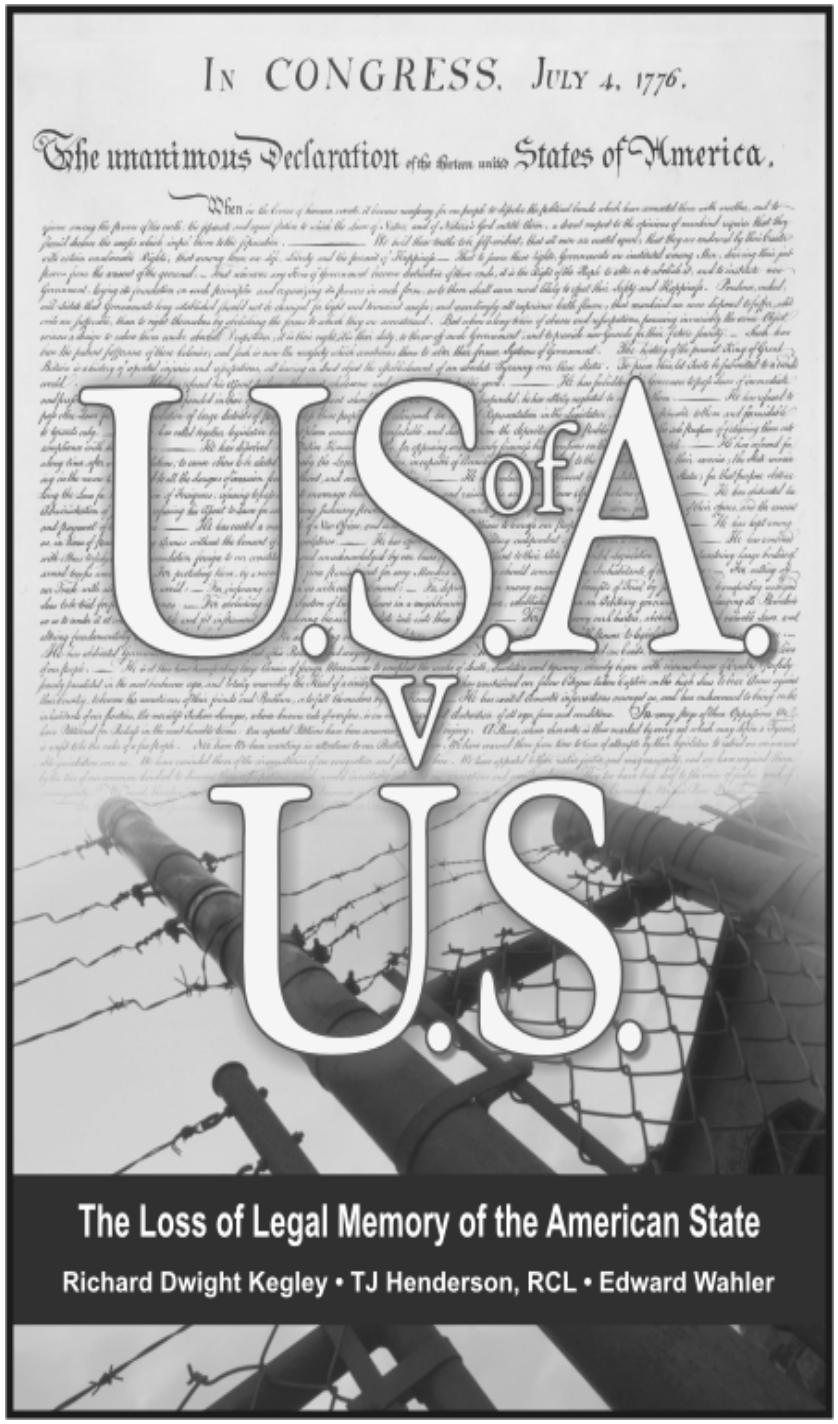

U S of A v U S, The loss of legal memory of the American State

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Author's Dedications

From Richard Dwight Kegley:

Dedicated to the memory of the following men, each man lived through and was affected by the "Great Depression." Each man knew there was something wrong and that America had been attacked from within. Each has passed on.

And to my Dad, Richard Jefferson Kegley, who always listened to and supported my studies. And to Jack Whittington, Alton Filan, Joe Cole, Esper Brown and Ray Smith. This book is the one you each wanted to read.

From TJ Henderson:

This book is dedicated to God, country and every man who died to save it from its own destruction. And to his Grandfather who would be proud to see this achievement.

From Ed Wahler:

This book is especially dedicated to my father who never got the chance to see what his son was capable of.

Acknowledgements

From Richard Dwight Kegley:

I would like to personally acknowledge the contributions of: Tom Gibson, Mark Keller, Dennis Craig Bynum, each and all, true Americans.

From T J Henderson:

I wish to thank all the people who turned me in the right direction over the last 14 years and that inspired this writing. I especially want to acknowledge Judge Ron Rainer, who inspired my passion for seeking the truth and justice, which this country so richly deserves. Judge Rainer also acknowledged my right to practice law in his court without being Licensed by the Washington State Bar Association. Judge Rainer's decision with respect to my practicing law in the case of State v Garrison, Stevenson County, Washington was never appealed and is now law.

From Ed Wahler:

I wish to thank my mother for demonstrating stubborn resolve in the face of adversity such that it became an ingrained trait. I further single out for special thanks my wife for supporting this time consuming and sometimes frustrating endeavor. Studying the deceptive and fraudulent acts of the government is not safe nor stress free, and she has seen her way clear to acknowledge that if not me than who and if not now then when. And finally, I wish to thank the good Lord for making me finish it.

Vitas

Richard Dwight Kegley

Richard is a life long Washingtonian who was born during War World II near Olympia, Washington. He was raised in a family with a strong spiritual heritage. His family has deep American roots extending to the early days of Washington's existence and back into original Oregon Country.

Richard's family on both sides has roots in America preceding the Declaration of Independence. He received a B.S. in Business Administration from Walla Walla College in 1968, an M.S. in Business Administration from University of Idaho in 1970, and a Masters Degree in Economics from Washington State in 1974. He spent 8 years teaching college level economics and business courses. The last nine years have been spent in voluminous reading in economics, law, case law and limited private writing and teaching. He gives full credit to the Father for knowledge and insight into matters related to the current book.

TJ Henderson

TJ was born on Oregon and lived near White Salmon, Washington most of his life. TJ is now a meandering "Citizen" situated on Douds, Iowa. His family has heritage pre-dating the Declaration of Independence.

TJ received his education in law from the school of self study and long hours studying every law book he could lay his hands on. TJ has had numerous wins in the courts in various areas of law, as well as a few rare losses. He claims that each and every case he has handled was an inspiration that drove him to study the law to the fullest extent. TJ won his very first argument arguing the right to non-bar counsel in Judge Ron Rainer's court in Stevenson Washington. He is currently teaching and counseling attorneys' nation wide in the area of consumer protection law. TJ also writes and teaches Constitutional law in its purest form. TJ has written several books discussing those areas of law, such as "You're an Outlaw", "Secrets of the Lending Institutions Revealed" and Mortgage Audit Analyses & Defenses" (MAAD). His knowledge and abilities in the areas of law he has a passion for are almost limitless. TJ displays a wealth of knowledge of law and it is most educational to listen to him speak. TJ credits his success to his ability to recall law citations almost verbatim off the top of his head after reading them only once.

Edward Wahler

Ed grew up as the son of a policeman. Then at the behest of his father attended the United States Coast Guard Academy. After discovering an inherent conflict with authority derived only from the insignia on your shoulder, Ed finished his undergraduate degree at Rensselaer Polytechnic Institute with a B.S. degree in Electrical Engineering.

Ed founded his own company in 1984, which he ran as President and CEO until 1998. The last eight years have been spent researching law and law history, alternative energy and alternative approaches to maintaining one's health. This book is the culmination of years of Divine guidance by and not so subtle Divine intervention in his life.

To the Reader:

This book comes with a CD containing audio files from a seminar taught within the body politic of the United States of America by one of the authors, Richard Dwight Kegley. It is hoped that the readers of this book will find the material on the audio CD a positive reinforcement to the concepts presented in this book. Every effort has been made to edit the audio files to make them as relevant as possible given the fact that when the seminar was taught this book was not even conceived of.

The authors recognize a dire need to educate the American people as to the true nature of the political and legal landscape they live in today. The authors invite each reader to become a member of the companion website to this book. The website will be used to provide additional information and examples of the real world application of the information in this book.

May God Bless and keep the Several States of the American Union and help the People to find their conviction with respect to Citizenship in that Union.

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Preface

There is something wrong with this Country! How many times have you heard that statement? The people participating in the conversation usually nod their heads in agreement but the dialogue usually proceeds no further. For while we can all come up with scores of personal or anecdotal evidence of the "disease" which afflicts our Republic, very few are able to articulate the root cause of the disease. This leads to a feeling of frustration and malaise that serves to perpetuate the status quo.

This book is intended to provide a forensic analysis of the facts of history with respect to the government and the union of states that has lead to the greatest confidence game ever played in the history of man. Most everything you believe about your "country" is a lie or is at least factually incorrect. Because arguably, the truth is you do not live in a Republic, you are not a Citizen of one, and you have no God given unalienable rights under your current citizenship status, rather you have civil rights given by the and at the of whim the present government.

The authors believe that since "the government" has substantially controlled the education system since the Civil War, and has benefited from teaching a version of history, law and government that does not comport with the true deeds and facts of the current actors, the people are at least entitled to a source of information that presents the truth in all of its illustrious glory.

The truth will be in stark contrast to most Americans domestic "world view." Many Americans are presented every day with facts and information from the news, from their life experiences in court or at work or from involvement with their local, state of federal bureaucracy that is in vivid and stark contrast to what they believe their world to be. The clinicians in the reading audience will recognize this by the clinical term "cognitive dissonance" which is loosely defined as the inability to accept new information or to assimilate new facts that are contrary to already established and deeply held views.

If you wonder who benefits from our mal-education you need only to turn on the news and watch the talking heads spinning their

latest tall tale about governmental benevolence, corruption or incompetence. Thomas Jefferson said:

> "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

When the author was in elementary school in Boca Raton, Florida, the public school would have awards every year for citizenship. The citizenship being celebrated usually involved some charitable act done for those less fortunate than the award winner. It was not until much later in life that the author learned that citizenship is really about being an active participant in the governance committed by one's purported local, state and federal "elected officers." One must know the bounds of the authority of those officers as defined by the Constitution or City Charter. And as this book will demonstrate, one must know one's status with respect to the legal relations that have been established and are being maintained with respect to each and every political body that one presumes to be a citizen of.

This book is intended to provide evidence that the choices one does or does not make still have very real consequences as regards one's legal relations with government. When dealing with a purported government by agreement or contract, it is not the government's duty to inform you about the law. You are presumed to know the law. That is the only way the system can work. If every police officer, tax collector, judge or any other purported government officer had to take the time to determine if you were competent in the area of law by which you were being in violation of, the system would collapse over night.

Of course, the law today is complex, by design one might say, that it is impossible to "know the law", or conversely to not be ignorant of it. Fundamentally, the real questions one needs to ask are three fold. First, what political relations are presumed? Second, what legal relations exist which creates a duty for me to perform or be bound to a particular jurisdiction and its codes, statutes and regulations? And, thirdly, are the laws, statutes and regulations truly made in pursuance of the organic law of the land, more particularly the constitution for that political body, particularly the non-statutized or original constitution for the political body. The authors hope to at least provide you with a basis for making those determinations and

to clearly demonstrate that through deceit and mischief those entrusted by the people to protect their rights and provide for their posterity have in fact attempted to prevent legal access to those rights and have squandered the people's wealth, security and future to the money interests, the elite and others whom are not the proper stewards and representatives of the people.

No conspiracy theory here, just the facts ma'am. For those who will read this book and decide to stay a citizen of the United States and accept benefits there from, this author would say, Bravo! you are at least now well enough informed to make a better informed decision. However, if you blindly accept the statement of your government without question, without proof, then you are properly situated within the corporate jurisdiction of the United States, having surrendered your rights and accepted the safety net of socialism.

The authors are adamant that all Citizens need to be informed about how and why governments are formed and what their duties are and reciprocally what duties the Citizen has to his government. To restore our Constitutional Republic, a condition precedent is joining the proper body politic and exercising the rights, privileges, immunities and meeting the duties and responsibilities of that Citizenship. This may also involve severing some legal relations that bind you by agreement or contract to another law form. Are you ready?

The authors also hope that the readers of this book will start study groups and citizen action committees with a goal to become acutely aware of the responsibilities we all share in making this experiment in republican governance a success.

Once you have completed this book, the authors invite you to visit www.USofAvUS.com to continue your education. We hope to make this web portal a community where you can meet up with like-minded people in your state to begin the journey of self determination in appearing only as a state "Citizen." As many of you will have questions at the end of the book on how to put your new knowledge into practice, you will be required to take a test on your proficiency of this material before information on the required documents and process to restore your Citizenship will be provided to you. Just like the United States makes citizens who are being federally naturalized take a citizenship test, so too the authors

believe that it would be irresponsible for a state Citizen to appear before the public at large without first self testing to ascertain that he/she is conversant and fully aware of the duties, responsibilities and gravity such a status demands.

The website will also be used to provide ongoing material and information to deal with those aspects of everyday life that the United States, through its municipal corporate law has put in place to frustrate your ability to live a free and unfettered life. Please enjoy this material and may it lead to the enjoyment of life, liberty and the pursuit of happiness (property). And hopefully it will enable the reader to answer the question: "What is wrong with this country?" Maybe it is US.

Introduction

Socialism amounts to the greed of the few at the expense of the many. Today, politically speaking Socialism is at the root of nearly all domestic agreements and contracts. By devices later explained, person after person is enveloped by the "System." This envelopment is accomplished by silent assent[1], waiver[2] or signature[3] upon particular agreements and contracts that create the appearance a person is politically a U.S. Citizen. This type of law is called contract law, which generally supersedes Constitutional law. Has anyone heard a judge say "If you bring up the constitution one more time I will hold you in contempt"? This type of poppycock is rung in the lower courts every day across this land. The place where this judicial comment takes place is called the "United States." The sad thing is, in that place the judge is usually legally correct. Why? Because of whom you are presumed to be, a U.S. citizen, acting within the socialistic U.S. Community.

The concept of socialism has been a problem since the early days of this Great Nation. Our Founding Fathers had situations come before them that contained the seeds of socialistic thought. Congress made special provisions for needy People even back in the first years of the United States of America.

The authors recall reading a story about this very thing, socialism. The following story has been told about a young Congressman named Davy Crockett. Today, many people know something about Davy Crockett. Davy Crockett served in the Congress from A.D. 1827 until A.D. 1835. Davy Crockett, at the age of 50, died at the Alamo fighting for the independence of Texas from Mexico.

[1] Silent assent simply means the silent acceptance of a recognized person that may include what appears to be a governmental entity. Silent assent implies recognition.

[2] **waiver**, 1. The voluntary relinquishment or abandonment-express or implied- of a legal right or advantage; *Black's Law*, 8th Edition, page 1611

[3] **signature**, 1. A person's name or mark written by that person or at the person's direction. 2. *Commercial Law*. Any name, mark or writing used with the intention of authenticating a document. *Black's Law*, 8th Edition, page 1415

While Davy Crockett was in Congress, a bill was proposed to grant public money to an elderly widow of a highly decorated naval officer of the Revolution and War of 1812. To the Congressmen the grant bill was thought to be a worthy cause. The grant bill was passed unanimously on an initial vote. However, Davy Crockett was allowed the floor and rose to speak. This is what was purportedly said:

"Mr. Speaker, I have as much respect for the memory of the deceased, and as much sympathy for the suffering of the living, if suffering there be, as any man in this House, but we must not permit the respect for the dead or our sympathy for a part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that Congress has no power to appropriate this money as an act of charity. Every Member upon this floor knows it. We have the right as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right so to appropriate a dollar of public money…. Every man in this House knows it is not a debt. We cannot, without the grossest corruption, appropriate this money as the payment of a debt. We have not the semblance of authority to appropriate it as charity... I cannot vote for this bill, but I will give one weeks pay to the object, and if every member of Congress will do the same, it will amount to more than the bill asks."

The ratification of the Constitution had taken place almost 50 years prior to the day mentioned above. Davy Crockett was making the claim that the Congress could not use the Taxpayer's money to pay such a bill that was not a debt of the "United States Government." When Davy Crockett yielded the floor, no other Congressmen rose to speak against what he had said. The vote was again taken and the bill was unanimously defeated.

The very next day one of Davy Crockett's fellow Congressmen asked him to justify his speech regarding the Naval Widow's grant bill and Davy Crockett gave the following explanation.

Congressman Crockett was standing on the steps of the Capitol building with some other Congressmen when their attention was brought to a bright light over Georgetown. It was a large fire; Congressmen jumped in their horse and buggies and rode over to the

fire. By the time they had gotten there the fire had consumed many of the Peoples' houses. The occupants only had what was left on their backs. There were a number of People suffering from the tragedy, as it was the middle of winter. Congressman Crockett felt the need to give them help, so the next morning a bill was introduced on the floor of Congress appropriating $20,000.00 for the victims' relief. The grant bill was rushed through and passed.

The next summer it was time for Congressman Crockett to start his re-election campaign. He started out on his journey in the countryside talking to the People within his district trying to gain their vote. When riding one day in an area, where he was more of a stranger, he saw a farmer plowing a field.

The two men met where the farmer's field and the road connected. Congressman Crockett introduced himself when the farmer interjected and said: "Yes I know you, you are Colonel Crockett. I have seen you once before, and I voted for you the last time you were elected. I suppose you are out electioneering now, but you better not waste your time or mine. I shall not vote for you again." This was a shock to Congressman Crocket, so he begged the farmer to tell him what his grievances were.

The farmer replied: "Well Colonel, it is hardly worth while to waste time or words upon it. I do not see how it can be mended, but you gave a vote last winter which shows that either you have not capacity to understand the Constitution, or that you are wanting in the honesty and firmness to be guided by it. In either case you are not the man to represent me…. I intend by it only to say that your understanding of the Constitution is very different than mine…. But an understanding of the Constitution different than mine I cannot overlook, because the Constitution, to be worth anything, must be held sacred, and rigidly observed in all its provisions. The man who wields power and misinterprets it is the more dangerous the more honest he is."

Congressman Crockett replied; "I admit the truth of all you say, but there must be some mistake about it, for I do not remember I gave any vote last winter upon any constitutional question." The farmer replied back; "Well Colonel, where do you find in the Constitution any authority to give away the public money to charity?"

Congressman Crockett replied reluctantly; "Well my friend; I may as well own up. You have got me there. But certainly nobody will complain that a great and rich country like ours should give the insignificant sum of $20,000 to relieve its suffering women and children, particularly with a full and overflowing Treasury, and I am sure, if you had been there, you would have done just as I did."

The farmer in a bold voice replied; "It is not the amount, Colonel, that I complain of; it is the principle. In the first place, the government ought to have in the Treasury no more than enough for its legitimate purposes. But that has nothing to do with the question. The power of collecting and disbursing money at pleasure is the most dangerous power that can be given to man, particularly under our system of collecting revenue by a tariff, which reaches every man in the country, no matter how poor he may be, and the poorer he is the more he pays in proportion to his means. What is worse, it presses upon him without his knowledge where the weight centers, for there is not a man in the United States who can ever guess how much he pays to the government, So you see, that while you are contributing to relieve one, you are drawing it from thousands who are even worse off than he. If you had the right to give anything, the amount was simply a matter of discretion with you, and you had as much right to give $20,000,000 as $20,000. If you have the right to give to one, you have the right to give to all; and, as the Constitution neither defines charity nor stipulates the amount, you are at liberty to give to any and everything which you may believe, or profess to believe is a charity, and to any amount you may think proper. You will very easily perceive what a wide door this would open for fraud and corruption and favoritism, on the one hand, and for the robbing of the people on the other. Individual members may give as much of their own money as they please, but they have no right to touch a dollar of the public money for that purpose. If twice as many houses had burned in this country as in Georgetown, neither you nor any other member of Congress would have thought of appropriating a dollar for our relief…. The people have delegated to Congress, by the Constitution, the power to do certain things. To do these, it is authorized to collect and pay moneys, and for nothing else. Everything beyond this is usurpation and a violation of the Constitution. So you see, Colonel, you have violated the Constitution in what I consider a vital point. It is precedence fraught with danger

to the country, for when Congress once begins to stretch its power beyond the limits of the Constitution, there is no limit to it, and no security for the people. I have no doubt you acted honestly, but that does not make it any better, except as far as you are personally concerned, and you see that I cannot vote for you." (Author's emphasis)

Congressman Crockett soon realized that the grant bill he had voted for could be not be properly support under the Constitution. Today, the authors contend, such a grant bill could be characterized as socialism. In telling this story to the other Congressmen on the Capitol entrance, he apologized for his actions and vowed to stop this kind of decision making in the future.

But to this countries demise Socialism did not stop there. Federal authority has supported the furtherance of socialism. The Federal Civil Rights Act was passed in 1866. With the proposed ratification of purported Amendment 14, the Civil Rights Act led to more Federal interference in state affairs. With more Federal interference in the State's affairs so has appeared more socialistic government.

What follows is in response to specific federal interference into the States. The Honorable T.M. Norwood of Georgia, in the United States Senate on April 30 and May 4, A.D. 1874 gave a speech about the destruction of the independent States if such an amendment (14^{th}) would be used to project federal power into the States. He stated; "A construction more dangerous to the existence of the States than this cannot be conceived. The most devoted federalist, the most ardent advocate of absolute consolidation, could not go further in his wildest dreams and desire for one government, one power, complete unification." (Author's emphasis)

The purported Amendment 14 has been a conduit to allow a the appearance as "federalism" of a complete unification of the federal government and the states. The purported Amendment 14 coupled with the Civil Rights Act has opened the door to federalization. Socialism is but one political outcome. The "New Deal" concepts President Roosevelt so eloquently pressed upon the good People of this country into believing were nothing more than pure Socialism. The facts the farmer argued against when telling

Congressman Crockett why he would not vote for him were but a harbinger of things to come.

In the following chapters, the reader will gain or should gain knowledge of these facts and that the socialistic "New Deal" and what has followed is nothing more than an old idea put into a new wrapper. The reader will learn or should learn how he/she got trapped and what each can do to get out of the trap.

The authors would like to stress one thing upon the mind of the reader; the authors cannot make political or legal determinations for you. Those determinations are for you and you alone to make. The authors can only provide information, facts and ideas, with the hope that the reader will self educate. The use of self education added to individual specific conduct gives the reader an opportunity for freedom from the destruction and immorality of the "System." May God Bless each and every reader in his or her endeavor.

Section One

Chapter 1

In the Beginning the Sovereign People

The beginning of the Nation occurred for the United States of America on July 4, A.D. 1776 as the People separated themselves from any other nation on earth.

The Sovereign authority to act was, and still is, expressed in the first word of the Declaration as "We." "We" are the Sovereign authority to establish the nation.

Excerpted from the Declaration of Independence of the original Thirteen United States of America.

> *We hold these truths to be self-evident. That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.*

As expressed above, the theory and practice for the source of authority for creation of the Nation and its government is "We." The theory of the purpose of government is "To Secure these Rights." From this basis "Governments are instituted Among Men." To make the point even more clear, the Declarants further stated; "Deriving Their Just Powers From the Consent of the Governed."

Upon the above basis, eleven very tough years later, the People again unmistakably exercised their Sovereign authority, as a

condition precedent,[4] by the use of the first three words of the Preamble to the Constitution, "We the People."

The Preamble is expressly not apart of the Constitution. Under the common law, "The preamble cannot control the enacting part of the Statute, in cases where the enacting part is expressed in clear, unambiguous terms; but in case any doubt arises on the enacting part, the preamble may be resorted to explain it, and show the intention of the law maker." Den Lloyd v. Urison, 2 NJL 212 (1807).

The lawmakers speak in their Sovereign authority:

Preamble of the original Constitution of the United States of America

> *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.*

The Senate of the United States expressly recognizes these relations by these words, "…the Court has read the preamble as bearing witness to the fact that the Constitution emanated from the people and was not the act of sovereign and independent States, McCulloch v. Maryland, 4 Wheat. (17 U.S.) 316, 403 (1819) Chisholm v. Georgia, 2 Dall. (2 U.S.) 419, 471 (1793); Martin v. Hunter's Lessee, 1 Wheat. (14 U.S.) 304, 324 (1816), and that it was made for, and is binding only in, the United States of America. Downes v. Bidwell, 182 U.S. 244, 251 (1901); In re Ross, 140 U.S. 453, 464 (1891)." Found on Page 53 of Senate document number 103-6, *Constitution of the United States of America*. [Author's emphasis]

[4] **condition precedent**, An act or event other than a lapse of time, that must exist or occur before a duty to perform something promised arises. If the condition does not occur and is not excused, the promised performance need not be rendered. The most common condition precedent contemplated by this phrase is the immediate or unconditional duty or performance by a promisor. *Black's Law*, 8th Edition, page 312.

Readers, please take note that this Constitution of America only applies in the United States of America. These premises form the foundation upon which this book proceeds.

Every July 4th, Americans honor the independence of our Nation with a renewed patriotic fervor that has reminded the authors of the Bicentennial celebrations of 1976. As is customary, in many places across this Land, traditional fireworks displays take center stage and scores of people turn out to witness the dazzling show in the summer night's sky. Looking around at the huge crowds gathered for the annual events, one might become aware that 99.99% of these people are not free. In truth and sadness, this country has not been a free people for a very long time, despite what the vast majority of the people maybe programmed to think. The people of the "UNITED STATES" celebrate the 4th day of July in honor of the country's independence, when in fact; the country has been conquered by the use of the corporation and the ignorance of such a fact.

The people call themselves a free people in a land of liberty. The Nation's anthems proudly sing the praises of this Nation. The people raise their voices, wave their flags of war and join in song, but how many Americans realize they have lost their freedom?

Freedom is a myth, portrayed in the people's minds, perpetuated by the real powers that control in order to avoid any major civil unrest. The myth is necessary to further the appearance of a voluntary submission to the "corporate, legislatively created, statutory, commercial enforcement system." It is commonly known as "Big Brother" or the "System." This System maintains the minds of most people within this myth, within the illusions that have been carefully crafted.

The truth of the matter is this: what freedoms have not been fraudulently removed from our use? The people have "voluntarily" surrendered freedoms through the people's silence and ignorance. As Americans, most of the people have no idea how freedoms so hard won have been lost. Apparently, our recent ancestors didn't have a real good grasp of the concept of Rights. For certainly, Rights have surely gone down the same path. What is left, at best, is a make-believe liberty, made of a hand full of hollow "freedoms."

A person, it would seem, should not dare to use that document called the Constitution as a symbol of rights upon which freedom is founded. It is the blueprint of a form of general government, which seemingly no longer exists in this country today. Apparently, the Constitution has been thrown out the window and stomped on by the existing powers in control. Apparently, the Republic has been shoved aside and replaced with a democracy. The fact of the matter is, most people in the current democracy remain unaware because they simply do not know the truth that lies beyond the myths. The people's so-called government has a vested interest to maintain the System.

To even begin to understand what has happened to the Republic, the people must look backward in time to the period surrounding the Civil War. The people must consider the radical effects of that war. Millions of people were then brought under the protections of the federal government. The federal government had not yet a municipal[5] local law for its federal citizens. That need for a municipal law was met in A.D. 1871. The year A.D. 1871 witnessed further erosion of the Republic. When the reader examines what happened during that time in the country's history, the reader begins to piece together this troubling, perplexing puzzle. The radical changes in government that occurred at this time form a basis to measure the real availability of freedoms.

It is time the people have an opportunity to learn what the teachers didn't and don't teach in the public or private schools at any level. The real history is far more interesting than what is taught. The authors are confident you'll stay awake for the lessons in this book.

The date is February 21, A.D. 1871 and the Forty-First Congress is in session. The reader is referred to the Acts of the Forty-First Congress, Section 34, Session III, chapters 61 and 62. On the date mentioned above, Congress passed an Act titled: "An Act To Provide a Government for the District of Columbia." This is also known as the Act of 1871. What does the act mean? It means that Congress, under constitutional authority, created a separate municipal government for the District of Columbia (not exceeding

[5] **municipal law**: 1. The ordinances and other laws applicable within a city, town, or other local governmental entity. 2. The internal law of a nation, as opposed to international law. *Black's Law,* 8th Ed,. Page 1043. [Author's emphasis]

ten Mile square). How could Congress do that? Moreover, WHY would Congress do that? To explain, let's look at the circumstances of those days.

The Act of 1871 was passed at a vulnerable time in America. The nation was weakened and financially depleted, essentially bankrupt in the aftermath of the Civil War. Arguably, the Civil War itself was nothing more than a calculated front for some pretty fancy footwork by corporate backroom players. In part, it was a strategically engineered maneuver by European interests (the international bankers) whose intent was gaining a stranglehold on the neck and coffers of America. The President and Congress well realized our country was in dire financial straits, but they refused to borrow directly from the international bankers. In those days, the Rothschild's of London, along with others were dipping their fingers into many a country's financial pie. There was the appearance in many countries of substantial incurred debt to said bankers. Congress in effect printed Green Backs to help finance the war. The President and Congress substantially refused to directly contract war debt with the domestic or European banking houses. In addition to the above financial circumstances, arguably, the Radical Republicans had attached the issue of slavery to a war train already gone down the tracks.

It would be beneficial, if the people of this nation would seriously think about banks and paper credit. Banks do not just lend money out of the goodness of their hearts. The Banks will not do anything to or for people, unless it is entirely in their best financial interest to do so. There has to be some sort of collateral or some string attached which puts the reader (the borrower, debtor and in most cases the surety) into a subservient financial position. These facts were equally true in A.D. 1871.

The cunning domestic and International Bankers were not about to lend the nation any money without some serious stipulations. Arguably, a plan was devised as a brilliant way of getting the Bankers' foot in the commercial door of the "United States." This was a prize they had coveted since the Revolution. Circumstances had been such, thanks to most of our Founding Fathers, who despised the money interest, of holding the Money Powers in check. The cumulative effect was to prevent by financial

means a governmental take over. Yet, by the Act of 1871, federal municipal law was created for the millions of new federal citizens. The new federal citizens were now, within federal municipal law, potential customers of the banks. This federal municipal law also gave Congress a law form and place "to hide" its private financial and monetary scheme.

The original Constitution drafted by the Founding Fathers was described but not named in this manner: The Constitution of the United States of America. The altered federal or statutory version reads: The Constitution Of The United States. See, the version at the end of *Blacks Law Dictionary*, 6th Edition, page 1639 and the *Federal* Civil Judicial Procedure and Rules, by Westgroup, 2004 Edition, at page 1108. This Constitution is the statutized federal corporate constitution and part of the District of Columbia corporate by-laws. The Constitution of the United States is not the document the people might mistakenly believe it to be. This last point is the source of much misunderstanding today. Today, the federal corporate constitution operates in relation to an economic/ commercial capacity, upon most persons, by agreement and contract. This Constitution only operates in a federal territorial place or plane. This document has been used to deceive the People into thinking it is the same parchment that governs the Republic. It absolutely is not. The missing words "of America" are reflective of the change in jurisdiction. The statutized federal corporate constitution is not limited in territorial application only to "not exceeding ten Mile square." The lack of the words, "of America", indicates the federal corporate constitution operates outside of the Several States of the American Union. This statutized federal corporate constitution operates where and upon whom Congress intends, everywhere except within the Several States of America, the Union. As the following chapters in this book reveal, jurisdictional applications not in relation to "of America" have had major impact on each subsequent generation. This has been especially true upon those people born in this country after A.D. 1933.

What the Congress did with the passage of the Act of 1871 was to legislatively adopt a Constitution "and laws not locally inapplicable" for the government of the District of Columbia. The kind of government the Congress created was a municipal corporation. The Constitution of the United States serves as the Constitution and a by-

law of that municipal corporation, and not that "of America." Government by legislated Municipal Corporation; think about that for a moment. Remember that Congress has constitutional power "to exercise exclusive legislation" and "to make all laws" over its territory and citizens subject to its jurisdiction. Downes v. Bidwell, 182 U.S. 244, 251 (1901); In re Ross, 140 U.S. 453, 464 (1891)

Incidentally, this corporate United States constitution, which serves, in part, as municipal by-law, does not benefit nor affect the Republic. It serves only to benefit and profit the federal municipal corporation. This United States constitution does not from a basis for legal relations in the Republic. The United States constitution operates in a place, plane and upon persons outside of the original Constitution of America. In re Ross, Downes v Bidwell supra and, Ponzi v. Fessenden, 258 US 254 (1922).

Instead of Rights, Privileges and Immunities, the Liberty guaranteed under the Constitution of the United States of America, the people now have the "appearance" of relative rights or privileges. One example of this is the "Sovereign's" right to travel, which has been transformed under federal corporate government public policy into a commercial privilege, whereby the people via agreement must be licensed. Today, this commercial travel operates outside of the original Constitutions. These types of legal relations by agreement and contract are the types of legal outcomes with which this book deals.

When the reader considers the word "Sovereign", you should think about what the word means. According to Webster's Dictionary of the English Language, 1828, "sovereign" is defined as:

> 1. chief or highest; supreme. 2. Supreme in power, superior in position to all others. 3. Independent of, and unlimited by, any other, possessing or entitled to, original and independent authority or jurisdiction.

In other words, our government was created by and for Sovereigns, the free "Citizens" who were deemed the highest authority by the Declaration of Independence and the creators of the Constitution of the United States of America. Only the People can be Sovereign - remember that. Government cannot be sovereign except

in relation to other governments, or to those people who have waived Sovereignty.

The reader has looked to the Declaration of Independence, where he/she has read: government is subject to the consent of the governed. The governed are supposed to be the People of this great Nation, the Sovereigns. Do you feel like a Sovereign, yesterday, or today; will you feel that way tomorrow? It doesn't take rocket scientists or constitutional historians to figure out current circumstances of government don't bode well for the People. What passes for "government" in these times is "not" subject to the consent of the governed. Rather, the governed are subject to control within the Municipal Corporation and public policy. This control as public policy does appear to encroach into every State of the Republic. The federal municipal corporation has "NO" jurisdiction outside of the District of Columbia, the ten miles square, other than territory and persons, possessions and property subject to the jurisdiction of Congress, unless the People grant "permission." Silent assent, waiver, agreement or contract may grant "Permission."

The federal municipal corporation, called the United States is used as a devise to convince the reader to think otherwise. Of course, the reader is presumed to know the law. This is ironic because as a people we are taught basically nothing about the Law or the American Constitution in any level of our education. Our children are mainly taught to obey the municipal corporate by-laws under public policy. The people are made to memorize facts. But real meaning is withheld from the people. The people are not told about the real Laws, only that the people must obey the appearance of law, i.e. federal municipal by-laws and public policy. Within the federal municipal corporate government schools very rarely is discussed the Constitution of the United States of America. Arguably, the current "public fool system" was put into place to indoctrinate and dumb down the masses to be submissive and subservient to the federal municipal corporation. What has been achieved in this situation is generally an unthinking, lower cost to persuade, ready to obey federal citizen.

With the passage of the Act of 1871, the Congress set a series of subtle and overt deceptions in motion. These deceptions have been persuasively sold to the people. Obviously being deceptive in

nature, no one can reasonably expect a very public discussion about the Act of 1871. No one can reasonably expect those foreign or domestic interests who have profited by the deceptions to reveal the true source of their profits.

Over time, the Republic by deception has been substantially suppressed. The People have unknowingly, therefore likely unwittingly, given the "appearance" of their assent. It is doubtful the reader has been taught about these matters in any school or church. It is not "profitable" to either state or church to have the true history revealed. It has not been socially or politically acceptable to discuss the true nature of the federal municipal government for the District of Columbia, or other territory, and the persons "subject to the jurisdiction" of Congress. What has been carefully suppressed or ignored is why it has been deemed legally necessary to create a federal municipal government as the District of Columbia for Negroes and others "and subject to the jurisdiction thereof." In like manner, what has been carefully suppressed or ignored is how state citizens get entangled in that federal territorial municipal jurisdiction. Also suppressed is discussion in the nature of the law form, essentially civil law, adopted by the Congress. The people have been duped into the "appearance" of voluntarily submitting their person to Congressional constitutional power "to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten Miles square)" (Article One Section 8 paragraph 17*)*, "…and to make all needful rules and regulations respecting the territory," (Article Four Section 3 paragraph 2), "and subject to the jurisdiction thereof "(purported Amendment 14 section 1).

Since Congress has the constitutional power to exercise exclusive Legislation over such District, or other territories or persons, it should not be a surprise to note that is exactly what Congress has done. It also should not be a surprise to note that various forms of bribery or political pressure, from whatever sources, private, domestic or foreign have influenced Congress in the District. For example, it would not be hard to conclude that the First and Second Banks of the United States, the current Federal Reserve Bank System and the current Internal Revenue System, as institutional commercial entities bear witness to these malignant influences. For these present entities, municipal civil law, also

known as private international law, is operative. Today, silent assent, waiver, private agreements and contracts invoke this law form.

A key idea is to understand that the District of Columbia being limited to (not exceeding ten Miles square) is as a place only a subset of a larger federal place. This federal place also extends in a plane of jurisdiction out over the geographic territory of the Several States[6] of the United States of America.

A larger jurisdiction is provided for by the authority of the Constitution at the last paragraph of Article One, Section 8: "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 Office thereof." This paragraph catches law making powers "vested by this Constitution" in relation to "the Government of the United States."

The question is: Does the Government of the United States supposedly act for all the People and the several States of the United States of America, or alternatively does the Government of the United States act by a federal municipal corporation over those places and persons subject to its sovereign jurisdiction? The answer is the Government of the United States has power in relation to both

[6] Note: The term "Several States of America" explicitly refers to the people, geographic territory and their political relations to the Union; for example Montana, North Carolina, Texas, and all the other Several States. It is to those states that the Constitution of the United States "of America" applies. These people are the beneficiaries of that document. These are the people to whom the officers swear an oath.
The term "several States of America" means the incorporated states that are recognized when the Several States are allowed into the Union. The small s "several States" are recognized as bodies politic and corporate as created by the Constitutions that are tendered to Congress to be examined to see if they meet the test of "Republican in form." The term small s "several States" means The State of Montana, The State of North Carolina and The State of Texas, etc. which are recognized by the Union as incorporated States to which are due "full faith and credit" for their official acts.
Today, in the Composite state there is the appearance that "State of NORTH CAROLINA" is somehow supposed to be thought of as politically and legally the same as the "State of North Carolina." It is very unlikely that in today's composite state, the two terms have any relevant commensurate meaning.

of the above. The question is how does the reader "appear" to depart from the source of Sovereignty, the People and their Several States of the United States of America? One possibility is to "appear" to submit to "exercise exclusive legislation in all cases" (Article One Section 8 paragraph 17), "…and to make all needful rules and regulations respecting the territory," (Article Four, Section 3, paragraph 2), "and subject to the jurisdiction thereof" (purported Amendment 14, section 1). Of course the reader recognizes the words "and subject to the jurisdiction thereof" are lifted from the purported Amendment 14. This is the same purported amendment that created the necessity for a federal municipal law i.e. District of Columbia, incorporated by the Act of 1871. The reason for the federal municipal law is that no such law existed for that class of persons created within the purported Amendment 14 prior to the incorporation of the District of Columbia. Hopefully, the reader by way of the following pages will better understand the necessity of the Act of 1871.

The People have granted seventeen limited enumerated powers to Congress to exercise on their behalf. The People have agreed to submit their persons to that particular constitutional jurisdiction. The People have also granted powers to Congress such that Congress can by legislation exercise exclusive control over those places and persons, "and subject to the jurisdiction thereof." As will be well explained, the purported Amendment14 was never intended to reach the People directly. It was intended to give authority to the United States Congress over a class of persons found within the jurisdiction of the federal Government of the United States and who would also be of that same class of persons resident in any State.

A very important question is: What is the distinction between the Government of the United States as seen in Article One, Section 8 at the last paragraph thereof and the United States of America? If the United States is defined within Title 28 USCA §3002(15)A, "means a federal corporation", then is the "Government of the United States" only limited to a federal corporation? It logically follows, if it "appears" a person has some how submitted "to the jurisdiction thereof", to what has a person submitted? To what capacity has the "appearance" of submission been given?

There are three basic questions involved:

(1) What really is "the Government of the United States" and has that government morphed into a capacity as a federal corporation? (Operating under private international law.)

(2) How does a person "appear" in fact to submit "and (be) subject to the jurisdiction thereof"? [Author's addition]

(3) If a person decides that whatever may be the current capacity of "the Government of the United States", and self determination demands the reader not be "and subject to the jurisdiction thereof", how does the reader in fact not be "and subject to the jurisdiction thereof"?

The Sovereign People have been deceived for far too many years into believing in false notions that they are free and independent. In actuality, the People continue to be slaves and servants of Congress' federal municipal corporation.

Today, given events in A.D. 1932 and 1933 and later the people appear to voluntarily accept political and legal relations to the federal municipal corporation. Demonstrably, high political crimes were committed against the People in 1933 by the President and the Congress. Some honest men, given the passage of time, could have remedied these circumstances. Given the political reality and undoubtedly due to lust for money and power, no political remedy has generally appeared. Today, we find ourselves in the present unpleasant circumstances. However, not all voices have been stilled. The reader may read, for example, in subsequent chapters what in A.D. 1937 a Supreme Court Justice said about his fellows in Congress. Is the reader willing to "forgive and forget" terrible crimes against the People? The reader "appears" to have lost more freedom than may be realized due to the use of the corporate form of the so-called government. The capacity in which today the government operates is crucial to understanding current political and legal relations. Inevitably, the People will become even more enslaved unless individually they turn away from the current federal municipal corporate democracy.

The authors are saddened to think about the brave men and women who have been killed in all the wars and conflicts instigated by power driven madmen. These courageous souls fought for the preservation of ideals they believed to be true. They certainly did not knowingly fight to preserve a federal municipal corporation and therein to satisfy the greed of the money and power hungry interests. Does the reader believe that any one of the individuals, who have been killed or maimed as a result of war, would have willingly fought if they had known the full truth? Does the reader believe one person would have laid down his life for a federal municipal corporation controlled by people driven by lust for power and money if the truth had been known? The authors think not. If the People had known long ago to what extent their Trust has been betrayed, the authors wonder how long it would take for another Revolution.

What the American People desperately need is a Revolution in "THOUGHT." As has so many times been demonstrated, thought and ideas really have changed the world. Will the American people ever restore the Republic? That is a question the authors cannot answer, yet. We hope, and most of all pray that, "We The People" will work together in a spirit of cooperation to make it happen in this lifetime.

Our children deserve their rightful legacy as the "cause of liberty" for which our ancestors fought so hard to give to the American People. Will the American People remain silent, caught up in "Good Times" and help to perpetuate the MYTH of freedom? Or, do we stand as One Sovereign People, but individually take back what has been deviously stolen from the house of our Republic? Freedom comes with a price. Freedom is not free.

The following pages are tendered in the hope that the information and the knowledge contained maybe of help. The reader may make a self determination to promote the "Cause of Liberty." The authors argue the "Cause of Liberty" is best promoted within the framework of the Republic restored. The authors believe that the highest social outcomes, for the most people, are only realizable within the Republic.

Chapter 2

Some Historical Perspective: Wilson to Roosevelt's New Deal

Woodrow Wilson was elected Democratic Governor of New Jersey in A.D. 1911, Wilson became a national figure due to his "progressive" views on reform. The following year, A.D. 1912, in a rapid political move, he was elected as the twenty-eighth President of the United States. Over the next few years he concentrated on anti-trust measures and on reorganizing the federal banking system. The Federal Reserve System was inaugurated under his presidency.

On the outbreak of the First World War, President Woodrow Wilson declared a policy of strict neutrality. Although the United States of America had strong ties with Britain, Wilson was concerned about the large number of people in this country who had been born in Germany and Austria. Other influential political leaders argued strongly in favor of the United States of America maintaining its isolationist policy. This included the pacifist pressure group, the American Union Against Militarism.

Opinion against Germany hardened after the sinking of the Lusitania. William J. Bryan, the pacifist Secretary of State, resigned and Wilson replaced him by a holder of pro-Allies sentiment Robert Lansing. Wilson also announced an increase in the size of the armed forces of the United States. However, in the A.D. 1916 Presidential election campaign, Woodrow Wilson stressed his policy of neutrality. His political team used the slogan: "He Kept Us Out of the War."

On January 31st, A.D. 1917, Germany announced a new submarine offensive. United States territorial waters were included in the new German submarine offensive. Wilson responded by breaking off diplomatic relations with Germany. The publication of the Zimmerman Telegram, that suggested that Germany was willing to help Mexico regain territory in Texas and Arizona, intensified popular opinion against the Central Powers.

On April 2nd, Wilson asked Congress for permission to go to war. This declaration of war was approved in the Senate on April 4th, A.D. 1917 by 82 votes to 6, and two days later, in the House of Representatives, by 373 to 50. Still avoiding alliances, war was

declared against the German government (rather than its subjects). Wilson also insisted that the United States of America was an associated power rather than a member of the Allies. Wilson appeared to maintain the separate nationality of the United States of America.

War was declared on June 28th, A.D. 1914 and lasted until the Armistice on December 14th, A.D. 1918. As noted, the United States entered the war effort by declaring war on Germany on April 6th, A.D. 1917. The Paris Peace Conference opened on January 12th, A.D. 1919. Meetings were held at various locations in and around Paris until January 20th, A.D. 1920. Leaders of 32 states representing about 75% of the world's population attended. However, negotiations were dominated by the five major powers responsible for defeating the Central Powers: the United States, Britain, France, Italy and Japan. Important figures in these negotiations included Georges Clemenceau (France) David Lloyd George (Britain), Vittorio Orlando (Italy), and Woodrow Wilson (United States).

Eventually five treaties emerged from the Conference that dealt with the Defeated Powers. The five treaties were named after the Paris suburbs of Versailles (Germany), St Germain (Austria), Trianon (Hungary), Neuilly (Bulgaria) and Serves (Turkey).

The world was in a political, commercial and legal context being transformed into a more interdependent whole. This was seen by an attempt to implement and go forward with a League of Nations. However, the League produced little results and in a few years failed.

In A.D. 1921, President Wilson left office and Warren Harding was elected to office. Before his nomination, Warren G. Harding declared, "America's present need is not heroics, but healing; not nostrums, but normalcy; not revolution, but restoration; not agitation, but adjustment; not surgery, but serenity; not the dramatic, but the dispassionate; not experiment, but equipoise; not submergence in internationality, but sustainment in triumphant nationality...." During Harding's campaign thirty-one distinguished Republicans had signed a manifesto assuring voters that a vote for Harding was a vote for the League. But Harding interpreted his election as a mandate to stay out of the League of Nations.

During Harding's presidency Republicans in Congress easily got the President's signature on their bills. Congress eliminated wartime controls and slashed taxes, established a Federal budget system, restored the high protective tariff, and imposed tight limitations upon immigration. By 1923, the postwar recession seemed to be giving way to a new surge of prosperity, and newspapers hailed Harding as a wise statesman carrying out his campaign promise—"Less government in business and more business in government."

Behind the facade, not all of Harding's Administration was so impressive. Word began to reach President Harding that some of his friends were using their official positions for their own enrichment. Alarmed, he complained, "My...friends...they're the ones that keep me walking the floors nights!" Harding asked Herbert Hoover. "If you knew of a great scandal in our administration", "would you for the good of the country and the party expose it publicly or would you bury it?" Hoover urged publishing it, but Harding feared the political repercussions. Harding did not live to find out how the public would react to the scandals of his administration. In August of 1923, he died in San Francisco of a heart attack.

On the morning of August 3, A.D. 1923, Vice President Calvin Coolidge received word that he would be President upon taking the oath. He forthwith took the Oath of Office. Coolidge rapidly became popular. In 1924, as the beneficiary of what was becoming known as "Coolidge prosperity", he polled more than 54 percent of the popular vote and was elected to the Presidency. In his Inaugural Address, Coolidge asserted that the country had achieved "a state of contentment seldom before seen", and pledged himself to maintain the status quo. In subsequent years, he twice vetoed farm relief bills, and killed a plan to produce cheap Federal electric power on the Tennessee River.

The political genius of President Coolidge was his talent for effectively doing nothing: his active inactivity suited the mood and certainly met the needs of the country admirably. It suited the business interests most of whom wanted little or no governmental control or regulation. And it suited all those who were convinced that government in the country had become dangerously complicated

and top-heavy. In A.D. 1928, while vacationing in the Black Hills of South Dakota, he issued the most famous of his laconic statements; "I do not choose to run for President in 1928." By the time the disaster of the Great Depression had hit the country, Coolidge was in retirement. Before his death in January 1933, he confided to an old friend, "I feel I no longer fit in with these times."

In A.D. 1928, Herbert Hoover was elected to public office and arguably, based upon in part laissez faire classical economic theory, helped created government public policy, which deepened the economic misery. Early in Hoover's administration, America was already in the midst an ill wind of economic convulsion and entering depression, possibly the worst the United States of America had ever experienced.

History of Herbert Hoover and his employment with the United States Government:

After the United States entered the war in 1917, President Wilson had appointed Hoover head of the Food Administration. He succeeded in cutting domestic consumption of foods, while avoiding rationing at home; yet overseas helped keep the Allies fed.

After the Armistice, (monetary reduction, commercial and military disarming of the losing Countries that entered the 1st World War), Hoover, a member of the Supreme Economic Council and head of the American Relief Administration, organized shipments of food for starving millions in central Europe. He extended aid to famine-stricken Soviet Russia in 1921. This political and commercial conduct was known as the "Good Neighbor" Policy.

It has been reported that, when a critic inquired if Hoover was not thus helping Bolshevism, Hoover retorted: "Twenty million people are starving, whatever their politics, they shall be fed!"

After capably serving as Secretary of Commerce under Presidents Harding and Coolidge, Hoover became the Republican Presidential nominee in 1928. He said then: "We in America today are nearer to the final triumph over poverty than ever before in the history of any land." At first his election seemed to bode well for further commercial prosperity. Yet, within the business cycle, the signs of impending commercial upheaval were all too apparent.

Predictably, within months, in October 1929, the stock market crashed and the Nation spiraled downward into depression.

After the market crash, Hoover announced that while he would keep the Federal budget balanced, but in an economic jujitsu move, he would cut taxes and expand public works spending. Hoover's fiscal policy, in these regards, did not follow completely the economic orthodoxy of the times. Particularly, expanding public works and cutting taxes would prove to be devices employed at one time or another by the democratic administration that was to follow.

By A.D. 1931, trade, commercial and monetary repercussions, particularly in relation to Europe, deepened the crisis. The President presented to Congress a program asking for creation of the Reconstruction Finance Corporation ostensively to aid business and provide additional help for farmers facing mortgage foreclosures. The President proposed banking reform. He advocated loans to States for feeding the unemployed and also promoted expansion of public works. The President, advised by way of then current economic theories, advocated drastic governmental economy. All of this sounds similar to early "New Deal" economic proposals.

At the same time, the President reiterated his view that while people must not suffer from hunger and cold, caring for them must be primarily a local and voluntary responsibility.

Hoover's Democratic opponents in Congress, whom he felt were sabotaging his program for their own political gain, unfairly painted him as a callus and cruel "do nothing" President. Hoover became the political scapegoat for the Depression, which resulted later, in 1932, in a crushing Republican defeat at the polls.

Later, in the A.D. 1930s, Hoover became a powerful critic of the "New Deal", warning against tendencies toward "statism."

In the midst of economic despair and depression during the fall of A.D. 1932, Franklin D. Roosevelt received an overwhelming political mandate. There is no doubt the people gave a political mandate, but one wonders if the people actually understood what Roosevelt intended to do with the mandate. The time of the Republic was at an end.

Assuming the Presidency at the depth of the Great Depression, Franklin D. Roosevelt set about to alter public opinion. The American people were told to have faith in themselves, and by implication, faith in the new Administration. He brought hope as he promised prompt, vigorous action. The President said in his first Inaugural Address, "the only thing we have to fear is fear itself." At that time, he also said other words that were the harbinger for the basis of commercial and public policy to come. In these regards, he stated, "treating the task as we would treat the emergency of a war." The authors ask the question if the real fear should have been that of the "New Deal"?

By March 1933 of Roosevelt's first term there were 13,000,000 real people unemployed, many banks were closed, in default, in the process of closing, reorganizing or otherwise drawing in assets. Many depositors' money was lost or at great risk of loss. Commercial, agricultural and financial activity was near a standstill. The Nation was setup for change.

In his first "hundred days", FDR proposed, and Congress began to enact a sweeping program, a "New Deal" to bring recovery to business and agriculture. Programs were proposed to bring relief to the unemployed and to those in danger of losing farms and homes. Substantial governmental expenditures proceeded at an accelerated pace: for example the establishment of the massive Tennessee Valley Authority. Reform was the order of the day. The old order was being swept away. But how would the new order be paid for?

From the above facts one could conclude the United States government was used intentionally, or alternatively by massive mismanagement, as a vehicle to starve large numbers of the people from the later 1920s through 1936. Thus, a people-centered commercial and political reality was realized in which to pass and continue the implementation of the "New Deal." Since the "New Deal" is in fact many different Acts based upon a democratic political model, it would take time to politically manage the United States Congress so as to produce appropriate legislation. Not all the legislation proved to be workable, or legal or Constitutional. Trial and error were the order of the day. An experiment in a federal democracy was underway.

The "New Deal" consisted in part of the following Acts. Emergency Banking Act/Federal Deposit Insurance Corporation (FDIC), Federal Emergency Relief Administration (FERA), Civil Works Administration (CWA), Civilian Conservation Corps (CCC), Indian Reorganization Act of 1934, National Industrial Recovery Act (NIRA) of June 1933, Public Works Association (PWA), Federal Securities Act of May 1934 as amended 1938 and 1939, Securities and Exchange Commission (SEC), Home Owners Loan Corporation (HOLC), Agriculture Adjustment Administration (AAA) 1933 as amended in 1938, Tennessee Valley Authority (TVA) May 1939, Works Progress Administration (WPA) 1935-1943, Farm Security Administration (FSA), National Labor Relations Act (Wagner Act) of 1935, Fair Labor Standards Act of 1938, Social Security Act of 1935 implemented in 1936.

The authors argue certain immoral and deceitful politicians used the vehicle of the United States Government to tell the people to have faith in that government. There was an organized use of the central government to further the expansion and power of the central government at the expense of the States. The United States Government would continue to promise there would be a chicken in every pot, now and in the future. The people were hungry, commercially beaten down by special interests in banking (the authors allege by immoral design). The people begin to depend upon the government dole. Of course, the hook was the people were defrauded to make an "appearance" of changed individual political status and embark upon new legal relations with the federal United States government. Of course, the jurisdictional place of the fact of "appearance" in the changed political and legal relations was exterior to the United States of America. The reader knows the jurisdictional place where the Constitution of the United States of America does not apply. That place is the jurisdiction of the United States. The reader may begin to understand the expanded construction of the jurisdictional place and persons to whom the Constitution of the United States of America does not apply.

That this country spiraled into economic disaster one cannot argue. The authors argue, simultaneously the country also spiraled into a political catastrophe. Yet the reader might conclude that the First World War efforts of feeding the foreign people of those countries and the commercial turmoil visited upon all countries

might have been an experiment road tested by the money interests. It can be argued that the major banks got control of those war-devastated countries' money systems. The money interests lacked control of only a "free" Nation's Money. The question then became how the money interest would deal with America? After all, the Federal Reserve Act of 1913 was after 20 years, in 1933 ex warranto, which is to say beyond legal challenge. The real money power contest lay just ahead: the National Money System versus the quasi-private Federal Reserve System. Of the challenges that faced the "New Deal" legislative team, the money system question was settled first by the Roosevelt Administration insiders. The National Money Standard and System were the first casualties of the "New Deal."

By 1935, the Nation had achieved some measure of recovery, but the economic recovery was not complete and sectors of the economy remained at low production levels. One result was that substantial unemployment remained. Businessmen and some Bankers were turning more and more against Roosevelt's "New Deal" program. They feared his experiments and were appalled because he had taken the Nation off the gold standard. The notion that the National Money System had been attacked so decisively was likely not really understood by the people. It is doubtful, at that time, (or even in the present day), most people understand the political and legal consequences of the loss of the National Money Standard and System.

Against economic policy orthodoxy, deficits in the budget were present. Further, business disliked the concessions to labor. Many Americans felt the Bankers were going to get too much control. To satisfy his many critics Roosevelt responded with a new program of social and governmental reform: namely his Crown Jewel, the Social Security Act. Further responses included heavier taxes on the wealthy, new controls over banks and public utilities, and an enormous work relief program for the unemployed. Other welfare and aid to the disabled followed. Who can argue with meeting the people's needs, but at what price?

The reader will find the Social Security Act of 1935 reproduced in the appendix of this book. The SS Act then became, in a sense, the Crown Jewel of the "corporate, legislatively created,

statutory, commercial enforcement system," also known as the "System", that was to follow. This System, with enormous loss of personal freedom and liberty, has been grossly expanded over the years to date.

In 1936, Roosevelt was re-elected by a top-heavy margin. It is thought Roosevelt felt armed with a popular mandate that would politically allow legislation to enlarge the Supreme Court. The Supreme Court had been invalidating key "New Deal" measures with very significant effect. The Roosevelt political team thought it possible its "Crown Jewel", the SS Act would be a likely judicial target. The Roosevelt political team set about to capture the Supreme Court. Roosevelt politically miscalculated the Supreme Court packing battle. The political compromise that followed resulted in a real cost to the American people. The cost was a revolution in interpreted constitutional law resulting in a loss of personal freedom. This terrible cost, individually manifested, by way of the appearance of facts, but actually rebuttable presumptions "We the People" suffer yet to this day. Hence, what the authors of this writing call the "Switch in Time case law" are cases that exhibit a reinterpretation of a person's legal relations, but in a changed political system. Subsequently, the Government could legally regulate the people and the economy, if the people would supply their "silent assent." In other words, all that would be required would be to do nothing and merely go ahead and do what appears to be one's normal business. The authors argue silent assent has been coupled with contract law via signature to substantially enslave the people in the federal system then in the making. The authors believe, "What a disaster that has turned out to be."

Now the reader knows something of what occurred to bring this great Nation to its peril. The reader may want to discover how the United States Supreme Court allowed the "New Deal" or point in fact the SS Act to constitutionally remain.

When you read the "Switch in Time" case law and the case law on dual citizenship, you should better understand the ramifications of the "New Deal" insofar as citizenship, political status and legal relations are concerned. The reader may make a political decision, by self determination to alter presumptions that relate to political status. The reader may decide to alter or change

certain legal relations. Understanding the following Supreme Court cases should help in your decision. As the reader likely has the "appearance" of resulting relations in respect to the United States Constitution, incorporated as part of the territorial municipal law of the District of Columbia by the Act of 1871. Because these resulting relations appear to make a person, "and subject to the jurisdiction thereof", the "Switch in Time" cases may loom large in importance. The United States Supreme Court decided these cases in 1937, one after another, in a four-month period of time. These cases, in particular and in part, redefined certain provisions of the Constitution of the United States as that constitution applies to specific persons and places. Remember, Congress incorporated the District of Columbia via federal municipal law and adopted the United States Constitution "and laws not locally inapplicable" in A.D. 1871. This Act of 1871 provided a federal municipal law base for federal citizens "and subject to the jurisdiction thereof." The authors argue that it is to this class of federal citizens the Supreme Court directly, with particularity and specificity in 1937 addressed the "Switch in Time."

As the reader will discover and hopefully understand, it is by rebutting presumptions that an individual appears to elect to remove his person from the United States. By this action that person may become a beneficiary and therein make claims upon the Constitution of the United States of America. These claims will operate as protection against the territorial federal municipal law and Congressional public policy applied to only federal citizens, "and subject to the jurisdiction thereof."

The "Switch in Time" cases include: Aetna Life Ins. v. Haworth et al., 300 US 227, 57 S.Ct. 461 (March 1st, 1937), defining actual controversies as procedural relations, West Coast Hotel Co. v. Parrish, 300 US 379, 57 S.Ct. 578 (March 29th, 1937), redefining Due Process, National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 US 1, 57 S.Ct. 615 (April 12th, 1937), redefining Interstate and Intrastate commerce, Chas. C. Steward Mach. Co. v. Davis, 301 US 548, 57 S.Ct. 883 (May 24th, 1937), redefining the taxing authority and most important, Helvering, Commissioner of Internal Revenue, et al. v. Davis, 301 US 619, 57 S.Ct. 904 (May 24th, 1937 as amended June 1st, 1937), redefining the general welfare clause, also read U.S. v. Butler 297 US 1, 56 S.Ct.

312 (Jan. 6th, 1936), purported to be overruled in the Senate, Document number 103d Congress, Senate Document 103-6, named the "Constitution of the United States of America, analysis and interpretation." As the reader continues his discovery, the "Switch in Time" cases and their political and legal implications are discussed.

Chapter 3

Switch in Time and the War in the Supreme Court

Roosevelt's administration of the "New Deal" faced substantial opposition among Congress, business, and before 1937 the United States Supreme Court. Roosevelt had gone to some businessmen of America and got an agreement to maintain wages at a relative high level. Many businessmen relied on overseas trade. Roosevelt, ostensibly to help business, promised he would put tariffs on foreign trade. This tariff campaign only lasted a few months. Not surprisingly, foreign countries retaliated with tariffs of their own against American trade. This resulted in businessmen being forced to drop wages and lay employees off.

To counter these circumstances, with which Roosevelt was faced, he started to place more legislative experiments of the "New Deal" before Congress. Congress, given the economic conditions complied and passed most of the "New Deal" proposals. Because of the continued political and economic pressures the Country was facing, the legislatures, both state and federal, went along with the new programs. By 1937, the economic and legislative experiments of the "New Deal" were well advanced. At that time, the majority in Congress felt compelled to pass the "New Deal" proposals. By 1937, the economic and legislative experiments of the "New Deal" were well under way.

At this time in our American History many in Congress and many businessmen of America did not like the "New Deal" ramifications, including the extra taxing powers the "New Deal" generated. Even before 1937, some businessmen started to challenge these governmental experiments in court, and some of these cases advanced to the Supreme Court.

Roosevelt knew, under the then current makeup of the court, the "New Deal" was faced with serious constitutional questions that were likely to be heard and ruled. By 1937, the Supreme Court, on constitutional grounds, had decided against a number of "New Deal" legislative act.. Roosevelt believed that political control of the Supreme Court was necessary. Roosevelt had already begun to "stack the court" with Justices that he believed were in favor of

"New Deal" proposals and Acts the Congress had passed. The result, the Supreme Court was decidedly split on just about every "New Deal" controversy that came before the Court. Supreme Court Justices found Roosevelt's "New Deal" or portions of his "New Deal" unconstitutional and/or constitutional with sharply worded dissenting opinions on both sides from early 1934 to mid 1937. It was obvious that depending on which Justice wrote the opinion he was or was not a Roosevelt hatchet man. Remember reader, that a Roosevelt Justice was sent there for a political purpose, to chop up prior constitutional interpretation, and stare decisis[7] be damned.

The author's focus is essentially how the office of President and Congress, through the use of the government of the United States as a federal United States corporation, has been able to gain extraordinary control over the lives of the American people. We therefore establish a before and after case comparison based appropriately around the time of the "Switch in Time" cases of 1937. By analysis of selected cases, the political change accepted and advanced by the Supreme Court is considered.

First, we must study U.S. v. Butler 297 US 1, 56 S.Ct. 312, Jan. 6th, 1936, to understand what happened the next year with the redefining of the taxing authorities and the General Welfare Clause, both at Article One, Section 8 of the Constitution of the United States. Remember reader; this case was decided in 1936 before the "Switch in Time."

U.S. v. Butler 297 US 1, 56 S.Ct. 312 (Jan. 6th, 1936), the General Welfare Clause and taxing

U.S. v. Butler, supra, involved the imposition of a so called processing tax on processors of agricultural commodities and allowed the agriculture secretary to enter into agreements with farmers for reduction of acreage all under the Agricultural Adjustment Act. Once the tax was collected, the secretary was allowed to appropriate the money as benefits to distressed farmers. The Agricultural Adjustment Act and its authorities were then challenged as being unconstitutional under Article One, Section 8 and the General Welfare Clause thereof.

[7] **stare decisis**, [Latin "to stand by things decided"] The Doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. *Black's Law*, 8th Ed., Page 1443

Here the Court spoke: There should be no misunderstanding as to the function of the Supreme Court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the People. All legislation must conform to the principles it lays down.

When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty: to lay the article of the Constitution that is invoked beside the statute that is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. The court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the relevant provisions of the Constitution; and, having done that, its duty ends.

The real question is will a Justice with a preconceived (Roosevelt) political view stay within strict construction[8] and stare decisis? The Court in Butler concluded on the point of constitutionality of the Agricultural Adjustment Act that:

> "When act of Congress in given case is appropriately challenged as not conforming to Constitution, court's sole power and duty is to determine whether the act is in accordance with the constitutional provisions invoked, and court will not approve or condemn any legislative policy." U.S. v. Butler supra.

Of course, to approve or condemn any legislative policy would invoke a political question that the court cannot hear under

[8] **strict construction**, The doctrinal view of judicial construction holding that judges should interpret a document or statute (esp. one involving penal sanctions) according to its literal terms, without looking to other sources to ascertain the meaning. *Black's Law* 8th Ed. Page 1462. Author's note: Strict construction is applied to the Court's interpretation of the Constitution when deciding the Constitutionality of acts of Congress.

separation of powers. (See chapter on Dual Citizenship and Political Question, Chapter 11.)

The Court in Butler concluded that the states were the repository for the decisions regulating the reduction of acreage. The Court stated:

> "Federal Union has only the powers expressly conferred on it and those reasonably implied from powers granted, while each state has all governmental powers except such as the people, by Constitution, have conferred on United States, denied to the state, or reserved to themselves."

It is the author's conclusion in this case that the word "themselves" also means the people of the Several States incorporated into the Union.

The Federal Government did not have the authority to regulate the reduction of agricultural acreage, in that the States (People) possessed that authority originally. The People had not granted nor waived such authority. Therefore, the Federal Government could not constitutionally regulate in this area of law.

The Butler Court, infra, determined in point[9], a question on the taxing powers of the United States. To allow the Federal Government to tax the production of agricultural products and to use that money to pay the debts of the United States as benefits to distressed farmers would be unconstitutional under Article One, Section 8 and within the General Welfare Clause.

The Court in Butler concluded that the "General welfare clause of Constitution does not empower Congress to legislate generally for the general welfare, but merely to tax, and appropriate the revenues so raised, for purpose of payment of nation's debts and of making provision for the nation's general welfare; the power to appropriate being as broad as the power to tax." U.S.C.A.Const. art. 1, § 8, cl. 1. (Author's emphasis)

The Court went on as follows: the clause thought to authorize the legislation is Article One, Section 8, clause 1 which confers upon the Congress the power to lay and collect Taxes, Duties, Imposts and

[9] **In point**, refers to a question directly decided or discussed by the court, the precise issue now at hand.

Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. It is not contended that this provision grants power to regulate agricultural production upon the theory that such legislation would promote the general welfare. Significantly, the government conceded in Butler that the phrase "to provide for the general welfare" qualifies the power "to lay and collect taxes."

The view that the clause grants power to provide for the general welfare, independently of the taxing power, has never been authoritatively accepted. Mr. Justice Story points out that, if it were adopted, "it is obvious that under color of the generality of the words, to 'provide for the common defence and general welfare', the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers." The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare. [Author's emphasis] Story, Commentaries on the Constitution of the United States (5th Edition) vol. I, s 907. (Author's emphasis) Readers, please take note of the Court's emphasis on the General Welfare clause. At this time, the Court viewed the General Welfare clause in the light of a more limited grant of Power.

Of course, taxing authority that allows the Federal Government to tax one man and deliver that tax to another as a benefit for some disaster or National Emergency is not a taxing authority conferred upon the United States by the Constitution of the United States of America. At this point in time, 1936, the Constitution of the United States had not been reinterpreted on the point of General Welfare. Would not the reader accept that the Social Security Act of 1935 rests primarily upon the General Welfare Clause? The authors boldly state the Social Security Act does exactly that, it takes one man's money and grants it to another through a welfare scheme, generally called "Old Age Benefits" under the guise of "General Welfare." See the Social Security Act's Preamble below, (Act of August 14, 1935) [H. R. 7260] implemented in 1936.

> "An act to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes." [Emphasis Author's]

The authors query what does "for other purposes" mean? Hint: Read the SS Act in its entirety to answer that question. See Appendix. Social Security will be discussed in detail in later chapters.

The Court reasoned as follows: The Congress is expressly empowered to lay taxes to provide for the general welfare. Funds in the Treasury as a result of taxation may be expended only through appropriation. Article One, Section 9, clause 7. They can never accomplish the objects for which they were collected, unless the power to appropriate is as broad as the power to tax. The necessary implication from the terms of the grant is that the public funds may be appropriated "to provide for the general welfare of the United States." These words cannot be meaningless; else they would not have been used. The conclusion must be that they were intended to limit and define the granted power to raise and to expend money. How shall these words be construed to effectuate the intent of the Constitution?

The Court continued its analysis: Since the foundation of the nation, sharp differences of opinion have persisted as to the true interpretation of the phrase. Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section, Section 8 of Article One; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress. In this view, the phrase is merely describing the same thing twice in one sentence, for taxation and appropriation are or may be necessary incidents of the exercise of any of the enumerated legislative powers.

The Court added another view: Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, and is not restricted in meaning by the grant of them. Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States and no more. Each contention has had the support of those whose views are entitled to weight.

Until the 1930s, the Supreme Court had noticed the question, but had never found it necessary to decide which construction of Article One Section 8 is true. Mr. Justice Story, in his Commentaries, supports the Hamiltonian position. By stating to the effect, we shall not review the writings of public men and commentators or discuss the legislative practice. The Court went on to say: Study of all these leads us to conclude that the reading advocated by Mr. Justice Story is the correct one. While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of Section 8 of Article One which bestow and define the legislative powers of the Congress. It results that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.

The Court further commented: but the adoption of the broader construction leaves the power to spend subject to limitations. As Story states:

> "The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them." [Author's emphasis]

The Court concluded the qualifying phrase must be given effect, all advocates of broad construction admit. Hamilton, in his well-known Report on Manufactures, states that the purpose must be "general, and not local." Monroe, an advocate of Hamilton's doctrine, wrote: "Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and

pleasure? They certainly have not." Story says, "that if the tax be not proposed for the common defense or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles." And Story makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from local, welfare. If the general welfare clause is narrowly defined, might the reader conclude the Social Security Act would also be found to be unconstitutional?

The Court further stated: every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law. Courts are reluctant to adjudge any statute in contravention of them. But, under our frame of government, no other place is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of a granted power. When such a contention comes to the Supreme Court, the Justices naturally require showings that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress. How great is the extent of that discretionary range of Congress?

The Court went on to say that, when the subject is the promotion of the general welfare of the United States, the court will hardly remark. But, despite the breadth of the legislative discretion, the courts duty to hear and to render judgment remains. If the statute plainly violates the stated principle of the Constitution the Justices must so declare.

The Butler Court found that the Justices are not required to ascertain the scope of the phrase 'general welfare of the United States' or to determine whether an appropriation in aid of agriculture falls within it.

Given the above analysis and reasoning, on this holding, if the general welfare clause is the basis of the Social Security Act, would not the Court be compelled to "Switch in Time" so as to not declare the Social Security Act unconstitutional?

As the reader shall see, after a year and political change, a difference in constitutional interpretation results.

The Butler court concluded:

> "Wholly apart from that question, another principle embedded in our Constitution prohibits the enforcement of the Agricultural Adjustment Act. The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end." [Author's emphasis]

In plain English language, the Congress, at this time, cannot use the General Welfare clause of Article One, Section 8 for the application of a payment to the discharge of a particular debt. In other words, Congress cannot use the taxing authority and general welfare clause to tax one and give to another, at least not constitutionally in 1936.

The Butler case, supra, further held on the taxing authorities that:

> "If the taxing power may not be used as the instrument to enforce a regulation of matters of state concern with respect to which the Congress has no authority to interfere, may it, as in the present case, be employed to raise the money necessary to purchase a compliance which the Congress is powerless to command? The government asserts that whatever might be said against the validity of the plan, if compulsory, it is constitutionally sound because the end is accomplished by voluntary co-operation. There are two sufficient answers to the contention. The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. The amount offered is intended to be sufficient to exert pressure on him to agree to the proposed regulation. The power to confer or withhold unlimited benefits is the power to coerce or destroy." [Author's emphasis]

Dear reader, please store away the last sentence in the above quotation.

It was said in Butler supra, that: Congress has no power to enforce its commands on the farmer to the ends sought by the

Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance. Here the Court stayed within a more strict construction view and within stare decisis. What would happen if the Court were to apply that analysis to the "Crown Jewel" of the "New Deal"?

In the Social Security Act, section 8, infra (See the appendix) it is mandatory that a person with $3000 or more in income must file and pay an income tax and an employer with 8 or more employees must collect the income tax along with other taxes. If these persons or employers do not there is a penalty at Section 807 (a).

"Sec. 807(a) "The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid."

The above quote follows the same reasoning the Supreme Court found in Butler. The cohesive nature of compliance through penalties for non-compliance is not within Congressional power, especially if it is mandatory in nature. The Social Security Act has the same exact means to an end theory as the Agricultural Adjustment Act. By this analysis, the holdings in Butler supra, should apply and the Social Security Act should be found to be un-constitutional as to certain "Citizens" discussed in this book. Anyone can volunteer under the Social Security laws if they so choose but cannot be "forced" to make application.

Now let's take a look at a case that touched on the same subject of the General Welfare clause and the taxing authority after the "Switch in Time" took place. Remember reader, this case is ruled on only one year after Butler supra. The reader must keep in mind that the Social Security Act is of a voluntary nature, as, when one makes application via a signature for a SS number and becomes by election a "U.S. citizen" or "citizen of the United States." See later chapters in this book concerning citizenship.

What a difference a year makes!

Helvering, Commissioner of Internal Revenue, et al. v. Davis, 301 US 619, 57 S.Ct. 904, is a case about imposing an excise tax upon employers of eight or more. In this case, Titles VIII and II (sections 801 et seq., 201 et seq. (42 U.S.C.A. §§ 1001 et seq., 401 et seq.) are the subject of attack. In the SS Act, Title 8 lays another excise tax upon employers in addition to the one imposed by Title 9 (though with different exemptions). Title 8 also lays an income tax upon employees to be deducted from their wages and paid by the employers to the general fund of the "United States." Therein, Title II provides for the payment of Old Age Benefits, and supplies the motive and occasion, in the view of the assailants of the statute, for the levy of the taxes imposed by Title 8.

Involved in this case of Helvering v. Davis, supra was an overwhelming dissenting opinion from certain Supreme Court Justices, with holdings similar to that of the Butler Court, supra. Again the authors remind the reader of the 'Constitutional War" that occurred in the Supreme Court over the "New Deal." What would the result be in terms of strict construction and stare decisis? Reader, can you possibly guess? How about a hint: Can you say, "Switch in Time."

The Helvering v. Davis Court held valid the portions mentioned above of the Social Security Act, by:

1) "Concept of general welfare in constitutional provision permitting Congress to spend money in aid of general welfare is not static." U.S.C.A. Const. Art. 1, § 8.

2) "Title of Social Security Act providing for federal old age benefits and authorizing appropriations to old age reserve account for monthly pensions and lump sum payments held not unconstitutional as violating provision reserving to states powers not delegated to United States and not prohibited to states, since unemployment is a general, national ill which Congress may check by nation's resources under general welfare clause, whether it results from lack of work or because of disabilities of age, and laws of separate states could not deal with problem effectively because of states' lack of resources and their reluctance to increase tax burdens." Social Security Act § 201 et seq., 42 U.S.C.A. § 401 et seq.; U.S.C.A. Const. Art. 1, § 8; Art. 6, par. 2; Amend. 10.

3) "Where money is spent to promote the general welfare, concept of welfare is shaped by Congress and not by the states, and, where concept is not arbitrary, locality must yield." U.S.C.A. Const. Art. 1, § 8; Art. 6, par. 2. [Author's emphasis]

Remember in the 1936 Butler Court, "General Welfare" was defined as the general welfare of the United States government not that of the citizens. So, in effect what the allies of the "New Deal" had done was redefine the general welfare clause to mean, Congress determined welfare of citizens and not that of the general government. The Court, in 1937, following the Congressional lead, had in effect destroyed 147 years of meaning of 'to provide for the common Defence and general Welfare' of the United States in Article One, Section 8. So much for stare decisis.

Next, the Court in Helvering v. Davis, supra, explains that an income tax imposed on employees and excise tax imposed on employers by Social Security Act, on basis of wages paid during calendar year, held not invalid because of provision exempting from both taxes agricultural labor, domestic service, service for national or state governments, and service performed by persons who have attained age of 65 years (Social Security Act ss 801, 804, 811(b), 42 U.S.C.A. ss 1001, 1004, 1011(b). The court's only explanation for this is:

> "The tax is not invalid as a result of its exemptions. Here again the opinion in Steward Machine Co. v. Davis, infra, says all that need be said." Helvering v. Davis, supra.

Remember reader, in U.S. v. Butler supra, the Court found the tax in that case to be unconstitutional unless it was of a voluntary nature and not forced upon the farmer by federal legislation. Now, let's take a look at the case referred to above, to see what was said about taxation insofar as the Social Security Act is concerned.

Chas. C. Steward Mach. Co. v. Davis, 301 US 548, 57 S.Ct. 883 (May 24th, 1937), was a case concerning the unemployment benefits some of which were paid by the employee and the rest of which were paid by the employer. These funds were paid into the general fund of the United States Treasury. This case absolutely had nothing to do with the income tax mentioned at section 8 of the Social Security Act. Nor did this case touch on who was to collect the income tax monies from the citizen employee and where the money is to be paid. So with that said, what did the Supreme Court Justice that rendered the decision in the Steward Machine Co., Court, supra mean when the Justice in the Helvering Court said;

"The tax is not invalid as a result of its exemptions. Here again the opinion in Steward Machine Co. v. Davis, supra, says all that need be said." Helvering v. Davis supra.

Steward Machine Co. supra, was not about income taxes; it was about unemployment taxes and the nature of that tax. The Court said that unemployment taxes are an excise tax derived from the employment or business of employment and could be taxed under that situation. The Steward Machine Co. Court said:

> "Excise tax imposed on employer with respect to having individuals in his employ equal to certain percentage of total wages conforms to constitutional requirement that excises shall be imposed with geographical uniformity (Social Security Act, ss 901--910, 42 U.S.C.A. ss 1101--1110; Const. Art. 1, s 8)." [Author's emphasis]
>
> The Court added:
>
> "Excise tax imposed on employer with respect to having individuals in his employ equal to certain percentage of total wages held not unconstitutional as arbitrary and discriminatory because of provisions exempting employers of less than eight individuals, agricultural labor, and domestic service, since exemptions have support in considerations of policy and practical convenience and would be upheld under Fourteenth Amendment if adopted by a state, and hence are valid in legislation by Congress, which is subject to restraints less narrow and confining (Social Security Act, ss 901--910, 42 U.S.C.A. ss 1101--1110; Const. Amends. 5, 14)." [Author's emphasis]

In the first quote from Steward Machine Co. supra, Mr. Justice Cardozo found that the excise tax must be imposed with geographical uniformity and then in the second quote he stated that, "because of provisions exempting employers of less than eight individuals, agricultural labor, and domestic service." The reader might conclude that Cardozo was working with a double negative. This tax is not uniform because it exempts certain employers and forces the burdens on wealthier employers. So, is this tax geographically uniform? No, because everybody and every business, under this tax scheme, is not taxed equally. Therefore the tax cannot meet the muster of an excise tax.

This contention would also apply to the income tax imposed on employees at section 8 of the Social Security Act. So what is meant by the quote in the Helvering case: "The tax is not invalid as a result of its exemptions. Here again the opinion in Steward Machine Co. v. Davis, supra, says all that need be said." Helvering v. Davis supra.

The meaning of this statement is as follows. The income tax imposed by section 8 of the Social Security Act is an excise tax. Excise tax for what? This income tax certainly is not for the payment of unemployment benefits. If that were the case, the Social Security Act must state so and it does not. This income tax is, in fact, a direct tax upon the employees for the privilege of employment by a federally contracted employer (EIN) to be collected by the employer and paid into the treasury of the "United States" and therefore must be held unconstitutional under current case law even today, if not voluntary. The constitutionality of the Social Security Act and the Act's provisions, which were under attack in the Steward Machine Co. court supra, is addressed by Justice Butler in his dissenting opinion. He said:

> "I am also of opinion that, in principle and as applied to bring about and to gain control over state unemployment compensation, the statutory scheme is repugnant to the Tenth Amendment: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The

> Constitution grants to the United States no power to pay unemployed persons or to require the states to enact laws or to raise or disburse money for that purpose. The provisions in question, if not amounting to coercion in a legal sense, are manifestly designed and intended directly to affect state action in the respects specified." [Author's emphasis]

In other words, the Federal Government generally cannot impose an act upon the States that would affect state action. Justice Butler went on to say:

> "Federal agencies prepared and took draft bills to state Legislatures to enable and induce them to pass laws providing for unemployment compensation in accordance with federal requirements and thus to obtain relief for the employers from the impending federal exaction. Obviously the act creates the peril of federal tax not to raise revenue but to persuade." Steward Mach. supra. [Author's emphasis]

> And:

> "The terms of the measure make it clear that the tax and credit device was intended to enable federal officers virtually to control the exertion of powers of the states in a field in which they alone have jurisdiction (meaning the several States) and from which the United States is by the Constitution excluded." [Author's emphasis and Additions]

> Finally:

"I am of opinion that the judgment of the Circuit Court of Appeals should be reversed."

Mr. Justice Butler, by his admissions in Steward Machine Co. supra, found that the provisions of the Social Security Act under attack should be un-constitutional and under the arguments made in U.S. v. Butler Court supra, the whole entire Social Security Act should be found unconstitutional, unless by agreement there is voluntary application into the Social Security program.

Has the reader agreed to the implications of the Social Security Act? Hint: see In re Meador, 16 F. Cas. 1294 (1868):

"And here a thought suggests itself. As the Meadors, subsequently to the passage of this act of July 20, 1868, applied for

and obtained from the government a license or permit to deal in manufactured tobacco, snuff and cigars, I am inclined to be of the opinion that they are, by this their own voluntary act, precluded from assailing the constitutionality of this law, or otherwise controverting it. For the granting of a license or permit--the yielding of a particular privilege--and its acceptance by the Meadors, was a contract, in which it was implied that the provisions of the statute which governed, or in any way affected their business, and all other statutes previously passed, which were in pari materia[10] with those provisions, should be recognized and obeyed by them. When the Meadors sought and accepted the privilege, the law was before them. And can they now impugn its constitutionality or refuse to obey its provisions and stipulations, and so exempt themselves from the consequences of their own acts?" [Footnote added by authors]

What if the reader appears to "voluntarily" accept and use the SSN? Won't the user be contractually subject to "the consequences of their own acts"?

In the next chapter, the authors discuss, under the Constitution, what is a "Controversy." What does the Supreme Court require, before the Court will accept a case as constituting a "Controversy"?

[10] **in pari materia**, [Latin, "in the same matter"] 1. on the same subject; relating to the same matter. It is a cannon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. *Black's Law,* 8th Edition. page 807

Chapter 4

Switch in Time and the War in the Supreme Court

The United States Supreme Court Defines Controversies under the Constitution

In this chapter, the authors show by stare decisis, prior to 1937, what is meant by the Controversies Clause at Article III of the Constitution of the United States of America. Also shown is the importance of the facts in relation to a contract. In addition, the Brandeis rules are seen as a devise to limit constitutional questions from reaching the Supreme Court.

Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 (1936) is a case about the Tennessee Valley Authority (A Federal Government Corporation) purchasing transmission lines and other property from Alabama Power Company without consent of the stock holders. George Ashwander and others brought suit against the Tennessee Valley Authority, its directors, the City of Florence, and others. A decree for plaintiffs, (9 F.Supp. 965), was reversed by the Circuit Court of Appeals, (78 F. 2d 578), and the case remanded, and plaintiffs brought certiorari[11] to the United States Supreme Court, who affirmed the Court of Appeals ruling.

Plaintiffs Ashwander and others were holders of preferred stock of the Alabama Power Company. Conceiving the contract with the Tennessee Valley Authority to be injurious to their corporate interests and also invalid, because beyond the constitutional power of the federal government, they submitted their protest to the board of directors of the Power Company and demanded that steps should be taken to have the contract annulled. The board refused, and the Commonwealth & Southern Corporation, the holder of all the common stock of the Power Company, declined to call a meeting of the stockholders to take action.

[11] **certiorari**,[Latin "To be more informed"] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. The writ evolved from one of the prerogative writs of the English Court of King's Bench, and in the united States it became a general appellate remedy. The U.S Supreme Court uses certiorari to review most of the cases that it decides to hear. *Black's Law, 8th* Edition, Pages 241-242

As the protest of the stockholders was unavailing and upon the Alabama Power Co.'s refusal, Plaintiffs brought suit to have the invalidity of the contract of January 4, 1934 determined and its performance enjoined. Ashwander and others went beyond that particular challenge, and setting forth the pronouncements, policies, and programs of the Tennessee Valley Authority, Ashwander sought a decree restraining these activities as repugnant to the Constitution, and also asked for a general declaratory decree with respect to the rights of the Tennessee Valley Authority in various relations.

The defendants, including the Tennessee Valley Authority and its directors, the Alabama Power Company and its mortgage trustee, and the municipalities within the described area, filed answers, and the case was heard upon evidence. The District Court made elaborate findings and entered a final decree annulling the contract of January 4, 1934, and enjoining the transfer of the transmission lines and auxiliary properties, (9 F.Supp. 965). The court also enjoined the defendant municipalities from making or performing any contracts with the Tennessee Valley Authority for the purchase of power and from accepting or expending any funds received from the Authority or the Public Works Administration for the purpose of constructing a public distribution system to distribute power which the Tennessee Valley Authority supplied. The court gave no consideration to plaintiffs' request for a general declaratory decree. The Tennessee Valley Authority, its directors, and the city of Florence appealed from the decree and the case was severed as to the other defendants. Plaintiffs, Ashwander and others took a cross-appeal. The case next went to the Circuit Court on appeal.

The Circuit Court of Appeals limited its discussion to the precise issue with respect to the effect and validity of the contract of January 4, 1934. The District Court had found that the electric energy required for the territory served by the transmission lines to be purchased under that contract was then available at Wilson Dam without the necessity for any interconnection with any other dam or power plant. The Circuit Court of Appeals accordingly considered the constitutional authority for the construction of Wilson Dam and for the disposition of the electric energy there created. In the view that the Wilson Dam had been constructed in the exercise of the war and commerce powers of the Congress and that the electric energy there available was the property of the United States and subject to

its disposition, the Circuit Court of Appeals decided that the decree of the District Court was erroneous and should be reversed. The court also held that plaintiffs should take nothing by their cross-appeal. (78 F.(2d) 578). On Plaintiffs' application the United States Supreme Court granted writ of certiorari. 296 U.S. 562, 56 S.Ct. 145, 80 L.Ed. 396.

First, in the appeal to the United States Supreme Court, the court looked at whether or not Plaintiffs Ashwander and others had the right to bring suit. The Supreme Court concluded that Ashwander and others "have a real interest, and there is no question that the suit was brought in good faith. If otherwise entitled, they should not be denied the relief which would be accorded to one who owned more shares." [Author's emphasis]

Plaintiffs Ashwander and others did not simply challenge the contract of January 4, 1934, as improvidently made or an unwise exercise of the discretion vested in the board of directors. Ashwander and others challenged the contract, both as injurious to the interests of the corporation, and as an illegal transaction violating the fundamental law, i.e. the Constitution.

The Supreme Court found that Ashwander and others were seeking to prevent the carrying out of the contract and that the suit was directed not only against the Alabama Power Company, but against the Tennessee Authority and its directors upon the grounds that the latter, under color of the statute, were acting beyond the powers which the Congress could validly confer.

