themselves. E.g., Message of President Grant to Congress, Dec. 7, 1874, 7 Messages and Papers of the Presidents (Richardson ed. 1899) 284, 291-292. Finally, in 1906, during the consideration of the bill that became the Naturalization Act of 1906, a Senate resolution and a recommendation of the House Committee on Foreign Affairs called for an examination of the problems relating to American citizenship, expatriation and protection [356 U.S. 50] abroad. In response to these suggestions, the Secretary of State appointed the Citizenship Board of 1906, composed of the Solicitor of the State Department, the Minister to the Netherlands and the Chief of the Passport Bureau. The board conducted a study and, late in 1906, made an extensive report with recommendations for legislation.

1958, Perez v. Brownell, 356 U.S. 50

Among the recommendations of the board were that expatriation of a citizen "be assumed" when, in time of peace, he became naturalized in a foreign state, engaged in the service of a foreign state where such service involved the taking of an oath of allegiance to that state, or domiciled in a foreign state for five years with no intention to return. Citizenship of the United States, Expatriation, and Protection Abroad, H.R.Doc. No. 326, 59th Cong., 2d Sess. 23. It also recommended that an American woman who married a foreigner be regarded as losing her American citizenship during coverture. Id. at 29. As to the first two recommended acts of expatriation, the report stated that

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no man should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one.

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Id. at 23. As to the third, the board stated that more and more Americans were going abroad to live, "and the question of their protection causes increasing embarrassment to this Government in its relations with foreign powers." Id. at 25.

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Within a month of the submission of this report, a bill was introduced in the House by Representative Perkins of New York based on the board's recommendations. Perkins' bill provided that a citizen would be "deemed to have expatriated himself" when, in peacetime, he became naturalized in a foreign country or took an oath of allegiance to a foreign state; it was presumed that a naturalized citizen who resided for five years in a foreign state had [356 U.S. 51] ceased to be an American citizen, and an American woman who married a foreigner would take the nationality of her husband. 41 Cong.Rec. 1463-1464. Perkins stated that the bill was designed to discourage people from evading responsibilities both to other countries and to the United States, and "to save our Government [from] becoming involved in any trouble or question with foreign countries where there is no just reason." Id. at 1464. What little debate there was on the bill centered around the foreign domicile provision; no constitutional issue was canvassed. The bill passed the House, and, after substantially no debate and the adoption of a committee amendment adding a presumption of termination of citizenship for a naturalized citizen who resided for two years in the country of his origin, 41 Cong.Rec. 4116, the Senate passed it and it became the Expatriation Act of 1907. 34 Stat. 1228.

1958, Perez v. Brownell, 356 U.S. 51

The question of the power of Congress to enact legislation depriving individuals of their American citizenship was first raised in the courts by Mackenzie v. Hare, 239 U.S. 299. The plaintiff in that action, Mrs. Mackenzie, was a native-born citizen and resident of the United States. In 1909, she married a subject of Great Britain and continued to reside with him in the United States. When, in 1913, she applied to the defendants, members of a board of elections in California, to be registered as a voter, her application was refused on the ground that, by reason of her marriage, she had ceased to be a citizen of the United States. Her petition for a writ of mandamus was denied in the state courts of California, and she sued out a writ of error here, claiming that, if the Act of 1907 was intended to apply to her, it was beyond the power of Congress. The Court, through Mr. Justice McKenna, after finding that merging the identity of husband and wife, as Congress had done in this instance, had [356 U.S. 52] a "purpose and, it may be, necessity, in international policy," continued:

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As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality, it has the powers of nationality, especially those which concern its relations and intercourse with other countries. We should hesitate long before limiting or embarrassing such powers…. We concur with counsel that citizenship is of tangible worth, and we sympathize with plaintiff in her desire to retain it and in her earnest assertion of it. But there is involved more than personal considerations. As we have seen, the legislation was urged by conditions of national moment…. It is the conception of the legislation under review that such an act may bring the Government into embarrassments and, it may be, into controversies….

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239 U.S. at 311-312. The Court observed that voluntary marriage of an American woman with a foreigner may have the same consequences, and "involve national complications of like kind," as voluntary expatriation in the traditional sense. It concluded: "This is no arbitrary exercise of government." 239 U.S. at 312. See also Ex parte Griffin, 237 F. 445; Ex parte Ng Fung Sing, 6 F.2d 670.

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By the early 1930's, the American law on nationality, including naturalization and denationalization, was expressed in a large number of provisions scattered throughout the statute books. Some of the specific laws enacted at different times seemed inconsistent with others, some problems of growing importance had emerged that Congress had left unheeded. At the request of the House Committee on Immigration and Naturalization, see 86 Cong.Rec. 11943, President Franklin D. Roosevelt established a Committee composed of the Secretary of State, [356 U.S. 53] the Attorney General and the Secretary of Labor to review the nationality laws of the United States, to recommend revisions and to codify the nationality laws into one comprehensive statute for submission to Congress; he expressed particular concern about "existing discriminations" in the law. Exec.Order No. 6115, Apr. 25, 1933. The necessary research for such a study was entrusted to specialists representing the three departments. Five years were spent by these officials in the study and formulation of a draft code. In their letter submitting the draft code to the President after it had been reviewed within the Executive Branch, the Cabinet Committee noted the special importance of the provisions concerning loss of nationality, and asserted that none of these provisions was "designed to be punitive or to interfere with freedom of action"; they were intended to deprive of citizenship those persons who had shown that "their real attachment is to the foreign country, and not to the United States." Codification of the Nationality Laws of the United States, H.R. Comm.Print, Pt. 1, 76th Cong., 1st Sess. V-VII.

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The draft code of the Executive Branch was an omnibus bill in five chapters. The chapter relating to "Loss of Nationality" provided that any citizen should "lose his nationality" by becoming naturalized in a foreign country; taking an oath of allegiance to a foreign state; entering or serving in the armed forces of a foreign state; being employed by a foreign government in a post for which only nationals of that country are eligible; voting in a foreign political election or plebiscite; using a passport of a foreign state as a national thereof; formally renouncing American citizenship before a consular officer abroad; deserting the armed forces of the United States in wartime (upon conviction by court martial); if a naturalized citizen, residing in the state of his former nationality or birth for two years if he thereby acquires the nationality of that state; or, if a naturalized citizen, [356 U.S. 54] residing in the state of his former nationality or birth for three years. Id. at 66-76.

1958, Perez v. Brownell, 356 U.S. 54

In support of the recommendation of voting in a foreign political election as an act of expatriation, the Committee reported:

1958, Perez v. Brownell, 356 U.S. 54

Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States, whether or not the person in question has or acquires the nationality of the foreign state. In any event, it is not believed that an American national should be permitted to participate in the political affairs of a foreign state and at the same time retain his American nationality. The two facts would seem to be inconsistent with each other.

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Id. at 67. As to the reference to plebiscites in the draft language, the report states: "If this provision had been in effect when the Saar Plebiscite was held, Americans voting in it would have been expatriated." Ibid. It seems clear that the most immediate impulse for the entire voting provision was the participation by many naturalized Americans in the plebiscite to determine sovereignty over the Saar in January, 1935. H.R.Rep. No. 216, 74th Cong., 1st Sess. 1. Representative Dickstein of New York, Chairman of the House Committee on Immigration and Naturalization, who had called the plebiscite an "international dispute" in which naturalized American citizens could not properly participate, N.Y. Times, Jan. 4, 1935, p. 12, col. 3, had introduced a bill in the House in 1935 similar in language to the voting provisions in the draft code, 79 Cong.Rec. 2050, but, although it was favorably reported, the House did not pass it. [356 U.S. 55]

1958, Perez v. Brownell, 356 U.S. 55

In June, 1938, the President submitted the Cabinet Committee's draft code and the supporting report to Congress. In due course, Chairman Dickstein introduced the code as H.R. 6127, and it was referred to his committee. In early 1940, extensive hearings were held before both a subcommittee and the full committee at which the interested Executive Branch agencies and others testified. With respect to the voting provision, Chairman Dickstein spoke of the Americans who had voted in the Saar plebiscite and said, "If they are American citizens, they had no right to vote, to interfere with foreign matters or political subdivision." Hearings before the House Committee on Immigration and Naturalization on H.R. 6127, 76th Cong., 1st Sess. 287. Mr. Flournoy, Assistant Legal Adviser of the State Department, said that the provision would be "particularly applicable" to persons of dual nationality, id. at 132; however, a suggestion that the provision be made applicable only to dual nationals, id. at 398, was not adopted.

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Upon the conclusion of the hearings in June, 1940 ,a new bill was drawn up and introduced as H.R. 9980. The only changes from the Executive Branch draft with respect to the acts of expatriation were the deletion of using a foreign passport and the addition of residence by a naturalized citizen for five years in any foreign country as acts that would result in loss of nationality. 86 Cong.Rec. 11960-11961. The House debated the bill for a day in September, 1940. In briefly summarizing the loss of nationality provisions of the bill, Chairman Dickstein said that

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this bill would put an end to dual citizenship, and relieve this country of the responsibility of those who reside in foreign lands and only claim citizenship when it serves their purpose.

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Id. at 11944. Representative Rees of Kansas, who had served as chairman of the subcommittee that studied the draft code, said that clarifying [356 U.S. 56] legislation was needed, among other reasons, "because of the duty of the Government to protect citizens abroad." Id. at 11947. The bill passed the House that same day. Id. at 11965.

1958, Perez v. Brownell, 356 U.S. 56

In the Senate also, after a favorable report from the Committee on Immigration, the bill was debated very briefly. Committee amendments were adopted making the provision on foreign military service applicable only to dual nationals, making treason an act of expatriation, and providing a procedure by which persons administratively declared to have expatriated themselves might obtain judicial determinations of citizenship. The bill as amended was passed. Id. at 12817-12818. The House agreed to these and all other amendments on which the Senate insisted, id. at 13250, and, on October 14, the Nationality Act of 1940 became law. 54 Stat. 1137.

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The loss of nationality provisions of the Act constituted but a small portion of a long omnibus nationality statute. It is not surprising, then, that they received as little attention as they did in debate and hearings, and that nothing specific was said about the constitutional basis for their enactment. The bill as a whole was regarded primarily as a codification—and only secondarily as a revision—of statutes that had been in force for many years, some of them, such as the naturalization provisions, having their beginnings in legislation 150 years old. It is clear that, as is so often the case in matters affecting the conduct of foreign relations, Congress was guided by and relied very heavily upon the advice of the Executive Branch, and particularly the State Department. See, e.g., 86 Cong.Rec. 11943-11944. In effect, Congress treated the Cabinet Committee as it normally does its own committees charged with studying a problem and formulating legislation. These considerations emphasize the importance, in the inquiry into congressional power in this field, of keeping in mind the historical background [356 U.S. 57] of the challenged legislation, for history will disclose the purpose fairly attributable to Congress in enacting the statute.

1958, Perez v. Brownell, 356 U.S. 57

The first step in our inquiry must be to answer the question: what is the source of power on which Congress must be assumed to have drawn? Although there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation of foreign affairs, there can be no doubt of the existence of this power in the lawmaking organ of the Nation. See United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318; Mackenzie v. Hare, 239 U.S. 299, 311-312. The States that joined together to form a single Nation and to create, through the Constitution, a Federal Government to conduct the affairs of that Nation must be held to have granted that Government the powers indispensable to its functioning effectively in the company of sovereign nations. The Government must be able not only to deal affirmatively with foreign nations, as it does through the maintenance of diplomatic relations with them and the protection of American citizens sojourning within their territories. It must also be able to reduce to a minimum the frictions that are unavoidable in a world of sovereigns sensitive in matters touching their dignity and interests.

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The inference is fairly to be drawn from the congressional history of the Nationality Act of 1940, read in light of the historical background of expatriation in this country, that, in making voting in foreign elections (among other behavior) an act of expatriation, Congress was seeking to effectuate its power to regulate foreign affairs. The legislators, counseled by those on whom they rightly relied for advice, were concerned about actions by citizens in foreign countries that create problems of protection and are inconsistent with American allegiance. Moreover, we cannot ignore the fact that embarrassments [356 U.S. 58] in the conduct of foreign relations were of primary concern in the consideration of the Act of 1907, of which the loss of nationality provisions of the 1940 Act are a codification and expansion.

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Broad as the power in the National Government to regulate foreign affairs must necessarily be, it is not without limitation. The restrictions confining Congress in the exercise of any of the powers expressly delegated to it in the Constitution apply with equal vigor when that body seeks to regulate our relations with other nations. Since Congress may not act arbitrarily, a rational nexus must exist between the content of a specific power in Congress and the action of Congress in carrying that power into execution. More simply stated, the means—in this case, withdrawal of citizenship—must be reasonably related to the end—here, regulation of foreign affairs. The inquiry—and, in the case before us, the sole inquiry—into which this Court must enter is whether or not Congress may have concluded not unreasonably that there is a relevant connection between this fundamental source of power and the ultimate legislative action. 3 [356 U.S. 59]

1958, Perez v. Brownell, 356 U.S. 59

Our starting point is to ascertain whether the power of Congress to deal with foreign relations may reasonably be deemed to include a power to deal generally with the active participation, by way of voting, of American citizens in foreign political elections. Experience amply attests that, in this day of extensive international travel, rapid communication and widespread use of propaganda, the activities of the citizens of one nation when in another country can easily cause serious embarrassments to the government of their own country as well as to their fellow citizens. We cannot deny to Congress the reasonable belief that these difficulties might well become acute, to the point of jeopardizing the successful conduct of international relations, when a citizen of one country chooses to participate in the political or governmental affairs of another country. The citizen may by his action unwittingly promote or encourage a course of conduct contrary to the interests of his own government; moreover, the people or government of the foreign country may regard his action to be the action of his government, or at least as a reflection if not an expression of its policy. Cf. Preuss, International Responsibility for Hostile Propaganda Against Foreign States, 28 Am.J.Int'l L. 649, 650.

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It follows that such activity is regulable by Congress under its power to deal with foreign affairs. And it must be regulable on more than an ad hoc basis. The subtle influences and repercussions with which the Government must deal make it reasonable for the generalized, although clearly limited, category of "political election" to be used in defining the area of regulation. That description carries with it the scope and meaning of its context and purpose; classes of elections—nonpolitical in the colloquial [356 U.S. 60] sense—as to which participation by Americans could not possibly have any effect on the relations of the United States with another country are excluded by any rational construction of the phrase. The classification that Congress has adopted cannot be said to be inappropriate to the difficulties to be dealt with. Specific applications are, of course, open to judicial challenge, as are other general categories in the law, by a "gradual process of judicial inclusion and exclusion." Davidson v. New Orleans, 96 U.S. 97, 104. 4

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The question must finally be faced whether, given the power to attach some sort of consequence to voting in a foreign political election, Congress, acting under the Necessary and Proper Clause, Art. I, § 8, cl. 18, could attach loss of nationality to it. Is the means, withdrawal of citizenship, reasonably calculated to effect the end that is within the power of Congress to achieve, the avoidance of embarrassment in the conduct of our foreign relations attributable to voting by American citizens in foreign political elections? The importance and extreme delicacy of the matters here sought to be regulated demand that Congress be permitted ample scope in selecting appropriate modes for accomplishing its purpose. The critical connection between this conduct and loss of citizenship is the fact that it is the possession of American citizenship by a person committing the act that makes the act potentially embarrassing to the American Government and pregnant with the possibility of embroiling this country in disputes with other nations. The termination of citizenship terminates the problem. Moreover, the fact is not without significance that Congress has interpreted [356 U.S. 61] this conduct, not irrationally, as importing not only something less than complete and unswerving allegiance to the United States, but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship.

1958, Perez v. Brownell, 356 U.S. 61

Of course, Congress can attach loss of citizenship only as a consequence of conduct engaged in voluntarily. See Mackenzie v. Hare, 239 U.S. 299, 311-312. But it would be a mockery of this Court's decisions to suggest that a person, in order to lose his citizenship, must intend or desire to do so. The Court only a few years ago said of the person held to have lost her citizenship in Mackenzie v. Hare, supra: "The woman had not intended to give up her American citizenship." Savorgnan v. United States, 338 U.S. 491, 501. And the latter case sustained the denationalization of Mrs. Savorgnan although it was not disputed that she "had no intention of endangering her American citizenship or of renouncing her allegiance to the United States." 338 U.S. at 495. 5 What both women did do voluntarily was to engage in conduct to which Acts of Congress attached the consequence of denationalization irrespective of—and, in those cases, absolutely contrary to—the intentions and desires of the individuals. Those two cases mean nothing—indeed, they are deceptive—if their essential significance is not rejection of the notion that the power of Congress to terminate citizenship depends upon the citizen's assent. It is a distortion of those cases to explain them away on a theory that a citizen's assent to denationalization may be inferred from his having engaged in conduct that amounts to an "abandonment of citizenship" or a "transfer [356 U.S. 62] of allegiance." Certainly an Act of Congress cannot be invalidated by resting decisive precedents on a gross fiction—a fiction baseless in law and contradicted by the facts of the cases.

1958, Perez v. Brownell, 356 U.S. 62

It cannot be said, then, that Congress acted without warrant when, pursuant to its power to regulate the relations of the United States with foreign countries, it provided that anyone who votes in a foreign election of significance politically in the life of another country shall lose his American citizenship. To deny the power of Congress to enact the legislation challenged here would be to disregard the constitutional allocation of governmental functions that it is this Court's solemn duty to guard.

1958, Perez v. Brownell, 356 U.S. 62

Because of our view concerning the power of Congress with respect to § 401(e) of the Nationality Act of 1940, we find it unnecessary to consider—indeed, it would be improper for us to adjudicate—the constitutionality of § 401(j), and we expressly decline to rule on that important question at this time.

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Judgment affirmed.

WARREN, J., dissenting

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MR. CHIEF JUSTICE WARREN, with whom MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS join, dissenting.

1958, Perez v. Brownell, 356 U.S. 62

The Congress of the United States has decreed that a citizen of the United States shall lose his citizenship by performing certain designated acts. 1 The petitioner in [356 U.S. 63] this case, a native-born American, 2 is declared to have lost his citizenship by voting in a foreign election. 3 Whether this forfeiture of citizenship exceeds the bounds of the Constitution is the issue before us. The problem is fundamental, and must be resolved upon fundamental considerations.

1958, Perez v. Brownell, 356 U.S. 63

Generally, when congressional action is challenged, constitutional authority is found in the express and implied powers with which the National Government has been invested or in those inherent powers that are necessary attributes of a sovereign state. The sweep of those powers is surely broad. In appropriate circumstances, they are adequate to take away life itself. The initial [356 U.S. 64] question here is whether citizenship is subject to the exercise of these general powers of government.

1958, Perez v. Brownell, 356 U.S. 64

What is this Government, whose power is here being asserted? And what is the source of that power? The answers are the foundation of our Republic. To secure the inalienable rights of the individual, "Governments are instituted among Men, deriving their just powers from the consent of the governed." I do not believe the passage of time has lessened the truth of this proposition. It is basic to our form of government. This Government was born of its citizens, it maintains itself in a continuing relationship with them, and, in my judgment, it is without power to sever the relationship that gives rise to its existence. I cannot believe that a government conceived in the spirit of ours was established with power to take from the people their most basic right.

1958, Perez v. Brownell, 356 U.S. 64

Citizenship is man's basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf. 4 His very existence is at the sufferance of the state within whose borders he happens to be. In this country, the expatriate would presumably enjoy, at most, only the limited rights and privileges of aliens, 5 and, like the alien, he might even [356 U.S. 65] be subject to deportation, and thereby deprived of the right to assert any rights. 6 This government was not established with power to decree this fate.

1958, Perez v. Brownell, 356 U.S. 65

The people who created this government endowed it with broad powers. They created a sovereign state with power to function as a sovereignty. But the citizens themselves are sovereign, and their citizenship is not subject to the general powers of their government. Whatever may be the scope of its powers to regulate the conduct and affairs of all persons within its jurisdiction, a government of the people cannot take away their citizenship simply because one branch of that government can be said to have a conceivably rational basis for wanting to do so.

1958, Perez v. Brownell, 356 U.S. 65

The basic constitutional provision crystallizing the right of citizenship is the first sentence of section one of the Fourteenth Amendment. It is there provided that

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All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the [356 U.S. 66] United States and of the State wherein they reside.

1958, Perez v. Brownell, 356 U.S. 66

United States citizenship is thus the constitutional birthright of every person born in this country. This Court has declared that Congress is without power to alter this effect of birth in the United States, United States v. Wong Kim Ark, 169 U.S. 649, 703. The Constitution also provides that citizenship can be bestowed under a "uniform Rule of Naturalization," 7 but there is no corresponding provision authorizing divestment. Of course, naturalization unlawfully procured can be set aside. 8 But apart from this circumstance, the status of the naturalized citizen is secure. As this Court stated in Osborn v. Bank of the United States, 9 Wheat. 738, 827:

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[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it so far as respects the individual.

1958, Perez v. Brownell, 356 U.S. 66

(Emphasis added.) Under our form of government, as established by the Constitution, the citizenship of the lawfully naturalized and the native-born cannot be taken from them.

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There is no question that citizenship may be voluntarily relinquished. The right of voluntary expatriation was recognized by Congress in 1868. 9 Congress declared that "the right of expatriation is a natural and inherent [356 U.S. 67] right of all people…. " 10 Although the primary purpose of this declaration was the protection of our naturalized citizens from the claims of their countries of origin, the language was properly regarded as establishing the reciprocal right of American citizens to abjure their allegiance. 11 In the early days of this Nation, the right of expatriation had been a matter of controversy. The common law doctrine of perpetual allegiance was evident in the opinions of this Court. 12 And, although impressment of naturalized American seamen of British birth was a cause of the War of 1812, the executive officials of this Government were not unwavering in their support of the right of expatriation. 13 Prior to 1868, all efforts to obtain congressional enactments concerning expatriation failed. 14 The doctrine of perpetual allegiance, however, was so ill-suited to the growing nation whose doors were open to immigrants from abroad that it could not last. Nine years before Congress acted, Attorney General Black stated the American position in a notable opinion: 15

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Here in the United States, the thought of giving it [the right of expatriation] up cannot be entertained for a moment. Upon that principle, this country was populated. We owe to it our existence as a nation. [356 U.S. 68] Ever since our independence, we have upheld and maintained it by every form of words and acts. We have constantly promised full and complete protection to all persons who should come here and seek it by renouncing their natural allegiance and transferring their fealty to us. We stand pledged to it in the face of the whole world.

1958, Perez v. Brownell, 356 U.S. 68

It has long been recognized that citizenship may not only be voluntarily renounced through exercise of the right of expatriation, but also by other actions in derogation of undivided allegiance to this country. 16 While the essential qualities of the citizen-state relationship under our Constitution preclude the exercise of governmental power to divest United States citizenship, the establishment of that relationship did not impair the principle that conduct of a citizen showing a voluntary transfer of allegiance is an abandonment of citizenship. Nearly all sovereignties recognize that acquisition of foreign nationality ordinarily shows a renunciation of citizenship. 17 Nor is this the only act by which the citizen may show a voluntary abandonment of his citizenship. Any action by which he manifests allegiance to a foreign state may be so inconsistent with the retention of citizenship as to result in loss of that status. 18 In recognizing the consequence of such action, the Government is not taking away United States citizenship to implement its general regulatory powers, for, as previously indicated, in my judgment, citizenship is immune from divestment under these [356 U.S. 69] powers. Rather, the Government is simply giving formal recognition to the inevitable consequence of the citizen's own voluntary surrender of his citizenship.

1958, Perez v. Brownell, 356 U.S. 69

Twice before, this Court has recognized that certain voluntary conduct results in an impairment of the status of citizenship. In Savorgnan v. United States, 338 U.S. 491, an American citizen had renounced her citizenship and acquired that of a foreign state. This Court affirmed her loss of citizenship, recognizing that,

1958, Perez v. Brownell, 356 U.S. 69

From the beginning, one of the most obvious and effective forms of expatriation has been that of naturalization under the laws of another nation.

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338 U.S. at 498. Mackenzie v. Hare, 239 U.S. 299, involved an American woman who had married a British national. That decision sustained an Act of Congress which provided that her citizenship was suspended for the duration of her marriage. Since it is sometimes asserted that this case is authority for the broad proposition that Congress can take away United States citizenship, it is necessary to examine precisely what the case involved.

1958, Perez v. Brownell, 356 U.S. 69

The statute which the Court there sustained did not divest Mrs. Mackenzie of her citizenship. 19 It provided that "any American woman who marries a foreigner shall take the nationality of her husband." 20 "At the termination [356 U.S. 70] of the marital relation," the statute continues, "she may resume her American citizenship…. " (Emphasis added.) Her citizenship was not taken away; it was held in abeyance.

1958, Perez v. Brownell, 356 U.S. 70

This view of the statute is borne out by its history. The 1907 Act was passed after the Department of State had responded to requests from both houses of Congress for a comprehensive study of our own and foreign nationality laws, together with recommendations for new legislation. 21 One of those recommendations, substantially incorporated in the 1907 Act, was as follows: 22

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That an American woman who marries a foreigner shall take during coverture the nationality of her husband; but upon termination of the marital relation by death or absolute divorce she may revert to her American citizenship by registering within one year as an American citizen at the most convenient American consulate or by returning to reside in the [356 U.S. 71] United States if she is abroad; or if she is in the United States by continuing to reside therein.

1958, Perez v. Brownell, 356 U.S. 71

(Emphasis added.) This principle of "reversion of citizenship" was a familiar one in our own law, 23 and the law of foreign states. 24 The statute was merely declarative of the law as it was then [356 U.S. 72] understood. 25 Although the opinion in Mackenzie v. Hare contains some reference to termination of citizenship, the reasoning is consistent with the terms of the statute that was upheld. Thus, the Court speaks of Mrs. Mackenzie's having entered a "condition," 239 U.S. at 312, not as having surrendered her citizenship. "Therefore," the Court concludes, "as long as the relation lasts, it is made tantamount to expatriation." Ibid. (Emphasis added.)

1958, Perez v. Brownell, 356 U.S. 72

A decision sustaining a statute that relies upon the unity of interest in the marital community—a common law fiction now largely a relic of the past—may itself be outdated. 26 However that may be, the foregoing demonstrates [356 U.S. 73] that Mackenzie v. Hare should not be understood to sanction a power to divest citizenship. Rather, this case, like Savorgnan, simply acknowledges that United States citizenship can be abandoned, temporarily or permanently, by conduct showing a voluntary transfer of allegiance to another country.

1958, Perez v. Brownell, 356 U.S. 73

The background of the congressional enactment pertinent to this case indicates that Congress was proceeding generally in accordance with this approach. After the initial congressional designation in 1907 of certain actions that were deemed to be an abandonment of citizenship, it became apparent that further clarification of the problem was necessary. In 1933, President Roosevelt, acting at the request of the House Committee on Immigration and Naturalization, 27 established a Committee of Cabinet members to prepare a codification and revision of the nationality laws. 28 The Committee, composed of the Secretary of State, the Attorney General and the Secretary of Labor, spent five years preparing the codification that became the Nationality Act of 1940, and submitted their draft in 1938. It is evident that this Committee did not believe citizenship could be divested under the Government's general regulatory powers. Rather, it adopted the position that the citizen abandons his status by compromising his allegiance. In its letter submitting the proposed codification to the President, the Committee described the loss of nationality provisions in these words: 29

1958, Perez v. Brownell, 356 U.S. 73

They are merely intended to deprive persons of American nationality when such persons, by their own acts, or inaction, show that their real attachment is to the foreign country, and not to the United States.

1958, Perez v. Brownell, 356 U.S. 73

(Emphasis added.) [356 U.S. 74] Furthermore, when the draft code was first discussed by the House Committee on Immigration and Naturalization—the only legislative group that subjected the codification to detailed examination 30—it was at once recognized that the status of citizenship was protected from congressional control by the Fourteenth Amendment. In considering the situation of a native-born child of alien parentage, Congressmen Poage and Rees, members of the committee, and Richard Flournoy, the State Department representative, engaged in the following colloquy: 31

1958, Perez v. Brownell, 356 U.S. 74

Mr. POAGE. Isn't that based on the constitutional provision that all persons born in the United States are citizens thereof?

1958, Perez v. Brownell, 356 U.S. 74

Mr. FLOURNOY. Yes.

1958, Perez v. Brownell, 356 U.S. 74

Mr. POAGE. In other words, it is not a matter we have any control over.

1958, Perez v. Brownell, 356 U.S. 74

Mr. FLOURNOY. No, and no one wants to change that.

1958, Perez v. Brownell, 356 U.S. 74

Mr. POAGE. No one wants to change that, of course.

1958, Perez v. Brownell, 356 U.S. 74

Mr. FLOURNOY. We have control over citizens born abroad, and we also have control over the question of expatriation. We can provide for expatriation. No one proposes to change the constitutional provisions.

1958, Perez v. Brownell, 356 U.S. 74

Mr. REES. We cannot change the citizenship of a man who went abroad, who was born in the United States.

1958, Perez v. Brownell, 356 U.S. 74

Mr. FLOURNOY. You can make certain acts of his result in a loss of citizenship.

1958, Perez v. Brownell, 356 U.S. 74

Mr. REES. Surely, that way. [356 U.S. 75]

1958, Perez v. Brownell, 356 U.S. 75

It is thus clear that the purpose governing the formulation of most of the "loss of nationality" provisions of the codification was the specification of acts that would of themselves show a voluntary abandonment of citizenship. Congress did not assume it was empowered to use denationalization as a weapon to aid in the exercise of its general powers. Nor should we.

1958, Perez v. Brownell, 356 U.S. 75

Section 401(e) of the 1940 Act added a new category of conduct that would result in loss of citizenship:

1958, Perez v. Brownell, 356 U.S. 75

Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory….

1958, Perez v. Brownell, 356 U.S. 75

The conduct described was specifically represented by Mr. Flournoy to the House Committee as indicative of "a choice of the foreign nationality," just like "using a passport of a foreign state as a national thereof." 32

1958, Perez v. Brownell, 356 U.S. 75

The precise issue posed by Section 401(e) is whether the conduct it describes invariably involves a dilution of undivided allegiance sufficient to show a voluntary abandonment of citizenship. Doubtless, under some circumstances, a vote in a foreign election would have this effect. For example, abandonment of citizenship might result if the person desiring to vote had to become a foreign national or represent himself to be one. 33 Conduct of this sort is apparently what Mr. Flournoy had in mind when he discussed with the committee the situation of an American-born youth who had acquired Canadian citizenship through the naturalization of his parents. Mr. Flournoy suggested that the young man might manifest [356 U.S. 76] an election of nationality by taking advantage of his Canadian citizenship and voting "as a Canadian." 34 And even the situation that bothered Committee Chairman Dickstein—Americans voting in the Saar plebiscite—might, under some circumstances, disclose conduct tantamount to dividing allegiance. Congressman Dickstein expressed his concern as follows: 35

1958, Perez v. Brownell, 356 U.S. 76

I know we have had a lot of Nazis, so-called American citizens, go to Europe who have voted in the Saar for the annexation of territory to Germany, and Germany says that they have the right to participate and to vote, and yet they are American citizens.

1958, Perez v. Brownell, 356 U.S. 76

There might well be circumstances where an American shown to have voted at the behest of a foreign government to advance its territorial interests would compromise his native allegiance.

1958, Perez v. Brownell, 356 U.S. 76

The fatal defect in the statute before us is that its application is not limited to those situations that may rationally be said to constitute an abandonment of citizenship. In specifying that any act of voting in a foreign political election results in loss of citizenship, Congress has employed a classification so broad that it encompasses conduct that fails to show a voluntary abandonment of American citizenship. 36 "The connection between the fact proved and that presumed is not sufficient." Manley v. Georgia, 279 U.S. 1, 7; see also Tot v. United States, 319 U.S. 463; Bailey v. Alabama, 219 U.S. 219. The [356 U.S. 77] reach of this statute is best indicated by a decision of a former attorney general holding that an American citizen lost her citizenship under Section 401(e) by voting in an election in a Canadian town on the issue of whether beer and wine should be sold. 37 Voting in a foreign election may be a most equivocal act, giving rise to no implication that allegiance has been compromised. Nothing could demonstrate this better than the political history of this country. It was not until 1928 that a presidential election was held in this country in which no alien was eligible to vote. 38 Earlier in our history, at least 22 States had extended the franchise to aliens. It cannot be seriously contended that this Nation understood the vote of each alien who previously took advantage of this privilege to be an act of allegiance to this country, jeopardizing the alien's native citizenship. How then can we attach such significance to any vote of a United States citizen in a foreign election? It is also significant that of 84 nations whose nationality laws have been compiled by the United Nations, only this country specifically designates foreign voting as an expatriating act. 39

1958, Perez v. Brownell, 356 U.S. 77

My conclusions are as follows. The Government is without power to take citizenship away from a native-born or lawfully naturalized American. The Fourteenth [356 U.S. 78] Amendment recognizes that this priceless right is immune from the exercise of governmental powers. If the Government determines that certain conduct by United States citizens should be prohibited because of anticipated injurious consequences to the conduct of foreign affairs or to some other legitimate governmental interest, it may within the limits of the Constitution proscribe such activity and assess appropriate punishment. But every exercise of governmental power must find its source in the Constitution. The power to denationalize is not within the letter or the spirit of the powers with which our Government was endowed. The citizen may elect to renounce his citizenship, and, under some circumstances, he may be found to have abandoned his status by voluntarily performing acts that compromise his undivided allegiance to his country. The mere act of voting in a foreign election, however, without regard to the circumstances attending the participation, is not sufficient to show a voluntary abandonment of citizenship. The record in this case does not disclose any of the circumstances under which this petitioner voted. We know only the bare fact that he cast a ballot. The basic right of American citizenship has been too dearly won to be so lightly lost.

1958, Perez v. Brownell, 356 U.S. 78

I fully recognize that only the most compelling considerations should lead to the invalidation of congressional action, and where legislative judgments are involved, this Court should not intervene. But the Court also has its duties, none of which demands more diligent performance than that of protecting the fundamental rights of individuals. That duty is imperative when the citizenship of an American is at stake—that status which alone assures him the full enjoyment of the precious rights conferred by our Constitution. As I see my duty in this case, I must dissent. [356 U.S. 79]

DOUGLAS, J., dissenting

1958, Perez v. Brownell, 356 U.S. 79

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

1958, Perez v. Brownell, 356 U.S. 79

While I join the opinion of THE CHIEF JUSTICE, I wish to add a word. The philosophy of the opinion that sustains this statute is foreign to our constitutional system. It gives supremacy to the Legislature in a way that is incompatible with the scheme of our written Constitution. A decision such as this could be expected in England, where there is no written constitution and where the House of Commons has the final say. But, with all deference, this philosophy has no place here. By proclaiming it, we forsake much of our constitutional heritage and move closer to the British scheme. That may be better than ours or it may be worse. Certainly it is not ours.