The Supreme Court found in such a case it is not necessary for stockholders, when their corporation refuses to take suitable measures for its protection, to show that the managing board or trustees have acted with fraudulent intent or under legal duress. To entitle the complainants to equitable relief, in the absence of an adequate legal remedy, it is enough for them to show the breach of trust or duty involved in the injurious and illegal action. Nor is it necessary to show that the transaction was ultra vires[12] the corporation. The illegality may be found in the lack of lawful authority on the part of those with whom the corporation is

[12] **ultra vires**, Unauthorized, beyond the scope of power allowed or granted by a corporate charter or by law. *Black's Law,* 8th Edition, Page 1559.

attempting to deal. Thus, the breach of duty may consist in yielding, without appropriate resistance, to governmental demands, which are without warrant of law or are in violation of constitutional restrictions. Stare decisis through case law clearly shows, that when the Congress transcends its authority the aggrieved party has the right to bring suit. See Ashwander supra at pages 7 and 8.

The United States Supreme Court said:

> "The general allegations as to the interest of the shareholder, and his right to have an injunction to prevent the purchase of the alleged unconstitutional securities by misapplication of the funds of the corporation, gives jurisdiction under the principles settled in Pollock v. Farmers Loan & Trust Company, 157 U.S. 429, at pages 433, 553, 554, 15 S.Ct. 673, 39 L.Ed. 759; (Purported to be overruled.) Brushaber v. Union Pacific R. Co., 240 U.S. 1, at page 10, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713. The Court then proceeded to examine the constitutional question and sustained the legislation under attack. A similar result was reached in Brushaber v. Union Pacific R. Co., supra. A close examination of these decisions leads inevitably to the conclusion that they should either be followed or be frankly overruled. We think that they should be followed, and that the opportunity to resort to equity, in the absence of an adequate legal remedy, in order to prevent illegal transactions by those in control of corporate properties, should not be curtailed because of reluctance to decide constitutional questions." [Author's addition]

The Supreme Court found no distinctions that would justify the court in refusing to entertain the "controversy" in the Ashwander case, supra. The Court stayed within familiar construction and stare decisis with the Courts established meaning of "Controversies" within Article III of the Constitution of the United States of America. The Court further stated that, "The Scope of the issue, we agree with the Circuit Court of Appeals that the question to be determined is limited to the validity of the contract of January 4, 1934. The pronouncements, policies, and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justifiable controversy save as they had fruition in

action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions." See Ashwander, supra at pages 9 and 10. [Author's emphasis]

The Supreme Court further held in Ashwander, supra, that:

> "The Act of June 14, 1934, providing for declaratory judgments, does not attempt to change the essential requisites for the exercise of judicial power. By its terms, it applies to 'cases of actual controversy,' a phrase which must be taken to connote a controversy of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts. See Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra, in Ashwander at page 9. While plaintiffs, as stockholders, might insist that the board of directors should take appropriate legal measures to extricate the corporation from particular transactions and agreements alleged to be invalid, plaintiffs had no right to demand that the directors should start a litigation to obtain a general declaration of the unconstitutionality of the Tennessee Valley Authority Act in all its bearings or a decision of abstract questions as to the right of the Authority and of the Alabama Power Company in possible contingencies." [Author's emphasis]

The Court, in examining the record found no ground for a demand by Ashwander of the above, except as it related to the contracts between the Tennessee Valley Authority and the Alabama Power Company. The Court took note of the contract of May 21, 1934, with the Electric Home & Farm Authority, Inc., and that of August 9, 1934, for an option to the Authority to acquire urban distribution systems, was understood to be inoperative (56 S.Ct. 469). The only remaining questions that Ashwander was entitled to raise, concerned the contract of January 4, 1934, providing for the purchase of transmission lines and the disposition of power. The questions that are properly before the Court in Ashwander relate to the constitutional authority for the construction of the Wilson Dam. These questions also include the disposition of the electric energy generated under the contract of January 4, 1934.

The third question before the Court in Ashwander was the constitutional authority for the Construction of the Wilson Dam. The Court specifically stated that: The Congress may not, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government. Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, 423, 4 L.Ed. 579; Linder v. United States, 268 U.S. 5, 15, 17, 45 S.Ct. 446, 69 L.Ed. 819, 39 A.L.R. 229. The government's argument in Ashwander recognizes this essential limitation. The government's contention is that the Wilson Dam was constructed, and the power plant connected with it was installed, in the exercise by the Congress of its war and commerce powers (Constitution, Article I, Section 8, paragraphs 3, 11); that is, for the purposes of national defense and the improvement of navigation.

The Court continued: The National Defense Act of June 3, 1916 authorized the President to cause an investigation to be made in order to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war; to designate for the exclusive use of the United States such site or sites, upon any navigable or non-navigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act; and to construct, maintain, and operate on any such site dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products. The President was authorized to lease or acquire by condemnation or otherwise such lands as might be necessary, and there was further provision that the products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

The Court further stated: The National Defense Act of June 3, 1916 did not allow the President to acquire transmission lines already constructed by another for the transmission of electricity to the general public and others. The National Defense Act of June 3,

1916 only allows the government to use the power needed for the use of the production of munitions and the sale of the excess. The Federal government's purchase of the transmission lines created a "Controversy" within the meaning of Article III under the contract of January 4, 1934.

Fourth, the Court touched on the constitutional authority to dispose of electric energy generated at the Wilson Dam. The government acquired full title to the dam site, with all riparian rights. The power of falling water was an inevitable incident of the construction of the dam. That waterpower came into the exclusive control of the federal government. The mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced constitute property belonging to the United States. See Green Bay & M. Canal Company v. Patten Paper Company, 172 U.S. 58, 80, 19 S.Ct. 97, 101, 43 L.Ed. 364; United States v. Chandler-Dunbar Water Power Company, 229 U.S. 53, 72, 73, 33 S.Ct. 667, 57 L.Ed. 1063; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 170, 52 S.Ct. 548, 76 L.Ed. 1038.

Authority to dispose of property constitutionally acquired by the United States is expressly granted to the Congress by Section 3 of Article IV of the Constitution. This section provides:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

In application please consider the following:

> The Supreme Court found that:
>
> "The occasion for the grant was the obvious necessity of making provision for the government of the vast territory acquired by the United States. The power to govern and to dispose of that territory was deemed to be indispensable to the purposes of the cessions made by the States. And yet it was a matter of grave concern because of the fear that 'the sale and disposal' might become 'a source of such immense revenue to the national government as to make it independent

> of and formidable to the people'. Story on the Constitution, ss 1325, 1326. The grant was made in broad terms, and the power of regulation and disposition was not confined to territory, but extended to 'other property belonging to the United States', so that the power may be applied, as Story says, 'to the due regulation of all other personal and real property rightfully belonging to the United States'. And so, he adds, it has been constantly understood and acted upon."

The question is whether a more limited power of disposal should be applied to the waterpower, convertible into electric energy, and to the electric energy thus produced at the Wilson Dam constructed by the government in the exercise of its constitutional functions. If so, it must be by reason either of: (1) the nature of the particular property, (2) the character of the 'surplus' disposed of, or (3) the manner of disposition. The Court focused discussion of the question of the constitutionality of the contract of January 4th, 1934 upon these factors.

The Court held that electric energy generated at the dam belongs to the United States. The Congress has authority to dispose of this energy only to the extent that it is a surplus necessarily created in the course of making munitions of war or operating the works for navigation purposes; that is, that the remainder of the available energy must be lost or go to waste. The Court found nothing in the Constitution that imposes such a limitation. It is not to be deduced from the mere fact that the electric energy is only potentially available until the generators are operated. The government has no less right to the energy thus available by letting the water course over its turbines than it has to use the appropriate processes to reduce to possession other property within its control, as, for example, oil which it may recover from a pool beneath its lands, and which is reduced to possession by boring oil wells and otherwise might escape its grasp. See Ohio Oil Company v. Indiana, 177 U.S. 190, 208, 20 S.Ct. 576, 44 L.Ed. 729. And it would hardly be contended that, when the government reserves coal on its lands, it can mine the coal and dispose of it only for the purpose of heating public buildings or for other governmental operations, or, if the government owns a silver mine, that it can obtain the silver only for the purpose of storage or coinage. Or that, when the government extracts the oil it has reserved, it has no constitutional power to sell

it. The Supreme Court decisions recognize no such restriction. See United States v. Gratiot, (supra, within the Ashwander case); Kansas v. Colorado, 206 U.S. 46, 88, 89, 27 S.Ct. 655, 51 L.Ed. 956; Light v. United States, 220 U.S. 523, 536, 537, 31 S.Ct. 485, 55 L.Ed. 570; Ruddy v. Rossi, 248 U.S. 104, 106, 39 S.Ct. 46, 63 L.Ed. 148, 8 A.L.R. 843. The United States owns the coal, or the silver, or the lead, or the oil it obtains from its lands, and it lies in the discretion of the Congress, acting in the public interest, to determine of how much of the property it shall dispose. The Supreme Court held within strict construction and stare decisis that the same principle is applicable to electric energy.

The Supreme Court then came to the question as to the validity of the method that has been adopted in disposing of the surplus energy generated at the Wilson Dam. The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property. It must also be one adopted in the public interest as distinguished from private or personal ends. The Supreme Court may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. See Kansas v. Colorado, supra. In this instance, the method of disposal embraces the sale of surplus energy by the Tennessee Valley Authority to the Alabama Power Company, the interchange of energy between the Authority and the Power Company, and the purchase by the Tennessee Valley Authority from the Power Company of certain transmission lines.

The Supreme Court said on this issue:

> "The transmission lines which the Authority undertakes to purchase from the Power Company lead from the Wilson Dam to a large area within about fifty miles of the dam. These lines provide the means of distributing the electric energy, generated at the dam, to a large population. They furnish a method of reaching a market. The alternative method is to sell the surplus energy at the dam, and the market there appears to be limited to one purchaser, the Alabama Power Company, and its affiliated interests. We know of no constitutional ground upon which the federal government can be denied the right to seek a wider market. We suppose that in the early days of mining in the West, if the government had undertaken to operate a silver mine on its domain, it could have acquired the mules or horses and equipment to carry its silver to market. And the transmission lines for electric energy are but a facility for conveying to market that particular sort of property, and the acquisition of these lines raises no different constitutional question, unless in some way there is an invasion of the rights reserved to the state or to the people. We find no basis for concluding that the limited undertaking with the Alabama Power Company amounts to such an invasion. Certainly, the Alabama Power Company has no constitutional right to insist that it shall be the sole purchaser of the energy generated at the Wilson Dam; that the energy shall be sold to it or go to waste."

This contention of course is based upon constitutional authority falling within strict construction and stare decisis.

The author's opinion is that the Federal Government has, in this instance, the statutory authority to make electric power and supply that power to its munitions manufacturing plants under the National Defense Act of June 3, 1916. Arguably, there exists a constitutional basis to such statutory authority. The Federal Government has the authority to buy the electric power transmission lines of other companies to seek a wider market for its excess electric power regardless of the ultimate end use of the electric power going to the public or consumer. In other words, within this fact pattern, if the Federal Government wants to sell its excess it can do so by any means.

The Supreme Court concluded:

> "We limit our decision to the case before us, as we have defined it. The argument is earnestly presented that the government by virtue of its ownership of the dam and power plant could not establish a steel mill and make and sell steel products, or a factory to manufacture clothing or shoes for the public, and thus attempt to make its ownership of energy, generated at its dam, a means of carrying on competitive commercial enterprises, and thus drawing to the federal government the conduct and management of business having

no relation to the purposes for which the federal government was established. The picture is eloquently drawn, but we deem it to be irrelevant to the issue here. The government is not using the water power at the Wilson Dam to establish any industry or business. It is not using the energy generated at the dam to manufacture commodities of any sort for the public. The government is disposing of the energy itself which simply is the mechanical energy, incidental to falling water at the dam, converted into the electric energy which is susceptible of transmission. The question here is simply as to the acquisition of the transmission lines as a facility for the disposal of that energy. And the government rightly conceded at the bar, in substance, that it was without constitutional authority to acquire or dispose of such energy except as it comes into being in the operation of works constructed in the exercise of some power delegated to the United States. As we have said, these transmission lines lead directly from the dam, which has been lawfully constructed, and the question of the constitutional right of the government to acquire or operate local or urban distribution systems is not involved. We express no opinion as to the validity of such an effort, as to the status of any other dam or power development in the Tennessee Valley, whether connected with or apart from the Wilson Dam, or as to the validity of the Tennessee Valley Authority Act or of the claims made in the pronouncements and program of the Authority apart from the questions we have discussed in relation to the particular provisions of the contract of January 4, 1934, affecting the Alabama Power Company." [Author's emphasis]

The Supreme Court stayed within strict construction and stare decisis in relation to Article III of the Constitution of the United States of America.

Therefore, the federal government staying within constitutional limits has the right to purchase the transmission lines for purposes of seeking a wider market for the excess power generated at the Wilson Dam.

In the Ashwander case supra, Mr. Justice Brandeis concurred, but set out what today is called the Brandeis rules or

alternatively the Ashwander rules. The authors will now elaborate on these rules for the reader.

First, Mr. Justice Brandeis covers the substantive law as follows. Plaintiffs, Ashwander and others' rights are not enlarged because the Tennessee Valley Authority entered into the transaction pursuant to an act of Congress. The fact that plaintiffs bill in equity, based upon the validity of the contract, calls for an enquiry into the legality of the transaction does not overcome the obstacle that ordinarily stockholders have no standing to interfere with the business management of Alabama Power Co.

The Justice continued: Mere belief that corporate action, taken or contemplated, is illegal gives the stockholder no greater right to interfere than is possessed by any other citizen. Stockholders are not guardians of the public. The function of guarding the public against acts deemed illegal rests with the public officials.

Justice Brandeis further expounded: Within recognized limits, stockholders may invoke the judicial remedy to enjoin acts of the management which threaten their property interest. But they cannot secure the aid of a court to correct what appear to them to be mistakes of judgment on the part of the officers. Courts may not interfere with the management of the corporation, unless there is bad faith, disregard of the relative rights of its members, or other action seriously threatening their property rights. This rule applies whether the mistake is due to error of fact or of law, or merely to bad business judgment. It applies, among other things, where the mistake alleged is the refusal to assert a seemingly clear cause of action, or the compromise of it. United Copper Securities Co. v. Amalgamated Copper Co., 244 U.S. 261, 263, 264, 37 S.Ct. 509, 61 L.Ed. 1119. If a stockholder could compel the officers to enforce every legal right, courts, instead of chosen officers, would be the arbiters of the corporation's fate.

The Court explained as follows. In Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 463, 23 S.Ct. 157, 160, 47 L.Ed. 256, a suit by the common stockholder to enjoin payment of an Alaska license tax alleged to be illegal, the Court said (in a previous Supreme Court case): "The directors represent all the stockholders, and are presumed to act honestly and according to their best judgment for the interests of all. Their judgment as to any

matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs."

Second, Mr. Justice Brandeis covers the equity practice as follows: Even where property rights of stockholders are alleged to be violated by the management, stockholders seeking an injunction must bear the burden of showing danger of irreparable injury, as do others who seek that equitable relief. In the case at bar the burden of making such proof was a peculiarly heavy one. The plaintiffs, being preferred stockholders, have but a limited interest in the enterprise, resembling, in this respect, that of a bondholder in contradistinction to that of a common stockholder. Acts may be innocuous to the preferred which conceivably might injure common stockholders. There was no finding that the property interests of the plaintiffs were imperiled by the transaction in question; and the record is barren of evidence on which any such finding could have been made.

Third, Mr. Justice Brandeis covers the practice in constitutional cases as follows: The fact that it would be convenient for the parties and the public to have promptly decided whether the legislation assailed is valid, cannot justify a departure from these settled rules of corporate law and established principles of equity practice. On the contrary, the fact that such is the nature of the enquiry proposed should deepen the reluctance of courts to entertain the stockholder's suit. "It must be evident to any one 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." 1 Cooley, Constitutional Limitations (8th Ed.), p. 332.

Justice Brandeis explains: The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress; and has restricted exercise of this function by rigid insistence that the jurisdiction of federal courts is limited to actual cases and controversies; and that they have no power to give advisory opinions. On this ground it has in recent years ordered the dismissal of several suits challenging the constitutionality of important acts of Congress. In Texas v. Interstate Commerce Commission, 258 U.S. 158, 162, 42 S.Ct. 261, 66 L.Ed. 531, the validity of titles 3 and 4 of the Transportation Act of 1920 (41 Stat. 456). In New Jersey v. Sargent, 269 U.S. 328, 46 S.Ct. 122, 70 L.Ed. 289, the validity of parts of the Federal Water Power Act (41 Stat. 1063). In Arizona v. California, 283 U.S. 423, 51 S.Ct. 522, 75 L.Ed. 1154, the validity of the Boulder Canyon Project Act (43 U.S.C.A. s 617 et seq.). Compare United States v. West Virginia, 295 U.S. 463, 55 S.Ct. 789, 79 L.Ed. 1546, involving the Federal Water Power Act and Liberty Warehouse Co. v. Grannis, 273 U.S. 70, 47 S.Ct. 282, 71 L.Ed. 541, where this Court affirmed the dismissal of a suit to test the validity of a Kentucky statute concerning the sale of tobacco; also, Massachusetts State Grange v. Benton, 272 U.S. 525, 47 S.Ct. 189, 71 L.Ed. 387.

In other words, a plaintiff cannot call upon the federal courts to declare an act of Congress invalid on hypothetical questions under the Declaratory Judgment Act of 1934. Neither may a plaintiff call upon the federal courts to question the constitutionality of an act of Congress unless the act affects the person directly. Such an act with direct effects upon private rights may lead to a "Controversy" arising under the Constitution.

The Supreme Court has developed, for governance use in 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. The Court speaking through Justice Brandies states the following rules:

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining, because to decide such questions is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital

controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act. Chicago & Grand Trunk Ry. Co. v. Wellman, 143 U.S. 339, 345, 12 S.Ct. 400, 402, 36 L.Ed. 176. Compare Lord v. Veazie, 8 How. 251, 12 L.Ed. 1067; Atherton Mills v. Johnston, 259 U.S. 13, 15, 42 S.Ct. 422, 66 L.Ed. 814.

2. The Court will not anticipate a question of constitutional law in advance of the necessity of deciding it. Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899; Abrams v. Van Schaick, 293 U.S. 188, 55 S.Ct. 135, 79 L.Ed. 278; Wilshire Oil Co. v. United States, 295 U.S. 100, 55 S.Ct. 673, 79 L.Ed. 1329. It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case. Burton v. United States, 196 U.S. 283, 295, 25 S.Ct. 243, 245, 49 L.Ed. 482.

3. The Court will not formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, supra. Compare Hammond v. Schappi Bus Line, Inc., 275 U.S. 164, 169--172, 48 S.Ct. 66, 72 L.Ed. 218.

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Siler v. Louisville & Nashville R. Co., 213 U.S. 175, 191, 29 S.Ct. 451, 53 L.Ed. 753; Light v. United States, 220 U.S. 523, 538, 31 S.Ct. 485, 55 L.Ed. 570. Appeals from the highest court of a state

challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. Berea College v. Kentucky, 211 U.S. 45, 53, 29 S.Ct. 33, 53 L.Ed. 81

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Tyler v. Judges, etc., 179 U.S. 405, 21 S.Ct. 206, 45 L.Ed. 252; Hendrick v. Maryland, 235 U.S. 610, 621, 35 S.Ct. 140, 59 L.Ed. 385. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. Columbus & Greenville Ry. Co. v. Miller, 283 U.S. 96, 99, 100, 51 S.Ct. 392, 75 L.Ed. 861. In Fairchild v. Hughes, 258 U.S. 126, 42 S.Ct. 274, 66 L.Ed. 499, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In Massachusetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078, the challenge of the federal Maternity Act was not entertained although made by the commonwealth on behalf of all its citizens.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

7. When the validity of an act of the Congress is drawn in question, and even 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. Crowell v. Benson, 285 U.S. 22, 62, 52 S.Ct. 285, 296, 76 L.Ed. 598.

The above seven rules often referred to as the Brandeis or Ashwander rules constitute an effort to reduce the possibility of potential cases involving constitutional issues from actually reaching, or being settled on Constitutional grounds by, the Supreme Court. In the author's opinion these Brandeis rules were formulated and implemented in an attempt to protect the "New Deal."

What follows are specific points, a reiteration of facts, in relation to the transaction (contract) complained about by Ashwander. What did Mr. Justice Brandeis say about the Ashwander case supra, in light of the above? The reader would be well served to consider the relevance of the following before contracting in person.

1. That estoppel applied to the stockholders because they did not challenge constitutionality of the Legislative Act from the beginning i.e. at the time of the contract.
2. The directors and its stockholders of the Alabama Power Company benefited from the Tennessee Valley Authority Act by purchasing the excess electric power after the contract of January 4, 1934 was executed.
3. The Tennessee Valley Authority Act was constitutional because the federal government was not engaged in the business of manufacturing of products to be sold to the public.
4. The purchase of the transmission lines and the Tennessee Valley Authority Act were both constitutional because the federal government had a right to dispose of excess power by any means.
5. Congress, under the Tennessee Valley Authority Act, imposed no obligation upon the Alabama Power Company.
6. The Tennessee Valley Authority Act imposed no penalties on the Alabama Power Company, which would destroy the Company.

7. The Alabama Power Company directors did not challenge the Tennessee Valley Authority Act and no breach of duty existed failing such a challenge.

Fourth, Mr. Justice Brandies said:

"I am aware that, on several occasions, this Court passed upon important constitutional questions which were presented in stockholders' suits bearing a superficial resemblance to that now before us. But in none of those cases was the question presented under circumstances similar to those at bar. In none, were the plaintiffs preferred stockholders. In some, the Court dealt largely with questions of federal jurisdiction and collusion. In most, the propriety of considering the constitutional question was not challenged by any party. In most, the statute challenged imposed a burden upon the corporation and penalties for failure to discharge it; whereas the Tennessee Valley Authority Act (16 U.S.C.A. § 831 et seq.) imposed no obligation upon the Alabama Power Company, and under the contract it received a valuable consideration. Among other things, the Authority agreed not to sell outside the area covered by the contract, and thus preserved the corporation against possible serious competition. The effect of this agreement was equivalent to a compromise of a doubtful cause of action. Certainly, the alleged invalidity of the Tennessee Valley Authority Act was not a matter so clear as to make compromise illegitimate. These circumstances present features differentiating the case at bar from all the cases in which stockholders have been held entitled to have this Court pass upon the constitutionality of a statute which the directors had refused to challenge." [Author's emphasis]

Here Mr. Justice Brandies concluded:

"If, or in so far as, any of the cases discussed may be deemed authority for sustaining this bill, they should now be disapproved. This Court, while recognizing the soundness of the rule of stare decisis where appropriate, has not hesitated to overrule earlier decisions shown, upon fuller consideration, to be erroneous. Our present keener appreciation of the wisdom of limiting our decisions rigidly

to questions essential to the disposition of the case before the court is evidenced by United States v. Hastings, 296 U.S. 188, 56 S.Ct. 218, 80 L.Ed. 148, decided at this term. There, we overruled United States v. Stevenson, 215 U.S. 190, 195, 30 L.Ed. 35, 54 L.Ed. 153, long a controlling authority on the Criminal Appeals Act (18 U.S.C.A. § 682)." [Author's emphasis]

Fifth, Mr. Justice Brandies concluded:

"If the Company ever had a right to challenge the transaction with the Tennessee Valley Authority, its right had been lost by estoppel before this suit was begun; and as it is the company's right which plaintiffs seek to enforce, they also are necessarily estopped. The Tennessee Valley Authority Act became a law on May 18, 1933. Between that date and January 1934, the company and its associates purchased approximately 230,000,000 kwh electric energy at Wilson Dam. Under the contract of January 4, 1934, which is here assailed, continued purchase of Wilson Dam power was provided for and made; and the Authority has acted in other matters in reliance on the contract. In May, 1934, the Company applied to the Alabama Public Service Commission for approval of the transfers provided for in the contract; and on June 1, 1934, the commission made in general terms its finding that the proposed sale of the properties was consistent with the public interest. Moreover, the plaintiffs in their own right are estopped by their long inaction. Although widespread publicity was given to the negotiations for the contract and to these later proceedings, the plaintiffs made no protest until August 7, 1934; and did not begin this suit until more than eight months after the execution of the contract. Others--certain ice and coal companies who thought they would suffer as competitors--appeared before the commission in opposition to the action of the Authority; and apparently they are now contributing to the expenses of this litigation." [Author's emphasis]

Sixth, Mr. Justice Brandies concludes:

"Even where by the substantive law stockholders have a standing to challenge the validity of legislation under which

the management of a corporation is acting, courts should, in the exercise of their discretion, refuse an injunction unless the alleged invalidity is clear. This would seem to follow as a corollary of the long established presumption in favor of the constitutionality of a statute."

Mr. Justice Brandeis continued:

"The challenge of the power of the Tennessee Valley Authority rests wholly upon the claim that the act of Congress which authorized the contract is unconstitutional. As the opinions of this Court and of the Circuit Court of Appeals show, that claim was not a matter 'beyond peradventure clear.' The challenge of the validity of the act is made on an application for an injunction--a proceeding in which the court is required to exercise its judicial discretion. In proceedings for a mandamus, where, also, the remedy is granted not as a matter of right but in the exercise of a sound judicial discretion, Duncan Townsite Co. v. Lane, 245 U.S. 308, 311, 312, 38 S.Ct. 99, 62 L.Ed. 309, courts decline to enter upon the enquiry when there is a serious doubt as to the existence of the right or duty sought to be enforced. As was said in United States v. Interstate Commerce Commission, 294 U.S. 50, 63, 55 S.Ct. 326, 331, 79 L.Ed. 752: 'Where the matter is not beyond peradventure clear, we have invariably refused the writ (of mandamus), even though the question were one of law as to the extent of the statutory power of an administrative officer or body.' A fortiori[13], this rule should have been applied here where the power challenged is that of Congress under the Constitution." [Author's emphasis]

In summary, as pointed out above, in order for the federal courts to have jurisdiction over cases arising under the Constitution of the United States (of America) there must exist within the fact pattern application of the seven rules as follows:

***Ashwander* rules**: A set of principles outlining the U.S. Supreme Court's policy of deciding constitutional questions

[13] **fortior**, [Latin "stronger"] (Of evidence) involving a presumption that, because of the strength of a party's evidence , shifts the burden of proof to the opposing party. *Black's Law,* 8th Edition, page 680

only when necessary, and of avoiding a constitutional question if the case can be decided on the basis of another issue. These rules were outlined in Justice Brandeis's concurring opinion in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 56 S.Ct. 466 (1936). They include the policy that the court should not decide a constitutional question in a friendly suit, should not anticipate a question of constitutional law, should not create a rule of constitutional law that is broader than that called for by the facts of the case, should not decide a constitutional issue if the case can be decided on another ground, should not rule on the constitutionality of a statute unless the plaintiff is harmed by the statute or if the plaintiff has accepted the benefits of the statute, and should not rule on the constitutionality of an act of Congress without first analyzing whether the act can be fairly construed in a way that would avoid the constitutional question. *Black's Law*, 8th Edition, at page 121 [Author's emphasis]

In this complex case, the Court, while remaining within its constitutional role as the judiciary, decided if there existed a "Controversy", upon the facts presented, as that term is used in the Constitution at Article III, Section 2. The Court used its own previously decided cases (stare decisis) upon the constitutional meaning of "Controversy", which the Court had decided within its role to determine constitutional construction i.e. constitutional meaning of "Controversy." The Court relied upon the fact of a contract, which the Court decided could affect private rights, to form the basis to trip its previously decided constitutional meaning of "Controversy." In effect, the Court applied its view of the facts to its previously determined constitutional meaning of "Controversy."

What Mr. Justice Brandeis was saying is: The Alabama Power Company was estopped to question the constitutionality of the contract. The company waited too long and received benefits under the contract. Because of these two facts, the preferred stock holders being in a lesser position than common stock holders were also estopped. The preferred stock holders were not entitled to use the Declaratory Judgment Act to bring their equity claims (contract). They had no equity with which to bring an equity claim. The

preferred stock holders were bound by a high standard to show damage to private right(s).

The Court, in this case, has determined "Controversy" exists in a constitutional sense. The Court determined that on the basis of a contract (equity) there existed the possibility of a damaged private right(s). Next, the Court determined, the preferred stock holders, upon the facts, had not suffered damage to those rights. No constitutional question was raised concerning the constitutionality of the Declaratory Judgment Act of 1934.

There are certain legal relations involved in this case the reader should consider:

(1) Does the party to a potential contract have legal or constitutional existence? It is important to consider the relation to a law form when the question of legal or Constitutional existence is examined. For example, in this case is the existence of TVA in accordance with the Constitution? Alternatively, is the existence of a purported municipal corporation in accordance with a constitution or derivative of statutory creation (Act of 1871)?

(2) Given the facts, does the potential party have a capacity to contract? Does the existence of the contract create presumptive existence of the political or legal capacity of either or both parties? Does the fact of the existence of a contract allow the presumption of the capacity of either part to contract?

(3) The question of the political and legal basis of capacity to contract should be considered before a contract is entered into.

(4) Estoppel may arise, barring fraud or other illegality, if a benefit is received under the contract.

(5) Generally, the courts will consider private rights in relation to contracts, barring estoppel.

(6) Constitutional questions may be barred by the Brandeis rules if a party fails to use due diligence prior to entering into a contract.

In the next chapter the authors consider a change in circumstances. These circumstances are very significant but subtle in nature. The Court applied the legislatively created rules of the Declaratory Judgment Act of 1934 to a claim, based upon a new set of facts and a different question brought to the Court. These legislative rules are viewed by the Court as procedural in nature. The Court, then, does not view these legislative rules as affecting the Court's judicial roll to interpret the constitutional meaning of "Controversy." Based upon the foregoing, the transaction of contracting should take on even more significance to the reader.

Chapter 5

Switch in Time and the War in the Supreme Court

Re: "Controversies", A Legislatively Created Procedure

In this chapter will be discussed Article III "Controversies" and how the Supreme Court of the United States responded to a statutorily created procedural device. This device originated when Congress legislated and passed the Declaratory Judgment Act of 1934.

Aetna Life Ins. v. Haworth et al., 300 US 227, 57 S.Ct. 461 (March 1st, 1937), is the case in which the "New Deal" Justices succeeded in finding constitutional this statutory device by the method of interpreting the legislated device to be procedural in nature. Hence Congress, having constitutional power over procedure, had not trenched[14] on Judicial Power to decide the meaning of "Controversy." The question presented in Aetna Life Ins. v. Haworth et al., supra, was whether the Federal District Court had jurisdiction of the suit brought in Aetna Life Ins. v. Haworth et al., supra, under the Federal Declaratory Judgment Act of June 14, 1934, 48 Stat. 955, Judicial Code § 274d, 28 USCA § 400, which is now codified at 28 USCA §§ 2201 and 2202.

The Declaratory Judgment Act of 1934 provided:

1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be re-viewable as such.

2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having

[14] **trench**, *v. intr 2.* To verge or encroach. Often used with *on* or *upon. Source www.dictionary.com*

jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

The Constitution of the United States of America at Article III, Section 2, paragraph 1, provides:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;- to all Cases affecting Ambassadors, other public Ministers and Consuls;- to all Cases of admiralty and maritime Jurisdiction- to Controversies to which the United States shall be a party;- to Controversies between two or more States;- between a State and Citizens of another State;- between Citizens of different States;- Between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." (in relation to America) [Author's addition]

The Federal Courts were limited by the Constitution of the United States of America to "Controversies" which arose under the Constitution and the Laws of the United States, and Treaties made, or which shall be made, under their Authority and was limited to certain parties in interest. The Declaratory Judgment Act allowed "actual controversies" to also be heard by the Federal Courts. The Constitution does not mention the Legislative Branch defining the meaning of "Controversy." The Constitution limits "Controversies" only to those "arising under this Constitution." Was the Declaratory Judgment Act, supra, an intrusion by the Legislature into the realm of Judicial Powers?

In Aetna Life Ins. v. Haworth et al., supra, the question in dispute arises upon the plaintiff's complaint which was dismissed by the District Court upon the ground that it did not set forth a 'controversy' in the constitutional sense and hence did not come within the legitimate scope of the new 1934 statute.

Aetna Life Ins. v. Haworth et al., supra, is an insurance company that had issued to the defendant, Edwin P. Haworth, five policies of insurance upon his life with the defendant's wife, Cora M. Haworth, being named as beneficiary. The complaint set forth the terms of the policies. They contained various provisions that for the present purposes it is unnecessary fully to particularize. It is sufficient to observe that they all provided for certain benefits in the event that the insured became totally and permanently disabled.

In one policy, for $10,000, issued in 1911, the company agreed, upon receiving the requisite proof of such disability and without further payment of premiums, to pay the sum insured, and dividend additions, in twenty annual installments, or a life annuity as specified, in full settlement.

In four other policies issued in 1921, 1928, and 1929, respectively, for amounts aggregating $30,000, plaintiff agreed upon proof of such disability to waive further payment of premiums, promising in one of the policies to pay a specified amount monthly and in the other three to continue the life insurance in force. By these four policies the benefits to be payable at death, and the cash and loan values to be available, were to be the same whether the premiums were paid or were waived by reason of the described disability.

The complaint in Aetna Life Ins. v. Haworth et al., supra, alleged that in 1930 and 1931 the insured ceased to pay premiums on the four policies last mentioned and claimed the disability benefits as stipulated. He continued to pay premiums on the first mentioned policy until 1934 and then claimed disability benefits. These claims, which were repeatedly renewed, were presented in the form of affidavits accompanied by certificates of physicians.

The complaint stated that while these policies were in force, the insured became totally and permanently disabled by disease and was "prevented from performing any work or conducting any

business for compensation or profit"; and that on October 7, 1930, he had made and delivered to the company a sworn statement "for the purpose of asserting and claiming his right to have these policies continued under the permanent and total disability provision contained in each of them"; that more than six months before that date he had become totally and permanently disabled and had furnished evidence of his disability within the stated time; that the annual premiums payable in the year 1930 or in subsequent years were waived by reason of the disability; and that he was entitled to have the policies continued in force without the payment of premiums so long as the disability should continue.

With respect to the policy first mentioned, it appears to the Court, that the insured claimed that prior to June 1, 1934, when he ceased to pay premiums, he had become totally and permanently disabled; that he was without obligation to pay further premiums and was entitled to the stipulated disability benefits including the continued life of the policy.

Aetna Life Insurance Co. further alleged that consistently, and at all times, it had refused to recognize these claims of the insured and had insisted that all the policies had lapsed according to their terms by reason of the non-payment of premiums. Aetna claimed the insured was not totally and permanently disabled at any of the times to which Defendant's claims referred. Aetna Life Insurance Co. further stated in the complaint, that taking loans into consideration, four of the policies have no value and the remaining policy (the first mentioned insurance policy) has a value of only $45.00 as extended insurance.

The Supreme Court said:

> "If, however, the insured has been totally and permanently disabled as he claims, the five policies are in full force, the plaintiff is now obliged to pay the accrued installments of cash disability benefits for which two of the policies provide, and the insured has the right to claim at any time cash surrender values accumulating by reason of the provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon."

Aetna Life Insurance Co. contended that there was a statutory "actual controversy" with the defendants, the Haworths, as to the existence of the total and permanent disability of the insured and as to the continuance of the obligations asserted despite the nonpayment of premiums.

In this case, the Haworths did not institute any action wherein Aetna Life Insurance Co. could have had an opportunity to prove the absence of the alleged disability.

Aetna Life Insurance Co. pointed to the danger that it might lose the benefit of evidence through disappearance, illness, or death of witnesses. Meanwhile, in the absence of a judicial decision with respect to the alleged disability, Aetna Life Insurance Co. in relation to these policies would be compelled to maintain reserves in excess of $20,000.

The complaint asked for a decree that the four policies be declared to be null and void by reason of lapse for nonpayment of premiums and that the obligation upon the remaining policy be held to consist solely in the duty to pay the sum of $45 upon the death of the insured, and for such further relief as the exigencies of the case might require.

First, the Supreme Court said in Aetna Life Ins. v. Haworth et al. supra:

> "The Constitution (Article III, Section 2) limits the exercise of the judicial power to 'cases' and 'controversies'. The term 'controversies', if distinguishable at all from 'cases', is so in that it is less comprehensive than the latter, and includes only suits of a civil nature." Per Mr. Justice Field In re Pacific Railway Commission (C.C.) 32 F. 241, 255, citing Chisholm v. Georgia, 2 Dall. 419, 431, 432, 1 L.Ed. 440. See Muskrat v. United States, 219 U.S. 346, 356, 357, 31 S.Ct. 250, 55 L.Ed. 246; Old Colony Trust Co. v. Commissioner, 279 U.S. 716, 723, 724, 49 S.Ct.499, 501, 502, 73 L.Ed. 918.
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> Further:
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> "The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy', manifestly has regard to the constitutional provision and is operative only in respect to

controversies which are such in the constitutional sense." Aetna Life Ins. v. Haworth et al., supra.

The Aetna Court stated:

"The word 'actual' is one of emphasis rather than of definition. Thus, the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish." Turner v. Bank of North America, 4 Dall. 8, 10, 1 L.Ed. 718 (1799); Stevenson v. Fain, 195 U.S. 165, 167, 25 S.Ct. 6, 49 L.Ed. 142 (1904); Kline v. Burke Construction Co., 260 U.S. 226, 234, 43 S.Ct. 79, 82, 67 L.Ed. 226, 24 A.L.R. 1077.

The Aetna Court looked to Turner v. Bank of North America, supra where that court said:

"A circuit court, though an inferior court, in the language of the constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules, which the caution or jealousy of the courts at Westminister long applied to courts of that denomination; but are entitled to as liberal intendments or presumptions in favor of their regularity, as those of any supreme court. A circuit court, however, is of limited jurisdiction: and has cognizance, not of cases generally, but only of a few specially circumstanced, amounting to a small proportion of the cases which an unlimited jurisdiction would embrace. And the fair presumption is (not as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather) that a cause is without its jurisdiction, until the contrary appears. This renders it necessary, inasmuch as the proceedings of no court can be deemed valid, further than its jurisdiction appears, or can be presumed, to set forth upon the record of a circuit court, the facts or circumstances which give jurisdiction, either expressly, or in such manner as to render them certain by legal intendment. Among those circumstances, it is necessary, where the defendant appears to be a citizen of one

state, to show that the plaintiff is a citizen of some other state, or an alien; or if (as in the present case) the suit be upon a promissory note, by an assignee, to show that the original promisee is so: for by a special provision of the statute, it is his description, as well as that of the assignee, which effectuates jurisdiction." [Author's emphasis]

This court followed strict construction and stare decisis under the Constitution of the United States of America at Article III, Section 2, which allows "Controversies" between citizens of different States.

The Supreme Court in its opinion in, Aetna Life Ins. v. Haworth et al., supra, went on to say:

"Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. The judiciary clause of the Constitution 'did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts'. Citing, Nashville, Chattanooga & St. Louis R. Co. v. Wallace, 288 U.S. 249, 264, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191. [Author's emphasis]

Further:

"In dealing with methods within its (Congress's) sphere of remedial action the Congress may create and improve as well as abolish or restrict. The Declaratory Judgment Act must be deemed to fall within this ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends." Aetna Life Ins. v. Haworth et al. supra. [Author's emphasis]

In Aetna Life Ins. v. Haworth et al. supra, the Supreme Court further stated:

"A 'controversy' in this sense must be one that is appropriate for judicial determination. Osborn v. Bank of United States, 9 Wheat. 738, 819, 6 L.Ed. 204. A justifiable controversy is thus distinguished from a difference or dispute of a

hypothetical or abstract character; from one that is academic or moot. United States v. Alaska S.S. Co., 253 U.S. 113, 116, 40 S.Ct. 448, 449, 64 L.Ed. 808. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." South Spring Gold Co. v. Amador Gold Co., 145 U.S. 300, 301, 12 S.Ct. 921, 36 L.Ed. 712; Fairchild v. Hughes, 258 U.S. 126, 129, 42 S.Ct. 274, 275, 66 L.Ed. 499; Massachusetts v. Mellon, 262 U.S. 447, 487, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078. [Author's emphasis]

Further:

"It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." See Muskrat v. United States, supra; Texas v. Interstate Commerce Commission, 258 U.S. 158, 162, 42 S.Ct. 261, 262, 66 L.Ed. 531; New Jersey v. Sargent, 269 U.S. 328, 339, 340, 46 S.Ct. 122, 125, 70 L.Ed. 289; Liberty Warehouse Co. v. Grannis, 273 U.S. 70, 47 S.Ct. 282, 71 L.Ed. 541; New York v. Illinois, 274 U.S. 488, 490, 47 S.Ct. 661, 71 L.Ed. 1164; Willing v. Chicago Auditorium Association, 277 U.S. 274, 289, 290, 48 S.Ct. 507, 509, 72 L.Ed. 880; Arizona v. California, 283 U.S. 423, 463, 464, 51 S.Ct. 522, 529, 75 L.Ed. 1154; Alabama v. Arizona, 291 U.S. 286, 291, 54 S.Ct. 399, 401, 78 L.Ed. 798; United States v. West Virginia, 295 U.S. 463, 474, 475, 55 S.Ct. 789, 793, 79 L.Ed. 1546; Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 324, 56 S.Ct. 466, 472, 80 L.Ed. 688. [Author's emphasis]

The Court continued:

"Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages." Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra, 288 U.S. 249, at page 263, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191; Tutun v. United States, 270 U.S. 568, 576, 577, 46 S.Ct. 425, 426, 70 L.Ed. 738; Fidelity National Bank & Trust Co. v. Swope, 274 U.S. 123, 132, 47 S.Ct. 511, 514, 71 L.Ed. 959; Old Colony Trust Company v. Commissioner, supra, 279 U.S. 716, at page 725, 49 S.Ct. 499, 502, 73 L.Ed. 918. And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required." Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra, 288 U.S. 249, at page 264, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191. [Author's emphasis]

With these principles governing the application of the Declaratory Judgment Act of 1934, the Court turned to the nature of the controversy, the relation and interests of the parties, and the relief sought in Aetna Life Ins. v. Haworth et al., supra.

Second, the Supreme Court in Aetna Life Ins. v. Haworth et al., supra, stated:

"There is here a dispute between parties who face each other in an adversary proceeding. The dispute relates to legal rights and obligations arising from the contracts of insurance. The dispute is definite and concrete, not hypothetical or abstract. Prior to this suit, the parties had taken adverse positions with respect to their existing obligations. Their contentions concerned the disability benefits which were to be payable upon prescribed conditions. On the one side, the insured claimed that he had become totally and permanently disabled and hence was relieved of the obligation to continue the payment of premiums and was entitled to the stipulated disability benefits and to the continuance of the policies in force. The insured presented this claim formally, as required by the policies. It was a claim of a present, specific right. On the other side, the company made an equally definite claim that the alleged basic fact did not exist, that the insured was not totally and permanently disabled and had not been relieved of the duty to continue the payment of premiums, that in consequence the policies had lapsed, and that the company was thus freed from its obligation either to pay disability benefits or to continue the insurance in force. Such

a dispute is manifestly susceptible of judicial determination. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts." [Author's emphasis]

Further:

"That the dispute turns upon questions of fact does not withdraw it, as the respondent seems to contend, from judicial cognizance. The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is everyday practice. Equally unavailing is respondent's contention that the dispute relates to the existence of a 'mutable fact' and a 'changeable condition--the state of the insured's health'. The insured asserted a total and permanent disability occurring prior to October 1930, and continuing thereafter. Upon that ground he ceased to pay premiums. His condition at the time he stopped payment, whether he was then totally and permanently disabled so that the policies did not lapse, is not a 'mutable' but a definite fact. It is a controlling fact which can be finally determined and which fixes rights and obligations under the policies. If it were found that the insured was not totally and permanently disabled when he ceased to pay premiums and hence was in default, the effect of that default and the consequent right of the company to treat the policies as lapsed could be definitely and finally adjudicated. If it were found that he was totally and permanently disabled as he claimed, the duty of the company to pay the promised disability benefits and to maintain the policies in force could likewise be adjudicated." [Author's emphasis]

The Court went on to say:

"There would be no difficulty in either event in passing a conclusive decree applicable to the facts found and to the obligations of the parties corresponding to those facts. If the insured made good his claim, the decree establishing his right to the disability benefits, and to the continuance of the policies in force during the period of the proved disability, would be none the less final and conclusive as to the matters

thus determined even though a different situation might later arise in the event of his recovery from that disability and his failure after that recovery to comply with the requirements of the policies. Such a contention would present a distinct subject matter." [Author's emphasis]

The Aetna Court concluded in the above paragraphs that the existence of legal rights stemming from a contract between the parties is ripe for judicial suit by complaint. The "New Deal" Federal Court accepted it had jurisdiction over the matter by way of federal legislation, specifically the Declaratory Judgment Act of 1934. Let's see what the Supreme Court in Aetna Life Ins. v. Haworth et al. supra, said about jurisdiction under the federally legislated Declaratory Judgment Act of 1934.

The court said:

"If the insured had brought suit to recover the disability benefits currently payable under two of the policies there would have been no question that the controversy was of a justifiable nature, whether or not the amount involved would have permitted its determination in a federal court. Again, on repudiation by the insurer of liability in such a case and insistence by the insured that the repudiation was unjustified because of his disability, the insured would have 'such an interest in the preservation of the contracts that he might maintain a suit in equity to declare them still in being.' Burnet v. Wells, 289 U.S. 670, 680, 53 S.Ct. 761, 764, 77 L.Ed. 1439; Cohen v. New York Life Insurance Co., 50 N.Y. 610, 624, 10 Am.Rep. 522; Fidelity National Bank & Trust Co. v. Swope, supra. [Author's emphasis]

Further:

"But the character of the controversy and of the issue to be determined is essentially the same whether it is presented by the insured or by the insurer. Whether the District Court may entertain such a suit by the insurer, when the controversy as here is between citizens of different States or otherwise is within the range of the federal judicial power, is for the Congress to determine. It is the nature of the controversy, not the method of its presentation or the particular party who

presents it, that is determinative." See Gully v. Interstate Natural Gas Co. (C.C.A.) 82 F. (2d) 145, 149; Travelers Insurance Co. v. Helmer (D.C.) 15 F.Supp. 355, 356; New York Life Insurance Co. v. London (D.C.) 15 F.Supp. 586, 589.

The Court stated:

"We have no occasion to deal with questions that may arise in the progress of the cause, as the complaint has been dismissed in limine. Questions of burden of proof or mode of trial have not been considered by the courts below and are not before us." [Author's emphasis]

The Courts conclusion is that the complaint presented a controversy to which the judicial power extends and that authority to hear and determine it has been conferred upon the District Court by the Declaratory Judgment Act. The decree is reversed and the cause is remanded for further proceedings in conformity with this opinion.

In other words, the Supreme Court has determined that the Declaratory Judgment Act of 1934, (hereinafter DJA) a legislatively contrived statutory device, is a constitutionally permissible procedure with which to access the federal courts. A possible plaintiff, upon a fact pattern where "legal relations" (private rights via contract, equity) are at issue, would have the opportunity to make a statutory claim without first proving a lawful right to be the basis of a constitutional Article III "controversy." In other words, an equity driven claim "legal relations" would only be necessary.

In the Aetna case supra, a contractual dispute (equity) based upon the statutory authority of DJA, was held to be a constitutionally sufficient procedure. Why? Because the Court concluded the DJA constitutionally reposed, via a procedure, a new legislative jurisdiction (declaratory determination) in the federal courts.

In order to arise at this decision Chief Justice Hughes defined "controversy" as:

"A *controversy* in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The

controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

Charles Allan Wright in *The Law of Federal Courts*, § 12 at 60-61 (5th ed. 1994) has the following to say about Chief Justice Hughes above definition of "controversy":

"Unfortunately, this definition, though often quoted, turns upon labels that the Court had used in the past to describe cases before it, and the labels themselves are 'elastic, inconstant, and imprecise'."

The authors argue, the federal, legislatively created Declaratory Judgment Act of 1934 redefined the Constitutionally accepted meaning of "Controversies" that could be heard in the Federal Courts. This was accomplished by the substituted use of a federal statutorily based claim as opposed to a constitutionally based claim.

Nowhere in Article III, defining the Judicial Power of the Federal Courts, does the Constitution of the United States of America allow Congress to trench upon the Article III Judicial Power to determine the meaning of "controversy" in the Federal Courts. The Congress can make the rules and regulations governing appeals to the Supreme Court at Article III, section 2, paragraph 2. The authors argue Article I power does not allow the Congress to legislate the meaning of Article III "controversies." The "New Deal" Congress legislated the Declaratory Judgment Act so as to allow congressionally expanded equity issues based upon contract to appear before the federal courts as actual "controversies." So where does this expanded federal legislative jurisdiction apply? Of coarse, to "New Deal" statutes now held to be constitutional via contract, (equity) within the "New Deal" courts. The authors argue the Article III judicial power applied to the constitutional meaning of "Controversies" bowed down to Article I legislative powers. Please readers, remember, the Court stated "actual controversies" was only a legislative procedural device. That was the Court's interpretation to cover legislative intrusion via equity into the Court's affairs at law.

In Aetna is revealed a particular creation of "New Deal" legislative jurisdiction as another step in the ever-widening expanse of federal legislative jurisdiction. How did the parties in the Aetna case trip federal legislative jurisdiction? The reader now understands, by the avenue of an insurance contract (private rights dispute via equity) and then invoked (using legislative benefit), the Declaratory Judgment Act as the statutory authority to procedurally access the courts. Remember, the federal trial court threw out the case because that Court, under the equitable fact pattern, found no constitutional "controversy" at law.

This outcome rests upon an equitable condition precedent, that of the existence of a contract. Dear reader, please review the six specific points mentioned near the end of the previous chapter.

A person cannot question the constitutionality of the legislative act if one takes a benefit under that Act. If a person voluntarily takes a legislative benefit, and submits to Article I legislative power, generally, that person is barred from a constitutional question on the constitutionality of that legislation.

As will be discussed in later chapters, the person who makes use of federal (state) statutory authority runs an almost certain risk of accepting the political status (federal) and legal person presumed upon the statutory user. This statutory user must as a condition precedent recognize the existent political state. Today, the existent political state is not the original State, and in fact will not recognize the person of the Several States. Obviously, the current "Federal personnel" Congress (state) will not accept to do statutory business with a person that has more commercial power than the person of the insolvent United States (state). Statutory users beware!!! More information and facts on these points will follow in Section Two.

In the next Chapter, the Supreme Court's reinterpretation of the due process clause is examined.

Chapter 6

Switch in Time and the War in the Supreme Court

The Court's new interpretation of Due Process

In furtherance of the war and given the sharply worded split decisions in the United States Supreme Court, the allies of the "New Deal" program knew they needed control of the Due Process Clause of the Constitution. Article 1, section 10 of the Constitution of the United States of America states that; "No State shall pass any Law impairing the Obligation of Contracts." The Fifth Article of the Bill of Rights guarantees under due process the right not to have the obligations of contracts impaired by state law. West Coast Hotel Co. v. Parrish, 300 US 379, 57 S.Ct. 578 (March 29th, 1937), presumes to redefine the Due Process clause of the constitution to impair the obligations of contracts by the operation of state law through the 14th[15] Amendment of the Constitution of the United States.

West Coast Hotel Co. v. Parrish supra, presented the question of the constitutionality of the minimum wage law enacted by the legislature of the state of Washington. The Act, Laws 1913 (Washington) c. 174, p. 602, Remington's Rev. Stat. (1932) s 7623 et seq. entitled 'Minimum Wages for Women', authorizes the fixing of minimum wages for women and minors. The Act provides:

> Section 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor that have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.
>
> Section. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages that are not adequate for their maintenance.

[15] This case presumes the validity of the purported Amendment 14.

> Section. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women.

By the law mentioned above, the state of Washington created an Industrial commission at Section 3. By a later act, the Industrial Welfare Commission was abolished and its duties were assigned to the "Industrial Welfare Committee" consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician, and the Supervisor of Women in Industry. Laws 1921 (Washington) c. 7, p. 12, Remington's Rev. Stat. (1932) ss 10840, 10893.

The Commission's duties were to ascertain the wages and conditions of labor of women and minors within the state. Public hearings were to be held. If, after investigation the commission found that in any occupation, trade, or industry the wages paid to women were inadequate to supply them necessary cost of living and to maintain the workers health, the commission was empowered to call a conference of representatives of employers and employees together with disinterested persons representing the public. The conference was to recommend to the commission, on its request, an estimate of a minimum wage adequate for the purpose above stated, and on the approval of such a recommendation it became the duty of the commission to issue an obligatory order fixing minimum wages.

Elsie Parrish was employed as a chambermaid and with her husband brought a suit to recover the difference between the wages paid her and the minimum wage fixed pursuant to the state law. The minimum wage was $14.50 per week of 48 hours. West Coast Hotel Co. challenged the act as repugnant to the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of the state, reversing the trial court, sustained the statute and directed judgment for the plaintiffs. (See Parrish v. West Coast Hotel Co., 185 Wash. 581, 55 P. (2d) 1083.)

West Coast Hotel Co. relied upon the decision of the

Supreme Court in Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238, which held invalid the District of Columbia Minimum Wage Act (40 Stat. 960), which was attacked under the due process clause of the Fifth Amendment.

On the argument at bar, counsel for Parrish attempted to distinguish the Adkins Case upon the ground that Parrish was employed in a hotel and that the business of an innkeeper was effected with a public interest. That effort at distinction is obviously futile, as it appears that in one of the cases ruled by the Adkins opinion the employee was a woman employed as an elevator operator in a hotel. Adkins v. Lyons, 261 U.S. 525, at page 542, 43 S.Ct. 394, 395, 67 L.Ed. 785, 24 A.L.R. 1238.

At about that same time, the case of Morehead v. New York ex rel. Tipaldo, 298 U.S. 587, 56 S.Ct. 918, 80 L.Ed. 1347, 103 A.L.R. 1445, came before the Supreme Court on certiorari to the New York court that had held the New York minimum wage act for women to be invalid. A minority of this Court thought that the New York statute was distinguishable in a material feature from that involved in the Adkins Case and that for that and other reasons the New York statute should be sustained. But the Court of Appeals of New York had said that it found no material difference between the two statutes and the Supreme Court of the United States held that the 'meaning of the statute' as fixed by the decision of the state court 'must be accepted here as if the meaning had been specifically expressed in the enactment'. 298 U.S. 587, at page 609, 56 S.Ct. 918, 922, 80 L.Ed. 1347, 103 A.L.R. 1445.

This view led to the affirmation by the Supreme Court of the judgment in the Morehead Case, as the Court considered that the only question before it was whether the Adkins Case was distinguishable and that reconsideration of that decision had not been sought. Upon that point the Court said:

> "The petition for the writ sought review upon the ground that this case (Morehead) is distinguishable from that one (Adkins). No application has been made for reconsideration of the constitutional question there decided. The validity of the principles upon which that decision rests is not challenged. This court confines itself to the ground upon which the writ was asked or granted. Here the review granted

was no broader than sought by the petitioner. He is not entitled and does not ask to be heard upon the question whether the Adkins Case should be overruled. He maintains that it may be distinguished on the ground that the statutes are vitally dissimilar." 298 U.S. 587, at pp. 604, 605, 56 S.Ct. 918, 920, 80 L.Ed. 1347, 103 A.L.R. 1445.

The Court in West Coast Hotel Co. v. Parrish supra, at this juncture of the case, came to the conclusion that the rulings in Atkins supra, needed fresh consideration. The Court reasoned:

> "We think that the question which was not deemed to be open in the Morehead Case is open and is necessarily presented here. The Supreme Court of Washington has upheld the minimum wage statute of that state. It has decided that the statute is a reasonable exercise of the police power of the state. In reaching that conclusion, the state court has invoked principles long established by this Court in the application of the Fourteenth Amendment. The state court has refused to regard the decision in the Adkins Case as determinative and has pointed to our decisions both before and since that case as justifying its position. We are of the opinion that this ruling of the state court demands on our part a re-examination of the Adkins Case. The importance of the question, in which many states having similar laws are concerned, the close division by which the decision in the Adkins Case was reached, and the economic conditions which have supervened, and in the light of which the reasonableness of the exercise of the protective power of the state must be considered, make it not only appropriate, but we think imperative, that in deciding the present case the subject should receive fresh consideration." [Author's emphasis]

The Adkins Court supra, mentioned within West Coast Hotel Co. v. Parrish supra, made distinctions between what is due process under Amendment 5 and West Coast Hotel Co. v. Parrish supra, makes due process distinctions under Amendment 14. Here again, as mentioned in other parts of this chapter and book, the reader should remember, to be a "citizen of the United States", "and subject to the jurisdiction thereof", was and is a voluntary election.

The Court in West Coast Hotel Co. v. Parrish, supra, went on to say:

> "The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the states, as the due process clause invoked in the Adkins Case governed Congress. (which was the Article 5th of the Bill of Rights) In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." [Author's emphasis and addition]

What does due process "in the interests of the community mean"? Flat out it means; people have made an appearance of election to be treated as a U.S. citizen or "citizen of the United States" and therein subjected themselves to the public policy of Congress and the states. These citizens have there own community. This federal citizenship became paramount and dominant over their State or National "Citizenship" (See later chapter on Citizenship). Arguably, this political choice and citizenship status has allowed the Courts to reinterpret the due process clause of the purported Amendment 14 as applied by the federal government against the states, in contrast to Article 5 of the Bill of Rights as applied against the government of the United States by State Citizens. The result is that a person who appears to have made such a federal citizen election has a different status and resulting set of legal relations, is in a different "community", in respect to a person who has not made such a federal citizen election.

The Supreme Court in West Coast Hotel Co. v. Parrish, supra held that the Court could:

> "In determining state's power to enact minimum wage law for women, federal Supreme Court could take judicial notice of unparalleled demands for relief which arose during economic depression, since denial of a living wage is not only detrimental to health and well being of workers, but casts direct burden for their support on the community." [Author's emphasis]

Further:

> "In view that the exploitation of a class of workers who are in an unequal position with regard to bargaining power and are thus relatively defenseless against denial of a living wage casts direct burden for their support on the community, the community may direct its law-making power to correct the abuse which springs from employers' selfish disregard of public interest." U.S.C.A.Const. Amend. 14.

During the "New Deal" era, in keeping with this social experiment in democracy, any person or any entity taking a benefit from the government was, and is, subject to the laws made by this "community." Where upon, the Supreme Court has politically made a choice not to follow strict construction and stare decisis. The quotes from West Coast Hotel Co. v. Parrish supra, below, redefining liberty under the purported Amendment 14th to mean liberty in a "community" as defined by that "community" demonstrate this crucial point i.e. public policy.

The Court stated:

> "Liberty, under Constitution, is subject to restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." U.S.C.A.Const. Amend. 14. [Author's emphasis]

And:

> "Liberty" safeguarded by the due process clause of Fourteenth Amendment is liberty in a social organization which requires the protection of law against the evils which

> menace the health, safety, morals, and welfare of the people." U.S.C.A.Const. Amend. 14. West Coast Hotel Co. v. Parrish supra. [Author's emphasis]

The authors argue the freedom to contract was also redefined by the "New Deal" political jurist of the Supreme Court to mean "qualified and not absolute" when contracting within the bounds of the community. This holding applied to the "community" was really outside familiar construction and stare decisis. The Court simply recognized a new political reality under economic exigency.

The Court said:

> "Freedom of contract is qualified and not absolute right since "liberty", guaranteed by Constitution, implies absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in interests of the community." U.S.C.A. Const. Amend. 14. West Coast Hotel Co. v. Parrish supra. [Author's emphasis]

The Supreme Court went on to say; "If statute enacted under police power of state regulating making of private contracts has reasonable relation to proper legislative purpose and is neither arbitrary nor discriminatory, requirements of due process are satisfied. U.S.C.A. Const. Amend. 14. West Coast Hotel Co. v. Parrish, supra. Really, is this strict construction and stare decisis?

The authors think not!!!! It would seem when interpreting the federal Constitution in relation to the purported Amendment 14, as applied to the States, the Supreme Court was now willing to sacrifice individual rights in relation to "community" rights.

Further, the Court has this to say:

> "But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions

imposed in the interests of the community." Chicago, Burlington & Quincy R. Co. v. McGuire, 219 U.S. 549, 565, 31 S.Ct. 259, 262, 55 L.Ed. 328.

And:

"This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day", Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, 42 L.Ed. 780).

Further, in dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. Chicago, Burlington & Quincy R. Co. v. McGuire, supra, 219 U.S. 549, at page 570, 31 S.Ct. 259, 55 L.Ed. 328.

The Court further cited as stare decisis:

Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77; Railroad Commission Cases, 116 U.S. 307, 6 S.Ct. 334, 388, 1191, 29 L.Ed. 636; Willcox v. Consolidated Gas Co., 212 U.S. 19, 29 S.Ct. 192, 53 L.Ed. 382, 48 L.R.A.(N.S.) 1134, 15 Ann.Cas. 1034; Atkin v. Kansas, 191 U.S. 207, 24 S.Ct. 124, 48 L.Ed. 148; Mugler v. Kansas, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205; Crowley v. Christensen, 137 U.S. 86, 11 S.Ct. 13, 34 L.Ed. 620; Gundling v. Chicago, 177 U.S. 183, 20 S.Ct. 633, 44 L.Ed. 725; Booth v. Illinois, 184 U.S. 425, 22 S.Ct. 425, 46 L.Ed. 623; Schmidinger v. Chicago, 226 U.S. 578, 33 S.Ct. 182, 57 L.Ed. 364; Armour & Co. v. North Dakota, 240 U.S. 510, 36 S.Ct. 440, 60 L.Ed. 771, Ann.Cas.1916D, 548; National Union Fire Insurance Co. v. Wanberg, 260 U.S. 71, 43 S.Ct. 32, 67 L.Ed. 136; Radice v. New York, 264 U.S. 292, 44 S.Ct. 325, 68 L.Ed. 690; Yeiser v. Dysart, 267 U.S. 540, 45 S.Ct. 399, 69 L.Ed. 775; Liberty Warehouse Company v. Burley Tobacco Growers' Association, 276 U.S. 71, 97, 48 S.Ct. 291, 297, 72 L.Ed. 473; Highland v. Russell

Car Co., 279 U.S. 253, 261, 49 S.Ct. 314, 316, 73 L.Ed. 688; O'Gorman & Young v. Hartford Insurance Co., 282 U.S. 251, 51 S.Ct. 130, 75 L.Ed. 324, 72 A.L.R. 1163; Hardware Insurance Co. v. Glidden Co., 284 U.S. 151, 157, 52 S.Ct. 69, 70, 76 L.Ed. 214; Packer Corporation v. Utah, 285 U.S. 105, 111, 52 S.Ct. 273, 275, 76 L.Ed. 643, 79 A.L.R. 546; Stephenson v. Binford, 287 U.S. 251, 274, 53 S.Ct. 181, 188, 77 L.Ed. 288, 87 A.L.R. 721; Hartford Accident Co. v. Nelson Co., 291 U.S. 352, 360, 54 S.Ct. 392, 395, 78 L.Ed. 840; Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S.Ct. 277, 78 L.Ed. 505, 90 A.L.R. 1285; Nebbia v. New York, 291 U.S. 502, 527--529, 54 S.Ct. 505, 511, 512, 78 L.Ed. 940, 89 A.L.R. 1469.

The point that was strongly stressed in the cases mentioned above is that adult employees should be deemed competent to make their own contracts, this point was decisively met many years ago in Holden v. Hardy, supra, where the Supreme Court pointed out the inequality in the footing of the parties. The Court so stated at 169 U.S. 366, 397, 18 S.Ct. 383, 390, 42 L.Ed. 780.

What was not allowed in the cases above is state legislative intrusion. The Supreme Court followed a more familiar construction and stare decisis exclusive of the "community." In furtherance of the "New Deal", the Supreme Court in West Coast Hotel Co. v. Parrish supra, blazed a new political trail by adopting an Amendment 14th (federalized) state "community" standard. The Court, in affect, was leaving it up to the states to determine the "community" standard. If a controversy arose under due process, the court would look to the "community" standard. The "New Deal" political basis of the Courts decision was the "community." By this decision, save for due process, socialism could constitutionally eventually displace the Republic by community conduct.

The United States Supreme Court and its "New Deal" allies concluded:

"The Legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been

applied.' There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms." Carroll v. Greenwich Insurance Co., 199 U.S. 401, 411, 26 S.Ct. 66, 50 L.Ed. 246; Patsone v. Pennsylvania, 232 U.S. 138, 144, 34 S.Ct. 281, 58 L.Ed. 539; Keokee Coke Co. v. Taylor, 234 U.S. 224, 227, 34 S.Ct. 856, 58 L.Ed. 1288; Sproles v. Binford, 286 U.S. 374, 396, 52 S.Ct. 581, 588, 76 L.Ed. 1167; Semler v. Oregon Board, 294 U.S. 608, 610, 611, 55 S.Ct. 570, 571, 79 L.Ed. 1086. This familiar principle has repeatedly been applied to legislation which singles out women, and particular classes of women, in the exercise of the state's protective power. Miller v. Wilson, supra, 236 U.S. 373, at page 384, 35 S.Ct. 342, 59 L.Ed. 628, L.R.A.1915F, 829; Bosley v. McLaughlin, supra, 236 U.S. 385, at pages 394, 395, 35 S.Ct. 345, 59 L.Ed. 632; Radice v. New York, supra, 264 U.S. 292, at pages 295--298, 44 S.Ct. 325, 326, 327, 68 L.Ed. 690. Their relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment."

The Parish Court held:

"Our conclusion is that the case of Adkins v. Children's Hospital supra, should be, and it is, overruled. The judgment of the Supreme Court of the state of Washington is affirmed."

OK, now let's take a look at what Mr. Justice Van Deventer, Mr. Justice McReynolds, Mr. Justice Butler, and Mr. Justice Sutherland had to say in their dissenting opinion. In the dissenting opinion of the above Justices, the judgment of the court should be reversed. Why and upon what foundations one might ask?

First, the dissenting Justices said;

"The principles and authorities relied upon to sustain the judgment were considered in Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238, and Morehead v. New York ex rel. Tipaldo, 298 U.S. 587, 56 S.Ct. 918, 80 L.Ed. 1347, 103 A.L.R. 1445, and their lack of application to cases like the one in hand was pointed out. A sufficient answer to all that is now said will be found in the

opinions of the court in those cases. Nevertheless, in the circumstances, it seems well to restate our reasons and conclusions." [Author's emphasis]

The Dissent stated:

Under the "United States of America" republican form of government, where the written Constitution, by its own terms, is the supreme law, some agency, of necessity, must have the power to declare the final word as to the validity of a statute assailed as unconstitutional. The Constitution makes it clear that the power has been entrusted to the Supreme Court when the question arises in a controversy within its jurisdiction; and so long as the power remains there, the Supreme Courts exercise cannot be avoided without betrayal of the trust.

Remember, the Constitution of the United States of America only applies in the United States of America. In re Ross, Downes v Bidwell supra.

Further, it was pointed out many times in the Adkins Case supra, that the Supreme Court's judicial duty is one of gravity and delicacy; and that rational doubt must be resolved in favor of the constitutionality of the statute. But whose doubts, and by whom resolved, under what circumstances? Whose political views should be adopted? Should the political view of the legislature trump the Courts Judicial duty, duly based upon strict construction and stare decisis.

The dissenting view observed: And, undoubtedly it is the duty of a member of the Supreme Court in the process of reaching a right conclusion of strict construction and stare decisis to give due weight to the opposing views. In the end, the question, which a Supreme Court Justice must answer, is not whether such views seem sound to those who entertain them, but whether they convince the Justice that the statute is constitutional or engender in his mind a rational doubt upon that issue. The oath, which the Justice takes as a judge, is not a composite oath, but an individual one. And in passing upon the validity of a statute, he discharges a duty imposed upon him, which cannot be consummated justly by an automatic acceptance of the views of others which have neither convinced, nor created a reasonable doubt in the Justice's mind. If upon a question

so important as the constitutionality of a statute the Justice surrenders his deliberate judgment, he stands forsworn. The Justice cannot subordinate his convictions to that extent and keep faith with his oath or retain his judicial and moral independence.

The dissenting Justices stated:

"The suggestion that the only check upon the exercise of the judicial power, when properly invoked, to declare a constitutional right superior to an unconstitutional statute is the judge's own faculty of self restraint, is both ill-considered and mischievous. Self-restraint belongs in the domain of will and not of judgment. The check upon the judge is that imposed by his oath of office, by the Constitution, and by his own conscientious and informed convictions; and since he has the duty to make up his own mind and adjudge accordingly, it is hard to see how there could be any other restraint. This Court acts as a unit. It cannot act in any other way; and the majority (whether a bare majority or a majority of all but one of its members), therefore, establishes the controlling rule as the decision of the court, binding, so long as it remains unchanged, equally upon those who disagree and upon those who subscribe to it. Otherwise, orderly administration of justice would cease. But it is the right of those in the minority to disagree, and sometimes, in matters of grave importance, their imperative duty to voice their disagreement at such length as the occasion demands--always, of course, in terms which, however forceful, do not offend the proprieties or impugn the good faith of those who think otherwise." [Author's emphasis]

The dissent continued:

"It is urged that the question involved should now receive fresh consideration, among other reasons, because of 'the economic conditions which have supervened'; but the meaning of the Constitution does not change with the ebb and flow of economic events. We frequently are told in more general words that the Constitution must be construed in the light of the present. If by that it is meant that the Constitution is made up of living words that apply to every new condition which they include, the statement is quite true.

But to say, if that be intended, that the words of the Constitution mean today what they did not mean when written--that is, that they do not apply to a situation now to which they would have applied then--is to rob that instrument of the essential element which continues it in force as the people have made it until they, and not their official agents, have made it otherwise."

The dissent stated that, the words of Judge Campbell in People ex rel. Twitchell v. Blodgett, 13 Mich. 127, 139, 140, apply with peculiar force.

"But it may easily happen, he said, 'that specific provisions may, in unforeseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding. Constitutions can not be changed by events alone. They remain binding as the acts of the people in their sovereign capacity, as the framers of Government, until they are amended or abrogated by the action prescribed by the authority which created them. It is not competent for any department of the Government to change a constitution, or declare it changed, simply because it appears ill adapted to a new state of things. [Author's Extreme Emphasis]

In other words, only the people by constitutional process can change the Constitution, for neither any political department of the government, nor the Supreme Court is so empowered. Since this is the case, strict construction and stare decisis from the Supreme Court must apply. Economic emergency as a material change in circumstances is a political branch pronouncement of the executive and legislature. Should the political view alter the judicial view? Here checks and balances between the great powers of government are lost if the judicial view surrenders to the political view. What if the current political view of the legislature is but a current passing fancy? Separation of powers is lost when judicial assent is given to the passing political moment. By logical extension of this flawed logic, the government may radically swing into an "experiment in democracy" or even a "New Deal."

The dissenting Justices said:

"Restrictions have, it is true, been found more likely than grants to be unsuited to unforeseen circumstances.... But, where evils arise from the application of such regulations, their force cannot be denied or evaded; and the remedy consists in repeal or amendment, and not in false construction. The principle is reflected in many decisions of this Court." See South Carolina v. United States, 199 U.S. 437, 448, 449, 26 S.Ct. 110, 50 L.Ed. 261, 4 Ann.Cas. 737; Lake County v. Rollins, 130 U.S. 662, 670, 9 S.Ct. 651, 32 L.Ed. 1060; Knowlton v. Moore, 178 U.S. 41, 95, 20 S.Ct. 747, 44 L.Ed. 969; Rhode Island v. Massachusetts, 12 Pet. 657, 723, 9 L.Ed. 1233; Craig v. Missouri, 4 Pet. 410, 431, 432, 7 L.Ed. 903; Ex parte Bain, 121 U.S. 1, 12, 7 S.Ct. 781, 30 L.Ed. 849; Maxwell v. Dow, 176 U.S. 581, 602, 20 S.Ct. 494, 44 L.Ed. 597; Jarrolt v. Moberly, 103 U.S. 580, 586, 26 L.Ed. 492. [Author's emphasis]

With the above said by the dissenting Justices in West Coast Hotel Co. v. Parrish supra, to the Reader this would mean that strict construction of the Constitution must be given to the statute claimed to be unconstitutional. If the Supreme Court, under Judicial Power, not political expediency, finds that statute to be unconstitutional, the authority enacting that statute must repeal or amend the statute. The judicial function of the Supreme Court is that of interpretation. The Supreme Court does not have the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase "supreme law of the land" stands for. To convert what was intended by the strict construction of the Constitution would convert judicial interpretation based upon a rule of law to mere consent of moral reflections. The dissenting Justices argue Supreme Court Justices are without that Power and do not have that position in Our government.

The dissent went on to say, If the Constitution, intelligently and reasonably construed in the light of these principles mentioned above, stands in the way of desirable legislation, the blame must rest upon the Constitution, and not upon the court for enforcing it according to its terms.

Further, the remedy in that situation and the only true remedy is to amend the Constitution. Only a majority vote of the people can

accomplish that task. Judge Cooley, in the first volume of his *Constitutional Limitations* (8th Ed. p. 124), very clearly pointed out that much of the benefit expected from written Constitutions would be lost if their provisions were to be bent to circumstances or modified by public opinion. [Author's emphasis]

And, Judge Cooley pointed out that the common law, unlike a Constitution, was subject to modification by public sentiment and action which the courts might recognize, but that a court or legislature which should allow a change in public sentiment to influence it in giving to a written Constitution a construction not warranted by the intention of its framers, would be justly chargeable with reckless disregard of official oath and public duty. If public policy and its course should become a precedent, these instruments would be of little avail. What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon the question of constitutionality of any statute.

The question that should come to the reader's mind is: When did the people change the Constitution of the United States of America so as to amend that document to allow for an experiment in democracy and the "New Deal"? The answer is, **NEVER**. In fact, in deed and practice the Constitution of the United States of America exists, today, only in the United States of America. The reinterpreted United States Constitution acts as a basis upon which the U.S. government, along with "and subject to the jurisdiction thereof" in a "community" are engaged in a social experiment in "New Deal" democracy, all outside the Republic.

The Adkins case supra, dealt with a State Law that had passed the scrutiny of the legislative and executive branches of that government. The Supreme Court recognized that these departments had affirmed the validity of the statute, and properly declared that their determination must be given great weight. The Supreme Court concluded; "after thorough consideration, that their view could not be sustained. We think it not inappropriate now to add a word on that subject before coming to the question immediately under review", Adkins supra.

The Supreme Court in Adkins went on to say:

> "The people by their Constitution created three separate, distinct, independent, and coequal departments of government. The governmental structure rests, and was intended to rest, not upon any one or upon any two, but upon all three of these fundamental pillars. It seems unnecessary to repeat, what so often has been said, that the powers of these departments are different and are to be exercised independently. The differences clearly and definitely appear in the Constitution. Each of the departments is an agent of its creator; and one department is not and cannot be the agent of another. Each is answerable to its creator for what it does, and not to another agent. The view, therefore, of the Executive and of Congress that an act is constitutional is persuasive in a high degree; but it is not controlling." [Author's emphasis]

The Reader as one of the Sovereign People is the "creator."

Finally, the Supreme Court and its dissenting Justices in West Coast Hotel Co. v. Parrish supra, is called to a question of the constitutionality of the minimum wage for women. The dissenting Justices weighed the facts of the statute with the facts of the District of Columbia's similar statute, which was found to be unconstitutional in the Adkins case, supra.

The Supreme Court said in Adkins:

> "If, in the light of the facts, the state legislation, without reason or for reasons of mere expediency, excluded men from the provisions of the legislation, the power was exercised arbitrarily. On the other hand, if such legislation in respect of men was properly omitted on the ground that it would be unconstitutional, the same conclusion of unconstitutionality is inescapable in respect of similar legislative restraint in the case of women." Adkins Case, 261 U.S. 525, 553, 43 S.Ct. 394, 399, 67 L.Ed. 785, 24 A.L.R. 1238

In light of the Adkins case supra, the statute under strict construction as applied to case was found to be unconstitutional for reasons that the statute excluded a certain sex of people. This

legislative encroachment on the right to contract could not meet muster under the United States Constitution and would violate the due process provision even under the purported Amendment 14. The dissenting Justices of West Coast Hotel Co. v. Parrish supra, said; "A more complete discussion may be found in the Adkins and Tipaldo Cases cited supra." To lesson the burden on the Reader, the authors will only concern this writing with the Adkins case, which is purported to have been overruled by West Coast Hotel Co. v. Parrish supra. In the authors' opinion this overruling for the "community" is without strict construction and stare decisis.

The Adkins Court supra, stated:

> "In view of the great changes in the contractual, political, and civil status of women, culminating in the Nineteenth Amendment, while physical differences may be recognized in fixing hours or conditions of work, women of mature age, sui juris, may not be subjected to restrictions on their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances."

The Court said, to do so would abrogate the Article 5th of the Bill of Rights, specifically at the clause "without due process of law." In both West Coast Hotel Co. v. Parrish supra, and the Adkins case supra, the same type of law was under consideration. But the concept of "community " is a distinguishing factor.

The Adkins court said:

> "The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It therefore undertakes

to solve but one-half of the problem. The other half is the establishment of a corresponding standard of efficiency, and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law is not confined to the great and powerful employers but embraces those whose bargaining power may be as weak as that of the employee. It takes no account of periods of stress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole." [Author's emphasis]

The Atkins Court further observed:

"The feature of this statute, which perhaps more than any other, puts upon it the stamp of invalidity, is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it. The moral requirement implicit in every contract of employment, viz. that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the

employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it." [Author's emphasis]

Further, the Atkins Court stated:

"In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money; but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding more, simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support, and require the shopkeeper, if he sell to the individual at all, to furnish that quantify at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, and solely with relation to circumstances apart from the contract of employment, the business affected by it, and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States." [Author's emphasis]

The Supreme Court was asked, upon the one hand, to consider the fact that several states have adopted similar statutes, and was invited, upon the other hand, to give weight to the fact that three times as many states, presumably as well informed and as anxious to promote the health and morals of their people, have refrained from enacting such legislation. The Supreme Court was also furnished with a large number of printed opinions approving the policy of the minimum wage, and the Supreme Court's own reading disclosed a large number of opinions to the contrary.

The Atkins Court stated:

> "These are all proper enough for the consideration of the lawmaking bodies, since their tendency is to establish the desirability or undesirability of the legislation; but they reflect no legitimate light upon the question of its validity and that is what we are called upon to decide. The elucidation of that question cannot be aided by counting heads." [Author's emphasis]

In other words, the question is a matter for the law, not a question to be decided by political vote.

The Supreme Court in Adkins further held:

> "Finally, it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage. The power to fix high wages connotes, by like course of reasoning, the power to fix low wages. If, in the face of the guaranties of the Fifth Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. If, for example, in the opinion of future lawmakers, wages in the building trades shall become so high as to preclude people of ordinary means from building and owning homes, an authority which sustains the minimum wage will be invoked to support a maximum wage for building laborers and artisans, and the same argument which has been here urged to strip the employer of his constitutional liberty of contract in one direction will be utilized to strip the

> employee of his constitutional liberty of contract in the opposite direction. A wrong decision does not end with itself; it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other." [Author's emphasis]

What the Court is saying is this: If the Court decides on a basis other than law as reflected in strict construction and stare decisis, then a precedent is established outside of the fundamental law of the land is at work. Welcome to the socialistic public policy of the "New Deal."

The Supreme Court in the Adkins case supra, concluded:

> "The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise as well as futile. But, nevertheless, there are limits to the power, and, when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare."

In summary, the above cases of Adkins supra, and in the dissenting opinion of West Coast Hotel Co. v. Parrish supra, found the right to contract for a wage set certain was not within consideration of the legislative powers. The Atkins Court found minimum wage laws for women unconstitutional. The Court also said it would be a violation of Due Process to set wage restrictions when a penalty is attached to that legislation. Stated otherwise, contracts must be voluntarily made. Contracts are subject to the law of the forum.

West Coast Hotel Co. v. Parrish supra, and its bare majority opinion attempts to justify the opposite result overruling Adkins and redefining the due process clause. This action of the Supreme Court and allies of the "New Deal" are not founded within strict construction of the Constitution of the United States of America and stare decisis. This action results in a constitutional reinterpretation of the United States Constitution as applied to the states through the

purported Amendment 14. The reinterpretation applies to those persons, entities and government in the "community" i.e. socialistic legislative experiment in democracy.

The authors argue, the opinion of West Coast Hotel Co. v. Parrish supra, should be overruled in its entirety and the dissenting opinion in that case should stand. Clearly, a bare majority of the Supreme Court was willing to make a political decision overturning a long established meaning within Due Process. Also, the Court was willing to allow the state Legislatures to, in effect, politically dictate an attack on previously held Supreme Court Constitutional interpretation. Clearly, by this decision, the experiment of a legislative democracy was protected. The Court found against private contract rights previously protected by due process. In Parish supra, private rights under due process lost out to "community" rights under reinterpreted due process. How did these rights in dispute come about? In this case the purported Amendment 14 was applied as against a State. At base, the employee made use of the State benefit of a minimum wage law. That State minimum wage law was written into the West Coast Hotel contract with the employee. By now, the reader may understand better the importance of the six points near the end of chapter four.

In the next chapter, the authors will discuss the Supreme Court's changed constitutional interpretation of "Commerce."

Chapter 7

Switch in Time and the War in the Supreme Court

The changed Constitutional Interpretation of "Commerce" in 1937

In furtherance of the Roosevelt war against the Constitution, and in part because of hostile split decisions in the United States Supreme Court, the allies of the "New Deal" knew they needed control of interstate and intrastate commerce. Interstate Commerce is commerce between the several States of the Union and properly regulated by Congress under Constitutional power. Intrastate Commerce is commerce within a particular state and is regulated by the States individually. The authors contend that to further application of the "New Deal" over the people, the economy and the States, the Roosevelt forces set about to expand application of and intertwine these two separate and distinct governmental powers. The National Labor Relations Act was perceived as a political necessity and a potential vehicle by which to change the constitutional meaning of the commerce clause.

The National Labor Relations Act (NLRA), also known as the Wagner Act, passed through Congress in the summer of 1935 and became one of the most important, but questionable, "legacies" of the "New Deal." NLRA reversed years of federal opposition to organized labor. Prior to the Acts passage, Congress knew that the regulation of employment was a State concern. The Act and subsequent statutes guaranteed the right of employees to organize, form unions, and bargain collectively with their employers. The Act assured that workers would have a choice on whether to belong to a union or not, and promoted collective bargaining as the primary way to insure peaceful industry-labor relations. The Act also created a new National Labor Relations Board to arbitrate deadlocked labor-management disputes, guarantee democratic union elections, and penalize unfair labor practices by employers. The law applied to all employers involved in interstate commerce except those with sufficient political power to avoid the Act, such as airlines, railroads, agriculture, and government. Most employers were vehemently opposed to this arbitrary Act. The Act was brought into being partly

because of declared economic necessity, yet created by the use of raw political power.

In 1936, shortly after the passage of the NLRA, Jones & Laughlin Steel Corporation found itself in a labor dispute with its employees. The employees took their grievances against Jones & Laughlin Steel Corporation to the National Labor Relations Board. The Board found against Jones & Laughlin Steel Corporation. The Corporation denied jurisdiction of the Board's order. The Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition holding that the order lay beyond the range of federal power. The National Labor Relations Board appealed to the United States Supreme Court, certiorari was granted. The United States Supreme Court found in favor of the Board. In effect, the Supreme Court had enlarged the constitutional bounds of the Commerce clause. It is the author's opinion that the cases discussed within the context of the "Switch in Time" were preconceived in an ordered manner by the Supreme Court to allow the "New Deal" to go forward.

The authors further contend these "Switch in Time" court decisions should be seen as an obvious political move by the Court to appease, at a crucial time in 1937, the other two branches of government. These political moves by the Supreme Court may reasonably be seen as a political accommodation so as to judicially impede Roosevelt's court packing plan. Further, the authors contend, Roosevelt won a battle, by the application of the "New Deal." But by maintaining its role as "final arbiter" and its political relations as a co-equal branch of government, coupled with the maintenance of Due Process, as an institution the Supreme ultimately won the Constitutional war.

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 US 1, 57 S.Ct. 615 (April 12th, 1937), Proceeding by the National Labor Relations Board against the Jones & Laughlin Steel Corporation for enforcement of an order of the Board. The petition was denied by the Circuit Court of Appeals (83 F.(2d) 998), and the petitioner brought certiorari.

Jones & Laughlin Steel Corporation was involved in proceedings under the National Labor Relations Act. The Board brought charges against defendant claiming they violated the act by

engaging in unfair labor practices affecting commerce. Jones & Laughlin Steel Corporation did not take advantage of its opportunity to present evidence (due process) to refute the discrimination and coercion charges brought by the Board. The findings of the Board were that employees had been discharged because of union activity and discouraged to take membership in the union. These allegations were all supported by evidence.

The Supreme Court found there were no grounds for setting aside the order of the Board so far as the facts were concerned. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.

Instead Jones & Laughlin Steel Corporation argued that (1) the act is in reality a regulation of labor relations and not of interstate commerce; (2) the act can have no application to the respondent's relations with its production employees because they are not subject to regulation by the federal government; and (3) the provisions of the Act violate Section 2 of Article III and the Fifth and Seventh Amendments of the Constitution of the United States.

First, Jones & Laughlin Steel Corporation challenged the Act in its entirety as an attempt to regulate all industry, thus invading the powers reserved to the States over their local concerns. This is the only subject within this case the authors will touch on because it is all that needs to be said. It is asserted that the references in the Act to interstate and foreign commerce are colorable[16] at best. Further, the act is not a true regulation of such commerce or of matters that directly affect it, but on the contrary, has the fundamental object of placing under the compulsory supervision of the federal government all industrial labor relations within the nation.

The Court in Jones & Laughlin Steel Corporation reasoned:

> "The argument seeks support in the broad words of the preamble (section 1) and in the sweep of the provisions of the act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope

[16] **colorable**, 1. (Of a claim or action) appearing to be true, valid or right <the pleading did not state a colorable claim>. 2. Intended to deceive; counterfeit <the court found the conveyance of exempt property to be a colorable transfer, and so set it aside>. *Black's Law*, 8th Edition, page 282

cannot be limited by either construction or by the application of the separability clause."

"If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall by reason of the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth Amendment. Schechter Corporation v. United States, 295 U.S. 495, 549, 550, 554, 55 S.Ct. 837, 851, 853, 79 L.Ed. 1570, 97 A.L.R. 947" (1935).

The authors argue without a "Switch in Time" this should have been the ruling of the Court in National Labor Relations Board supra, if the court barring political consideration were following strict construction and stare decisis.

"The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several States' and the internal concerns of a state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system."

Once again the authors assert that without a "Switch in Time" this should have been the basis of ruling in National Labor Relations Board supra, if the Court, barring political consideration were following strict construction and stare decisis.

The Court in Jones & Laughlin Steel Corporation further reasoned:

"But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held 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. Federal Trade Commission v. American Tobacco Co.,

264 U.S. 298, 307, 44 S.Ct. 336, 337, 68 L.Ed. 696, 32 A.L.R. 786; Panama R.R. Co. v. Johnson, 264 U.S. 375, 390, 44 S.Ct. 391, 395, 68 L.Ed. 748; Missouri Pacific R.R. Co., v. Boone, 270 U.S. 466, 472, 46 S.Ct. 341, 343, 70 L.Ed. 688; Blodgett v. Holden, 275 U.S. 142, 148, 276 U.S. 594, 48 S.Ct. 105, 107, 72 L.Ed. 206; Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346, 48 S.Ct. 194, 198, 72 L.Ed. 303.

"We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in section 10(a), 29 U.S.C.A. § 160(a), which provides:

"Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 (section 158)) affecting commerce.' The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are 'affecting commerce'. The act specifically defines the 'commerce' to which it refers (section 2(6), 29 U.S.C.A. § 152(6)."

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

Now that we have heard the Court's pronouncement on the definition of "commerce", we may proceed in the analysis. In the author's opinion, the Court in Jones & Laughlin Steel Corporation supra, is not drawing the distinction between what is Constitutional and what is statutory. The Court is combining the interpreted constitutional and statutory meanings by, in effect, clouding the distinctions of interstate and intrastate commerce.

The mechanism for intentional interpreted constitutional change is in the mystical use of "affects commerce" by the Congress and the Courts acceptance of the words "affects commerce" as being within the bounds of the interpreted commerce clause. Does the Court really expect the People to believe the incantation of "affects commerce" will somehow direct the case reader to not detect the Courts gigantic departure from strict constitutional construction and stare decisis? The Courts decision is not based in properly applied judicial reasoning, but is in fact, a bold political move calculated to curry political favor with the other two branches of government.

The authors argue the statute created by Congress within 29 U.S.C.A. § 152(6)(2), in effect is intertwining interstate commerce with intrastate commerce outside Constitutional authority to do so.

The authors further contend that within 29 USCA § 152(6)(2) are the words; "The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States." [Author's emphasis] In transportation of goods between states the federal government has jurisdiction while the goods are in transit and only then. In the Constitutional sense of the words, interstate commerce and transportation, commerce ends at the gates of Jones & Laughlin Steel Corporation's manufacturing facility, at which point the federal government has no jurisdiction or the power to legislate. The jurisdiction belongs to the state or local concerns.

The Jones & Laughlin Steel Corporation Court supra, reasoned on this issue in the following manner:

> "There can be no question that the commerce thus contemplated by the act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The act also defines the term 'affecting commerce' section 2(7), 29 U.S.C.A. s 152(7):
>
> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Here again, the authors reiterate that interstate commerce ends at the gates of Jones & Laughlin Steel Corporation and

intrastate commerce takes over. In other words, affecting commerce can only mean: the transportation of the goods between states before they reach the gates of Jones & Laughlin Steel Corporation. There and only during the interval of time while the goods are in transit via interstate transportation does the federal government have jurisdiction. In fact, the Court's acceptance of the open-ended term "affects commerce" reflects a barely disguised political decision designed to placate the other two branches of government. The author's reasoning follows the dissenting opinions of the Jones & Laughlin Steel Corporation Court supra, and other opinions within that case. Hereinafter, discussed later, are the dissenting opinions. The authors view these dissenting opinions as following a more balanced view of constitutional interpretation and stare decisis.

The authors argue the Court's intertwining of interstate and intrastate commerce can be directly detected in the following statement. The Jones & Laughlin Steel Corporation Court supra, reasoned that:

> "intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. The Shreveport Case (Houston, E. & W.T.R. Co. v. United States), 234 U.S. 342, 351. 352, 34 S.Ct. 833, 58 L.Ed. 1341; Railroad Commission of Wisconsin v. Chicago, B. & Q.R. Co., 257 U.S. 563, 588, 42 S.Ct. 232, 237, 66 L.Ed. 371, 22 A.L.R. 1086.It is manifest that intrastate rates deal primarily with a local activity. But in ratemaking they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. Id. Under the Transportation Act, 1920, Congress went so far as to authorize the Interstate Commerce Commission to establish a statewide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. Railroad Commission of Wisconsin v. Chicago, B. & Q.R.R. Co., supra; Florida v. United States, 282 U.S. 194, 210, 211, 51 S.Ct. 119, 123, 75 L.Ed. 291."

Mr. Justice McReynolds delivered the following dissenting opinion.

> Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler and Mr. Justice McReynolds are unable to agree with the decisions just announced. They dissented as follows:
>
> "We conclude that these causes were rightly decided by the three Circuit Courts of Appeals and that their judgments should be affirmed. The opinions there given without dissent are terse, well considered and sound. They disclose the meaning ascribed by experienced judges to what this Court has often declared and are set out below in full."
>
> "Considering the far-reaching import of these decisions, the departure from what we understand has been consistently ruled here, and the extraordinary power confirmed to a Board of three, the obligation to present our views becomes plain."

The holding in this case as an explicit manifestation of the "Switch in Time" can be observed through the comments of the dissenting justices as follows:

> "The Court as we think departs from well-established principles followed in Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947 (May, 1935), and Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (May, 1936). Upon the authority of those decisions, the Circuit Courts of Appeals of the Fifth, Sixth and Second Circuits in the causes now before us have held the power of Congress under the commerce clause does not extend to relations between employers and their employees engaged in manufacture, and therefore the act conferred upon the National Labor Relations Board no authority in respect of matters covered by the questioned orders. In Foster Bros. Mfg. Co. v. National Labor Relations Board, 85 F.(2d) 984, the Circuit Court of Appeals, Fourth Circuit, held the act inapplicable to manufacture and expressed the view that if so extended it would be invalid. Six District Courts, on the authority of Schechter's and Carter's Cases, have held that the Board has

> no authority to regulate relations between employers and employees engaged in local production. No decision or judicial opinion to the contrary has been cited, and we find none. Every consideration brought forward to uphold the act before us was applicable to support the acts held unconstitutional in causes decided within two years. And the lower courts rightly deemed them controlling." [Author's emphasis]
>
> The dissenting justices continue:
>
> "The three respondents happen to be manufacturing concerns--one large, two relatively small. The act is now applied to each upon grounds common to all. Obviously what is determined as to these concerns may gravely affect a multitude of employers who engage in a great variety of private enterprises-- mercantile, manufacturing, publishing, stock-raising, mining, etc. It puts into the hands of a Board power of control over purely local industry beyond anything heretofore deemed permissible."

In the dissenting opinion, the Justices reiterate what was said in the National Labor Relations Board v. Jones & Laughlin Steel Corporation supra, opinion of June 15, 1936, 83 F.(2d) 998 Before Foster, Sibley, and Hutcheson, Circuit Judges. By the Circuit Court:

> "The National Labor Relations Board has petitioned us to enforce an order made by it, which requires Jones & Laughlin Steel Corporation, organized under the laws of Pennsylvania, to reinstate certain discharged employees in its steel plant in Aliquippa, Pa., and to do other things in that connection."
>
> "The petition must be denied, because, under the facts found by the Board and shown by the evidence, the Board has no jurisdiction over a labor dispute between employer and employees touching the discharge of laborers in a steel plant, who were engaged only in manufacture. The Constitution does not vest in the Federal Government the power to regulate the relation as such of employer and employee in production or manufacture."

The Circuit Court went on to say and the dissenting Justices reiterated;

> "One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power & L. Co. v. Pfost, 286 U.S. 165, 182, 52 S.Ct. 548, 76 L.Ed. 1038. Production is not commerce; but a step in preparation for commerce. Chassaniol v. Greenwood, 291 U.S. 584--587, 54 S.Ct. 541, 78 L.Ed. 1004."

The dissenting justices adopted the following:

> "We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor, and working conditions, the bargaining in respect of these things--whether carried on separately or collectively--each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it." Carter v. Carter Coal Company (298 U.S. 238) 56 S.Ct. 855, 80 L.Ed. 1160, decided May 18, 1936.
>
> And further adopted:

> "That the employer has a very large business, the interruption of which by a strike of employees which might happen, and that in consequence of such strike production might be stopped and interstate commerce in the products affected, does not make the regulation of the relation justified under the commerce power of Congress, because the possible effect on interstate commerce is too remote to warrant Federal invasion of the state's right to regulate the employer-employee relation. Nor is it important that the employer imports part of his raw materials in interstate commerce and sells and exports a large part of his product in interstate commerce, which imports and exports would possibly be stopped by a possible strike. The employers' entire business thus connected together does not, as respects federal power, make a case different from that in which importation of materials, manufacture of them, and sale and export of the product are conducted by three persons. The employer here by doing all three things does not alter the respective constitutional spheres of the federal and state governments. The making and fabrication of steel by Jones & Laughlin Steel Corporation is production regulable by the state of Pennsylvania, notwithstanding the corporation also engages in interstate commerce regulable by Congress in bringing in its raw materials and again in selling and delivering its products. No specific present intent appears to impede or destroy interstate commerce by means of a strike in a manufacturing plant, or other like direct obstruction to or burden on interstate commerce. The order we are asked to enforce is not shown to be one authorized to be made under the authority of Congress. Carter v. Carter Coal Co., supra."

The dissenting Justices went on to selected cases as containing similar legal relations as the Jones & Laughlin Steel Corporation supra.

Therefore, the authors will not go into the other three cases mentioned in the dissenting opinion because those cases virtually say the same thing. (See and read National Labor Relations Board v. Jones & Laughlin Steel Corporation supra, in the appendix.)

The dissenting Court reasoned, in Knight's Case, Chief Justice Fuller, speaking for the Court, said:

> "Doubtless the power to control the manufacture of a given thing involves, in a certain sense, the control of its disposition, but this is a secondary, and not the primary, sense; and, although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. * * * It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

The dissenting justice continued:

> "In Schechter's Case we said: 'In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. <u>If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to</u>

> <u>federal control.</u> Author's emphasis and comment: This is actually what has happened

Further, the dissenting justice continued:

> "Carter's Case declared—'Whether the effect of a given activity or condition is direct or indirect is not always easy to determine. The word 'direct' implies that the activity or condition invoked or blamed shall operate proximately--not mediately, remotely, or collaterally--to produce the effect. It connotes the absence of an efficient intervening agency or condition. And the extent of the effect bears no logical relation to its character. The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined."
>
> And:
>
> "Any effect on interstate commerce by the discharge of employees shown here would be indirect and remote in the highest degree, as consideration of the facts will show. In No. 419 ten men out of ten thousand were discharged; in the other cases only a few. The immediate effect in the factor may be to create discontent among all those employed and a strike may follow, which, in turn, may result in reducing production, which ultimately may reduce the volume of goods moving in interstate commerce. By this chain of indirect and progressively remote events we finally reach the evil with which it is said the legislation under consideration undertakes to deal. A more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine."

The dissenting Justices pointedly observed:

"The Constitution still recognizes the existence of states with indestructible powers; the Tenth Amendment was supposed to put them beyond controversy."

The dissenting Justices went on to say in the following quotes:

"We are told that Congress may protect the 'stream of commerce' and that one who buys raw material without the state, manufactures it therein, and ships the output to another state is in that stream. Therefore it is said he may be prevented from doing anything which may interfere with its flow."

"This, too, goes beyond the constitutional limitations heretofore enforced. If a man raises cattle and regularly delivers them to a carrier for interstate shipment, may Congress prescribe the conditions under which he may employ or discharge helpers on the ranch? The products of a mine pass daily into interstate commerce; many things are brought to it from other states. Are the owners and the miners within the power of Congress in respect of the latter's tenure and discharge? May a mill owner be prohibited from closing his factory or discontinuing his business because so to do would stop the flow of products to and from his plant in interstate commerce? May employees in a factory be restrained from quitting work in a body because this will close the factory and thereby stop the flow of commerce? May arson of a factory be made a federal offense whenever this would interfere with such flow? If the business cannot continue with the existing wage scale, may Congress command a reduction? If the ruling of the Court just announced is adhered to, these questions suggest some of the problems certain to arise."

"And if this theory of a continuous 'stream of commerce' as now defined is correct, will it become the duty of the federal government hereafter to suppress every strike which by possibility it may cause a blockade in that stream? In re Debs, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092. Moreover, since Congress has intervened, are labor relations between most manufacturers and their employees removed from all

control by the state? Oregon-Washington R. Co. v. Washington 270 U.S. 87, 46 S.Ct. 279, 70 L.Ed. 482 (1926).

"To this argument Arkadelphia Milling Co. v. St. Louis Southwestern Railway Co., et al., 249 U.S. 134, 150, 39 S.Ct. 237, 63 L.Ed. 517, affords an adequate reply. No such continuous stream is shown by these records as that which counsel assume."

"There is no ground on which reasonably to hold that refusal by a manufacturer, whose raw materials come from states other than that of his factory and whose products are regularly carried to other states, to bargain collectively with employees in his manufacturing plant, directly affects interstate commerce. In such business, there is not one, but two distinct movements or streams in interstate transportation."

The dissenting Justice on the concept of stream of commerce opined:

"The first brings in raw material and there ends." Jones & Laughlin Steel Corporation supra.

The reader would do well to remember the phrase previously mentioned: commerce ends at the gates of Jones & Laughlin Steel Corporation and, "Then follows manufacture, a separate and local activity." The dissenting Court found that activity is subject to intrastate commerce and regulation of the States.

The dissenting Court continued, "Upon completion of this and not before, the second distinct movement or stream in interstate commerce begins and the products go to other states." The dissenting Court concluded, Interstate Commerce begins again once the finished product leaves the gates of Jones & Laughlin Steel Corporation and continues in commerce directed to another State.

Insofar as the federal government authority to regulate the employees of industry, the dissenting Justices had this to say:

"The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractual relations. This right is unduly abridged by the act now upheld. A private owner is deprived of power

to manage his own property by freely selecting those to whom his manufacturing operations are to be entrusted. We think this cannot lawfully be done in circumstances like those here disclosed."

In light of the many cited opinions, the dissenting Justices concluded:

"It seems clear to us that Congress has transcended the powers granted."

The authors maintain that the Roosevelt Court's use of the congressionally created term "affecting commerce" is just applied plastic legalese. The Roosevelt Court's adoption and use of "affecting commerce", as being within the re-interpreted commerce clause is a bare mechanism for political expansion of the "New Deal", and a bare mechanism to politically assent to and politically placate the other two branches of the Roosevelt government. On all counts, the Court's conduct appears as a direct attack on the separation of powers and a dagger thrust at established commerce clause relations. Commerce clause relations are at the heart of the Constitution. To allow the federal government even greater control over "Commerce" continually reduces the role of the several States.

The authors in the next section deal with many questions concerning citizenship. The nature of "Citizenship" and who may be a "Citizen" and the two classes of citizenship are discussed. Finally, how the political choice of citizenship is linked to legal relations is considered.

Section Two

In Section One the authors have introduced a discussion based upon a question: What has happened to our Nation? In particular: Why has there been the apparent loss of individual freedom and liberty? Discussion is centered on a selected set of Supreme Court cases tied to 1937. The point of the discussion is to consider the Supreme Court's conduct in respect to the Constitution. In particular, the political reorientation of the Court to the "New Deal" is analyzed by way of selected "Switch in Time" cases. The authors argue the Supreme Court "lost" a political battle by accepting an "experiment in democracy" but "won" the war by saving the Constitutional integrity of the Supreme Court vis-à-vis the separation of powers and the retention of Constitutional due process.

In relation to the National government, the contradistinction of what appears to be "government" today is analyzed in Section Two, beginning with the civil war and continuing through to the Composite state. To understand that the political "old union" based on individual rights and duties in relation to the Several States and the incorporated States has given way to a "new union" is foundational. To understand that the political change from a Republican form has given way to democratic from of government is crucial.

The authors argue that the body politic has been removed from "government." The appearance of the body corporate in respect to contracted commercial relations is the method by which "government" has evolved into the Composite state. The exhibit below entitled "Indiana and Company, March 1935" is illustrative of the business relations' nature of what appears, today, to be "government."

Indiana & Company, March 1935

"(pg. 1)...This little study of the affairs of Indiana for its business year from July 1, 1933, to June 30, 1934, is merely a sample of the financial set-up of our state government, its receipts and disbursements. ... How much government do we want and how far shall our social program go? ... (pg. 5) The activities of government have grown and spread so rapidly since the World War that it is difficult for those closely associated with government to get a complete picture of just

what the many activities are. Government is no longer the simple instrument of our grandfathers, but is a complex organization, made so because you and I, the citizens, have continued to insist that government do more and more things for us. There was a time when government was almost purely political in nature. It consisted principally of the courts, maintenance of public records and some sort of police protection. ... (pg. 6): GOVERNMENT's BIGGEST BUSINESS , Whether as individuals we like it or not, it seems that we have reached a point where it is absolutely necessary for government to step in and take a (pg. 7) larger part in the private affairs of the people in order "to promote the general welfare" one of the purposes set forth in the preamble to the Constitution of the United States. As a result, government today is the biggest business in a nation which prides itself on being a nation of business people. ... How great a part this "collection agency" business plays in our state government set-up today is shown in the chart of "Indiana & Co." in this pamphlet. (pg. 12) Indiana has been more successful than any other state in changing her governmental set-up since 1933 to meet changed business and economic conditions. ... ...Every citizen has a right to be and should be a critic of his government - should take an interest in the solution of government problems. We hope this little outline of the state's affairs will help explain these problems, for only by intelligent criticism will we be able to improve the business in which all of us are stockholders," Indiana & Co. Report For Fiscal Year Beginning July 1, 1933, and ending June 30, 1934, PREPARED BY INDIANA GROSS INCOME TAX DIVISION, C.A. Jackson, Director, March, 1935.

Here people have been deceptively induced into contracting with commercial "government" so as to waive their "vested rights." The effect is to remove the free Constitutions as restraints upon government. Today, this grand exercise has been described as "federalism." The authors argue the legal community has both politically and commercially fostered the changed nature of the state. In promoting the changed nature of the state, the legal community has conveniently assisted in the loss of legal memory in relation to the Several States and several States. The legal community is judged guilty of immoral and unethical conduct. But the people are not absolved of the effects of their conduct of silent assent, waiver, agreements and contracts; they are the Sovereigns. When they

comprehend the nature of the fraud then each has a duty to self determine upon conscience the political and legal relations with respect to the state. If a person by will chooses another state of affairs other than the Composite state, given Constitutional due process, other political and legal relations are possible. This book begins to disclose the nature of the perceived fraud and shows the necessity of changed personal conduct. Should the reader decide other than current political and legal relations to the Composite state are morally and ethically necessary, then Section Two gives particularity and specificity to nature of political and legal relations from the point of view of the people of the Several States and their incorporated States.

The integrity of the Nation and the ability to access free Constitutions for the benefit and use of the people is presumed. How a person may change thought and conduct in relation to these ideas is directly considered. The journey of changed personal, political and legal conduct may continue by reading Section Two.

Chapter 8

The Sovereign People as Citizens and Their Old Union

The Constitution of the United States of America only applies in the United States of America. This correct statement is a proper conclusion resting upon unimpeachable case law of the Supreme Court. As the reader has noted in Section 1 the Senate accepts the above as admitted fact.

> "and that it was made for, and is binding only in, the United States of America." Downes v. Bidwell, 182 U.S. 244, 251 (1901); In re Ross, 140 U.S. 453, 464 (1891),

The Constitution, constitutionally applied and used as mere municipal law in the Act of 1871, gives Congress authority over persons within the territory, known as the District of Columbia. There also exists a Constitution of the United States, constitutionally applied by Congress as territorial local law over persons, places and territories subject to the exclusive Legislation of Congress. This jurisdiction extends over persons, places and territories in the circumstances where Congress is the sovereign. This constitutional jurisdiction, where Congress is exclusive and sovereign also is without "of America." The Constitution for "of America" allows for a "Government of the United States." That government governs all the above relations.

The Constitution, when exercised in the name of the Sovereign Authority of The People, by consent of The People governed, has 17 limited enumerated powers. By these specific powers and only by this specific jurisdiction are circumstances allowed where the People do consent to be governed in the name of "the Government of the United States." Article I, Section 8, paragraphs 17,18.

This "the Government of the United States" exists as a National government for the Several States of the American Union a/k/a The United States of America. In this capacity, The People, in effect, grant "the Government of the United States" to themselves as self government.

The Constitution, by the consent of the governed grants to "the Government of the United States" a separate distinct capacity or role totally exterior to the several States of the American Union. In this capacity, "the Government of the United States" exists outside of and is foreign to the several States of the American Union. This territorial government capacity rests upon the following constitutional authority.

The Government of the United States as a political institution, is constitutionally empowered "to exercise exclusive legislation in all cases," Article I, Section 8, paragraph 17, and "to make all laws which shall be necessary and proper," Article 1, Section 8, par. 18, and "to dispose of and make all needed rules and regulations respecting the territory belonging to the United States," Article IV, Section 2, paragraph 2.

Obviously, the Constitution, by the consent of the governed, gives exclusive authority or jurisdiction outside "of America" to the "Congress." In re Ross and Downes vs. Bidwell supra.

The persons, places and territories under the "exclusive" constitutional jurisdiction of "the Congress" must exclude the Sovereign, for the Sovereign has not constitutionally included his person within that portion of the Constitution. In re Ross and Downes vs. Bidwell, supra.

The People and therefore, the several States of the American Union as "of America" are outside the "exclusive jurisdiction" "of Congress." In re Ross and Downes vs. Bidwell supra.

Logically, the Sovereign, the creator, the grantor of power to Congress, cannot be subject to a granted authority "the Congress, unless the Sovereign explicitly includes his person subject to a grant of power. The Sovereign has included his person subject only to the 17 limited enumerated powers. Obviously, the only conclusion properly reached is that "the Government of the United States" of Article I, Section 8, paragraphs 17,18, constitutionally exists as a political institution for two separate sets of circumstances. (1) for The People "of America," within the granted 17 limited enumerated powers, and (2) under the exclusive authority of the Congress for all other classes of persons, places and territories outside "of America."

These constitutional circumstances result, in a jurisdictional sense, only as an either or situation.

In this chapter, the relationship of Citizenship to the "old union" is the principle topic. The authors, by the use of the term "old union" mean:

(1) A period of time, from July 4 A.D. 1776, through a "more perfect union" as a ratified Constitution in A.D. 1789, till the break up of the several States of the American Union, "of America" in A.D. 1861.

(2) During this period of time exists a political union of The Sovereignty as The People.

(3) Given 1 and 2 above, the result being "the Government of the United States" as stated in Article I, Section 8, paragraphs 17,18 can politically exist.

(4) At this time, in this political union, the question of the relative power between the general federal government (17 limited enumerated powers) as exercised in the name of The Sovereignty-The People, versus the Several States, under their Constitutions had not been settled. In a word, unsettled questions of "States Rights" existed.

(5) At this time, this political union was broken when the Sovereignty as The People, by their Representatives of the 11 Southern States walked out of the Congress. The "old union" ceased to exist.

That is to say, the "old union" is first and foremost a particular political union. The major questions of relative political power between the central government, as "the Government of the United States" and the governments for the Several States of America had not yet been settled.

Finally, the Sovereignty of The People, in Congress assembled, refused further negotiations and ceased Recognition with the Representatives of the Sovereignty, The People of the 11 Southern States. In A.D. 1861, neither political negotiations nor Recognition were seemingly possible. The failure of political negotiations, concerning Representation and States relative power in relations to "the Government of the United States", did bring down

the "old union." The result, a Civil War, became the exercise of the raw political means to settle questions not settled at the Ratification of the Constitution in A.D. 1789.

In the context of the "old union" the question of "Citizenship" is next considered. The readers' attention is directed to the Constitution as viewed outside of the exclusive constitutional authority of Congress to make municipal law for persons, places and territories subject to its jurisdiction.

The Sovereignty as The People in Their Constitution at Article I directly uses the concept of "Citizen." The People direct how, by what means, and most important, who will govern. Remember, reader, this in the paramount sense is self government. Only Citizens, as they, The Sovereigns declare themselves to be, will be allowed to operate "the Government of the United States."

Therefore, what do The People require before any one of them is allowed a place in institutionalized self government, i.e., "the Government of the United States?" The answer is in Article I, Section 2, "No person shall be a Representative who shall not have attained to the age of twenty-five years." Here is open notorious age discrimination by the power of the Sovereignty. The Sovereigns again discriminate "and being seven years a Citizen of the United States."

The Sovereigns further discriminate and further define who shall be that Representative as "and the Citizen be an Inhabitant of that State of which he shall be chosen." Similar descriptions constitutionally exist for senators. Even more explicit discrimination exists in relation to the Office of President, as only "a natural born citizen" may constitutionally apply.

The concept of "inhabitants" is crucial to a proper understating of Citizenship. In the "American Dictionary of the English Language, Noah Webster, 1828," Webster defines "inhabitant" as (1) "a dweller, one who dwells and resides permanently in a place, or has a fixed residence, as distinguished from an occasional lodger or visitor; . . . the inhabitants of a town, city, county or state." (2) "The conditions or qualifications which constitute a person and inhabitant... are defined by the statutes of different governments or states."

Reader, please notice, it is at this time "The People", as the state government, that decides what person is an "Inhabitant." The definition results from an act of Sovereignty. The People, being Sovereign, define for themselves who may be an "Inhabitant" of one of the several incorporated States. The People discriminate by their Constitution and define the discriminatory qualifications for a Representative, Senator or President. The People discriminate by their Constitution and define that only a "Citizen of the United States" acting in the capacity as an "Inhabitant" of a proper State may be a Representative, Senator or President. The capacity of "Inhabitant" is the principle condition precedent required to hold elected public office.

A question may be, in what context, or in what political union will the definition of an "Inhabitant" be rendered? This chapter explicitly presumes the "old Union" as defined above.

Is a Citizen presumed in the "old union" within the "United States of America", where the Sovereignty of The People, as self government applies? Or, to the contrary, is a definition of Citizen made by Congress under exclusive constitutional authority applied over persons, places and territories subject to its jurisdiction? In affect to ask these questions is to answer them.

In short, self government requires as a condition precedent, self determination by the Sovereign as to who is a Citizen. This circumstance is admitted by the Sovereignty in Article I, Section 2, by the words, "Inhabitant of that State." In like manner, in reference to the Senate, Article I, Section 3, paragraph 3, again the words of admission "Inhabitant of that State." In Article III, in speaking of the Executive, The People explicitly state, "no person, except a natural born Citizen, or a Citizen of the United States, at the time of adoption of this Constitution, shall be eligible to the office of President." This latter definition allows the Citizens to permit persons born in those territories that will become States to apply for election to the office of President.

The authors, without comment, note in passing The People and their Constitution at Article III, set no "Citizenship" qualifications for the judiciary in respect to "the Government of the United States."

What have the courts said in relation to the origin of "Citizenship"? In United States v Hal, 26 Fed. Cas. No 15,282, page 79, 81 Judge Woods said, "By the original constitution citizenship in the United States was a consequence of citizenship in a state." This representative case utilized, at this time, the generally accepted relations as to citizenship.

What Rights do The People, acting in a capacity relative to their States, enjoy? "The people of the state, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the king by his own prerogative." Lansing v. Smith, 4 Wendell 9, (NY) (1829)."

It would seem reasonable that The People, acting in a capacity relative to the Several States of the American Union, could determine the elements in respect to an "Inhabitant." As has just been constitutionally demonstrated, that is an operative condition precedent built into the Constitution.

At various times, the Supreme Court has spoken about the source of power in relation to The People. "Here (in America) sovereignty rests with the People." Chisholm v. Georgia, 2 Dall, 415,472." The Court, at 456 "Thus, the People themselves and collectively, are sovereign (Chisholm at 456) over both the State and the federal government and are the true sovereigns within this nation."

Later, the Court said: "It will be admitted on all hands that with the exception of the powers granted to the states and the federal government, through the Constitutions, the people of the several states are unconditionally sovereign within their respective states." Ohio L. Ins. & T. Co. v. Debolt, 16 How. 416, 14 L.Ed. 997.

The Court, in Yick Wo vs Hopkins and Woo Lee vs. Hopkins 118 U.S. 356, put a point to the question of sovereignty. "Sovereignty itself, of course, is not subject to law for it is the author and source of law."

It seems proper to conclude that a "Citizen", by the power of Sovereignty as The People, through self government of the Several States, is presumed in the State. This presumption of the organic state's determination of "Inhabitant" as built into the Constitution is a determinative factor of citizenship. This determinative factor as a

Constitutional presumption arises from The People as Sovereign in relation to one of the Several States.

Even today, in the 8th Edition of *Blacks Law Dictionary*, page 1430, "Sovereign" is rendered as:

> "n., 1. a person, body or state vested with independent and supreme authority."

Based upon the above Constitutional relations, what can be fairly and properly concluded as to "Citizenship" in the "old union?"

1) The People, individually, self determine "Citizenship" by each according to his conduct of inhabitation.
2) The principle determinative conduct is the place a proper Person, as an "Inhabitant," permanently resides.
3) The place where that self determined conduct, in the role of "Inhabitant", exists is only in one of the incorporated Several States of the American Union.
4) The local laws and customs of that place within one of the Several States, under self government of the Sovereign, defines the elements as to who will be determined by that State to be an "Inhabitant."
5) Together, all such places, statutes and customs are found only in the United States of America, the same place, where the Constitution of the United States of America applies. Constitution, In re Ross and Downes vs. Bidwell, supra.
6) By this local self determined "Citizenship", They place in Their Persons political self government in the several States and in relation to "the Government of the United States" as per Article I, Section 8 paragraphs 17, 18. Only a Citizen need apply for office.
7) The People as Sovereigns have the declared authority and necessary duty to self determine "Citizenship."

The authors argue the above seven points constitute a Standard by which to determine and consider the subject of

Citizenship in the "old union." Ultimately, any standard rests upon the political relations agreed to by the Sovereignty of the People. Only in Their Sovereignty can each, in his own person, self determine by conduct and status as an "Inhabitant" thereby create a resulting "Citizen." The People, as individual Citizens, may become upon oath or affirmation to their fellow Citizens, part of and in total "the government of the United States." In the "old union", by definition, "the Government of the United States" as a political institution cannot determine "Citizenship." There is no Constitutional authority for any such conduct of governmental determination.

In relation to "Naturalization", the Congress does have power to establish a uniform rule of "Naturalization." Even then, the Congress has no Constitutional powers to define Citizenship. At this time period, the "Government of the United States", has no authority to "Naturalize" because it has no definition of Citizenship except in relationship to the States by which to "Naturalize." "Naturalization" was accomplished only in relation to one of the incorporated Several States of the Union.

Now, does it come as a shock to the reader that in the "old union" The People, by Their Constitution, did not attempt to define who is a "Citizen"? To be a member of the political "old union", given conduct of permanent residence in one of the Several States Citizenship was generally presumed. This is only logical for as the reader has observed, at this time, there is no constitutional definition of Citizenship.

"Citizenship" was a matter to be settled by The People, individually, in a capacity in relation to one of the Several States. The People saw no necessity to make as paramount law as in the Constitution a definition of Citizenship. To self determine "Citizenship" was within the Sovereign's prerogative. Lansing v. Smith supra, and "not subject to law." Yick Wo supra.

The act of State recognition, as to who was already a Citizen, by their conduct of permanent residence, as by custom and usage an "Inhabitant", was left to the States. Of course, the question as to how "State's Rights" ought to be seen in relation to the federal Constitution was not settled. Thus, Citizenship was not finally settled.

In the next chapter, the basic premise of the discussion is a massive breakdown in the political relations of The People. In fact, a dominant portion of The People assert by war oppressive Federal power in response to the assertions of "State's Rights." These "State's Rights" are vigorously prosecuted by a smaller portion of The People. The "old union" is consequentially destroyed.

As a consequence, the "new union" in terms of Sovereignty and citizenship is considered in relation to the Standard adopted in this present chapter.

In the following chapter, the court cases cited on Sovereignty and citizenship represent a pre-civil war understanding held by the courts while viewed through and in consideration of the new circumstances. The changed circumstances are dominated by raw Federal political power. The question of what political body would determine who is an "Inhabitant", resident or citizen must be discussed given the change in circumstances.

Chapter 9

Federal Citizenship Defined for "All persons"

In A.D. 1861, the political divide widened, between those mainly Northern forces composed of the majority of the People who remained in favor of maintaining the Union, and those mostly Southern People predominately holding the "States' Rights" view. To say the Civil War was mainly over the question of Slavery masks too many serious questions left to the future in A.D. 1787. The original Constitution left unanswered questions concerning "Migration" and "Amendments", thus States' representation in Congress was not a settled issue. "Representation" was left to the States. Political conflict was inevitable.

Within the Constitution at Article I, Section 2, questions of how and by whom Representation would commence and continue are considered. In Article V, in relation to Amendments, a dated compromise is explicitly stated as "provided that no amendment, which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article." Lacking political agreement, serious questions of how Representation would proceed had been postponed for future settlement. On this core issue of Representation, the Constitution was incomplete. The admittance of the date 1808 in A.D. 1789 is a proof. The inclusion in Article V of the words "Shall be deprived of its equal Suffrage in the Senate" simply drives home the point.

To be Represented in the halls of Congress is a necessary condition to the whole political process of "the Government of the United States." Most Southern Congressional Representatives of the People believed Their views were being overridden by raw Northern political power. It seemed no additional political compromise was possible. The poisonous political divide that had only increased after the compromise of A.D. 1850 was now too expansive to bridge by mere words. The eleven Southern States of the People, by Their Representatives, walked out of Congress and openly stated the fact of Succession from the Union. Shortly thereafter, The Sovereign People were at war in opposition to the Sovereign People. This set

of circumstances is uniquely an America experience. Hence, the term "Civil War" can only be properly understood within the American context.

Given the open failure in respect to Representation and actual war, at that point in time, politically the "old Union" of the People was no more. A question was, would the people enter into new political relations? The answer must have seemed simple, yes! What political form would the "New Union" take? That must have been a much more difficult question to comprehend at that time. What would be the nature of that political form? On what basis would the People accept any "New Union?" Again, at the time these must have been difficult questions. Political Representation of the People "in the Government of the United States," as stated in Article I and Article II of the original Constitution, as ratified by the People in A.D. 1789, had been promulgated, but had never been finally settled. In effect, the Civil War, in a constitutional sense, in part, simply revealed the unsettled nature of Representation.

Continuing questions in relation to "Representation" are revealed in the following:

"When the 39th Congress assembled on December 5, 1865, the senators and representatives from the 25 northern states voted to deny seats in both houses of Congress to anyone elected from the 11 southern states. The full complement of senators from the 36 states of the Union was 72, and the full membership in the House was 240. Since it requires only a majority vote (Article I, Section 5, Constitution of the United States) to refuse a seat in Congress, only the 50 senators and 182 congressmen from the North were seated. All of the 22 senators and 58 representatives from the southern states were denied seats. Texas v White 7 Wall 700, presumed to be over turned, Dyett v. Turner, 439 P.2d 266 (1968). This case simply reduces to Congressional numbers which bespeak of the questionable political validity of the Congress. This lack of Congressional political validity undermines any except a voluntary recognition and acceptance of the purported Amendment 14 by Citizens of the Several States.

After the Civil War, what remained of Congress attempted "civil rights" legislation as the federal Civil Rights Act of 1866. This legislation could not be as effective as Representatives in that

politically questionable Congress would have liked. The definition of Citizenship had not been dealt with in the Constitution but had been retained by the States. Thus, there was no perceived need in the general Constitution to define Citizenship. The definition of Citizenship was effected through the constitutional concept of "Inhabitant" which was left for definition to local law and custom of the Several States of the American Union. That is, it was left to the People themselves.

The Civil War revealed unsettled political questions of political Representation. However, the Civil War could not possibly answer the political question as to who was a citizen. Therefore, after the Civil War, the political question remained as to who was a citizen. The defeated People of the Southern States generally were not allowed Representation in the halls of Congress until new State Constitutions were written containing a new definition of who was a resident and citizen. These new constitutions, thus written, had to be accepted by a politically questionable Congress before these "new" States could commence governance. The authors argue, that it is presumptive that the People of the Southern States by silent acquiescence have accepted these new state constitutions. Further, if an agreement or contract is written in relation to these southern states, it is presumptive the new constitutions are written into the law of the contract.

Under the federal Civil Rights Act of 1866, if a person were not a citizen in one of the several States, for whom would federal civil rights enforcement commence? Moreover, the eleven Southern States governments had effectively collapsed by the end of the Civil War. These States had in place local laws and customs that would not allow recognition of persons as objects of the federal civil rights laws to be defined with the political status of citizen. With the States' local laws and customs defining residency for a particular race to the exclusion of another race, there was no possibility of the Negro being politically defined as a resident under local law. Given the fact that these Southern States did not recognize the political status or legal person of the Negro, who in the Southern States could enforce federal civil rights laws? The facts are that forced Reconstruction in relation to the Southern States was used as a means to implement a particular political status as to certain new federal persons whose political status was as yet unsettled. The

authors reserve the question as to the Constitutionality of Reconstruction as that issue has never been ruled upon by any court.

It was painfully obvious that if Reconstruction were to be "successful", the Constitution would require amendment. Thus, the Constitutional term "Inhabitant" in the "old Union" would in the "New Union" be redefined as "resident" but with an entirely different political status and legal meaning. If the Constitution, in respect to Negro persons was amended to allow a new political status for such persons, in fact, a "New Union" would exist in a constitutional sense.

The People, according to the Secretary of State, ratified Amendment 13 on December 18, A.D. 1865, as:

> Section 1, neither slavery nor involuntary servitude, except as a punishment for crime, whereof the parties shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2, Congress shall have power to enforce this Article by appropriate legislation.

Once again Congress purportedly amended the Constitution on July 21, A.D. 1868. Congress allegedly adopted and transmitted to the Department of State a politically questionable legislative act as a concurrent resolution declaring that the legislators of the named States had ratified Amendment 14. More will be stated later concerning the language of this purported Amendment.

(1) Given the refusal of political Representation by Congress to the ten Southern States, how could this purported political legislative act as a "concurrent resolution" have any constitutional legitimacy? Texas v. White and Dyett v. Turner supra.

(2) Even if Representation were not a question, how could Legislative Power ordering an Executive Act be "promulgated"? Was not this purported legislative act simply in the form of presumptive conquest[17], fueled by the ravages of Civil War and presumptively forced upon millions of the People? Questions of illegality are numerous.

[17] **conquest**, 1. *Int'l Law*. An act of force by which, during a war, a belligerent occupies territory within an enemy country with the intention of extending its

The authors argue the Supreme Court has never ruled in point on vital legal questions concerning the unlawful reconstruction and subsequent purported "ratification." of Amendment 14. The authors take exception to the presumption that the purported Amendment 14 has any binding Constitutional authority in relation to People in any of the Several States of America. The authors explicitly argue that Congress has done an unlawful act by attempting to supplant a Constitutional duty reposed in the executive branch, specifically the Secretary of State. Further, the authors note the purported Amendment 14 is directed, not against the People, but against the incorporated States as institutions of government. In particular, the Congress has no Constitutional authority to direct the Secretary of State as "and it shall be duly promulgated as such by the Secretary of State." Arguably, the Secretary of State has no lawful duty upon these conditions to "promulgate." The authors reserve both political and legal questions in relation to the purported Amendment 14. Hence, the authors argue that for native-born Citizens, acceptance and application of the purported Amendment 14 is voluntary.

However, the reader may appear in person to not question the legal and political legitimacy of the purported Amendment 14 by silent assent, waiver, agreement or contract. Therein, a statutory presumption exists that the purported Amendment 14 is indeed valid and binding in relation to such a person. This statutory presumption is at the basis of potential political and subsequent legal entrapment. As will be considered in detail in later chapters, the purported Amendment 14 has been published within the non-positive law of Title 8 of the United States Codes.

The Constitution was again amended on March 30, A.D. 1870 by the act of the Secretary of State in declaration that Amendment 15 had been ratified by the Legislatures of the named States.

The Amendment reads:

sovereignty over that territory. That intention is usu. proclaimed in a proclamation or some other legal act. *Black's Law*, 8th Edition, page 322

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.

Section 2, The Congress shall have power to enforce this Article by appropriate legislation.

By the end of March, A.D. 1870, the so-called "civil war amendments" had appeared.

Politically, the 36 or 37 State Legislatures that at particular times were represented in the Congress (Tennessee being the excepted Southern State) had spoken and therein created a "New Union." Upon what conditions would the remaining Southern States be allowed Representation in the "New Union"?

In order for these new political relations to exist, in relation to the people and their government, there must exist a condition precedent, i.e. the People must create a new unheard of class of citizenship. Arguably, the purported Amendment 14 is the federal mechanism to create this new class of citizenship recognized in the "new Union."

The People, in silent ratification, or by failure of legal challenge to the purported Amendment 14, have appeared to grant political recognition, political rights, and political voice to a class of persons not previously represented in relation to "the Government of the United States," or (generally) within the institution of State government. Article I, Section 8, paragraphs 17,18 supra. Today, this operative presumption of ratification is imbedded in nearly every domestic transaction the reader may encounter.

The People enjoy state Citizenship by birth within any one of the Several States of the American Union. No federal government authority is required. However, presumptive acts to alter this state of affairs are immediately available to any person, i.e. Social Security numbers at birth. These acts and their consequences are deemed the intention of the person performing the act and therefore are the method by which the presumption of federal citizenship as "U.S. citizen" becomes operative. The reader will recall that the definition of "Inhabitant" in relation to "Citizen", in the constitutional sense, had been left to the People in their States. Obviously, differences in

local law of the incorporated States as to who was an "Inhabitant" and thus a citizen, had been reflected in the Not settled questions on Representation admitted or implied within the Constitution, Article 5 supra. If a person was not an "Inhabitant", thus not a Citizen, then in a political sense, that person could not be Represented (or a Representative). Here was the real rub.

The authors note that not all of the Several States have ratified each of the civil war amendments. This appears to be the case for at least two reasons. 1. Outright rejection or "withdrew", the appearance of ratification 2. States admitted to the Union after A.D. 1870 may not have voted on Ratification.

The Several States, without federal interference, until the purported Amendment 14, could determine and define who would be recognized by a State as a permanent resident; the concept of "Inhabitant" and thus Representation hinged on this point. With this form of State recognition, the exercise of political rights and legal rights, in effect, could be defined available only for a pre-selected class of the People, i.e., white. This particular form of State recognition, or lack thereof, was pervasive throughout the Several States, North or South.

The purported Amendment 14, in Section 1, in part states: "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." The People, by A.D. 1868, in some of the Several States, recognized a new federal class of "All persons" who would now be in a "new Union" constitutional sense, considered as having political and legal rights. Citizenship conditions imposed were; (1) born or naturalized (2) "and subject to the jurisdiction thereof" (more on this second point later). The result, in a constitutional sense, is a new class of federally defined and recognized citizenship, made up of (1) "citizens of the United States, (2) "and of the State wherein they reside."

Reader, please do not be misled. The People, without voluntary assent, did not include Their persons in the new federal citizenship. The People, in the "old Union" by and large, were already recognized as Citizens in their Several States of the American Union. Now, the "old Union" was no more, but the People had not lost in a constitutional sense their State Citizenship.

To grapple directly with this point, to be included within the federal term "citizens of the United States and of the State wherein they reside" someone must first be included in the term "All persons." The Sovereigns, the People were already Citizens with powerful political and legal rights. These non-federal Citizens already had a self government. They already had use of Article IV, Section 1, "full faith and credit." They already had Section 2, thereof, "the Citizens of each State shall be entitled to all Privileges and Immunities..." These Citizens already had the Bill of Rights. These Citizens already enjoyed "Vested Rights." Until the Civil War, these Citizens had Representation in "the Government of the United States." These Citizens were not citizens of the United States, these Citizens were Citizens of the Several States, hence arguably Citizens of the Untied States of America. These Citizens, by Constitutional construction could not be included in the terms "All persons" except by grant of a political and legal waiver.

The authors argue, the People, as Sovereigns, before and after the purported Amendment 14, could then and may now self determine, within any one of the Several States, Their State Citizenship, exclusive of any federal citizenship. The People did not require the purported federal Amendment 14 to enjoy full political and legal rights. As admitted by Dred Scott vs. John A. Sandford, 80 U.S. 19, Howard 393 (1857). "The question (before us) is simply this: can a Negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the Citizen?" The court answered, "No."

In the case Valkenburg vs. Brown, 43 Cal. 43, 47 (1872), the court stated that, "No white person born within the limits of the United States and subject to their jurisdiction, or born without those limits and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the Federal Constitution (the Thirteenth, Fourteenth, and Fifteenth). The purpose of the Fourteenth Amendment of the Constitution of the United States was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States who could not be brought within the operation of the naturalization laws because

native born, and whose birth, though native, had at the same time left them without the status of citizenship." Notice reader, the Court explicitly identifies the "Federal Constitution" as that constitution recently modified. Further, as stated, this Court is very direct on the purpose of Amendment 14. [Author's emphasis]

In the Slaughter-House cases, 83 U.S. 16 Wall. 36, 21 L.Ed. 394 (1873);

> "The first Section of the 14th article, to which our attention is more specifically invited, opens with a definition of citizenship - not only citizenship of the United States, but citizenship of the States ... The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established ... Other privileges and immunities of the citizens of the United States, and, other privileges and immunities of the Citizen of the state, and what they respectively are, we will presently consider, but we wish to state here that it is only the former which are placed by this clause under the protection of the Fourteenth Article of the federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment." . [Author's emphasis]

Please notice, in respect of citizenship, the Supreme Court, on the basis of two distinct classes of citizenship, explicitly identifies two classes of "protection."

And in United States vs. Susan B. Anthony, 24 Fed. Case 289 (1873), "The Fourteenth Amendment creates and defines citizenship of the United States. It has long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except by first becoming a Citizen of some State ... The rights of the Citizens of the State, as such are not under consideration in the Fourteenth Amendment and are fully guaranteed by other provisions." [Author's emphasis]

The authors argue, the People, the Sovereignty, did not include the People in the term "All persons" as the object of the purported Amendment 14, based, in part, on the following. In Chisholm vs. Georgia, 2 U.S. 419, 2 Dall. 419, 1L.Ed. 440 (1793),

"At the revolution, the Sovereignty devolved on the people; and they are truly the Sovereigns of the country, but they are Sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the Sovereignty." The authors argue Citizens, as Sovereigns, are not constitutionally contemplated by the federal United States as "and subject to the jurisdiction thereof."

The authors have previously argued the People, the true Sovereignty, have the right to self determine Citizenship anywhere in the Several States of the American Union. That the Sovereigns politically self determine who is a Citizen within the American Union, is presumed within Downes vs. Bidwell supra, and In re Ross supra.

The purported Amendment 14 is based upon, arguably, an illegal act of a 36 State Congress sent to the Department of State and directed to be promulgated by the Secretary of State. Said action of that Congress is a purported legislative action. In the face of that act, the Congress had/has no Power under the Constitution to include any of the Sovereigns within the words "All persons" in the purported Amendment 14. The Authors argue "the Government of the United States" possesses no legal rights to enforce the Amendment 14 definition of citizenship or that federal citizenship as against any one of the People. The following cases are offered as clarification.

Please consider "a Sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on a logical and practical ground that there can be no legal Right as against the authority that makes the law on which the Right depends. Kawananakoa vs. Polyblank, 205 U.S. 349, 353; 27 Supreme Court 256, 257; 51 L.Ed. 834 (1907).

As the People are the true "Kings," the Supreme Court in U.S. vs. Herron, 20 Wall. 251, 255 (1874), stated, "… but where a statute is general, and thereby any prerogative, Right, title, or interest divested or taken from the king, in such case the king is not bound, unless the statute is made to extend to him by express words." No such express words exist, which could be made out to bind or include the People within the purported Amendment 14 term "All persons."

The Congress did not pretend, by any express legislative language, by its act of "adopted and transmitted" to the Department of State and directing the Secretary of State to "promulgate" the purported Amendment 14 to make law so as to forcibly include within a federal citizenship any one of the People. The Congress by this act, did not purport to affect the People's State Citizenship.

The Slaughter-House Court has said:

> "the first section of the 14 Article, to which our attention is more specially invited, opens with a definition of citizenship - - not only citizenship of the United States, but citizenship of the States, no such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It has been the occasion of much discussion in the courts, by the Executive department and in the public journals. It has been said by imminent judges that no man was a citizen of the United States, except as he was a citizen of one of those States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens, whether this position was sound or not had never been judicially decided. But had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States."

The Slaughter-House Court, in a most direct manner, went on to state:

> "The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the Negro can admit of no doubt. The phrase, 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls and citizens or subjects of

foreign States born within the United States." [Author's emphasis]

And here is the Supreme Court's interpreted true meaning of the term "subject to its jurisdiction." The Sovereign People are not subject to any general government, as "the Government of the United States", except, only by the seventeen limited enumerated Powers. The words "and subject to its jurisdiction" do not force a subjugated federal citizenship on those of the Sovereignty. The Courts defined meaning of those words "and subject to the jurisdiction thereof" excludes a legally enforceable federal citizenship on the Sovereignty, but does not preclude a voluntary waiver.

The Court went on:

> "The next observation is more important in view of arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but is only necessary that he should be born or naturalized in the United States to be a citizen of the Union." Slaughter-House Cases supra. [Author's emphasis]

Reader, please read again the Supreme Court's words, "but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union." The authors emphatically emphasize the words "to be a citizen of the Union." Caution reader, the Supreme Courts use of the term "the Union" must be considered in context of the date of A.D. 1873. The context is the "New Union."

Notice what the court did not say (1) the Court did not say the purported Amendment 14 at the first clause compelled any political citizenship or any political relations. (2) The Court did not say the purported Amendment 14 defined any citizenship in a Constitutional sense, in relation to the "exclusive" legislative

jurisdiction of Congress, as "to exercise exclusive Legislation in all cases", Article I, section 8, paragraph 17 supra.

Notice what the court did say in respect to the first clause (1) it declared "that persons may be citizens of the United States," "of the Union," "without regard to their citizenship of a particular State" (implied acceptance of Amendment 14) (2) It (Amendment 14) overturns the Dred Scott decision. (3) Why is this decision overturned? By making All persons born in the United States "and subject to its jurisdiction thereof" citizens of the United States "of the Union." (4) Please note, the term "and subject to its jurisdiction", was intended to exclude from its operation children of ministers, consuls and citizens and subjects of foreign States born within the United States. (5) By construction, the term "and subject to its jurisdiction" includes the 17 limited enumerated Powers that the People, the true Sovereigns, have delegated to "the Government of the United States." (6) He (a citizen) "must reside within the State to make him a citizen. (In plain English, " in the State" does not mean in a federal area.)

The relation of citizenship to the "exclusive" legislative jurisdiction of Congress was not presumed within the law of the case. Slaughter-House and Susan B. Anthony supra. For a discussion on the application of "exclusive" legislative jurisdiction of Congress, see In re Ross and Downes v. Bidwell supra.

The author's conclusions are as follows. The term "New Union" means a new union inclusive of persons not previously, in a constitutional sense, entitled to citizenship. The term "of America" means, that specific places of the Several States, where the People (barring silent assent, waiver, agreement or contract; presumptions) are not subject to the constitutional authority of "the Congress ...to exercise exclusive legislation" over all persons, places and territories subject to its jurisdiction. Therefore, "in the Union", in the Several States as "of America", there is no Power to be found in the Constitution to compel the People to accept any particular political relations to "the Government of the United States" or the Congress. This statement explicitly includes the question of citizenship. By Sovereign Right, political relations, including citizenship, are solely by self determination of the People. This self determination is solely within the conduct of the People.

The central subject of the purported Amendment 14 as the definition and creation of Federal Citizenship has never been required of any one of the People. As the reader has learned, the People realize their individual Citizenship in anyone of their Several States, upon being recognized as an "Inhabitant." Inhabitant simply means a permanent residence as a self determined conduct of One of the People. No constitutional federal Power exists before or after the purported Amendment 14 to legally compel "residence" in opposition to any one of the Peoples self determined conduct in respect to permanent residence. Today, jurisdictional questions in respect to "Residence" come about because what appears to be the State Legislatures[18] manufacture a class of definitions so as to include, based upon conduct, particular persons, i.e. children in public school, voter registration, hunting and fishing licenses, driver license. All requires such conduct as "voluntary" self classification in relation to "resident." This resident is an implied purported Amendment 14 federal citizen.

At birth, in relation to one of the Several States of America, and barring any federal relations, a person is subject to 17 limited enumerated Powers operated by the "Government of the United States" Article I, Section 8, paragraph 17 supra. Today, that same person, not being a Federal citizen, is not subject to the purported Amendment 14 as "and subject to the jurisdiction thereof" operated by the United States, a federal corporation. The latter corporation relations are only by silent assent, waiver, agreement or contract.

[18] Today, the "States" when operating under federal territorial law, act by and for a presumed class of federal citizens. Various devices have been employed to make of no legal effect the original incorporated State's territorial boundaries. For example, 1) new Constitutions with no State (incorporated) boundaries, 2) various statutized legal terms that apply to more or less of the statutory scheme of a state, such as; various meanings of "state", "State", "in this state", "within this state", "in the state", "in the State", these terms are territorial in nature, most lead to federal territorial jurisdiction being applied in relation to a particular state's legislative scheme. Such legislative schemes are designed to make of no legal effect the incorporated State boundaries. The result is that in this territorial sense, the state operates as an unincorporated federalized state. The deception is in the use of these terms of art. In addition, the constitutional meaning of "Inhabitant" and permanent resident are not in legal memory. Today, only federal residents appear in legal memory.

In addition, one of the People may expose his person, by way of specific political and legal relations, to the constitutional authority of "the Congress ... to exercise exclusive legislation." In these federal jurisdictional circumstances outside any of the Several States "the Congress" has constitutional powers over persons, places and territories subject to its jurisdiction. That is what is meant by the circumstance of a "federal area" i.e. zip code. Under these particular circumstances the Congress is the sovereign. Here, the Constitution of the United States of America does not provide protection. Further, there is under these circumstances no directly operative Bill of Rights. The Congress may "if it sees fit", by statute, create statutory rights and duties out of thin air, (i.e. Title 26). The Congress has the Constitutional authority to so act. The Congress may even create a "corporate, legislatively created, statutory, commercial, enforcement system." People's silent assent, waiver, agreements or contracts, as conduct is the determinative factor as to the class of political and legal relations that exist.

The next chapter begins a discussion of the circumstances in which one of the People, in each his own person, may, by specific political and legal relations per waiver, silent assent, agreements and contracts, undertake duties and receive benefits as defined by the Congress. Rest assured, the Courts of the United States, United States Courts, (or State) under federal circumstances, will interpret the law of the case. This may be a jurisdictional circumstance the reader may wish to avoid. The next chapters may be of help in relation to such decisions.

Chapter 10

The United States, a Federal Corporation and Dual Citizenship

The reader is well aware that the Constitution of the United States of America only applies in the United States of America. The reader is equally aware of the importance attached to the words "of America" as used above. The words "of America" mean the People and their Several States of the American Union outside of a federal territorial place or jurisdiction.

When "the Government of the United States", as used in the constitutional sense, operates territorially outside The People in Their Several States, what is the explicit source of Constitutional law for such conduct? In this use, what is the nature of the United States?

A Court held that; "the United States is to be regarded as a body politic and corporate", In re Merriam's Estate, 36 N.E. 505 (1894).

In relation to the "corporate" capacity the "charter" of this federal corporation is the Constitution of the United States. That federal charter places the limits, duties, powers and privileges upon said corporation. The Supreme Court has settled this issue in Reid vs. Covert, 354 U.S. 1 (1957), 1 L. Ed. 2nd. 1148, "The United States is entirely a creature of the Federal Constitution, its power and authority has no other source and it can only act in accordance with all the limitations imposed by the Constitution." The Court explicitly does not cite the Constitution of the United States **of America**. This Constitution "of America" is not the federal constitution. The federal constitution is that constitution which only has territorial application and jurisdiction in a federal area outside "of America", i.e. outside the Several States of the America Union. Why? Because the Congress (since 1948) has chosen to operate what appears to be the "government" and has operated this "government" federally in relation to all the several States. Alternatively, the "government" has domestically employed the device of a territorial federal corporation, 28 USC §(3002)(15) supra. The several States as entities have appeared to accept federal corporation relations. The political reorganization by way of these relations is termed "federalism." Federalism deals with individual persons as presumed U.S. citizens.

In this sense, "federalism" deals with the constitutions as only inclusive within territorial and municipal law. The Constitutions, as "free[19]" Constitutions, do not appear within the legal memory of the states that are part of this "federalism" model.

Today, the federal corporate constitution is applied to people, persons, places and territories as two distinct classes as follows:

1) the people in the Several States, in part, when any of the constitutional 17 limited enumerated Powers of Article I, Section 8 apply; and to the several States as institutions, in part, when the Constitutional limits of Article I, Section 10 applies.

2) To persons, places and territories completely outside any and all of the Sovereign people and outside their several States as institutions of government.

Today, either of the two classes above may be drawn into the "corporate" legislatively created statutory commercial enforcement system. All it takes is silent assent, waiver, agreement or contract. Either class is presumed to include U.S. citizens. This book is concerned with class one, while foreign territorial application, i.e. Washington D.C., Guam, Puerto Rico etc., is class two and outside the scope of this book.

Reader, please pause and take a deep breathe and count to 50 before proceeding!

In relation to the federal corporate constitution, how does the purported Amendment 14 fit into this picture of two completely different classes of people, persons, places, territories and state institutions of local government?

In the following case, United States v. Anthony, 24 Fed. Cas. 829 (1873) the Court stated:

> "The fourteenth amendment creates and defines citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been

[19] **free**, Not subject to legal constraint of another. *Black's Law*, 4th Edition page 791

judicially decided to the contrary, that there was no such thing as a citizen of the United States, except as that condition arose from citizenship of some state. No mode existed, it was said, of obtaining a citizenship of the United States, except by first becoming a citizen of some state. This question is now at rest. The fourteenth amendment defines and declares who shall be citizens of the United States, to wit, 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof.' The latter qualification was intended to exclude the children of foreign representatives and the like. With this qualification, every person born in the United States or naturalized is declared to be a citizen of the United States and of the state wherein he resides." [Author's emphasis]

In US v Anthony supra, it was held that:

"After creating and defining citizenship of the United States, the fourteenth amendment provides, that 'no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' This clause is intended to be a protection, not to all our rights, but to our rights as citizens of the United States only; that is, to rights existing or belonging to that condition or capacity. The expression, citizen of a state, used in the previous paragraph, is carefully omitted here. In article 4, § 2, subdivision. 1, of the constitution of the United States, it had been already provided, that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' The rights of citizens of the states and of citizens of the United States are each guarded by these different provisions.) That, these rights are separate and distinct, was held in the Slaughterhouse Cases, 16 Wall. [83 U. S.] 36, recently decided by the supreme court. The rights of citizens of the state, as such, are not under consideration in the fourteenth amendment. They stand as they did before the adoption of the fourteenth amendment, and are fully guaranteed by other provisions. The rights of citizens of the states have been the subject of judicial decision on more than one occasion. Corfield v. Coryell [Case No. 3,230]; Ward v. Maryland, 12

Wall. [79 U. S.] 418, 430; Paul v. Virginia, 8 Wall. [75 U. S.] 168." [Author's emphasis]

This new federal citizenship was designed to provide "protection" via a federally recognized status for a class of persons that had been previously vulnerable to attack subsequent to their emancipation from indentured servitude. Arguably Congress, by virtue of the purported Amendment 14, created for the emancipated slaves a "citizenship" they could present in court in lieu of being a Citizen of the state in which they inhabited. Today, by silent assent, waiver, agreement or contract almost all people in the United States are presumed to be one of these federal citizens.

The issue of status was raised prior to the Civil War in the landmark case Dred Scott v. Sandford, 60 US 393 (1856), purported to be overruled. Scott was a slave by birth who found himself in Illinois and then Wisconsin territory for nearly ten years before the death of his owner, who was originally from Missouri. Scott brought his suit in court for freedom under the theory that his residence in free United States territory as well as the free state of Illinois made him a free man. Chief Justice Taney held, for the majority, that not only was Scott a slave but that he had no standing to sue as he was not a citizen of the United States.

What is most fascinating is the argument written in Dred Scott supra, by Justice Curtis in the dissenting opinion. He espoused and broke down a theory grounded in international law, a concept long held as in itinere (on a journey, on the way, Blacks Law 8th Edition, page 800) and suggested this principle applied in the Scott case by virtue of his master's choice to remain domiciled in the Wisconsin territory. Curtis suggested that the masters decision to take up residence there, and permit Scott to marry in that territory (at Fort Snelling) laid down sufficient grounds for the argument that Scott was not only a resident of Wisconsin at the time, but that his being allowed to marry was akin to being vested a property right. Curtis cited previous decisions that showed a bequest of property from master to slave evidenced intent to grant his freedom since only a freeman could take and hold such a bequest (Legrand v. Darnell, 2 Pet. R., 664). It was of course not sufficiently convincing to sway seven of the nine justices on the court. But the maxim of law laid down in the dissent sheds light to what the fourteenth amendment

actually performed in law a decade later: Curtis Said in his dissenting opinion, "It is generally agreed by writers upon international law, and the rule has been judicially applied in a great number of cases, that wherever any question may arise concerning the status of a person, it must be determined according to that law which has next previously rightfully operated on and fixed that status. And, further, that the laws of a country do not rightfully operate upon and fix the status of persons who are within its limits in itinere, or who are abiding there for definite temporary purposes, as for health, curiosity, or occasional business; that these laws, known to writers on public and private international law as personal statutes, operate only on the inhabitants of the country. Not that it is or can be denied that each independent nation may, if it thinks fit, apply them to all persons within their limits. But when this is done, not in conformity with the principles of international law, other States are not understood to be willing to recognize or allow effect to such applications of personal statutes. Dred Scott v. Sandford 60 U.S. (19 How.) 393,595 (1857) [Author's emphasis]

Even if the *in itinere* [20]status were recognized "that law which has next previously rightfully operated on and fixed that status" could likely have been argued as the laws of Missouri, since this was where Scott and his family resided with no voiced intent to seek his freedom until the death of his master in 1843.

With the onset of the purported fourteenth (and the thirteenth and fifteenth) amendments, the newly emancipated slaves were granted a newly created and defined citizenship of the United States. These persons received a federally recognized status that was compelled against the States by the words "no State shall enforce any law which shall abridge the privileges and immunities of citizens of the United States." Under this protection, a form of *in itinere* status was bestowed upon them even if they never once set foot in the District of Columbia. Act of 1871 supra.

[20] **in itinere**. In eyre; on a journey or circuit. In old English law, the justices in itinere (or in eyre) were those who made a circuit through the kingdom once in seven years for the purposes of trying causes. 3 Bl.Comm.58. In course of transportation; on the way; not delivered to the vendee. In this sense the phrase is equivalent to "*in transitu*." Black Law, 4th Ed., page 896.

Presently shall be discussed cases where the operations of the courts are fully under the accepted power of the purported Amendment 14. It was held in the following case that:

> "[T]he distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former to the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union." Slaughter-House Cases, 83 U.S. 36, 69-70 (1872).

Further the Supreme Court has said:

> "We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. Slaughter-House Cases, 16 Wall. 74." United States v. Cruikshank et. al., 92 U.S. 542, 549 (1875).

Explicitly noted are two classes of rights, one federal class and one class originating in the several States.

The following cases support the argument of two separate classes of rights and the separate nature of citizenship.

> "Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state. United States v. Cruikshank, 92 U.S. 542, 549 (1875); Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 73-74 (1873); and see Short v. State, 80 Md. 392, 401-02, 31 Atl. 322 (1895). See also Spear, State Citizenship, 16 Albany L.J. 24 (1877). Amendment 14 and federal statutes define citizenship of the United States, but the requirements for citizenship of a state generally depend not upon definition but the

constitutional or statutory context in which the term is used. Risewick v. Davis, 19 Md. 82, 93 (1862); Halaby v. Board of Directors of University of Cincinnati, 162 Ohio St. 290, 293, 123 N. E. 2d 3 (1954) and authorities therein cited." Crosse v. Board of Supervisors of Electors of Baltimore City, 221 A.2d 431, 433-434 (1966).

Indeed, for the first time there was created in America, arguably, two new distinct divisions; a general federal government with its citizens, and States subject to direct federal intervention in respect to federal citizens but also containing only state Citizens. Citizenship in one division did not have the same political and legal relations as the other. In the Anthony case supra, the defendant was seeking recognition of 14th amendment[21] citizenship so as to enjoy the protections it offered its citizens. The Court held she could not qualify as a citizen of the United States by virtue of her sex for gender was not mentioned in the 14th Amendment. Her point of view was, of course, to arrive in the case and law books and the Constitution as amended by the 19th Article[22] some years later.

If a person can possess the status of both a federal and state citizen or of a federal citizen or a state citizen but not both, is there any reason a person would not want to be, in some cases, deemed a federal citizen of the United States? After all, the cases seem to show instances where persons found protection, or sought protection, under the veil of this newly defined type of citizenship.

Based upon the above, what might one fairly conclude?

1) Prior to purported Amendment 14 there was no such thing as a federal citizenship.
2) The purported Amendment 14 is intended to define and create a new federal citizenship as "citizens of the United States."

[21] The author' explicitly use the term "14th amendment citizenship" because Susan B Anthony adopted the 14 Amendment as if it was actually ratified and chose to attempt to take a benefit there from.

[22] The author's explicitly use the term "19th Article" in distinction to "article of Amendment 19" to refer to the federal territorial constitution.

3) This federal citizen is also deemed to be a citizen in any one of the incorporated Several States, "wherein they reside."
4) The two citizenships are distinct and have different rights, duties, privileges and immunities.
5) There is no authority within the purported Amendment 14 to compel either citizenship or both.
6) There is no constitutional power reposed in the political general government as "the Government of the United States", or alternatively in the United States, a federal corporation, to compel a federal citizenship, or any State citizenship upon anyone of the People of America.

If one of the people self determine to maintain a Citizenship in relation to one of the incorporated several States of America despite the federal government's deceptions, the federal government has no Constitutional authority to compel otherwise. An example of this Citizenship would be an Oregonian, a New Yorker or a Texan. Today, only the people of the Several States as Oregon, New York and Texas, etc. are of and in the "New Union" as "of America." Only these states, Oregon, New York and Texas have joined the "Union" of America. These political relations do not allow for a person to be a Citizen of or have a Citizenship in relation to the State of Oregon, State of New York or the State of Texas. These States are the named corporations created by the people via their Constitutions. These incorporated States received recognition upon the Several States' admission to statehood. These States, by incorporated Constitutions, are the States referred to, for example in Article I, Section 10.

The Question is: What circumstances have changed? What is the particular nature of these changes?

Today, "the appearance of reality for reality itself" is that the federal government is all-powerful and that the people have all accepted a federal citizenship. Further, the illusion continues that the incorporated several States, as institutions, are nothing more than local extensions of the federal government, i.e. federalism. In fact, by presumption, based upon the appearance of facts resting on silent

assent, waiver, agreement or contract, federal political and legal relations are thus commenced.

The authors explicitly do not suggest that the only causes of the vastly changed circumstances in political and legal relations from A.D. 1868 to the present are the following. But the appearance of facts in relation to most readers are as below. Likely, most readers in their day to day lives operate in relation to the following circumstances.

1) Many readers may believe they are "permanent residents" in one of the Several States of the Union; in the teeth of many agreements and contracts to the contrary

2) Many readers may also believe they do not appear to have accepted "residence" in any place, district or territory outside any one of the Several States. The use of the zip code and the contract with the United States Postal Service is evidence to the contrary.

3) By means likely unknown to the vast majority of readers, by presumed political choice, they appear to have accepted a federal citizenship.

4) The vast majority of readers likely have a lifetime accumulation of public and private records as witness to political and legal relations territorial to the federal corporate government. Some of these public records may exist as higher forms, upon waiver, as admissible evidence.

In the first section, in reference to a particular period of time, the authors chose to expose the reader to substantial political and legal changes in the role of the federal government with respect to the people. The federal government's changed role in political and legal relations to the people, based upon Supreme Court rulings, was presented as a "Switch in Time." Questions as to the relative balance of power between the federal government and the state governments were considered. The inescapable conclusion was that a substantial increase in federal control, brought on by radical changes in the legislative agenda and judicial constitutional interpretation occurred. These increases in federal control were manifested in changed political and legal relations (rights and duties) between the people

and government. These changes, by in personam[23] conduct, directly reached the people.

The authors argue that, in order for these substantial changes in the balance of governmental power between the federal government and the incorporated States to be realized, the Supreme Court politically accepted and politically ruled so as to effect changes in the political and legal relations of the people to the government.

What follows are specific examples of laws, discussed in detail, whereby the people appear to voluntarily accept changed political and legal relations to government. All based on presumption of course.

In 1935 the Social Security Act, at section 8, created a new type of revenue collection scheme. Legal rights, created under his scheme became enforceable in the United States District Court, for the benefit of the United States (by whatever business name employed (United States of America)). Legal rights are created by signature pursuant to agreements and contracts in relation to the SS5 application. The non-positive law[24] of Title 26 supplies terms and conditions to the agreement and contract. These are the very same

[23] in personam, [Latin "against a person" 1. Involving or determining the personal rights and obligations of the parties. 2. (Of a legal action) brought against a person rather than a property.

[24] **positive law**, Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society. "A 'law' in the sense in which that term is employed in jurisprudence, is enforced by a sovereign political authority. It is thus distinguished not only from all rules which, like the principles of morality and the so-called laws of honor and of fashion, are enforced by a determinate authority which is either, on the one hand, superhuman, or, on the other hand, politically subordinate. In order to emphasize the fact that 'laws', in the strict sense of the term are thus authoritatively imposed, they are described as *positive laws*." *Black's Law*, 4th Edition, 1324

Reader please carefully note the changes in political and legal meaning from 1950 to 2004 in *Black's Law* 4 Edition versus *Black's Law* 8th Edition.

positive law, A system of law promulgated and implemented within a particular political community by political superiors, as distinct from moral law or law existing in an ideal community or in some nonpolitical community. Positive law typically consists of enacted law – code, statutes, and regulations that are adopted and enforced in the courts. The term derives from the medieval use of *positum* (latin "established"), so that the phrase *positive law* literally means law established by human authority. *Black's Law,* 8th Ed. Page 1200.

contractual terms enforced in court. The appearance of a signature on the SS5 application creates conditions precedent as to the "source" of authority for the taxes mentioned in the Social Security Act. Since the SS5 application for Citizens of the Several States is voluntary, obviously the signature is presumed to be voluntary. The authority for the taxes voluntarily imposed under the Social Security Act is by the appearance of the voluntary signature on the SS5 application. These taxes benefit the badly managed commercial business operated as the United States. This United States is defined at Title 28 USCA §3002(15) as, "the United States means a federal corporation." Today, revenue collection for the benefit of this corporation is called, in part, the income tax.[25]

> Section 8 of the Social Security Act:
>
> INCOME TAX ON EMPLOYEES
>
> SECTION 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:
>
> (1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.
>
> (2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall 1 1/2 per centum.
>
> (3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.
>
> (4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2 1/2 per centum.
>
> (5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.
>
> DEDUCTION OF TAX FROM WAGES
>
> SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer by deducting the

[25] Note: Questions as to the solvency of this corporate United States are outside the scope of this book.

> amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.
>
> (b) If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.
>
> DEDUCTIBILITY FROM INCOME TAX
>
> SEC. 803. For the purposes of the income tax imposed by Title I of the Revenue Act of 1934 or by any Act of Congress in substitution there for, the tax imposed by section 801 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.
>
> EXCISE TAX ON EMPLOYERS
>
> SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:
>
> (1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.
>
> (2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1 1/2 per centum.
>
> (3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.
>
> (4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2 1/2 per centum.
>
> (5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.
>
> ADJUSTMENT OF EMPLOYERS TAX

SEC. 805. If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

REFUNDS AND DEFICIENCIES

SEC. 806. If more or less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot be adjusted under section 802 (b) or 805 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

COLLECTION AND PAYMENT OF TAXES

SEC. 807. (a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal- revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of

the Revenue Act of 1926 and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

RULES AND REGULATIONS

SEC. 808. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

SALE OF STAMPS BY POSTMASTERS

SEC. 809. The Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as

(1) are located in county seats, or

(2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury, as internal- revenue collections all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the

Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department.

PENALTIES

SEC. 810. (a) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, shall be fined not more than $1,000 or imprisoned for not more than six months, or both.

(b) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITIONS

SEC. 811. When used in this title-

(a) The term wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term employment means any service, of whatever nature, performed within the United States by an employee for his employer, except-

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Is there anything not understood about the words "INCOME TAX ON EMPLOYEES" in the above Social Security Act? The benefit to act in the capacity of a territorial federal "employee" in legal relation to the territorial federal "employer" exists within the Social Security Act. The excise taxable benefit, "employment", exists within the legal relation of "employee" to "employer" acting within federal "employment." The constitutional nexus is the excise taxable privilege of "employee." Article I, Section 8, paragraph 1 supra. The "employer" is engaged in "employment" territorially and federally within the United States via the application for the federal employer identification number (EIN). All such employment attaches federal territorial law. an additional constitutional basis may be seen at "the Congress shall have Power to dispose of and make all needed Rules and Regulations respecting the Territory or other Property belonging to the United States…" Article IV, Section 2, paragraph 2 supra.

If the reader has not yet arrived at a conclusion as to how the people, by presumption, appear politically as "U.S. citizens" and subject to the jurisdiction of the federal United States, a federal corporation, by now, the authors, with more particularity and specificity, will explain. The reader or the reader's parents went down to the Social Security office and made an election through the Social Security application to be treated as a federal "U.S. citizen." A federal citizen of the United States is defined at 8 USCA §1101(a)(22). If the reader's parents made the election for a minor, then, when the minor turned 18 years of age, that person had a statutory duty and opportunity to change this election. If that person, did not in writing change the presumption, then by silent assent, that person is presumed to have ratified an election to be treated as a federal U.S. citizen subject to the jurisdiction of the federal United States. That status sticks, by presumption, like glue to that person.

The authors have good news. A person, upon self determination, can sever the presumptive political election and status as evidenced within the application of the SS5 form. The reader will have opportunity to read about this and other changes in presumptions in subsequent chapters.

Remember this well, the Social Security Act is voluntary in nature. Today, no law requires a Citizen to obtain a Social Security number. If a person contracts territorially with the federal United States, a federal corporation, that person is subject to copious volumes of territorial federal law duly contracted into by the States. The effects in personam reach into the several States via "residency." The presumption is that a "resident" is a federal citizen who acts as a person in relation to the purported amendment 14 as to wherein " they reside." The States define "residency" or "resident" in terms of specific conduct. For example, conduct of having children in the State Public School System, conduct of having signed a voter registration card or conduct such as having a driver's license, etc. All three sets of conduct operate with a condition precedent that a "resident" is the person performing this conduct.

It was held in In re Meador, 16 Fed. Cas. 1294 (1868), that:

> "And here a thought suggests itself. As the Meadors, subsequently to the passage of this act of July 20, 1868, applied for and obtained from the government a license or permit to deal in manufactured tobacco, snuff and cigars, I am inclined to be of the opinion that they are, by this their own voluntary act, precluded from assailing the constitutionality of this law, or otherwise controverting it. For the granting of a license or permit--the yielding of a particular privilege--and its acceptance by the Meadors, was a contract, in which it was implied that the provisions of the statute which governed, or in any way affected their business, and all other statutes previously passed, which were in pari materia with those provisions, should be recognized and obeyed by them. When the Meadors sought and accepted the privilege, the law was before them. And can they now impugn its constitutionality or refuse to obey its provisions and stipulations, and so exempt themselves from the consequences of their own acts?" [Author's emphasis]

The Court answers this question with an emphatic no.

The reader may want to re-read the above underlined statements.

Within more recent times, it was quoted in United States v. Slater, 545 F.Supp. 179 at page 182 (1982) that in respect to territorial application of federal laws based upon the presumption of U.S. citizenship, consider the following:

> "Subtitle A of the Internal Revenue Act of 1954, Title 26 of the United States Code, was enacted in accordance with Congress' constitutional power to lay and collect an income tax." "There is a tax imposed, in 26 U.S.C. § 1, on the income of 'every individual.' No provision exists in the tax code exempting from taxation persons who, like Slater, characterize themselves as somehow standing apart from the American polity, and the defendant cites no authority supporting his position. Slater's protestations to the effect that he derives no benefit from the United States government have no bearing on his legal obligation to pay income taxes. Cook v. Tait, 265 U.S. 47, 68 L. Ed. 895, 44 S. Ct. 444 (1924); Benitez Rexach v. United States, 390 F.2d 631 (1st Cir.), cert. denied 393 U.S. 833, 21 L. Ed. 2d 103, 89 S. Ct. 103 (1968). Unless the defendant can establish that he is not a citizen of the United States, the IRS possesses authority to

attempt to determine his federal tax liability." [Author's emphasis]

In UNITED STATES OF AMERICA v FRECH, United States Court of Appeals, Tenth Circuit, 97-6282 and 97-6349 (DC No. CR-97-80-R), (WD OK.) The three judge panel states:

> "Defendants have not argued that they are not residents of Alfalfa County, Oklahoma, which lies in the Western District of Oklahoma for purposes of determining venue. Additionally, the acts charged in the indictment were committed in the Western District of Oklahoma. We conclude that venue was properly in that district. See 18 USC § 3237(a): Fed. R. Crim. P. 18."

Of course, if a person's only motivation for gaining insight into the two forms of citizenship is simply to escape an audit or collection process by the IRS, that person might be missing the bigger picture.

The case of In re Merriam's Estate, infra, which was affirmed by the Supreme Court in United States v. Perkins supra, lays down a solid foundation for something far more ominous than the mere fact that the United States is a federal corporation. It was held in, In re Merriam's Estate, 36 N.E. 505 (1894), that "It is suggested that the United States is to be regarded as a domestic corporation, so far as the State of New York is concerned. We think this contention has no support in reason or authority. A domestic corporation is the creature of this state created by its legislature, or located here and created by or under the laws of the United States. (Code of Civil Pro. § 3343, sub. 18.) The United States is a government and body politic and corporate, ordained and established by the American people acting through the sovereignty of all the states." Consider the date of the case: 1894.

Consider, in 19 CJS § 883 one finds the statement that: "The United States government is a foreign corporation with respect to a State." The below case is cited as the authority. That the United States is a foreign corporation is exactly what the court held. By affirming the decision in, In re Merriam's Estate supra, the United States Supreme Court concurred in U.S. v. Perkins, 163 U.S. 625 (1896).

The two attorneys in U.S. v. Perkins supra, made argument in the New York Court of Appeals. One of the attorneys, Jesse Johnson, argued "stock held by decedent in foreign corporations should not be included in the value on which the tax is to be levied." However, Charles Baker argued that the "legacy in question on the death of the testator vested immediately in the United States, and became at once their property, free from liability to taxation." Baker then confronted the court with an either/or position. Either the United States was not a corporation at all, and therefore not within the meaning of those terms employed in the New York laws, OR the United States was a domestic corporation entitled to all the privileges and immunities respectively. The court did not find for either argument. It held the United States was a corporation, it was not domestic with respect to New York and was not immune from being taxed on the legacy of the estate. It further held that the tax imposed was on the right of succession and not on the property itself, rendering the United States argument with respect to stocks of foreign corporations completely moot. The Supreme Court affirmed New York's holding by stating that the legacy became the property of the United States only after it had suffered a diminution to the amount of the tax. However, the Supreme Court also made clear that the United States was not one of the class of corporations intended by law to be exempt from taxation and that the United States was indeed a government corporation.

The acceptance of potential Social Security benefits, which include the use of the SSN, has very real and serous implications as to one's political status and legal rights. By application, the people create the appearance, by presumption that they each elect in a political sense a federal citizenship, and they each elect territorial and political legal relations, concerning rights and duties, with respect to the federal corporate United States. These effects reach into the Several States. In the next chapter, additional details of the in personam effects of territorial federal political and legal relations will be discussed.

Chapter 11

Dual Citizenship and Political Question

It is very difficult, at the present time, to conceptualize dual political citizenship status in this country. Why? Because each of the two separate citizenship roles have distinct jurisdictional foundations emanating from different political relations. The first, original citizenship is represented by the political status as a member of a body politic formed in each of the Several States of the "Union" governed by a body politic and a body corporate. A State Constitution creates this body politic and body corporate. In general this means the Several States of "America", i.e. incorporated States. The jurisdictional basis is "We The People." The Several States combine to form the Nation, the United States of America. The control function of the resulting governments at whatever level, is in the Sovereign People. Today, people are almost never referred to with respect to political status as only state Citizens or in this sense as a Nation.

A second citizenship is represented by the political status as a member of a federal body politic formed on the basis of the purported Amendment 14 as "citizens of the United States." Today. a federal citizen is referred to as a "citizen of the United States", "U.S. citizen", "United States national" or "national of the United States." The jurisdictional basis is a purported amendment to the federal Constitution. Thus, this jurisdictional basis is subsequent to and dependent on the original Constitution. That original Constitution enjoys a jurisdictional foundation in the Sovereignty of the People. The control function over governments realized by this original constitutional jurisdictional avenue resides in the People. The Sovereign People only give up the general control function over governments as they individually accept, or fail to deny, the political status as a federal citizen in relation to government. The federal government maintains the control function over federal citizens.

If one of the sovereign People disputes the legal existence or legality of, refuses to be politically joined or politically questions the basis of, the purported Amendment 14, the result is that today, no possibility exists to effectively operate, in relation to a State Citizen,

a federally based Composite state[26] or other related governmental function. The reason is simple, because there is the loss of the federal control function. Without the purported Amendment 14 nexus, there would not exist any federal jurisdiction or authority upon which to legally base the control function, i.e. the federal corporate government would not enjoy any legal rights, sans contract, with which to enforce territorial federal municipal law against We the People. Today, what appears to be the States and other local governments are operated by federal elected citizens all of who are federal employees, i.e. Federal personnel.

This fact, of potential loss of centralized federal corporate control over a state Citizen, has tremendous consequences. Why? Today, the body politic of the Several States "of America" cannot fill out a "U.S. citizen" voter or office holder application without appearing to have changed one's political status. The result is, today, a United States federal citizen both elects and holds elected office. Congress has chosen to operate the normal functions of government in a federal corporate capacity via private agreements and contracts. And there is the appearance of the unincorporated States, based upon private agreements and contracts, to commercially operate the normal functions of the States. Similarly, all parties, the United States, the unincorporated states and people, by virtue of these agreements and contracts appear to operate territorially using federalized municipal local law. Hence, the reader may have heard the term in reference to government, "Its all corporate."[27] The Composite states results from these political and legal relations. The

[26] ***composite state***, A state that comprises an aggregate or group of constituent states. *Black's Law*, 8th Ed., page 1442

[27] The reader may have heard the term "in this state" or alternatively, a state may have been reconstituted without geographic borders, in either case the intent is to accept federalized municipal local law within what effectively is a new state voluntarily recognized by private agreements and contracts. No law exists creating the duty to recognize such a state, such act of recognition is a political act. The authors would further observe that this contractual state is not unconstitutional given the people's undeniable right to contract privately outside the Constitution or the State Constitutions. These constitutional documents, in this respect, are not under legislative jurisdiction, i.e. federal municipal law, Act of 1871. In similar respects, the reader may examine state law to find where the legislature placed the State Constitution under its control, for example Washington's RCW Volume O.

Composite state can only exist while the federal control function exists and is operative.

The separate and distinct political foundations of citizenship have over time for whatever causes generally been ignored, covered up and become disused by the people. Apparently, the disuse has been to the political and commercial satisfaction of a majority of the person of the legal community[28]. Certainly today's "US citizen", as voters and political office holders do not seem ready to recognize the political foundation supporting state Citizens. Loss of federalized central control can be of serious concern to certain persons.

The author's argue this general inattention, by both the people and the legal community to the foundational political circumstances by which to consider citizenship, in part, has resulted in terrible, malignant political consequences. Two obvious consequences are the increased empowerment of the federal corporate United States and the effective destruction of the Republic.

Today, the political control function is purportedly based in the "democracy." By demonstrable facts, today's federal corporate democratic government is operating within circumstances of a general loss of governmental control. This statement is demonstrated by the ongoing attempts of today's governments, at whatever level, to increase in personam control. As a result of this loss of general governmental control, the government attempts to maintain itself, by imposing more individual control.[29]

The explosion in the size, scope and cost of governments has manifested this loss of the general control function within the democracy. Further, this as identified loss of control in terms of "money" has resulted in the savaged real value of a nominal debt based "dollar." This result is of itself, based on the democratically controlled destruction of the "National Money System." Further, this

[28] That body composed of the judiciary, academics and their schools, and the resulting bar association members. The supposed judicial branch bar members are in effect licensed by the "U.S. citizen" legislative branch. Thus, today the legal community is the operative agent of the "U.S. citizen" political community.

29 The above statements are in concert with the working thesis of this book. The people must reestablish their working control by reestablishing Republican government. The democracy has proved to be a failure.

as identified loss of control has resulted in a general sinkhole of moral value and ethics. Why should the reader be surprised at this outcome? Since fall A.D. 1932 the whole practice of "democratic" government has been premised on "the appearance of reality for reality", i.e. deceit. This result has too often been displayed in person within government and integrated business institutions. Finally, this as identified loss of control has resulted in loss of personal freedom and the ability to effectively individualize "Liberty."

The authors argue the control function in relation to governmental activity must be reestablished within the Republic. As the following chapters will show, this loss of control function can only be addressed one person at a time. Each individual must reassert individual control over "government."

In order to supply answers by which to address these specific problems, it is necessary to consider the following: As people, over time, have gone about their daily lives and pursued their individual interests, the legal community, particularly by the beginning of 1933, has been kept extremely busy. After the democratic political mandate issued in the fall elections of A.D. 1932, the general legal community adopted or was compelled to accept a political presumption. This political presumption became imbedded within the legal community's relations to the general public and to government. This presumption is that the people have chosen to conduct an "experiment in democracy."[30]

This democratic experiment has only the appearance of an accepted proposition. A politically based proposition is rebuttable. The existence of this proposition is essentially ignored or not known, by the mass of people, but is gobbled up in the term "our Democracy."

In the legal community there are written and spoken statements in existence that there is no general plan "to go back", or

[30] From *The Supreme Court of the United States*, prepared by the Supreme Court of the United States, and published with the co-operation of the Supreme Court Historical Society, page 6, undated. "Hamilton had written that through the practice of judicial review the court ensured that the will of the whole people, as expressed in their constitution, would be supreme over the will of a legislature, whose statutes might only express the temporary will of part of the people." [Author's emphasis]

to “ever go back” to the previous state of political affairs, i.e. return to the Republican form of government. This political position and silence on the matter as to “not to go back” to an individual based government, as opposed to a certainly deceitful and discredited democratic government, is a position with which the authors strongly disagree.

This proposition of silence, in part, by failing to deal with issues considered in this book invites a continued loss of individual personal freedom and individual liberty that is completely unacceptable. The general legal community’s conduct as “head in the political sand of democracy” cannot be justified by any theory of economic necessity or by any acceptable moral or ethical code. The present course of action by the general legal community is principally a “democratic” political position based in the named deceit that causes the erosion and continued additional loss of personal freedom and liberty. This course of action by the general legal community must not be allowed to be maintained. Far too much is at stake, most importantly freedom itself. The present silent treatment on these politically based issues by the general legal community, by and large, with only small exception is terribly immoral, shocks the conscience and promotes an unconscionable disservice to the American People.

Given the accepted political conditions precedent, the “experiment in democracy” accepted or compelled within the general legal community, one finds an explanation for how the present state of disgusting legal relations has been reached. The authors argue with more specificity and particularity, the present state of legal relations has been reached, in part, based upon the following events and facts.

The incorporated States, upon silently accepted statutes as State Bar Acts, generally enacted in 1933 or within a few years thereafter, require the entities (generally Bar Associations) thus created to license members. Generally, the license requirement must be met before a member of the Bar entity, thus legislatively democratically created, may represent members of the “public.” Control via the license over the licensee is the mechanism used to maintain political and commercial discipline, i.e. compelled or silent acceptance of the “experiment in democracy.”

In effect, the bar licensee, supposedly a member of the judicial branch, is by nature of the legislatively created Bar Act in effect, licensed by the legislative branch. The legislative branch being the source of jurisdiction for the State Bar Act demonstrates this fact. Obvious constitutional questions of separation of powers are always present in any relation to the courts via a licensed bar member. The separation of powers question is premised upon the fact of a legislatively based license duty being made mandatory upon a judicial officer.

By the discipline, in part, self invoked by the licensee, coupled with the generally unspoken political decision by the general legal community to voluntarily accept the “experiment in democracy”, the political result has been the ongoing suppression of the “Republic” “of America.” This foundational suppression of the Sovereignty of the People is grounded in their individual conduct as silent assent, waiver, agreements and contracts. The legal community is not individually immune from this conduct. This foundational suppression occurs as the people employ a bar attorney or are effected by bar attorney work product as laws or legal forms, etc.

The authors argue the outcome of this demonstrable state of affairs has been dramatic. The existence of the Composite state, founded upon a federal control function, has by and large displaced the proper constitutional relations of the Several States and the several incorporated States. This process has advanced, one person at a time, by each person’s conduct. By now the reader knows the process is individual in nature and composed of silent assent, waiver, agreements and contracts.