1958, Perez v. Brownell, 356 U.S. 79

We deal here with the right of citizenship created by the Constitution. Section 1 cl. 1, of the Fourteenth Amendment states

1958, Perez v. Brownell, 356 U.S. 79

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

1958, Perez v. Brownell, 356 U.S. 79

As stated by the Court in the historic decision United States v. Wong Kim Ark, 169 U.S. 649, 702,

1958, Perez v. Brownell, 356 U.S. 79

Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution.

1958, Perez v. Brownell, 356 U.S. 79

What the Constitution grants, the Constitution can take away. But there is not a word in that document that covers expatriation. The numerous legislative powers granted by Art. I, 8, do not mention it. I do not know of any legislative power large enough and powerful enough to modify or wipe out rights granted or created by § 1, cl. 1 of the Fourteenth Amendment.

1958, Perez v. Brownell, 356 U.S. 79

Our decisions have never held that expatriation can be imposed. To the contrary, they have assumed that [356 U.S. 80] expatriation was a voluntary relinquishment of loyalty to one country and attachment to another. Justice Paterson spoke of expatriation in Talbot v. Janson, 3 Dall. 133, 153, as "a departure with intention to leave this country, and settle in another." The loss of citizenship in this country without its acquisition in another country was to him the creation of "a citizen of the world"—a concept that is "a creature of the imagination, and far too refined for any republic of ancient or modern times." Ibid.

1958, Perez v. Brownell, 356 U.S. 80

So far as I can find, we have, prior to this day, never sustained the loss of a native-born American citizenship unless another citizenship was voluntarily acquired. That was true both in Mackenzie v. Hare, 239 U.S. 299, and Savorgnan v. United States, 338 U.S. 491. We should look to their facts, not to loose statements unnecessary for the decisions. In the Mackenzie case, it was the marriage of a native-born woman to an alien that caused the loss of one nationality and the acquisition of another. In the Savorgnan case, the native-born American citizen became naturalized in Italy. In this case, Perez did vote in a foreign election of some kind. But, as THE CHIEF JUSTICE has clearly shown, § 401(e) of the Nationality Act of 1940 "is not limited to those situations that may rationally be said to constitute an abandonment of citizenship." Ante, p. 76.

1958, Perez v. Brownell, 356 U.S. 80

Our landmark decision on expatriation is Perkins v. Elg, 307 U.S. 325, where Chief Justice Hughes wrote for the Court. The emphasis of that opinion is that "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance." Id. at 334.

1958, Perez v. Brownell, 356 U.S. 80

Today's decision breaks with that tradition. It allows Congress to brand an ambiguous act as a "voluntary renunciation" of citizenship when there is no requirement and no finding that the citizen transferred his loyalty from this country to another. This power is found in the [356 U.S. 81] power of Congress to regulate foreign affairs. But if voting abroad is so pregnant with danger that Congress can penalize it by withdrawing the voter's American citizenship, all citizens should be filled with alarm. Some of the most heated political discussions in our history have concerned foreign policy. I had always assumed that the First Amendment, written in terms absolute, protected those utterances, no matter how extreme, no matter how unpopular they might be. Yet if the power to regulate foreign affairs can be used to deprive a person of his citizenship because he voted abroad, why may not it be used to deprive him of his citizenship because his views on foreign policy are unorthodox, or because he disputed the position of the Secretary of State or denounced a Resolution of the Congress or the action of the Chief Executive in the field of foreign affairs? It should be remembered that many of our most heated controversies involved assertion of First Amendment rights respecting foreign policy. The hated Alien and Sedition Laws grew out of that field. 1 More recently, the rise of fascism and communism [356 U.S. 82] has had profound repercussions here. Could one who advocated recognition of Soviet Russia in the 1920's be deprived of his citizenship? Could that fate befall one who was a Bundist 2 in the late 1930's or early 1940's and extolled Hitler? Could it happen in the 1950's to one who pleaded for recognition of Red China or who proclaimed against the Eisenhower Doctrine in the Middle East? No doubt George F. Kennan "embarrassed" our foreign relations when he recently spoke over the British radio. 3 Does the Constitution permit Congress to cancel his citizenship? Could an American who violated his passport restrictions and visited Red China be deprived of his citizenship? Or suppose he trades with those under a ban. To many people, any of those acts would seem much more heinous than the fairly innocent act of voting abroad. If casting a ballot abroad is sufficient to deprive an American of his citizenship, why could not like penalties be imposed on the citizen who expresses disagreement with his Nation's foreign policy in any of the ways enumerated?

1958, Perez v. Brownell, 356 U.S. 82

The fact that First Amendment rights may be involved in some cases and not in others seems irrelevant. For the grant of citizenship by the Fourteenth Amendment is clear and explicit, and should withstand any invasion of the legislative power.

1958, Perez v. Brownell, 356 U.S. 82

What the Court does is to make it possible for any one of the many legislative powers to be used to wipe out or modify specific rights granted by the Constitution, provided the action taken is moderate and does not do violence to the sensibilities of a majority of this Court. The examples where this concept of Due Process has been [356 U.S. 83] used to sustain state action 4 as well as federal action, 5 which modifies or dilutes specific constitutional guarantees, are numerous. It is used today drastically to revise the express command of the first Clause of § 1 of the Fourteenth Amendment. A right granted by the Constitution—whether it be the right to counsel or the right to citizenship—may be waived by the citizen. 6 But the waiver must be first a voluntary act and second an act consistent with a surrender of the right granted. When Perez voted, he acted voluntarily. But, as shown, § 401(e) does not require that his act have a sufficient relationship to the relinquishment of citizenship—nor a sufficient quality of adhering to a foreign power. Nor did his voting abroad have that quality.

1958, Perez v. Brownell, 356 U.S. 83

The decision we render today exalts the Due Process Clause of the Fifth Amendment above all others. Of course, any power exercised by the Congress must be asserted in conformity with the requirements of Due Process. Tot v. United States, 319 U.S. 463; United States v. Harriss, 347 U.S. 612; Lambert v. California, 355 U.S. 225. But the requirement of Due Process is a limitation on powers granted, not the means whereby rights granted by the Constitution may be wiped out or watered down. The Fourteenth Amendment grants citizenship to the native-born, as explained in United States v. Wong Kim Ark, supra. That right may be waived or surrendered by the citizen. But I see no constitutional [356 U.S. 84] method by which it can be taken from him. Citizenship, like freedom of speech, press, and religion, occupies a preferred position in our written Constitution, because it is a grant absolute in terms. The power of Congress to withhold it, modify it, or cancel it does not exist. One who is native-born may be a good citizen or a poor one. Whether his actions be criminal or charitable, he remains a citizen for better or for worse, except and unless he voluntarily relinquishes that status. While Congress can prescribe conditions for voluntary expatriation, Congress cannot turn white to black and make any act an act of expatriation. For then the right granted by the Fourteenth Amendment becomes subject to regulation by the legislative branch. But that right has no such infirmity. It is deeply rooted in history, as United States v. Wong Kim Ark, supra, shows. And the Fourteenth Amendment put it above and beyond legislative control.

1958, Perez v. Brownell, 356 U.S. 84

That may have been an unwise choice. But we made it when we adopted the Fourteenth Amendment and provided that the native-born is an American citizen. Once he acquires that right, there is no power in any branch of our Government to take it from him.

WHITTAKER, J., memorandum

1958, Perez v. Brownell, 356 U.S. 84

Memorandum of MR. JUSTICE WHITTAKER.

1958, Perez v. Brownell, 356 U.S. 84

Though I agree with the major premise of the majority's opinion—that Congress may expatriate a citizen for an act which it may reasonably find to be fraught with danger of embroiling our Government in an international dispute or of embarrassing it in the conduct of foreign affairs—I cannot agree with the result reached, for it seems plain to me that § 401(e) is too broadly written to be sustained upon that ground. That section, so far as here pertinent, expatriates an American citizen simply for "voting in a political election in a foreign state." Voting in a political election in a particular foreign state may be open to aliens under the law of that state, as it was in presidential elections [356 U.S. 85] in the United States until 1928 as the dissenting opinion of THE CHIEF JUSTICE observes. Where that is so—and this record fails to show that petitioner's act of voting in a political election in Mexico in 1946 was not entirely lawful under the law of that state—such legalized voting by an American citizen cannot reasonably be said to be fraught with danger of embroiling our Government in an international dispute or of embarrassing it in the conduct of foreign affairs, nor, I believe, can such an act—entirely legal under the law of the foreign state—be reasonably said to constitute an abandonment or any division or dilution of allegiance to the United States. Since these are my convictions, I dissent from the majority's opinion and join in so much of the dissenting opinion of THE CHIEF JUSTICE as expresses the view that the act of a citizen of the United States in voting in a foreign political election which is legally open to aliens under the law of that state cannot reasonably be said to constitute abandonment or any division or dilution of allegiance to the United States.

1958, Perez v. Brownell, 356 U.S. 85

This leaves open the question presented respecting the constitutionality of § 401(j), but inasmuch as the majority have found it unnecessary to adjudicate the constitutionality of that section in this case, it would be wholly fruitless for me now to reach a conclusion on that question, and I neither express nor imply any views upon it. Limiting myself to the issue decided by the majority, I dissent.

Footnotes

FRANKFURTER, J., lead opinion (Footnotes)

1958, Perez v. Brownell, 356 U.S. 85

1. Incorporated into § 349 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 267-268, 8 U.S.C. § 1481.

1958, Perez v. Brownell, 356 U.S. 85

2. Petitioner proceeded under § 503 of the Nationality Act of 1940, 54 Stat. 1137, 1171, which authorizes an individual to bring suit for a declaration of nationality in a United States District Court against the head of any government agency that denies him a right or privilege of United States nationality on the ground that he is not a United States national. The judicial hearing in such an action is a trial de novo in which the individual need make only a prima facie case establishing his citizenship by birth or naturalization. See Pandolo v. Acheson, 202 F.2d 38, 40-41. The Government must prove the act of expatriation on which the denial was based by "`clear, unequivocal, and convincing' evidence which does not leave `the issue in doubt.'" Gonzales v. Landon, 350 U.S. 920; see Schneiderman v. United States, 320 U.S. 118, 158.

1958, Perez v. Brownell, 356 U.S. 85

3. The provision of the Fourteenth Amendment that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States…" sets forth the two principal modes (but by no means the only ones) for acquiring citizenship. Thus, in United States v. Wong Kim Ark, 169 U.S. 649 (Chief Justice Fuller and Mr. Justice Harlan dissenting), it was held that a person of Chinese parentage born in this country was among "all persons born…in the United States," and therefore a citizen to whom the Chinese Exclusion Acts did not apply. But there is nothing in the terms, the context, the history, or the manifest purpose of the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship. The limit of the operation of that provision was clearly enunciated in Perkins v. Elg, 307 U.S. 325, 329:

1958, Perez v. Brownell, 356 U.S. 85

As at birth she became a citizen of the United States, that citizenship must be deemed to continue unless she has been deprived of it through the operation of a treaty or congressional enactment or by her voluntary action in conformity with applicable legal principles.

1958, Perez v. Brownell, 356 U.S. 85

4. Petitioner in the case before us did not object to the characterization of the election in which he voted as a "political election." It may be noted that, in oral argument, counsel for the petitioner expressed his understanding that the election involved was the election for Mexico's president.

1958, Perez v. Brownell, 356 U.S. 85

5. The District Court in Savorgnan stated:

1958, Perez v. Brownell, 356 U.S. 85

I am satisfied from the proofs submitted that, at the time plaintiff signed Exhibits 1 and 2 [application for Italian citizenship and oath of allegiance to Italian Government], she had no present or fixed intention in her mind to expatriate herself.

1958, Perez v. Brownell, 356 U.S. 85

73 F.Supp. 109, 111.

WARREN, J., dissenting (Footnotes)

1958, Perez v. Brownell, 356 U.S. 85

1. Section 401 of the Nationality Act of 1940, 54 Stat. 1137, 1168 1169, as amended, 8 U.S.C. § 1481.

1958, Perez v. Brownell, 356 U.S. 85

The fact that the statute speaks in terms of loss of nationality does not mean that it is not petitioner's citizenship that is being forfeited. He is a national by reason of his being a citizen, § 101(b), Nationality Act of 1940, 54 Stat. 1137, 8 U.S.C. § 1101(a)(22). Hence, he loses his citizenship when he loses his status as a national of the United States. In the context of this opinion, the terms nationality and citizenship can be used interchangeably. Cf. Rabang v. Boyd, 353 U.S. 427.

1958, Perez v. Brownell, 356 U.S. 85

2. Petitioner was born in El Paso, Texas, in 1909, a fact of which he was apprised in 1928. His Mexican-born parents took him to Mexico when he was 10 or 11 years old. In 1932, petitioner married a Mexican national; they have seven children. In 1943 and 1944, petitioner sought and received permission to enter this country for brief periods as a wartime railroad laborer. In 1952, petitioner again entered this country as a temporary farm laborer. After he had been ordered deported as an alien illegally in the United States, he brought this action for a declaratory judgment of citizenship, relying upon his birth in this country.

1958, Perez v. Brownell, 356 U.S. 85

3. Section 401(e) of the Nationality Act of 1940, 54 Stat. 1169, 8 U.S.C. § 1481(5).

1958, Perez v. Brownell, 356 U.S. 85

The courts below concluded that petitioner had lost his citizenship for the additional reason specified in § 401(j) of the Nationality Act, which was added in 1944, 58 Stat. 746, 8 U.S.C. § 1481(10):

1958, Perez v. Brownell, 356 U.S. 85

Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States.

1958, Perez v. Brownell, 356 U.S. 85

The majority expressly declines to rule on the constitutional questions raised by § 401(j). My views on a statute of this sort are set forth in my opinion in Trop v. Dulles, post, p. 86, decided this day, involving similar problems raised by § 401(g) of the Nationality Act, 54 Stat. 1169, as amended, 8 U.S.C. § 1481(8).

1958, Perez v. Brownell, 356 U.S. 85

4. See Borchard, Diplomatic Protection of Citizens Abroad (1916), § 8; 1 Oppenheim, International Law (7th ed., Lauterpacht, 1948), §§ 291-294; Holborn, The Legal Status of Political Refugees, 1920-1938, 32 Am.J.Int'l L. 680 (1938); Preuss, International Law and Deprivation of Nationality, 23 Geo.L.J. 250 (1934); Study on Statelessness, U.N. Doc. No. E/1112 (1949); 64 Yale L.J. 1164 (1955).

1958, Perez v. Brownell, 356 U.S. 85

5. See Konvitz, The Alien and the Asiatic in American Law (1946); Comment, 20 U. of Chi.L.Rev. 547 (1953). Cf. Takahashi v. Fish & Game Commission, 334 U.S. 410; Oyama v. California, 332 U.S. 633.

1958, Perez v. Brownell, 356 U.S. 85

6. Harisiades v. Shaughnessy, 342 U.S. 580; Fong Yue Ting v. United States, 149 U.S. 698.

1958, Perez v. Brownell, 356 U.S. 85

Even if Congress can divest United States citizenship, it does not necessarily follow that an American-born expatriate can be deported. He would be covered by the statutory definition of "alien," 8 U.S.C. § 1101(a)(3), but he would not necessarily have come "from a foreign port or place," and hence may not have effected the "entry," 8 U.S. C. § 1101(a)(13), specified in the deportation provisions, 8 U.S.C. § 1251. More fundamentally, since the deporting power has been held to be derived from the power to exclude, Fong Yue Ting v. United States, supra, it may well be that this power does not extend to persons born in this country. As to them, deportation would perhaps find its justification only as a punishment, indistinguishable from banishment. See dissenting opinions in United States v. Ju Toy, 198 U.S. 253, 264; Fong Yue Ting v. United States, supra, at 744.

1958, Perez v. Brownell, 356 U.S. 85

Since this action for a declaratory judgment does not involve the validity of the deportation order against petitioner, it is unnecessary, as the Government points out, to resolve the question of whether this petitioner may be deported.

1958, Perez v. Brownell, 356 U.S. 85

7. U.S.Const., Art. I, § 8, cl. 4.

1958, Perez v. Brownell, 356 U.S. 85

8. See, e.g., Knauer v. United States, 328 U.S. 654; Baumgartner v. United States, 322 U.S. 665; Schneiderman v. United States, 320 U.S. 118.

1958, Perez v. Brownell, 356 U.S. 85

9. Act of July 27, 1868, 15 Stat. 223.

1958, Perez v. Brownell, 356 U.S. 85

10. Ibid.

1958, Perez v. Brownell, 356 U.S. 85

11. See Savorgnan v. United States, 338 U.S. 491, 498 and n. 11; Foreign Relations, 1873, H.R.Exec.Doc. No. 1, 43d Cong., 1st Sess. Pt. 1, Vol. II, 1186-1187, 1204, 1210, 1213, 1216, 1222 (views of President Grant's Cabinet members); 14 Op.Atty.Gen. 295; Tsiang, The Question of Expatriation in America Prior to 1907, 97-98, 108-109.

1958, Perez v. Brownell, 356 U.S. 85

12. See Shanks v. Dupont, 3 Pet. 242; Inglis v. Trustees of Sailor's Snug Harbour, 3 Pet. 99.

1958, Perez v. Brownell, 356 U.S. 85

13. 3 Moore, Digest of International Law, §§ 434-437; Tsiang, 45-55, 71-86, 110-112.

1958, Perez v. Brownell, 356 U.S. 85

14. Tsiang, 55-61

1958, Perez v. Brownell, 356 U.S. 85

15. 9 Op.Atty.Gen. 356, 359.

1958, Perez v. Brownell, 356 U.S. 85

16. See, e.g., Savorgnan v. United States, 338 U.S. 491; Mackenzie v. Hare, 239 U.S. 299; Bauer v. Clark, 161 F.2d 397, cert. denied, 332 U.S. 839. Cf. Acheson v. Maenza, 92 U.S.App.D.C. 85, 202 F.2d 453.

1958, Perez v. Brownell, 356 U.S. 85

17. See Laws Concerning Nationality, U.N. Doc. No. ST/LEG/ SER.B/4 (1954).

1958, Perez v. Brownell, 356 U.S. 85

18. See generally Laws Concerning Nationality, op. cit. supra, note 17.

1958, Perez v. Brownell, 356 U.S. 85

19. Act of March 2, 1907, 34 Stat. 1228-1229. The full text is as follows:

1958, Perez v. Brownell, 356 U.S. 85

SEC. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

1958, Perez v. Brownell, 356 U.S. 85

20. This clause merely expressed the well understood principle that a wife's nationality "merged" with that of her husband's. Cockburn, Nationality, 24; 3 Moore, Digest of International Law, 450-451, 453; 3 Hackworth, Digest of International Law, 246-247. This was a consequence of the common law fiction of a unity of interest in the marital community. During coverture, the privileges and obligations of a woman's citizenship gave way to the dominance of her husband's. Prior to the Act of March 2, 1907, the Department of State declined to issue passports to American-born women who were married to aliens. 3 Moore, 454; 3 Hackworth, 247. The Attorney General ruled that a woman in such circumstances was not subject to an income tax imposed on all citizens of the United States residing abroad. 13 Op.Atty.Gen. 128. Several courts held that, during the duration of a marriage consummated prior to the Act between an American-born woman and an alien, a court may entertain a petition for her naturalization. In re Wohlgemuth, 35 F.2d 1007; In re Krausmann, 28 F.2d 1004; In re Page, 12 F.2d 135. Cf. Pequignot v. Detroit, 16 F. 211.

1958, Perez v. Brownell, 356 U.S. 85

21. S.Res. 30, 59th Cong., 1st Sess.; H.R.Rep. No. 4784, 59th Cong., 1st Sess.

1958, Perez v. Brownell, 356 U.S. 85

22. H.R.Doc. No. 326, 59th Cong., 2d Sess. 29. The Department's covering letter makes abundantly clear that marriage was not to result in "expatriation." Id. at 3.

1958, Perez v. Brownell, 356 U.S. 85

23. Consult generally 3 Moore, § 410(2) ("Reversion of Nationality"); Van Dyne, Naturalization, 242-255. Numerous cases contain references to a woman's "reverting" to United States citizenship after the termination of her marriage to an alien. E.g., Petition of Zogbaum, 32 F.2d 911, 913; Petition of Drysdale, 20 F.2d 957, 958; In re Fitzroy, 4 F.2d 541, 542. The Department of State adopted the same interpretation. In 1890, Secretary Blaine declared the view of the Department that:

1958, Perez v. Brownell, 356 U.S. 85

The marriage of an American woman to a foreigner does not completely divest her of her original nationality. Her American citizenship is held for most purposes to be in abeyance during coverture, but to be susceptible of revival by her return to the jurisdiction and allegiance of the United States.

1958, Perez v. Brownell, 356 U.S. 85

(Emphasis added.) Foreign Rel. U.S. 1890, 301.

1958, Perez v. Brownell, 356 U.S. 85

In 1906 Secretary Root stated:

1958, Perez v. Brownell, 356 U.S. 85

Under the practice of the Department of State, a widow or a woman who has obtained an absolute divorce, being an American citizen and who has married an alien, must return to the United States, or must have her residence here in order to have her American citizenship revert on becoming femme sole.

1958, Perez v. Brownell, 356 U.S. 85

Foreign Rel. U.S. 1906, Pt. 2, 1365.

1958, Perez v. Brownell, 356 U.S. 85

24. Consult generally 3 Moore, 458-462. H.R.Doc. No. 326, 59th Cong., 2d Sess. 269-538, a report by the Department of State which Congress requested prior to its Act of March 2, 1907, contains a digest of the nationality laws of forty-four countries. Twenty-five of those provided in widely varying terms that, upon marriage, a woman's citizenship should follow that of her husband. Of these twenty-five, all but two made special provision for the woman to recover her citizenship upon termination of the marriage by compliance with certain formalities demonstrative of the proper intent, and in every instance wholly different from the ordinary naturalization procedures .

1958, Perez v. Brownell, 356 U.S. 85

25. In re Wohlgemuth, 35 F.2d 1007; In re Krausmann, 28 F.2d 1004; Petition of Drysdale, 20 F.2d 957; In re Page, 12 F.2d 135.

1958, Perez v. Brownell, 356 U.S. 85

In fact, Congressman Perkins, supporting the bill on the floor of the House, explained its effect in these words:

1958, Perez v. Brownell, 356 U.S. 85

The courts have decided that a woman takes the citizenship of her husband, only the decisions of the courts provide no means by which she may retake the citizenship of her own country on the expiration of the marital relation. This bill contains nothing new in that respect, except a provision that, when the marital relation is terminated the woman may then retake her former citizenship.

1958, Perez v. Brownell, 356 U.S. 85

41 Cong.Rec. 1465.

1958, Perez v. Brownell, 356 U.S. 85

Cases discussing the pre-1907 law generally held that a woman did not lose her citizenship by marriage to an alien, although she might bring about that result by other acts (such as residing abroad after the death of her husband) demonstrating an intent to relinquish that citizenship. E.g., Shanks v. Dupont, 3 Pet. 242; In re Wright, 19 F.Supp. 224; Petition of Zogbaum, 32 F.2d 911; In re Lynch, 31 F.2d 762; Petition of Drysdale, 20 F.2d 957; In re Fitzroy, 4 F.2d 541; Wallenburg v. Missouri Pacific R. Co., 159 F. 217; Ruckgaber v. Moore, 104 F. 947; Comitis v. Parkerson, 56 F. 556. This was also the view of the Department of State. 3 Moore, 449-450; 3 Hackworth, 247-248.

1958, Perez v. Brownell, 356 U.S. 85

26. The marriage provisions of the 1907 legislation were substantially repealed by the 1922 Cable Act, 42 Stat. 1021, and the last remnants of the effect of marriage on loss of citizenship were eliminated in 1931. 46 Stat. 1511. See Roche, The Loss of American Nationality, 99 U. of Pa.L.Rev. 25, 47-49.

1958, Perez v. Brownell, 356 U.S. 85

27. See 86 Cong.Rec. 11943.

1958, Perez v. Brownell, 356 U.S. 85

28. Exec.Order No. 6115, April 5, 1933.

1958, Perez v. Brownell, 356 U.S. 85

29. Codification of the Nationality Laws of the United States, H.R. Comm.Print, Pt. 1, 76th Cong., 1st Sess. VII.

1958, Perez v. Brownell, 356 U.S. 85

30. The bill was considered by the House Committee on Immigration and Naturalization and its subcommittee. Hearings before the House Committee on Immigration and Naturalization on H.R. 6127, 76th Cong., 1st Sess. The Senate did not hold hearings on the bill.

1958, Perez v. Brownell, 356 U.S. 85

31. Hearings at 37-38.

1958, Perez v. Brownell, 356 U.S. 85

32. Id. at 132. The passport provision was apparently deleted by the subcommittee, for it does not appear in the version of the bill that was printed when hearings resumed before the full committee on May 2, 1940. Id. at 207.

1958, Perez v. Brownell, 356 U.S. 85

33. Cf. In the Matter of P\_\_\_, 1 I. & N.Dec. 267 (this particular election in Canada was open only to British subjects).

1958, Perez v. Brownell, 356 U.S. 85

34. Hearings at 98.

1958, Perez v. Brownell, 356 U.S. 85

35. Id. at 286-287 .

1958, Perez v. Brownell, 356 U.S. 85

36. The broad sweep of the statute was specifically called to the attention of the committee by Mr. Henry F. Butler. Hearings at 286-287. Mr. Butler also submitted a brief suggesting that the coverage of the statute be limited to those voting "in a manner in which only nationals of such foreign state or territory are eligible to vote or participate." Id. at 387.

1958, Perez v. Brownell, 356 U.S. 85

37. In the Matter of F\_\_\_, 2 I. & N.Dec. 427.

1958, Perez v. Brownell, 356 U.S. 85

38. Aylsworth, The Passing of Alien Suffrage, 25 Am.Pol.Sci.Rev. 114.

1958, Perez v. Brownell, 356 U.S. 85

39. Laws Concerning Nationality, U.N. Doc. No. ST/LEG/SER. B/4 (1954). The statutes of Andorra (191 sq. mi.; 5,231 pop.) provide for loss of nationality for a citizen who "exercises political rights in another country," id. at 10, and this very likely includes voting.

1958, Perez v. Brownell, 356 U.S. 85

Of course, it should be noted that two nations, Romania and Russia, have statutes providing that, upon decree of the government, citizenship can be withdrawn, apparently for any reason. Id. at 396, 463.

DOUGLAS, J., dissenting (Footnotes)

1958, Perez v. Brownell, 356 U.S. 85

1. Miller, Crisis in Freedom (1951), 167-168, states the Federalist case for those laws:

1958, Perez v. Brownell, 356 U.S. 85

As in the case of the Alien Act, the Federalists justified the Sedition Law by citing the power of Congress to provide for the common defense and general welfare and the inherent right of every government to act in self-preservation. It was passed at a time of national emergency, when, as a member of Congress said, "some gentlemen say we are at war, and when all believe we must have war." "Threatened by faction, and actually at hostility with a foreign and perfidious foe abroad," the Sedition Act was held to be "necessary for the safety perhaps the existence of the Government." Congress could not permit subversive newspapers to "paralyze the public arm and weaken the efforts of Government for the defense of the country." The wiles of France and its adherents were as dangerous as its armies: "Do not the Jacobin fiends of France use falsehood and all the arms of hell," asked William Cobbett, "and do they not run like half-famished wolves to accomplish the destruction of this country?" If Congress had failed to take every precautionary measure against such danger, the blood of the Republic would have been upon its hands.

1958, Perez v. Brownell, 356 U.S. 85

2. Cf. Keegan v. United States, 325 U.S. 478.

1958, Perez v. Brownell, 356 U.S. 85

3. See Kennan, Russia, The Atom and the West (1957).

1958, Perez v. Brownell, 356 U.S. 85

4. See Betts v. Brady, 316 U.S. 455; In re Summers, 325 U.S. 561; Adamson v. California, 332 U.S. 46; Bute v. Illinois, 333 U.S. 640; Feiner v. New York, 340 U.S. 315; Breard v. Alexandria, 341 U.S. 622; Adler v. Board of Education, 342 U.S. 485; Beauharnais v. Illinois, 343 U.S. 250; In re Groban, 352 U.S. 330; Breithaupt v. Abram, 352 U.S. 432.

1958, Perez v. Brownell, 356 U.S. 85

5. United Public Workers v. Mitchell, 330 U.S. 75; American Communications Assn. v. Douds, 339 U.S. 382; Dennis v. United States, 341 U.S. 494.

1958, Perez v. Brownell, 356 U.S. 85

6. E.g., Adams v. McCann, 317 U.S. 269, 275.

President Eisenhower's Special Message to Congress on the Sending of United States Forces to Lebanon, 1958

Title: President Eisenhower's Special Message to Congress on the Sending of United States Forces to Lebanon

Author: Dwight D. Eisenhower

Date: July 15, 1958

Source: Public Papers of the Presidents, Eisenhower, 1958, pp.550-552

Public Papers of Eisenhower, 1958, p.550

To the Congress of the United States:

Public Papers of Eisenhower, 1958, p.550

On July 14, 1958, I received an urgent request from the President of the Republic of Lebanon that some United States forces be stationed in Lebanon. President Chamoun stated that without an immediate showing of United States support, the government of Lebanon would be unable to survive. This request by President Chamoun was made with the concurrence of all the members of the Lebanese cabinet. I have replied that we would do this and a contingent of United States Marines has now arrived in Lebanon. This initial dispatch of troops will be augmented as required. U. S. forces will be withdrawn as rapidly as circumstances permit.

Public Papers of Eisenhower, 1958, p.550

Simultaneously, I requested that an urgent meeting of the United Nations Security Council be held on July 15, 1958. At that meeting, the Permanent Representative of the United States reported to the Council the action which this Government has taken. He also expressed the hope that the United Nations could soon take further effective measures to meet more fully the situation in Lebanon. We will continue to support the United Nations to this end.

Public Papers of Eisenhower, 1958, p.550–p.551

United States forces are being sent to Lebanon to protect American lives and by their presence to assist the Government of Lebanon in the [p.551] preservation of Lebanon's territorial integrity and independence, which have been deemed vital to United States national interests and world peace.

Public Papers of Eisenhower, 1958, p.551

About two months ago a violent insurrection broke out in Lebanon, particularly along the border with Syria which, with Egypt, forms the United Arab Republic. This revolt was encouraged and strongly backed by the official Cairo, Damascus, and Soviet radios which broadcast to Lebanon in the Arabic language. The insurrection was further supported by sizable amounts of arms, ammunition and money and by personnel infiltrated from Syria to fight against the lawful authorities. The avowed purpose of these activities was to overthrow the legally constituted government of Lebanon and to install by violence a government which would subordinate the independence of Lebanon to the policies of the United Arab Republic.

Public Papers of Eisenhower, 1958, p.551

Lebanon referred this situation to the United Nations Security Council. In view of the international implications of what was occurring in Lebanon, the Security Council on June 11, 1958 decided to send observers into Lebanon for the purpose of insuring that further outside assistance to the insurrection would cease. The Secretary General of the United Nations subsequently undertook a mission to the area to reinforce the work of the observers.

Public Papers of Eisenhower, 1958, p.551

It was our belief that the efforts of the Secretary General and of the United Nations observers were helpful in reducing further aid in terms of personnel and military equipment from across the frontiers of Lebanon. There was a basis for hope that the situation might be moving toward a peaceful solution, consonant with the continuing integrity of Lebanon, and that the aspect of indirect aggression from without was being brought under control.

Public Papers of Eisenhower, 1958, p.551

The situation was radically changed, however, on July 14, when there was a violent outbreak in Baghdad, in nearby Iraq. Elements in Iraq strongly sympathetic to the United Arab Republic seem to have murdered or driven from office individuals comprising the lawful government of that country. We do not yet know in detail to what extent they have succeeded. We do have reliable information that important Iraqi leaders have been murdered.

Public Papers of Eisenhower, 1958, p.551–p.552

We share with the Government of Lebanon the view that these events in Iraq demonstrate a ruthlessness of aggressive purpose which tiny [p.552] Lebanon cannot combat without further evidence of support from other friendly nations.

Public Papers of Eisenhower, 1958, p.552

After the most detailed consideration, I have concluded that, given the developments in Iraq, the measures thus far taken by the United Nations Security Council are not sufficient to preserve the independence and integrity of Lebanon. I have considered, furthermore, the question of our responsibility to protect and safeguard American citizens in Lebanon of whom there are about 2,500 Pending the taking of adequate measures by the United Nations, the United States will be acting pursuant to what the United Nations Charter recognizes is an inherent right—the right of all nations to work together and to seek help when necessary to preserve their independence. I repeat that we wish to withdraw our forces as soon as the United Nations has taken further effective steps designed to safeguard Lebanese independence.

Public Papers of Eisenhower, 1958, p.552

It is clear that the events which have been occurring in Lebanon represent indirect aggression from without, and that such aggression endangers the independence and integrity of Lebanon.

Public Papers of Eisenhower, 1958, p.552

It is recognized that the step now being taken may have serious consequences. I have, however, come to the considered and sober conclusion that despite the risks involved this action is required to support the principles of justice and international law upon which peace and a stable international order depend.

Public Papers of Eisenhower, 1958, p.552

Our Government has acted in response to an appeal for help from a small and peaceful nation which has long had ties of closest friendship with the United States. Readiness to help a friend in need is an admirable characteristic of the American people, and I am, in this message, informing the Congress of the reasons why I believe that the United States could not in honor stand idly by in this hour of Lebanon's grave peril. As we act at the request of a friendly government to help it preserve its independence and to preserve law and order which will protect American lives, we are acting to reaffirm and strengthen principles upon which the safety and security of the United States depend.

DWIGHT D. EISENHOWER

NAACP v. Patterson, 1958

Title: National Association for the Advancement of Colored People v. Patterson

Author: U.S. Supreme Court

Date: June 30, 1958

Source: 357 U.S. 449

This case was argued January 15-16, 1958, and was decided June 30, 1958.

1958, National Association for the Advancement of, 357 U.S. 449

CERTIORARI TO THE SUPREME COURT OF ALABAMA

Syllabus

1958, National Association for the Advancement of, 357 U.S. 449

Petitioner is a nonprofit membership corporation organized under the laws of New York for the purpose of advancing the welfare of Negroes. It operates through chartered affiliates which are independent unincorporated associations, with membership therein equivalent to membership in petitioner. It had local affiliates in Alabama, and opened an office of its own there without complying with an Alabama statute which, with some exceptions, requires a foreign corporation to qualify before doing business in the State by filing its corporate charter and designating a place of business and an agent to receive service of process. Alleging that petitioner's activities were causing irreparable injury to the citizens of the State for which criminal prosecution and civil actions at law afforded no adequate relief, the State brought an equity suit in a state court to enjoin petitioner from conducting further activities in, and to oust it from, the State. The court issued an ex parte order restraining petitioner, pendente lite, from engaging in further activities in the State and from taking any steps to qualify to do business there. Petitioner moved to dissolve the restraining order, and the court, on the State's motion, ordered the production of many of petitioner's records, including its membership lists. After some delay, petitioner produced substantially all the data called for except its membership lists. It was adjudged in contempt, and fined $100,000 for failure to produce the lists. The State Supreme Court denied certiorari to review the contempt judgment, and this Court granted certiorari.