The application of this process has resulted in “legal memory” in relation to the Republican form of government arguably being “lost” or replaced by a “democratic” based legal memory. This question of “lost” or replaced legal memory based upon the use of political and legal presumptions by the general legal community is another reason for this present book.

Legal memory is “lost” or replaced via time. The loss of legal memory is a too convenient tool by which, over time, to support change in the political and legal meaning of words. By the use of this mechanism of changed political and legal meaning of words, the

authors argue, the general legal community has achieved an immoral and ethically indefensible position of power over the people.

This position of power made effective by esoteric language (legalese) has without any question been politically and unethically employed to suppress the Republican form of government. The result has been a realized loss of executable personal rights, increased duties and as a direct result, significant loss of individual freedom and liberty.

So what the heck is the meaning of this term "legal memory"? Here again a close study by the reader will help reveal the changed political and legal circumstance faced daily.

> **legal memory**. An ancient usage, custom, supposed grant (as a foundation for prescription) and the like, are said to be immemorial when they are really or fictitiously of such an ancient date that "the memory of man runneth not to the contrary," or, in other words, "beyond legal memory." And legal memory or "time out of mind," according to the rule of the common law, commenced from the reign of Richard I, A.D. 1189. But reduced to 60 years, and again by that of 2 & 3 Wm. IV, c. 71 to 20 years. In the American states, by statute, the time of legal memory is generally fixed at a period corresponding to that proscribed for actions for the recovery of real property, usually about 20 years. Black Law, 6th Edition page 985. [Author's emphasis]

Please notice that at this time, *Black's Law*, 6th Edition was published in 1990, in the memory of the legal community, i.e. the legal memory, "America states" are accepted as existent and secondly legal memory is equal to 20 years.

> **legal memory**, The period during which a legal right or custom can be determined or established. Traditionally, common-law legal memory began in the year 1189, but in 1540 it became a steadily moving period of 60 years. "
>
> "Because of the importance to feudal landholders of seisin and of real property in general, the writ of right has been called 'the most solemn of all actions.' Nevertheless, it was believed that the time within which such a complainant would be allowed to prove an ancestor to have been seised of

the estate in question must be limited. At first this was done by selecting an arbitrary date in the past, before which 'legal memory' would not run. The date initially was Dec. 1, 1135 (the death of Henry 1); in 1236 it was changed by statute to Dec. 19, 1154 (the coronation of Henry II); and in 1275 it became Sept. 3, 1189 (the coronation of Richard 1). Finally, in 1540, an arbitrary period of sixty years was set as the period of 'legal memory.' The latter change was probably made because it was felt that a 350-year statute of limitations was somewhat awkward." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interest* 45 n.65 (2d ed.1984) *Black's Law*, 8th Edition, page 914.

Please further notice:

1) In 2004, there is no legal memory in relation to the America state mentioned.

Note: See "foreign state"[31]

2) In 2004, there is no mention of American common law. See page 270, 7th edition at "common law."

3) In 2004, the source of the law is referred to under the British system. In that system the Sovereignty is in the Crown, in which control of the state also exists. Today control of the state is centralized federally.

4) In 2004, the accepted period of legal memory is set to 60 years as like the British system.

5) In 2004, the "American state" is not currently in legal memory. Contrast this to 1990 where the "American states" are in legal memory.

Likely some readers may have sought out "some solution" to the political and legal complexities faced daily. Some readers may have had a suspicion that political questions of citizenship are central to proper analysis of certain facts of which they may have concerns. For example, various approaches to "expatriation " have been

[31] *Black's Law*, 8th Ed. Page 676. Note: "American state" is not the state under discussion.

attempted with mixed and easily predictable results (see definition of territorial law[32]). The failure to accurately analyze the jurisdictional foundations of both political and legal relations, here under discussion, has under relevant circumstances lead to mixed but usually unfortunate results. The devotees of "expatriation" are likely unable to answer the questions of "just what are you expatriating from?" and "where are you expatriating to?" Expatriation may not be a solution if the problem is accepted as self determined selection of citizenship. A reason "expatriation" may not be a solution is because citizenship is not easily separated from a person, except by specific conduct. A state Citizen, "an inhabitant", with permanent allegiance to one of the Several States of the American Union, will likely have created the "appearance" of having voluntarily accepted federal citizenship i.e. "U.S. citizen", "citizen of the United States." The solution for a reader may be to sever the political and the legal relations between a state Citizen and the "United States", a federal corporation.[33] As the reader may now have considered, built into certain legal relations is a political presumption the actor, perhaps as an applicant, has self determined to be a federal citizen.

The severance process is by way of self determination or self will and involves a political question. A choice only the reader may make. Ultimately, no "person" can make the political choice of citizenship for another person. As used in the previous sentence the word "person" may include government acting in corporate capacity. Various presumptions in relation to the facts of citizenship will be discussed in this and following chapters.

Most Americans, in this day and age, have created the "appearance" of being a citizen of the United States, a federal citizen, and thereby subjected themselves to the territorial legislative jurisdiction of Congress. They take on the "appearance" of that citizenship by means unknown to them. As the reader has learned, most persons have accepted the "appearance" of "U.S. citizen"

[32] t**erritorial law**, The law that applies to all persons within a given territory regardless of their citizenship or nationality. *Black's Law*, 8th Edition, page 1512

[33] Note: The "United States" is sometimes deceptively referred to as "United States of America." This term refers to a corporation used by the government for commercial purposes. This corporation has no included body politic of the people of the Several States. This corporate form, "United States of America" lacking the body politic of the people of the Several States, does not represent the Nation.

beginning in the 1930's by appearing at certain government offices and making an application for benefits, such as a deferred retirement plan, through the Social Security Act as amended in the private law of Title 42. Other persons under the age of 18 were told they could not work without the social security number. Where upon, the parents signed and accepted the agreement for a social security number on their behalf. Some simply were given the social security number at birth, before leaving the hospital, upon a signature by their parents or parent.

The acceptance and use of the social security number not only made out an "appearance" that person intended to be politically treated as a U.S. citizen, a federal citizen and subject to the territorial legislative jurisdiction of Congress, it also did something of far more consequence than the reader may think. Most Americans in the 1930's and, arguably, fewer now rely upon the government to tell them the truth of the legal and political effects associated with the social security number. Today, the truth is, after the 1970s not even many government workers in the social security offices know the truth. The truth is, the discovery of presumptions in relation to political and legal truth, is purposely left to each man or women.

Next will be shown some political and legal facts associated with the presumed facts regarding how the social security number and account are established. This fact of the established social security account and resulting commercial relations may be viewed as a rebuttable presumption.[34]

The readers' attention is drawn to the Administrative Procedures Act of 1946 found at Title 5 USCA Section 552 et seq.

[34] **rebuttable presumption**, In the law of evidence. A presumption which may be rebutted by evidence. Otherwise called a "disputable" presumption. A species of legal presumption which holds good until disproved. Best, Pres. § 25; 1 Greenl. Ev. § 33; Beck v. Kansas City Public Service Co., Mo.App., 48 S.W.2d 213,215. It shifts burden of proof. Helnew v. Donnan, 52 S.Ct. 358,362,285 U.S. 312, 76 L.Ed 772. And which standing alone will support a finding against contradictory evidence. Leiber v. Rigby, 34 Cal.App2d 582, 94 P.2d 49, 50. *Black's Law*, 4th Edition, page 1432.

rebuttable presumption, An inference drawn from certain facts that establish a prima facia case, which may be overcome by the introduction of contrary evidence. 89. C.J.S. Evidence §§ 131, 135,152-156, 160. *Black's Law*, 8th Edition, page 1224.

These code sections were designed under certain presumptions to enable the functioning of a "New Deal" federal government and related executive agencies, i.e. a corporate federal government by administration. Under what premise is the democracy presumed to be voluntarily accepted as the general theory of government? The authors suggest by the use of presumptions a Republic is eliminated and an experiment in corporate legislative democracy is substituted. In effect, a democratic experiment is substituted for a Republican form as the presumed theory of the government.

As proof of this vital change in circumstances, please reader; pay particular attention to 5 USCA Section 552a §§ (a)(2) and (a)(13). This specific portion of the Administrative Procedures Act of 1946 supra, allows the "appearance" of a condition precedent to exist which supports the presumption the people have in fact voluntarily separated themselves from their Republican government. The effect is to create an "appearance" the people have voluntarily, individually, but en mass collectively politically created and accepted a legislative democracy, but with a severe sting attached. This is The Political Presumption made by an "appearance" of self determination, i.e. to be treated as a federal U.S. citizen. This rebuttable presumption of a voluntary "acceptance" of a legislative democracy in the person of a federal U.S. citizen operates as a condition precedent. This federal U.S. citizen is subject to the territorial legislative jurisdiction of Congress. What follows is an explanation of how this presumption appears.

The portion of the Administrative Procedures Act, 5 USCA Section 552a §§ (a)(2) and (a)(13) supra, combined with the Social Security Act and the person's use of the account and social security number create the "appearance" of political and legal relations to the corporate federal United States. That person animated an application for SSA and therein presumably intended to voluntarily grant exclusive legislative control over his person by the federal government i.e. Congress. Of course, all this is in the context of a political experiment in legislative democracy principally operated by administration. Today, administrative operation of the United States in the capacity of a federal corporation is the entity with which the U.S. citizen has contracted political and legal relations. The political capacity of a U.S. citizen is a contracted political capacity as viewed from the political capacity of a Citizen of the Several States of

America. The reader's Constitutionally protected and unlimited "right to contract" has been deceptively used with prejudice against the reader.

Take note, for most persons, the "appearance" of a fact, the SSA account and number and the "appearance" of the associated fact of the presumed intent to grant the federal government exclusive control over the applicant's person, exists. The fact of the use of the Social Security account and number leads to a fair inference the person intends to participate in the legislative democracy with the attached severe sting of federal governmental control over the applicant's person. It is also then a fair inference that the person has a duty of allegiance to the political legislative democracy government, namely the federal U.S. government. It is also then a fair inference the person has agreed to accept the jurisdiction of that government and obey its "exclusive" territorial laws. It is also then a further fair inference the person has duties under those same "exclusive" federal laws. How else can the federal government manage, fund and administer the welfare benefit program (state) if the control function mechanism over a person is lacking?

Here, in part, is how this "System" based upon presumptions was accomplished. Remember reader, what follows are, in part, core components of what is actually referred to as the "System", i.e. the corporate, legislatively created, statutory commercial enforcement system.

5 USCA Section 552a, § (a)(2) to wit:

> "the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence."

In the above mentioned title and section the term "individual" means a "citizen of the United States" and "subject to the jurisdiction thereof" as that term is used in the federal Constitution of the United States at the purported Amendment 14, i.e. a federal citizen as distinguished from a Citizen of the Several States. The reader might be thinking, "So what does that have to do with me"? Here likely, is what it has to do with the reader.

At 5 USCA Section 552a, § (a)(13) to wit:

> "The term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits)." [Author's emphasis]

In the above-mentioned title and section "Federal personnel" means: "individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States, (including survivor benefits)." The authors draw the readers attention to "deferred retirement benefits under any retirement program of the Government of the United States" does that sound like Social Security, of course it does. The Social Security Act did a lot more than meets the eye, which the diligent reader will discover in reading other chapters of this book. So, now that the reader has been given notice of the above political and legal relations, by "appearance", (rebuttable presumptions, presumed), only that person can change the presumed political and legal relations through self determination. Only that person can change the "appearance" of presumed legal relations with the federal government of the United States. Notice, the above code section did not say Government of the United States of America. Of course, as a U.S. citizen, presumed legal relations with government of the United States would be with the federal government. The reader is well aware that Congress, under constitutional authority, does have jurisdiction over its persons, places and territories.

The federal government nexus between "individual" means "citizen of the United States", 5 USCA § 552a (a)(2) and 5 USCA § 552a (a)(13) means "Federal personnel", "individuals… entitled…" has been examined. Additionally, at other locations within Title 5 other federal nexus' are shown, to wit: Title 5 "Government Organization and Employees" at Section 101, Persons Required to File, (f) the officers and employees referred to in subsections (a), (d), and (c) are (1) the President, (2) Vice-President. Please note the President and Vice-President are both officers and employees of the answer given in the title of the act " Government Organization and Employees." The question is how are these "officers" related to the United States, a federal corporation? The answer is they are

"employees." As the reader has noted from 5 USCA § 552a (a)(13) supra, the term "Federal personnel" means officers and employees of the Government of the United States… and individuals." So here is an explanation of a path and nexus, likely a path by which the reader has taken on, as an individual, the capacity of a "Federal personnel."

How may the reader be a Federal employee? At 8 CFR Chapter 1, section 214.2 (using the 1-1-92 edition) at (F) "United States employer means": (1) a person, firm, corporation, contractor, or other association, or organization in the United States which suffers or permits a person to work within the United States; (2) which has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and (3) which has an Internal Revenue Service Tax Identification Number. Generally, the IRS Tax Identification number is the Employer Identification number (EIN).

The EIN is only territorial and in relation to the United States, a federal corporation. The United States employer with an EIN may have employees that are "federal employees" in respect to 5 USCA § 552a (a)(13). For such class of Federal "Employees", a potential "Employer" is required to have a Federal EIN with which to transact federal "Employment" with federal "Employees" via the federal Employee's SSN in respect to 5 USCA § 552a (a)(13).

The person, with SSN, who is self employed is treated as both a federal "Employer" and federal "Employee."

The Federal "Employee" in respect to 5 USCA § 552a (a)(13) is required to make application for "Employment" via a "W-2" which is presented to the federal employer as defined at section 214.2 (F) (1)(2)(3). This W-2 form establishes, in part, a legal basis for the federal "Employer", federal "Employee" "Employment" transaction. All such transactions are deemed territorial to the United States. All persons, President, or common laborer, as noted above under the non-positive law of Title 5 voluntarily make application and place themselves as "Employees" under federal territorial jurisdiction. The process is by the explicit act of placing signature on the various forms noted with respect to the noted relevant applications. For example, within the application to run for elective office, in relation to Title 5, the applicant is required to submit an

SSN and territorially agree to territorial U.S. employment. The federal citizen political presumption is accepted by the application.

Self determination is defined as; first, the word "self" needs no elaborate definition, in this case it could be the reader. Second, the word "determination" means; "to settle or decide by choice of alternatives or possibilities." *Blacks Law* 6th Edition, page 450. [Author's emphasis] In *Blacks Law*, 8th Edition, the word "determination" is not used in the same context as the sixth. Please see the following chapter and discussion concerning the Foreign Sovereign Immunities Act for an explanation as to the use of the legal term "determination" in today's legal context.

In recognition of the above, please note; in Castro v. U.S., 540 U.S. 375, 124 S.Ct. 786, (2003), it was held that:

> "Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief. Re-characterization is unlike "liberal construction," in that it requires a court deliberately to override the pro se[35] litigant's choice of procedural vehicle for his claim. It is thus a paternalistic judicial exception to the principle of party self determination, born of the belief that the "parties know better" assumption does not hold true for pro se prisoner litigants. I am frankly not enamored of any departure from our traditional adversarial principles. It is not the job of a federal court to create a "better correspondence" between the substance of a claim and its underlying procedural basis. But if departure from traditional adversarial principles is to be allowed, it should certainly not occur in any situation where there is a risk that the patronized litigant will be harmed rather than assisted by the court's intervention. It is not just a matter of whether the litigant is more likely, or even much more likely, to be helped rather than harmed. The overriding rule of judicial intervention must be "first, do no harm." The injustice caused by letting the litigants own mistake lie is regrettable, but incomparably less than the injustice of producing prejudice through the court's intervention." [Author's emphasis]

[35] **pro se**, One who represents oneself in a court proceeding without the assistance of a lawyer. *Black Law*, 8th Edition, page 1258

In other words, if the reader made a self determination not to be a "citizen of the United States" (purported Amendment 14) and self determined not to contract into the status of a U.S. citizen and further made the claim, properly and timely, in the "courts of today" for jurisdictional purposes, a "controversy" would be possible. The party (respondent) better be able to back up the claim by facts. "Where is the evidence of the facts"? The court may ask in a long round about way, which may confuse the person making the claim. For example, please re-examine the ruling in US v. Slater, 545 F.Supp. 179 (1982). Slater is discussed in more detail later in this chapter. From reading the case it appears Slater thought he knew his status and capacity. It also appears Slater had no method of presenting evidence and proof of self determination.

Evidence on citizenship status (the fact) involves a political question and must be self determined The courts cannot hear political questions. Only the reader can make a political choice and therefore create a fact of self determination of citizenship status. The courts have little choice but to accept as a fact a proper claim of "Citizenship" status. Under the Rules of Evidence, Rule 902(4) indicates a procedure in respect to citizenship status. This citizenship status as a fact must be timely offered for evidence. This fact may be offered in rebuttal to presumptions that may not all be contained within the Social Security question.

Consider the "appearance" by an applicant to have made "an election", by signing an SS5 application, to be treated as a "US citizen" and receive benefits. In that context, consider the following holding in, Bernal v. Fainter, 467 U.S. 216, 104 S.Ct. 2312, 81 L.Ed.2d 175 (1984):

> "Rationale behind the political function exception to strict judicial scrutiny on equal protection challenge to laws that discriminate on basis of alienage is that within broad boundaries a state may establish its own form of government and limit the right to govern to those who are full-fledged members of the political community, and some public positions are so closely bound up with formulation and implementation of self-government that the State is permitted

to exclude from those positions persons outside the political community, i.e., persons who have not become part of the process of democratic self-determination." U.S.C.A. Const. Amendment 14. [Author's emphasis]

As the reader may conclude from cases previously mentioned, if the reader does not elect to be involved in the U.S. political community, then he or she cannot expect to derive a benefit there from. If a person claims to be outside the U.S. political community, but accepts benefits in relation there to, such as social security, "residence" or a drivers' license, he or she is presumed by such acceptance and resulting conduct to be a part of and owe permanent allegiance to the U.S. community. That person may be both an applicant and a voter in respect to the "political community."

The courts of that "political community" state may lack jurisdiction in any case where self determination of "Citizenship" status and the admissible evidence of that political choice as a fact are properly before the court. The reason is that particular claims of which the court has subject matter jurisdiction are bound up in the agreed or contractual legal relations of the parties. If there is no presumption of U.S. community political relations, then an inference of the existence of legal relations may not be possible. In fact, there may not exist under these circumstances a duty for which a claim may be properly before the court, i.e. as "failure to state a claim" or as failure of "the institution of the prosecution." However, if a person claims "state Citizenship", but in fact, accepts the benefits of a federal territorial government, (legislative democracy, U.S. community), that person's claimed citizenship is contrary to prior demonstrated legal relations.

As the reader has observed, in this country, a "state Citizen" may not be a federal U.S. citizen and may not be generally subject to the territorial jurisdiction of Congress. If the reader presents as a fact self determination of his or her "state Citizenship", and a denial of political and legal relations to the federal democracy, under the rules of evidence, the courts have little say otherwise. However, a real question is involved regarding any conduct in relation to these activities, as to what is the "Will" of the person? Does the person's alleged "Will" comport with the facts of the observable conduct? Is that person's conduct reflective of that person's will? The facts of

that person's actual conduct may become evidence the court will consider. This is also known as the "center-of-gravity" doctrine. [36]

The choices and possibilities of citizenship are; (1) A "Citizen", in the geographical and political sense, being a "Citizen" of one of the Several States of the American Union, for example properly as Texas, Michigan, New York, etc., or; (2) a "citizen" of the United States, a federal citizen, and recognized as such by what appears to be a political status as a citizen of the incorporated states.

Once a person has made a self determination or allows a presumption to exist as to his which "citizen" or "Citizen" he or she "wills" to be, that self determined status is a political question. Once a person has made the "appearance" by application (agreement, contract), of a choice of federal "citizenship" in relation to Social Security and the Administrative Procedures Act supra, that person is treated as a federal U.S. citizen. Permanent allegiance and duties with respect to that territorial federal legislative jurisdiction is enforced. This jurisdiction is under the authority of Congress at Article I, Section 8 and Article 4, Section 2, paragraph 2. Later, if the person makes an alternative self determination that is contrary to the political self determination previously described in number 2 above, i.e. U.S. citizen, but desires to be treated within the first definition, then both political and legal relations need to be severed with the Executive Department of the United States. In addition, similar political and legal relations also need to be severed with respect to the state in which the "appearance" of the second defined US citizenship above appears to exist. Questions in relation to the procedure to accomplish the political and legal recognition of this alternative self determination will be discussed later.

A Political question cannot be heard in the courts as some form of declaratory judgment or other form of complaint. The court simply will not hear it or will determine the nature of the case on a case-by-case basis. It was held in" Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, that; "A complaint under Federal Declaratory Judgment Act for a decree declaring Illinois statutes apportioning the State of Illinois into congressional districts invalid in that such

[36]**center-of-gravity doctrine**, *Conflict of laws*. The rule that, in choice-of-law questions, the law of the jurisdiction with the most significant relationship to the transaction or event applies. *Black's Law*, 8th Edition, page 237.

districts lacked compactness of territory and approximate equality of population, was dismissed for want of equity in that the issue was of a peculiarly political nature and therefore was not meant for determination."

And Further in, Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, that:

> "In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." "We have said that 'In determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations.' Coleman v. Miller, 307 U.S. 433, 454--455, 59 S.Ct. 972, 982, 83 L.Ed. 1385. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the 'political question' label to obscure the need for "case-by-case inquiry." Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case." [Author's emphasis]

In the above case, and within the emphasis indicated by underlined text, the authors demonstrate that the Political Question will be determined on a case-by-case basis. If it is determined that a claim under court consideration is political in nature, there would be a separation of powers problem between the court and the political

body. To deal with a separation of powers problem, if the question is properly before the court and if the question is found to be one of a political nature, the courts will refrain from hearing the case. It therefore is incumbent upon any person "willing" to change the "appearance" (rebuttable presumption) of federal U.S. citizenship to remove the possibility of a court's presumption of a non-justiciable political question. In other words, to prevent a presumption of federal citizenship before a court, a timely denial is required. This is accomplished by a timely presentment of admissible evidence of facts. One might ask, whose duty is it to provide the evidence? That depends on the presumption a party is "willing" to have before the court. Likely a duty will fall on the respondent. Will the question of status be self determined by a person directly or will the government use a presumption of status? The answer to this question is determined by the conduct of the person. The operative definition of conduct is, "those things done and those things not done."

Citizenship is of a political nature. One's citizenship is between the person making a claim of citizenship, no matter what that citizenship, and the political body in which that person may be recognized as a citizen. If a person seeks to sever the political and legal relations in relation to a citizenship, he or she can accomplish that end. That person has a burden to establish as a legal fact the act of self determination.

A "Citizenship" in relation to one of the Several States is invested with more self responsibility than a federal U.S. citizen who is subject to the territorial legislative jurisdiction of the United States Congress. Among those responsibilities is being able, by admissible fact, to show a state Citizenship as was not shown in the case below. The question is open, will a person timely exhibit the facts of status, or will a government agent presume status? In the case below, in relation to the presumption of federal citizenship, the government attorneys prevailed based upon the failure of Mr. Slater to properly rebut the legal presumptions.

In U.S. v. Slater, 545 F.Supp. 179, William M. Slater argued:

> "I am not a person described as a "TAXPAYER" and defined in the administrative section 7701(a)(14) of Title 26 CFR-Internal Revenue Code of 1954-68A Stats at Large; or as that section was first written by the 65th Congress in 1919 in 40

Stat 1057 in the Revenue Act of 1916 to wit: "The term 'taxpayer' includes any person, trust or estate subject to a tax imposed by this Act." I am not subject to any tax imposed by this Act, because I do not have any governmental granted benefit, franchise, license, or special commercial privilege that renders me "subject to a tax imposed by this Act." The US IRS does not have primary jurisdiction over me in personam or in rem...."

The Court said in Slater supra:

"Slater attempts to distinguish, for purposes of establishing tax liability, between an "unencumbered, unfranchised, freeborn, living individual 'person' with unalienable rights," such as himself, and an "enfranchised and licensed organization 'person' (such as a corporation) which owes its very existence to the state and could not exist without the state's allowance." The defendant concludes, "THE GOVERNMENT HAS JURISDICTION OVER LICENSED, FRANCHISED 'PERSONS' BUT THEY DO NOT HAVE JURISDICTION OVER A FREE, LIVING, ME 'PERSON'." Defendant's Answering Brief at 2-3.

The court concluded that:

"The defendant's argument is without merit. Unless the defendant can establish that he is not a citizen of the United States, the IRS possesses authority to attempt to determine his federal tax liability." [Author's emphasis]

The court in Slater supra, is bluntly pointing out, as viewed by the court, a real duty upon Slater. That duty is that unless a certain person can prove that he or she is not a contracted U.S. citizen, then he or she is subject to the laws of the United States Congress, including the federal "extra territorial" tax laws. Again, the question is asked, who will "establish"[37] the facts?

By the time of trial the court had notice of a duty, self imposed within Slater's SS application, to prove a negative fact, that

[37]**establish**, 1.To settle, make or fix firmly; to enact permanently. 2. To make or form; to bring about or into existence. 3. To prove; to convince. *Black Law*, 8th Edition, page 586

of not being a federal U.S. citizen. How does a person prove a negative fact? A person must create admissible evidence of a denial of that negative fact. While at the same time, that person should show a lack of admissible proof of a counter denial of that fact. Alternatively stated, a person must create admissible proof of a denial of that negative fact (not a U.S. citizen) without there being present a showing of an admissible fact of a counter denial (being a U.S. citizen). These ideas will receive additional discussion later.

The cases mentioned above in relation to self determination and the fact of a person's citizenship were decided on legal relations. The cases appear to be decided on legal issues, however, by now the reader should understand that there were answers to political questions presumed by the prosecution and the court and un-rebutted by the defendant. The reader is advised of the duty of diligent self education in this area of political and legal relations, and the law thereof, before making any self determination on "Citizenship." Certainly, self education is a necessity for a person claiming as a fact state Citizenship, before any attempt is made to sever political and legal relations. Severing the appearance of "facts" associated with the political and legal relations will be discussed in the following chapters. The establishment of admissible legal facts, in regards to self determination, will also be discussed.

Chapter 12

Some thoughts on agreements and contracts in relation to the U.S. community

If the people, singularly as persons, would not make agreements or contracts with any other person or entity outside the original political boundaries of Their Several States, that is to say, stay outside a federal territorial place, then federal law would have small application. This statement assumes that within the "Several States" the public law of the States is foreign both as to venue[38] and jurisdiction in relation to the United States, a federal municipal corporation. Here the term "Several States" refers, for example, to New Mexico, California, Georgia, etc.: that is the People, a specific place as a geographic territory and the people's political incorporation within the body politic of the United States of America. In this sense, the "Several States" are the incorporated States, incorporated into the body politic United States of America. The "Several States" are not commercially incorporated entities per say. Under what municipal law might the "Several States" incorporate? Answer: none.

For example, New Mexico people "of America" do State business based upon a contract, their "Constitution of the State of New Mexico." This contract creates an entity as both a body politic and body corporate. This entity, State of New Mexico, does the public's business under public law. State of New Mexico as an incorporated constitutional entity is not within "of America." At some point in time New Mexico was allowed into the Union "of America." New Mexico's acceptance into the union was based upon Congress' view that the offered contract was republican in form as "Constitution of the State of New Mexico." In similar manner, the

[38] **venue**, [Law French "coming"] *Procedure*. 1. The proper or a possible place for a lawsuit to proceed, usu. because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant. 2. The county or other territory over which a trial court has jurisdiction. Cf. JURISDICTION 3. Loosely, the place where a conference or meeting is held. 4. In a pleading, the statement established the place for trial. 5. In an affidavit, the designation of the place where it was made. *Black's Law* 8th Edition, page 1591. [Author's emphasis]

other Several States as California, Georgia etc. conduct their internal relations and create their internal public law.

Because of the above circumstances, in relation to the "Several States of America", territorial federal municipal law would not apply barring some specific conduct. However, as the reader has noted, the people individually but effectively en mass have made territorial agreements and contracts under municipal law with the United States, a federal corporation. The people have gone silent in respect to the appearance of state governments, as these state governments operate in a corporate capacity, via agreements and contracts with the United States as a federal corporation. Thusly, federal territorial municipal law has been significantly integrated into what appears to be the public law of a state. These states are not duly incorporated States, but appear to exist based upon the statutory incorporation of the original State Constitutions. Thus, in these new states there is the loss of legal memory of the free[39] original State Constitutions.

The legal community has aided and abetted the integration of territorial federal municipal law into the states. Thus today, because of the mass of such integrated federal law, the original States, as governmental entities, have been erased from legal memory. The state constitutions have been rewritten with no "Several States" territorial location and/or the states as governmental entities have used, for example "in this state" or "within this state" definitions to mean territorially a federal jurisdiction imposed for what appears to be an original "State" governmental purpose or concern. People unwittingly contract with or in federal jurisdiction when agreements and contracts are created in "this state."

Today, the state governments do not recognize original State Citizens, i.e. Citizens in relation to the "Several States." The question is why? The political answer is the working presumption predominately used by the state government and political subdivisions is that U.S. citizens are resident within the state. Those are the presumed federal persons (U.S. citizens) with whom the States does business; that presumption is controlled by the legal

[39] **free**, Not subject to legal constraint of another. *Black's Law*, 4th Edition, page 791

community. What results from all this is the Composite state concept.[40]

In order to better understand what has occurred, certain legal terms require definition. Why are the legal definitions of words so very important? In part, because the concepts of "appearance of reality for reality itself", and the Composite state, as political and legal trickery, are made operative through legal words. In short, legal words are used as a vehicle to gain political and legal control. The deception is manifest in the changed meaning, over time, of the legal words. In this situation, what Congress has created as federal municipal law for the Untied States, a federal corporation, may not be the moral conscience of Citizens "of America." The authors argue legal words are used as a devise to overcome the People's real political will and moral conscience. The following word study may be of benefit to the reader.

What is the meaning of "public" (capacity) and "private" (capacity)? From "Webster's Dictionary of the English Language" 1828, Webster describes "public" as "n. pertaining to a nation, state or community; extending to a whole people; as a public law, which binds the people of a nation or a state, as opposed to a private statute or resolve, which respects an individual or a corporation only." Webster describes "private" as "properly, separate; unconnected with others; hence, peculiar to one's self; belonging to or concerning an individual only; as a man's private opinion, business or concerns; private property."

[40] The authors recognize that for the reader to maintain political control in respect to today's Composite state circumstances, the reader must be able to assert control in all negotiations. Such negotiations must be preparatory to agreements and contracts and include capacity, choice of law form, time, place, space and plane. To be politically effective such negotiations must be undertaken with a high state of knowledge and learning by the parties seeking political control. The authors argue, today, the legal community is the actual party in control, in relation to the level of political and legal knowledge of other parties. The legal community's pre-selected "democratic" political choice is the actual controlling condition precedent. The authors argue this political control is unwittingly silently accepted by many people who, given alternative political and legal knowledge and understanding, would never accept the legal community's political orthodoxy. Failing negotiations, the democratic political presumption is certain to operate.

Black's Law Dictionary, 5th Edition, at page 1076 (1979), defines "private" as "effecting or belonging to private individuals, as distinct from the public generally. Not official; not clothed with office." People v. Powell, 280 Mich. 699, 274 N.W. 372, 373. *Black's Law Dictionary*, 5th Edition, page 1104, defines "public" as:

> "n. the whole body politic or the aggregate of the citizens of a state, nation, or municipality. The inhabitants of a state, county, or community. In one sense, everybody, and accordingly the body of the people at large; the community at large, without reference to the geographical limit of any corporation like a city, town, or county; the people."

Pay particular attention to the words "without reference to the geographical limits of any corporation...."

Black's Law, 8th Edition, page 1264, (2004), defines "public" as:

> "n., 1., the people of a nation or community as a whole, public adj. 1 relating or belonging to an entire community, state, or nation." Also defined is "private", at page 1233, as "adj., relating or belonging to an individual, as opposed to the public or government."

For the term "private" used as a noun, no legal definition appears in the 7th or 8th additions of *Black's Law Dictionary*.

Notice in the above quotation for "public" out of the 8th Edition, there is no comma after the word "nation." What if the people, as a nation, had been presumed to establish a new political community under a "New Deal" as an "experiment in democracy," and just suppose as a part of that experiment the President and the Legislature, as presumptive agents of the People, had destroyed the national money system. This destruction began in 1933 and has destroyed the lawful A.D. 1900 precious metal standard of value (gold and silver). And, by the end of 1964, silver coinage based upon a lawful standard of value, had effectively been demonetized. If law and the common law, as general law, would disappear along with the loss of the National Money System, would these facts require changes in "government"? Would not changed circumstances require changes in the legal definitions? Would it be possible then

that a new redefined use of the term "nation" might appear?[41] As the reader has noted, could these changed circumstances lead to the judiciary's particular use of the term "community." West Coast Hotel Co. v. Parrish, supra.

Notice the following points: (1) In *Black's Law*, 8th Edition, "private" is rendered as "opposed" to the public or government. In *Black's Law*, 5th Edition, "private" is rendered as, not official, not clothed with office. A clear connotation is that by the time of the 7th and 8th Editions, the term "private" is used as an adjective and is not used as meaning separated from the "public" as "not official, not clothed with office", Rather, "private" in 1999 is now rendered as "opposed" to, meaning adverse to the public and government. Could it be that the operative presumption is that most persons are "U.S. Federal personnel", (see chapter 11). This difference in meaning, over time, of the rendered term "private" is such that the rendered term "private" as a noun is not defined in *Blacks Law* 7th and 8th Editions beginning in 1999. (2) No common law cite is used in *Black's Law*, 7th or 8th Editions, for the term "private" when used as an adjective.

In consideration of these legal terms, why do the legal meanings change so radically, or disappear, over such a short span of time, specifically 1990 through 1999? What is it that the editor's of *Black's Law Dictionary* take notice? Why not leave the explanation to Black's editors? Within the 7th Edition, 1999, at the term "common law", n., page 270, definitions (2) and (3) hold an explanation.

> (2)"The body of law based on the English legal system, as distinct from a civil-law system < all states except Louisiana have the common law as their legal system>."
>
> (3)"General law common to the country as a whole, as opposed to special law that has only local application < the issue is whether the common law trumps our jurisdiction's local rules > also termed jus commune."

[41] Questions of money and the national money system are not within the scope of the present book. A new book on money and the money system, premised upon this current book will appear in the near future.

> "In its historical origin the term common law (jus commune) was identical in meaning with the term general law... The jus commune was the general law of the land - the lex terrae - as opposed to jus speciale. By a process of historical development, however, the common law has now become, not the entire general law, but only the residue of that law after deducting equity and statute law. It is no longer possible, therefore, to use the expression common law and general law as synonymous." John Salmond, Jurisprudence 97 (Glanville L. Williams, ed. 10th Ed. 1947).

An additional explanation to the change in the recognized law form (in legal memory) is included within the second quotation that follows also found at page 270 of *Black's Law*, 7th Edition.

> "It is necessary to dispose briefly of a problem of nomenclature. European equivalence of the expression 'common law' have been used, especially in Germany, to describe an emergent system of national law, based on the Roman model, that came into existence before national parliaments undertook to enact laws for the nation as a whole. In this use, 'the common law' (gemeines Recht) was used to distinguish the commonly shared tradition of Roman law from local statutes and customs." Lon L. Fuller, Anatomy of the Law 133 (1968)."

The question of what is law is beyond the scope of this present book. However, there are two ideas in the above points to keep in mind.

1. The English legal system of common law should be seen as very different from civil law. Common law citations are quoted in *Black's Law Dictionary*, Editions 1 through 6, from the year A.D. 1891 operative through 1999. By the 7th Edition, 1999, it must be presumed, that the editors believe that the general body of law is no longer composed mainly of the common law. There are almost no common law case cites used beginning with the 7th Edition.
2. It is possible that a new "general law common to the country as a whole" had appeared and is recognized.

> This "general law common" should be seen as "opposed" to special law that only has local application. This "general law common" is not now "common law", but rather it is mostly composed of equity and statutory law. Why? Mainly because the National Money System, with the removal of silver species coin, had been effectively collapsed by January 1, 1965. Further, that the "U.S. community" had been transformed into the "Composite state."

The next logical questions are first, what is "special law" and secondly, what is meant by "local application"? Again in the 7th Edition of *Black's Law* at page 890, "special law" is defined as:

> "a law that pertains to and affects a particular case, person, place or thing as opposed to the general public. Also termed special act, private law."

And what is "local law"? *Black's Law*, 7th Edition, at page 950 defines "local law" as:

(1) "a statute that relates to or operates in a particular locality rather than in the entire state,"

(2) "a statute that applies to a particular person or things rather than an entire class of persons or things,"

(3) "the law of a particular jurisdiction, as opposed to the law of a foreign state-also termed internal law."

What may be said in conclusion on the above two quotes from John Salmond and Lon L. Fuller.

(1) By 1947, the common law cannot be said to be the general law, for equity and statute law dominate (remember the "Switch in Time" cases of 1937, including several legal questions of equity and statute law).

(2) Even if the Roman civil law, or "common law" has dominated generally for a nation, this law should be distinguished from local law and also may be dissimilar from statutes and customs.

Upon the points above, today, generally equity and statute law dominate. American common law is not generally operative. Today, there is "general law common" applied to the country as a whole. The "general law common" should be understood to be accepted in relation to the Composite state.

What does this mean? The reader should consider the capacity or role of both parties, and the legal place of the transaction. A question might be asked: What law will apply to the legal transaction? The failure to understand the law actually applied to any legal transaction should be of serious concern.

For example: there is no "general law common" that requires any person born in one of the Several States of the Union to fill out and apply for a Social Security account number. (For this time, put aside the question of what the government has done in an attempt to force acceptance of the SSN.) In addition, the SS application is a request for a retirement benefit voted on a yearly basis by Congress. The SS application within the non-positive law of Title 8 is also a request to open an income tax account under the management of the Treasury. This process is an example of a law (the non-positive law of Title 26, individual income tax) that is not "general law common", but applies upon those persons who make application and invoke federal extra territorial special law, i.e. non-positive law. This process of invoking not "general law common", but instead invoking special local law is generally by a signature. In this case, the jurisdiction of special local law is attached in personam. This process is by presumed voluntary self determination. The effect of this process of self determination is that the applicant will appear to politically accept a U.S. citizen status and receive a federal retirement benefit administered, in part, by the contracted states. A condition precedent is of course the payment of the self imposed income and other taxes. The administrative agency charged with the duty to collect this tax is the Treasury. The IRS, not an agency[42], is

[42] Note: The source for the use of the term "bureau" is 26 CFR section 601.101(a) which designates Internal Revenue Service as a bureau of the Department of the Treasury. The Department of the Treasury is the agency, the Internal Revenue Service is a bureau within Treasury. Title 5, U.S.C.A. section 105 defines the term Executive agency. The reader may wish to consider Hancock vs. Egger, 848 Fd. 2nd 87 (6th circuit 1988).

simply a bureau of the Treasury. In this example, federal extra territorial special law is self applied.

This above example includes federal special local law, not general law common for the whole country; that is, not law applied generally to all the people in any of the Composite states. This federal local law is "special" for this law operates upon persons, in personam, wherever they live. Again, for a definition of "special law" look at *Black's Law*, 8th Edition, page 900 (2004) "a law that pertains to and affects a particular case, person, place, or thing, as opposed to the general public." In 2004, the general public must be understood in relation to only the Composite state context.

In the example of Social Security, a person's signature triggers "special" federal law. Other seriousness consequences of the signatory act maybe enumerated as follows.

(1) First, there now exists as a fact the appearance of an election to be treated politically as a "U.S. citizen."

(2) There appears a person, as an "individual", in their private capacity, not politically or legally in relation to any of the Several States, or protected by the public laws of any of the several States. By possession of an SS number and use of the account, this also triggers an income taxpayer account number (and other taxes).

(3) There appears to be a person who may be entitled to federal retirement and other benefits.

(4) A person, who has by signature, written federal extra territorial special law and a host of additional federal territorial law into the Social Security agreement.

(5) In that person of the SS signatory, there appears to be a granted waiver of Constitutional "Vested Rights", replaced by a voluntary acceptance of federal civil rights, duties, and the acceptance of public policy.

As to point number 1 above, the presumptive waiver of exclusive citizenship in one of the Several States of America may be the most serious political act undertaken by one of the People. By accepting the appearance of U.S. citizenship at line 3, box A of the Social Security Application, (or any other placement on the application), a person is deemed to have pledged permanent

allegiance to the United States, a federal corporation. Consider the following: A "federal citizen" is defined in *Black's Law*, 8th Edition, at page 261, as " a citizen of the United States." This federal citizen is distinguished from a "natural-born citizen, a person born within the jurisdiction of a national government." *Black's Law*, 8th Edition, page 261.

Notice that citizenship is distinguished as "federal" versus national. Please consider the following from *Black's Law*, 8th Edition, page 537, "dual citizenship, see definition 2, 'the status of a person who is a citizen of both the United States and the person's country of residence.'" In plain English, if by birth, a person who is born in one of the Several States of the American Union, and such a a Citizen "of America" were to enter into a political and legal agreement to be treated as a U.S. citizen, then that person has made the appearance to enter, by an agreement or contract, into a dual citizenship. In other words, that Citizen has elected to be treated as a U.S. citizen, federally, in respect to all federal contracting.

At this time, the authors put aside the question of whether a presumption of federal citizenship exists at birth. The states also make territorial federal commercial agreements and contracts outside of Public Law when operating "in this state."

The reader's attention is directed to *Black's Law*, 8th Edition, page 1050, and the term "nation." When used as a noun:

(1) "A large group of people having a common origin, language, and tradition and usually constituting a political entity." [Author's emphasis]

Pay particular attention to the second definition:

(2). "A community of people inhabiting a defined territory and organized under an independent government." [Author's emphasis]

Reader, please note, both definitions allow for a Composite state definition in relation to the terms "nation" or "national."

Now, let us examine the term "national", as a noun, again page 1050 supra.

(1) "A member of a nation."

Pay particular attention to number 2,

(2) "A person owing permanent allegiance to and under the protection of a state, 8 U.S.C.A., § 1101(a)(21)."

Reader, do not be misled. Title 8 U.S.C.A. is not general law applicable to all citizens in the Several States of America. Title 8 U.S.C.A. is not positive law but special law only for persons self included within, for example, the Immigration and Naturalization Act of December 1952 (INS). See, *Black's Law*, 8th Edition, page 765. (8 U.S.C.A., § 1101-1537). The reader may make the appearance of an election[43] to self naturalize under this special law by signature on an SS5 form. The definition of "citizen" within Title 8 U.S.C.A. section 1101 (a)(22) is a "citizen of the United States" based upon those particular words of the purported Amendment 14. The reader may wish to break the presumption of having made an election to self naturalize with the resultant loss of rights and the increase of duties, etc.

Once again, please do not be misled. A "state" is not necessarily a Nation. See *Black's Law*, 8th Edition, page 1443. The use of the term "state" in the above definition of "national" means in a territorial sense (federal), and "state" also means an institutional system of relations (U.S. community). The definition of "state" within the meaning of the INS Act, sections 1101-1157, defines who is a citizen of that "state" and includes the exactly quoted words of the purported Amendment 14, section one, citizenship definition. This special law statutory definition is used in Title 8 to define a "federal citizen." Again see 8 U.S.C.A. § 1101(a)(22). This is not "general law common", but as to Citizens "of America" must be invoked under private agreement or contract. This transaction is presumed to be a voluntary act. (See chapter 3, Helvering, Commissioner of Internal Revenue supra.)

[43] **election**, n. 1. The exercise of a choice; esp., the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies… 2. The doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument and retaining some property to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims, so that the party is entitled to enjoy only one… *Black's Law*, 8 the Edition, page 557

Again, explicitly, what is a "U.S. citizen"? See, *Black's Law*, 8th Edition, page 1577, "U.S. citizen": "see, national of the United States under national", at page 1050 (inside column) "national of the United States, a citizen of the United States, or a non-citizen, who owes permanent allegiance to the United States." Citing 8 U.S.C.A., section 1101(a)(22). "Also, termed U.S. national, U.S. citizen." [Author's emphasis]

What is a "U.S. citizen"? A "citizen of the United States" or a U.S. national who owes permanent allegiance to the United States, a federal corporation. Alternatively stated, a person as a citizen, who owes permanent allegiance to the United States, a federal corporation.

What does "allegiance" mean? *Black's Law*, 8th Edition, at page 82 reads in part as follows:

> Allegiance, "1. A citizen's obligation of fidelity and obedience to the government or sovereign in return for the benefits of the protection of the state..."

What "state" is under discussion? Answer: a federal state in the form of a Composite state.

In summary, when a person signs an SS5 application, in a political sense, this person appears to join the U.S. community, appears to accept "Switch in Time" administrative public policy and appears to accept the duty of allegiance to the United States, a federal corporation. If that person is a natural born Citizen "of America", that person has the appearance of being a dual citizen. But viewed in the Composite state, that person is treated only as a federal citizen.

Previously, the authors, within Chapter 11 have discussed a statutory term: "individual." The clear connotation is that if a person makes a Social Security agreement for retirement benefits, that person elects to be treated in the status of a "Federal personnel", also previously defined within Chapter 11.

Any person who signs an SS Application has made the appearance to submit his person to extra territorial special law as described in Title 5, Title 8, Title 26 and Title 42. (But not limited

to those Titles.) Some effects of submission to this extra territorial special law jurisdiction are examined in the following paragraphs.

The reader has noted in Chapter Nine, "no white person, born within the limits of the United States and subject to their jurisdiction, or born without those limits and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the federal constitution (the Thirteenth, Fourteenth and Fifteenth). The purpose of the Fourteenth Amendment of the Constitution of the United States was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States who could not be brought within the operation of the naturalization laws because native born, and whose birth, though native, had at the same time left them without the status of citizenship." Valkenburg v. Brown supra. Differences in citizenship, as is now apparent, today lead to radically different outcomes.

As to legal effects in relation to the rights and duties of citizenship, the authors remind the reader of the following, "…other privileges and immunities of the citizens of the United States, and other privileges and immunities of the Citizen of the state, and what they respectively are, we will presently consider, but we wish to state here, that it is only the former which is placed by this clause, under the protection of the Fourteenth Article of the federal constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment." Slaughter-House cases supra. There are different sets of possible legal effects associated with different classes of privileges and immunities.

A question of the difference in citizenship class rights is clearly noticed by the following words from United States v. Susan B. Anthony supra, "…The rights of the Citizens of the State, as such, are not under consideration in the Fourteenth Amendment and are fully guaranteed by other provisions." Would it be fair to conclude different legal effects are rooted in different classes of rights? The authors believe they have demonstrated that to be the case.

Reader, please note that in a constitutional sense, there are two distinct classes of rights, privileges and immunities. There exists a class for a Citizen of one of the "Several States" of the Union "of America", and there exists a separate distinct class for

federal citizens, i.e. "U.S. citizens" who owe permanent allegiance to the United States, a federal corporation.

The first class of rights, privileges and immunities are Constitutional in the sense that they are written into the Constitution and are protected and secured by the Constitution. Proper public officers, if the existed, have a duty to protect and upon a claim, enforce these inherent rights, privileges, immunities and "Vested Rights." The Congress cannot legislate away, or otherwise impinge the Citizen's possession and use of such rights, privileges and immunities. These "Vested Rights" can be waived by signature. This is the clear connotation with respect to "Citizen" in which the authors use the term "waiver."

As for the other class of rights and duties for a federal citizen, these maybe accepted by the election made on the SS5 at line 3, box A, "U.S. citizen." As to what are the rights and duties for this federal class, it is up to Congress to decide under federal authority based upon "and subject to the jurisdiction thereof." For this federal class of persons, whatever rights or duties may be available, in relation to the several States, is premised upon federal equal protection. Today, equal protection is considered in relation to the Composite state.

The purported Amendment Fourteen gives Congress the constitutional authority to enforce against the States as "No state shall make or enforce any law which shall abridge." Notice, these two points:

1. U.S. citizens do not enjoy Constitutional secured rights, privileges and immunities written into the Constitution of the United States of America, as noted in the previously cited cases. These federal citizens rights, etc. are supported by the federal constitution of the United States.
2. Congress is not Constitutionally limited by the purported Amendment Fourteen as to what may be the federal rights, privileges and immunities of its federal citizens. In a constitutional sense, it is up to Congress to legislate the nature of federal rights, privileges and immunities. The Civil Rights Act of

1866 is just such an example. Said Act of 1866 for federal citizens forms the basis in part of not "general law common", but the current non-positive special law, Title 42, section 1983 actions.

Users beware. The reader will remember that Title 42 of the United States Code contains the statutory authority for the Social Security Act, which is not within the "general law common."

For the first class of Citizens "of America", it may be said that these Citizens have Constitutional "Vested Rights." For the other class, as federal citizens, those citizens do not enjoy the same class of rights, privileges and immunities. That class of federal citizens has a federal guarantee against deprivation of rights, privileges and immunities applied to the several incorporated States. The basic source of these federal rights, privileges and immunities is the purported Amendment 14, Section 1. This federal class of citizens, in addition, has the federal guarantee against State discrimination in the application of State rights, privileges and immunities. These federal citizens' class of rights may also be "vested." However, Congress controls this class of rights. Upon the above background discussion of political and legal relations in relation to class of rights, the reader's attention is directed to *Black's Law Dictionary* as follows.

What are "vested rights"? The reader will find in *Black's Law*, 5th Edition, at page 1402 (1979):

> "vested rights, in constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the Act of any other private person, and which is a right and equitable that the government should recognize and protect as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived, otherwise then by the established methods of procedure and for the public welfare."

Note: At the time of the 5th Edition, an American state was still in legal memory.

In *Black's Law*, 7th Edition, at page 1324, or *Black's Law*, 8th Edition, at page 1349 "vested rights" is now defined as:

> "a right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." [Author's emphasis]

In the current legal memory, where no legal memory of the America states is presumed, consent[44] is still required.

Whichever class of citizens are involved, either class of citizens may enjoy rights, privileges and immunities, but may waive the same by the "person's consent." Notice the possessive form of the word "person's" in the above paragraph. The implication is that a person enjoys a right to give or not give the consent to waive vested rights.

Either citizen, as signatory on an SS5 application, may waive constitutional rights, privileges and immunities. As a result, the class of rights, privileges and immunities waived is not the same for both citizenships. Arguably, Citizens "of America" give up a greater bundle of rights, privileges and immunities.

What is a waiver? In *Black's Law*, 5th Edition, page 1417, the reader will find waiver defined as:

> "the intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, or when one dispenses with the performance of something he is entitled to exact ..."…"The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. A doctrine resting upon an equitable principle, which courts of law will recognize. Atlas Life Ins. Co. v. Schrimsher, 179 Okl. 643, 66 p.2d, 944, 948."

This definition is in legal memory in relation to the American state.

[44] **consent**, 1. Agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person; *Black's Law*, 8th Edition, page 323

Waiver is rendered in *Black's Law*, 8th Edition, at page 1611 as:

> "n., 1 The voluntary relinquishment or abandonment express or implied of a legal right or advantage. The party alleged to have waived a right must have had both knowledge of the existing right and the intention of foregoing it."

Even in legal memory in relation to the Composite state there must exist the concept of voluntary conduct.

The effect of waiver in either class of citizens is to make out the appearance (presumption) of the voluntary acceptance of extra territorial special law, private law, for that person in the capacity of the signatory on the SS5 application. However, the full extent of what is waived for the two classes of citizens is a very different matter. And while this matter is generally beyond the scope of this book, the authors believe that the reader should have more than a passing notice of the extent of what is waived.

The key concept is that the capacity of a person may appear to be changed in fact, in terms of political and legal relations by the appearance of a signature on the SS5 form.

What is capacity? *Black's Law*, 5th Edition, at page 188 (1979), defines "capacity" as:

> "Legal qualification (i.e., legal age), competency, power or fitness. Ability to understand the nature and effects of one's acts… The ability of a particular individual or entity to use, or to be brought into, the courts of a forum, citing Johnson v. Helicopter and Airplane Services Corp., D.C.M.D. 404 fed. supp. 726, 729."

Black's Law, 8th Edition, page 220, states: "Capacity, (1) the role in which one performs an act." What does the term "role" mean? In *Black's Law Dictionary*, from 1891, the 1st Edition, until 2004 with the 8th Edition, the editors of Black's do not appear to define the term "role." Nor is the term "role" defined in Webster's dictionary of A.D. 1828. We turn to the definition for "role" found in Webster's *New 20th Century Dictionary of the English Language*, unabridged (1941) page 1475, "Role, n., a part or character represented by an actor; any conspicuous part or function performed

by anyone, as a leading public character." Notice here the term "role" or "public" are not determined in a legal sense.

Today, what conclusions seem reasonable? Given that the common law is not the bulk of the "general law common", people do not usually act in a legal sense directly as humans (except in birth and death). Rather, they act through a role. They play a part; they act out a performance as a "public" (common usage) character. Anyone may be an actor and perform a role. Today, what is a foundational significant accepted condition precedent? Simply, the People in political and legal relations have left their original place in relation to their Several States. They have left the common law and have abandoned a public capacity in relation thereof. Why? Because in today's political and legal relations, the vast majority of such relations are transacted in the "U.S. community." Within this "U.S. community" the "general law common" is present. However, in addition, most people appear to voluntarily invoke as "individuals" extra-territorial special law federally.

Please consider the possibility that what appears to be the general government does not now operate in Public political capacity as per Article I, Section 8, paragraphs 17, 18, "the government of the United States" for that Nation "of America", but rather what appears to be the general government is operating in a domestic capacity-role as a federal corporation. That government uses various names, such as: United States, United States of America, U.S.A., and U.S. Today, domestically, these uses are in relation to the U.S. community. Domestically, the governmental method is to induce a private, non-public transaction. Today, what appear to be "public" transactions with any person or entity are most usually transacted under private international law.

The general government and states seldom act politically or legally in relation to the Several States "of America", but each usually acts privately for their own commercial interests. As such, these unincorporated states induce transactions with "individuals" as "customers."

Today, the several incorporated States seldom act in any political or legal relation in public capacity as originally organized by the People. Rather, the current situation most usually faced by the reader is that the capacity of all people (persons), parties, states

and the general government is by private agreement or contract. The private agreement or contract is legally necessary to create recognition of the unincorporated state actor in whatever capacity. The reader has previously considered the meaning of the terms "private" and "public." Over relatively recent times, from 1990 until today these terms have been radically altered in political and legal meaning to fit the "general law common", special law and private international law necessary for the existence of the Composite state.

To further assist the reader's understanding of the nature of today's domestic, commercial relations or other similar transactions, please consider that political presumptions are intertwined within the usual transaction. Specifically, that the reader's usual commercial and other transactions take place by private agreement or contract within the U.S. Community. Here, an unincorporated state acts politically and legally within the Composite state. As the reader develops a better understanding of the true nature of political and legal relations involved in day-to-day transactions, a better more informed decision should follow. The authors argue that most transactions should be viewed in relation to the "appearance" of a fact and use of the reader's Social Security number.

In the chapter that follows, the affects of private commercial relations in terms of "foreign states" are considered. These "foreign states" are foreign to the Several States "of America." As such these "foreign states" are foreign to America. The reader should gain a better understanding of the effects of territorial private commercial transactions in relation to a person in the capacity of a "foreign state."

Chapter 13

American citizens in relation to "foreign states"

A political choice

In this chapter, the authors undertake a discussion of the Foreign Sovereign Immunity Act, 28 U.S.C. Section 1602-1612, hereinafter FSIA. The reasons the authors select a study of the FSIA are as follows:

(1) Today, the FSIA reflects a general principle of commerce, specifically that when a "foreign state" acts privately for its own benefit within the United States it may be held responsible for certain commercial conduct.

(2) It is necessary for the reader to have a better understanding of what appears as the day-to-day commercial environment. This is particularly so should the reader self determine to change conduct in relation to the Social Security number.

(3) Arguably, the reader would be benefited by the knowledge and understanding the Congress imparts through the FSIA. It is a given that the Congress is very well aware that the Composite state is operated by public policy, i.e., in relation to the U.S. Community.

In *Black's Law*, 8th Edition, page 675, one finds the term "Foreign Sovereign Immunity Act" (FSIA) defined thusly:

> "A federal statute providing individuals with a right of action against foreign governments, under certain circumstances, to the extent the claim arises from the private, as opposed to the public acts of the foreign state." At 28 U.S.C.A. Section 1602-1611 (Author's emphasis).

The editor's of *Black's Law Dictionary* at page 675 supra, quote the following:

> "14 A Charles Allen Wright, et al.," *Federal Practice and Procedure*, Section 3662, at 163-161 (2nd Ed. 1998)", "The

> Foreign Sovereign Immunity Act (FSIA) of 1976 was designed to provide a set of comprehensive regulations governing access to federal and state courts in this country, for plaintiffs asserting claims against foreign states and instrumentalities thereof. The enactment of this legislation responded to the reality that increased contacts between American citizens and companies, on the one hand, and foreign states and entities owned by foreign states, on the other, as well as a constantly expanding range of government activities, had created the need for judicial fora[45] in this country to resolve disputes arising out of these practices."

As the reader has noted, different classes of citizenship are well recognized in the law. In contrast, there is the INS Act (1952) located within the non-positive law of Title 8. This Act allows for naturalization in the role of a federal citizen. State naturalization has ended because the federal government has taken over naturalization and the original States have effectively collapsed. It should be apparent there is an ongoing political attack on the concept of different classes of citizenship.

The authors have discussed transformation of the law by the replacement of the common law with equity or statutory law. The result has been the general law, upon the removal of the common law, has been transformed into the "general law common."

These two factors, changes in citizenship presumptions and transformation of the law have contributed mightily to the formation of the unincorporated Composite state. Given the Composite state circumstances, within current legal memory, the presumption of a single class of federal citizen is intertwined with legal relations. Today, generally both the every day domestic commercial facts and the case law are developed under the "general law common." Within this political and legal situation[46] there is no general presumption that an American Citizen is a party to a legal action.

[45] **fora**, the plural form of forum.

[46] **situation**, 1. Condition: position in reference to circumstances <dangerous situation>. 2. The place where someone or something is occupied; allocation <situation near the border>. *Black's Law*, 8th Edition, page 1421.

Today, generally, America Citizens have almost no relation to current legal memory. In contrast to this fact, please examine the term "American" in *Black's Law*, 4th Edition, page 107:

> "Pertaining to the western hemisphere or in a more restrictive sense to the United States. See Beardsley v. Selectmen of Bridgeport, 53 Conn. 493, 3A. 557, 55 Am. Rep. 152"

Reader please take note of the following:

> "It was assumed in Life Photo Film Corp. v. Bell, 90 Misc. Rep. 469, 154 NYS 763, 764 that the term 'American' included all classes of citizen, native and naturalized, irrespective of where they originally came from."

It was fair to say in 1950 there was a presumption, before the INS Act of 1952, that the term "American" included all classes of citizens, native or naturalized, irrespective of where they originally came from.

Upon the foregoing, if Charles Allen Wright, in respect of federal practice may be believed, "Americans" defined as all classes of citizens, even Citizens of the Several States, may undertake an action within the limits of the FSIA.

The term "foreign state" and that term's meaning is crucial in respect to the Congressional intent and usefulness of FSIA. To assist the reader with an understanding as to that term of art, please examine Webster's 1829 Dictionary supra, at the term:

> **state**, "a political body, or body politic: the whole body of people united under one government, whatever may be the form of a government …more usually the word signifies a political body governed by representatives, a common wealth; as the States of America."

So what is the statutory meaning within FSIA of a "foreign state"?

In terms of the definition section of the FSIA, a "foreign state" is not directly defined. Why? Because the answer to the question "What is a "state" is all bound up in political questions. For example, in *Black's Law*, 5th Edition, page 1262, one finds:

state, "n. a people permanently occupying a fixed territory, bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereign control over all persons and things within its boundaries … United States v. Kusche, DC Cal., 56 F. Supp. 201, 207,208."

Notice this is a common law cite previous to the "general law common." Therefore, what is a "foreign state" depends on recognized political organization and political orientation. What is a "foreign state" also depends on if or how the reader politically decides to recognize or not recognize a "state" as a political organization. What is a "foreign state" is in relation to a political question and is left to a person's political choice to determine in fact if any given "state" is "foreign."

Political questions, as the reader is well aware, are generally not justiciable within the United States courts. The authors argue that the statutory meaning of a "foreign state" within FSIA is left up to the political orientation, i.e. citizenship of the user of FSIA. A federal citizen may use FSIA only in relation to a foreign country. A Citizen of one of the Several States of America holding a different non-federal political orientation and citizenship may view a "foreign state" as being in fact a Composite state. This point of political orientation is clearly demonstrated and supported by the term "foreign state", used within the context of the Composite state as follows.

On page 676 of *Black's Law*, 8th Edition, 2004, the term "foreign state" is defined as:

(1) "foreign country,"

(2) "an American state different from the one under discussion."

Of course, the obvious question is how is the "American state" different from the one under discussion?"

By the above discussion, the answer to the question of how is the "American State" "different from the one under discussion" should be clear. What constitutes a person's understanding of the meaning of a "foreign state" depends upon political understanding and political orientation. The Congress with little specificity and

particularity statutorily defined a "foreign state", thus Charles Allen Wright can rightly state "the enactment of this legislation responded to the reality that increased contacts between American citizens … as well as a constantly expanding range of government activities, had created the need for judicial fora in this country to resolve disputes arising out of these practices." Welcome to the Composite state.

Based upon the above discussion, how has "sovereign immunity" been dealt with by United States courts? In the case of Schooner Exchange v. M' Faddon, 7 Crunch 116, 3 L.Ed. 287 (1812), Foreign Sovereign Immunity was regarded as being under most circumstances almost absolute to foreign states.

The United States courts usually accepted this concept of absolute foreign sovereign immunity by the states. The result was that the political branch, through the Executive to the State Department, requested friendly states receive immunity in the United States courts.

In Hannes V Kingdom of Roumania Monopolies Institute, 260 A.D. 189, 20 N.Y.S. 825, June 19, 1940, the Supreme Court of the State of New York, prior to FSIA, dealt with a case wherein the Roumanian government created a government corporation with which to sell bonds in the United States.

The executive branch of the Federal Government did not indicate any position with respect to the claim of immunity from suit in the state court made by the Roumanian Corporation and the Government of Roumania. It was held that foreign corporations, as such, are not entitled to immunity from suit in the Untied States even though their functions may include to some extent the performance of public duties.

It was further held that questions of immunity of foreign sovereign powers and their agents are determined under international law as matters of comity involving considerations of expediency and friendly international intercourse rather than the principles of municipal law.

Further, questions included to what extent the commercial dealings of the corporation involved United States citizens and how

close the corporation was to the foreign sovereign. A question was considered as to the public or private nature of the Corporations Act.

The Court held that in determining the extent to which immunity should be granted to the corporation, the Court would consider the intention of the sovereign with respect to immunity to be possessed by the corporation. This was an issue of fact required to be determined from study of the foreign law including foreign statues and all relevant circumstances.

Notice, reader, it is the intention of the sovereign with respect to immunity to be possessed by the corporate entity that bears real scrutiny in the foreign law. Suppose a "foreign state" in relation to the United States only does private commercial business in a Federal area as "in this state." Just suppose there is a definite law defining "in this state" or "within this state." Just suppose that a Composite state's adopted commercial code indicates that a transaction will be presumed "in this state" "barring prior agreement of the parties." These suppositions need to be kept in mind with respect to the discussion of the applications of the Foreign Sovereign Immunities Act that follows.

The Hannes case supra, contains representative questions involved in sovereign immunity issues. The New York State Supreme Court ordered a trial on the claims. At this time, 1940, given the lack of clear statutory authority, what followed is representative of many such circumstances as reflected in similar cases.

Now the authors continue the discussion concerning events leading to the FSIA.

In 1952, the State Department changed the long held political policy of absolute sovereign immunity combined with deference to the political branches and adopted the restrictive theory of immunity (Gates v. Victor Fine Foods, 29 U.M. Intra-Am L.R 575-585 1998).

Under the restrictive theory, a foreign state, given the circumstances of public acts usually enjoys immunity, but such is not the case for its private acts. (1) Because of Executive Office (U.S. State Department) pressure and political interference (2) and the difficulty of courts deciding what is a public act versus a private act (3) and because of the increasing intervention of governments in

traditional private matters (the Switch in Time cases), Congress in 1976 passed the FSIA.

The authors note that the fundamental principle of the FSIA is the broad grant of immunity to a foreign state. In other words, the Foreign Sovereign Immunity Act at Section 1604 contains the following statement,

> "Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter."

A foreign state is presumed to be immune, however by the appearance of specific conduct, defined in the Act, immunity may be lost.

The statutized circumstances in Section 1605 contain general exceptions to the jurisdictional immunity of a foreign state. At Section 1606, the extent of liability is considered, and at Section 1607, counterclaims are discussed. These sections, 1605 through 1607 form the statutory basis, under FSIA, upon which to ground an FSIA claim.

Consider, may federal law, in the form of FSIA presume that a Composite state has foreign sovereign immunity to the courts of the United States? Answer, yes. Section 1605 explicitly operates under that possible presumption. Is it possible the FSIA could contain a presumption the Composite state has sovereign immunity to the courts of the incorporated State? Answer: yes.

As the reader is well aware, Amendment XI gives the incorporated States immunity from suit under certain circumstances. In the words of the Constitution, "The judicial power of the United States shall not ...extend... to one of the United States"

In case one might be wondering, the FSIA is not unconstitutional because the Composite state is unincorporated. Hence, that state is not of the class of incorporated States protected from "suits in law or equity," and is not in the class "one of the United States."

Please, reader, do not be misled. The Composite state is not unconstitutional in view of Article IV, Section 3, "New States..." The Composite state is not a New state. Why, because the Composite state has not been incorporated and has not become a State by the "consent of the Legislatures of the States concerned, as well as of the Congress." Article IV, Section 3 supra.

The author's conclusion is that the Composite state, a federal state, is an unincorporated political devise born of deceit. As such, it is the political devise used to separate the people from their State and the common law. This Composite state is a direct result of a loss of the National Money System in A.D. 1933, based upon the presumed political decisions of the people. The loss of the National Money System ended the ability of the people to pay their debts in law. Instead, the people are legally allowed, under public policy, to discharge their debts with fiat, "no assured value", "notes." This discharge presumption operates barring prior agreements of the parties. (For example, in the Composite state see Uniform Commercial Code presently at 1-105, this state.)

As the reader is aware, the people at least, assented to the "New Deal," and the Supreme Court accepted that political reality in the "Switch in Time" cases of 1937. The fulfillment of the "New Deal" process is a concentration of political and legal authority in federal territorial municipal law as applied in the Composite state.

The Several States of America and the incorporated States, have almost no contact with the people. In reality, the "foreign state" as a Composite state recognized by 1999, is the state under discussion and therefore is not the American state. The authors argue such is the presumption built into *Black's Law* Dictionary in both the 7th and 8th Editions.

This political Composite state is a condition precedent domestically presumed to exist by the legal profession. This fact is based upon the silent assent of the people, by their everyday conduct in placing their signature in legal territorial proximity to the Composite state.

The legal profession as controlled through the State Bar Associations and is predisposed to accept the presumed political relations associated with the Composite state. The "law", from this

viewpoint, is work product controlled by the legal community. This controlled "law" is created in the context of the Composite state within federalized state legislatures and federalized courts. This controlled "law" is the presumed revealed will of the people. Today, generally, court case law accepts as the law of the case either equity, statutory law or public policy as the "general law common."

The demise of the incorporated State is directly related to the demise of the common law that is directly related to the demise of the National Money System.

The authors argue since the vast majority of the people have not a clue of the ideas and facts presented in this book, select people who do have a clue can control politically, through the Composite state, and legally, by the "laws" that proceed from the federally dominated Composite legislatures. In effect, today, the "law" is written for the community benefit of the Composite state, not the People of the Several States. How is this state of affairs effectuated? Private commercial conduct is the most usual conduct of the Composite state (90% of the time?).

The Composite state prosecutes on this basis in its Composite state name for taxes, fines and forfeitures. The Composite state by law appears to demand licenses, permits and other forms of compliance. The Composite state collects for the private benefit of the Composite state.

It doesn't take a rocket scientist to realize that Sections 1605, 1606 and 1607 of the FSIA capture the vast majority of the federal territorial commercial conduct carried on in relation to the Composite state, i.e. private conduct. In similar manner, the reader may have appeared to enter into private conduct via a signature so as to bind a person within the Composite state. Only the reader can self determine the true nature of their signature. Does the reader, by force of will, do conduct "in this state," the federal territorial Composite state? All a person has to do is sign (provide a signature) in that state. The Composite states loses sovereign immunity by certain FSIA statutized commercial acts, and in similar manner, a Person loses the benefits of the Constitution of the United States of America and "vested rights" by silent assent, waiver, agreement or contract.

The authors argue signature in relation to the Social Security Application, (the SS5), or Social Security account is the principle means by which the reader politically and legally appears to access the Composite state. The authors explicitly do not suggest that the signature on the SS application is the only path into the Composite state. The reader's signature on voter registration forms, licenses, permits and other business accounts, purchases of vehicles, real estate, all and each in its particular form contain political and legal deceptions. Today, each of these signature uses exists in the Composite state.

Within the "general law common", the reader, likely, unwittingly by silent assent and waiver, appears to voluntarily accept by signature on contracts and agreements, political and legal relations as if there is no deception. Thus, the Composite state deceptively appearing as "government" is made legally real and a fact by signature. The people get the existent deceptive government by signature. In effect, by signature, the people create a "foreign state". With the aforesaid discussion of the foundation it is noted Congress passed FSIA in 1976, Huuummmmm!!!!!! A.D. 1776 – 1976. Did Congress in relation to the Composite state provide a commercial remedy for citizens? An answer depends on the reader's political and legal orientation. If the reader appears to be "a U.S. Citizen" FSIA would not be helpful with respect to the Composite state's commerce. However, as a U.S. Citizen, that federal citizen may find the FSIA helpful in terms of a foreign country's commercial practice in relation to the United States.

The following and last chapter may be of additional help to the reader who wills to separate his person from the deceptive Composite state.

Chapter 14

In conclusion

Today, the reality of the Composite state harshly impacts most people. It is likely most people believe the Constitutions secure and protect their "rights." What most people do not understand about the Nation or the nation, nationality, the state, relations between the federal government and the state governments and the political collapse of the State and the Nation, hence the actual source of the people's political and legal relations, form the subject matter of this book. The Composite state's deceptive use of "the appearance of reality for reality itself" is a fact.

It is a fact in 1937 the Supreme Court radically changed judicial interpretation of the Constitution as "Switch in Time." This abrupt Supreme Court change constitutionally allowed the political application of various deceptions in the form of "appearance of reality for reality itself" to proceed. This abrupt Supreme Court change has proven to be a watershed event for the creation of the Composite state.

In Section 1 of this book is briefly outlined a portion of the change from what had been the remainder of the Republic until the general elections, A.D. 1932, when beginning with Roosevelt's Presidency in 1933, an experiment in a federal legislative democracy commenced. This continuous political experiment, first in the form of the "New Deal," and, later versions, until today has been and is created and controlled principally through federal legislation and a compliant judiciary's case law. The reader has observed the ever-increasing federal power exercised by both executive and legislative action appear before his/her eyes. So, too, has the reader been a witness to the demise of the Constitutional independence of the Several States of America and the several States. The political destruction of the incorporated several States of America and resulting political and legal relations to the Composite state has been discussed. This political destruction of the incorporated several States of America has been directly tied to the conduct of the people via silent assent, waiver, agreements and contracts.

Who is the person in real control of the state government? Surprisingly, the authors argue the People of the Several States of America hold the real power. This power exercised in a joint relation exists by each person's individual conduct. The conduct of signature in relation to the state is the actual source of power, or loss of power. The current state cannot exist without the silent assent, waiver, and compliant signatures of the people.

The authors have argued that a terrible deception, "the appearance of reality for reality itself", combined with a "Switch in Time" have been knowingly deployed upon the people. Today, the result of this continued and enhanced deception and compliant court decisions, is a federalized state defined as a Composite state. The Composite state is the actual working state that displays the appearance of operation through current "government" institutions. People exercise their political and legal relations, essentially operating their daily lives, within the Composite state.

The authors have demonstrated that by a signature, arguably the most important and significant being the signature on the SS5 application, the people of the "new Union" have appeared to accept, as a political fact status as a "U.S. citizen." A "U.S. citizen" is defined as a federal citizen that owes permanent allegiance to the United States, a federal corporation. Domestically, the people individually within that political condition precedent, a federal "U.S. citizen", create legal relations subject to federal and state law. For the Composite state, federal and state government institution are only controlled by "Federal personnel" as employees. 5 USCA 552a (a)(13) These "Federal personnel", in the role of federal and state employees, have only federal territorial employment contracts. The authors argue Citizens of the Several States have no political, lawful or legal duty to recognize any such purported governmental persons or purported governmental entities. Any such duty of recognition can only come about via voluntary contract (equity).

The people's self determined political and legal relations realized in each his person by the appearance of the fact of federal signature, has effectively collapsed the normal and proper operations of the several States of the American Union. This same signatory process has allowed the federal Congress, by consent of the people, to effectively collapse the Constitutional National "government of

the United States" of Article I, Section 8, paragraphs 17,18. Today, the result is that what appears to be the general government is now run domestically as a federal corporation. This federal corporation has become a key component of the Composite state. The several States, as incorporated institutions, have surrendered the greater amount of their authority to the Composite state. This State instituted surrender is measured by and is in concert with the loss of the people's political and legal relations as the Several States in fact.

The authors argue what the "Federal personnel" Congress has managed by deception is to collapse "the government of the United States" of Article I, Section 8, paragraphs 17,18, and convert and conduct government operations within the form the United States means a federal corporation. Thus, the incorporated State, a body politic and a body corporate, as an institution of government has effectively been negated resulting in a federal corporate state. Correctly understood, this result is because of the direct conduct, as silent assent, waiver and signatory acts of the people. The people, even within a calculated practiced deception, have presumably voluntarily signed and created for themselves a Composite state. The people democratically, en masse, have allowed and assented by waiver of their Vested Rights, given in exchange for a federal benefit package, have themselves, fastened federal territorial law in the form of civil rights and duties upon each his person.

The key part is the voluntary signature, or rather the appearance of that fact. The appearance of that fact of signature arguably colors almost all possible individual conduct. That "voluntary" signature, arguably induced by deception, makes possible the use of a rebuttable presumption. What is the presumed fact to be rebutted? The appearance of the voluntary signature! The reader should by now, in political and legal terms, understand what a signature means. The signatory agrees to accept federal political relations (U.S. citizen) and then a body of federal and state law, the "general law common", in relation to his person. The reader has likely taken notice of the special federal law that attaches to his person by the presumed signature on the SS5 application. In addition, the reader should be well aware that the SSN holder and user is deemed to be part of that group statutorily labeled "Federal personnel." 5 USCA 552a § (a)(13)

The authors argue that fundamentally, because the federal political system is based upon a deception, specifically the "appearance of reality for reality itself", the entire "corporate, legislatively created, statutory, commercial enforcement system" is based in a true sense upon a fraud. This system has essentially engulfed the several incorporated States. Thus, the result the Composite state has a very shaky foundation based upon fraud. This fraud can continue to be maintained via a lack of knowledge of the fraud.

The reader may self determine not to be a participant in the fraud, may will to remove the reader's person from the "corporate, legislatively created, statutory, commercial enforcement system", may will to separate from and not recognize the Composite state as legitimate form of "government."

The condition precedent to effect a change in political and legal circumstances is that the reader must decide, (self determine), to politically separate, (citizenship), and not accept with prejudice legal benefits from the Composite state. The Ashwander rules apply both in fact and in principle. If the reader decides, self determines, to maintain political and legal relations with the Composite state, then that person appears to self impose the civil rights and duties of that Composite state. In these circumstances, that person owes permanent allegiance to the Composite state. At this point, the reader should understand certain facts as to what, by whom, and how participation in the Composite state comes about.

The reader is cautioned that in effect the will of the reader via SS5 signature, has been handed over to a "Federal personnel" Congress. That Congress manages by public policy "an experiment in legislative democracy" within the context of a federalized Composite state. The federal corporate United States and its business practices form a major part of the Composite state. The "Federal personnel" Congress dictates public policy presumably in representation to the will of the people as they run their "experiment in democracy." Here the reader, as participant, exposes his person to that democratic will. These democratic people may produce perceived, unethical, immoral duties or rights as "law" operative within the realm of the Composite state.

The Social Security signatory has accepted and substituted that democratic people's conduct in place of his own possible self determined conduct, and must accept the results. Those results likely will not be in accordance with Paramount Law.[47] The reader may within his own conscience self determine the nature of that Paramount Law. The reader's conscience may not be exercised via the same Paramount Law or other standard as the conscience of Congress or the states. If the reader self determines upon conscience to receive the benefits offered by the United States Congress within the Composite state, the authors argue, that person should do his agreed to commercial duties and enjoy civil and commercial rights within the Composite state. That reader need not read beyond this point. The authors in respect to that conduct have nothing further for that reader.

By now, given explained causes and effects of the signatory's recognition and acceptance of the SS5 application, it should be clear that the applicant has deposited his person in the Composite state.

If the reader wills to follow a Republic model based upon the Constitution of the United States of America. And, if the reader wills to escape the Composite state based upon ethical and moral relations. Then, the necessary conduct to effectuate the will of the reader is already within view. There must be a change in the appearance of certain currently presumed facts. A presumptive fact is in existence, that of the signature on the SS5 application. The reader already knows information and facts concerning the deceptive political and legal relations presumed accepted.

What follows is an explanation of the reader's possible self determined conduct in relation to that vital matter of the appearance of a voluntary signature on the SS5 application.

The principle decisions in relation to the matter of Social Security are only self determined. In like manner, the matter of one's signature is self determined. The authors argue, only the reader can self determine if the reader was deceived, or fraudulently

[47] Paramount Law means, in a constitutional sense, the law that flows directly from the Constitution of the United States of America and only applies in the United States of America. Paramount Law may also mean that law that flows from the source of authority to which the people have appealed. Paramount Law means "the Law of Nature and of Nature's God."

induced into the appearance of giving a "voluntary" signature on the SS5 application. Likely, only the reader knows or has personal knowledge of the circumstances surrounding that presumed signature. Please realize there likely is no other person available in the capacity of a witness to that presumed signature. Certainly, no government witness with personal knowledge is available. No third party witness with personal knowledge as notary public, judicial witness or other public functionary is available. Only the reader has personal knowledge, only the reader can ascertain the circumstances surrounding the presumed fact of an SS5 signature. If it is determined, that in fact, personal knowledge of the circumstances surrounding the presumed signature leads the reader to conclude the presumed signature is not, in fact, the will of the reader, then specific conduct is required. The operative condition precedent of participation in the Composite state is the appearance of voluntary political joinder. The person of that voluntary political joinder exhibits commercial relations and capacity as "Federal personnel" and a political status as "U.S. citizen."

The reader may seriously consider the following before any other conduct is undertaken. The authors argue the serious political and legal consequences of any other future conduct in relation to the Composite state based upon silent assent, waiver and signature should very carefully consider. Specifically, before any other conduct is considered in relation to licenses, permits, property real or personal, banking and other business relations, etc., the authors contend the Social Security question should be dealt with first.

Please think about where the SSN and account appear. The authors argue that SSN is the principle account number that allows the person all too easy access into the "corporate, legislatively created, statutory, commercial enforcement system." The "System" is where "U.S. employment" takes place and "Federal personnel" relations result. The "System" is lubricated by the "no assured value" debt notes of the United States. The System supplies credit upon application via the Social Security account number. It is very difficult to work, earn a living, and pay bills or to avail oneself of credit without the SSN. The Composite state and the intertwined twins, the business corporations and other institutions mostly require an SSN for federal and state identification and record keeping (credit score) purposes. Of course, possession and use of the SSN is strictly

"voluntary." The person requiring the federal identification often attempts to shift legal liability to the issuer of the identification, i.e. the Composite state as an institution and in particular the federal government.

Please think carefully about the uses of the SSN the reader self imposes. The reader's SSN is the lifeline into use of the System. But of course the SSN is also an avenue of abuse by the System.

Please consider; even if the reader suddenly got a gold star on the forehead that meant the federal Composite state recognized that the presumption of a voluntary SSN signature was not legally viable, would that fact be immediately useful? Consider all the computer records maintained by state and local governments and likely medical and dental records, school, insurance, vehicle titles, driver's license, other licenses, business and personal credit? Simple recognition that there was not a voluntary SS5 signature does not overturn presumptions of political and legal relations built into all of the above records.

If the reader carefully self determines, in the face of all these possible circumstances, to change personal conduct in the use of the presumptive SS5 signature, the authors provide the following additional educational information. The authors explicitly state no promises; no warranty expressed or implied is made in any respect to the following. It is presumptive that the reader has searched conscience and by will has self determined to change political relations. It is presumption the reader has in a very serious manner considered legal circumstances. It is presumptive in relation to the above situation the reader has sought both Devine and human counsel.

The reader may wish to thoughtfully and carefully ascertain the facts existent at the express time of the signature on the SS5 application. Did the reader sign the application in person? Did a parent or guardian sign the application for the reader? Did the signatory or the user of the SSN know the facts or meaning of the following?

1. The legal place (situs) of the agreement/contract. Was the place within federal legislative jurisdiction? Do not be confused, every agreement or contract has

a place (situs). That place has law attached (lex locii) that binds the parties.

2. Did the signatory or user know the parties involved in the application? In what capacity? Did the signatory realize that the "Federal personnel" government was operating in an undisclosed capacity? Was that undisclosed capacity as a for profit federal corporation?

3. Did the signatory or user know that a political condition was clearly stated on the Social Security application at line 3, box A as "U.S. citizen"? In fact was the meaning of that political term within special law defined any place on the application form? Was the signatory misled, deceived or uninformed at the time of the application?

4. Did the signatory or user intend to accept a political citizen status as a "U.S. citizen" defined as a person owing permanent allegiance to the United States as a federal corporation? Such definition exists under special law. See Title 8, Section 1100(a)(22). Did the signatory or user intend to accept a nexus in the capacity of "Federal personnel"? 5 USCA 552a § (a) (13)

5. Did the application indicate that the agreement or contract would exist under general or special law? Did the application disclose that all persons were required by law to fill out the application? Did the application indicate that there was no basis under positive law by which a legal duty to recognize and accept the application was imposed?

6. Did the application, in fact, disclose all the terms and conditions of the agreement? Did the application disclose that the agreement or contract was in fact under special law? Was there a disclosure, in fact, that the law that would apply would only apply specially and territorially as to the signatory or user?

7. Did the application, in fact, disclose that the SSA would create an SSN and that SSN would be used to

open a business related account in the Treasury? Further, did the application disclose an agency, the Treasury, contained a collection Bureau known as the Internal Revenue Service? Did the application indicate the SSN is the account number generally utilized by that Bureau? (See footnote on page 202.)

8. At the time of the SS5 application transaction, did the reader have actual knowledge that any employee of the Social Security Administration told the future applicant that an SSN is mandatory? At that time, was the future applicant informed that a Social Security Number was required for "Employment"? Was the meaning of the term "covered employment" discussed?

9. At any time during the application process, did any SSA employee discuss or negotiate the place (situs) of the application? Did the future applicant have actual knowledge of the legal situs of the application? Was the applicant informed, did the applicant understand that the legal situs of the application was federal territory?

10. At any time during the application process, did any SSA employee disclose to the future SS account holder, in fact, that the SSN entitled the holder to possible future receipt of benefits, but also subjected the holder to the collection of income and others taxes to pay for the purported benefits? Did disclosure take place that taxes and benefits are within a corporate United State business model?

For example, on the basis of the above or other possible questions, it is up to each applicant (current SSN user) to self determine if any deceit, fraud, undue influence or failure to disclose material facts prejudicial to the applicant, failure of consideration (see PL 95-147), duress, or any other matter that would be considered an affirmative defense, in fact, might be available.

Only the reader has the personal knowledge to make a self determination on the above. If the reader self determines that there may be in existence actual specific facts as to some or all of the

above points, then these specific facts may be put into a record, under oath, before a notary public. The reader may want to consider making a proper affidavit to which the reader may also append a political declaration. To hold real legal effect, these official notices must be sworn under penalties of perjury before a third-party witness, for example a notary public. The reader is cautioned there is more to the procedural story in relation to the creation of facts than has been presented here. The reader is also cautioned these "facts" may not be honestly recreated under oath in the future should the reader voluntarily slip back into the Composite state by use of the SSN or other forms of joinder. Any specific effective procedure is generally presumed within the scope of this book and is left to the reader's performed conduct in relation to the companion website to this book.

If the reader has fairly understood the educational material presented in this book, and the reader has self determined not to appear to have made a voluntary election upon an SS5 application to be treated politically as a "U.S. citizen", and the reader has self determined to create a political relation only within the context of the Several States and the Constitution of the United States of America, then the authors believe that the reader has self determined a change is necessary. That change must be reflected by specific in personam conduct.

It is now only by conduct, based upon self determination made by the self motivated reader, by which a change in circumstances may occur. The political rebuttable presumption of federal citizenship and legal relations embedded within the appearance of voluntary SS5 signature may be properly rebutted. The choice is the reader's; federal citizenship as a U.S. citizen owing permanent allegiance to the United States, a federal corporation and assumed legal relations. Alternately, the reader may choose only Citizenship in relation to permanent residence, and associated legal relations, in one of the Several States of the America Union.

At this point it should be crystal clear to the astute reader to obtain and use a form or template, pre-made by some person who would not be a witness nor have personal knowledge of the circumstances of the reader's own Social Security application and transaction process, to make any such use is an exercise in futility.

The actor's own knowledge applied to the actor's own facts form the only real basis for self determination. Likewise, only the reader may self determine and make a declaration of political relations. What rational person would accept the declaration as real if there were the possibility the declarant's will was not reflected in the declaration?

At this point the authors make available and leave to the reader's self determination as to whether the reader may wish to access www.USofAvUS.com and therein take a test of the included knowledge and information. This endeavor may be of benefit. The reader may then, upon successful testing, have an opportunity to self determine to seek additional educational material available on the above mentioned website.

This additional material may prove quite useful should the reader, after careful consideration, decide to change political and legal relations with respect to the federal United States. It would then follow that the appearance the reader is a party to an experiment in legislative democracy, embedded within the Composite state, may be rebutted. It would also follow the reader may rebut the appearance of a presumption of any business relations with the unincorporated commercial state. Any self determined change in political and legal relations, the authors leave to the care of the people within the Several States. These people retain Sovereignty in relation to the incorporated States. It is by their will in their Sovereignty that legal memory may be established in relation to free Constitutions. The Constitution of the United States of America is personally operative in relation to the United States of America. The political and public controversy upon which legal relations are established is between the United States of America and the United States. Only each person's political and legal self determination may establish legal memory in relation to that public controversy. Self determine wisely.

Appendix

The authors acknowledge and thank Thompson West for permission to reprint the cases found within this appendix.

The Social Security Act of 1935

Preamble

The Social Security Act (Act of August 14, 1935) [H. R. 7260]

An act to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

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

TITLE I- GRANTS TO STATES FOR OLD-AGE ASSISTANCE

APPROPRIATION

SECTION 1. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ended June 30, 1936, the sum of $49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board established by Title VII (hereinafter referred to as the Board), State plans for old-age assistance.

STATE OLD-AGE ASSISTANCE PLANS

SEC. 2. (a) A State plan for old-age assistance must

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency;

(5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require,

and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one- half of the net amount so collected shall be promptly paid to the United States. Any payment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan-

(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or (3) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing July 1, 1935,

(1) an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan with respect to each individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and

(2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose: Provided, That the State plan, in order to be approved by the Board, need not provide for financial participation before July 1, 1937, by the State, in the case of any State which the Board, upon application by the State and after reasonable notice and opportunity for hearing to the State, finds is prevented by its constitution from providing such financial participation.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on

(A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived,

(B) records showing the number of aged individuals in the State, and

(C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 4. In the case of any State plan for old-age assistance which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds-

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2 (a) to be included in the plan; the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 5. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 6. When used in this title the term old age assistance means money payments to aged individuals.