1958, National Association for the Advancement of, 357 U.S. 449

Held:

1958, National Association for the Advancement of, 357 U.S. 449

1. Denial of relief by the State Supreme Court did not rest on an adequate state ground, and this Court has jurisdiction to entertain petitioner's federal claims. Pp. 454-458.

1958, National Association for the Advancement of, 357 U.S. 449

2. Petitioner has a right to assert on behalf of its members a claim that they are entitled under the Federal Constitution to be protected from being compelled by the State to disclose their affiliation with the Association. Pp. 458-460. [357 U.S. 450]

1958, National Association for the Advancement of, 357 U.S. 450

3. Immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment. The State has failed to show a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of petitioner's membership lists is likely to have. Accordingly, the judgment of civil contempt and the fine which resulted from petitioner's refusal to produce its membership lists must fall. Pp. 460-466.

1958, National Association for the Advancement of, 357 U.S. 450

(a) Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment. Pp. 460-461.

1958, National Association for the Advancement of, 357 U.S. 450

(b) In the circumstances of this case, compelled disclosure of petitioner's membership lists is likely to constitute an effective restraint on its members' freedom of association. Pp. 461-463.

1958, National Association for the Advancement of, 357 U.S. 450

(c) Whatever interest the State may have in obtaining the names of petitioner's ordinary members, it has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order. Pp. 463-466.

1958, National Association for the Advancement of, 357 U.S. 450

4. The question whether the state court's temporary restraining order preventing petitioner from soliciting support in the State violates the Fourteenth Amendment is not properly before this Court, since the merits of the controversy have not been passed on by the state courts. Pp. 466-467.

1958, National Association for the Advancement of, 357 U.S. 450

265 Ala. 349, 91 So.2d 214, reversed, and cause remanded. [357 U.S. 451]

HARLAN, J., lead opinion

1958, National Association for the Advancement of, 357 U.S. 451

MR. JUSTICE HARLAN delivered the opinion of the Court.

1958, National Association for the Advancement of, 357 U.S. 451

We review from the standpoint of its validity under the Federal Constitution a judgment of civil contempt entered against petitioner, the National Association for the Advancement of Colored People, in the courts of Alabama. The question presented is whether Alabama, consistently with the Due Process Clause of the Fourteenth Amendment, can compel petitioner to reveal to the State's Attorney General the names and addresses of all its Alabama members and agents, without regard to their positions or functions in the Association. The judgment of contempt was based upon petitioner's refusal to comply fully with a court order requiring in part the production of membership lists. Petitioner's claim is that the order, in the circumstances shown by this record, violated rights assured to petitioner and its members under the Constitution .

1958, National Association for the Advancement of, 357 U.S. 451

Alabama has a statute, similar to those of many other States, which requires a foreign corporation, except as exempted, to qualify before doing business by filing its corporate charter with the Secretary of State and designating a place of business and an agent to receive service of process. The statute imposes a fine on a corporation transacting intrastate business before qualifying, and provides for criminal prosecution of officers of such a corporation. Ala.Code, 1940, Tit. 10, §§ 192-198. The National Association for the Advancement of Colored People is a nonprofit membership corporation organized under the laws of New York. Its purposes, fostered on a nationwide basis, are those indicated by its name,\* and it operates [357 U.S. 452] through chartered affiliates which are independent unincorporated associations, with membership therein equivalent to membership in petitioner. The first Alabama affiliates were chartered in 1918. Since that time, the aims of the Association have been advanced through activities of its affiliates, and, in 1951, the Association itself opened a regional office in Alabama, at which it employed two supervisory persons and one clerical worker. The Association has never complied with the qualification statute, from which it considered itself exempt.

1958, National Association for the Advancement of, 357 U.S. 452

In 1956, the Attorney General of Alabama brought an equity suit in the State Circuit Court, Montgomery County, to enjoin the Association from conducting further activities within, and to oust it from, the State. Among other things, the bill in equity alleged that the Association had opened a regional office and had organized various affiliates in Alabama; had recruited members and solicited contributions within the State; had given financial support and furnished legal assistance to Negro students seeking admission to the state university, and had supported a Negro boycott of the bus lines in Montgomery to compel the seating of passengers without regard to race. The bill recited that the Association, by continuing to do business in Alabama without complying with the qualification statute, was

1958, National Association for the Advancement of, 357 U.S. 452

…causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief….

1958, National Association for the Advancement of, 357 U.S. 452

On the day the complaint was filed, the Circuit Court issued ex parte an order restraining the Association, pendente lite, from engaging in [357 U.S. 453] further activities within the State and forbidding it to take any steps to qualify itself to do business therein.

1958, National Association for the Advancement of, 357 U.S. 453

Petitioner demurred to the allegations of the bill and moved to dissolve the restraining order. It contended that its activities did not subject it to the qualification requirements of the statute and that, in any event, what the State sought to accomplish by its suit would violate rights to freedom of speech and assembly guaranteed under the Fourteenth Amendment to the Constitution of the United States. Before the date set for a hearing on this motion, the State moved for the production of a large number of the Association's records and papers, including bank statements, leases, deeds, and records containing the names and addresses of all Alabama "members" and "agents" of the Association. It alleged that all such documents were necessary for adequate preparation for the hearing, in view of petitioner's denial of the conduct of intrastate business within the meaning of the qualification statute. Over petitioner's objections, the court ordered the production of a substantial part of the requested records, including the membership lists, and postponed the hearing on the restraining order to a date later than the time ordered for production.

1958, National Association for the Advancement of, 357 U.S. 453

Thereafter, petitioner filed its answer to the bill in equity. It admitted its Alabama activities substantially as alleged in the complaint and that it had not qualified to do business in the State. Although still disclaiming the statute's application to it, petitioner offered to qualify if the bar from qualification made part of the restraining order were lifted, and it submitted with the answer an executed set of the forms required by the statute. However petitioner did not comply with the production order, and for this failure, was adjudged in civil contempt and fined $10,000. The contempt judgment provided that the fine would be subject to reduction or remission if compliance [357 U.S. 454] were forthcoming within five days, but otherwise would be increased to $100,000.

1958, National Association for the Advancement of, 357 U.S. 454

At the end of the five-day period, petitioner produced substantially all the data called for by the production order except its membership lists, as to which it contended that Alabama could not constitutionally compel disclosure, and moved to modify or vacate the contempt judgment, or stay its execution pending appellate review. This motion was denied. While a similar stay application, which was later denied. was pending before the Supreme Court of Alabama, the Circuit Court made a further order adjudging petitioner in continuing contempt and increasing the fine already imposed to $100,000. Under Alabama law, see Jacoby v. Goetter, Weil & Co., 74 Ala. 427, the effect of the contempt adjudication was to foreclose petitioner from obtaining a hearing on the merits of the underlying ouster action, or from taking any steps to dissolve the temporary restraining order which had been issued ex parte, until it purged itself of contempt. But cf. Harrison v. St. Louis & S.F. R. Co., 232 U.S. 318; Hovey v. Elliott, 167 U.S. 409.

1958, National Association for the Advancement of, 357 U.S. 454

The State Supreme Court thereafter twice dismissed petitions for certiorari to review this final contempt judgment, the first time, 91 So.2d 221, for insufficiency of the petition's allegations and the second time on procedural grounds. 265 Ala. 349, 91 So.2d 214. We granted certiorari because of the importance of the constitutional questions presented. 353 U.S. 972.

1958, National Association for the Advancement of, 357 U.S. 454

I

1958, National Association for the Advancement of, 357 U.S. 454

We address ourselves first to respondent's contention that we lack jurisdiction because the denial of certiorari by the Supreme Court of Alabama rests on an independent nonfederal ground, namely, that petitioner, in applying for certiorari, had pursued the wrong appellate [357 U.S. 455] remedy under state law. Respondent recognizes that our jurisdiction is not defeated if the nonfederal ground relied on by the state court is "without any fair or substantial support," Ward v. Board of County Commissioners, 253 U.S. 17, 22. It thus becomes our duty to ascertain,

1958, National Association for the Advancement of, 357 U.S. 455

…in order that constitutional guaranties may appropriately be enforced, whether the asserted non-federal ground independently and adequately supports the judgment.

1958, National Association for the Advancement of, 357 U.S. 455

Abie State Bank v. Bryan, 282 U.S. 765, 773.

1958, National Association for the Advancement of, 357 U.S. 455

The Alabama Supreme Court held that it could not consider the constitutional issues underlying the contempt judgment which related to the power of the State to order production of membership lists because review by certiorari was limited to instances

1958, National Association for the Advancement of, 357 U.S. 455

…where the court lacked jurisdiction of the proceeding, or where, on the face of it, the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained….

1958, National Association for the Advancement of, 357 U.S. 455

265 Ala. at 353, 91 So.2d at 217. The proper means for petitioner to obtain review of the judgment in light of its constitutional claims, said the court, was by way of mandamus to quash the discovery order prior to the contempt adjudication. Because of petitioner's failure to pursue this remedy, its challenge to the contempt order was restricted to the above grounds. Apparently not deeming the constitutional objections to draw into question whether, "on the face of it, the order disobeyed was void," the court found no infirmity in the contempt judgment under this limited scope of review. At the same time, it did go on to consider petitioner's constitutional challenge to the order to produce membership lists, but found it untenable, since membership lists were not privileged against disclosure pursuant to reasonable state demands and since the privilege against self-incrimination was not available to corporations. [357 U.S. 456]

1958, National Association for the Advancement of, 357 U.S. 456

We are unable to reconcile the procedural holding of the Alabama Supreme Court in the present case with its past unambiguous holdings as to the scope of review available upon a writ of certiorari addressed to a contempt judgment. As early as 1909, that court said in such a case, Ex parte Dickers, 162 Ala. 272, at 276, 279-280, 50 So. 218, at 220, 221:

1958, National Association for the Advancement of, 357 U.S. 456

Originally, on certiorari, only the question of jurisdiction was inquired into; but this limit has been removed, and now the court "examines the law questions involved in the case which may affect its merits."…

1958, National Association for the Advancement of, 357 U.S. 456

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1958, National Association for the Advancement of, 357 U.S. 456

…[T]he judgment of this court is that the proper way to review the action of the court in cases of this kind is by certiorari, and not by appeal.

1958, National Association for the Advancement of, 357 U.S. 456

We think that certiorari is a better remedy than mandamus, because the office of a "mandamus" is to require the lower court or judge to act, and not "to correct error or to reverse judicial action,"…whereas, in a proceeding by certiorari, errors of law in the judicial action of the lower court may be inquired into and corrected.

1958, National Association for the Advancement of, 357 U.S. 456

This statement was in full accord with the earlier case of Ex parte Boscowitz, 84 Ala. 463, 4 So. 279, and the practice in the later Alabama cases, until we reach the present one, appears to have been entirely consistent with this rule. See Ex parte Wheeler, 231 Ala. 356, 358, 165 So. 74, 75-76; Ex parte Blakey, 240 Ala. 517, 199 So. 857; Ex parte Sellers, 250 Ala. 87, 88, 33 So.2d 349, 350. For example, in Ex parte Morris, 252 Ala. 551, 42 So.2d 17, decided as late as 1949, the petitioner had been held in contempt for his refusal to obey a court order to produce names of members of the Ku Klux Klan. On writ of certiorari, constitutional grounds were urged in part for [357 U.S. 457] reversal of the contempt conviction. In denying the writ of certiorari, the Supreme Court concluded that petitioner had been accorded due process, and, in explaining its denial, the court considered and rejected various constitutional claims relating to the validity of the order. There was no intimation that the petitioner had selected an inappropriate form of appellate review to obtain consideration of all questions of law raised by a contempt judgment.

1958, National Association for the Advancement of, 357 U.S. 457

The Alabama cases do indicate, as was said in the opinion below, that an order requiring production of evidence "…may be reviewed on petition for mandamus." 265 Ala. at 353, 91 So.2d at 217. (Italics added.) See Ex parte Hart, 240 Ala. 642, 200 So. 783; cf. Ex parte Driver, 255 Ala. 118, 50 So.2d 413. But we can discover nothing in the prior state cases which suggests that mandamus is the exclusive remedy for reviewing court orders after disobedience of them has led to contempt judgments. Nor, so far as we can find, do any of these prior decisions indicate that the validity of such orders can be drawn in question by way of certiorari only in instances where a defendant had no opportunity to apply for mandamus. Although the opinion below suggests no such distinction, the State now argues that this was, in fact, the situation in all of the earlier certiorari cases, because there, the contempt adjudications, unlike here, had followed almost immediately the disobedience to the court orders. Even if that is indeed the rationale of the Alabama Supreme Court's present decision, such a local procedural rule, although it may now appear in retrospect to form part of a consistent pattern of procedures to obtain appellate review, cannot avail the State here, because petitioner could not fairly be deemed to have been apprised of its existence. Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional [357 U.S. 458] rights. Cf. Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673.

1958, National Association for the Advancement of, 357 U.S. 458

That there was justified reliance here is further indicated by what the Alabama Supreme Court said in disposing of petitioner's motion for a stay of the first contempt judgment in this case. This motion, which was filed prior to the final contempt judgment and which stressed constitutional issues, recited that

1958, National Association for the Advancement of, 357 U.S. 458

[t]he only way in which the [Association] can seek a review of the validity of the order upon which the adjudication of contempt is based [is] by filing a petition for Writ of Certiorari in this Court.

1958, National Association for the Advancement of, 357 U.S. 458

In denying the motion, 265 Ala. 356, 357, 91 So.2d 220, 221, the Supreme Court stated:

1958, National Association for the Advancement of, 357 U.S. 458

It is the established rule of this Court that the proper method of reviewing a judgment for civil contempt of the kind here involved is by a petition for common law writ of certiorari….

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But the petitioner here has not applied for writ of certiorari, and we do not feel that the petition [for a stay] presently before us warrants our interference with the judgment of the Circuit Court of Montgomery County here sought to be stayed.

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We hold that this Court has jurisdiction to entertain petitioner's federal claims.

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II

1958, National Association for the Advancement of, 357 U.S. 458

The Association both urges that it is constitutionally entitled to resist official inquiry into its membership lists, and that it may assert, on behalf of its members, a right personal to them to be protected from compelled disclosure by the State of their affiliation with the Association as revealed by the membership lists. We think that petitioner argues more appropriately the rights of its members, and that its nexus with them is sufficient to permit that it act as their representative before this [357 U.S. 459] Court. In so concluding, we reject respondent's argument that the Association lacks standing to assert here constitutional rights pertaining to the members, who are not, of course, parties to the litigation.

1958, National Association for the Advancement of, 357 U.S. 459

To limit the breadth of issues which must be dealt with in particular litigation, this Court has generally insisted that parties rely only on constitutional rights which are personal to themselves. Tileston v. Ullman, 318 U.S. 44; Robertson and Kirkham, Jurisdiction of the Supreme Court (1951 ed.), § 298. This rule is related to the broader doctrine that constitutional adjudication should where possible be avoided. See Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-348 (concurring opinion). The principle is not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court. See Barrows v. Jackson, 346 U.S. 249, 255-259; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 183-187 (concurring opinion).

1958, National Association for the Advancement of, 357 U.S. 459

If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association. To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion. Petitioner is the appropriate party to assert these rights, because it and its members are, in every practical sense, identical. The Association, which provides in its constitution that "[a]ny person who is in accordance with [its] principles and policies…" may become a member, is but the medium through which its individual members seek to make more effective the expression of their own views. The reasonable likelihood that the Association itself through diminished financial support and membership may be adversely [357 U.S. 460] affected if production is compelled is a further factor pointing towards our holding that petitioner has standing to complain of the production order on behalf of its members. Cf. Pierce v. Society of Sisters, 268 U.S. 510, 534-536.

1958, National Association for the Advancement of, 357 U.S. 460

III

1958, National Association for the Advancement of, 357 U.S. 460

We thus reach petitioner's claim that the production order in the state litigation trespasses upon fundamental freedoms protected by the Due Process Clause of the Fourteenth Amendment. Petitioner argues that, in view of the facts and circumstances shown in the record, the effect of compelled disclosure of the membership lists will be to abridge the rights of its rank-and-file members to engage in lawful association in support of their common beliefs. It contends that governmental action which, although not directly suppressing association, nevertheless carries this consequence, can be justified only upon some overriding valid interest of the State.

1958, National Association for the Advancement of, 357 U.S. 460

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. De Jonge v. Oregon, 299 U.S. 353, 364; Thomas v. Collins, 323 U.S. 516, 530. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See Gitlow v. New York, 268 U.S. 652, 666; Palko v. Connecticut, 302 U.S. 319, 324; Cantwell v. Connecticut, 310 U.S. 296, 303; Staub v. City of Baxley, 355 U.S. 313, 321. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the [357 U.S. 461] effect of curtailing the freedom to associate is subject to the closest scrutiny.

1958, National Association for the Advancement of, 357 U.S. 461

The fact that Alabama, so far as is relevant to the validity of the contempt judgment presently under review, has taken no direct action, cf. De Jonge v. Oregon, supra; Near v. Minnesota, 283 U.S. 697, to restrict the right of petitioner's members to associate freely, does not end inquiry into the effect of the production order. See American Communications Assn. v. Douds, 339 U.S. 382, 402. In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action. Thus, in Douds, the Court stressed that the legislation there challenged, which, on its face, sought to regulate labor unions and to secure stability in interstate commerce, would have the practical effect "of discouraging" the exercise of constitutionally protected political rights, 339 U.S. at 393, and it upheld the statute only after concluding that the reasons advanced for its enactment were constitutionally sufficient to justify its possible deterrent effect upon such freedoms. Similar recognition of possible unconstitutional intimidation of the free exercise of the right to advocate underlay this Court's narrow construction of the authority of a congressional committee investigating lobbying and of an Act regulating lobbying, although in neither case was there an effort to suppress speech. United States v. Rumely, 345 U.S. 41, 46-47; United States v. Harriss, 347 U.S. 612, 625-626. The governmental action challenged may appear to be totally unrelated to protected liberties. Statutes imposing taxes upon, rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the Fourteenth Amendment. Grosjean v. American [357 U.S. 462] Press Co., 297 U.S. 233; Murdock v. Pennsylvania, 319 U.S. 105.

1958, National Association for the Advancement of, 357 U.S. 462

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in American Communications Assn. v. Douds, supra, at 402:

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A requirement that adherents of particular religious faiths or political parties wear identifying armbands, for example, is obviously of this nature.

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Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. Cf. United States v. Rumely, supra, at 56-58 (concurring opinion).

1958, National Association for the Advancement of, 357 U.S. 462

We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that, on past occasions, revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and [357 U.S. 463] its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.

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It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from state action, but from private community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the production order that private action takes hold.

1958, National Association for the Advancement of, 357 U.S. 463

We turn to the final question—whether Alabama has demonstrated an interest in obtaining the disclosures it seeks from petitioner which is sufficient to justify the deterrent effect which we have concluded these disclosures may well have on the free exercise by petitioner's members of their constitutionally protected right of association. See American Communications Assn. v. Douds, supra, at 400; Schneider v. State, 308 U.S. 147, 161. Such a "…subordinating interest of the State must be compelling," Sweezy v. New Hampshire, 354 U.S. 234, 265 (concurring opinion). It is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize.

1958, National Association for the Advancement of, 357 U.S. 463

It is important to bear in mind that petitioner asserts no right to absolute immunity from state investigation, and no right to disregard Alabama's laws. As shown by its substantial compliance with the production order, petitioner does not deny Alabama's right to obtain from it such information as the State desires concerning the purposes [357 U.S. 464] of the Association and its activities within the State. Petitioner has not objected to divulging the identity of its members who are employed by or hold official positions with it. It has urged the rights solely of its ordinary rank-and-file members. This is therefore not analogous to a case involving the interest of a State in protecting its citizens in their dealings with paid solicitors or agents of foreign corporations by requiring identification. See Cantwell v. Connecticut, supra, at 306; Thomas v. Collins, supra, at 538.

1958, National Association for the Advancement of, 357 U.S. 464

Whether there was "justification" in this instance turns solely on the substantiality of Alabama's interest in obtaining the membership lists. During the course of a hearing before the Alabama Circuit Court on a motion of petitioner to set aside the production order, the State Attorney General presented at length, under examination by petitioner, the State's reason for requesting the membership lists. The exclusive purpose was to determine whether petitioner was conducting intrastate business in violation of the Alabama foreign corporation registration statute, and the membership lists were expected to help resolve this question. The issues in the litigation commenced by Alabama by its bill in equity were whether the character of petitioner and its activities in Alabama had been such as to make petitioner subject to the registration statute, and whether the extent of petitioner's activities without qualifying suggested its permanent ouster from the State. Without intimating the slightest view upon the merits of these issues, we are unable to perceive that the disclosure of the names of petitioner's rank-and-file members has a substantial bearing on either of them. As matters stand in the state court, petitioner (1) has admitted its presence and conduct of activities in Alabama since 1918; (2) has offered to comply in all respects with the state qualification statute, although preserving [357 U.S. 465] its contention that the statute does not apply to it, and (3) has apparently complied satisfactorily with the production order, except for the membership lists, by furnishing the Attorney General with varied business records, its charter and statement of purposes, the names of all of its directors and officers, and with the total number of its Alabama members and the amount of their dues. These last items would not, on this record, appear subject to constitutional challenge, and have been furnished, but whatever interest the State may have in obtaining names of ordinary members has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order.

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From what has already been said, we think it apparent that Bryant v. Zimmerman, 278 U.S. 63, cannot be relied on in support of the State's position, for that case involved markedly different considerations in terms of the interest of the State in obtaining disclosure. There, this Court upheld, as applied to a member of a local chapter of the Ku Klux Klan, a New York statute requiring any unincorporated association which demanded an oath as a condition to membership to file with state officials copies of its

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…constitution, by laws, rules, regulations and oath of membership, together with a roster of its membership and a list of its officers for the current year.

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N.Y.Laws 1923, c. 664, §§ 53, 56. In its opinion, the Court took care to emphasize the nature of the organization which New York sought to regulate. The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, which the Court assumed was before the state legislature when it enacted the statute, and of which the Court itself took judicial notice. Furthermore, the situation before us is significantly different from that in Bryant, because the organization there had made no effort to comply with [357 U.S. 466] any of the requirements of New York's statute, but rather had refused to furnish the State with any information as to its local activities.

1958, National Association for the Advancement of, 357 U.S. 466

We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment. And we conclude that Alabama has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have. Accordingly, the judgment of civil contempt and the $100,000 fine which resulted from petitioner's refusal to comply with the production order in this respect must fall.

1958, National Association for the Advancement of, 357 U.S. 466

IV

1958, National Association for the Advancement of, 357 U.S. 466

Petitioner joins with its attack upon the production order a challenge to the constitutionality of the State's ex parte temporary restraining order preventing it from soliciting support in Alabama, and it asserts that the Fourteenth Amendment precludes such state action. But, as noted above, petitioner has never received a hearing on the merits of the ouster suit, and we do not consider these questions properly here. The Supreme Court of Alabama noted in its denial of the petition for certiorari that such petition raised solely a question pertinent to the contempt adjudication.

1958, National Association for the Advancement of, 357 U.S. 466

The ultimate aim and purpose of the litigation is to determine the right of the state to enjoin petitioners from doing business in Alabama. That question, however, is not before us in this proceeding.

1958, National Association for the Advancement of, 357 U.S. 466

265 Ala. at 352, 91 So.2d at 216. The proper method for raising questions in the state appellate courts pertinent to the underlying suit for an injunction appears [357 U.S. 467] to be by appeal, after a hearing on the merits and final judgment by the lower state court. Only from the disposition of such an appeal can review be sought here.

1958, National Association for the Advancement of, 357 U.S. 467

For the reasons stated, the judgment of the Supreme Court of Alabama must be reversed, and the case remanded for proceedings not inconsistent with this opinion.

1958, National Association for the Advancement of, 357 U.S. 467

Reversed.

Footnotes

HARLAN, J., lead opinion (Footnotes)

1958, National Association for the Advancement of, 357 U.S. 467

\* The Certificate of Incorporation of the Association provides that its

1958, National Association for the Advancement of, 357 U.S. 467

…principal objects…are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage, and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

Cooper v. Aaron, 1958

Title: Cooper v. Aaron

Author: U.S. Supreme Court

Date: September 12, 1958

Source: 358 U.S. 1

This case was argued September 11, 1958, and was decided September 12, 1958. The opinion was not announced until September 29, 1958. Note: 5, applies not only to this case but also to No. 1, Misc., August Special Term, 1958, Aaron et al. v. Cooper et al., on application for vacation of order of the United States Court of Appeals for the Eighth Circuit staying issuance of its mandate, for stay of order of the United States District Court for the Eastern District of Arkansas, and for such other orders as petitioners may be entitled to, argued August 28, 1958.

1958, Cooper v. Aaron, 358 U.S. 1

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1958, Cooper v. Aaron, 358 U.S. 1

FOR THE EIGHTH CIRCUIT

Syllabus

1958, Cooper v. Aaron, 358 U.S. 1

Under a plan of gradual desegregation of the races in the public schools of Little Rock, Arkansas, adopted by petitioners and approved by the courts below, respondents, Negro children, were ordered admitted to a previously all-white high school at the beginning of the 1957-1958 school year. Due to actions by the Legislature and Governor of the State opposing desegregation, and to threats of mob violence resulting therefrom, respondents were unable to attend the school until troops were sent and maintained there by the Federal Government for their protection; but they [358 U.S. 2] attended the school for the remainder of that school year. Finding that these events had resulted in tensions, bedlam, chaos and turmoil in the school, which disrupted the educational process, the District Court, in June, 1958, granted petitioners' request that operation of their plan of desegregation be suspended for two and one-half years, and that respondents be sent back to segregated schools. The Court of Appeals reversed.

1958, Cooper v. Aaron, 358 U.S. 2

Held: The judgment of the Court of Appeals is affirmed, and the orders of the District Court enforcing petitioners' plan of desegregation are reinstated, effective immediately. Pp. 4-20.

1958, Cooper v. Aaron, 358 U.S. 2

1. This Court cannot countenance a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution in Brown v. Board of Education, 347 U.S. 483. P. 4.

1958, Cooper v. Aaron, 358 U.S. 2

2. This Court rejects the contention that it should uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify its holding in the Brown case have been further challenged and tested in the courts. P. 4.

1958, Cooper v. Aaron, 358 U.S. 2

3. In many locations, obedience to the duty of desegregation will require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes at particular schools. P. 7.

1958, Cooper v. Aaron, 358 U.S. 2

4. If, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), a District Court concludes that justification exists for not requiring the present nonsegregated admission of all qualified Negro children to public schools, it should scrutinize the program of the school authorities to make sure that they have developed arrangements pointed toward the earliest practicable completion of desegregation, and have taken appropriate steps to put their program into effective operation. P. 7.

1958, Cooper v. Aaron, 358 U.S. 2

5. The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 15-16.

1958, Cooper v. Aaron, 358 U.S. 2

6. The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed [358 U.S. 3] upon the actions of the Governor and Legislature, and law and order are not here to be preserved by depriving the Negro children of their constitutional rights. P. 16.

1958, Cooper v. Aaron, 358 U.S. 3

7. The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executives or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." Pp. 16-17.

1958, Cooper v. Aaron, 358 U.S. 3

8. The interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." P. 18.

1958, Cooper v. Aaron, 358 U.S. 3

9. No state legislator or executive or judicial officer can war against the Constitution without violating his solemn oath to support it. P. 18.

1958, Cooper v. Aaron, 358 U.S. 3

10. State support of segregated schools through any arrangement, management, funds or property cannot be squared with the command of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws. P. 19.

1958, Cooper v. Aaron, 358 U.S. 3

257 F. 2d 33, affirmed. [358 U.S. 4]

Joint Opinion

1958, Cooper v. Aaron, 358 U.S. 4

Opinion of the Court by THE CHIEF JUSTICE, MR. JUSTICE BLACK, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE BURTON, MR. JUSTICE CLARK, MR. JUSTICE HARLAN, MR. JUSTICE BRENNAN, and MR. JUSTICE WHITTAKER.

1958, Cooper v. Aaron, 358 U.S. 4

As this case reaches us, it raises questions of the highest importance to the maintenance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution. Specifically, it involves actions by the Governor and Legislature of Arkansas upon the premise that they are not bound by our holding in Brown v. Board of Education, 347 U.S. 483. That holding was that the Fourteenth Amendment forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property. We are urged to uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify our holding in Brown v. Board of Education have been further challenged and tested in the courts. We reject these contentions.

1958, Cooper v. Aaron, 358 U.S. 4

The case was argued before us on September 11, 1958. On the following day, we unanimously affirmed the judgment of the Court of Appeals for the Eighth Circuit, 257 F.2d 33, which had reversed a judgment of the District Court for the Eastern District of Arkansas, 163 F.Supp. 13. The District Court had granted the application of the petitioners, the Little Rock School Board and School Superintendent, to suspend for two and one-half years the operation of the School Board's court-approved desegregation program. In order that the School Board [358 U.S. 5] might know, without doubt, its duty in this regard before the opening of school, which had been set for the following Monday, September 15, 1958, we immediately issued the judgment, reserving the expression of our supporting views to a later date.\* This opinion of all of the members of the Court embodies those views.

1958, Cooper v. Aaron, 358 U.S. 5

The following are the facts and circumstances so far as necessary to show how the legal questions are presented.

1958, Cooper v. Aaron, 358 U.S. 5

On May 17, 1954, this Court decided that enforced racial segregation in the public schools of a State is a denial of the equal protection of the laws enjoined by the Fourteenth Amendment. Brown v. Board of Education, [358 U.S. 6] 347 U.S. 483. The Court postponed, pending further argument, formulation of a decree to effectuate this decision. That decree was rendered May 31, 1955. Brown v. Board of Education, 349 U.S. 294. In the formulation of that decree, the Court recognized that good faith compliance with the principles declared in Brown might, in some situations,

1958, Cooper v. Aaron, 358 U.S. 6

call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.

1958, Cooper v. Aaron, 358 U.S. 6

Id. at 300. The Court went on to state:

1958, Cooper v. Aaron, 358 U.S. 6

Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

1958, Cooper v. Aaron, 358 U.S. 6

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.

1958, Cooper v. Aaron, 358 U.S. 6

349 U.S. at 300-301. [358 U.S. 7]

1958, Cooper v. Aaron, 358 U.S. 7

Under such circumstances, the District Courts were directed to require "a prompt and reasonable start toward full compliance," and to take such action as was necessary to bring about the end of racial segregation in the public schools "with all deliberate speed." Ibid. Of course, in many locations, obedience to the duty of desegregation would require the immediate general admission of Negro children, otherwise qualified as students for their appropriate classes at particular schools. On the other hand, a District Court, after analysis of the relevant factors (which, of course, excludes hostility to racial desegregation), might conclude that justification existed for not requiring the present nonsegregated admission of all qualified Negro children. In such circumstances, however, the Court should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation, and had taken appropriate steps to put their program into effective operation. It was made plain that delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced, and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could constitute good faith compliance. State authorities were thus duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system.

1958, Cooper v. Aaron, 358 U.S. 7

On May 20, 1954, three days after the first Brown opinion, the Little Rock District School Board adopted, and on May 23, 1954, made public, a statement of policy entitled "Supreme Court Decision—Segregation in Public Schools." In this statement, the Board recognized that

1958, Cooper v. Aaron, 358 U.S. 7

It is our responsibility to comply with Federal Constitutional Requirements, and we intend to do so when the Supreme Court of the United States outlines the method to be followed. [358 U.S. 8]

1958, Cooper v. Aaron, 358 U.S. 8

Thereafter, the Board undertook studies of the administrative problems confronting the transition to a desegregated public school system at Little Rock. It instructed the Superintendent of Schools to prepare a plan for desegregation, and approved such a plan on May 24, 1955, seven days before the second Brown opinion. The plan provided for desegregation at the senior high school level (grades 10 through 12) as the first stage. Desegregation at the junior high and elementary levels was to follow. It was contemplated that desegregation at the high school level would commence in the fall of 1957, and the expectation was that complete desegregation of the school system would be accomplished by 1963. Following the adoption of this plan, the Superintendent of Schools discussed it with a large number of citizen groups in the city. As a result of these discussions, the Board reached the conclusion that "a large majority of the residents" of Little Rock were of "the belief…that the Plan, although objectionable in principle" from the point of view of those supporting segregated schools, "was still the best for the interests of all pupils in the District."

1958, Cooper v. Aaron, 358 U.S. 8

Upon challenge by a group of Negro plaintiffs desiring more rapid completion of the desegregation process, the District Court upheld the School Board's plan, Aaron v. Cooper, 143 F.Supp. 855. The Court of Appeals affirmed, 243 F.2d 361. Review of that judgment was not sought here.

1958, Cooper v. Aaron, 358 U.S. 8

While the School Board was thus going forward with its preparation for desegregating the Little Rock school system, other state authorities, in contrast, were actively pursuing a program designed to perpetuate in Arkansas the system of racial segregation which this Court had held violated the Fourteenth Amendment. First came, in November, 1956, an amendment to the State Constitution flatly commanding the Arkansas General Assembly to oppose

1958, Cooper v. Aaron, 358 U.S. 8

in every Constitutional manner the Unconstitutional [358 U.S. 9] desegregation decisions of May 17, 1954, and May 31, 1955, of the United States Supreme Court,

1958, Cooper v. Aaron, 358 U.S. 9

Ark.Const.Amend. 44, and, through the initiative, a pupil assignment law, Ark.Stats. §§ 80-1519 to 80-1524. Pursuant to this state constitutional command, a law relieving school children from compulsory attendance at racially mixed schools, Ark.Stats. § 80-1525, and a law establishing a State Sovereignty Commission, Ark.Stats. §§ 6-801 to 6-824, were enacted by the General Assembly in February, 1957.

1958, Cooper v. Aaron, 358 U.S. 9

The School Board and the Superintendent of Schools nevertheless continued with preparations to carry out the first stage of the desegregation program. Nine Negro children were scheduled for admission in September, 1957, to Central High School, which has more than two thousand students. Various administrative measures, designed to assure the smooth transition of this first stage of desegregation, were undertaken.

1958, Cooper v. Aaron, 358 U.S. 9

On September 2, 1957, the day before these Negro students were to enter Central High, the school authorities were met with drastic opposing action on the part of the Governor of Arkansas, who dispatched units of the Arkansas National Guard to the Central High School grounds and placed the school "off limits" to colored students. As found by the District Court in subsequent proceedings, the Governor's action had not been requested by the school authorities, and was entirely unheralded. The findings were these:

1958, Cooper v. Aaron, 358 U.S. 9

Up to this time [September 2], no crowds had gathered about Central High School and no acts of violence or threats of violence in connection with the carrying out of the plan had occurred. Nevertheless, out of an abundance of caution, the school authorities had frequently conferred with the Mayor and Chief of Police of Little Rock about taking appropriate [358 U.S. 10] steps by the Little Rock police to prevent any possible disturbances or acts of violence in connection with the attendance of the 9 colored students at Central High School. The Mayor considered that the Little Rock police force could adequately cope with any incidents which might arise at the opening of school. The Mayor, the Chief of Police, and the school authorities made no request to the Governor or any representative of his for State assistance in maintaining peace and order at Central High School. Neither the Governor nor any other official of the State government consulted with the Little Rock authorities about whether the Little Rock police were prepared to cope with any incidents which might arise at the school, about any need for State assistance in maintaining peace and order, or about stationing the Arkansas National Guard at Central High School.