TITLE II-FEDERAL OLD-AGE BENEFITS OLD-AGE RESERVE ACCOUNT

Section 201. (a) There is hereby created an account in the Treasury of the United States to be known as the Old-Age Reserve Account hereinafter in this title called the Account. There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the Account as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired

(1) on original issue at par, or

(2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the Account only on such terms as to provide an investment yield of not less than 3 per centum per annum.

(c) Any obligations acquired by the Account (except special obligations issued exclusively to the Account) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Account shall be credited to and form a part of the Account.

(e) All amounts credited to the Account shall be available for making payments required under this title.

(f) The Secretary of the Treasury shall include in his annual report the actuarial status of the Account.

OLD-AGE BENEFIT PAYMENTS

SEC. 202. (a) Every qualified individual (as defined in section 210) shall be entitled to receive, with respect to the period beginning on the date he

attains the age of sixty-five, or on January 1, 1942, whichever is the later, and ending on the date of his death, an old-age benefit (payable as nearly as practicable in equal monthly installments) as follows:

(1) If the total wages (as defined in section 210) determined by the Board to have been paid to him, with respect to employment (as defined in section 210) after December 31, 1936, and before he attained the age of sixty- five, were not more than $3,000, the old-age benefit shall be at a monthly rate of one-half of 1 per centum of such total wages;

(2) If such total wages were more than $3,000, the old-age benefit shall be at a monthly rate equal to the sum of the following:

(A) One-half of 1 per centum of $3,000; plus

(B) One-twelfth of 1 per centum of the amount by which such total wages exceeded $3,000 and did not exceed $45,000; plus

(C) One-twenty-fourth of 1 per centum of the amount by which such total wages exceeded $45,000.

(b) In no case shall the monthly rate computed under subsection (a) exceed $85.

(c) If the Board finds at any time that more or less than the correct amount has theretofore been paid to any individual under this section, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments under this section to the same individual.

(d) Whenever the Board finds that any qualified individual has received wages with respect to regular employment after he attained the age of sixty-five, the old-age benefit payable to such individual shall be reduced, for each calendar month in any part of which such regular employment occurred, by an amount equal to one month s benefit. Such reduction shall be made, under regulations prescribed by the Board, by deductions from one or more payments of old-age benefit to such individual.

PAYMENTS UPON DEATH

SEC. 203. (a) If any individual dies before attaining the age of sixty-five, there shall be paid to his estate an amount equal to 3 « per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936.

(b) If the Board finds that the correct amount of the old-age benefit payable to a qualified individual during his life under section 202 was less than 3 « per centum of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which such 3 « per centum exceeds the amount (whether more or less than the correct amount) paid to him during his life as old-age benefit.

(c) If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was less than the correct amount to which he was entitled under section 202, and that the correct amount of

such old-age benefit was 3 « per centum or more of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which the correct amount of the old- age benefit exceeds the amount which was so paid to him during his life.

PAYMENTS TO AGED INDIVIDUALS NOT QUALIFIED FOR BENEFITS

SEC. 204. (a) There shall be paid in a lump sum to any individual who, upon attaining the age of sixty-five, is not a qualified individual, an amount equal to 3 « per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five.

(b) After any individual becomes entitled to any payment under subsection (a), no other payment shall be made under this title in any manner measured by wages paid to him, except that any part of any payment under subsection (a) which is not paid to him before his death shall be paid to his estate.

AMOUNTS OF $500 OR LESS PAYABLE TO ESTATES

SEC. 205. If any amount payable to an estate under section 203 or 204 is $500 or less, such amount may, under regulations prescribed by the Board, be paid to the persons found by the Board to be entitled thereto under the law of the State in which the deceased was domiciled, without the necessity of compliance with the requirements of law with respect to the administration of such estate.

OVERPAYMENTS DURING LIFE

SEC. 206. If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was more than the correct amount to which he was entitled under section 202, and was 3 « per centum or more of the total wages by which such old-age benefit was measurable, then upon his death there shall be repaid to the United States by his estate the amount, if any, by which such total amount paid to him during his life exceeds whichever of the following is the greater:

(1) Such 3 « per centum, or

(2) the correct amount to which he was entitled under section 202.

METHOD OF MAKING PAYMENTS

SEC. 207. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each person entitled to receive a payment under this title, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursement of the Treasury Department, and prior to audit or settlement by the General Accounting Office, shall make payment in accordance with the certification by the Board.

ASSIGNMENT

SEC. 208. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

PENALTIES

SEC. 209. Whoever in any application for any payment under this title makes any false statement as to any material fact, knowing such statement to be false, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

DEFINITIONS

SEC. 210. When used in this title-- (a) The term wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such employer with respect to employment during such calendar year.

(b) The term employment means any service, of whatever nature, performed within the United States by an employee for his employer, except-

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer s trade or business;

(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(c) The term qualified individual means any individual with respect to whom it appears to the satisfaction of the Board that-

(1) He is at least sixty-five years of age; and

(2) The total amount of wages paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five, was not less than $2,000; and

(3) Wages were paid to him, with respect to employment on some five days after December 31, 1936, and before he attained the age of sixty-five, each day being in a different calendar year.

TITLE III-GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION APPROPRIATION

SECTION 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

PAYMENTS TO STATES

SEC. 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board s determination shall be based on

(1) the population of the State;

(2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and

(3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection

(a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for-

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation, and a statement of such recipient s rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law finds that in the administration of the law there is--

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a); the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

TITLE IV-GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN APPROPRIATION

SECTION 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children.

STATE PLANS FOR AID TO DEPENDENT CHILDREN

SEC. 402. (a) A State plan for aid to dependent children must

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency;

(5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and

(6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a) except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State

(1) who has resided in the State for one year immediately preceding the application for such aid or

(2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

PAYMENT TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 for any month with respect to one such dependent child and $12 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection

(a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such

expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived,

(B) records showing the number of dependent children in the State, and

(C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

OPERATION OF STATE PLANS

SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds-

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan; the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 405. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000 for all necessary expenses of the Board in administering the provisions of this title.

DEFINITIONS

SEC. 406. When used in this title-

(a) The term dependent child means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister,

uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home;

(b) The term aid to dependent children means money payments with respect to a dependent child or dependent children.

TITLE V- GRANTS TO STATES FOR MATERNAL AND CHILD WELFARE

PART 1-MATERNAL AND CHILD HEALTH SERVICES

APPROPRIATION

SECTION 501. For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $3,800,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children s Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 502. (a) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and such part of $1,800,000 as he finds that the number of live births in such State bore to the total number of live births in the United States, in the latest calendar year for which the Bureau of the Census has available statistics.

(b) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to the States $980,000 (in addition to the allotments made under subsection (a)), according to the financial need of each State for assistance in carrying out its State plan, as determined by him after taking into consideration the number of live births in such State.

(c) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 504 until the end of the second succeeding fiscal year. No payment to a State under section 504 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 503. (a) A State plan for maternal and child-health services must (1) provide for financial participation by the State;

(2) provide for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency;

(3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan;

(4) provide that the State health agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) provide for the extension and improvement of local maternal and child-health services administered by local child health units;

(6) provide for cooperation with medical, nursing, and welfare groups and organizations; and

(7) provide for the development of demonstration services in needy areas and among groups in special need.

(b) The Chief of the Children s Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State health agency of his approval.

PAYMENT TO STATES

SEC. 504. (a) From the sums appropriate therefor and the allotments available under section 502 (a), the Secretary of the Treasury shall pay to each State which has an approved plan for maternal and child-health services, for each quarter beginning with the quarter commencing July 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on

(A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and

(B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount, which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount, estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement

by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotments available under section 502 (b), and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

OPERATION OF STATE PLANS

SEC. 505. In the case of any State plan for maternal and child-health services which has been approved by the Chief of the Children s Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 503 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 2-SERVICES FOR CRIPPLED CHILDREN

APPROPRIATION

SEC. 511. For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State, services for locating crippled children and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling, there is hereby authorized to be appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936, the sum of $2,850,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children s Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 512. (a) Out of the sums appropriated pursuant to section 511 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and the remainder to the States according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to section 511 and the cost of furnishing such service to them

(b) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 514 until the end of the second succeeding fiscal year. No payment to a State under section

514 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 513. (a) A State plan for services for crippled children must

(1) provide for financial participation by the State;

(2) provide for the administration of the plan by a State agency or the supervision of the administration of the plan by a State agency;

(3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan;

(4) provide that the State agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

(5) provide for carrying out the purposes specified in section 511; and

(6) provide for cooperation with medical, health, nursing, and welfare groups and organizations and with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children.

(b) The Chief of the Children s Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State agency of his approval.

PAYMENT TO STATES

SEC. 514. (a) From the sums appropriated therefor and the allotments available under section 512, the Secretary of the Treasury shall pay to each State which has an approved plan for services for crippled children, for each quarter, beginning the quarter commencing July 1, 1935, an amount which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on

(A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter and if such amount is less than one-half of the total sum of such estimated expenditures the source or sources from which the difference is expected to be derived, and

(B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

OPERATION OF STATE PLANS

SEC. 515. In the case of any State plan for services for crippled children which has been approved by the Chief of the Children s Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan finds that in the administration of the plan there a failure to comply substantially with any provision required by section 513 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 3- CHILD WELFARE SERVICES

SEC. 521. (a) For the purpose of enabling the United States, through the Children s Bureau, to cooperate with State public-welfare agencies establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as child-welfare services) for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, beginning with the year ending June 30, 1936, the sum of $1,500,000. Such amount shall be allotted by the Secretary of Labor for use by cooperating State public- welfare agencies on the basis of plans developed jointly by the State agency and the Children s Bureau, to each State, $10,000, and the remainder to each State on the basis of such plans, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted shall be expended for payment of part of the cost of district, county or other local child- welfare services in areas predominantly rural, and for developing State services for the encouragement and assist- ance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. The amount of any allotment to a State under this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to

such State under this section until the end of the second succeeding fiscal year. No payment to a State under this section shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

(b) From the sums appropriated therefor and the allotments available under subsection (a) the Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States, and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

PART 4- VOCATIONAL REHABILITATION

SEC. 531. (a) In order to enable the United States to cooperate with the States and Hawaii in extending and strengthening their programs of vocational rehabilitation of the physically disabled, and to continue to carry out the provisions and purposes of the Act entitled An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment , approved June 2, 1920, as amended (U.S.C., title 29, ch. 4; U.S.C., Supp. VII title 29, secs. 31, 32, 34, 35, 37, 39, and 40), there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $841,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $1,938,000. Of the sums appropriated pursuant to such authorization for each fiscal year, $5,000 shall be apportioned to the Territory of Hawaii and the remainder shall be apportioned among the several States in the manner provided in such Act of June 2, 1920, as amended.

(b) For the administration of such Act of June 2, 1920, as amended, by the Federal agency authorized to administer it, there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $22,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $102,000.

PART 5- ADMINISTRATION

SEC. 541. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $425,000, for all necessary expenses of the Children s Bureau in administering the provisions of this title, except section 531.

(b) The Children s Bureau shall make such studies and investigations as will promote the efficient administration of this title, except section 531.

(c) The Secretary of Labor shall include in his annual report to Congress a full account of the administration of this title, except section 531.

TITLE VI- PUBLIC HEALTH WORK APPROPRIATION

SECTION 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30,1936, the sum of $8,000,000 to be used as hereinafter provided.

STATE AND LOCAL PUBLIC HEALTH SERVICES

SEC. 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

INVESTIGATIONS

SEC. 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation (including the printing and binding of the findings of such investigations), and f or the pay and allowances and traveling expenses of personnel of the Public Health Service, including commissioned officers, engaged in such investigations or detailed to cooperate with the health authorities of any State in carrying out the

purposes specified in section 601: Provided, That no personnel of the Public Health Service shall be detailed to cooperate with the health authorities of any State except at the request of the proper authorities of such State.

(b) The personnel of the Public Health Service paid from any appropriation not made pursuant to subsection (a) may be detailed to assist in carrying out the purposes of this title. The appropriation from which they are paid shall be reimbursed from the appropriation made pursuant to subsection (a) to the extent of their salaries and allowances for services performed while so detailed.

(c) The Secretary of the Treasury shall include in his annual report to Congress a full account of the administration of this title.

TITLE VII-SOCIAL SECURITY BOARD ESTABLISHMENT

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the Board) to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board , no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and

(2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

DUTIES OF THE SOCIAL SECURITY BOARD

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD

SEC. 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE VIII- TAXES WITH RESPECT TO EMPLOYMENT

INCOME TAX ON EMPLOYEES

SECTION 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall 1 « per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2 « per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

DEDUCTION OF TAX FROM WAGES

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(b) If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

DEDUCTIBILITY FROM INCOME TAX

SEC. 803. For the purposes of the income tax imposed by Title I of the Revenue Act of 1934 or by any Act of Congress in substitution therefor, the tax imposed by section 801 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.

EXCISE TAX ON EMPLOYERS

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him

after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1 « per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2 « per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

ADJUSTMENT OF EMPLOYERS TAX

SEC. 805. If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

REFUNDS AND DEFICIENCIES

SEC. 806. If more or less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot be adjusted under section 802 (b) or 805 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

COLLECTION AND PAYMENT OF TAXES

SEC. 807. (a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal- revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926 and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

RULES AND REGULATIONS

SEC. 808. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

SALE OF STAMPS BY POSTMASTERS

SEC. 809. The Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as

(1) are located in county seats, or

(2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury, as internal- revenue collections all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department.

PENALTIES

SEC. 810. (a) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, shall be fined not more than $1,000 or imprisoned for not more than six months, or both.

(b) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, or uses, sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any ma- terial in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITIONS

SEC. 811. When used in this title- (a) The term wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term employment means any service, of whatever nature, performed within the United States by an employee for his employer, except-

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer s trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

TITLE IX- TAX ON EMPLOYERS OF EIGHT OR MORE

IMPOSITION OF TAX

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of

the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing of his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

SEC. 903 (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that-

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona-fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

UNEMPLOYMENT TRUST FUND

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the Unemployment Trust Fund , hereinafter in this title called the Fund . The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired

(1) on original issue at par, or

(2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be is- sued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be

required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

ADMINISTRATION, REFUNDS, AND PENALTIES

SEC. 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal- revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with inter- est at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

INTERSTATE COMMERCE

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

SEC. 907. When used in this title -- (a) The term employer does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term employment means any service, of whatever nature, performed within the United States by an employee for his employer, except-

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of a crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term State agency means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term unemployment fund means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term contributions means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term compensation means cash benefits payable to individuals with respect to their unemployment.

RULES AND REGULATIONS

SEC. 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

ALLOWANCE OF ADDITIONAL CREDIT

SEC. 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser- (1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or (2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

SEC. 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7 « per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when

(A) compensation has been payable from such account throughout the preceding calendar year, and

(B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and

(C) such account amounts to not less than 7 « per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section-

(1) The term reserve account means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term pooled fund means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve

accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term guaranteed employment account means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual s guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term year of compensation experience , as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE X- GRANTS TO STATES FOR AID TO THE BLIND APPROPRIATION

SECTION 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $3,000,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board, State plans for aid to the blind.

STATE PLANS FOR AID TO THE BLIND

SEC. 1002. (a) A State plan for aid to the blind must

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency;

(5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan- (1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application or

(2) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing July 1, 1935,

(1) an amount which shall be used exclusively as aid to the blind equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan with respect to each individual who is blind and is not an inmate of a public institution not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and

(2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under provisions of clause (1) of subsection (a), such estimate to be based on

(A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived,

(B) records showing the number of blind individuals in the State, and

(C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 1004. In the case of any State plan for aid to the blind which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such a plan, finds--

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002 (a) be included in the plan; the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 1005. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936 the sum of $30,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 1006. When used in this title the term aid to the blind means money payments to blind individuals.

TITLE XI- GENERAL PROVISIONS

DEFINITIONS SECTION 1101. (a) When used in this Act-

(1) The term State (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term United States when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term person means an individual, a trust or estate, a partnership, or a corporation.

(4) The term corporation includes associations, joint-stock companies, and insurance companies.

(5) The term shareholder includes a member in an association, joint- stock company, or insurance company.

(6) The term employee includes an officer of a corporation.

(b) The terms includes and including when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS

SEC. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

SHORT TITLE

SEC. 1105. This Act may be cited as the Social Security Act.

Approved, August 14, 1935.

Supreme Court of the United States

ASHWANDER et al. v. TENNESSEE VALLEY AUTHORITY et al

(two cases).

FN* Rehearing denied 297 U.S. 728, 56 S.Ct. 588, 80 L.Ed. 1011.

Mandate of Supreme Court conformed to 14 F.Supp. 11.

Nos. 403, 404.

Argued and Submitted Dec. 19, 20, 1935.

Decided Feb. 17, 1936.

Mr. Justice McREYNOLDS, dissenting.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Suit by George Ashwander and others against the Tennessee Valley Authority, its directors, the City of Florence, and others. A decree for plaintiffs, 9 F.Supp. 965, was reversed by the Circuit Court of Appeals, 78 F.(2d) 578, and the cause remanded, and plaintiffs bring certiorari.

Decree of Circuit Court of Appeals affirmed.

West Headnotes

[1] **Federal Civil Procedure 170A** ⇦187

170A Federal Civil Procedure

170AII Parties

170AII(D) Class Actions

170AII(D)3 Particular Classes Represented

170Ak187 k. Stockholders, Investors, and Depositors. Most Cited Cases

(Formerly 106k343)

Small preferred stockholders of Power Company, who had sought unsuccessfully to have the corporation assert its right to have an allegedly illegal contract declared invalid, held to have complied with equity rule as to suit by stockholders in right of corporation by showing their demand upon, and refusal by, board of directors to take steps for annulment of the contract (Equity Rule 27, 28 U.S.C.A. following section 723).

[2] **Corporations 101** ⇦204

101 Corporations

101IX Members and Stockholders

101IX(C) Suing or Defending on Behalf of Corporation

101k204 k. Grounds of Action or Defense. Most Cited Cases

Where preferred stockholders of Power Company had challenged its contract for sale of substantial part of its transmission lines and property to a federal agency as injurious to the corporation's interests and as beyond federal

agency's constitutional authority, but the corporation, through its directors, had refused to take steps to annul contract, such stockholders held entitled, in absence of adequate legal remedy, to maintain bill in right of corporation to declare contract invalid and enjoin performance; it being unnecessary to show that corporation's managing board had acted with fraudulent intent or under legal duress or that transaction was ultra vires the corporation.

[3] **Corporations 101** ⇦207

101 Corporations

101IX Members and Stockholders

101IX(C) Suing or Defending on Behalf of Corporation

101k206.5 Persons Entitled to Sue or Defend

101k207 k. In General. Most Cited Cases

That plaintiffs were preferred rather than common stockholders of Power Company held not to preclude them from suing, in the rights of the corporation, to enjoin allegedly injurious and illegal contract for sale of substantial portion of corporation's property to a federal agency, where plaintiffs had equal voting power, share for share, with common stockholder, and where the corporation's parent company, which owned all the common stock, was a party to the challenged contract.

[4] **Corporations 101** ⇦204

101 Corporations

101IX Members and Stockholders

101IX(C) Suing or Defending on Behalf of Corporation

101k204 k. Grounds of Action or Defense. Most Cited Cases

That Power Company was to receive substantial consideration under contract to sell considerable portion of its transmission lines to a federal agency which allegedly had no constitutional authority to make the purchase held not to preclude Company's preferred stockholders from suing in equity, in the right of the corporation, to enjoin performance of the contract, where consideration was allegedly inadequate and transaction allegedly entailed disruption of services and a loss of business and franchises.

[5] **Constitutional Law 92** ⇦43(1)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k41 Persons Entitled to Raise Constitutional Questions

92k43 Estoppel or Waiver

92k43(1) k. In General. Most Cited Cases

Power Company which had contracted in January, 1934, with Tennessee Valley Authority for sale of Company's transmission lines to the Authority and for interchange of hydroelectric energy held not estopped from challenging validity of 1933 statute creating the Authority so far as statute authorized such contract, and hence Company's stockholders were not

precluded from maintaining suit in its behalf to enjoin performance, though, even after the passage of the 1933 act, Company continued its long-established practice of purchasing electric energy generated at Wilson Dam and though Company had instituted proceeding for approval of contract by State Public Service Commission, nor were stockholders estopped by not bringing suit until October, 1934, a month after their unsuccessful demand on company's directors to act. Tennessee Valley Authority Act, 16 U.S.C.A. § 831 et seq.

[6] **Estoppel 156** ⇦56

156 Estoppel

156III Equitable Estoppel

156III(A) Nature and Essentials in General

156k56 k. Acts Done or Omitted, and Change of Position. Most Cited Cases

Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities.

[8] **Declaratory Judgment 118A** ⇦67

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy

118Ak67 k. Accrual of Controversy. Most Cited Cases

(Formerly 13k6)

Judicial power does not extend to determination of abstract questions, and claims based merely upon assumed potential invasions of rights are not enough to warrant judicial intervention.

[9] **Declaratory Judgment 118A** ⇦66

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy

118Ak66 k. Advisory Opinions. Most Cited Cases

(Formerly 13k6)

Phrase "cases of actual controversy" in Federal Declaratory Judgments Act connotes controversy of justiciable nature, thus excluding advisory decree on hypothetical facts. Jud.Code, § 274d, 28 U.S.C.A. § 400.

[10] **Corporations 101** ⇦204

101 Corporations

101IX Members and Stockholders

101IX(C) Suing or Defending on Behalf of Corporation

101k204 k. Grounds of Action or Defense. Most Cited Cases

Preferred stockholders of Power Company, though entitled to demand that board of directors take legal steps to extricate corporation from allegedly invalid transactions and agreements with Tennessee Valley Authority, could

not insist that directors sue to obtain general declaration of unconstitutionality of Tennessee Valley Authority Act in all its bearings or a decision of abstract questions as to the right of Authority and Company in possible contingencies (Tennessee Valley Authority Act, 16 U.S.C.A. § 831 et seq.).

[11] **Constitutional Law 92** ⇦50

92 Constitutional Law

92III Distribution of Governmental Powers and Functions

92III(A) Legislative Powers and Delegation Thereof

92k50 k. Nature and Scope in General. Most Cited Cases

Congress may not, under pretext of executing its powers, pass laws for accomplishment of objects not intrusted to it by the Constitution.

[12] **Evidence 157** ⇦38

157 Evidence

157I Judicial Notice

157k38 k. International Law. Most Cited Cases

Court may take judicial notice of international situation at time of passage of National Defense Act of 1916 under authority of which Wilson Dam and its auxiliary plants were constructed (National Defense Act of 1916, § 124, 50 U.S.C.A. § 79).

[13] **Commerce 83** ⇦82.30

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(K) Miscellaneous Subjects and Regulations

83k82.30 k. Navigation, Shipping, and Related Matters. Most Cited Cases

(Formerly 83k20)

Power to regulate interstate commerce embraces power to keep navigable rivers of United States free from, and to remove, obstructions to navigation, since "commerce" includes navigation. U.S.C.A.Const. art. 1, § 8, cl. 3.

[14] **Commerce 83** ⇦82.35

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(K) Miscellaneous Subjects and Regulations

83k82.35 k. Public Highways, Navigable Waters, and State Lands. Most Cited Cases

(Formerly 83k19)

Navigable Waters 270 ⇦2

270 Navigable Waters

270I Rights of Public

270k2 k. Power to Control and Regulate. Most Cited Cases

War and National Emergency 402 ⇐40

402 War and National Emergency

402II Measures and Acts in Exercise of War and Emergency Powers

402II(A) In General

402k40 k. Preparatory and Promotional Measures in General. Most Cited Cases

(Formerly 402k4)

Wilson Dam and its hydroelectric power plant held to have been validly constructed for purposes of national defense and improvement of navigation under federal war and commerce powers. National Defense Act of 1916, § 124, 50 U.S.C.A. § 79; U.S.C.A.Const. art. 1, § 8, cls. 3, 11.

[15] **United States 393** ⇐58(3)

393 United States

393II Property

393k58 Disposition of Property

393k58(3) k. Sale of Realty, Timber, and Fixtures in General. Most Cited Cases

(Formerly 393k58)

Water power which was inevitable incident of construction of Wilson Dam, right to convert such power into electric energy, and electric energy thus produced *held* "property belonging to United States" within constitutional provision authorizing Congress to dispose of territory or property belonging to United States. U.S.C.A. Const. art. 4, § 3.

[16] **United States 393** ⇐58(1)

393 United States

393II Property

393k58 Disposition of Property

393k58(1) k. In General. Most Cited Cases

(Formerly 393k58)

Express power of Congress under Constitution to dispose of property belonging to United States is not abridged or withdrawn by Ninth or Tenth Amendment. Const. art. 4, § 3; Amends. 9, 10.

[17] **United States 393** ⇐53(6.1)

393 United States

393I Government in General

393k53 Corporations and Special Instrumentalities Controlled by United States

393k53(6) Powers, Liabilities and Activities

393k53(6.1) k. In General. Most Cited Cases

(Formerly 393k53(6), 393k58)

Power of Congress, and hence of Tennessee Valley Authority, to dispose of hydroelectric energy generated at Wilson Dam which had been constructed for national defense and navigation purposes, held not limited to the small amount of surplus energy unavoidably created in course of making munitions of war or operating the navigation works, but extended to all energy available at the dam in excess of government's needs. Tennessee Valley Authority Act, 16 U.S.C.A. § 831 et seq.; National Defense Act of 1916, § 124, 50 U.S.C.A. § 79; U.S.C.A. Const. art. 4, § 3.

[18] **United States 393** ⇐58(1)

393 United States

393II Property

393k58 Disposition of Property

393k58(1) k. In General. Most Cited Cases

(Formerly 393k58)

Method adopted by Congress for disposal of property belonging to United States must be appropriate means of disposition according to nature of the particular property and must be adopted in public interest as distinguished from private and personal ends. U.S.C.A. Const. art. 4, § 3.

[19] **United States 393** ⇐53(6.1)

393 United States

393I Government in General

393k53 Corporations and Special Instrumentalities Controlled by United States

393k53(6) Powers, Liabilities and Activities

393k53(6.1) k. In General. Most Cited Cases

(Formerly 393k53(6), 393k58)

Government, and hence the Tennessee Valley Authority, could constitutionally sell to Power Company surplus hydroelectric energy available at Wilson Dam erected by United States for defense and navigation purposes, and could likewise contract with Power Company for interchange of hydroelectric energy; both methods being proper forms of "disposition" of property belonging to United States. Tennessee Valley Authority Act, 16 U.S.C.A. § 831 et seq.; National Defense Act of 1916, § 124, 50 U.S.C.A. § 79; U.S.C.A. Const. art. 4, § 3.

[20] **States 360** ⇐18.73

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.73 k. Public Utilities. Most Cited Cases

(Formerly 360k4.16, 360k4)

United States 393 ⇐53(6.1)

393 United States

393I Government in General

393k53 Corporations and Special Instrumentalities Controlled by United States

393k53(6) Powers, Liabilities and Activities

393k53(6.1) k. In General. Most Cited Cases

(Formerly 393k53(6), 393k58)

Contract by Tennessee Valley Authority to purchase from Power Company transmission lines, with auxiliary properties, leading from Wilson Dam to large area in Alabama within 50 miles of dam, which lines were intended by the Authority to convey to market surplus hydroelectric energy generated at dam in excess of amount needed for national defense or operation of the navigation works, held not illegal as contemplating an unconstitutional disposition of such energy by government or as invading powers reserved to state of Alabama or to the people. Tennessee Valley Authority Act, 16 U.S.C.A. § 831 et seq.; National Defense Act of 1916, § 124, 50 U.S.C.A. § 79; Const. art. 4, § 3, and Amends. 9, 10.

****468 *291** Messrs. Forney Johnston, of Birmingham, Ala., and James M. Beck, of Washington, D.C., for petitioners.

***307** Messrs. John Lord O'Brian and Stanley F. Reed, Sol. Gen., both of Washington, D.C., for respondent Tennessee Valley Authority.

***314** Mr. W. H. Mitchell, of Florence, Ala., for respondent City of florence, ala.

Messrs. Thomas W. Martin, Perry W. Turner, and William Logan Martin, all of Birmingham, Ala., for respondent Alabama Power Co.

Messrs. Courtland Palmer, of New York City, and John T. Stokely, of Birmingham, Ala., for respondent Chemical Bank & Trust Co.

***315** Mr. Chief Justice HUGHES delivered the opinion of the Court.

On January 4, 1934, the Tennessee Valley Authority, an agency of the federal government, [FN1] entered into a contract with the Alabama Power Company, providing (1) for the purchase by the Authority from the Power Company of certain transmission lines, substations, and auxiliary properties for $1,000,000; (2) for the purchase by the Authority from the Power Company of certain real property for $150,000; (3) for an interchange of hydroelectric energy, and, in addition, for the sale by the Authority to the Power Company of its 'surplus power,' on stated terms; and (4) for mutual restrictions as to the areas to be served in the sale of power. The contract was amended and supplemented in minor particulars on February 13 and May 24, 1934. [FN2]

FN1 The Tennessee Valley Authority is a body corporate created by the Act of Congress of May 18, 1933, amended by the Act of Congress of August 31, 1935. 48 Stat. 58; 49 Stat. 1075 (16 U.S.C.A. s 831 et seq.).

FN2 The Commonwealth & Southern Corporation, organized under the laws of Delaware, and the owner of the common stock of the Alabama Power Company, was a party to the contract, which also contained agreements with other subsidiaries of the Commonwealth & Southern Corporation, viz: Tennessee Electric Power Company, Georgia Power Company, and Mississippi Power Company. The agreements with these companies are not involved in this suit.

The Alabama Power Company is a corporation organized under the laws of Alabama, and is engaged in the generation of electric energy and its distribution generally throughout that state; its lines reaching 66 counties. The transmission lines to be purchased by the Authority extend from Wilson Dam, at the Muscle Shoals plant owned by the United States on the Tennessee river in ***316** northern Alabama, into seven counties in that state, within a radius of about 50 miles. These lines serve a population of approximately 190,000, including about 10,000 individual customers, or about one-tenth of the total number served directly by the Power Company. The real property to be acquired by the Authority (apart from the transmission lines above mentioned and ****469** related properties) is adjacent to the area known as the 'Joe Wheeler dam site,' upon which the Authority is constructing the Wheeler Dam.

The contract of January 4, 1934, also provided for co-operation between the Alabama Power Company and the Electric Home & Farm Authority, Inc., a subsidiary of the Tennessee Valley Authority, to promote the sale of electrical appliances, and to that end the Power Company, on May 21, 1934, entered into an agency contract with the Electric Home & Farm Authority, Inc. It is not necessary to detail or discuss the proceedings in relation to that transaction, as it is understood that the latter corporation has been dissolved.

There was a further agreement on August 9, 1934, by which the Alabama Power Company gave an option to the Tennessee Valley Authority to acquire urban distribution systems which had been retained by the Power Company in municipalities within the area served by the transmission lines above mentioned. It appears that this option has not been exercised and that the agreement has been terminated.

Plaintiffs are holders of preferred stock of the Alabama Power Company. Conceiving the contract with the Tennessee Valley Authority to be injurious to the corporate interests and also invalid, because beyond the constitutional power of the federal government, they submitted their protest to the board of directors of the Power Company and demanded that steps should be taken to have the contract annulled. The board refused, and the ***317** Commonwealth & Southern Corporation, the holder of all the common stock of the Power Company, declined to call a meeting of the stockholders to take action. As the protest was unavailing, plaintiffs brought this suit to have the invalidity of the contract determined and its performance enjoined. Going beyond that particular challenge, and setting forth the pronouncements, policies, and programs of the Authority, plaintiffs sought a decree restraining these activities as repugnant to the Constitution, and also asked a general

declaratory decree with respect to the rights of the Authority in various relations.

The defendants, including the Authority and its directors, the Power Company and its mortgage trustee, and the municipalities within the described area, filed answers, and the case was heard upon evidence. The District Court made elaborate findings and entered a final decree annulling the contract of January 4, 1934, and enjoining the transfer of the transmission lines and auxiliary properties. 9 F.Supp. 965. The court also enjoined the defendant municipalities from making or performing any contracts with the Authority for the purchase of power and from accepting or expending any funds received from the Authority or the Public Works Administration for the purpose of constructing a public distribution system to distribute power which the Authority supplied. The court gave no consideration to plaintiffs' request for a general declaratory decree.

The Authority, its directors, and the city of Florence appealed from the decree and the case was severed as to the other defendants. Plaintiffs took a cross-appeal.

The Circuit Court of Appeals limited its discussion to the precise issue with respect to the effect and validity of the contract of January 4, 1934. The District Court had found that the electric energy required for the territory served by the transmission lines to be purchased ***318** under that contract is available at Wilson Dam without the necessity for any interconnection with any other dam or power plant. The Circuit Court of Appeals accordingly considered the constitutional authority for the construction of Wilson Dam and for the disposition of the electric energy there created. In the view that the Wilson Dam had been constructed in the exercise of the war and commerce powers of the Congress and that the electric energy there available was the property of the United States and subject to its disposition, the Circuit Court of Appeals decided that the decree of the District Court was erroneous and should be reversed. The court also held that plaintiffs should take nothing by their cross-appeal. 78 F.(2d) 578. On plaintiffs' application we granted writs of certiorari. 296 U.S. 562, 56 S.Ct. 145, 80 L.Ed. 396.

[1] First. The Right of Plaintiffs to Bring this Suit. Plaintiffs sue in the right of the Alabama Power Company. They sought unsuccessfully to have that right asserted by the Power Company itself, and, upon showing their demand and its refusal, they complied with the applicable ****470** rule. [FN3] While their stock holdings are small, they have a real interest, and there is no question that the suit was brought in good faith. [FN4] If otherwise entitled, they should not be denied the relief which would be accorded to one who owned more shares.

FN3 Equity Rule 27 (28 U.S.C.A. following section 723).

FN4 The District Court found that 'approximately 1900 preferred stockholders of the Alabama Company, holding over 40,000 shares of the preferred stock thereof, have associated themselves with a preferred stockholders' protective committee and authorized their names to be joined with the plaintiffs of record in this case as parties plaintiff.'

[2] Plaintiffs did not simply challenge the contract of January 4, 1934, as improvidently made-as an unwise exercise of the discretion vested in the board of directors. They challenged the contract both as injurious to the ***319** interests of the interests of the corporation and as an illegal transaction-violating the fundamental law. In seeking to prevent the carrying out of the contract, the suit was directed, not only against the Power Company, but against the Authority and its directors upon the ground that the latter, under color of the statute, were acting beyond the powers which the Congress could validly confer. In such a case it is not necessary for stockholders-when their corporation refuses to take suitable measures for its protection-to show that the managing board or trustees have acted with fraudulent intent or under legal duress. To entitle the complainants to equitable relief, in the absence of an adequate legal remedy, it is enough for them to show the breach of trust or duty involved in the injurious and illegal action. Nor is it necessary to show that the transaction was ultra vires the corporation. The illegality may be found in the lack of lawful authority on the part of those with whom the corporation is attempting to deal. Thus, the breach of duty may consist in yielding, without appropriate resistance, to governmental demands which are without warrant of law or are in violation of constitutional restrictions. The right of stockholders to seek equitable relief has been recognized when the managing board ortrustees of the corporation have refused to take legal measures to resist the collection of taxes or other exactions alleged to be unconstitutional (Dodge v. Woolsey, 18 How. 331, 339, 340, 345, 15 L.Ed. 401; Pollock v. Farmers' Loan & Trust Company, 157 U.S. 429, 433, 553, 554, 15 S.Ct. 673, 39 L.Ed. 759; Brushaber v. Union Pacific R. Co., 240 U.S. 1, 10, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713); or because of the failure to assert the rights and franchises of the corporation against an unwarranted interference through legislative or administrative action (Greenwood v. Union Freight R. Co., 105 U.S. 13, 15, 16, 26 L.Ed. 961; Cotting v. Kansas City Stock Yards Co., 183 U.S. 79, 114, 22 S.Ct. 30, 46 L.Ed. 92). The remedy has been accorded to stockholders of public service corporations with respect to rates alleged to be confiscatory.**s20 *320** Smyth v. Ames, 169 U.S. 466, 469, 517, 18 S.Ct. 418, 42 L.Ed. 819; Ex parte Young, 209 U.S. 123, 129, 130, 143, 28 S.Ct. 441, 52 L.Ed. 714, 13 L.R.A.(N.S.) 932, 14 Ann.Cas. 764. The fact that the directors in the exercise of their judgment, either because they were disinclined to undertake a burdensome litigation or for other reasons which they regarded as substantial, resolved to comply with the legislative or administrative demands, has not been deemed an adequate ground for denying to the stockholders an opportunity to contest the validity of the governmental requirements to which the directors were submitting. See Dodge v. Woolsey, supra, 18 How. 331, at pages 340, 345, 15 L.Ed. 401; Greenwood v. Union Freight R. Co., supra, 105 U.S. 13, at page 15, 26

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L.Ed. 961; Pollock v. Farmers' Loan & Trust Company, supra, 157 U.S. 429, at pages 433, 553, 554, 15 S.Ct. 673, 39 L.Ed. 759; Brushaber v. Union Pacific R. Co., supra, 240 U.S. 1, at page 10, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713.

In Smith v. Kansas City Title & Trust Company, 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577, a shareholder of the Title Company sought to enjoin the directors from investing its funds in the bonds of federal land banks and joint-stock land banks upon the ground that the act of Congress authorizing the creation of these banks and the issue of bonds was unconstitutional, and hence that the bonds were not legal securities in which the corporate ****471** funds could lawfully be invested. The proposed investment was not large-only $10,000 in each of the classes of bonds described. Id., 255 U.S. 180, at pages 195, 196, 41 S.Ct. 243, 65 L.Ed. 577. And it appeared that the directors of the Title Company maintained that the Federal Farm Loan Act (see 12 U.S.C.A. s 641 et seq.) was constitutional and that the bonds were 'valid and desirable investments.' Id., 255 U.S. 180, at page 201, 41 S.Ct. 243, 245, 65 L.Ed. 577. But neither the conceded fact as to the judgment of the directors nor the small amount to be invested-shown by the averments of the complaint-availed to defeat the jurisdiction of the court to decide the question as to the validity of the act and of the bonds which it authorized. The Court held that the validity of the act was directly drawn in question and that the shareholder was entitled to maintain the suit. The Court said: 'The general allegations as to the interest of the ***321** shareholder, and his right to have an injunction to prevent the purchase of the alleged unconstitutional securities by misapplication of the funds of the corporation, gives jurisdiction under the principles settled in Pollock v. Farmers' Loan & Trust Co. and Brushaber v. Union Pacific R.R. Co., supra.' Id., 255 U.S. 180, at pages 201, 202, 41 S.Ct. 243, 246, 65 L.Ed. 577. The Court then proceeded to examine the constitutional question and sustained the legislation under attack. A similar result was reached in Brushaber v. Union Pacific R. Co., supra. A close examination of these decisions leads inevitably to the conclusion that they should either be followed or be frankly overruled. We think that they should be followed, and that the opportunity to resort to equity, in the absence of an adequate legal remedy, in order to prevent illegal transactions by those in control of corporate properties, should not be curtailed because of reluctance to decide constitutional questions.

[3] We find no distinctions which would justify us in refusing to entertain the present controversy. It is urged that plaintiffs hold preferred shares, and that, for the present purpose, they are virtually in the position of bondholders. The rights of bondholders, in case of injury to their interests through unconstitutional demands upon, or transactions with, their corporate debtor, are not before us. Compare Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 367, 368, 14 S.Ct. 1047, 38 L.Ed. 1014. Plaintiffs are not creditors but shareholders (with equal voting power share for share with the common stockholders, according to the findings), and thus they have a proprietary interest in the corporate enterprise which is subject to injury

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through breaches of trust or duty on the part of the directors who are not less the representatives of the plaintiffs because their shares have certain preferences. See Ball v. Rutland R. Co. (C.C.) 93 F. 513, 514, 515. It may be, as in this case, that the owner of all the common stock has participated in the transaction in question, and the owners of preferred ***322** stock may be the only persons having a proprietary interest in the corporation who are in a position to protect its interests against what is asserted to be an illegal disposition of its property. [FN5] A court of equity should not shut its door against them.

FN5 See note 2.

[4] It is said that here, instead of parting with money, as in the case of illegal or unconstitutional taxes or exactions, the Power Company is to receive a substantial consideration under the contract in suit. But the Power Company is to part with transmission lines which supply a large area, and plaintiffs allege that the consideration is inadequate and that the transaction entails a disruption of services and a loss of business and franchises. If, as plaintiffs contend, those purporting to act as a governmental agency had no constitutional authority to make the agreement, its execution would leave the Power Company with doubtful remedy, either against the governmental agency which might not be able, or against the government which might not be willing, to respond to a demand for the restoration of conditions as they now exist. In what circumstances and with what result such an effort at restoration might be made is unpredictable. If, as was decided in Smith v. Kansas City Title & Trust Company, supra, stockholders had the right to sue to test the validity of a proposed investment in the bonds of land banks, we can see no reason for denying to these plaintiffs a similar resort to equity in order to challenge, on the ground of unconstitutionality, a contract involving****472** such a dislocation and misapplication of corporate property as are charged in the instant case.

[5] [6] The government urges that the Power Company is estopped to question the validity of the act creating the Tennessee Valley Authority, and hence that the stockholders, suing in the right of the corporation, cannot ***323** maintain this suit. It is said that the Power Company, in 1925, installed its own transformers and connections at Wilson Dam, and has ever since purchased large quantities of electric energy there generated, and that the Power Company continued its purchases after the passage of the act of 1933 constituting the Authority. The principle is invoked that one who accepts the benefit of a statute cannot be heard to question its constitutionality. Great Falls Manufacturing Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis, etc., Co., v. George C. Prendergast Const. Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351. We think that the principle is not applicable here. The prior purchase of power in the circumstances disclosed may have a bearing upon the question before us, but it is by no means controlling. The contract in suit manifestly has a broader range, and we find nothing in the earlier transactions which preclude the contention that this

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contract goes beyond the constitutional power of the Authority. Reference is also made to a proceeding instituted by the Power Company to obtain the approval of the contract by the Alabama Public Service Commission and to the delay in the bringing of this suit. It was brought on October 8, 1934, following plaintiffs' demand upon the board of directors in the preceding August. Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities. We see no reason for concluding that the delay or the proceeding before the Commission caused any prejudice to either the Power Company or the Authority, so far as the subject-matter of the contract between them is concerned, or that there is any basis for the claim of estoppel.

We think that plaintiffs have made a sufficient showing to entitle them to bring suit and that a constitutional question is property presented and should be decided.

***324** [7] [8] [9] [10] Second. The Scope of the Issue. We agree with the Circuit Court of Appeals that the question to be determined is limited to the validity of the contract of January 4, 1934. The pronouncements, policies, and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions. Muskrat v. United States, 219 U.S. 346, 361, 31 S.Ct. 250, 55 L.Ed. 246; Liberty Warehouse Company v. Grannis, 273 U.S. 70, 74, 47 S.Ct. 282, 71 L.Ed. 541; Willing v. Chicago Auditorium Ass'n, 277 U.S. 274, 289, 48 S.Ct. 507, 72 L.Ed. 880; Nashville, Chattanooga & St. Louis R. Co. v. Wallace, 288 U.S. 249, 262, 264, 53 S.Ct. 345, 77 L.Ed. 730, 87 A.L.R. 1191. It was for this reason that the Court dismissed the bill of the state of New Jersey which sought to obtain a judicial declaration that in certain features the Federal Water Power Act [FN6] exceeded the authority of the Congress and encroached upon that of the state. New Jersey v. Sargent, 269 U.S. 328, 46 S.Ct. 122, 70 L.Ed. 289. For the same reason, the state of New York, in her suit against the state of Illinois, failed in her effort to obtain a decision of abstract questions as to the possible effect of the diversion of water from Lake Michigan upon hypothetical water power developments in the indefinite future. New York v. Illinois, 274 U.S. 488, 47 S.Ct. 661, 71 L.Ed. 1164. At the last term the Court held, in dismissing the bill of the United States against the state of West Virginia, that general allegations that the state challenged the claim of theUnited States that the rivers in question were navigable, and asserted a right superior to that of the United States to license their use for power production, raised an issue 'too vague and ill-defined to admit of judicial determination.' United States v. State of West Virginia, 295 U.S. 463, 474, 55 S.Ct. 789, 79 L.Ed. 1546. Claims based ****473** merely upon 'assumed potential invasions' ***325** of rights are not enough to warrant judicial intervention. Arizona v. California, 283 U.S. 423, 462, 51 S.Ct. 522, 75 L.Ed. 1154.

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FN6 41 Stat. 1063.

The Act of June 14, 1934, [FN7] providing for declaratory judgments, does not attempt to change the essential requisites for the exercise of judicial power. By its terms, it applies to 'cases of actual controversy,' a phrase which must be taken to connote a controversy of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts. See Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra. While plaintiffs, as stockholders, might insist that the board of directors should take appropriate legal measures to extricate the corporation from particular transactions and agreements alleged to be invalid, plaintiffs had no right to demand that the directors should start a litigation to obtain a general declaration of the unconstitutionality of the Tennessee Valley Authority Act in all its bearings or a decision of abstract questions as to the right of the Authority and of the Alabama Power Company in possible contingencies.

FN7 48 Stat. 955 (28 U.S.C.A. s 400). 56 S.CT.-30 1/2

Examining the present record, we find no ground for a demand by plaintiffs except as it related to the contracts between the authority and the Alabama Power Company. And as the contract of May 21, 1934, with the Electric Home & Farm Authority, Inc., and that of August 9, 1934, for an option to the Authority to acquire urban distribution systems, are understood to be inoperative (56 S.Ct. 469), the only remaining questions that plaintiffs are entitled to raise concern the contract of January 4, 1934, providing for the purchase of transmission lines and the disposition of power.

There is a further limitation upon our inquiry. As it appears that the transmission lines in question run from the Wilson Dam and that the electric energy generated at that dam is more than sufficient to supply all the requirements***326** of the contract, the questions that are properly before us relate to the constitutional authority for the construction of the Wilson Dam and for the disposition, as provided in the contract, of the electric energy there generated.

[11] Third. The Constitutional Authority for the Construction of the Wilson Dam. The Congress may not, 'under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government.' Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, 423, 4 L.Ed. 579; Linder v. United States, 268 U.S. 5, 15, 17, 45 S.Ct. 446, 69 L.Ed. 819, 39 A.L.R. 229. The government's argument recognizes this essential limitation. The government's contention is that the Wilson Dam was constructed, and the power plant connected with it was installed, in the exercise by the Congress of its war and commerce powers (Const. art. 1, s 8, cls. 3, 11); that is, for the purposes of national defense and the improvement of navigation.

[12] [13] [14] Wilson Dam is described as a concrete monolith one hundred feet high and almost a mile long, containing two locks for navigation and eight installed generators. Construction was begun in 1917 and completed in 1926. Authority for its construction is found in section 124 of the National

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Defense Act of June 3, 1916. [FN8] It authorized the President to cause an investigation to be made in order to determine 'the best, cheapest, and most available means for the production of nitrates and other products for munitions of war'; to designate for the exclusive use of the United States 'such site or sites, upon any navigable or non-navigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act (section)'; and 'to construct, maintain, and operate' on any such site 'dams, locks, improvements to navigation, power houses, and other plants and equipment or other ***327** means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.' The President was authorized to lease or acquire by condemnation or otherwise such lands as might be necessary, and there was further provision that 'the products of such plants shall be used by the President for military and naval purposes to the extent that he may ****474** deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.' Id.

FN8 39 Stat. 166, 215 (50 U.S.C.A. s 79).

We may take judicial notice of the international situation at the time the act of 1916 was passed, and it cannot be successfully disputed that the Wilson Dam and its auxiliary plants, including the hydroelectric power plant, are, and were intended to be, adapted to the purposes of national defense. [FN9] While the District Court found that there is no intention to use the nitrate plants or the hydroelectric units installed at Wilson Dam for the production ***328** of war materials in time of peace, 'the maintenance of said properties in operating condition and the assurance of an abundant supply of electric energy in the event of war, constitute national defense assets.' This finding has ample support.

FN9 Among the findings of the District Court on this point are the following:

'38. The Muscle Shoals plants, including the Sheffield steam plant and the 8 hydro-electric units installed at Wilson Dam, were authorized for war purposes by section 124 of the National Defense Act of 1916 in anticipation of participation in the great war. The original conception was for the use of Nitrate Plant No. 1 employing the Haber process and Plant No. 2 employing the cyanamid process for the fixation or manufacture of nitrogen and its subsequent conversion into ammonium nitrate for explosives. Plant No. 1 was completed but was never practicable, due to the lack of knowledge of the Haber process. Plant No. 2 successfully developed calcium cyanamid from a manufacturing standpoint but due to the availability of ammonium nitrate as a result of commercial development of by-product or synthetic processes, the commercial or peace-time manufacture of calcium cyanamid at Nitrate Plant No. 2 is considered uneconomical and undesirable and is not

proposed or suggested by either the War Department or the TVA. The Court further finds, however, that the plant with the aid of electric power furnished by Wilson Dam and the Sheffield steam plant can be operated to produce annually 110,000 tons of ammonium nitrate by the cyanamid process and that the present plans of the War Department count upon that plant to supply that amount annually in the event of a major war. * * *

'40. The existence of these facilities which make available large quantities of nitrogenous war materials by use of either the nitrogen fixing process or the oxidation of synthetic ammonia is a valuable national defense asset.'

The act of 1916 also had in view 'improvements to navigation.' Commerce includes navigation. 'All America understands, and has uniformly understood,' said Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 190, 6 L.Ed. 23, 'the word 'commerce,' to comprehend navigation.' The power to regulate interstate commerce embraces the power to keep the navigable rivers of the United States free from obstructions to navigation and to remove such obstructions when they exist. 'For these purposes,' said the Court in Gilman v. Philadelphia, 3 Wall. 713, 725, 18 L.Ed. 96, 'Congress possesses all the powers which existed in the States before the adoption of the national Constitution, and which have always existed in the Parliament in England.' See, also, Philadelphia Company v. Stimson, 223 U.S. 605, 634, 32 S.Ct. 340, 56 L.Ed. 570.

The Tennessee river is a navigable stream, although there are obstructions at various points because of shoals, reefs, and rapids. The improvement of navigation on this river has been a matter of national concern for over a century. Recommendation that provision be made for ***329** navigation around Muscle Shoals was made by the Secretary of War, John C. Calhoun, in his report transmitted to the Congress by President Monroe in 1824, [FN10] and, from 1852, the Congress has repeatedly authorized projects to develop navigation on that and other portions of the river, both by open channel improvements and by canalization. [FN11] The ****475** Wilson Dam project, adopted in 1918, gave a nine-foot slack water development, for fifteen miles above Florence, over the Muscle Shoals rapids, and, as the District Court found, 'flooded out the them existing canal and locks which were inadequate.' The District Court also found that a 'high dam of this type was the only feasible means of eliminating this most serious obstruction to navigation.' By the act of 1930, after a protracted study by the Corps of Engineers of the United States Army, the Congress adopted a project for a permanent improvement of the main stream 'for a navigable depth of nine feet.' [FN12]

FN10 Sen.Doc.No.1, 18th Cong., 2d Sess.; H.R.Doc.No.119, 69th Cong., 1st Sess., 11, 12.

FN11 See Rivers and Harbors Acts of August 30, 1852, c. 104, 10 Stat. 56, 60; July 25, 1868, c. 233, 15 Stat. 171, 174; March 3, 1871, c. 118, 16 Stat. 538, 542; June 10, 1872, c. 416, 17 Stat. 370, 372; September 19, 1890, c. 907, 26 Stat. 426, 445, 446; August 18,

1894, c. 299, 28 Stat. 338, 354; April 26, 1904, c. 1605, 33 Stat. 309; March 2, 1907; c. 2509, 34 Stat. 1073, 1093; June 25, 1910, c. 382, 36 Stat. 630, 652; July 25, 1912, c. 253, 37 Stat. 201, 215; July 27, 1916, c. 260, 39 Stat. 391, 399; March 3, 1925, c. 467, 43 Stat. 1186, 1188; July 3, 1930, c. 847, 46 Stat. 918, 927, 928. See, also H.R.Docs.No.319, 67th Cong., 2d Sess.; No. 463, 69th Cong., 1st Sess.; No. 185, 70th Cong., 1st Sess.; No. 328, 71st Cong., 2d Sess.

FN12 Act of July 3, 1930, c. 847, 46 Stat. 918, 927, 928.

While, in its present condition, the Tennessee river is not adequately improved for commercial navigation, and traffic is small, we are not at liberty to conclude either that the river is not susceptible of development as an important waterway, or that Congress has not undertaken ***330** that development, or that the construction of the Wilson Dam was not an appropriate means to accomplish a legitimate end.

The Wilson Dam and its power plant must be taken to have been constructed in the exercise of the constitutional functions of the federal government.

[15] [16] Fourth. The Constitutional Authority to Dispose of Electric Energy Generated at the Wilson Dam. The government acquired full title to the dam site, with all riparian rights. The power of falling water was an inevitable incident of the construction of the dam. That water power came into the exclusive control of the federal government. The mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced constitute property belonging to the United States. See Green Bay & M. Canal Company v. Patten Paper Company, 172 U.S. 58, 80, 19 S.Ct. 97, 101, 43 L.Ed. 364; United States v. Chandler-Dunbar Water Power Company, 229 U.S. 53, 72, 73, 33 S.Ct. 667, 57 L.Ed. 1063; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 170, 52 S.Ct. 548, 76 L.Ed. 1038.

Authority to dispose of property constitutionally acquired by the United States is expressly granted to the Congress by section 3 of article 4 of the Constitution. This section provides:

'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.'

To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable. And the Ninth Amendment (which petitioners also invoke), in insuring the maintenance of the rights retained by the people, does not withdraw the rights which are expressly granted to the ***331** federal government. The question is as to the scope of the grant and whether there are inherent limitations which render invalid the disposition of property with which we are now concerned.

The occasion for the grant was the obvious necessity of making provision for the government of the vast territory acquired by the United States. The power to govern and to dispose of that territory was deemed to be

indispensable to the purposes of the cessions made by the States. And yet it was a matter of grave concern because of the fear that 'the sale and disposal' might become 'a source of such immense revenue to the national government as to make it independent of and formidable to the people.' Story on the Constitution, ss 1325, 1326. The grant was made in broad terms, and the power of regulation and disposition was not confined to territory, but extended to 'other property belonging to the United States,' so that the power may be applied, as Story says, 'to the due regulation of all other personal and real property rightfully belonging to the United States.' And so, he adds, 'it has been constantly understood and acted upon.' Id.

This power of disposal was early construed to embrace leases, thus enabling the government to derive profit through royalties. The question arose with respect to a government lease of lead mines on public lands, under the Act of March 3, 1807 ****476** (2 Stat. 448). The contention was advanced that 'disposal is not letting or leasing'; that Congress had no power 'to give or authorize leases' and 'to obtain profits from the working of the mines.' The Court overruled the contention, saying: 'The disposal must be left to the discretion of Congress. And there can be no apprehensions of any encroachments upon State rights, by the creation of a numerous tenantry within their borders, as has been so strenuously urged in the argument.' United States v. Gratiot, 14 Pet. 526, 533, 538, 10 L.Ed. 573. The policy, early ***332** adopted and steadily pursued, of segregating mineral lands from other public lands and providing for leases, pointed to the recognition both of the full power of disposal and of the necessity of suitably adapting the methods of disposal to different sorts of property. The policy received particular emphasis following the discovery of gold in California in 1848. [FN13] in For example, an act of 1866, dealing with grants to Nevada, declared that 'in all cases lands valuable for mines of gold, silver, quicksilver, or copper shall be reserved from sale.' [FN14] And Congress from the outset adopted a similar practice in reserving salt springs. Morton v. Nebraska, 21 Wall. 660, 667, 22 L.Ed. 639; Montello Salt Company v. Utah, 221 U.S. 452, 31 S.Ct. 706, 55 L.Ed. 810, Ann.Cas.1912D, 633. It was in the light of this historic policy that the Court held that the school grant to Utah by the Enabling Act of 1894 [FN15] was not intended to embrace land known to be valuable for coal. United States v. Sweet, 245 U.S. 563, 572, 38 S.Ct. 193, 62 L.Ed. 473. See, also, as to the reservation and leases of oil lands, Pan American Petroleum & Transport Co. v. United States, 273 U.S. 456, 487, 47 S.Ct. 416, 71 L.Ed. 734.

FN13 See citations of numerous statutes in United States v. Sweet, 245 U.S. 563, 568, 569, 38 S.Ct. 193, 62 L.Ed. 473.

FN14 Act of July 4, 1866, c. 166, s 5, 14 Stat. 85, 86.

FN15 Act of July 16, 1894, c. 138, 28 Stat. 107.

But, when Congress thus reserved mineral lands for special disposal, can it be doubted that Congress could have provided for mining directly by its own agents, instead of giving that right to lessees on the payment of royalties?

FN16 Upon what ground could it be said that the government could not mine its own gold, silver, coal, lead, or phosphates in the public domain and dispose of them as property belonging to the United States? That it could dispose***333** of its land but not of what the land contained? It would seem to be clear that under the same power of disposition which enabled the government to lease and obtain profit from sales by its lessees it could mine and obtain profit from its own sales.

FN16 See, as to royalties under leases 'to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain,' the Act of February 25, 1920, c. 85, 41 Stat. 437. Also, as to leases of public lands containing potassium deposits, the Act of October 2, 1917, c. 62, 40 Stat. 297.

The question is whether a more limited power of disposal should be applied to the water power, convertible into electric energy, and to the electric energy thus produced at the Wilson Dam constructed by the government in the exercise of its constitutional functions. If so, it must be by reason either of (1) the nature of the particular property or (2) the character of the 'surplus' disposed of, or (3) the manner of disposition.

(1) That the water power and the electric energy generated at the dam are susceptible of disposition as property belonging to the United States is well established. In the case of Green Bay & M. Canal Company v. Patten Paper Company, supra, the question was 'whether the water power incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox river' was 'subject to control and appropriation by the United States, owning and operating those public works, or by the state of Wisconsin, within whose limits Fox river lies.' Id., 172 U.S. 58, at pages 68, 69, 19 S.Ct. 97, 101, 43 L.Ed. 364. It appeared that, under the authority of the Congress, the United States had acquired, by purchase from a Canal Company, title to its improvement works, lands and water powers, on the Fox river, and that the United States had consented to the retention by the Canal Company of the water powers with appurtenances. We held that the 'substantial meaning of the transaction was that the United States granted to the Canal Company the right to continue in ****477** the possession and enjoyment of the water powers and the lots appurtenant thereto, subject to the rights and control of the United States as owning and operating the public works'; and that the method by which the arrangement was ***334** effected was 'as efficacious as if the entire property had been conveyed to the United States by one deed, and the reservedproperties had been reconveyed to the Canal Company by another.' Id., 172 U.S. 58, at page 80, 19 S.Ct. 97, 105, 43 L.Ed. 364. We thought it clear that the Canal Company was 'possessed of whatever rights to the use of this incidental water power that could be validly granted by the United States.' Id., 172 U.S. 58, at page 69, 19 S.Ct. 97, 101, 43 L.Ed. 364. And in this view it was decided that, so far as the 'water powers and appurtenant lots are regarded as property,' the title of the Canal Company could not be controverted, and that it was 'equally plain that the mode and extent of the use and enjoyment of such

property by the Canal Company' fell within the sole control of the United States. See Kaukauna Water-Power Company v. Green Bay & M. Canal Company, 142 U.S. 254, 12 S.Ct. 173, 178, 35 L.Ed. 1004; Green Bay & M. Canal Company v. Patten Paper Company, 173 U.S. 179, 19 S.Ct. 316, 43 L.Ed. 658.

In United States v. Chandler-Dunbar Water Power Company, 229 U.S. 53, 33 S.Ct. 667, 57 L.Ed. 1063, the United States had condemned land in Michigan, lying between the St. Marys river and the ship canal strip of the government, in order to improve navigation. The riparian owner, under revocable permits from the Secretary of War, had placed in the rapids 'the necessary dams, dykes, and forebays for the purpose of controlling the current and using its power for commercial purposes.' Id., 229 U.S. 53, at page 68, 33 S.Ct. 667, 674, 57 L.Ed. 1063. The Act of March 3, 1909, FN17 authorizing the improvement, had revoked the permit. We said that the government 'had dominion over the water power of the rapids and falls' and could not be required to pay 'any hypothetical additional value to a riparian owner who had no right to appropriate the current to his own commercial use.' Id., 229 U.S. 53, at page 76, 33 S.Ct. 667, 677, 57 L.Ed. 1063. The act of 1909 also authorized the Secretary of War tolease 'any excess of water power which results from the conservation of the flow of the river, and the works which the government may construct.'***335** 'If the primary purpose is legitimate,' said the Court, 'we can see no sound objection to leasing any excess of power over the needs of the government. The practice is not unusual in respect to similar public works constructed by state governments.' Id., 229 U.S. 53, at page 73, 33 S.Ct. 667, 676, 57 L.Ed. 1063. Reference was made to the case of Kaukauna Water-Power Company v. Green Bay & M. Canal Company, supra, where the Court had observed in relation to a Wisconsin statute of 1848, which had reserved to the state the water power created by the dam over the Fox river: 'As there is no need of the surplus running to waste, there was nothing objectionable in permitting the state to let out the use of it to private parties, and thus reimburse itself for the expenses of the improvement.' In International Paper Company v. United States, 282 U.S. 399, 51 S.Ct. 176, 75 L.Ed. 410, the government made a war-time requisition of electrical power, and was held bound to make compensation to a lessee who thereby had lost the use of the water to which he was entitled. The Court brushed aside attempted 'distinctions between the taking of power and the taking of water rights,' saying that the government intended 'to take and did take the use of all the water power' and had exercised its power of eminent domain to that end. Id., 282 U.S. 399, at pages 407, 408, 51 S.Ct. 176, 177, 75 L.Ed. 410.

FN17 35 Stat. c. 264, 815, 820, 821.

[17] (2) The argument is stressed that, assuming that electric energy generated at the dam belongs to the United States, the Congress has authority to dispose of this energy only to the extent that it is a surplus necessarily created in the course of making munitions of war or operating the works for navigation purposes; that is, that the remainder of the available

energy must be lost or go to waste. We find nothing in the Constitution which imposes such a limitation. It is not to be deduced from the mere fact that the electric energy is only potentially available until the generators are operated. The government has no less right to the energy thus available by letting the water course over its turbines**478 than it has *336 to use the appropriate processes to reduce to possession other property within its control, as, for example, oil which it may recover from a pool beneath its lands, and which is reduced to possession by boring oil wells and otherwise might escape its grasp. See Ohio Oil Company v. Indiana, 177 U.S. 190, 208, 20 S.Ct. 576, 44 L.Ed. 729. And it would hardly be contended that, when the government reserves coal on its lands, it can mine the coal and dispose of it only for the purpose of heating public buildings or for other governmental operations. Or, if the government owns a silver mine, that it can obtain the silver only for the purpose ofstorage or coinage. Or that, when the government extracts the oil it has reserved, it has no constitutional power to sell it. Our decisions recognize no such restriction. United States v. Gratiot, supra; Kansas v. Colorado, 206 U.S. 46, 88, 89, 27 S.Ct. 655, 51 L.Ed. 956; Light v. United States, 220 U.S. 523, 536, 537, 31 S.Ct. 485, 55 L.Ed. 570; Ruddy v. Rossi, 248 U.S. 104, 106, 39 S.Ct. 46, 63 L.Ed. 148, 8 A.L.R. 843. The United States owns the coal, or the silver, or the lead, or the oil, it obtains from its lands, and it lies in the discretion of the Congress, acting in the public interest, to determine of how much of the property it shall dispose.

We think that the same principle is applicable to electric energy. The argument pressed upon us leads to absurd consequences in the denial, despite the broad terms of the constitutional provision, of a power of disposal which the public interest may imperatively require. Suppose, for example, that in the erection of a dam for the improvement of navigation, it became necessary to destroy a dam and power plant which had previously been erected by a private corporation engaged in the generation and distribution of energy which supplied the needs of neighboring communities and business enterprises. Would any one say that, because the United States had built its own dam and plant in the exercise of its constitutional functions, and had complete ownership and dominion over both, no power could be supplied to the communities and enterprises dependent on it, not because of *337 any unwillingness of the Congress to supply it, or of any overriding governmental need, but because there was no constitutional authority to furnish the supply? Or that, with abundant power available, which must otherwise be wasted, the supply to the communities and enterprises whose very life may be at stake must be limited to the slender amount of surplus unavoidably involved in the operation of the navigation works, because the Constitution does not permit any more energy to be generated and distributed? In the case of the Green Bay & M. Canal Company, above cited, where the government works supplanted those of the Canal Company, the Court found no difficulty in sustaining the government's authority to grant to the Canal Company the water powers which it had previously enjoyed,

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subject, of course, to the dominant control of the government. And in the case of United States v. Chandler-Dunbar Water Power Company, supra, the statutory provision (35 Stat. 822, s 12) to which the Court referred was 'that any excess of water in the St. Marys River at Sault Sainte Marie over and above the amount now or hereafter required for the uses of navigation shall be leased for power purposes by the Secretary of War upon such terms and conditions as shall be best calculated in his judgment to insure the development thereof.' It was to the leasing, under this provision, of 'any excess of power over the needs of the government,' that the Court saw no valid objection. Id., 229 U.S. 53, at page 73, 33 S.Ct. 667, 676, 57 L.Ed. 1063.

The decisions which petitioners cite give no support to their contention. Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565, Shively v. Bowlby, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331, and Port of Seattle v. Oregon & Washington Railway Co., 255 U.S. 56, 41 S.Ct. 237, 65 L.Ed. 500, dealt with the title of the States to tidelands and the soil under navigable waters within their borders. See Borax Consolidated v. Los Angeles, 296 U.S. 10, 15, 56 S.Ct. 23, 80 L.Ed. 9. Those cases did not concern the dominant authority of the federal government in the interest of navigation to erect dams and avail itself of the incidental water power. We emphasized the dominant character of that authority in the case of *338 the Green Bay & M. Canal Company v. Patten Paper Co., supra, 172 U.S. 58, at page 80, 19 S.Ct. 97, 105, 43 L.Ed. 364, by this statement: 'At what points in the dam and canal the water for power may **479 be withdrawn, and the quantity which can be treated as surplus with due regard to navigation, must be determined by the authority which owns and controls that navigation. In such matters there can be no divided empire.' The case of Wisconsin v. Illinois, 278 U.S. 367, 49 S.Ct. 163, 73 L.Ed. 426, related to the diversion by the state of Illinois of water from Lake Michigan through the drainage canal at Chicago, and the questions now before us with respect to the disposition of surplus energy created at a dam erected by the federal government in the performance of its constitutional functions were in no way involved.

[18] (3) We come then to the question as to the validity of the method which has been adopted in disposing of the surplus energy generated at the Wilson Dam. The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. See Kansas v. Colorado, supra. In this instance, the method of disposal embraces the sale of surplus energy by the Tennessee Valley Authority to the Alabama Power Company, the interchange of energy between the Authority and the Power Company, and the purchase by the Authority from the Power Company of certain transmission lines.

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[19] As to the mere sale of surplus energy, nothing need be added to what we have said as to the constitutional authority to dispose. The government could lease or sell and fix the terms. Sales of surplus energy to the Power Company by the Authority continued a practice begun by the government several years before. The contemplated ***339** interchange of energy is a form of disposition, and presents no questions which are essentially different from those that are pertinent to sales.

[20] The transmission lines which the Authority undertakes to purchase from the Power Company lead from the Wilson Dam to a large area within about fifty miles of the dam. These lines provide the means of distributing the electric energy, generated at the dam, to a large population. They furnish a method of reaching a market. The alternative method is to sell the surplus energy at the dam, and the market there appears to be limited to one purchaser, the Alabama Power Company, and its affiliated interests. We know of no constitutional ground upon which the federal government can be denied the right to seek a wider market. We suppose that in the early days of mining in the West, if the government had undertaken to operate a silver mine on its domain, it could have acquired the mules or horses and equipment to carry its silver to market. And the transmission lines for electric energy are but a facility for conveying to market that particular sort of property, and the acquisition of these lines raises no different constitutional question, unless in some way there is an invasion of the rights reserved to the state or to the people. We find no basis for concluding that the limited undertaking with the Alabama Power Company amounts to such an invasion. Certainly, the Alabama Power Company has no constitutional right to insist that it shall be the sole purchaser of the energy generated at the Wilson Dam; that the energy shall be sold to it or go to waste.

We limit our decision to the case before us, as we have defined it. The argument is earnestly presented that the government by virtue of its ownership of the dam and power plant could not establish a steel mill and make and sell steel products, or a factory to manufacture clothing or shoes for the public, and thus attempt to make its ***340** ownership of energy, generated at its dam, a means of carrying on competitive commercial enterprises, and thus drawing to the federal government the conduct and management of business having no relation to the purposes for which the federal government was established. The picture is eloquently drawn, but we deem it to be irrelevant to the issue here. The government is not using the water power at the Wilson Dam to establish any industry or business. It is not using the energy generated at the dam to manufacture commodities of any sort for the public. The government is disposing of the energy itself which simply is the mechanical energy, incidental***480** to falling water at the dam, converted into the electric energy which is susceptible of transmission. The question here is simply as to the acquisition of the transmission lines as a facility for the disposal of that energy. And the government rightly conceded at the bar, in substance, that it was without constitutional authority to acquire or dispose of such energy except as it

comes into being in the operation of works constructed in the exercise of some power delegated to the United States. As we have said, these transmission lines lead directly from the dam, which has been lawfully constructed, and the question of the constitutional right of the government to acquire or operate local or urban distribution systems is not involved. We express no opinion as to the validity of such an effort, as to the status of any other dam or power development in the Tennessee Valley, whether connected with or apart from the Wilson Dam, or as to the validity of the Tennessee Valley Authority Act or of the claims made in the pronouncements and program of the Authority apart from the questions we have discussed in relation to the particular provisions of the contract of January 4, 1934, affecting the Alabama Power Company.

The decree of the Circuit Court of Appeals is affirmed.

Affirmed.

***341** Mr. Justice BRANDEIS (concurring).

'Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.' Blair v. United States, 250 U.S. 273, 279, 39 S.Ct. 468, 470, 63 L.Ed. 979.

I do not disagree with the conclusion on the constitutional question announced by the CHIEF JUSTICE; but, in my opinion, the judgment of the Circuit Court of Appeals should be affirmed without passing upon it. The government has insisted throughout the litigation that the plaintiffs have no standing to challenge the validity of the legislation. This objection to the maintenance of the suit is not overcome by presenting the claim in the form of a bill in equity and complying with formal prerequisites required by Equity Rule 27 (28 U.S.C.A. following section 723). The obstacle is not procedural. It inheres in the substantive law, in well-settled rules of equity, and in the practice in cases involving the constitutionality of legislation. Upon the findings made by the District Court, it should have dismissed the bill.

From these it appears: The Alabama Power Company, a corporation of that state with transmission lines located there, has outstanding large issues of bonds, preferred stock, and common stock. Its officers agreed, with the approval of the board of directors, to sell to the Tennessee Valley Authority a part of these lines and incidental property. The management thought that the transaction was in the interest of the company. It acted in the exercise of its business judgment with the utmost good faith. [FN1] ***342** There was no showing of fraud, oppression, or gross negligence. There was no showing of legal duress. There was no showing that the management believed that to sell to the Tennessee Valley Authority was in excess of the company's corporate powers, or that it was illegal because entered into for a forbidden purpose.

FN1 The management explained that it was in the best interest of the company to accept the offer of the Authority for the purchase of the transmission lines in a limited area coupled with an agreement on the part of the Authority not to sell outside of that area during the life of the contract. It protected the company against possible entrance of the Authority into the territory in which were located nine-tenths of the company's customers, including the largest; and it assured the company that so long as the latter retained its urban distribution systems within the territory served by the transmission lines, those systems would be serviced by power from Wilson Dam. Upon delivery of the transmission lines, the Authority agreed to pay the company $1,150,000.

Nor is there any basis in law for the assertion that the contract was ultra vires the company. Under the law of Alabama, a public utility corporation may ordinarily sell a part of its transmission lines and incidental property to another such corporation if the approval of the Public Service Commission is obtained. The contract provided for securing such approval. Moreover, before the motion to dissolve the restraining****481** order was denied, and before the hearing on the merits was concluded, the Legislature, by Act No. 1, approved January 24, 1935 (Gen.Acts Ala.1935, p. 1) and effective immediately, provided that a utility of the state may sell all or any of its property to the Tennessee Valley Authority without the approval of the Public Service Commission or of any other state agency.

First. The substantive law. The plaintiffs who object own about 1/340 of the preferred stock. They claimed at the hearing to represent about 1/9 of the preferred stock; that is, less than 1/45 in amount of all the securities outstanding. Their rights are not enlarged because the Tennessee Valley Authority entered into the transaction pursuant to ***343** an act of Congress. The fact that the bill calls for an enquiry into the legality of the transaction does not overcome the obstacle that ordinarily stockholders have no standing to interfere with the management. Mere belief that corporate action, taken or contemplated, is illegal gives the stockholder no greater right to interfere than is possessed by any other citizen. Stockholders are not guardians of the public. The function of guarding the public against acts deemed illegal rests with the public officials.

Within recognized limits, stockholders may invoke the judicial remedy to enjoin acts of the management which threaten their property interest. But they cannot secure the aid of a court to correct what appear to them to be mistakes of judgment on the part of the officers. Courts may not interfere with the management of the corporation, unless there is bad faith, disregard of the relative rights of its members, or other action seriously threatening their property rights. This rule applies whether the mistake is due to error of fact or of law, or merely to bad business judgment. It applies, among other things, where the mistake alleged is the refusal to assert a seemingly clear cause of action, or the compromise of it. United Copper Securities Co. v. Amalgamated Copper Co., 244 U.S. 261, 263, 264, 37 S.Ct. 509, 61 L.Ed.

1119. If a stockholder could compel the officers to enforce every legal right, courts, instead of chosen officers, would be the arbiters of the corporation's fate.

In Hawes v. Oakland, 104 U.S. 450, 462, 26 L.Ed. 827, a common stockholder sought to enjoin the Contra Costa Water-Works Company from permitting the city of Oakland to take without compensation water in excess of that to which it was legally entitled. This Court, in affirming dismissal of the bill, said: 'It may be the exercise of the highest wisdom, to let the City use the water in the manner complained of. The directors are better able to act ***344** understandingly on this subject than a stockholder residing in New York. The great body of the stockholders residing in Oakland or other places in California, may take this view of it and be content to abide by the action of their directors. If this be so, is a bitter litigation with the City to be conducted by one stockholder for the Corporation and all other stockholders, because the amount of his dividends is diminished?'

In Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 463, 23 S.Ct. 157, 160, 47 L.Ed. 256, a suit by the common stockholder to enjoin payment of an Alaska license tax alleged to be illegal, the Court said: 'The directors represent all the stockholders, and are presumed to act honestly and according to their best judgment for the interests of all. Their judgment as to any matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs.' FN2

FN2 See, also, Samuel v. Holladay, 21 Fed. Cas. pages 306, 311, 312, No. 12,288.

Second. The equity practice. Even where property rights of stockholders are ****482** alleged to be violated by the management, stockholders seeking an injunction must ***345** bear the burden of showing danger of irreparable injury, as do others who seek that equitable relief. In the case at bar the burden of making such proof was a peculiarly heavy one. The plaintiffs, being preferred stockholders, have but a limited interest in the enterprise, resembling, in this respect, that of a bondholder in contradistinction to that of a common stockholder. Acts may be innocuous to the preferred which conceivably might injure common stockholders. There was no finding that the property interests of the plaintiffs were imperiled by the transaction in

question; and the record is barren of evidence on which any such finding could have been made.

Third. The practice in constitutional cases. The fact that it would be convenient for the parties and the public to have promptly decided whether the legislation assailed is valid, cannot justify a departure from these settled rules of corporate law and established principles of equity practice. On the contrary, the fact that such is the nature of the enquiry proposed should deepen the reluctance of courts to entertain the stockholder's suit. 'It must be evident to any one 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.' 1 Cooley, Constitutional Limitations (8th Ed.), p. 332.

The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress; [FN3] and has restricted exercise of this function by rigid insistence that the jurisdiction of federal courts is limited to actual cases and controversies; and that they have no power to give advisory ***346** opinions. [FN4] On this ground it has in recent years ordered the dismissal of several suits challenging the constitutionality of important acts of Congress. In Texas v. Interstate Commerce Commission, 258 U.S. 158, 162, 42 S.Ct. 261, 66 L.Ed. 531, the validity of titles 3 and 4 of the Transportation Act of 1920 (41 Stat. 456). In New Jersey v. Sargent, 269 U.S. 328, 46 S.Ct. 122, 70 L.Ed. 289, the validity of parts of the Federal Water Power Act (41 Stat. 1063). In Arizona v. California, 283 U.S. 423, 51 S.Ct. 522, 75 L.Ed. 1154, the validity of the Boulder Canyon Project Act (43 U.S.C.A. s 617 et seq.). Compare United States v. West Virginia, 295 U.S. 463, 55 S.Ct. 789, 79 L.Ed. 1546, involving the Federal Water Power Act and Liberty Warehouse Co. v. Grannis, 273 U.S. 70, 47 S.Ct. 282, 71 L.Ed. 541, where this Court affirmed the dismissal of a suit to test the validity of a Kentucky statute concerning the sale of tobacco; also, Massachusetts State Grange v. Benton, 272 U.S. 525, 47 S.Ct. 189, 71 L.Ed. 387.

FN3 E.g., Miller, J., in Ex parte Garland, 4 Wall. 333, 382, 18 L.Ed. 366; Hepburn v. Griswold, 8 Wall. 603, 610, 19 L.Ed. 513; Adkins v. Children's Hospital, 261 U.S. 525, 544, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238; Holmes, J., in Blodgett v. Holden, 275 U.S. 142, 147, 148, 276 U.S. 594, 48 S.Ct. 105, 72 L.Ed. 206.

FN4 E.g., Hayburn's Case, 2 Dall. 409, 1 L.Ed. 436; United States v. Ferreira, 13 How. 40, 14 L.Ed. 42; Gordon v. United States, 2 Wall. 561, 17 L.Ed. 921; Id., 117 U.S. 697, append.; Muskrat v. United States, 219 U.S. 346, 31 S.Ct. 250, 55 L.Ed. 246; Willing v. Chicago Auditorium Ass'n, 277 U.S. 274, 48 S.Ct. 507, 72 L.Ed. 880.

The 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. They are:

1. The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.' Chicago & Grand Trunk Ry. Co. v. Wellman, 143 U.S. 339, 345, 12 S.Ct. 400, 402, 36 L.Ed. 176. Compare Lord v. Veazie, 8 How. 251, 12 L.Ed. 1067; Atherton Mills v. Johnston, 259 U.S. 13, 15, 42 S.Ct. 422, 66 L.Ed. 814.

****483** 2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' ***347** Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899; [FN5] Abrams v. Van Schaick, 293 U.S. 188, 55 S.Ct. 135, 79 L.Ed. 278; Wilshire Oil Co. v. United States, 295 U.S. 100, 55 S.Ct. 673, 79 L.Ed. 1329. 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' Burton v. United States, 196 U.S. 283, 295, 25 S.Ct. 243, 245, 49 L.Ed. 482.

FN5 E.g., Ex parte Randolph, 20 Fed.Cas. pages 242, 254, No. 11,558; Charles River Bridge v. Warren Bridge, 11 Pet. 420, 553, 9 L.Ed. 773; Trade-Mark Cases, 100 U.S. 82, 96, 25 L.Ed. 550; Arizona v. California, 283 U.S. 423, 462-464, 51 S.Ct. 522, 75 L.Ed. 1154.

3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, supra. Compare Hammond v. Schappi Bus Line, Inc., 275 U.S. 164, 169-172, 48 S.Ct. 66, 72 L.Ed. 218.

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Siler v. Louisville & Nashville R. Co., 213 U.S. 175, 191, 29 S.Ct. 451, 53 L.Ed. 753; Light v. United States, 220 U.S. 523, 538, 31 S.Ct. 485, 55 L.Ed. 570. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. Berea College v. Kentucky, 211 U.S. 45, 53, 29 S.Ct. 33, 53 L.Ed. 81.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. [FN6] ***348**Tyler v. Judges, etc., 179 U.S. 405, 21 S.Ct. 206, 45 L.Ed. 252; Hendrick v.

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Maryland, 235 U.S. 610, 621, 35 S.Ct. 140, 59 L.Ed. 385. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. Columbus & Greenville Ry. Co. v. Miller, 283 U.S. 96, 99, 100, 51 S.Ct. 392, 75 L.Ed. 861. In Fairchild v. Hughes, 258 U.S. 126, 42 S.Ct. 274, 66 L.Ed. 499, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In Massachusetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078, the challenge of the federal Maternity Act was not entertained although made by the commonwealth on behalf of all its citizens.

FN6 E.g., Hatch v. Reardon, 204 U.S. 152, 160, 161, 27 S.Ct. 188, 51 L.Ed. 415, 9 Ann.Cas. 736; Corporation Commission v. Lowe, 281 U.S. 431, 438, 50 S.Ct. 397, 74 L.Ed. 945; Heald v. District of Columbia, 259 U.S. 114, 123, 42 S.Ct. 434, 66 L.Ed. 852; Sprout v. South Bend, 277 U.S. 163, 167, 48 S.Ct. 502, 72 L.Ed. 833, 62 A.L.R. 45; Concordia Fire Insurance Co. v. Illinois, 292 U.S. 535, 547, 54 S.Ct. 830, 78 L.Ed. 1411.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. [FN7] Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

FN7 Compare Electric Co. v. Dow, 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; Pierce v. Somerset Ry., 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; Leonard v. Vicksburg, etc., R. Co., 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.

7. 'When the validity of an act of the Congress is drawn in question, and even 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.'****484** Crowell v. Benson, 285 U.S. 22, 62, 52 S.Ct. 285, 296, 76 L.Ed. 598. [FN8]

FN8 E.g., United States v. Delaware & Hudson Co., 213 U.S. 366, 407, 408, 29 S.Ct. 527, 53 L.Ed. 836; United States v. Jin Fuey Moy, 241 U.S. 394, 401, 36 S.Ct. 658, 60 L.Ed. 1061, Ann.Cas.1917D, 854; Baender v. Barnett, 255 U.S. 224, 41 S.Ct. 271, 65 L.Ed. 597; Texas v. Eastern Texas R. Co., 258 U.S. 204, 217, 42 S.Ct. 281, 66 L.Ed. 566; Panama R. Co. v. Johnson, 264 U.S. 375, 390, 44 S.Ct. 391, 68 L.Ed. 748; Linder v. United States, 268 U.S. 5, 17, 18, 45 S.Ct. 446, 69 L.Ed. 819, 39 A.L.R. 229; http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=1926122104tMissouri Pacific R. Co. v. Boone, 270 U.S. 466, 471, 472, 46 S.Ct. 341, 70 L.Ed. 688; Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346, 48 S.Ct. 194, 72 L.Ed. 303; Blodgett v. Holden, 275 U.S. 142, 148, 276 U.S. 594, 48 S.Ct. 105, 72 L.Ed. 206; Lucas v. Alexander, 279 U.S. 573, 577, 49 S.Ct. 426, 73 L.Ed. 851, 61 A.L.R. 906; Interstate Commerce Commission v. Oregon-Washington R. & N. Co., 288 U.S. 14, 40, 53 S.Ct. 266, 77 L.Ed. 588.

***349** Fourth. I am aware that, on several occasions, this Court passed upon important constitutional questions which were presented in stockholders' suits bearing a superficial resemblance to that now before us. But in none of those cases was the question presented under circumstances similar to those at bar. In none, were the plaintiffs preferred stockholders. In some, the Court dealt largely with questions of federal jurisdiction and collusion. In most, the propriety of considering the constitutional question was not challenged by any party. In most, the statute challenged imposed a burden upon the corporation and penalties for failure to discharge it; whereas the Tennessee Valley Authority Act (16 U.S.C.A. s 831 et seq.) imposed no obligation upon the Alabama Power Company, and under the contract it received a valuable consideration. Among other things, the Authority agreed not to sell outside the area covered by the contract, and thus preserved the corporation against possible serious competition. The effect of this agreement was equivalent to a compromise of a doubtful cause of action. Certainly, the alleged invalidity of the Tennessee Valley Authority Act was not a matter so clear as to make compromise illegitimate. These circumstances present features differentiating the case at bar from all the cases in which stockholders have been held entitled to have this Court pass upon the constitutionality of a statute which the directors had refused to challenge. The cases commonly cited are these: [FN9]

FN9 Others are Memphis City v. Dean, 8 Wall. 64, 73, 19 L.Ed. 326; Smyth v. Ames, 169 U.S. 466, 515-518, 18 S.Ct. 418, 42 L.Ed. 819; Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 23 S.Ct. 157, 47 L.Ed. 256; Ex parte Young, 209 U.S. 123, 143, 28 S.Ct. 441, 52 L.Ed. 714, 13 L.R.A. (N.S.) 932, 14 Ann.Cas. 764; Delaware & Hudson Co. v. Albany & Susquehanna R. Co., 213 U.S. 435, 29 S.Ct. 540, 53 L.Ed. 862; Wathen v. Jackson Oil & Refining Co., 235 U.S. 635, 35 S.Ct. 225, 59 L.Ed. 395.

Dodge v. Woolsey, 18 How. 331, 341-346, 15 L.Ed. 401, was a suit brought by a common stockholder to enjoin a breach of trust by the directors which, if submitted to, would seriously injure the plaintiff. The Court crew clearly the distinction between 'an error of judgment' and a breach ***350** of duty; declared that it could not interfere if there was only an error of judgment; held that on the facts the threatened action of the directors would be a breach of trust; and pointed to the serious injury necessarily resulting therefrom to the plaintiff. [FN10]

FN10 The resolution of the directors (Dodge v. Woolsey, 18 How. 331, at page 340, 15 L.Ed. 401) was this: 'Resolved, that we fully concur in the views expressed in said letter as to the illegality of the

tax therein named, and believe it to be in no way binding upon the bank; but, in consideration of the many obstacles in the way of testing the law in the courts of the State, we cannot consent to take the action which we are called upon to take, but must leave the said Kleman to pursue such measures as he may deem best in the premises.' Referring to Dodge v. Woolsey, the Court pointed out in Hawes v. Oakland, 104 U.S. 450, 459, 26 L.Ed. 827: 'As the law then stood there was no means by which the bank, being a citizen of the same State with Dodge, the tax-collector, could bring into a court of the United States the right which it asserted under the Constitution, to be relieved of the tax in question, except by writ of error to a State court from the Supreme Court of the United States.'

Greenwood v. Union Freight R. Co., 105 U.S. 13, 15, 16, 26 L.Ed. 961, was ****485** a suit brought by a common stockholder to enjoin the enforcement of a statute alleged to be unconstitutional as repealing the corporation's charter. The Court said: 'It is sufficient to say that this bill presents so strong a case of the total destruction of the corporate existence * * * that we think the complainant as a stockholder comes within the rule * * * which authorizes a shareholder to maintain a suit to prevent such a disaster, where the corporation peremptorily refuses to move in the matter.'

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 553, 554, 15 S.Ct. 673, 679, 39 L.Ed. 759, was a suit brought by a common stockholder to enjoin a breach of trust by paying voluntarily a tax which was said to be illegal. The stockholder's substantive right to object was not challenged. The question raised was that of equity jurisdiction. The allegation of threatened irreparable damage to the corporation and ***351** to the plaintiff was admitted. The Court said: 'The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as it was within the power of the government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. * * * Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits.' The jurisdictional issued discussed in the dissent (157 U.S. at pages 608-612, 15 S.Ct. 673, 39 L.Ed. 759) was the effect of Rev.St. s 3224 (26 U.S.C.A. s 1543).

Cotting v. Kansas City Stock Yards Co., 183 U.S. 79, 113, 22 S.Ct. 30, 44, 46 L.Ed. 92, was a suit brought by a common stockholder to enjoin enforcement of a rate statute alleged to be unconstitutional against which the directors refused to protect the corporation. It was alleged and found that its enforcement would subject the company to great and irreparable loss. The serious contention concerning jurisdiction was, as stated by Mr. Justice Brewer, whether a suit lay against the Attorney General of the State. Of the jurisdiction of the suit 'as one involving a controversy between the stockholders and the corporation and its officers, no serious question is made.'