1958, Cooper v. Aaron, 358 U.S. 10

Aaron v. Cooper, 156 F.Supp. 220, 225.

1958, Cooper v. Aaron, 358 U.S. 10

The Board's petition for postponement in this proceeding states:

1958, Cooper v. Aaron, 358 U.S. 10

The effect of that action [of the Governor] was to harden the core of opposition to the Plan and cause many persons who theretofore had reluctantly accepted the Plan to believe there was some power in the State of Arkansas which, when exerted, could nullify the Federal law and permit disobedience of the decree of this [District] Court, and, from that date, hostility to the Plan was increased, and criticism of the officials of the [School] District has become more bitter and unrestrained.

1958, Cooper v. Aaron, 358 U.S. 10

The Governor's action caused the School Board to request the Negro students on September 2 not to attend the high school "until the legal dilemma was solved." The next day, September 3, 1957, the Board petitioned the District Court for instructions, and the court, after a hearing, found that the Board's [358 U.S. 11] request of the Negro students to stay away from the high school had been made because of the stationing of the military guards by the state authorities. The court determined that this was not a reason for departing from the approved plan, and ordered the School Board and Superintendent to proceed with it.

1958, Cooper v. Aaron, 358 U.S. 11

On the morning of the next day, September 4, 1957, the Negro children attempted to enter the high school, but, as the District Court later found, units of the Arkansas National Guard,

1958, Cooper v. Aaron, 358 U.S. 11

acting pursuant to the Governor's order, stood shoulder to shoulder at the school grounds and thereby forcibly prevented the 9 Negro students…from entering,

1958, Cooper v. Aaron, 358 U.S. 11

as they continued to do every school day during the following three weeks. 156 F.Supp. at 225.

1958, Cooper v. Aaron, 358 U.S. 11

That same day, September 4, 1957, the United States Attorney for the Eastern District of Arkansas was requested by the District Court to begin an immediate investigation in order to fix responsibility for the interference with the orderly implementation of the District Court's direction to carry out the desegregation program. Three days later, September 7, the District Court denied a petition of the School Board and the Superintendent of Schools for an order temporarily suspending continuance of the program.

1958, Cooper v. Aaron, 358 U.S. 11

Upon completion of the United States Attorney's investigation, he and the Attorney General of the United States at the District Court's request, entered the proceedings and filed a petition on behalf of the United States, as amicus curiae, to enjoin the Governor of Arkansas and officers of the Arkansas National Guard from further attempts to prevent obedience to the court's order. After hearings on the petition, the District Court found that the School Board's plan had been obstructed by the Governor through the use of National Guard troops, and granted a preliminary injunction on September [358 U.S. 12] 20, 1957, enjoining the Governor and the officers of the Guard from preventing the attendance of Negro children at Central High School, and from otherwise obstructing or interfering with the orders of the court in connection with the plan. 156 F.Supp. 220, affirmed, Faubus v. United States, 254 F.2d 797. The National Guard was then withdrawn from the school.

1958, Cooper v. Aaron, 358 U.S. 12

The next school day was Monday, September 23, 1957. The Negro children entered the high school that morning under the protection of the Little Rock Police Department and members of the Arkansas State Police. But the officers caused the children to be removed from the school during the morning because they had difficulty controlling a large and demonstrating crowd which had gathered at the high school. 163 F.Supp. at 16. On September 25, however, the President of the United States dispatched federal troops to Central High School, and admission of the Negro students to the school was thereby effected. Regular army troops continued at the high school until November 27, 1957. They were then replaced by federalized National Guardsmen who remained throughout the balance of the school year. Eight of the Negro students remained in attendance at the school throughout the school year.

1958, Cooper v. Aaron, 358 U.S. 12

We come now to the aspect of the proceedings presently before us. On February 20, 1958, the School Board and the Superintendent of Schools filed a petition in the District Court seeking a postponement of their program for desegregation. Their position, in essence, was that, because of extreme public hostility, which they stated had been engendered largely by the official attitudes and actions of the Governor and the Legislature, the maintenance of a sound educational program at Central High School, with the Negro students in attendance, would be impossible. The Board therefore proposed that the Negro students already admitted to the school be withdrawn [358 U.S. 13] and sent to segregated schools, and that all further steps to carry out the Board's desegregation program be postponed for a period later suggested by the Board to be two and one-half years.

1958, Cooper v. Aaron, 358 U.S. 13

After a hearing, the District Court granted the relief requested by the Board. Among other things, the court found that the past year at Central High School had been attended by conditions of "chaos, bedlam and turmoil"; that there were "repeated incidents of more or less serious violence directed against the Negro students and their property"; that there was "tension and unrest among the school administrators, the classroom teachers, the pupils, and the latters' parents, which inevitably had an adverse effect upon the educational program"; that a school official was threatened with violence; that a "serious financial burden" had been cast on the School District; that the education of the students had suffered "and under existing conditions will continue to suffer"; that the Board would continue to need "military assistance or its equivalent"; that the local police department would not be able "to detail enough men to afford the necessary protection"; and that the situation was "intolerable." 163 F.Supp. at 20-26.

1958, Cooper v. Aaron, 358 U.S. 13

The District Court's judgment was dated June 20, 1958. The Negro respondents appealed to the Court of Appeals for the Eighth Circuit and also sought there a stay of the District Court's judgment. At the same time, they filed a petition for certiorari in this Court asking us to review the District Court's judgment without awaiting the disposition of their appeal to the Court of Appeals, or of their petition to that court for a stay. That we declined to do. 357 U.S. 566. The Court of Appeals did not act on the petition for a stay, but, on August 18, 1958, after convening in special session on August 4 and hearing the appeal, reversed the District Court, 257 F.2d 33. On August 21, 1958, the Court of Appeals stayed its mandate [358 U.S. 14] to permit the School Board to petition this Court for certiorari. Pending the filing of the School Board's petition for certiorari, the Negro respondents, on August 23, 1958, applied to MR. JUSTICE WHITTAKER, as Circuit Justice for the Eighth Circuit, to stay the order of the Court of Appeals withholding its own mandate, and also to stay the District Court's judgment. In view of the nature of the motions, he referred them to the entire Court. Recognizing the vital importance of a decision of the issues in time to permit arrangements to be made for the 1958-1959 school year, see Aaron v. Cooper, 357 U.S. 566, 567, we convened in Special Term on August 28, 1958, and heard oral argument on the respondents' motions, and also argument of the Solicitor General who, by invitation, appeared for the United States as amicus curiae, and asserted that the Court of Appeals' judgment was clearly correct on the merits, and urged that we vacate its stay forthwith. Finding that respondents' application necessarily involved consideration of the merits of the litigation, we entered an order which deferred decision upon the motions pending the disposition of the School Board's petition for certiorari, and fixed September 8, 1958, as the day on or before which such petition might be filed, and September 11, 1958, for oral argument upon the petition. The petition for certiorari, duly filed, was granted in open Court on September 11, 1958, 358 U.S. 29, and further arguments were had, the Solicitor General again urging the correctness of the judgment of the Court of Appeals. On September 12, 1958, as already mentioned, we unanimously affirmed the judgment of the Court of Appeals in the per curiam opinion set forth in the margin at the outset of this opinion.

1958, Cooper v. Aaron, 358 U.S. 14

In affirming the judgment of the Court of Appeals which reversed the District Court, we have accepted without reservation the position of the School Board, the [358 U.S. 15] Superintendent of Schools, and their counsel that they displayed entire good faith in the conduct of these proceedings and in dealing with the unfortunate and distressing sequence of events which has been outlined. We likewise have accepted the findings of the District Court as to the conditions at Central High School during the 1957-1958 school year, and also the findings that the educational progress of all the students, white and colored, of that school has suffered, and will continue to suffer if the conditions which prevailed last year are permitted to continue.

1958, Cooper v. Aaron, 358 U.S. 15

The significance of these findings, however, is to be considered in light of the fact, indisputably revealed by the record before us, that the conditions they depict are directly traceable to the actions of legislators and executive officials of the State of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court's decision in the Brown case and which have brought about violent resistance to that decision in Arkansas. In its petition for certiorari filed in this Court, the School Board itself describes the situation in this language:

1958, Cooper v. Aaron, 358 U.S. 15

The legislative, executive, and judicial departments of the state government opposed the desegregation of Little Rock schools by enacting laws, calling out troops, making statements villifying federal law and federal courts, and failing to utilize state law enforcement agencies and judicial processes to maintain public peace.

1958, Cooper v. Aaron, 358 U.S. 15

One may well sympathize with the position of the Board in the face of the frustrating conditions which have confronted it, but, regardless of the Board's good faith, the actions of the other state agencies responsible for those conditions compel us to reject the Board's legal position. Had Central High School been under the direct management of the State itself, it could hardly be suggested [358 U.S. 16] that those immediately in charge of the school should be heard to assert their own good faith as a legal excuse for delay in implementing the constitutional rights of these respondents, when vindication of those rights was rendered difficult of impossible by the actions of other state officials. The situation here is in no different posture because the members of the School Board and the Superintendent of Schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State.

1958, Cooper v. Aaron, 358 U.S. 16

The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some 41 years ago in a unanimous opinion in a case involving another aspect of racial segregation:

1958, Cooper v. Aaron, 358 U.S. 16

It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution.

1958, Cooper v. Aaron, 358 U.S. 16

Buchanan v. Warley, 245 U.S. 60, 81. Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights. The record before us clearly establishes that the growth of the Board's difficulties to a magnitude beyond its unaided power to control is the product of state action. Those difficulties, as counsel for the Board forthrightly conceded on the oral argument in this Court, can also be brought under control by state action.

1958, Cooper v. Aaron, 358 U.S. 16

The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws.

1958, Cooper v. Aaron, 358 U.S. 16

A State acts by its legislative, its executive, or its judicial authorities. It can act in no [358 U.S. 17] other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government,…denies or takes away the equal protection of the laws violates the constitutional inhibition; and, as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.

1958, Cooper v. Aaron, 358 U.S. 17

Ex parte Virginia, 100 U.S. 339, 347. Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313; Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230; Shelley v. Kraemer, 334 U.S. 1; or whatever the guise in which it is taken, see Derrington v. Plummer, 240 F.2d 922; Department of Conservation and Development v. Tate, 231 F.2d 615. In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." Smith v. Texas, 311 U.S. 128, 132.

1958, Cooper v. Aaron, 358 U.S. 17

What has been said, in the light of the facts developed, is enough to dispose of the case. However, we should answer the premise of the actions of the Governor and Legislature that they are not bound by our holding in the Brown case. It is necessary only to recall some basic constitutional propositions which are settled doctrine. [358 U.S. 18]

1958, Cooper v. Aaron, 358 U.S. 18

Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of Marbury v. Madison, 1 Cranch. 137, 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3 "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers'

1958, Cooper v. Aaron, 358 U.S. 18

anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State….

1958, Cooper v. Aaron, 358 U.S. 18

Ableman v. Booth, 21 How. 506, 524.

1958, Cooper v. Aaron, 358 U.S. 18

No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that:

1958, Cooper v. Aaron, 358 U.S. 18

If the legislatures of the several states may at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery….

1958, Cooper v. Aaron, 358 U.S. 18

United States v. Peters, 5 Cranch. 115, 136. A Governor who asserts a [358 U.S. 19] power to nullify a federal court order is similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court,

1958, Cooper v. Aaron, 358 U.S. 19

it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases….

1958, Cooper v. Aaron, 358 U.S. 19

Sterling v. Constantin, 287 U.S. 378, 397-398.

1958, Cooper v. Aaron, 358 U.S. 19

It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law. Bolling v. Sharpe, 347 U.S. 497. The basic decision in Brown was unanimously reached by this Court only after the case had been briefed and twice argued and the issues had been given the most serious consideration. Since the first Brown opinion, three new Justices have come to the Court. They are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, [358 U.S. 20] are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.

FRANKFURTER, J., concurring

1958, Cooper v. Aaron, 358 U.S. 20

Concurring opinion of MR. JUSTICE FRANKFURTER.

1958, Cooper v. Aaron, 358 U.S. 20

While unreservedly participating with my brethren in our joint opinion, I deem it appropriate also to deal individually with the great issue here at stake.

1958, Cooper v. Aaron, 358 U.S. 20

By working together, by sharing in a common effort, men of different minds and tempers, even if they do not reach agreement, acquire understanding and thereby tolerance of their differences. This process was under way in Little Rock. The detailed plan formulated by the Little Rock School Board, in the light of local circumstances, had been approved by the United States District Court in Arkansas as satisfying the requirements of this Court's decree in Brown v. Board of Education, 349 U.S. 294. The Little Rock School Board had embarked on an educational effort "to obtain public acceptance" of its plan. Thus, the process of the community's accommodation to new demands of law upon it, the development of habits of acceptance of the right of colored children to the equal protection of the laws guaranteed by the Constitution, Amend. 14, had peacefully and promisingly begun. The condition in Little Rock before this process was forcibly impeded by those in control of the government of Arkansas was thus described by the District Court, and these findings of fact have not been controverted:

1958, Cooper v. Aaron, 358 U.S. 20

14. Up to this time, no crowds had gathered about Central High School and no acts of violence or threats of violence in connection with the carrying out of the plan had occurred. Nevertheless, out of an abundance of caution, the school authorities had [358 U.S. 21] frequently conferred with the Mayor and Chief of Police of Little Rock about taking appropriate steps by the Little Rock police to prevent any possible disturbances or acts of violence in connection with the attendance of the 9 colored students at Central High School. The Mayor considered that the Little Rock police force could adequately cope with any incidents which might arise at the opening of school. The Mayor, the Chief of Police, and the school authorities made no request to the Governor or any representative of his for State assistance in maintaining peace and order at Central High School. Neither the Governor nor any other official of the State government consulted with the Little Rock authorities about whether the Little Rock police were prepared to cope with any incidents which might arise at the school, about any need for State assistance in maintaining peace and order, or about stationing the Arkansas National Guard at Central High School.

1958, Cooper v. Aaron, 358 U.S. 21

156 F.Supp. 220, 225.

1958, Cooper v. Aaron, 358 U.S. 21

All this was disrupted by the introduction of the state militia and by other obstructive measures taken by the State. The illegality of these interferences with the constitutional right of Negro children qualified to enter the Central High School is unaffected by whatever action or nonaction the Federal Government had seen fit to take. Nor is it neutralized by the undoubted good faith of the Little Rock School Board in endeavoring to discharge its constitutional duty.

1958, Cooper v. Aaron, 358 U.S. 21

The use of force to further obedience to law is, in any event, a last resort, and one not congenial to the spirit of our Nation. But the tragic aspect of this disruptive tactic was that the power of the State was used not to sustain law, but as an instrument for thwarting law. The State of Arkansas is thus responsible for disabling one [358 U.S. 22] of its subordinate agencies, the Little Rock School Board, from peacefully carrying out the Board's and the State's constitutional duty. Accordingly, while Arkansas is not a formal party in these proceedings and a decree cannot go against the State, it is legally and morally before the Court.

1958, Cooper v. Aaron, 358 U.S. 22

We are now asked to hold that the illegal, forcible interference by the State of Arkansas with the continuance of what the Constitution commands, and the consequences in disorder that it entrained, should be recognized as justification for undoing what the School Board had formulated, what the District Court in 1955 had directed to be carried out, and what was in process of obedience. No explanation that may be offered in support of such a request can obscure the inescapable meaning that law should bow to force. To yield to such a claim would be to enthrone official lawlessness, and lawlessness, if not checked, is the precursor of anarchy. On the few tragic occasions in the history of the Nation, North and South, when law was forcibly resisted or systematically evaded, it has signaled the breakdown of constitutional processes of government on which ultimately rest the liberties of all. Violent resistance to law cannot be made a legal reason for its suspension without loosening the fabric of our society. What could this mean but to acknowledge that disorder under the aegis of a State has moral superiority over the law of the Constitution? For those in authority thus to defy the law of the land is profoundly subversive not only of our constitutional system, but of the presuppositions of a democratic society. The State "must…yield to an authority that is paramount to the State." This language of command to a State is Mr. Justice Holmes', speaking for the Court that comprised Mr. Justice Van Devanter, Mr. Justice McReynolds, Mr. Justice Brandeis, Mr. Justice Sutherland, [358 U.S. 23] Mr. Justice Butler and Mr. Justice Stone. Wisconsin v. Illinois, 281 U.S. 179, 197.

1958, Cooper v. Aaron, 358 U.S. 23

When defiance of law, judicially pronounced, was last sought to be justified before this Court, views were expressed which are now especially relevant:

1958, Cooper v. Aaron, 358 U.S. 23

The historic phrase "a government of laws, and not of men " epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. "A government of laws, and not of men," was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment.

1958, Cooper v. Aaron, 358 U.S. 23

But, from their own experience and their deep reading in history, the Founders knew that Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised. "Civilization involves subjection of force to reason, and the agency of this subjection is law." (Pound, The Future of Law (1937) 47 Yale L.J. 1, 13.) The conception of a government by laws dominated the thoughts of those who founded this [358 U.S. 24] Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men who were to be the depositories of law, who, by their disciplined training and character and by withdrawal from the usual temptations of private interest, may reasonably be expected to be "as free, impartial, and independent as the lot of humanity will admit." So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for.

1958, Cooper v. Aaron, 358 U.S. 24

United States v. United Mine Workers, 330 U.S. 258, 307-309 (concurring opinion).

1958, Cooper v. Aaron, 358 U.S. 24

The duty to abstain from resistance to "the supreme Law of the Land," U.S.Const., Art. VI, ¶ 2, as declared by the organ of our Government for ascertaining it, does not require immediate approval of it, nor does it deny the right of dissent. Criticism need not be stilled. Active obstruction or defiance is barred. Our kind of society cannot endure if the controlling authority of the Law as derived from the Constitution is not to be the tribunal specially charged with the duty of ascertaining and declaring what is "the supreme Law of the Land." See President Andrew Jackson's Message to Congress of January 16, 1833, II Richardson, Messages and Papers of the Presidents (1896 ed.) 610, 623. Particularly is this so where the declaration of what "the supreme Law" commands on an underlying moral issue is not the dubious pronouncement of a gravely divided Court, but is the unanimous conclusion of a long-matured deliberative process. The Constitution is not the formulation of the [358 U.S. 25] merely personal views of the members of this Court, nor can its authority be reduced to the claim that state officials are its controlling interpreters. Local customs, however hardened by time, are not decreed in heaven. Habits and feelings they engender may be counteracted and moderated. Experience attests that such local habits and feelings will yield, gradually though this be, to law and education. And educational influences are exerted not only by explicit teaching. They vigorously flow from the fruitful exercise of the responsibility of those charged with political official power, and from the almost unconsciously transforming actualities of living under law.

1958, Cooper v. Aaron, 358 U.S. 25

The process of ending unconstitutional exclusion of pupils from the common school system—"common" meaning shared alike—solely because of color is no doubt not an easy, overnight task in a few States where a drastic alteration in the ways of communities is involved. Deep emotions have, no doubt, been stirred. They will not be calmed by letting violence loose—violence and defiance employed and encouraged by those upon whom the duty of law observance should have the strongest claim—nor by submitting to it under whatever guise employed. Only the constructive use of time will achieve what an advanced civilization demands and the Constitution confirms.

1958, Cooper v. Aaron, 358 U.S. 25

For carrying out the decision that color alone cannot bar a child from a public school, this Court has recognized the diversity of circumstances in local school situations. But is it a reasonable hope that the necessary endeavors for such adjustment will be furthered, that racial frictions will be ameliorated, by a reversal of the process and interrupting effective measures toward the necessary goal? The progress that has been made in respecting the constitutional rights of the Negro children, according to the graduated plan sanctioned by the two [358 U.S. 26] lower courts, would have to be retraced, perhaps with even greater difficulty because of deference to forcible resistance. It would have to be retraced against the seemingly vindicated feeling of those who actively sought to block that progress. Is there not the strongest reason for concluding that to accede to the Board's request, on the basis of the circumstances that gave rise to it, for a suspension of the Board's nonsegregation plan, would be but the beginning of a series of delays calculated to nullify this Court's adamant decisions in the Brown case that the Constitution precludes compulsory segregation based on color in state-supported schools?

1958, Cooper v. Aaron, 358 U.S. 26

That the responsibility of those who exercise power in a democratic government is not to reflect inflamed public feeling, but to help form its understanding, is especially true when they are confronted with a problem like a racially discriminating public school system. This is the lesson to be drawn from the heartening experience in ending enforced racial segregation in the public schools in cities with Negro populations of large proportions. Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze the supreme Law, precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

1958, Cooper v. Aaron, 358 U.S. 26

Lincoln's appeal to "the better angels of our nature" failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable.

Footnotes

Joint Opinion (Footnotes)

1958, Cooper v. Aaron, 358 U.S. 26

\* The following was the Court's per curiam opinion:

1958, Cooper v. Aaron, 358 U.S. 26

PER CURIAM.

1958, Cooper v. Aaron, 358 U.S. 26

The Court, having fully deliberated upon the oral arguments had on August 28, 1958, as supplemented by the arguments presented on September 11, 1958, and all the briefs on file, is unanimously of the opinion that the judgment of the Court of Appeals for the Eighth Circuit of August 18, 1958, 257 F.2d 33, must be affirmed. In view of the imminent commencement of the new school year at the Central High School of Little Rock, Arkansas, we deem it important to make prompt announcement of our judgment affirming the Court of Appeals. The expression of the views supporting our judgment will be prepared and announced in due course.

1958, Cooper v. Aaron, 358 U.S. 26

It is accordingly ordered that the judgment of the Court of Appeals for the Eighth Circuit, dated August 18, 1958, 257 F.2d 33, reversing the judgment of the District Court for the Eastern District of Arkansas, dated June 20, 1958, 163 F.Supp. 13, be affirmed, and that the judgments of the District Court for the Eastern District of Arkansas, dated August 28, 1956, 143 F.Supp. 855, and September 3, 1957, enforcing the School Board's plan for desegregation in compliance with the decision of this Court in Brown v. Board of Education, 347 U.S. 483, be reinstated. It follows that the order of the Court of Appeals dated August 21, 1958, staying its own mandate is of no further effect.

1958, Cooper v. Aaron, 358 U.S. 26

The judgment of this Court shall be effective immediately, and shall be communicated forthwith to the District Court for the Eastern District of Arkansas.

President Eisenhower's State of the Union Address, 1958

Title: President Eisenhower's State of the Union Address

Author: Dwight D. Eisenhower

Date: January 9, 1958

Source: Public Papers of the Presidents, Eisenhower, 1958, pp.2-15

[Delivered in person before a joint session]

Public Papers of Eisenhower, 1958, p.2

Mr. President, Mr. Speaker, Members of the 85th Congress:

Public Papers of Eisenhower, 1958, p.2

It is again my high privilege to extend personal greetings to the members of the 85th Congress.

Public Papers of Eisenhower, 1958, p.2

All of us realize that, as this new session begins, many Americans are troubled about recent world developments which they believe may threaten our nation's safety. Honest men differ in their appraisal of America's material and intellectual strength, and the dangers that confront us. But all know these dangers are real.

Public Papers of Eisenhower, 1958, p.2

The purpose of this message is to outline the measures that can give the American people a confidence—just as real—in their own security.

Public Papers of Eisenhower, 1958, p.2

I am not here to justify the past, gloss over the problems of the present, or propose easy solutions for the future.

Public Papers of Eisenhower, 1958, p.2

I am here to state what I believe to be right and what I believe to be wrong; and to propose action for correcting what I think wrong!

I.

Public Papers of Eisenhower, 1958, p.2

There are two tasks confronting us that so far outweigh all other that I shall devote this year's message entirely to them. The first is to ensure our safety through strength.

Public Papers of Eisenhower, 1958, p.2

As to our strength, I have repeatedly voiced this conviction: We now have a broadly based and efficient defensive strength, including a great deterrent power, which is, for the present, our main guarantee against war; but, unless we act wisely and promptly, we could lose that capacity to deter attack or defend ourselves.

Public Papers of Eisenhower, 1958, p.2

My profoundest conviction is that the American people will say, as one man: No matter what the exertions or sacrifices, we shall maintain that necessary strength !

Public Papers of Eisenhower, 1958, p.2

But we could make no more tragic mistake than merely to concentrate on military strength.

Public Papers of Eisenhower, 1958, p.2

For if we did only this, the future would hold nothing for the world but an Age of Terror.

Public Papers of Eisenhower, 1958, p.2–p.3

And so our second task is to do the constructive work of building a genuine peace. We must never become so preoccupied with our desire [p.3] for military strength that we neglect those areas of economic development, trade, diplomacy, education, ideas and principles where the foundations of real peace must be laid.

II.

Public Papers of Eisenhower, 1958, p.3

The threat to our safety, and to the hope of a peaceful world, can be simply stated. It is communist imperialism.

Public Papers of Eisenhower, 1958, p.3

This threat is not something imagined by critics of the Soviets. Soviet spokesmen, from the beginning, have publicly and frequently declared their aim to expand their power, one way or another, throughout the world.

Public Papers of Eisenhower, 1958, p.3

The threat has become increasingly serious as this expansionist aim has been reinforced by an advancing industrial, military and scientific establishment.

Public Papers of Eisenhower, 1958, p.3

But what makes the Soviet threat unique in history is its all—inclusiveness. Every human activity is pressed into service as a weapon of expansion. Trade, economic development, military power, arts, science, education, the whole world of ideas—all are harnessed to this same chariot of expansion.

Public Papers of Eisenhower, 1958, p.3

The Soviets are, in short, waging total cold war.

Public Papers of Eisenhower, 1958, p.3

The only answer to a regime that wages total cold war is to wage total peace.

Public Papers of Eisenhower, 1958, p.3

This means bringing to bear every asset of our personal and national lives upon the task of building the conditions in which security and peace can grow.

III.

Public Papers of Eisenhower, 1958, p.3

Among our assets, let us first briefly glance at our military power.

Public Papers of Eisenhower, 1958, p.3

Military power serves the cause of security by making prohibitive the cost of any aggressive attack.

Public Papers of Eisenhower, 1958, p.3

It serves the cause of peace by holding up a shield behind which the patient constructive work of peace can go on.

Public Papers of Eisenhower, 1958, p.3

But it can serve neither cause if we make either of two mistakes. The one would be to overestimate our strength, and thus neglect crucially important actions in the period just ahead. The other would be to underestimate our strength. Thereby we might be tempted to become irresolute in our foreign relations, to dishearten our friends, and to lose our national poise and perspective in approaching the complex problems ahead.

Public Papers of Eisenhower, 1958, p.4

Any orderly balance-sheet of military strength must be in two parts. The first is the position as of today. The second is the position in the period ahead.

Public Papers of Eisenhower, 1958, p.4

As of today: our defensive shield comprehends a vast complex of ground, sea, and air units, superbly equipped and strategically deployed around the world. The most powerful deterrent to war in the world today lies in the retaliatory power of our Strategic Air Command and the aircraft of our Navy. They present to any potential attacker who would unleash war upon the world the prospect of virtual annihilation of his own country.

Public Papers of Eisenhower, 1958, p.4

Even if we assume a surprise attack on our bases, with a marked reduction in our striking power, our bombers would immediately be on their way in sufficient strength to accomplish this mission of retaliation. Every informed government knows this. It is no secret.

Public Papers of Eisenhower, 1958, p.4

Since the Korean Armistice, the American people have spent $225 billion in maintaining and strengthening this overall defensive shield. This is the position as of today.

Public Papers of Eisenhower, 1958, p.4

Now as to the period ahead: Every part of our military establishment must and will be equipped to do its defensive job with the most modern weapons and methods. But it is particularly important to our planning that we make a candid estimate of the effect of long-range ballistic missiles on the present deterrent power I have described.

Public Papers of Eisenhower, 1958, p.4

At this moment, the consensus of opinion is that we are probably somewhat behind the Soviets in some areas of long-range ballistic missile development. But it is my conviction, based on close study of all relevant intelligence, that if we make the necessary effort, we will have the missiles, in the needed quantity and in time, to sustain and strengthen the deterrent power of our increasingly efficient bombers. One encouraging fact evidencing this ability is the rate of progress we have achieved since we began to concentrate on these missiles.

Public Papers of Eisenhower, 1958, p.4

The intermediate ballistic missiles, Thor and Jupiter, have already been ordered into production. The parallel progress in the intercontinental ballistic missile effort will be advanced by our plans for acceleration. The development of the submarine-based Polaris missile system has progressed so well that its future procurement schedules are being moved forward markedly.

Public Papers of Eisenhower, 1958, p.4–p.5

When it is remembered that our country has concentrated on the development of ballistic missiles for only about a third as long as the [p.5] Soviets, these achievements show a rate of progress that speaks for itself. Only a brief time back, we were spending at the rate of only about one million dollars a year on long range ballistic missiles. In 1957 we spent more than one billion dollars on the Arias, Titan, Thor, Jupiter, and Polaris programs alone.

Public Papers of Eisenhower, 1958, p.5

But I repeat, gratifying though this rate of progress is, we must still do more!

Public Papers of Eisenhower, 1958, p.5

Our real problem, then, is not our strength today; it is rather the vital necessity of action today to ensure our strength tomorrow.

Public Papers of Eisenhower, 1958, p.5

What I have just said applies to our strength as a single country. But we are not alone. I have returned from the recent NATO meeting with renewed conviction that, because we are a part of a world-wide community of free and peaceful nations, our own security is immeasurably increased.

Public Papers of Eisenhower, 1958, p.5

By contrast, the Soviet Union has surrounded itself with captive and sullen nations. Like a crack in the crust of an uneasily sleeping volcano, the Hungarian uprising revealed the depth and intensity of the patriotic longing for liberty that still burns within these countries.

Public Papers of Eisenhower, 1958, p.5

The world thinks of us as a country which is strong, but which will never start a war. The world also thinks of us as a land which has never enslaved anyone and which is animated by humane ideals. This friendship, based on common ideals, is one of our greatest sources of strength.

Public Papers of Eisenhower, 1958, p.5

It cements into a cohesive security arrangement the aggregate of the spiritual, military and economic strength of all those nations which, with us, are allied by treaties and agreements.

Public Papers of Eisenhower, 1958, p.5

Up to this point, I have talked solely about our military strength to deter a possible future war.

Public Papers of Eisenhower, 1958, p.5

I now want to talk about the strength we need to win a different kind of war—one that has already been launched against us.

Public Papers of Eisenhower, 1958, p.5

It is the massive economic offensive that has been mounted by the communist imperialists against free nations.

Public Papers of Eisenhower, 1958, p.5–p.6

The communist imperialist regimes have for some time been largely frustrated in their attempts at expansion based directly on force. As a [p.6] result, they have begun to concentrate heavily on economic penetration, particularly of newly-developing countries, as a preliminary to political domination.

Public Papers of Eisenhower, 1958, p.6

This non-military drive, if underestimated, could defeat the free world regardless of our military strength. This danger is all the greater precisely because many of us fail or refuse to recognize it. Thus, some people may be tempted to finance our extra military effort by cutting economic assistance. But at the very time when the economic threat is assuming menacing proportions, to fail to strengthen our own effort would be nothing less than reckless folly !

Public Papers of Eisenhower, 1958, p.6

Admittedly, most of us did not anticipate the psychological impact upon the world of the launching of the first earth satellite. Let us not make the same kind of mistake in another field, by failing to anticipate the much more serious impact of the Soviet economic offensive.

Public Papers of Eisenhower, 1958, p.6

As with our military potential, our economic assets are more than equal to the task. Our independent farmers produce an abundance of food and fibre. Our free workers are versatile, intelligent, and hardworking. Our businessmen are imaginative and resourceful. The productivity, the adaptability of the American economy is the solid foundation-stone of our security structure.

Public Papers of Eisenhower, 1958, p.6

We have just concluded another prosperous year. Our output was once more the greatest in the nation's history. In the latter part of the year, some decline in employment and output occurred, following the exceptionally rapid expansion of recent years. In a free economy, reflecting as it does the independent judgments of millions of people, growth typically moves forward unevenly. But the basic forces of growth remain unimpaired. There are solid grounds for confidence that economic growth will be resumed without an extended interruption. Moreover, the Federal government, constantly alert to signs of weakening in any part of our economy, always stands ready, with its full power, to take any appropriate further action to promote renewed business expansion.

Public Papers of Eisenhower, 1958, p.6

If our history teaches us anything, it is this lesson: so far as the economic potential of our nation is concerned, the believers in the future of America have always been the realists. I count myself as one of this company.

Public Papers of Eisenhower, 1958, p.6–p.7

Our long-range problem, then, is not the stamina of our enormous engine of production. Our problem is to make sure that we use these [p.7] vast economic forces confidently and creatively, not only in direct military defense efforts, but likewise in our foreign policy, through such activities as mutual economic aid and foreign trade.

Public Papers of Eisenhower, 1958, p.7

In much the same way, we have tremendous potential resources on other non-military fronts to help in countering the Soviet threat: education, science, research, and, not least, the ideas and principles by which we live. And in all these cases the task ahead is to bring these resources more sharply to bear upon the new tasks of security and peace in a swiftly-changing world.

IV.

Public Papers of Eisenhower, 1958, p.7

There are many items in the Administration's program, of a kind frequently included in a State of the Union Message, with which I am not dealing today. They are important to us and to our prosperity. But I am reserving them for treatment in separate communications because of my purpose today of speaking only about matters bearing directly upon our security and peace.

Public Papers of Eisenhower, 1958, p.7

I now place before you an outline of action designed to focus our resources upon the two tasks of security and peace.

Public Papers of Eisenhower, 1958, p.7

In this special category I list eight items requiring action. They are not merely desirable. They are imperative.

1. DEFENSE REORGANIZATION

Public Papers of Eisenhower, 1958, p.7

The first need is to assure ourselves that military organization facilitates rather than hinders the functioning of the military establishment in maintaining the security of the nation.

Public Papers of Eisenhower, 1958, p.7

Since World War II, the purpose of achieving maximum organizational efficiency in a modern defense establishment has several times occasioned action by the Congress and by the Executive.

Public Papers of Eisenhower, 1958, p.7

The advent of revolutionary new devices, bringing with them the problem of overall continental defense, creates new difficulties, reminiscent of those attending the advent of the airplane half a century ago.

Public Papers of Eisenhower, 1958, p.7

Some of the important new weapons which technology has produced do not fit into any existing service pattern. They cut across all services, involve all services, and transcend all services, at every stage from development to operation. In some instances they defy classification according to branch of service.

Public Papers of Eisenhower, 1958, p.7–p.8

Unfortunately, the uncertainties resulting from such a situation, and the jurisdictional disputes attending upon it, tend to bewilder and confuse [p.8] the public and create the impression that service differences are damaging the national interest.

Public Papers of Eisenhower, 1958, p.8

Let us proudly remember that the members of the Armed Forces give their basic allegiance solely to the United States. Of that fact all of us are certain. But pride of service and mistaken zeal in promoting particular doctrine has more than once occasioned the kind of difficulty of which I have just spoken.

Public Papers of Eisenhower, 1958, p.8

I am not attempting today to pass judgment on the charge of harmful service rivalries. But one thing is sure. Whatever they are, America wants them stopped.

Public Papers of Eisenhower, 1958, p.8

Recently I have had under special study the never-ending problem of efficient organization, complicated as it is by new weapons. Soon my conclusions will be finalized. I shall promptly take such Executive action as is necessary and, in a separate message, I shall present appropriate recommendations to the Congress.

Public Papers of Eisenhower, 1958, p.8

Meanwhile, without anticipating the detailed form that a reorganization should take, I can state its main lines in terms of objectives:

Public Papers of Eisenhower, 1958, p.8

A major purpose of military organization is to achieve real unity in the Defense establishment in all the principal features of military activities. Of all these, one of the most important to our nation's security is strategic planning and control. This work must be done under unified direction.

Public Papers of Eisenhower, 1958, p.8

The defense structure must be one which, as a whole, can assume, with top efficiency and without friction, the defense of America. The Defense establishment must therefore plan for a better integration of its defensive resources, particularly with respect to the newer weapons now building and under development. These obviously require full coordination in their development, production and use. Good organization can help assure this coordination.

Public Papers of Eisenhower, 1958, p.8

In recognition of the need for single control in some of our most advanced development projects, the Secretary of Defense has already decided to concentrate into one organization all the anti-missile and satellite technology undertaken within the Department of Defense.

Public Papers of Eisenhower, 1958, p.8

Another requirement of military organization is a clear subordination of the military services to duly constituted civilian authority. This control must be real; not merely on the surface.

Public Papers of Eisenhower, 1958, p.8–p.9

Next there must be assurance that an excessive number of [p.9] compartments in organization will not create costly and confusing compartments in our scientific and industrial effort.

Public Papers of Eisenhower, 1958, p.9

Finally, to end inter-service disputes requires clear organization and decisive central direction, supported by the unstinted cooperation of every individual in the defense establishment, civilian and military.

2. ACCELERATED DEFENSE EFFORT

Public Papers of Eisenhower, 1958, p.9

The second major action item is the acceleration of the defense effort in particular areas affected by the fast pace of scientific and technological advance.

Public Papers of Eisenhower, 1958, p.9

Some of the points at which improved and increased effort are most essential are these:

Public Papers of Eisenhower, 1958, p.9

We must have sure warning in case of attack. The improvement of warning equipment is becoming increasingly important as we approach the period when long-range missiles will come into use.

Public Papers of Eisenhower, 1958, p.9

We must protect and disperse our striking forces and increase their readiness for instant reaction. This means more base facilities and standby crews.

Public Papers of Eisenhower, 1958, p.9

We must maintain deterrent retaliatory power. This means, among other things, stepped-up long range missile programs; accelerated programs for other effective missile systems; and, for some years, more advanced aircraft.

Public Papers of Eisenhower, 1958, p.9

We must maintain freedom of the seas. This means nuclear submarines and cruisers; improved anti-submarine weapons; missile ships; and the like.

Public Papers of Eisenhower, 1958, p.9

We must maintain all necessary types of mobile forces to deal with local conflicts, should there be need. This means further improvements in equipment, mobility, tactics and fire power.

Public Papers of Eisenhower, 1958, p.9

Through increases in pay and incentive, we must maintain in the armed forces the skilled manpower modern military forces require.

Public Papers of Eisenhower, 1958, p.9

We must be forward-looking in our research and development to anticipate and achieve the unimagined weapons of the future.

Public Papers of Eisenhower, 1958, p.9

With these and other improvements, we intend to assure that our vigilance, power, and technical excellence keep abreast of any realistic threat we face.

3. MUTUAL AID

Public Papers of Eisenhower, 1958, p.9–p.10

Third: We must continue to strengthen our mutual security efforts. Most people now realize that our programs of military aid and defense [p.10] support are an integral part of our own defense effort. If the foundations of the Free World structure were progressively allowed to crumble under the pressure of communist imperialism, the entire house of freedom would be in danger of collapse.

Public Papers of Eisenhower, 1958, p.10

As for the mutual economic assistance program, the benefit to us is threefold. First, the countries receiving this aid become bulwarks against communist encroachment as their military defenses and economies are strengthened. Nations that are conscious of a steady improvement in their industry, education, health and standard of living are not apt to fall prey to the blandishments of communist imperialists.

Public Papers of Eisenhower, 1958, p.10

Second, these countries are helped to reach the point where mutually profitable trade can expand between them and us.

Public Papers of Eisenhower, 1958, p.10

Third, the mutual confidence that comes from working together on constructive projects creates an atmosphere in which real understanding and peace can flourish.

Public Papers of Eisenhower, 1958, p.10

To help bring these multiple benefits, our economic aid effort should be made more effective.

Public Papers of Eisenhower, 1958, p.10

In proposals for future economic aid, I am stressing a greater use of repayable loans, through the Development Loan Fund, through funds generated by sale of surplus farm products, and through the Export-Import Bank.

Public Papers of Eisenhower, 1958, p.10

While some increase in Government funds will be required, it remains our objective to encourage shifting to the use of private capital sources as rapidly as possible.

Public Papers of Eisenhower, 1958, p.10

One great obstacle to the economic aid program in the past has been, not a rational argument against it on the merits, but a catchword: "give-away program."

Public Papers of Eisenhower, 1958, p.10

The real fact is that no investment we make in our own security and peace can pay us greater dividends than necessary amounts of economic aid to friendly nations.

Public Papers of Eisenhower, 1958, p.10

This is no "give-away." Let's stick to facts!

Public Papers of Eisenhower, 1958, p.10

We cannot afford to have one of our most essential security programs shot down with a slogan !

4. MUTUAL TRADE

Public Papers of Eisenhower, 1958, p.10

Fourth: Both in our national interest, and in the interest of world peace, we must have a five-year extension of the Trade Agreements Act with broadened authority to negotiate.

Public Papers of Eisenhower, 1958, p.11

World trade supports a significant segment of American industry and agriculture. It provides employment for four and one-half million American workers. It helps supply our ever increasing demand for raw materials. It provides the opportunity for American free enterprise to develop on a worldwide scale. It strengthens our friends and increases their desire to be friends. World trade helps to lay the groundwork for peace by making all free nations of the world stronger and more self-reliant.

Public Papers of Eisenhower, 1958, p.11

America is today the world's greatest trading nation. If we use this great asset wisely to meet the expanding demands of the world, we shall not only provide future opportunities for our own business, agriculture, and labor, but in the process strengthen our security posture and other prospects for a prosperous, harmonious world.

Public Papers of Eisenhower, 1958, p.11

As President McKinley said, as long ago as 1901: "Isolation is no longer possible or desirable…. The period of exclusiveness is past."

5. SCIENTIFIC COOPERATION WITH OUR ALLIES

Public Papers of Eisenhower, 1958, p.11

Fifth: It is of the highest importance that the Congress enact the necessary legislation to enable us to exchange appropriate scientific and technical information with friendly countries as part of our effort to achieve effective scientific cooperation.

Public Papers of Eisenhower, 1958, p.11

It is wasteful in the extreme for friendly allies to consume talent and money in solving problems that their friends have already solved—all because of artificial barriers to sharing. We cannot afford to cut ourselves off from the brilliant talents and minds of scientists in friendly countries. The task ahead will be hard enough without handcuffs of our own making.

Public Papers of Eisenhower, 1958, p.11

The groundwork for this kind of cooperation has already been laid in discussions among NATO countries. Promptness in following through with legislation will be the best possible evidence of American unity of purpose in cooperating with our friends.

6. EDUCATION AND RESEARCH

Public Papers of Eisenhower, 1958, p.11–p.12

Sixth: In the area of education and research, I recommend a balanced program to improve our resources, involving an investment of about a billion dollars over a four year period. This involves new activities by the Department of Health, Education and Welfare designed principally to encourage improved teaching quality and student opportunities in the interests of national security. It also provides a five-fold increase in [p.12] sums available to the National Science Foundation for its special activities in stimulating and improving science education.

Public Papers of Eisenhower, 1958, p.12

Scrupulous attention has been paid to maintaining local control of educational policy, spurring the maximum amount of local effort, and to avoiding undue stress on the physical sciences at the expense of other branches of learning.

Public Papers of Eisenhower, 1958, p.12

In the field of research, I am asking for substantial increases in basic research funds, including a doubling of the funds available to the National Science Foundation for this purpose.

Public Papers of Eisenhower, 1958, p.12

But Federal action can do only a part of the job. In both education and research, redoubled exertions will be necessary on the part of all Americans if we are to rise to the demands of our times. This means hard work on the part of state and local governments, private industry, schools and colleges, private organizations and foundations, teachers, parents, and—perhaps most important of all—the student himself, with his bag of books and his homework.

Public Papers of Eisenhower, 1958, p.12

With this kind of all-inclusive campaign, I have no doubt that we can create the intellectual capital we need for the years ahead, invest it in the right places—and do all this, not as regimented pawns, but as free men and women !

7. SPENDING AND SAVING

Public Papers of Eisenhower, 1958, p.12

Seventh: To provide for this extra effort for security, we must apply stern tests of priority to other expenditures, both military and civilian. This extra effort involves, most immediately, the need for a supplemental defense appropriation of $1.3 billion for fiscal year 1958.

Public Papers of Eisenhower, 1958, p.12

In the 1959 budget, increased expenditures for missiles, nuclear ships, atomic energy, research and development, science and education, a special contingency fund to deal with possible new technological discoveries, and increases in pay and incentives to obtain and retain competent manpower add up to a total increase over the comparable figures in the 1957 budget of about $4 billion.

Public Papers of Eisenhower, 1958, p.12

I believe that, in spite of these necessary increases, we should strive to finance the 1959 security effort out of expected revenues. While we now believe that expected revenues and expenditures will roughly balance, our real purpose will be to achieve adequate security, but always with the utmost regard for efficiency and careful management.

Public Papers of Eisenhower, 1958, p.12–p.13

This purpose will require the cooperation of Congress in making careful analysis of estimates presented, reducing expenditure on less [p.13] essential military programs and installations, postponing some new civilian programs, transferring some to the states, and curtailing or eliminating others.

Public Papers of Eisenhower, 1958, p.13

Such related matters as the national debt ceiling and tax revenues will be dealt with in later messages.

8. WORKS OF PEACE

Public Papers of Eisenhower, 1958, p.13

My last call for action is not primarily addressed to the Congress and people of the United States. Rather, it is a message from the people of the United States to all other peoples, especially those of the Soviet Union.

Public Papers of Eisenhower, 1958, p.13

This is the spirit of what we would like to say:

Public Papers of Eisenhower, 1958, p.13

"In the last analysis, there is only one solution to the grim problems that lie ahead. The world must stop the present plunge toward more and more destructive weapons of war, and turn the corner that will start our steps firmly on the path toward lasting peace.

Public Papers of Eisenhower, 1958, p.13

"Our greatest hope for success lies in a universal fact: the people of the world, as people, have always wanted peace and want peace now.

Public Papers of Eisenhower, 1958, p.13

"The problem, then, is to find a way of translating this universal desire into action.

Public Papers of Eisenhower, 1958, p.13

"This will require more than words of peace. It requires works of peace."

Public Papers of Eisenhower, 1958, p.13

Now, may I try to give you some concrete examples of the kind of works of peace that might make a beginning in the new direction.

Public Papers of Eisenhower, 1958, p.13

For a start our people should learn to know each other better. Recent negotiations in Washington have provided a basis in principle for greater freedom of communication and exchange of people. I urge the Soviet government to cooperate in turning principle into practice by prompt and tangible actions that will break down the unnatural barriers that have blocked the flow of thought and understanding between our people.

Public Papers of Eisenhower, 1958, p.13

Another kind of work of peace is cooperation on projects of human welfare. For example, we now have it within our power to eradicate from the face of the earth that age-old scourge of mankind: malaria. We are embarking with other nations in an all-out five-year campaign to blot out this curse forever. We invite the Soviets to join with us in this great work of humanity.

Public Papers of Eisenhower, 1958, p.14

Indeed, we would be willing to pool our efforts with the Soviets in other campaigns against the diseases that are the common enemy of all mortals—such as cancer and heart disease.

Public Papers of Eisenhower, 1958, p.14

If people can get together on such projects, is it not possible that we could then go on to a full-scale cooperative program of Science for Peace?

Public Papers of Eisenhower, 1958, p.14

We have as a guide and inspiration the success of our Atoms-for-Peace proposal, which in only a few years, under United Nations auspices, became a reality in the International Atomic Energy Agency.

Public Papers of Eisenhower, 1958, p.14

A program of Science for Peace might provide a means of funneling into one place the results of research from scientists everywhere and from there making it available to all parts of the world.

Public Papers of Eisenhower, 1958, p.14

There is almost no limit to the human betterment that could result from such cooperation. Hunger and disease could increasingly be driven from the earth. The age-old dream of a good life for all could, at long last, be translated into reality.

Public Papers of Eisenhower, 1958, p.14

But of all the works of peace, none is more needed now than a real first step toward disarmament.

Public Papers of Eisenhower, 1958, p.14

Last August the United Nations General Assembly, by an overwhelming vote, approved a disarmament plan that we and our allies sincerely believed to be fair and practical. The Soviets have rejected both the plan, and the negotiating procedure set up by the United Nations. As a result, negotiation on this supremely important issue is now at a stand-still.

Public Papers of Eisenhower, 1958, p.14

But the world cannot afford to stand still on disarmament! We must never give up the search for a basis of agreement.

Public Papers of Eisenhower, 1958, p.14

Our allies from time to time develop differing ideas on how to proceed. We must concert these convictions among ourselves. Thereafter, any reasonable proposal that holds promise for disarmament and reduction of tension must be heard, discussed, and, if possible, negotiated.

Public Papers of Eisenhower, 1958, p.14

But a disarmament proposal, to hold real promise, must at the minimum have one feature: reliable means to ensure compliance by all. It takes actions and demonstrated integrity on both sides to create and sustain confidence. And confidence in a genuine disarmament agreement is vital, not only to the signers of the agreement, but also to the millions of people all over the world who are weary of tensions and armaments.

Public Papers of Eisenhower, 1958, p.14

I say once more, to all peoples, that we will always go the extra mile with anyone on earth if it will bring us nearer a genuine peace.

CONCLUSION

Public Papers of Eisenhower, 1958, p.15

These, then, are the ways in which we must funnel our energies more efficiently into the task of advancing security and peace.

Public Papers of Eisenhower, 1958, p.15

These actions demand and expect two things of the American people: sacrifice, and a high degree of understanding. For sacrifice to be effective it must be intelligent. Sacrifice must be made for the right purpose and in the right place—even if that place happens to come close to home !

Public Papers of Eisenhower, 1958, p.15

After all, it is no good demanding sacrifice in general terms one day, and the next day, for local reasons, opposing the elimination of some unneeded Federal facility.

Public Papers of Eisenhower, 1958, p.15

It is pointless to condemn Federal spending in general, and the next moment condemn just as strongly an effort to reduce the particular Federal grant that touches one's own interest.

Public Papers of Eisenhower, 1958, p.15

And it makes no sense whatever to spend additional billions on military strength to deter a potential danger, and then, by cutting aid and trade programs, let the world succumb to a present danger in economic guise.

Public Papers of Eisenhower, 1958, p.15

My friends of the Congress: The world is waiting to see how wisely and decisively a free representative government will now act.

Public Papers of Eisenhower, 1958, p.15

I believe that this Congress possesses and will display the wisdom promptly to do its part in translating into law the actions demanded by our nation's interests. But, to make law effective, our kind of government needs the full voluntary support of millions of Americans for these actions.

Public Papers of Eisenhower, 1958, p.15

I am fully confident that the response of the Congress and of the American people will make this time of test a time of honor. Mankind then will see more clearly than ever that the future belongs, not to the concept of the regimented atheistic state, but to the people—the God-fearing, peace-loving people of all the world.

Public Papers of Eisenhower, 1958, p.15

DWIGHT D. EISENHOWER

Public Papers of Eisenhower, 1958, p.15

NOTE: This is the text of the document which the President signed and transmitted to the Senate and the House of Representatives ( H. Doc. 251, 85th Cong., 2d sess.).

Public Papers of Eisenhower, 1958, p.15

The Address as reported from the floor appears in the Congressional Record (vol. 104, p. 171).

President Eisenhower's Special Message to the Congress on Civil Rights, 1959

Title: President Eisenhower's Special Message to the Congress on Civil Rights

Author: Dwight D. Eisenhower

Date: February 5, 1959

Source: Public Papers of the Presidents, Eisenhower, 1959, pp.164-167

Public Papers of Eisenhower, 1959, p.164

To the Congress of the United States:

Public Papers of Eisenhower, 1959, p.164

Two principles basic to our system of government are that the rule of law is supreme, and that every individual regardless of his race, religion, or national origin is entitled to the equal protection of the laws. We must continue to seek every practicable means for reinforcing these principles and making them a reality for all.

Public Papers of Eisenhower, 1959, p.164–p.165

The United States has a vital stake in striving wisely to achieve the goal of full equality under law for all people. On several occasions I have stated that progress toward this goal depends not on laws alone but on building a better understanding. It is thus important to remember [p.165] that any further legislation in this field must be clearly designed to continue the substantial progress that has taken place in the past few years. The recommendations for legislation which I am making have been weighed and formulated with this in mind.

Public Papers of Eisenhower, 1959, p.165

First, I recommend legislation to strengthen the law dealing with obstructions of justice so as to provide expressly that the use of force or threats of force to obstruct Court orders in school desegregation cases shall be a Federal offense.

Public Papers of Eisenhower, 1959, p.165

There have been instances where extremists have attempted by mob violence and other concerted threats of violence to obstruct the accomplishment of the objectives in school decrees. There is a serious question whether the present obstruction of justice statute reaches such acts of obstruction which occur after the completion of the court proceedings. Nor is the contempt power a satisfactory enforcement weapon to deal with persons who seek to obstruct court decrees by such means.

Public Papers of Eisenhower, 1959, p.165

The legislation that I am recommending would correct a deficiency in the present law and would be a valuable enforcement power on which the government could rely to deter mob violence and such other acts of violence or threats which seek to obstruct court decrees in desegregation

cases.

Public Papers of Eisenhower, 1959, p.165

Second, I recommend legislation to confer additional investigative authority on the FBI in the case of crimes involving the destruction or attempted destruction of schools or churches, by making flight from one State to another to avoid detention or prosecution for such a crime a Federal offense.

Public Papers of Eisenhower, 1959, p.165

All decent, self-respecting persons deplore the recent incidents of bombings of schools and places of worship. While State authorities have been diligent in their execution of local laws dealing with these crimes, a basis for supplementary action by the federal government is needed.

Public Papers of Eisenhower, 1959, p.165

Such recommendation when enacted would make it dear that the FBI has full authority to assist in investigations of crimes involving bombings of schools and churches. At the same time, the legislation would preserve the primary responsibility for law enforcement in local law enforcement agencies for crimes committed against local property.

Public Papers of Eisenhower, 1959, p.165

Third, I recommend legislation to give the Attorney General power to inspect Federal election records, and to require that such records be preserved for a reasonable period of time so as to permit such inspection.

Public Papers of Eisenhower, 1959, p.165–p.166

The right to vote, the keystone of democratic stir-government, must [p.166] be available to all qualified citizens without discrimination. Until the enactment of the Civil Rights Act of 1957, the government could protect this right only through criminal prosecutions instituted after the right had been infringed. The 1957 Act attempted to remedy this deficiency by authorizing the Attorney General to institute civil proceedings to prevent such infringements before they occurred.

Public Papers of Eisenhower, 1959, p.166

A serious obstacle has developed which minimizes the effectiveness of this legislation. Access to registration records is essential to determine whether the denial of the franchise was in furtherance of a pattern of racial discrimination. But during preliminary investigations of complaints the Department of Justice, unlike the Civil Rights Commission, has no authority to require the production of election records in a civil proceeding. State or local authorities, in some instances, have refused to permit the inspection of their election records in the course of investigations. Supplemental legislation, therefore, is needed.

Public Papers of Eisenhower, 1959, p.166

Fourth, I recommend legislation to provide a temporary program of financial and technical aid to State and local agencies to assist them in making the necessary adjustments required by school desegregation decisions.

Public Papers of Eisenhower, 1959, p.166

The Department of Health, Education, and Welfare should be authorized to assist and cooperate with those States which have previously required or permitted racially segregated public schools, and which must now develop programs of desegregation. Such assistance should consist of sharing the burdens of transition through grants-in-aid to help meet additional costs directly occasioned by desegregation programs, and also of making technical information and assistance available to State and local educational agencies in preparing and implementing desegregation programs.

Public Papers of Eisenhower, 1959, p.166

I also recommend that the Commissioner of Education be specifically authorized, at the request of the States or local agencies, to provide technical assistance in the development of desegregation programs and to initiate or participate in conferences called to help resolve educational problems arising as a result of efforts to desegregate.

Public Papers of Eisenhower, 1959, p.166

Filth, I recommend legislation to authorize, on a temporary basis, provision for the education of children of members of the Armed Forces when State-administered public schools have been closed because of desegregation decisions or orders.

Public Papers of Eisenhower, 1959, p.167

The Federal Government has a particular responsibility for the children of military personnel in Federally affected areas, since Armed Services personnel are located there under military orders rather than of their own free choice. Under the present law, the Commissioner of Education may provide for the education of children of military personnel only in the case of those who live on military reservations or other Federal property. The legislation I am recommending would remove this limitation.

Public Papers of Eisenhower, 1959, p.167

Sixth, I recommend that Congress give consideration to the establishing of a statutory Commission on Equal Job Opportunity under Government Contracts.

Public Papers of Eisenhower, 1959, p.167

Non-discrimination in employment under government contracts is required by Executive Orders. Through education, mediation, and persuasion, the existing Committee on Government Contracts has sought to give effect not only to this contractual obligation, but to the policy of equal job opportunities generally. While the program has been widely accepted by government agencies, employers and unions, and significant progress has been made, full implementation of the policy would be materially advanced by the creation of a statutory Commission.

Public Papers of Eisenhower, 1959, p.167

Seventh, I recommend legislation to extend the life of the Civil Rights Commission for an additional two years. While the Commission should make an interim report this year within the time originally fixed by law for the making of its final report, because of the delay in getting the Commission appointed and staffed, an additional two years should be provided for the completion of its task and the making of its final report.

Public Papers of Eisenhower, 1959, p.167

I urge the prompt consideration of these seven proposals.

Public Papers of Eisenhower, 1959, p.167

DWIGHT D. EISENHOWER

Barenblatt v. United States, 1959

Title: Barenblatt v. United States

Author: U.S. Supreme Court

Date: June 8, 1959

Source: 360 U.S. 109

This case was argued November 18, 1958, and was decided June 8, 1959.

1959, Barenblatt v. United States, 360 U.S. 109

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

1959, Barenblatt v. United States, 360 U.S. 109

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Syllabus

1959, Barenblatt v. United States, 360 U.S. 109

Summoned to testify before a Subcommittee of the House of Representatives Committee on Un-American Activities, which was investigating alleged Communist infiltration into the field of education, petitioner, formerly a graduate student and teaching fellow at the University of Michigan, refused to answer questions as to whether he was then or had ever been a member of the Communist Party. He disclaimed reliance upon the privilege against self-incrimination, but objected generally to the right of the Subcommittee to inquire into his "political" and "religious" beliefs or any "other personal or private affairs" or "associational activities" upon grounds set forth in a previously prepared memorandum, which was based on the First, Ninth, and Tenth Amendments, the prohibition against bills of attainder and the doctrine of separation of powers. For such refusal, he was convicted of a violation of 2 U.S.C. § 192, which makes it a misdemeanor for any person summoned as a witness by either House of Congress or a committee thereof to refuse to answer any question pertinent to the question under inquiry. He was fined and sentenced to imprisonment for six months.

1959, Barenblatt v. United States, 360 U.S. 109

Held: Petitioner's conviction is sustained. Pp. 111-134.

1959, Barenblatt v. United States, 360 U.S. 109

1. In the light of the Committee's history and the repeated extensions of its life, as well as the successive appropriations by the House of Representatives for the conduct of its activities, its legislative authority and that of the Subcommittee to conduct the inquiry under consideration here is unassailable, and House Rule XI, 83d Congress, which defines the Committee's authority, cannot be said to be constitutionally infirm on the score of vagueness. Watkins v. United States, 354 U.S. 178, distinguished. Pp. 116-123.

1959, Barenblatt v. United States, 360 U.S. 109

(a) Rule XI has a "persuasive gloss of legislative history" which shows beyond doubt that, in pursuance of its legislative concerns in the domain of "national security," the House of Representatives has clothed the Committee with pervasive authority to investigate Communist activities in this country. Pp. 117-121. [360 U.S. 110]

1959, Barenblatt v. United States, 360 U.S. 110

(b) In the light of the legislative history, Rule XI cannot be construed so as to exclude the field of education from the Committee's compulsory authority. Pp. 121-123.

1959, Barenblatt v. United States, 360 U.S. 110

2. The record in this case refutes petitioner's contention that he was not adequately apprised of the pertinency of the Subcommittee's questions to the subject matter of the inquiry. Watkins v. United States, supra, distinguished. Pp. 123-125.

1959, Barenblatt v. United States, 360 U.S. 110

3. On the record in this case, the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and therefore the provisions of the First Amendment were not transgressed by the Subcommittee's inquiry into petitioner's past or present membership in the Communist Party. Pp. 125-134.

1959, Barenblatt v. United States, 360 U.S. 110

(a) Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. Pp. 126-127.

1959, Barenblatt v. United States, 360 U.S. 110

(b) The investigation here involved was related to a valid legislative purpose, since Congress has wide power to legislate in the field of Communist activity in this Country and to conduct appropriate investigations in aid thereof. Pp. 127-129.

1959, Barenblatt v. United States, 360 U.S. 110

(c) Investigatory power in this domain is not to be denied Congress solely because the field of education is involved, and the record in this case does not indicate any attempt by the Committee to inquire into the content of academic lectures or discussions, but only to investigate the extent to which the Communist Party had succeeded in infiltrating into our educational institutions persons and groups committed to furthering the Party's alleged objective of violent overthrow of the Government. Sweezy v. New Hampshire, 354 U.S. 234, distinguished. Pp. 129-132.

1959, Barenblatt v. United States, 360 U.S. 110

(d) On the record in this case, it cannot be said that the true objective of the Committee and of the Congress was purely "exposure," rather than furtherance of a valid legislative purpose. Pp. 132-133.

1959, Barenblatt v. United States, 360 U.S. 110

(e) The record is barren of other factors which, in themselves, might lead to the conclusion that the individual interests at stake were not subordinate to those of the Government. P. 134.

1959, Barenblatt v. United States, 360 U.S. 110

102 U.S.App.D.C. 217, 252 F.2d 129, affirmed. [360 U.S. 111]

HARLAN, J., lead opinion

1959, Barenblatt v. United States, 360 U.S. 111

MR. JUSTICE HARLAN delivered the opinion of the Court.

1959, Barenblatt v. United States, 360 U.S. 111

Once more the Court is required to resolve the conflicting constitutional claims of congressional power, and of an individual's right to resist its exercise. The congressional power in question concerns the internal process of Congress in moving within its legislative domain; it involves the utilization of its committees to secure "testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." McGrain v. Daugherty, 273 U.S. 135, 160. The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

1959, Barenblatt v. United States, 360 U.S. 111

Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, [360 U.S. 112] it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly, in the context of this case, the relevant limitations of the Bill of Rights.

1959, Barenblatt v. United States, 360 U.S. 112

The congressional power of inquiry, its range and scope, and an individual's duty in relation to it, must be viewed in proper perspective. McGrain v. Daugherty, supra; Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv.L.Rev. 153, 214; Black, Inside a Senate Investigation, 172 Harpers Monthly 275 (February 1936). The power and the right of resistance to it are to be judged in the concrete, not on the basis of abstractions. In the present case, congressional efforts to learn the extent of a nationwide, indeed worldwide, problem have brought one of its investigating committees into the field of education. Of course, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching—freedom and its corollary, learning—freedom, so essential to the wellbeing of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain. But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls. [360 U.S. 113]

1959, Barenblatt v. United States, 360 U.S. 113

In the setting of this framework of constitutional history, practice, and legal precedents, we turn to the particularities of this case.

1959, Barenblatt v. United States, 360 U.S. 113

We here review petitioner's conviction under 2 U.S.C. § 192 1 for contempt of Congress, arising from his refusal to answer certain questions put to him by a Subcommittee of the House Committee on Un-American Activities during the course of an inquiry concerning alleged Communist infiltration into the field of education.

1959, Barenblatt v. United States, 360 U.S. 113

The case is before us for the second time. Petitioner's conviction was originally affirmed in 1957 by a unanimous panel of the Court of Appeals, 100 U.S.App.D.C. 13, 240 F.2d 875. This Court granted certiorari, 354 U.S. 930, vacated the Judgment of the Court of Appeals, and remanded the case to that court for further consideration in light of Watkins v. United States, 354 U.S. 178, which had reversed a contempt of Congress conviction and which was decided after the Court of Appeals' decision here had issued. Thereafter, the Court of Appeals, sitting en banc, reaffirmed the conviction by a divided court. 102 U.S.App.D.C. 217, 252 F.2d 129. We again granted certiorari, 356 U.S. 929, to consider petitioner's statutory and constitutional challenges to his conviction, and particularly his claim that the Judgment below cannot stand under our decision in the Watkins case.

1959, Barenblatt v. United States, 360 U.S. 113

Pursuant to a subpoena, and accompanied by counsel, petitioner, on June 28, 1954, appeared as a witness before [360 U.S. 114] this congressional Subcommittee. After answering a few preliminary questions and testifying that he had been a graduate student and teaching fellow at the University of Michigan from 1947 to 1950 and an instructor in psychology at Vassar College from 1950 to shortly before his appearance before the Subcommittee, petitioner objected generally to the right of the Subcommittee to inquire into his "political" and "religious" beliefs or any "other personal and private affairs" or "associational activities," upon grounds set forth in a previously prepared memorandum which he was allowed to file with the Subcommittee. 2 Thereafter, petitioner specifically declined to answer each of the following five questions:

1959, Barenblatt v. United States, 360 U.S. 114

Are you now a member of the Communist Party? [Count One.]

1959, Barenblatt v. United States, 360 U.S. 114

Have you ever been a member of the Communist Party? [Count Two.]

1959, Barenblatt v. United States, 360 U.S. 114

Now, you have stated that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party? [Count Three.]

1959, Barenblatt v. United States, 360 U.S. 114

Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan? [ Count Four.]

1959, Barenblatt v. United States, 360 U.S. 114

Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions? [Count Five.]

1959, Barenblatt v. United States, 360 U.S. 114

In each instance the grounds of refusal were those set forth in the prepared statement. Petitioner expressly disclaimed reliance upon "the Fifth Amendment." 3 [360 U.S. 115]

1959, Barenblatt v. United States, 360 U.S. 115

Following receipt of the Subcommittee's report of these occurrences, the House duly certified the matter to the District of Columbia United States Attorney for contempt proceedings. An indictment in five Counts, each embracing one of petitioner's several refusals to answer, ensued. With the consent of both sides, the case was tried to the court without a jury, and, upon conviction under all Counts, a general sentence of six months' imprisonment and a fine of $250 was imposed.

1959, Barenblatt v. United States, 360 U.S. 115

Since this sentence was less than the maximum punishment authorized by the statute for conviction under any one Count, 4 the judgment below must be upheld if the conviction upon any of the Counts is sustainable. See Claassen v. United States, 142 U.S. 140, 147; Roviaro v. United States, 353 U.S. 53; Whitfield v. Ohio, 297 U.S. 431. As we conceive the ultimate issue in this case to be whether petitioner could properly be convicted of contempt for refusing to answer questions relating to his participation in or knowledge of alleged Communist Party activities at educational institutions in this country, we find it unnecessary to consider the validity of his conviction under the Third and Fifth Counts, the only ones involving questions which on their face do not directly relate to such participation or knowledge.

1959, Barenblatt v. United States, 360 U.S. 115

Petitioner's various contentions resolve themselves into three propositions: first, the compelling of testimony by the Subcommittee was neither legislatively authorized nor constitutionally permissible because of the vagueness of Rule XI of the House of Representatives, Eighty-third Congress, the charter of authority of the parent Committee. 5 Second, petitioner was not adequately apprised of the pertinency of the Subcommittee's questions to the [360 U.S. 116] subject matter of the inquiry. Third, the questions petitioner refused to answer infringed rights protected by the First Amendment.

1959, Barenblatt v. United States, 360 U.S. 116

SUBCOMMITTEE'S AUTHORITY TO COMPEL TESTIMONY

1959, Barenblatt v. United States, 360 U.S. 116

At the outset, it should be noted that Rule XI authorized this Subcommittee to compel testimony within the framework of the investigative authority conferred on the Un-American Activities Committee. 6 Petitioner contends that Watkins v. United States, supra, nevertheless held the grant of this power in all circumstances ineffective because of the vagueness of Rule XI in delineating the Committee jurisdiction to which its exercise was to be appurtenant. This view of Watkins was accepted by two of the dissenting judges below. 102 U.S.App.D.C. at 124, 252 F.2d at 136.

1959, Barenblatt v. United States, 360 U.S. 116

The Watkins case cannot properly be read as standing for such a proposition. A principal contention in Watkins was that the refusals to answer were justified because the requirement of 2 U.S.C. § 192 that the questions asked be "pertinent to the question under inquiry" had not been satisfied. 354 U.S. at 208-209. This Court reversed the conviction solely on that ground, holding that Watkins had not been adequately apprised of the subject matter of the Subcommittee's investigation or the pertinency [360 U.S. 117] thereto of the questions he refused to answer. Id. at 206-209, 214-215, and see the concurring opinion in that case, id. at 216. In so deciding, the Court drew upon Rule XI only as one of the facets in the total mise en scene in its search for the "question under inquiry" in that particular investigation. Id. at 209-215. The Court, in other words, was not dealing with Rule XI at large, and indeed in effect stated that no such issue was before it, id. at 209. That the vagueness of Rule XI was not alone determinative is also shown by the Court's further statement that, aside from the Rule,

1959, Barenblatt v. United States, 360 U.S. 117

the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic [under inquiry] clear.