Chicago v. Mills, 204 U.S. 321, 27 S.Ct. 286, 51 L.Ed. 504, was a suit brought by a common stockholder of the People's Gas, Light & Coke Company to enjoin enforcement of an ordinance alleged to be illegal. The sole question before this Court was whether the federal court had jurisdiction. That question raised an issue of fact. This Court in affirming the judgment below said (204 U.S. 321, at page 331, 27 S.Ct. 286, 289, 51 L.Ed. 504): 'Upon the whole record we agree with the circuit court that the testimony does not disclose that the jurisdiction of the Federal court was collusively and fraudulently invoked.'

Brushaber v. Union Pacific R. Co., 240 U.S. 1, 9, 10, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A.1917D, 414, Ann.Cas.1917B, 713, was a suit brought by a common stockholder to restrain the corporation from voluntarily paying a tax alleged to ***352** be invalid. As stated by plaintiff's counsel: 'The contention is-and this is the only objection that is made to the suit-that it seeks to do indirectly what the Revised Statutes (section 3224) have said shall not be done; namely, enjoin the collection of a tax.' The Court, assuming that the averments were identical with those in the Pollock Case, declared that the right of the stockholder to sue was clear.

Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 199-202, 41 S.Ct. 243, 65 L.Ed. 577, was a suit brought by a common stockholder to enjoin investment by the company in bonds issued under the Federal Farm Loan Act. Neither the parties, nor the government which filed briefs as amicus, made any objection to the jurisdiction. But as both parties were citizens of Missouri, the Court raised, and considered fully, the question whether there was federal jurisdiction under section 24 of the Judicial Code (28 U.S.C.A. s 41). It was on this question that Mr. Justice Holmes and Mr. Justice McReynolds dissented. The Court held that there was federal jurisdiction; and upon averments of the bill, assumed to be adequate, sustained the right of the stockholder to invoke the equitable remedy on the authority of the Brushaber and Pollock Cases.

Hill v. Wallace, 259 U.S. 44, 60-63, 42 S.Ct. 453, 455, 66 L.Ed. 822, was a ****486** suit by members of the Board of Trade of Chicago to restrain enforcement of the Future Trading Act (42 Stat. 187), alleged to be unconstitutional. The Court held that the averments of the bill, which included allegations of irreparable injury, stated 'sufficient equitable grounds to justify granting the relief' on the cases above cited.

If, or in so far as, any of the cases discussed may be deemed authority for sustaining this bill, they should now be disapproved. This Court, while recognizing the soundness of the rule of stare decisis where appropriate, has not hesitated to overrule earlier decisions shown, upon fuller ***353** consideration, to be erroneous. [FN11] Our present keener appreciation of the wisdom of limiting our decisions rigidly to questions essential to the disposition of the case before the court is evidenced by United States v. Hastings, 296 U.S. 188, 56 S.Ct. 218, 80 L.Ed. 148, decided at this term. There, we overruled United States v. Stevenson, 215 U.S. 190, 195, 30 L.Ed.

35, 54 L.Ed. 153, long a controlling authority on the Criminal Appeals Act (18 U.S.C.A. s 682).

FN11 A notable recent example is Humphrey's Executor v. United States, 295 U.S. 602, page 626 et seq., 55 S.Ct. 869, 79 L.Ed. 1611, which limited Myers v. United States, 272 U.S. 52, 47 S.Ct. 21, 71 L.Ed. 160, disapproving important statements in the opinion. For lists of decisions of this Court later overruled, see Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-409, 52 S.Ct. 443, 76 L.Ed. 815; Malcolm Sharp, Movement in Supreme Court Adjudication-A Study of Modified and Overruled Decisions, 46 Harv.L.Rev. 361, 593, 795.

Fifth. If the Company ever had a right to challenge the transaction with the Tennessee Valley Authority, its right had been lost by estoppel before this suit was begun; and as it is the company's right which plaintiffs seek to enforce, they also are necessarily estopped. The Tennessee Valley Authority Act became a law on May 18, 1933. Between that date and January, 1934, the company and its associates purchased approximately 230,000,000 kwh electric energy at Wilson Dam. Under the contract of January 4, 1934, which is here assailed, continued purchase of Wilson Dam power was provided for and made; and the Authority has acted in other matters in reliance on the contract. In May, 1934, the Company applied to the Alabama Public Service Commission for approval of the transfers provided for in the contract; and on June 1, 1934, the commission made in general terms its finding that the proposed sale of the properties was consistent with the public interest. Moreover, the plaintiffs in their own right are estopped by their long inaction. Although widespread publicity was given to the negotiations for the contract and to these later proceedings,***354** the plaintiffs made no protect until August 7, 1934; and did not begin this suit until more than eight months after the execution of the contract. Others-certain ice and coal companies who thought they would suffer as competitors-appeared before the commission in opposition to the action of the Authority; and apparently they are now contributing to the expenses of this litigation.

Sixth. Even where by the substantive law stockholders have a standing to challenge the validity of legislation under which the management of a corporation is acting, courts should, in the exercise of their discretion, refuse an injunction unless the alleged invalidity is clear. This would seem to follow as a corollary of the long established presumption in favor of the constitutionality of a statute.

Mr. Justice Iredell said, as early as 1798, in Calder v. Bull, 3 Dall. 386, 399, 1 L.Ed. 648: 'If any act of congress, or of the legislature of a state, violates those constitutional provisions, it is unquestionably void; though, I admit, that as the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority, but in a clear and urgent case.'

Mr. Chief Justice Marshall said, in Dartmouth College v. Woodward, 4 Wheat. 518, 625, 4 L.Ed. 629: 'On more than one occasion, this court has

expressed the cautions circumspection with which it approaches the consideration of such questions; and has declared, that in no doubtful case, would it pronounce a legislative act to be contrary to the constitution.' FN12

FN12. In 1811, Chief Justice Tilghman of the Supreme Court of Pennsylvania, while asserting the power of the court to hold laws unconstitutional, but declining to exercise it in a particular case, stated the practice as follows: 'For weighty reasons, it has been assumed as a principle in constitutional construction by the Supreme Court of the United States, by this court, and every other court of reputation in the United States, that an Act of the legislature is not to be declared void, unless the violation of the constitution is so manifest as to leave to room for reasonable doubt.' James B. Thayer, after quoting the passage in The Origin and Scope of the American Doctrine of Constitutional Law, 7 Harv.Law Review 129, 140, called attention (p. 144) to 'a remark of Judge Cooley, to the effect that one who is a member of a legislature may vote against a measure as being, in his judgment, unconstitutional; and, being subsequently placed on the bench, when this measure having been passed by the legislature in spite of his opposition, comes before him judicially, may there find it his duty, although he has in no degree changed his opinion, to declare it constitutional.'

****487 *355** Mr. Justice Washington said, in Ogden v. Saunders, 12 Wheat. 213, 270, 6 L.Ed. 606: 'But if I could rest my opinion in favour of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone, would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body, by which any law is passed, to presume in favour of its validity, until its violation of the constitution is proved beyond all reasonable doubt. This has always been the language of this court, when that subject has called for its decision; and I know that it expresses the honest sentiments of each and every member of this bench.'

Mr. Chief Justice Waite said in the Sinking-Fund Cases, 99 U.S. 700, 718, 25 L.Ed. 496: 'This declaration (that an act of Congress is unconstitutional) should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.'

The challenge of the power of the Tennessee Valley Authority rests wholly upon the claim that the act of ***356** Congress which authorized the contract is unconstitutional. As the opinions of this Court and of the Circuit Court of Appeals show, that claim was not a matter 'beyond peradventure clear.' The challenge of the validity of the act is made on an application for an

injunction-a proceeding in which the court is required to exercise its judicial discretion. In proceedings for a mandamus, where, also, the remedy is granted not as a matter of right but in the exercise of a sound judicial discretion, Duncan Townsite Co. v. Lane, 245 U.S. 308, 311, 312, 38 S.Ct. 99, 62 L.Ed. 309, courts decline to enter upon the enquiry when there is a serious doubt as to the existence of the right or duty sought to be enforced. As was said in United States v. Interstate Commerce Commission, 294 U.S. 50, 63, 55 S.Ct. 326, 331, 79 L.Ed. 752: 'Where the matter is not beyond peradventure clear, we have invariably refused the writ (of mandamus), even though the question were one of law as to the extent of the statutory power of an administrative officer or body.' A fortiori this rule should have been applied here where the power challenged is that of Congress under the Constitution.

Mr. Justice STONE, Mr. Justice ROBERTS, and Mr. Justice CARDOZO join in this opinion.

The separate opinion of Mr. Justice McREYNOLDS.

Considering the consistent rulings of this court through many years, it is not difficult for me to conclude that petitioners have presented a justiciable controversy which we must decide. In Smith v. Kansas City Title & Trust Co., 255 U.S. 180, 41 S.Ct. 243, 65 L.Ed. 577, the grounds for jurisdiction were far less substantial than those here disclosed. We may not with propriety avoid disagreeable duties by lightly forsaking long respected precedents and established practice.

Nor do I find serious difficulty with the notion that the United States, by proper means and for legitimate ends, ***357** may dispose of water power or electricity honestly developed in connection with permissible improvement of navigable waters. But the means employed to that end must be reasonably appropriate in the circumstances. Under pretense of exercising granted power, they may not in fact undertake something not intrusted to them. Their mere ownership, e.g., of an iron mine would hardly permit the construction of smelting works ****488** followed by entry into the business of manufacturing and selling hardware, albeit the ore could thus be disposed of, private dealers discomfited and artificial prices publicized. Here, therefore, we should consider the truth of petitioners' charge that, while pretending to act within their powers to improve navigation, the United States, through corporate agencies, are really seeking to accomplish what they have no right to undertake-the business of developing, distributing and selling electric power. If the record sustains this charge, we ought so to declare and decree accordingly.

The Circuit Court of Appeals took too narrow a view of the purpose and effect of the contract of January 4, 1934. That went far beyond the mere acquisition of transmission lines for proper use in disposing of power legitimately developed. Like all contracts, it must be considered as a whole, illumined by surrounding circumstances. Especial attention should be given to the deliberately announced purpose of directors, clothed with

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extraordinary discretion and supplied with enormous sums of money. With $50,000,000 at their command they started out to gain control of the electrical business in large areas and to dictate sale prices. The power at Wilson Dam was the instrumentality seized upon for carrying the plan into effect.

While our primary concern is with this contract, it cannot be regarded as a mere isolated effort to dispose of property. And certainly to consider only those provisions ***358** which directly relate to Alabama Power Company is not permissible. We must give attention to the whole transaction-its antecedents, purpose and effect-as well as the terms employed.

No abstract question is before us; on the contrary, the matter is of enormous practical importance to petitioners-their whole investment is at stake. Properly understood, the pronouncements, policies and program of the Authority illuminate the action taken. They help to reveal the serious interference with the petitioners' rights. Their property was in danger of complete destruction under a considered program commenced by an agency of the national government with vast resources subject to its discretion and backed by other agencies likewise intrusted with discretionary use of huge sums. The threat of competition by such an opponent was appalling. The will to prevail was evident. No private concern could reasonably hope to withstand such force.

The Tennessee river, with headwaters in West Virginia and North Carolina, crosses Tennessee on a southwesterly course, enters Alabama near Chattanooga, and flows westerly across the northern part of that state to the northeast corner of Mississippi. There it turns northward, passes through Tennessee and Kentucky, and empties into the Ohio forty miles above Cairo. The total length is nine hundred miles; the drainage basin approximates forty thousand square miles. The volume of water is extremely variable; commercial navigation is of moderate importance.

At Muscle Shoals, near Florence, Ala. (twenty miles east of the Mississippi line and fifteen south of Tennessee), a succession of falls constitutes serious interference with navigation; also presents possibilities for development of power on a large scale. During and immediately after the World War, a great dam was constructed there by the United States, intended primarily for generation***359** of power. Production of electricity soon commenced. Some of this was devoted to governmental purposes; much was sold, delivery being made at or near the dam.

During the last thirty years, several corporations have been engaged in the growing business of developing electric energy and distributing this to customers over a network of interconnected lines extending throughout Tennessee, Georgia, Alabama, and Mississippi. At great expense they gradually built up extensive businesses and acquired properties of very large value. All operated under state supervision. Through stock ownership or otherwise, they came under general control of the Commonwealth & Southern Corporation. Among the associates were the Alabama Power

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Company which serviced Alabama; the Mississippi Company which serviced Mississippi; and the Tennessee Company which operated in eastern Tennessee. Huge sums were invested in these enterprises by thousands of persons in many states. Apparently, the companies were diligently developing their several systems and responding to the demands of the territories which they covered.

In 1933, operations began under an imposing program for somewhat improving ****489** Tennessee river navigation and especially for developing the water power along its whole course at public expense. This plan involved conversion of water power into electricity for wide distribution throughout the valley and adjacent territory. Its development was intrusted to the Tennessee Valley Authority, a federal corporation wholly controlled by the United States. This promptly took over the Wilson Dam and began work upon the Wheeler Dam, twenty miles up the river, and the Pickwick Dam, some forty miles lower down. Also it commenced construction of Norris Dam across Clinch river, a branch of the Tennessee, two hundred miles above the Wilson Dam. All these, with probable additions, were to be connected by transmission wires, ***360** and electric energy distributed from them to millions of people in many states. Public service corporations were to be brought to terms or put out of business. At least $75,000,000 of public funds was early appropriated for expenditure by the directors; and other governmental agencies in control of vast sums were ready to lend aid.

Readily to understand the issues now before us, one must be mindful of these circumstances.

The trial court made findings of fact which fill more than sixty printed pages. They are not controverted and for present purposes are accepted; upon them the cause stands for decision. They are much quoted below. Plainly they indicate, and that court, in effect, declared, the contract of January 4th was a deliberate step into a forbidden field, taken with definite purpose to continue the trespass.

Nothing suggests either necessity or desirability of entering into this agreement solely to obtain solvent customers willing to pay full value for all surplus power generated at Wilson Dam. Apparently there was ample opportunity for such sales deliveries to be made at or near the dam. No attempt was made to show otherwise. The definite end in view was something other than orderly disposition.

The Authority's answer to the complaint is little more than a series of denials. It does not even allege that the contract of January 4th was necessary for ready disposal of power; or that thereby better prices could be obtained; or that no buyer was ready, able and willing to take at the dam for full value; or that the board expected to derive adequate return from the business to be acquired. No sort of explanation of the contract is presented-why it was entered into or whether profitable use probably could be made of the property. And I find in the Authority's brief no serious attempt to justify the purchases because necessary or in fact an advantageous method for

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disposing***361** of property. Nothing in the findings lends support to any such view.

The record leaves no room for reasonable doubt that the primary purpose was to put the federal government into the business of distributing and selling electric power throughout certain large districts, to expel the power companies which had long serviced them, and to control the market therein. A government instrumentality had entered upon a pretentious scheme to provide a 'yardstick' of the fairness of rates charged by private owners, and to attain 'no less a goal than the electrification of America.' 'When we carry this program into every town and city and village, and every farm throughout the country, we will have written the greatest chapter in the economic, industrial and social development of America.' Any reasonable doubt concerning the purpose and result of the contract of January 4th or of the design of the Authority should be dispelled by examination of its Reports for 1934 and 1935. [FN*]

FN* From the Annual Report, T.V.A. Board for 1934, pp. 23, 24, 25, 26, 27 and 28:

To provide a workable and economic basis of operations, the Authority plans initially to serve certain definite regions and to develop its program in those areas before going outside.

The initial areas selected by the Authority may be roughly described as (a) the region immediately proximate to the route of the transmission line soon to be constructed by the Authority between Muscle Shoals and the site of Norris Dam; (b) the region in proximity to Muscle Shoals, including northern Alabama and northeastern Mississippi; and (c) the region in the proximity of Norris Dam (the new source of power to be constructed by the Authority on the Clinch River in northeast Tennessee).

At a later stage in the development it is contemplated to include, roughly, the drainage area of the Tennessee River in Kentucky, Alabama, Georgia, and North Carolina, and that part of Tennessee which lies east of the west margin of the Tennessee drainage area.

To make the area a workable one and a fair measure of public ownership, it should include several cities of substantial size (such as Chattanooga and Knoxville) and, ultimately, at least one city of more than a quarter million, within transmission distance, such as Birmingham, Memphis, Atlanta, or Louisville.

While it is the Authority's present intention to develop its power program in the above-described territory before considering going outside, the Authority may go outside the area if there are substantial changes in general conditions, facts, or governmental policy, which would necessarily require a change in this policy of regional development, or if the privately owned utilities in the area do not cooperate in the working out of the program.

The Authority entered into a 5-year contract on January 4, 1934, with the Commonwealth & Southern Corporation and its Alabama, Tennessee, Georgia, and Mississippi subsidiaries. The contract covered options to

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purchase electric properties in certain counties of Alabama, Mississippi, and Tennessee, the sale of distribution systems to municipalities in these counties, restrictions on territorial expansion by the contracting parties, the interchange of power, and other matters.

Alabama properties.-All of the low-tension (44,000 volts or lower) transmission lines, substations, rural lines, and rural distribution systems of the Alabama Power Co. in the counties of Lauderdale, Colbert, Lawrence, Limestone, and Morgan (except the Hulaco area), were included in the contract; also those in the north half of Franklin County, including the town of Red Bay, and the territory in the northern part of Cullman County served by a line of the Alabama Power Co. extending south from Decatur. The price of these properties was set at $1,101,256. The purchase had not been completed at the end of the fiscal year.

The power company agreed to attempt to sell the local distribution systems in the above counties to the respective municipalities, the Authority reserving the right to serve them if sales were not consummated within 3 months of bona fide negotiation and effort. Because of the failure of any (many) of the municipalities in northern Alabama to consummate negotiations for the purchase of the distribution systems serving them, the Authority entered into negotiations for the direct purchase of these distribution systems, but a purchase contract had not been completed on June 30.

Mississippi properties.-The contract covered all of the properties of the Mississippi Power Co. in the counties of Pontotoc, Lee, Itawamba, Union, Benton, Tippah, Prentiss, Tishomingo, and Alcorn, except a dam site on the Tennessee River in Tishomingo County. The purchase price was $850,000. The purchase was completed and delivery was accepted on June 1, 1934.

The transmission and generation facilities acquired in Mississippi and to be retained as part of the Authority's system include the following:

44,000-volt transmission lines..miles		63
44,000-volt substations.....		6
22,000-volt transmission lines..miles		45
22,000-volt substations.....		4
Tupelo steam stand-by generating plant ..... Kilovolt-amperes		4,374
Corinth steam stand-by generating plant ..... Kilovolt-amperes		2,225
Blue Mountain Diesel generating plant ..... Kilovolt-amperes		150
Myrtle Diesel generating plant ..... Kilovolt-amperes		75

Part of the local distribution facilities acquired in Mississippi were sold prior to the end of the fiscal year and it is expected that all will be sold eventually, as noted hereafter.

Tennessee properties.-The contract covered all of the properties of the Tennessee Electric Power Co. in the counties of Anderson, Campbell, Morgan (except the lines extending into Morgan County from Harriman), and Scott; also those in the west portion of Claiborne County, and the 66,000-volt transmission line from Anderson County to Knoxville. The price of these properties was set at $900,000. The purchase had not been completed at the end of the fiscal year.

Negotiations were carried on diligently for several months with the National Power & Light Co., an affiliate of the Electric Bond & Share Co., in an endeavor to acquire the eastern Tennessee electric properties of the Tennessee Public Service Co., a subsidiary of the National Power & Light Co. The electric distribution system in the city of Knoxville is included in these properties. The negotiations resulted in a contract after the end of the fiscal year.

Construction of rural electric lines in northern Alabama and northeastern Mississippi was commenced in the latter part of 1933 with relief labor, the Authority furnishing supervision and materials. Relief labor was withdrawn of February 15, 1934, after which date the work was continued by the Authority with its own forces. Approximately 93.5 miles of rural electric lines were under construction in Lauderdale and Colbert Counties, Ala., on June 30, and approximately 127 miles in Lee, Pontotoc, Alcorn, Itawamba, Prentiss, Monroe, and Tishomingo Counties, Miss.

A standard form of 20-year contract was devised to govern the sale of power at wholesale to municipal distribution systems, and was first used in a contract with the city of Tupelo, Miss. The Tupelo contract has been published by the Authority and is available for distribution.

Annual Report, T.V.A. 1935, pp. 29, 30:

The Authority has devoted special attention during the year to the problems of rural electrification, as required by section 10 of the act. By the close of the fiscal year 200 miles of rural electric line had been built, and 181 additional miles were in process of construction. These lines are divided among the various counties as follows:

	Miles completed	Miles in progress
Alabama:		
Colbert	19	15
Lauderdale	72	..
Mississippi:		
Alcorn	41	29
Lee and Itawamba	41	26
Pontotac	27	..
Prentiss	..	7
Tennessee:		
Lincoln	..	104
Total	200	181

In addition to the above, a number of the rural lines purchased from the Mississippi Power Co. were rehabilitated in order to improve operating and safety conditions, and to provide for increases in load. Also, additional customers were connected to all existing rural lines.

****490 *362** 'The conception was to establish an independent network comparable in all respects with the electric utility system serving the area, with which TVA sought to establish interchange arrangements, both as outlets for its ***363** own power, and to use existing systems as a stand-by or back-up service.'

'The TVA plan as conceived and in process of execution contemplates complete and exclusive control and jurisdiction over all power sites on the Tennessee River ***364** and tributaries.' 'The TVA policy contemplates full corporate discretion by TVA in developing, executing and extending its electric system and service within transmission limits.' 'This policy contemplated service utility in type and covered not only generation but transmission and distribution (preferably through public or nonprofit agencies, if available) both wholesale and retail. That is, ***365** moreover, implicit in both the January 4 contract and the now terminated August 9th contract.'

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****491** The challenged contract is defended upon the theory that the 'Federal Government may dispose of the surplus water power necessarily created by Wilson Dam and may authorize generation of electric energy and acquisition of transmission lines as means of facilitating this disposal.' But to facilitate disposal was not the real purpose; obviously the thing to be facilitated was carrying on business by use of the purchased property. Under the guise of disposition something wholly different was to be accomplished-devotion of electric power to purposes beyond the sphere of proper federal action, an unlawful goal. There is no plausible claim that such a contract was either necessary or desirable merely to bring about the sale of property. This Court has often affirmed that facts, not artifice, control its conclusions. The Agency has stated quite clearly the end in view: 'This public operation is to serve as a yardstick by which to measure the fairness of electric rates.' 'The TVA power policy was not designed or limited with a view to the marketing of the power produced and available at Muscle Shoals.' 'In formulating and going forward with the power policy the Board was considering that policy as a permanent and independent commercial function.'

For present purposes a complete survey of relevant circumstances preceding the contract of January 4th and all its consequences is not essential. The pleadings and findings fairly outline the situation. What follows is mainly quoted or derived from them.

The Act of May 18, 1933, created the Tennessee Valley Authority as a body ****492** corporate 'for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, in the interest of the national defense and for agricultural ***366** and industrial development, and to improve navigation in the Tennessee River and to control the destructive flood waters in the Tennessee River and Mississippi River Basins.' Section 1, 16 U.S.C.A. s 831. It provided, a board of three directors 'shall direct the exercise of all the powers of the Corporation' (section 2, 16 U.S.C.A. s 831a), and 'is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants' (section 5, 16 U.S.C.A. s 831d); and to 'produce, distribute, and sell electric power, as herein particularly specified.' (Section 5). The corporation 'shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation' (section 4, 16 U.S.C.A. s 831c); 'to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries.' (Section 4).

Also, the board is 'hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities, corporations, partnerships, or individuals, according to the policies hereinafter set-forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years.' Section 10, 16 U.S.C.A. s 831i. 'In order to promote and encourage the fullest possible use

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of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable.' Section 10.

'One of the first corporate acts of TVA after its organization was to formulate and announce a power policy to govern the commercial distribution of electric power by TVA. The evidence establishes the fact that the Board ***367** from the outset has considered that it has general corporate discretion as to the establishment and extension of its electric power policy. In establishing a power policy the Board was not primarily considering merely the question of disposal of power produced at Muscle Shoals no longer required for governmental purposes as a result of overbuilding, obsolescence of plants or termination of war purpose. Nor was it considering disposal of prospective increases in electric power to be unavoidably created in excess of some governmental requirement. It was considering the matter from the standpoint of the successful establishment and permanent operation of an independent and well rounded government-owned electric distribution system and the general civic, social and industrial planning and development of the Tennessee Valley region as a whole.'

'Under date of August 25, 1933, TVA announced its power policy, indicating both the initial stage of its development and certain later steps originally determined upon. * * * This power policy had not been rescinded or abandoned or modified at the time of submission of this cause.'

'In September, 1933, the Authority announced its wholesale and retail rate schedules, which are shown by the evidence to be materially lower than corresponding schedules of the existing utilities in the area. Following this action numerous municipalities in the area began to make efforts to construct municipal systems with which to distribute TVA current, and Public Works Administration (called PWA) gave assurances of favorable consideration of applications for loans to that end.'

Under such circumstances, Commonwealth & Southern Corporation negotiated the January 4th contract for its operating subsidiaries-Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Tennessee Electric Power Company.

***368** This recited that the Alabama Company, the Mississippi Company, and the Tennessee Company desired to sell, and the Authority desired to purchase, certain land, buildings, and physical properties devoted to the generation, transmission, and distribution of electricity, together with certain franchises, contracts, and going business.

****493** The Alabama Company agreed to sell for $1,000,000 all of its low tension (44 KV or lower) transmission lines, substations (including the high tension station at Decatur and the Sheffield Steam Plant Station), and all rural lines and rural distribution systems in five Alabama counties and parts

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of two others. (These counties are northwestern Alabama and lie on both sides of the Tennessee river for eighty miles or more.)

The Mississippi Company, in consideration of $850,000, agreed to transfer all of its transmission and distribution lines, substations, generating plants and other property in Pontotoc, Lee, Itawamba, Union, Benton, Tippah, Prentiss, Tishomingo, and Alcorn counties (except one dam site in Tishomingo county), state of Mississippi, used in connection with the generation, transmission, distribution or sale of electrical energy. (These counties are the northeastern section of the state, a territory sixty miles square.)

For $900,000, the Tennessee Company agreed to convey its transmission and distribution lines, substations, distribution systems, and other properties used in connection with the transmission, distribution, and sale of electrical energy in Anderson, Campbell, Morgan, and Scott counties, East Tennessee, and 'all of the 66 KV transmission line from Cove Creek to Knoxville.' (These counties are in the mountains northward from Knoxville within a radius of about sixty miles. They lie northeast of Muscle Shoals and some points therein are much more than a hundred miles from Wilson Dam. They have a population of 86,000.)

***369** The power companies agreed that 'any conveyance of property shall include not only the physical property, easements and rights-of-way, but shall also include all machinery, equipment, tools and working supplies set forth in the respective exhibits, and all franchises, contracts and going business relating to the use of any of said properties.' Also, 'to transfer or secure the transfer of said franchises, contracts and going business, and to transfer said properties with all present customers attached, so far as they are able.' Also, 'that during the period of this contract none of said companies will sell electric energy to any municipality, corporation, partnership, association or individual in any portion of the above described counties or parts thereof in Alabama, Tennessee and Mississippi, etc.' The Authority agreed not to sell 'electric energy outside of the specified counties to the customers of non-utilities supplied by the power companies.'

Other covenants provided for interchange of electric energy between the contracting parties and for cooperation in the sale of electric appliances throughout the entire territory served by the power companies.

'Power Companies covenant and agree that after the expiration of this agreement the interchange arrangement then in effect will be maintained by Power Companies for an additional period (not exceeding eighteen months) sufficient to permit Authority to construct its own transmission facilities for serving all of the territory which it is then serving in whole or in part with power obtained at such interchange points.'

'Power Companies agree to have available at all times for exchange, at each point of exchange, energy and capacity to supply the entire demands of the customers served by Authority from such points of exchange, subject to the limitations as to transmission capacity set forth in Section 10(h) hereof;

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Provided, that the maximum***370** amount which Authority shall be entitled to demand at all points of exchange shall be 70,000 k.v.'

Prior to the agreement for sale the Alabama Company had derived $750,000 gross annual revenue from its properties located within the 'ceded area.' This district had a population of 190,000; and the company had therein 10,000 individual customers-approximately one-tenth of all those directly served by it. The lines transferred by the Mississippi Power Company served directly 4,000 customers in 9 counties, having total population of 184,000. When this cause began, the Mississippi properties were being operated by TVA and rural lines were in process of extension by it in both Mississippi and Alabama.

'All of the electric properties and facilities covered by the contract of January 4, 1934, * * * were contracted for by TVA for the purpose of continuing and enlarging the utility service for which they were used by the respective power companies.'

****494** 'The operation of a commercial utility service by TVA and the wholesaling and retailing by TVA of electricity in the area served by the Alabama Power Company is not and will not be in aid of the regulation of navigation or national defense or other governmental function in so far as any plan, purpose or activity of the TVA or the United States disclosed on this record would indicate.'

Answering the petitioners' complaint, Alabama Company admitted 'that the public statements of TVA indicated the program therein alleged; and the directors of respondent company considered that to vest such an agency as therein alleged with unlimited power and access to public funds, in a program of business competition and public ownership promotion in the area served by respondent company would in effect destroy this respondent's property; and such conclusion on its part was the ***371** principal inducement for it to enter into the contracts of January 4 and August 9, 1934; and respondent company thereby was and will be enabled to salvage a larger amount of its property than it could have done by competition.' Also, 'that under the circumstances of threatened competition, directed or controlled by TVA as averred therein, this respondent agreed to the sale of certain of its transmission lines and property, and entered into the contract dated January 4, 1934. * * * Respondent company admits that at and before the execution of the contract, the threat was made to use federal funds to duplicate the facilities of respondent which would result in competition with rates not attainable by or permissible to this respondent, and such rates would be stipulated, controlled and regulated by TVA.'

As matter of law the trial court found:

'The function intended by TVA under the evidence in relation to service, utility in type, in the area ceded by the contract of January 4, 1934, transcends the function of conservation or disposition of government property, involves continuing service and commercial functions by the government to fill contracts not governmental in origin or character.'

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'Performance of the contract of January 4, 1934, would involve substantial loss and injury to the Alabama Power Company, including, inter alia, the loss or abandonment of franchises, licenses, going business and service area supporting its general system and power facilities and unless resisted would tend to invite a progressive encroachment on its service area by the Tennessee Valley Authority.'

'Congress has no constitutional authority to authorize Tennessee Valley Authority or any other federal agency to undertake the operation, essentially permanent in character, of a utility system, for profit, involving the ***372** generation, transmission and commercial distribution of electricity within state domain, having no reasonable relation to a lawful governmental use.'

'The contract of January 4, 1934, expressly provided for the transfer of all or substantially all of the lines and properties of the Alabama Power Company for the service of the ceded area, included transmission lines, rural distribution systems and certain urban distribution systems, and contemplated the eventual transfer of fourteen urban distribution systems. This contract, expressly contemplating service of the ceded area by the Tennessee Valley Authority with electricity to be generated or purchased by the Tennessee Valley Authority for that purpose, was in furtherance of illegal proprietary operations by the Tennessee Valley Authority in violation of the Federal Constitution and void. The contract was accordingly ultra vires and void as to the Alabama Power Company.'

Having made exhaustive findings of fact and law, the trial court entered a decree annulling the January 4th contract and enjoining the Alabama Power Company from performing it. The Circuit Court of Appeals reversed, upon the theory that the Authority was making proper arrangements for sale of surplus power from the Wilson dam. The injunction was continued.

I think the trial court reached the correct conclusion and that its decree should be approved. If under the thin mask of disposing of property the United States can enter the business of generating, transmitting and selling power as, when, and wherever some board may specify, with the definite design to accomplish ends wholly beyond the sphere marked out for them by the Constitution, and easy way has been found for breaking down the limitations heretofore supposed to guarantee protection against aggression.

U.S. 1936.

Ashwander v. Tennessee Valley Authority

297 U.S. 288, 56 S.Ct. 466, 80 L.Ed. 688

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Supreme Court of the United States.

AETNA LIFE INS. CO. OF HARTFORD, CONN. v. HAWORTH et al.

FN* Rehearing denied 300 U.S. 687, 57 S.Ct. 667, 81 L.Ed. --.

No. 446.

Argued Feb. 4, 1937.

Decided March 1, 1937.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Suit by the AEtna Life Insurance Company of Hartford, Connecticut, against Edwin P. Haworth and another. A decree of dismissal (11 F.Supp. 1016) was affirmed by the Circuit Court of Appeals (84 F.(2d) 695), and plaintiff brings certiorari.

Reversed and remanded.

West Headnotes

[1] **Federal Courts 170B** ⇦12.1

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(A) In General

170Bk12 Case or Controversy Requirement

170Bk12.1 k. In General. Most Cited Cases

(Formerly 170Bk12, 106k281)

Under constitutional provision limiting exercise of judicial power to cases and controversies, the term "controversies", if distinguishable from "cases" is so in that it is less comprehensive than the latter and includes only suits of a civil nature (Const. art. 3, s 2).

[2] **Declaratory Judgment 118A** ⇦62

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy

118Ak62 k. Nature and Elements in General. Most Cited Cases

(Formerly 13k6)

Declaratory Judgment Act applicable by its terms to cases of "actual controversy" is operative only in respect to controversies which are such in a constitutional sense, the word "actual" being one of emphasis rather than of definition. 28 U.S.C.A. §§ 2201, 2202; U.S.C.A.Const. art. 3, § 2.

[3] **Federal Courts 170B** ⇦1.1

170B Federal Courts

170BI Jurisdiction and Powers in General

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170BI(A) In General

170Bk1 Judicial Power of United States; Power of Congress

170Bk1.1 k. In General. Most Cited Cases

(Formerly 170Bk1, 106k258)

In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense, Congress is acting within its delegated power over the jurisdiction of the federal courts, and is not confined to traditional forms or traditional remedies, but may create and improve as well as abolish or restrict (Const. art. 3, s 2).

[4] **Declaratory Judgment 118A** ⇦22

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(B) Constitutional and Statutory Provisions

118Ak22 k. Validity of Statutes. Most Cited Cases

(Formerly 13k6)

Declaratory Judgment Act is within power of Congress so far as it authorizes relief which is consonant with exercise of judicial function in determination of controversies to which, under the Constitution, the judicial power extends. 28 U.S.C.A. §§ 2201, 2202; U.S.C.A.Const. art. 3, § 2.

[5] **Federal Courts 170B** ⇦12.1

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(A) In General

170Bk12 Case or Controversy Requirement

170Bk12.1 k. In General. Most Cited Cases

(Formerly 170Bk12, 106k281)

A 'controversy' in the constitutional sense must be one that is appropriate for judicial determination, be definite and concrete, touching legal relations of parties having adverse legal interests, and be a real and substantial controversy admitting of specific relief through decree of conclusive character (Const. art. 3, s 2).

[6] **Federal Courts 170B** ⇦12.1

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(A) In General

170Bk12 Case or Controversy Requirement

170Bk12.1 k. In General. Most Cited Cases

(Formerly 170Bk12, 106k281)

Where there is a concrete case admitting of immediate and definitive determination of legal rights of parties in adversary proceeding upon facts alleged, judicial function may be appropriately exercised, although adjudication of rights of litigants may not require the award of process or the

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payment of damages, and though there be no allegation of irreparable injury (Const. art. 3, s 2).

[7] **Declaratory Judgment 118A** ⇦164

118A Declaratory Judgment

118AII Subjects of Declaratory Relief

118AII(G) Written Instruments and Contracts

118AII(G)2 Insurance

118Ak163 Life and Accident Insurance

118Ak164 k. Disability Provisions. Most Cited Cases

(Formerly 13k6)

Where holder of insurance policies had formally presented claim for stipulated benefits for total and permanent disability and to be relieved from duty of paying premiums because of such disability while insurer had made equally definite claim that insured was not totally and permanently disabled, and that policies had lapsed for nonpayment of premiums, there was a dispute susceptible of judicial determination under Declaratory Judgment Act in suit by insurer; the dispute not relating as claimed to existence of changeable condition, but to existence of fact capable of final determination as to disability of insured when he stopped payment of premiums. 28 U.S.C.A. §§ 2201, 2202.

[8] **Declaratory Judgment 118A** ⇦10

118A Declaratory Judgment

118AI Nature and Grounds in General

118AI(A) In General

118Ak10 k. Fact Questions. Most Cited Cases

(Formerly 13k6)

That dispute turns upon questions of fact does not withdraw it from judicial cognizance under Declaratory Judgment Act. Jud.Code § 274d, 28 U.S.C.A. § 400 and note.

[9] **Constitutional Law 92** ⇦70.3(14)

92 Constitutional Law

92III Distribution of Governmental Powers and Functions

92III(B) Judicial Powers and Functions

92k70 Encroachment on Legislature

92k70.3 Inquiry Into Motive, Policy, Wisdom, or Justice of Legislation

92k70.3(9) Particular Subjects of Legislation, Application to

92k70.3(14) k. Government. Most Cited Cases

(Formerly 92k70(3))

Whether district court may entertain suit by insurer for determination of dispute with insured, as to existence of total and permanent disability relieving insured from payment of premiums and entitling him to disability benefits when controversy is between citizens of different states or otherwise within range of federal judicial power, is for Congress to determine.

[10] **Federal Courts 170B** ⇦763.1

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)1 In General

170Bk763 Extent of Review Dependent on Nature of Decision Appealed from

170Bk763.1 k. In General. Most Cited Cases

(Formerly 170Bk763, 30k866(1))

On appeal from a decree dismissing the complaint in limine, questions as to the burden of proof or mode of trial are not before the appellate court.

****462 *228** Mr. E. R. Morrison, of Kansas City, Mo., for petitioner.

***233** Mr. Rees Turpin, of Kansas City, Mo., for respondents.

***236** Mr. Chief Justice HUGHES delivered the opinion of the Court.

The question presented is whether the District Court had jurisdiction of this suit under the Federal Declaratory Judgment Act. Act of June 14, 1934, 48 Stat. 955, Jud.Code s 274d, 28 U.S.C. s 400 (28 U.S.C.A. s 400 and note). FN1

FN1 The act provides:

'(1) In cases of actual controversy * * * the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

'(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

'(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.'

The question arises upon the plaintiff's complaint which was dismissed by the District Court upon the ground that it did not set forth a 'controversy' in the constitutional sense and hence did not come within the legitimate scope of the statute. 11 F.Supp. 1016. The decree of dismissal was affirmed by the

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Circuit Court of Appeals. 84 F.(2d) 695. We granted certiorari. November 16, 1936. 299 U.S. 536, 57 S.Ct. 190, 81 L.Ed. 395.

***237** From the complaint it appears that plaintiff is an insurance company which had issued to the defendant Edwin P. Haworth five policies of insurance upon his life, the defendant Cora M. Haworth being named as beneficiary. The complaint set forth the terms of the policies. They contained various provisions which for the present purpose it is unnecessary fully to particularize. It is sufficient to observe that they all provided for certain benefits in the event that the insured became totally and permanently disabled. In one policy, for $10,000, issued in 1911, the company agreed, upon receiving the requisite proof of such disability and without further payment of premiums, to pay the sum insured, and dividend additions, in twenty annual installments, or a life annuity as specified, in full settlement. In four other policies issued in 1921, 1928, and 1929, respectively, for amounts aggregating $30,000, plaintiff agreed upon proof of such disability to waive further payment of premiums, promising in one of the policies to pay a specified amount monthly and in the other three to continue the life insurance in force. By these four policies the benefits to be payable at death, and the cash and loan values to be available, were to be the same whether the premiums were paid or were waived by reason of the described disability.

The complaint alleges that in 1930 and 1931 the insured ceased to pay premiums on the four policies last mentioned and claimed the disability benefits as stipulated. He continued to pay premiums on the first mentioned policy until 1934 and then claimed disability benefits. These claims, which were repeatedly renewed, were presented in the form of affidavits accompanied by certificates of physicians. A typical written claim on the four policies is annexed to the complaint. It states that while these policies were in force, the insured became ***238** totally and permanently disabled by disease and was 'prevented****463** from performing any work or conducting any business for compensation or profit'; that on October 7, 1930, he had made and delivered to the company a sworn statement 'for the purpose of asserting and claiming his right to have these policies continued under the permanent and total disability provision contained in each of them'; that more than six months before that date he had become totally and permanently disabled and had furnished evidence of his disability within the stated time; that the annual premiums payable in the year 1930 or in subsequent years were waived by reason of the disability; and that he was entitled to have the policies continued in force without the payment of premiums so long as the disability should continue.

With respect to the policy first mentioned, it appears that the insured claimed that prior to June 1, 1934, when he ceased to pay premiums, he had become totally and permanently disabled; that he was without obligation to pay further premiums and was entitled to the stipulated disability benefits including the continued life of the policy.

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Plaintiff alleges that consistently and at all times it has refused to recognize these claims of the insured and has insisted that all the policies had lapsed according to their terms by reason of the non-payment of premiums, the insured not being totally and permanently disabled at any of the times to which his claims referred. Plaintiff further states that taking loans into consideration four of the policies have no value and the remaining policy (the one first mentioned) has a value of only $45 as extended insurance. If, however, the insured has been totally and permanently disabled as he claims, the five policies are in full force, the plaintiff is now obliged to pay the accrued installments of cash disability benefits for which two of the policies provide, and the insured ***239** has the right to claim at any time cash surrender values accumulating by reason of the provisions for waiver of premiums, or at his death, Cora M. Haworth, as beneficiary, will be entitled to receive the face of the policies less the loans thereon.

Plaintiff thus contends that there is an actual controversy with defendants as to the existence of the total and permanent disability of the insured and as to the continuance of the obligations asserted despite the nonpayment of premiums. Defendants have not instituted any action wherein the plaintiff would have an opportunity to prove the absence of the alleged disability and plaintiff points to the danger that it may lose the benefit of evidence through disappearance, illness, or death of witnesses; and meanwhile, in the absence of a judicial decision with respect to the alleged disability, the plaintiff in relation to these policies will be compelled to maintain reserves in excess of $20,000.

The complaint asks for a decree that the four policies be declared to be null and void by reason of lapse for nonpayment of premiums and that the obligation upon the remaining policy be held to consist solely in the duty to pay the sum of $45 upon the death of the insured, and for such further relief as the exigencies of the case may require.

[1] [2] [3] [4] First.-The Constitution (article 3, s 2) limits the exercise of the judicial power to 'cases' and 'controversies.' 'The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature.' Per Mr. Justice Field in Re Pacific Railway Commission (C.C.) 32 F. 241, 255, citing Chisholm v. Georgia, 2 Dall. 419, 431, 432, 1 L.Ed. 440. See Muskrat v. United States, 219 U.S. 346, 356, 357, 31 S.Ct. 250, 55 L.Ed. 246;in Old Colony Trust Co. v. Commissioner, 279 U.S. 716, 723, 724, 49 S.Ct. 499, 501, 502, 73 L.Ed. 918. The Declaratory Judgment Act of 1934, in its limitation to 'cases of actual controversy,' manifestly ***240** has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word 'actual' is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish. Turner v. Bank of North America, 4

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Dall. 8, 10, 1 L.Ed. 718; Stevenson v. Fain, 195 U.S. 165, 167, 25 S.Ct. 6, 49 L.Ed. 142; Kline v. Burke Construction Co., 260 U.S. 226, 234, 43 S.Ct. 79, 82, 67 L.Ed. 226, 24 A.L.R. 1077. Exercising this control of practice and procedure the Congress is not confined to traditional forms or traditional remedies. ****464** The judiciary clause of the Constitution 'did not crystallize into changeless form the procedure of 1789 as the only possible means for presenting a case or controversy otherwise cognizable by the federal courts.' Nashville, Chattanooga & St. Louis R. Co. v. Wallace, 288 U.S. 249, 264, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191. In dealing with methods within its sphere of remedial action the Congress may create and improve as well as abolish or restrict. The Declaratory Judgment Act must be deemed to fall within this ambit of congressional power, so far as it authorizes relief which is consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the judicial power extends.

[5] [6] A 'controversy' in this sense must be one that is appropriate for judicial determination. Osborn v. Bank of United States, 9 Wheat. 738, 819, 6 L.Ed. 204. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. United States v. Alaska S.S. Co., 253 U.S. 113, 116, 40 S.Ct. 448, 449, 64 L.Ed. 808. The controversy must be definite and concrete, touching the legal relations of parties having ***241** adverse legal interests. South Spring Gold Co. v. Amador Gold Co., 145 U.S. 300, 301, 12 S.Ct. 921, 36 L.Ed. 712; Fairchild v. Hughes, 258 U.S. 126, 129, 42 S.Ct. 274, 275, 66 L.Ed. 499; Massachusetts v. Mellon, 262 U.S. 447, 487, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. See Muskrat v. United States, supra; Texas v. Interstate Commerce Commission, 258 U.S. 158, 162, 42 S.Ct. 261, 262, 66 L.Ed. 531; New Jersey v. Sargent, 269 U.S. 328, 339, 340, 46 S.Ct. 122, 125, 70 L.Ed. 289; Liberty Warehouse Co. v. Grannis, 273 U.S. 70, 47 S.Ct. 282, 71 L.Ed. 541; New York v. Illinois, 274 U.S. 488, 490, 47 S.Ct. 661, 71 L.Ed. 1164; http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&ReferencePositionType=S&SerialNum=1928125850&ReferencePosition=509rsltWilling v. Chicago Auditorium Association, 277 U.S. 274, 289, 290, 48 S.Ct. 507, 509, 72 L.Ed. 880; Arizona v. California, 283 U.S. 423, 463, 464, 51 S.Ct. 522, 529, 75 L.Ed. 1154; Alabama v. Arizona, 291 U.S. 286, 291, 54 S.Ct. 399, 401, 78 L.Ed. 798; United States v. West Virginia, 295 U.S. 463, 474, 475, 55 S.Ct. 789, 793, 79 L.Ed. 1546; Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 324, 56 S.Ct. 466, 472, 80 L.Ed. 688. Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. Nashville,

Chattanooga & St. Louis R. Co. v. Wallace, supra, 288 U.S. 249, at page 263, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191; Tutun v. United States, 270 U.S. 568, 576, 577, 46 S.Ct. 425, 426, 70 L.Ed. 738; Fidelity National Bank & Trust Co. v. Swope, 274 U.S. 123, 132, 47 S.Ct. 511, 514, 71 L.Ed. 959; Old Colony Trust Company v. Commissioner, supra, 279 U.S. 716, at page 725, 49 S.Ct. 499, 502, 73 L.Ed. 918. And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required. Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra, 288 U.S. 249, at page 264, 53 S.Ct. 345, 348, 77 L.Ed. 730, 87 A.L.R. 1191.

With these principles governing the application of the Declaratory Judgment Act, we turn to the nature of the controversy, the relation and interests of the parties, and the relief sought in the instant case.

***242** [7] Second-There is here a dispute between parties who face each other in an adversary proceeding. The dispute relates to legal rights and obligations arising from the contracts of insurance. The dispute is definite and concrete, not hypothetical or abstract. Prior to this suit, the parties had taken adverse positions with respect to their existing obligations. Their contentions concerned the disability benefits which were to be payable upon prescribed conditions. On the one side, the insured claimed that he had become totally and permanently disabled and hence was relieved of the obligation to continue the payment of premiums and was entitled to the stipulated disability benefits and to the continuance of the policies in force. The insured presented this claim formally, as required by the policies. It was a claim of a present, specific right. On the other side, the company made an equally definite claim that the alleged basic fact did not exist, that the insured was not totally and permanently disabled and had ****465** not been relieved of the duty to continue the payment of premiums, that in consequence the policies had lapsed, and that the company was thus freed from its obligation either to pay disability benefits or to continue the insurance in force. Such a dispute is manifestly susceptible of judicial determination. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.

[8] That the dispute turns upon questions of fact does not withdraw it, as the respondent seems to contend, from judicial cognizance. The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is everyday practice. Equally unavailing is respondent's contention that the dispute relates to the existence of a 'mutable fact' and a 'changeable condition-the state of the insured's health.' The insured***243** asserted a total and permanent disability occurring prior to October, 1930, and continuing thereafter. Upon that ground he ceased to pay premiums. His condition at the time he stopped payment, whether he was then totally and permanently disabled so that the policies did not lapse, is not a 'mutable' but a definite fact. It is a controlling fact which can be finally determined and which fixes rights and obligations under the policies. If it were found that the insured

was not totally and permanently disabled when he ceased to pay premiums and hence was in default, the effect of that default and the consequent right of the company to treat the policies as lapsed could be definitely and finally adjudicated. If it were found that he was totally and permanently disabled as he claimed, the duty of the company to pay the promised disability benefits and to maintain the policies in force could likewise be adjudicated. There would be no difficulty in either event in passing a conclusive decree applicable to the facts found and to the obligations of the parties corresponding to those facts. If the insured made good his claim, the decree establishing his right to the disability benefits, and to the continuance of the policies in force during the period of the proved disability, would be none the less final and conclusive as to the matters thus determined even though a different situation might later arise in the event of his recovery from that disability and his failure after that recovery to comply with the requirements of the policies. Such a contention would present a distinct subject matter.

[9] If the insured had brought suit to recover the disability benefits currently payable under two of the policies there would have been no question that the controversy was of a justiciable nature, whether or not the amount involved would have permitted its determination in a federal court. Again, on repudiation by ***244** the insurer of liability in such a case and insistence by the insured that the repudiation was unjustified because of his disability, the insured would have 'such an interest in the preservation of the contracts that he might maintain a suit in equity to declare them still in being.' Burnet v. Wells, 289 U.S. 670, 680, 53 S.Ct. 761, 764, 77 L.Ed. 1439; Cohen v. New York Life Insurance Co., 50 N.Y. 610, 624, 10 Am.Rep. 522; Fidelity National Bank & Trust Co. v. Swope, supra. But the character of the controversy and of the issue to be determined is essentially the same whether it is presented by the insured or by the insurer. Whether the District Court may entertain such a suit by the insurer, when the controversy as here is between citizens of different States or otherwise is within the range of the federal judicial power, is for the Congress to determine. It is the nature of the controversy, not the method of its presentation or the particular party who presents it, that is determinative. See Gully v. Interstate Natural Gas Co. (C.C.A.) 82 F. (2d) 145, 149; Travelers Insurance Co. v. Helmer (D.C.) 15 F.Supp. 355, 356; New York Life Insurance Co. v. London (D.C.) 15 F.Supp. 586, 589.

[10] We have no occasion to deal with questions that may arise in the progress of the cause, as the complaint has been dismissed in limine. Questions of burden of proof or mode of trial have not been considered by the courts below and are not before us.

Our conclusion is that the complaint presented a controversy to which the judicial power extends and that authority to hear and determine it has been conferred upon the District Court by the Declaratory Judgment Act. The decree is reversed and the cause is remanded for further proceedings in conformity with this opinion.

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Reversed.

U.S., 1937.

Aetna Life Ins. Co. of Hartford, Conn. v. Haworth

300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, 108 A.L.R. 1000

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Supreme Court of the United States

WEST COAST HOTEL CO. v. PARRISH et ux.

No. 293.

Argued Dec. 16, 17, 1936.

Decided March 29, 1937.

Action by Ernest Parrish and wife against the West Coast Hotel Company. From a judgment of the Supreme Court of the State of Washington (185 Wash. 581, 55 P.(2d) 1083), reversing a judgment of the trial court and directing judgment for plaintiffs, the defendant appeals.

Affirmed.

Mr. Justice SUTHERLAND, VAN DEVANTER, McREYNOLDS, and BUTLER, dissenting.

West Headnotes

[1] **Courts 106** ⇐90(3)

106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k90 Decisions of Same Court or Co-Ordinate Court

106k90(3) k. Constitutional Questions. Most Cited Cases

Where state Supreme Court in determining that minimum wage law for women was valid, refused to regard prior decision of federal Supreme Court determining that another minimum wage law was invalid as determinative and pointed to other decisions of federal Supreme Court as justifying its position, such ruling of state Supreme Court demanded re-examination on part of federal Supreme Court of prior decision determining minimum wage law to be invalid, especially in view of importance of question, close division by which prior decision was reached, and change in economic conditions.

[2] **Labor and Employment 231H** ⇐2218(3)

231H Labor and Employment

231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime Pay

231HXIII(B)1 In General

231Hk2215 Constitutional and Statutory Provisions

231Hk2218 Validity

231Hk2218(3) k. State Statutes in General. Most Cited Cases

(Formerly 232Ak1088 Labor Relations, 255k69 Master and Servant)

Reasonableness of exercise of protective power of state through enactment of minimum wage laws must be determined in light of economic conditions.

[3] **Constitutional Law 92** ⇐275(2.1)

92 Constitutional Law

92XII Due Process of Law

92k275 Deprivation of Liberty or Property as to Occupation or Employment

92k275(2) Regulation of Employment of Labor

92k275(2.1) k. In General. Most Cited Cases

(Formerly 92k275(2))

"Liberty" safeguarded by due process clause of Fourteenth Amendment is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. U.S.C.A.Const. Amend. 14.

[4] **Constitutional Law 92** ⇐275(1)

92 Constitutional Law

92XII Due Process of Law

92k275 Deprivation of Liberty or Property as to Occupation or Employment

92k275(1) k. In General. Most Cited Cases

Liberty, under Constitution, is subject to restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. U.S.C.A.Const. Amend. 14.

[5] **Constitutional Law 92** ⇐276(1)

92 Constitutional Law

92XII Due Process of Law

92k276 Deprivation of Liberty to Contract

92k276(1) k. In General. Most Cited Cases

(Formerly 92k276)

Freedom of contract is qualified and not absolute right since "liberty," guaranteed by Constitution, implies absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in interests of the community. U.S.C.A. Const. Amend. 14.

[6] **Constitutional Law 92** ⇐275(2.1)

92 Constitutional Law

92XII Due Process of Law

92k275 Deprivation of Liberty or Property as to Occupation or Employment

92k275(2) Regulation of Employment of Labor

92k275(2.1) k. In General. Most Cited Cases

(Formerly 92k275(2))

Labor and Employment 231H ⇦1238
231H Labor and Employment
231HXII Labor Relations
231HXII(E) Labor Contracts
231Hk1237 Constitutional and Statutory Provisions
231Hk1238 k. In General. Most Cited Cases
(Formerly 232Ak243 Labor Relations)
Power under Constitution to restrict freedom of contract may be exercised in public interest with respect to contracts between employer and employee. U.S.C.A.Const. Amend. 14.
[7] **Constitutional Law 92** ⇦275(2.1)
92 Constitutional Law
92XII Due Process of Law
92k275 Deprivation of Liberty or Property as to Occupation or Employment
92k275(2) Regulation of Employment of Labor
92k275(2.1) k. In General. Most Cited Cases
(Formerly 92k275(2))
Labor and Employment 231H ⇦3
231H Labor and Employment
231HI In General
231Hk2 Constitutional and Statutory Provisions
231Hk3 k. In General. Most Cited Cases
(Formerly 232Ak5 Labor Relations)
In dealing with relation of employer and employee, Legislature has wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. U.S.C.A.Const. Amend. 14.
[8] **Constitutional Law 92** ⇦275(3)
92 Constitutional Law
92XII Due Process of Law
92k275 Deprivation of Liberty or Property as to Occupation or Employment
92k275(2) Regulation of Employment of Labor
92k275(3) k. Fair Labor Standards; Wages and Hours. Most Cited Cases
(Formerly 92k275(2))
Labor and Employment 231H ⇦2218(8)
231H Labor and Employment
231HXIII Wages and Hours

231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2215 Constitutional and Statutory Provisions
231Hk2218 Validity
231Hk2218(8) k. Women and Minors. Most Cited Cases
(Formerly 232Ak1094 Labor Relations, 255k69 Master and Servant)
Washington minimum wage law for women held not invalid on ground that adult employees should be deemed competent to make their own contracts since employers and employees do not stand on basis of equality. Rem.Rev.Stat.Wash. § 7623 et seq.
[9] **Constitutional Law 92** ⇦275(2.1)
92 Constitutional Law
92XII Due Process of Law
92k275 Deprivation of Liberty or Property as to Occupation or Employment
92k275(2) Regulation of Employment of Labor
92k275(2.1) k. In General. Most Cited Cases
(Formerly 92k275(2))
Labor and Employment 231H ⇦1238
231H Labor and Employment
231HXII Labor Relations
231HXII(E) Labor Contracts
231Hk1237 Constitutional and Statutory Provisions
231Hk1238 k. In General. Most Cited Cases
(Formerly 232Ak243 Labor Relations)
Fact that both parties are of full age and competent to contract does not necessarily deprive state of power to interfere where parties do not stand on equality or where public health demands that one party to contract shall be protected against himself. U.S.C.A.Const. Amend. 14.
[10] **Constitutional Law 92** ⇦276(1)
92 Constitutional Law
92XII Due Process of Law
92k276 Deprivation of Liberty to Contract
92k276(1) k. In General. Most Cited Cases
(Formerly 92k276)
If statute enacted under police power of state regulating making of private contracts has reasonable relation to proper legislative purpose and is neither arbitrary nor discriminatory, requirements of due process are satisfied. U.S.C.A. Const. Amend. 14.
[11] **Constitutional Law 92** ⇦70.3(1)
92 Constitutional Law

92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.3 Inquiry Into Motive, Policy, Wisdom, or Justice of Legislation
92k70.3(1) k. In General. Most Cited Cases
(Formerly 92k70(3))
The questions of the wisdom, justice, policy, or expediency of a statute are for the Legislature alone.
[12] **Constitutional Law 92** ⇦70.3(1)
92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.3 Inquiry Into Motive, Policy, Wisdom, or Justice of Legislation
92k70.3(1) k. In General. Most Cited Cases
(Formerly 92k70(3))
Legislature is primarily judge of necessity of an enactment. U.S.C.A.Const. Amend. 14.
[13] **Constitutional Law 92** ⇦48(1)
92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k48 Presumptions and Construction in Favor of Constitutionality
92k48(1) k. In General. Most Cited Cases
(Formerly 92k48)
Every presumption favors validity of legislative enactment, and though court may hold views inconsistent with wisdom of law, it may not be annulled unless palpably in excess of legislative power. U.S.C.A. Const.Amend. 14.
[14] **Constitutional Law 92** ⇦275(3)
92 Constitutional Law
92XII Due Process of Law
92k275 Deprivation of Liberty or Property as to Occupation or Employment
92k275(2) Regulation of Employment of Labor
92k275(3) k. Fair Labor Standards; Wages and Hours. Most Cited Cases
(Formerly 92k275(2))

Washington minimum wage law requiring payment to women employees of minimum wages found necessary for decent maintenance of women held not invalid as arbitrary or capricious. Rem.Rev.Stat.Wash. § 7623 et seq., and §§ 10840, 10893; U.S.C.A. Const. Amend. 14.
[15] **Evidence 157** ⇦14
157 Evidence
157I Judicial Notice
157k14 k. Facts Relating to Human Life, Health, Habits, and Acts. Most Cited Cases
In determining state's power to enact minimum wage law for women, federal Supreme Court could take judicial notice of unparalleled demands for relief which arose during economic depression, since denial of a living wage is not only detrimental to health and well being of workers, but casts direct burden for their support on the community.
[16] **Labor and Employment 231H** ⇦2212
231H Labor and Employment
231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2211 Power to Regulate
231Hk2212 k. In General. Most Cited Cases
(Formerly 232Ak1082.1, 232Ak1082 Labor Relations, 255k69 Master and Servant)
In view that the exploitation of a class of workers who are in an unequal position with regard to bargaining power and are thus relatively defenseless against denial of a living wage casts direct burden for their support on the community, the community may direct its law-making power to correct the abuse which springs from employers' selfish disregard of public interest. U.S.C.A.Const. Amend. 14.
[17] **Constitutional Law 92** ⇦224(3)
92 Constitutional Law
92XI Equal Protection of Laws
92k224 Sex Discrimination
92k224(3) k. Occupation and Employment. Most Cited Cases
(Formerly 92k238(2))
Labor and Employment 231H ⇦2218(8)
231H Labor and Employment
231HXIII Wages and Hours
231HXIII(B) Minimum Wages and Overtime Pay
231HXIII(B)1 In General
231Hk2215 Constitutional and Statutory Provisions
231Hk2218 Validity

231Hk2218(8) k. Women and Minors. Most Cited Cases

(Formerly 232Ak1094 Labor Relations)

Washington minimum wage law for women held not unconstitutional as arbitrary discrimination notwithstanding it did not extend to men, since legislative authority acting within its proper field is not bound to extend its regulation to all cases which it might possibly reach. Rem.Rev.Stat.Wash. § 7623 et seq., and §§ 10840, 10893; U.S.C.A.Const. Amend. 14.

[18] **Constitutional Law 92** ⚿208(1)

92 Constitutional Law

92X Class Legislation

92k208 Class Legislation

92k208(1) k. In General. Most Cited Cases

Legislature is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest, and if the law presumably hits the evil, where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.

****579 *379** Appeal from the Supreme Court of the State of Washington.

Messrs. ***3800** E. L. Skeel and John W. Roberts, both of Seattle, Wash., for appellant.

Messrs. W. A. Toner, of Olympia, Wash., and ***381** Sam M. Driver, of Wenatchee, Wash., for appellees.

***386** Mr. Chief Justice HUGHES delivered the opinion of the Court.

This case presents the question of the constitutional validity of the minimum wage law of the state of Washington.

The act, entitled 'Minimum Wages for Women,' authorizes the fixing of minimum wages for women and minors. Laws 1913 (Washington) c. 174, p. 602, Remington's Rev.Stat.(1932) s 7623 et seq. It provides:

'Section 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and norals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

'Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ ***387** women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

'Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable

and not detrimental to health ****580** and morals, and which shall be sufficient for the decent maintenance of women.'

Further provisions required the commission to ascertain the wages and conditions of labor of women and minors within the state. Public hearings were to be held. If after investigation the commission found that in any occupation, trade, or industry the wages paid to women were 'inadequate to supply them necessary cost of living and to maintain the workers in health,' the commission was empowered to call a conference of representatives of employers and employees together with disinterested persons representing the public. The conference was to recommend to the commission, on its request, an estimate of a minimum wage adequate for the purpose above stated, and on the approval of such a recommendation it became the duty of the commission to issue an obligatory order fixing minimum wages. Any such order might be reopened and the question reconsidered with the aid of the former conference or a new one. Special licenses were authorized for the employment of women who were 'physically defective or crippled by age or otherwise,' and also for apprentices, at less than the prescribed minimum wage.

By a later act the Industrial Welfare Commission was abolished and its duties were assigned to the Industrial Welfare Committee consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, ***388** the Supervisor of Industrial Relations, theIndustrial Statistician, and the Supervisor of Women in Industry. Laws 1921 (Washington) c. 7, p. 12, Remington's Rev.Stat.(1932) ss 10840, 10893.

The appellant conducts a hotel. The appellee Elsie Parrish was employed as a chambermaid and (with her husband) brought this suit to recover the difference between the wages paid her and the minimum wage fixed pursuant to the state law. The minimum wage was $14.50 per week of 48 hours. The appellant challenged the act as repugnant to the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of the state, reversing the trial court, sustained the statute and directed judgment for the plaintiffs. Parrish v. West Coast Hotel Co., 185 Wash. 581, 55 P. (2d) 1083. The case is here on appeal.

The appellant relies upon the decision of this Court in Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238, which held invalid the District of Columbia Minimum Wage Act (40 Stat. 960) which was attacked under the due process clause of the Fifth Amendment. On the argument at bar, counsel for the appellees attempted to distinguish the Adkins Case upon the ground that the appellee was employed in a hotel and that the business of an innkeeper was affected with a public interest. That effort at distinction is obviously futile, as it appears that in one of the cases ruled by the Adkins opinion the employee was a woman employed as an elevator operator in a hotel. Adkins v. Lyons, 261 U.S. 525, at page 542, 43 S.Ct. 394, 395, 67 L.Ed. 785, 24 A.L.R. 1238.

The recent case of Morehead v. New York ex rel. Tipaldo, 298 U.S. 587, 56 S.Ct. 918, 80 L.Ed. 1347, 103 A.L.R. 1445, came here on certiorari to the New York court which had held the New York minimum wage act for women to be invalid. A minority of this Court thought that the New York statute was distinguishable in a material feature from that involved in the Adkins Case and that for that and other reasons the New ***389** York statute should be sustained. But the Court of Appeals of New York had said that it found no material difference between the two statutes and this Court held that the 'meaning of the statute' as fixed by the decision of the state court 'must be accepted here as if the meaning had been specifically expressed in the enactment.' 298 U.S. 587, at page 609, 56 S.Ct. 918, 922, 80 L.Ed. 1347, 103 A.L.R. 1445. That view led to the affirmance by this Court of the judgment in the Morehead Case, as the Court considered that the only question before it was whether the Adkins Case was distinguishable and that reconsideration of that decision had not been sought. Upon that point the Court said: 'The petition for the writ sought review upon the ground that this case (Morehead) is distinguishable from that one (Adkins). No application has been made for reconsideration of the constitutional question there decided. The validityof the principles upon which that decision rests is not challenged. This court confines itself to the ground upon which the writ was asked or granted. * * * Here the review granted was no broader than sought by the petitioner. * * * He is not entitled and does not ask to be heard upon the ****581** question whether the Adkins Case should be overruled. He maintains that it may be distinguished on the ground that the statutes are vitally dissimilar.' 298 U.S. 587, at pp. 604, 605, 56 S.Ct. 918, 920, 80 L.Ed. 1347, 103 A.L.R. 1445.

[1] [2] We think that the question which was not deemed to be open in the Morehead Case is open and is necessarily presented here. The Supreme Court of Washington has upheld the minimum wage statute of that state. It has decided that the statute is a reasonable exercise of the police power of the state. In reaching that conclusion, the state court has invoked principles long established by this Court in the application of the Fourteenth Amendment. The state court has refused to regard the decision in the Adkins Case as determinative and has pointed to our decisions both before and since that case as justifying its position. We are of the opinion that this ruling of ***390** the state court demands on our part a re-examination of the Adkins Case. The importance of the question, in which many states having similar laws are concerned, the close division by which the decision in the Adkins Case was reached, and the economic conditions which have supervened, and in the light of which the reasonableness of the exercise of the protective power of the state must be considered, make it not only appropriate, but we think imperative, that in deciding the present case the subject should receive fresh consideration.

The history of the litigation of this question may be briefly stated. The minimum wage statute of Washington was enacted over twenty-three years ago. Prior to the decision in the instant case, it had twice been held valid by

the Supreme Court of the state. Larsen v. Rice, 100 Wash. 642, 171 P. 1037; Spokane Hotel Co. v. Younger, 113 Wash. 359, 194 P. 595. The Washington statute is essentially the same as that enacted in Oregon in the same year. Laws 1913 (Oregon) c. 62, p. 92. The validity of the latter act was sustained by the Supreme Court of Oregon in Stettler v. O'Hara, 69 Or. 519, 139 P. 743, L.R.A.1917C, 944, Ann.Cas.1916A, 217, and Simpson v. O'Hara, 70 Or. 261, 141 P. 158. These cases, after reargument, were affirmed here by an equally divided court, in 1917. 243 U.S. 629, 37 S.Ct. 475, 61 L.Ed. 937. The law of Oregon thus continued in effect. The District of Columbia neMinimum Wage Law (40 Stat. 960) was enacted in 1918. The statute was sustained by the Supreme Court of the District in the Adkins Case. Upon appeal the Court of Appeals of the District first affirmed that ruling, but on rehearing reversed it and the case came before this Court in 1923. The judgment of the Court of Appeals holding the act invalid was affirmed, but with Chief Justice Taft, Mr. Justice Holmes, and Mr. Justice Sanford dissenting, and Mr. Justice Brandeis taking no part. The dissenting opinions took the ground that the decision was at variance with the ***391** principles which this Court had frequently announced and applied. In 1925 and 1927, the similar ninimum wage statutes of Arizona and Arkansas were held invalid upon the authority of the Adkins Case. The Justices who had dissented in that case bowed to the ruling and Mr. Justice Brandeis dissented. Murphy v. Sardell, 269 U.S. 530, 46 S.Ct. 22, 70 L.Ed. 396; Donham v. West-Nelson Co., 273 U.S. 657, 47 S.Ct. 343, 71 L.Ed. 825. The question did not come before us again until the last term in the Morehead Case, as already noted. In that case, briefs supporting the New York statute were submitted by the states of Ohio, Connecticut, Illinois, Massachusetts, New Hampshire, New Jersey, and Rhode Island. 298 U.S. page 604, note, 56 S.Ct. 920, 80 L.Ed. 1347, 103 A.L.R. 1445. Throughout this entire period the Washington statute now under consideration has been in force.

[3] [4] The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the states, as the due process clause invoked in theAdkins Case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in ****582** the interests of the community is due process.

***392** [5] This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described. [FN1]

FN1 Allgeyer v. Louisiana, 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832; Lochner v. New York, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937, 3 Ann.Cas. 1133; Adair v. United States, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764.

'But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified, and not an absolute, right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.' Chicago, Burlington & Quincy R. Co. v. McGuire, 219 U.S. 549, 565, 31 S.Ct. 259, 262, 55 L.Ed. 328.

[6] [7] This power under the Constitution to restrict freedom of contract has had many illustrations. [FN2] That it may be exercised in the public interest with respect to contracts ***393** between employer and employee is undeniable. Thus statutes have been sustained limiting employment in underground mines and smelters to eight hours a day (Holden v. Hardy, 169 U.S. 366, 18 S.Ct. 383, 42 L.Ed. 780); in requiring redemption in cash of store orders or other evidences of indebtedness issued in the payment of wages (Knoxville Iron Co. v. Harbison, 183 U.S. 13, 22 S.Ct. 1, 46 L.Ed. 55); in forbidding the payment of seamen's wages in advance (Patterson v. The Bark Eudora, 190 U.S. 169, 23 S.Ct. 821, 47 L.Ed. 1002); in making it unlawful to contract to pay miners employed at quantity rates upon the basis of screened coal instead of the weight of the coal as originally produced in the mine (McLean v. Arkansas, 211 U.S. 539, 29 S.Ct. 206, 53 L.Ed. 315); in prohibiting contracts limiting liability for injuries to employees (Chicago, Burlington & Quincy R. Co. v. McGuire, supra); in limiting hours of work of employees in manufacturing establishments (Bunting v. Oregon, 243 U.S. 426, 37 S.Ct. 435, 61 L.Ed. 830, Ann.Cas.1918A, 1043); and in maintaining workmen's compensation laws (New York Central R. Co. v. White, 243 U.S. 188, 37 S.Ct. 247, 61 L.Ed. 667, L.R.A.1917D, 1, Ann.Cas.1917D, 629; Mountain Timber Co. v. Washington, 243 U.S. 219, 37 S.Ct. 260, 61 L.Ed. 685, Ann.Cas.1917D, 642). In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion ****583** in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression. Chicago, Burlington & Quincy R. Co. v. McGuire, supra, 219 U.S. 549, at page 570, 31 S.Ct. 259, 55 L.Ed. 328.

FN2 Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77; Railroad Commission Cases, 116 U.S. 307, 6 S.Ct. 334, 388, 1191, 29 L.Ed. 636; Willcox v. Consolidated Gas Co., 212 U.S. 19, 29 S.Ct. 192, 53 L.Ed. 382, 48 L.R.A.(N.S.) 1134, 15 Ann.Cas. 1034; Atkin v. Kansas, 191 U.S. 207, 24 S.Ct. 124, 48 L.Ed. 148; Mugler v. Kansas, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205; Crowley v. Christensen, 137 U.S. 86, 11 S.Ct. 13, 34 L.Ed. 620; Gundling v. Chicago, 177 U.S. 183, 20 S.Ct. 633, 44 L.Ed. 725; Booth v. Illinois, 184 U.S. 425, 22 S.Ct. 425, 46 L.Ed. 623; Schmidinger v. Chicago, 226 U.S. 578, 33 S.Ct. 182, 57 L.Ed. 364; Armour & Co. v. North Dakota, 240 U.S. 510, 36 S.Ct. 440, 60 L.Ed. 771, Ann.Cas.1916D, 548; National Union Fire Insurance Co. v. Wanberg, 260 U.S. 71, 43 S.Ct. 32, 67 L.Ed. 136; lRadice v. New York, 264 U.S. 292, 44 S.Ct. 325, 68 L.Ed. 690; Yeiser v. Dysart, 267 U.S. 540, 45 S.Ct. 399, 69 L.Ed. 775; Liberty Warehouse Company v. Burley Tobacco Growers' Association, 276 U.S. 71, 97, 48 S.Ct. 291, 297, 72 L.Ed. 473; Highland v. Russell Car Co., 279 U.S. 253, 261, 49 S.Ct. 314, 316, 73 L.Ed. 688; O'Gorman & Young v. Hartford Insurance Co., 282 U.S. 251, 51 S.Ct. 130, 75 L.Ed. 324, 72 A.L.R. 1163; Hardware Insurance Co. v. Glidden Co., 284 U.S. 151, 157, 52 S.Ct. 69, 70, 76 L.Ed. 214; Packer Corporation v. Utah, 285 U.S. 105, 111, 52 S.Ct. 273, 275, 76 L.Ed. 643, 79 A.L.R. 546; Stephenson v. Binford, 287 U.S. 251, 274, 53 S.Ct. 181, 188, 77 L.Ed. 288, 87 A.L.R. 721; Hartford Accident Co. v. Nelson Co., 291 U.S. 352, 360, 54 S.Ct. 392, 395, 78 L.Ed. 840; Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S.Ct. 277, 78 L.Ed. 505, 90 A.L.R. 1285; Nebbia v. New York, 291 U.S. 502, 527-529, 54 S.Ct. 505, 511, 512, 78 L.Ed. 940, 89 A.L.R. 1469.

[8] The point that has been strongly stressed that adult employees should be deemed competent to make their own contracts was decisively met nearly forty years ago in Holden v. Hardy, supra, where we pointed out the inequality in the footing of the parties. We said (Id., 169 U.S. 366, 397, 18 S.Ct. 383, 390, 42 L.Ed. 780):

'The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that ***394** their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employe s, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.'

[9] And we added that the fact 'that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public heath demands that one party to the contract shall be protected against himself.' 'The state still retains an interest in his welfare, however reckless

he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer.'

It is manifest that this established principle is peculiarly applicable in relation to the employment of women in whose protection the state has a special interest. That phase of the subject received elaborate consideration in Muller v. Oregon (1908) 208 U.S. 412, 28 S.Ct. 324, 326, 52 L.Ed. 551, 13 Ann.Cas. 957, where the constitutional authority of the state to limit the working hours of women was sustained. We emphasized the consideration that 'woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence' and that her physical well being 'becomes an object of public interest and care in order to preserve the strength and vigor of the race.' We emphasized the need of protecting women against oppression despite her possession of contractual rights. We said that 'though limitations upon personal and contractual rights may be removed by legislation, there is that in her ***395** disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right.' Hence she was 'properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained.' We concluded that the limitations which the statute there in question 'places upon her contractualpowers, upon her right to agree with her employer, as to the time she shall labor' were 'not imposed solely for her benefit, but also largely for the benefit of all.' Again, in Quong Wing v. Kirkendall, 223 U.S. 59, 63, 32 S.Ct. 192, 56 L.Ed. 350, in referring to a differentiation with respect to the employment of women, we said that the Fourteenth Amendment did not interfere with state power by creating a 'fictitious equality.' We referred to recognized classifications on the basis of sex with regard to hours of work and in other matters, and we observed that the particular points at which that difference shall be enforced by legislation were largely in the power of the state. In later rulings this Court sustained the regulation of hours of work of women employees in Riley v. Massachusetts, 232 U.S. 671, 34 S.Ct. 469, 58 L.Ed. 788 (factories), Miller v. Wilson, 236 U.S. 373, 35 S.Ct. 342, 59 L.Ed. 628, L.R.A.1915F, 829 (hotels), and Bosley v. McLaughlin, 236 U.S. 385, 35 S.Ct. 345, 59 L.Ed. 632 (hospitals).

This array of precedents and the principles they applied were thought by the dissenting Justices in the Adkins Case to demand that the minimum wage statute be ****584** sustained. The validity of the distinction made by the Court between a minimum wage and a maximum of hours in limiting liberty of contract was especially challenged. 261 U.S. 525, at page 564, 43 S.Ct. 394, 403, 67 L.Ed. 785, 24 A.L.R. 1238. That challenge persists and is without any satisfactory answer. As Chief Justice Taft observed: 'In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to ***396** the

one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand.' And Mr. Justice Holmes, while recognizing that 'the distinctions of the law are distinctions of degree,' could 'perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate.' Id., 261 U.S. 525, at p. 569, 43 S.Ct. 394, 405, 67 L.Ed. 785, 24 A.L.R. 1238.

One of the points which was pressed by the Court in supporting its ruling in the Adkins Case was that the standard set up by the District of Columbia Act did not take appropriate account of the value of the services rendered. In the Morehead Case, the minority thought that the New York statute had met that point in its definition of a 'fair wage' and that it accordingly presented a distinguishable feature which the Court could recognize within the limits which the Morehead petition for certiorari was deemed to present. The Court, however, did not take that view and the New York Act was held to be essentially the same as that for the District of Columbia. The statute now before us is like the latter, but we are unable to conclude that in its minimum wage requirement the state has passed beyond the boundary of its broad protective power.

The minimum wage to be paid under the Washington statute is fixed after full consideration by representatives of employers, employees, and the public. It may be assumed that the minimum wage is fixed in consideration of the services that are performed in the particular occupations under normal conditions. Provision is made for special licenses at less wages in the case of women who are incapable of full service. The statement of Mr. Justice Holmes in the Adkins Case is pertinent: 'This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as ***397** the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been up-held.' 261 U.S. 525, at page 570, 43 S.Ct. 394, 406, 67 L.Ed. 785, 24 A.L.R. 1238. And Chief Justice Taft forcibly pointed out the consideration which is basic in a statute of this character: 'Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law, and that while in individual cases, hardship mayresult, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed, and so to that of the community at large.' Id., 261 U.S. 525, at page 563, 43 S.Ct. 394, 403, 67 L.Ed. 785, 24 A.L.R. 1238.

[10] [11] [12] [13] We think that the views thus expressed are sound and that the decision in the Adkins Case was a departure from the true application of the principles governing the regulation by the state of the relation of employer and employed. Those principles have been reenforced by our subsequent decisions. Thus in Radice v. New York, 264 U.S. 292, 44 S.Ct. 325, 68 L.Ed. 690, we sustained the New York statute which restricted the employment of women in restaurants at night. In O'Gorman & Young v. Hartford Fire Insurance Company, 282 U.S. 251, 51 S.Ct. 130, 75 L.Ed. 324, 72 A.L.R. 1163, which upheld an act regulating the commissions of insurance agents, we pointed to the presumption of the constitutionality of a statute dealing with a subject within the scope of the police power and to the absence of any factual foundation of record for deciding that the limits of power had been transcended. In **585Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1469, dealing *398 with the New York statute providing for minimum prices for milk, the general subject of the regulation of the use of private property and of the making of private contracts received an exhaustive examination, and we again declared that if such laws 'have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of dur process are satisfied'; that 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal'; that 'times without number we have said that the Legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.' Id., 291 U.S. 502, at pages 537, 538, 54 S.Ct. 505, 516, 78 L.Ed. 940, 89 A.L.R. 1469.

[14] With full recognition of the earnestness and vigor which characterize the prevailing opinion in the Adkins Case, we find it impossible to reconcile that ruling with these well-considered declarations. What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end? The Legislature of the state was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. The Legislature was entitled to adopt measures to reduce the evils of the 'sweating system,'*399 the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus making their very helplessness the occastion of a most injurious competition. The Legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its policy of protection. The

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adoption of similar requirements by many states evidences a deepseated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the Legislature is entitled to its judgment.

[15] [16] [17] [18] There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being, but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land. While in the instant case no factual brief has been presented, there is no reason to doubt that the state of Washington has encountered the same social problem that is present elsewhere. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The *400 community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest. The argument that the legislation in question constitutes an arbitrary discrimination, because it does not extend to men, is unavailing. This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The Legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might **586 have been applied.' There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms. Carroll v. Greenwich Insurance Co., 199 U.S. 401, 411, 26 S.Ct. 66, 50 L.Ed. 246; Patsone v. Pennsylvania, 232 U.S. 138, 144, 34 S.Ct. 281, 58 L.Ed. 539; Keokee Coke Co. v. Taylor, 234 U.S. 224, 227, 34 S.Ct. 856, 58 L.Ed. 1288; Sproles v. binford, 286 U.S. 374, 396, 52 S.Ct. 581, 588, 76 L.Ed. 1167; Semler v. Oregon Board, 294 U.S. 608, 610, 611, 55 S.Ct. 570, 571, 79 L.Ed. 1086. This familiar principle has repeatedly been applied to legislation which singles out women, and particular classes of women, in the exercise of the state's protective power. Miller v. Wilson, supra, 236 U.S. 373, at page 384, 35 S.Ct. 342, 59 L.Ed. 628, L.R.A.1915F, 829; Bosley v. McLaughlin, supra, 236 U.S. 385, at pages 394, 395, 35 S.Ct. 345, 59 L.Ed. 632; Radice v. New York, supra, 264 U.S. 292, at pages 295-298, 44 S.Ct. 325, 326, 327, 68 L.Ed. 690. Their

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relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment.

Our conclusion is that the case of Adkins v. Children's Hospital, supra, should be, and it is, overruled. The judgment of the Supreme Court of the state of Washington is affirmed.

Affirmed.

Mr. Justice SUTHERLAND.

Mr. Justice VAN DEVANTER, Mr. Justice McREYNOLDS, Mr. Justice BUTLER, and I think the judgment of the court below should be reversed.

***401** The principles and authorities relied upon to sustain the judgment were considered in Adkins v. Children's Hospital, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785, 24 A.L.R. 1238, and Morehead v. New York ex rel. Tipaldo, 298 U.S. 587, 56 S.Ct. 918, 80 L.Ed. 1347, 103 A.L.R. 1445, and their lack of application to cases like the one in hand was pointed out. A sufficient answer to all that is now said will be found in the opinions of the court in those cases. Nevertheless, in the circumstances, it seems well to restate our reasons and conclusions.

Under our form of government, where the written Constitution, by its own terms, is the supreme law, some agency, of necessity, must have the power to say the final word as to the validity of a statute assailed as unconstitutional. The Constitution makes it clear that the power has been intrusted to this court when the question arises in a controversy within its jurisdiction; and so long as the power remains there, its exercise cannot be avoided without betrayal of the trust.

It has been pointed out many times, as in the Adkins Case, that this judicial duty is one of gravity and delicacy; and that rational doubts must be resolved in favor of the constitutionality of the statute. But whose doubts, and by whom resolved? Undoubtedly it is the duty of a member of the court, in the process of reaching a right conclusion, to give due weight to the opposing views of his associates; but in the end, the question which he must answer is not whether such views seem sound to those who entertain them, but whether they convince him that the statute is constitutional or engender in his mind a rational doubt upon that issue. The oath which he takes as a judge is not a composite oath, but an individual one. And in passing upon the validity of a statute, he discharges a duty imposed upon him, which cannot be consummated justly by an automatic acceptance of the views of others which have neither convinced, nor created a reasonable doubt in, his mind. If upon a question so ***402** important he thus surrender his deliberate judgment, he stands forsworn. He cannot subordinate his convictions to that extent and keep faith with his oath or retain his judicial and moral independence.

The suggestion that the only check upon the exercise of the judicial power, when properly invoked, to declare a constitutional right superior to an unconstitutional statute is the judge's own faculty of self-restraint, is both ill considered and mischievous. Self-restraint belongs in the domain of will and

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not of judgment. The check upon the judge is that imposed by his oath of office, by the Constitution, and by his own conscientious and informed convictions; and since he has the duty to make up his own mind and adjudge accordingly, it is hard to see how there could be any other restraint. This Court acts as a unit. It cannot act in any other way; and the majority (whether a bare majority or a majority of all but one of its members), therefore, establishes the controlling rule as the decision of the court, binding, so long as it remains unchanged, equally upon those who disagree and upon those who subscribe to it. Otherwise, orderly****587** administration of justice would cease. But it is the right of those in the minority to disagree, and sometimes, in matters of grave importance, their imperative duty to voice their disagreement at such length as the occasion demands-always, of course, in terms which, however forceful, do not offend the proprieties or impugn the good faith of those who think otherwise.

It is urged that the question involved should now receive fresh consideration, among other reasons, because of 'the economic conditions which have supervened'; but the meaning of the Constitution does not change with the ebb and flow of economic events. We frequently are told in more general words that the Constitution must be construed in the light of the present. If by that it is meant that the Constitution is made up of ***403** living words that apply to every new condition which they include, the statement is quite true. But to say, if that be intended, that the words of the Constitution mean today what they did not mean when written-that is, that they do not apply to a situation now to which they would have applied then-is to rob that instrument of the essential element which continues it in force as the people have made it until they, and not their official agents, have made it otherwise.

The words of Judge Campbell in People ex rel. Twitchell v. Blodgett, 13 Mich. 127, 139, 140, apply with peculiar force. 'But it may easily happen,' he said, 'that specific provisions may, in unforeseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding. Constitutions can not be changed by events alone. They remain binding as the acts of the people in their sovereign capacity, as the framers of Government, until they are amended or abrogated by the action prescribed by the authority which created them. It is not competent for any department of the Government to change a constitution, or declare it changed, simply because it appears ill adapted to a new state of things.

'Restrictions have, it is true, been found more likely than grants to be unsuited to unforeseen circumstances. * * * But, where evils arise from the application of such regulations, their force cannot be denied or evaded; and the remedy consists in repeal or amendment, and not in false construction.' The principle is reflected in many decisions of this Court. See South Carolina v. United States, 199 U.S. 437, 448, 449, 26 S.Ct. 110, 50 L.Ed. 261, 4 Ann.Cas. 737; Lake County v. Rollins, 130 U.S. 662, 670, 9 S.Ct. 651, 32 L.Ed. 1060; Knowlton v. Moore, 178 U.S. 41, 95, 20 S.Ct. 747, 44 L.Ed. 969; Rhode Island v. Massachusetts, 12 Pet. 657, 723, 9 L.Ed. 1233; Craig v. Missouri, 4 Pet. 410, 431, 432, 7 L.Ed. 903; Ex parte Bain,121 U.S.

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1, 12, 7 S.Ct. 781, 30 L.Ed. 849; Maxwell v. Dow, 176 U.S. 581, 602, 20 S.Ct. 494, 44 L.Ed. 597; Jarrolt v. Moberly, 103 U.S. 580, 586, 26 L.Ed. 492.

***404** The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase 'supreme law of the land' stands for and to convert what was intended as inescapable and enduring mandates into mere moral reflections.

If the Constitution, intelligently and reasonably construed in the light of these principles, stands in the way of desirable legislation, the blame must rest upon that instrument, and not upon the court for enforcing it according to its terms. The remedy in that situation-and the only true remedy-is to amend the Constitution. Judge Cooley, in the first volume of his Constitutional Limitations (8th Ed.) p. 124, very clearly pointed out that much of the benefit expected from written Constitutions would be lost if their provisions were to be bent to circumstances or modified by public opinion. He pointed out that the common law, unlike a Constitution, was subject to modification by public sentiment and action which the courts might recognize; but that 'a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. * * * What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent ****588** time when a court has occasion to pass upon it.'

The Adkins Case dealt with an Act of Congress which had passed the scrutiny both of the legislative and executive branches of the government. We recognized that ***405** thereby these departments had affirmed the validity of the statute, and properly declared that their determination must be given great weight, but we then concluded, after thorough consideration, that their view could not be sustained. We think it not inappropriate now to add a word on that subject before coming to the question immediately under review.

The people by their Constitution created three separate, distinct, independent, and coequal departments of government. The governmental structure rests, and was intended to rest, not upon any one or upon any two, but upon all three of these fundamental pillars. It seems unnecessary to repeat, what so often has been said, that the powers of these departments are different and are to be exercised independently. The differences clearly and definitely appear in the Constitution. Each of the departments is an agent of its creator; and one department is not and cannot be the agent of another. Each is answerable to its creator for what it does, and not to another agent.