1959, Barenblatt v. United States, 360 U.S. 117

Ibid. In short, while Watkins was critical of Rule XI, it did not involve the broad and inflexible holding petitioner now attributes to it. 7

1959, Barenblatt v. United States, 360 U.S. 117

Petitioner also contends, independently of Watkins, that the vagueness of Rule XI deprived the Subcommittee of the right to compel testimony in this investigation into Communist activity. We cannot agree with this contention, which, in its furthest reach, would mean that the House Un-American Activities Committee under its existing authority has no right to compel testimony in any circumstances. Granting the vagueness of the Rule, we may not read it in isolation from its long history in the House of Representatives. Just as legislation is often given meaning by the gloss of legislative reports, administrative interpretation, and long usage, so the proper meaning of an authorization to a congressional committee is not to be derived alone from its abstract terms unrelated to the definite content furnished them by the course of congressional actions. The Rule comes to us with a [360 U.S. 118] "persuasive gloss of legislative history," United States v. Witkovich, 353 U.S. 194, 199, which shows beyond doubt that, in pursuance of its legislative concerns in the domain of "national security," the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country.

1959, Barenblatt v. United States, 360 U.S. 118

The essence of that history can be briefly stated. The Un-American Activities Committee, originally known as the Dies Committee, was first established by the House in 1938. 8 The Committee was principally a consequence of concern over the activities of the German-American Bund, whose members were suspected of allegiance to Hitler Germany, and of the Communist Party, supposed by many to be under the domination of the Soviet Union. 9 From the beginning, without interruption to the present time and with the undoubted knowledge and approval of the House, the Committee has devoted a major part of its energies to the investigation of Communist activities. 10 More particularly, in 1947, the Committee announced [360 U.S. 119] a wide-range program in this field, 11 pursuant to which, during the years 1948 to 1952, it conducted diverse inquiries into such alleged Communist activities as espionage; efforts to learn atom bomb secrets; infiltration into labor, farmer, veteran, professional, youth, and motion picture groups, and, in addition, held a number of hearings upon various legislative proposals to curb Communist activities. 12

1959, Barenblatt v. United States, 360 U.S. 119

In the context of these unremitting pursuits, the House has steadily continued the life of the Committee at the [360 U.S. 120] commencement of each new Congress; 13 it has never narrowed the powers of the Committee, whose authority has remained throughout identical with that contained in Rule XI, and it has continuingly supported the Committee's activities with substantial appropriations. 14 Beyond this, the Committee was raised to the level of a standing committee of the House in 1945, it having been but a special committee prior to that time. 15

1959, Barenblatt v. United States, 360 U.S. 120

In light of this long and illuminating history, it can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of [360 U.S. 121] compulsory process, was beyond the purview of the Committee's intended authority under Rule XI.

1959, Barenblatt v. United States, 360 U.S. 121

We are urged, however, to construe Rule XI so as at least to exclude the field of education from the Committee's compulsory authority. Two of the four dissenting judges below relied entirely, the other two alternatively, on this ground. 102 U.S.App.D.C. at 224, 226, 252 F.2d at 136, 138. The contention is premised on the course we took in United States v. Rumely, 345 U.S. 41, where in order to avoid constitutional issues, we construed narrowly the authority of the congressional committee there involved. We cannot follow that route here, for this is not a case where Rule XI has to "speak for itself, since Congress put no gloss upon it at the time of its passage," nor one where the subsequent history of the Rule has the "infirmity of post litem motam, self-serving declarations." See United States v. Rumely, supra, at 44-45, 48.

1959, Barenblatt v. United States, 360 U.S. 121

To the contrary, the legislative gloss on Rule XI is again compelling. Not only is there no indication that the House ever viewed the field of education as being outside the Committee's authority under Rule XI, but the legislative history affirmatively evinces House approval of this phase of the Committee's work. During the first year of its activities, 1938, the Committee heard testimony on alleged Communist activities at Brooklyn College, N.Y. 16 The following year, it conducted similar hearings relating to the American Student Union and the Teachers Union. 17 The field of "Communist influences in education" was one of the items contained in the Committee's [360 U.S. 122] 1947 program. 18 Other investigations including education took place in 1952 and 1953. 19 And, in 1953, after the Committee had instituted the investigation involved in this case, the desirability of investigating Communism in education was specifically discussed during consideration of its appropriation for that year, which, after controversial debate, was approved. 20

1959, Barenblatt v. United States, 360 U.S. 122

In this framework of the Committee's history, we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable, and that, independently of whatever bearing the broad scope of Rule XI may have on the issue of "pertinency" in a given investigation into Communist activities, as in Watkins, the Rule cannot be said to be constitutionally [360 U.S. 123] infirm on the score of vagueness. The constitutional permissibility of that authority otherwise is a matter to be discussed later.

1959, Barenblatt v. United States, 360 U.S. 123

PERTINENCY CLAIM

1959, Barenblatt v. United States, 360 U.S. 123

Undeniably, a conviction for contempt under 2 U.S.C. § 192 cannot stand unless the questions asked are pertinent to the subject matter of the investigation. Watkins v. United States, supra, at 214-215. But the factors which led us to rest decision on this ground in Watkins were very different from those involved here.

1959, Barenblatt v. United States, 360 U.S. 123

In Watkins, the petitioner had made specific objection to the Subcommittee's questions on the ground of pertinency; the question under inquiry had not been disclosed in any illuminating manner, and the questions asked the petitioner were not only amorphous on their face, but, in some instances, clearly foreign to the alleged subject matter of the investigation—"Communism in labor." Id. at 185, 209-215.

1959, Barenblatt v. United States, 360 U.S. 123

In contrast, petitioner in the case before us raised no objections on the ground of pertinency at the time any of the questions were put to him. It is true that the memorandum which petitioner brought with him to the Subcommittee hearing contained the statement,

1959, Barenblatt v. United States, 360 U.S. 123

to ask me whether I am or have been a member of the Communist Party may have dire consequences. I might wish to…challenge the pertinency of the question to the investigation,

1959, Barenblatt v. United States, 360 U.S. 123

and, at another point, quoted from this Court's opinion in Jones v. Securities & Exchange Comm'n, 298 U.S. 1, language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency. 21 These statements cannot, [360 U.S. 124] however, be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and, buried as they were in the context of petitioner's general challenge to the power of the Subcommittee, they can hardly be considered adequate, within the meaning of what was said in Watkins, supra, at 214-215, to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection.

1959, Barenblatt v. United States, 360 U.S. 124

We need not, however, rest decision on petitioner's failure to object on this score, for here "pertinency" was made to appear "with undisputable clarity." Id. at 214. First of all, it goes without saying that the scope of the Committee's authority was for the House, not a witness, to determine, subject to the ultimate reviewing responsibility of this Court. What we deal with here is whether petitioner was sufficiently apprised of "the topic under inquiry" thus authorized "and the connective reasoning whereby the precise questions asked relate [d] to it." Id. at 215. In light of his prepared memorandum of constitutional objections, there can be no doubt that this petitioner was well aware of the Subcommittee's authority and purpose to question him as it did. See p. 123, supra. In addition, the other sources of this information which we recognized in Watkins, supra, at 209-215, leave no room for a "pertinency" objection on this record. The subject matter of the inquiry had been identified at the commencement of the investigation as Communist infiltration into the field of education. 22 Just prior to petitioner's appearance before the Subcommittee, the scope of the day's hearings had been announced as,

1959, Barenblatt v. United States, 360 U.S. 124

in the main, communism in education and the experiences and background in the party by Francis X. T. Crowley. [360 U.S. 125] It will deal with activities in Michigan, Boston, and, in some small degree, New York.

1959, Barenblatt v. United States, 360 U.S. 125

Petitioner had heard the Subcommittee interrogate the witness Crowley along the same lines as he, petitioner, was evidently to be questioned, and had listened to Crowley's testimony identifying him as a former member of an alleged Communist student organization at the University of Michigan while they both were in attendance there. 23 Further, petitioner had stood mute in the face of the Chairman's statement as to why he had been called as a witness by the Subcommittee. 24 And, lastly, unlike Watkins, id. at 182-185, petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency, of course, was clear beyond doubt.

1959, Barenblatt v. United States, 360 U.S. 125

Petitioner's contentions on this aspect of the case cannot be sustained.

1959, Barenblatt v. United States, 360 U.S. 125

CONSTITUTIONAL CONTENTIONS

1959, Barenblatt v. United States, 360 U.S. 125

Our function at this point is purely one of constitutional adjudication in the particular case and upon the particular record before us, not to pass judgment upon the general wisdom or efficacy of the activities of this Committee in a vexing and complicated field. [360 U.S. 126]

1959, Barenblatt v. United States, 360 U.S. 126

The precise constitutional issue confronting us is whether the Subcommittee's inquiry into petitioner's past or present membership in the Communist Party 25 transgressed the provisions of the First Amendment, 26 which, of course, reach and limit congressional investigations. Watkins, supra, at 197.

1959, Barenblatt v. United States, 360 U.S. 126

The Court's past cases establish sure guides to decision. Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. These principles were recognized in the Watkins case, where, in speaking of the First Amendment in relation to congressional inquiries, we said (at p. 198):

1959, Barenblatt v. United States, 360 U.S. 126

It is manifest that, despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred…. The critical element is the existence of, [360 U.S. 127] and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness.

1959, Barenblatt v. United States, 360 U.S. 127

See also American Communications Assn. v. Douds, 339 U.S. 382, 399-400; United States v. Rumely, supra, at 43-44. More recently, in National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 463-466, we applied the same principles in judging state action claimed to infringe rights of association assured by the Due Process Clause of the Fourteenth Amendment, and stated that the "`subordinating interest of the State must be compelling'" in order to overcome the individual constitutional rights at stake. See Sweezy v. New Hampshire, 354 U.S. 234, 255, 265 (concurring opinion). In light of these principles, we now consider petitioner's First Amendment claims.

1959, Barenblatt v. United States, 360 U.S. 127

The first question is whether this investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose. See Watkins v. United States, supra, at 198.

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That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. 27 In the last analysis, this power rests on [360 U.S. 128] the right of self-preservation, "the ultimate value of any society," Dennis v. United States, 341 U.S. 494, 509. Justification for its exercise, in turn, rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress. 28 On these premises, this Court, in its constitutional adjudications, has consistently refused to view the Communist Party as an ordinary political party, and has upheld federal legislation aimed at the Communist problem which, in a different context, would certainly have raised constitutional issues of the gravest character. See, e.g., Carlson v. Landon, 342 U.S. 524; Galvan v. Press, 347 U.S. 522. On the same premises, this Court has upheld under the Fourteenth Amendment state legislation requiring those occupying or seeking public office to disclaim knowing membership in any organization advocating overthrow of the Government by force and violence, which legislation none can avoid seeing was aimed at membership in the Communist Party. See Gerende v. Board of Supervisors, 341 U.S. 56; Garner v. Board of Public Works, 341 U.S. 716. See also Beilan v. Board of Public Education, 357 U.S. 399; Lerner v. Casey, 357 U.S. 468; Adler v. Board of Education, 342 U.S. 485. Similarly, in other areas, this Court has recognized the close nexus between the Communist Party and violent overthrow of government. See Dennis v. United States, supra; American Communications Assn. v. Douds, supra. To suggest that, because the Communist Party may also sponsor peaceable political reforms, the constitutional issues before us should now be judged as if that Party were just an ordinary political [360 U.S. 129] party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II, affairs to which Judge Learned Hand gave vivid expression in his opinion in United States v. Dennis, 183 F.2d 201, 213, and to the vast burdens which these conditions have entailed for the entire Nation.

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We think that investigatory power in this domain is not to be denied Congress solely because the field of education is involved. Nothing in the prevailing opinions in Sweezy v. New Hampshire, supra, stands for a contrary view. The vice existing there was that the questioning of Sweezy, who had not been shown ever to have been connected with the Communist Party, as to the contents of a lecture he had given at the University of New Hampshire, and as to his connections with the Progressive Party, then on the ballot as a normal political party in some 26 States, was too far removed from the premises on which the constitutionality of the State's investigation had to depend to withstand attack under the Fourteenth Amendment. See the concurring opinion in Sweezy, supra, at 261, 265, 266, n. 3. This is a very different thing from inquiring into the extent to which the Communist Party has succeeded in infiltrating into our universities, or elsewhere, persons and groups committed to furthering the objective of overthrow. See Note 20, supra. Indeed, we do not understand petitioner here to suggest that Congress in no circumstances may inquire into Communist activity in the field of education. 29 [360 U.S. 130] Rather, his position is, in effect, that this particular investigation was aimed not at the revolutionary aspects, but at the theoretical classroom discussion of communism. In our opinion, this position rests on a too constricted view of the nature of the investigatory process, and is not supported by a fair assessment of the record before us. An investigation of advocacy of or preparation for overthrow certainly embraces the right to identify a witness as a member of the Communist Party, see Barsky v. United States, 83 U.S.App.D.C. 127, 167 F.2d 241, and to inquire into the various manifestations of the Party's tenets. The strict requirements of a prosecution under the Smith Act, 30 see Dennis v. United States, supra, and Yates v. United States, 354 U.S. 298, are not the measure of the permissible scope of a congressional investigation into "overthrow," for, of necessity, the investigatory process must proceed step by step. Nor can it fairly be concluded that this investigation was directed at controlling what is being taught at our universities, rather than at overthrow. The statement of the Subcommittee Chairman at the opening of the investigation evinces no such intention, 31 and, so far as this record reveals [360 U.S. 131] nothing thereafter transpired which would justify our holding that the thrust of the investigation later changed. The record discloses considerable testimony concerning the foreign domination and revolutionary [360 U.S. 132] purposes and efforts of the Communist Party. 32 That there was also testimony on the abstract philosophical level does not detract from the dominant theme of this investigation—Communist infiltration furthering the alleged ultimate purpose of overthrow. And certainly the conclusion would not be justified that the questioning of petitioner would have exceeded permissible bounds had he not shut off the Subcommittee at the threshold.

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Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress was purely "exposure." So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. Arizona v. California, 283 U.S. 423, 455, and cases there cited. "It is, of course, true," as was said in McCray v. United States, 195 U.S. 27, 55,

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that, if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be temporarily effectual. The [360 U.S. 133] remedy for this, however, lies, not in the abuse by the judicial authority of its functions, but in the people, upon whom, after all, under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power.

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These principles, of course, apply as well to committee investigations into the need for legislation as to the enactments which such investigations may produce. Cf. Tenney v. Brandhove, 341 U.S. 367, 377-378. Thus, in stating in the Watkins case, p. 200, that "there is no congressional power to expose for the sake of exposure," we at the same time declined to inquire into the "motives of committee members," and recognized that their

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motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.

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Having scrutinized this record, we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that "the primary purposes of the inquiry were in aid of legislative processes." 240 F.2d at 881. 33 Certainly this is not a case like Kilbourn v. Thompson, 103 U.S. 168, 192, where

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the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial.

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See McGrain v. Daugherty, 273 U.S. 135, 171. The constitutional legislative power of Congress in this instance is beyond question. [360 U.S. 134]

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Finally, the record is barren of other factors which, in themselves, might sometimes lead to the conclusion that the individual interests at stake were not subordinate to those of the state. There is no indication in this record that the Subcommittee was attempting to pillory witnesses. Nor did petitioner's appearance as a witness follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee. 34 And the relevancy of the questions put to him by the Subcommittee is not open to doubt.

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We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that, therefore, the provisions of the First Amendment have not been offended.

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We hold that petitioner's conviction for contempt of Congress discloses no infirmity, and that the judgment of the Court of Appeals must be

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Affirmed.

BLACK, J., dissenting

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MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS concur, dissenting.

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On May 28, 1954, petitioner Lloyd Barenblatt, then 31 years old and a teacher of psychology at Vassar College, was summoned to appear before a Subcommittee of the House Committee on Un-American Activities. After service of the summons, but before Barenblatt appeared on June 28, his four-year contract with Vassar expired and was not renewed. He therefore came to the Committee as a private citizen without a job. Earlier that day, the Committee's interest in Barenblatt had been aroused by the testimony of an ex-Communist named Crowley. When Crowley had first appeared before the Un-American Activities Committee, he had steadfastly [360 U.S. 135] refused to admit or deny Communist affiliations or to identify others as Communists. After the House reported this refusal to the United States Attorney for prosecution, Crowley "voluntarily" returned and asked to testify. He was sworn in and interrogated, but not before he was made aware by various Committee members of Committee policy to "make an appropriate recommendation" to protect any witness who "fully cooperates with the committee." He then talked at length, identifying by name, address and occupation, whenever possible, people he claimed had been Communists. One of these was Barenblatt, who, according to Crowley, had been a Communist during 1947-1950 while a graduate student and teaching fellow at the University of Michigan. Though Crowley testified in great detail about the small group of Communists who had been at Michigan at that time, and though the Committee was very satisfied with his testimony, it sought repetition of much of the information from Barenblatt. Barenblatt, however, refused to answer their questions and filed a long statement outlining his constitutional objections. He asserted that the Committee was violating the Constitution by abridging freedom of speech, thought, press, and association, and by conducting legislative trials of known or suspected Communists which trespassed on the exclusive power of the judiciary. He argued that, however he answered questions relating to membership in the Communist Party, his position in society and his ability to earn a living would be seriously jeopardized; that he would, in effect, be subjected to a bill of attainder despite the twice-expressed constitutional mandate against such legislative punishments. 1 This would occur, he pointed out, even [360 U.S. 136] if he did no more than invoke the protection of clearly applicable provisions of the Bill of Rights as a reason for refusing to answer.

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He repeated these and other objections in the District Court as a reason for dismissing an indictment for contempt of Congress. His position, however, was rejected at the trial and in the Court of Appeals for the District of Columbia Circuit over the strong dissents of Chief Judge Edgerton and Judges Bazelon, Fahy and Washington. The Court today affirms, and thereby sanctions the use of the contempt power to enforce questioning by congressional committees in the realm of speech and association. I cannot agree with this disposition of the case, for I believe that the resolution establishing the House Un-American Activities Committee and the questions that Committee asked Barenblatt violate the Constitution in several respects. (1) Rule XI, creating the Committee, authorizes such a sweeping, unlimited, all-inclusive and undiscriminating compulsory examination of witnesses in the field of speech, press, petition and assembly that it violates the procedural requirements of the Due Process Clause of the Fifth Amendment. (2) Compelling an answer to the questions asked Barenblatt abridges freedom of speech and association in contravention of the First Amendment. (3) The Committee proceedings were part of a legislative program to stigmatize and punish by public identification and exposure all witnesses considered by the Committee to be guilty of Communist affiliations, as well as all witnesses who refused to answer Committee questions on constitutional grounds; the Committee was thus improperly seeking to try, convict, and punish suspects, a task which the Constitution expressly denies to Congress and grants exclusively [360 U.S. 137] to the courts, to be exercised by them only after indictment and in full compliance with all the safeguards provided by the Bill of Rights.

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I.

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It goes without saying that a law, to be valid, must be clear enough to make its commands understandable. For obvious reasons, the standard of certainty required in criminal statutes is more exacting than in noncriminal statutes. 2 This is simply because it would be unthinkable to convict a man for violating a law he could not understand. This Court has recognized that the stricter standard is as much required in criminal contempt cases as in all other criminal cases, 3 and has emphasized that the "vice of vagueness" is especially pernicious where legislative power over an area involving speech, press, petition and assembly is involved. 4 In this area, the statement that a statute is void if it "attempts to cover so much that it effectively covers nothing," see Musser v. Utah, 333 U.S. 95, 97, takes on double significance. For a statute broad enough to support infringement of speech, writings, thoughts and public assemblies against the unequivocal command of the First Amendment necessarily leaves all persons to guess just what the law really means to cover, and fear of a wrong guess inevitably leads people to forego the very rights the Constitution sought to protect above all others. 5 Vagueness becomes [360 U.S. 138] even more intolerable in this area if one accepts, as the Court today does, a balancing test to decide if First Amendment rights shall be protected. It is difficult, at best, to make a man guess—at the penalty of imprisonment—whether a court will consider the State's need for certain information superior to society's interest in unfettered freedom. It is unconscionable to make him choose between the right to keep silent and the need to speak when the statute supposedly establishing the "state's interest" is too vague to give him guidance. Cf. Scull v. Virginia, 359 U.S. 344.

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Measured by the foregoing standards, Rule XI cannot support any conviction for refusal to testify. In substance, it authorizes the Committee to compel witnesses to give evidence about all "un-American propaganda," whether instigated in this country or abroad. 6 The word "propaganda" seems to mean anything that people say, write, think or associate together about. The term "un-American" is equally vague. As was said in Watkins v. United States, 354 U.S. 178, 202,

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Who can define [its] meaning…? What is that single, solitary "principle of the form of government as guaranteed by our Constitution'?" I think it clear that the boundaries of the Committee are, to say the least, "nebulous." Indeed, "It would be difficult to imagine a less explicit authorizing resolution." Ibid. [360 U.S. 139]

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The Court—while not denying the vagueness of Rule XI—nevertheless defends its application here because the questions asked concerned communism, a subject of investigation which had been reported to the House by the Committee on numerous occasions. If the issue were merely whether Congress intended to allow an investigation of communism, or even of communism in education, it may well be that we could hold the data cited by the Court sufficient to support a finding of intent. But that is expressly not the issue. On the Court's own test, the issue is whether Barenblatt can know with sufficient certainty, at the time of his interrogation, that there is so compelling a need for his replies that infringement of his rights of free association is justified. The record does not disclose where Barenblatt can find what that need is. There is certainly no clear congressional statement of it in Rule XI. Perhaps if Barenblatt had had time to read all the reports of the Committee to the House, and in addition had examined the appropriations made to the Committee, he, like the Court, could have discerned an intent by Congress to allow an investigation of communism in education. Even so, he would be hard put to decide what the need for this investigation is, since Congress expressed it neither when it enacted Rule XI nor when it acquiesced in the Committee's assertions of power. Yet it is knowledge of this need—what is wanted from him and why it is wanted—that a witness must have if he is to be in a position to comply with the Court's rule that he balance individual rights against the requirements of the State. I cannot see how that knowledge can exist under Rule XI.

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But even if Barenblatt could evaluate the importance to the Government of the information sought, Rule XI would still be too broad to support his conviction. For we are dealing here with governmental procedures which the Court itself admits reach to the very fringes of congressional [360 U.S. 140] power. In such cases, more is required of legislatures than a vague delegation to be filled in later by mute acquiescence. 7 If Congress wants ideas investigated, if it even wants them investigated in the field of education, it must be prepared to say so expressly and unequivocally. And it is not enough that a court, through exhaustive research, can establish, even conclusively, that Congress wished to allow the investigation. I can find no such unequivocal statement here.

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For all these reasons, I would hold that Rule XI is too broad to be meaningful, and cannot support petitioner's conviction. 8

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II

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The First Amendment says in no equivocal language that Congress shall pass no law abridging freedom of speech, press, assembly or petition. 9 The activities of [360 U.S. 141] this Committee, authorized by Congress, do precisely that through exposure, obloquy and public scorn. See Watkins v. United States, 354 U.S. 178,'197-198. The Court does not really deny this fact, but relies on a combination of three reasons for permitting the infringement: (A) the notion that, despite the First Amendment's command, Congress can abridge speech and association if this Court decides that the governmental interest in abridging speech is greater than an individual's interest in exercising that freedom, (B) the Government's right to "preserve itself,"(C) the fact that the Committee is only after Communists or suspected Communists in this investigation.

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(A) I do not agree that laws directly abridging First Amendment freedoms can be justified by a congressional or judicial balancing process. There are, of course, cases suggesting that a law which primarily regulates conduct but which might also indirectly affect speech can be upheld if the effect on speech is minor in relation to the need for control of the conduct. With these cases I agree. Typical of them are Cantwell v. Connecticut, 310 U.S. 296, and Schneider v. Irvington, 308 U.S. 147. Both of these involved the right of a city to control its streets. In Cantwell, a man had been convicted of breach of the peace for playing a phonograph on the street. He defended on the ground that he was disseminating religious views, and could not, therefore, be stopped. We upheld his defense, but, in so doing, we pointed out that the city did have substantial power over conduct on the streets even where this power might to some extent affect speech. A State, we said, might,

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by general and nondiscriminatory legislation, [360 U.S. 142] regulate the times, the places, and the manner of soliciting upon its streets and holding meetings thereon.

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310 U.S. at 304. But even such laws governing conduct, we emphasized, must be tested, though only by a balancing process, if they indirectly affect ideas. On one side of the balance, we pointed out, is the interest of the United States in seeing that its fundamental law protecting freedom of communication is not abridged; on the other, the obvious interest of the State to regulate conduct within its boundaries. In Cantwell, we held that the need to control the streets could not justify the restriction made on speech. We stressed the fact that, where a man had a right to be on a street, "he had a right peacefully to impart his views to others." 310 U.S. at 308. Similar views were expressed in Schneider, which concerned ordinances prohibiting the distribution of handbills to prevent littering. We forbade application of such ordinances when they affected literature designed to spread ideas. There were other ways, we said, to protect the city from littering which would not sacrifice the right of the people to be informed. In so holding, we, of course, found it necessary to "weigh the circumstances." 308 U.S. at 161. But we did not in Schneider, any more than in Cantwell, even remotely suggest that a law directly aimed at curtailing speech and political persuasion could be saved through a balancing process. Neither these cases nor any others can be read as allowing legislative bodies to pass laws abridging freedom of speech, press and association merely because of hostility to views peacefully expressed in a place where the speaker had a right to be. Rule XI, on its face and as here applied, since it attempts inquiry into beliefs, not action—ideas and associations, not conduct—does just that. 10 [360 U.S. 143]

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To apply the Court's balancing test under such circumstances is to read the First Amendment to say

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Congress shall pass no law abridging freedom of speech, press, assembly and petition, unless Congress and the Supreme Court reach the joint conclusion that, on balance, the interest of the Government in stifling these freedoms is greater than the interest of the people in having them exercised.

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This is closely akin to the notion that neither the First Amendment nor any other provision of the Bill of Rights should be enforced unless the Court believes it is reasonable to do so. Not only does this violate the genius of our written Constitution, but it runs expressly counter to the injunction to Court and Congress made by Madison when he introduced the Bill of Rights.

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If they [the first ten amendments] are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. 11

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Unless we return to this view of our judicial function, unless we once again accept the notion that the Bill of Rights means what it [360 U.S. 144] says and that this Court must enforce that meaning, I am of the opinion that our great charter of liberty will be more honored in the breach than in the observance.

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But even assuming what I cannot assume, that some balancing is proper in this case, I feel that the Court after stating the test ignores it completely. At most, it balances the right of the Government to preserve itself, against Barenblatt's right to refrain from revealing Communist affiliations. Such a balance, however, mistakes the factors to be weighed. In the first place, it completely leaves out the real interest in Barenblatt's silence, the interest of the people as a whole in being able to join organizations, advocate causes and make political "mistakes" without later being subjected to governmental penalties for having dared to think for themselves. It is this right, the right to err politically, which keeps us strong as a Nation. For no number of laws against communism can have as much effect as the personal conviction which comes from having heard its arguments and rejected them, or from having once accepted its tenets and later recognized their worthlessness. Instead, the obloquy which results from investigations such as this not only stifles "mistakes," but prevents all but the most courageous from hazarding any views which might at some later time become disfavored. This result, whose importance cannot be overestimated, is doubly crucial when it affects the universities, on which we must largely rely for the experimentation and development of new ideas essential to our country's welfare. It is these interests of society, rather than Barenblatt's own right to silence, which I think the Court should put on the balance against the demands of the Government, if any balancing process is to be tolerated. Instead they are not mentioned, while, on the other side, the demands of the Government are vastly overstated, and called "self-preservation." It is admitted that this Committee can only seek [360 U.S. 145] information for the purpose of suggesting laws, and that Congress' power to make laws in the realm of speech and association is quite limited, even on the Court's test. Its interest in making such laws in the field of education, primarily a state function, is clearly narrower still. Yet the Court styles this attenuated interest self-preservation, and allows it to overcome the need our country has to let us all think, speak, and associate politically as we like, and without fear of reprisal. Such a result reduces "balancing" to a mere play on words, and is completely inconsistent with the rules this Court has previously given for applying a "balancing test," where it is proper:

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[T]he courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs…may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

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Schneider v. Irvington, 308 U.S. 147, 161. (Italics supplied.)

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(B) Moreover, I cannot agree with the Court's notion that First Amendment freedoms must be abridged in order to "preserve" our country. That notion rests on the unarticulated premise that this Nation's security hangs upon its power to punish people because of what they think, speak or write about, or because of those with whom they associate for political purposes. The Government, in its brief, virtually admits this position when it speaks of the "communication of unlawful ideas." I challenge this premise, and deny that ideas can be proscribed under our Constitution. I agree that despotic governments cannot exist without stifling the voice of opposition to their oppressive practices. The First Amendment means to me, however, that the only constitutional way our Government can preserve itself is to leave its people the fullest possible freedom to praise, criticize or discuss, as they see fit, all governmental policies and to suggest, if they desire, [360 U.S. 146] that even its most fundamental postulates are bad, and should be changed; "Therein lies the security of the Republic, the very foundation of constitutional government." 12 On that premise this land was created, and on that premise it has grown to greatness. Our Constitution assumes that the common sense of the people and their attachment to our country will enable them, after free discussion, to withstand ideas that are wrong. To say that our patriotism must be protected against false ideas by means other than these is, I think, to make a baseless charge. Unless we can rely on these qualities—if, in short, we begin to punish speech—we cannot honestly proclaim ourselves to be a free Nation, and we have lost what the Founders of this land risked their lives and their sacred honor to defend.

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(C) The Court implies, however, that the ordinary rules and requirements of the Constitution do not apply because the Committee is merely after Communists, and they do not constitute a political party, but only a criminal gang. "[T]he long and widely accepted view," the Court says, is "that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence." 13 This justifies the [360 U.S. 147] investigation undertaken. By accepting this charge and allowing it to support treatment of the Communist Party and its members which would violate the Constitution if applied to other groups, the Court, in effect, declares that Party outlawed. It has been only a few years since there was a practically unanimous feeling throughout the country and in our courts that this could not be done in our free land. Of course, it has always been recognized that members of the Party who, either individually or in combination, commit acts in violation of valid laws can be prosecuted. But the Party as a whole and innocent members of it could not be attainted merely because it had some illegal aims and because some of its members were lawbreakers. Thus, in De Jonge v. Oregon, 299 U.S. 353, 357 (1937), on stipulated facts that the Communist Party advocated criminal syndicalism—

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crime, physical violence, sabotage or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution

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—a unanimous Court, speaking through Chief Justice Hughes, held that a Communist addressing a Communist rally could be found guilty of no offense so long as no violence or crime was urged at the meeting. The Court absolutely refused to concede that either De Jonge or the Communist Party forfeited the protections of the First and Fourteenth Amendments because one of the Party's purposes was to effect a violent change of government. See also Herndon v. Lowry, 301 U.S. 242.

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Later, in 1948, when various bills were proposed in the House and Senate to handicap or outlaw the Communist Party, leaders of the Bar who had been asked to give their views rose up to contest the constitutionality of the measures. The late Charles Evans Hughes, Jr., questioned the validity under both the First and Fifth Amendments of one of these bills, which in effect outlawed the Party. The late John W. Davis attacked it [360 U.S. 148] as lacking an ascertainable standard of guilt under many of this Court's cases. 14 And the Attorney General of the United States not only indicated that such a measure would be unconstitutional, but declared it to be unwise even if valid. He buttressed his position by citing a statement by J. Edgar Hoover, Director of the Federal Bureau of Investigation, and the declaration of this Court in West Virginia Board of Education v. Barnette, 319 U.S. 624, 642, that:

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If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. 15

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Even the proponent of the bill disclaimed any aim to outlaw the Communist Party and pointed out the "disadvantages" of such a move by stating that "the Communist Party was illegal and outlawed in Russia when it took over control of the Soviet Union." 16 Again, when the [360 U.S. 149] Attorney General testified on a proposal to bar the Communist Party from the ballot, he said,

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an organized group, whether you call it political or not, could hardly be barred from the ballot without jeopardizing the constitutional guarantees of all other political groups and parties. 17

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All these statements indicate quite clearly that, no matter how often or how quickly we repeat the claim that the Communist Party is not a political party, we cannot outlaw it, as a group, without endangering the liberty of all of us. The reason is not hard to find, for mixed among those aims of communism which are illegal are perfectly normal political and social goals. And muddled with its revolutionary tenets is a drive to achieve power through the ballot, if it can be done. These things necessarily make it a political party whatever other, illegal, aims it may have. Cf. Gerende v. Board of Supervisors, 341 U.S. 56. Significantly, until recently, the Communist Party was on the ballot in many States. When that was so, many Communists undoubtedly hoped to accomplish [360 U.S. 150] its lawful goals through support of Communist candidates. Even now, some such may still remain. 18 To attribute to them, and to those who have left the Party, the taint of the group is to ignore both our traditions that guilt, like belief, is "personal, and not a matter of mere association," and the obvious fact that

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men adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles.

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Schneiderman v. United States, 320 U.S. 118, 136. See also Dennis v. United States, 341 U.S. 494, 579, 581 (dissenting opinions).

1959, Barenblatt v. United States, 360 U.S. 150

The fact is that, once we allow any group which has some political aims or ideas to be driven from the ballot and from the battle for men's minds because some of its members are bad and some of its tenets are illegal, no group is safe. Today we deal with Communists or suspected Communists. In 1920, instead, the New York Assembly suspended duly elected legislators on the ground that, being Socialists, they were disloyal to the country's principles. 19 In the 1830's, the Masons were hunted as outlaws and subversives, and abolitionists were considered revolutionaries of the most dangerous kind in both North and South. 20 Earlier still, at the time of the universally [360 U.S. 151] unlamented alien and sedition laws, Thomas Jefferson's party was attacked and its members were derisively called "Jacobins." Fisher Ames described the party as a "French faction" guilty of "subversion" and "officered, regimented and formed to subordination." Its members, he claimed, intended to "take arms against the laws as soon as they dare." 21 History should teach us then, that, in times of high emotional excitement, minority parties and groups which advocate extremely unpopular social or governmental innovations will always be typed as criminal gangs, and attempts will always be made to drive them out. 22 It was knowledge of this fact, and of its great dangers, that caused the Founders of our land to enact the First Amendment as a guarantee that neither Congress nor the people would do anything to hinder or destroy the capacity of individuals and groups to seek converts and votes for any cause, however radical or unpalatable their principles might seem under the accepted notions of the time. Whatever the States were left free to do, the First Amendment sought to leave Congress devoid of any kind or quality of power to direct any type of national laws against the freedom of individuals to think what they please, advocate whatever policy they choose, and join with others to bring about the social, religious, political and governmental changes which seem best to them. 23 Today's holding, in my judgment, marks [360 U.S. 152] another major step in the progressively increasing retreat from the safeguards of the First Amendment.