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The view, therefore, of the Executive and of Congress that an act is constitutional is persuasive in a high degree; but it is not controlling.

Coming, then, to a consideration of the Washington statute, it first is to be observed that it is in every substantial respect identical with the statute involved in the Adkins Case. Such vices as existed in the latter are present in the former. And if the Adkins Case was properly decided, as we who join in this opinion think it was, it necessarily follows that the Washington statute is invalid.

In support of minimum-wage legislation, it has been urged, on the one hand, that great benefits will result in favor of underpaid labor, and, on the other hand, that the danger of such legislation is that the minimum will tend to become the maximum and thus bring down the ***406** earnings of the more efficient toward the level of the less-efficient employees. But with these speculations we have nothing to do. We are concerned only with the question of constitutionality.

That the clause of the Fourteenth Amendment which forbids a state to deprive any person of life, liberty, or property without due process of law includes freedom of contract is so well settled as to be no longer open to question. Nor reasonably can it be disputed that contracts of employment of labor are included in the rule. Adair v. United States, 208 U.S. 161, 174, 175, 28 S.Ct. 277, 280, 52 L.Ed. 436, 13 Ann.Cas. 764; Coppage v. Kansas, 236 U.S. 1, 10, 14, 35 S.Ct. 240, 59 L.Ed. 441, L.R.A.1915C, 960. In the first of these cases, Mr. Justice Harlan, speaking for the Court, said, 'The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. * * * In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.'

In the Adkins Case we referred to this language, and said that while there was no such thing as absolute freedom of contract, but that it was subject to a great variety of restraints, nevertheless, freedom of contract was the general rule and restraint the exception; and that the power to abridge that freedom could only be justified by the existence of exceptional circumstances. This statement of the rule has been many times affirmed; and we do not understand that it is questioned by the present decision.

We further pointed out four distinct classes of cases in which this court from time to time had upheld statutory interferences with the liberty of contract. They were, in brief, (1) statutes fixing rates and charges to be ***407** exacted by businesses impressed with a public interest; (2) statutes relating to contracts for the performance of public work; (3) statutes prescribing the character, methods, and time for payment of wages; and (4) statutes fixing hours of labor. It is the last class that has been most relied upon as affording support for minimum-wage ****589** legislation; and much of the opinion in

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the Adkins Case, 261 U.S. 525, 547-553, 43 S.Ct. 394, 397-399, 67 L.Ed. 785, 24 A.L.R. 1238, is devoted to pointing out the essential distinction between fixing hours of labor and fixing wages. What is there said need not be repeated. It is enough for present purposes to say that statutes of the former class deal with an incident of the employment, having no necessary effect upon wages. The parties are left free to contract about wages, and thereby equalize such additional burdens as may be imposed upon the employer as a result of the restrictions as to hours by an adjustment in respect of the amount of wages. This court, wherever the question is adverted to, has been careful to disclaim any purpose to uphold such legislation as fixing wages, and has recognized an essential difference between the two. E.g., Bunting v. Oregon, 243 U.S. 426, 37 S.Ct. 435, 61 L.Ed. 830, Ann.Cas.1918A, 1043; Wilson v. New, 243 U.S. 332, 345, 346, 353, 354, 37 S.Ct. 298, 61 L.Ed. 755, L.R.A.1917E, 938, Ann.Cas.1918A, 1024; and see Freund, Police Power, s 318.

We then pointed out that minimumwage legislation such as that here involved does not deal with any business charged with a public interest, or with public work, or with a temporary emergency, or with the character, methods, or periods of wage payments, or with hours of labor, or with the protection of persons under legal disability, or with the prevention of fraud. It is, simply and exclusively, a law fixing wages for adult women who are legally as capable of contracting for themselves as men, and cannot be sustained unless upon principles apart from those involved in cases already decided by the court.

Two cases were involved in the Adkins decision. In one of them it appeared that a woman twenty-one years of age, ***408** who brought the suit, was employed as an elevator operator at a fixed salary. Her services were satisfactory, and she was anxious to retain her position, and her employer, while willing to retain her, was obliged to dispense with her services on account of the penalties prescribed by the act. The wages received by her were the best she was able to obtain for any work she was capable of performing; and the enforcement of the order deprived her, as she alleged, not only of that employment, but left her unable to secure any position at which she could make a living with as good physical and moral surroundings and as good wages as she was receiving and was willing to take. The Washington statute, of course, admits of the same situation and result, and, for aught that appears to the contrary the situation in the present case may have been the same as that just described. Certainly, to the extent that the statute applies to such cases, it cannot be justified as a reasonable restraint upon the freedom of contract. On the contrary, it is essentially arbitrary.

Neither the statute involved in the Adkins Case nor the Washington statute, so far as it is involved here, has the slightest relation to the capacity or earning power of the employee, to the number of hours which constitute the day's work, the character of the place where the work is to be done, or the circumstances or surroundings of the employment. The sole basis upon which the question of validity rests is the assumption that the employee is

entitled to receive a sum of money sufficient to provide a living for her, keep her in health and preserve her morals. And, as we pointed out at some length in that case (261 U.S. 525, at pages 555-557, 43 S.Ct. 394, 400, 401, 67 L.Ed. 785, 24 A.L.R. 1238), the question thus presented for the determination of the board can not be solved by any general formula prescribed by a statutory bureau, since it is not a composite but an individual question to be answered for each individual, considered by herself. ***409** What we said further in that case (261 U.S. 525, at pages 557-559, 43 S.Ct. 394, 401, 67 L.Ed. 785, 24 A.L.R. 1238), is equally applicable here:

'The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It therefore undertakes to solve but one-half ****590** of the problem. The other half is the establishment of a corresponding standard of efficiency, and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law is not confined to the great and powerful employers but embraces those whose bargaining power may be as weak as that of the employee. It takes no account of periods of stress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole.

'The feature of this statute, which perhaps more than any other, puts upon it the stamp of invalidity, is that it ***410** exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the

proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it. The moral requirement implicit in every contract of employment, viz. that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money; but he is not entitled to more. It what he gets is worth what he pays, he is not justified in demanding more, simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission ***411** power to determine the quantity of food necessary for individual support, and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, and solely with relation to circumstances apart from the contract of employment, the business affected by it, and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States.'

Whether this would be equally or at all true in respect of the statutes of some of the states we are not called upon to say. They are not now before us; and it is enough that it applies in every particular to the Washington statute now under consideration.

The Washington statute, like the one for the District of Columbia, fixes minimum wages for adult women. Adult men and their employers are left free to bargain as they please; and it is a significant and an ****591** important fact that all state statutes to which our attention has been called are of like character. The common-law rules restricting the power of women to make contracts have, under our system, long since practically disappeared. Women today stand upon a legal and political equality with men. There is no longer any reason why they should be put in different classes in respect of their legal ***412** right to make contracts; nor should they be denied, in effect,

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the right to compete with men for work paying lower wages which men may be willing to accept. And it is an arbitrary exercise of the legislative power to do so. In the Tipaldo Case, 298 U.S. 587, 615, 56 S.Ct. 918, 925, 80 L.Ed. 1347, 103 A.L.R. 1445, it appeared that the New York Legislature had passed two minimum-wage measures-one dealing with women alone, the other with both men and women. The act which included men was vetoed by the Governor. The other, applying to women alone, was approved. The 'factual background' in respect of both measures was substantially the same. In pointing out the arbitrary discrimination which resulted (298 U.S. 587, at pages 615-617, 56 S.Ct. 918, 925, 80 L.Ed. 1347, 103 A.L.R. 1445), we said:

'These legislative declarations, in form of findings or recitals of fact, serve well to illustrate why any measure that deprives employers and adult women of freedom to agree upon wages, leaving employers and men employees free so to do, is necessarily arbitrary. Much, if not all that in them is said in justification of the regulations that the act imposes in respect of women's wages apply with equal force in support of the same regulation of men's wages. While men are left free to fix their wages by agreement with employers, it would be fanciful to suppose that the regulation of women's wages would be useful to prevent or lessen the evils listed in the first section of the act. Men in need of work are as likely as women to accept the low wages offered by unscrupulous employers. Men in greater number than women support themselves and dependents and because of need will work for whatever wages they can get and that without regard to the value of the service and even though the pay is less than minima prescribed in accordance with this act. It is plain that, under circumstances such as those portrayed in the 'factual background,' prescribing of minimum wages for women alone would unreasonably restrain them ***413** in competition with men and tend arbitrarily to deprive them of employment and a fair chance to find work.'

An appeal to the principle that the Legislature is free to recognize degrees of harm and confine its restrictions accordingly, is but to beg the question, which is-Since the contractual rights of men and women are the same, does the legislation here involved, by restricting only the rights of women to make contracts as to wages, create an arbitrary discrimination? We think it does. Difference of sex affords no reasonable ground for making a restriction applicable to the wage contracts of all working women from which like contracts of all working men are left free. Certainly a suggestion that the bargaining ability of the average woman is not equal to that of the average man would lack substance. The ability to make a fair bargain, as every one knows, does not depend upon sex.

If, in the light of the facts, the state legislation, without reason or for reasons of mere expediency, excluded men from the provisions of the legislation, the power was exercised arbitrarily. On the other hand, if such legislation in respect of men was properly omitted on the ground that it would be unconstitutional, the same conclusion of unconstitutionality is inescapable in

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respect of similar legislative restraint in the case of women. Adkins Case, 261 U.S. 525, 553, 43 S.Ct. 394, 399, 67 L.Ed. 785, 24 A.L.R. 1238.

Finally, it may be said that a statute absolutely fixing wages in the various industries at definite sums and forbidding employers and employees from contracting for any other than those designated would probably not be thought to be constitutional. It is hard to see why the power to fix minimum wages does not connote a like power in respect of maximum wages. And yet, if both powers be exercised in such a way that the minimum and the maximum so nearly approach each other as to ***414** become substantially the same, the right to make any contract in respect of wages will have been completely abrogated.

A more complete discussion may be found in the Adkins and Tipaldo Cases cited supra.

U.S. 1937.

West Coast Hotel Co. v. Parrish

300 U.S. 379, 57 S.Ct. 578, 108 A.L.R. 1330, 8 O.O. 89, 1 L.R.R.M. (BNA) 754, 81 L.Ed. 703, 1 Lab.Cas. P 17,021

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Supreme Court of the United States

NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORPORATION.

No. 419.

Argued Feb. 10, 11, 1937.

Decided April 12, 1937.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Proceeding by the National Labor Relations Board against the Jones & Laughlin Steel Corporation for enforcement of an order of the Board. The petition was denied by the Circuit Court of Appeals (83 F.(2d) 998), and the petitioner brings certiorari.

Reversed and remanded.

Mr. Justice McREYNOLDS, Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER, dissenting.

West Headnotes

[1] **Labor and Employment 231H** ⚿1934

231H Labor and Employment

231HXII Labor Relations

231HXII(J) Judicial Review and Enforcement of Decisions of Labor Relations Boards

231HXII(J)2 Enforcement by Courts

231Hk1933 Questions of Law or Fact; Findings

231Hk1934 k. In General. Most Cited Cases

(Formerly 232Ak723 Labor Relations, 255k15 Master and Servant)

In a proceeding under the National Labor Relations Act on charges that defendant violated the act by engaging in unfair labor practices affecting commerce, where defendant did not take advantage of its opportunity to present evidence to refute that offered to show discrimination and coercion, and the findings of the Board that employees were discharged because of union activity and to discourage membership in the union were supported by evidence, there was no ground for setting aside the order of the Board so far as the facts were concerned. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.

[2] **Commerce 83** ⚿7(1)

83 Commerce

83I Power to Regulate in General

83k2 Constitutional Grant of Power to Congress

83k7 Internal Commerce of States

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83k7(1) k. In General. Most Cited Cases

(Formerly 83k7)

Authority of the federal government over interstate commerce may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce among the several states and the internal concerns of the state. U.S.C.A.Const. Amend. 10.

[3] **Statutes 361** ⇦205

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k205 k. In General. Most Cited Cases

Courts may not deny effect to specific provisions of the National Labor Relations Act which Congress had constitutional power to enact by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.

[4] **Constitutional Law 92** ⇦48(3)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k44 Determination of Constitutional Questions

92k48 Presumptions and Construction in Favor of Constitutionality

92k48(3) k. Doubtful Cases; Construction to Avoid Doubt. Most Cited Cases

(Formerly 92k48)

As between two possible interpretations of a statute, by one of which it would be unconstitutional, and by the other valid, it is the plain duty of the courts to adopt that which will save the act, and, even to avoid a serious doubt, the rule is the same.

[5] **Constitutional Law 92** ⇦48(7)

92 Constitutional Law

92II Construction, Operation, and Enforcement of Constitutional Provisions

92k44 Determination of Constitutional Questions

92k48 Presumptions and Construction in Favor of Constitutionality

92k48(4) Application to Particular Legislation or Action or to Particular Constitutional Questions

92k48(7) k. State-Federal or Interstate Relations, Problems Involving. Most Cited Cases

(Formerly 92k48)

National Labor Relations Act empowering the National Labor Relations Board to prevent any person from engaging in unfair labor practices affecting commerce as therein defined may be construed so as to operate within the sphere of constitutional authority as it purports to reach only what may be deemed to burden or obstruct interstate or foreign commerce, and thus qualified must be construed as contemplating the exercise of control within constitutional bounds. National Labor Relations Act of 1935, §§ 2, 10, 29 U.S.C.A. §§ 151 et seq., 152(6, 7), 160; U.S.C.A. Const.Amend. 5.

[6] **Commerce 83** ⇦62.30

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(D) Employment of Labor

83II(D)2 Labor Relations

83k62.30 k. In General. Most Cited Cases

(Formerly 83k16)

Acts which directly burden or obstruct interstate or foreign commerce or its free flow are within the reach of congressional power and are not rendered immune because they grow out of labor disputes.

[7] **Labor and Employment 231H** ⇦1104

231H Labor and Employment

231HXII Labor Relations

231HXII(C) Collective Bargaining

231Hk1101 Constitutional and Statutory Provisions

231Hk1104 k. Validity. Most Cited Cases

(Formerly 232Ak173 Labor Relations, 255k16 Master and Servant)

National Labor Relations Act, so far as it safeguards the right of employees to self-organization and to select representatives of their own choosing for collective bargaining, or other mutual protection, without restraint or coercion by their employer, does not invade the constitutional rights of employers and employees. National Labor Relations Act of 1935, §§ 7, 8, 29 U.S.C.A. §§ 157, 158; U.S.C.A.Const. Amend. 5.

[8] **Commerce 83** ⇦5

83 Commerce

83I Power to Regulate in General

83k2 Constitutional Grant of Power to Congress

83k5 k. Commerce Among the States. Most Cited Cases

(Formerly 83k16)

Congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a flow of interstate or foreign commerce, and burdens and obstructions may be due to injurious action springing from other sources.

[9] **Commerce 83** ⇦1

83 Commerce
83I Power to Regulate in General
83k1 k. Nature and Grounds of Power. Most Cited Cases
Power to regulate commerce is a power to enact all appropriate legislation for its protection or advancement, to adopt measures to promote its growth and insure its safety, and to foster, protect, control, and restrain.
[10] **Commerce 83** ⇦5
83 Commerce
83I Power to Regulate in General
83k2 Constitutional Grant of Power to Congress
83k5 k. Commerce Among the States. Most Cited Cases
Power of Congress to regulate commerce is plenary and may be exerted to protect interstate commerce no matter what the source of the dangers which threaten it.
[11] **Commerce 83** ⇦7(2)
83 Commerce
83I Power to Regulate in General
83k2 Constitutional Grant of Power to Congress
83k7 Internal Commerce of States
83k7(2) k. Activities Affecting Interstate Commerce. Most Cited Cases
(Formerly 83k16)
Though activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress has power to exercise that control.
[12] **Commerce 83** ⇦13.5
83 Commerce
83I Power to Regulate in General
83k11 Powers Remaining in States, and Limitations Thereon
83k13.5 k. Local Matters Affecting Commerce. Most Cited Cases
(Formerly 83k16)
Powers of Congress to regulate commerce may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local, and create a completely centralized government, the question necessarily being one of degree.
[13] **Commerce 83** ⇦62.32(1)
83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(D) Employment of Labor

83II(D)2 Labor Relations
83k62.32 Particular Businesses
83k62.32(1) k. In General. Most Cited Cases
(Formerly 83k62.32, 232Ak56 Labor Relations, 83k43)
Manufacturing operations of a large steel company organized on a national scale and drawing raw materials from various other states and shipping out the finished product to all parts of the nation held to have such close and intimate relation to "interstate commerce" that Congress had constitutional authority to safeguard the rights of its employees to self-organization and freedom in the choice of representatives for collective bargaining as was done by the National Labor Relations Act. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.
[15] **Labor and Employment 231H** ⇦1146
231H Labor and Employment
231HXII Labor Relations
231HXII(C) Collective Bargaining
231Hk1146 k. Individual Contracts. Most Cited Cases
(Formerly 232Ak180 Labor Relations, 255k16 Master and Servant)
Labor and Employment 231H ⇦1153
231H Labor and Employment
231HXII Labor Relations
231HXII(D) Bargaining Representatives
231Hk1151 Constitutional and Statutory Provisions
231Hk1153 k. Purpose. Most Cited Cases
(Formerly 232Ak180 Labor Relations, 255k16, 255k15(6) Master and Servant)
Provision of National Labor Relations Act that representatives designated or selected for purpose of collective bargaining by majority of employees in unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, is designed only to prevent collective bargaining with any one purporting to represent employees other than the representatives selected, and does not preclude such individual contracts as employer may elect to make directly with individual employees. National Labor Relations Act of 1935, § 9(a), 29 U.S.C.A. § 195(a).
[16] **Labor and Employment 231H** ⇦1112
231H Labor and Employment
231HXII Labor Relations
231HXII(C) Collective Bargaining
231Hk1111 Duty to Bargain Collectively
231Hk1112 k. In General. Most Cited Cases

(Formerly 232Ak177 Labor Relations, 255k16, 255k15(6) Master and Servant)

National Labor Relations Act does not compel agreements between employers and employees or any agreement whatever, or prevent the employer from refusing to make a collective contract and hiring individuals on whatever terms the employer may by unilateral action determine, but proceeds on the theory that free opportunity for negotiation is likely to promote industrial peace and bring about adjustments and agreements, which the act in itself does not attempt to compel. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.

[17] **Labor and Employment 231H** ⇦966

231H Labor and Employment

231HXII Labor Relations

231HXII(A) In General

231Hk963 Constitutional and Statutory Provisions

231Hk966 k. Validity. Most Cited Cases

(Formerly 232Ak43 Labor Relations, 255k16 Master and Servant)

That the National Labor Relations Act is claimed to be one-sided in its application and to subject the employer to supervision and restraint, and leave untouched abuses for which employees may be responsible, does not affect the power of Congress to enact it, as the legislative authority exerted within its proper field need not embrace all evils within its reach. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.

[18] **Administrative Law and Procedure 15A** ⇦6.1

15A Administrative Law and Procedure

15AI In General

15Ak6 Validity of Statutes

15Ak6.1 k. In General. Most Cited Cases

(Formerly 15Ak6)

Labor and Employment 231H ⇦1654

231H Labor and Employment

231HXII Labor Relations

231HXII(I) Labor Relations Boards and Proceedings

231HXII(I)1 In General

231Hk1651 Constitutional and Statutory Provisions

231Hk1654 k. Validity. Most Cited Cases

(Formerly 232Ak503 Labor Relations)

National Labor Relations Act establishing standards to which the National Labor Relations Board must conform, requiring complaint, notice, and hearing, requiring the Board to receive evidence and make findings which are to be conclusive only if supported by evidence, and providing for review of the order of the Board by a designated court when all questions of

jurisdiction, regularity of proceeding, and questions of constitutional right or statutory authority are open to examination, affords adequate opportunity to secure judicial protection against arbitrary action and is not unconstitutional with respect to its procedural provisions. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq; Const. art. 3, § 2; Amend. 5.

[19] **Labor and Employment 231H** ⇦1828(5)

231H Labor and Employment

231HXII Labor Relations

231HXII(I) Labor Relations Boards and Proceedings

231HXII(I)10 Orders

231Hk1821 Particular Relief

231Hk1828 Reinstatement and Back Pay Orders

231Hk1828(5) k. Discharge Because of Union Activities. Most Cited Cases

(Formerly 232Ak633 Labor Relations, 255k15(91), 255k15 Master and Servant)

Order of National Labor Relations Board requiring employer to reinstate employees discharged because of union activities and for the purpose of discouraging membership in the union *held* authorized by statute. National Labor Relations Act of 1935, § 10(c), 29 U.S.C.A. § 160(c).

[20] **Labor and Employment 231H** ⇦1654

231H Labor and Employment

231HXII Labor Relations

231HXII(I) Labor Relations Boards and Proceedings

231HXII(I)1 In General

231Hk1651 Constitutional and Statutory Provisions

231Hk1654 k. Validity. Most Cited Cases

(Formerly 232Ak503 Labor Relations, 255k16, 255k15(10) Master and Servant)

National Labor Relations Act so far as it authorizes National Labor Relations Board to require reinstatement of employees discharged in violation of provisions of the statute, *held* within the power of the Congress. National Labor Relations Act of 1935, § 10(c), 29 U.S.C.A. § 160(c).

[21] **Jury 230** ⇦19(1)

230 Jury

230II Right to Trial by Jury

230k19 Civil Proceedings Other Than Actions; Special Proceedings

230k19(1) k. In General. Most Cited Cases

National Labor Relations Act, in authorizing National Labor Relations Board to require reinstatement of employees discharged in violation of the statute, and to direct payment of wages for time lost by the discharge, does not violate constitutional right of trial by jury, as the Constitution preserves

the right which existed under the common law when the Amendment to the Constitution was adopted and a proceeding under the statute is a statutory proceeding unknown to the common law. National Labor Relations Act of 1935, § 10(c), 29 U.S.C.A. § 160(c); U.S.C.A. Const.Amend. 7.

Constitutional Law 92 ⇦275(5)

92 Constitutional Law

92XII Due Process of Law

92k275 Deprivation of Liberty or Property as to Occupation or Employment

92k275(2) Regulation of Employment of Labor

92k275(5) k. Labor Relations in General. Most Cited Cases

(Formerly 92k275(1))

Labor and Employment 231H ⇦1431

231H Labor and Employment

231HXII Labor Relations

231HXII(G) Unfair Labor Practices

231Hk1428 Constitutional and Statutory Provisions

231Hk1431 k. Validity. Most Cited Cases

(Formerly 232Ak363 Labor Relations, 255k16 Master and Servant)

National Labor Relations Act, so far as it restrains employers for the purpose of preventing an unjust interference with the right of employees to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work, is not an arbitrary or capricious restraint on the employer's right to conduct his business within the due process clause and other constitutional restrictions. National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.; U.S.C.A. Const.Amend. 5.

****617 *5** Messrs. Homer S. Cummings, Atty. Gen., and Stanley F. Reed, Sol. Gen., and J. Warren Madden, both of Washington, D.C., for petitioner.

Mr. Earl F. Reed, of Pittsburgh, Pa., for respondent.

***22** Mr. Chief Justice HUGHES delivered the opinion of the Court.

In a proceeding under the National Labor Relations Act of 1935 [FN1] the National Labor Relations Board found that the respondent, Jones & Laughlin Steel Corporation, had violated the act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the Beaver Valley Lodge No. 200, affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of America, a labor organization. The unfair labor practices charged were that the corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its enployees in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employees.

FN1 Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. s 151 et seq. (29 U.S.C.A. s 151 et seq.).

The National Labor Relations Board, sustaining the charge, ordered the corporation to cease and desist from such discrimination and coercion, to offer reinstatement to ten of the employees named, to make good their losses in pay, and to post for thirty days notices that the corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. As the corporation failed to comply, the Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition holding that the order lay beyond the range of federal power. 83 F.(2d) 998. We granted certiorari. 299 U.S. 534, 57 S.Ct. 119, 81 L.Ed. 393.

The scheme of the National Labor Relations Act-which is too long to be quoted in full-may be briefly stated. The first section (29 U.S.C.A. s 151) sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of collective***23** bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce. [FN2] The act ***24** then defines the terms it ****618** uses, including the terms 'commerce' and 'affecting commerce.' Section 2 (29 U.S.C.A. s 152). It creates the National Labor Relations Board and prescribes its organization. Sections 3-6 (29 U.S.C.A. ss 153-156). It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing. Section 7 (29 U.S.C.A. s 157). It defines 'unfair labor practices.' Section 8 (29 U.S.C.A. s 158). It lays down rules as to the representation of employees for the purpose of collective bargaining. Section 9 (29 U.S.C.A. s 159). The Board is empowered to prevent the described unfair labor practices affecting commerce and the act prescribes the procedure to that end. The Board is authorized to petition designated courts to secure the enforcement of its order. The findings of the Board as to the facts, if supported by evidence, are to be conclusive. If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the Board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order. Section 10 (29 U.S.C.A. s 160). The Board has broad powers of investigation. Section 11 (29 U.S.C.A. s 161). Interference with members of the Board or its agents in the performance of their duties is punishable by fine and imprisonment. Section 12 (29 U.S.C.A. s 162). Nothing in the act is to be construed to interfere with the right to strike. Section 13 (29 U.S.C.A. s 163). There is a separability clause to the effect that, if any provision of the act or its application to any person or circumstances shall be held invalid, the remainder of the act or its application to other persons or circumstances shall

not be affected. Section 15 (29 U.S.C.A. s 165). The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

FN2 This section is as follows:

'Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

'The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

'Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

'It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.' 29 U.S.C.A. s 151.

The procedure in the instant case followed the statute. The labor union filed with the Board its verified charge. ***25** The Board thereupon issued its complaint against the respondent, alleging that its action in discharging the employees in question constituted unfair labor practices affecting commerce within the meaning of section 8, subdivisions (1) and (3), and section 2, subdivisions (6) and (7), of the act. Respondent, appearing specially for the

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purpose of ****619** objecting to the jurisdiction of the Board, filed its answer. Respondent admitted the discharges, but alleged that they were made because of inefficiency or violation of rules or for other good reasons and were not ascribable to union membership or activities. As an affirmative defense respondent challenged the constitutional validity of the statute and its applicability in the instant case. Notice of hearing was given and respondent appeared by counsel. The Board first took up the issue of jurisdiction and evidence was presented by both the Board and the respondent. Respondent then moved to dismiss the complaint for lack of jurisdiction and, on denial of that motion, respondent in accordance with its special appearance withdrew from further participation in the hearing. The Board received evidence upon the merits and at its close made its findings and order.

Contesting the ruling of the Board, the respondent argues (1) that the act is in reality a regulation of labor relations and not of interstate commerce; (2) that the act can have no application to the respondent's relations with its production employees because they are not subject to regulation by the federal government; and (3) that the provisions of the act violate section 2 of article 3 and the Fifth and Seventh Amendments of the Constitution of the United States.

The facts as to the nature and scope of the business of the Jones & Laughlin Steel Corporation have been found by the Labor Board, and, so far as they are essential to the determination of this controversy, they are not in dispute. The Labor Board has found: The corporation is ***26** organized under the laws of Pennsylvania and has its principal office at Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and nearby Aliquippa, Pa. It manufactures and distributes a widely diversified line of steel and pig iron, being the fourth largest producer of steel in the United States. With its subsidiaries-nineteen in number-it is a completely integrated enterprise, owning and operating ore, coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants. It owns or controls mines in Michigan and Minnesota. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns coal mines in Pennsylvania. It operates towboats and steam barges used in carrying coal to its factories. It owns limestone properties in various places in Pennsylvania and West Virginia. It owns the Monongahela connecting railroad which connects the plants of the Pittsburgh works and forms an interconnection with the Pennsylvania, New York Central and Baltimore & Ohio Railroad systems. It owns the Aliquippa & Southern Railroad Company, which connects the Aliquippa works with the Pittsburgh & Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati and Memphis,-to the last two places by means of its own barges and transportation equipment. In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semifinished

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materials sent from its works. Through one of its wholly-owned subsidiaries it owns, leases, and operates stores, warehouses, and yards for the distribution of equipment and supplies for drilling and operating oil and gas wells and for pipe lines, refineries and pumping stations. It has sales offices in ***27** twenty cities in the United States and a wholly-owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent. of its product is shipped out of Pennsylvania.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa 'might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated.'

To carry on the activities of the entire steel industry, 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Respondent points to evidence that the Aliquippa plant, in which the discharged, ****620** men were employed, contains complete facilities for the production of finished and semifinished iron and steel products from raw materials; that its works consist primarily of a by-product coke plant for the production of coke; blast furnaces for the production of pig iron; open hearth furnaces and Bessemer converters for the production of steel; blooming mills for the reduction of steel ingots into smaller shapes; and a number of finishing mills such as structural mills, rod mills, wire mills, and the like. In addition, there are other buildings, structures and equipment, storage yards, docks and an intraplant storage system. Respondent's operations at these works are carried on in two distinct stages, the first being the conversion of raw materials into pig ***28** iron and the second being the manufacture of semifinished and finished iron and steel products; and in both cases the operations result in substantially changing the character, utility and value of the materials wrought upon, which is apparent from the nature and extent of the processes to which they are subjected and which respondent fully describes. Respondent also directs attention to the fact that the iron ore which is procured from mines in Minnesota and Michigan and transported to respondent's plant is stored in stock piles for future use, the amount of ore in storage varying with the season but usually being enough to maintain operations from nine to ten months; that the coal which is procured from the mines of a subsidiary located in Pennsylvania and taken to the plant at Aliquippa is there, like ore, stored for future use, approximately two to three months' supply of coal being always on hand; and that the limestone which is obtained in Pennsylvania and West Virginia is also stored in amounts usually adequate to run the blast furnaces for a few weeks. Various details

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of operation, transportation, and distribution are also mentioned which for the present purpose it is not necessary to detail.

Practically all the factual evidence in the case, except that which dealt with the nature of respondent's business, concerned its relations with the employees in the Aliquippa plant whose discharge was the subject of the complaint. These employees were active leaders in the labor union. Several were officers and others were leaders of particular groups. Two of the employees were motor inspectors; one was a tractor driver; three were crane operators; one was a washer in the coke plant; and three were laborers. Three other employees were mentioned in the complaint but it was withdrawn as to one of them and no evidence was heard on the action taken with respect to the other two.

***29** [1] While respondent criticizes the evidence and the attitude of the Board, which is described as being hostile toward employers and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the Board so far as the facts pertaining to the circumstances and purpose of the discharge of the employees are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the Board that respondent discharged these men 'because of their union activity and for the purpose of discouraging membership in the union.' We turn to the questions of law which respondent urges in contesting the validity and application of the act.

First. The Scope of the Act.-The act is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that the references in the act to interstate and foreign commerce are colorable at best; that the act is not a true regulation of such commerce or of matters which directly affect it, but on the contrary has the fundamental object of placing under the compulsory supervision of the federal government all industrial labor relations within the nation. The argument seeks support in the broad words of the preamble (section 1 [FN3]) and in the sweep of the provisions of the act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

FN3 See note 2.

[2] If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall ***30** by reason of ****621** the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth Amendment. Schechter Corporation v. United States, 295 U.S. 495, 549, 550, 554, 55 S.Ct. 837, 851, 853, 79 L.Ed. 1570, 97 A.L.R. 947. The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce

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'among the several States' and the internal concerns of a state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system. Id.

[3] [4] But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held 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. Federal Trade Commission v. American Tobacco Co., 264 U.S. 298, 307, 44 S.Ct. 336, 337, 68 L.Ed. 696, 32 A.L.R. 786; Panama R.R. Co. v. Johnson, 264 U.S. 375, 390, 44 S.Ct. 391, 395, 68 L.Ed. 748; Missouri PacificR.R. Co., v. Boone, 270 U.S. 466, 472, 46 S.Ct. 341, 343, 70 L.Ed. 688; Blodgett v. Holden, 275 U.S. 142, 148, 276 U.S. 594, 48 S.Ct. 105, 107, 72 L.Ed. 206; Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346, 48 S.Ct. 194, 198, 72 L.Ed. 303.

[5] We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in section 10(a), 29 U.S.C.A. s 160(a), which provides:

'Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 (section 158)) affecting commerce.'

***31** The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are 'affecting commerce.' The act specifically defines the 'commerce' to which it refers (section 2(6), 29 U.S.C.A. s 152(6):

'The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.'

There can be no question that the commerce thus contemplated by the act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The act also defines the term 'affecting commerce' section 2(7), 29 U.S.C.A. s 152(7):

'The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.'

[6] This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not ***32** rendered immune because they grow out of labor disputes. See Texas & N.O.R. Co. v. Railway & S.S. Clerks, 281 U.S. 548, 570, 50 S.Ct. 427, 433, 434, 74 L.Ed. 1034; Schechter Corporation v. United States, supra, 295 U.S. 495, at pages 544, 545, 55 S.Ct. 837, 849, 79 L.Ed. 1570, 97 A.L.R. 947; ****622**Virginian Railway Co. v. System Federation No. 40, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789, decided March 29, 1937. It is the effect upon commerce, not the source of the injury, which is the criterion. Second Employers' Liability Cases (Mondou v. New York, N.H. & H.R. Co.), 223 U.S. 1, 51, 32 S.Ct. 169, 56 L.Ed. 327, 38 L.R.A.(N.S.) 44. Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control, and hence to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed.

[7] Second. The Unfair Labor Practices in Question.-The unfair labor practices found by the Board are those defined in section 8, subdivisions (1) and (3). These provide:

'Sec. 8. It shall be an unfair labor practice for an employer-

'(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (section 157 of this title). * * *

'(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.' FN4

FN4 What is quoted above is followed by this proviso-not here involved-' Provided, That nothing in this Act (chapter), or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, Secs. 701-712), as amended from time to time (sections 701 to 712 of Title 15), or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act (chapter) as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in

section 9(a) (section 159(a) of this title), in the appropriate collective bargaining unit covered by such agreement when made.'

***33** Section 8, subdivision (1), refers to section 7, which is as follows:

'Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.'

Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 209, 42 S.Ct. 72, 78, 66 L.Ed. 189, 27 A.L.R. 360. We reiterated these views when we had under consideration the Railway Labor Act of 1926, 44 Stat. 577. Fully recognizing the legality of collective action on the part of employees in ***34** order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective actionwould be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation****623** and conference between employers and employees, 'instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.' Texas & N.O.R. Co. v. Railway & S.S. Clerks, supra. We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934 (45 U.S.C.A. s 151 et seq.). Virginian Railway Co. v. System Federation, No. 40, supra.

Third. The application of the Act to Employees Engaged in Production.-The Principle Involved.-Respondent says that, whatever may be said of employees engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not

subject to federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce. Kidd v. Pearson, 128 U.S. 1, 20, 21, 9 S.Ct. 6, 32 L.Ed. 346; United Mine Workers v. Coronado Co., 259 U.S. 344, 407, 408, 42 S.Ct. 570, 581, 582, 66 L.Ed. 975, 27 A.L.R. 762; Oliver Iron Co. v. Lord, 262 U.S. 172, 178, 43 S.Ct. 526, 529, 67 L.Ed. 929; United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 265 U.S. 457, 465, 44 S.Ct. 623, 625, 68 L.Ed. 1104, 33 A.L.R. 566; Industrial Association v. United States, 268 U.S. 64, 82, 4S.Ct. 403, 407, 69 L.Ed. 849; Coronado Coal Co. v. United Mine Workers, 268 U.S. 295, 310, 45 S.Ct. 551, 556, 69 L.Ed. 963; Schechter Corporation v. United States, supra, 295 U.S. 495, at page 547, 55 S.Ct. 837, 850, 79 L.Ed. 1570, 97 A.L.R. 947; Carter v. Carter Coal Co., 298 U.S. 238, 304, 317, 327, 56 S.Ct. 855, 869, 875, 880, 80 L.Ed. 1160.

The government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving 'a great movement of ***35** iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country-a definite and well-understood course of business.' It is urged that these activities constitute a 'stream' or 'flow' of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the Packers and Stockyards Act. [FN5] Stafford v. Wallace, 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735, 23 A.L.R. 229. The Court found that the stockyards were but a 'throat' through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for, while they created 'a local change of title,' they did not 'stop the flow,' but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the state to impose anondiscriminatory tax upon property which the owner intended to transport to another state, but which was not in actual transit and was held within the state subject to the disposition of the owner, the Court remarked: 'The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority.' Id., 258 U.S. 495, at page 526, 42 S.Ct. 397, 405, 66 L.Ed. 735, 23 A.L.R. 229. See Minnesota v. Blasius, 290 U.S. 1, 8, 54 S.Ct. 34, 36, 78 L.Ed. 131. Applying the doctrine of Stafford v. Wallace, supra, the Court sustained the Grain Futures Act of 1922 [FN6] with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had found ***36** that they had become 'a constantly recurring burden and obstruction to that commerce.' Board of Trade of City of Chicago v. Olsen, 262 U.S. 1, 32, 43 S.Ct. 470, 476, 67 L.Ed. 839. Compare Hill v. Wallace, 259 U.S. 44, 69, 42 S.Ct. 453, 458, 66 L.Ed. 822.

See, also, Tagg Bros. & Moorhead v. United States, 280 U.S. 420, 50 S.Ct. 220, 74 L.Ed. 524.

FN5 42 Stat. 159 (7 U.S.C.A. s 181 et seq.).

FN6 42 Stat. 998 (7 U.S.C.A. ss 1-17).

Respondent contends that the instant case presents material distinctions. Respondent says that the Aliquippa plant is extensive in size and represents a large investment in buildings, machinery and equipment. The raw materials which are brought to the plant are delayed for long ****624** periods and, after being subjected to manufacturing processes 'are changed substantially as to character, utility and value.' The finished products which emerge 'are to a large extent manufactured without reference to pre-existing orders and contracts and are entirely different from the raw materials which enter at the other end.' Hence respondent argues that, 'If importation and exportation in interstate commerce do not singly transfer purely local activities into the field of congressional regulation, it should follow that their combination would not alter the local situation.' Arkadelphia Milling Co. v. St. Louis, Southwestern R. Co., 249 U.S. 134, 151, 39 S.Ct. 237, 63 L.Ed. 517; Oliver Iron Co. v. Lord, supra.

[8] [9] [10] [11] [12] We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the 'stream of commerce' cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the government invokes in support of the present act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is ***37** the power to enact 'all appropriate legislation' for its 'protection or advancement' (The Daniel Ball, 10 Wall. 557, 564, 19 L.Ed. 999); to adopt measures 'to promote its growth and insure its safety' (County of Mobile v. Kimball, 102 U.S. 691, 696, 697, 26 L.Ed. 238); 'to foster, protect, control, and restrain.' (Second Employers' Liability Cases, supra, 223 U.S. 1, at page 47, 32 S.Ct. 169, 174, 56 L.Ed. 327, 38 L.R.A.(N.S.) 44). See Texas & N.O.R. Co. v. Railway & S.S. Clerks, supra. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' Second Employers' Liability Cases, 223 U.S. 1, at page 51, 32 S.Ct. 169, 176, 56 L.Ed. 327, 38 L.R.A.(N.S.) 44; Schechter Corporation v. United States, supra. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied thepower to exercise that control. Schechter Corporation v. United States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may

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not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the Court said in Board of Trade of City of Chicago v. Olsen, supra, 262 U.S. 1, at page 37, 43 S.Ct. 470, 477, 67 L.Ed. 839, repeating what had been said in Stafford v. Wallace, supra: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it.'

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who ***38** are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. The Shreveport Case (Houston, E. & W.T.R. Co. v. United States), 234 U.S. 342, 351. 352, 34 S.Ct. 833, 58 L.Ed. 1341; Railroad Commission of Wisconsin v. Chicago, B. & Q.R. Co., 257 U.S. 563, 588, 42 S.Ct. 232, 237, 66 L.Ed. 371, 22 A.L.R. 1086. It is manifest that intrastate rates deal primarily with a local activity. But in rate making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. Id. Under the Transportation Act, 1920, [FN7] Congress went so far as to authorize the Interstate ****625** Commerce Commission to establish a state-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. Railroad Commission of Wisconsin v. Chicago, B. & Q.R.R. Co., supra; Florida v. United States, 282 U.S. 194, 210, 211, 51 S.Ct. 119, 123, 75 L.Ed. 291. Other illustrations are found in the broad requirements of the Safety Appliance Act (45 U.S.C.A. ss 1-10) and the Hours of Service Act (45 U.S.C.A. ss 61-64). Southern Railway Co. v. United States, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72; Baltimore & Ohio R.R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 31 S.Ct. 621, 55 L.Ed. 878. It is said that this exercise of federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

FN7 Sections 416, 422, 41 Stat. 484, 488 (49 U.S.C.A. ss 13, 15a); Interstate Commerce Act, s 13(4), 49 U.S.C.A. s 13(4).

The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal Anti-Trust Act (15 U.S.C.A. ss 1-7, 15 note). In the Standard Oil and American Tobacco Cases (Standard Oil Co. v. United States), 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619,

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34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734; (United States v. American Tobacco Co.) 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663), that statute was applied to combinations of employers engaged in productive industry. ***39** Counsel for the offending corporations strongly urged that the Sherman Act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U.S. 1, at page 5, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A. (N.S.) 834, Ann.Cas.1912D, 734; 221 U.S. 106, at page 125, 31 S.Ct. 632, 55 L.Ed. 663. Counsel relied upon the decision in United States v. E.C. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325. The Court stated their contention as follows: 'That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject dehors the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the states.' And the Court summarily dismissed the contention in these words: 'But all the structure upon which this argument proceeds is based upon the decision in United States v. E.C. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325. The view, however, which the argument takes of that case, and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice' (citing cases). 221 U.S. 1, at pages 68, 69, 31 S.Ct. 502, 519, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734.

Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. Loewe v. Lawlor, 208 U.S. 274, 28 S.Ct. 301, 52 L.Ed. 488, 13 Ann.Cas. 815; Coronado Coal Co. v. United Mine Workers, supra; Bedford Cut Stone Co. v. Stone Cutters' Association, 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916, 54 A.L.R. 791. See, also, Local 167, International Brotherhood of Teamsters v. United States, 291 U.S. 293, 297, 54 S.Ct. 396, 398, 78 L.Ed. 804; Schechter Corporation v. United States, supra. The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus, in the first Coronado Case, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, ***40** and that it had not been shown that the activities there involved-a local strike-brought them within the provisions of the Anti-Trust Act, notwithstanding the broad terms of that statute. A similar conclusion was reached in United Leather Workers' International Union v. Herkert & Meisel Trunk Co., supra, Industrial Association v. United States, supra, and Levering & Garrigues v. Morrin, 289 U.S. 103, 107, 53 S.Ct. 549, 550, 77 L.Ed. 1062. But in the first Coronado Case the Court also said that 'if Congress deems certain recurring practices though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to ****626** subject them to national

supervision and restraint.' 259 U.S. 344, at page 408, 42 S.Ct. 570, 582, 66 L.Ed. 975, 27 A.L.R. 762. And in the second Coronado Case the Court ruled that, while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the 'intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act.' 268 U.S. 295, at page 310, 45 S.Ct. 551, 556, 69 L.Ed. 963. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by theemployees' conduct. Industrial Association v. United States, 268 U.S. 64, at page 81, 45 S.Ct. 403, 407, 69 L.Ed. 849. What was absent from the evidence in the first Coronado Case appeared in the second and the act was accordingly applied to the mining employees.

It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. In the Schechter Case, supra, we found that the effect there was so remote as to be beyond the federal power. To find 'immediacy or directness' there was to find it 'almost ***41** everywhere,' a result inconsistent with the maintenance of our federal system. In the Carter Case, supra, the Court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds,-that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process. These cases are not controlling here.

[13] Fourth. Effects of the Unfair Labor Practice in Respondent's Enterprise.-Giving full weight to respondent's contention with respect to a break in the complete continuity of the 'stream of commerce' by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter

when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical ***42** conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of Virginia Railway Co. v. System Federation No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act, 'when there was no dispute as to the organizations authorized to represent the employees, and when there was willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided.' That, on the other hand, 'a prolific source ****627** of dispute had been the maintenance by the railroads of company unions and the denial by railway management of the authority of representatives chosen by their employees.' The opinion in that case also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But, with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

***43** These questions have frequently engaged the attention of Congress and have been the subject of many inquiries. [FN8] The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences. [FN9] The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall. It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self-organization and freedom in the choice of representatives for collective bargaining.

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FN8 See, for example, Final Report of the Industrial Commission (1902), vol. 19, p. 844; Report of the Anthracite Coal Strike Commission (1902), Sen.Doc. No. 6, 58th Cong., Spec.Sess.; Final Report of Commission on Industrial Relations (1916), Sen.Doc. No. 415, 64th Cong., 1st Sess., vol. 1; National War Labor Board, Principles and Rules of Procedure (1919), p. 4; Bureau of Labor Statistics, Bulletin No. 287 (1921), pp. 52-64; History of the Shipbuilding Labor Adjustment Board, U.S. Bureau of Labor Statistics, Bulletin No. 283.

FN9 See Investigating Strike in Steel Industries, Sen.Rep. No. 289, 66th Cong., 1st Sess.

[14] [15] Fifth. The Means Which the Act Employs.-Questions under the Due Process Clause and Other Constitutional Restrictions.-Respondent asserts its right to conduct its business in an orderly manner without being subjected to arbitrary restraints. What we have said points to the fallacy in the argument. Employees have their correlative ***44** right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. Texas & N.O.R. Co. v. Railway S.S. Clerks, supra; Virginian Railway Co. v. System Federation No. 40. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. The provision of section 9(a) [FN10] that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit, imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute. This provision has its analogue in section 2, Ninth, of the Railway Labor Act, as amended (45 U.S.C.A. s 152, subd. 9), which was under consideration in Virginian Railway Co. v. System Federation No. 40, supra. The decree which we affirmed in that case required the railway company to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with any one other than their true representative as ascertained in accordance with the provisions of the act. We said that the obligation to treat with ****628** the true representative was exclusive and hence imposed the negative duty to treat with no other. We also pointed out that, as conceded by the government, [FN11] the injunction***45** against the company's entering into any contract concerning rules, rates of pay and working conditions except with a chosen representative was 'designed only to prevent collective bargaining with any one purporting to represent employees' other than the representative they had selected. It was taken 'to prohibit the negotiation of labor contracts, generally applicable to employees' in the described unit with any other representative than the one so chosen, 'but not as precluding such individual contracts' as the company might 'elect to make directly with individual employees.' We think this construction alsoapplies to section 9(a) of the National Labor Relations Act (29 U.S.C.A. s 159(a).

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FN10 The provision is as follows: 'Sec. 9(a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.' 29 U.S.C.A. s 159(a).

FN11 See Virginian Railway Co. v. System Federation No. 40, 300 U.S. 515, 57 S.Ct. 592, 600, 81 L.Ed. 789, note 6, decided March 29, 1937.

[16] The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' [FN12] The act expressly provides in section 9(a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. As we said in Texas & N.O.R. Co. v. Railway & S.S. Clerks, supra, and repeated in Virginian Railway Co. v. System Federation No. 40, the cases of Adair v. United States, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764, and Coppage v. Kansas, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441, L.R.A.1915C, 960, are inapplicable to legislation of this character. The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their ***46** self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

FN12 See note 11.

[17] The act has been criticized as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible; that it fails to provide a more comprehensive plan,-with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling,

equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll v. Greenwich Insurance Co., 199 U.S. 401, 411, 26 S.Ct. 66, 50 L.Ed. 246; Keokee Coke Co. v. Taylor, 234 U.S. 224, 227, 34 S.Ct. 856, 58 L.Ed. 1288; Miller v. Wilson, 236 U.S. 373, 384, 35 S.Ct. 342, 59 L.Ed. 628, L.R.A.1915F, 829;n Sproles v. Binford, 286 U.S. 374, 396, 52 S.Ct. 581, 588, 76 L.Ed. 1167. The question in such cases is whether the Legislature, in what it does prescribe, has gone beyond constitutional limits.

[18] The procedural provisions of the act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing ****629** the ***47** creation and action of administrative bodies. See Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U.S. 88, 91, 33 S.Ct. 185, 57 L.Ed. 431. The act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. It is not necessary to repeat these rules which have frequently been declared. None of them appears to have been transgressed in the instant case. Respondent was notified and heard. It had opportunity to meet the charge of unfair labor practices upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity. The facts found by the Board support its order and the evidence supports the findings. Respondent has no just ground for complaint on this score.

[19] [20] The order of the Board required the reinstatement of the employees who were found to have been discharged because of their 'union activity' and for the purpose of 'discouraging membership in the union.' That requirement was authorized by the act. Section 10(c), 29 U.S.C.A. s 160(c). In Texas & N.O.R. Co. v. Railway & S.S. Clerks, supra, a similar order for restoration to service was made by the court in contempt proceedings for the violation of an injunction issued by the court to restrain an interference with ***48** the right of employees as guaranteed by the Railway Labor Act of 1926. The requirement of restoration to service of employees discharged in violation of the provisions of that act was thus a

sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety.

[21] Respondent complaints that the Board not only ordered reinstatement but directed the payment of wages for the time lost by the discharge, less amounts earned by the employee during that period. This part of the order was also authorized by the act. Section 10(c). It is argued that the requirement is equivalent to a money judgment and hence contravenes the Seventh Amendment with respect to trial by jury. The Seventh Amendment provides that 'In suits at common law, where the value in controversy shall exceed twenty dollars; the right of trial by jury shall be preserved.' The amendment thus preserves the right which existed under the common law when the amendment was adopted. Shields v. Thomas, 18 How. 253, 262, 15 L.Ed. 368; In re Wood, 210 U.S. 246, 258, 28 S.Ct. 621, 52 L.Ed. 1046; Dimick v. Schiedt, 293 U.S. 474, 476, 55 S.Ct. 296, 79 L.Ed. 603, 95 A.L.R. 1150; Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657, 55 S.Ct. 890, 891, 79 L.Ed. 1636. Thus it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. Clark v. Wooster, 119 U.S. 322, 325, 7 S.Ct. 217, 30 L.Ed. 392; Pease v. Rathbun-Jones Engineering Co., 243 U.S. 273, 279, 37 S.Ct. 283, 61 L.Ed. 715, Ann.Cas.1918C, 1147. It does not apply where the proceeding is not in the nature of a suit at common law. Guthrie National Bank v. Guthrie, 173 U.S. 528, 537, 19 S.Ct. 513, 43 L.Ed. 796.

The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employee and payment for time lost are ***49** requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit.

Our conclusion is that the order of the Board was within its competency and that ****630** the act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion. It is so ordered.

Reversed and remanded.

***76** Mr. Justice McREYNOLDS delivered the following dissenting opinion.

Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, Mr. Justice BUTLER and I are unable to agree with the decisions just announced.

We conclude that these causes were rightly decided by the three Circuit Courts of Appeals and that their judgments should be affirmed. The opinions there given without dissent are terse, well-considered and sound. They disclose the meaning ascribed by experienced judges to what this Court has often declared and are set out below in full.

Considering the far-reaching import of these decisions, the departure from what we understand has been consistently ruled here, and the extraordinary power confirmed to a Board of three, [FN1] the obligation to present our views becomes plain.

FN1 National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U.S.C.Supp. I, tit. 29, s 151 et seq. (29 U.S.C.A. s 151 et seq.)).

The Court as we think departs from well-established principles followed in Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947 (May, 1935), and Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (May, 1936). Upon the authority of those decisions, the Circuit Courts of Appeals of the Fifth, Sixth and Second Circuits in the causes now before us have held the power of Congress under the commerce clause does not extend to relations between employers and their employees engaged in manufacture, and therefore the act conferred upon the National Labor Relations Board no authority in respect of matters covered by the questioned orders. In Foster Bros. Mfg. Co. v. National Labor Relations Board, 85 F.(2d) 984, the Circuit Court of Appeals, Fourth Circuit, held the act inapplicable to manufacture and expressed the view that if so extended it ***77** would be invalid. Six District Courts, on the authority of Schechter's and Carter's Cases, have held that the Board has no authority to regulate relations between employers and employees engaged in local production. [FNa] No decision or judicial opinion to the contrary has been cited, and we find none. Every consideration brought forward to uphold the act before us was applicable to support the acts held unconstitutional in causes decided within two years. And the lower courts rightly deemed them controlling.

FNa Stout v. Pratt, 12 F.Supp. 864; Bendix Products Corporation v. Beman, 14 F.Supp. 58; Eagle-Picher Lead Co. v. Madden, 15 F.Supp. 407; Bethlehem Shipbuilding Corporation v. Meyers, 15 F.Supp. 915; El Paso Electric Co. v. Elliott, 15 F.Supp. 81; Oberman & Co. v. Pratt, 16 F.Supp. 887.

By its terms the Labor Act extends to employers-large and small-unless excluded by definition, [FN2] and declares that, if one of these interferes with, restrains, or coerces any employee regarding his labor affiliations, etc., this shall be regarded as ****631** unfair labor practice. And a 'labor organization' means any organization of any kind or any agency or employee representation committee or plan which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes,***78** wages, rates of pay, hours of employment or conditions of work. [FNb]

FN2. Sec. 2. (2) The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, amended from time to time (sections 151 to 163 of Title 45), or any labor

organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

Sec. 2. (3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act (chapter) explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

FNb Sec. 2. (5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 3. (a) There is created a board, to be known as the 'National Labor Relations Board' (hereinafter referred to as the 'Board'), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

The three respondents happen to be manufacturing concerns-one large, two relatively small. The act is now applied to each upon grounds common to all. Obviously what is determined as to these concerns may gravely affect a multitude of employers who engage in a great variety of private enterprises-mercantile, manufacturing, publishing, stock-raising, mining, etc. It puts into the hands of a Board power of control over purely local industry beyond anything heretofore deemed permissible.

79II.

(No. 419) Circuit Court of Appeals (Fifth Circuit)

(National Labor Relations Board v. Jones & Laughlin Steel Corporation)

Opinion June 15, 1936, 83 F.(2d) 998

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Before Foster, Sibley, and Hutcheson, Circuit Judges.

By the Court: 'The National Labor Relations Board has petitioned us to enforce an order made by it, which requires Jones & Laughlin Steel Corporation, organized under the laws of Pennsylvania, to reinstate certain discharged employees in its steel plant in Aliquippa, Pa., and to do other things in that connection.

'The petition must be denied, because, under the facts found by the Board and shown by the evidence, the Board has no jurisdiction over a labor dispute between employer and employees touching the discharge of laborers in a steel plant, who were engaged only in manufacture. The Constitution does not vest in the Federal Government the power to regulate the relation as such of employer and employee in production or manufacture.

"One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power & L. Co. v. Pfost, 286 U.S. 165, 182, 52 S.Ct. 548, 76 L.Ed. 1038. Production is not commerce; but a step in preparation for commerce. Chassaniol v. Greenwood, 291 U.S. 584-587, 54 S.Ct. 541, 78 L.Ed. 1004.

"We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' ***80** Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor, and working conditions, the bargaining in respect of these things-whether carried on separately or collectively-each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and ****632** employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it.' Carter v. Carter Coal Company (298 U.S. 238) 56 S.Ct. 855, 80 L.Ed. 1160, decided May 18, 1936.

'That the employer has a very large business, the interruption of which by a strike of employees which might happen, and that in consequence of such strike production might be stopped and interstate commerce in the products affected, does not make the regulation of the relation justified under the commerce power of Congress, because the possible effect on interstate commerce is too remote to warrant Federal invasion of the state's right to regulate the employer-employee relation. Nor is it important that the

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employer imports part of his raw materials in interstate commerce and sells and exports a large part of his product in interstate commerce, which imports and exports would possibly be stopped by a possible strike. The employers' entire business thus connected together does not, as respects federal power, make a case different from that in which importation of materials, manufacture of them, and sale and export of the product are conducted by three persons. The employer here by doing ***81** all three things does not alter the respective constitutional spheres of the federal and state governments. The making and fabrication of steel by Jones & Laughlin Steel Corporation is production regulable by the state of Pennsylvania, notwithstanding the corporation also engages in interstate commerce regulable by Congress in bringing in its raw materials and again in selling and delivering its products. No specific present intent appears to impede or destroy interstate commerce by means of a strike in a manufacturing plant, or other like direct obstruction to or burden on interstate commerce. The order we are asked to enforce is not shown to be one authorized to be made under the authority of Congress. Carter v. Carter Coal Co., supra.

'The petition is denied.'

III.

(Nos. 420-421) Circuit Court of Appeals (Sixth Circuit)

(Fruehauf Trailer Co. v. National Labor Relations Board)

Opinion June 30, 1936, 85 F.(2d) 391

Before Moorman, Hicks, and Simons, Circuit Judges.

'Per Curiam. The National Labor Relations Board has filed a petition in this court to enforce an order issued by it in proceedings which it instituted against the Fruehauf Trailer Company. The order directs the Trailer Company to cease and desist from discharging or threatening to discharge any of its employees because of their activities in connection with the United Automobile Workers Federal Labor Union No. 19,375, to cease discouraging its employees from becoming members of that union, to offer to certain of its former employees immediate and full reinstatement in their former positions without prejudice to their seniority rights, to make such employees whole for any losses of pay that they have suffered by reason of their discharge by paying ***82** them what they would have earned as wages from the dates of their discharges, and to post notices throughout its Detroit plant, in conspicuous places, stating that it has ceased and desisted from discharging or threatening to discharge its employees for joining the United Automobile Workers Federal Labor Union No. 19,375. The Fruehauf Trailer Company has filed its petition seeking a review of the order and praying that the court set it aside. The record of the proceeding before the Labor Board has been filed and the two petitions have been heard together in this court.

'The Fruehauf Trailer Company is a corporation organized and existing under the laws of the state of Michigan and is engaged in the manufacture, assembly, and sale of automobile trailers at its plant in Detroit, Mich. The

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material and parts used in the manufacture and production of the trailers are shipped to the plant. After the trailers are manufactured, many of them are shipped to other states for sale and use. The order in question undertakes to regulate and control the Trailer Company's relations and dealings with its employees engaged in the production and manufacture of trailers at the company's plant in Detroit and does not directly affect any of the activities****633** of the Trailer Company in the purchasing and transporting to its plant of materials and parts for the manufacture and production of trailers or in the shipping or selling of such trailers after they are manufactured. It was issued under the authority of the Act of Congress of July 5, 1935, known as the National Labor Relations Act (29 U.S.C.A. s 151 et seq.). The authority for the act is claimed under the commerce clause of the Constitution. Since the order is directed to the control and regulation of the relations between the Trailer Company and its employees in respect to their activities in the manufacture and production of ***83** trailers and does not directly affect any phase of any interstate commerce in which the Trailer Company may be engaged, and since, under the ruling of Carter v. Carter Coal Company (298 U.S. 238) 56 S.Ct. 855, 80 L.Ed. 1160 (decided May 18, 1936), the Congress has no authority or power to regulate or control such relations between the Trailer Company and its employees, the National Labor Relations Board was without authority to issue the order. See National Labor Relations Board v. Jones & Laughlin Steel Corporation (C.C.A.5) 83 F.(2d) 998, decided June 15, 1936.

'The petition of the Board is accordingly dismissed and the order is set aside.'

IV.

(Nos. 422-423) Circuit Court of Appeals (Second Circuit)

(National Labor Relations Board v. Friedman-Harry Marks Clothing Co.)

Opinion July 13, 1936, 85 F.(2d) 1

Before Manton, Swan, and A.N. Hand, Circuit Judges.

'Per Curiam. The respondent, a Virginia corporation, is a manufacturer of men's clothing with its principal office and its factory in Richmond, Va. Practically all the raw materials used are brought from other states into Virginia, where respondent manufactures them into men's clothing. About 83 per cent. of the manufactured products are sold f.o.b. Richmond, to customers located in states other than Virginia.

'Two sets of charges were filed with petitioner's local regional director by the Amalgamated Clothing Workers of America, a labor union of workers in the men's clothing industry, in which it was alleged that the respondent violated the National Labor Relations Act (29 U.S.C.A. s 151 et seq.) by discharging from its employ, and discriminating against 29 out of 800 of its employees, because they had engaged in union activities. The Board filed complaints under section 10(b) of the act (***84**29 U.S.C.A. s 160(b), and after a hearing respondent was found to have violated the act and was ordered to cease and desist from the unfair labor practices.

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'Petitioner's theory is that the respondent is engaged in interstate commerce because of the shipment of raw materials to it from other states and the shipment of its finished products to other states, and, in addition, that the flow of commerce doctrine, as exemplified in Swift & Co. v. United States, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518, brings this manufacturer within the federal power to regulate commerce. Respondent contends that the National Labor Relations Act, as applied to it, is unconstitutional and therefore invalid, and that the attempt to enforce its provisions against it is illegal.

'It is shown that the alleged unfair labor practices complained of occurred in the manufacture of clothing in Richmond, Va. None of the workers involved had to do with the transportation of the clothing after its manufacture. They were engaged in various operations in the Richmond factory.

'The relations between the employer and its employees in this manufacturing industry were merely incidents of production. In its manufacturing, respondent was in no way engaged in interstate commerce, nor did its labor practices so directly affect interstate commerce as to come within the federal commerce power. Carter v. Carter Coal Co. (298 U.S. 238), 56 S.Ct. 855, 80 L.Ed. 1160, May 18, 1936; Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947. No authority warrants the conclusion that the powers of the Federal Government permit the regulation of the dealings between employers or employees when engaged in the purely local business of manufacture.

'Therefore the orders to cease and desist may not be enforced.

'Petitions denied.'

85V.

In each cause the Labor Board formulated and then sustained a charge of unfair labor practices towards persons employed ****634** only in production. It ordered restoration of discharged employees to former positions with payment for losses sustained. These orders were declared invalid below upon the ground that respondents while carrying on production operations were not thereby engaging in interstate commerce; that labor practices in the course of such operations did not directly affect interstate commerce; consequently respondents' actions did not come within congressional power.

Respondent in No. 419 is a large, integrated manufacturer of iron and steel products-the fourth largest in the United States. It has two production plants in Pennsylvania where raw materials brought from points outside the state are converted into finished products, which are thereafter distributed in interstate commerce throughout many states. The Corporation has assets amounting to $180,000,000, gross income $47,000,000, and employs 22,000 people-10,000 in the Aliquippa plant where the complaining employees worked. So far as they relate to essential principles presently important, the activities of this Corporation, while large, do not differ materially from those of the other respondents and very many small producers and distributors. It has attained great size; occupies an important place in business; owns and

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operates mines of ore, coal, and limestone outside Pennsylvania, the output of which, with other raw material, moves to the production plants. At the plants this movement ends. Having come to rest, this material remains in warehouses, storage yards, etc., often for months, until the process of manufacture begins. After this has been completed, the finished products go into interstate commerce. The discharged employees labored only in the manufacturing***86** department. They took no part in the transportation to or away from the plant; nor did they participate in any activity which preceded or followed manufacture.

Our concern is with those activities which are common to the three enterprises. Such circumstances as are merely fortuitous-size, character of products, etc.-may be put on one side. The wide sweep of the statute will more readily appear if consideration be given to the Board's proceedings against the smallest and relatively least important-the Clothing Company. If the act applies to the relations of that Company to employees in production, of course it applies to the larger respondents with like business elements although the affairs of the latter may present other characteristics. Though differing in some respects, all respondents procure raw materials outside the state where they manufacture, fabricate within and then ship beyond the state.

In Nos. 420, 421, the respondent, Michigan corporation, manufactures commercial trailers for automobiles from raw materials brought from outside that state, and thereafter sells these in many states. It has a single manufacturing plant at Detroit and annual receipts around $3,000,000; 900 people are employed.

In Nos. 422, 423, the respondent is a Virginia corporation engaged in manufacturing and distributing men's clothing. It has a single plant and chief office at Richmond, annual business amounting perhaps to $2,000,000, employs 800, brings in almost all raw material from other states and ships the output in interstate commerce. There are some 3,300 similar plants for manufacturing clothing in the United States, which together employ 150,000 persons and annually put out products worth $800,000,000.

87VI.

The Clothing Company is a typical small manufacturing concern which produces less than one-half of one per cent. of the men's clothing produced in the United States and employs 800 of the 150,000 workmen engaged therein. If closed today, the ultimate effect on commerce in clothing obviously would be negligible. It stands alone, is not seeking to acquire a monopoly or to restrain trade. There is no evidence of a strike by its employees at any time or that one is now threatened, and nothing to indicate the probable result if one should occur.

Some account of the Labor Board's proceedings against this Company will indicate the ambit of the act as presently construed.

September 28, 1935, the Amalgamated Clothing Workers of America, purporting to act under section 10(b) of the National Labor Relations Act,

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[FN3] filed with the ****635** Board a ***88** 'Charge,' stating that the Clothing Company had engaged in unfair labor practices within the meaning of the act-section 8(1)(3), 29 U.S.C.A. s 158 (1, 3)-in that it had, on stated days in August and September, 1935, unjustifiably discharged, demoted or discriminated against some 20 named members of that union and, in other ways, had restrained, interfered with and coerced employees in the exercise of their right of free choice of representatives for collective bargaining. And further 'that said labor practices are unfair labor practices affecting commerce within the meaning of said Act.'

> FN3. Sec. 10. (b). Whenever it is charged that any person has engaged in or in engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer title 15, secs. 701-712), as amended from and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailingin courts of law or equity shall not be controlling. 29 U.S.C.A. s 160(b).

This 'Charge' contained no discription of the Company's business, no word concerning any strike against it past, present or threatened. The number of persons employed or how many of these had joined the union is not disclosed.

Thereupon the Board issued a 'Complaint' which recited the particulars of the 'Charge,' alleged incorporation of the Company in Virginia, and ownership of a plant at Richmond where it is continuously engaged in the 'production, sale and distribution of men's clothing'; that material is brought from other states and manufactured into clothing, which is sold and shipped to many states, etc.-' all of aforesaid constituting a continuous flow of commerce among the several states.' Also that while operating the Richmond plant the Clothing Company discharged, demoted, laid off or discriminated against some 20 persons 'employed in production at the said plant * * * for the reason that all of the said employees, and each of them, joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection,' etc. Further, that the Company circulated among its employees

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and under ***89** took to coerce them to sign a writing expressing satisfaction with conditions; induced some members of the union to withdraw; did other similar things, etc.-all of which amounted to unfair labor practices affecting commerce within the meaning of section 8(1)(3)(4) [FN4]ain and section 2(6)****636** (7) [FN5] of the Labor Act. 'The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.'

> FN4. Sec. 8. It shall be an unfair labor practice for an employer-
>
> '(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (section 157 of this title).
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a) (section 156 of this title), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act (chapter), or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 158 secs. 701-712), as amended from time to time (sections 701 to 712 of Title 15), or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act (chapter) as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a) (section 159(a) of this title), in the appropriate collective bargaining unit covered by such agreement when made.
>
> (4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act (chapter).
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a) (section 159(a) of this title). 29 U.S.C.A. s 158.
>
> Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer. 29 U.S.C.A. s 159(a).

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FN5. Sec. 2(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. 29 U.S.C.A. s 152(6, 7).

The complaint says nothing concerning any strike against the Clothing Company past, present or threatened; there is no allegation concerning the number of persons employed, how many joined the union, or the value of the output.

***90** The respondent filed a special appearance objecting to the Board's jurisdiction, which was overruled; also an answer admitting the discharge of certain employees, but otherwise it generally denied the allegations of the 'Complaint.'

Thereupon the Board demanded access to the Company's private records of accounts, disclosure of the amount of capital invested by its private owners, the names of all of its employees, its pay rolls, the amounts and character of all purchases and from whom made, the amounts of sales and to whom made, including the number and kind of units, the number of employees in the plant ***91** during eight years, the names and addresses of the directors and officers of the Company, the names and addresses of its salesmen, the stock ownership of the Company, the affiliation, if any, with other companies, and the former occupations and businesses of its stockholders.

During hearings held at Richmond and Washington, unfettered by rules of evidence, it received a mass of testimony-largely irrelevant. Much related to the character of respondent's business, general methods used in the men's clothing industry, the numbers employed and the general effect of strikes therein. The circumstances attending the discharge or demotion of the specified employees were brought out.

Following this the Board found-

The men's clothing industry of the United States ranks sixteenth in the number of wage earners employed, with more than 3,000 firms and 150,000 workers engaged. The steps in the typical process of manufacture are described. Raw material is brought in from many states, and after fabrication the garments are sold and delivered through canvassers and retailers. 'The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation.'

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The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in making clothing. Members are organized in local unions. Before recognition of this union by employers long and bitter strikes occurred, some of which are described.****637** The union has striven consistently to improve the general economic and social conditions of members. Benefits that flow from recognizing and co-operating with it are realized by manufacturers.

Description is given of the Clothing Company's operations, the sources of its raw material (nearly all outside ***92** Virginia), and the method used to dispose of its output. Eighty-two per cent. is sold to customers beyond Virginia. It is among the fifty largest firms in the industry, and among the ten of that group paying the lowest average wage.

In the summer of 1935 the employees at the Richmond plant formed a local of the Amalgamated Clothing Workers and solicited memberships. The management at once indicated opposition and declared it would not permit employees to join. Hostile acts and the circumstances of the discharge or demotion of complaining employees are described. It is said all were discharged or demoted because of union membership. And further that 'Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the contrary position, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce.'

The number of employees who joined the union does not appear; the general attitude of employees towards the union or the Company is not disclosed; the terms of employment are not stated-whether at will, by the day or by the month. What the local chapter was especially seeking at the time we do not know.

It does not appear that, either prior or subsequent to the 'Complaint,' there has been any strike, disorder or ***93** industrial strife at respondent's factory, or any interference with or stoppage of production or shipment of its merchandise. Nor that alleged unfair labor practices at its plant had materially affected manufacture, sale or distribution; or materially affected, burdened or obstructed the flow of products; or affected, burdened or obstructed the flow of interstate commerce, or tended to do so.

The Board concluded that the Clothing Company had discriminated in respect to tenure and employment and thereby had discouraged membership in the union; that it had interfered with, restrained and coerced its employees

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in violation of rights guaranteed by section 7 of the National Labor Relations Act; that these acts occurred in the course and conduct of commerce among the states, immediately affect employees engaged in the course and conduct of interstate commerce, and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

An order followed, March 28, 1936, which commanded immediate reinstatement of eight discharged employees and payment of their losses; also that the Company should cease and desist from discharging or discriminating against employees because of connections with the union, should post notices, etc. On the same day the Board filed a petition asking enforcement of the order in the United States Circuit Court of Appeals (Second Circuit) at New York, which was denied July 13, 1936. National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 85 F.(2d) 1.

VII.

The precise question for us to determine is whether in the circumstances disclosed Congress has power to authorize what the Labor Board commanded the respondent to do. Stated otherwise, in the circumstances here existing could Congress by statute direct what the Board has ordered? General disquisitions concerning the enactment***94** are of minor, if any, importance. Circumstances not treated as essential to the exercise of power by the Board may, of course, be disregarded. The record in Nos. 422, 423-a typical case-plainly presents these essentials and we may properly base further discussion upon the circumstances there disclosed.

****638** A relatively small concern caused raw material to be shipped to its plant at Richmond, Va., converted this into clothing, and thereafter shipped the product to points outside the State. A labor union sought members among the employees at the plant and obtained some. The Company's management opposed this effort, and in order to discourage it discharged eight who had become members. The business of the Company is so small that to close its factory would have no direct or material effect upon the volume of interstate commerce in clothing. The number of operatives who joined the union is not disclosed; the wishes of other employees is not shown; probability of a strike is not found.

The argument in support of the Board affirms: 'Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it could be prevented.'

Manifestly that view of congressional power would extend it into almost every field of human industry. With striking lucidity, fifty years ago, Kidd v. Pearson, 128 U.S. 1, 21, 9 S.Ct. 6, 10, 32 L.Ed. 346, declared: 'If it be held that the term (commerce with foreign nations and among the several states) includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in ***95** the future, it is impossible to

deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining,-in short, every branch of human industry.' This doctrine found full approval in United States v. E. C. Knight Co., 156 U.S. 1, 12, 13, 15 S.Ct. 249, 253, 39 L.Ed. 325; Schechter Poultry Corporation et al. v. United States, supra, and Carter v. Carter Coal Co. et al., supra, where the authorities are collected and principles applicable here are discussed.

In Knight's Case, Chief Justice Fuller, speaking for the Court, said: 'Doubtless the power to control the manufacture of a given thing involves, in a certain sense, the control of its disposition, but this is a secondary, and not the primary, sense; and, although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. * * * It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.'

In Schechter's Case we said: 'In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate ***96** commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control.'

Carter's Case declared-'Whether the effect of a given activity or condition is direct or indirect is not always easy to determine. The word 'direct' implies that the activity or condition invoked or blamed shall operate proximately-not mediately, remotely, or collaterally-to produce the ****639** effect. It connotes the absence of an efficient intervening agency or condition. And the extent of the effect bears no logical relation to its character. The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in

which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined.'

Any effect on interstate commerce by the discharge of employees shown here would be indirect and remote in ***97** the highest degree, as consideration of the facts will show. In No. 419 ten men out of ten thousand were discharged; in the other cases only a few. The immediate effect in the factor may be to create discontent among all those employed and a strike may follow, which, in turn, may result in reducing production, which ultimately may reduce the volume of goods moving in interstate commerce. By this chain of indirect and progressively remote events we finally reach the evil with which it is said the legislation under consideration undertakes to deal. A more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine.

The Constitution still recognizes the existence of states with indestructible powers; the Tenth Amendment was supposed to put them beyond controversy.

We are told that Congress may protect the 'stream of commerce' and that one who buys raw material without the state, manfactures it therein, and ships the output to another state is in that stream. Therefore it is said he may be prevented from doing anything which may interfere with its flow.

This, too, goes beyond the constitutional limitations heretofore enforced. If a man raises cattle and regularly delivers them to a carrier for interstate shipment, may Congress prescribe the conditions under which he may employ or discharge helpers on the ranch? The products of a mine pass daily into interstate commerce; many things are brought to it from other states. Are the owners and the miners within the power of Congress in respect of the latter's tenure and discharge? May a mill owner be prohibited from closing his factory or discontinuing his business because so to do would stop the flow of products to and from his plant in interstate commerce? ***98** May employees in a factory be restrained from quitting work in a body because this will close the factory and thereby stop the flow of commerce? May arson of a factory be made a federal offense whenever this would interfere with such flow? If the business cannot continue with the existing wage scale, may Congress command a reduction? If the ruling of the Court just announced is adhered to, these questions suggest some of the problems certain to arise.

And if this theory of a continuous 'stream of commerce' as now defined is correct, will it become the duty of the federal government hereafter to suppress every strike which by possibility it may cause a blockade in that stream? In re Debs, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092, Moreover,

since Congress has intervened, are labor relations between most manufacturers and their employees removed from all control by the state? Oregon-Washington R. Co. v. Washington (1926) 270 U.S. 87, 46 S.Ct. 279, 70 L.Ed. 482.

To this argument Arkadelphia Milling Co. v. St. Louis Southwestern Railway Co., et al., 249 U.S. 134, 150, 39 S.Ct. 237, 63 L.Ed. 517, affords an adequate reply. No such continuous stream is shown by these records as that which counsel assume.

There is no ground on which reasonably to hold that refusal by a manufacturer, whose raw materials come from states other than that of his factory and whose products are regularly carried to other states, to bargain collectively with employees in his manufacturing plant, directly affects interstate commerce. In such business, there is not one but who distinct movements or streams in interstate transportation. The first brings in raw material and there ends. Then follows manufacture, a separate and local activity. Upon completion of this and not before, the second distinct movement or stream in interstate commerce begins and the products ****640** go to other states. Such is the common course for small as well as ***99** large industries. It is unreasonable and unprecedented to say the commerce clause confers upon Congress power to govern relations between employers and employees in these local activities. Stout v. Pratt (D.C.) 12 F.Supp. 864. In Schechter's Case we condemned as unauthorized by the commerce clause assertion of federal power in respect of commodities which had come to rest after interstate transportation. And, in Carter's Case, we held Congress lacked power to regulate labor relations in respect of commodities before interstate commerce has begun.

It is gravely stated that experience teaches that if an employer discourages membership in 'any organization of any kind' 'in which employees participate, and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work,' discontent may follow and this in turn may lead to a strike, and as the outcome of the strike there may be a block in the stream of interstate commerce. Therefore Congress may inhibit the discharge! Whatever effect any cause of discontent may ultimately have upon commerce is far too indirect to justify congressional regulation. Almost anything-marriage, birth, death-may in some fashion affect commerce.

VIII.

That Congress has power by appropriate means, not prohibited by the Constitution, to prevent direct and material interference with the conduct of interstate commerce is settled doctrine. But the interference struck at must be direct and material, not some mere possibility contingent on wholly uncertain events; and there must be no impairment of rights guaranteed. A state by taxation on property may indirectly but seriously affect the cost of

transportation; it may not lay a direct tax upon ***100** the receipts from interstate transportation. The first is an indirect effect, the other direct.

This power to protect interstate commerce was invoked in Standard Oil Co. v. United States, 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734, and United States v. American Tobacco Co., 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663. In each of those cases a combination sought to monopolize and restrain interstate commerce through purchase and consequent control of many large competing concerns engaged both in manufacture and interstate commerce. The combination was sufficiently powerful and action by it so persistent that success became a dangerous probability. Here there is no such situation, and the cases are inapplicable in the circumstances. There is no conspiracy to interfere with commerce unless it can be said to exist among the employees who became members of the union. There is a single plant operated by its own management whose only offense, as alleged, was the discharge of a few employees in the production department because they belonged to a union, coming within the broad definition of 'labor organization' prescribed by section 2(5) of the act. That definition includes any organization in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, wages, &c.

Section 13 of the Labor Act (29 U.S.C.A. s 163) provides-'Nothing in this Act (chapter) shall be construed so as to interfere with or impede or diminish in any way the right to strike.' And yet it is ruled that to discharge an employee in a factory because he is a member of a labor organization (any kind) may create discontent which may lead to a strike and this may cause a block in the 'stream of commerce'; consequently the discharge may be inhibited. Thus the act exempts from its ambit the every evil which counsel insist may result from discontent caused by a discharge of an association member, but permits coercion of a nonmember to join one.

***101** The things inhibited by the Labor Act relate to the management of a manufacturing plant-something distinct from commerce and subject to the authority of the state. And this may not be abridged because of some vague possibility of distant interference with commerce.

IX.

Texas & New Orleans Railroad Co. et al., v. Brotherhood of Railway & Steamship Clerks et al., 281 U.S. 548, 50 S.Ct. 427, 434, 74 L.Ed. 1034, is not controlling. There the Court, while considering an act definitely limited to common carriers engaged in interstate transportation over ****641** whose affairs Congress admittedly has wide power, declared: 'The petitioners invoke the principle declared in Adair v. United States, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764, and Coppage v. Kansas, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441, L.R.A.1915C, 960, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at

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the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds.'

Adair's Case, supra, presented the question-'May Congress make it a criminal offense against the United States-as, by the 10th section of the act of 1898 (30 Stat. 428), it does-for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?' The answer was no. 'While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may ***102** require, it is not within the functions of government-at least, in the absence of contract between the parties-to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor or prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair,-however unwise such a course might have been,-to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so, however unwise such course on his part might have been-to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.' 'The provision of the statute under which the defendant was convicted must be held to be repugnant to the 5th Amendment, and as not embraced by nor within the power of Congress to regulate interstate commerce, but, under the guise of regulating interstate commerce, and as applied to this case, it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant, Adair.'

Coppage v. Kansas, following the Adair Case held that a state statute, declaring it a misdemeanor to require an ***103** employee to agree not to become a member of a labor organization during the time of his employment, was repugnant to the due process clause of the Fourteenth Amendment.

The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractual relations. This right is unduly abridged by the act now upheld. A private owner is deprived of

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power to manage his own property by freely selecting those to whom his manufacturing operations are to be entrusted. We think this cannot lawfully be done in circumstances like those here disclosed.

It seems clear to us that Congress has Transcended the powers granted.

U.S. 1937.

N.L.R.B. v. Jones & Laughlin Steel Corp.

301 U.S. 1, 57 S.Ct. 615, 108 A.L.R. 1352, 81 L.Ed. 893, 1 L.R.R.M. (BNA) 703, 1 Empl. Prac. Dec. P 9601, 1 Lab.Cas. P 17,017

Briefs and Other Related Documents (Back to top)

• 1937 WL 34884 (Appellate Brief) Brief for Jones & Laughlin Steel Corporation (Feb. 06, 1937)

• 1937 WL 34883 (Appellate Brief) Brief for National Labor Relations Board (Jan. 29, 1937)

• 1936 WL 34334 (Appellate Brief) Petition for A Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit (Oct. Term 1936)

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Supreme Court of the United States

CHAS. C. STEWARD MACH. CO. v. DAVIS.
No. 837.

Argued April 8-9, 1937.
Decided May 24, 1937.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Suit by the Charles C. Steward Machine Company against Harwell G. Davis, individually and as Collector of Internal Revenue for the District of Alabama. A judgment dismissing the suit was affirmed by the Circuit Court of Appeals (89 F.(2d) 207), and plaintiff brings certiorari.

Affirmed.

Mr. Justice SUTHERLAND and Mr. Justice VAN DEVANTER dissenting in part.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER dissenting.

West Headnotes

[1] **Taxation 371** ⇦2170

371 Taxation
371III Property Taxes
371III(C) Liability of Private Persons and Property in General
371k2169 Nature of Property
371k2170 k. In General. Most Cited Cases
(Formerly 371k61)

Natural rights are as much subject to taxation as rights of less importance.

[2] **Internal Revenue 220** ⇦3003

220 Internal Revenue
220I Nature and Extent of Taxing Power in General
220I(A) In General
220k3003 k. Power to Tax and Regulate in General. Most Cited Cases
(Formerly 220k1)

"Excise", which Congress has power to impose, is not limited to vocations or activities that may be prohibited altogether or to those that are the outcome of a franchise, but extends to vocations or activities pursued as of common right (Const. art. 1, s 8).

[3] **Licenses 238** ⇦3

238 Licenses
238I For Occupations and Privileges

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238k2 Power to License or Tax

238k3 k. In General. Most Cited Cases

What individual does in operation of a business is amenable to taxation just as much as what he owns, if classification is not tyrannical or arbitrary.

[4] **Licenses 238** ⇦3

238 Licenses

238I For Occupations and Privileges

238k2 Power to License or Tax

238k3 k. In General. Most Cited Cases

Power to tax activities and relations that constitute a calling considered as a unit is power to tax any of them.

[5] **Internal Revenue 220** ⇦3003

220 Internal Revenue

220I Nature and Extent of Taxing Power in General

220I(A) In General

220k3003 k. Power to Tax and Regulate in General. Most Cited Cases

(Formerly 371k16)

Subject-matter of taxation open to power of Congress is as comprehensive as that open to power of states, though method of apportionment may at times be different. U.S.C.A. Const. art. 1, § 8.

[6] **Internal Revenue 220** ⇦3064

220 Internal Revenue

220IV Direct Taxes

220k3060 What Constitutes Direct Taxes

220k3064 k. Other Particular Taxes. Most Cited Cases

(Formerly 220k2(3))

Exaction required of employer with respect to having individuals in his employ equal to certain percentage of total wages held not a "direct tax" but a "duty", "impost", or "excise" on relation of employment which Congress had power to impose, even though employment for lawful gain is a natural, inherent, or inalienable right, since employment is a business relation, if not itself a business, and business is as legitimate an object of taxing power as property (Social Security Act, ss 901-910, 42 U.S.C.A. ss 1101-1110; Const. art. 1, s 8).

[7] **Internal Revenue 220** ⇦3003

220 Internal Revenue

220I Nature and Extent of Taxing Power in General

220I(A) In General

220k3003 k. Power to Tax and Regulate in General. Most Cited Cases

(Formerly 220k1)

Power to lay taxes on occupations pursued of common right, which belongs by accepted practice to state Legislatures, is not denied by Federal Constitution to Congress.

[8] **Internal Revenue 220** ⇦4352

220 Internal Revenue

220XIV Taxes on Specific Articles and Transactions

220XIV(D) Employment Taxes

220k4352 k. Constitutional and Statutory Provisions. Most Cited Cases

(Formerly 220k2(3))

Excise tax imposed on employer with respect to having individuals in his employ equal to certain percentage of total wages conforms to constitutional requirement that excises shall be imposed with geographical uniformity (Social Security Act, ss 901-910, 42 U.S.C.A. ss 1101-1110; Const. art. 1, s 8).

[9] **Internal Revenue 220** ⇦4352

220 Internal Revenue

220XIV Taxes on Specific Articles and Transactions

220XIV(D) Employment Taxes

220k4352 k. Constitutional and Statutory Provisions. Most Cited Cases

(Formerly 220k2(3))

Excise tax imposed on employer with respect to having individuals in his employ equal to certain percentage of total wages held not unconstitutional as arbitrary and discriminatory because of provisions exempting employers of less than eight individuals, agricultural labor, and domestic service, since exemptions have support in considerations of policy and practical convenience and would be upheld under Fourteenth Amendment if adopted by a state, and hence are valid in legislation by Congress, which is subject to restraints less narrow and confining (Social Security Act, ss 901-910, 42 U.S.C.A. ss 1101-1110; Const. Amends. 5, 14).

[10] **United States 393** ⇦85

393 United States

393VI Fiscal Matters

393k85 k. Appropriations. Most Cited Cases

Proceeds of excise imposed on employer by Social Security Act, when collected and paid into Treasury, are subject to appropriation like public moneys generally, and no presumption can be indulged that they will be misapplied or wasted (Social Security Act, §§ 901-910, 42 U.S.C.A. §§ 1101-1110).

[11] **States 360** ⇦18.47

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.45 Labor and Employment

360k18.47 k. Unemployment Compensation and Workers' Compensation. Most Cited Cases

(Formerly 360k4.18, 360k4)

Social Security Act imposing tax on employer with respect to having individuals in his employ and allowing credit up to 90 per cent. of tax for contributions made to state unemployment fund under law approved by Social Security Board held not unconstitutional as involving coercion of states to enact unemployment compensation laws, since under act, proceeds of tax are not earmarked for a special group, law which is a condition of credit has had state's approval, and condition is not linked to irrevocable agreement and is directed to relief of unemployment for which nation and state may lawfully co-operate. Social Security Act, §§ 901-910, 42 U.S.C.A. §§ 1101-1110; Const. Amend. 10.

[12] **States 360** ⇦18.47

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.45 Labor and Employment

360k18.47 k. Unemployment Compensation and Workers' Compensation. Most Cited Cases

(Formerly 360k4.18, 360k4)

Social Security Act imposing tax on employer with respect to having individuals in his employ and allowing credit up to 90 per cent. of tax for contributions made to state unemployment fund under state unemployment compensation law approved by Social Security Board held not unconstitutional as calling for surrender by states of powers essential to their quasi sovereign existence since, under act, state law may be repealed and deposits made thereunder in federal Treasury may be withdrawn. Social Security Act, §§ 901-910, 42 U.S.C.A. §§ 1101-1110; Const. Amend. 10.

[13] **States 360** ⇦4.19

360 States

360I Political Status and Relations

360I(A) In General

360k4.19 k. Cooperation Between State and United States. Most Cited Cases

(Formerly 360k4)

States may make agreements with Congress if essence of their statehood is maintained without impairment, since even sovereigns may contract without derogating from their sovereignty.

Evidence 157 ⇦83(1)

157 Evidence

157II Presumptions

157k83 Official Proceedings and Acts

157k83(1) k. In General. Most Cited Cases

No presumption can be indulged that proceeds of excise imposed by Social Security Act will be misapplied or wasted (Social Security Act, §§ 901-910, 42 U.S.C.A. §§ 1101-1110).

****884 *551** Messrs. William Logan Martin, of Birmingham, Ala., Neil P. Sterne, of Anniston, Ala., and Walter Bouldin, of Birmingham, Ala., for petitioner.

Homer S. Cummings, Atty. Gen., ***553** Charles E. Wyzanski, Jr., Sp. Asst. Atty. Gen., and Robert H. Jackson, Asst. Atty. Gen., for respondent.

***573** Mr. Justice CARDOZO delivered the opinion of the Court.

The validity of the tax imposed by the Social Security Act (42 U.S.C.A. ss 301-1305) on employers of eight or more is here to be determined.

Petitioner, an Alabama corporation, paid a tax in accordance with the statute, filed a claim for refund with the Commissioner of Internal Revenue, and sued to recover the payment ($46.14), asserting a conflict between the statute and the Constitution of the United States. Upon demurrer the District Court gave judgment for the defendant dismissing the complaint, and the Circuit Court of Appeals for the Fifth Circuit affirmed. 89 F.(2d) 207. The decision is in accord with judgments of the Supreme Judicial Court of Massachusetts (Howes Brothers Co. v. Massachusetts Unemployment Compensation Commission, December 30, 1936, 5 N.E.(2d) 720), the Supreme Court of California (Gillum v. Johnson, November 25, 1936, 62 P.(2d) 1037), and the Supreme Court of Alabama (Beeland Wholesale Co. v. Kaufman, March 18, 1937, 174 So. 516). It is in conflict with a judgment of the Circuit Court of Appeals for the First Circuit, from which one judge dissented.
http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=350&FindType=Y&SerialNum=1937130386ltDavis v. Boston & Maine R.R. Co., April 14, 1937, 89 F. (2d) 368. An important question of constitutional law being involved, we granted certiorari. 300 U.S. 652, 57 S.Ct. 673, 81 L.Ed. 863.

***574** The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C., c. 7 (Supp.II), 42 U.S.C.A. ss 301-1305) is divided into eleven separate titles, of which only titles IX and III are so related to this case as to stand in need of summary.

The caption of title IX is 'Tax on Employers of Eight or More.' Every employer (with stated exceptions) is to pay for each calendar year 'an excise tax, with respect to having individuals in his employ,' the tax to be measured by prescribed percentages of the total wages payable by the employer during the calendar year with respect to such employment. Section 901, 42

U.S.C.A. s 1101. One is not, however, an 'employer' within the meaning of the act unless he employs eight persons or more. Section 907(a), 42 U.S.C.A. s 1107(a). There are also other limitations of minor importance. The term 'employment' too has its special definition, excluding agricultural labor, domestic service in a private ****885** home, and some other smaller classes. Section 907(c), 42 U.S.C.A. s 1107(c). The tax begins with the year 1936, and is payable for the first time on January 31, 1937. During the calendar year 1936 the rate is to be 1 per cent., during 1937 2 per cent., and 3 per cent. thereafter. The proceeds, when collected, go into the Treasury of the United States like internal revenue collections generally. Section 905(a), 42 U.S.C.A. s 1105(a). They are not earmarked in any way. In certain circumstances, however, credits are allowable. Section 902, 42 U.S.C.A. s 1102. If the taxpayer has made contributions to an unemployment fund under a state law, he may credit such contributions against the federal tax, provided, however, that the total credit allowed to any taxpayer shall not exceed 90 per centum of the tax against which it is credited, and provided also that the state law shall have been certified to the Secretary of the Treasury by the Social Security Board as satisfying certain minimum criteria. Section 902. The provisions of section 903 (42 U.S.C.A. s 1103) defining those criteria are stated in the ***575** margin. [FN1] Some of the conditions thus attached to the allowance of a credit are designed to give assurance that the state unemployment compensation law shall be one in substance as well as name. Others are designed to give assurance that the contributions shall be protected against loss after payment to the state. To this last end there ***576** are provisions that before a state law shall have the approval of the Board it must direct that the contributions to the state fund be paid over immediately to the Secretary of the Treasury to the credit of the 'Unemployment Trust Fund.' Section 904 (42 U.S.C.A. s 1104) establishing this fund is quoted below. [FN2] For the moment it is ****886** enough to say that the fund is to be held by the Secretary of the Treasury, who is to invest in government securities any portion not required in his judgment to meet current withdrawals. He is authorized and directed to pay out of the fund to any competent state agency such sums as it may duly requisition from the amount standing to its credit. Section 904(f), 42 U.S.C.A. s 1104(f).

FN1. Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that-

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the

Unemployment Trust Fund established by Section 904 (section 1104 of this chapter);

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

FN2. Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Unemployment Trust Fund,' hereinafter (in this title) called the 'Fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended (section 752 of

Title 31), are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple or one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

***577** Title III, which is also challenged as invalid, has the caption 'Grants to States for Unemployment Compensation Administration.' Under this title, certain sums of money are 'authorized to be appropriated' for the purpose of assisting the states in the administration of their unemployment compensation laws, the maximum for the fiscal year ending June 30, 1936, to be $4,000,000, and $49,000,000 for each fiscal year thereafter. Section 301, 42 U.S.C.A. s 501. No present appropriation is made to the extent of a single dollar. All that the title does is to authorize future appropriations. Actually only $2,250,000 of the $4,000,000 authorized was appropriated for 1936 (Act of Feb. 11, ***578** 1936, c. 49, 49 Stat. 1109, 1113) and only $29,000,000 of the $49,000,000 authorized for the following year (Act of June 22, 1936, c. 689, 49 Stat. 1597, 1605). The appropriations when made were not specifically out of the proceeds of the employment tax, but out of any moneys in the Treasury. Other sections of the title prescribe the method by which the payments are to be made to the state (section 302, 42 U.S.C.A. s 502) and also certain conditions to be established to the satisfaction of the Social Security Board before certifying the propriety of a payment to the Secretary of the Treasury (section 303, 42 U.S.C.A. s 503). They are

designed to give assurance to the federal government that the moneys granted by it will not be expended for purposes alien to the grant, and will be used in the administration of genuine unemployment compensation laws.

The assault on the statute proceeds on an extended front. Its assailants take the ground that the tax is not an excise; that ****887** it is not uniform throughout the United States as excises are required to be; that its exceptions are so many and arbitrary as to violate the Fifth Amendment; that its purpose was not revenue, but an unlawful invasion of the reserved powers of the states; and that the states in submitting to it have yielded to coercion and have abandoned governmental functions which they are not permitted to surrender.

The objections will be considered seriatim with such further explanation as may be necessary to make their meaning clear.

[1] [2] [3] [4] [5] [6] [7] First: The tax, which is described in the statute as an excise, is laid with uniformity throughout the United States as a duty, an impost, or an excise upon the relation of employment.

1. We are told that the relation of employment is one so essential to the pursuit of happiness that it may not be burdened with a tax. Appeal is made to history. From the precedents of colonial days, we are supplied with ***579** illustrations of excises common in the colonies. They are said to have been bound up with the enjoyment of particular commodities. Appeal is also made to principle or the analysis of concepts. An excise, we are told, imports a tax upon a privilege; employment, it is said, is a right, not a privilege, from which it follows that employment is not subject to an excise. Neither the one appeal nor the other leads to the desired goal.

As to the argument from history: Doubtless there were many excises in colonial days and later that were associated, more or less intimately, with the enjoyment or the use of property. This would not prove, even if no others were then known, that the forms then accepted were not subject to enlargement. Cf. Pensacola Teleg. Co. v. Western Union Telegraph Co., 96 U.S. 1, 9, 24 L.Ed. 708; In re Debs, 158 U.S. 564, 591, 15 S.Ct. 900, 39 L.Ed. 1092; South Carolina v. United States, 199 U.S. 437, 448, 449, 26 S.Ct. 110, 50 L.Ed. 261, 4 Ann.Cas. 737. But in truth other excises were known, and known since early times. Thus in 1695 (6 & 7 Wm. III, c. 6), Parliament passed an act which granted 'to His Majesty certain Rates and Duties upon Marriages, Births and Burials,' all for the purpose of 'carrying on the War against France with Vigour.' See Opinion of the Justices, 196 Mass. 603, 609, 85 N.E. 545, 547. No commodity was affected there. The industry of counsel has supplied us with an apter illustration where the tax was not different in substance from theone now challenged as invalid. In 1777, before our Constitutional Convention, Parliament laid upon employers an annual 'duty' of 21 shillings for 'every male Servant' employed in stated forms of work. [FN3] ***580** Revenue Act of 1777, 17 George III, c. 39. [FN4] The point is made as a distinction that a tax upon the use of male servants was thought of as a tax upon a luxury. Davis v. Boston & Maine R.R. Co., supra.

It did not touch employments in husbandry or business. This is to throw over the argument that historically an excise is a tax upon the enjoyment of commodities. But the attempted distinction, whatever may be thought of its validity, is inapplicable to a statute of Virginia passed in 1780. There a tax of 3 pounds, 6 shillings, and 8 pence was to be paid for every male tithable above the age of twenty-one years (with stated exceptions), and a like tax for 'every white servant whatsoever, except apprentices under the age of twenty one years.' 10 Hening's Statutes of Virginia, p. 244. Our colonial forbears knew more about ways of taxing than some of their descendants seem to be willing to concede.

FN3 The list of services is comprehensive. It included: 'Maitre d'Hotel, House-steward, Master of the House, Groom of the Chamber, Valet de Chambre, Butler, Under-butler, Clerk of the Kitchen, Confectioner, Cook, House-porter, Footman, Running-footman, Coachman, Groom, Postillion, Stable-boy, and the respective Helpers in the Stables of such Coachman, Groom, or Postillion, or in the Capacity of Gardener (not being a Day-labourer), Park-keeper, Game-keeper, Huntsman, Whipper-in. ***'

FN4 The statute, amended from time to time, but with its basic structure unaffected, is on the statute books today. Act of 1803, 43 George III, c. 161; Act of 1812, 52 George III, c. 93; Act of 1853, 16 & 17 Vict., c. 90; Act of 1869, 32 & 33 Vict., c. 14. 24 Halsbury's Laws of England, 1st ed., p. 692 et seq.

FN5 See, also, the following laws imposing occupation taxes: 12 Hening's Statutes of Virginia, p. 285, Act of 1786; Chandler, The Colonial Records of Georgia, vol. 19, Part 2, p. 88, Act of 1778; 1 Potter, Taylor and Yancey, North Carolina Revised Laws, p. 501, Act of 1784.

The historical prop failing, the prop or fancied prop of principle remains. We learn ****888** that employment for lawful gain is a 'natural' or 'inherent' or 'inalienable' right, and not a 'privilege' at all. But natural rights, so called, are as much subject to taxation as rights of less importance. [FN6] An excise is not limited to vocations or activities ***581** that may be prohibited altogether. It is not limited to those that are the outcome of a franchise. It extends to vocations or activities pursued as of common right. What the individual does in the operation of a business is amenable to taxation just as much as what he owns, at all events if the classification is not tyrannical or arbitrary. 'Business is as legitimate an object of the taxing power as property.' City of Newton v. Atchison, 31 Kan. 151, 154, 1 P. 288, 290, 47 Am.Rep. 486 (per Brewer, J.). Indeed, ownership itself, as we had occasion to point out the other day, is only a bundle of rights and privileges invested with a single name. Henneford v. Silas Mason Co., Inc. (March 29, 1937) 300 U.S. 577, 57 S.Ct. 524, 527, 81 L.Ed. 814. 'A state is at liberty, if it

pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively.' Id. Employment is a business relation, if not itself a business. It is a relation without which business could seldom be carried on effectively. The power to tax the activities and relations that constitute a calling considered as a unit is the power to tax any of them. The whole includes the parts. Nashville, C. & St. L. Ry. Co. v. Wallace, 288 U.S. 249, 267, 268, 53 S.Ct. 345, 349, 350, 77 L.Ed. 730, 87 A.L.R. 1191.

FN6 The cases are brought together by Prof. John MacArthur Maguire in an essay, 'Taxing the Exercise of National Rights' (Harvard Legal Essays, 1934, pp. 273, 322).

The Massachusetts decisions must be read in the light of the particular definitions and restrictions of the Massachusetts Constitution. Opinions of the Justices, 282 Mass. 619, 622, 186 N.E. 490; Id., 266 Mass. 590, 593, 165 N.E. 904, 63 A.L.R. 952. And see Howes Brothers Co. v. Massachusetts Unemployment Compensation Commission, supra, 5 N.E.(2d) 720, at pages 730, 731.

The subject-matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. 'The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises.' Article 1, s 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. Burnet v. Brooks, 288 U.S. 378, 403, 405, 53 S.Ct. 457, 464, 465, 77 L.Ed. 844, 86 A.L.R. 747; Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 12, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A.1917D, 414, Ann.Cas.1917B, 713. Whether the tax is to be ***582** classified as an 'excise' is in truth not of critical importance. If not that, it is an 'impost' (Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, 622, 625, 15 S.Ct. 912, 39 L.Ed. 1108; \fs20fs20 Pacific Insurance Co. v. Soule, 7 Wall. 433, 445, 19 L.Ed. 95), or a 'duty' (Veazie Bank v. Fenno, 8 Wall. 533, 546, 547, 19 L.Ed. 482; Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 570, 15 S.Ct. 673, 39 L.Ed. 759; Knowlton v. Moore, 178 U.S. 41, 46, 20 S.Ct. 747, 44 L.Ed. 969). A capitation or other 'direct' tax it certainly is not. 'Although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imposts, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue.' Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 557, 15 S.Ct. 673, 680, 39 L.Ed. 759. There is no departure from that thought in later cases, but rather a new emphasis of it. Thus, in Thomas v. United States, 192 U.S. 363, 370, 24 S.Ct. 305, 306, 48 L.Ed. 481, it was said of the words 'duties, imposts, and excises' that 'they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions,

vocations, occupations, and the like.' At times taxpayers have contended that the Congress is without power to lay an excise on the enjoyment of a privilege created by state law. The contention has been put aside as baseless. Congress may tax the transmission of property by inheritance or will, though the states and not Congress have created the privilege of succession. **889Knowlton v. Moore, supra, 178 U.S. 41, at page 58, 20 S.Ct. 747, 44 L.Ed. 969. Congress may tax the enjoyment of a corporate franchise, though a state and not Congress has brought the franchise into being. Flint v. Stone Tracy Co., 220 U.S. 107, 108, 155, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas.1912B, 1312. The statute books of the states are strewn with illustrations of taxes laid on ***583** occupations pursued of common right. [FN7] We find no basis for a holding that the power in that regard which belongs by accepted practice to the Legislatures of the states, has been denied by the Constitution to the Congress of the nation.

FN7 Alabama General Acts, 1935, No. 194, art. 13, s 348 et seq. (flat license tax on occupations); Arizona Revised Code, Supplement (1936) s 3138a et seq. (general gross receipts tax); Connecticut General Statutes, Supplement (1935) ss 457c, 458c (gross receipts tax on unincorporated businesses); Revised Code of Delaware (1935) ss 192-197 (flat license tax on occupations); Compiled Laws of Florida, Permanent Supplement (1936) Vol. 1, s 1279 (1) et seq. (flat license tax on occupations); Georgia Laws, 1935, p. 11 (flat license tax on occupations); Indiana Statutes Ann. (1933) s 64-2601 et seq. (general gross receipts tax); Louisiana Laws, 3rd Extra Session, 1934, Act No. 15, 1st Extra Session, 1935, Acts Nos. 5, 6 (general gross receipts tax); Mississippi Laws, 1934, c. 119 (general gross receipts tax); New Mexico Laws, 1935, c. 73 (general gross receipts tax); South Dakota Laws, 1933, c. 184 (general gross receipts tax, expired June 30, 1935); Washington Laws, 1935, c. 180, title 2, p. 709 (general gross receipts tax); West Virginia Code, Supplement (1935) s 960 (general gross receipts tax).

[8] 2. The tax being an excise, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine, the uniformity exacted is geographical, not intrinsic. Knowlton v. Moore, supra, 178 U.S. 41, at page 83, 20 S.Ct. 747, 44 L.Ed. 969; Flint v. Stone Tracy Co., supra, 220 U.S. 107, at page 158, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas.1912B, 1312; Billings v. United States, 232 U.S. 261, 282, 34 S.Ct. 421, 58 L.Ed. 596; Stellwagen v. Clum, 245 U.S. 605, 613, 38 S.Ct. 215, 62 L.Ed. 507; LaBelle Iron Works v. United States, 256 U.S. 377, 392, 41 S.Ct. 528, 532, 65 L.Ed. 998; Poe v. Seaborn, 282 U.S. 101, 117, 51 S.Ct. 58, 61, 75 L.Ed. 239; Wright v. Vinton Branch of Mountain Trust Bank (March 29, 1937) 300 U.S. 440, 57 S.Ct. 556, 81 L.Ed. 736. 'The rule of liability shall be alike in all parts of the United States.' Florida v. Mellon, 273 U.S. 12, 17, 47 S.Ct. 265, 266, 71 L.Ed. 511.

[9] Second: The excise is not invalid under the provisions of the Fifth Amendment by force of its exemptions.

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***584** The statute does not apply, as we have seen, to employers of less then eight. It does not apply to agricultural labor, or domestic service in a private home or to some other classes of less importance. Petitioner contends that the effect of these restrictions is an arbitrary discrimination vitiating the tax.

The Fifth Amendment unlike the Fourteenth has no equal protection clause. LaBelle Iron Works v. United States, supra; Brushaber v. Union Pacific R.R. Co., supra, 240 U.S. 1, at page 24, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A.1917D, 414, Ann.Cas.1917B, 713. But even the states, though subject to such a clause, are not confined to a formula of rigid uniformity in framing measures of taxation. Swiss Oil Corporation v. Shanks, 273 U.S. 407, 413, 47 S.Ct. 393, 395, 71 L.Ed. 709. They may tax some kinds of property at one rate, and others at another, and exempt others altogether. Bell's Gap R.R. Co. v. Pennsylvania, 134 U.S. 232, 10 S.Ct. 533, 33 L.Ed. 892; Stebbins v. Riley, 268 U.S. 137, 142, 45 S.Ct. 424, 426, 69 L.Ed. 884, 44 A.L.R. 1454; Ohio Oil Co. v. Conway, 281 U.S. 146, 150, 50 S.Ct. 310, 74 L.Ed. 775. They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akinthereto. Quong Wing v. Kirkendall, 223 U.S. 59, 62, 32 S.Ct. 192, 56 L.Ed. 350; American Sugar Refining Co. v. Louisiana, 179 U.S. 89, 94, 21 S.Ct. 43, 45 L.Ed. 102; Armour Packing Co. v. Lacy, 200 U.S. 226, 235, 26 S.Ct. 232, 50 L.Ed. 451; Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573, 30 S.Ct. 578, 54 L.Ed. 883; Heisler v. Thomas Colliery Co., 260 U.S. 245, 255, 43 S.Ct. 83, 84, 67 L.Ed. 237; State Board of Tax Com'rs v. Jackson, 283 U.S. 527, 537, 538, 51 S.Ct. 540, 543, 75 L.Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536. If this latitude of judgment is lawful for the states, it is lawful, a fortiori, in legislation by the Congress, which is subject to restraints less narrow and confining. Quong Wing v. Kirkendall, supra.

****890** The classifications and exemptions directed by the statute now in controversy have support in considerations of policy and practical convenience that cannot be condemned as arbitrary. The classifications and exemptions would therefore be upheld if they had been adopted by a state and the provisions of the Fourteenth Amendment were invoked to annul them. This is held in two cases ***585** passed upon today in which precisely the same provisions were the subject of attack, the provisions being contained in the Unemployment Compensation Law of the state of Alabama (Gen.Acts Ala.1935, p. 950, as amended). Carmichael v. Southern Coal & Coke Co. (Carmichael v. Gulf States Paper Corporation), 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245. The opinion rendered in those cases covers the ground fully. It would be useless to repeat the argument. The act of Congress is therefore valid, so far at least as its system of exemptions is concerned, and this though we assume that discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment.

[10] [11] Third: The excise is not void as involving the coercion of the states in contravention of the Tenth Amendment or of restrictions implicit in our federal form of government.

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The proceeds of the excise when collected are paid into the Treasury at Washington, and thereafter are subject to appropriation like public moneys generally. Cincinnati Soap Co. v. United States (May 3, 1937) 301 U.S. 308, 57 S.Ct. 764, 81 L.Ed. 1122. No presumption can be indulged that they will be misapplied or wasted. [FN8] Even if they were collected in the hope or expectation that some other and collateral good would be furthered as an incident, that without more would not make the act invalid. Sonzinsky v. United States (March 29, 1937) 300 U.S. 506, 57 S.Ct. 554, 555, 81 L.Ed. 772. This indeed is hardly questioned. The case for the petitioner is built on the contention that here an ulterior aim is wrought into the very structure of the act, and what is ***586** even more important that the aim is not only ulterior, but essentially unlawful. In particular, the 90 per cent. credit is relied upon as supporting that conclusion. But before the statute succumbs to an assault upon these lines, two propositions must be made out by the assailant. Cincinnati Soap Co. v. United States, supra. There must be a showing in the first place that separated from the credit the revenue provisions are incapable of standing by themselves. There must be a showing in the second place that the tax and the credit in combination are weapons of coercion, destroying or impairing the autonomy of the states. The truth of each proposition being essential to the success of the assault, we pass for convenience to a consideration of the second, without pausing to inquire whether there has been a demonstration of the first.

FN8 The total estimated receipts without taking into account the 90 per cent. deduction, range from $225,000,000 in the first year to over $900,000,000 seven years later. Even if the maximum credits are available to taxpayers in all states, the maximum estimated receipts from Title IX will range between $22,000,000, at one extreme, to $90,000,000 at the other. If some of the states hold out in their unwillingness to pass statutes of their own, the receipts will be still larger.

To draw the line intelligently between duress and inducement, there is need to remind ourselves of facts as to the problem of unemployment that are now matters of common knowledge. West Coast Hotel Co. v. Parrish (March 29, 1937) 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703. The relevant statistics are gathered in the brief of counsel for the government. Of the many available figures a few only will be mentioned. During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than 10 million; at times a peak was attained of 16 million or more. Disaster to the breadwinner meant disaster to dependents. Accordingly the roll of the unemployed, itself formidable enough, was only a partial roll of the destitute or needy. The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the

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unemployed ***587** and their dependents is a use for any purpose ****891** narrower than the promotion of the general welfare. Cf. United States v. Butler, 297 U.S. 1, 65, 66, 56 S.Ct. 312, 319, 80 L.Ed. 477, 102 A.L.R. 914; Helvering v. Davis, 301 U.S. 619, 672, 57 S.Ct. 904, 81 L.Ed. 1307, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933, and July 1, 1936, the states (according to statistics submitted by the government) incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,929,307,125, or twice the obligations of states and local agencies combined. According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935, and 1936, the stupendous total of $8,681,000,000. The parens patriae has many reasons-fiscal and economic as well as social and moral-for planning to mitigate disasters that bring these burdens in their train.

In the presence of this urgent need for some remedial expedient, the question is to be answered whether the expedient adopted has overlept the bounds of power. The assailants of the statute say that its dominant end and aim is to drive the state Legislatures under the whip of economic pressure into the enactment of unemployment compensation laws at the bidding of the central government. Supporters of the statute say that its operation is not constraint, but the creation of a larger freedom, the states and the nation joining in a co-operative endeavor to avert a common evil. Before Congress acted, unemployment compensation insurance was still, for the most part, a project and no more. Wisconsin was the pioneer. Her statute was adopted in 1931. At times bills for such insurance were introduced elsewhere, but they did not reach the stage of law. In 1935, four states (California, Massachusetts, New Hampshire, and New York) passed unemployment***588** laws on the eve of the adoption of the Social Security Act, and two others did likewise after the federal act and later in the year. The statutes differed to some extent in type, but were directed to a common end. In 1936, twenty-eight other states fell in line, and eight more the present year. But if states had been holding back before the passage of the federal law, inaction was not owing, for the most part, to the lack of sympathetic interest. Many held back through alarm lest in laying such a toll upon their industries, they would place themselves in a position of economic disadvantage as compared with neighbors or competitors. See House Report, No. 615, 74th Congress, 1st session, p. 8; Senate Report, No. 628, 74th Congress, 1st session, p. 11. [FN9] Two consequences ensued. One was that the freedom of a state to contribute its fair share to the solution of a national problem was paralyzed by fear. The other was that in so far as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the government of the nation.

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FN9 The attitude of Massachusetts is significant. Her act became a law August 12, 1935, two days before the federal act. Even so, she prescribed that its provisions should not become operative unless the federal bill became a law, or unless eleven of the following states (Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Vermont) should impose on their employers burdens substantially equivalent. St. of 1935, c. 479, p. 655. Her fear of competition is thus forcefully attested. See, also, California St.1935, c. 352, art. 1, s 2; Idaho Laws 1936 (Third Extra Session) c. 12, s 26; Mississippi Laws, 1936, c. 176, s 2-a.

The Social Security Act is an attempt to find a method by which all these public agencies may work together to a common end. Every dollar of the new taxes will continue in all likelihood to be used and needed by the ***589** nation as long as states are unwilling, whether through timidity or for other motives, to do what can be done at home. At least the inference is permissible that Congress so believed, though retaining undiminished freedom to spend the money as it pleased. On the other hand, fulfillment of the home duty will be lightened and encouraged by crediting the taxpayer upon his account with the Treasury of the nation to the extent that his contributions ****892** under the laws of the locality have simplified or diminished the problem of relief and the probable demand upon the resources of the fisc. Duplicated taxes, or burdens that approach them are recognized hardships that government, state or national, may properly avoid. Henneford v. Silas Mason Co., Inc., supra; Kidd v. Alabama, 188 U.S. 730, 732, 23 S.Ct. 401, 47 L.Ed. 669; Watson v. State Comptroller, 254 U.S. 122, 125, 41 S.Ct. 43, 44, 65 L.Ed. 170. If Congress believed that the general welfare would better be promoted by relief through local units than by the system then in vogue, the co-operating localities ought not in all fairness to pay a second time.

Who then is coerced through the operation of this statute? Not the taxpayer. He pays in fulfillment of the mandate of the local legislature. Not the state. Even now she does not offer a suggestion that in passing the unemployment law she was affected by duress. See Carmichael v. Southern Coal & Coke Co. (Carmichael v. Gulf States Paper Corporation), supra. For all that appears, she is satisfied with her choice, and would be sorely disappointed if it were now to be annulled. The difficulty with the petitioner's contention is that it confuses motive with coercion. 'Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed.' Sonzinsky v. United States, supra. In like manner every rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive ***590** or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now

the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems. The wisdom of the hypothesis has illustration in this case. Nothing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be applied with fitness to the relations between state and nation. Even on that assumption the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree, at times, perhaps, of fact. The point had not been reached when Alabama made her choice. We cannot say that she was acting, not of her unfettered will, but under the strain of a persuasion equivalent to undue influence, when she chose to have relief administered under laws of her own making, by agents of her own selection, instead of under federal laws, administered by federal officers, with all the ensuing evils, at least to many minds, of federal patronage and power. There would be a strange irony, indeed, if her choice were now to be annulled on the basis of an assumed duress in the enactment of a statute which her courts have accepted as a true expression of her will. Beeland Wholesale Co. v. Kaufman, supra. We think the choice must stand.

In ruling as we do, we leave many questions open. We do not say that a tax is valid, when imposed by act of Congress, if it is laid upon the condition that a state may escape its operation through the adoption of a statute unrelated in subject-matter to activities fairly within the scope of national policy and power. No such question is before us. In the tender of this credit Congress does not intrude upon fields foreign to its function. The purpose ***591** of its intervention, as we have shown, is to safeguard its own treasury and as an incident to that protection to place the states upon a footing of equal opportunity. Drains upon its own resources are to be checked; obstructions to the freedom of the states are to be leveled. It is one thing to impose a tax dependent upon the conduct of the taxpayers, or of the state in which they live, where the conduct to be stimulated or discouraged is unrelated to the fiscal need subserved by the tax in its normal operation, or to any other end legitimately national. The Child Labor Tax Case, 259 U.S. 20, 42 S.Ct. 449, 66 L.Ed. 817, 21 A.L.R. 1432, and Hill v. Wallace, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822, were decided in the belief that the statutes there condemned were exposed to that reproach. Cf. United States v. Constantine, 296 U.S. 287, 56 S.Ct. 223, 80 L.Ed. 233. It is quite another thing to say that a tax will be abated upon the doing of an act that will satisfy the fiscal need, the tax and the alternative being approximate equivalents. In such circumstances, if in no others, inducement or persuasion does not go beyond the bounds of power. We do not fix the outermost line. Enough for present purposes that wherever ****893** the line may be, this statute is within it. Definition more precise must abide the wisdom of the future.

Florida v. Mellon, 273 U.S. 12, 47 S.Ct. 265, 71 L.Ed. 511, supplies us with a precedent, if precedent be needed. What was in controversy there was section 301 of the Revenue Act of 1926 (44 Stat. 69), which imposes a tax upon the transfer of a decedent's estate, while at the same time permitting a

credit, not exceeding 80 per cent., for 'the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory.' Florida challenged that provision as unlawful. Florida had no inheritance taxes and alleged that under its constitution it could not levy any. 273 U.S. 12, 15, 47 S.Ct. 265, 71 L.Ed. 511. Indeed, by abolishing inheritance taxes, it had hoped to induce wealthy persons to become its citizens. See 67 Cong. Rec., Part 1, pp. 735, 752. It argued at our bar that 'the Estate Tax provision was not passed for the purpose ***592** of raising federal revenue' (273 U.S. 12, 14, 47 S.Ct. 265, 71 L.Ed. 511), but rather 'to coerce States into adopting estate or inheritance tax laws' (273 U.S. 12, 13, 47 S.Ct. 265, 71 L.Ed. 511). In fact, as a result of the 80 per cent. credit, material changes of such laws were made in thirty-six states. [FN10] In the face of that attack we upheld the act as valid. Cf. Massachusetts v. Mellon, 262 U.S. 447, 482, 43 S.Ct. 597, 599, 67 L.Ed. 1078; also Act of August 5, 1861, c. 45, 12 Stat. 292; Act of May 13, 1862, c. 66, 12 Stat. 384.

FN10 Perkins, State Action under the Federal Estate Tax Credit Clause, 13 North Carolina L. Rev. 271, 280.

United States v. Butler, supra, is cited by petitioner as a decision to the contrary. There a tax was imposed on processors of farm products, the proceeds to be paid to farmers who would reduce their acreage and crops under agreements with the Secretary of Agriculture, the plan of the act being to increase the prices of certain farm products by decreasing the quantities produced. The court held (1) that the socalled tax was not a true one (297 U.S. 1, at pages 56, 61, 56 S.Ct. 312, 315, 317, 80 L.Ed. 477, 102 A.L.R. 914), the proceeds being earmarked for the benefit of farmers complying with the prescribed conditions, (2) that there was an attempt to regulate production without the consent of the state in which production was affected, and (3) that the payments to farmers were coupled with coercive contracts (297 U.S. 1, at page 73, 56 S.Ct. 312, 322, 80 L.Ed. 477, 102 A.L.R. 914), unlawful in their aim and oppressive in their consequences. The decision was by a a divided court, a minority taking the view that the objections were untenable. None of them is applicable to the situation here developed.

(a) The proceeds of the tax in controversy are not earmarked for a special group.

(b) The unemployment compensation law which is a condition of the credit has had the approval of the state and could not be a law without it.

(c) The condition is not linked to an irrevocable agreement, for the state at its pleasure may repeal its unemployment law (section 903(a)(6), 42 U.S.C.A. s 1103(a)(6), terminate the credit, ***593** and place itself where it was before the credit was accepted.

(d) The condition is not directed to the attainment of an unlawful end, but to an end, the relief of unemployment, for which nation and state may lawfully coo perate.

[12] Fourth: The statute does not call for a surrender by the states of powers essential to their quasi sovereign existence.

Argument to the contrary has its source in two sections of the act. One section (903 [FN11]) defines the minimum criteria to which a state compensation system is required to conform if it is to be accepted by the Board as the basis for a credit. The other section (904 [FN12]) rounds out the requirement with complementary rights and duties. Not all the criteria or their incidents are challenged as unlawful. We will speak of them first generally, and then more specifically in so far as they are questioned.

FN11 See note 1, supra.

FN12 See note 2, supra.

A credit to taxpayers for payments made to a state under a state unemployment law will be manifestly futile in the absence of some assurance that the law leading to the credit is in truth what it professes to be. An unemployment law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more. What is ****894** basic and essential may be assured by suitable conditions. The terms embodied in these sections are directed to that end. A wide range of judgment is given to the several states as to the particular type of statute to be spread upon their books. For anything to the contrary in the provisions of this act they may use the pooled unemployment form, which is in effect with variations in Alabama, California, Michigan, New York, and elsewhere. They may establish a system of merit ratings applicable at ***594** once or to go into effect later on the basis of subsequent experience. Cf. Sections 909, 910, 42 U.S.C.A. ss 1109, 1110. They may provide for employee contributions as in Alabama and California, or put the entire burden upon the employer as in New York. They may choose a system of unemployment reserve accounts by which an employer is permitted after his reserve has accumulated to contribute at a reduced rate or even not at all. This is the system which had its origin in Wisconsin. What they may not do, if they would earn the credit, is to depart from those standards which in the judgment of Congress are to be ranked as fundamental. Even if opinion may differ as to the fundamental quality of one or more of the conditions, the difference will not avail to vitiate the statute. In determining essentials, Congress must have the benefit of a fair margin of discretion. One cannot say with reason that this margin has been exceeded, or that the basic standards have been determined in any arbitrary fashion. In the event that some particular condition shall be found to be too uncertain to be capable of enforcement, it may be severed from the others, and what is left will still be valid.

We are to keep in mind steadily that the conditions to be approved by the Board as the basis for a credit are not provisions of a contract, but terms of a statute, which may be altered or repealed. Section 903(a)(6). The state does not bind itself to keep the law in force. It does not even bind itself that the moneys paid into the federal fund will be kept there indefinitely or for any stated time. On the contrary, the Secretary of the Treasury will honor a requisition for the whole or any part of the deposit in the fund whenever one

is made by the appropriate officials. The only consequence of the repeal or excessive amendment of the statute, or the expenditure of the money, when requisitioned, for other than compensation uses or administrative expenses, is ***595** that approval of the law will end, and with it the allowance of a credit, upon notice to the state agency and an opportunity for hearing. Section 903(b, c), 42 U.S.C.A. s 1103(b, c).

These basic considerations are in truth a solvent of the problem. Subjected to their test, the several objections on the score of abdication are found to be unreal.

Thus, the argument is made that by force of an agreement the moneys when withdrawn must be 'paid through public employment offices in the State or such other agencies as the Board may approve.' Section 903(a)(1), 42 U.S.C.A. s 1103(a)(1). But in truth there is no agreement as to the method of disbursement. There is only a condition which the state is free at pleasure to disregard or to fulfill. Moreover, approval is not requisite if public employment offices are made the disbursing instruments. Approval is to be a check upon resort to 'other agencies' that may perchance, be irresponsible. A state looking for a credit must give assurance that her system has been organized upon a base of rationality.

There is argument again that the moneys when withdrawn are to be devoted to specific uses, the relief of unemployment, and that by agreement for such payment the quasi-sovereign position of the state has been impaired, if not abandoned. But again there is confusion between promise and condition. Alabama is still free, without breach of an agreement to change her system over night. No officer or agency of the national government can force a compensation law upon her or keep it in existence. No officer or agency of that government, either by suit or other means, can supervise or control the application of the payments.

Finally and chiefly, abdication is supposed to follow from section 904 of the statute and the parts of section 903 that are complementary thereto. Section 903(a)(3). By these the Secretary of the Treasury is authorized and directed to receive and hold in the Unemployment Trust Fund all ***596** moneys deposited therein by a state agency for a state unemployment fund and to invest in obligations of the United States such portion of the fund as is not in his judgment required to meet current withdrawals. We are told that Alabama****895** in consenting to that deposit has renounced the plenitude of power inherent in her statehood.

The same pervasive misconception is in evidence again. All that the state has done is to say in effect through the enactment of a statute that her agents shall be authorized to deposit the unemployment tax receipts in the Treasury at Washington. Alabama Unemployment Act of September 14, 1935, section 10(i) (Gen.Acts Ala.1935, p. 961). The statute may be repealed. Section 903(a)(6), 42 U.S.C.A. s 1103(a)(6). The consent may be revoked. The deposits may be withdrawn. The moment the state commission gives notice to the depositary that it would like the moneys back, the Treasurer

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will return them. To find state destruction there is to find it almost anywhere. With nearly as much reason one might say that a state abdicates its functions when it places the state moneys on deposit in a national bank.

There are very good reasons of fiscal and governmental policy why a state should be willing to make the Secretary of the Treasury the custodian of the fund. His possession of the moneys and his control of investments will be an assurance of stability and safety in times of stress and strain. A report of the Ways and Means Committee of the House of Representatives, quoted in the margin, develops the situation clearly. [FN13] Nor is there risk of loss ***597** or waste. The credit of the Treasury is at all times back of the deposit, with the result that the right of withdrawal will be unaffected by the fate of any intermediate investments, just as if a checking account in the usual form had been opened in a bank.

> FN13 'This last provision will not only afford maximum safety for these funds but is very essential to insure that they will operate to promote the stability of business rather than the reverse. Unemployment reserve funds have the peculiarity that the demands upon them fluctuate considerably, being heaviest when business slackens. If, in such times, the securities in which these funds are invested are thrown upon the market for liquidation, the net effect is likely to be increased deflation. Such a result is avoided in this bill through the provision that all reserve funds are to be held by the United States Treasury, to be invested and liquidated by the Secretary of the Treasury in a manner calculated to promote business stability. When business conditions are such that investment in securities purchased on the open market is unwise, the Secretary of the Treasury may issue special nonnegotiable obligations exclusively to the unemployment trust fund. When a reverse situation exists and heavy drains are made upon the fund for payment of unemployment benefits, the Treasury does not have to dispose of the securities belonging to the fund in open market but may assume them itself. With such a method of handling the reserve funds, it is believed that this bill will solve the problem often raised in discussions of unemployment compensation, regarding the possibility of transferring purchasing power from boom periods to depression periods. It will in fact operate to sustain purchasing power at the onset of a depression without having any counteracting deflationary tendencies.' House Report, No. 615, 74th Congress, 1st session, p. 9.

[13] The inference of abdication thus dissolves in thinnest air when the deposit is conceived of as dependent upon a statutory consent, and not upon a contract effective to create a duty. By this we do not intimate that the conclusion would be different if a contract were discovered. Even sovereigns may contract without derogating from their sovereignty. Perry v. United States, 294 U.S. 330, 353, 55 S.Ct. 432, 436, 95 A.L.R. 1335, 79 L.Ed. 912; 1 Oppenheim, International Law (4th Ed.) ss 493, 494; Hall,

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International Law (8th Ed.) s 107; 2 Hyde, International Law, s 489. The states are at liberty, upon obtaining the consent of Congress, to make agreements with one another. Constitution, art. 1, s 10, par. 3. Poole v. Fleeger, 11 Pet. 185, 209, 9 L.Ed. 680; Rhode Island v. Massachusetts, 12 Pet. 657, 725, 9 L.Ed. 1233. We find no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment. [FN14] Alabama ***598** is seeking and obtaining a credit of many millions in favor of her citizens out of the Treasury of the nation. Nowhere in our scheme of government-in the limitations express or implied of our Federal Constitution-do we find that she is prohibited from assenting to conditions that will assure a fair ****896** and just requital for benefits received. But we will not labor the point further. An unreal prohibition directed to an unreal agreement will not vitiate an act of Congress, and cause it to collapse in ruin.

FN14 Cf. 12 Stat. 503 (7 U.S.C.A. s 301 et seq.); 26 Stat. 417 (7 U.S.C.A. s 321 et seq.).

Fifth: Title III of the act is separable from title IX, and its validity is not at issue.

The essential provisions of that title have been stated in the opinion. As already pointed out, the title does not appropriate a dollar of the public moneys. It does no more than authorize appropriations to be made in the future for the purpose of assisting states in the administration of their laws, if Congress shall decide that appropriations are desirable. The title might be expunged, and title IX would stand intact. Without a severability clause we should still be led to that conclusion. The presence of such a clause (section 1103, 42 U.S.C.A. s 1303) makes the conclusion even clearer. Williams v. Standard Oil Co., 278 U.S. 235, 242, 49 S.Ct. 115, 117, 73 L.Ed. 287, 60 A.L.R. 596; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 184, 52 S.Ct. 548, 553, 76 L.Ed. 1038; Carter v. Carter Coal Co., 298 U.S. 238, 312, 56 S.Ct. 855, 873, 80 L.Ed. 1160.

The judgment is affirmed.

Separate opinion of Mr. Justice McREYNOLDS.

That portion of the Social Security legislation here under consideration, I think, exceeds the power granted to Congress. It unduly interferes with the orderly government of the state by her own people and otherwise offends the Federal Constitution.

In Texas v. White (1869) 7 Wall. 700, 725, 19 L.Ed. 227, a cause of momentous importance, this Court, through Chief Justice Chase, declared-

***599** 'But the perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States,

are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' (Lane County v. Oregon, 7 Wall. 71, 76, 19 L.Ed. 101). Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.'

The doctrine thus announced and often repeated, I had supposed was firmly established. Apparently the states remained really free to exercise governmental powers, not delegated or prohibited, without interference by the federal government through threats of punitive measures or offers of seductive favors. Unfortunately, the decision just announced opens the way for practical annihilation of this theory; and no cloud of words or ostentatious parade of irrelevant statistics should be permitted to obscure that fact.

***600** The invalidity also the destructive tendency of legislation like the act before us were forecefully pointed out by President Franklin Pierce in a veto message sent to the Senate May 3, 1854. [FN1] He was a scholarly lawyer of distinction and enjoyed the advice and counsel of a rarely able Attorney General-Caleb Cushing of Massachusetts. This message considers with unusual lucidity points here specially important. I venture to set out pertinent portions of it which must appeal to all who continue to respect both the letter and spirit of our great charter.

FN1 'Messages and Papers of the President' by James D. Richardson, Vol. V, pp. 247-256.

'To the Senate of the United States:

'The bill entitled 'An Act making a grant of public lands to the several States for the benefit of indigent insane persons,' which was presented to me on the 27th ultimo, has ****897** been maturely considered, and is returned to the Senate, the House in which it originated, with a statement of the objections which have required me to withhold from it may approval. * * *

'If in presenting my objections to this bill I should say more than strictly belongs to the measure or is required for the discharge of my official obligation, let it be attributed to a sincere desire to justify my act before those whose good opinion I so highly value and to that earnestness which springs from my deliberate conviction that a strict adherence to the terms and purposes of the federal compact offers the best, if not the only, security for the preservation of our blessed inheritance of representative liberty.

'The bill provides in substance:

'First. That 10,000,000 acres of land be granted to the several States, to be apportioned among them in the compound ratio of the geographical area and representation of said States in the House of Representatives.

***601** 'Second. That wherever there are public lands in a State subject to sale at the reguiar price of private entry, the proportion of said 10,000,000 acres falling to such State shall be selected from such lands within it, and that to the States in which there are no such public lands land scrip shall be issued to the amount of their distributive shares, respectively, said scrip not to be entered by said States, but to be sold by them and subject to entry by their assignees: Provided, That none of it shall be sold at less than $1 per acre, under penalty of forfeiture of the same to the United States.

'Third. That the expenses of the management and superintendence of said lands and of the moneys received therefrom shall be paid by the States to which they may belong out of the treasury of said States.

'Fourth. That the gross proceeds of the sales of such lands or land scrip so granted shall be invested by the several States in safe stocks, to constitute a perpetual fund, the principal of which shall remain forever undiminished, and the interest to be appropriated to the maintenance of the indigent insane within the several States.

'Fifth. That annual returns of lands or scrip sold shall be made by the States to the Secretary of the Interior, and the whole grant be subject to certain conditions and limitations prescribed in the bill, to be assented to by legislative acts of said States.

'This bill therefore proposes that the Federal Government shall make provision to the amount of the value of 10,000,000 acres of land for an eleemosynary object within the several States, to be administered by the political authority of the same; and it presents at the threshold the question whether any such act on the part of the Federal Government is warranted and sanctioned by the Constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty.

***602** 'It can not be questioned that if Congress has power to make provision for the indigent insane without the limits of this District it has the same power to provide for the indigent who are not insane, and thus to transfer to the Federal Government the charge of all the poor in all the States. It has the same power to provide hospitals and other local establishments for the care and cure of every species of human infirmity, and thus to assume all that duty of either public philanthropy or public necessity to the dependent, the orphan, the sick, or the needy which is now discharged by the States themselves or by corporate institutions or private endowments existing under the legislation of the States. The whole field of public beneficence is thrown open to the care and culture of the Federal Government. Generous impulses no longer encounter the limitations and control of our imperious fundamental law; for however worthy may be the present object in itself, it is only one of a class. It is not exclusively worthy of benevolent regard. Whatever considerations dictate sympathy for this particular object apply in

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like manner, if not in the same degree, to idiocy, to physical disease, to extreme destitution. If Congress may and ought to provide for any one of these objects, it may and ought to provide for them all. And if it be done in this case, what answer shall be given when Congress shall be called upon, as it doubtless will be, to pursue a similar course of legislation in the others? It will obviously be vain to reply that the object is worthy, but that the application has taken a wrong direction. The power will have been deliberately assumed, the general obligation will by this act have been acknowledged, and the question of means and expediency will alone be left for consideration.****898** The decision upon the principle in any one case determines it for the whole class. The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government***603** assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who by any form of calamity become fit objects of public philanthropy.

'I readily and, I trust, feelingly acknowledge the duty incumbent on us all as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want and to disease of body or mind; but I can not find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded. And if it were admissible to contemplate the exercise of this power for any object whatever, I can not avoid the belief that it would in the end be prejudicial rather than beneficial in the noble offices of charity to have the charge of them transferred from the States to the Federal Government. Are we not too prone to forget that the Federal Union is the creature of the States, not they of the Federal Union? We were the inhabitants of colonies distinct in local government one from the other before the Revolution. By the Revolution the colonies each became an independent State. They achieved that independence and secured its recognition by the agency of a consulting body, which, from being an assembly of the ministers of distinct sovereignties instructed to agree to no form of government which did not leave the domestic concerns of each State to itself, was appropriately denominated a Congress. When, having tried the experiment of the Confederation, they resolved to change that for the present Federal Union, and thus to confer on the Federal Government more ample authority, they scrupulously measured such of the ***604** functions of their cherished sovereignty as they chose to delegate to the General Government. With this aim and to this end the fathers of the Republic framed the Constitution, in and by which the independent and sovereign States united themselves for certain specified objects and purposes, and for those only, leaving all powers not therein set forth as conferred on one or another of the three great departments-the legislative, the executive, and the judicial-indubitably with

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the States. And when the people of the several States had in their State conventions, and thus alone, given effect and force to the Constitution, not content that any doubt should in future arise as to the scope and character of this act, they ingrafted thereon the explicit declaration that 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people.'

'Can it be controverted that the great mass of the business of Government-that involved in the social relations, the internal arrangements of the body politic, the mental and moral culture of men, the development of local resources of wealth, the punishment of crimes in general, the preservation of order, the relief of the needy or otherwise unfortunate members of society-did in practice remain with the States; that none of these objects of local concern are by the Constitution expressly or impliedly prohibited to the States, and that none of them are by any express language of the Constitution transferred to the United States? Can it be claimed that any of these functions of local administration and legislation are vested in the Federal Government by any implication? I have never found anything in the Constitution which is susceptible of such a construction. No one of the enumerated powers touches the subject or has even a remote analogy to it. The powers conferred upon the United States have reference to federal relations, or to the means of accomplishing***605** or executing things of federal relation. So also of the same character are the powers taken away from the States by enumeration. In either case the powers granted and the powers restricted were so granted or so restricted only where it was requisite for the maintenance of peace and harmony between the States or for the purpose of protecting their common interests and defending their common sovereignty against aggression from abroad or insurrection at home.

****899** 'I shall not discuss at length the question of power sometimes claimed for the General Government under the clause of the eighth section of the Constitution, which gives Congress the power 'to lay and collect taxes, duties, imposts, and excises, to pay debts and provide for the common defense and general welfare of the United States,' because if it has not already been settled upon sound reason and authority it never will be. I take the received and just construction of that article, as if written to lay and collect taxes, duties, imposts, and excises in order to pay the debts and in order to provide for the common defense and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive. It would be impossible in that view to escape from the conclusion that these were inserted only to mislead for the present, and, instead of enlightening and defining the pathway of the future, in involve its action in the mazes of doubtful construction. Such a conclusion the character of the men who framed that sacred instrument will never permit us to form. Indeed, to suppose it susceptible of any other

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construction would be to consign all the rights of the States and of the people of the States to the mere discretion***606** of Congress, and thus to clothe the Federal Government with authority to control the sovereign States, by which they would have been dwarfed into provinces or departments and all sovereignty vested in an absolute consolidated central power, against which the spirit of liberty has so often and in so many countries struggled in vain.

'In my judgment you can not by tributes to humanity make any adequate compensation for the wrong you would inflict by removing the sources of power and political action from those who are to be thereby affected. If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto, when the power and majesty and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see 'the beginning of the end.'

'Fortunately, we are not left in doubt as to the purpose of the Constitution any more than as to its express lauguage, for although the history of its formation, as recorded in the Madison Papers, shows that the Federal Government in its present form emerged from the conflict of opposing influences which have continued to divide statesmen from that day to this, yet the rule of clearly defined powers and of strict construction presided over the actual conclusion and subsequent adoption of the Constitution. President Madison, in the Federalist, says:

"The powers delegated to the proposed Constitution are few and defined. Those which are to remain in the State governments are numerous and indefinite. * * * Its (the General Government's) jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.'

***607** 'In the same spirit President Jefferson invokes 'the support of the State governments in all their rights as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies;' and President Jackson said that our true strength and wisdom are not promoted by invasions of the rights and powers of the several States, but that, on the contrary, they consist 'not in binding the States more closely to the center, but in leaving each more unobstructed in its proper orbit.'

'The framers of the Constitution, in refusing to confer on the Federal Government any jurisdiction over these purely local objects, in my judgment manifested a wise forecast and broad comprehension of the true interests of these objects themselves. It is clear that public charities Within the States can be efficiently administered only by their authority. The bill before me concedes this, for it does not commit the funds it provides to the administration of any other authority.

'I can not but repeat what I have before expressed, that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are

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proceeding**900 to establish them, shall be led to suppose, as, should this bill become a law, they will be, that Congress is to make provision for such objects the fountains of charity will be dried up at home and the several States instead of bestowing their own means on the social wants of their own people may themselves, through the strong temptation which appeals to states as to individuals, become humble suppliants for the bounty of the Federal Government, reversing their true relations to this Union. * * *

'I have been unable to discover any distinction on constitutional grounds or grounds of expediency between an appropriation of $10,000,000 directly from the money in *608 the Treasury for the object contemplated and the appropriation of lands presented for my sanction, and yet I can not doubt that if the bill proposed $10,000,000 from the Treasury of the United States for the support of the indigent insane in the several States that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

'I respectfully submit that in a constitutional point of view it is wholly immaterial whether the appropriation be in money or in land. * * *

'To assume that the public lands are applicable to ordinary State objects, whether of public structures, police, charity, or expenses of State administration, would be to disregard to the amount of the value of the public lands all the limitations of the Constitution and confound to that extent all distinctions between the rights and powers of the States and those of the United States; for if the public lands may be applied to the support of the poor, whether sane or insane, if the disposal of them and their proceeds be not subject to the ordinary limitations of the Constitution, then Congress possesses unqualified power to provide for expenditures in the States by means of the public lands, even to the degree of defraying the salaries of governors, judges, and all other expenses of the government and internal administration within the several States.

'The conclusion from the general survey of the whole subject is to my mind irresistible, and closes the question both of right and of expediency so far as regards the principle of the appropriation proposed in this bill. Would not the admission of such power in Congress to dispose of the public domain work the practical abrogation of some of the most important provisions of the Constitution? * * *

*609 'The general result at which I have arrived is the necessary consequence of those views of the relative rights, powers, and duties of the States and of the Federal Government which I have long entertained and often expressed and in reference to which my convictions do but increase in force with time and experience.'

No defense is offered for the legislation under review upon the basis of emergency. The hypothesis is that hereafter it will continuously benefit unemployed members of a class. Forever, so far as we can see, the states are expected to function under federal direction concerning an internal matter. By the sanction of this adventure, the door is open for progressive

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inauguration of others of like kind under which it can hardly be expected that the states will retain genuine independence of action. And without independent states a Federal Union as contemplated by the Constitution becomes impossible.

At the bar counsel asserted that under the present act the tax upon residents of Alabama during the first year will total $9,000,000. All would remain in the Federal Treasury but for the adoption by the state of measures agreeable to the National Board. If continued, these will bring relief from the payment of $8,000,000 to the United States.

Ordinarily, I must think, a denial that the challenged action of Congress and what has been done under it amount to coercion and impair freedom of government by the people of the state would be regarded as contrary to practical experience. Unquestionably our federate plan of government confronts an enlarged peril.

Separate opinion of Mr. Justice SUTHERLAND.

With most of what is said in the opinion just handed down, I concur. I agree that the pay roll tax levied is an excise within the power of Congress; that the devotion of *610 not more than 90 per cent. of it to the credit of employers in states which require the payment of a similar tax under so-called unemployment-tax laws is not an unconstitutional use of the proceeds of the **901 federal tax; that the provision making the adoption by the state of an unemployment law of a specified character a condition precedent to the credit of the tax does not render the law invalid. I agree that the states are not coerced by the federal legislation into adopting unemployment legislation. The provisions of the federal law may operate to induce the state to pass an employment law if it regards such action to be in its interest. But that is not coercion. If the act stopped here, I should accept the conclusion of the court that the legislation is not unconstitutional.

But the question with which I have difficulty is whether the administrative provisions of the act invade the governmental administrative powers of the several states reserved by the Tenth Amendment. A state may enter into contracts; but a state cannot, by contract or statute, surrender the execution, or a share in the execution, of any of its governmental powers either to a sister state or to the federal government, any more than the federal government can surrender the control of any of its governmental powers to a foreign nation. The power to tax is vital and fundamental, and, in the highest degree, governmental in character. Without it, the state could not exist. Fundamental also, and no less important, is the governmental power to expend the moneys realized from taxation, and exclusively to administer the laws in respect of the character of the tax and the methods of laying and collecting it and expending the proceeds.

The people of the United States, by their Constitution, have affirmed a division of internal governmental powers between the federal government and the governments of the several states-committing to the first its powers by express grant and necessary implication; to the latter, or *611 to the

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people, by reservation, 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States.' The Constitution thus affirms the complete supremacy and independence of the state within the field of its powers. Carter v. Carter Coal Co., 298 U.S. 238, 295, 56 S.Ct. 855, 865, 80 L.Ed. 1160. The federal government has no more authority to invade that field than the state has to invade the exclusive field of national governmental powers; for, in the oft-repeated words of this court in Texas v. White, 7 Wall. 700, 725, 19 L.Ed. 227, 'the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government.' The necessity of preserving each from every form of illegitimate intrusion or interference on the part of the other is so imperative as to require this court, when its judicial power is properly invoked, to view with a careful and discriminatingeye any legislation challenged as constituting such an intrusion or interference. See South Carolina v. United States, 199 U.S. 437, 448, 26 S.Ct. 110, 50 L.Ed. 261, 4 Ann.Cas. 737.

The precise question, therefore, which we are required to answer by an application of these principles is whether the congressional act contemplates a surrender by the state to the federal government, in whole or in part, of any state governmental power to administer its own unemployment law or the state pay roll-tax funds which it has collected for the purposes of that law. An affirmative answer to this question, I think, must be made.

I do not, of course, doubt the power of the state to select and utilize a depository for the safe-keeping of its funds; but it is quite another thing to agree with the selected depository that the funds shall be withdrawn for certain stipulated purposes, and for no other. Nor do I doubt the authority of the federal government and a state government to co-operate to a common end, provided***612** each of them is authorized to reach it. But such co-operation must be effectuated by an exercise of the powers which they severally possess, and not by an exercise, through invasion or surrender, by one of them of the governmental power of the other.

An illustration of what I regard as permissible co-operation is to be found in title I of the act now under consideration. By that title, federal appropriations for oldage assistance are authorized to be made to any state which shall have adopted a plan for old-age assistance conforming to designated requirements. But the state is not obliged, as a condition of having the federal bounty, to deposit in the federal treasury funds raised by the state. The state keeps its own funds and administers its own law in respect of them, without let or hindrance of any kind on the part of the federal government; so that we have simply the familiar case of federal aid upon****902** conditions which the state, without surrendering any of its powers, may accept or not as it chooses. Massachusetts v. Mellon, 262 U.S. 447, 480, 482, 483, 43 S.Ct. 597, 598, 599, 67 L.Ed. 1078.

But this is not the situation with which we are called upon to deal in the present case. For here, the state must deposit the proceeds of its taxation in the federal treasury, upon terms which make the deposit suspiciously like a forced loan to be repaid only in accordance with restrictions imposed by federal law. Title IX, ss 903(a)(3), 904(a), (b), (e), 42 U.S.C.A. ss 1103(a)(3), 1104(a, b, e). All moneys withdrawn from this fund must be used exclusively for the payment of compensation. Section 903(a)(4), 42 U.S.C.A. s 1103(a)(4). And this compensation is to be paid through public employment offices in the state or such other agencies as a federal board may approve. Section 903(a)(1), 42 U.S.C.A. s 1103(a)(1). The act, it is true, recognizes section 903(a)(6), 42 U.S.C.A. s 1103(a)(6) the power of the Legislature to amend or repeal its compensation law at any time. But there is nothing in the act, as I read it, which justifies the conclusion that the state may, in that event, unconditionally withdraw its ***613** funds from the federal treasury. Section 903(b), 42 U.S.C.A. s 1103(b), provides that the board shall certify in each taxable year to the Secretary of the Treasury each state whose law has been approved. But the board is forbidden to certify any state which the board finds has so changed its law that it no longer contains the provisions specified in subsection (a), 'or has with respect to such taxable year failed to comply substantially with any such provision.' The federal government, therefore, in the person of its agent, the board, sits not only as a perpetual overseer, interpreter and censor of state legislation on the subject, but, as lord paramount, to determine whether the state is faithfully executing its own law-as though the state were a dependency under pupilage [FN1] and not to be trusted. The foregoing, taken in connection with the provisions that money withdrawn can be used only in payment of compensation and that it must be paid through an agency approved by the federal board, leaves it, to say the least, highly uncertain whether the right of the state to withdraw any part of its own funds exists, under the act, otherwise than upon these various statutory conditions. It is true also that subsection (f) of section 904, 42 U.S.C.A. s 1104(f), authorizes the Secretary of the Treasury to pay to any state agency 'such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.' But it is to be observed that the payment is to be made to the state agency, and only such amount as that agency may duly requisition. It is hard to find in this provision any extension of the right of the state to withdraw its funds except in the manner and for the specific purpose prescribed by the act.

FN1 Compare Snow v. United States, 18 Wall. 317, 319, 320, 21 L.Ed. 784.

By these various provisions of the act, the federal agencies are authorized to supervise and hamper the administrative powers of the state to a degree which not only does not comport with the dignity of a quasi sovereign***614** state-a matter with which we are not judicially concerned-but which deny to it that supremacy and freedom from external interference in respect of its

affairs which the Constitution contemplates-a matter of very definite judicial concern. I refer to some, though by no means all, of the cases in point.

In the License Cases, 5 How. 504, 588, 12 L.Ed. 256, Mr. Justice McLean said that the federal government was supreme within the scope of its delegated powers, and the state governments equally supreme in the exercise of the powers not delegated nor inhibited to them; that the states exercise their powers over everything connected with their social and internal condition; and that over these subjects the federal government had no power. 'They appertain to the State sovereignty as exclusively as powers exclusively delegated appertain to the general government.'

In Tarble's Case, 13 Wall. 397, 20 L.Ed. 597, Mr. Justice Field, after pointing out that the general government and the state are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres, said that, except in one particular, they stood in the same independent relation to each other as they would if their authority embraced distinct territories. The one particular referred to is that of the supremacy ****903** of the authority of the United States in case of conflict between the two.

In Farrington v. Tennessee, 95 U.S. 679, 685, 24 L.Ed. 558, this court said, 'Yet every State has a sphere of action where the authority of the national government may not intrude. Within that domain the State is as if the union were not. Such are the checks and balances in our complicated but wise system of State and national polity.'

'The powers exclusively given to the federal government,' it was said in Worcester v. State of Georgia, 6 Pet. 515, 570, 8 L.Ed. 483, 'are limitations upon the state authorities. But ***615** with the exception of these limitations, the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power.'

The force of what has been said is not broken by an acceptance of the view that the state is not coerced by the federal law. The effect of the dual distribution of powers is completely to deny to the states whatever is granted exclusively to the nation, and, conversely, to deny to the nation whatever is reserved exclusively to the states. 'The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not committed to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is incumbent equally upon the federal government and the states. State powers can neither be appropriated on the one hand nor abdicated on the other.' Carter v. Carter Coal Co., supra, 298 U.S. 238, at page 295, 56 S.Ct. 855, 866, 80 L.Ed. 1160. The purpose of the Constitution in that regard does not admit of doubt or qualification; and it can be thwarted no more by voluntary surrender from within than by invasion from without.

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Nor may the constitutional objection suggested be overcome by the expectation of public benefit resulting from the federal participation authorized by the act. Such expectation, if voiced in support of a proposed constitutional enactment, would be quite proper for the consideration of the legislative body. But, as we said in the Carter Case, supra, 298 U.S. 238, at page 291, 56 S.Ct. 855, 864, 80 L.Ed. 1160, 'nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power.' Moreover, everything which the act seeks to do for the relief of unemployment might have been accomplished, as is done by this same act for the relief of the misfortunes of old age, without***616** obliging the state to surrender, or share with another government, any of its powers.

If we are to survive as the United States, the balance between the powers of the nation and those of the states must be maintained. There is grave danger in permitting it to dip in either direction, danger-if there were no other-in the precedent thereby set for further departures from the equipoise. The threat implicit in the present encroachment upon the administrative functions of the states is that greater encroachments, and encroachments upon other functions, will follow.

For the foregoing reasons, I think the judgment below should be reversed.

Mr. Justice VAN DEVANTER joins in this opinion.

Mr. Justice BUTLER, dissenting.

I think that the objections to the challenged enactment expressed in the separate opinions of Mr. Justice McREYNOLDS and Mr. Justice SUTHERLAND are well taken. I am also of opinion that, in principle and as applied to bring about and to gain control over state unemployment compensation, the statutory scheme is repugnant to the Tenth Amendment: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The Constitution grants to the United States no power to pay unemployed persons or to require the states to enact laws or to raise or disburse money for that purpose. The provisions in question, if not amounting to coercion in a legal sense, are manifestly designed and intended directly to affect state action in the respects specified. And, if valid as so employed, this 'tax and credit' device may be made effective to enable federal authorities to induce, if not indeed to compel, state enactments for any purpose within the realm of ***617** state power and generally to control state administration of state laws.

****904** The act creates a Social Security Board and imposes upon it the duty of studying and making recommendations as to legislation and as to administrative policies concerning unemployment compensation and related subjects. Section 702, 42 U.S.C.A. s 902. It authorizes grants of money by the United States to States for old age assistance, for administration of unemployment compensation, for aid to dependent children, for maternal

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and child welfare and for public health. Each grant depends upon state compliance with conditions prescribed by federal authority. The amounts given being within the discretion of the Congress, it may at any time make available federal money sufficient effectively to influence state policy, standards and details of administration.

The excise laid by section 901 (42 U.S.C.A. s 1101) is limited to specified employers. It is not imposed to raise money to pay unemployment compensation. But it is imposed having regard to that subject for, upon enactment of state laws for that purpose in conformity with federal requirements specified in the act, each of the employers subject to the federal tax becomes entitled to credit for the amount he pays into an unemployment fund under a state law up to 90 per cent. of the federal tax. The amounts yielded by the remaining 10 per cent., not assigned to any specific purpose, may be applied to pay the federal contributions and expenses in respect of state unemployment compensation. It is not yet possible to determine more closely the sums that will be needed for these purposes.

When the federal act was passed, Wisconsin was the only state paying unemployment compensation. Though her plan then in force is by students of the subject generally deemed the best yet devised, she found it necessary to change her law in order to secure federal approval. In the absence of that, Wisconsin employers subject to the ***618** federal tax would not have been allowed any deduction on account of their contribution to the state fund. Any state would be moved to conform to federal requirements, not utterly objectionable, in order to save its taxpayers from the federal tax imposed in addition to the contributions under state laws.

Federal agencies prepared and took draft bills to state Legislatures to enable and induce them to pass laws providing for unemployment compensation in accordance with federal requirements and thus to obtain relief for the employers from the impending federal exaction. Obviously the act creates the peril of federal tax not to raise revenue but to persuade. Of course, each state was free to reject any measure so proposed. But, if it failed to adopt a plan acceptable to federal authority, the full burden of the federal tax would be exacted. And, as federal demands similarly conditioned may be increased from time to time as Congress shall determine, possible federal pressure in that field is without limit. Already at least forty-three states, yielding to the inducement resulting immediately from the application of the federal tax and credit device, have provided for unemployment compensation in form to merit approval of the Social Security Board. Presumably the remaining States will comply whenever convenient for their Legislatures to pass the necessary laws.

The terms of the measure make it clear that the tax and credit device was intended to enable federal officers virtually to control the exertion of powers of the states in a field in which they alone have jurisdiction and from which the United States is by the Constitution excluded.

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I am of opinion that the judgment of the Circuit Court of Appeals should be reversed.

U.S. 1937.

Charles C. Steward Mach. Co. v. Davis

301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279, 109 A.L.R. 1293, 19 A.F.T.R. 510

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Supreme Court of the United States

HELVERING, Com'r of Internal Revenue, et al. v. DAVIS.
No. 910.

Argued May 5, 1937.
Decided May 24, 1937.
As Amended June 1, 1937.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

Suit by George P. Davis against the Edison Electric Illuminating Company of Boston wherein Guy T. Helvering, Commissioner of Internal Revenue, and another were allowed to intervene. A decree of the District Court dismissing the bill was reversed by the Circuit Court of Appeals (89 F.(2d) 393), and Guy T. Helvering and another bring certiorari.

Decree of Circuit Court of Appeals reversed and decree of District Court affirmed.

Mr. Justice McREYNOLDS, Mr. Justice BUTLER, Mr. Justice CARDOZO, Mr. Justice BRANDEIS, Mr. Justice STONE, and Mr. Justice ROBERTS dissenting in part.

West Headnotes

[1] **Constitutional Law 92** ⇦46(2)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k46 Necessity of Determination
92k46(2) k. Form and Sufficiency of Objection or Allegation. Most Cited Cases

Shareholder's suit for injunction to restrain corporation from making payments and deductions from wages called for by Social Security Act, and to declare act void on ground that deductions would produce unrest among employees and would be followed by demands of increases in wages and that corporation and shareholders would suffer irreparable loss, held sufficient to raise issue of validity of tax imposed by act.

[2] **Constitutional Law 92** ⇦70.3(9.1)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.3 Inquiry Into Motive, Policy, Wisdom, or Justice of Legislation

92k70.3(9) Particular Subjects of Legislation, Application to
92k70.3(9.1) k. In General. Most Cited Cases
(Formerly 92k70.3(9), 92k70(3))

Under constitutional provisions permitting Congress to spend money in aid of general welfare, discretion in drawing line between one welfare and another and between particular and general welfare belongs to Congress and not to courts, unless choice is clearly wrong, and not an exercise of judgment but a display of arbitrary power. U.S.C.A.Const. art. 1, § 8.

[3] **Constitutional Law 92** ⇦48(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k48 Presumptions and Construction in Favor of Constitutionality
92k48(1) k. In General. Most Cited Cases
(Formerly 92k48)

Person challenging validity of act of Congress must show that by no reasonable possibility can challenged legislation fall within wide range of discretion permitted to Congress.

[4] **Constitutional Law 92** ⇦81

92 Constitutional Law
92IV Police Power in General
92k81 k. Nature and Scope in General. Most Cited Cases

Concept of general welfare in constitutional provision permitting Congress to spend money in aid of general welfare is not static. U.S.C.A.Const. art. 1, § 8.

[5] **States 360** ⇦4.16(2)

360 States
360I Political Status and Relations
360I(A) In General
360k4.16 Powers of United States and Infringement on State Powers
360k4.16(2) k. Federal Laws Invading State Powers. Most Cited Cases
(Formerly 360k4.17, 360k4)

Title of Social Security Act providing for federal old age benefits and authorizing appropriations to old age reserve account for monthly pensions and lump sum payments held not unconstitutional as violating provision reserving to states powers not delegated to United States and not prohibited to states, since unemployment is a general, national ill which Congress may check by nation's resources under general welfare clause, whether it results from lack of work or because of disabilities of age, and laws of separate

states could not deal with problem effectively because of states' lack of resources and their reluctance to increase tax burdens. Social Security Act § 201 et seq., 42 U.S.C.A. § 401 et seq.; U.S.C.A.Const. art. 1, § 8; art. 6, par. 2; Amend. 10.

[6] **States 360** ⇦18.1

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.1 k. In General. Most Cited Cases

(Formerly 360k4.7, 360k4)

Where money is spent to promote the general welfare, concept of welfare is shaped by Congress and not by the states, and, where concept is not arbitrary, locality must yield. U.S.C.A.Const. art. 1, § 8; art. 6, par. 2.

[7] **Internal Revenue 220** ⇦4354

220 Internal Revenue

220XIV Taxes on Specific Articles and Transactions

220XIV(D) Employment Taxes

220k4354 k. Nature of Tax. Most Cited Cases

(Formerly 220k2(3))

Tax imposed upon employers by Social Security Act, to be paid with respect to having individuals in employ and measured by wages, held valid "excise" or "duty" upon relation of employment (Social Security Act s 804, 42 U.S.C.A. s 1004; Const. art. 1, s 8).

[8] **Internal Revenue 220** ⇦4352

220 Internal Revenue

220XIV Taxes on Specific Articles and Transactions

220XIV(D) Employment Taxes

220k4352 k. Constitutional and Statutory Provisions. Most Cited Cases

(Formerly 220k2(3))

Income tax imposed on employees and excise tax imposed on employers by Social Security Act, on basis of wages paid during calendar year, held not invalid because of provision exempting from both taxes agricultural labor, domestic service, service for national or state governments, and service performed by persons who have attained age of 65 years (Social Security Act ss 801, 804, 811(b), 42 U.S.C.A. ss 1001, 1004, 1011(b).

****905 *620** Messrs. Homer S. Cummings, Atty. Gen., Robert H. Jackson, Asst. Atty. Gen., and Charles E. Wyzanski, Jr., Sp. Asst. Atty. Gen., for petitioners.

***625** Messrs. Edward F. McClennen and Jacob J. Kaplan, both of Boston, Mass., for respondent.

***634** Mr. Justice CARDOZO delivered the opinion of the Court.

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C., c. 7 (Supp.), s 301 et seq. (42 U.S.C.A. s 301 et seq.), is challenged once again.

****906** In Steward Machine Co. v. Davis, 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279, decided this day, we have upheld the validity of Title IX of the act (section 901 et seq. (42 U.S.C.A. s 1101 et seq.)), imposing an excise upon employers of eight or more. In this case Titles VIII and II (sections 801 et seq., 201 et seq. (42 U.S.C.A. ss 1001 et seq., 401 et seq.)) are the subject of attack. Title VIII lays another excise upon employers in addition to the one imposed by Title IX (though with different exemptions). It lays a special income tax upon employees to be deducted from their wages and paid by the employers. Title II provides for the payment of Old Age Benefits, and supplies the motive and occasion, in the view of the assailants of the statute, for ***635** the levy of the taxes imposed by Title VIII. The plan of the two titles will now be summarized more fully.

Title VIII, as we have said, lays two different types of tax, an 'income tax on employees,' and 'an excise tax on employers.' The income tax on employees is measured by wages paid during the calendar year. Section 801 (42 U.S.C.A. s 1001). The excise tax on the employer is to be paid 'with respect to having individuals in his employ,' and, like the tax on employees, is measured by wages. Section 804 (42 U.S.C.A. s 1004). Neither tax is applicable to certain types of employment, such as agricultural labor, domestic service, service for the national or state governments, and service performed by persons who have attained the age of 65 years. Section 811(b), 42 U.S.C.A. s 1011(b). The two taxes are at the same rate. Sections 801, 804 (42 U.S.C.A. ss 1001, 1004). For the years 1937 to 1939, inclusive, the rate for each tax is fixed at one per cent. Thereafter the rate increases 1/2 of 1per cent. every three years, until after December 31, 1948, the rate for each tax reaches 3 per cent. Ibid. In the computation of wages all remuneration is to be included except so much as is in excess of $3,000 during the calendar year affected. Section 811(a), 42 U.S.C.A. s 1011(a). The income tax on employees is to be collected by the employer, who is to deduct the amount from the wages 'as and when paid.' Section 802(a), 42 U.S.C.A. s 1002(a). He is indemnified against claims and demands of any person by reason of such payment. Ibid. The proceeds of both taxes are to be paid into the Treasury like internal revenue taxes generally, and are not ear-marked in any way. Section 807(a), 42 U.S.C.A. s 1007(a). There are penalties for nonpayment. Section 807(c), 42 U.S.C.A. s 1007(c).

Title II (section 201 et seq. (42 U.S.C.A. s 401 et seq.)) has the caption 'Federal Old-Age Benefits.' The benefits are of two types, first, monthly pensions, and second, lump-sum payments, the payments of the second class being relatively few and unimportant.

The first section of this title creates an account in the United States Treasury to be known as the 'Old-Age ***636** Reserve Account.' Section 201 (42 U.S.C.A. s 401). No present appropriation, however, is made to that

account. All that the statute does is to authorize appropriations annually thereafter, beginning with the fiscal year which ends June 30, 1937. How large they shall be is not known in advance. The 'amount sufficient as an annual premium' to provide for the required payments is 'to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually.' Section 201(a), 42 U.S.C.A. s 401(a). Not a dollar goes into the Account by force of the challenged act alone, unaided by acts to follow.

Section 202 and later sections (42 U.S.C.A. s 402 et seq.) prescribed the form of benefits. The principal type is a monthly pension payable to a person after he has attained the age of 65. This benefit is available only to one who has worked for at least one day in each of at least five separate years since December 31, 1936, who has earned at least $2,000 since that date, and who is not then receiving wages 'with respect to regular employment.' Sections 202(a), (d), 210(c), 42 U.S.C.A. ss 402(a, d), 410(c). The benefits are not to begin before January 1, 1942. Section 202(a), 42 U.S.C.A. s 402(a). In no event are they to exceed $85 a month. Section 202(b), 42 U.S.C.A. s 402(b). They are to be measured (subject to that limit) by a percentage of the wages, the percentage decreasing at stated intervals as the wages become higher. Section 202(a), 42 U.S.C.A. s 402(a). In addition to the monthly benefits, provision is made in certain contingencies**907 for 'lump sum payments' of secondary importance. A summary by the Government of the four situations calling for such payments is printed in the margin. [FN1]

FN1 (1) If through an administrative error or delay a person who is receiving a monthly pension dies before he receives the correct amount, the amount which should have been paid to him is paid in a lump sum to his estate (section 203(c) 42 U.S.C.A. s 403(c)).

(2) If a person who has earned wages in each of at least five separate years since December 31, 1936, and who has earned in that period more than $2,000, dies after attaining the age of 65, but before he has received in monthly pensions an amount equal to 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and the time he reaches 65, then there is paid in a lump sum to his estate the difference between said 3 1/2 per cent. and the total amount paid to him during his life as monthly pensions (section 203(b), 42 U.S.C.A. s 403(b)).

(3) If a person who has earned wages since December 31, 1936, dies before attaining the age of 65, then there is paid to his estate 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and his death (section 203(a), 42 U.S.C.A. s 403(b)).

(4) If a person has, since December 31, 1936, earned wages in employment covered by Title II, but has attained the age of 65 either without working for at least one day in each of 5 separate years since 1936, or without earning at least $2,000 between January 1, 1937, and the time he attains 65, then there is paid to him (or to his estate, section 204(b), 42 U.S.C.A. s 404(b)), a lump sum equal to 3 1/2 per cent. of the 'wages' paid to him between January 1, 1937, and the time he attained 65 (section 204(a), 42 U.S.C.A. s 404(a)).

637** This suit is brought by a shareholder of the Edison Electric Illuminating Company of Boston, a Massachusetts corporation, to restrain the corporation from making payments and deductions called for by the act, which is stated to be void under the Constitution of the United States. The bill tells us that the corporation has decided to obey the statute, that it has reached this decision in the face of the complainant's protests, and that it will make the payments and deductions unless restrained by a decree. The expected consequences are indicated substantially as follows: The deductions from the wages of the employees will produce unrest among them, and will be followed, it is predicted, by demands that wages be increased. If the exactions shall ultimately be held void, the company will have parted with moneys which as a practical matter it will be impossible to recover. Nothing is said in the bill about the promise of indemnity. The prediction is made also that serious consequences will ensue638** if there is a submission to the excise. The corporation and its shareholders will suffer irreparable loss, and many thousands of dollars will be subtracted from the value of the shares. The prayer is for an injunction and for a declaration that the act is void.

The corporation appeared and answered without raising any issue of fact. Later the United States Commissioner of Internal Revenue and the United States Collector for the District of Massachusetts, petitioners in this court, were allowed to intervene. They moved to strike so much of the bill as has relation to the tax on employees, taking the ground that the employer, not being subject to tax under those provisions, may not challenge their validity, and that the complainant shareholder, whose rights are no greater than those of his corporation, has even less standing to be heard on such a question. The intervening defendants also filed an answer which restated the point raised in the motion to strike, and maintained the validity of Title VIII in all its parts. The District Court held that the tax upon employees was not properly at issue, and that the tax upon employers was constitutional. It thereupon denied the prayer for an injunction, and dismissed the bill. On appeal to the Circuit Court of Appeals for the First Circuit, the decree was reversed, one judge dissenting. Davis v. Edison Electric Illuminating Co., 89 F.(2d) 393. The court held that Title II was void as an invasion of powers reserved by the Tenth Amendment to the states or to the people, and that Title II in collapsing carried Title VIII along with it. As an additional reason for invalidating the tax upon employers, the court held that it was not an excise as excises were understood when the Constitution was adopted. Cf. Davis v. Boston & Maine R. Co. (C.C.A.) 89 F.(2d) 368, decided the same day.

A petition for certiorari followed. It was filed by the intervening defendants, the Commissioner, and the Collector, and ****908** brought two questions, and

two only, to our ***639** notice. We were asked to determine: (1) 'Whether the tax imposed upon employers by section 804 of the Social Security Act (42 U.S.C.A. s 1004) is within the power of Congress under the Constitution,' and (2) 'Whether the validity of the tax imposed upon employees by section 801 of the Social Security Act (42 U.S.C.A. s 1001) is properly in issue in this case, and if it is, whether that tax is within the power of Congress under the Constitution.' The defendant corporation gave notice to the clerk that it joined in the petition, but it has taken no part in any subsequent proceedings. A writ of certiorari issued. 301 U.S. 674, 57 S.Ct. 792, 81 L.Ed. 1336.

[1] First: Questions as to the remedy invoked by the complainant confront us at the outset.

Was the conduct of the company in resolving to pay the taxes a legitimate exercise of the discretion of the directors? Has petitioner a standing to challenge that resolve in the absence of an adequate showing of irreparable injury? Does the acquiescence of the company in the equitable remedy affect the answer to those questions? Though power may still be ours to take such objections for ourselves, is acquiescence effective to rid us of the duty? Is duty modified still further by the attitude of the Government, its waiver of a defense under section 3224 of the Revised Statutes (26 U.S.C.A. s 1543), its waiver of a defense that the legal remedy is adequate, its earnest request that we determine whether the law shall stand or fall? The writer of this opinion believes that the remedy is ill conceived, that in a controversy such as this a court must refuse to give equitable relief when a cause of action in equity is neither pleaded nor proved, and that the suit for an injunction should be dismissed upon that ground. He thinks this course should be followed in adherence to the general rule that constitutional questions are not to be determined in the absence of strict necessity. In that view he is supported by Mr. Justice BRANDEIS, Mr. Justice STONE, and Mr. Justice ROBERTS. However, a majority of the ***640** court have reached a different conclusion. They find in this case extraordinary features making it fitting in their judgment to determine whether the benefits and the taxes are valid or invalid. They distinguish Norman v. Consolidated Gas Co., 89 F.(2d) 619, recently decided by the Circuit Court of Appeals for the Second Circuit, on the ground that in that case, the remedy was challenged by the company and the Government at every stage of the proceeding, thus withdrawing from the court any marginal discretion. The ruling of the majority removes from the case the preliminary objection as to the nature of the remedy which we took of our own motion at the beginning of the argument. Under the compulsion of that ruling, the merits are now here.

Second: The scheme of benefits created by the provisions of Title II is not in contravention of the limitations of the Tenth Amendment.

[2] [3] [4] [5] Congress may spend money in aid of the 'general welfare.' Constitution, art. 1, s 8; United States v. Butler, 297 U.S. 1, 65, 56 S.Ct. 312, 319, 80 L.Ed. 477, 102 A.L.R. 914. Steward Machine Co. v. Davis, supra. There have been great statesmen in our history who have stood for other

views. We will not resurrect the contest. It is now settled by decision. United States v. Butler, supra. The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. ***641** 'When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress.' United States v. Butler, supra, 297 U.S. 1, at page 67, 56 S.Ct. 312, 320, 80 L.Ed. 477, 102 A.L.R. 914. Cf. Cincinnati Soap Co. v. United States, 301 U.S. 308, 57 S.Ct. 764, 81 L.Ed. 1122, May 3, 1937; United States v. Realty Co., 163 U.S. 427, 440, 16 S.Ct. 1120, 41 L.Ed. 215; Head Money Cases, 112 U.S. 580, 595, 5 S.Ct. 247, 28 L.Ed. 798. Nor is the concept of the general welfare static. Needs that were narrow or parochial****909** a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the times.

The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 442, 54 S.Ct. 231, 241, 78 L.Ed. 413, 88 A.L.R. 1481. Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the Steward Machine Co., supra, has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.

Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory ***642** groups. [FN2] Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. [FN3] A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant

facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important the number of such persons unable to take care of themselves is growing at a threatening pace. More and more our population is becoming urban and industrial instead of rural and agricultural. [FN4] The evidence is impressive that among industrial workers the younger men and women are preferred over the older. [FN5] In times of retrenchment the older are commonly the first to go, and even if retained, their wages are likely to be lowered. The plight of men and women at so low an age as 40 is hard, almost hopeless, when they are driven to seek for reemployment. Statistics are in the brief. A few illustrations will be chosen from many there collected. In 1930, out of 224 American factories investigated, 71, or almost one third, had fixed maximum hiring age limits; in 4 plants the limit was under 40; in 41 it was under 46. In the other 153 plants there were no fixed limits, but in practice few were hired if they were over 50 years of age. [FN6] With the loss of savings inevitable in periods of idleness, ***643** the fate of workers over 65, when thrown out of work, is little less than desperate. A recent study of the Social Security Board informs us that 'one-fifth of the aged in the United States were receiving old-age assistance, emergency relief, institutional care, employment under the works program, or some other form of aid from public or private funds; two-fifths to one-half were dependent on friends and relatives, one-eighth had some income from earnings; and possibly one-sixth had some savings or property. Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support.' [FN7] We summarize in the margin the results of other studies by state and national commissions. [FN8] They point the same way.

FN2 Report to the President of the Committee on Economic Security, 1935.

FN3 Hearings before the House Committee on Ways and Means on H.R. 4120, 74th Congress, 1st session; Hearings before the Senate Committee on Finance on S. 1130, 74th Congress, 1st Session.

FN4 See Report of the Committee on Recent Social Trends, 1932, vol. 1, pp. 8, 502; Thompson and Whelpton, Population Trends in the United States, pp. 18, 19.

FN5 See the authorities collected at pp. 54-62 of the Government's brief.

FN6 Hiring and Separation Methods in American Industry, 35 Monthly Labor Review, pp. 1005, 1009.

FN7 Economic Insecurity in Old Age (Social Security Board, 1937), p. 15.

FN8 The Senate Committee estimated, when investigating the present act, that over one half of the people in the United States over 65 years of age are dependent upon others for support. Senate Report, No. 628, 74th Congress, 1st Session, p. 4. A similar estimate was made in the Report to the President of the Committee on Economic Security, 1935, p. 24.

A Report of the Pennsylvania Commission on Old Age Pensions made in 1919 (p. 108) after a study of 16,281 persons and interviews with more than 3,500 persons 65 years and over showed two fifths with no income but wages and one fourth supported by children; 1.5 per cent. had savings and 11.8 per cent. had property.

A report on old age pensions by the Massachusetts Commission on Pensions (Senate No. 5, 1925, pp. 41, 52) showed that in 1924 two thirds of those above 65 had, alone or with a spouse, less than $5,000 of property, and one fourth had none. Two thirds of those with less than $5,000 and income of less than $1,000 were dependent in whole or in part on others for support.

A report of the New York State Commission made in 1930 (Legis. Doc. No. 67, 1930, p. 39) showed a condition of total dependency as to 58 per cent. of those 65 and over, and 62 per cent. of those 70 and over.

The national Government has found in connection with grants to states for old age assistance under another title of the Social Security Act (Title I (section 1 et seq., 42 U.S.C.A. s 301 et seq.)) that in February, 1937, 38.8 per cent. of all persons over 65 in Colorado received public assistance; in Oklahoma the percentage was 44.1, and in Texas 37.5. In 10 states out of 40 with plans approved by the Social Security Board more than 25 per cent. of those over 65 could meet the residence requirements and qualify under a means test and were actually receiving public aid. Economic Insecurity in Old Age, supra, p. 15.

***644** The problem is plainly national in area and dimensions. Moreover, laws of the ****910** separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. This is brought out with a wealth of illustration in recent studies of the problem. [FN9] Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors. We have seen this in our study of the problem of unemployment compensation. Steward Machine Co. v. Davis, supra. A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all.

FN9 Economic Insecurity in Old Age, supra, chap. VI, p. 184.

[6] Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here as often is with power, not with wisdom. Counsel for respondent has recalled to us the virtues of self-reliance and frugality. There is a possibility, he says, that aid from a

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paternal government ***645** may sap those sturdy virtues and breed a race of weaklings. If Massachusetts so believes and shapes her laws in that conviction, must her breed of sons be changed, he asks, because some other philosophy of government finds favor in the halls of Congress? But the answer is not doubtful. One might ask with equal reason whether the system of protective tariffs is to be set aside at will in one state or another whenever local policy prefers the rule of laissez faire. The issue is a closed one. It was fought out long ago. [FN10]

FN10 IV Channing, History of the United States, p. 404 (South Carolina Nullification); 8 Adams, History of the United States (New England Nullification and the Hartford Convention).

When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield. Constitution, art. 6, par. 2.

Third: Title II being valid, there is no occasion to inquire whether Title VIII would have to fall if Title II were set at naught.

The argument for the respondent is that the provisions of the two titles dovetail in such a way as to justify the conclusion that Congress would have been unwilling to pass one without the other. The argument for petitioners is that the tax moneys are not earmarked, and that Congress is at liberty ****911** to spend them as it will. The usual separability clause is embodied in the act. Section 1103 (42 U.S.C.A. s 1303).

We find it unnecessary to make a choice between the arguments, and so leave the question open.

[7] Fourth: The tax upon employers is a valid excise or duty upon the relation of employment.

As to this we need not add to our opinion in Steward Machine Co. v. Davis, supra, where we considered a like question in respect of Title IX.

***646** [8] Fifth: The tax is not invalid as a result of its exemptions.

Here again the opinion in Steward Machine Co. v. Davis, supra, says all that need be said.

Sixth: The decree of the Court of Appeals should be reversed and that of the District Court affirmed. Ordered accordingly.

Decree of Court of Appeals reversed, and decree of District Court affirmed.

Mr. Justice McREYNOLDS and Mr. Justice BUTLER are of opinion that the provisions of the Act here challenged are repugnant to the Tenth Amendment, and that the decree of the Circuit Court of Appeals should be affirmed.

U.S. 1937.

Helvering v. Davis

301 U.S. 672, 301 U.S. 619, 57 S.Ct. 904, 109 A.L.R. 1319, 19 A.F.T.R. 531, 81 L.Ed. 1307

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Reader's Notes