1959, Barenblatt v. United States, 360 U.S. 152

It is, sadly, no answer to say that this Court will not allow the trend to overwhelm us; that today's holding will be strictly confined to "Communists," as the Court's language implies. This decision can no more be contained than could the holding in American Communications Assn. v. Douds, 339 U.S. 382. In that case, the Court sustained as an exercise of the commerce power an Act which required labor union officials to take an oath that they were not members of the Communist Party. The Court rejected the idea that the Douds holding meant that the Party and all its members could be attainted because of their Communist beliefs. It went to great lengths to explain that the Act held valid

1959, Barenblatt v. United States, 360 U.S. 152

touches only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint.

1959, Barenblatt v. United States, 360 U.S. 152

"[W]hile this Court sits," the Court proclaimed, no wholesale proscription of Communists or their Party can occur. 339 U.S. at 404, 410. I dissented and said:

1959, Barenblatt v. United States, 360 U.S. 152

Under such circumstances, restrictions imposed on proscribed groups are seldom static, even though the rate of expansion may not move in geometric progression from discrimination to arm-band to ghetto and worse. Thus, I cannot regard the Court's holding as one which merely bars Communists from holding union office, and nothing more. For its reasoning would apply just as forcibly to statutes barring Communists and their respective sympathizers from election to political office, mere membership [360 U.S. 153] in unions, and, in fact, from getting or holding any job whereby they could earn a living.

1959, Barenblatt v. United States, 360 U.S. 153

339 U.S. at 449. My prediction was all too accurate. Today, Communists or suspected Communists have been denied an opportunity to work as government employees, lawyers, doctors, teachers, pharmacists, veterinarians, subway conductors, industrial workers and in just about any other job. See Speiser v. Randall, 357 U.S. 513, 531 (concurring opinion). Cf. Barsky v. Board of Regents, 347 U.S. 442, 456, 467, 472 (dissenting opinions). In today's holding, they are singled out and, as a class, are subjected to inquisitions which the Court suggests would be unconstitutional but for the fact of "Communism." Nevertheless, this Court still sits! 24

1959, Barenblatt v. United States, 360 U.S. 153

III

1959, Barenblatt v. United States, 360 U.S. 153

Finally, I think Barenblatt's conviction violates the Constitution because the chief aim, purpose and practice of the House Un-American Activities Committee, as disclosed by its many reports, is to try witnesses and punish them because they are or have been Communists or because they refuse to admit or deny Communist affiliations. The punishment imposed is generally punishment by humiliation and public shame. There is nothing strange or novel about this kind of punishment. It is, in [360 U.S. 154] fact, one of the oldest forms of governmental punishment known to mankind; branding, the pillory, ostracism and subjection to public hatred being but a few examples of it. 25 Nor is there anything strange about a court's reviewing the power of a congressional committee to inflict punishment. In 1880, this Court nullified the action of the House of Representatives in sentencing a witness to jail for failing to answer questions of a congressional committee. Kilbourn v. Thompson, 103 U.S. 168. The Court held that the Committee, in its investigation of the Jay Cooke bankruptcy, was seeking to exercise judicial power, and this, it emphatically said, no committee could do. It seems to me that the proof that the Un-American Activities Committee is here undertaking a purely judicial function is overwhelming, far stronger, in fact, than it was in the Jay Cooke investigation which, moreover, concerned only business transactions, not freedom of association.

1959, Barenblatt v. United States, 360 U.S. 154

The Un-American Activities Committee was created in 1938. It immediately conceived of its function on a grand scale as one of ferreting out "subversives," and especially of having them removed from government jobs. 26 It made many reports to the House urging removal [360 U.S. 155] of such employees. 27 Finally, at the instigation of the Committee, the House put a rider on an appropriation bill to bar three government workers from collecting their salaries. 28 The House action was based on Committee findings that each of the three employees was a member of, or associated with, organizations deemed undesirable, and that the "views and philosophies" of these workers,

1959, Barenblatt v. United States, 360 U.S. 155

as expressed in various statements and writings, constitute subversive activity within the definition adopted by your committee, and that [they are] therefore unfit for the present to continue in Government employment. 29

1959, Barenblatt v. United States, 360 U.S. 155

The Senate and the President agreed [360 U.S. 156] to the rider, though not without protest. We held that statute void as a bill of attainder in United States v. Lovett, 328 U.S. 303 (1946), stating that its "effect was to inflict punishment without the safeguards of a judicial trial," and that this "cannot be done either by a State or by the United States." 328 U.S. at 316-317.

1959, Barenblatt v. United States, 360 U.S. 156

Even after our Lovett holding, however, the Committee continued to view itself as the "only agency of government that has the power of exposure," and to work unceasingly and sincerely to identify and expose all suspected Communists and "subversives" in order to eliminate them from virtually all fields of employment. 30 How well it has succeeded in its declared program of "pitiless publicity and exposure" is a matter of public record. It is enough to cite the experience of a man who masqueraded as a Communist for the F.B.I. and who reported to this same Committee that, since 1952, when his "membership" became known, he has been unable to hold any job. 31 To [360 U.S. 157] accomplish this kind of result, the Committee has called witnesses who are suspected of Communist affiliation, has subjected them to severe questioning, and has insisted that each tell the name of every person he has ever known at any time to have been a Communist, and, if possible, to give the addresses and occupations of the people named. These names are then indexed, published, and reported to Congress, and often to the press. 32 The same technique is employed to cripple the job opportunities of those who strongly criticize the Committee or take other actions it deems undesirable. 33 Thus, in 1949, the Committee [360 U.S. 158] reported that it had indexed and printed some 335,000 names of people who had signed "Communist" petitions of one kind or another. 34 All this the Committee did and does to punish by exposure the many phases of "un-American" activities that it reports cannot be reached by legislation, by administrative action, or by any other agency of Government, which, of course, includes the courts.

1959, Barenblatt v. United States, 360 U.S. 158

The same intent to expose and punish is manifest in the Committee's investigation which led to Barenblatt's conviction. The declared purpose of the investigation was to identify to the people of Michigan the individuals responsible for the, alleged, Communist success there. 35 The Committee claimed that its investigation "uncovered" members of the Communist Party holding positions in the school systems in Michigan; that most of the teachers subpoenaed before the Committee refused to answer questions on the ground that to do so might result in [360 U.S. 159] self-incrimination, and that most of these teachers had lost their jobs. It then stated that "the Committee on Un-American Activities approves of this action." 36

1959, Barenblatt v. United States, 360 U.S. 159

Similarly, as a result of its Michigan investigation, the Committee called upon American labor unions to amend their constitutions, if necessary, in order to deny membership to any Communist Party member. 37 This would, of course, prevent many workers from getting or holding the only kind of jobs their particular skills qualified them for. The Court, today, barely mentions these statements, which, especially when read in the context of past reports by the Committee, show unmistakably what the Committee was doing. I cannot understand why these reports are deemed relevant to a determination of a congressional intent to investigate communism in education, but irrelevant to any finding of congressional intent to bring about exposure for its own sake or for the purposes of punishment.

1959, Barenblatt v. United States, 360 U.S. 159

I do not question the Committee's patriotism and sincerity in doing all this. 38 I merely feel that it cannot be done by Congress under our Constitution. For, even assuming that the Federal Government can compel witnesses to testify as to Communist affiliations in order to subject them to ridicule and social and economic retaliation, I cannot agree that this is a legislative function. Such publicity is clearly punishment, and the Constitution [360 U.S. 160] allows only one way in which people can be convicted and punished. As we said in Lovett,

1959, Barenblatt v. United States, 360 U.S. 160

Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty or property of particular named persons because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts.

1959, Barenblatt v. United States, 360 U.S. 160

328 U.S. at 317. (Italics added.) Thus, if communism is to be made a crime, and Communists are to be subjected to "pains and penalties," I would still hold this conviction bad, for the crime of communism, like all others, can be punished only by court and jury, after a trial with all judicial safeguards.

1959, Barenblatt v. United States, 360 U.S. 160

It is no answer to all this to suggest that legislative committees should be allowed to punish if they grant the accused some rules of courtesy or allow him counsel. For the Constitution proscribes all bills of attainder by State or Nation, not merely those which lack counsel or courtesy. It does this because the Founders believed that punishment was too serious a matter to be entrusted to any group other than an independent judiciary and a jury of twelve men acting on previously passed, unambiguous laws, with all the procedural safeguards they put in the Constitution as essential to a fair trial—safeguards which included the right to counsel, compulsory process for witnesses, specific indictments, confrontation of accusers, as well as protection against self-incrimination, double jeopardy and cruel and unusual punishment—in short, due process of law. Cf. Chambers v. Florida, 309 U.S. 227. They believed this because, not long before, worthy men had been deprived of their liberties, and indeed their lives, through parliamentary trials without these safeguards. The memory of one of these, John Lilburne—banished and disgraced by a parliamentary [360 U.S. 161] committee on penalty of death if he returned to his country—was particularly vivid when our Constitution was written. His attack on trials by such committees and his warning that "what is done unto any one may be done unto every one" 39 were part of the history of the times [360 U.S. 162] which moved those who wrote our Constitution to determine that no such arbitrary punishments should ever occur here. It is the protection from arbitrary punishments through the right to a judicial trial with all these safeguards which, over the years, has distinguished America from lands where drumhead courts and other similar "tribunals" deprive the weak and the unorthodox of life, liberty and property without due process of law. It is this same right which is denied to Barenblatt, because the Court today fails to see what is here for all to see—that exposure and punishment is the aim of this Committee and the reason for its existence. To deny this is to ignore the Committee's own claims and the reports it has issued ever since it was established. I cannot believe that the nature of our judicial office requires us to be so blind, and must conclude that the Un-American Activities Committee's "identification" and "exposure" of Communists and suspected Communists, like the activities of the Committee in Kilbourn v. Thompson, amount to an encroachment on the judiciary which bodes ill for the liberties of the people of this land.

1959, Barenblatt v. United States, 360 U.S. 162

Ultimately, all the questions in this case really boil down to one—whether we as a people will try fearfully and futilely to preserve democracy by adopting totalitarian methods or whether, in accordance with our traditions and our Constitution, we will have the confidence and courage to be free.

1959, Barenblatt v. United States, 360 U.S. 162

I would reverse this conviction. [360 U.S. 163]

1959, Barenblatt v. United States, 360 U.S. 163

APPENDIX TO OPINION OF MR. JUSTICE BLACK, DISSENTING

1959, Barenblatt v. United States, 360 U.S. 163

RANDOM SELECTION OF STATEMENTS BY THE HOUSE

1959, Barenblatt v. United States, 360 U.S. 163

UN-AMERICAN ACTIVITIES COMMITTEE ON EXPOSURE

1959, Barenblatt v. United States, 360 U.S. 163

AND PUNISHMENT OF "SUBVERSIVES"

1959, Barenblatt v. United States, 360 U.S. 163

"[T]o inform the American people of the activities of any such organizations…is the real purpose of the House Committee."

1959, Barenblatt v. United States, 360 U.S. 163

The purpose of this committee is the task of protecting our constitutional democracy by turning the light of pitiless publicity on [these] organizations.

1959, Barenblatt v. United States, 360 U.S. 163

H.R.Rep. No. 1476, 76th Cong., 3d Sess. 1-2, 24.

1959, Barenblatt v. United States, 360 U.S. 163

"The very first exposure which our committee undertook in the summer of 1938 was that of the German-American Bund."

1959, Barenblatt v. United States, 360 U.S. 163

Other organizations…have been greatly crippled…as a result of our exposures. The American Youth Congress once enjoyed a very considerable prestige…. Today, many of its distinguished former sponsors refuse to be found in its company…. We kept the spotlight of publicity focused upon the American Youth Congress, and today it is clear to all that, in spite of a degree of participation in its activities by many fine young people, it was never, at its core, anything less than a tool of Moscow.

1959, Barenblatt v. United States, 360 U.S. 163

This committee is the only agency of Government that has the power of exposure…. There are many phases of un-American activities that cannot be reached by legislation or administrative action. We believe that the committee has shown that fearless exposure…is the…answer.

1959, Barenblatt v. United States, 360 U.S. 163

H.R.Rep. No. 1, 77th Cong., 1st Sess. 21-22, 24.

1959, Barenblatt v. United States, 360 U.S. 163

Our investigation has shown that a steady barrage against Congress comes…from the New Republic, one of whose editors…was recently forced out of an $8,000 [360 U.S. 164] Government job by the exposure of his Communist activities.

1959, Barenblatt v. United States, 360 U.S. 164

H.R.Rep. No. 2277, 77th Cong., 2d Sess. 3.

1959, Barenblatt v. United States, 360 U.S. 164

[T]he House Committee on Un-American Activities is empowered to explore and expose activities by un-American individuals and organizations which, while sometimes being legal, are nonetheless inimical to our American concepts.

1959, Barenblatt v. United States, 360 U.S. 164

The Committee recommends that Congress "discharge…any employee or official of the Federal Government whose loyalty to the United States is found to be in doubt." H.R.Rep. No. 2742, 79th Cong., 2d Sess. 16, 17.

1959, Barenblatt v. United States, 360 U.S. 164

"Index of Persons and Organizations." (Six pages of names follow.) H.R.Rep. No. 2233, 79th Cong., 2d Sess. III-VIII.

1959, Barenblatt v. United States, 360 U.S. 164

Early in 1947, the committee adopted the following eight point program….

1959, Barenblatt v. United States, 360 U.S. 164

1. To expose and ferret out the Communists and Communist sympathizers in the Federal Government.

1959, Barenblatt v. United States, 360 U.S. 164

2. To spotlight the spectacle of…Communists…in American labor.

1959, Barenblatt v. United States, 360 U.S. 164

"In a sense, the storm of opposition to the activities of the committee is a tribute to its achievements in the field of exposure…. " Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., Dec. 31, 1948, 2, 3 (Committee print).

1959, Barenblatt v. United States, 360 U.S. 164

The committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began…in August, 1938. The committee would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and exposure.

1959, Barenblatt v. United States, 360 U.S. 164

In the course of its investigations…, the committee has made available a large, completely indexed, and readily accessible reference collection of lists of signers of Communist Party election petitions.

1959, Barenblatt v. United States, 360 U.S. 164

H.R.Rep. No.1950, 81st Cong., 2d Sess. 15, 19. [360 U.S. 165]

1959, Barenblatt v. United States, 360 U.S. 165

To conduct the expose…, it was necessary for the investigative staff to interview over 100 persons….

1959, Barenblatt v. United States, 360 U.S. 165

The same tedious investigation of details was necessary prior to the successful exposure…in the Territory of Hawaii.

1959, Barenblatt v. United States, 360 U.S. 165

As a result of the investigation and hearings held by the committee, Dolivet's contract with the United Nations has not been renewed, and it is the committee's understanding that he was removed from editorship of the United Nations World.

1959, Barenblatt v. United States, 360 U.S. 165

H.R.Rep. No. 3249, 81st Cong., 2d Sess. 4, 5.

1959, Barenblatt v. United States, 360 U.S. 165

During 1951, the committee's hearings disclosed the positive identification of more individuals…than during any preceding year.

1959, Barenblatt v. United States, 360 U.S. 165

If communism in Hollywood is now mythical, it is only because this committee conducted three investigations to bring it about. The industry itself certainly did not accomplish this.

1959, Barenblatt v. United States, 360 U.S. 165

The committee's investigation…was concerned almost entirely with the problem of exposure of the actual members of the Communist Party, and did not deal, except in a few instances, with…fellow travelers.

1959, Barenblatt v. United States, 360 U.S. 165

"On the question of fellow travelers, suffice it to say…, `The time has come now when even the fellow traveler must get out.'" "Dr. Struik was identified as a Communist teacher…. Nevertheless, he was permitted to teach…until this year."

1959, Barenblatt v. United States, 360 U.S. 165

With individuals like…Struik…teaching in our leading universities, your committee wonders who the Professor Struiks were…who led Alger Hiss along the road of communism.

1959, Barenblatt v. United States, 360 U.S. 165

H.R.Rep. No. 2431, 82d Cong., 2d Sess. 6, 8-9, 16-17.

1959, Barenblatt v. United States, 360 U.S. 165

In this annual report, the committee feels that the Congress and the American people will have a much clearer and fuller picture…by having set forth the names and, where possible, the positions occupied by individuals who have been identified as Communists, or former Communists, during the past year.

1959, Barenblatt v. United States, 360 U.S. 165

"The committee considers the failure of certain trade unionists to [360 U.S. 166] rid themselves of Communists to be a national disgrace." "The following persons were identified." (Approximately fifty pages of names follow.) H.R.Rep. No. 2516, 82d Cong., 2d Sess. 6-7, 12-27, 28-34, 36-40, 41-56, 58-67 (similar lists can be found in various other reports).

1959, Barenblatt v. United States, 360 U.S. 166

"The focal point of the investigation into the general area of education was to the individual who had been identified."

1959, Barenblatt v. United States, 360 U.S. 166

The question has been asked as to what purpose is served by the disclosure of the names of individuals who may long ago have left the conspiracy.

1959, Barenblatt v. United States, 360 U.S. 166

The committee has no way of knowing the status of his membership at present until he is placed under oath and the information is sought to be elicited.

1959, Barenblatt v. United States, 360 U.S. 166

H.R.Rep. No. 1192, 83d Cong., 2d Sess. 1, 7

BRENNAN, J., dissenting

1959, Barenblatt v. United States, 360 U.S. 166

MR. JUSTICE BRENNAN, dissenting.

1959, Barenblatt v. United States, 360 U.S. 166

I would reverse this conviction. It is sufficient that I state my complete agreement with my Brother BLACK that no purpose for the investigation of Barenblatt is revealed by the record except exposure purely for the sake of exposure. This is not a purpose to which Barenblatt's rights under the First Amendment can validly be subordinated. An investigation in which the processes of lawmaking and law-evaluating are submerged entirely in exposure of individual behavior—in adjudication, of a sort, through the exposure process—is outside the constitutional pale of congressional inquiry. Watkins v. United States, 354 U.S. 178, 187, 200; see also Sweezy v. New Hampshire, 354 U.S. 234; NAACP v. Alabama, 357 U.S. 449; Uphaus v. Wyman, ante, p. 82 (dissenting opinion).

Footnotes

HARLAN, J., lead opinion (Footnotes)

1959, Barenblatt v. United States, 360 U.S. 166

1.

1959, Barenblatt v. United States, 360 U.S. 166

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

1959, Barenblatt v. United States, 360 U.S. 166

2. In the words of the panel of the Court of Appeals which first heard the case, this memorandum

1959, Barenblatt v. United States, 360 U.S. 166

can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers.

1959, Barenblatt v. United States, 360 U.S. 166

100 U.S.App.D.C. at 17, n. 4, 240 F.2d at 879, n. 4.

1959, Barenblatt v. United States, 360 U.S. 166

3. We take this to mean the privilege against self-incrimination.

1959, Barenblatt v. United States, 360 U.S. 166

4. See Note 1, supra.

1959, Barenblatt v. United States, 360 U.S. 166

5. H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24. The Committee's charter appears as paragraph 17(b) of Rule XI. References to the Rule throughout this opinion are intended to signify that paragraph.

1959, Barenblatt v. United States, 360 U.S. 166

6.

1959, Barenblatt v. United States, 360 U.S. 166

The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

1959, Barenblatt v. United States, 360 U.S. 166

H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24. The Rule remains current in the same form. H.Res. 7, 86th Cong., 1st Sess., Cong.Rec. Jan. 7, 1959, p. 13.

1959, Barenblatt v. United States, 360 U.S. 166

7. Had Watkins reached to the extent now claimed by petitioner, a reversal of the judgment of the Court of Appeals, not a remand for further consideration, would have been required when this case first came to us.

1959, Barenblatt v. United States, 360 U.S. 166

8. H.Res. 282, 75th Cong., 3d Sess., 83 Cong.Rec. 7568, 7586.

1959, Barenblatt v. United States, 360 U.S. 166

9. See debate on the original authorizing resolution, 75th Cong., 3d Sess., 83 Cong.Rec. 7567, 7572-7573, 7577, 7583-7586.

1959, Barenblatt v. United States, 360 U.S. 166

10. H.R.Rep. No. 2, 76th Cong., 1st Sess.; H.R.Rep. No. 1476, 76th Cong., 3d Sess.; H.R.Rep. No. 1, 77th Cong., 1st Sess.; H.R.Rep. No. 2277, 77th Cong., 2d Sess.; H.R.Rep. No. 2748, 77th Cong., 2d Sess.; H.R.Rep. No. 2233, 79th Cong., 2d Sess.; H.R.Rep. No. 2742, 79th Cong., 2d Sess.; Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., December 31, 1948 (Committee Print); H.R.Rep. No.1950, 81st Cong., 2d Sess.; H.R. Rep No. 3249, 81st Cong., 2d Sess.; H.R.Rep. No. 2431, 82d Cong., 2d Sess.; H.R.Rep. No. 2516, 82d Cong., 2d Sess.; H.R.Rep. No. 1192, 83d Cong., 2d Sess.; H.R.Rep. No. 57, 84th Cong., 1st Sess.; H.R.Rep. No. 1648, 84th Cong., 2d Sess.; H.R.Rep. No. 53, 85th Cong., 1st Sess.; H.R.Rep. No. 1360, 85th Cong., 2d Sess.

1959, Barenblatt v. United States, 360 U.S. 166

11. The scope of the program was as follows:

1959, Barenblatt v. United States, 360 U.S. 166

1. To expose and ferret out the Communists and Communist sympathizers in the Federal Government.

1959, Barenblatt v. United States, 360 U.S. 166

2. To spotlight the spectacle of having outright Communists controlling and dominating some of the most vital unions in American labor.

1959, Barenblatt v. United States, 360 U.S. 166

3. To institute a counter-educational program against the subversive propaganda which has been hurled at the American people.

1959, Barenblatt v. United States, 360 U.S. 166

4. Investigation of those groups and movements which are trying to dissipate our atomic bomb knowledge for the benefit of a foreign power.

1959, Barenblatt v. United States, 360 U.S. 166

5. Investigation of Communist influences in Hollywood.

1959, Barenblatt v. United States, 360 U.S. 166

6. Investigation of Communist influences in education.

1959, Barenblatt v. United States, 360 U.S. 166

7. Organization of the research staff so as to furnish reference service to Members of Congress and to keep them currently informed on all subjects relating to subversive and un-American activities in the United States.

1959, Barenblatt v. United States, 360 U.S. 166

8. Continued accumulation of files and records to be placed at the disposal of the investigative units of the Government and armed services.

1959, Barenblatt v. United States, 360 U.S. 166

Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., Dec. 31, 1948, 2-3 (Committee Print).

1959, Barenblatt v. United States, 360 U.S. 166

12. Report of the Committee on Un-American Activities to the United States House of Representatives, 80th Cong., 2d Sess., December 31, 1948, 15-21 (Committee Print); H.R.Rep. No.1950, 81st Cong., 2d Sess. 1-10; H.R.Rep. No. 3249, 81st Cong., 2d Sess. 5-6, 27-29; H.R.Rep. No. 2431, 82d Cong., 2d Sess. 6-9; H.R.Rep. No. 2516, 82d Cong., 2d Sess. 7-67, 69-73.

1959, Barenblatt v. United States, 360 U.S. 166

13. H.Res. 26, 76th Cong., 1st Sess., 84 Cong.Rec. 1098, 1128; H.Res. 321, 76th Cong., 3d Sess., 86 Cong.Rec. 532, 605; H.Res. 90, 77th Cong., 1st Sess., 87 Cong.Rec. 886, 899; H.Res. 420, 77th Cong., 2d Sess., 88 Cong.Rec. 2282, 2297; H.Res. 65, 78th Cong., 1st Sess., 89 Cong.Rec. 795, 810. See Note 15, infra.

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14. See, e.g., H.Res. 510, 75th Cong., 3d Sess., 83 Cong.Rec. 8637, 8638 (1938); H.Res. 91, 77th Cong., 1st Sess., 87 Cong.Rec. 899 (1941); H.Res. 415, 78th Cong., 2d Sess., 90 Cong.Rec. 763 (1944); H.Res. 77, 80th Cong., 1st Sess., 93 Cong.Rec. 699, 700 (1947); H.Res. 152, 80th Cong., 1st Sess., 93 Cong.Rec. 3074 (1947); H.Res. 482, 81st Cong., 2d Sess., 96 Cong.Rec. 3941, 3944 (1950); H.Res. 119, 83d Cong., 1st Sess., 99 Cong.Rec. 1358-1359, 1361-1362 (1953); H.Res. 352, 84th Cong., 2d Sess., 102 Cong.Rec. 1585, 1718-1719 (1956); H.Res. 137, 86th Cong., 1st Sess., Cong.Rec. Jan. 29, 1959, p. 1286.

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15. H.Res. 5, 79th Cong., 1st Sess., 91 Cong.Rec. 10, 15. In 1946, the Committee's charter was embodied in the Legislative Reorganization Act of 1946, 60 Stat. 812, 828. Since then, the House has continued the life of the Committee by making the charter provisions of the Act part of the House Rules for each new Congress. H.Res. 5, 80th Cong., 1st Sess., 93 Cong.Rec. 38; H.Res. 5, 81st Cong., 1st Sess., 95 Cong.Rec. 10, 11; H.Res. 7, 82d Cong., 1st Sess., 97 Cong.Rec. 9, 17, 19; H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24; H.Res. 5, 84th Cong., 1st Sess., 101 Cong.Rec. 11; H.Res. 5, 85th Cong., 1st Sess., 103 Cong.Rec. 47; H.Res. 7, 86th Cong., 1st Sess., Cong.Rec. Jan. 7, 1959, p. 13.

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16. Hearings before House Special Committee on Un-American Activities on H.Res. 282, 75th Cong., 3d Sess. 943-973.

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17. Hearings before House Special Committee on Un-American Activities on H.Res. 282, 76th Cong., 1st Sess. 6827-6911.

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18. See Note 11, supra.

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19. Defense area hearings at Detroit in 1952 involved inquiries into Communist activities among the students and teachers in Michigan schools and universities. H.R.Rep. No. 2516, 82d Cong., 2d Sess. 10. Similar investigations were conducted by the Committee the same year in the Chicago defense area. Id. at 28. In 1953, the Committee investigated alleged Communist infiltration into the public school systems in Philadelphia and New York, H.R.Rep. No. 1192, 83d Cong., 2d Sess. 2, 4.

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20. In the course of that debate, a member of the Un-American Activities Committee, Representative Jackson, commented:

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So far as education is concerned, if the American educators, and, if the gentlemen who are objecting to the investigation of communism and Communists in education will recognize a valid distinction, I want to point out this is not a blunderbuss approach to the problem of communism in education. We are not interested in textbooks. We are not interested in the classroom operations of the universities. We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy. I may say in that connection that we have sworn testimony identifying individuals presently on the campuses of this country, men who have been identified under oath as one-time members of the Communist Party. Is there any Member of this body who would say we should not investigate this situation?

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83d Cong., 1st Sess., 99 Cong.Rec. 1360.

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21.

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The citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made, and, if the purpose disclosed is not a legitimate one, he may not be compelled to answer.

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298 U.S. at 26.

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22. Excerpts from the Chairman's statement at the opening of the investigation on February 25, 1953, as to the nature of this inquiry are set forth in Note 31, infra.

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23. Crowley immediately preceded petitioner on the witness stand. It appears to be undisputed that petitioner was in the hearing room at the time this statement was made and during Crowley's testimony. In his own examination, petitioner acknowledged knowing Crowley.

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24. The Chairman stated at the hearing, just before petitioner was excused,

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that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

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That information which the witness has would be very valuable to this committee and its work.

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25. Because the sustaining of petitioner's conviction on any one of the five Counts of the indictment suffices for affirmance of the judgment under review, we state the constitutional issue only in terms of petitioner's refusals to answer the questions involved in Counts One and Two in order to sharpen discussion. However, we consider his refusal to answer the question embraced in Count Four would require the same constitutional result. As to Counts Three and Five, see p. 115, supra.

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26.

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances .

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27. See Legislative Recommendations by House Committee on Un-American Activities, Subsequent Action Taken by Congress or Executive Agencies (A Research Study by Legislative Reference Service of the Library of Congress), Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., June 1958.

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28. See Subversive Activities Control Act of 1950, Title I of the Internal Security Act of 1950, § 2, 64 Stat. 987-989. See also Carlson v. Landon, 342 U.S. 524, 535, n. 21.

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29. The amicus brief of the American Association of University Professors states at page 24:

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The claims of academic freedom cannot be asserted unqualifiedly. The social interest it embodies is but one of a larger set within which the interest in national self-preservation and in enlightened and well informed law-making also prominently appear. When two major interests collide, as they do in the present case, neither the one nor the other can claim a priori supremacy. But it is in the nature of our system of laws that there must be demonstrable justification for an action by the Government which endangers or denies a freedom guaranteed by the Constitution.

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30. 54 Stat. 670, 18 U.S.C. § 2385.

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31. The following are excerpts from that statement:

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…In opening this hearing, it is well to make clear to you and others just what the nature of this investigation is.

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From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such, and it is not now the purpose of this committee to investigate education or educational institutions, as such….

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\* \* \* \*

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The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

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The committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

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It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary…. Communism and Communist activities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals, and, therefore, this morning, the committee is calling you [one Davis] as a person known by this committee to have been at one time a member of the Communist Party.

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\* \* \* \*

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The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

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The full statement is printed as the Appendix to the original Court of Appeals opinion, 100 U.S.App.D.C. 22-24, 240 F.2d 884-886.

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32. Thus, early in the investigation, one of the witnesses, Hicks, testified in response to a question as to "the general purpose of the Communist Party in endeavoring to organize a cell or unit among the teaching profession" at the various universities that, contrary to his original view:

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…it is very obvious to me that the popular front [Communist protection of democracy against Fascism] was simply a dodge that happened in those particular years to serve the foreign policy of the Soviet Union; so it seems to me that the party, in organizing branches in the colleges, had two purposes. One was to carry out the existing line which they wanted to make a show of advancing, and then, of course, the other was to try to have a corps of disciplined revolutionaries whom they could use for other purposes when the time came.

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33. We agree with the Court of Appeals that the one sentence appearing in the Committee's report for 1954, upon which petitioner largely predicates his exposure argument, bears little significance when read in the context of the full report and in light of the entire record. This sentence reads:

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The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success.

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34. See p. 124 and Note 24, supra.

BLACK, J., dissenting (Footnotes)

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1. Bills of attainder are among the few measures explicitly forbidden to both State and Federal Governments by the body of the Constitution itself. U.S.Const., Art. I, § 9, cl. 3, states "No Bill of Attainder or ex post facto Law shall be passed." U.S.Const., Art. I, § 10, cl. 1, reads in part "No State shall…pass any Bill of Attainder [or] ex post facto Law…. "

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2. E.g., Lanzetta v. New Jersey, 306 U.S. 451; Winters v. New York, 333 U.S. 507, 515; Jordan v. De George, 341 U.S. 223, 230-231.

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3. E.g., Watkins v. United States, 354 U.S. 178, 207-208; Flaxer v. United States, 358 U.S. 147; Scull v. Virginia, 359 U.S. 344.

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4. See, e.g., Herndon v. Lowry, 301 U.S. 242; Winters v. New York, 333 U.S. 507; Watkins v. United States, 354 U.S. 178; Scull v. Virginia, 359 U.S. 344.

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5. Thornhill v. Alabama, 310 U.S. 88, 97-98. Cf. Herndon v. Lowry, 301 U.S. 242.

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6. Rule XI in relevant part reads,

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The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

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H.Res. 5, 83d Cong., 1st Sess., 99 Cong.Rec. 15, 18, 24. See also H.Res. 7, 86th Cong., 1st Sess., Cong.Rec. Jan. 7, 1959, p. 13.

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7. See, e.g., Panama Refining Co. v. Ryan, 293 U.S. 388; Schechter Poultry Corp. v. United States, 295 U.S. 495; id. at 551 (concurring opinion); Berra v. United States, 351 U.S. 131, 135 (dissenting opinion); Watkins v. United States, 354 U.S. 178, 203-205; Sweezy v. New Hampshire, 354 U.S. 234. Cf. United States v. Rumely, 345 U.S. 41; Kent v. Dulles, 357 U.S. 116. These cases show that, when this Court considered that the legislative measures involved were of doubtful constitutionality substantively, it required explicit delegations of power.

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8. It is, of course, no answer to Barenblatt's claim that Rule XI is too vague to say that, if it had been too vague, it would have been so held in Watkins v. United States, 354 U.S. 178. It would be a strange rule indeed which would imply the invalidity of a broad ground of decision from the fact that this Court decided an earlier case on a narrower basis.

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9. The First Amendment reads:

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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There can be no doubt that the same Amendment protects the right to keep silent. See West Virginia Board of Education v. Barnette, 319 U.S. 624; NAACP v. Alabama, 357 U.S. 449, 460-466; Sweezy v. New Hampshire, 354 U.S. 234, 255 (concurring opinion); Watkins v. United States, 354 U.S. 178; Scull v. Virginia, 359 U.S. 344. Cf. United States v. Rumely, 345 U.S. 41.

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10. I do not understand the Court's opinion in Watkins v. United States, 354 U.S. 178, 198, to approve the type of balancing process adopted in the Court's opinion here. We did discuss in that case "the weight to be ascribed to…the interest of the Congress in demanding disclosures from an unwilling witness." As I read, and still read, the Court's discussion of this problem in Watkins, it was referring to the problems raised by Kilbourn v. Thompson, 103 U.S. 168, which held that legislative committees could not make roving inquiries into the private business affairs of witnesses. The Court in Kilbourn held that the courts must be careful to insure that, on balance, Congress did not unjustifiably encroach on an individual's private business affairs. Needless to say, an individual's right to silence in such matters is quite a different thing from the public's interest in freedom of speech, and the test applicable to one has little, if anything, to do with the test applicable to the other.

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11. 1 Annals of Cong. 439 (1789). (Italics supplied.)

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12.

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The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

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De Jonge v. Oregon, 299 U.S. 353, 365.

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13. Cf. statement of Sir Richard Nagle presenting a bill of attainder against between two and three thousand persons for political offenses,

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"Many of the persons here attainted," said he, "have been proved traitors by such evidence as satisfies us. As to the rest, we have followed common fame."

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Cited in Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 142, 148 (concurring opinion).

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14. See Hearings, Senate Committee on the Judiciary on H.R. 5852, 80th Cong., 2d Sess. 415-420, 420-422.

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15. Id. at 422-425. See also Hearings, Subcommittee on Legislation of the House Committee on Un-American Activities on H.R. 4422, H.R. 4581, 80th Cong., 2d Sess. 16-37.

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16. Hearings, Subcommittee on Legislation of the Committee on Un-American Activities on H.R. 4422, H.R. 4581, 80th Cong., 2d Sess. 13. This statement was relied on by the Honorable Thomas E. Dewey, then a candidate for the presidency of the United States, in a speech given in Portland, Oregon, in May, 1948. Mr. Dewey went on to say, in opposing outlawry of the Communist Party:

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I am against it because it is a violation of the Constitution of the United States and of the Bill of Rights, and clearly so. I am against it because it is immoral, and nothing but totalitarianism itself. I am against it because I know from a great many years' experience in the enforcement of the law that the proposal wouldn't work, and instead it would rapidly advance the cause of communism in the United States and all over the world.

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There is an American way to do this job, a perfectly simple American way…, outlawing every conceivable act of subversion against the United States….

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Now, times are too grave to try any expedients and fail. This expedient has failed, this expedient of outlawing has failed in Russia. It failed in Europe, it failed in Italy, it failed in Canada….

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1959, Barenblatt v. United States, 360 U.S. 166

Let us not make such a terrific blunder in the United States…. Let us go forward as Free Americans. Let us have the courage to be free.

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XIV Vital Speeches of the Day, 486-487. (Italics supplied.)

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17. Hearings, Subcommittee on Legislation of the Committee on Un-American Activities on H.R. 4422, H.R. 4581, 80th Cong., 2d Sess. 20. Compare statement of John Lilburne, "what is done unto any one may be done unto every one." Note 39 infra.

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18. S.Doc. No. 97, 85th Cong., 2d Sess. 149, lists the States with laws relating to the Communist Party and the ballot. See also Fund For The Republic, Digest of the Public Record of Communism in the United States, 324-343. For a discussion of state laws requiring a minimum percentage of the votes cast to remain on the ballot, see Note, 57 Yale L.J. 1276.

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19. See O'Brian, Loyalty Tests and Guilt by Association, 61 Harv.L.Rev. 592, 593. Significantly, the action of the New York Assembly was strongly condemned by Charles Evans Hughes, then a former Associate Justice of this Court, and later its Chief Justice.

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20. See generally McCarthy, The Anti-masonic Party: A Study of Political Anti-masonry in the United States, 1827-1840. H.R.Doc. No. 461, 57th Cong., 2d Sess. 365. Nye, William Lloyd Garrison, 88-105; Korngold, Two Friends of Man, 82-104. Cf. St. George Tucker, Appendix, 1 Blackstone (Tucker ed. 1803) 315, discussing English laws "for suppressing assemblies of free-masons" and pointing out that similar laws cannot be enacted under our Constitution.

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21. Ames, Laocoon, printed in Works of Fisher Ames (1809 ed.), 94, 97, 101, 106. See also American Communications Assn. v. Douds, 339 U.S. 382, 445 (dissenting opinion).

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22. Cf. Mill, On Liberty (1885 ed.), 30 (criticizing laws restricting the right to advocate tyrannicide).

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23. Cf. St. George Tucker, Appendix, 1 Blackstone Commentaries (Tucker ed. 1803) 299.

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[T]he judicial courts of the respective states are open to all persons alike, for the redress of injuries of this nature [libel];…But the genius of our government will not permit the federal legislature to interfere with the subject, and the federal courts are, I presume, equally restrained by the principles of the constitution, and the amendments which have since been adopted.

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24. The record in this very case indicates how easily such restrictions spread. During the testimony of one witness, an organization known as the Americans for Democratic Action was mentioned. Despite testimony that this organization did not admit Communists, one member of the Committee insisted that it was a Communist front because "it followed a party line, almost identical in many particulars with the Communist Party line." Presumably, if this accusation were repeated frequently and loudly enough, that organization, or any other, would also be called a "criminal gang." Cf. Feiner v. New York, 340 U.S. 315, 321, 329 (dissenting opinions).

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25. See generally XII Encyclopedia of the Social Sciences 714; Barnes, The Story of Punishment, 62-64; Lowie, Primitive Society, 398; Andrews, Old-Time Punishments (1890 ed.), 1-145, 164-187; IV Plutarch's Lives (Clough, New Nat. ed.1914) 43-44.

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26. In its very first report, it stated,

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The committee has felt that it is its sworn duty and solemn obligation to the people of this country to focus the spotlight of publicity upon every individual and organization engaged in subversive activities, regardless of politics or partisanship.

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It further claimed that,

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While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate, communism, fascism, and nazism, it does have the right to focus the spotlight of publicity upon their activities….

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H.R.Rep. No. 2, 76th Cong., 1st Sess. 9-10, 13. See also the statement of the Committee's first Chairman,

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I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession.

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83 Cong.Rec. 7570 (1938).

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27. See, e.g., H.R.Rep. No. 2748, 77th Cong., 2d Sess. 5.

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On September 6, 1941, the chairman of this committee wrote the President a letter, accompanied by 43 exhibits, detailing the Communist affiliation and background of the following officials…and suggested that they be dismissed from their positions.

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On November 28, 1941…the chairman called the attention of the members to the case of [the] principal economist in the Department of Agriculture;

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On January 15, 1942, the chairman of the committee…called attention to…one Malcolm Cowley…. Several weeks later, Mr. Cowley resigned his position with the Federal Government;

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On March 28, 1942, the chairman wrote a letter to the…Chairman of the Board of Economic Welfare, and called attention to…eight of its employees and made particular reference to one Maurice Parmelee…. The following week, Mr. Parmelee was dismissed….

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Id. at 6.

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In the Chairman's speech of September 24, [1942,] he also presented to the House the names of 19 officials of the Government…. Yet, to the committee's knowledge, no action has been taken in the cases of the 19 officials.

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Id. at 8.

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28. Section 304 of the Urgent Deficiency Appropriation Act, 1943, 57 Stat. 431, 450. The history of this rider is detailed in United States v. Lovett, 328 U.S. 303.

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29. See, e.g., H.R.Rep. No. 448, 78th Cong., 1st Sess. 6, 8. The Un-American Activities Committee did not actually undertake the trials of these government employees. That task fell to a special Subcommittee of the Committee on Appropriations which was created in response to a speech by the Chairman of the Un-American Activities Committee. Id. at 3.

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30. Virtually every report of the Committee emphasizes that its principal function is exposure, and that, once exposed, subversives must be driven out. Space, however, prevents listing more than a random sampling of statements by the Committee. These are given in an Appendix to this opinion, post, p. 163. For other similar statements by the Committee and its members see, e.g., notes 26, 27, supra; 31-37, infra; Watkins v. United States, 354 U.S. 178; United States v. Josephson, 165 F.2d 82, 93 (dissenting opinion); Barsky v. United States, 83 U.S.App.D.C. 127, 138, 167 F.2d 241, 252 (dissenting opinion).

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31. This evidence was given before the Committee on May 7, 1959, in Chicago, Ill. It has not yet been published.

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Even those the Committee does not wish to injure are often hurt by its tactics, so all-pervasive is the effect of its investigations.

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It has been brought to the attention of the committee that many persons so subpoenaed…have been subjected to ridicule and discrimination as a result of having received such subpoenas;

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The committee…has met with many obstacles and difficulties. Not the least of these has been the reluctance of former Communists to give testimony before the committee which might bring upon them public censure and economic retaliation;

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To deny to these cooperative witnesses a full opportunity for social, economic, and political rehabilitation…will…render more difficult the obtaining of authentic…information.

1959, Barenblatt v. United States, 360 U.S. 166

H.R.Rep. No. 2431, 82d Cong., 2d Sess. 5. (Italics added.)

1959, Barenblatt v. United States, 360 U.S. 166

While the American people…were fortunate to have this testimony, some of the witnesses themselves were not. Instances have come to the committee's attention where several of these witnesses have been forced from gainful employment after testifying. Some have been released from the employment which they competently held for years prior to their testimony.

1959, Barenblatt v. United States, 360 U.S. 166

H.R.Rep. No. 2516, 82d Cong., 2d Sess. 3.

1959, Barenblatt v. United States, 360 U.S. 166

32. Descriptions of the size and availability of Committee's files as well as the efficiency of its cross-indexing system can be found in most of its reports. See, e.g., H.R.Rep. No. 2742, 79th Cong., 2d Sess. 16-17; H.R.Rep. No.1950, 81st Cong., 2d Sess. 18-23; H.R.Rep. No. 2431, 82d Cong., 2d Sess. 24-28.

1959, Barenblatt v. United States, 360 U.S. 166

33. It is impossible even to begin to catalogue people who have been stigmatized by the Committee for criticizing it. In 1942, the Committee reported "Henry Luce's Time magazine has been drawn sucker-fashion into this movement to alter our form of government…. " H.R.Rep. No. 2277, 77th Cong., 2d Sess. 2. In 1946, Harold Laski and socialists generally were attacked for their "impertinence in suggesting that the United States should trade its system of free economy for some brand of Socialism." The Committee deemed it "imperative" that it ascertain the "methods used to enable Mr. Laski to broadcast to [a] rally." H.R.Rep. No. 2233, 79th Cong., 2d Sess. 46-47. In 1951, a full report was issued on a "communist lobby"—committee formed to urge defeat of a communist control bill before Congress. Among the distinguished sponsors of the group listed by the committee was the late Prof. Zechariah Chafee. The Committee, nevertheless, advised

1959, Barenblatt v. United States, 360 U.S. 166

the American public that individuals who knowingly and actively support such a propaganda outlet…are actually aiding and abetting the Communist program in the United States.

1959, Barenblatt v. United States, 360 U.S. 166

H.R.Rep. No. 3248, 81st Cong., 2d Sess. 1, 11-12, 15. See also Gellhorn, Report on a Report of the House Committee on Un-American Activities, 60 Harv.L.Rev. 1193.

1959, Barenblatt v. United States, 360 U.S. 166

34. H.R.Rep. No.1950, 81st Cong., 2d Sess.19.

1959, Barenblatt v. United States, 360 U.S. 166

35.

1959, Barenblatt v. United States, 360 U.S. 166

The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success.

1959, Barenblatt v. United States, 360 U.S. 166

H.R.Rep. No. 57, 84th Cong., 1st Sess. 15.

1959, Barenblatt v. United States, 360 U.S. 166

36. Id. at 17

1959, Barenblatt v. United States, 360 U.S. 166

37.

1959, Barenblatt v. United States, 360 U.S. 166

[T]he Committee on Un-American Activities calls upon the American labor movement…to amend its constitutions, where necessary, in order to deny membership to a member of the Communist Party or any other group which dedicates itself to the destruction of America's way of life.

1959, Barenblatt v. United States, 360 U.S. 166

Ibid.

1959, Barenblatt v. United States, 360 U.S. 166

38. Sincerity and patriotism do not, unfortunately, insure against unconstitutional acts. Indeed, some of the most lamentable and tragic deaths of history were instigated by able, patriotic and sincere men. See generally Mill, On Liberty (1885 ed.), 43-48.

1959, Barenblatt v. United States, 360 U.S. 166

39.

1959, Barenblatt v. United States, 360 U.S. 166

For certainly it cannot be denied, but if he be really an offender, he is such by the breach of some law, made and published before the fact, and ought by due process of law, and verdict of 12 men, to be thereof convict, and found guilty of such crime; unto which the law also hath prescribed such a punishment agreeable to that our fundamental liberty; which enjoineth that no freeman of England should be adjudged of life, limb, liberty, or estate, but by Juries; a freedom which parliaments in all ages contended to preserve from violation; as the birthright and chief inheritance of the people, as may appear most remarkably in the Petition of Right, which you have stiled that most excellent law.

1959, Barenblatt v. United States, 360 U.S. 166

And therefore we trust upon second thoughts, being the parliament of England, you will be so far from bereaving us, who have never forfeited our right, of this our native right, and way of Trials by Juries (for what is done unto any one, may be done unto every one), that you will preserve them entire to us, and to posterity, from the encroachments of any that would innovate upon them….

1959, Barenblatt v. United States, 360 U.S. 166

And it is believed, that…had [the cause] at any time either at first or last been admitted to a trial at law, and had passed any way by verdict of twelve sworn men: all the trouble and inconveniences arising thereupon had been prevented: the way of determination by major votes of committees, being neither so certain nor so satisfactory in any case as by way of Juries, the benefit of challenges and exceptions, and unanimous consent, being all essential privileges in the latter; whereas committees are tied to no such rules, but are at liberty to be present or absent at pleasure. Besides, Juries being birthright, and the other but new and temporary, men do not, nor, as we humbly conceive, ever will acquiesce in the one as in the other; from whence it is not altogether so much to be wondered at if, upon dissatisfactions, there have been such frequent printing of men's cases, and dealings of Committees, as there have been, and such harsh and inordinate heats and expressions between parties interested, such sudden and importunate appeals to your authority, being indeed all alike out of the true English road, and leading into nothing but trouble and perplexity, breeding hatred and enmities between worthy families, affronts and disgust between persons of the same public affection and interest, and to the rejoicing of none but public adversaries. All which, and many more inconveniences, can only be avoided, by referring all such cases to the usual Trials and final determinations of law.

1959, Barenblatt v. United States, 360 U.S. 166

Howell's State Trials 411-412, Statement of John Lilburne (1653).

President Eisenhower's Veto of Bill to Amend the Federal Water Pollution Control Act, 1960

Title: President Eisenhower's Veto of Bill to Amend the Federal Water Pollution Control Act

Author: Dwight D. Eisenhower

Date: February 22, 1960

Source: Public Papers of the Presidents, Eisenhower, 1960-1961, pp.208-210

[Released February 23, 1960. Dated February 22, 1960]

Public Papers of Eisenhower, 1960-1961, p.208

To the House of Representatives:

Public Papers of Eisenhower, 1960-1961, p.208

I am returning herewith, without my approval, H.R. 3610, an enrolled bill "To amend the Federal Water Pollution Control Act to increase grants for construction of sewage treatment works, and for other purposes."

Public Papers of Eisenhower, 1960-1961, p.208

The bill would authorize an increase in Federal grants to municipalities for assistance in the construction of sewage treatment works from $50 million to $90 million annually, and from $500 million to $900 million in the aggregate.

Public Papers of Eisenhower, 1960-1961, p.208–p.209

Because water pollution is a uniquely local blight, primary responsibility for solving the problem lies not with the Federal Government but rather must be assumed and exercised, as it has been, by State and local governments. This being so, the defects of H.R. 3610 are apparent. [p.209] By holding forth the promise of a large-scale program of long-term Federal support, it would tempt municipalities to delay essential water pollution abatement efforts while they waited for Federal funds.

Public Papers of Eisenhower, 1960-1961, p.209

The rivers and streams of our country are a priceless national asset. I, accordingly, favor wholeheartedly appropriate Federal cooperation with States and localities in cleaning up the Nation's waters and in keeping them clean. This Administration from the beginning has strongly supported a sound Federal water pollution control program. It has always insisted, however, that the principal responsibility for protecting the quality of our waters must be exercised where it naturally reposes—at the local level.

Public Papers of Eisenhower, 1960-1961, p.209

Polluted water is a threat to the health and well-being of all our citizens. Yet, pollution and its correction are so closely involved with local industrial processes and with public water supply and sewage treatment, that the problem can be successfully met only if State and local governments and industry assume the major responsibility for cleaning up the nation's rivers and streams.

Public Papers of Eisenhower, 1960-1961, p.209

The Federal Government can help, but it should stimulate State and local action rather than provide excuses for inaction—which an expanded program under H.R. 3610 would do.

Public Papers of Eisenhower, 1960-1961, p.209

The following are steps which I believe the Federal Government should take so that our rivers and streams may more rapidly be relieved of the pollution blight.

Public Papers of Eisenhower, 1960-1961, p.209

First, I am requesting the Secretary of Health, Education and Welfare to arrange for a national conference on water pollution to be held next December. This conference will help local taxpayers and business concerns to realize the obligation they have to help prevent pollution. It is unconscionable for one town or city deliberately to dump untreated or inadequately treated sewage into a stream or river without regard to the impact of such action on the lives of down-stream neighbors. Local taxpayers should be willing to assume the burdens necessary to bring such practices to a halt. Businessmen and industrialists must face up. to the expenditures they must make if industrial pollutants are to be removed from the nation's waters. In short, the proposed conference will provide a forum in which all concerned can confront and better appreciate their mutual responsibility for solving this pressing problem.

Public Papers of Eisenhower, 1960-1961, p.209–p.210

Second, where the issue is of an interstate nature and the problem is beyond the powers of a single State, or where it is otherwise appropriate [p.210] to assist State enforcement actions, the Federal Government should have authority to move more quickly and effectively in directing the application of control measures that will swiftly correct such intolerable pollution. In accordance with the 1961 Budget Message, recommendations will be submitted to the Congress for strengthening the enforcement provisions of the Federal Water Pollution Control Act.

Public Papers of Eisenhower, 1960-1961, p.210

Third, the Federal Government should continue to provide modest financial assistance for the administration of control programs by States and interstate water pollution control agencies. Because such programs rest upon a solid foundation of local cooperative action, they properly merit Federal encouragement and assistance. An extended life for this program is recommended in the 1961 Budget.

Public Papers of Eisenhower, 1960-1961, p.210

Fourth, the Federal Government, through research and technical assistance, can be of material help in contributing to our knowledge of water pollution—its causes, its extent, its impact and methods for its control. Increased Federal effort in this respect is also provided for in the 1961 Budget.

Public Papers of Eisenhower, 1960-1961, p.210

These measures will provide Federal authority that accords with the proper Federal, State, and local roles in water pollution abatement. urge their early consideration by the Congress.

DWIGHT D. EISENHOWER

Public Papers of Eisenhower, 1960-1961, p.210

NOTE: The veto message was released in Washington.

President Eisenhower's Report to the American People on the Events in Paris, 1960

Title: President Eisenhower's Report to the American People on the Events in Paris

Author: Dwight D. Eisenhower

Date: May 25, 1960

Source: Public Papers of the Presidents, Eisenhower, 1960-1961, pp.437-445

[Delivered by radio and television from the President's Office at 8 p.m.]

Public Papers of Eisenhower, 1960-1961, p.437

My fellow Americans:

Public Papers of Eisenhower, 1960-1961, p.437

Tonight I want to talk with you about the remarkable events last week in Paris, and their meaning to our future.

Public Papers of Eisenhower, 1960-1961, p.437–p.438

First, I am deeply grateful to the many thousands of you, and to representatives in Congress, who sent me messages of encouragement and support while I was in Paris, and later upon my return to Washington. Your messages clearly revealed your abiding loyalty to America's [p.438] great purpose—that of pursuing, from a position of spiritual, moral and material strength—a lasting peace with justice.

Public Papers of Eisenhower, 1960-1961, p.438

You recall, of course, why I went to Paris ten days ago.

Public Papers of Eisenhower, 1960-1961, p.438

Last summer and fall I had many conversations with world leaders; some of these were with Chairman Khrushchev, here in America. Over those months a small improvement in relations between the Soviet Union and the West seemed discernible. A possibility developed that the Soviet leaders might at last be ready for serious talks about our most persistent problems—those of disarmament, mutual inspection, atomic control, and Germany, including Berlin.

Public Papers of Eisenhower, 1960-1961, p.438

To explore that possibility, our own and the British and French leaders met together, and later we agreed, with the Soviet leaders, to gather in Paris on May 16.

Public Papers of Eisenhower, 1960-1961, p.438

Of course we had no indication or thought that basic Soviet policies had turned about. But when there is even the slightest chance of strengthening peace, there can be no higher obligation than to pursue it.

Public Papers of Eisenhower, 1960-1961, p.438

Nor had our own policies changed. We did hope to make some progress in a Summit meeting, unpromising though previous experiences had been. But as we made preparations for this meeting, we did not drop our guard nor relax our vigilance.

Public Papers of Eisenhower, 1960-1961, p.438

Our safety, and that of the free world, demand, of course, effective systems for gathering information about the military capabilities of other powerful nations, especially those that make a fetish of secrecy. This involves many techniques and methods. In these times of vast military machines and nuclear-tipped missiles, the ferreting out of this information is indispensable to free world security.

Public Papers of Eisenhower, 1960-1961, p.438

This has long been one of my most serious preoccupations. It is part of my grave responsibility, within the over-all problem of protecting the American people, to guard ourselves and our allies against surprise attack.

Public Papers of Eisenhower, 1960-1961, p.438

During the period leading up to World War II we learned from bitter experience the imperative necessity of a continuous gathering of intelligence information, the maintenance of military communications and contact, and alertness of command.

Public Papers of Eisenhower, 1960-1961, p.438–p.439

An additional word seems appropriate about this matter of communications and command. While the Secretary of Defense and I were in Paris, we were, of course, away from our normal command posts. He recommended that under the circumstances we test the continuing readiness of our military communications. I personally approved. Such [p.439] tests are valuable and will be frequently repeated in the future.

Public Papers of Eisenhower, 1960-1961, p.439

Moreover, as President, charged by the Constitution with the conduct of America's foreign relations, and as Commander-in-Chief, charged with the direction of the operations and activities of our Armed Forces and their supporting services, I take full responsibility for approving all the various programs undertaken by our government to secure and evaluate military intelligence.

Public Papers of Eisenhower, 1960-1961, p.439

It was in the prosecution of one of these intelligence programs that the widely publicized U-2 incident occurred.

Public Papers of Eisenhower, 1960-1961, p.439

Aerial photography has been one of many methods we have used to keep ourselves and the free world abreast of major Soviet military developments. The usefulness of this work has been well established through four years of effort. The Soviets were well aware of it. Chairman Khrushchev has stated that he became aware of these flights several years ago. Only last week, in his Paris press conference, Chairman Khrushchev confirmed that he knew of these flights when he visited the United States last September.

Public Papers of Eisenhower, 1960-1961, p.439

Incidentally, this raises the natural question—why all the furor concerning one particular flight? He did not, when in America last September charge that these flights were any threat to Soviet safety. He did not then see any reason to refuse to confer with American representatives.

Public Papers of Eisenhower, 1960-1961, p.439

This he did only about the flight that unfortunately failed, on May 1, far inside Russia.

Public Papers of Eisenhower, 1960-1961, p.439

Now, two questions have been raised about this particular flight; first, as to its timing, considering the imminence of the Summit meeting; second, our initial statements when we learned the flight had failed.

Public Papers of Eisenhower, 1960-1961, p.439

As to the timing, the question was really whether to halt the program and thus forego the gathering of important information that was essential and that was likely to be unavailable at a later date. The decision was that the program should not be halted.

Public Papers of Eisenhower, 1960-1961, p.439

The plain truth is this: when a nation needs intelligence activity, there is no time when vigilance can be relaxed. Incidentally, from Pearl Harbor we learned that even negotiation itself can be used to conceal preparations for a surprise attack.

Public Papers of Eisenhower, 1960-1961, p.439

Next, as to our government's initial statement about the flight, this was issued to protect the pilot, his mission, and our intelligence processes, at a time when the true facts were still undetermined.

Public Papers of Eisenhower, 1960-1961, p.439–p.440

Our first information about the failure of this mission did not disclose [p.440] whether the pilot was still alive, was trying to escape, was avoiding interrogation, or whether both plane and pilot had been destroyed. Protection of our intelligence system and the pilot, and concealment of the plane's mission, seemed imperative. It must be remembered that over a long period, these flights had given us information of the greatest importance to the nation's security. In fact, their success has been nothing short of remarkable.

Public Papers of Eisenhower, 1960-1961, p.440

For these reasons, what is known in intelligence circles as a "covering statement" was issued. It was issued on assumptions that were later proved incorrect. Consequently, when later the status of the pilot was definitely established, and there was no further possibility of avoiding exposure of the project, the factual details were set forth.

Public Papers of Eisenhower, 1960-1961, p.440

I then made two facts clear to the public: first, our program of aerial reconnaissance had been undertaken with my approval; second, this government is compelled to keep abreast, by one means or another, of military activities of the Soviets, just as their government has for years engaged in espionage activities in our country and throughout the world. Our necessity to proceed with such activities was also asserted by our Secretary of State who, however, had been careful—as was I—not to say that these particular flights would be continued.

Public Papers of Eisenhower, 1960-1961, p.440

In fact, before leaving Washington, I had directed that these flights be stopped. Clearly their usefulness was impaired. Moreover, continuing this particular activity in these new circumstances could not but complicate the relations of certain of our allies with the Soviets. And of course, new techniques, other than aircraft, are constantly being developed.

Public Papers of Eisenhower, 1960-1961, p.440

Now I wanted no public announcement of this decision until I could personally disclose it at the Summit meeting in conjunction with certain proposals I had prepared for the conference.

Public Papers of Eisenhower, 1960-1961, p.440

At my first Paris meeting with Mr. Khrushchev, and before his tirade was made public, I informed him of this discontinuance and the character of the constructive proposals I planned to make. These contemplated the establishment of a system of aerial surveillance operated by the United Nations.

Public Papers of Eisenhower, 1960-1961, p.440

The day before the first scheduled meeting, Mr. Khrushchev had advised President de Gaulle and Prime Minister Macmillan that he would make certain demands upon the United States as a precondition for beginning a Summit conference.

Public Papers of Eisenhower, 1960-1961, p.441

Although the United States was the only power against which he expressed his displeasure, he did not communicate this information to me. I was, of course, informed by our allies.

Public Papers of Eisenhower, 1960-1961, p.441

At the four power meeting on Monday morning, he demanded of the United States four things: first, condemnation of U-2 flights as a method of espionage; second, assurance that they would not be continued; third, a public apology on behalf of the United States; and, fourth, punishment of all those who had any responsibility respecting this particular mission.

Public Papers of Eisenhower, 1960-1961, p.441

I replied by advising the Soviet leader that I had, during the previous week, stopped these flights and that they would not be resumed. I offered also to discuss the matter with him in personal meetings, while the regular business of the Summit might proceed. Obviously, I would not respond to his extreme demands. He knew, of course, by holding to those demands the Soviet Union was scuttling the Summit Conference.

Public Papers of Eisenhower, 1960-1961, p.441

In torpedoing the conference, Mr. Khrushchev claimed that he acted as the result of his own high moral indignation over alleged American acts of aggression. As I said earlier, he had known of these flights for a long time. It is apparent that the Soviets had decided even before the Soviet delegation left Moscow that my trip to the Soviet Union should be cancelled and that nothing constructive from their viewpoint would come out of the Summit Conference.

Public Papers of Eisenhower, 1960-1961, p.441

In evaluating the results, however, I think we must not write the record all in red ink. There are several things to be written in the black. Perhaps the Soviet action has turned the clock back in some measure, but it should be noted that Mr. Khrushchev did not go beyond invective-a time-worn Soviet device to achieve an immediate objective. In this case, the wrecking of the Conference.

Public Papers of Eisenhower, 1960-1961, p.441

On our side, at Pads, we demonstrated once again America's willingness, and that of her allies, always to go the extra mile in behalf of peace. Once again, Soviet intransigence reminded us all of the unpredictability of despotic rule, and the need for those who work for freedom to stand together in determination and in strength.

Public Papers of Eisenhower, 1960-1961, p.441–p.442

The conduct of our allies was magnificent. My colleagues and friends—President de Gaulle and Prime Minister Macmillan—stood sturdily with the American delegation in spite of persistent Soviet attempts to split the Western group. The NATO meeting after the Pads Conference showed unprecedented unity and support for the alliance and [p.442] for the position taken at the Summit meeting. I salute our allies for us all.

Public Papers of Eisenhower, 1960-1961, p.442

And now, most importantly, what about the future?

Public Papers of Eisenhower, 1960-1961, p.442

All of us know that, whether started deliberately or accidentally, global war would leave civilization in a shambles. This is as true of the Soviet system as of all others. In a nuclear war there can be no victors-only losers. Even despots understand this. Mr. Khrushchev stated last week that he well realizes that general nuclear war would bring catastrophe for both sides. Recognition of this mutual destructive capability is the basic reality of our present relations. Most assuredly, however, this does not mean that we shall ever give up trying to build a more sane and hopeful reality—a better foundation for our common relations.

Public Papers of Eisenhower, 1960-1961, p.442

To do this, here are the policies we must follow, and to these I am confident the great majority of our people, regardless of party, give their support:

Public Papers of Eisenhower, 1960-1961, p.442

First. We must keep up our strength, and hold it steady for the long pull—a strength not neglected in complacency nor overbuilt in hysteria. So doing, we can make it clear to everyone that there can be no gain in the use of pressure tactics or aggression against us and our Allies.

Public Papers of Eisenhower, 1960-1961, p.442

Second. We must continue businesslike dealings with the Soviet leaders on outstanding issues, and improve the contacts between our own and the Soviet peoples, making clear that the path of reason and common sense is still open if the Soviets will but use it.

Public Papers of Eisenhower, 1960-1961, p.442

Third. To improve world conditions in which human freedom can flourish, we must continue to move ahead with positive programs at home and abroad, in collaboration with free nations everywhere. In doing so, we shall continue to give our strong support to the United Nations and the great principles for which it stands.

Public Papers of Eisenhower, 1960-1961, p.442

Now as to the first of these purposes—our defenses are sound. They are tailored to the situation confronting us.

Public Papers of Eisenhower, 1960-1961, p.442

Their adequacy has been my primary concern for these past seven years—indeed throughout my adult life.

Public Papers of Eisenhower, 1960-1961, p.442

In no respect have the composition and size of our forces been based on or affected by any Soviet blandishment. Nor will they be. We will continue to carry forward the great improvements already planned in these forces. They will be kept ready—and under constant review.

Public Papers of Eisenhower, 1960-1961, p.443

Any changes made necessary by technological advances or world events will be recommended at once.

Public Papers of Eisenhower, 1960-1961, p.443

This strength—by far the most potent on earth—is, I emphasize, for deterrent, defensive and retaliatory purposes only, without threat or aggressive intent toward anyone.

Public Papers of Eisenhower, 1960-1961, p.443

Concerning the second part of our policy—relations with the Soviets-we and all the world realize, despite our recent disappointment, that progress toward the goal of mutual understanding, casing the causes of tensions, and reduction of armaments is as necessary as ever.

Public Papers of Eisenhower, 1960-1961, p.443

We shall continue these peaceful efforts, including participation in the existing negotiations with the Soviet Union. In these negotiations we have made some progress. We are prepared to preserve and build on it. The Allied Paris communiqué and my own statement on returning to the United States should have made this abundantly clear to the Soviet government.

Public Papers of Eisenhower, 1960-1961, p.443

We conduct these negotiations not on the basis of surface harmony nor are we deterred by any bad deportment we meet. Rather we approach them as a careful search for common interests between the Western allies and the Soviet Union on specific problems.

Public Papers of Eisenhower, 1960-1961, p.443

I have in mind, particularly, the nuclear test and disarmament negotiations. We shall not back away, on account of recent events, from the efforts or commitments that we have undertaken.

Public Papers of Eisenhower, 1960-1961, p.443

Nor shall we relax our search for new means of reducing the risk of war by miscalculation, and of achieving verifiable arms control.

Public Papers of Eisenhower, 1960-1961, p.443

A major American goal is a world of open societies.

Public Papers of Eisenhower, 1960-1961, p.443

Here in our country anyone can buy maps and aerial photographs showing our cities, our dams, our plants, our highways—indeed, our whole industrial and economic complex. We know that Soviet attaches regularly collect this information. Last fall Chairman Khrushchev's train passed no more than a few hundred feet from an operational ICBM, in plain view from his window. Our thousands of books and scientific journals, our magazines, newspapers and official publications, our radio and television, all openly describe to all the world every aspect of our society.

Public Papers of Eisenhower, 1960-1961, p.443

This is as it should be. We are proud of our freedom.

Public Papers of Eisenhower, 1960-1961, p.444

Soviet distrust, however, does still remain. To allay these misgivings I offered five years ago to open our skies to Soviet reconnaissance aircraft on a reciprocal basis. The Soviets refused. That offer is still open. At an appropriate time America will submit such a program to the United Nations, together with the recommendation that the United Nations itself conduct this reconnaissance. Should the United Nations accept this proposal, I am prepared to propose that America supply part of the aircraft and equipment required.

Public Papers of Eisenhower, 1960-1961, p.444

This is a photograph of the North Island Naval Station in San Diego, California. It was taken from an altitude of more than 70 thousand feet. You may not perhaps be able to see them on your television screens, but the white lines in the parking strips around the field are clearly discernible from 13 miles up. Those lines are just six inches wide.

Public Papers of Eisenhower, 1960-1961, p.444

Obviously most of the details necessary for a military evaluation of the airfield and its aircraft are clearly distinguishable.

Public Papers of Eisenhower, 1960-1961, p.444

I show you this photograph as an example of what could be accomplished through United Nations aerial surveillance.

Public Papers of Eisenhower, 1960-1961, p.444

Indeed, if the United Nations should undertake this policy, this program, and the great nations of the world should accept it, I am convinced that not only can all humanity be assured that they are safe from any surprise attack from any quarter, but indeed the greatest tensions of all, the fear of war, would be removed from the world. I sincerely hope that the United Nations may adopt such a program.

Public Papers of Eisenhower, 1960-1961, p.444

As far as we in America are concerned, our programs for increased contacts between all peoples will continue. Despite the suddenly expressed hostility of the men in the Kremlin, I remain convinced that the basic longings of the Soviet people are much like our own. I believe that Soviet citizens have a sincere friendship for the people of America. I deeply believe that above all else they want a lasting peace and a chance for a more abundant life in place of more and more instruments of war.

Public Papers of Eisenhower, 1960-1961, p.444–p.445

Finally, turning to the third part of America's policy—the strengthening of freedom—we must do far more than concern ourselves with military defense against, and our relations with, the Communist Bloc. Beyond this, we must advance constructive programs throughout the world for the betterment of peoples in the newly developing nations. [p.445] The zigs and zags of the Kremlin cannot be allowed to disturb our worldwide programs and purposes. In the period ahead, these programs could well be the decisive factor in our persistent search for peace in freedom.

Public Papers of Eisenhower, 1960-1961, p.445

To the peoples in the newly developing nations urgently needed help will surely come. If it does not come from us and our friends, these peoples will be driven to seek it from the enemies of freedom. Moreover, those joined with us in defense partnerships look to us for proof of our steadfastness. We must not relax our common security efforts.

Public Papers of Eisenhower, 1960-1961, p.445

As to this, there is something specific all of us can do, and right now. It is imperative that crippling cuts not be made in the appropriations recommended for Mutual Security, whether economic or military. We must support this program with all of our wisdom and all of our strength. We are proud to call this a nation of the people. With the people knowing the importance of this program, and making their voices heard in its behalf throughout the land, there can be no doubt of its continued success.

Public Papers of Eisenhower, 1960-1961, p.445

Fellow Americans, long ago I pledged to you that I would journey anywhere in the world to promote the cause of peace. I remain pledged to pursue a peace of dignity, of friendship, of honor, of justice.

Public Papers of Eisenhower, 1960-1961, p.445

Operating from the firm base of our spiritual and physical strength, and seeking wisdom from the Almighty, we and our allies together will continue to work for the survival of mankind in freedom—and for the goal of mutual respect, mutual understanding, and openness among all nations.

Public Papers of Eisenhower, 1960-1961, p.445

Thank you, and good night.

Public Papers of Eisenhower, 1960-1961, p.445

NOTE: On August 28, the White House made public an exchange of letters between James C. Hagerty, Press Secretary to the President, and the Joint Editorial Board of Moscow News and Nouvelles de Moscou. In a letter dated June 25, the Board returned copies of the President's address, received that day from the U.S. Embassy, stating that it was "directed essentially against the friendship between our peoples." The Press Secretary's letter, dated August 15, stated that the Board's letter confirmed the fact that the Soviet press is not free to publish or broadcast any viewpoint running counter to the policies of the Soviet Government.

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